

Paul Katz, *Religion and the development of Chinese legal culture*, Routledge, 2009, London and New York, xiii + 224 pp.

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Each page of this book has interesting examples drawn from the practice of Chinese worshippers and officials, foreign courts and Taiwan temples, classical texts and modern political discourse. There is a welter of materials. But the problem is to find the argument which embraces all of the data. His goal, stated in the Preface, is straightforward enough: "My primary goal ... has been to elucidate the ways in which a wide range of religion has contributed to the formation of Chinese legal culture."(vi)

In a long and somewhat rambling introductory chapter, the author sets out his intentions. Although he takes some time to get to the point, it is possible to discern two main arguments, which are to be supported by his later material. The first is that "This book views the pursuit of justice in Chinese culture as a cogent cultural system covering a wide range of options for achieving legitimation and dispute resolution, something that I would tentatively term the 'Chinese judicial continuum'." (p. 7) For Katz, this continuum ranges from rituals to persuade the gods to give a certain judgement to mediation by traditional elites through to going to court, even courts which have their origins far from Chinese culture, for a judgement by officials. A little later, the author offers a different image, no longer a continuum but a parallel: "Chinese men and women of all social classes have consistently viewed the official judicial system as having a parallel in the religious realm, with the two systems being interwoven and interacting." (p. 20) The second argument is that this continuum or these parallels have ancient origins, but continue to be a part of Chinese judicial ideology even in modern times, and in technologically advanced societies. Katz suggests that "From ancient times to the present, the ideology of justice and judicial rituals have played integral roles in the formation and even the perpetuation of Chinese legal culture." (p. 23)

His eight working chapters provide the materials to support these arguments. These are: [1] the development of the judicial underworld in the Chinese tradition; [2] the judicial continuum, where Katz particularly argues for his suggestion that from the rituals to persuade the gods to the trials in modern

courts there is a working continuum in the ideology of justice; [3, 4, 5] three chapters give examples of different forms of judicial rituals: oath-making and chicken beheading, indictments in the nether world, and trials of the insane and dressing as a criminal; [6] judicial rituals (mainly oaths) in the diaspora and Hong Kong; [7] judicial rituals in modern Taiwan; and finally [8] a case study of the Dizang 地藏 abbey in Taiwan, including the underworld petitions and certificates of gratitude filed there. The working chapters show long and patient research into the Chinese religious tradition, and the Chinese understanding of the underworld.

Some of the chapters have been previously published, and differences in approach can be distracting. For example, the first chapter on the judicial underworld is comparative with other cultures, such as Egyptian, Greek, Roman and Hebrew models. But this comparative method does not continue into later chapters. An exception is a short segment on ordeals (p.79)

His work on judicial rituals, mainly oaths, in the Chinese diaspora and in Hong Kong brings up a fundamental cultural difference between Chinese and western legal systems. Both systems faced the practical question: how to get parties and witnesses to give reliable evidence? In western legal systems, oaths linked to the divine were and still are used to sanction the giving of evidence. Moreover, the west was pluralist, and eventually had to respond to the question: could a Jew or other non-Christian give evidence on oath? The answer was eventually affirmative, and so began the search for appropriate forms of oath for non-Christians. This search was not confined to followers of Chinese religion. But the data which Katz has collected draws on those areas where the western legal systems embraced parts of China (for example, in Hong Kong) or where the Chinese took themselves into those jurisdictions (for examples, in Australia or the USA). His data suggests that the Chinese themselves offered rituals such as breaking a plate, or snuffing out a candle, or cutting off the head of a chicken, as appropriate to their culture. These were not invented by westerners.

His work on judicial rituals also suggests that his proposed “continuum” might not be intact. A feature of traditional Chinese court practice is that it relied on torture to get reliable evidence. When, at the end of the Qing dynasty, scholars such as Shen Jiaben 沈家本 and Wu Tingfang 伍廷芳 sought to introduce western legal systems, they also sought to reform the system of torture. Wu

Tingfang (better known in Cantonese as Ng Choy) had been a barrister in Hong Kong, and he argued that the British courts got their evidence without the use of torture, so China could take the same path. But the Qing officials, even the reformers, were reluctant to take this step (p. 80) What was it about the quality of evidence given by Chinese, even under oath, that made the Qing officials reluctant to give up the use of torture? And why have modern Chinese courts chosen not to have a system of oaths to link the giving of evidence with the religious realm? Perhaps the legal continuum was not, and is not, so continuous. Perhaps Katz's alternative suggestion of parallel tracks is more appropriate.

Katz's insight that these rituals are intended to provide legitimation in this life, and perhaps in the underworld, is particularly helpful. Thus rituals by politicians (p. 145) and by parties to a legal, family, or business dispute, make sense as public statements of their position rather than as direct legal processes. Such rituals may appropriately be used in parallel with legal processes, to impress both the gods and the parties to the dispute.

The particular attraction of this book is not the conclusions, but the data, which has been gathered both extensively and intensively. Each chapter provides interest and challenge. I can confidently predict that the book will be well-cited, because future scholars in the field cannot avoid Katz's work. Scholars may agree or disagree with his conclusions, but they will read the chapters with care, and then build on the work he has done.