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DISPUTED PROPERTIES, CONTESTED IDENTITIES: FAMILY LAW, SOCIAL REFORM AND THE CREOLE CHINESE IN DUTCH COLONIAL JAVA (1830-1942)

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GUO-QUAN SENG

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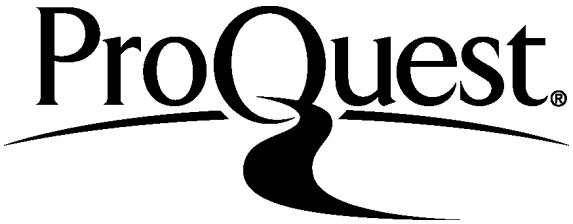

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Abstract

This dissertation examines the cultural agency of the creole Chinese settler group in Southeast Asia on the grounds of the colonial-capitalist property regime and deep structures of creolized Chinese kinship over the course of the long nineteenth century in Dutch colonial Java (1830-1942). It looks at how discourses on inheritance rights and marital norms within the Chinese family changed under the legal advice of three successive groups of experts on Chinese personal law: 1) the Dutch colonial-appointed Chinese officer, 2) the Sinology-trained government translator, and 3) the judicial reformer. Being exempted from the European law of persons, the Chinese, like other Asian and indigenous peoples under colonial rule, were entitled to their own "religious laws, folk institutions and usages" under the colonial constitution (art. 79 and 109 *Regeerings-Reglement*). Under this rubric of legal expertise, different sets of intermediaries took on epistemological presumptions about the ideal Chinese family that changed over time, and did not remain stable even within each time period.

Between the 1830s and 1860s, the mercantile Chinese officers proclaimed inheritance rights for the ideal Chinese family based on patrilineal principles that recognized almost equal rights among different classes (main wife, concubine, adopted) of sons, and a small portion for widows and daughters. In practice, as my survey of probate and legal cases show, the colonial institution of the testament allowed individual fathers to exercise great discretion. Law recognized the woman's autonomy to handle her own property. Wealthier creole Chinese fathers often left more significant shares of their estates to their wives and daughters than prescribed by the Chinese officers. Some patterns of inheritance among the creole Chinese in fact followed the

bilateral kinship system described by William Skinner, in which the daughter's inheritance via uxori-local marriage brought with it worshipping duties for patri- and matrilineal ascendants in the next generation. Creole Chinese women also got involved in personal and familial forms of entrepreneurial activities that confounded the patriarchal Chinese officers and colonial judges administering the law. These widely ranging patterns of social-familial practices surrounding a kinship system that was patriarchal in ideology but bilateral in practice was the norm at least until the 1890s, and probably persisted for even longer among the parts of the community unexposed to modern education.

Between the 1860s and 1890s, the Sinology trained Dutch translators injected a more classically patriarchal notion of the ideal Chinese family into colonial jurisprudence. Drawing from Henry Maine's comparative law project, in which paternal despotism was designated as an intermediate stage prior to the full flowering of individualistic civil law, large swaths of newly colonized peoples and cultures were categorized as being stuck under the paternal despotism of underdeveloped Asian family laws. Amateur and emergent professional Sinologists derived family inheritance rights by posing comparative legal ethnographic questions of the Chinese father's power and its limits to Qing Chinese law and Confucian classics. Three schools of thought emerged over differences in their interpretation of the Chinese woman's inheritance rights. By the later 1880s, the purist notion that Chinese law treated women as property prevailed over the pragmatist reading that accorded women some rights. Despite their differences in emphasis, all three schools did not see any need to study the customs of the creole Chinese and agreed that applying a purer notion of Chinese law would help to civilize the mixed-race creoles of Java.

The debate on personal law reform took on racial and explicitly civilizing tones in the 1890s when reformers began to show concern about mixed marriages and to champion monogamy for the Chinese and native populations. Debates however were conducted mainly among colonial elites with no input from the Chinese or Indonesian population. Colonial plans to produce a unified civil code for all races, however, faltered in the face of criticism by the adat (customary) law school. The application of European law to the Chinese population in Java went ahead in 1919, when the Chinese were subjected to monogamy and consensual marriage laws. Newspapers of the period show that the Chinese embraced monogamy but Chinese parents remained ambivalent about losing the authority to arrange marriages for their children. The question of native concubinage was addressed not so much in the newspapers as in Peranakan literature. Peranakan Chinese writers were critical of the practice. The intellectual Kwee Tek Hoay tried to put that pedagogical point across to his audience, in the most famous novel of the period, by setting up the native concubine and her mestizo daughter as the counter-patriarchal saviors of a childless Chinese family.

Abbreviations

ANRI	Arsip Nasional Republik Indonesia (Archives of the National Republic of Indonesia)
THHK	Tionghoa Hwee Kuan 中華會館
WBK	Wees- en Boedelkamer (Archive of the Orphans and Probates Chamber)

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Introduction

> Now you must know that if the lawgiver in [Netherlands] India has to deal with primitive or half-civilized situations, for instance with polygamy or concubinage, to which he cannot bring changes, he can only then leave the regulation thereof to adat, the customary law, officially named: the religious laws, folk institutions and usages.
> But when the lawgiver endeavors to regulate family law, then he does this as a civilized lawgiver. He then begins with the principles of monogamy, that is to say that the husband can only be bound to marriage with one wife, at the same time as the wife with one husband.
>
> Lecture to Indies-Chinese students in The Hague
> - Pieter H. Fromberg 1912[1]

> Thus in time the customs, beliefs and religion of the Chinese of Java grew extremely chaotic and burdensome. From China-born fathers the Chinese inherited practices from China which could not be neglected; by their mothers they were engulfed in native practices and customs as firmly and fanatically held to as those from the father's side… In time the Chinese bore that unorthodox burden with patience and accepted it as fate. Various educated young people who sought to reform their marriage ceremonies because they did not like acting foolishly were obliged to submit to the smooth words of parents and elders who said: "One is a bride or a groom only once."
>
> "The Origins of the Modern Chinese Movement in Indonesia"
> - Kwee Tek Hoay, 1937[2]

For both Pieter H. Fromberg and Kwee Tek Hoay, speaking and writing albeit twenty-five years apart, changing the way the Chinese conceived of marriage and the family was at the very heart of the movement to reform the Chinese in colonial Indonesia. Today, we remember Kwee Tek Hoay the Peranakan Chinese intellectual much more than Pieter Fromberg. Kwee's

[1] Fromberg, "Voorheen en thans" (Then and now) [A lecture held at the Chinese association, Chung Hwa Hui on 28.12.1912 in The Hague] in *Verspreide Geschriften*, 491-509, citation from 501.
[2] Kwee, Lea Williams trans., *The origins of the modern Chinese movement in Indonesia* (Ithaca, N.Y., Modern Indonesia Project, Southeast Asia Program, Cornell University, 1969 [1931-2]).

Malay language writings and intervention in politics, religion and education between the 1920s and 1940s came to set the parameters within which the Chinese community defined their minority cultural identity in post-colonial Indonesia.[3] Yet until the late 1920s, Pieter H. Fromberg, the retired colonial jurist who became the foremost advocate for Chinese emancipation in the Dutch Indies during the 1910s, was indisputably not only the most vocal, but also the most influential intellectual voice for the Chinese community in colonial Java and the rest of the Indies. Fromberg's treatise, *The Chinese Movement in the Indies* (1911), gained such popularity and traction among the Indies Chinese that even his foremost adversary within the Chinese community, the China-oriented *Sin-Po* intellectuals, found it useful to translate and propagate his analysis of the structural injustices that the Indies Chinese faced.[4]

Closer readings of Fromberg's and Kwee's notions of what reforms for the Chinese family entailed, reveal jarring differences in their approach and emphasis. For Fromberg, what was at stake in the turn to "family law" reform was the bestowing of civilization in the form of monogamy to a polygamous, and by extension, primitive people. What was remarkably absent throughout Kwee Tek Hoay's 1937 account of "The Origins of the Modern Chinese Movement in Indonesia," was the role that the colonial state and colonial reformers such as Fromberg tried to play in the 1910s and 1920s. The Chinese movement was not so much concerned with polygamy as the native practices introduced by native mothers into Peranakan Chinese culture that had to be eradicated under the rubric of Confucian teachings. There was no place for the discourse of civilization in the Indies Chinese reformers' quest to become modern.

[3] See Myra Sidharta, *100 tahun Kwee Tek Hoay: dari penjaja tekstil sampai ke pendekar pena* [One Hundred Years of Kwee Tek Hoay: From Textile Peddlar to Intellectual] (Jakarta: Pustaka Sinar Harapan, 1989).
[4] This appeared under the translation and editing of the *Sin Po* editor Tjoe Bou San in 1920. See Tjoe ed. and trans., *Pergerakan Tionghoa di Hindia Olanda dan Mr. P. H. Fromberg* [The Chinese Movement in Netherlands India] (Batavia: Drukkerij Sin Po, 1921).

It was not so much for social reform but for refining its rule of property that Dutch officials began to show concern over Chinese customary law and Chinese kinship systems in the 1860s. Until then, the Dutch judiciary and probate system had relied mainly on Dutch-appointed "Chinese officers" – members of the local Chinese merchant elite – to determine the customary laws of the community in cases of property disputes among Chinese kin. Between the 1860s and 1890s, the discipline of legal ethnography at the imperial metropoles took a global comparative "family law" turn, the effects in Java of which shifted the burden of "customary law" determination from the Chinese officers to Sinology-trained official Dutch-Chinese translators. It is indicative of the ethnographic moment that when the colonial Department of Justice appointed Pieter H. Fromberg to draft a Chinese private law code in 1894, it was his task to "restore the Chinese *patria potestas*" (paternal head of the household). Yet by the early 1910s, as Fromberg's lecture to the young Indies Chinese students sojourning in the Netherlands indicated, civilized "family law" had become a standard for empire's Chinese subjects to strive for.

Using a transnational and social history frame of analysis, this dissertation explores how notions of family, law and race in an overseas Chinese society changed over time alongside changes to colonial property and personal laws across the nineteenth and early twentieth centuries. It treats law and contestations over legislation as a locus for studying how an overseas Chinese community was grounded within not only a plural society but a global structure of shifting legal ethnographic categories. By placing the social history of contested Chinese familial norms within the same field of analysis as a global knowledge structure of colonial personal law,

more broadly speaking, this dissertation opens up a new way of framing the historiographical question of cultural agency for a diasporic people.

Diaspora, Only a Question of Culture?

Today there are more than fifty million Chinese and people of Chinese heritage living outside of China. Eighty percent of these overseas Chinese live among Southeast Asian societies. While Chinese merchants had begun to venture into maritime Southeast Asia from the second millennium, the majority of today's Southeast Asian Chinese are descended from laborers, petty traders and their families, who arrived between 1840 and 1942 at a time when the region was being colonized by expansionist European empires. The departure of the Europeans after 1945 either by gradualist self-withdrawal or revolutionary expulsion left the new fledgling Southeast Asian nations with significant and relatively wealthy Chinese and other Asian minorities in their midst. The colonial legacy coupled with Communist China's ideological interventions in the region during the Cold War complicated nationalist efforts to integrate Chinese minorities. Although tensions have simmered after Southeast Asian nations normalized diplomatic relations with China from the late 1970s, the political loyalty of Chinese minorities in the region (and the majority in Singapore to the region) has once again come under populist scrutiny in the wake of the ongoing maritime boundary dispute between China and Southeast Asian nations.[5]

[5] See the most recent writings of Caroline Hau on the situation in the Philippines. Hau, "The problem with loyalty oaths: Has anyone imagined the logistical nightmare of translating a call for action of Filipino-Chinese communities into actual policy?" published 11.7.2015, www.rappler.com. The predicament of Singapore's Chinese majority periodically surfaces in moments of political struggle in the intra-elite discourse among the Malay or Indonesian national leaders. Singapore, along with Malaysian/Indonesian Chinese minorities are usually constructed as the enemy-within "Other" in these indigenous elite power struggles. For a current Malaysian example, see, "Najib is Singapore, Jho Low proxy, says Dr. Mahathir" in, www.themalaysianinsider.com (published 17.7.2015). Indonesia's current president had to address a sustained smear campaign alleging that he is a Christian-Chinese during the 2014 presidential elections. See Ainur Rohmah, "Indonesia presidential election hit by 'black campaign'" in www.aa.com.tr (published 15.6.2014).

The relaxation of Cold War tensions and the rapid rise of China's influence over the last three decades have contributed to a remarkable "re-sinization" of Chinese minorities in the region. In post-Suharto Indonesia, Chinese education and the celebration of Chinese festivals are no longer prohibited. There is now great demand for Chinese language education within the boundaries of national education. Nationalism's Janus face comes into full view when it turns to face China. Indigenous leaders of Chinese discriminating nations no longer shy from proclaiming their Chinese ancestry either for electoral gains or for capturing some imagined cultural capital in connection with the emergent world power.[6] Be that as it may, "re-sinicization" will be better understood, as Caroline Hau points out, in the context of circulating discourses of Chinese-ness, amidst shifting global structures of race, nationalism, and capitalist cosmopolitanism that goes back to at least the nineteenth century.[7]

Although scholars of the overseas Chinese have been careful to distinguish local structures and practices of Chinese identification from nationalistic claims emanating from mainland China, that distinction is harder to make and analytically less helpful where non-state actors and questions of culture and identity are concerned. Within the field, the debate has largely come to be framed around the concept of diaspora, or the extent to which the "culture" of the Chinese overseas and overseas Chinese communities should be placed within a common framework and measured against a certain universal standard of Chinese-ness. The concept of a Cultural China and with its diaspora of Chinese communities scattered across not only Southeast

[6] They include: President Corazon Cojuangco Aquino of the Philippines, King Bhumibol Adulyadej, Prime Minister Kukrit Pramoj, Prime Minister Thaksin Shinawatra of Thailand, President Abdurrahman Wahid of Indonesia and Prime Minister Abdullah Badawi of Malaysia. See Caroline S. Hau, "Becoming "Chinese"—But What "Chinese"?—in Southeast Asia" in *The Asia-Pacific Journal: Japan Focus.*

[7] Hau, ibid. See also her recent book, *The Chinese question: ethnicity, nation, and region in and beyond the Philippines* (Singapore/Kyoto: NUS Press, Kyoto University Press 2014).

Asia, but also Taiwan, Hong Kong and America, was most forcefully put forth by Tu Wei-ming. Written in the aftermath of China's failed political transition in 1989, Tu argued that while Confucian civilization had decayed in the center (mainland China), it survived in a revitalized form among diaspora Chinese on the periphery of the central plains territory that gave birth to Chinese civilization.[8]

In a recent defense of "diaspora" that is critical of Tu's spatial-cultural Chinese cultural scheme, historian Shelly Chan argues for a more complex historicization of the concept that would be sensitive to "moments of acute rupture or historical dislocation". Chan uses the biographical case of the cosmopolitan Straits Chinese Peranakan intellectual Lim Boon Keng to illustrate how paying attention to diaspora may disrupt the linearity of nation-based historical narratives. Reconstructing Lim's debates with the May Fourth intellectual, Lu Xun, when the former was helming the overseas Chinese funded Xiamen University, Chan shows how Lim's embrace of Confucianism at the turn of the twentieth century clashed against Lu Xun's cultural iconoclasm of the 1920s. Seen in this light, Lim's anachronism from a China-centered history can be understood as a counter-cultural discourse against maritime European imperialism in Asia in a diasporic reading of dislocated histories. Likewise, the unexpected revival of Lim's Confucianist legacy by in post-colonial Singapore suggests for Chan that diaspora "derives from historical sedimentation of many sources, laying down rich grounds for future reformulation".[9] Although Chan does not specify how the later day revival of Lim Boon Keng's Peranakan Confucianism disrupts time, it is arguably more of a disruption against an orthodox appropriation

[8] Tu, "Cultural China: The Periphery as the Center" in *Daedulus* Vol. 120, No. 2, *The Living Tree: The Changing Meaning of Being Chinese Today* (Spring, 1991), pp. 1-32.
[9] Shelly Chan, "The Case for Diaspora," in *The Journal of Asian Studies*, Vol. 74, no. 1, Feb. 2015, 107-128, citations from 122.

of Confucian values by Singapore's Anglophone elites in the 1990s. For the marginalized Sinophone in Singapore, Lim stood for a counter-cultural discourse against Lee Kuan Yew's embrace of Confucianist Asian values in Anglophone Singapore's national discourse during the 1990s.[10]

Critiques of "diaspora," on the other hand, have insisted that the concept obscures how the politics of representation is always contextual and local. Without rejecting the use of "diaspora" as an analytical concept outright, cultural studies and literary critics have sought to politicize representations of Chinese-ness at the very site where the subject chooses to represent Chinese-ness or being labelled Chinese. Ien Ang, an Indonesia-born Peranakan Chinese who grew up in the Netherlands, argues in a reflexive autobiography that Chinese-ness is as much external racial imposition as subjective identification for a people like her who does not speak Chinese.[11] Shu-mei Shih has called for a new Sinophone canon that would grant "Diaspora… an end date", because "cultural practice is place-based" and "everyone should be given a chance to become a local".[12] Underlying both Ang, Shih, and others' criticism is the conflation of Han race or ethnicity with practices of culture and language (or literary) abilities that may have diverged significantly from the "Chinese".[13]

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[10] Lee's nationalization of autonomous colonial-era Chinese schools between the 1960s and 1980s had left Singapore's Sinophone intellectuals deracinated by the 1990s. While the Anglophone Lee might have rhetorically endorsed the Harvard professor Tu Weiming's peripheral Chinese culturalism, the Chinese-speaking intellectuals in Singapore resurrected an alternative hero in the persona of the earlier Peranakan elite, who was a scholar of the Confucian classics himself. See Huang Jianli, "Biography and Representation: A Nanyang University Scholar and Her Configuration of the Sinophone Intelligentsia in Singapore" in Chinese Southern Diaspora Studies, Vol. 5, 2011-2, 3-28.

[11] Ien Ang, *On Not Speaking Chinese: Living Between Asia and the West* (Psychology Press, 2001), 21-36.

[12] "Against Diaspora: The Sinophone as Places of Cultural Production" in *Globalizing Modern Chinese Literature: A Critical Reader on Sinophone and Diasporic Writings*. Eds. Jing Tsu and David Wang. (London: Brill, 2010), 29-48.

[13] See also Allen Chun, "Fuck Chineseness: On the Ambiguities of Ethnicity as Culture as Identity" in *boundary* 2, Vol. 23, No. 2, 1996, 111-138.

I agree that an overemphasis on the cultural in the deployment of diaspora as an analytical concept risks obscuring both the more concrete social institutions that ground those processes of long distance connections and the broader global historical contexts against which the movements and connections were enabled. Although shifting cultural identities are momentous events in the histories of individuals and groups, questions framed around cultural identity may lose sight of the transnational and multi-vocal processes that are in and of themselves constitutive of diaspora. As Adam Mckeown argues, instead of using it as a category for describing groups, it would be more useful to develop a "diasporic perspective that can direct the analysis of geographically dispersed institutions, identities, links, and flows".[14] Grounded on ever shifting social institutions centered on trade, labor, families, nationalism and ethnicity, culture can instead be made to assume and explain the new guises of village networks, oath-bound fraternal societies, transnational patrilineal households, and inter-racial marriages rather than reify already existing fluid identities for bounded ones.

This dissertation grounds the study of cultural change in one Chinese settler society in the form of shifting social norms surrounding Chinese marriage and familial inheritance, and in the context of global changes in the structures of race, nation and colonial personal law between 1830 and 1942. It locates the formation of the Peranakan Chinese society in Java within deep local structures of creolized kinship systems, property regimes, and the shifting transnational discourses of race and nation. I argue that the misalignment between long established structures

[14] Adam McKeown, "Conceptualizing Chinese Diasporas, 1842 to 1949", *The Journal of Asian Studies*, Vol. 58, No. 2 (May, 1999), 306-337. See also McKeown, *Chinese Migrant Networks and Cultural Change: Peru, Chicago, Hawaii, 1900-1936* (Chicago: Chicago UP, 2001).

that made this a creole society came under the pressure of the newly nationalized global system of race-based family laws around the 1890s. The social tensions that resulted from these transformations were experienced not so much in the form of the more transparent social or political movements of the time. Rather a deep unsettling anxiety pervaded over how older attitudes about families, marriages and native concubines had now got to change in step with the move toward modernity. It is within these deep structures and the underlying tensions as they were transformed, that questions of cultural agency will be posed.

Historical Background: The Making of a Creole Chinese Society

Throughout the colonial (1816-1942) period, the Dutch ran Java as a dualist economy, divided between a capital-intensive Western sector and a labor-intensive Eastern sector. Although the ownership of capital shifted from state to corporate enterprise between the Cultivation System (1830-70) and the subsequent Corporate Plantation System (1870-1942), the legal-constitutional segregation of the Western capital-intensive and native labor-intensive social-economic spheres persisted to the end. Under the Cultivation System, the colonial state extracted corvée labor *(heerendiensten)* through the salaried native feudal elite to produce tropical cash crops such as coffee, indigo and sugar for the global market. Although compulsory labor was abolished, land remained inalienable to non-natives under the 1870 Agrarian Law. The state-controlled extraction of the feudal agrarian surplus was merely replaced with the private exploitation of native land and labor through village corporations sanctioned by the state to contract the village community's land and labor in 21½ -year leases. The continual expansion of agrarian exploitation through the bureaucratized aristocracy and village corporation sustained Java's population rapid expansion (from 7 million in 1830, to 16.2 in 1870, 28.4 in 1900, and

41.7 in 1930) with neither improvement to living standards nor the proletarianization of the peasantry.[15]

Unlike other capitalist mining and plantation sites in the world that began to draw on Chinese indentured labor, the Dutch plantation scheme in Java, with cooperation of the native elite and the explosion of the peasant population, had no further need of foreign immigrant labor. Chinese immigration to Java was closed between 1837 and 1866 (with minor exceptions for skilled artisans). Entry after 1866 was loosened but still required proof of self-sustaining employment and financial guarantees from local residents.[16] Net annual Chinese immigration rose to more than 3,000 in the 1900's, peaking at 11,000 in the 1920s. On Java, there were about 78,000 Chinese to 7 million natives in 1830; 227,000 to 28 million in 1900; and 582,000 to 41.7 million in 1930.[17] The proportionate rate of Chinese population growth (about 1 in 100 Javans were Chinese throughout the nineteenth century) up to 1900 reflects the almost negligible numbers of new arrivals up to that point.

Within this relatively closed and rigid colonial economy, Chinese merchants served as intermediaries between Western capital and native agrarian labor to facilitate the circulatory sphere of the increasingly monetized colonial economy. Access to the hinterland for the Chinese retailers was restricted to the highest bidders of revenue farms such as licenses to operate

[15] Clifford Geertz, *Agricultural Involution: The Process of Ecological Change in Indonesia* (Berkeley: California UP, 1963), 47-123, population figures from 70-1. Under the Cultivation System, the peasantry is obliged to plant the cash crop, pay land rent, but the state bought the crops at a small margin of earnings (minus land rent) to the peasant. See Cees Fasseur, *The politics of colonial exploitation: Java, the Dutch, and the Cultivation System* (Ithaca: Cornell, 1992).
[16] W. J. Cator, *The Economic Position of the Chinese in the Netherlands Indies*, (Oxford, 1936).
[17] Peter Boomgaard and A.J. Gooszen, *Population Trends 1795-1942, Changing Economy in Indonesia Vol. 11* (Royal Tropical Institute, The Netherlands, 1991), 106, 117, 127, 135.

markets, abattoirs, run toll roads, or the most lucrative of all, sell opium to Javanese consumers. These revenue farms earned the colonial state earned between 15% and 30% of its local revenue.[18] Under the pass-and-quarter system (1834-1914), inland travelers had to apply for a pass and travel according to approved itineraries. Those who wished to settle in the hinterland could only reside in designated, racially segregated "Chinese camps" (*Chineesche kampen)* in the residency capitals and district towns under the authority of "a chief of their own nation". Colonial officials admitted that the policy failed to achieve its goal of preventing contact between the Chinese and the Javans –174 wards were designated across Java in 1874 but upwards of 30,000 Javan villages reported resident Chinese in their midst in 1890.[19] Despite its failure, the state ethnic segregation and enumeration of peoples no doubt raised the ethnic self-awareness of the targeted subjects.

The concentration of Chinese into wards strengthened the social standing of the merchant elite. Between 1850s and 1890s, the colonial economy bred a fairly consistent class of colonial-backed Chinese elite, whose public and economic roles overlapped. Chinese officers were only chosen from successful and land-rich revenue-farmers. At its peak between 1850s and 1870s about 3,000 revenue farmers dominated the Javan circulatory economy, among whom 1,400 were landowners, and 460 appointed Chinese officers.[20] In the economic sphere, the Chinese officers acted as intermediaries for the operation of the government leases and pass-and-quarters system. In the private sphere, they were the state's intermediaries for matters relating to the birth, marriage, death and poverty relief of their community. These city-based mercantile leaders,

[18] See Abdul Wahid, "From Revenue Farming to State Monopoly: The Political Economy of Taxation in Colonial Indonesia, Java c. 1816-1942" (Doctor Proefschrift, Utrecht University, Institute of History and Culture, 2013).
[19] Cator, *Economic Position,* 34.
[20] For a more detailed year-by-year breakdown of the figures, see De Waal, *Onze Indische Financien,* 171.

whose extensive patronage networks of kin-related sub-lessors reached into the hinterland, sat at the apex of the creole Chinese society.[21]

Because Chinese emigration was a purely male phenomenon until the 1890s, the early overseas Chinese settler families were almost mestizo by definition. But ethnic endogamy within the Chinese community soon gave rise to a settled Chinese creole society.[22] The China-born element was always small in Java. In 1860, the male Chinese sojourner group was 2,500, compared to a settled creole population of 146,900. In 1870, there were 2,500 male sojourners to 172,000 creole settlers.[23] The very small proportion of China-born sojourners competed with the creole Chinese men in the marriage market for the same pool of creole Chinese women. This gender imbalance was countered by new indigenous women entering the society through inter-ethnic marriage and the keeping of native housekeepers as concubines – the *nyai*.[24] "Continual increment of new blood, both (male) Chinese and (female) indigenous," William Skinner points out, contributed to rapid population growth and the formation of a stable creolized culture. [25]

While creole-women dominant marriages and Chinese endogamy prevailed in the colonial cities, mestizo practices of marriage and ethnic exogamy were more likely to occur in the hinterland. The question of mestizo Chinese marriages warrants further research. Suffice it to note here that at the lower ends of the creole Chinese society, and especially in the countryside, it

[21] James Rush, *Opium to Java: Revenue Farming and Chinese Enterprise in Colonial Indonesia 1860-1910* (Ithaca: Cornell, 1990), 96-8.
[22] The Chinese subscribe to "vague notions of racial purity" that are often "subordinated to ideological principles about the male descent line". Wang Gungwu, "The Study of Chinese Identities in Southeast Asia" in *China and the Chinese Overseas,* Wang Gungwu (Singapore: Eastern Universities Press, 2003), 234.
[23] De Waal, *Onze Indische Financien,* 170.
[24] Skinner estimates that the sojourner population was between 1 and 5% of the total Chinese population in Java. Skinner, William, "Creolized Chinese societies in Southeast Asia" in: *Sojourners and Settlers: Histories of Southeast Asia and the Chinese*, ed. by Anthony Reid. (Sydney: Allen and Unwin, 1996), 50–93.
[25] Skinner, "Creolized Chinese Societies", 53.

was just as likely for the China-born or poorer creole Chinese men to assimilate into village Java via matrilocal marriage with an indigenous woman.[26] In Batavia, the only city in which Chinese marriage registers have survived, one in three creole Chinese women married a China-born settler between the 1870s and 1890s.[27] That ratio is significant given the small proportion of new Chinese settlers within the creole society. But the higher incidence of settler-creole marriages reflects how some creole parents favored entrepreneurially successful new Chinese settlers over prospective creole grooms. Marital residence with the bride's family (uxori-local), an anomaly in the dominant Chinese patrilocal marriage pattern, was a widely accepted practice among the Peranakan Chinese.[28] Daughters were used to bring in sons-in-law whenever sons or competent sons were missing, and because there were no lineage agnates to provide sons for adoption, the needs of family business "almost demanded inheritance through daughters and their competence over property brought to marriage". Marital residence could thus go either with the bride or groom's family (ambilocal), depending on which side offered better opportunities.[29] As a result, the patrilineal Chinese ancestral worship system became bilateral – descendants were just as likely to worship their mother's as their father's ascending line.[30]

[26] Skinner, "Creolized Chinese Societies", 53-4, esp. footnote 6 for the four categorical exceptions to creole endogamous marriage.
[27] Hans Gooszen, "The marriage market for Chinese girls in Batavia: some explorations into its territorial boundaries" in *The Archives of the Kong Koan of Batavia,* Leonard Blussé and Chen Menghong eds. (Leiden: Brill, 2003), 69-79, citation 77.
[28] Unfortunately the marriage registers do not indicate the place of marital residence. There is hence no way to determine if the settler-creole marriages were settler-Chinese patrilocal or creole uxorilocal. For prevalence of uxorilocal marriage among Peranakans, see Skinner, "Creolized Chinese Societies", 63, and John Clammer, *Straits Chinese Society: studies in the sociology of the baba communities of Malaysia and Singapore,* 35-44.
[29] Skinner, "Chinese kinship change in Java".
[30] Skinner, "Chinese kinship change in Java".

Methodology, Sources, Outline

"Close contact with the native element, and especially the intimate mixing with native blood, has changed much," wrote Dutch Sinologist J. J. M. de Groot in the *Encyclopedia of the Netherlands Indies* entry on "Chinese" in 1899, "but the cardinal principles of their family life has survived in an almost pristine (*ongerept)* state".[31] My research problematizes both the internal tensions within colonial forms of knowledge that supported ethnographic statements such as de Groot's and the external tensions these knowledge structures encounter when imposed on social reality. I take William Skinner's creole Chinese society thesis as a starting point for reconstructing the complex kinship and hybridized cultural structures of the Peranakan Chinese in Java. Recent research drawing on newly available Dutch and Indonesian colonial archives have shed new light on the social-economic status of the Chinese officers, their economic role under the revenue-farming system, and the problematic place of the Chinese under Dutch colonial law.[32] I draw on some of these new findings to help reconstruct the changing social familial norms of the creole Chinese society. But my story departs from theirs and Skinner's by its focus on colonial knowledge structures and the social tensions when these were brought to bear on creolized kinship practices. The chapters are organized by theme and chronology. Chapters One and Four approach the questions of creolized kinship practices from the bottom-up, while Chapters Two and Three zoom in on shifts and tensions within the emergent top-down global structure of racialized family law.

[31] *Encylopaedie van Nederlandsch-Indie I*, 350.
[32] Menghong Chen, *De Chinese gemeenschap van Batavia, 1843-1865: een onderzoek naar het Kong Koan-archief* [The Chinese community in Batavia, 1843-65: a research in the Kong Koan archive] (Leiden: Leiden UP, 2013); Monique Erkelens, *The Decline of the Chinese Council of Batavia: the loss of prestige and authority of the traditional elite amongst the Chinese community from the end of the nineteenth century until 1942* (Leiden, History Proefschrift, 2013); Patricia Tjiook-Liem, *De rechtspositie der Chinezen in Nederlands-Indië 1848-1942* (Leiden: Van Vollenhoven Institute, Proefschrift, 2009).

Chapter One reconstructs the tension between Chinese patrilineal norms proclaimed by the Chinese officer class and the agency of creole Chinese woman in Javan society. While the relative autonomy of the women in Java is a well-established thesis within the historiography and contemporary ethnographies, few works have examined women's role in Java's colonial society through the lenses of colonial law.[33] In this chapter, I draw on legal and probate sources from the Batavia Chinese Council, Dutch colonial law journals, and the Probate Chamber archives to examine how women staked their claims to inheritance against the prevailing Chinese patrilineal norms, and how and whether these claims were recognized by the Chinese officers. It also reconstructs creole Chinese women's economic agency in the context of the bilateral kinship system, and the colonial legal institution of joint property marriage. To what extent did women stake claims to patrilineal inheritance through their fulfilment of ritual duties usually born by Chinese sons? How did women benefit from and abuse the colonial protection of Chinese women from their husbands' debt in the juridical separation of pre- and postnuptial property? How did women manipulate law to further the interests of both their paternal and affinal kin?

Chapter Two traces the emergence of a global regime of ethnographic personal laws to Henry Sumner Maine's comparative family law project, and examines how Sinology trained Dutch translators attempted to translate the Chinese patrilineal kinship system they derived from their study of Confucian classics into legal practice between 1862 and 1896. In this chapter, my sources are drawn not only from the legal advice these translators published in the Dutch law journals, but also from the colonial archival records that reveal the Sinologists' input in the multiple failed attempts to codify Chinese private law in this period. The story that emerges from

[33] The one exception is Eric Jone's work on women in early modern Batavia. See his, *Wives, slaves, and concubine : a history of the female underclass in Dutch Asia* (DeKalb : Northern Illinois University Press, 2010).

these sources is not one of a straightforward and wholesale translation of patrilineal Confucian norms into the Dutch legal system. The chapter shows how the Dutch translators and legal advisers took different positions on their Sinologist readings of the power of the Chinese father in relation to the rights of Chinese women according to how their varying ethnographic readings of the local creolized context. Unable but also unwilling to recognize the hybridity of local Chinese society, the intervention of what I call Sinology's imagined Chinese father put an end to creole Chinese women's relative autonomy and some of their previously recognized inheritance rights under colonial law between the mid-1880s and early 1890s.

Chapter Three continues the top-down line of inquiry but brings the story forward into the period between the 1890s and 1910s when Dutch colonial legislative policy took a sharp national and Ethical Policy turn. Drawing mainly from the colonial archival and published sources, this chapter looks at how rising concerns about inter-racial marriage and empire's civilizing mission led liberal colonial intellectuals to debate about and advocate for private law reform for the colony's non-European subjects. It also considers how national and international events shaped the discourse on private law reform. In particular, the passing of the Dutch National Law (1892) in the metropole, and the establishment of formal legal equality between Japanese and European subjects in the colony (1899) prompted colonial administrators and intellectuals to eventually recalibrate the colony's formally dualist legal hierarchy into a tripartite system. This chapter examines how civilization discourse informed the legislative debates on private law reform. While Japanese subjects had been lumped together with Europeans from 1899, the Chinese were formally separated the European and native categories in 1919 when a monogamous family law was finally applied to the Chinese in the colony. While previous studies

have looked into the inter-racial marriage law (1898) and debates over native marriage law reforms (1930s), this is the first attempt to reconcile marriage law reform of the middling Chinese group with the overarching colonial concern for maintaining the tripartite racial hierarchy.[34] The chapter also draws attention to the colonial concerns over the Chinese-native sexual unions and the legitimacy of the children produced of Chinese men's native concubines.

Chapter Four explores how creole Chinese society responded to the new monogamous private law status imposed on them without any prior consultation. Drawing on Chinese-Malay newspapers, legal guidebooks, and popular literature, the chapter argues that the new law drew a bifurcated response from the mass-based China-oriented group and the descendants of the wealthier Chinese officer class. While both groups embraced monogamy, the China-oriented intellectuals did not give the new law much attention. While the Chinese merchant elites were receptive of monogamy, their translation and commentaries on the 1919 private law betrayed patriarchal anxieties over the new institution of consensual marriage. The second half of the chapter explores the shifting pedagogical themes Peranakan Chinese male authors constructed for their mass-market novels in relation to the triangular tension between family, love and the pursuit of wealth. The chapter ends by a close reading of the Peranakan intellectual, Kwee Tek Hoay's popular novel *The Rose of Cikembang* (1927). I argue that by Kwee's pedagogy is embedded in his subtle critiques of Chinese patrilineal attitudes and the Chinese practice of keeping native concubines by a tragi-comedy that allowed for the frustrated love between the

[34]Ann Stoler, *Carnal knowledge and imperial power: race and the intimate in colonial* rule (Berkeley: U. of California Press, 2002); Elsbeth Locher-Scholten, *Women and the Colonial State, Elsbeth Locher-Scholten, Women and the colonial state : essays on gender and modernity in the Netherlands Indies, 1900-1942.*

Chinese male and his native concubine to end with the reinstatement of their unacknowledged, but eventually re-sinicized and reinstated mestizo daughter.

Chapter One

Bilateral Kinship, the Kapitan's Patrilineal Norms and Creole Woman's Cultural Agency

Some time in 1848 or 1849, Sena, a young native woman, left the outskirts of Batavia for Tangerang, a district adjacent to but further away from the Dutch colonial capital. She was arrested along the way for journeying without a valid travel pass. After Sena was brought back to her village in the vicinity of Batavia, and when the circumstances of her illicit journey became known, she decided to sue a Chinese man for the custody of their child. Her custody battle in the country bench (Landraad) for Batavia's surrounding region (ommelanden) was recounted by the presiding judge - the administrative Resident for the particular ommelanden district. In this law journal article titled, "The Concept of Paternal Power among the Chinese," the anonymous writer (most likely the Resident himself) describes how the administrative court was set up with five native runners (*oppassers*), a native prosecutor (*hoofdjaksa*), with a Chinese headman (*hoofd der Chineesche natie*) in attendance, and some thirty native onlookers who crowded around the court, as the trial went in action.[1]

During the trial, Sena testified that she had been a housekeeper for the Chinese man, The Atauw, for the last three years. Two years ago, she bore him a child. Recently The Atauw cast her out of the house for no reason. "I wanted to take my child along," said Sena, "but The Atauw

[1] "Begrip van Vaderlijke Magt Onder de Chinezen" in *Het Regt van Nederlandsch-Indië* no. 2, 1849, 25-31.

sent (the child) away to his brother. Since I had nothing, and thus nothing by which to provide for my child, I left for home." "The child betrays Chinese origins," observed the presiding judge, "but has a sweet face and shows clear signs of recognition when he sees his mother."

The Atauw spoke in Malay, the lingua franca of the maritime trading world of Southeast Asia, "Ini saija poenja anakh." (This is my child.) This fact was not disputed by Sena. The Atauw "appears to have found it very natural, that he could cast the mother out after the child had been weaned of her milk, and also because she had not taken good care of the child". When asked for their opinion, the native prosecutor announced that The Atauw was obliged to return the child to the mother. The Chinese headman, however, gave an opposing counsel. "According to Chinese usage (*gebruik*), the woman, no matter how she brings the child to the world, exercises no power (*magt*) over it, and is likened to a sack (*zak*), whose contents belong to whoever fills it." The Resident dismissed the Chinese officer's counsel on the grounds that, "the Chinese doctrines brought forth can only be considered to be valid among the Chinese, but in no sense are they applied to Chinese who live with Mohammedan-religion professing native women, such as Sena, so that The Atauw cannot retain the child nor take away her motherly care without her express permission."

Sena's and The Atauw's tussles over custody rights through entanglements with empire's law and its native and Chinese intermediaries unravel some of the complex and unstable norms surrounding race, class, family and gender that gave mid-nineteenth century colonial Java the appearance of social order. Colonial law in this case no doubt served to divide boundary-crossing peoples and hybridizing practices into colonial designated racial-cultural spheres – Islamic law

will prevail for the countryside, Chinese law for the Chinese-quartered cities; different legal intermediaries for different peoples. Yet their story should also give pause to the Furnivallian imagery of mid to late nineteenth century colonial Indonesia as a plural society, where different races met at the marketplace to trade and returned to their segregated social spaces for their private lives.[2] The view from the bottom-up and from the out(country)side-in suggests that colonized subjects of various groups met not only in the markets, but also crossed racial/cultural boundaries in the private sphere of the family.

This chapter examines Chinese settler family-formations in nineteenth-century Java in the context of the early modern pluralist order of property rights. It focuses on Chinese settlement in colonial Java's urban centers and the influence of wealth accumulation and transmission on the structure of the creolized Chinese families. The colonial state concentrated Chinese residence and wealth in urban colonial Java, and kept them out of the countryside. In this chapter, I argue, along with anthropologist William Skinner, that a bilateral, rather than patrilineal, family system prevailed among the Chinese in Java.[3] While Skinner stresses the move away from patrilocal marital residence for the elevated ritual role of Chinese widows and daughters, equally significant is the pluralist order of property rights in general, and the legal institution of the testament in particular. The elevated role of women's property rights in creole Chinese society is all the more outstanding, considering the fact that patrilineal socio-legal norms continued to hold sway among the Dutch-appointed Chinese mercantile leaders in the same period.

[2] JS Furnivall, *Netherlands India: A Study of Plural Economy* (Cambridge, 1944).
[3] This argument is laid out in the immediately following section. But the gist of the argument is to be found in an unpublished manuscript, Skinner, "Chinese kinship change in Java", Delivered at Association of American Anthropology (unpublished, 1958), in: G. William Skinner papers, #7-36. Division of Rare and Manuscript Collections, Cornell University Library.

Private Property and Chinese Patrilineality in Colonial Law

Central to patterns of Chinese inheritance was the legal probate process that the early modern Company state had specially put in place for Chinese merchants in Batavia since the seventeenth century. Although Chinese officers were involved in handling probate cases and representing "Chinese law" to the colonial courts, the nineteenth century saw their legal advisory role diminished after the colonial state appointed Sinology-trained Dutch officials as court interpreters in the 1860s. At the peak of the Chinese officers' intermediation between the 1840s and 1860s, a pattern of patrilineal inheritance prevailed suggesting at first sight a patrilineal pattern for the creole Chinese family.

The probate chambers of Batavia, Semarang and Surabaya, which received new statutes in the 1820s, had in fact operated continuously through the *Vereenigde Oost-Indie Compagnie* (henceforth, VOC – 1619-1799), French (1800-1811), British (1811-1816) and Dutch (1816-1942) colonial periods in Java. Respecting the property of foreign traders was one common goal of varying European colonialisms. Attracting seasonal Chinese junk traders to the colonial city, the VOC had problems dealing with the debt of deceased Chinese settlers and their often impoverished surviving families. In response, the Company set up the *College van Boedelmeesteren te Batavia* (literally, College of Estate Masters in Batavia), or *Boedelkamer* (Probate Chamber) with European heads and Chinese members to deal with the estates of dead Chinese in 1640. Although the probate chamber was closed for seven years (1648-55) due to Chinese resistance, the Chinese themselves soon asked for the chamber to be reinstated.[4] In a

[4] Heleen C. Gall, "De Weeskamer in Nederlands-Indie 1624-1848, Aspecten van haar uitsluiting bij testament" (The Orphanage in the Netherlands Indies 1624-1848, Aspects of its exclusion by testament) in *Tombola; acht rechtshistorische loten* (undated) 25-39.

sign of how the colonial probate process had largely been internalized by the mercantile community, a Chinese literati sojourner who lived among the creole Chinese in Java for ten years in the 1780s was able to describe the process in his ethnography of Dutch colonial society:

> Anyone who is on the verge of dying and has no kin by him summons a notary – a Dutch clerk (荷蘭代書) – for drawing up a contract (作字). The dying man's will (意) is strictly followed. It is as good as cast in iron (鐵案不移). The contract is submitted to the Probate Chamber – a Dutch magistracy (荷蘭衙門) – for safekeeping. When the kin come and claim the estate, some draw dividends by the year, others claim plantations, houses, servants and slaves, still others have debts to settle. All these are settled in contracts, with precision down to the last dime and penny. The slightest contravention can cause one to end up in jail.[5] [my translation]

The legal obligation to set up testaments was widely accepted by the Chinese in Java. About two-thirds of the 116 inheritance and probate cases from the nineteenth century involved deceased Chinese who did set up testaments.[6] Among those who failed (ab-intestato) and left clues for the failure, it tended to be out of sheer negligence or premature deaths resulting from accidents.[7] A contemporary Dutch official Chinese interpreter, J.W. Young observed that some Chinese left it too late for the superstitious fear of hastening death by planning for it.[8]

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[5] Wang Dahai, "Haidao Yizhi" (A leisurely account of the maritime islands) [1791] in 小方壺斋輿地丛钞目录 14, 廣文書局 1962, 8476.

[6] 77 out of 116: Of the 77, 12 of the 18 are from the Batavia Probate Chamber archives, while 65 of 98 are from the probate-related inheritance cases that turned up in the Batavia Chinese Council minutes during the nineteenth century. Total tally: 77 ex-testamento (two-thirds), 22 ab-intestato (one-sixth), 17 – unknown (one-sixth).

[7] Arsip Nasional Republik Indonesia (ANRI): Wees- en Boedelkamer (WBK), Boedel Papieren (Probate Papers, BP), no. 3945, Tjia Kioe 1867; WBK, BP, no. 1427, Siow The Goan 1867; WBK, BP, no. 5090, Kwee Taij Yoe 1872.

[8] J.W. Young, "Lim Goan Soe, Een Benadeelde Erfgenaam" (Lim Goan Soe, A Wronged Heir) *Uit de Indo-Chineesche Samenleving* (Utrecht: H. Honig, 1895), 39-134, quotation from 93-4.

If the testament was widely accepted by the Chinese as part of the public probate process, what constituted a fair distribution of the estate among Chinese legatees and kin was harder to define. Colonial courts that dealt with Chinese inheritance disputes conferred with the Chinese officers for advice on Chinese inheritance customs. In 1761, a VOC judicial secretary, in collaboration with Kapitan Cina Oeij Tsi Lauw 黃市鬧, had assembled a compendium of "Chinese law" (*Chineesche Regt)*, which turned out essentially to be a code of Chinese family law. The legal compendium was published and copies were deposited in the colonial courts and the probate chambers "*ter speculatie"* (for their speculative reference), although it was never officially adopted as statute law.[9] When the colonial state attempted to codify a "private legal status" for the Chinese in Java between 1857 and 1917, Chinese officers were officially requested to represent Chinese inheritance laws only once in 1863.[10] These two moments come closest to being a patriarchal self-representation of family norms as expressed through European legal rights and duties by the creole Chinese themselves. Here, I will only concentrate on those creolized norms insofar as they pertain to the probate process and inheritance.

Both the 1761 compendium and the 1863 consultation upheld the prerogative of the father to divide his estate through a testament. (Art. 36, 1761) In the 1761 compendium, this point was conceded with the qualification that ideally, the Chinese did not divide their estates because "property stayed in the family according to their customs". (Art. 45) The Batavia Chinese Kapitans' enunciation of 1863 did not specify if testamentary division could be challenged except in the case of the primary wife's son. The primary wife's son could receive a smaller share, but he was anyhow entitled to a share in the estate. According to the 1761

[9] Pieter Haktseen, "Chineesch Regt" (1761) in *Het Regt van Nederlandsch Indie 2,* 1849, 311-341.
[10] I deal with the problem of colonial codification in the following chapter.

compendium, “disinheritance seldom takes place, but when a father does that in a written legacy, he is well entitled to give a smaller portion to a son who deserved more, provided there are valid reasons that he and the family have to acknowledge”. (Art. 43)

In both cases, the Kapitans from both centuries espoused a patriarchal and patrilineal vision of the sons’ inheritance rights largely to the exclusion of daughters. Art. 39 of the 1761 compendium stated that “legitimate or illegitimate daughters receive nothing more than their clothing and jewelry at the time when they marry out of the family”. According to the Batavia Chinese Kapitans’ enunciation in 1863, in ab-intestato cases, married daughters received nothing, but unmarried daughters were entitled to one-sixth share of the son-of-primary-wife and one-third share of the son-of-concubine.[11] While all sons were entitled to a share, different classes of sons received different portions. Again the 1761 compendium is more comprehensive for it also suggests how patriarchs ought to divide their estate in testaments, whereas the 1863 enunciation only makes these suggestions for ab-intestato cases. The 1761 compendium made distinctions between three classes of male heirs: 1) the eldest son (an adopted one also counted), 2) the other sons and the eldest grandson and 3) the concubine’s sons. (Art. 40) In 1863, the Kapitans distinguished between two son classes: 1) the primary wife’s sons and 2) concubine’s sons and adopted sons. Interestingly, perhaps reflecting influence from Islamic inheritance law, property division was expressed by ratio among different classes of kin on both occasions. In the table, I retain the hypothetical families chosen by the Kapitans to reflect their inheritance ratios:

[11] Gong-an Bu, 13.1.1863.

1761			**1863**	
Eldest son	20/100		Primary wife's son	6/22
Widow	20/100		Primary wife's younger son	6/22
Eldest grandson	15/100		Concubine's son	3/22
Younger Son	15/100		Concubine's younger son	3/22
Youngest Son	15/100		Widow	2/22
Concubine's Son	7.5/100		Unmarried daughter	1/22
Concubine's Son	7.5/100		Unmarried younger daughter	1/22

Table 1.1 Division of Chinese estate according to Chinese officers' advice in 1761 and 1863.

While daughters were only entitled to a dowry – unspecified in 1761 and equal to one-sixth of what the primary wife's son received in 1863, it seems clear that daughters of wealthy families were married with significant dowries. In the 1761 compendium, according to Article 17, "Brides seldom bring property into a marriage, but it happens sometimes when both parents are very rich, then a bride may bring property into her marriage in the form of land. Her husband may draw income from it to their common property, but when she dies, before or after her husband, that land reverts to the original family". As wives and widows, creole Chinese women in Java in theory had little power to dispose of their property. In the 1761 compendium, "the husband is the guardian of the wife and to him belongs all that she brought to the marriage, jewelry, gold, silver, furniture and cash belong to the *community*, except only for lands (specified in art. 17)". (Art. 21) "Married women may dispose of no property, nor can she trade". (Art. 4) In 1761 (Art. 22) and 1863, it was specified the remarrying widows could not bring their deceased husbands' property to the new marriage.

If these were the inheritance norms pronounced by the Kapitans, to what extent did creole Chinese inheritance reflect those patrilineal patterns in practice? At first sight, the traditional patrilineal pattern of equal division between sons generally prevailed. Half of the nineteenth century Chinese testators divided their estates equally, and exclusively among sons. (Refer to Table 1.2 below.) Another one-quarter legated the majority of their estate equally among sons, but did bequeath smaller portions of their estate to daughters. Yet if we included testaments that divided legacies equally among sons and daughters (6), and those that gave daughters more (2), then it seems significant that overall, one-third of all testaments left at least some if not an equal or more share for daughters.

	Chinese Council cases	**Probate Papers**	
Female testator (widow)	12	2	14
Male testator	50	10	60
			74
Household Division by Testament (Chinese Council + Probate Papers, minus 14 content unknown)			**60 cases**
Heirs			
Son(s) as heir(s), daughter(s) excluded		31	
Son(s) as heir(s), daughter(s) w. some inheritance		12	
All children equal share		6	
Daughter(s) share larger than son(s)		2	
Wife as sole heir		4	
Heirless widow		4	
Other (Niece's husband)		1	
Total		60	

Table 1.2: Legating patterns in testaments left by the Chinese in Java in the 19th century.

Colonial legal norms upholding private property among its urban denizens left an imprint on the shape of the creole Chinese settler family. Despite the Chinese officers' consistent pronouncement of patrilineal familial norms to the inquirers of the colonial state, Chinese inheritance practice as reflected through the institution of the legal testament betrayed a somewhat higher status for the Chinese woman than the Chinese officers would admit. This contradiction between ideology and practice cannot be resolved on the plane of socio-legal norms alone. Before a clearer notion of women's legal inheritance rights can be analyzed, the next section considers the creole woman's place in nineteenth century patterns of Chinese migration and colonial economic changes.

Bilateral Kinship and the Daughter's Share

Scholars like William Skinner have argued for the higher ritual status of creole Chinese woman through the Chinese patrilineal family form's adaptation to the entrepreneurial needs and marital residential patterns of Chinese settler society in Java. Yet the social-economically induced changes to the Chinese family form do not resolve the contradiction between the pronounced Chinese patrilineal legal norms and women-acknowledging inheritance practices. In other words, the question of how Chinese fathers might have stuck to a patrilineal ideology while recognizing women's inheritance rights remains inadequate without a cultural explanation of how fathers and daughters reconciled this colonial-diasporic historical contradiction. This section argues that the contradiction was negotiated and arbitrated in the colonial legal sphere through the mediation of the paternalistic Chinese mercantile leaders. Creole daughters negotiated their inheritance rights by performing aspects of Chinese rituality before the arbiters of Chinese customary law – the Chinese Kapitans.

One-third (20 of 60) of all the Chinese testaments from the nineteenth century designated at least some inheritance for daughters. For about one-sixth of the cases (9 of 60), the creole daughters received as much if not more than their brothers.[12] Almost all (17 of 20) of the nineteenth century testaments that mentioned daughters left them more than one-sixth of the share of the individual primary wife's son - the Kapitans' customary portion for the unmarried daughter. The most frequent form of daughters' inheritance was cash, but almost equally popular was the legation of the usufruct rent of houses or private lands for the daughters' lifetime, while retaining the ownership of the houses and lands with the patrilineal heir(s). This pattern of testamentary legation suggests that although patrilineal inheritance for sons remained the dominant form of family succession, one-sixth of the testators contravened the Kapitans' patrilineal norms and followed the creole pattern of bilateral property succession.

Reflecting how the daughter's testamentary share must have been a widely accepted familial norm where they occurred, only one in all twenty of the testamentary daughters were sued by their brothers. Even that sole case turns out to be an exception that proves the rule. It is a case wherein a disinherited son sued not so much to reduce his step-sisters' portion, but to be equal co-heirs with them.[13] The other nineteen cases landed in court for non-daughter related disputes. On the flip side, reflecting how their inheritance was probably not conceived as a legal right, at least not a right they felt entitled to challenge for in court, creole Chinese daughters themselves were the least litigious amongst immediate kin who contested for inheritance in

[12] At least some inheritance for daughters: A1, C7, C21, C36.1, C37, C51, D19, D21, D23, D24, P2, P14. (12 cases)
Equal share between daughter(s) and son(s): C31, C34, D3, E5, D14, P3, P11. (7 cases)
Daughters with bigger share than sons: C26, C32. (2 cases)
[13] Gong-an Bu, 30.1.1852.

colonial Java. As tabulated in Table 1.2, only one in nine (5 of 45) family disputes over inheritance that went to court were initiated by daughters, as compared to one in three by both widows (14) and (grand)sons (15).

Litigant's Relationship with Deceased	**Number of cases**
Widows	14
Daughters	5
Patrilineal Kin	
(Grand)sons	15
(Grand)nephews	6
Brother	1
Paternal Uncle	1
Others	
Widower	1
Ex-wife	1
Agnate kin	1
Subtotal	45
Debt-collection	8
Administrative transfers	5
Total	58

Table 1.3: Litigants in probate/inheritance cases that appeared in the Chinese Council of Batavia (19th century)

Where daughters did go to court to claim their inheritance rights, four of the five disputes grew out of two distinctly creolized Chinese kinship patterns. They were either 1) daughters of primary wives contesting sons-of-concubines and adopted sons for equal inheritance rights,[14] or 2) uxorilocal daughters claiming patrilineal inheritance rights.[15] For the rest of this section, I

[14] D3 and D23.
[15] D23, C26, C32. The fifth case concerns a daughter suing the non-kin related administrator of her widowed mother's estate for her testamentary share.

focus on one of the uxorilocal cases to examine the role marital uxorilocality and cultural creolité played in this daughter's quest for her inheritance rights to be recognized by the colonial court and the Chinese Kapitans.

A uxori-locally married primary-wife daughter sues stepbrothers for equal share of father's estate.

When Liem Tjong Kang (林長庚) died in August 1852, he divided his estate into four parts by testament (June 1851) between his concubine and their three sons, leaving his daughter by an earlier primary wife f50.[16] Ten years later in May 1862, Liem Hoei Nio (林海娘), the daughter by his primary wife, hired a Dutch lawyer to sue her three step-brothers for an equal share of the estate in the Batavia Landraad (native court). The Dutch lawyer had at first framed her appeal in "Chinese law" (唐例), claiming that the father was "not supposed to divide the estate between his wife (妻) (sic.) and concubine's sons (庶子), while a daughter of legal marriage (明婚) received only f50". The Chinese Council turned down the appeal, citing Art. 75 of the Dutch Indies Government Regulations (*Regeeringsreglement* 1830, 1853), which gave "native judges" the power to "apply to natives the religious laws, institutions and uses of the natives". Under Chinese law, the Kapitans claimed, daughters were not entitled to an inheritance.

Changing tack, the Dutch lawyer now claimed that Hoei Nio was entitled to her "legal portion" (*legitieme portie)* according to the Dutch Civil Code, which gave all children a guaranteed share regardless of gender.[17] The Chinese Council summoned the fifty-six year old litigant for a hearing. Hoei Nio began by repeating her plea, "I am the birth daughter of the

[16] Gong-an Bu, 25.7.1862.
[17] The lawyer claims disingenuously that the parts of the Civil Code that had been applied to the Chinese in Java since 1855 (Staatsblad no. 79) included "inheritance laws".

deceased Liem Tjong Kang and his legal wife Ong Tjoe Nio, and hence according to Chinese law, I should receive all of my father's estate. Now I am willing to divide it with my brothers for a one-fifth share each….My brothers are born of a concubine, they are not entitled to my deceased father's estate."

Hoei Nio went on to recount her uxorilocal marriage arranged by her father, and how she had tried to maintain her ritual bond to her father even after she and her husband had been evicted from her father's house. She was married thirty-eight years ago (1822) by her father, who had found a groom Go Tjeng Joan (吳清元) for her to be married into (进赘) the Liem family.[18] It appears that Hoei Nio's birth mother had passed away by then for it was the father who prepared her dowry, including her jewelry for the wedding. Liem Tjong Kang helped his son-in-law start a new business in oil delivery 油車. According to Hoei Nio, the couple lived with her father for twenty-two years until 1844, when they were chased out because of her husband's wanton (浪费) way of living. Although they moved to Banten, Hoei Nio claimed that she occasionally visited her father, and was present at his funeral.

> When I got to Father's house, he was already dead. So I stayed to observe the funeral (視斂). I asked for a length of white cloth to serve as my mourning dress, but my younger brothers and sisters turned me out. After the funeral I returned to Banten. I stayed until the burial was over. I personally attended the procession and was there for a total of seven days.[19]

[18] Although this is not mentioned in her account, bride and groom were both eighteen years old. The marriage was registered in the Batavia Chinese marriage registers, 22.11.1822.
[19] Gong-an Bu, 25.7.1862.

When summoned to the Chinese Council, the three defendants, represented by the eldest brother Liem Pek Swoa 林北山(35) were questioned about the relationship between their eldest sister and father. According to Pek Swoa, she had left the household when he was only six (i.e. 1833 cf. Hoei Nio's 1844). She returned to visit initially. But after Hoei Nio attended his wedding in 1843/4, they lost touch. It was only when their father died that she finally appeared. Even then, she did not stay long enough at the funeral to attend the "post-wailing ritual" (卒哭).[20]

In the staging of their agency before the Chinese Kapitans, Hoei Nio's testimony and her brother's counter-statement suggest multiple slippages in the meanings of being Chinese or creole in the colonial Java. On the part of the litigating daughter and her lawyer, both appear at first sight to have at best been opportunistically unaware of "Chinese law", or worse to have disingenuously misrepresented it. But that is so only if we took for granted that Chinese patrilineal norms were well-established and widely publicized. If we kept in mind the fact that Hoei Nio was most likely a mestizo-creole daughter, and that she had been living outside Batavia's Chinese society, in Banten, for either sixteen or twenty-nine years, then her perception of her rights and duties as a Chinese daughter might understandably have been less straightforward. Her performance at the funeral was more telling. While she was present, and desired to don the mourning dress to partake in the co-rituality of her father's departure, Hoei Nio was denied the Chinese mourning dress. She stayed for the full seven days until she saw her

[20] 卒哭, literally "to stop crying", refers to the stage in classical Chinese mourning rituals when mourners transited from crying incessantly to crying twice a day at sunrise and sunset. In practice, and in this case, it most likely refers to the rituals performed at the setting up of the dead person's ancestral tablet at home. See entry in *Handian 汉典* [Han Dictionary]*:* www.zdic.net.

father interred. Yet as implied by her brothers, she had been ritually inadequate because she had missed the "post-wailing ritual".

After the Chinese Council was satisfied that both parties had no more to say, they submitted the following judgment to the colonial Landraad:

> We examined the statements of both parties, and read Liem Tjong Kang's testament. According to Chinese law, daughters do not inherit. They only receive the bridal gift (妝奩) which is given to them when they marry out. Now that Liem Hoei Nio confessed herself that her father had given her jewelry at the time of her marriage, and helped in her husband's bankrupted (血本) business in delivering oil, it can be said that the affective bonds between father and daughter had been fulfilled. Even if the sons were not born of a primary wife…what is more important to the Chinese is that the line is being continued (承宗). Moreover Liem Tjong Kang made a testament before he died, and so the contract ought to be followed. Lim Hoei Nio's statement cannot be accepted.[21]

On closer examination, although the Chinese legal norm denying the daughter her inheritance was stated up front, it was clearly not a sufficient cause for dismissing Hoei Nio's plea. Fathers had a customary duty to fulfill, as mentioned in the previous section, of providing for the daughter's dowry. In fact, Tjong Kang went beyond his call of duty by investing in his son-in-law's uxorilocally arranged business. The Kapitans could have stopped there, but they pressed on by further examining the actual and post-mortem ritual relationship between father and daughter. Since "continuing the line" was more important for the Chinese, the Kapitans wanted to prove beyond doubt not only that it was the concubine's sons who had assumed his role as the lineage-successor, but that Hoei Nio had not come close to performing any of the

[21] Gongan Bu, 25.7.1862.

rituals necessary for continuing the dead man's line. This line of questioning suggests that while Hoei Nio's case could easily have been dismissed by her factual testamentary exclusion in colonial law, and in addition by the fact that she was a daughter and not a son in Chinese law, the Kapitans had to allow for female agency in the affectionate and ritual norms to affect legal outcomes. At the very least, they had to allow for that normative plausibility because of colonial law's intervention in suggesting that daughters should have their assured share under Dutch law.

Propertied Widows, Creolized Norms

If non-testamentary daughters were aware of the plausibility of bargaining an inheritance share from the patrilineal headmen through the performativity of Chinese rituals, widowed mothers had even more legal leeway in negotiating inheritance rights for themselves and their sons and daughters. This final section begins by considering the extent to which widows in fact owned and inherited property, and some cultural patterns of that property holding. The chapter concludes by a case study of how a creole widow navigated around colonial-Chinese patrilineal norms by the arranging for co-habitation with a partner without remarrying, and by the use of a testament to ensure her daughter's inheritance.

In only one of the fourteen widows' testaments from the nineteenth century is it clear that she was legating her own property. Liem Hok Nio 林福娘, the widow of Tio Kwie 張開, made a testament (3.8.1849) giving her sons f50 each, and her adopted, uxorilocally married daughter Tio Tji Nio 張宇娘 and son-in-law f100 apiece. Surprisingly, Liem Hok Nio legated a house to her sister Liem Moie Nio 林梅娘, the biological mother of Tio Tji Nio. We know that the house belonged to her because it was mentioned in the Chinese Council trial that after her husband died,

Tio Tji Nio moved with her adoptive mother to live in the latter's own house. That must also explain why the sons only received f50, for they must have already had inherited their father's house and property.[22]

Peranakan Chinese women seemed to have set up testaments only if they owned immovable assets toward the end of their lives. Thirteen of the fourteen widows' testaments registered houses and lands. Seven of them specially legated ancestral worship houses (*rumah abu* – literally, ash house), often with the express instruction that the houses were not to be resold, but the rent could be used for worshipping purposes.[23] To whom they legated these ash houses may provide clues as who had given them those houses. Three of the seven left ash houses for their uxorilocal family members, while the rest left ash houses for their husbands' patrilineal kin.[24] If we include Liem Hok Nio's house, which she left for her sister, then we may perhaps assume that about one-third (4 out of 14) of widows who died with immovable assets had originally received them from their natal families, and had kept their property separate from their husbands'. In other words, the majority (two-thirds) of the wealthier widows who possessed immovable assets at the end of their lives most likely merged their own property with their husbands' or inherited from them.

There is evidence to suggest, as Skinner has observed for the twentieth century, that married-out daughters were asked to contribute financially to the ancestral cult of their father's ascending line. This must have been a phenomenon widespread enough to have prompted an

[22] Gong-an Bu, 26.4.1850. [See also C15: Widow claims a house was purchased by her own money. Rejected, someone else paying property tax. Read again C31, appears to be separate property in uxorilocal marriage.]
[23] C1, C32, C36, D1, D18, D21, D22.
[24] C1, C32, D22.

inquiry from a legal adviser of the Batavia Resident. In it, the resident wanted to know "when they are appointed legal heirs," whether or not "in Batavia, a Chinese woman (who) inherits an estate, would have to contribute to the expenditure on annual and festive prayers".[25] The Kapitans had a debate, and Kapitan Tan Foong Gie's 陳逢義 explication won over most of his colleagues:

> By custom, although all children inherited, only the sons bear the costs of worshipping. Although daughters also inherit, they need not intervene. Second, in China, for wealthy families, although daughters also inherited, the dowry entered the estate of the family she married, (hence) she need not meddle with it. In Batavia, daughters are also appointed legal heirs, (so) if her mind 心 so desires, there's nothing wrong with it, (but) there's also no fault with not doing it. But (what is important) is that she needs to follow her husband's orders.[26]

In the one century from the 1840s to the 1930s, between ten and fifteen percent of the existing Chinese probate files in the Indonesian archives were left by women. (See Table 1.3) While not all of these women/widows would have left behind immovable assets, the numbers do convey a sense of the proportion of women/widows who possessed some wealth, and might have been actively and independently making their own decisions for the posthumous moral economy of their families and households.

[25] Gong-an Bu, 7.6.1861.
[26] Gong-an Bu, 7.6.1861.

Period	Female/Total Number of Probate Papers	Proportion
1840s – 1870s	3 / 19	15.8%
1880s	20 / 141	14.1%
1890s	28 / 262	10.6%
1900s	33 / 273	12.1%
1910s	62 / 448	13.8%
1920s	50 / 350	14.2%
1930s	69 / 527	13.0%

Table 1.4 Chinese Probate Papers in Wees- en Boedelkamer, Boedelpaperien (Orphans and Probate Chamber), The National Archives of Indonesia

The majority of wives and widows (perhaps 80-90%) held their assets (jointly or individually) in the form of cash and/or jewelry. Recall that it was customary for husbands to leave one-third of the son-of-primary-wife's portion for the widow. Insofar as widows received testamentary inheritance (12 of 60 cases), they received it either in cash form, or in the form of both cash and immovable assets but as co-heirs with their sons.[27] The remainder (majority) of widows who did not receive an inheritance must have had to rely on their son-heirs for sustenance.

As laid out in Table 1.4, widows together with (grand)sons formed the largest group of litigants in Chinese inheritance disputes. Fourteen widows were litigants suing for their inheritance rights.[28] Conversely only five widows were challenged in court for the same reason.[29] It is useful at this juncture to make a comparative gesture to the contemporary widows' chastity ideal in late-imperial China, and the Song-to-Ming jurisprudential shift from allowing widow

[27] Cash inheritance for widows: A1, C7, D14, D16, P8; Co-heir with son(s): A2, C36.1, C37, D19, D23, D15, E10.
[28] A1, A2, C8, C12, C15, C18, C31, D8, D14, D18, D21, D26, E2. (short of one)
[29] B2, D15, D16, D21, E2.

inheritance to a regime of property custodianship through the adoption of a husband's nephew. In Kathryn Bernhardt's study of women and property in late imperial China, she singles out the latter legal shift, what she calls "patrilineal succession" – the mandatory appointment of a brother-in-law's son as heir – as the most frequently litigated sort of inheritance dispute facing widows(8 in 10).[30] Although the cultural discourse in which family disputes were framed was similar, the actual disputes that emerged in the colonial context were somewhat different.

To begin with, the first institution the son-less widow faced in trying to benefit from her husband's estate was not so much her patrilineal kin as the colonial probate process. On this level, the Kapitans were often called in to mediate differences between Chinese widows and the Probate Chamber over cultural interpretations of inheritance rights. On one hand, Kapitan intervention served to translate Chinese cultural signs to help facilitate the widows' actions in achieving claims of patrilineal legitimacy. For instance, when widows adopted nephews and staked inheritance claims for themselves and/or through the nephew, the Probate Chamber often had to rely on the Kapitan's advice for the legality of such claims.[31] At other times Kapitan mediations turned the Probate Chamber into a hybridized cultural surrogate for the perpetuation of the Chinese patrilineal ritual order. When Tan Hok Nio 陳福娘 sued the Probate Chamber for an equal share of her husband's estate as a son would according to Dutch law, the Chinese Council disagreed:

> [We disagree] because in China, clans and lineages, and lineage elders all live in one spot, there is no such thing as people of different family names living altogether, that is why widows could inherit the estate [in China under the continued supervision of their lineage elders]. In Batavia, although lineage kin 族

[30] Bernhardt, *Women and Property in China, 960-1949* (Stanford, 1999), 47-92.
[31] D8 and D14.

> 親 are present, they live in different places, so that it is hard to look out for each other…it is hence inappropriate for the widow to inherit. It will be most appropriate if the Probate Chamber held on to the estate, and disbursed monthly interests to the widow for her sustenance. By Chinese customs, she could draw on the estate if she did not remarry. She could inherit the estate if she adopted a patrilineal descendent 嗣.[32]

Neither were the Kapitans blind adherents of an unchanging patrilineal form of domination. The legality of the colonial probate process often took precedence both as evidence and as a matter of law, over more vulgar understandings of ritualized orders. In his testament (2.5.1849), Oeij Jioe Tek 黃有德 appointed his children and wife as co-heirs to his estate, and both his elder brother and wife as their co-guardians of the children. In August 1850, Choa Pik Nio 蔡蜜娘 sued her brother-in-law for obstructing her wish to lease the house, and for dispossessing the house of furniture. She requested that he return the furniture and the legal deed of the house, and be evicted from it. Here, the brother-in-law appealed to the Kapitans that he co-resided in the house that holds his brother's soul tablet, and also that his brother appointed him a guardian. The Kapitans merely referred to the testament and found that he was a guardian but no heir. They thus advised the Landraad to evict him and order the return of the furniture.[33] The widow and her husband's testament prevailed over patrilineal precedence.

A widow's cohabitation arrangement and an inheritance between a mother and a daughter

Chiew Sin Nio was clearly conscious not only of the various shades and nuances of the colonial-Chinese patrilineal order that served to constrict the agency of the creole Chinese woman, but also of the multiple slippages under which she could use colonial law and patrilineal

[32] Gong-an Bu, 11.10.1848.
[33] Gong-an Bu, 18.10.1850.

ritual to serve her own life goals. Sin Nio had married Oeij A-Kwie 黃亚桂, for whom she bore a single child – a daughter – Oeij Swie Nio 黃瑞娘.[34] When A-Kwie died sometime in the late 1830s, their daughter was not yet seven years old. It does not appear as though the marriage bore any son. Sin Nio was a wealthy widow. She owned three houses besides "many other things". It is most likely that Sin Nio inherited her significant wealth from her dead husband because during the subsequent trial, her neighbors testified that she had "brought the objects from her previous marriage". As a young creole widow with only a single daughter and no lineage-continuator, Sin Nio clearly faced significant obstructions in taking possession and disposing of her property in a colonial and Chinese patrilineal order.

Unlike the young widow we witnessed at the opening of the chapter, Sin Nio knew to steer clear not only of her neighbors' possibly incriminating tongues, but also of the formal colonial legal-ritual patrilineal order. She cohabited with but did not marry Tjung A-Nam 種亞南 not long after her first husband's death. There was no registration with the Batavia Chinese Council. In the trial, this cohabitation arrangement would be labeled a "wild union" (野合). This was apparently an accepted custom within the Batavia Chinese society.[35] It is quite likely that this was a union of convenience for the second marriage produced no child. And neither was her second partner an honest man, as events later would prove. She lived for another ten years in her second marriage before she died in 1848, leaving behind Oeij Swie Nio, who by then was

[34] Gong-an Bu, 22.11.1850.
[35] I discuss the legality of ritual marriages in another chapter. Menghong Cheng mentions the accepted custom of "old marriage"旧婚, wherein ritually married couple registered their union later in life, usually for the security of property they had accumulated. See Chen, "Between the Chinese Tradition and Dutch Colonial System: Chinese Marriages in Batavia in the Nineteenth Century" in *The Archives of the Kong Koan of Batavia,* Leonard Blussé and Chen eds. (Leiden: Brill, 2003),

fourteen. Knowing that setting up a testament was "as good as cast as iron" in Dutch colonial society, Sin Nio did not neglect to do so before she died. In the testament (15 February 1848) she bequeathed two of her three houses to her second husband. For her surviving daughter, she left a house, specifying that it was not to be resold. Her own ancestral altar was to be maintained therein. All of her furniture and jewelry (inventoried at f2787) was also left for her daughter under the guardianship of the second husband.

By 1850, two years after her mother's passing, Oeij Swie Nio was a married woman herself. In August, she sued her stepfather at the Landraad for the loss of her mother's furniture and jewelry. At the trial in the Chinese Council, the stepfather tried to argue that the jewelry in particular was bought with his own money. Swie Nio and her witnesses insisted that her late mother always owned the jewelry. The stepfather, in turn, retorted that they were only loaned to her for the occasion of her wedding. At this point, the Kapitans stepped in to chastise Tjung A-Nam:

> You were unofficially married with Chiew Sin Nio for ten years. As a woman, she was capable of bequeathing (you) houses, why would she not have the means to acquire some gold jewelry for herself? As a man, how could you harbor designs over women's things? Women's accessories, once they have been worn by a lady, even if it was the husband who paid for them, they belong to the lady. We should follow the testament. These objects should be returned to Oeij Swie Nio.[36]

Chiew Sin Nio's agency in the navigating her life goals through the legal-ritual structures of colonial-Chinese patriarchy represents a clear instance of the Skinnerian creolized bilateral Chinese kinship system. The ancestral altar and property that passed down between Sin Nio and

[36] Gong-an Bu, 22.11.1850.

her daughter added a second ascending line to the new ritual duties of the young daughter on top of those she assumed in her husband's family.

Bilateral Female Economic Agency and the Predicament of Patriarchal Law

Colonial Java's nineteenth century Chinese commercial elites have often been depicted as patriarchs of big extended families. Creole Chinese women appear in these Javan business histories as appendices to the patriarchs' grand business strategies in their capacity for facilitating inter-familial marital alliances.[37] Beyond the domestic household, I argue that creole Chinese women served other economic roles within a Chinese inter-familial context that sometimes confused the colonial legal authorities. First, at the lower end of Java's retailing network, women often engaged in shop-keeping retailing trade. Second, and what perplexed the colonial authorities more, were the mortgage loans wealthy women in the upper echelons, ,such as the above-mentioned Tan Paginio, who contracted within her bilateral kinship network as an illicit form of security against their kinsmen's speculative trading behavior.

1) **Inherited Property, Separate Businesses**

By the 1870s and 1880s, the highly stratified commercial-credit networks between Dutch-Chinese big businesses in the entrepôt cities and smaller Chinese retailers in the countryside had been formed.[38] Colonial law was consistent insofar as the protection of Chinese women of lower down the retailing scale was concerned. During the credit crisis of the later 1880s in central and eastern Java, leeway was given to recognize the separate ownership of Chinese women's property in the small retailing sphere even if they could not be proven by

[37] James Rush, *Opium to Java*; Peter Post, ibid.
[38] Alexander Claver, *Dutch Commerce and Chinese Merchants*, Chapter 2.

written evidence.[39] In the two following cases, I discuss how colonial law went out of the way to identify the fact that the creole Chinese women's property was inherited, and thus provide other means for which to protect Chinese widows from their husbands' debts.

In the first case, Tjan Pan Nio tried to stake claims of her separate property by her occupation and her dutiful worshipping of her father's ashes.[40] Tjan Pan Nio had denied in the Court of Justice in Surabaya that she was ever married with the man with whom she was co-residing, and whose property had been impounded by his creditors. She tried to reclaim the twenty items of jewelry embargoed in an iron safe in the room she shared with the bankruptee. Pan Nio claimed that she was a "public merchantwoman" (*openbare koopvrouw*) and the main tenant of the house, whose ownership she tried to prove by her worshipping of her father's ashes. She produced a co-tenant to testify her performance of the latter worshipping duties. Her claims were however turned down by On 18 August 1886, the Court of Justice in Surabaya on account that their co-residence was proof of their marriage and that she had no notarial evidence of her separate ownership of her jewelry in the iron safe. Pan Nio appealed against the decision at the High Court.

The High Court overturned the Surabaya Court's decision and restored Pan Nio's jewelry to her based on two technical arguments. Despite the fact of co-residence between Pan Nio and bankruptee, the Supreme Court granted Pan Nio her appeal for non-marriage based on the legalistic interpretation that Chinese marriages had to be proven by a license issued by the

[39] Claver, Chapter 3.
[40] "Tjan Pan Nio ca. Lim Tjoe Nio en Tjiok Oen Tjia" (Hoog-Gerechtshof van Nederlandsch-Indie, 7.4.1887) in *HRNI* 48, 1887, 387-394.

Probate Chamber. Because the Court denied the claims of marriage, the question of whether Pan Nio's jewelry was separately held by her became moot. The judge then deemed the fact that her possession of the key to the safe sufficient proof of the objects in it. Perhaps satisfied that Pan Nio's property was indeed inherited from her father, the High Court intervened in this instance to protect the women's share of her property, where a strict interpretation of Art. 2 of 1855 Staatsblad no. 79 would have surrendered her property to her husband's debt claimants.

In the second case, although Tan Hong Nio's attempt to deny her marriage with her bankruptee husband failed, the High Court deemed her mother's testamentary gift of the house sufficient evidence for her separate ownership of the impounded objects in the house.[41] In the trial at the Surabaya Court of Justice, Hong Nio admitted that she had lived with the bankruptee as wife and husband. However, she claimed they had separated for four years. She lived in the main building while he in the side wing, which was also the location of his *toko* (shop). Both ran their businesses separately. They shared the only kitchen in the house but had two separate sets of kitchen maids.[42] While the Court of Justice in Surabaya had dismissed her suit based on the lack of written evidence of her ownership of objects seized from an iron safe, the High Court over-ruled Surabaya, ruling that her inheritance of the house for her mother, and her subsequent oath to claim ownership of moveable objects therein was sufficient.

The bilateral nature of the creole Chinese family gave daughters a greater chance to inherit and continue to operate a family business while inheriting patrilineal worshipping duties.

[41] "Tan Hong Nio ca. Het Vendukantoor te Pasoeroean en Tjoe Tan Ngo" in *HRNI* 52, 1889, 385-392.
[42] According to Tjoe's male servant, Hong Nio became offended with Tjoe after he kept a Chinese wife in Nganjuk, a small town eighty miles west of Pasuruan.

As the previous chapter explains, the relative shallowness of Chinese patri-lineages, coupled with the neo-local pattern of familial residence gave daughters a higher chance of inheriting a family business in case of the default of sons or capable sons. In the two cases discussed above, the High Court went out of its way to protect Chinese women, where the Surabaya Court of Justice had attempted to impose a stricter interpretation of the need for evidence to prove separate property in a marriage. It was perhaps no coincidence that both cases also showed signs of bilateral kinship inheritance in practice. Both women had inherited from their parents, and where a daughter inherited from her father, she also assumed the ritual duties of ancestral worship.

Creole Women as Financial Security and Bilateral Familial Actor

Handling property disputes involving contracts made by Chinese women in the upper echelons of creole Chinese society presented greater challenges for colonial law. Women's security from debts incurred by men created a special niche for women within the family-centered trading enterprises of Java's colonial economy. Throughout the 1860s to 1880s, European merchants and Dutch jurists made repeated accusations against Chinese merchants who defaulted on loans while continuing to run their massive businesses through capital held by their wives. The same voices urged the colonial government to put an end to the Chinese exemption from community property marriage during the various attempts to codify a Chinese private legal status in the latter half of the nineteenth century. As Tan Paginio's opposing lawyer pointed out, exemption from community property marriage was not in and of itself a problem. It was also the common practice among European merchants to sign pre-nuptial agreements that

protected their wives from their debt liability.[43] The problem for colonial law lay in how Chinese women manipulated or were manipulated to make fraudulent loans as a form of entrepreneurial financial security.

More than other business groups, Chinese entrepreneurs were far more willing and able to bear excessive financial risks in their operation of sugar plantations, revenue farming or textile retailing trades in the Javan hinterland. As a Dutch banker's assessment of one Chinese sugar planter in 1856 showed, the Chinese were particularly adept at lowering taxes and building markets to attract Javan peasant labor migration to their lands. They increased production from investments in irrigation and technology, while ensuring abundant labor supply by cheap and flexible credit advances to the peasantry. Such enterprises required high levels of initial capital investment, while returns often took longer to mature, especially in agricultural endeavors.[44] A more speculative kind of Chinese middlemen trade involved advancing loans from Dutch textile trading houses for textile retailing in the hinterland in exchange for Javan agricultural produce. But Chinese merchants often exploited the turn-around time between Dutch loans and the delivery of Javan agricultural products to make speculative bets in real estate.[45] As historian Alexander Claver shows, Dutch trading houses were dependent on the Chinese retailing network and often willing to renegotiate loans to prevent greater losses.[46]

Propertied women in the upper echelons of Chinese mercantile families often served as financial instruments for their brothers as an added layer of security in case of bankruptcy. There

[43] Tan Pa Ginio ca. Liem Tiang Keng, *IWR*, no. 1464, 1891.
[44] Claver, *Dutch Commerce and Chinese Merchants*, 35-42.
[45] Claver, *Dutch Commerce and Chinese Merchants*, 42-9.
[46] Claver, *Dutch Commerce and Chinese Merchants*, 65-72.

was a name for this practice. P. Meeter had observed that "babas (creole Chinese men) …call such practice 'Pindjem nama' (name borrowing)".[47] According to Meeter, the exclusion of community property marriage made the Chinese wife a convenient safe haven for her husband's assets against potential debtors. He gave to example of one Tsioe Swie Djien inherited f10,000-20,000 (f = Dutch Indies gulden) and began to run a business. He filed for bankruptcy two and a half years later.[48] When the Probate Chamber inspected his account books, they found his inheritance recorded as credit entries under the name of his wife. Moreover, his books showed that he had made a f12,000 payment to his wife several days before filing for bankruptcy. Creditors complained to the Council for Justice. But the Council replied that it was prevented from launching an investigation against Tsioe's wife as Staatsblad 1855 no. 79 had excluded Chinese wives from community property marriage. The only recourse was a civil suit. But lawyers dissuaded the creditors from pressing charges for the money and property would most likely have been transferred away even if they won the case.

A second case involves the story we encountered at the opening of this dissertation: Ong Boen Seng's elder sister's intervening to succeed her brother's lands and pass it to his sole surviving son. Ong Kwie Nio had purportedly lent her brother, Ong Boen Seng, f290,000 against an annual interest rate of 6% in December 1878, and with six parcels of the Ong family's private lands in Tangerang as collateral. This intricate securitization of risky ventures through the sister's illicit mortgage would not have come to light were it not for the inheritance dispute Ong Boen Seng accidentally plunged his extended family into but dying without leaving a will. His

[47] P. Meeter, "Nota omtrent de ontworpen bepalingen betreffende het Burgelijk; Handels- en Strafregt voor de Chinezen op Java en Madura", Surabaya, 25.7.1882; in NA, MvK: 2.10.02, 4567; Mailrapport 9.4.1892 no. 33.
[48] Meeter, "Nota…", 30-1.

two sons being of minor age at the time of his death, Boen Seng's estate came under the guardianship of the Batavia Probate Chamber. Unwilling to let the Ong family's capital be controlled by the Dutch authorities, Ong Kim Nio sued Boen Seng's estate to recover the f290,000 loan, which had in fact been lying dormant for many years.

In 1886, the Dutch Probate Chamber sued Ong Kim Nio for having entered a fraudulent mortgage contract with her brother, requesting for the contract's annulment. The Probate Chamber pointed out that the original 1878 mortgage had been made with the intention of the "deceptive curtailment of the rights of the firm Maclaine Watson".[49] At the same time as he purportedly borrowed f290,000 from his sister, the Probate Chamber charged that:

> Ong Boen Seng took the risk of being sued as guarantor for a certain Thung Siong Kie by the firm Maclaine Watson & Co. for the payment of a sum of f122,647.96 by the aforementioned debtor as accounts resulting from two consignment contracts, and (Ong Boen Seng) had intended to deprive the aforementioned firm of all hope (to recover the debt) through the seizure of his immovable property, which in that case can be forestalled by him…in consultation with his sister…and his brother-in-law Oei Tjiong Piauw by the settlement of the mortgage in question with the aforementioned persons.[50]

The Probate Chamber's case was eventually thrown out by the colonial court because the plaintiff could not demonstrate with concrete evidence that the loan had not been serviced by between brother and sister. At the conclusion of the five-year trial, the High Court ordered the Probate Chamber to pay Ong Kwie Nio half the purported debt – f145,000. When Ong Kwie Nio

[49] De Weeskamer te Batavia ca. Ong Kwe Nio in *IWR* no. 1236, March 1887. Maclaine Watson was a British commodities trading house based in Batavia from the 1820s.
[50] De Weeskamer te Batavia ca. Ong Kwee Nio (10.10.1889) in *Indisch Tijdschrift van het Recht,* 54, 403-421, citation from 415.

died ten years later in 1898, her estate would fall under the management of the Batavia Probate Chamber. Ong Kwie Nio's testament (20.12.1892) revealed the bilateral role that upper class Chinese women played in the social reproduction of Chinese patrilineal families in the sphere of property transmission. Kwie Nio named as heirs to her estate from both her father's and her husband's families. The f145,000 she had wrung from the Probate Chamber was duly returned to her nephew, Ong Hok Tiang.[51]

Conclusion

Between the late eighteenth and early twentieth century, Java's Peranakan Chinese formed a creolized intermediate society. Sandwiched between European capitalist interests and the indigenous peasantry, Chinese mercantile settlers in Java took indigenous wives but instead of assimilating into Javan society, they practiced Chinese endogamy and lived in segregated colonial ethnic enclaves. William Skinner has argued that the resulting creole family formation departed significantly from the Chinese patrilineal system - China-born immigrants were married-in as sons-in-law (uxorilocal residence), while daughters and widows often received a share in inheritance. Examining the colonial legal and probate archives, this chapter argues that while the colonial state's Chinese legal advisers (the Kapitans Cina) pronounced Chinese patrilineal norms in theory, creole daughters fared relatively well in practice in terms of how their rights of inheritance generally went legally unchallenged. The Kapitans' patrilineal norms had a "Sinicizing" effect on creole widows, particularly in the area of widow-remarriage, yet the widows in turn were aware of their juristic rights and proved to be one of the most litigious groups in the Dutch colonial courts. More importantly, this chapter has also attempted to recover

[51] Indonesian National Archives, Wees- en Boedelkamer, Boedelpapieren 4240, Ong Kwie Nio en Oeij Gen Nio, 1899.

the fragmented histories of creole Chinese women's involvement in the law and in the colonial economy. Women were aware of staking their claims to property via the performance of bilateralized Chinese patrilineal ancestral worshipping rituals. Furthermore, women were often acted in the interests of the bilateral family, if not of themselves, in the differentially stratified spheres of the colonial economy. The next chapter turns to how the Sinology trained colonial officials struggled to come to terms with these creolized practices of Chinese family between the 1860s and 1890s.

Chapter Two

Comparative Law, Sinology's Father and the Patriarchalization of Creole Chinese Social Relations

> We have in our colonies about 300,000 Chinese subjects, who are, except respecting their social usages, totally subjected to [Netherlands] Indian legislation. As a natural consequence, most of the laws, ordinances and decrees promulgated by the Indian government, together with the conditions of lease of the government revenues, the local ordinances and regulations etcetera, have to be translated into Chinese.
>
> Gustaaf Schlegel, *Dutch-Chinese Dictionary* (1886)[1]

By the time Gustaaf Schlegel published his Dutch-Chinese dictionary in 1886, he had been working on it for twenty-eight years, ever since his arrival in Xiamen in the Chinese province of Fujian in 1858. After four years of training in China, the Ministry for Colonies appointed Schlegel as interpreter in the Chinese language to the Dutch East Indies government. Schlegel was the first among thirty-five Dutchmen, who were trained in Sinology in both Leiden and southern China before being dispatched to serve as language interpreters and advisers on Chinese affairs between 1862 and 1896. He would also be appointed as Leiden University's first

[1] G. Schlegel, *Nederlandsch-Chineesch Woordenboek* (Leiden, 1886), 7.

Professor of Sinology in 1875, holding the position until his retirement in 1903.[2] This chapter examines how Sinology-trained Dutch translators and their Sinology-inflected legal ethnography patriarchalized the colonial jurisprudence on Chinese personal law between 1862 and 1896.

The chapter begins by tracing the global ethnographic turn in the jurisprudence of the colonial subject's personal law beginning from around 1860. I argue that the Dutch ethnographic governance of personal law was part of the global expansion of a capitalistic rule of private property via the trans-imperial project of comparative family law. As mid-nineteenth century European empires assumed control over a greater share of the Asian population, and as the penetration of European private traders increased contact with colonial subjects, the need to provide legal certainty for jurisprudence over personal law involving Asian subjects became more urgent. The cultural misunderstanding over South Asian religions that provoked the Indian Rebellion in 1857 led to a wholesale overhaul of British jurisprudential policy over the rule of colonial personal law in the subcontinent. This chapter traces how Henry Sumner Maine's comparative legal framework was first translated into a comparative family law project by British and European officials working on the China coast between the 1860s and 1880s.

The Sinological interventions that Schlegel and his fellow Sinology trained interpreters made in Java beginning from the 1860s were part of this broader global epistemological colonization of older social relations under the new frame of comparative family law. Although

[2] Leonard Blussé, "Of Hewers of Wood and Drawers of Water: Leiden University's Early Sinologists (1853-1911)" in *Leiden Oriental Connections, 1850-1940,* Willem Otterspeer ed. (Leiden: Brill, 1989), 317-353.

pluralist legal systems were a common feature of all early modern polities,[3] the ethnographic turn moved the early nineteenth century utilitarian search for legal certainty, towards a global standard of cultural difference based on researched and observed variations in "family law". In Java, the native peoples were segregated in the countryside for the colonial feudal Cultivation System (1830-70), and exempted altogether from European law. The legal epistemological question first arose with the Chinese settler group, who had extensive trading contact with Europeans in the port cities, and to whom European commercial law had been applied since 1855. Although it was a top-down and intellectually elitist process, the ethnographical colonization of existing Chinese settler social relations was neither a straightforward nor an unequivocal imposition of any despotic colonial will. The irony of the Sinological moment in colonial Java (1862-1896), was that intra-Dutch colonial debates among the Sinologists ultimately led to the reification in colonial jurisprudence of Sinology's imagined Chinese father – the Chinese incarnation of the universal *patria potestas* in Henry Maine's developmentalist prescription.

In colonial Java, Schlegel and his fellow interpreters' influence on jurisprudence was felt in two areas: when they served as advisers to the law courts and probate chambers on Chinese customary practices (1862-1896) and to the state-appointed committees for the drafting of a Chinese private law code (1862-1892). Three schools of thought emerged among the translators. The first, held by what I call the Sinology purists (Schlegel), translated Chinese ethical and legal textual norms directly into the civil law discourse of rights and duties. The purists concluded that the Chinese woman had no rights and was treated as a "thing" (zaak) by the Chinese patriarch. The pragmatists (Groeneveldt), however, countered the purist view by arguing for a pragmatic

[3] Laura Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge University Press, 2002).

reading of Chinese legal inheritance-in-practice. The Chinese woman had partial rights in some instances. Finally, a third realist school (Meeter) emerged in the commercially flourishing city of Semarang. The realists agreed with the purists that the Chinese woman had no rights. But they went even further by arguing that pragmatist jurisprudence condoned the Chinese patriarchal manipulation of their womenfolk to abuse law under the cover of women's rights. Although judicial policy fluctuated along with the translators' varying visions of classic Chinese patriarchy, the general trend over the course of these three decades was the curtailment of the existing rights of the creole Chinese wife, widow and daughter in favor of patrilineal inheritance under the name of Sinology's imagined Chinese father.

Family Law and the Global Ethnographic Turn

While the European-native divide was fundamental to the racially hierarchized colonial order, that dualistic order was ultimately sustained through extensive colonial theorizing on the distinctions between European civil law and Asian legal notions of family and property. The expanding European empires confronted tribal forms of African social organization into the 1870s and 1880s. Liberal international lawyers reformulated these sub-national patterns of power as recognizable personal property rights to be subsumed under new forms of European territorial sovereignty.[4] In Asia, older colonial relations with Asian powers were being reframed in parallel legal discourses of ethnographic difference, and international subordination.

This culturalist remaking of European empires from the 1860s forward adopted "family law" as the new civilizational standard for subsuming old powers and inventing new property

[4] For Africa, see Andrew Fitzmaurice, "Liberalism and Empire in Nineteenth-Century International Law" in *AHR*, 117 (February 2012), 122-140.

rights for empire's transformed subjects.[5] At the heart of this trans-colonial legal reconstitution of empire was Henry Maine's appropriation of Roman legal historical development to counteract earlier Enlightenment attempts at constituting colonies with social contract theory. Whereas empire's social contract theorists such as Bentham, Mill and Macaulay attempted to make enlightened, individualist subjects out of the colonized, Maine's formula after the 1857 Indian rebellion was to defer liberal equality at the individualist level for the recognition of cultural difference standardized at the level of the family.

As Maine argues in *Ancient Law* (1861), the notion that individuals in a "state of nature" had "contracted" property or inheritance rights from sovereigns was unreasonable. Instead, the "Family" was the sole source of legal identity in the primitive stage of universal human development.[6] Maine pioneered a comparative historical method, in which it was more important to get behind the "Legal Fictions" of past jurists, to read the habits and customs of each historical period for the real "motives" of prior stages of historical societies. The well-recorded history of the legal development of Rome provides the materials for studying how law evolved with society's changing "motives". The development from the unimpeded powers of the early Roman father over his wife, children and slaves to the rights-and contract-based law code of Justinian formed a historical progression from "status to contract". For Maine, contemporary Europe, having arrived at the contractual phase of legal development, was poised, through the study of comparative jurisprudence, to point other societies toward the same end.

[5] Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton University Press, 2010). For how discourses of the filiation and civil rights fed into colonial doctrines of race, citizenship and nationality in the French empire beginning in the 1880s, see Emmanuelle Saada, *Empire's Children: Race, Filiation, and Citizenship in the French Colonies* (Chicago: The University of Chicago Press, 2012), 95-119.
[6] See *Ancient Law*, especially Chapter V.

The methodical and comparative search for an integral "Chinese Family Law" first began not with the Dutch Sinologists, but the Chinese Imperial Maritime Customs official, P.G. von Möllendorff's "The Family Law of the Chinese" in 1878.[7] This was followed a year later by the British Consul in Canton, E. H. Parker's review and critique of Möllendorff's work, in an essay titled, "Comparative Chinese Family Law". [8] As observed by Parker, they were "acting as pioneers in the field of Chinese Family Jurisprudence, armed with the technical language of the Roman Law, and 'provided beforehand with a proper store of language, and with an apparatus of appropriate logical methods'."[9]

In Möllendorf's study, "family law (was) understood not merely as a statement of the Chinese family laws (*leges*) but including also general usages, which will have to enter largely into a future codification of the Chinese law, especially private law."[10] He set out to compare the "family laws" of the two antiquities under two main headings: marriage and *patria potestas* (paternal power). What was a marriage? How was it contracted and dissolved? What was the power of the father vis-à-vis his children and wife, and the duties and rights of the latter vice-versa? How was the *patria potestas* acquired through marriage, procreation, and adoption?

In answering these questions, Möllendorff argued for the equivalence of Chinese and Roman ritual-legal concepts of kinship and marriage. The Chinese concept of inner/outer kinship

[7] This essay was first read before the North-China Branch of the Royal Asiatic Society at Shanghai in 1878, and published the next year. It was subsequently revised and updated for re-publication in 1893. For earlier studies, see for instance, W. H.Medhurst, "Marriage, Affinity and Inheritance in China" in *Transactions of the China Branch of the Royal Asiatic Society*, Part IV, 1853-4, 1-32.
[8] E.H. Parker, "Comparative Chinese family Law", in *China Review*, Vol. VIII, 1879-80. There is a third attempt at comparative Chinese family law, by a French Sinologist, M. Scherzer, *La Puissance Paternelle en Chine: Etude de Droit Chinois* (Paris, 187?).
[9] Ibid., 67.
[10] Möllendorff, ibid., 134.

groups 內親/外姻 was equated with the Roman concept of consanguinity/affinity. (135) The degrees of five costumes (*wufu* 五服), which determined the mourning period and the kind of mourning dress according to the proximity/distance of kin from the deceased, were mapped onto the Roman gradations of kinship. (136-8) The Chinese primary wife (*qi* 妻) and secondary wife (*qie* 妾) was likened to the Roman *connubium* and *concubinatus*, with the qualification that "concubinage is, however, at the same time permitted, and marriage with several concubines is allowed." (141-2) The Chinese marriage is particularly lacking in *animus matrimonii*, the "intention of husband and wife to form a connexion for life," since the contract (*lishu* 禮書) between the bride and groom in China is signed by the *pater familias* from both sides. (152-3) Yet like Rome, the Chinese wife "comes into the *manu mariti* (literally, hands of the husbands)." She "ceases to be *sui juris* (legally independent), if she ever was it, and leaves the *patria potestas*, if she stood under it". (160) Möllendorff found essential equivalence between *patria potestas* and the power of the Chinese father, as he declared:

> As was the rule according to the Roman law of the time before Justinian, all persons who depend on a *pater familias*, either grandfather, father, uncle, mother, or husband, stand in China under *patria potestas.* (169)…
> The *patria potestas* over children, whether legitimate or adopted, is unlimited. The father (or after his death, the mother) can do with them as he likes; he may not only chastise, but even sell, expose, or kill them. (171-2)

The purported absolute powers of the Chinese *patria potestas* was further supplemented by the "duty of the children to show them reverence and obedience (*xiaoshun* 孝順) and, if necessary, to nurse and support them." The Chinese term *Xiaoshun*, translated as "filial piety," is more than legal duty. "In fact," according to Möllendorff, "the whole of Chinese life is theoretically based

on filial piety; on it the well-being of the family is built, and on this again society in general, and even the Empire itself, relies."

If, for Möllendorff, late imperial Chinese law stood at the Roman stage just prior to the Justinian codes, E. H. Parker would argue that the absence of contract law placed China even earlier in Roman legal history:

> …China has not yet emerged from Status, and, as regards **the *Patria Potestas,* the Testamentary Power, the position of women and slaves, the fiction of adoption, and the almost entire absence of any written law of contract**, remains in the position of the Roman Law, – not of the later Empire, not even of the Antonine era; not even, again, of the early Empire, or the Republic at its prime; but of the Roman Law anterior to the publication of the Twelve Tables, - 2,200 years ago. In fact, with the Chinese Law, as with the Chinese language, we are carried back to a position whence we can survey, so to speak, a living past, and converse with fossil men. (69) (*my emphasis)*

Yet Parker's position on the Chinese marriage contradicts his highfalutin dismissal of Chinese law and society to the fossil age. While Möllendorff saw Chinese marriage as a contract between two *patria potestas* for the transfer of the bride, Parker argued that Chinese marriage "embrac(ed) both contract proper and conveyance, and extend(ed) beyond the sphere of property into the relations of domestic life". (76) Customary practices he had collected suggested that the implicit consent of the daughter was needed for the parents to commit her to marriage.[11]

[11] Parker accords a special importance to the study of customs, as even the law code in China "does not necessarily originate with the ruler, but is picked up thread by thread from the people themselves, just as a grammar is picked up piecemeal from a living language". (70) In other words, China's statute laws were really more akin to customary law. "For several years past," Parker emphasized, "we have been making careful enquiry into Chinese Customary Law." He made sure that the "The Manchu, Canton, Foochow, and Hakka informants have all agreed upon the subject," before it was recorded as a Chinese customary law. (77) According to Maine's theory, customary laws, like the first Roman law codes, should be studied closely to reveal how early jurists fictionalized law for the interests of the developing *patria potestas*.

According to custom, "it is by no means uncommon (for women) to positively refuse to marry, and the parents have no power to compel a union under such circumstances." (85) Citing Maine, he suggested that "both in the popular and professional view the contract was long regarded as an incomplete conveyance". (76). Parker thus saw in the Chinese marriage exchange a higher degree of inter-parental and inter-spousal mutuality and finality than the term "contract" implies:

> The two wills are those of the parents of the spouses, (or perhaps, more strictly speaking, those of each family, viewed in the light of corporations, and including in them the two spouses), and the *jus* is that of the husband over his wife, which is none the less a *jus* because qualified and circumscribed, or because the wife has also a certain counter *jus* in the matter. (76)

In inheritance, Parker was also forced to concede that contemporary China-early Roman parallels were more apparent than real in practice. The Chinese father, Park cited contemporary ethnographic records to argue, had no power to "disinherit an individual member of his family". (92) The testator, usually in a nuncupative (oral) will, "confines himself to allotting particular portions to particular sons, or at most gives an extra share to the eldest or to the favourite son". The Chinese father's inability to alienate property outside of his family presented difficulties for Parker's theory of the absolute Chinese *patria potestas*.[12]

The specific Chinese conundrum lay in the antiquity and longevity of the influence of the Confucian classics over social life. Parker surmises that the "fundamental social principles" of the Chinese had hardly changed since Confucius' compilation of the *Rites of Zhou* and the

[12] "In respect of property, the power of the Chinese father appears to equal that of the earliest Roman father; no limit of age, and no circumstances of acquisition seem to deprive the father of his right to appropriate his son's property… In practice, however, a distinction seems to be made when the father has divided his own property amongst his sons during his lifetime, and under these circumstances, the neighbours would view with disfavor an arbitrary revocation." (92)

Records of Rites. The fundamental social principle, or the Confucianist "motive" of contemporary Chinese society was the "Patriarchal Principle, *hiao,* [孝]", which for Parker, "pervade the Law and Customs of the Chinese as completely and tenaciously as the *Patria Potestas* ever did the Jurisprudence of Rome". (68) Yet the extra-legal, moral and ethical nature of the restraints on the patriarch did not prevent Parker from characterizing China as a status-determined collective of families, kept in order by separate patriarchal family heads. The irony was not lost on Parker himself, who admitted that the Chinese lacked the Roman lexical range to express various Roman concepts of fatherly power: *patria* for his children, *dominica* slaves, *manus* wife, and *mancipum* bondsmen. The Chinese "social fabric" had the same "juristical phenomena," he points out, but they "have not found expression in a corresponding number of ideas". (91) For Parker, it was symptomatic of a deeper problem with customary legal language, for in it, the powers of the Chinese father "exist rather in a negative than in a positive state, and potentially rather than actively; that is, it is easier to ascertain what the customary law will not punish a man for doing or failing to do than to lay down precisely what he may do or fail to do without being punished." (94) China, by Parker's suggestion, would have to legislatively invent new language for the ethically restrained father to finally articulate the unconscious power he had been presumed to possess.

Translating *Patria Potestas*, Codifying The Purist Position (1865-72)

Although women's participation in trade and transactions was common in Java, the arrival of a civil law jurists and Sinologists from the mid-nineteenth century brought patriarchal notions of women to bear on the Indies legal scene. Trained first in Leiden (Holland), and then in Xiamen and Canton in Qing China for another four years in the Chinese classics, Southern

Fujianese and Cantonese dialects, Gustaaf Schlegel was among the first generation of Sinology educated Dutch colonial interpreters to serve in the Dutch colonial courts in Java from the 1862 forward. In 1865, the Governor-General of the Netherlands Indies appointed the newly arrived Sinologist, Gustaaf Schlegel to assist a commission of a Supreme Court judge and two other lawyers to "draft a Chinese inheritance code" in conjunction with recommending amendments to the legal status of the Chinese in Java (as stipulated in 1855 Staatsblad no. 79).[13] Over the next fifty-two years, three different commissions would produce six different draft codes of private law for the Chinese in Java, none of which was enacted as law until the final draft in 1917. The introduction of a Sinological discourse of "family law" influenced the social-legal practices of Chinese familial inheritance in Dutch Java between the 1860s and 1890s, eventually superseding less rigid forms of early modern patriarchy.

To the newly arrived Sinologist-interpreters, Chinese women had to have fewer property rights to speak of when compared with their European counterparts. The position was put across most strongly in expert testimonies Schlegel gave in the same period when he was advising the state commission on Chinese private law codification. Schlegel derived this notion from his literalist readings of Confucian moralist tracts, combined with ethnographic knowledge he collected during his study sojourn in Xiamen.[14] "The (Chinese) woman is rather seen as a thing (zaak)," says Schlegel in his 1865 expert testimony against a Chinese daughter's inheritance rights "and a means for the reproduction of the male lineage, than an independent personality

[13] Nationaal Archief (heneforth, NA), Archief Ministerie van Koloniën (MvK), 2.10.02, 1600: "Extract uit het register der besluiten van de Gouvernor-General van Nederlands-Indië, 19.1.1865".
[14] Schlegel, "Chineesch Regt: iets over Chinesche testamenten, donatiën en erfopvolging" in *Het Regt van Nederlandsch-Indië* (Henceforth, HRNI) 20, 1862, 369-374; and Schlelgel, "Wettelijke bepalingen omtrent de huwelijken in China en beschrijving der daartoe gebruikelijke plgtigheden"in ibid., 394-408.

with her own destiny and rights."[15] In another testimony in the following year, Schlegel (and his colleage M. van Faber) would cite the Confucian adage to support his claim, "The woman is always dependent: as a girl on her parents; as wife on her husband; as widow on her son." Although he recognized that daughters sometimes brought usufruct rights to their marriage, he insisted on their complete surrender of property rights as a matter of principle:

> To say…that a Chinese woman can possess something, is, according to Chinese ethics, an absurdity and a little ridiculous in their eyes, as if a servant or a slave wanted to claim that the expensive livery, which had been lent to him by his master, belongs to him.
> A Chinese woman has nothing; her diamonds, clothes, in short, all that she brings with her to her marriage, by the fact of her marriage itself comes to the possession of her husband.[16]

When the topic of community property marriage came up for discussion inside the Codification Commission in April 1865, Schlegel's ideas prevailed:

> It was remarked that there was no marital community (of property) among the Chinese for the simple reason that the woman never owned anything. Gentleman Schlegel thereby informed (the Commission) that although the wife occasionally brought a significant dowry to the marriage, this immediately became the property of the husband.[17]

It had been a long colonial statutory tradition to exclude the Chinese from the Dutch doctrine of community property marriage. In Dutch civil law, community property marriage (*gemeenschap van goederen*) presumed equal and joint ownership of property within the

[15] "Berigten van Deskundigen" in IWR no. 142, 1866.
[16] "Berigten van Deskundigen" in IWR no. 154, 1866.
[17] Minutes of the Second Meeting of the Codification Commission, 20.4.1865: in NA, MvK: 2.10.02, 2471; Mailrapport 17.2.1872 no. 8.

household, under the name of the patriarch unless otherwise specified in prenuptial agreements. In 1766, the Company era government had passed a statute excluding the Chinese from community property marriage with the following rationale:

> … … it will bring about no benefit to annul this old custom (exclusion of community property marriage), when the Chinese often in the most rash of ways spend all their wealth through gambling or otherwise, or lose it through misfortune, and find himself in debt, while the wife does not partake in the profits of his husband if there is any, it would be hard to accept that by such laws and concepts, she would be liable for his debt.[18]

Likewise, in 1855, when the Chinese received civil and commercial law, but were exempted for much of personal law, the lawgiving authorities made a special effort to not only exclude community property marriage, but also specify how the wife's separate property might only be protected by pre-nuptial notarial contracts:

> There exists no community property in law between the Foreign Oriental and his spouse by the consummation of the marriage.
> The wife retains all the movable and immovable property (*zaken)* that belong to her.
> The reporting/registration (aanbrengst) of moveable property by the wife at the point of marriage, can be proved in no other way than by an authentic deed, made by herself or before her, whereby these property are specifically described; property accruing to the wife by inheritance, legacy or gift during the marriage must be proven by a notarial description… …, likewise for the transfer of immovable property… …
> The profits made by the wife, during the marriage, accruing from her own property or trade, cannot be otherwise proven than by properly kept written evidence.
> All other (property) not proven to belong to the wife as described in this article is considered to belong to the husband. (Staatsblad 1855 n. 79, Chapter II, Art. 2)

[18] Ibid.

Read in the context of this colonial statutory tradition, Schlegel had in fact set the logic for excluding community property on its head. The original intent in 1766 was protective. In 1855, the protection of the Chinese wife had already been weakened by the requirement that the wife's separate property be proven by notarial contracts. By Schlegel's advice in 1865, the Chinese father's absolute proprietary rights became the justification for depriving the wife of community property. If community property under Dutch civil law meant equal ownership under the husband's legal management, Schlegel's was a community under the absolute powers of the husband/father. While the three jurists on the Commission could not have contested Schlegel's expert knowledge on the Chinese family, it is remarkable that they allowed the Sinologist's authority to invert the intent of the 1766 and 1855 statutory laws. On this matter, the three jurists went along with Schlegel because "the prevailing law is based on existing practices (*bestaande gebruik*), and there was no reason to bring changes to it". There was no ethnographic evidence to support "existing practices".

If the protective intent of the 1766 and 1855 exclusion of community property marriages had been unconsciously overturned by the 1865 jurists, it was not at first sight clear whether the allowance for prenuptial agreements (Burgelijk Wetboek, henceforth B.W., Art. 140-149, 151-154) was meant to compensate for that change. The contractual definition of marriage in the Civil Code implied the wife's consent to the husband's power as father of the family. Prenuptial conditions in the Civil Code for Europeans were granted under the condition that these "are not in conflict with good morals or public order". More importantly, the prenuptial agreements were "neither to deviate from the power of the husband … …the power of the father, nor from the rights of the relation of the lifelong spouse" (B.W. Art. 139) The Civil Code also deemed all

agreements between spouses invalid until publicly registered as with notaries. (B.W. Art. 152) This clause was likewise applied to the Chinese as Art. 24 in the draft, with the following explanation:

> By European law, where community property is presupposed (to exist), it was sufficient to impose on spouses the duty to register their prenuptial agreements (*huwelijksvoorwaarden*), under penalty (if they did not) that they would be considered liable to third parties as in a community property marriage. By this draft ordinance, however, where the exclusion of community property is presupposed, the spouses do not have the interest (*belang*, to have a pre-nuptial agreement*).* In view (of the fact) that it can often be of the greatest import to third parties to know whether community property was contracted (*bedongen*), in other words, whether both spouses are liable for the payment of debts; and that those third parties would not be satisfied unless the marriage contract was made public, the Commission decided that it has to include Art. 24 in the ordinance.
> Without such a provision, the contracted community (property marriage) could be made a complete and total deception (*illusoir*) against the third party … … and the creditors can be deprived of (the right of) the recovery of benefits/profits (*het verhaal op baten*).[19]

In other words, if the Dutch wife was entitled to half the household property by default, under community property marriage, the Chinese wife, by the exclusion of community property would have her property subsumed under her husband's ownership unless otherwise stated. Her pre-nuptial agreement would be public knowledge in the interests of third parties.

While accepting Schlegel's opinion on the need to exclude Chinese wives from civil law's protection under the community property doctrine, the three jurists pointed to the positive inheritance rights Chinese women would gain through the application of the doctrine of the

[19] "Nota van Toelichting behoorende tot het ontwerp eener ordonnantie, opgemaakt door de commissie ingesteld bij besluit van den Gouverneur-Generaal dd. 19 Januarij 1865 No. 1" in NA, MvK: 2.10.02, 1844; Mailrapport 19.12.1866 no. 27.

legitieme portie (legitimate share).[20] This Dutch law guaranteed surviving spouses, sons and daughters equal shares of up to three-quarters of the estate, before the remainder could be disposed by testament. "The recognition of women's rights of inheritance would bring about a complete change in their position," the commission countered, "(so that) the causes (Schlegel) gave for the exclusion of community property will thereby lose its significance".[21]

Besides the juridical-legislative counter-balance, the commission's reference to existing probate practices is in fact of greater historical significance for it pointed to long-standing practices in colonial society that had already softened the sharper edges of Chinese patriarchy:

> It is however to be recalled, that the Colleges of Probate Masters and especially that in Batavia have also recognized the inheritance rights of women, according to the European law of inheritance, in estates that have become vacant through intestacy; … … even for the woman who had entrusted her power of attorney to the husband or a third party.[22]

Although the three jurists agreed that Chinese daughters and widows should enjoy commensurate inheritance rights, they could not agree on how the scale of that inheritance in relation to Chinese sons. In the commission's fifth meeting on 27th July 1865, the applicability of the Dutch legitimate share was fiercely debated.[23] Two of the three jurists, TH Kinderen and F. Alting Mees "wish(ed) that women would in every sense (of the law) be given equal (inheritance) rights as men". The third jurist, A. van der Hoeven wanted to give half of the male heir's legitimate share to the female. Van der Hoeven, a lawyer and advocate at the Supreme Court,

[20] Dutch Indies Civil Code, Book 2, Title 12: Rights of Inheritance by Death (*Erfopvolging bij Versterf).*
[21] Minutes of the Second Meeting of the Codification Commission, 20.4.1865, ibid.
[22] Minutes of the Second Meeting of the Codification Commission, 20.4.1865, ibid.
[23] This and the next paragraph are based on Minutes of the Fifth Codification Commission Meeting, 20.4.1865, in NA, MvK: 2.10.02, 2471; Mailrapport 17.2.1872 no. 8.

cited to support his stand the fact the Chinese "only recognized a diminutive testamentary share for women," and the somewhat too strong application of this law would "incur the displeasure of the Chinese". Van der Hoeven had apparently canvassed some of the Chinese Kapitans and had received their support for his half-share proposal for Chinese women. Schlegel "strongly supported" Van der Hoeven's position. Passing the gender neutral inheritance law would be a "provocation of great dissatisfaction especially among the wealthy class", and Schlegel insisted that his "strongest opposition" be recorded in the minutes.

Kinderen and Mees "retain(ed) their sentiments" (*blijven hun gevoelen).* They argued that the passing of the law would have no direct effect on Chinese "family life", as the implementation of the law would be "blunted" (*afstuiten*) by the existing morals and customs of the Chinese. Addressing Van der Hoeven's and Schlegel's fear of Chinese displeasure, the two proposed that "so long as the question was to be determined by a sum of money, one will always have two opposing parties in conflict with each other – the displeased party of the moment will always be tempered by the satisfaction of the other party".[24] In the end Van der Hoeven "reconciled with the majority", who in turn proposed that they hold a conference with the Chinese officers. Since their rejection of the changes might be expected, the commission offered Van der Hoeven's proposal as a likely "transaction" with the Chinese chiefs. Schlegel who had no vote as the Sinology adviser on the codification commission nonetheless wanted his "strongest disapproval" (*ten sterkste afkeuren*) recorded.

[24] To support their thesis, they referred to how the deeply rooted institution, the fideicommissum (bequeath in trust) was abolished "with the stroke a pen" and without causing any revolution back in the Netherlands.

The first Commission's draft codes (1865, 1867 and 1872) set the legal-epistemological foundations for defining the property rights of Chinese women in Java. In its post-enlightenment quest for utilitarian "legal certainty" (*rechtszekerheid),* Dutch codifiers, to paraphrase Lord Macaulay's prescription for uniform legal codes, found it "necessary" to unify the Chinese under Dutch commercial law, while attempting to incorporate them under Dutch personal law "wherever possible".[25] The limits of that possibility were determined discursively by Schlegel's purist translation of Chinese ethical prescriptions of Chinese family life into a discourse of rights and duties. If the translation of the Chinese woman's property rights was contentious in the codification debates among Gustaaf Schlegel and the colonial jurists, it proved to be even more contested when the Sinology-trained interpreters debated the question more openly in colonial journals and within the legal-bureaucratic circle. Despite Schlegel's protests, the jurists pushed through the first commission's draft code. The code was ready for implementation in 1877 when W. P. Groeneveldt, a Chinese interpreter of Schlegel's generation, submitted a sixty-nine page memorandum to dispute its first commission's translation of Chinese legal rights.

Deriving Women's Partial Rights: A Pragmatist Ethnography

W. P. Groeneveldt had been a Chinese interpreter in West Borneo (1864-9) and Sumatra (1870-3) before being posted to Batavia (1874-7). Thereafter, Groeneveldt left the interpreting service to join the colonial bureaucracy. He was appointed honorary adviser for Chinese affairs, and ended his colonial service in the 1890s as the vice-president of the Netherlands Indies Council (*Raad van Nederlands Indië)* – the highest advisory body for colonial executive power. After three years in capital city of the Dutch East Indies, Groeneveldt submitted a 69-page

[25] Thomas Babington Macaulay, "Government of India", A speech delivered in the House of Commons on 10.7.1833.

critique of the first commission's work to the Minister for Colonies in The Hague in March 1877.[26]

One of Groeneveldt's critique of the Sinological purists was their failure to consult the local Chinese and their consequent misreading of the ends of Chinese religion in its relationship with property succession in Java. Groeneveldt disputed Schlegel's claim that the Chinese officers had presented "contradictory information on various legal questions" due to their ignorance of Chinese law. It sounded "incredible" to him that there would be "any major uncertainties about inheritance" with such a "civilized (*beschaafd)* people as the Chinese," with "such developed family life" and "family bonds that endure even into the afterlife". Groenevedlt observed that:

> The cardinal principle, by which Chinese inheritance law is ordered, is derived from the veneration of ancestors, which as one knows is the real (*eigenlijk)* religion of the Chinese… …. according to the concepts of that veneration, a person continues to enjoy the fruits of his property together with his ancestors after death, and that he therefore has no wish for himself, and has no right toward his ancestors, to alienate the property from the family, but is instead obliged to do all that he can to bequeath the property to his direct descendants.[27]

The various contradictions of the 1865-72 codes were the result of its "transitory form" (*overgangsvorm),* with the end goal of bringing the Chinese society into eventual uniformity with European laws. Yet in Groeneveldt's view, far from assimilating with European society, Chinese society in the Dutch Indies had a natural tendency to move closer to the natives:

[26] Groeneveldt to Minister for Colonies, 6.3.1877 in NA, MvK: 2.10.02, 3000; Mailrapport 16.6.1877, no. 44.
[27] Groeneveldt to Minister for Colonies, 6.3.1877, ibid.

> Our experience has taught us that the Chinese society in our colonies, remains roughly as it is when regularly strengthened by new elements from China, and if such a supply is lacking, the Chinese will gradually sink to the level of the natives; they surely do not (rise) closer to us.[28]

His ethnographically inclined critique of the Sinological purists would surface in his alternative formulation of the Chinese woman's property rights. If inter-racial marriage was missing from the Sinological purist concept of the Chinese patriarchy, Groeneveldt's consideration of Chinese-native unions was used not so much as an ethnographic corrective but rather to account for local Chinese men's low opinion of creole women in relation to the civilizational superiority of the Chinese woman. He attributes the general low opinion of Chinese women in Java to their marriage with Balinese slaves in the eighteenth century. Groeneveldt's critique of the Sinological purists was hence pointed at their ethnographic misunderstanding of the social status of women in China.

Legal certainty would follow, Groeneveldt argues, if the Chinese could "as far as possible be left with their own institutions". In concrete terms, he argued that the elevated status of the Chinese woman called for the **inclusion of community property marriage** for the Chinese in Java. A Chinese widow should have usufruct inheritance rights equal with her legal children. Insisting on the term "secondary wives" (*tweede vrouwen*) instead of the derogatory "concubines" (*bijzitten*), he proposed that they should also enjoy half the usufruct inheritance rights of the legal child.[29]

[28] Groeneveldt to Minister for Colonies, 6.3.1877, ibid.
[29] Groeneveldt to Minister for Colonies, 6.3.1877, ibid.

Four months after submitting this memorandum, Groeneveldt would bring his ethnographic challenge against the Sinological purists into the colonial courts. Two testament-designated daughters of the main wife appealed against their testament-excluded half-brothers and half sisters of their father's minor wife 1) to deny that Chinese had access to the legitimate share and 2) to uphold Schlegel's expert testimony against the Chinese daughters' inheritance. [30]

The Supreme Court tasked Groeneveldt, a local ethnic-Chinese interpreter and a Chinese officer to testify if "according to inheritance laws valid in China, children inherited without distinction of sex from their **father** and if so by what proportions".[31] The Supreme Court demanded a response to Schegel's and Von Faber's 1866 expert reports, wherein the translators propounded their "woman as thing" theory. Groeneveldt's reply was carefully calculated to introduce the language of "rights" into Dutch colonial legal discourse of Chinese women in relation to their family:

> The daughters, who are already married, have no claim on the estate. The unmarried daughters also do not inherit, but the (male) heirs have the duty to provide maintenance and to give her a (wedding) trousseau (*uitzet),* in proportion with her status (*stand*) and with the inherited property. This right of the unmarried daughter to the inheritance of the father is not further regulated, and the brothers

[30] The minor wife, Sim Tjoe Nio plea for a legal share of 3/40 of their father's estate for her six minor children had been granted by The Court of Justice in Batavia. They had been excluded in the testament of their father Lauw Assie made many years ago in 1851. That testament had appointed his first wife (who died before Lauw Assie, but most likely before the second marriage) and their four daughters as heirs to his estate. The first marriage bore no son. Sim Tjoe Nio then had six children (two sons and four daughters), five of whom are still minors when their father passed in 1874. The Court of Justice granted both Sim both of her pleas. Each of her five minor children was to receive 3/40 of the estate from their elder half-sisters.[30] Two of the elder daughters, who held the legal title to their father's lands, appealed against the lower court's application of the legitimate share doctrine on a Chinese case. They also counter-argued, without irony, that experts like Schlegel had testified against the Chinese daughter's right to inherit under Chinese law. Of course, their lawyers felt safe making such an argument because they had been appointed by testament. See Sim Tjoe Nio ca. Lauw Dji Praauw (Raad van Justitie te Batavia, 29.12.1876) in *HRNI* 28, 1877, 201-9;

[31] W.P. Groeneveldt, Lie Hoet Seng, Lie A-Lim, "Rapport van Deskundigen" (24.9.1877) in "The Pitnio ca. The Tianseng en The Wantjiang (Het Hoog GeregtsHof van Ned.-Indie, 2.5.1878)" in *HRNI* 30, 1878, 384-394.

> are left to their own means to fulfill the duty that results therefrom. If the brothers are found to be negligent, it is the duty of other family members to induce (*anndringen)* him, failing which the judge is empowered to see to it that…he lives up to the duty.[32]

Here, Groeneveldt inserted the concept of the daughter's rights through the customary duty of the brother-heir to provide for his sister until marriage. "The recognition of (this) slightest right already dispels from the woman," Groeneveldt argued, "the claim that she exists as a thing (*zaak*)."[33] In China, women were granted three more rights without dispute: The widow's life-long right to live off her husband's property; the widow-mother's right to decide on her children's marriages; and the daughter's right to inherit when her father died with neither sons, nor suitable persons for adoption in the side-branches of the family. While it had to be admitted that the Chinese did not have community property marriages, having taken these scenarios into consideration, Groeneveldt argued that "certain rights of the woman on the communal property to the woman was secure (*verzekerd*)".

Returning to Sim Tjoe Nio's plea for the inheritance rights of the minor wife's children, the expert witnesses replied that the Chinese father did not have the absolute freedom to dispose of his property, and any excluded heir had the right to seek restitution with family elders or the local magistrate. "Excluded sons had the right to appeal for their share of inheritance (*erfdeel),*" while excluded daughters could appeal "for the other rights they exercise on their father's inheritance".[34] In what portions did natural and adopted sons and daughters inherit? The experts replied:

[32] Groeneveldt et al., ibid., 388.
[33] Groeneveldt et al., ibid., 389.
[34] Groeneveldt et al., ibid., 392.

> The carnal (*vleeschelijke*) and adopted sons have an equal share; sons born of adulterous relations inherit half the share of the former, but with the absence of carnal and adopted sons they inherit the entire legacy; daughter do not inherit with (the sons), but are granted the rights outlined above.[35]

The Supreme Court accepted Groeneveldt's advice. The testament-appointed daughters were assured of their share in their father's estate, but not to the exclusion of the minor wife's sons despite their exclusion from the testament.[36] Yet the greater point for colonial jurisprudence was not so much the outcome of the case, as Groeneveldt's pragmatist derivation of partial rights for the widow and the daughters from observed Chinese customs. Let us now turn to the Semarang translator, P. Meeter's realist rejoinder.

Ethnographic Realist: Sinology's Machiavellian Father

To dismiss Groeneveldt's Chinese rights-discourse, P. Meeter introduced a comparative antiquities approach to argue that China remained a patriarchal society, and hence Chinese women deserved patriarchal laws. Meeter was the first among the Dutch Sinologists to attempt to connect a theory of the Chinese state to its law and ethics. He cited the American Sinologist Samuel Wells Williams' survey of *The Middle Kingdom* (1848) to support his claim that the "theory of the Chinese Government is undoubtedly patriarchal".[37] Contemporary China was

[35] Groeneveldt et al., ibid., 394.
[36] The case went through many more twists. The initial appear outcome was that nly the two minor half-brothers could have their 3/40 share of Lauw Assie's lands. The minor wife then filed a second plea for her minor sons to gain 1/3 of the estate each against their two elder sisters. The Court of Justice granted her plea, and this was confirmed by the Supreme Court judges, who rejected the Lauw sisters' appeal to limit their half-brothers' share to 3/40 each. See "Lauw Djiprauw, c.s. appellanten ca. Sim Tjoe Nio" (Hoog-Geregtshof van Nederlandsch-Indie, 14.3.1878) in *HRNI* 30, 1878, 189-196; Sim Tjoe Nio ca. Lauw Sarong en Lauw Dji Prauw (Raad van Justitie te Batavia, 28.2.1879) in *HRNI* 34, 1880, 98-104; Lauw Sarong en Lauw Dji Prauw ca. Sim Tjoe Nio (Hoog-Geregtshof van Nederlandsch-Indie, 22.1.1880) in ibid.
[37] P. Meeter, "De Regtstoestand der Chineesche Vrouw" in *HRNI* 32, 1879, 345-373. See also Samuel Wells Williams, John William Orr, *The Middle Kingdom: a survey of the geography, government, education, social life, arts, religion, etc. of the Chinese empire and its inhabitants*, Volume 1 (New York: Wiley and Putnam, 1848), 296.

likened to Antiquity in Egypt, Greece and Rome, but more precisely, like the polygamous and daughter-trading society of Abrahamic Israel. Practices such as "polygamy and adoption," were the result of the Chinese "pining for descendants and lineage successors," which in turn stemmed from "absolute paternal power" (*uitgebreide vaderlijke magt).* The power was prescribed most clearly in "Li Ki" (*Book of Rites*), which Meeter describes as the "political ethics of Confucius", and was the "basis for the state religion" (*staatsgodsdienst*). According to this theory then, Meeter argued that wherever the Qing Code remained silent on women's status, or "when the advice of the legal experts conflicted," it became "necessary to go to the source and consult the *Book of Rites".*[38]

In concrete terms, Meeter rejected Groeneveldt's proposal for recognizing the widow's inheritance and her guardianship rights over her children. Instead, he argues for the absolute power of the father over all his "legal wife, concubines, slaves and children". While admitting that "chaste widows" might have a high status in late imperial China, that was nonetheless moral and religious, rather than legal personality. In fact, Meeter agreed with Groeneveldt that the "Chinese woman in (Netherlands) India stands intellectually and morally lower than the woman in China". That was precisely why, Meeter argued, there were "less grounds compared to women in China for her to exercise her 'so-called' rights". Chinese customs were not gradually changing with their "contact and intermingling with natives and Europeans". In fact, these new customs were "invented by the clever Chinese chiefs and their skillful lawyers". The Chinese baba's "put on another dress" and pretended to be ignorant of Chinese customs, but "everyone who observes

[38] Meeter, ibid., 349.

the comings and goings of the Chinese in India" will notice how they followed Chinese customs in their daily life.[39]

According to Meeter, the Chinese in Java were by nature reluctant to "think about the hour of death", and left it to the "last hour to summon a notary in haste, and for the making of the last will". Such a father would usually dictate his last will thus:

> If one of the sons was of major age, then he will be appointed the sole heir and executor; if all children were minor, then the wife (especially after 1855) will be appointed as heir and executor and legacies left for the children – significant for sons, minuscule for daughters; the same happens when the testator has only daughters or left behind no child.[40]

Furthermore, the Chinese in Java often connived, consciously or unconsciously, to avoid colonial law's intervention in their family's property holdings. Meeter cited two typical cases. First, the male kin (father or brother) of a dead man was appointed executor of the estate, and had declared to the Probate Chamber that the deceased left behind no property. Yet the Probate Chamber often "seized a not insignificant sum of property" when they visited the family. When confronted, the male kin executor protested that the deceased had sold his house to his widowed wife (with contract to prove), and the remaining moveable property belonged to the father and/or brothers. Although the Probate Chamber was supposed to seal the immovable property (the house) as legal guardian for the minor aged children, Meeter pointed out that there was nothing

[39] Meeter, ibid., 366, "It is also the case here that Chinese girls are rarely seen after the age of 7 or 10; Chinese women are hardly seen as a rule, and they make themselves scarce whenever men approach; - married sons and their wives and children often live for a long time with their parents, marriage between people of the same surname does not happen, the bride's permission for her marriage is never solicited; Chinese widows hardly remarry; adoptions occur frequently, etc."
[40] Meeter, ibid., 368.

colonial law could do in this case since "women can buy and sell as a legal personality in the (Dutch) Indies" and civil law was not applicable to the transfer of movable property between father and brothers.[41]

The second typical case involved fraudulent bankruptcies and underage marriages. A wealthy merchant married a rich woman. Soon, he filed for bankruptcy. But he was found to be living his usual luxuriant life and trading under the name of his wife, who still retained her own property. Years later, by the deathbed of this wealthy woman, now a widow, the notary was summoned to draw up the last will. Her minor son was appointed heir and executor of her estate. The Probate Chamber proceeded to seal her property as legal guardian for the minor son. But since the European law which admitted men who married to majority was applicable for the Chinese, the Probate Chamber found the "barely adult" boy married while before her mother had been interred. Meeter pointed out that such actions constituted "serious offences against Chinese morals and laws". Not only did the Chinese chiefs fail to stop such offences, but they "lent their cooperation" in these cases by granting their consent to the sham marriages.[42]

Meeter's campaign against the Chinese woman's legal personality went beyond concerns for colonial law and justice. It was also framed as a moral crusade against the less-than-civilized "Indies-Chinese woman":

> She is usually a lowly-cultured, highly sensual being, who becomes the tool of her male relatives after the death of her husband. If she becomes the heir or executor, then there will usually be an "uncle from the mother's side" or a male friend from another lineage, who will help himself to the lion's share of the inheritance at the expense of the minor heirs. And if only such widows can also be forbidden from

[41] Meeter, ibid., 368-9.
[42] Meeter, ibid., 369.

> remarrying in (Netherlands) India, for the resistance that she can proffer against seducers who go after her wealth, is usually not strong. Chastity does not have so high a standing in (Netherlands) India as in China.[43]

Meeter concluded that new legislation was needed not so much to achieve the "unattainable ideal of inculcating Western concepts among the Chinese," but more so as to begin to "address the current needs".[44]

P. Meeter's patriarchal theory of Chinese law had an immediate effect on the colonial courts' assessment of Chinese woman's property rights. In August 1879, Tan Boentjiet had sued his (minor wife) mother for his legal share of his father's estate and for the legal guardianship of his two minor-wife brothers. In his will, Tan Tauw had named the minor wife as the sole heir and guardian of any minor children, and a kin Tan Tjoey Seng as executor. The eldest son Boentjiet was legated f500. Tan Boentjiet argued that "according to Chinese inheritance law, sons…inherited from their father and not only as intestate heirs, but (sons) have the right to a legitimate share, of which they cannot be deprived by the last will". Instead of citing Groeneveldt's report, which would have granted the widow-mother a life-long usufruct right, and perhaps recognized the right of her guardianship through her Chinese right to decide on her sons' marriages, the Court of Justice turned for evidence on "Chinese inheritance law" to Meeter's report on "The Legal Status of the Chinese Woman". The judges applied Meeter's Chinese law and the Dutch legitimate share to overturn Tan Tauw's testament, and order the equal division of

[43] Meeter, ibid., 371.
[44] Meeter, ibid., 373.

the estate into four parts for the widow and the three sons. They also ordered the mother to transfer the legal guardianship to the eldest son.[45]

P. Meeter was an ethnographic Machiavellian in his manipulation of the purist position for colonial self-interest. He saw in women's rights a loophole for Chinese men to shield their property from the claims of their European creditors. His Sinological purism had a colonial functionalist edge to it that the purely academic Gustaaf Schlegel was probably innocent of. Yet both Groeneveldt and P. Meeter held the same low opinion of the civility of the creole Indies-Chinese woman compared to her Chinese counterpart. Although this did not prevent Groeneveldt from insisting on Chinese women's inheritance rights for the Indies-Chinese woman, Groenveldt did so perhaps for the pragmatic reason of providing some protection for the Chinese widow. P. Meeter thought a stricter enforcement of Chinese ethical standards would have a civilizing effect on the sensual Indies-Chinese woman. While Meeter's patriarchal theory gained the upperhand in the colonial courts, Groeneveldt would be appointed to the second codification commission to redraft the Chinese private law code. All his major pragmatist ethnographic arguments made their way into the 1892 code: inclusion of community property marriage for the protection of the wife, and legal portion inheritance (equality between widows, daughters and sons). Although Groenveldt won his battle against the purists, he would lose the war against the unexpected adversary – the Kapitans whom he never consulted. When his published law code was circulated among the Kapitans, their universal opposition against granting Chinese daughters an equal share with sons assured the law's defeat. When the Governor-General appointed a new commission to

[45] The judgement was upheld in the Supreme Court appeal: Oeij Kim Nio ca. Tan Liong Sam (Hoog Geregtshof van Nederlandsch-Indie, 5.2.1880) in *HRNI* 34, 1880, 131-138.

draft yet another code, he chose a sole Supreme Court jurist, Pieter H. Fromberg for the task. Sinology would take the backseat from hereafter.

The Jurisprudential Consequences of the Sinological Moment

1) Intestate Daughters Lose Inheritance Rights

In the translations between classical Chinese ethical norms and Dutch civil law, long standing colonial legal traditions was often left out of the equation. One of these was the practice followed by colonial Probate Chambers of applying the Dutch legal portion inheritance law to all Chinese intestate (without testament) cases. When the Indies-born A. A. Buykes did a study of Java's system of probate chambers in the late 1850s, he found this practice to have been alive since "time immemorial".[46] Although Buykes provided no explanation for this practice, it was probably meant to ensure that the widows and daughters of poorer Chinese who were more likely to die intestate would not be left completely destitute. The Kapitans probably acquiesced in this anti-patriarchal practice they were themselves not likely to die intestate.

One sign that this practice was indeed ingrained in the minds of the Probate Chamber officials is its survival up to at least 1880 even after colonial jurisprudence had in theory announced its demise in 1865. In the 1865 landmark case, the colonial court asked Schlegel if "(b)y having daughters inherit in intestate cases, were the existing laws in China still applied (in Java) in an unadulterated form? If not, since roughly when did it diverge therefrom?" Schlegel responded to the effect that "existing laws in China" on daughters' inheritance had simply *never* been applied by the Probate Chamber in such cases. In Chinese intestate cases, the Probate

[46] Buykes, *Academisch Proefschrift over de Weeskamer en het Collegie van Boedelmeesteren te Batavia,* (Leiden, 1861), 113.

Chamber had "since time immemorial" applied Dutch inheritance law, which gave daughters and sons an equal share.[47] "What was the reason for this divergence, and how has the division of estates been handled since?"[48] The commission suggested that the divergence came about not so much due to the "adaptation of the (inheritance) concepts by the Chinese in this country," as the "ignorance of the local colleges on Chinese laws, folk institutions and usages". The colleges could have made use of "the advice of the male kin (of the deceased), which was not sufficiently supplemented by the almost illiterate and often little civilized Chinese chiefs". In view of the commission's report, the judge dismissed a widow's plea against the Probate Chamber for the recognition of her daughter's inheritance rights.[49]

Despite the precedent set by the 1865 case, we find that in 1881, the Probate Chamber granted a son-less widow and her two daughters the inheritance of Ong Boen Seng's estate to the exclusion of sons born by two minor wives. When the two concubines sued for their sons' share, the Probate Chamber, representing the son-less widow and her daughters, appealed to the Court of Justice and the Supreme Court on account of the intestate daughter's rights but eventually lost.[50] The probate file of Ong Boen Seng shows that her widow had repeatedly appealed to the Chamber for maintenance from the estate during the course of 1881.[51] It is likely that the Probate Chamber did not always follow legal precedents set by colonial jurisprudence, but applied its "time immemorial" practice where it felt necessary for the protection of destitute widows.

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[47] For this long standing colonial practice in the Batavia Probate Chamber, see the contemporary dissertation A. A. Buykes, *Weeskamer en het Collegie van Boedelmeesteren te Batavia,* (Leiden, 1861), 113.
[48] "Lim Boenio ca. Het Kollegie van Boedelmeesteren te Batavia" (Raad van Justitie, 13.10.1865) in *Indisch Weekblad van het Recht,* 130, 1865; Lim Boenio ca. Kollegie, 13.10.1865; "Berigten van Deskundigen" in *Indisch Weekblad van het Recht,* no. 142, 1866.
[49] "*Collegie van Boedelmeesters te Batavia ca. Lim Boenio"* (Raad van Justitie, 16.8.1866) in *Het Regt van Nederlandsch-Indie,* no. 23, 1867.
[50] Cite the case.
[51] Cite probate chamber file.

2) The Chinese Woman Loses *Sui Juris* Status

In Tegal, a central Java entrepôt town too small to have its own notary, Tan Paginio borrowed f10,000 from Liem Eng Tjie before the Resident's secretary, with the house standing on her own land serving as collateral.[52] Paginio would herself argue in court that her mortgage was a fraud made up by her by-then deceased husband and her brother without her knowledge. Paginio's lawyers tried to annul the contract by three different strategies over the course of six years (1886-92). She finally won her case in 1891, when her lawyer Conrad Theodore van Deventer,[53] argued that the private legal status of the Chinese, was to be determined by "laws, institutions and usages of the Chinese in general, and not of the Chinese settled in the Netherlands-Indië or a particular part of it". The 1891 threw out another long-standing jurisprudential position that the exclusion of the Chinese from community property marriage implied that Chinese women were *sui juris* by default. What had changed, the judged argued, was that, "the married Chinese woman in Java is not competent to act without the authority or written authorization of her spouse…such as entering into contracts and mortgaging immovable property, an authority that now in 1891, in most European legislations has not yet been granted to married European women".[54]

[52] Tan Pa Ginio ca. Liem Tiang Keng, *Indisch Weekblad van het Recht*, no. 1464, 1891.
[53] C. Th. van Deventer (1857-1915), the liberal-moralist lawyer would in 1899 famously frame the Netherlands' relationship with Javan peoples as a Christian missionary "debt of honor," providing the final liberalist catalyst for a three decades long colonial movement toward social development in what came to be called the colonial "Ethical Policy" in 1901.
[54] Tan Paginio v. Liem Tiang Keng, 22 April 1891, Raad van Justiite te Semarang, IWR n. 1464.

Conclusion

A recent study of these Sinological and juridical debates concludes that the entire thirty-year fracas was a "cloak and dagger" [*drogreden en dekmantel*] cover for colonialism's blindness to Chinese opinions and its lack of political (financial) resolve to match words with action.[55] In this chapter, I argued that these debates are better understood as part of a uniform ethnographic turn to a global rule of property for colonial subjects in many parts of the colonized world. The process of epistemological colonization of existing social relations proceeded at different pace and faced varying contradictions at various points of European colonial contact with other cultures. In Java, Dutch and European commercial contact with the Chinese settlers and the colonial state's aim to provide legal certainty for the economy prioritized the epistemological colonization of Chinese settler social relations over that of the indigenous population. Differences in Sinological readings and ethnographic approaches led to heated debate among the Sinology experts. Yet it was still Henry Sumner Maine's framework of comparative law that provided the unifying standard for the working out of an epistemology of property rights for Chinese wives and daughters in the context of a particular Chinese *patria potestas.* In contrast to the autonomy creole Chinese women exercised under the bilateral kinship system discussed in Chapter One, the Sinological intervention imposed the despotic laws of the Chinese father derived more from classical Confucian texts than from any ethnographic recognition of the hybridized culture of the creole Chinese in Java. The next chapter considers how the Ethical turn in Dutch colonial policy in the 1890s introduced a new civilizational and national standard of family laws for the Chinese in Java.

[55] Patricia Tjiook-Liem, *Rechtspositie der Chinezen,* 155-219, citation from 217.

Chapter Three

Ethical Policy and the Turn to Chinese Marriage Law Reform

In 1891, Conrad Theodore van Deventer successfully persuaded the Dutch Indies Supreme Court to disavow the Chinese woman's autonomy in representing herself in law.[1] Van Deventer was a jurist who resigned early from the colonial justice department to practice as a private lawyer in the vibrant commercial city of central Java, Semarang. During the 1880s and 1890s, Van Deventer joined a steady stream of colonial officials who crossed over from colonial service into the liberalizing colonial economy as professional lawyers, journalists and academics, only to re-emerge as empire's critics in the emergent colonial public sphere. In 1899, during a private furlough back in the Netherlands, van Deventer's polemical "A Debt of Honor" (*Een Eereschuld*) (1899) provoked Dutch Parliamentarians into disbursing empire's first official tranche of funds for social welfare spending in the colony. The Ethical Policy, launched two years later, heralded a new age when the colonial state assumed the civilizing mission alongside new forms of private capitalist exploitation in the colonial economy.

Although criminal and public law were constantly being fine-tuned throughout the nineteenth century, colonial reformers turned teir attention to the colonial subject's private law and the regulation of the subject's intimate life from the late 1880s. In 1887, the Dutch scholar of Islamic law and Government Adviser for Eastern Languages and Mohammedan Law, L.W.C. van den Berg, convened the association of Netherlands-Indies jurists in Batavia to discuss the

[1] Refer to discussion of the case at the end of Chapter One.

question of women's racial-legal status in mixed-race marriages. The Dutch jurists were concerned with whether women of European legal status should follow their native husband's legal status after marriage.[2] After van den Berg returned to the Netherlands to become Professor of Religious Laws, Folk Institutions and Customs at the University of Delft (1887-1901), he also served for twenty years as secretary to the State Commission for the Review of the Indies Lawgiving in the Private Law Domain (1892-1911).[3] In fact between the 1890s and 1930s, colonial private law reform movement became one of the most contested grounds for colonial imaginations of racial difference.

If private law reformers before 1900 were primarily interested in fostering legal certainty, beginning in the 1890s, colonial reformers became concerned with regulating inter-racial marriage and the Chinese practice of polygamy. These new concerns were part of the broader liberal ethical turn in Dutch colonial policy, but they were also paternalistic reactions to forestall modernizing Asian nations' demand for the parity of their overseas subjects with Europeans. In the 1890s, a newly assertive Japan, having completed its legal reforms along Western lines and signed treaties of friendship and commerce with Western powers, forced the Dutch to equate Japanese subjects with Europeans in the Dutch East Indies in 1899.[4] With China also proceeding apace with political and legal reforms after the 1895 Sino-Japanese War, and reaching out to its

[2] Joke van der Meer, '"De Vrouw volgt den staat van haren man": Wetgeving bij gemengde huwelijken in Nederlands-Indië'. ['The woman follows the state of her husband: Legislation of mixed marriages in Netherlands-Indië] (University of Amsterdam: Bachelors Thesis, 2006), 17-27.
[3] S. J. van den Berg, "Levensbericht van Mr. L.W.C. van den Berg" [Official Biography of Mr. L.W.C. van den Berg] in *Jaarboek van de Maatschappij der Nederlandse Letterkunde*, 1928, 16-30.
[4] Henricus Anthonius Franciscus Lijnkamp, *De "Japannerwet" onderzoek naar de wording* [The "Japanese Law": a study of its terminology] (Utrecht: N.V. A. Oosthoek's Uitgevers-Maatschappij, 1938), esp. 62-8. See also P. Tjiook-Liem, "Feiten en ficties bij het ontstaan van de Japannerwet: Wijziging van art. 109 RR bij Stb. 1899 no. 121, Ind. Stb. 1899 no. 202" [Facts and fictions by the genesis of the Japanese law] in *Rechtsgeleerd Magazijn THEMIS*, 2005, 4, 192-208.

overseas subjects in the next decade, it became in the interests of the Dutch empire to regulate the nationality and cultivate political loyalty among its colonial subjects.[5]

This chapter traces how colonial debates on the reform of native and Chinese private law transformed and shaped notions of racialized legal status and the place of empire's Chinese subjects within the new imperial order of the early twentieth century. Ann Stoler has argued that the 1898 Mixed Marriage Act was aimed at incorporating the mestizo Indies population into new cultural forms of whiteness centered on the bourgeois, nuclear European family to the exclusion of the native concubinage household arrangements commonly practiced among the lower Eurasian classes.[6] In preparation for the 1937 (indigenous) Marriage Law, historian Elsbeth Locher-Scholten shows how the Dutch colonial government forsook its alliance with Indonesian feminists and left out monogamy when the draft law came under the attack of Islamic and nationalist groups.[7] Building on the scholarship of colonial marriage law reform for Eurasians (1898) and indigenous Indonesians (1937), this chapter argues that the intervening politics of regulating the Indies Chinese private law domain (1919) not only proceeded with the same "sexual affronts" of racialized thinking, but was also propelled by political pressure to incorporate the Dutch empire's Chinese subjects as new Indies citizens.

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[5] Private law reform was one in a series of colonial reforms that developed in tandem with demands from an increasingly organized and China-oriented self-reformist Chinese movement. Beginning from 1900, the Chinese in Java founded a Confucianist reform movement to simplify religious rituals, but more importantly, to spread modern education and end discriminatory colonial policies against the Chinese. The Dutch became worried about the loyalty of their Chinese subjects after China began to send both school inspectors (1906) and a warship (1908), passed a nationality law (1909) and eventually demanded to set up consulates in the Dutch Indies. In response, the colonial government opened Hollandsch-Chineesch Schools (1908), negotiated a dual-nationality treaty with China (1910), created a lower criminal court with equal access for all races (1914), removed all restrictions to Chinese residential and movement rights across Java (1916), and appointed Chinese members to the new legislative advisory council, the *Volksraad* (1917). See Mona Lohanda; Ming Govaars

[6] Stoler, Race and Sexual Affronts,

[7] Locher-Scholten, *Women and the Colonial State: Essays on Gender and Modernity in the Netherlands Indies 1900-1942* (Amsterdam: Amsterdam UP, 2000), 187-218.

Nationality Law and the Ethical Concern for Mixed Marriages

The racializing effect of the Dutch colonial regulation of mixed marriages at the turn of the century has been well studied in recent years.[8] Less often noted is how these reforms took place amidst global shifts in concepts of nationality, international law and civilization.[9] The formation of a modern subject presupposed a private legal status that was commensurate with European standards of civilized family law, which at the turn of the twentieth century included minors (children and women) subsumed under the virtuous tutelage of the nuclear family's patriarch.[10] European nationality laws promulgated from the metropoles in the late 1880s and early 1890s required colonial jurists to work out the effects of redefining the mobile citizens and colonial subjects' relationship with the state by principles of blood descent. As early as the 1870s, liberalizing empires held out the prospect of "naturalization" to native subjects. In so doing, colonial states had to develop standards for naturalization which were, as a French jurist explained in the 1930s, "based on both reason and experience that the private law of a people is in strict harmony and concordance with its political organization, its social state, and its degree of civilization".[11]

In Dutch Java, nationality, naturalization, and private law reform became enmeshed in the colonial debates over the legal statuses of the non-European subjects during the 1890s and thereafter. Soon after the introduction of Dutch civil and commercial law to Java (1848), the dualistic racial division of Dutch colonial subjects into Europeans and natives was formalized in the 1854 *Regeeringsreglement* (colonial constitution). Chinese, Arabs and other Asian settlers

[8] Stoler, ibid; Locher-Scholten, ibid.
[9] Adam Mckeown, *Melancholy Order, Asian migration and the globalization of borders* (New York: Columbia UP, 2006).
[10] Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley: California UP, 2004).
[11] Cited in Saada, *Empire's Children*, 105.

were lumped under "Foreign Orientals" and equated (*gelijkgesteld)* with the natives, and subjected to a separate and less rigorous system of native jurisprudence.[12] For the ease of commercial intercourse with Europeans, the colonial state applied parts of the civil and commercial codes to the Foreign Orientals in 1855 (Staatsblad no. 79), although personal law remained under separate native jurisprudence. Native and Chinese Christians began to apply for naturalization from the 1870s and 1880s respectively, yet no more than 500 native and twenty Chinese Christians were granted European legal status before 1900. As religion became uncoupled from the naturalization criteria, notions of culture and upbringing associated with European society became the new standards for European assimilation in the 1890s.[13]

The Netherlands Nationality Law (1892) replaced the previous territorial principle of citizenship with the blood-descent principle (*jus sanguinis*). As Dutch historian Betty de Hart points out, the preclusion of foreigner-marrying Dutch women from Dutch nationality under the pretext of the "unity of the family" (*eenheid van gezin)* under the father betrayed the patriarchal nature of Dutch national imagination. A Dutch woman who married a foreigner was considered "no longer to belong judicially, but also social and culturally to Dutch society".[14] If Dutch women in the metropole risked losing membership of society on top of their nationality by marrying other Europeans, the perceived risk for Dutch and European women marrying men of non-European descent was understandably greater.

[12] Art. 109 and 75, "Het Regeringsreglement van Nederlandsch-Indië" (1854)
[13] Tjiook-Liem, *Rechtspositie der Chinezen,* 294.
[14] De Hart, "Maria Toet en andere verhalen. De nationaliteit van de gehuwde vrouw en de constructie van de natiestaat" [Maria Toet and other stories. The nationality of the married woman and the construction of the nation-state] in *Tijdschrift voor Social Geschiedenis* 25, 1999, 183-206.

The first goal of L.W.C. van den Berg's private law reform state commission in the 1890s was to resolve the legal uncertainty created by the small but gradually increasing rate of inter-racial marriage. Citing colonial civil registry figures, van den Berg showed that there were on average fifty-five registered European-native/Chinese marriages per year between 1856 and 1885. The majority of these inter-racial marriages were between Europeans and native/Chinese Christians, but almost one-third involved non-Christian natives or Chinese.[15] In the ten years after 1885, the average number of inter-racial marriage rose further to an average of eighty-two per year.[16]

But the main sources of legal uncertainty, as van den Berg would clarify, were marriages involving European women and Native or Foreign Oriental (Chinese/Arab) men. In all other cases – whether Native-Foreign Oriental, or European men-Native/Foreign Oriental women unions – women followed their husbands' legal status. The Company-era prohibition of inter-racial marriage had been lifted in 1848 (art. 15 Transitional Provisions for Indies Civil Law), under the condition that native husbands of European women were "subject to European private law, [but]… not also to European public and criminal law". Van den Berg's commission wondered if it was incorrect for the children of such marriages to not be made Europeans "in all senses," when they were entered in the Civil Registry. Yet as the commission observed, these children, with few exceptions, "were brought up in the environs and according to the national

[15] Van Den Berg, "Praeadvice" in *Handelingen der Nederlandsch-Indische Juristen-Vereeniging* [Proceedings of the Netherlands-Indies Jurists' Association (Batavia, 1887), 14.
[16] Cited in Bergsma, Minister for Colonies Report to Queen Wilhelmina, 18.5.1896 in I. A. Nederburgh ed., *Gemengde Huwelijken Staatsblad 1898 No. 158: Officieele bescheiden met eenige aanteekeningen van Mr. J. A. Nederburgh* [Mixed Marriages, Staatsblad 1898 No. 158: Official correspondence with some notes by Mr. J. A. Nederburgh] (Batavia, 1899), 82.

character (*landaard*) of the father".[17] Van den Berg and the State Commission's proposed solution was for the European woman and the children to follow the racial-legal status of her non-European husband.

At the basis of the agreement between Van den Berg and the Minister for Colonies, was the endorsement of the patriarchal principle enshrined in the Dutch nationality law.[18] Van Den Berg's proposal had been opposed by the Director for the Justice Department and the Council for Netherlands-Indië in Batavia. The latter party proposed assimilating the European woman and her non-European husband to the "higher" European legal category.[19] Minister Bergsma argued on the side of the state commission that the "foremost faults of the current regulation were that the spouses … kept the state of the category to which they belonged before the marriage". The state commission was "correct… to highlight that the nature of marriage requires that spouses have a unity of interests". In fact, "more than elsewhere the unity of law for the family is necessary for the Indies, because the different categories of persons there were subject to completely variant private and public laws". The principle of having "the wife following the husband," was "expressly maintained in the Dutch National Law" of 1892 and did not contradict the plural religious and racial jurisdiction of the colonial legal system.[20]

[17] L.W.C. van den Berg and J. van Gennep, "Further Advice from the State Commission", 4.12.1895, in Nederburgh ed., *Gemengde Huwelijken,* 67-79, citation from 77-8.
[18] My argument is a causally-related one. Betty de Hart makes a similar argument in a comparative socio-legal framework. See de Hart, " 'De verwerpelijkste van all gemengde huwelijken': De Gemengde Huwelijken Regeling Nederlands-Indië 1898 en de Rijkswet op het Nederlandschap 1892 vergeleken" ['The most reprehensible of all mixed marriages': The Mixed Marriages Law Netherlands-Indië 1898 and the Royal Law on Dutch Nationality 1892 compared] in *Gaan en staan* (Amsterdam: Stichting Beheer IISG, 2001), 60-80.
[19] See their letters in Nederburgh ed., *Gemengde Huwelijken,* 43-58.
[20] Bergsma, ibid., 85, 88.

In addressing the fears of their opponents that European women married to native men might be subject to polygamous arrangements under Islamic law, the Governor-General repeated Van den Berg's stand that the Mixed Marriages Law had precisely the opposite effect of forewarning "a woman of European descent what awaited her in case she marries a native and therefore treads into Native society, [so that] nothing hateful or abhorrent can be thought of her treatment by a law which she knowingly and willingly embraced".[21] In fact, the proposal to let the European woman assimilate with her husband's native category was made easier by Van den Berg's observation that such women had by and large already been culturally assimilated with native society:

> Where it concerns pure European women, or even women, who up to a certain extent remained loyal (*getrouw)* to the European nationality, such marriages are surely undesirable from a political, social and moral point of view; yet where it concerns women, who only belong to the European population by a legal fiction (*rechtsfictie*), I do not see which interest of the state is opposed by such marriages, since a rational law has [now] been made [to address that].[22]

The Mixed Marriage Law was in theory also applicable to inter-racial marriages between people of the Native and Foreign Oriental (Chinese) categories, although in practice it remained a moot question for the Chinese community until the Indies Chinese Civil Registry was established in 1919. Recognizing that "very many more mixed marriages between Natives and Foreign Orientals, or among the different sorts of Foreign Orientals themselves have remained unregulated up this point," the State Commission argued that there was "an irrefutable demand to put an end to the situation as quickly as possible by establishing order with law". By advocating

[21] Van der Wijck (Governor-General of the Netherlands-Indies) to the Minister of Colonies, 1.6.1895, in Nederburgh ed., ibid., 59-63, citation from 63.
[22] Van Den Berg, "Praeadvice" in *Handelingen der Nederlandsch-Indische Juristen-Vereeniging* [Proceedings of the Netherlands-Indies Jurists' Association (Batavia, 1887), 56. Cited in Van de Meer, ibid., 20.

European exceptionalism (i.e. for European women to be exempted from subsumption under the patriarchal principle), van den Berg argued that his adversaries were missing the point "that the law also covered marriages between Natives and Foreign Orientals". In those cases, patriarchal rule also had to be upheld. The maintenance of the patriarchal family across all races was essential, the State Commission argued, "in reference to [the racial classification law] art. 109 *Regeerings-Reglement* in connection with the law on Dutch nationality".[23]

Quasi-nationality and the Invention of Legal Conscience

Dictated in part by the new Dutch nationality law, but triggered in particular by the rising incidence of inter-racial marriage between Europeans and Asians, L.W.C. van den Berg's concerns in the drafting of the Mixed Marriages Law reflected a more rigid view of the racial hierarchy and patriarchal order in colonial society. As discussed in the previous chapter, the will to maintain a particular colonial understanding of the Chinese patriarchal family was also present in Pieter Fromberg's drafting of the 1897 Chinese private law code. Such views would be challenged in the 1880s by the gradual acceptance of the colonial civilizing mission. In the realm of legislative and judicial reform, the foremost critic of the older mode of colonial legislative thinking was the colonial jurist-intellectual I.A. Nederburgh. Between 1896 and 1906, Nederburgh emerged as a new voice within the colonial public sphere championing Indies citizenship for Indonesian natives and gradualist assimilation into a unified civil code for all races.

[23] Van den Berg and J. van Gennep, "Nader Advies van de Staatscommissie," 4.12.1895 in Nederburgh ed., ibid., 73-9, citations from 69, 74, 75.

Born in Batavia in 1861 to an illustrious colonial service family whose members spanned both the metropole and colony, Izak Alexander Nederburgh received his Doctorate in Legal Science from Leiden University with a thesis on land and the question of state domain in the Netherlands Indies in 1882.[24] Serving at the Court of Justice in Batavia, Nederburgh started his own law journal, *Wet en Adat* (Law and Custom), in 1896, calling for the serious study of native customs (adat) as a form of private law.[25] Throughout his career, first as a colonial jurist (1880s-1925), then as Professor of State and Administrative Law, and Adat Law, at the University of Utrecht (1925-31), he became the most vocal advocate for a unified civil code for the colony.[26] As part of the broader Ethical Policy assault on colonial non-intervention, Nederburgh argued for a legislative philosophy that encouraged native elites to associate with European society, and for legal ethnography to recognize the increasingly frequent social interactions of native populations beyond their organic communities.

Nederburgh at first focused his strongest critique on the lawgiver's refusal to grant legal membership of the state to the native population. The 1892 Dutch nationality law had deprived Foreign Orientals and Indonesian natives of the portable national *staatsverband.* The *staatsverband* was a reciprocal legal doctrine that bound overseas Netherlanders to Dutch legal peculiarities on top of the jurisdiction of the locally prevailing civil law. Nederburgh argued that nationality laws in general provided national citizens with the reciprocal rights of "regulations

[24] See "Inventaris van het archief van S.C. Nederburgh [levensjaren 1762-1811], 1606-1809 en van de familie Nederburgh, 1458-1965", esp. 77-79.
[25] Nederburgh, "Ter inleiding van 'Wet en Adat'" and "*Ons Arbeidsveld"* in *Wet en Adat; bladen gewijd in het algemeen aan het recht en aanverwante onderwerpen, in het bizonder aan Indische rechtsbelangen*. Nederburgh ed. (Batavia: G. Kolff & Co., 1896), 1-16.
[26] I.A. Nederburgh (1841-1941) has curiously remained very marginal in Dutch colonial historiography in comparison with his adversary, the Leiden School Adat Law professor, Cornelis van Vollenhoven. Neither his contemporaries nor later day Dutch historians wrote any of the usually mundane but mandatory official biographies of Dutch colonial officials. Only University of Utrecht has put up a short and bare description of his law professorship in the Faculty of Indology. See the university's full catalog of faculty at https://profs.library.uu.nl/.

concerning personal law and (legal) warranties of national *staatsverband*". It contravened the conventions of "modern international private law," Nederburgh argued, when a person such as a native, had to be held accountable to the law of the state, when s/he was never endowed with the *staatsverband* to begin with.[27]

The concept of *staatsverband* – a form of mutually recognizable personal law couched in a nation-form – and its denial to the native and Foreign Oriental groups in the colony presented a different sort of complication for the Chinese settlers. While Nederburgh was in favor of creating a *staatsverband* for the native population, he at first desisted from advocating the same for the Foreign Orientals. While the foreign resident was entitled to his/her national laws in the Dutch colony, it would be difficult for Netherlands to be responsible for the same person's *staatsverband* when s/he left it. Nederburgh was of the opinion that the Foreign Orientals kept their nationality "even if they had settled here and mix with the indigenous population…after living many generations in Netherlands Indië". They were still "subjected to the laws of their country of origin, in matters concerning their (legal) standing and personal capacity". What was needed, Nederburgh argued, was a legal means for them to assume the *staatsverband* of the country of the adoption, if it was they who had "sunk roots" there.[28] The transients and settlers had to be sorted out.

Nederburgh's championing of the personal law rights of natives and Asian settlers was a critique of Van Den Berg's conceptualization of the division between public and private law. He developed this line in his critical annotation of the Mixed Marriages Law (published 1899), and

[27] Nederburgh, "De invloed der vreemdelingschap op het rechtswezen in N.I". [The influence of the foreigner on the judiciary in Netherlands Indië" in ibid., 147-196.
[28] Nederburgh, "De invloed," 153.

in an essay calling for the unification of private and personal law under one civil code in 1903.[29] At the heart of Nederburgh's thesis was his disagreement with the wholesale adoption of the metropole-centered definition of nationality and legal identity, as expressed in the Dutch Nationality Law. In particular, Nederbugh disputed against the notion put forth by the Mixed Marriages Law that a change in the woman's public law status with inter-racial marriage necessitated a concomitant change in her private law status.

> It is… clear that this regulation of mixed marriages has to do with the status of public law, through which the remainder of the public and private legal relations are controlled in Netherlands-India, [regulating] namely the status with regard to quasi-nationality, [i.e.] the distinctions in Europeans, Natives and those equated the former or latter (Art. 109 and 75 *Regeerings-Reglement*).
>
> Now it was certainly correct for the State Commission to use the provision as stipulated in the Dutch Nationality Law as the model, where the wife has to follow the husband's status, when they belong to different status. Indeed there are many analogies between the question of nationality and the specific Indies question of quasi-nationality: both are based on descent, although with the former the significance is smaller; both concern one's membership of the state; quasi-nationality concerns race in the broader sense and therefore groups together statuses which contain distinctions. However, one should duly keep both matters [i.e. nationality and quasi-nationality] separate with precision. Prof. De Louter also treats them separately in his renowned guidebook [on administrative law]. I mean to remind people that the distinction, because it appears that the two concepts have been confused in the previously published [Mixed Marriages] law. … [O]ne reads that "the Dutch woman who marries a native thus becomes foreign, and native" and … this is repeated with "foreign (native)," where in both places it was justified based on Dutch law.[30]

[29] Nederburgh ed., *Gemengde Huwelijken* (1899); Nederburgh, "Verhandelingen: Eenheid of meerheid van recht voor Nederlandsch-Indië" [Essays: Unity or diversity of law for Netherlands India] in *Tijdschrift van het Recht in Nederlandsch-Indië* 79, 1902, 559-612; and 80, 1903, 1-80.
[30] Nederburgh ed., *Gemengde Huwelijken*, 110.

In contrast to Van den Berg's formulation of the native subject as foreign and alien under the Mixed Marriages Law, Nederburgh counter-proposed elevating the native public/private law status into what he called a quasi-nationality. On the surface, racial difference was not explicitly formulated in Social Darwinian terms in Dutch colonial legal discourse. The colonial constitution, under articles 75 and 109 of the Organic Law (*Regeerings-Reglement*), framed difference by the subject's place of descent (art. 109) and subjection to native and religious adjudication of private law disputes (art. 75). By conflating nationality with marriage law, Van den Berg risked analogizing principles of descent with quasi-national categories of belonging to the state. Nederburgh wanted to argue that one's belonging to the state was a separate question from one's racial descent from the nation. There was no need to alienate quasi-nationals from the state by a faulty analogy of the Dutch nationality law to a colonial marriage law.

In Nederburgh's formulation, the patriarchal and genealogical effect of the Dutch nationality law should be limited to determining the subject's private law status, with no effect on its commensurate public law status. In other words, the subject's descent from whatever nationality or quasi-nationality should continue to determine whether s/he was categorized as European, Native or Foreign Oriental under public law. For the native subject, then, the principle of descent determined both public and quasi-national legal status, which should both remain immutable to crossings made in the private law realm.

> A Dutch woman, who marries a native, becomes, if [the native] was an alien, an alien according to Dutch law, but this does not imply that she also becomes native, because regarding that which concerns her, the law, as long as she is no longer Dutch, has nothing whatsoever to do with [her] than the *staatsverband*. One can be a good Netherlander and yet be Native…, one can thus be Native without

> being alien just as one can be alien and yet not be Native. The concepts go in the same direction without coinciding.
>
> It is then also an incorrect proposition [for] the law on Dutch nationality to consider the Native as such to be alien per se.[31]

Inter-racial marriage should only change the category of the woman's race status in public law without her private law status having to go unrecognized or subsumed under the husband's. The native-marrying Dutch woman should maintain her belonging to the Dutch state, just as it was wrong to deprive the native of some form of belonging to the colonial state. The solution was already embedded in the framing of the contradictions identified by Nederburgh: the native subject should be a quasi-national private legal subject so that s/he might enjoy the right of the *staatsverband* – a right of belonging to the state which came with the state's recognition of distinct but associated native private laws.

Elevating Asian private law status to the level of a quasi-nationality required an associational and pedagogical relationship between Europeans and the colonial subject. Taking on the Orientalist jurists, Nederburgh introduced the concept of legal conscience (*rechstbewustzijn*) among Asians and argued that colonial state had the duty to civilize the Foreign Oriental and native populations by forming "egoist individuals" who would be "in harmony with the whole, and with humanity". The social uplifting of individual egos was essential because "a state without law cannot exist, and law cannot exist without legal conscience". The end goal of this development was the "formation of a completely new nation out of the native," under the guidance of the Dutch and Europeans.[32] But the existence of the

[31] Nederburgh ed., *Gemengde Huwelijken*, 111.
[32] Nederburgh, ""Het Indisch Chineeze-Recht der Toekomst" in *Wet en Adat*, Nederburgh ed., 169.

Chinese population complicated the picture. These foreigners misled the natives. "The legal conscience must suffer," Nederburgh argued, "when in the same place and between the same citizens different, and sometimes contradicting laws are applied."[33] Nederburgh's solution was to assimilate the Chinese, along with the natives, into European society. In that regard, the Orientalist attempt to "restore the Chinese *patria potestas*" in their private legal status backfired. Particularly misleading were the Dutch Sinologist advisers of Probate Chambers. These advisers "held on to the law of China," were "out of touch with the local legal conscience, and were out of touch with the impulse of the local needs and desires of the Chinese."[34]

Nederburgh argued that Fromberg and the Dutch Sinologists ignored the impact that colonial legal intervention had had on Chinese practices. Confronted with the fact that some Chinese might have been assimilating to European practices, Nederburgh claimed that the jurists and Sinologists "shrugged (their) shoulders in their ignorance of those Chinese, who were no longer Chinese, and who would not be delighted if the (Chinese) laws were applied to them."[35] He attributed this bias to the Sinologists' natural tendency to rely on the "least assimilated" (*het minst schikt*) among the "Indies Chinese" for their knowledge on local customs. Even Fromberg had to concede, he pointed out, that "no matter whether they had a European or Indies-European upbringing, everyone knows that there are many queue-wearing Chinese in our colony, who no longer know nor wanted to know Chinese and Chinese law and customs."[36]

[33] Nederburgh, "Het Indisch Chineeze-Recht", 170.
[34] Nederburgh, "Het Indisch Chineeze-Recht", 190.
[35] Nederburgh, "Het Indisch Chineeze-Recht", 58.
[36] Nederburgh, "Het Indisch Chineeze-Recht", 59.

Nederburgh argued that this bias had the greatest impact in distorting Fromberg's design of marriage consent and his toleration of polygamy in his 1897 draft private law code for the Chinese community. Fromberg's code had ruled out the Civil Code requirement for both parties to indicate their consent for a marriage to be valid. (Art. 28) But Nederburgh argued that even in Europe, it was still the case that most marriages took place at the intervention of parents, and young daughters consented because "their parents (so) desired," without their having chosen their husbands themselves. Such social reality, however, laid "no obstacle in the way of individuals, who want to maintain or seize hold (*veroveren)* of their freedom, and serve as the vanguard (*voorloopers*) for a gradual and voluntary adaptation of the morals."[37] In Java, "many young Chinese people were no longer so completely enamored (*ingenomen)* with the compulsion their parents want to impose on them." Nederburgh cited, to support his argument, the case of a wealthy Chinese officer's son who was accused by his parents of lacking filial piety for turning down match-made marital offers.[38]

If Fromberg argued that polygamy had to be legally recognized in respect of the Chinese zeal for male lineage reproduction, Nederburgh opposed polygamy more for its adverse impact on colonial public order than for its regrettable truncation of women's rights. While he recognized Fromberg's "philosophical basis for concubinage," Nederburgh argued that the zeal for sons often turned women into "a vessel for pleasure" (*werktuig tot zingenot)*. Permitting the Chinese demand for "the same marriage customs as (practiced) in their fatherland… did not in any way contradict the Dutch with international law [*volkenrecht*]". But it would contradict international law "when they are unwilling to be subject to the public order of the land, on whose

[37] Nederburgh, "Het Indisch Chineeze-Recht", 57.
[38] Nederburgh, "Het Indisch Chineeze-Recht", 59.

hospitality they are dependent as foreigners."[39] Chinese concubinage conflicted with the colonial public order in two ways: it enslaved native women, tempted childless European men to the same vice, and threatened the mixed-race Indies-Europeans to moral degeneration:

> The Chinese, who understands so excellent the art of taking the native into his power, finds therefore in Indië ample room to procure for himself exquisite vessels and does not name them *dzi-ngè*, as the Chinese concubine is called, but "*loe-pi"*, in other words "female slave". So the foreigners come both with and to make money, and acquire everything, demoralize our people and to make them half-slaves….
>
> One imagines that the European whose marriages are not blessed with offspring… would perhaps succumb to the temptation when the condition existed for him to beget an offspring through a second wife…
>
> A large part of the European population of Indië are surrounded, in the nature of things, more by Easterners than Westerners. Should we needlessly leave Indies Europeans to degeneration by our complete indifference to demonstrate to foreigners the main principles of law, which deprive them of the support for their already wavering esteem?[40]

Nederburgh concluded that adoption was the furthest limit the law should go to accommodate the Chinese zeal for male lineage reproduction. The "Chinese fear of neglecting their soul tablets would not necessitate the permission of polygamy, when adoption is available".[41]

In fact, it was more important to legislatively assimilate the Chinese with Europeans. To do so, Nederburgh proposed a three stage "historical line" of development, where "pure Chinese law" was the beginning stage, with the end being "the point where the legal needs of different

[39] Nederburgh, "Het Indisch Chineeze-Recht", 61.
[40] Nederbrugh, "Het Indisch Chineeze-Recht", 61-3.
[41] Nederburgh, "Het Indisch Chineeze-Recht", 62.

groups of the country came together …in one general law".[42] The many intermediate stages of development should be abandoned for the end stage. That the commission and Fromberg took Chinese law as a starting point was thus misguided. For Nederburgh, the signs of Chinese assimilation should be recognized and further encouraged. By applying wholesale European civil law, individual Chinese who struggled to be free from their Chinese customs would serve as the vanguard for the rest of the Chinese population.

For Nederburgh, the Mixed Marriages Law was a conceptually confused and retrograde law, combining the racially exclusionary nature of the Dutch Nationality Law with the colonial toleration of uncivilized non-European marital practices. Nederburgh tried to disentangle the analogically patriarchal relationship that Van Den Berg had set up between the Dutch Nationality Law and colonial marriage law, by denying the commensurability of public and private legal statuses for the non-European, and by hypothetically conferring quasi-nationality, and the pedagogy of conscience-making for the Dutch empire's Asian subjects. The Dutch Treaty of Friendship and Commerce (1896) with Meiji Japan and the colonial assumption of the Ethical Policy (1901) ushered in a new age for colonial lawgiving. Nederburgh's hypothetical solution for the contradictory situation of Asian private law would be translated into policy and used to draft codes at the dawn of the new century.

National Family Laws and Racial Classification

As it turned out, the greater challenge to the Dutch colonial racial hierarchy in Java came neither from the Dutch colonial intellectuals nor the colonial subjects, but from the changing exogenous geopolitical situation in Asia. Having reformed its legal system to conform to western

[42] Nederburgh, "Het Indisch Chineeze-Recht", 39.

standards, Meiji Japan signed Treaties of Friendship and Commerce with western powers in the mid-1890s, and pressured them to end judicial extra-territoriality in Japan for European subjects and differential legal treatment for overseas Japanese subjects in European states and colonies. Under pressure from Japanese diplomacy and the Dutch metropole, the colonial state eventually agreed to revise the Organic Law's (art. 75 and 109 of *Regeerings-Reglement*) racial classificatory system to incorporate Japanese sojourners and settlers in the Indies into the European category in 1899 – the same year the Japanese adopted their modern civil code. With the incorporation of the Japanese, the principle of classification by racial descent between Europeans and Natives was broken.[43] This arbitrary incorporation of the Japanese as Europeans in the colony was reframed as a distinction based on a universal standard of national family law in 1907, (amended art. 109 *Regeerings-Reglement*), and formally enacted as part of the colonial Organic Law in 1920. The 1907 amendment to the Organic Law included as Europeans, "All Japanese and all other persons descended from elsewhere, ... who would in their country be subject to a family law, resting in the main on the same principles as the Dutch".[44] It was within this broader global and regional context of shifts in attitudes to legal reforms and racial hierarchy elsewhere in Asia that the Dutch colonial state set a new course for the reform of private law for its indigenous and Chinese subjects.

Although the course toward progressive reform in the legal sphere had been set by the Dutch Ethical Policy, its pace and method remained hotly contested among colonial legal reformers. Throughout the late colonial period (1901-1942), reformers were split between those

[43] Tjiook-Liem, P. "Feiten en ficties bij het ontstaan van de Japannerwet: Wijziging van art. 109 RR bij Stb. 1899 no. 121, Ind. Stb. 1899 no. 202" [Facts and fictions by the genesis of the Japanese law] in *Rechtsgeleerd Magazijn THEMIS*, 2005, 4, 192-208.
[44] Staatsblad 1907 no. 205.

who believed in upholding native adat (customary) law, and others who believed that customary law had to be replaced more quickly by the Dutch civil code through the process of legal unification. The 1907 reframing of nation-based family law as the universal arbiter of racial hierarchy in the colony was achieved along with the triumph of adat school of legal thought over the advocates of legal unification. For the next thirty years, the Dutch remained reluctant to concede equality for all subjects before the law, as the British had done in India since the 1830s. Underneath the Dutch intransigence stood the practical difficulties of abolishing and rationalizing the tripartite race-based political economy of Java – expansion of judicial administrative capacity for non-Europeans, unification of the dualist civil service and the liberation of Foreign Orientals from economic restrictions. Historian Cess Fasseur has shown that "the supporters of legal equality and unification quickly found the influential protagonists of the Leiden adat school blocking their way". The legal unifiers gained ascendance twice (1901-6 and 1917-1925), but both times the Leiden adat school eventually prevailed over the question of "how… to eliminate the often provocative differences in the field of public and constitutional law while maintaining the differences corresponding to the different *rechtsbehoeften* (legal needs) of different population groups as far as private and family law were concerned".[45]

While both the legal unifiers and the adat school agreed in both rounds of debate that native family law (marriage, inheritance) should remain untouched, the legal unifiers insisted that other areas of private law such as land ownership, contracts and commercial law should be made available to help ease the native Javan into the fast-changing colonial economy. The unified civil code would not have brought about a uniform legal subject, but would have stood for an associationist policy that integrated the Dutch empire's non-European subjects into civil

[45] Fasseur, "Cornerstone and Stumblingblock", 93.

law insofar their native family laws permitted. Nederburgh, in his pragmatist critique of the adat school, argued that the colonial state simply lacked the official capacity to maintain a good adat law jurisdiction. For adat jurisdiction to work, the "adat must simply [be left to] grow and blossom through the judge's corresponding knowledge of *inventing* folk law consciousness (*volksrechtbewustzijn)* and [it is] by the contribution of his decisions [to that consciousness] that the law correctly treads in line with the [society's] needs".[46] Legal administration was such a low priority for both the European and Native civil service, Nederburgh pointed out, that the officials could not be expected to measure up to such inventiveness.[47] More importantly, social interaction among the various populations in general, and the Westernization of the native and Chinese elites in particular, was such that adat law could not be "unconditionally maintained."[48]

The move to project a civilized legal conscience among the colonial subject momentarily gained the upper hand among the colonial legal reformers. Between 1901 and 1906, the tide turned against the earlier Orientalist mode of colonial jurisprudence. In 1904, when Fromberg wrote another thesis (1903) to defend his draft code, it was clear that the grounds for the "restoration of the Chinese *patria potestas*" that the previous commission recommended ten years before had completely shifted. Reviewing Fromberg's thesis, the Indies Council reported to the Governor-General that there was in fact "no objection of overriding nature to declare the entire personal law for Europeans on the Chinese". The only exemptions to be made were the provision for adoptions and for the recognition of Chinese corporations (kongsi's).[49]

[46] Nederburgh, "Eenheid of meerheid," in ibid., 585. Emphasis in the original.
[47] Nederburgh, "Eenheid of meerheid," 586.
[48] Nederburgh, "Eenheid of meerheid," 34.
[49] Raad van Nederlandsch-Indië to Gov.-Gen, 8.4.1904 in Verbaal 25.10.1904 n. 11.

Yet the adat school prevailed in the heated debate that subsequently unfolded in 1906, both inside and outside the Dutch Parliament in The Hague, over the proposed abolishment of racial classification under the colonial constitution for the sake of legal unification. As one contemporary observer put it, "experts in and outside the Parliament fought each other with the greatest energies, while political opponents in turn appeared to have taken the same line and the hustings was clearly beyond the normal horizon of the Parliament."[50] The debate propelled Cornelis van Vollenhoven, the Professor of Netherlands-Indies Adat Law and the State and Administrative Law of the Dutch colonies at Leiden University since 1901, to the forefront of native law administration, and turned adat law and its recognition of local "jural" communities into the colonial orthodoxy for four remaining decades of colonial rule.[51] For Van Vollenhoven, the unifiers' haste in applying contract and property law to the native population was ill-advised. There was "no guarantee with how multifarious the native legal community may be – here [organized] only by territorial communities, there only by kinship, and elsewhere by both – that European property law will always fit with those varying conditions of folks arrangements."[52] As a result of Van Vollenhoven's intervention, Dutch legislators passed an amendment that turned the legal unifiers' "main intention upside down": instead of preserving adat law only when necessary, the state commission was now tasked to apply European law "only when the needs of native society required it."[53]

[50] Jan de Louter, "De Wijziging van het Regeerings-Reglement van Nederlandsch-Indië" [The Amendment of the Government Regulation of Netherlands Indie] in *De Gids*, 1907, I, 331-347, citation from 340.
[51] For the politics of the unification vs. adat law debate, see Fasseur, "Colonial Dilemma," for a critical introduction of adat law philosophy, its administration and its legacy, see H. W. J. Sonius, "Introduction" in *Van Vollenhoven on Indonesian Adat Law: Selections from Het Adatrecht van Nederlandsch-Indie*, ed. J. F. Holleman (The Hague: Martinus Nijhoff, 1981), XXIX-LXVII.
[52] Van Vollenhoven, "Geen Juristenrecht voor den Inlander" [No Lawyers' law for the Native] in *Xxe Eeuw*, 1905.
[53] The law was passed as Staatsblad van Nederlandsch-Indië 1906 n. 204. See Fasseur, "Colonial Dilemma", 250.

In this same debate where native adat law was favored over the application of civil contract and property law, the Dutch legislators also amended the colony's racial classificatory system so that the aforementioned national family law criterion became the sole factor distinguishing Foreign Orientals from Europeans.[54] "The door was hence opened for other Asians to be subject to the law for Europeans, and international complications thus avoided".[55] Foreign Orientals were no longer equated with natives, as in the previous colonial constitution (art. 109), but reclassified as a separate racial group. The example of Japan had indicated that it was possible for other Asians to modernize their laws, and family law in particular, along the lines of the West. The original design of the colonial constitutional amendments (art. 75 and 109) implied that even the legal unifiers did not think that indigenous Indonesians were ready for reform of their family law. Modern family law had thus been conveniently identified as the race-marker among the European haves, Asian might-haves, and native have-nots.

With the preservation of adat law upheld by the amendment of 1906/7 (art. 75 *Regeerings-Reglement*), the private law reform commission designed a unified law code that had little prospect of becoming law. The 1910 draft code applied civil contract and property laws to all population groups, while exempting natives and Foreign Orientals from Dutch personal law. The code opened with an article stating that "the folk law (*volksrecht)* for the natives and Foreign Orientals will be maintained with regard to personal law".[56] For the Chinese, the code largely retained the patriarchal spirit of the private law status designed by Fromberg in 1897. Among other exemptions, monogamous marriage was not applied to the Chinese. However, van den Berg himself could not agree with the rest of the state commission. In his view, the draft neither

[54] Staatsblad van Nederlandsch-Indië 1906 n. 205.
[55] Louter, "Wijziging van het Regeerings-Reglement", 345.
[56] Artikel 1, "Ontwerp van een Koninklijk Besluit" (1910).

met the stipulation of the new adat law orthodoxy of exempting the native population from contract and property law, nor did it provide the basis for keeping up with the "so rapidly changing economic and social needs" of the time.[57]

Legalizing and not legalizing adultery for the Chinese

With the collapse of the effort to win support for a unified Indies Civil Code for all races in 1910, the Department of Justice in the colony resumed its previous policy of drafting a separate private law code for the Chinese. J.W.C. Cordes, the Director for the Justice Department explained that he had been informed by the Advisor for Chinese Affairs, H.J.F. Borel, in April 1912, that "new laws in China will only recognize the monogamous marriage."[58] But a closer study of China's newly drafted civil code indicated that "no mention was made of a strict monogamy in the Western sense". Cordes was nonetheless impressed that Chinese codifiers clearly "wanted to break with (the laws) that had prevailed until then," especially with regard to divorce matters.[59] The monogamy clause (article 27) had neither been included in Fromberg's 1897 nor in the 1910 State Commission draft codes. According to Cordes, the new Chinese code "recognized the institute of concubinage, although it painstakingly avoided to name it." This was surreptitiously accomplished by the recognition of three sorts of sons: the primary sons (*hoofdzoons*), subsidiary sons (*bijzoons*), and natural sons (*natuurlijkzoons*). This and other instances indicated to Cordes that "in China they ha[d] yet to free themselves from the concept of the family as a unit of the society and that property belonged to the family." The Chinese draft

[57] L.W.C. van den Berg, *Afzonderlijk advies naar aanleiding van het ontwerp van een nieuw Burgerlijk Wetboek voor Nederlandsch-Indië* (1910), 1.
[58] *Ontwerp eener regeling van den privaatrechtelijken toestand der Chineezen in Nederlandsch-Indië* (Draft of a regulation of the private legal status of the Chinese in Netherlands-Indië) (Batavia, 28.3.1914), 2 in NA: Archief Ministerie van Koloniën 1900-63, Openbare Verbalen, 2.10.36.04, Inv. 1487, Mailrapport 15.12.1915, n. 13.
[59] Philip Huang (2001), 18-9. Van Wettum, in Tijdschrift, and in Malay translation.

was “in many ways below the standard of civilization, already achieved in general by the Chinese settled (in the Indies).”[60]

As Cordes reported in his preface to the draft code, there was consensus among the legal experts and colonial authorities that the Chinese were ready for European civil law. Two advisers for Chinese affairs, the Chinese legal expert Pieter H. Fromberg, and more importantly, a policy set down in 1904, when the Governor-General and his advisory body, the Council for Netherlands-Indies (Raad van Nederlandsch-Indië), had determined that “where principled breaches on the institutions of Chinese with regard to family and inheritance law are concerned, one can surely go a couple of steps further and declare the entire European law on them”. Furthermore, for political reasons, as Cordes points out, the Chinese in the Indies had to be given a “legal position closer to that of the European” so that the Dutch could “stand stronger against demands made by China”.[61]

The Indies Chinese were hence deemed “close” enough with Europeans to be ready for monogamous marriage, although monogamy had to be watered down to suit their state of civilization. “To begin with,” Cordes declared, “I would not want to consider the carnal union between a married man and an unmarried woman as adultery, and therefore wish to grant children produced by a married man through an unmarried woman (legal) recognition”. Admittedly, such a “deviation” in the “spirit of the religious laws, institutions and usages of the Chinese in the Netherlands Indies” stood against “marriage, (being) the principle institute of

[60] *Ontwerp*, 7-8.
[61] *Ontwerp*, 9.

personal law". Yet the "only reason" why this exemption "had to be made" was because "the transition to our legal system in this respect would have been too great".[62]

The codifier of the 1914 draft, the jurist B. J Heijman, proposed a solution that imposed monogamy (article 27) on the Indies Chinese, while absolving the married Chinese man from conjugal sexual fidelity.[63] This was done by amending Dutch civil law provisions on the rights and duties of spouses. Where European "[s]pouses are mutually indebted to each other for trust, help and sustenance," (Article 103), the same mutual obligations applied, "except where with regard to the Chinese adultery is understood to mean". (1914, Article 1[e]) "It is not forbidden," Heijman clarified in the appending commentary, "for the married man to have a carnal union (*vleeschelijke gemeenschap)* with an unmarried woman".[64] If it was permissible for the married man to contravene his monogamous sexual union with his wife, the same latitude was not extended to the married Chinese woman. The definition of adultery for Chinese was amended to refer only to the woman's breach of conjugal sexual fidelity: "the carnal union outside of marriage between a married or unmarried man and a married woman." (Article 1[g])

Besides exempting married Chinese men from the penalties of adultery, the children of these extra-marital relations would also enjoy more rights than the civil law-natural child. Under Dutch civil law, all children born outside of wedlock were considered "natural," as opposed to

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[62] *Ontwerp,* 10.

[63] In so doing, Heijman In contrast, legislators in 1930s Republican China refused to deal with the long-standing practice of concubinage under the purview of bigamy law. They eventually compromised with the feminist lobby by treating concubinage under adultery law. See Lisa Tran, *Concubines under Modern Chinese Law* (UCLA: History Ph.D. Dissertation, 2005), Chapter Two.

[64] *Ontwerp,* 13. The codifier promised an amendment of the unified Dutch Indies criminal code to exempt the Chinese from prosecution for adultery, see *Ontwerp,* 14. In the late colonial Dutch Indies, adultery by either spouse carried a maximum sentence of nine month's imprisonment. Art. 284, Wetboek van Strafrecht voor Nederlandsch Indië (1915-1942).

the "legal" offspring of married parents. Natural children, however, still enjoyed more rights than children born of adulterous or incestuous relations, although these rights were limited to one-third the share of the legal child's inheritance.[65] The Chinese "natural child inherits from his/her father or mother, who has recognized him/her, the same share as a legal child". (Art. 1 h.1) The move in fact mimicked what the Chinese had done in their provisional civil code, as Cordes had pointed out, in recognizing the children (sons in the Chinese case) of polygamous relationships without actually granting any rights to or even naming the concubine in law.

This backhanded way of recognizing the inheritance rights of the concubine's son at the expense of the Chinese man's conjugal fidelity came under the severe criticism of the retired jurist, Pieter H. Fromberg.[66] Consulted for his opinion as a Chinese legal expert (being the drafter of the 1897 code), and the foremost advocate of social reforms among the Indies Chinese population, Fromberg argued that such circumlocution "tarnished" (*ontsieren)* the legislation by "implying that a married Chinese man was not duty-bound to marital fidelity". For Fromberg, only the interest of the natural Chinese child had to be protected, while "every of the married man's extra-marital sexual relations (was to be) condemn(ed)".[67] Fromberg thus recommended

[65] The natural child could also inherit up to half the estate if the last parent died childless. (Art. 863) Children born of adulterous or incestuous relations, however, had no such inheritance rights. They were only entitled to support "necessary (for) livelihood" during the lifetime of their parents. (Art. 867-9)
[66] Pieter H. Fromberg, Nota I, 19.9.1915 in NA: 2.10.36.04, Inv. 1487, Mailrapport 15.12.1915, no. 13. After serving twenty-five years in the colonial legal service, Fromberg spent the remainder years of his life (1908-1924) championing the causes of the Indies Chinese in particular and of all emergent Indonesian nationalist groups more generally, for the removal of all racially discriminating laws in the Dutch colony. Based in The Hague, he wrote for colonial journals and lectured among the Indies Chinese students in the Netherlands. He returned to the Indies twice (1913 and 1921-3) as a private citizen, when he surveyed Indonesian nationalist leaders and pushed for legal unification of the different ethnic groups.
[67] Nota I, 16.

upholding conjugal fidelity for both man and wife, and the removal of all euphemistic references to permissible extra-marital relations in the code.[68]

The acknowledgement of the concubine's children should, in Fromberg's advice, be limited to those born before the implementation of the private law code. To this end, Fromberg proposed transitory provisions (*overgangsbepalingen)* in the new code for the children of existing concubines to be automatically acknowledged without being affected by the new legislation.[69] "In the meantime," Fromberg warned, "for the next twenty years, one will receive continuous lawsuits from individuals, who will present themselves at the distribution of a Chinese estate, without being able to show any deed of acknowledgement, claiming to be an acknowledged natural child of the legator, born before the new legislation".[70] The transitory provision (1917 Staatsblad no. 129, art. 17) that eventually passed exempted such children from being categorized as children of the adulterous and incestuous relations (art. 283, Ind. Civil Code), making it easier for them to be acknowledged in law by their parents. By implication, although the law remained silent on this, it appears that the concubine's child, born after the legislation, would be counted as a product of adulterous parents.

With Fromberg's intervention, Heijman's decriminalization of adultery for the Chinese was also scrapped. There was no question about making adultery prosecutable for the Chinese. The dilemma for the lawgiver, as the Minister for Colonies posed the question to Fromberg, was whether Chinese who had already been living with concubines for a long time were also

[68] Nota I, 15-6. This meant the deletion of articles 1e, g, h, I, j, k, l and n.
[69] Fromberg, Nota V.
[70] Fromberg, Nota V, 4.

prosecutable under the new legislation.[71] Fromberg pointed out that since the adultery law (Art. 256) in the Native Criminal Code punished men who "fostered a concubine (*gundik)* in the same house as the married wife," the onus was on the wife to sue her husband. Yet for existing cases of Chinese concubinage, the cohabitation of man, wife and concubine already "presume(s) that the major wife tolerates the concubine, or at least is at peace with her presence, so that no lawsuit will be filed from her side, even if art. 256 were applied."[72] Application of article 256 had a "more ostensible than real import." Still, Fromberg argued that it was important to apply it until such time as the unified criminal code made adultery equally punishable for the monogamous man and wife.[73]

The colonial government took Fromberg's advice for adopting a stricter monogamy for the Indies Chinese over Heijman's sexually permissive version. The design of the Chinese monogamous marriage in "Staatsblad 1917 no. 129: Regulation of the private legal status of the Chinese" was essentially the result of Fromberg's contribution to the colonial lawmaking process. In leaning on Fromberg's counsel, the government counted not only on his Chinese legal expertise, but his close contacts with the Chinese community in Java and his analysis of their changing attitudes to colonial racial policy, international politics and familial and gender norms. Fromberg's reading of the local Chinese situation was all the more critical because, as he pointed out, for "Heijman's draft code, the leaders of the Indies-Chinese society were not consulted".[74] The 1892 code was defeated and Fromberg reminded the Minister for Colonies, precisely because of the backlash it suffered from the Chinese Kapitans, who were kept unaware of the

[71] Afdeeling (Section) A1 memorandum, Ministry for Colonies, Nota I in: NA: 2.10.36.04, Inv. no. 1487, Mailrapport 15.12.1915, no. 13.
[72] Fromberg, Nota VI, 2.12.1915 in NA: 2.10.36.04, Inv. no. 1487, Mailrapport 2.3.1916, no. 13.
[73] Fromberg, Nota VI, 2.12.1915, ibid.
[74] Fromberg, Nota III, 11.10.1915, 3-4.

code until its publication. The next section reconstructs Fromberg's reading of the changing structure and social mores of the Indies-Chinese society in Java of the 1900s and 1910s as in the context of the shifting structures of family-law determined racial categories in the Dutch colony.

Monogamy, Family Law, and the proto-Indies Citizen

Legislative changes alone do not produce civilized subjects. Fromberg, the champion for equal rights among Chinese, natives and Europeans, encouraged the Dutch-educated Peranakan Chinese to embrace liberty and equality for Chinese women. Speaking to the newly founded Indies-Chinese student association, Chung Hwa Hui in the Hague in 1912, he reminded the young Indies Chinese that "if the lawgiver in the Indies has to deal with primitive or half-civilized conditions, such as polygamy or concubinage, to which he cannot bring changes, he will leave the regulation thereof to adat, the customary law… But if the lawgiver is committed to regulating the family law, then he does it as a civilized lawgiver. He then begins with the principle of monogamy, that is that the man at any time can only be married with one wife, and the wife with one man".[75] If they wanted to be treated as civilized subjects, then the onus was on them to embrace civilized ways.

But "would the social needs of the Indies Chinese," Minister Pleyte asked, "require the regulation of their family and inheritance law through the application of European provisions?"[76] Fromberg acknowledged that his proposed reforms "stem for a significant part from having to reckon with the conservative currents in the Indie-Chinese society, which wish to hold the woman in an inferior and dependent position". To what extent should concessions be given to

[75] Fromberg, "Voorheen en thans" (Then and now) [A lecture held at the Chinese association, Chung Hwa Hui on 28.12.1912 in The Hague] in *Verspreide Geschriften*, 491-509, citation from 501.
[76] Fromberg, Nota III, 11.10.1915.

these conservative elements? Fromberg's conclusion was that besides the sole provision of adoption for son-less couples, the need for "a complete application of European law was self-evident".

For Fromberg the "transformation of the Chinese society in the Indies was directed at education and development, [a transformation] that the Chinese girl also desires". In the Dutch-Chinese schools, set up since 1908, Chinese youth in the Indies had been "receiving Western education and the influence of a civilization that respects women". Students in Chinese national schools in the Indies also picked up "civilized influence" from their western-style educated Chinese teachers.[77] The most palpable outcome of these developments was the figure of Caroline Tan, a lady "armed with Western and Chinese civilization," whose 1913 lecture at the Chung Hwa Hui in The Hague Fromberg attended. In his notes to Minister Pleyte, Fromberg cited Caroline Tan's lecture, in which Confucian precepts were used to frame her calls for further emancipation of Indies-Chinese girls and the abolition of "panggit, koppelarij en polygamie."[78]

Yet not all segments of the Indies-Chinese society might be ready for European family law. "(S)ignificant parts" of Indies-Chinese society, according to Fromberg, remained "conservative". In his view, as expressed to the Minister for Colonies in 1915, the rise of the "Chinese movement" from the turn of the twentieth century has "caused at least the prominent currents in Indies Chinese society to outgrow classic Chinese legal concepts".[79] What did Fromberg identify as constitutive of the "prominent currents" of the movement? In an earlier

[77] Fromberg, Nota I, 12.
[78] "Panggit" is the Malay word for the seclusion of a marriageable girl, and "koppelarij" the Dutch word for matchmaking). Fromberg, Nota I, 14. Caroline Tan's arguments can be found in her article "Het Chineesche Meisje" in *Bataviaasche Nieuwsblad*, 1 and 3 April 1914.
[79] Fromberg, Nota III, ibid.

brochure entitled "The Chinese Movement in Java," Fromberg traced the movement's origins to a sense of disempowerment as a result of the decline of Kapitan leadership and the abolition revenue farming system. "The dilemma," the Indies Chinese faced was between "falling to the state of inferiority as the natives find themselves, and capturing the social and legal position of a people, who do not count themselves any less than the Japanese, deserve". The Chinese movement was born on the "conviction…that all forces must be exerted to attain that goal".[80]

After a sojourn in the Indies in 1913, Fromberg developed the notion of a bifurcated leadership of the movement – a framework he would consistently adhere to throughout his lobby for a European family law and a common Indies citizenship between 1915 and his final public intervention in 1922. Fromberg observed that the two groups were divided not only by their stance on the colonial government's policy on Indies citizenship, but their cultural worldview and sense of national identity. The first group, the "*Majoorspartij*" (the Major's Party), "appreciate(d) the help the Chinese ha(d) received from the Government, accept(ed) Dutch subject status (*onderdaanschap),* and participate(d) in Indies public life" – as members of municipal councils and the Volksraad (advisory legislative council). The Majoorspartij consisted of Chinese who were "born in the Indies, ha(d) parents who lived here, ha(d) descendants who would remain there, and thus placed their first priority on being settled in the Indies". They were "satisfied with a cultural attachment (*band)* with China," but they were also "Chinese nationals and would come to the front when the Chinese nationality is compromised". Every now and then, they voiced out against Art. 109 of the colonial constitution because it "openly identified Chinese as lesser than Europeans and Japanese". This group ran the newspaper *Perniagaan*

[80] Fromberg, *De Chineesche Beweging op Java* (Amsterdam: Elsevier, 1911), 30.

(Commerce), and were centered around the figure of the Chinese Major of Batavia, Khouw Kim An.[81]

The second group, which coalesced around the newspaper *Sin Po*, was, in Fromberg's words, composed of nationalists and "separatists".[82] As historian Leo Suryadinata shows, the Sin Po group spearheaded the resistance against the militia recruitment policy (1914-8) and was instrumental in defeating the Majoorspartij's motion for Indies Chinese to partake in the Volksraad at a conference of community leaders in 1917.[83] By 1922, Fromberg appeared to be estranged from the Sin Po group for their non-cooperation strategy and their blatantly Chinese nationalistic orientation. Writing about this group in 1922, he castigated them for "wanting to remain separated from other population groups; to remain as aliens (*vreemdelingen*), foreigners (*uitlanders)* in the Indies….(and) for orienting themselves to and expecting all salvation to come from China".[84] The Sin Po group appropriated Fromberg's critique of the colonial discrimination against the Indies Chinese, without identifying with Fromberg's championing of Chinese assimilation into a common Indies subject status. *Sin Po* translated and serialized Fromberg's *De Chineesche Beweging op Java* (1911) in February 1918, and republished it as a book in 1921. The *Sin Po* editor, Tjou Bou San, prefaced Fromberg's work as having "explained the issues that formed the cause for the birth of the Chinese movement in the land of Java and criticized colonial policy and the Dutch people".

[81] Fromberg, "De Bevolkingsgroepen", 781.
[82] Fromberg, "De Bevolkingsgroepen", 781.
[83] Leo Suryadinata, *Peranakan Chinese Politics in Java*, Chapter One.
[84] Fromberg, "De Bevolkingsgroepen", 781.

Fromberg consulted both sets of leaders on family law reform in 1913, during his year-long sojourn in Java. Yet both sets of leaders of the Chinese movement appear to have been ambivalent about Fromberg's proposal of a strict monogamous marriage. "It is not known to me," Fromberg wrote in 1915, "that there was a single Chinese, who dared to openly defend the keeping of minor wives (*bijvrouwen),* on the grounds of Chinese ethics".[85] The next section compares how both sets of leaders responded to the monogamous family law, and how the colonial government watered down its definition of the monogamous marriage soon after the law was passed.

Polygamous Revisionisms, Sexuality and Racial Discourse

On 1 May 1919, "Judiciary/Foreign Orientals: Regulation of the Private Legal Status of the Chinese" (Staatsblad 1917 no. 129) was enacted, inaugurating the new monogamous legal set-up for the Chinese in Java. This was followed half a year later, on the first day of 1920, with the formal replacement of the dualist (European/Native) descent-based racial constitution of the colony with a tripartite (European/Foreign Orientals/Native) racial system structured around the aforementioned "family law criterion".[86] When Fromberg pushed for a stricter monogamy for the Indies Chinese, he was aware of the contradiction this would cause for the family-law-determined racial hierarchy. As early as 1915, Fromberg had warned the minister for colonies that the passing of the new Indies Chinese private law code created the "anomaly…that Indies Chinese are subject to our family law, as it is now about to happen, - notwithstanding the fact

[85] Fromberg, Nota I, 12.
[86] Staatsblad 1919 no. 622 enacted as law the previously mentioned "family law criterion" racial order, first drawn up in Staatsblad 1907 no. 205. Pieter Fromberg pointed out later on that the 1907 amendment was "intended for Americans, South Africans and Australians, ... (who) have the same civilization (as Europeans) and are subject to the same legislation in their countries as the peoples of Europe. The monogamous family law is the characteristic of that civilization". Fromberg, "De bevolkingsgroepen in Indonesie en art. 109 Reg. Reglt". (1922) in: *Verspreide Geschriften,* 706-793, citation from 782.

that they are deemed ready for equality (with Europeans) according to the Indies constitution, yet are not equated, so long as China leaves its classical law unchanged, but would immediately (be equated), as soon as China comes forth with a civil code, that is modelled on Western principles".[87] Yet as it turned out, not only could the Chinese subject only be given an intermediate position in the colonial racial hierarchy between Europeans and natives, the colonial judicial minds would waver over the plausibility of holding their polygamous subjects to the new monogamous law.

The advocate of monogamous marriage for the Chinese, Pieter Fromberg, was aware of the extra-marital patterns of Chinese male and native female sexual relations. He discovered a pattern of Chinese racial endogamy while researching and drafting the 1897 Chinese private law code. The Probate Chambers, from whom the Chinese obtained a license for legal marriage until 1911, had never recorded any Chinese marriage with a native woman. Fromberg surmised that "[i]t was as though (the Chinese) instinctively felt that marriage with the native would result in them blending into the great mass of the native population". He also observed that "all along Chinese men kept native women as housekeepers or minor wives, wherein the woman stood in an inferior position to the men". With regard to inter-racial sexual relations, Fromberg's larger point was that the "Chinese (were) an extraordinarily strong race; the children produced by a native or European woman, immediately acquired a Chinese type and as it were, were assimilated (*opgenomen*) into the Chinese race".[88] The monogamy law would presumably put an end to such polygamous and inter-racial practices.

[87] Fromberg, Nota II, 2.10.1915, in NA: 2.10.36.04, Inv. no. 1487, Mailrapport 15.12.1915, no. 13.
[88] Fromberg, "*De Bevolkingsgroep in Indonesie en art. 109 Reg. Rglt*". (1922), 774-5.

The first sign that the judicial authorities vacillated over their newly acquired role in limiting Chinese male sexual promiscuity was in the quick succession of revisions to the nomenclature of Chinese wifehood. It will be recalled that children of concubines who were born before the law went into effect were automatically recognized under the transitory provisions (Art. 17). Between 1918 and 1924, three laws were passed between 1918 and 1924 to tighten the wording and clarify the definition of the sort of pre-1919 concubinage that would continue to be recognized after 1919. The original transitory law stipulated that "children born before the implementation of this ordinance by concubines (*bijzitten*) of their father and treated by the latter as his children, are considered to be in equal standing with legal children".[89] The first (1918) amendment standardized all references in the law to the minor wife as "concubine" (*bijzit).*[90] In the second (1921) amendment, reference to children born to concubines before 1919, was replaced by the definition of "legal children," being those born to parents who had "undergone a legal secondary marriage (*wettig nevenhuwelijk)"* before the law's implementation. This amendment effectively extended the window for the concubine to produce legal heirs indefinitely beyond 1919. It also replaced references to "concubine" with the mother of a "secondary marriage".

The appearance of "legal" children with "legal marriage" parents in the same article intended for concubines and their offspring touched a raw nerve with Fromberg. In a scathing critique of the amendment, Fromberg described the institution of the Chinese minor wife as a "morally tolerated concubine," which was nevertheless "illegal," "improper," "impermissible" and "incorrect". Reframing the transitory law as such amounted to creating a "regulated

[89] Staatsblad 1917 no. 129, Art. 17.
[90] The original wording of the second section of Art. 17 mentioned "other wives than the legal spouse".

polygamy of the worst sort".[91] (335) In Fromberg's view, only the married main wife's children should be considered legal. All children "born outside of marriage are considered illegal/illegitimate (*onwettige)* regardless if they are born of the *bini moeda* (*bijvrouw)* [Malay (Dutch): minor wife] or of a *soendal* (*clandestine vrouw*) [Malay (Dutch): prostitute/mistress (clandestine wife)]". It was true that in Dutch colonial jurisprudence, a "constant practice" had persisted in giving the illegal sons of extra-marital relations, "so long as they are acknowledged by the father," an equal share as legal sons. Yet being entitled to an equal share did not make them "legal children in the sense of the law". In fact the 1921 amendment went in "direct contradiction with the new legislation applied on the Chinese," because it was completely in conflict with the Civil Code:

> Because if there is something concerning public order in our Civil Code, then it is the homage to the monogamy principle, whereas if the new version of article 17 were applied, then it brings about a legalized polygamy of the most brutal sort. Indeed, every existing relationship to a minor wife (there had been a case of ten in total for the same man), is elevated to a marriage. And the civil code had to be applied on that kind of polygamy![92]

Fromberg also protested against the indefinite extension of legality to children born of a minor wife contracted before May 1919. This worked against the principles of the transitory law, "because by the fact that the child was not only born, but conceived, under the already implemented legislation, the relationship between father and son can also (be considered to) arise from the new legislation and thus be regulated by it". It was unimaginable for Fromberg that the polygamous Chinese man had to be "indulged for at least twenty years while the civil code was

[91] Fromberg, "De nieuwe Chineezenwetgeving (Transitoir recht and het "wettig nevenhuwelijk")" [The new Chinese legislation (Transitionary law and the "legal secondary marriage")] in *Indisch Tijdschrift van het Recht* 117, 1922, 335.
[92] Fromberg, "De nieuwe Chineezenwetgeving", 338.

made available to him". Furthermore, this undermined the position of the main wife and her children, which had just been elevated by civil law. Formberg insisted on denying minor wives of Chinese the designation of "legal marriage," and their offspring the status "legal children".

As a compromise to Fromberg, the final (1924) amendment replaced parents of "secondary marriage" with father and "minor wife," but continued to confer "legal" status on the minor wife's child:

> (1) …(C)hildren, born to the minor wives (*bijvrouwen)* of their father and openly treated as children by the latter, are considered legal children, if the relationship between the father and the minor wife existed before the ordinance was applicable to the father.
> (2) By the death of their father during their minority age, these children will come by law under the guardianship of their carnal (*vleeschelijke*) mother.[93]

If Fromberg won the battle to have civil law applied on the Chinese, the liberal lawyers lost the larger war to create a unified civil code for all Indies subjects to the adat school jurists. Cornelis van Vollenhoven had characterized the draft Indies civil codes of 1910 and 1923 as "ready-made," and "lawyers' law". Instead, he favored upholding adat law (customary law) adjudicated by native juridical communities at the local level.[94] By 1925, the argument that civil law was alien to the Easterners and that the private law of the native Indonesians had to evolve at its own pace won the day a second time.

Yet losing the battle did not prevent Cornelis van Vollenhoven, the leading adat law professor based in Leiden, from drawing up the adat law of the Chinese. On the question of

[93] Staatsblad 1924 no. 557.
[94] Sonius, "Introduction" , XXXIV-XXXV.

concubinage and legal descent, Van Vollenhoven criticized Fromberg's fixation on a "western juridical" form of legality. Since the Indies criminal code had been applied to all colonial subjects since 1915, Van Vollenhoven argued that what was "legal" needed a "broader definition" in the Indies than in Netherland. In other words, Fromberg should accept that adat was law on Java. In adat law on Java, "the son of a Javan born of a concubine not married with the father is still legal (*wettig*)". "Adat law recognizes that this relationship is unspoken, allows such a son as a son to claim descent from his father without any legal acknowledgement, and sets him only slightly behind the son of a married mother for inheritance". Commenting on Fromberg's faulty "syllogistic" reasoning behind legal descent and concubinage, Van Vollenhoven concluded that "a *Hollandsch* brain knows no legal sons other than out of a legal spouse".[95]

As Fromberg predicted, the recognition of polygamy in the transitory law did have the effect of encouraging the children of minor wives to sue for their inheritance rights. In a survey carried out in the early 1930s, the Utrecht University-trained law student Han Swie Tian found that 11 out of 33 of the "most important judgements on Indies Chinese family and inheritance law" in the period 1894-1934 involved disputes over the status of the minor wife's children. All eleven cases occurred after the passing of the new Chinese private law in 1919.[96]

In the aftermath of the Chinese Republic's enactment of its modern family law code (Books Four and Five) in 1931, colonial jurists became alarmed again about the judiciary's slackening regulation of Chinese promiscuity. As the Conflict of Law Professor in the Batavia Law School (*Rechtshogeschool),* R. D. Kollewijn specialized in *intergentiel privaatrecht* – the

[95] Cornelis van Vollenhoven, *Het Adatrecht* .... , 56-7.
[96] See the list of his cases in Han, *Kennis van het familie- en erfrecht,* Appendix A, 116-133. My preliminary research into five of these cases, show that two of them involved the children of native minor wives.

systemic study of conflicts between the nineteen famous adat law circles, as delineated by Van Vollenhoven. Reviewing the Republican Chinese family law code within months of its publication, Kollewijn subjected the code "first of all to the question: how does the new (Chinees) Civil Code stand in relation to the principle of monogamy?" Although Kollewijn was satisfied that the monogamy principle was enshrined in the code, and that bigamy had been criminalized, he still felt compelled to ask, "What applies in law, when he who may not enter into a second marriage, still does it?" He found that while the public prosecutor had the authority to charge the bigamous man, he was not obliged to do so. Furthermore, unlike the Dutch prosecutor, he had no authority to apply for the annulment of the second marriage. Only the "interested party," such as the main wife, might do so. Worse, the bigamy charge had to be framed as adultery, the right to sue of which was forgone if the second marriage was entered into with her consent, was later forgiven, or had occurred for two years. This meant that "marriage with more than a woman was… disallowed, …. but conceivable". Kollewijn thus concluded that "western marriage law has not achieved a complete victory," and that the Chinese family could only be understood as a "compromise".[97]

On the legal recognition of natural children, the Chinese Republic's was also "very different from …European family law". The natural child was considered "legal" in relation to the mother from the time of birth, without the latter having to apply for a legal deed of acknowledgement. The mere fact of the natural father's maintenance of the child was sufficient for its legal acknowledgement. Children born of adulterous or incestuous relations were not excluded from parental recognition. Kollewijn pointed out that, across Europe, only Russia had regulations for natural children on "relatively favorable terms". The discrimination of children of

[97] R. D. Kollewijn, "Het Moderne Chinese Familierecht" in *Indisch Tijdschrift van het Recht,* 1932, 134.1, 107-8.

extra-marital relations, while "not itself a principle that our Western sense of justice demands," was a "means to defend our marriage law". A legal system, such as the Chinese Republic's, "that disdains those means, may then on those grounds alone fail to qualify as Western".[98]

A year later, Kollewijn observed that the Indies Supreme Court had, in two recent Chinese cases, come to the "surprising conclusion that such children (born out of wedlock), because their father openly treated them as children, must be considered 'legal children' under the new (1919 Indies) legislation, regardless whether or not they were born of a minor wife".[99] For Kollewijn, "the significance of these judgements… amount to no less than an amendment of our law," that had to be put right again. As early as 1926, the Supreme Court had "very wrongly, in an unthinking instant, let slip by recognizing old Chinese legal family relations under the new legislation without recourse to the transitory law". Yet the fault might lie in the transitory law itself. The 1924 amendment had "said nothing about children born outside wedlock, whose mothers are not minor wives". The law's silence on the other types of mothers had allowed the Supreme Court to slip old adat law Chinese kinship forms back into recognition. The Lawgiver of the 1924 amendment had "only named children born of [minor wife] relations to be sanctioned under the new law, because he wanted to exclude the other unmentioned types of children born outside of wedlock".[100] Besides the minor wives' children, which other unmentioned types of children born outside of wedlock was Kollewijn trying to exclude from legal recognition?

[98] Kollewijn, "Chinese Familierecht", 110.
[99] Kollewijn, "Nieuwe Arresten van het HoogGerechtshof over Chinees Familierecht" [New cases from the Supreme Court on Chinese family law] in *Indisch Tijdschrift van het Recht,* 135, 1932, 9.
[100] Kollewijn, "Nieuwe Arresten", 12.

The problem with the Chinese private law code and its 1924 amendment, Kollewijn pointed out, was that "no legal provision deprives with explicit words children born out of a 'loose' woman the state (*staat)* they had received from the older law".[101] In researching the wording of various iterations of legislation, Kollewijn argued that with the 1918 amendment having "drawn the line at the concubine," it was "highly unlikely that (the lawgiver) had not thought of (excluding the state) of children of 'loose' women".[102] Yet the eventual wording of the law was "too incomplete" for the jurist to come to any conclusive answer about the legal fate of these children. Being the adat law expert, Kollewijn proposed another line of inquiry: "Did these children possess a status (*staat)* under Indies Chinese adat law, that may be likened to the legal child of the father under the new legislation?"[103]

Producing an impressive survey of colonial jurisprudence stretching back to 1854, Kollewijn noted with regret, however, that "the old jurisprudence produced not many cases of children who had undoubtedly been born of 'loose women' and yet were still acknowledged by their father". All nine cases he identified involved relations, which were more ambiguous than the minor wife relation. They tended to be Chinese concubines taken without proper ceremony, concubines taken *before* the primary wife marriage or native concubines living either in the same household or in the village (kampong). Four of the nine cases involved native concubine mothers. Kollewijn found that in all nine cases, under the old jurisprudence, the judges acknowledged these "clandestine children" and gave them an equal share as the legal children, because they had been treated as children by their fathers. The older jurisprudence could have recognized them as

[101] Kollewijn, "Nieuwe Arresten", 14.
[102] Kollweijn, "Nieuwe Arresten", 16.
[103] Kollweijn, "Nieuwe Arresten", 17.

"natural-acknowledged" (*natuurlijk-erkende)* but chose instead to accept them as "legal" children.[104]

Although Kollewijn wished that the judges could have gone further to test if these mothers were indeed minor wives rather than "loose women," he accepted the jurisprudential tradition of using the father's open acknowledgement as the determining proof for the existence of a minor wife relation.[105] But this was not good law because the onus for deciding whether a child was legal or natural-acknowledged then fell on the "will of the father". "The Chinese father has never been (legally) qualified to distinguish between the (legal or naturally) acknowledged children."[106] Kollewijn reasoned that perhaps the Supreme Court erred on the side of the interest of genuine minor wives, who may find it difficult to prove their relationship after the death of their husbands. Given the rare occurrence (9 cases) of suspected "loose women" relations with Chinese men in close to eighty years of colonial jurisprudence, Kollewijn further consoled himself that "such cases … will perhaps seldom" recur.[107]

What are the stories of the two allegedly morally suspect women who set Kollewijn off on his extended and ultimately futile academic witch-hunt for legal precedents of "loose women" in 1931? The first woman, Tjio Kim Nio, had lived with Thio Tjoan Tjiong in Meester-Cornelis (outskirts of city of Batavia) after the death of the latter's main wife. She gave birth to his daughter in 1915, and he died seven years later. Two sons of the previous main wife held the father's property, and denied their half-sister her share based on the allegation that Tjio Kim Nio

[104] Kollewijn, "Nieuwe Arresten", 18-20.
[105] Kollewijn, "Nieuwe Arresten", 25.
[106] Kollewijn, "Nieuwe Arresten", 27.
[107] Kollewijn, "Nieuwe Arresten", 29.

did not fulfill the minor wife standard of the 1924 amendment. The Supreme Court awarded Tjio's daughter her share based on evidence that her father had "openly treated her as his child" during his lifetime.[108]

The second was an Indonesian woman named Sarminah. Kwee Siauw Khim's first Chinese wife passed away very young. Some time later, in 1878, Kwee married Oei Sik Nio, and remained married until he died in 1928. Oei Sik Nio, the main wife, bore Kwee two sons and a daughter. From at least the time Kwee married Oei, if not earlier, he also "kept Sarminah for more than twenty years in a house he bought for her". The house "lay close by his own dwelling and he bore a great number of children with Sarminah". The children of Saminah took Kwee's family name, were supported and sent to school by him, and visited his main residence during festivities in the presence of the main wife. Having thus ascertained that her children were openly acknowledged by the father, the judge ruled that Sarminah was "to be considered a minor wife" and her children were to be considered legitimate.[109]

Conclusion

While colonial reformers deployed the orientalist discourse of the Chinese *patria potestas* for the utilitarian goal of legal certainty in their nineteenth century debates, the Ethical turn in colonial policy introduced new assumptions about race, nation, civilization and the corresponding place of the colonial subject in colonial society. The most significant shift in colonial discourse after the Ethical turn was exemplified in L.W.C. van den Berg's creation of

[108] "Thio Pi Seng en Thio Boen Lim tegen Vrouwe Tjio Kim Nio," HoogGerechtshof (27.11.1930) in *Indisch Tijdschrift van het Recht,* 135, 1932, 32-6.
[109] "Kwee Djie Hoe et al. tegen Kwee Djie Kong et al.," HoogGerechtshof (25.6.1931) in *Indisch Tijdschrift van het Recht*, 135, 1932, 36-44.

the Mixed Marriages Law and I. A. Nederburgh's critique of Chinese polygamy and his introduction of the concept of legal consciousness among colonial subjects. However, what prompted the Dutch empire to shift its racial hierarchy was the exogenous factor of the rise of Japan and the Japanese adoption of western law. In the legislative debates to recalibrate the colonial racial classificatory system in the Dutch metropole in 1906, there was no dispute among Dutch lawmakers on the decision to make family law the new arbiter of race, rather than the place of descent. What was disputed was the degree to which it was feasible to subject the natives of Java to the rest of the private law corpus – property and contract laws. That debate was settled in favor of Cornelis van Vollenhoven's adat law philosophy, which argued for the maintenance of the older jural communities not so much for legal certainty as for the colonial duty to respect the historical tradition of the colonized. As Chinese private law reform in Java resumed on its separate track in the 1910s, the implementation of a monogamous marriage law came to occupy the reformers' central attention. Pieter H. Fromberg changed his stance, with his new advocacy for monogamy prevailing over the older modes of judicial thinking. However, the inauguration of monogamy among the Chinese in 1919 did not improve their racial standing with regard to the family law criterion. The law was revised to recognize existing cases of polygamy, while colonial jurists continued to be wary of the uncivilized practices of inter-racial Chinese-native sexual unions. The next chapter discusses how the Chinese in Java themselves responded to these colonial attempts to reform marriage law.

Chapter Four

Monogamy as Colonial Modernity: Patriarchal and Pedagogical Chinese Familial Sentiments

With the enactment of the Chinese private law code in May 1919, the Chinese in Java officially became modern monogamous colonial subjects, entitled to free, consensual marriages registered with the state. Yet the law had been passed with barely any official consultation with the Chinese community. When a similar code, which would have extended monogamy to the native Indonesian population on a voluntary basis was drafted in 1937, opposition from Islamic groups drowned out the voices of Indonesian women, who stood for the reform.[1] Across the Java Sea, when the British colonial government consulted local Chinese leaders on plans to codify Chinese family law in 1925 and 1926, resistance from Chinese society across the Straits Settlements put all plans for legal reform to halt.[2] This chapter examines how the Chinese community in Java responded to the new family law regulations during the 1920s and 1930s.

The Chinese response to the new family law regulations has to be situated within a broader history of movement for political emancipation and social progress. Beginning from 1900, with the formation of the Confucian revivalist movement, the Tiong Hoa Hwee Kuan (henceforth, THHK) aimed to uplift the Chinese community by the reform of Chinese religious

[1] Locher-Scholten, *Women and the Colonial State*, 187-209.
[2] Straits Settlements Chinese Marriage Committee, *Report* (Singapore: Govt. Print. Office, 1926).

practices and the introduction of modern education.[3] In competition for their political loyalty, the Dutch colonial state entered the social reform scene by granting separate Dutch schools to the Chinese community beginning from 1908. On the eve of the founding of the Dutch Chinese school, there were more than fifty THHK schools with more than 5,500 students on Java.[4] Twenty years later, the Dutch-Chinese school enrollment had caught up with the THHK and other Chinese schools. The numbers stabilized between 1928 and 1942, when about 25,000 ethnic Chinese students attended Dutch-Chinese or European schools as opposed to nearly 30,000 in Chinese schools across the Netherlands East Indies.[5] Whether educated in the Chinese, English or Dutch medium, the growing numbers of educated, young Indies Chinese would have been taught the merits of the bourgeois, monogamous nuclear family in school. The new Indies Chinese marriage law concerns their familial future, and it was with that in mind that Peranakan Chinese intellectuals responded to the new colonial legal reforms.

Monogamy and Bifurcated Reactions

The China-oriented Sin Po group followed legal reforms in early Republican China and used developments in China as a means of critiquing the colonial government's relative lack of resolve in codifying family law for the Indies Chinese. When the colonial adviser for Chinese affairs, B.A.J. van Wettum's translation of late Qing China's draft civil code (1910) was published in 1914, *Sin Po* "reminded (its readers) of the existing legal uncertainty, of how the court sometimes made judgments referring to the Qing Code, and other times to Indies-Chinese

[3] The best account remains Kwee Tek Hoay, *The origins of the modern Chinese movement in Indonesia* (Ithaca, N.Y., Modern Indonesia Project, Southeast Asia Program, Cornell University, 1969 [1931-2]). See also Lea Williams, *Overseas Chinese nationalism; the genesis of the Pan-Chinese movement in Indonesia, 1900-1916* (Glencoe, Ill., Free Press, 1960).
[4] Ming Govaars, *Dutch colonial education : the Chinese experience in Indonesia, 1900-1942* (Singapore: Chinese Heritage Center), 107.
[5] With the caveat that the Chinese school enrolment figures beyond 1928 are not available. See Ming Govaars, 257-9, 263.

law, which (*Sin Po* claimed) was determined by the Dutch administration."[6] In April 1917, on the eve of the promulgation of the new Indies Chinese private legal code, *Sin Po* carried "The administration of marriage of the Chinese nation in China" on its front page. Citing what appears to have been an official guidebook for marriage rites, the *Sin Po* editorial claimed that *Tjoe Soe Kim Long* assembled the ancient marital customs of the Chinese nation, together with the latest modifications, which had been certified by the republic's Department of Education. Although customs laid out in the book were followed from "the emperor to the lowest rungs of the people and could be considered to have become public (*oemoem),*" *Sin Po* was careful to point out that the customs had "not been given permanency (*ketetapan*)". In fact, "people were free (*dikasi merdika*) to use customs to their own good, so long as it did not conflict with good manners (*kesopanan*)".[7]

Yet the author, writing under the pen name *Just*, did not endorse the marital customs of *Tjoe Soe Kim Long* without reflection. On gender and marriage, *Just* was critical of the Chinese practice of the adopted child-bride, which he found "strange" *(aneh). Just* pointed out that having the child-bride and their prospective brother-grooms grow up in the same household, it became difficult for them to willingly agree to consummate the marriage later on. "90% of those marriages ended in divorces." In a passage on poverty-enforced prostitution and female sexual purity, *Just* agreed with the early Republican Confucian endorsement of filial piety (*kabaktian*) over sexual purity in times of economic need. Citing an example his diasporic readers would have identified with, *Just* related the story of how the daughter of a son-less couple resorted to prostitution in order to earn the freight costs of shipping her father's corpse home from overseas.

[6] Cited in Fromberg, ibid., Nota III, 2.
[7] "Oeroesan nikah dari bangsa Tionghoa di Tiongkok" in *Sin Po,* 13.4.1917. At this point, I have not been able to trace *Tjoe Soe Kim Long* to its original Chinese title.

Such daughters, *Just* claimed, citing the *Tjoe Soe Kim Long*, were entitled to the same marriage ceremonies as a virgin (*prawan*) bride.[8]

The response of the *Sin Po* group to the new Indies Chinese private law code was lukewarm. Unlike its full front-page coverage of the "Administration of Marriage of the Chinese nation," *Sin Po* introduced the new colonial law in a brief article tucked in the middle of the daily paper.[9] The report was a matter-of-fact summary of the gist of the new law – the application of the entire Civil Code on the Chinese with exemptions for Chinese adoption and business firms, and a separate civil register. Although *Sin Po* made no commentary on the new law, the editor felt "it was necessary to translate a few important articles from the Civil Code of the Dutch Indies," which would be applied to the Chinese. Out of close to 500 articles of the newly applied European personal law (Book One), the editor singled out fourteen of those relating to "Marriage" (articles 27-34) and the "Rights and Duties of Husband and Wife" (articles 103-7) for translation.

Despite differences with Pieter H. Fromberg over the question of Chinese political loyalty, the Sin Po group understood and transmitted the design of a strict monogamous marriage law to its diasporic reading public. Where the "Regulation of the Private Legal Status of the Chinese" (Staatsblad 1917 no. 129) was concerned with the application of civil law, no mention was made in the code of adultery or bigamy's criminality. In fact, as mentioned above, Fromberg was willing to tolerate polygamous relationships by default insofar as Chinese wives and minor wives themselves refrained from suing their polygamous husbands. On this matter, the Sin Po

[8] *"Oeroesan nikah"*, ibid.
[9] *Sin Po*, 26.4.1917.

editor went one step further than Fromberg in reminding his readers that the monogamous clause (art. 27) was "related to articles 256 and 257 of the Native criminal code", which criminalized bigamy and the "fostering of a concubine in the same house as the wife".

The wealthier Chinese, among whom polygamy was more frequent, had a vested interest in following developments in Chinese and colonial family law more closely. Hoa Siang In Kiok, the same press that published the Majoorpartij's newspaper, *Perniagaan*, brought out a Malay translation of B. A. J. van Wettum's Dutch rendition of family and inheritance law in the provisional Chinese Civil Code. In the preface, the translator lamented that "the Chinese in the Indies, especially among the wealthy ones, are often involved in lawsuits over the division of property". The litigants who appeared most frequently in these inheritance disputes, the translator explained, were "children of the married wife (*bini kawin*), children of the younger wife (*bini moeda)* and adopted children," who fought among themselves for a larger share of the estate.[10]

Even before the new Indies Chinese private law was passed, the colonial appointed Chinese community leaders had taken steps to reduce uncertainty around the civil status of the Chinese by keeping registers along European lines. In Batavia and other cities, Chinese leaders kept "registers of legitimate births, marriages and deaths of the Chinese, so that they may be used like the civil registry (*burgerlijke stand*) for this nation".[11] In Batavia, it was at the request of life insurance companies that Major Khouw Kim An responded by issuing death certificates. Given the lack of governmental resources, Major Khouw relied on local ward masters (*wijkmeesters*) to

[10] B.A.J. van Wettum, *Hak Familie dan Hak Poesaka di Burgerlijk Wetboek Baroe di Tiongkok* (Batavia: Hoa Siang In Kiok, 1914), 1-2.
[11] Wettum, *Hak Familie*, 3.

deposit the registers of their particular wards with the Chinese Council. Death certificates were then issued on the basis of the ward masters' records. In Surabaya, where the Chinese major did not have the aid of a council, he personally certified instances of death to insurance companies.[12]

The frequency with which Dutch law codes were translated into Malay by commercial book publishers indicates that there was probably a significant demand from Malay-literate colonial subjects to keep up with the latest Dutch legislations. The *Perniagaan* affiliated book publishers – the Batavia-based Hoa Siang In Kiok and Tjiong Koen Bie – in particular, specialized in translating Dutch law codes along with practical advice on commercial action.[13] Tjiong Koen Bie himself co-authored with A. Joseph Sr. and Amidjaja, *The Book of "Real Knowledge", being: Various templates for claims, contracts, requests, new regulations, law and legislation, regulation on accounts and other matters* (1910).[14] John F. Knoetsen's *The Solicitor - Various petition templates for making claims at the Residency Court and the Landraad* (1930s?), provided side-by-side Dutch-Malay versions of different kinds of commercial claims traders could file through the lower courts. As the author explained in his foreword, his guidebook, "The Solicitor," was written as a resource for "many merchants (who) want to be able to file claims themselves in matters of solicitation".

[12] Cited in Fromberg, Nota IV, 3.
[13] Some titles from the Tjiong Koen Bie press include: 1) *Salinan dari oendang-oendang Hak Persamaan (Gelijkstelling). Pertoekaran Bangsa (Naturalisatie) dan Kerahajatan (Onderdaanschap)* [Translation from the laws on (racial) equalization, change of nationality (naturalization) and citizenship (subject status)] (1918?); *Persewahan Roema Tinggal (Huurcomissie ordonnatie)* [Leasing the residential house (The ordinance of the lease commission)] (1918?)
[14] *Kitab "Ilmoe Sedjati" ia'ni: Tjonto roepa-roepa rekest, perdjandjian, permoehoenan, atoeran baroe, wet dan oendang-oendang, atoeran pegang boekoedagang (boekhouden) dan lain-lain sebagainja* [Book of "True Konwledge": Templates for filing pleas, undertaking, requests, new regulations, law and regulations, accounting regulations and other similar matters] (Batavia: Tjiong Koen Bie & co., 1910).

One of the more prolific Malay translators of Dutch law was Phoa Tjoen Hoay. One of two sons of a Bogor Chinese Kapitan, the Phoa brothers and their family were at the forefront of Java's Chinese movement at the turn of the century. Tjoen Hoay's paternal elder uncle, Phoa Keng Hek was one of the two founders of the Confucian revivalist organization – the Tiong Hoa Hwee Kuan – responsible for the creation of a pan-Java network of modern Chinese schools from 1901 forward.[15] Both Tjoen Hoay and his elder brother Tjoen Hoat were professional writers, and served some time as editor of the Majoorpartij's mouthpiece, *Perniagaan.* During the 1910s, Phoa translated at least four Dutch legal codes into Malay: the commercial code (1912), bankruptcy law (1913?), local courts ordinance (1914), and the Chinese private legal status code (1919).[16] As he explained in his 1912 translation of the Dutch Commercial Code, he rendered it "by the simplest route into low Malay".[17] In 1914, the colonial government replaced police-administered criminal law for non-Europeans with a judicially equipped local court (*landgerecht)* for all races. In his translation of the ordinance, Phoa expressed his hopes for "clarify(ing) for the public the workings of the law, which, because of its many about-turns, was extremely difficult [to comprehend]".[18]

Phoa's desire to act as an enabling interpreter of Dutch law was even more evident in his translation of the 1917 Indies Chinese private law code. There, he gave an article-by-article commentary of the law "for the convenience of the reader".[19] At one point, he even went so far as to point out a grammatical error he found in an article in the code which contained a singular

[15] "Phoa Keng Hek", in Claudine Salmon, *Literature in Malay by the Chinese of Indonesia: a provisional annotated bibliography* (Paris, 1981), 290.
[16] *Wetboek Tentang Oeroesan Perniaga'an jang berlakoe dalam Hindia Ollanda* (Batavia: Tjiong Koen Bie & Co., 1912); *Landgerecht: Salinan atoerannja dan djoega salinan dari lain-lain wet jang berhoeboeng pada ini hal.* (Batavia: Tjiong Koen Bie & Co., 1914), see page 4 for his translation of bankruptcy law.
[17] *Wetboek Tentang Oeroesan Perniaga'an*, see cover page.
[18] Phoa, *Landgerecht*, 4.
[19] Phoa, *Privaatrecht dan Burgerlijke-stand Boeat Bangsa Tiong Hoa* (Batavia: Tjiong Koen Bie, 1919), 21.

subject and an allegedly mismatched plural demonstrative pronoun. “I do not dare to change the law,” Phoa confessed, “I only translate whatever is there (in the law), but I am free (*merdika)* to give further clarifications to the reader, so that people who read my translation will obtain all the necessary certainty.”[20]

Although Phoa strived to provide “all the necessary certainty,” he conveniently left his commentary on the monogamy article (art. 28) to the end of his book. The 1917 Chinese private law code assumed the universal application of the Dutch Civil and Commercial Codes to the Chinese, and was thus mainly preoccupied with promulgating exemptions from civil law for them. An Indies Chinese wanting to know how the 1917 code changed the legal implications of his everyday life would have had to read it alongside a copy of the Dutch civil code. Phoa did concede at the end of his commentary that “if it is felt necessary, it will also be good for one to read the other legal codes related to this new law”. He then pointed readers to the laws he had translated with Tjong Koen Bie press, urging them to purchase them “at a cheap price”. What Phoa left unsaid was that neither he nor Tjong Koen Bie appears to have translated the Dutch Civil Code.[21] He closed his commentary on the Chinese private law code on an ambiguous note regarding his broader understanding of the place of civil law in relation to other genres of law:

> Because there are still many more laws I have to translate, that is all (I can do) for the laws of the “*privaatrecht*” of the Chinese nation, the meaning of the *privaatrecht*, being the unification (*digaboeng djadi satoe*) of resident

[20] Phoa, *Privaatrecht*, 84-5.
[21] The only Malay translation of the Dutch Civil Code I have found is the rather awkwardly translated: *Burgerlijk Wetboek, Kitab dari hak-haknja, permistian-permistiannja dan pembikinan perdjandjian-perdjandian roepa-roepa satoe pada lajin boewat orang Olanda dan siapa-siapa jang di bersama-samaken pada orang Olanda di dalem Tanah Hindia Nederland* [Civil Code, Book of Rights (or Justice), on obligations and the making of agreements between one and others for the Dutch and whoever is equated with the Dutch in the land of the Netherlands Indiës] (Batawi, Albrecht & Co., 2nd. Edition, 1900). The only other attempt appears to have been made by Indonesians after they gained independence (1949), and only in 1961. More on this below.

(*pendoedoek*) rights and merchant (*soedagar*) rights, I hereby conclude [my commentary].[22]

Phoa had no word for "civil", or something of the citizen, as denoted by the "*burger*" in "*Burgerlijk Wetboek"* (Civil Code). A more expansive understanding of universal human rights, for citizens who held themselves by civilized codes, was lost on the Dutch-educated translator. Phoa, in a more literal reading of civil law, simply called it the rights of residents (*pendoedoek).* The use of "resident" in the Malay language implied a degree of detachment from the body politick as opposed to the more politically pregnant notion of "people" (*rakyat*), whose loyalty was owed to the king (*raja)* under Malay notions of kingship *(kerajaan).*[23] When the Indonesian republic opened voluntary subjection to the Civil Code to all citizens in 1949, they also chose a neo-logism, "perdata" over "civil" (*sipil).*[24] There was perhaps no clearer sign of the colonial subject's sense of alienation than his polite lamentation, hidden at the tail end of his book, of the colonial lawgiving process:

> There is one question I would like to record here: "Should not the government, when these laws were still in their planning stages, have also heard the thoughts of the Chinese nation/race (*bangsa*)? Especially when those laws have been specially made for that nation/race? If not, why did the government not do it? Sure, it *cannot be denied* that these changes bring a lot of *good* to the Chinese nation, but it can only be just (*adil)* if the thoughts of that nation were heard *before* the laws were implemented. So what now? I'm afraid now that these

[22] Phoa, *Privaatrecht,* 44.
[23] See Anthony Milner, *The invention of politics in colonial Malaya: contesting nationalism and the expansion of the public sphere* (Cambridge: Cambridge UP, 1995).
[24] The etymology of "perdata" remains unclear. It is neither Javanese nor Malay. The first Indonesian translation of the Dutch Civil Code was sometime between 1949 and 1959: R. Subekti and R. Tjitrosudibio trans., *Kitab Undang-Undang Hukum Perdata* (Djakarta: Pradnja Paramita 2nd ed., 1959). See W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Djakarta: Balai Pustaka, 1952), in which civil law (*hukum perdata*) is defined as "the law that regulates rights, property and relations between people in a country". Alan Stevens, *A Comprehensive Indonesia-English Dictionary* (2004), claims Sanskrit/Javanese to be the etymology of the word. But "perdata" does not appear in Javanese dictionaries of the late colonial years. It is thus, most likely, an Indonesian republican neologism of Sanskritic origins.

> published laws will be implemented… it will sooner cause much difficulty to government officials, than I may finish the other things I want to say![25] (emphasis in the original)

To pre-empt such difficulties, Phoa appended a guide (*penoendjoek djalan)* to help his readers navigate the new law. "Not only will many Chinese find it complicated having to refer back and forth between the translated provisions on the Chinese Civil Registry and the Civil Code," Phoa explained, "unfortunately there are very many Chinese who do not know what he has to do for matters of a binding nature (*oerusan jang misti)".* As Phoa sees it, dealing with birth and death should be "clear to the reader". But it was "the matter of marriage in particular… that confuse(d) people". The new law was conceptualized in Phoa's eleven-page guide not so much as a prescription of rights and duties in equal parts, but of prohibitions.

In a contrast indicative of Phoa's patriarchal mindset, the "Prohibitions on Men" (*Larangan Lelaki)* he outlined amounted to ten pages as opposed to the one page he devoted to "Prohibitions on Women" *(Larangan Prampoewan).* Property loomed larger for the patriarchal mind, taking even the precedence over monogamy and consensual marriage. As though it posed no contradiction to the immediately following section of consensual marriage, "Prohibitions on Men" began with the new age for majority (eighteen/twenty-one) and how marriages might be arranged for sons of minor age. "On a subject of great importance, – like when there is such a great urgency for the young man to attain the status (*keadaan)* of adult or to be declared adult before he reaches the age, a way that enables him to manage property and other things," it was possible to apply to the Governor-General for special permission.

[25] Phoa, *Privaatrecht*, 97-8.

Seen from the polygamous man's point of view, monogamy was presented as a negative prohibition rather than a declaration of duty born out of mutual-dependence. "After the first legal marriage, the man is forbidden to marry again with other women, if his marital wife (*istri kawin*) is still alive and has not been legally divorced from him."[26] Likewise, consensual marriage was presented as a loss for men accustomed to other means of procuring marital relations. "After 1 May 1919, one can no longer force a woman to be his marital wife, without the liking (*soeka*) of that woman." The law "requires that the man and the woman must themselves like it, before they can become husband and wife."[27] To illustrate this abstract ideal to his readers, Phoa explained that "when the time comes for signing the paper in front of the Civil Registry official, if the girl with an unyielding heart (*hati keras*) declares that she does not like to become the wife of the man… then that marriage fails, and the Civil Registry official will refuse to certify it."[28]

After laying down these general principles, Phoa then devised eight common scenarios in which the Chinese male might find themselves having to contract a marriage through civil law. Here, I highlight three of these scenarios that are illustrative of particular Indies Chinese male marital strategies or predicaments in relation to age, familial and racial dynamics: 1) Men between 18 and 21 years of age, required parental application with the civil registry. Those living alone in the countryside, without families near them, might seek the help of local Chinese chiefs; 2) A dying father with a minor and only son might arrange to offer the son in marriage by seeking the Governor-General's permission; 3) A son, between the ages of 18 and 21, born of unmarried parents had to indicate that he had been acknowledged by his father. If the father was

[26] In the Dutch Civil Code, the monogamy article (27) reads, "The man, at any time, can be bound in marriage only with one woman, the woman with one man."
[27] Article 28: "The free assent of the prospective spouses is required for marriage to come into being."
[28] Phoa, *Privaatrecht*, 103-4.

dead or absent, "the mother might be asked for her consent, only if that woman was Chinese, European or equated with Europeans;" "If the mother was of the indigenous nation, and the father was not capable of giving his consent, the child would have to apply for marriage with the Court of Justice."[29]

It seems clear from Phoa's templates that his target audience was parents (fathers) having to arrange marriages rather than young men and women seeking love marriages under the new law. The colonial delineation of an intermediate age group (18-21) was an important category that Phoa took care to publicize. This might indicate that Chinese parents were likely to be thinking of marrying their children within that age window. Parental consent, required even for those in the 21-30 age window, was perhaps a regulation Phoa willingly took note of.

If Phoa had accepted the Dutch introduction of monogamous marriage with some patriarchal ambivalence, he was less ambivalent toward the new legal discrimination against children born of extra-marital (adultery and incest) relationships. Children born of adulterous relations had to apply with the Civil Registry, while those of incestuous relations with the Governor-General for civil acknowledgement.[30] To be sure, the legal uncertainty surrounding the children of unmarried parents was one of the eight templates of problematic marriages he identified for his readers. Furthermore, his treatment of the sections for illegitimate children was limited to translation without critical commentary.[31] Yet Phoa made the extra effort to explain what the various legal categories of children – "natural" (*natuurlijk)*, "legal" (*wettige)*, and "acknowledged" (*wettelijk erkende)* meant. On closer reading, Phoa gave the legal concept of the

[29] Phoa, *Privaatrecht*, 107- 112.
[30] See Art. 56 of Staatsblad 1917 no. 130.
[31] Art. 17 Staatsblad 1917 no. 129, and art. 56 of Staatsblad 1917 no. 130.

"natural" child a twist, which might have hinted at the creole Chinese tolerance of pre-marital sexual liaisons:

> In this translation I have mentioned pure-blooded (*sadjati = natuurlijke*) children, legal (*jang sah = wettige*) children, and acknowledged (*jang diakoe = erkende*) children. I want to explain their meaning as follows. The pure-blooded child, is one that is authentic (*tulen*), but which is accidentally born (*terlahir)* before the parents are married, hence s/he was conceived by the free love (*pertjintaan merdika)* of the parents. If s/he is recognized by the parents after birth, then the authentic child becomes an acknowledged child. The legal child refers to the child who is conceived after the parents are married according to the full requirements of the law. People should not mistake the acknowledged for the legal child.[32]

Finally, the colonial legal discrimination against the child born of an extra-marital relationship with native women was noted by Phoa but with no critique. Under article 56 of the Chinese Civil Registry ordinance,

> Section 1: The registration of a natural child, whose mother belongs to the native or therewith equated, non-Chinese population, will not be approved by a semi-official, but only by a (full) official of the Civil Registry, in cases where the mother is unmarried, when such child has a Chinese as father, and the registration by the latter is made, with the simultaneous acknowledgement of the child.
> The birth of the child may be registered at any age, but such registration may not in any case occur in conflict with articles 282, 283, and the first paragraph of 284.[33]

In his treatment of this critical article, Phoa duly provided translations of the two and a half articles that limited the conditions for the legal recognition of a mestizo child. Art. 282 required the mother (or father) of the child be at least of nineteen years of age. Art. 283 excluded the

[32] Phoa, *Privaatrecht,* 76-7.
[33] Staatsblad 1917 no. 130. Section (2): The child can be registered at any age, but this may never take place in contravention of the provisions of articles 282, section 1, 283 and 284, section 1, of the Civil Code.

children of adulterous and incestuous parents from legal recognition. The first paragraph of Art. 284 demanded that the native mother of the mestizo child also agreed to the recognition of the mestizo child by his European father. But the remainder of Art. 284, in particular, the notorious paragraph three, which the Dutch colonial jurist R. D. Kollewijn later singled out for having "blemished" the history of the Civil Code, was not included.[34] After demanding that the native mother give her consent to her child's legal recognition by the father (paragraph one), the same article then went on to state that "the civil relation derived from the natural descent of a natural child, whose mother belongs to the native… population, will be annulled, regardless of an acknowledgement by the mother who is permitted to do so (as a European) after a subsequent marriage with the father". In other words, the native mother lost all rights on the child to the father once s/he agreed to legal recognition. The rationale for this perpetual severance of the mother's civil rights, according to Kollewijn, was that "European fortunes had to be protected against the possibility that it would fall in bad hands, namely the Indonesian mother through a child acknowledged by a European."[35]

In the 1919 Chinese version of the Dutch civil code, however, the native mother did not lose all rights on her child after the Chinese father registered him/her in the Chinese civil registry. The Dutch had designed the Indies Chinese civil code to be more civil to the native mother than its original Dutch version. Phoa was aware of this double-standard, but he did not comment on it. The laws on birth registration were clear enough for Phoa. For the registration of marriages, Chinese-native marriages must have been frequent enough for Phoa to identify it in his guide, but

[34] Kollewijn's remark is cited in Wim Wertheim's review of R. D. Kollewijn, *Intergentiel Recht. Verzamelde opstellen over intergentiel privaatrecht* ('s-Gravenhage, Bandung, 1955) in *Indonesie: tweemaandelijks tijdschrift gewijd van het Indonesisch cultuurgebied,* 9, 1956, 170.
[35] Cited in Wertheim, Review of R. D. Kollewijn, *Intergentiel Recht,* ibid., 170.

the colonial double standards against the mestizo children was presented as another legal obstacle for the colonial subject to navigate around.

Creole Chinese Literary Reportage and the Pedagogy of Family and Love

While contemporary newspapers and legal guidebooks provide an insight into the Chinese elite's public response to the new colonial Chinese marriage law, it is in the Malay language Peranakan Chinese pulp literature of the times that shifting attitudes to marriage, family and race of the period can be found. Like the creole Chinese patriarch's ambivalence to monogamy and consensual marriage, the Peranakan Chinese literature of the period displayed similar concerns over the notions of love marriage and the autonomous modern girl. Interestingly, monogamy was an accepted norm among Peranakan Chinese male writers. In fact, writers of this period problematized the threat to the Chinese familial order more as a choice between love marriage and the older practice of marriage arranged for wealth and status.

Peranakan Chinese literature in "Low Malay" (or bazaar Malay) flourished in late colonial Indonesia as a form of "wild literature" in relation to the official "High Malay" Indonesian literature that the colonial publishers supported. As compiled in Claudine Salmon's bibliographic study, more than three thousand titles of original novels, short stories, philosophical treatises, and translations from Western classics appeared between the 1870s and 1960s. The Peranakan novel-form reached its peak in the period between 1924 and 1942, when 900 titles were authored by some 250 authors.[36] Salmon has traced the increase in literary production in this period to the appearance of the literary review journal, whose pages serialized

[36] Salmon, 48.

novels and short stories, and created a market that supported both the mass production and consumption of the literature.[37]

Written almost entirely by male Peranakan Chinese authors in realist Peranakan social settings, family, love, gender and sexuality were the most frequently explored and exploited themes within the corpus. Although some authors wrote approvingly of love marriage, divorce, and women's education and economic independence, Salmon has noted that the majority saw "Westernization [as]… dangerous when it affected women's status and their role in Peranakan society." In Salmon's reading, women's dependence on men and their families, and their physical, but more importantly, moral decline when that dependence was lost was a common theme in the literature of the 1920s and 1930s.[38] In fact, more than straightforward morality tales of women and family, James Siegel has pointed out that "correct familial sentiment, love, and desire for wealth" form the triangle of tension in this genre of novels. Desire for wealth is more frequently posed as a contradiction against familial sentiment and love, than family against love marriage alone. According to Siegel,

> "Love" is an ambiguous category; when it disrupts family it is not *cinta* (love) but simple desire. When money is the issue between lovers, one of them has *cinta* the other is false. But there is always a close relation between the two and the result is threatening to the family. In the typical story, familial sentiments that should govern the welfare of the family are replaced by insatiable desire for gain. The very basis of social order, the sentiments of kinship and loyalty that assure continuity between generations, are threatened. "Chinese" identity, centered as it is on familial piety, is menaced.[39]

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[37] Salmon, ibid., 51-2.
[38] Salmon, ibid., 56-7.
[39] Siegel, *Fetish, Recognition, Revolution* (Princeton: Princeton UP, 1997), "Chapter Five: Scandal, Women, Authors and Sino-Malay Nationalism," 115-133, citation from 117-8. More than their fictional characters' desire for wealth, Siegel is also critical of the effect that Peranakan authors' relentless pursuit of profit has on the quality of

In fact, Peranakan literary reportage had a distinctive pedagogical edge to it. Elizabeth Chandra argues that even the more raunchy sort of literature "advocate(d) monogamy as a moral economic choice, an advocacy that is done precisely by spelling out in titillating narrative the manifold ways a paramour can throw men off guard and ruin their lives."[40] Peranakan authors thrived on embellishing reportage with scandalous gossip, others weaved social-moral commentary into the erotic as "education for modern man". Published between 1924 and 1930, the eleven-installment Hermine Tan series by the writer-publisher entrepreneur Kwee Seng Tjoan (henceforth, KST) tells the story of the multiple escapades of a modest Chinese girl who turns into a femme fatale after being sold by her father for cash. Miss Hermine plots to seduce wealthy men in order to satisfy her own desire for material wealth. Chandra points out, although the stories' erotic imageries border on the misogynistic, KST was also critical of specific Chinese practices that led to the plight of women like Hermine - the Chinese fathers who sell off or arrange marriages for daughters for material gains; and the desirous and polygamous men who fall prey to Miss Hermine's seduction. In fact, only by standing outside of Chinese family norms and by exploiting the economy of male desires, could women such as Miss Hermine regain agency in the capitalist patriarchal market-society.

A more precise history of the Chinese reception of monogamy remains to be written. A recent survey of two Peranakan Chinese women's journal in the 1920s and 1930s indicate that

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their fiction. He shows how the novelists were obsessed with retelling stories of sexual scandal involving women, and thrived on the circulation of gossip to the extent that one author reproduced the love letters of a fallen woman verbatim when the author's blackmail of her father failed. For Siegel, such a frame of seeing the world 'transferred authority from authors, thus from writing, to the social,' at the expense of fiction and literature.

[40] Chandra, "(Im)moral Compass: Erotic Literature and the Education of Modern Man," Kyoto-Berkeley Seminar on Indonesia Conference Proceedings (Kyoto: Kyoto University Center for Southeast Asian Studies, 2014), pp. 1-52.

even in women-filled columns on women's emancipation, their emphasis was more on women's education and employment than marital reforms. Insofar as marriage was broached, the feminists promoted the new bourgeois nuclear family ideal and women's role in it as the virtuous housewife, rather than make iconoclastic critique of the traditional Chinese patriarchy and polygamous practices.[41] This corresponds with studies of Peranakan Chinese male authorial voices, which indicate that monogamy had by and large been accepted as a norm. In contrast to but also in tandem with colonial juridical anxieties over polygamous practices, the Chinese male author projected the problem not so much onto the cultic anxiety for patri-lineage reproduction as onto the question of the independent or "loose" Chinese women. The pedagogy of correct familial sentiments centered on contrasting desirous love marriage against a more virtuous form of family fortune enhancing monogamy.

Family, Race, Culture and the Sentimentalist Pedagogy of Kwee Tek Hoay

If monogamy had become an accepted norm among the Peranakan male writers of the 1920s and 1930s, Chinese men's relationships with native concubines remained contentious. The women's journals of the 1920s and 1930s did not broach the question of native concubinage among Chinese families. Here again, we turn to the Peranakan Chinese male authorial voice to examine their views on the question. A systematic study of the character of the native concubine (the *nyai*) in Peranakan literature remains to be done.[42] In this section, I analyze Kwee Tek Hoay's views on this question in relation to Chinese familial sentiments and how it was also framed as a question of love and family fortunes, but with an additional angle on the intertwined

[41] Faye Chan, "Chinese women's emancipation as reflected in two Peranakan women's journals" in *Archipel*, Vol. 49, 1995, 45-62.
[42] According to Elizabeth Chandra, Chinese authors produced the majority of "*njai* stories" circulating in colonial Indonesia, although it is not clear if all of them involved Chinese men – *Nyai* relationships. See Chandra, "(Im)moral Compass," footnote 26.

problem of race and culture. Among his myriad social intellectual interventions in late colonial Indonesian, he tackled this question in one of the most popular Peranakan Chinese novels of the period – *The Rose of Cikembang* (1927).

Born in Buitenzorg in West Java in the 1880s to shopkeeper parents, Kwee left his Confucianist Chinese school early to help his parents, and later grew to become "one of the most creative figures in twentieth century Indonesia". In his polyvalent adult life spanning the 1910s and 1951/2, Kwee combined in one person the multiple careers of a "businessman, newspaper contributor, editor and publisher, polemicist and social critic, historian, visionary, lecturer on theosophy and mysticism, novelist, poet, and playwright".[43] On the literary front, Kwee defended the popular use of Low Malay among the Peranakan Chinese against the colonial government's attempt to standardize it.[44] His broader cultural legacy in the search for a pragmatic moral transcendence among Indonesian Chinese religious practices makes his intervention in the question of race and native concubinage at once more interesting and problematic. He is also remembered today for founding the Tridharma "Peranakan version of the Chinese three-in-one redemptive society" in the 1930s by combining Confucianism, Buddhism and Daoism as an alternative to the iconoclastic Confucianists of the earlier decades. As Prasenjit Duara notes, the transcendence project that Kwee pursued attempted to spiritually interiorize the syncretic religious practices of the Peranakan Chinese that also borrowed from Islamic and Javanese

[43] George Fowler, "Introduction," in *The Rose of Cikembang*, Kwee Tek Hoay, Fowler trans., xxiv-xxv.
[44] In the 1930s, Kwee became critical of the infiltration of Dutch words into Chinese-Malay, and of the younger Peranakan Chinese's preference to use English and Dutch over Malay. Besides language, Kwee was also worried about the "scandal of Melayu publishing," where "authors without authority wrote books of instruction, stories that made no sense, or the damaged morality by preaching the value of magic." Kwee's popular creative writings in the 1920s and 1930s would come to embody the good literature that sought control and recognition, and "will neither deceive nor harm." Kwee, "Merosotnja Pembatjaan Melajoe Tionghoa" [The decline in quality of Chinese-Malay reading material], *Moestika Romans*, 50, February 1934; Kwee, "Memberpaeiki Bahasa Melayoe" [Improving the Malay language], *Moestika Romans*, 53, May 1934; Cited in Siegel, *Fetish, Recognition, Revolution*, 131-2; Siegel, *Fetish, Recognition, Revolution*, 132-3.

beliefs. “To the extent that the transcendence he advocated was dialogically related to the variety of [Indonesian] faiths and practices,” Duara argues that, “Kwee’s Tridharma could not homogenize Chineseness,” although it did prepare the creole Chinese in Java “for a nationalist society by delineating the inner self that could adapt to it.”[45]

Less often noted among Kwee’s multifarious social interventions was his role in propagating new gender and familial roles. The two most prominent Peranakan Chinese journals that devoted independent space and columns to advocating the cause for women’s emancipation – *Panorama* and *Maanblad Istri* – were run by Kwee Tek Hoay and her daughter, Kwee Yat Nio.[46] *Panorama* in particular, was a journal the editors sold as something “that must be read by people who like to think and care about questions of elevated significance (*soeal-soeal jang tinggi*)”.[47] The novel *The Rose of Cikembang* was first composed for the vernacular Malay opera *Bangsawan*, and then serialized on the pages of *Panorama* in 1927. The story’s popularity among the Peranakan Chinese ensured that it would be republished multiple times (1930, 1963, 2013), and made into one of colonial Indonesia’s first “talkie” movies (1931, remade 1972).[48] A closer reading of the form and plot of *The Rose* for Kwee Tek Hoay’s sentimentalist pedagogy can shed light on the cultural logics and limits of Peranakan Chinese patriarchal family norms.

[45] Duara, *The Crisis of Global Modernity: Asian Traditions and a Sustainable Future* (Cambridge: Cambridge UP, 2015), 212-221.
[46] Faye Chan, ibid.
[47] Administrative Panorama, 'Have you already subscribed to the journal "Panorama"?' in *Boenga Roos Darie Tjikembang*, Kwee Tek Hoay (Batavia: Panorama, 2nd edition, 1930), front material.
[48] Fowler, “Introduction,” vii. It was remade into film again in 1976.

Despite its colonial cosmopolitan setting, *The Rose of Cikembang* was crafted as a cultural descendant of the older vernacular literature of the Malay world.[49] Written mainly in the modern novel form, it nonetheless retained semblances of the Malay verse (*syair)* narrative, by its opening with a moral exhortation addressed directly to the reader framed in the form of verse.[50] Possibly in response to the great incidence of scandalous social gossip passing off as fiction, Kwee took pains to avoid lewd depictions of love relations and specifically addressed the nature and function of fiction: "All those characters are but artificial creations, Products of amusement and of play, To help pass time in solitude; Yet though this story is man-made, Think not that it has never transpired; Many have never sinned, Who have endured accidents and sorrow." If even good souls cannot avoid sufferings, one may infer that Kwee was trying to proffer a general lesson on human empathy for universal suffering. But he ends his verse with this admonition, "When you are feeling extremely fearful, Consider the one whose fortunes are ill-destined, Watch your actions, so that you yourself, Do not become the cause of another's suffering."[51] Human error is seldom pre-designed. Suffering, Kwee implied, is more often inflicted by humans out of fear. The pedagogy is nuanced: the moral self has to be taught suffering so as to remain true to the self and other in times of weakness and fear.

The novel opens with the male Chinese protagonist, Oh Ay Cheng, shown to be living happily in a state of withdrawal from the standard triangle of Peranakan Chinese predicaments: love-wealth-family. In contradistinction to most other love stories of the period, whose actors

[49] Kwee claimed that its original inspiration came from hearing the French love song, *Mimi D'amour,* sung by his daughter in English. The lyrics, as translated by Kwee, told of a wealthy widower staring at a portrait of his dead wife, wishing to bring her back to life.
[50] For the role of orality in Malay writing traditions, see Amin Sweeney, *A Full Hearing: Orality and Literacy in the Malay World* (Berkeley: Univ. of California Press, 1987).
[51] See the third edition of the book, Kwee, *Bunga Roos Dari Tjikembang: The Soul Ripens in Ters* [sic.] (Surakarta": Swastika, 1963), 3. This verse has been left out of the English version translated by Fowler.

struggle from within that existential triangle, Kwee shows that a state of bliss is also possible outside the triangle. The withdrawal from urban Peranakan Chinese society is, however, temporary and thrust onto the male protagonist by circumstances rather than choice:

> Even though he was thirty years old, Ay Cheng had not yet married and had no wish to marry. He had known several clever and pretty girls while he was still in school, back when his father had still been a man of considerable property and well known in Sukabumi. He often went to the cinema with these girls and had corresponded with them as well, but the hard times and poverty that struck his family led him to break off all relationships with the companions and acquaintances of those earlier days, including those girls who had been his friends, and to seek a new life in this quiet place. He had not thought of marrying, not only because he felt he could not afford to, but also because he worried that he might end up with a wife who was not suited to living forever after in this quiet mountain region, far from all the livelier pleasures of life. Besides, he loved with all his heart his *nyai,* his concubine, Marsiti….He did not want to take the risk of changing such a satisfying life by marrying a "modern" girl filled with aspirations, desires and demands, which he feared he didn't have the means to meet.[52]

Although fallen, Ay Cheng had moved his own way up the managerial ladder in a Chinese-owned rubber plantation on the hills of Buitenzorg in West Java. Kwee Tek Hoay then gradually draws the male protagonist back into the fold of the Peranakan triangle using the ploy of a familiar creole Chinese marriage strategy: the uxori-local marriage proposal by a son-less wealthy Chinese father to an entrepreneurially proven but modest Chinese employee. Under pressure from his own father and the selfless encouragement of his Sundanese *nyai,* Marsiti, Ay Cheng succumbs to the marriage proposal out of duty to his father rather than love for the modern bride or desire for her inheritance.

[52] Kwee, The Rose, 5-6.

Unlike most other Peranakan love stories of the period, Kwee took the pursuit of wealth out of the equation, so that the tension experienced by the protagonist appears to be a pure struggle between family duty and love. Yet Kwee set up the struggle between the male actor's family duty and love to be a false struggle. Ay Cheng, the protagonist quickly turns out to be an anti-hero, because despite at first experiencing the loss of Marsiti as an almost fatal form of suffering, he was soon nursed back to his spirits by his new bride, Gwat Nio, and had his love transferred to the modern wife. The marriage turns out to be a success insofar as the couple remain in love, and the business Ay Cheng inherited from his father-in-law expands. Before long, Ay Cheng himself was appointed a Chinese officer, and was "dragged into the turbulent vortex of the most powerful Chinese companies, which brought to him greatness and renown but did not give him true contentment."[53]

Although the first generation of uxori-local succession was successful, the consequences of Chinese-native concubinage and Chinese endogamy would form the tragic crisis around which the heart of the plot twists. Ay Cheng's father-in-law (Liok Keng Jim) would reveal later on that he had paid for Marsiti to be escorted far from Ay Cheng for Gwat Nio's sake. In a dramatic turn, Keng Jim would discover too late that Marsiti was his own daughter of a native concubine, Nyai Mina, whom he had wrongly driven away on a misplaced suspicion of sexual infidelity.[54] (See chart below) Not only had Keng Jim wrongly dismissed his *nyai* before, but he now sends off his own Chinese-Mestizo daughter, Marsiti, and indirectly causes her premature death. As the story unfolds, Keng Jim becomes the first generation male ego to reveal the underlying paternal anxieties over familial succession and marital choices for children fraught with risks.

[53] Kwee, *The Rose*, 36.
[54] Ay Cheng himself saw the semblances, but "people didn't notice those similarities since Gwat Nio has white complexion while Marsiti's complexion was the pale golden color of the *langsat* plum." See Kwee, *The Rose*, 32.

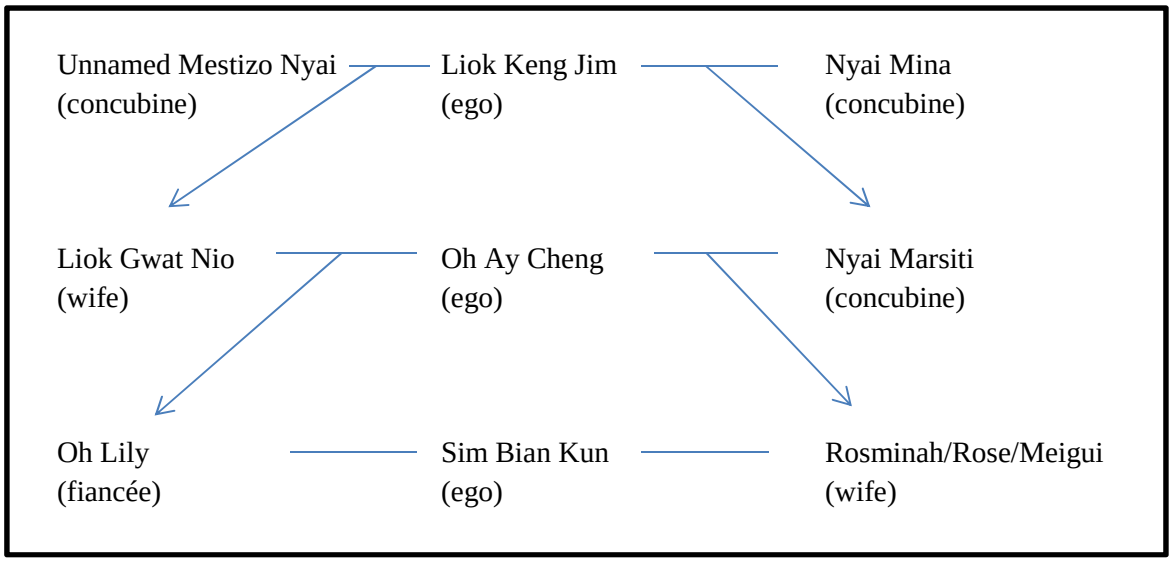

Chart 4.1: Marital/concubine relations with male egos as patrilineal actors in *The Rose of Cikembang.*

From the point of view of male egos, between Ay Cheng and his father-in-law, the classical Chinese patriarchal conundrum resolved itself in the second generation because of the former's conversion to modern love marriage through his modern wife, Gwat Nio's influence. Ay Cheng no longer needs to resort to the arranged marriage. His talented but melancholic daughter is attracted to and falls in love with the American-educated Sim Bian Kun, a son of another rich Chinese man her parents approve of. From the male ego perspective, it is more remarkable that Kwee Tek Hoay did not make patrilineal succession feature as a problem – the uxorilocal marriage had been completely naturalized in his Peranakan Chinese worldview.

The two male egos, Keng Jim and Ay Cheng, do struggle, however, over love for their native concubines and a Chinese notion of monogamy – the familial duty for the recognition of one sexual partner as the main wife. The permissive but discriminatory Peranakan Chinese attitude to the native concubine is condoned by Ay Cheng's father against his will as a familial

duty for the furtherance of the family's fortunes. In response to Ay Cheng's protest that he "can't split [his] love in two," his father retorts:

> That's not a problem. If you still love Marsiti, you don't have to love Gwat Nio. After you marry, you can think of her as a kind of close companion. That's something I know you won't do, because that young lady is ten times the worth of your *nyai*. But let me emphasize again: since it's the woman's side that wants this marriage, all the risks have to be borne by Tuan Liok Keng Jim if you don't love his daughter. What you must not do is refuse the offer that will bring great benefit to our family. As far as Marsiti is concerned, I know very well that she would be very happy if you sent her to the kampong [village], and bought her a house with all the furnishings, rice fields for her sustenance, and a fixed allowance every month.[55]

Ay Cheng's father transfers the risk of the marriage transaction to the bride's father. But the decision to sacrifice love for familial duty was made neither by Ay Cheng nor his father, but by Marsiti. Unable to come to a decision, Ay Cheng's father brings Marsiti into the transaction, whereupon the *njai* urged Ay Cheng to "follow the wishes of his parents, because a child that does not do so is sinful before Allah." Here, the agent and hero swap roles, and the cultural source for Ay Cheng's filial piety becomes blurred. Having intervened between father and son to resolve the Chinese moral predicament, Marsiti could no longer tolerate Ay Cheng's flattery of her "nobility." She "broke away from his embrace and walked to the door."[56]

Marsiti's move inverses the agency of culture in the story. Agency is removed from the Peranakan Chinese ego's triangular superego demands for love, family and wealth, into that of the native concubine's struggle between love, family and God. In this transaction, the risk

[55] Kwee, *The Rose*, 13.
[56] Kwee, *The Rose*, 14.

embedded in the exchange was made to fall entirely on the bride's father, and the groom's concubine. *The Rose of Cikembang* was probably the most popular novel in the Peranakan Chinese canon for this clever albeit "excessively sentimental and melodramatic"[57] sleight of hand: at this juncture, Kwee Tek Hoay designed the clash between these two superegos – egos acting in fear Chinese moral and Islamic godly sins – to occur between a father and his long-lost *nyai*-born daughter. Yet the father's choice to protect one daughter from his son-in-law's concubine turns out to lead his other daughter to a premature death.

The supernatural death of Oh Lily further echoes Kwee Tek Hoay's moral pedagogy for the story – the greatest sufferings are inflicted by unintended human action. In Kwee's telling, Lily dies prematurely by a streak of depressive melancholy, attributed in the novel by a medical doctor to the grief Ay Cheng felt for Marsiti at the time of Lily's conception.[58] Ay Cheng, who has remained monogamous despite siring only one daughter, and his wife are devastated. The story does however have a happy ending. Oh Lily returns, almost in a spectral form as a Rosminah, from Cikembang. In a final melodramatic twist, it turns out that Marsiti was pregnant when she left Ay Cheng. She and her daughter settled in Cikembang, near Sukabumi in West Java, before she passed away.

> Upon Marsiti's instructions, Rosminah was not raised a Muslim. She was well cared for by Tirta [Ay Cheng's old servant] and placed in a village school so that she learned to read and write in Sundanese and Malay. …Marsiti herself gave the child the name "Rosminah". "Ros" or "Rose" had been the child's name because when she was born, the rose bushes in the yard were in full bloom, while "Mina" had been the name of Marsiti's mother, the *nyai* of Keng Jim. The child also had a Chinese name, Mei Gui, which meant none other than "rose." Marsiti got the

[57] Fowler, "Translator's note" in *The Rose*, xxix.
[58] Kwee, *The Rose*, 48.

> name from a Chinese peddler…Tirta on several occasions thought to tell Ay Cheng about her, but…he worried that the child would not be acknowledged. He decided that once Rose was grown up, he would find a nice young Chinese man to be her husband and let him be the one to handle Rose's interests with Ay Cheng.[59]

The comic ending thus betrays Kwee's belief in a particular Peranakan Chinese notion of patriarchal endogamy, although the more interesting question here is not so much the reproduction of the Chinese patriarchy as the spectral agency of the native concubine. Kwee's story ends with Oh Lily's fiancé, Sim Bian Kun, running into whom he thought was Lily, thereby alerting Ay Cheng to the existence of Rosminah, his forsaken daughter by Marsiti. Rosminah willingly recognizes her father and step-mother, and accepts her place as the substitute of Lily in her unfulfilled marriage. The return of Rosminah from the Sundanese community, aided by an intensive tutorial in Chinese, and capped with her replacement of Lily as Bian Kun's wife, signifies the comedic closure for the tragic fate that her mother suffered. Marsiti's spirit was also happily reunited with the family. At the wedding, "her spirit [was] standing there," next to her portrait, "in a brilliant glow, watching over all with a sweet smile that contained boundless compassion and love for her daughter, son-in-law, husband, sister, and everyone who paid homage to her."[60]

Situated within the broader colonial field of reformist discourses surrounding the Chinese family, Kwee's intervention can be read as a counter-cultural critique of both the Dutch colonial legalistic suppression of Chinese polygamy and the Chinese patriarchal oppression of the Chinese wife and the native concubine. The success of Kwee's double entendre lies in his tragicomic emplotment of two successive generations of polygamous and inter-racial marriage

[59] Kwee, *The Rose*, 71-2.
[60] Kwee, *The Rose*, 99.

complications. Stripped to its barest outline, Ay Cheng, the bigamous Chinese male protagonist appears on the surface to be the uxori-local, male lineage-rescuing, and fortune-inheriting son-in-law hero of the Chinese lineage. Yet by the end of the story, we find that the true heroines or anti-heroines turn out to be the shamefully annulled mother-and-daughter pair of native concubines, who had been housekeepers (*njai)* to the Chinese patriarch and his son-in-law, the protagonist. The tragedy in *The Rose* stems from the mishaps that befall two generations of native concubines – a mother and her Chinese-mestizo daughter – as a result of Chinese familial discrimination against them. The necessarily operatic comedic ending both reinstates the agency of the native concubine, at the same time as it exposes the Chinese endogamous limits of Kwee Tek Hoay's familial sentiments.

Conclusion

This chapter has argued that the Peranakan Chinese patriarchal response to changing familial norms in general and colonial family law reform in particular was at once receptive and ambivalent. The first part of the chapter examined the immediate response of Peranakan Chinese newspapers in the period between the publication and enactment of the new Chinese private law code (April 1917 to May 1919). Despite not giving the law too much attention in general, the more progressive, China-oriented and mass-based *Sin Po* group took care to propagate to its readers the new monogamous regulations in the law. The *Perniagaan* merchant elites, who have a greater stake in colonial society, helped to publicize the new law by having the entire law code translated into Malay, and by providing advice to Chinese parents on how to navigate the new legal situation. While they accepted the principle of monogamy, the guidebook advice for

registering minor age brides and grooms suggest that they remained ambivalent about free marriage.

The second part of the chapter argued that broader changes in Chinese patriarchal attitudes to marriage and gender reflected the new familial norms introduced by colonial law. Studies of Peranakan Chinese literature have indicated that the monogamous bourgeois family was an accepted norm among male writers, who dramatized the male ego's dangerous navigation of familial duties, love marriages, and the pursuit of wealth. Informal relationships between Chinese men and their native concubines formed as tough a question for colonial legal reformers (discussed in the previous chapter) as Peranakan Chinese intellectuals. In my close reading of Kwee Tek Hoay's popular novel *The Rose of Cikembang*, I argue that Kwee managed to formulate a popularized pedagogy of correct racial and familial sentiments for his readers on the question of native concubinage in Chinese families. Kwee was no doubt critical of the institution of native concubinage. But his sentimentalist solution was for tragic love with the native concubine to be rewarded by a comic Chinese endogamous ending, on the condition that men and women adopt the new modern norms of monogamy.

Conclusion

This dissertation gave voice to the multiple cultural mediators who argued over the meaning of Chinese-ness at the site of colonial personal law jurisdiction over a century between the 1840s and 1930s. For the Chinese officers representing Chinese religious and customary law to the colonial authorities between the 1840s and 1860s, the Chinese practiced patrilineal inheritance that distinguished between two classes of sons, and granted widows and daughters some form of right. When Sinology trained Dutch translators worked for the colonial government between the 1860s and 1890s, they replaced the officers' oral proclamations with Confucian-classics derived notions of paternal power and patrilineal succession rights. As colonial jurists debated over the direction of Chinese personal law reform between the 1890s and 1919, it was no longer inheritance but marriage law that animated arguments over whether the Chinese were ready for monogamy. After Chinese personal law was modernized in 1919, colonial jurists continued to worry about cross-racial and non-marital sexual unions between Chinese men and native women. In the 1920s and 1930s, the Peranakan Chinese elites by and large accepted monogamy. However, they were more ambivalent over Dutch notions of legal rights, love marriage and the fate of the mestizo Chinese children born of native concubines.

Underlying the Chinese elite and colonial state actors' shifting proclamations of Chinese-ness was the state's utilitarian goal of providing predictable outcomes for disputants and claimants over contested property. The quest for a stable "Chinese" inheritance law in the second half of the nineteenth century turned out to be an elusive goal. Part of the problem lay with the older Company era statutes the colonial state inherited when the post-Napoleonic Dutch state

returned to Java in 1816. One of these statutes subjected all Chinese intestate (without testament) cases to Dutch inheritance law, which gave daughters an equal share as sons. As discussed in Chapter One, probate chambers may have continued to enforce this statute as late as the 1880s, despite earlier Supreme Court rulings depriving Chinese daughters of inheritance rights. A second company era statute expressly ruled Chinese women out from community property marriage in order to protect the wife from the husband's debt liabilities. But the colonial state soon found itself dealing with Chinese women suspected of committing fraud in collusion with their husbands or brothers against third parties to exploit Chinese women's immunity from family-incurred debt.

A deeper structural condition that gave rise to colonial "Chinese" law's instability was simply the colonial state and its "Chinese" intermediaries' refusal to formally recognize the greater autonomy with which creole Chinese women exercised their own property, and creole Chinese widows handled their families'. As I suggested in Chapters One and Two, the Chinese officers, and some colonial judges and probate chambers might have been more pragmatic than the Sinology trained translators in their dealings with Chinese women by granting them what property they could reasonably prove belonged to them. Chapter Two looked at how the Sinology experts introduced idealized notions of Confucianist patriarchal power in the Indies judicial system as part of a wider global circulation of comparative legal ethnographic knowledge. Patriarchal power was a new form of "Chinese" family law derived ethnographically from the study of Qing law and Confucian classics. The purists among these Sinologists held the creole Chinese to the standards of the *Book of Rites*, while pragmatists saw some flexibility in the way Qing mandarins handled women's rights in law. Yet all understood that a purer form of

"Chinese" law would help to civilize the mixed-race Chinese in Java. In the 1890s, the Supreme Court finally brought thirty years' of "Chinese" jurisprudence to its logical conclusion when it denied Chinese women their right to represent themselves in law without any male kin assistance.

The irony is often noted that racial segregation and discrimination became more serious in the late colonial era (1901-42) at a time when serious associative efforts were made to socialize the different racial groups into a common Dutch Indies citizenry.[1] In retrospect, this irony was nowhere more apparent than in the area of private law reform, where the "family law criterion" (Art. 109 *Regeerings-Reglement*) came to define racial difference and in turn stand for the necessity of a racial hierarchy. In Chapter Three, I reconstructed parts of this long-running debate among colonial intellectuals that took place in two phases: 1897-1910, 1918-1925. Contemporaries were not unaware of how and why the associationist and the adat schools were debating past rather with each other. Both sides understood that having a unified civil code would not end racial differences overnight – the "family law criterion" was in that sense more a symbol for what was thought to be irreconcilable differences between the races. The associationist school, led by I. A. Nederburgh and the Utrecht Indologists, wanted to accelerate the integration of the Chinese and native groups by unifying the separate laws wherever possible. The adat school, led by Cornelis van Vollenhoven and his Leiden-trained followers, believed that imposing Dutch civil law on existing native jural communities would be a travesty to the integrity and history of the autochthonous peoples of Indonesia. Both times the debate was won emphatically by the Leiden adat school.[2]

[1] *Verslag van de Commmisse tot bestudeering van staatrechtelijke hervormingen* [Report of the Commission for the study of constitutional reforms] (1941), Deel II, 40-97.
[2] Fasseur, "Cornerstone and Stumbling Block".

Recent studies have rightly pointed to the deep structures of gender, sexuality, and religious based male anxieties to explain the racist motivations behind all the attempts to reform personal law in colonial Indonesia.[3] Chapter Three contributes to this literature by showing how the sharp turns in Chinese personal law reform was part of the broader effort by the associationist reformers to push for a unified civil law for all races. Although the unified civil code was never enacted, another gradualist but separate progression of marriage law reform went ahead: Mixed Marriages Act (1898), Chinese Private Legal Status (1919), Native Christian Marriage Law (1925), Native Marriage Draft Law (1937). In this way, monogamy law percolated down from the Europeans to Eurasians, Chinese, Native Christians, and finally natives. The Native Marriage Draft Law would have made it possible for non-Christian Indonesians who wanted modern, monogamous marriages by their own volition to register their marriage with the state's civil registry. But due to opposition from Islamic groups, the colonial authorities eventually backed down. Like the concern for legally unregulated Eurasian inter-racial sexual unions, Chapter Three showed that colonial jurists were also not immune to anxieties over the problem of native concubinage among Chinese men. By bringing the international and domestic politics of private law reform into the same field of analysis, the chapter also shows how race politics in the colonial era was a domestic issue that became increasingly internationalized as Asian states began to make claims on behalf of their overseas subjects.

Progressive laws do not change popular attitudes overnight. The non-consultative colonial approach to lawmaking did not encourage Java's Chinese subjects to identify with the 1919 Chinese Private Law Status. Besides Pieter Fromberg's advocacy for monogamy among

[3] Ann Stoler, *Carnal Knowledge and Imperial Power;* Stoler, *Race and the Education of Desire;* Locher-Scholten, *Women and the Colonial State*.

the Dutch educated Chinese youth, it is remarkable that such a momentous law was passed without any prior or subsequent public education campaign by the colonial authorities. It gives one the impression that the monogamy law was designed only for the Dutch-educated Chinese. Further research can examine the extent to which marriage registration rates with the Chinese Civil Registry reflected popular response to the modern family law. Chapter Four showed that monogamy was generally embraced by the two major creole Chinese groups. But the wealthier Chinese officer group remained skeptical about consensual marriage, and took extra care to explain how marriages of minor aged youth could still be registered with special permission. The minds of these Dutch missionary educated Malay-speaking intellectuals had no concept of the "civil" (*burger*) or citizen when they translated "civil law". Civil law was simply translated in their Malay legal guide as rights of the "resident" (*pendoedoek*).

The Chinese reticence on the colonial-imposed modern family law contrasted with the growth of a cottage industry of reportage literature, which took love, marriage and the pursuit of wealth as themes for story making. The creole Chinese writers who thrived on experimenting with new familial norms while profiting from the erotic, produced a veritable market-place of socio-familial values for the creole Chinese reading public during the 1920 and 1930s. As recent scholarship has shown, the pedagogical strategy of these writers tested Chinese male egos with the temptations of love marriage, modern girl lovers against older forms marriages arranged out of class reproduction patriarchal concerns. While the writers remained skeptical of love marriage, they nonetheless held up monogamy as a value for the "education for man".[4] My close reading of Kwee Tek Hoay's *The Rose of Cikembang* (1927) suggests that insofar as the foremost

[4] Elizabeth Chandra, "(Im)moral Compass"; and James Siegel, *Fetish, Recognition, Revolution.*

Peranakan intellectual was critical of Chinese patriarchy and native concubinage, he did so within the cultural limits of Chinese endogamy.

The history of the re-sinification of the Peranakans in Java and the Malay world after 1895 has fascinated cultural critics engaged in deconstructing state-produced cultural authenticity. Shelly Chan has recently defended the case for "diaspora" by showing how creolized Chinese reconnected with their forgotten Confucian cultural heritage over time.[5] In a call for decentering state-authorized discourses of Chinese-ness in the 1990s, Allen Chun has likewise "extol[led] the virtues of being Peranakan," as an example of a particular historical Chinese identity that was relatively freely chosen among multiple others in a culturally decolonized and demystified way.[6] Having re- and deconstructed the multiple authors and discourses that went into the formation of creole Chinese identity across the nineteenth and early twentieth centuries, this dissertation raises questions about whether the formation of any modern identity can be free of colonial-capitalist structures of racialized knowledge production.

Moving the debate forward, the dissertation argues the case for socially grounded research into the formation of creole Chinese identities of Southeast Asia and around the world. While the diaspora framework privileges the study of Chinese culture in foreign settings from a comparative Chinese perspective, a creole frame allows the Chinese-ness of the subjects to be studied in more locally grounded social contexts, and to allow the non-Chinese "others" into the same framework of cultural analysis. From the tyrannical distance of the historicized present, it may seem curious for the Peranakan Chinese to have chosen their Chinese cultural identity in

[5] Chan, "The case for Diaspora".
[6] Allen Chun, "Fuck Chineseness," 134.

spite of all their locally assimilated ways. But a closer look into the contemporary everyday life structures of Southeast Asian societies will reveal traces of hybridized “Chinese” practices that blend into and shape social landscapes without having any necessary cultural connection with mainland China. A creole history will go some way to naturalize our understandings of these peoples as part of the region without diminishing the difficult history of their contemporary pasts.

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