

## **Gap between Law and Practices in Qing-Taiwan: Local Diversity of Posthumous Adoption**

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### **ABSTRACT**

Existing research has revealed discrepancies between the legal code and verdicts of local magistrates in Qing Taiwan. By cross-examining the Qing Code, the Tan-Hsin Archives and private documents, with focus on posthumous adoption, this article analyzes the diversity of worship traditions, as well as the roles taken up by the Code and relevant orthodox norms in lawsuits and people's daily lives. In view of the close relationship of posthumous adoption with continuation of the patrilineal family line, familial property division, and widows' protection, the Code provided more detailed provisions on the eligibility of heirs, who could posthumously attain an heir and who had the right to name heirs. For example, the Code stipulated that only a male of the same clan could be an heir. Furthermore, on the eligibility of being worshiped, factors such as attaining adulthood, having a chaste widow, or being the only son, shall be considered. The Code also granted widows a certain degree of power in the choice of heir.

However, private documents showed that appointed heirs with different surnames were in fact quite common. The language of relevant documents, and the fact that most of those who had posthumous adoption were unmarried and had male siblings, revealed that posthumous adoption not only served the purpose of lineage continuation, it was also a way to arrange for the "posthumous-care" of deceased relatives. It was not uncommon for a widow to bring in a matrilocal husband and bear a son to continue her deceased family line. So was the arrangement of multiple heirs from nuclear families of the deceased's brothers. Finally, the fact that convents in local societies provided funding for adoptive heirs for those who died in battles against bandits, demonstrated that posthumous adoption was not confined to family affairs, but also involved the duty and entitlement of a member of self-defense groups in frontier societies.

With regards to the decision making of heir appointment, while existing studies focus on the rights granted to widows by the Code, detailed analysis of private documents and

the Tan-Hsin Archives showed a scarce presence of widows. The brothers and parents of the deceased played the primary roles. It is worth-mentioning that a childless widow could gain more control over the family property by adopting an heir outside of her deceased husband's clan or, as mentioned earlier, by giving birth to a son to be the deceased husband's heir. In addition, the female elders in the deceased's family had considerable influence on posthumous adoption.

The Tan-Hsin Archives shows that the official stance did not entirely forbid the unorthodox practice of posthumous adoption. In fact, magistrates selectively adopted three different approaches: (1) condemn and reject, (2) tolerate and turn a blind eye to, and (3) proactively propose unorthodox practices as a solution for both parties. Accordingly, the Code might be cited as a legitimate resource for adjudication or completely ignored, depending on the case and situation. This article attempts to go beyond monotonous and orthodox understanding of posthumous adoption and to reveal the diverse nature of worship and family traditions in Qing-ruled Taiwan. It is hoped that the new understanding of traditions will help us reconsider how to reform the legal system in local contexts.

**Keywords:** Posthumous Adoption, Ancestor Worship, Qing Taiwan, Qing Code, Tan-Hsin Archives, Private Documents, Diversity, Traditions, (un-)Orthodox, Gap, Role of Law