Introduction

This book describes a transformation of gender and property relations that occurred in China between the tenth and fourteenth centuries, a period of rapid social and economic change and expanding foreign occupation. During much of this time, women's property rights were steadily improving, and laws and practices affecting marriage and property were moving away from Confucian ideals of patrilineality. Then the Mongol invasion of the thirteenth century and the subsequent confrontation between nomadic and sedentary culture precipitated a re-Confucianization of the law and a swing back toward patrilineal principles that deprived women of their property rights and reduced their legal and economic autonomy.

By using gender and property as its focus, this book provides a reevaluation of the Mongol invasion and its influence on Chinese law and society. It also presents a new look at the changing position of women in premodern China and explores the changing meaning of gender with all its contradictions as it was continually reinvented and reinforced. The transmission and control of property was an area of tension between government laws, Confucian ideology, social practice, and ethnic norms. It was a site at which gender constructions, moral standards, and ethnic identity were both defined and challenged, such that new sets of meanings emerged over time. Such themes are the subject of this book.

The Mongol conquest of China, completed in 1276, marked the culmination of a process of foreign encroachment begun by the Khitan Liao in the tenth century and continued by the Jurchen Chin in the eleventh and twelfth. The widespread destruction of life and property in North China, especially during the prolonged Mongol attacks, has been well documented, but it is generally accepted that the conquest of China by its nomadic steppe neighbors did not appreciably affect basic Chinese social institutions such as marriage and inheritance. This book argues that on the contrary the Mongol invasion was instrumental in

bringing about a fundamental change in gender relations that altered the legal and economic position of women for centuries.

In the Sung dynasty (960–1279), previous to the Mongol invasion, property law affecting women was undergoing ferment and change, as described in Chapter 2. At a time of unprecedented commercialization that eroded social stability, property took on new importance, especially for women. More property was transferred to women than at any time previously in Chinese history. Most strikingly, traditional law that was originally meant to keep inheritance along the agnatic male line was reinterpreted to allow considerable assets to pass out of the patriline to daughters. Other laws protected a woman's property within marriage and allowed her to take all of it into a remarriage in case of widowhood or divorce. These developments gave elite women unprecedented economic independence and encouraged the remarriage of widows. Patrilineal principles were further eroded by state policies that deprived agnates of family property and granted considerable benefits to daughters and nonrelatives when no sons survived in a household. In response, newly developing agnatic kin groups devised ways to keep property in the male line at the expense of women.

During these same centuries, influential philosophers sought to revitalize the Confucian tradition and apply its precepts more rigorously to the family and household. Property devolving to women conflicted with Confucian ideology, which tied succession to property to the ritual duties of ancestral sacrifices and an unbroken line of male descendents to carry on these sacrifices. As described in Chapter 3, Confucian reformers challenged women's customary and legal rights to property. At the same time, however, they granted faithful wives and chaste widows considerable financial authority within the household as they rethought issues of gender roles, male–female identity, and the preservation of patrilineal descent. Although Confucian philosophers opposed Sung laws that granted elite women considerable financial autonomy, they did not succeed in changing these laws, nor did their ideas upset customary notions of marriage, property control, personal autonomy, and widow remarriage. This was to change under Mongol rule.

Chapter 4 details how indigenous social change combined with foreign invasion to create a new constellation of property and gender relations that curtailed women's financial and personal autonomy and promoted widow chastity. The Mongol conquest of China during the thirteenth century confronted the Chinese with new forms of marriage and property relations that were radically different from their own. Practices such as the levirate, which allowed a man to marry his father's or brother's widow and prevent her from returning home, challenged

Chinese notions of incest, personal autonomy, and marriage exchanges, and they upset traditional power relations within a household. The lack of a comprehensive legal code during the Yüan and frequent reversals of rulings by both local magistrates and central ministries caused further confusion and disagreement around issues of marriage and property. By the 1270s, issues of marriage, incest, property control, personal autonomy, control of reproduction, and widow chastity had entered a contested sphere of conflicting values, seen in legal challenges and court battles. This atmosphere created the opportunity for a radical rethinking of traditional Chinese values and practices surrounding women, marriage, and property. The result was a transformation of the law and social attitudes at the expense of women's property rights and personal autonomy, which endured for the remainder of the imperial period.

The men and women who are the primary subjects of this study held property in some amount. Often they owned only small amounts of land or occasionally only movable property. They appeared on the government registers as members of taxable households, and while they might not have been well off, they were not people of servile status. This group represented a majority of the population, not just the elite. The women who are discussed in this book were usually (though not always) principal or first wives. Concubines and maids, who themselves could be bought and sold, sometimes appear in the pages below, but they are important to the narrative more for what they represented to free women: the potential fate of any woman without property.

Property and related social standing were major sources of agency for women. The pages below bring to life many strong women who exercised power and authority within the household and beyond. They show women going to court to defend their property rights, sometimes even against members of their family. At the same time, this book is concerned primarily with changes over time in the parameters within which women's agency had to operate. Laws, social structures, and ideology informed and limited the possibilities of action for both men and women. Individual challenges to these structures determined their parameters but also opened fissures and instabilities in them over time. Lawsuits and other sources used in this study demonstrate differing expectations around gender roles on the part of male and female litigants, individual judges, and the state. It is precisely these areas of disagreement that reveal the limits created by laws and social structures, the areas of their instabilities, and the evolution of all of these over time. The study of these themes reveals the changing and contested meaning of gender and ethnicity in middle-period China and

shows how these both informed and were informed by other historical developments.

Historical Context

The Sung dynasty (960–1276) was a time of economic development, social transformation, and cultural brilliance. Its sophisticated arts were famous around the world and delight visitors to museums to this day. Overshadowing the richness of the society, though, was the constant threat of foreign war with powerful neighbors. Periods of uneasy peace were punctuated by border wars, leading finally to the Jurchen invasion of North China completed in 1127, which ended the Northern Sung, and the Mongol invasion of all of China, by 1276, which ended the Southern Sung. (See Map 1.)

Contours of Change at the National Level

Sung society was fundamentally different from that of the T'ang, which preceded it.[1] The T'ang was basically an aristocratic (or to some an oligarchic) society, where high office was dominated by a small number of "great clans." Membership in these clans was determined by birth, making marriage into a powerful family the best way to achieve wealth and high status.[2] Elite status was closely tied to government service, and officials were chosen from a proportionately small pool of elites. This privileged group all but disappeared during the upheavals at the end of the T'ang, eventually being replaced in the Sung by a broader and less stable elite, variously called the literati or gentry (in Chinese, *shih*).

The new elites of the Sung maintained their status through a range of activities including government service, community leadership, learning, and wealth. In the Northern Sung, a relatively small segment of the elite, which Robert Hartwell has called the "professional elite,"

1 The general outlines of this difference and its significance were first described in the early twentieth century by the Japanese scholar Naitō Konan (Torajirō, 1866–1934). For a summary, see Naitō Torajirō, "Gaikakuteki Tō-Sō jidai kan," *Rekishi to chiri* 9:5 (1922): 1–12. For an English overview of Naitō's thesis, see Miyazawa Hisayuki, "An Outline of the Naitō Hypothesis and Its Effects on Japanese Studies of China," *Far Eastern Quarterly* 14:4 (1955): 533–52. For a critical appraisal of Naitō and the context of his work, see Joshua Fogel, *Politics and Sinology: The Case of Naitō Konan* (Cambridge, Mass.: Harvard University Press, 1984).

2 David Johnson, *The Medieval Chinese Oligarchy* (Boulder, Colo.: Westview Press, 1977); David Johnson, "The Last Years of a Great Clan," *Harvard Journal of Asiatic Studies* 37:1 (June 1977): 5–102; Patricia Ebrey, *The Aristocratic Families of Early Imperial China* (Cambridge: Cambridge University Press, 1978).

Map 1. Northern and Southern Sung borders superimposed on the provinces of modern China.

still dominated the highest government offices and used the capital as their power base. But the majority of officialdom was recruited from the much larger *shih* class, and by Southern Sung times, the small professional elite had been subsumed within this. The members of this larger *shih* group concentrated on securing their positions in their home prefectures. They accomplished this through landholding, marriage ties, community relief work, temple and shrine building, bridge and dam repair, other public works, participation in the examination system, and occasional appointment to office.[3] Women played a significant role in these endeavors.

While members of the Sung elite had to employ various strategies to maintain or improve their status, participation in the examinations (by the males of the household), and the possibility of government service that it offered, continued to be preeminent. An important factor in the transformation of the elite from T'ang to Sung was the expanded and revised system of civil service examinations under the Sung, which recruited as many as half of all new officials by anonymous competitive examinations based on literary ability and knowledge of the Confucian classics.[4] Figures for the numbers of candidates sitting for the civil service examinations provide an estimate of the size of the *shih* class. The number of adult males taking the prefectural (lowest level) examinations was as much as 3 to 5 percent of the total male population (in some areas as much as 10 percent) and was increasing over the course of the dynasty.[5] This represents a portion of the population considerably larger than the elite class of Europe during the same centuries. It reflects the expansion of literate culture and economic opportunity in the Sung

3 Robert Hartwell, "Demographic, Political, and Social Transformations of China," *Harvard Journal of Asiatic Studies* 42 (1982): 383–94; Robert P. Hymes, *Statesmen and Gentlemen: The Elite of Fu-chou, Chiang-hsi, in Northern and Southern Sung* (Cambridge: Cambridge University Press, 1986). Conclusions about changes in marriage strategies and residence patterns are also shown by Ihara Hiroshi; see esp. "Sōdai kanryō no kon'in no imi ni tsuite," *Rekishi to chiri* 254 (1976): 12–19; and "Nan-Sō Shisen ni okeru teikyo shijin: Seidofu ro, Shishū ro o chūshin to shite," *Tōhōgaku* 54 (1977). For more on elite strategies and the importance of kinship (both agnatic and affinal), see Beverly Bossler, *Powerful Relations: Kinship, Status, and the State in Sung China (960–1279)* (Cambridge, Mass.: Harvard University Press, 1998). For the localist orientation in religion, see Ellen Neskar, "The Cult of Worthies: A Study of Shrines Honoring Local Confucian Worthies in the Sung Dynasty (960–1279)" (Ph.D. dissertation, Columbia University, 1993).

4 John Chaffee, *Thorny Gates of Learning in Sung China: A Social History of Examinations* (Cambridge: Cambridge University Press, 1985); Thomas H. C. Lee, *Government, Education, and Examinations in Sung China* (Hong Kong: Chinese University Press, 1985); E. A. Kracke, *Civil Service in Early Sung China: 960–1067* (Cambridge, Mass.: Harvard University Press, 1953).

5 Chaffee, *Thorny Gates*, 36–8, esp. Fig. 3, and 219 n. 75; and John Chaffee, "Education and Examinations in Sung Society" (Ph.D. dissertation, University of Chicago, 1979), 57–9. These numbers vary considerably by geographic region.

compared to the less commercialized, more aristocratic society of the preceding T'ang dynasty.[6]

The belief by some scholars that the examinations fostered social mobility, regularly bringing "new blood" into the bureaucracy,[7] has been tempered by the realization that the examinations drew almost exclusively from among those who already had elite status in their communities, and who usually had other examination candidates or officeholders in their extended families.[8] Moreover, over the course of the Sung, examinations became less important as a means of recruitment, providing 57 percent of officials in 1046 and only 27 percent in 1213.[9] The rest of officialdom gained office through a combination of hereditary appointment (*yin*, literally "shadow" privilege), government schools, and special, less competitive examinations given to selected groups.[10] The most important of these, hereditary appointment, was based on family connections, which could be through affinal relatives. Thus connections through women, cemented by marriage ties and the exchange of dowry, were an important part of elite male strategies.

Ironically, even as the standard examinations became less important as a means of government recruitment, more and more literati flocked to take them. Competition for even the lowest degree increased

6 The "aristocrats" of the T'ang represented a very narrow segment of the population, much like the knights and feudal elite of medieval Europe. See Johnson, *Medieval Chinese Oligarchy*. The elite of the Sung are much more comparable to the "gentry" of Tudor and Stuart England, who comprised a comparable portion (4–5%) of the population. For England, see e.g., Peter Laslett, *World We Have Lost* (London: Methuen and Co., 1979), 27–8. The connection between learning and the elite, found in China, is made for the later period in Europe by Lawrence Stone, "The Education Revolution in England, 1560–1640," *Past and Present* 28 (July 1964): 41–80.

7 E. A. Kracke, "Family versus Merit in Chinese Civil Service Examinations under the Empire," *Harvard Journal of Asiatic Studies* 10 (1947): 105–23; Sudō Yoshiyuki, *Sōdai kanryōsei to daitochi shoyū* (Tokyo: Nihon hyōronsha, 1950), 33–76; Ping-ti Ho, *The Ladder of Success in Imperial China: Aspects of Social Mobility, 1368–1911* (New York: Columbia University Press, 1962).

8 Hymes, *Statesmen*, esp. chs. 1 and 2. There were various limits on who could sit for the examinations, and each candidate had to be recommended by local officials; Chaffee, *Thorny Gates*, 53–61. There is disagreement over the extent to which local elites could exclude candidates from the prefectural examination halls and thus limit competition and social mobility; see Chaffee, *Thorny Gates*, 60 and 223 n. 97; and Hymes, *Statesmen*, 42–6. The qualification of some candidates to sit the examinations was at times contested in court; see for example *Ming-kung shu-p'an ch'ing-ming chi* (Beijing: Chung-hua shu-chü, 1987), 97–8 [hereafter cited as CMC].

9 Chaffee, *Thorny Gates*, 26–7.

10 For the relative importance of different recruitment methods at different times, see Chaffee, *Thorny Gates*, esp. ch. 2; and Umehara Kaoru, *Sōdai kanryō seido kenkyū* (Kyoto: Dohosha, 1985). Officeholding through the *yin* privilege shows that hereditary advantage did not completely disappear in the Sung.

dramatically over the Sung, rising to a pass ratio of about 1 in 100 or more.[11] As the population increased dramatically in the Sung, fewer men per capita could become officials. This meant that the vast majority of elites could no longer depend on the state for their status, in the form of actual government service or an examination degree that provided a sinecure and the promise of eventual appointment. Nevertheless, participation in the examinations in itself became ever more important as a marker of elite status. It confirmed a certain level of wealth, education, and local connection, and it validated the privileges that these had already conferred. As success on the examinations grew more remote, a schism developed between government service and the education that prepared one for it. Education in the Confucian classics by itself became a trapping of status. In this context, a fellowship of Confucian reformers, led in the Southern Sung by Chu Hsi (1130–1200), promoted learning as an end in itself. Having seen factionalized politics at court and the failure of central government action to improve local conditions, they stressed the value of direct knowledge of the classics for personal cultivation and community rejuvenation, separate from government service. In essence, they promoted as a virtue what had become a necessity for most elites: the pursuit of study without regard to obtaining office thereby. They stressed the broad, even cosmic, relevance of education, toward a goal of comprehensive social reform.[12]

The economic changes taking place in the Sung, with which the elite had to contend, have been appropriately described as an "economic revolution."[13] Technological advances in agriculture and transportation transformed daily life and produced a society that dazzled the few Europeans who observed it just after the Sung.[14] New strains of early ripening Champa rice were introduced from Southeast Asia early in the Sung dynasty, and innovations in fertilizers, irrigation, seed strains, and

11 Chaffee, *Thorny Gates*, 35–7. The ratios differed greatly by prefecture, as government quotas lagged behind population growth. In some areas, especially in the Southeast and Fukien, only one in several hundred candidates was granted a degree.

12 For discussions of these developments, see Peter Bol, "The Sung Examination System and the *Shih*," *Asia Major*, 3rd series, 3:2 (1990): 149–71; Peter Bol, "Chu Hsi's Redefinition of Literati Learning," and Wm. Theodore de Bary, "Chu Hsi's Aims as an Educator," both in *Neo-Confucian Education: The Formative Stage*, ed. Wm. Theodore de Bary and John Chaffee (Berkeley: University of California Press, 1989).

13 Mark Elvin, *The Pattern of the Chinese Past* (Stanford, Calif.: Stanford University Press, 1973).

14 See for instance the account of Marco Polo (though he may have been reporting second hand information); Ronald Latham trans., *The Travels of Marco Polo* (New York: Penguin Books, 1980), esp. chs. 4 and 5.

cropping contributed further to huge increases in agricultural output.[15] These increases made it possible to support a vastly larger population. The population of China doubled between the eighth and eleventh centuries, with nearly all of the increase in the rice-growing south.[16] The T'ang dynasty had already sought to tap the agricultural wealth of the rice-growing areas with its system of canals, bringing tax grain from the lower Yangtze up to the capital at Ch'ang-an.[17] The placing of the Sung capital far to the east at Kaifeng, nearer by canal to the lower Yangtze region, reflects the growing economic importance of the Southeast in the economy of that time.

Commercial expansion of the Sung went far beyond anything seen in the T'ang. The T'ang system of price controls and strictly regulated markets broke down as commerce burst the confines of government regulation.[18] Even far-flung rural areas were drawn into market networks, stimulating commercial agriculture and sideline production, though this development was highly uneven even in the economically advanced Lower Yangtze.[19] Commercial taxes and income from state monopolies became a major source of income for the Sung government as land tax revenues stagnated. Merchants delivered an extraordinary range of products to urban centers.[20] Trade

15 Ping-ti Ho, "Early Ripening Rice in Chinese History," *Economic History Review*, 2nd series, 9:2 (1956): 200–18. Elvin, *Pattern*, 121–4. Advances in agriculture were by no means universal, and regional variation in cropping and technology was striking. See Sudō Yoshiyuki, *Sōdai keizaishi kenkyū* (Tokyo: Tōkyō daigaku shuppankai, 1962), 73–206; and Shiba Yoshinobu, *Sōdai Kōnan keizaishi no kenkyū* (Tokyo: Tōkyō daigaku Tōyōbunka kenkyūjo, 1988), esp. 137–65, 365–449.

16 Ping-ti Ho, "An Estimate of the Total Population of Sung and Chin China," *Etudes Song*, 1st series, no. 1 (The Hague: Mouton, 1970), 33–53; Hans Bielenstein, "Chinese Historical Demography: A.D. 2–1982," *Bulletin of the Museum of Far Eastern Antiquities*, no. 59 (1987): 1–288; Hartwell, "Demographic, Political, and Social Transformations of China," 383–94.

17 Denis Twitchett, *Financial Administration under the T'ang Dynasty* (Cambridge: Cambridge University Press, 1963).

18 Kato Shigeshi, "On the Hang or the Associations of Merchants in China," *Memoirs of the Research Dept. of the Tōyō Bunko*, no. 9 (1936); Denis Twitchett, "Merchant, Trade, and Government in Late T'ang," *Asia Major*, new series, 14:1 (1968): 63–93.

19 Shiba Yoshinobu, *Commerce and Society in Sung China*, trans. and ed. Mark Elvin (Ann Arbor: Center for Chinese Studies, University of Michigan, 1970); Shiba Yoshinobu, "Urbanization and the Development of Markets in the Lower Yangtze Valley," in *Crisis and Prosperity in Sung China*, ed. John Haeger (Tucson: University of Arizona, 1975); and Shiba, *Sōdai Kōnan keizaishi*.

20 Jacques Gernet, *Daily Life in China on the Eve of the Mongol Invasion*, trans. H. M. Wright (Stanford, Calif.: Stanford University Press, 1962), esp. 44–51; Shiba, *Commerce and Society in Sung China*; Shiba Yoshinobu, *Sōdai shōgyōshi kenkyū* (Tokyo: Kazama shobō, 1968); Colin Jeffcott, "Government and the Distribution System in Sung Cities," *Papers on Far Eastern History* 1 (March 1970): 119–52.

was facilitated by the use of money: gold, silver, and especially copper coins, and by private and, from the twelfth century, government issue of paper currency – the first in the world.[21] Strings of "1,000" copper cash (actual numbers varied to as low as 770) became the standard medium of exchange, as quotes from Sung sources show. Transportation networks and the diversification of production allowed the unprecedented growth of towns and cities in the Sung. Urban centers like Hangchow may have had populations exceeding 1 million, representing urbanization rates that were not surpassed until the twentieth century. These towns and cities in turn became centers of industrial production.[22]

Towns and cities were also centers of learning. The invention of printing in the seventh century and its rapid spread in the Sung gave many more people the opportunity to become educated.[23] When education became more widely available, more people over a wider area of the empire could aspire to Confucian training that might lead to success in the state examinations and an official career. This also helped increase the size of the elite, and gave its members the character of literati. The printing and book-making industry flourished, expanding beyond government printing of the Confucian classics. Especially in the last half of the dynasty, commercial publishers produced many types of books on a wide range of topics such as agriculture, medicine, family advice, legal precedents, miscellaneous notes, and local history. Research on the Sung today is facilitated by these many volumes that were printed.

Another major change from the T'ang was the irreversible development of a free market in land. Already in the late T'ang, government attempts to control land tenure, with periodic redistributions under the "Equal Field System," had broken down. The Sung government made a few localized attempts to limit large landholdings but in general placed

21 Lien-sheng Yang, *Money and Credit in China: A Short History* (Cambridge, Mass.: Harvard University Press, 1952); Robert Hartwell, "The Evolution of the Early Northern Sung Monetary System," *Journal of the American Oriental Society* 87 (1967): 280–9; Richard von Glahn, *Fountain of Fortune: Money and Monetary Policy in China, 1000–1700* (Berkeley: University of California Press, 1996).

22 G. William Skinner, "Introduction: Urban Development in Imperial China," in *The City in Late Imperial China*, ed. G. Wm. Skinner (Stanford University Press, 1977), 9–31; Robert Hartwell, "Markets, Technology, and the Structure of Enterprise in the Development of the Eleventh-Century Chinese Iron and Steel Industry," *Journal of Economic History* 26:9 (1966): 29–58; Robert Hartwell, "A Revolution in the Chinese Iron and Coal Industries," *Journal of Asian Studies* 21 (1962): 153–62.

23 Thomas Carter, *The Invention of Printing in China and Its Spread Westward* (New York: Columbia University Press, 1925); Denis Twitchett, *Printing and Publishing in Medieval China* (New York: Frederic Beil, 1983).