As a last point, let me make it clear that what I have described as the official religion did not constitute the religion of all those who were, or who aspired to be, officials. In his home county before he became an official, in his nonofficial capacity while he was an official, and when he retired, a scholar-official might well sponsor nonofficial temples and take part in nonofficial rites. At the very pinnacle of the hierarchy, the Ch'ing emperors had their nonofficial religion in the inner palace. The official religion with the office of emperor at its head was an institution of government; and, like the examinations, possession of it and the content of it could be disputed and changed. On either side of the official religion, so to speak, were on the one hand the shu-yuan and on the other the secret societies. Outside the city were the places of Buddhist and Taoist retreat. All of them were places where the institutions of government and the official religion could be disputed. The walled cities of administration stood for official power. The power of nonofficial religious institutions and the governed lay beyond the walls in the countryside and in unwalled central places.

Urban Social Control

SYBILLE VAN DER SPRENKEL

In most societies the law and legal institutions have been concerned with the resolution of conflicts and disputes: "The pervasive problems of conflict and conflict resolution are central in legal studies," to quote a recent writer. Can the same be said of China? And were there differences between urban and rural communities in this respect? And again, although modern sociologists tend to think of the various norms and mechanisms that arise out of social interaction rather than of a generalized entity, social control, may this concept still have usefulness when one is thinking of a premodern society? Perhaps these questions may serve as a starting point for our inquiry.

It must be stressed at the outset that in traditional China "urban" was not a category to be sharply distinguished from "rural." Consequently, we are dealing here with a sector that is part of the general spectrum of social behavior, not a sharply differentiated and localized category. The idea that the degree of urbanization varies along a continuum is applicable also in this field: no Chinese communities ever established themselves as municipalities possessing defined powers of independent jurisdiction. Town and country were alike governed by a blend of two different kinds of organization: the first, the territorial network of the centralized imperial authority reaching from the top downward to the family or household at the base, the seat of whose administration was merely located within one city in the hsien; and the second, the customary unofficial organization of overlapping groups and associations, which arose not by design or by explicitly established right but spontaneously wherever and whenever groups of people associated regularly and shared neighborhood, activities, cult practices, common interests, or general interdependence. It will be the purpose of this
paper to describe how these different systems of official and customary jurisdiction operated; how their spheres were delimited in practice, or at what points they merged or overlapped; and what relevance the hierarchy of local systems may have had for them. There are grounds for thinking of the urban central place generally as the locus of dispute settlement, both formal and informal, for the area around it; and whether the disputes had arisen in the town itself or in the surrounding countryside, the town teahouse, frequented regularly by influential leisurely persons and on market days by others, is often referred to as the venue for village mediation. To ensure, therefore, that what are being considered are predominantly urban phenomena, the major emphasis in this paper will be on matters related to commerce and industry (at least at the artisan level), since these activities may be assumed to have been relatively more significant in towns and cities.

The choice of a starting point for our exposition is to some extent arbitrary—official and unofficial organization each being influenced, though in different ways, by the other. Official organization undoubtedly owed something to forms and beliefs that had their roots in custom; the form “spontaneous” organization took was just as certainly affected by, and in some ways a response to, the actual character of the official administration.

Let us deal first, then, with the control and jurisdiction that were exercised by statute law and the courts of the imperial administration. The intention behind these (if we may ignore for present purposes the question of whose intention and for whose advantage) may be said to have been to reinforce Confucian morality—to govern in such a way that people would choose to obey their moral nature, and to provide additional sanctions for those people, whether populace or officials, who would not be obedient without them. *

Although each successive dynasty enacted its own administrative and penal statutes and amended them at intervals, the models were ancient and both form and content reflected the thinking of earlier times. The headings of Ming and Ch’ing penal codes were virtually unchanged

* Law was, of course, only the extreme pole of the attempt to impose orthodoxy. No opportunity was lost of propagating orthodoxy both directly through education and indirectly through other inducements—such as rewards of honor for filial sons and chaste widows. Moreover, the entrance examinations for the bureaucracy were structured to direct the attention of each generation to Confucian ethical texts. This of course went on in towns (see the paper by Tilemann Grimm elsewhere in this volume), and we know that the sons of successful merchants were drawn into the system. It may be doubted, however, whether Confucian ideals really made much appeal to the commercial community as such; in this connection a content analysis of urban literature and drama might be revealing.

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from those of Tang, and their arrangement reflected the structure of the imperial administration. The purpose of laws (as proclaimed in the Sacred Edict, for example) was twofold: to prohibit people from doing evil and to encourage them to do good. Since rulers were responsible, according to Confucian political philosophy, for creating conditions in which their subjects could behave properly, the pursuit of this objective led incidentally to the attempt on the part of government to regulate much of people’s lives. * Thus the penal code not only covered matters commonly regarded as crimes everywhere (e.g., killing and stealing), matters of significance from the point of view of Confucian values (e.g., ritual, and family and sumptuary laws—including the style of life permitted to persons of different ranks), and offences against state power and orthodoxy (e.g., heresy and rebellion); but it also included provisions that reinforced Confucian economic thinking—punishments for a range of actions in the economic sphere that were held to be contrary to the public interest.

The early Confucian thinkers on whose ideas the provisions were based believed that the amount of wealth a community possessed was determined by the amount of primary production; beyond that, a larger share of wealth could only be enjoyed by some at the expense of others. So they held that essential occupations (pen-yeh) should be encouraged and inessential ones suppressed (chung-pen i-mo). In the orthodox view, therefore, trade, commerce, and financial operations for private gain were accorded little prestige and were controlled by the government in the interest of its subjects. From Han times on, Chinese governments operated a system of economic controls, issuing licenses for the production of certain commodities, such as salt and iron, and requiring that important business transactions be conducted through a government-recognized agent. †

Through the centuries both the volume and the real significance of
trade grew. Specialized products became associated with particular localities, and interregional trade developed on a considerable scale. Life in towns and cities pulsed with the rhythm of commerce, which was recognized as an important source of official revenue. In practice, the social and legal position of merchants consequently improved: in the Ch'ing period, for example, the taxation to which they were subject was relatively light; and the salt merchants in particular actually enjoyed certain privileges, for example the provision that their sons could enter the official examinations in the center where their family was "sojourning." But these were relatively minor modifications, and the basic ideas remained too fundamental to the structure of government to permit the adaptation of official procedures so that they could actually be of use to those engaged in commerce; this would have required a complete and explicit reversal in official thinking. The substance of the laws continued to support the notion of trade as nonproductive.

The "Hu pu" section of the penal code (that is, the section on the revenue department, which was concerned with family and marriage law, registration of population, and registration and taxation of land) included statutes designed to deal with commercial and financial affairs: penalties were provided for evasion of duties; for usury (including a rather weak section treating nonpayment of a debt as a failure to return borrowed property); for neglect or misuse of property entrusted for safe custody; for offenses against the official licensing system; and, in particular, for attempts to monopolize the market in a commodity. The system thus provided that cases concerning economic affairs would come into court as offenses against government economic regulations; that is, that the courts should form part of the apparatus of government economic control. The courts, associated primarily with the punishment of offenses, never developed the techniques introduced in other societies to handle the adjudication of interpersonal or interhouse disputes arising from conflicts of interest or from claims for loss or damage. Persons with a grievance could denounce others, but the yamen court offered neither adequate recourse for the hearing and adjustment of claims nor machinery for assessing compensation or awarding other remedies. In short, the magistrate's court was not the venue for the adjustment of commercial disputes. Furthermore, it is evident that the government resorted to court action only to a very limited extent in forcing its economic policies on those engaged in industry and commerce. We must be on our guard, as Chü T'ung-tsu cautions, against exaggerating the extent to which the yamen courts were bypassed. However, in the best known of the Ch'ing collections of cases (which one presumes must have been to some extent representative, since they were intended as models for the guidance of magistrates), there are very few references to merchants at all, and the fact of the persons mentioned being connected with trade appears (with the exception of the salt merchants) as a largely incidental circumstance.

Imperial law on these topics never having developed beyond the concern to enforce ethical norms and safeguard the public interest, people were left to pursue their activities locally with a minimum of interference—so long as they did not flagrantly contravene the statutes—without benefit of court adjudication. In other words, much was left to unofficial social organization.

This organizing of activities locally went on mainly in the particularistic groups and ad hoc associations for which Chinese everywhere have shown such outstanding talent. (One sees that the need for them originated in imperial China, and that Chinese abroad have simply been drawing on the experience of a long tradition.) The structure, membership, and leadership of these associations were quite formal, and they

* In another part of the code, in the section on driving another to commit suicide (under the general heading of homicide), owing money is given as one in a list of reasons why this might occur. The penalty was raised to strangulation if it was the local magistrate who was driven to commit suicide for this reason.

1 A certain procedural distinction was made between matters dealt with under the "Hu pu" (family and commerce) section and those under "Hsing pu" (crimes). Cases were forwarded to different offices of the provincial government (which had competence to conclude all but capital cases).

* According to Bodde and Morris 1967, p. 205, the Hsing-an hui-lan and its two supplements together contain only two cases under "Stabilization of Commodity Prices by Market Supervision," though there are 53 cases under the section on salt laws. The cases translated in Bodde and Morris 1967 are admittedly a selection from what is already a selection. However, consultation of the full Chinese text of some relevant sections of HAHIL reveals that the omissions made in the text above. Examination of the section on usury (HAHIL, ch. 10, "Wei chin chi li", 395-408) is revealing; of the cases included, none relate to what might be described as normal commerce. They involve such matters as nonpayment of debts being made the excuse for rape or kidnapping; selling of a debtor's ox as self-help for nonpayment of rent (assimilated to the prohibition on seizure of cattle for this purpose); loans to expectant magistrates followed by the lender's accompanying the magistrate to his post (in itself an improper act); and, in one case, threats leading to the suicide of the magistrate. Of these cases selected in Bodde and Morris (out of nine in HAHIL) from the section treating restraint of market operations, two turn out to be about transport workers demanding higher wages (on grounds of higher "productivity" and higher cost of living, respectively); the third, a case of purchase of grain from a government granary on false pretenses, was brought under the section on "restraint of market operations in order to acquire monopolistic profits," by analogy, as there was no statute exactly covering this offense. See Bodde and Morris 1967, pp. 286-71.
had their own rules and sanctions that were well known to their members. (The unorganized or unenforced, it will be seen later, were at a certain practical disadvantage, so the implicit sanctions of expulsion or loss of reputation were always in reserve if no particular sanctions were specified.)

The extent to which the imperial administration exercised real control locally depended on how much power it could command. It is commonly asserted that its power was felt more in towns than in the countryside and of course in the capitals and garrison cities more than in other towns. In the countryside, where land was the chief means of production, the landowning function of the kinship group gave it significant power to control members' lives. In towns and cities, the lineage was less significant in this respect. Though business at both the merchant and the artisan level was organized on family lines (and of course within the family discipline was exercised by senior family members over their juniors, as was general in China), kinship organization was not the machinery by which business was regulated.8

A large part of what went on in towns and cities had to do either with temples or with trading, and other contributors to this volume describe urban neighborhood religious associations and the guilds in which craftsmen and merchants were organized. Apart from family occasions, i.e., weddings, funerals, and private ancestor worship (and guilds also served as proxy family in the case of funerals and burials of deceased sojourners), temples and guilds probably covered the activities that were most significant in the lives of urban residents: neighborhood temples were associated with street markets, festivals, and processions; guilds with the practice of crafts and trade; and both with such recreations as theatricals, jugglers, and feasts.

A good many towns, perhaps most, possessed religious foundations—Confucian temples, lama temples, Buddhist monasteries, mosques, and so on—more important than those based on purely local cults, and the rituals associated with them punctuated the year and enhanced the lives of the area residents. Temples located in towns were sometimes also connected with secret societies, which, by their nature, tended to overlap with heterodox sects. Leong and Tao mention temples built by ephemeral societies through public subscription led by someone well-to-do: "When the work is completed, nothing but the temple with the monks remains. Yet the utility of these temples, which are found everywhere in China, is manifold, as the site of festivals, the warehouse of goods, the classroom of private tutors, the meeting-place of poor artisans, the dining-room of feasting parties, etc." These indications of

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overlap of clientele and ambiguity of function—at times religious, political, economic, and social, perhaps changing cyclically—warn against making too sharp a distinction between temples and other types of organization.

Neighborhood religious associations formed the focus of a sort of local self-government. The pervasive beliefs in spirits associated with places, and the consequent needs that premodern Chinese, urban as well as rural, seem to have felt, gave rise to practices which, as they were shared by people in the neighborhood, had somehow to be organized and financed; and presumably the association took on other functions by accretion, like the parish in Western cities. Elsewhere in this volume, Professor Schipper discusses the entrance subscriptions paid by members of the neighborhood association (a virtually compulsory levy) that were then invested in property to provide a continuing income for the support of the cult, and of a rotating leadership to manage association affairs and allocate duties. Shared supernatural beliefs would no doubt serve to reinforce the authority of leaders if there were disputes about obligations or disagreement about the conduct of association business. And if other interpersonal disputes arose in which adherents were involved, the same leaders would be available to arbitrate. This seems to be a recognizable Chinese pattern.

The organization of townspeople's workaday lives was in the hands of guilds. The purposes for which these existed, their manner of organization, and the means by which they maintained control over their members are fully dealt with in another paper in this volume. Suffice it here to recapitulate. They varied in their structure—some were relatively democratic and others hierarchical—but they were alike in adopting rules or standards appropriate to the particular business of their members and in providing effective machinery for intragroup adjudication and sanctioning. They were both inclusive and exclusive. Membership offered benefits without which the individual trader could not hope to survive (protection against official demands that went beyond what was usually exacted, against unfair or improper practices on the part of fellow members or competitors, and against the hostility experienced by sojourners at the hands of the host community), but these were bought at a cost. The cost was obedience to the guild's own authority, which rested on its indispensability to members. Guilds also offered their members certain other attractions such as conviviality, assistance in time of need, and the opportunity to participate in the most immediate political processes and to share in the exercise of some authority. They were of course particularistic and sectional in their interests and not directly
concerned with the welfare of the general public, though insofar as they kept up the quality of goods and the standards of work and helped to maintain order they could be said to have served the public interest also. Their existence was recognized by the authorities, with whom guilds were in regular communication—merchant guilds through their secretaries, craft guilds through their leaders—and magistrates were frequently called on to approve guild rules, in the hope perhaps of avoiding charges under the statute on monopolies or under other government regulations. The context in which they operated, we must remember, included not only the imperial administration (concerned as described above with controlling the economy) but also the prevailing intellectual climate in which the economic philosophy of the limited good was generally accepted, and the actual existence in the Chinese countryside of a permanent reservoir of surplus labor, among whom many would have been ready to leave the hardships and insecurity of the rural scene for work in the towns unless some deterrent had been placed in their way. The premise on which guilds were based (or perhaps one should say on which most of them were based) was the belief in trade as a stagnant pool. Each group watched jealously to preserve its position and to maintain the status quo between its members through such methods as putting barriers in the way of alienating another member's customers and restricting the numbers who might be taken on for training. For porters within a city, for example, additional rules delimited areas within which members might operate. The regulations of various guilds dealt directly or indirectly with the subject of debt—stipulating how and when accounts were to be settled, or setting out measures to prevent anyone who did not pay up from continuing in the trade. Guilds were concerned to avoid friction between members because group solidarity was indispensable to the pursuit of their primary objectives; and, no doubt for this reason and also in order to preserve both their strength and their “public image,” the rules of some guilds ordered members not to take disputes to the yamen without first bringing them before the guild for a hearing. Some guilds, if they were convinced of the justice of a member’s cause, would then undertake to prosecute on his behalf. The disciplining of members and the arbitration of disputes may be regarded as secondary or derived functions of the guild, as in another context they may be of the lineage.

* Analogously, beggars had their own association rules, as did the blind. These associations would not have owned their own hall but would have met in a temple.

† Note that although there are recorded instances of yamen courts referring commercial cases back to guild courts for settlement (and endorsing their decisions),

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Differences were adjusted, erring members were disciplined, and decisions were given in accordance with norms that were either formally adopted or customary, the latter being a sort of customary law of the trade, akin to customary land tenures. It is perhaps worth observing that careful “legislation,” that is, specification of norms, by guilds (and other bodies) could obviate or reduce the scale of disputes, and no doubt this was a motive for their reformulation. If the rules specified clearly, for example, the period for which the seller was responsible for the safe custody of an espaiment and at what point the purchaser had to assume responsibility, how long the purchaser was allowed before payment had to be made, the conditions under which the work had to be done, or criteria for judging the quality of the product, and if these rules were clearly understood by all concerned, then the incidence of disputes about such matters was likely to be reduced. Explicit specification would also have made policing of the norms, by mutual observation, a simpler matter. But cases could still arise—through bad faith, falsification of fact, or simple mistakes—that would make adjudication necessary. It is easy to see the advantage a guild would have over the imperial authorities in the specification of norms appropriate for each particular branch of business; and, as adjudication was partly a matter of interpreting and applying norms so specified and understood, we can also see the headstart over the official courts given to guild machinery of adjudication by the norm-specification function.

Adjudication is said to have been informal, and the sanctions the guilds imposed, ranging from small fines to expulsion or worse, were practical. Presumably on account of both the rotation of duties that was the practice in many guilds and the personal familiarity that existed in most, it seems likely that there may have been a “there but for the grace of God . . .” atmosphere about the proceedings. The fact that the guild premises were the scene of the occasional ritual to the patron deity no doubt added strength to any reprimand received there. Perhaps it is worth noting that whereas the diffuse character of the functions of the imperial administration militated against the usefulness of the yamen for judicial purposes (the magistrate being responsible for tax collection, the census, and land registration besides legal work), the reverse was true of the guild. The diffuseness of its activities made it more this was not the intention of the law. Unlike Tokugawa Japan, for example, where mediation procedures were the rule, China prohibited private settlement once a dispute had been brought to the attention of the magistrate. However, in the actual context of Chinese life resort to mediation was frequently no more voluntary than it was in Japan. On this point see Jerome Alan Cohen, “Chinese Mediation on the Eve of Modernization,” in California Law Review, 54, no. 3 (Aug. 1966): 379-.
effective for purposes both of control and of adjudication: continuing personal familiarity opened up many opportunities for exerting pressure or influence, on which the effectiveness of informal adjudication rests.

Although the guild and the neighborhood temple association both existed to serve the interests of their members and exercised a high degree of autonomy, it will be seen that they in fact exercised a control that the sociologist would regard as being of essentially the same type as that of the imperial administration—namely a blend of normative and coercive power. Though to the outside observer there appears to be a great difference between the yamen court and a hearing by an autonomous group in terms both of the point of view of the person with the grievance or involved in the dispute and of the type of power structure involved, perhaps there was not too much difference in the kind of treatment the plaintiff and defendant would receive. In one case judgment would be by his peers, and in the other by the administrative authorities; the former might be less terrible than the latter, but it was probably still very unappealing, and it left the individual equally nfree. Both represented authoritative adjudication in terms of norms that the individual had very little power to affect—i.e., the application of normative/coercive power. felt as slightly less oppressive perhaps when exercised by the guild because of the latter’s diffuse functions and the range of the members’ needs it met. Authority would be tempered on account of judges and judged having at other times shared in common struggles or common enjoyment, whereas the county magistrate remained always a distant figure. The member might have some part (more nominal than real for some, for, as in the lineage, some members were more powerful than others) in shaping or amending the norms, but, that done, compliance was expected and sanctions would be enforced for nonobservance. When disputes between members were mediated, appeals would be made to the norms and the solution offered would have to be in terms of what conformed best to them; amends would have to be made then by the party in the wrong. The requirement that an offender provide a feast was a subtle punishment, as MacGowan has pointed out. For though a man suffered financial loss thereby, he could regain face by playing the host; but the occasion also served to teach the deference due to seniority and subordination to authority. Perhaps this kind of control can be thought of in some cases as representing the enforcement of a code of professional conduct—a kind of status ethic of an occupation organized to defend and promote its interests against both government and public. In other cases it might even be thought of as representing an ethic adopted by a group of sojourners on the defensive against native residents, i.e., sets of norms controlling the behavior of incoming townsmen during a period of urbanization, the norms gradually undergoing change in response to other social changes. Furthermore, though the guild may have come into existence as the trade’s response to government exactions, it is clear that the government attempted to exercise control over guild members through it by recognizing one member as responsible for the trade. And, to individual merchants or craftsmen, the guild and official administration together seem to have represented a two-tiered system of normative/coercive control.

The control guilds exercised over their members gave them strength in conducting their external power struggles with the public, their competitors, and the imperial administration. The stance they adopted toward administrative authority varied at different times and in different instances: at some times complying with yamen demands, at others resisting, and sometimes one guild petitioning against others for a decision or action in its favor, i.e., manipulating the power of the administration for its own ends. The precise position depended on no doubt on the local power relations at the time. Oscillations of this kind were probably among the factors that determined the exact form guild organization took, and this subject deserves study. However, considered solely under the aspect of adjudication of disputes, it seems clear that the absence of a clearly articulated power structure linking the different elements of the situation was another factor that made the yamen court ineffective as an impartial judicial organ of appeals. It might be aligned with or opposed to the guild. In neither case had an individual anything to gain by appeal to it, and one presumes that the guild only referred cases for decision where the local situation was such that a verdict in its favor could be expected; i.e., administrative power was thus used to reinforce the guild’s own power.*

In contrast with this, machinery of another type existed for the conduct of transactions on the basis of mutuality or complementarity of interests that did allow the parties some power in the determination of the obligations into which they entered and did provide for settlement

* There is one other form of the exercise of arbitrary power that should perhaps be mentioned, if only to show the limitations of the regime’s control or of any other control—namely, the set of supernatural beliefs associated with sheng-shui, “geomancy.” These were a means of coercing the credulous to act or refrain from acting (usually in the matter of sitting buildings or graveyards) in accordance with the spirits of the locality. This was no doubt operated by natives against newcomers.

of ensuing disputes by negotiation rather than by authoritative normative pronouncement; in other words, this machinery functioned as a kind of embryonic form of contract.*

There were of course customary procedures according to which these transactions were conducted and there were recognized institutionalized roles associated with them.

Probably few commercial transactions of any consequence in traditional China were either impersonal or casual. At their heart, as a necessary condition, was the prior establishment of a personal relationship. In the case of routine purchases of any commodity, purchaser and vendor usually maintained a continuing relationship (though the purchaser did not necessarily do so exclusively with one vendor, of course). For articles or services to be supplied to order (whether the particular item were a gown from a tailor or a coffin from a coffin-maker), for a service to be performed for another, or for any deal involving trust and credit, the parties to the transaction entered it as persons in relationship, normally using an intermediary to arrange the terms of the agreement. And the same would apply to taking on staff or apprentices and to borrowing a sum of money. One got nowhere until a relationship of trust had been established. The intermediary served two purposes: first, he forged a circle of acquaintance, testifying to the good faith of the parties; and later, if difficulty arose, he served as a witness to the terms agreed on, a channel of communication and, if necessary, perhaps even an arbitrator.

There were recognized rituals to be gone through: references to common acquaintances or to friends who had been customers to the satisfaction of both sides; the negotiation of the particular deal and the specification of the terms agreed on (such as date of delivery, quality, and price), all of which would have to be in conformity with local custom or guild practice. Often these terms were specified in writing, or an entry might simply be made in an order book; but written or not, the terms agreed on were clearly specified. For some types of transaction samples would be inspected and accepted, and then the supplier was under an obligation to produce similar goods and the purchaser to accept goods similar to the sample seen, even if they contained faults. Thus the principle of caveat emptor applied. No contract of sale, written or unwritten, was considered binding unless a deposit had been paid

* This was not an exclusively urban development, for a similar form of organization is observable in rural compacts for exchange of labor or hire of work animals, but the expansion of trade must have increased the number of occasions for its employment.

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as bargain money or earnest money. "Once bargain money has been paid, there is no going back by either of the principals."[a]

Could this be the Chinese version of what Durkheim called the non-contractual elements of contract (more correctly perhaps, of quasi contract)? The precise details of a specific transaction had to be spelled out, but the negotiations were conducted and the compact was concluded according to customary forms that helped to ensure that the transaction would be regarded as an obligation and honored in due time. If not, further customary actions would be taken to uphold the terms agreed on, to redress the infractions of the newly extended normative order (for this is what results from the process of "contracting"), or to "adjust" the situation to the satisfaction of all concerned.

What our nineteenth-century writer called the law with regard to Broker and Principal reflects the key role of the middleman-guarantor, referred to above as the intermediary.* A case heard in the Shanghai Supreme Court in 1867 established the principle (established it, that is, for the benefit of ignorant foreigners; it was not invented then, of course) that Chinese sellers looked in the first instance to the middleman, and as long as they trusted him, the name of the principal (i.e., the purchaser) did not appear; but if they could not obtain payment from the middleman, they held to their right to fall back on the principal.[26] We have here what looks like a specific extension for commercial purposes of a basic principle in all Chinese dealings—the responsibility of the guarantor.

Two consequences followed from this: first, the middleman was involved in the detailed terms of the specified transaction; and second, he was also taking a certain risk on the deal since, however carefully it was arranged, changes might occur outside the control of his client or himself that might make it impossible for the bargain to be honored. And as there was risk, commissary was payable as a percentage charge on his agency.[27] This would seem to be in line with the institution of the government-licensed brokers at markets, who took fees for their services as agents, and it seems therefore to mesh with accepted traditional forms.[28] (It is also in line with the principles on which Chinese banking was conducted.)

Let us revert to the theme of the mediation of disputes, bearing in mind particularly the commercial transactions just discussed. Reference
was made above—in the section about the guilds—to the guild’s function of norm-specification being thought of as a preliminary factor in conflict settlement. I will now suggest that the processes of negotiation—of both agreements and subsequent disagreements—should likewise be regarded as a continuity. It can be thought of perhaps as divided into stages, with the attainment of the later stages contingent upon some hitch having arisen in the earlier ones (see Table 1). Compare this with the sort of dispute that might come up for hearing in an artisan or occupational guild—say between two barbers, where one accuses the other of stealing his customers; or where coffin-maker A accuses B of taking too many apprentices; or where a master silkweaver accuses an employee of moving to another employer and taking some of his raw materials. The sequence of actions might go as shown in Table 2 (slightly amplifying information given by Burgess).24

It is clear that the sequence shown in Table 1 represents a more dynamic process than that in Table 2, though it is likely that, over time, cases of the second type might also result in shifts in the normative order by rule revision.

No simple or necessary historical succession from one form of mediation/ arbitration to the other is suggested. Both forms must have existed

### Table 1. Stages of a Sample Negotiation

<table>
<thead>
<tr>
<th>Stages</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. An intermediary is approached by one or both potential parties to a transaction; he investigates the circumstances surrounding the contemplated deal.</td>
<td>1. Fellow guild members try to conciliate the disputants but fail.</td>
</tr>
<tr>
<td>2. Negotiations and adjustments between the intermediary and both parties lead to a specification of terms satisfactory to all concerned.</td>
<td>2. Guild officials or guild members sitting as a court hear the parties to the dispute.</td>
</tr>
<tr>
<td>3. The parties signify their acceptance of the terms, and the intermediary guarantees that the terms will be honoured.</td>
<td>3. The “court” determines which rules apply and attempts to interpret them to fit the case.</td>
</tr>
<tr>
<td>4. The failure of one party to fulfill its obligations creates a potential rift.</td>
<td>4. The guild “court” suggests a solution to the parties. If the parties accept, the dispute is settled.</td>
</tr>
<tr>
<td>5. The intermediary is called on to mediate; he investigates to see how circumstances have changed and what would now be a reasonable or practicable settlement.</td>
<td>5. Where the parties do not accept the guild’s solution, further argument or sanctions follow until peace is restored.</td>
</tr>
</tbody>
</table>

side by side to meet different needs, though it seems at least probable that the volume of cases of the negotiated-compromise type must have increased over time as trade expanded and as the quickening tempo of social change made it more difficult for terms agreed on to be fulfilled.

Could it be said that we have here an embryonic or customary law of contract and of agency? Jameson agreed with this conclusion. He also pointed to the treatment of guarantors as vestiges (perhaps therefore a transition stage) of the principle that a person’s responsibilities were governed by his status.

The idea however that a middleman is somehow responsible for the contracts which he has been the means of bringing about still survives, but it may be assumed that as legal ideas become more definite it will disappear. Throughout Chinese law a man’s responsibilities are largely governed by status, that is, the condition of life in which he was born or in which he has voluntarily placed himself. The march of events throughout the world has been to replace status by contract, and China cannot but follow the same path. The responsibility of a middleman has been implied from his position, but in future the question will be more frequently asked whether or not he has expressly contracted a responsibility, and if not he will be discharged.25

Another piece of evidence that might indicate that this was a form lying closer to contract than to status is the fact that, unlike most other personal responsibilities in China, the responsibility of the guarantor died with him—it was not passed on to his heirs.24

Leaving aside the question of the development and succession of the forms institutions took to return to the matter of mediation, it seems to me that the area of commercial transactions was the place of mediation and compromise settlement par excellence in Chinese society. This has not perhaps been sufficiently noticed in studies up to now, when we have stressed the readiness to accept compromise settlement as characteristic of Chinese law. It may be true that there was considerable in-

### Table 2. Stages of a Dispute Within a Guild

<table>
<thead>
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<th>Stages</th>
<th>Actions</th>
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<tbody>
<tr>
<td>1. Fellow guild members try to conciliate the disputants but fail.</td>
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</tr>
<tr>
<td>2. Guild officials or guild members sitting as a court hear the parties to the dispute.</td>
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<tr>
<td>3. The “court” determines which rules apply and attempts to interpret them to fit the case.</td>
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</tr>
<tr>
<td>4. The guild “court” suggests a solution to the parties. If the parties accept, the dispute is settled.</td>
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</tr>
<tr>
<td>5. Where the parties do not accept the guild’s solution, further argument or sanctions follow until peace is restored.</td>
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</tr>
</tbody>
</table>
entive to keep disputes regarding family matters out of court and to settle them within and between lineages (or smaller kinship units) or otherwise by private mediation; but it is clear from recent work that there was no reluctance on the part of yamen courts to pronounce (that is, to lay down the law unequivocally) on the rights and wrongs of cases arising in that field. These were not matters for compromise; in disputes arising from commercial transactions, however, informal settlement appears to have been the method chosen and permitted. The courts never developed machinery for dealing with the negotiation of claims and counterclaims; nor could they so long as they were burdened with the function of enforcing Confucian ethical norms. In matters of commerce, the logic of the whole situation drove people to rely on personal relationships (though they might be institutionalized with the support of custom and mediation) rather than on official law, and to aim at equitable settlement in the light of various considerations: the entitlement previously and specifically agreed on, the changes in circumstances that might make fulfillment impossible or inequitable, and the resources and other commitments of the parties. No wonder, then, that there was confusion about the role of the guarantor and whether he was guaranteeing man or money. He could only do the one through the other.28

Moreover, in a society of inveterate traders depending for their security and the expansion of their business largely on a mechanism that involved another person who negotiated on their behalf and underwrote part of their risk for a fee, one would expect to find this mechanism institutionalized and the people involved of some substance and standing in the community. A parallel was suggested above with the government-licensed brokers; and the hypothesis that this was indeed the model from which the role was developed occurred also to Jamieson.29 If this is correct, an interesting and significant development must have occurred: an agent originally acting in the government's interest has been transformed into a private agent acting in the interests of his client (and himself, of course). He framed an agreement and guaranteed the terms, thus providing as a private person a security the imperial government failed to give. Could the explanation be that the superiority of unofficial organization for purposes of mediation resulted in more use being made of this private role, and its having become, through use, more specialized? And could this be a specialist role that, in the commercial field, provided a sort of substitute for the Western lawyer comparable to the "magistrate's law secretary" (mu-yu) in the criminal field?

Yet it was not completely private, for whereas the magistrate's ad-
vals for a specified period (fixed according to the number of those taking part): the initiator took the pool first and then the others followed in rotation, usually with a slight addition to allow for an element of interest. The transactions were regularly recorded in writing. These associations were called into being whenever someone was in need of money (or saw an opportunity for making good use of a little capital) and could find others with money to lend. One can see that there must also have been practical limits on the scale to which such operations could be extended.

In the Chinese system of dispute settlement and enforcement of social obligation, the allocation of functions between institutions differed from that found in other advanced commercial communities. These differences resulted in developments that strike the Western readers as curious: for example, the custody of articles by pawnshops was subject to legal safeguards (i.e., preventing improper use of existing wealth) whereas the conduct of banks—apart from some ancient prohibitions against counterfeiting—was left almost entirely to guild regulation. Since the registration and sale of land were matters over which the government exercised control, it might be thought that disputes between landlord and tenant would have come before the yamen court. Yet Doolittle reports as follows:

Chinese landlords oftentimes experience trouble in regard to the collection of rent for houses or land leased to tenants. The latter seem frequently to act on the principle that possession is nine points in law, and, after a few regular payments of rent-money according to contract, begin to offer less than the sum agreed upon. If this sum is received, the amount tendered is often lessened the next time, or the day of payment is delayed. Unkind words follow; and as litigation is proverbially dubious in regard to the justness and the promptness of the magistrate, very much depending on the amount of bribe-money presented to his honour and his satellites, landlords usually shrink from invoking the law, and resort to the established custom of ordering the obnoxious or dilatory incumbent away, giving him the privilege of remaining three months without rent from the date of the notification. Landlords who serve this notice are content to have the premises vacated at the time intimated, not demanding the arrearage of rent, however great it may be.

It seems likely that the intended reference here is to an urban setting (the mention of land would not preclude this in China, as cities usually included some agricultural land within the walls), since knowledge of the demand for land might be supposed to have encouraged rural tenants to meet their obligations, and since the system of paying a share of the crop as rent would have made those obligations difficult to avoid. It sounds as though a money rent payable to an unfamiliar landlord formed the subject of Doolittle's passage. If the city were large, it might have been more difficult for landlords to form a ring than it would have been for suppliers of other commodities. This passage thus indicates a flaw in the system of guaranteeing agreements and compromise settlements from at least one point of view.

It should not be thought, of course, that no traders ever defaulted on their obligations. The underworld of crime and banditry testifies to the contrary, though how far such roles were filled by specifically urban recruitment is difficult to assess. At least one may say that traders had reason to abide by the rules so as to continue in business, and one can find reports of good faith being respected. Any who were drummed out of the trade by their guilds no doubt added to the numbers of vagrants, some of whom may have become lawless. Viewed as a whole, the system of social control appears in the main to have worked effectively to promote the orderly conduct of business and to permit a measure of expansion (though from the point of view of many, especially the most enterprising, it must always have been felt as restrictive). Jernigan and most other writers on the subject of commerce in the nineteenth century give a favorable overall impression of the way things worked generally. Interestingly, some well worked out ideas, almost parallel to some of those advanced above, have been put forward by Donald R. DeGlopper in a thesis on the general subject of conflict resolution in China. He contrasts two models. The first was based on Confucianism, which, by refusing to recognize the legitimacy of conflict at all, treated all conflict as reprehensible; this was applied within the state and within bounded ascriptive groups such as the lineage, especially where solidarity was required, as in circumstances of interlineage rivalry and feuding (and, one might add, commercial rivalries). In the second type, conflict developed between people who were not related in the ways just mentioned; here the parties appealed to whatever influential people they could call on among the crosscutting groups and segments around them, and neither the issues nor the settlement could be clear-cut. Beyond the range of acquaintance within which appeal to "face" operated, a relationship had to be established by means of a third party who would introduce, guarantee, and mediate if necessary for the contracting parties; this third party would then represent society in general.

It is possible here to do justice to DeGlopper's thinking, nor is this the place to comment on it beyond suggesting perhaps that, though the Confucian refusal to admit the legitimacy of conflict is un-
doubtlessly an important element in the situation, other institutional factors also have to be taken into account: other societies have invented new doctrines to suit new circumstances.

The mix of the different kinds of power that supported norms and enforced decisions clearly varied in different situations. It seems correct to make a distinction between the model that operated in the main according to normative/coercive power in varying blends and that operated by normative/remunerative power—i.e., by appeal to "face" and self-interest. Let us look, for example, at the mutual loan society referred to above. Its members would have known one another well and would have seen to it that none among them evaded his responsibilities (mainly normative/coercive, with a trace of remunerative, since they might want to repeat the process in the future). Compare that situation with a credit transaction, probably between a rural borrower and an urban lender. Here there would assuredly have been a third party involved to introduce the parties and, since he shared liability, to bring pressure to bear to see that the debt was cleared (mainly remunerative/coercive with overtones of normative).

One can hypothesize that wherever possible the attempt would have been made to shift a normative/coercive situation toward a remunerative one in which bargaining was possible, and that even within ascriptive groups there might have been an attempt to submit a matter to prestigious mediators rather than to authoritative seniors by a sort of feedback effect from one model to the other.

Yet reliance on unspecified mediators, though no doubt acceptable if not inevitable in many other spheres where disagreements were unpredictable, would not have produced sufficiently clear-cut or predictable solutions for purposes of commerce, perhaps for the reasons that DeGlopper suggests (namely, that disputes were not always disposed of but were sometimes transformed into more lasting and large-scale conflicts). Hence the choice before the transaction was entered into of a negotiator acceptable to both parties would have had an extra advantage in commercial dealings.

Did the mediator represent society or the public? His involvement would certainly have prevented the matter from being entirely a private one between two parties striving to assert their own interests as perceived subjectively. His engagement was private, in the sense that he was chosen by the parties as someone trusted and acceptable to both, but the formalities were not of their invention and for all important transactions his role was technically brought within the ambit of administrative control. Mediation, it is perhaps worth saying, is to some extent always a moral process; there must be some standards to which to appeal, even if only in terms of respectability and reputation for the sake of future prospects, so an element of social control is inevitably involved, for how else is reputation to be maintained? The relevant question to be asked is "Of what range of generality are the standards that are being applied?" Even an argument in terms of the mediator's reputation—"face"—implies a degree of generality.

It remains to consider the relevance of the hierarchy of central places to matters discussed in this paper. I shall refer first to "legislative" functions—that is, the formulation of norms—and then to jurisdiction.

First, it might be hypothesized that, in general, with ascent in the scale of central places, the work of formulating norms was undertaken by agencies of increasing functional specificity, or, in associations of the Landsmannschaft type, probably of increasingly specific local origin. However, besides the increase in scale and volume of activities and in numbers of persons involved, other random factors may have been at work (e.g., special features of geographical location), so the trend may not have corresponded exactly to the hierarchy of central places.

Second, as the quest for improved social status drew upwardly mobile persons toward centers progressively higher in the urban hierarchy, the norms of the groups the new townsmen or sojourners were obliged by their own necessities to form or join provided them with a code of conduct to be observed—if they were to be accepted and to profit from the wider opportunities offered in the town or city. Thus, in toto, such codes may be said to have served as an ethic of mobility and a factor facilitating the process of increasing urbanization.

Third, it seems likely that the proportion of activities governed by obligations of the contractual type and subject to third-party negotiations would have increased pari passu with ascent in the scale of trading centers and, by implication, in the degree of urbanization (provided, of course, that this urbanization happened as the result of spontaneous growth and not of administrative convenience).

Fourth, role specialization connected with contractual relationships would have followed the same ladder, the intermediary role found in...
small market centers becoming that of the broker, with a separate guild and more specialized line of business, in larger trading centers.

As regards jurisdiction specifically, transfer of cases upward through the ascending levels of the hierarchy of places would have been most significant for those cases—however they originated—that did reach the yamen to be dealt with by the coercive authority of the administration; and then, according to the seriousness with which matters were officially regarded, cases would have been transferred to higher authorities according to the measure of their competence. This would obviously have routed them by the administrative significance of places, which was not necessarily the same thing as progress up the ladder of economic central places as seen from a Skinnerian point of view.

At an earlier stage, transfer from ascriptive group to yamen probably happened in a number of different circumstances. Among them the following are suggested as examples: instances where some extra power of coercion was needed against an offender who did not prove amenable to other forms of group pressure; where conflict developed between two rival ascriptive groups of the same type; where a guild was fairly evenly divided in its councils and one faction could not prevail against another (though one would think that fairly strenuous efforts would have been made to avoid this); and perhaps where the local magistrate was strong—whether through personal qualities or factors in the local situation—relative to the guild.

In cases that required mediation, when the chosen mediator was not successful in offering an acceptable solution, other more influential persons would have been called on to try to produce one; and in the nature of things it is likely that the chain of persons so brought in would have owed their persuasive power to experience or position in progressively wider circles, circles likely to be correlated with the Skinnerian hierarchy of economic centers and systems. But because mediation depended on essentially personal factors—acquaintance and connections to establish communication, and persuasion of and acceptance by the parties involved—there must have been practical limits to the possibility of extension in this manner. It seems certain that a point must soon have been reached at which remoteness and unfamiliarity with the persons concerned would have reduced the usefulness of a potential mediator; so, for the best chance of successful mediation it is likely that ascertainment would have halted just before that level. Moreover, as the process of third-party mediation became more remote from the original disputants, there must, one assumes, have been a gradual shift toward more authoritative pronouncements on the case (i.e., arbitration), however much coercion may have been disguised by a show of prestige or

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by argument or principle. And in cases where the arbitrator owed his influence to bureaucratic connections, this factor might have been another reason for deviation from the economic hierarchy. Of course, if mediation failed completely and rupture of relations led to violence and then criminal trial, this would have constituted a linkage between the two modes, and such cases would of course have followed the yamen court hierarchy as described above.

We have discussed the different modes of control governing the lives of people in Chinese towns and cities in late imperial times, with particular attention to the areas of commerce and artisan-level industry.

As happened generally in China, people's lives were subject to control by organization of two kinds, with some overlap existing between the two: on the one hand, local and particularistic groups and associations, in which most of life was lived, that devised their own rules and procedures and enforced them by customary mechanisms; on the other hand, the official state administration governing by statute, courts and bureaucracy, which was normally somewhat remote unless stirred to action by specific appeals or disturbances. Together, and to some extent in conjunction, the two types of organization attempted to enforce the normative order—made up of morality, rules, and statutes—and, in practice they did so to the extent that their real power allowed, for such a comprehensive system of control naturally stimulated techniques of evasion.

Though there was a long tradition of government intervention in economic affairs in China—with the exceptions noted of salt and iron, whose production and trade were always subject to government control—we find the detailed regulation of much of commerce and industry and the adjustment of disputes in this sphere left mainly to guilds, occasionally in consultation with the administration. In some of their activities, town and city dwellers came within the scope of local temple organizations.

Traditionally in China a person's obligations depended mainly on status—as subject, subordinate, or as member of this or that group—and were enforced by the group or association concerned, or occasionally by yamen courts. From the viewpoint of a person subject to (1) the discipline of seniors within the family, (2) the authority of whatever groups he belonged to, and (more remotely) (3) the authority of the imperial administration, it must have appeared that both official and unofficial systems exercised an authoritative type of control over him (depending, we can see, on a blend of normative and coercive power, though this might have been disguised as prestige or influence).
However, obligations of another kind could be entered into by means of agreements concluded according to customary forms. This variant represented a more dynamic and flexible means of control than authoritative regulation, something more akin to contractual than to status obligations. Terms could be negotiated according to the interests of the parties, and conditions of performance, the liability of each party, and penalties for nonfulfillment could be specified ad hoc. In cases of this type, negotiations were conducted through an intermediary, who himself guaranteed the agreed terms for a fee and who could later be called in as mediator if difficulty or dispute arose. It can be seen that adjustment of claims in this way by negotiation involved a power mix including a remunerative element and lesser (and variable) amounts of normative and coercive power.

Since the official legal system never developed mechanisms to provide security against business risks, such assurance had to depend on a system of personal (but not arbitrary) guarantees and negotiation. The state was involved only to the extent that it required the guarantor of an agreement himself to have a guarantor. The importance of the intermediary/guarantor function—the culmination of an interesting historical development and still probably in a transitional stage in late imperial times—suggests a specialist role in the commercial sphere comparable to the functions performed in the West by professional lawyers. A parallel development in the field of criminal law was the position of the mu-yu, the magistrate’s advisor.

Finally, some tentative correlations were suggested between the modes of social control employed and the hierarchy of central places established by Skinner. Matters of concern to the Confucian state—family affairs (particularly succession and inheritance), crimes of violence and crimes against the state, and ritual offenses—were subject to control by authority, and jurisdiction over them followed the administrative hierarchy. However, commercial matters (apart from the salt trade and the production of iron) tended to be left in practice to control by unofficial organization, whose dependence on local and personal connections set limits to its expansion. Variations that might be demonstrated, it has been suggested, were the increasing proportion of obligations of the negotiable type (relative to those dealt with by authoritative regulation) and the increasing specialization in the norm specification function with ascent in the hierarchy of central places.

Social Structure in a Nineteenth-Century Taiwanese Port City

DONALD R. DEGLOPPER

The Chinese urban dweller legally belonged to his family and active village in which the temple of his ancestors stood, and to which he conscientiously maintained affiliation—Max Weber,resp. 81

Max Weber, working with inadequate data, was wrong about the social structure of the Chinese city. In The City he argued that there was in China no urban community, for the lineage and the ancestor cult ("the magical closure of the clans") precluded the formation of civic confederations.¹ Since Weber wrote, however, practically every study of urban overseas Chinese settlements has discussed the urban community and its civic confederations.² Still, the questions Weber raised—essentially about the character of urban corporate groups and about the relations of such groups to each other and to the occupants of political offices—provided the stimulus for this account of the social structure of a nineteenth-century Taiwanese port city.

My account is imperfect. It is based on eighteen months’ residence in Lu-kang and on subsequent research in the Cornell University Library.³ It relies on the projection of some contemporary patterns into the past, on old men’s tales of the days of their fathers, on my acquaintance with the physical structure of the city, which has changed but little, and on my interpretation of the scanty documentary material on Lu-kang’s past—material that consists largely of Ch’ing local gazetteers and histories, Japanese statistical compilations, and contemporary memoirs and brief notes on folklore.⁴ The primary justification for this exercise is the absence in the literature of accounts of the internal structure of particular Chinese cities. Only when we know something about the internal order of a number of cities and about the kinds of variations in their structures may we proceed beyond the delusively simple picture of “the Chinese city” that trapped Weber.

Lu-kang lies halfway down the west coast of Taiwan. First settled in the late seventeenth century, it was from the 1770’s to the 1860’s the