

LAW, STATE AND SOCIETY IN CHINA [3]

THE NATURE OF SOCIAL AGREEMENTS (*YUE*) IN THE LEGAL ORDER OF MING AND QING CHINA (PART ONE)

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The two most notable forms of law in the Ming and Qing periods were state law and private contracts. They were thought to exist separately, as the saying went: “The state has laws while individuals have private contracts.” Scholars have also held the same view; they have contrasted the two, defining the former as vertical, authoritative and a political tool to govern the state, and the latter as horizontal, voluntary and a tool to regulate economic activities of individuals. Social agreements that were instituted in order to maintain order in villages, however, had characteristics of both; on one hand they were contracts drawn up voluntarily by the villagers, but on the other hand, they also had the aspect of commands given by village leaders for ordinary members to observe. The opening section looks at studies that have been made on written law and private contracts. The following section examines how village compacts were instituted and how they were enforced. Three types of village compact are examined – village regulations, village compacts based on the Confucian moral code, and alliances connected with rent-resistance movements. Part Two will discuss the nature of coercive commands and voluntary contracts, both of which commonly coexisted in a unique mixture in village compacts, and will then expand the conclusion drawn from the discussion above to the level of the state, to present a new framework for understanding the relationship between statutory law and private contracts, and that between state authority and social power.

THE STUDY OF MING-QING LEGAL HISTORY AND THE PROBLEM OF SOCIAL AGREEMENTS (*YUE*)

The Sphere of Law and the Sphere of Contracts

In Ming and Qing China, the word “law” (*fa* 法) referred to the written law codes promulgated by emperors, that is, the systematic and comprehensive penal codes addressing various crimes. Emperors presided over the law codes as the absolute authority, and

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government officials were required to abide by them when exercising their right to perform punishment. In this sense, the Ming and Qing “legal” order simply constituted a process whereby emperors could punish and reprimand those who had committed criminal acts by making the system of rewards and punishments clear, using government officials as mediators for this procedure. Theoretically speaking, if the “law” was sufficiently effective to prevent people from committing further crimes, there would be no longer any need for it to exist.

However, if we consider the “law” to be an effort by people to create order through shared language rather than to resort to physical acts of punishment, we need to consider a different aspect of the Ming and Qing legal order. Because Ming and Qing societies were by no means static, it is impossible to imagine that the existing order would continue if people did not commit crimes. On the other hand, family property was continually divided equally among brothers generation after generation, and as it became ever smaller, people were forced to make ends meet solely by means of this ever-decreasing property. This encouraged people to form financial or other mutual alliances through social agreements. Those who have had even a glimpse of the voluminous private documents dating from the Ming and Qing periods are overwhelmed by the massive volume and variety of social agreements (*yue* 約) that people made with one another. In other words, mutually binding contracts governed the daily lives and social relationships of Ming and Qing commoners.¹ It can safely be said that such contracts made up a substantial part of the Ming and Qing legal order.

For example, the land ownership and management that formed the basis of agricultural production was entirely based on such agreements. Whenever people sold, bought, or rented (as tenant farmers) pieces of land, contractual documents were drawn up. Often people collectively invested their labour and resources to form a partnership (*hegu* 合股) for joint agricultural, commercial, mining or manufacturing activities. In such cases, copies of documents with detailed information concerning the amount of capital investment and rate of dividend were made for all the parties involved, and tally impressions were exchanged. Everyone signed all the copies, and each took one copy to keep; this type of agreement was called *hetongyue* 合同約.

Efforts to establish lasting alliances through *hetongyue* were not limited to things like land management and commerce, but were extended to all aspects of daily life. Examples preserved in documentary collections include eight people banding together as the “Pure and Bright Association” (Qingming hui 清明会) in order to purchase a piece of land in connection with a funeral ceremony,² four families of different surnames forming an

1 For collections and publications of such contract documents, see Kishimoto 1993. “Contract” (*jie* 契) and “agreement” (*yue* 約) do not need to be strictly differentiated. In fact, both “sales contract” (*mai jie* 売契) and “sales agreement” (*mai yue* 売約) had the same legal effect. However, while *yue* usually have corresponding *jie* with similar contents, this is not necessarily the case for *jie*. An “agreement” (約) generally referred to the various promises made by people, while “contract” (契) was used more for vital documents, such as land transactions, where the documents were written by the seller and handed over to the buyer, and could be later used as evidence or as proof of their rights.

2 “Jiaqing shiyinian chutaichangdeng qingminghui jichayu” 嘉慶十一年朱太常等清明会稽查約 found in the *Qindai qianjiadao baxian dangan xuanbian*, vol. 1, p. 252. The Qingming hui seems to have been established in the forty-seventh year of the Qianlong era (1782). The agreement in question was made to reconfirm the purpose of the association in the eleventh year of the Jiaqing era (1806).

association called the Bienwang guhui (卞王古会) to purchase land to finance “theatrical performances for worshipping the gods,”³ and 44 members of the same clan establishing a fund for the spring and autumn ancestral veneration rituals.⁴ These agreements could also be fixed in the form of tablets. A document from Guangdong dated the third year of the Xianfeng era (1853) states that the “elders of each village” belonging to the same religious group got together to make an agreement for the whole community to “invest funds and establish property” so that the accruing interest might be used to hire someone to carry out the low-level services related to local security that were required of villagers as a public duty.⁵ Local gazetteers too reveal that “the people of Peng district make so-called parental associations (*fumuhui* 父母会). Several, or several tens, of people of similar circumstances (that is, having aged parents) get together and make an agreement. If someone loses a parent, members of the association help with the funeral arrangements and contribute money for them.”⁶ Such records demonstrate that local farmers met their daily needs through a variety of *hetongyue*-type agreements (or through associations formed by such agreements).⁷

Such contracts of various kinds constitute, together with the codified laws, an indispensable part of the Ming and Qing legal order (like legal systems in other societies). However, little direct relevance between them is apparent in the official diktat of the time. As the proverb “law for the state and private agreements for the people” clearly demonstrates, laws were fundamentally made by the central government, or the emperors and their officials, and did not concern commoners at all. Although government officials tended to respect mutual agreements among commoners when making legal judgment, private agreements relating to civil affairs were never brought to the fore in the sphere of the law. The conventional approach to Ming and Qing legal history considers the distinction and contrast between “private agreements” and “official law” to be self-evident, and no attempt

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- 3 “Jin Wang Chen Song sixing lunguan zuyin yimo” 金汪陳宋四姓輪管租銀議墨” found in the *Mingqing huizhou shehui shiliao congbian* vol. 1, p. 569. This contract was made some time after the establishment of the association when the ten households (whether the four families consisted of ten households to begin with or the four households later expanded into ten is not clear) came together to make a catalogue of the property of the group.
 - 4 “Shexian huangshi chunqiu erjisihui heyue” 歙縣黃氏春秋二祭祀會合約 in the *Mingqing huizhou shehui shiliao congbian*, vol. 1, p. 578.
 - 5 “Wutong sangu xiangyue beiji” 梧洞三股鄉約碑記 in the *Taiping tianguo wenxianziliaoji*, p. 348. However, it says at the end of the inscription, “those whose names are recorded in this inscription do not need to make equal payment towards the maintenance of public order (*baojia gongfei* 保甲公費) for generations to come. However, this exemption does not apply to their siblings, nieces or nephews.” Thus the benefit was limited only to those who had directly invested in the fund, that is, those who were recorded in the inscription as “those who had contributed money” (*juanqian renming* 捐錢人名) and their descendants. It did not include the whole village community.
 - 6 Penghuting zhijuan 澎湖厅志卷. Contained in T'ai 1980, p. 341.
 - 7 The importance of these associations in China has long been pointed out by Hatada Takashi. “Groups called *hui* 会 (or *she* 社), which emerged from the necessities imposed by communal living existed in villages throughout Northern China. These groups were formed whenever communal activities were required. Such activities might include the supervision of agriculture, temple rituals, various events, the processing of finances, entertainment and other matters of village administration, as well as a variety of activities connected with daily life. It was a common form of communal living.” Hatada 1986. Further, focus on the segmentation of function in such a relationship of mutual aid and varied social relationships and affiliation with several groups are two points that have been raised in criticism of the theory that the “village community” (*sonraku kyōdōtai* 村落共同体) of pre-modern Japan also existed in Imperial China.

has been made to examine the relation between the two.⁸ However, as long as we continue to discuss laws and private agreements separately, we will end up regarding them as a bipolar system: the law of the central government as a means for the emperor to control the people and form his political realm, and mutually-binding private agreements made by commoners of equal social status under the control of the emperor in order to build and maintain their economic activities. Thus, ironically, the more studies that are done on each topic, the greater the distinction that has been made between officials and commoners, vertical and horizontal social ties, and the state and society. As a result, a comprehensive view of the legal order of traditional China has been lost.⁹

How to Understand *Yue*

However, when we examine not the typical, but the borderline cases, it is readily apparent that they cannot be easily classified as either laws or private agreements, in terms of how they worked or in terms of their concept.

For example, many of the agreements made at the village level that I present below take the form of *hetongyue* or mutually-binding contracts. However, they often concern prohibitions which are enforced by punishment, and in this sense they function more like laws than private agreements. In addition, the effect of the regulations established by these agreements reached beyond those who were directly involved. Thus, in reality, *hetongyue*, mutually established and having the appearance of private agreements, functioned as orders given by those with the power to control local residents. Needless to say, there was a great difference between such agreements and “laws” in terms of authority, and there was a difference too between such agreements and contracts, that is, fair agreements made by those of equal status. The absence of hierarchy among commoners is only an idealization and not a reflection of reality.

Furthermore, when we examine how the word “*yue*” was used, it is clear that it is misleading to interpret it simply as a “contract” and contrast it with “laws.” We sometimes find expressions such as “have the clan head restrain (*yueshu* 約束) his clan members from doing ill” in prohibitions issued by local officials during the Ming and Qing periods. In this case, *yueshu* implies that clan heads are to “supervise and control” their members and make sure

8 For the history of studies of Ming and Qing “law” in Japan, see Terada 1990. For a study on contracts, see Kishimoto 1993.

9 Of course I am not saying that laws and agreements/contracts must not be treated separately. What I am criticizing here is that such approaches tend to ignore their common basis. Postwar scholars of Ming and Qing legal history in Japan have gradually come to the conclusion that state law in Imperial China did not function as a code for both the rulers and the ruled. Shiga Shūzō claimed that customary practices were not considered to be “customary law,” that is, norms that are not documented but that exist and work in society. Shiga expanded his theory to the entire legal culture of Imperial China and claimed that in traditional China, “the idea never existed that laws were regulations to be strictly observed in order to establish the rights and duties between conflicting parties.” Similarly there was no concept to define the law in order to make it into a perfected system as a means to a complete solution for any dispute that may arise in various facets of a person’s life. In short, “the concept of having defined and established law did not exist” either for Chinese officials or commoners. Shiga 1984, p. 367. On the other hand, when we deal with agreements/contracts, the more we discuss about how widespread they were, the more we are forced to admit that an “objective system” existed among the involved parties for the mutual recognition of the items stipulated. This is the problem I ultimately intend to pursue in this paper.

they do not commit crime. In these prohibitions, the word “*yue*” does not necessarily imply mutual contractual behaviour.¹⁰ There are also many cases where officials “vouchsafed” (*ji* 給) a “prohibition” (*jinyue* 禁約). “*Yue*” when used for the titles of documents recording various regulations also sometimes goes beyond the idea of mutual agreements made by the people. If we go back to the Warring States period, as well as the Qin-Han dynasties, this latter usage of “prohibition” is the dominant meaning of *yue*.

Masubuchi Tatsuo, in his classical study of *yue* in ancient China, discusses its use as follows.¹¹ The dictionary definition of *yue* or *yueshu* 約束 is “binding” or “control”, and therefore *yue* “among individuals of equal position may be akin to promises or agreements as we use them today.” However, in phrases where it is used as a verb, with “the commander” the subject and “his soldiers” the object, it meant “one-directional control through which (the commander) ordered or prohibited certain conduct by his soldiers.” Thus, *yue* was used in the sense of military codes or regulations imposed upon soldiers and enforced by punishment. While such *yue* had to be written out clearly, and the soldiers had to be well informed of their contents in advance (“to order three times and request five times”, *sanlin wujia* 三令五甲) in order to ensure strict observance, once the contents were clearly presented by the commander, the soldiers had no choice but to obey. A text says, “If the *yueshu* is not clear or the soldiers are not well informed about its contents, that is the fault of the military commander. If the *yueshu* has been clearly presented but the soldiers do not act accordingly, that is the fault of the soldiers.” Although these documents are called *yue*, they cannot even be interpreted as agreements between a commander who promises rewards and soldiers who promise to do their best; rather they signified the total control of soldiers by leaders through a clearly demonstrated system of rewards and punishments, or the instructions issued by the leader for that purpose.

However, Masubuchi’s studies also show that the bonds between leaders and soldiers at the time were not as autocratic and compulsive as we might imagine from such control, but their relationship was one of mutual trust, “an emotional tie based on a shared sense of honour.” Masubuchi therefore focused his discussion on how one-directional control and an “emotional tie based on a shared sense of honour” (which conceptually do not coexist) combined in the course of history. He examined various types of one-directional *yue* issued by superiors to control people. The laws and penal codes (also called *yue* or *yueshu*) proclaimed after the Han unification in order to extend Han control throughout the country were examined first. Masubuchi initially discusses the identical meaning of the expressions “order [*yue* 約] the law of the Three Chapters” (*yue fasan zhang* 約法三章) and “make” [*zhi* 制] the *yue* of the Three Chapters” (*zhi sanzhang zhi yue* 制三章之約). Second, he examines the “house pacts” (*jiayue* 家約) of the Han royal family as well as of other powerful families, and the village *yue* issued by village leaders for the cooperation of local residents in

10 I do not know of any documents that can show us how such “*yueshu*” were made. However, wording used in historical documents, such as “allow landlords to *yueshu* wanderers temporarily living in their households,” or “make landlords to *yueshu* domestic servants, workers and tenant farmers,” show that it is not necessary to read this *yue* as a written order or agreement. *Yue*, as well as *shu*, simply means that superiors bind and dictate to inferiors. Since I am focusing on the social aspects of agreements/orders in this paper, I cannot discuss such household control and command in detail. However, we must keep in mind that such immediate control over the family by the patriarch had always existed, and this provided society with a model of social integration.

11 Masubuchi 1960.

matters such as irrigation, agricultural labour and community security. He found a common feature that existed between soldiers and their leaders, villagers and elders, and elders and the leaders of village groups and described it as emotional binding, or “strong personal connections, made voluntarily based on common emotional ties, that need not be reinforced by formalities such as mutual pledges (盟 *meng*).” He gives one example of a *yueshu* made between villagers, elders and the leader of an immigrant community at the end of the Later Han dynasty. When the people had finally settled down in the new village, a leader named Tian Shou called the elders together and advocated the necessity of unity. He recommended that “they select a wise elder and make him leader.” The elders agreed and all “recommended” Tian Shou. Accepting their recommendation, Tian Shou “drew up a *yueshu*” and “made the people observe it. Everyone found it convenient and in the end, people would not even take something lost by the side of the road.” It was this personal trust for the person whom they had recommended and selected as their leader that functioned to “support and enforce” the legal binding power of the *yue* that had been proclaimed unilaterally by him. Historical records also say that “people recommended a specific person to be their leader so that they might follow his orders.” Masubuchi put it in the historical context as follows. By the middle of the Spring and Autumn Period, neither unity by blood relationship, by clan or lineage, nor unity by *meng* 盟 (a magical ritual performed by those of equal position in order to swear obedience to an agreement; it involved the construction of an altar, the offering of a sacrifice and the drinking of the blood of a sacrifice) was any longer effective enough to maintain the political order. Consequently, a system where the head of a group controlled group members based on emotional and personal ties developed and gradually replaced the old system of social unity.

Although Masubuchi’s study focuses mainly on the “military agreement” type of *yue* in the ancient period, and his emphasis is not so much on the concept of *yue* itself, as on the foundation of the authority of leaders, his discussion based on his extensive knowledge of *yue* in general provides a number of useful pointers for our study. Reconstructing Masubuchi’s discussion with a focus on the concept of *yue*, the following conclusions can be drawn.

First of all, the military agreements (one-directional orders and announcement of punishments, without mutual approval) and the agreements or “mutually-binding pacts,” including *meng* made between those of equal position are both called *yue*. It is clear therefore that the word *yue* itself is a superordinate concept that transcends the difference between orders and agreements. If, from an interest in legal history, we focus on its normative aspect, we can say only that the *yue* sets out, not the specific form of a law, but the “conditions” under which a certain standard of behaviour or a set of rewards and punishments is shared by those involved by some means or another. This is equally true for those bound by *meng* agreements and for soldiers bound by military regulations. For this reason, a shared standard of behaviour (which might take the form of an agreement or of a regulation) could itself also be called *yue* at times. In this respect, the two types of *yue* discussed here are two means by which people are led to “a condition bound by *yue*,” a shared standard of behaviour is thus established and promoted. From the Spring and Autumn Period through to the Qin-Han dynasties, two systems coexisted to set a shared standard of behaviour and build the political order: one is a system of agreement (*yue*) or pledged alliance (*meng*) which those of equal position made, and the other is a system of

control by orders (*yueshu*) which a superior advocated and enforced on followers. The binding force of the former fundamentally depended on divine power or the fear of, and belief in, divine punishment, but this was already diminishing at that time. The second system required the person who proclaimed the order to have sufficient resources to enforce it. Theoretically speaking, there may be various possibilities, beginning with the fear of a military power. However, in the case of a war-band during the Warring States, Qin and Han periods, Masubuchi says that personal trust in the leader by group members supported the actual binding power of the *yue*.

Once we extend our gaze to this level, it becomes clear that considering the contrast between laws and contracts/agreements to be self-evident or looking at the *yue* of village communities as extensions of common agreements is a lazy approach. Historically speaking, *yue* is a comprehensive term encompassing various actions undertaken to build up and regulate a shared standard of behaviour, as well as the structure and forms of such a standard of behavior. Not only the *yue* of village communities, but also the “laws” and “contracts/agreements” that appear to be polar opposites in the Ming and Qing legal order, must be re-examined through this historical context. The following discussion moves from this point.

Shared Standards of Behaviour during the Ming and Qing Periods

First, let us review the situation in the Ming and Qing periods based on the above framework. It should be readily apparent that the written law codes issued by the central government during this time were an extended form of the *yueshu* 約束 which made their appearance during the Warring States, Qin and Han periods as the formative principle of imperial orders. By Ming and Qing times, “law” no longer consisted of merely “Three Chapters” like at the beginning of the Han dynasty but was a complicated system with a vast number of penal laws (*lü* 律) and statutes (*li* 例). However, as previous scholarship has shown, they were all issued unilaterally by imperial will.¹² Law functioned so that emperors could control the people. It could not have been used by the people as a means to make appeals to the authorities. Furthermore, after the establishment of imperial authority over the entire state, that is, the formation of a world of “one rule for ten thousand people” (*yijun wanmin* 一君万民), their sovereignty was already consolidated by the transcendental theory of the Mandate of Heaven (*tianming* 天命). The emperors no longer needed to rely on “mutual trust” to legitimize the right to proclaim laws.

Nevertheless, a large number “agreements among equals” were also established between the “ten thousand people” during the Ming and Qing periods. Needless to say, since the imperial system was already firmly established, such agreements no longer functioned to form political alliances between kings as they had done during the Spring and Autumn Period. Their main use was related to economic activities. However, as long as they dealt with give-and-take matters, there was no need to appeal to divine authority for them to function.

Consequently, from the point of view of the principles of political structure, *yue* based on the agreement between interested parties of an equal position and *yue* issued

¹² See for example Terada 1990.

unilaterally as orders from superiors were not considered to be two choices that could be selectively applied to a given situation. Instead, they were differentiated as “law” by the emperor, and as “contracts/agreements” by commoners. These two followed different principles in terms of function, and were executed in different social spheres. This of course is the fundamental structure of the polar sphere I referred to above.

On the other hand, if we turn our attention away from the conceptual level to the reality of the society in Ming and Qing village communities that represented a social sphere larger than the domain of private agreements but smaller than state administrative counties, we discover a vast world of *yue* that cuts across these two boundaries. What actually went on here provides excellent material for reviewing the conventional polar relationship theory.

I will first introduce several examples of *yue* that were made in village communities in order to verify that conditions supporting both commands by superiors and mutual agreements among equals coexisted there. In the following section, I will examine conceptually the internal structure of the *yue*, where both types were intermixed. At the same time, I will clarify the essential relationship between leader and followers, and orders and agreements. Finally, based on this analysis, I will briefly consider the position of law and agreements, which seemingly existed without mutual involvement, in shared standards of behaviour during the Ming and Qing periods.¹³

ASPECTS OF YUE IN VILLAGE COMMUNITIES

Community Agreements

Let us first examine agreements made by local people to institute village regulations. In historical documents, they are variously referred to as “compacts made by so-and-so” “prohibitory regulations” (*jinyue* 禁約), or “village compacts” (*xiangyue* 鄉約). Scholars call them “local regulations” (*cungui* 村規), “village regulations” (*hsianggui* 鄉規), or “agreements by the people” (*minyue* 民約).”

Although no examples of such agreements are extant dating from the Ming period, there are a number of format examples for them included in writings known to scholarship as “encyclopedias” (*riyong baike quanshu*; Jap. *nichiyō hyakka zensho* 日用百科全書), more specifically, in the volume where examples of formats for compacts and agreements, as well as contracts are collected. Niida Noboru has made a detailed study of forty-three such texts (individual titles mentioned below refer to these texts).¹⁴ I will introduce a few examples used by Niida, starting with a document entitled “Village Compacts” found at the beginning of the section “Types of Village Compacts” (*xiangyue tilei* 鄉約體類) contained in the chapter called “Introducing [Documents] for People’s Use” in the text *Santai wanyong*

13 It should be noted that this paper is not a study of individual *yue*. I am mostly dependent on previous works in terms of knowledge and information about historical facts and documents, and in that sense, there is not much I can add to it. I must also admit that as I focus on the shared characteristics of *yue*, my discussion may not fully reflect the fruits of previous works. On the other hand, I strongly hope that the comprehensive and theoretical discussion made in this paper (which has not been attempted much in the past) can be an inspiration to other scholars and contribute to their future work.

14 Niida 1962 (Parts 1 and 2), Niida 1964 (Part 3). Unless otherwise specified, all the daily encyclopedic texts I quote hereafter are late Ming texts. For details of individual texts, refer to Niida’s article.

zhengzong 三台万用正宗. It reads: Our village is highly populated, and we depend solely on agriculture, as we do not have any kind of productive industry. Therefore, when seedlings are beginning to sprout, horses and cows should not be allowed to trample on the rice fields or cultivated land of others, nor should ducks be allowed to peck at crops in the fields. Each household should keep these animals enclosed. “From such and such a date in such and such a month, following agreement by the assembly, if bandits do not respect the agreement, they will be punished according to previous example. If they resist and refuse to respect the agreement, they will be reported to the magistrate, and everyone [in the village] will bear witness against them, and a fine will be imposed amounting to ten times the loss. Such conduct will not be permitted even if no such regulation exists in the [official] penal code. We will respect the agreement and observe it.”

In the same section, there is an “agreement (*yue*) concerning fields, gardens, mountains and marshes,” which gives the format for an even more solid organization. In order to restrain wicked people who would trample down the plants on mountain-sides and in fields, the people of the village “came together, offered a pig as a sacrifice, prepared wine and sipped blood to confirm their alliance (*meng* 盟),” and implemented a new prohibitory regulation (*jinyue* 禁約), to which members of the alliance were also subject. The “merit of patrols” every day was recommended, as was the holding of a “meeting to exchange tablets” in order to rotate the guards once a month.

These formats allow us to imagine how local residents came together to establish by mutual consent (“agreements through assembly”, *huizhong yiyue* 会衆議約) detailed rules and punishments concerning their daily lives, and at times even formed new organizations to agree to certain regulations and carry them out. However, not all of the formats here were written for this purpose. For example, in the “prohibitory regulations concerning ancestral mounds,” found in the *Yunjin Shuqian* 雲錦書箋, it says that “those who instituted the prohibitory regulations,” who own ancestral mounds here and there, have been suffering recently from frequent robberies. Therefore, “clan members with ancestral mounds summoned those who lived in the vicinity, prepared wine, and confirmed their alliance to institute the prohibitory regulation.” By doing so, they were able to prohibit people from going into the mountains to cut down trees. It was also decided that the descendants of the main household should take it in turns to patrol, and neighbours should watch over one another. Those who robbed the tombs would be sent to the county officials for further investigation. The agreement added, “it was for this reason that the prohibitory regulations were instigated. They should not be taken lightly.”

Though clan members certainly “came together” to make this agreement, they did not necessarily discuss the matter together. Instead, it was those who owned the ancestral mounds who took the initiative to instigate the agreement in order to prohibit the illegal cutting down of trees, and they then presented it to the gathered members. The content of the agreement is actually quite similar to the “ordinance regarding those possessing ancestral mounds” (*Zhanmushan bangshi* 占墓山榜式) found in the *Shiwen leiju jingda qing-qian* 事文類聚敬割青錢 (Yuan dynasty). This was a notice board that the owners of ancestral mounds put up announcing a reward for those who reported illegal tree cutters and stating that such miscreants would be brought before the county officials.

The *Santai wanyong zhengzong* also contains notices such as “agreement not to steal fruit and vegetables from fields and orchards” and these too are called *yue*. This “agreement” is

on the surface very similar to the first example discussed, though it begins in a slightly different way, with the sentence “matters concerning the agreement on prohibitions within a certain boundary.” It lists instances of wrong conduct spreading within the boundary under discussion, and cites the necessity of “implementing a compact (*yue*) to prohibit totally [such actions].” Everyone should look into their hearts and repent; those who remained unrepentant and dared to commit such wrong deeds again would be punished without mercy. The agreement concluded with the formulaic phrase, “by so doing, let the people learn to be candid.” Though the agreement does not clearly indicate who “furnished” it, it is very clear from its intent that it was a normative notice prohibiting certain actions in respect to a certain area, handed down by a village leader who was considered socially superior to the others of the community.¹⁵

The above examples show that there were different types of *yue* in village communities during the Ming period, depending on who was behind the proclamation. They range from those similar to “agreements among equals,” like the compact made by an assembly in the first example, to those resembling public notifications and those more like unilateral declarations of rules and regulations by social superiors, such as the examples concerning ancestral mounds and the one cited in the previous paragraph. In other words, “*yue*” can be applied to all of these types of agreement.

Examples of agreements dating from the Qing dynasty collected by T'ai Yen-hui give more details about how they were made and carried out in the villages. I will summarize as an example an agreement of the *hetongyue* (mutually-binding contract) type simply called *heyuezi* 合約字, dated the tenth year of Xianfeng (1860).¹⁶

Ever since our ancestors immigrated to Taiwan, order has been maintained in this land for several hundred years. However in recent years, “there have been dissolute evil-doers and ignorant persons who would violate the law. They depend on powerful people and take advantage of any opportunities that appear before them, gathering other wicked ones and trespassing across village boundaries for plunder.” Therefore, “we gathered together the village elders and discussed matters publicly,” and each member “bound” (約束) [their juniors] and determined to draw up strict regulations. In the future, if violators (even though they claim some reason) do not first appeal to the village elders and await their decision, but band together and use force to achieve their objectives and get what they want, whether it happens in this village or elsewhere, we shall sound the gong to gather the villagers to arrest them. A bounty will be given to those who capture the violators, and if in the process they are injured, compensation will be given. If anyone should shelter such violators, he shall be punished. Costs will be shared: the victim shall cover thirty percent while the remaining seventy percent shall be covered evenly by the villagers.” If

15 Later in this agreement, it says that the accused should “go to elders’ council and be judged,” and that fines and other objects taken from him as punishment should be “put in a certain place in the village for group use.” Another *yue* in the same text says “if bandits or bullies engage villagers in a dispute or meddle in disputes among the villagers, promptly appeal to the elders’ council and have the case judged by the public authority.” (*Jinliuchu zhujian hemiao yue* 禁六畜竹踐禾苗約). Such statements suggest that the underlying structure of these agreements was much like that of the local elders (*lilaoren* 里老人).

16 See T'ai 1978, p. 148; Niida 1962, p. 732 contains the entire document except for the signatures at the end. Although the text consists of an introduction and the individual regulations, they have been summarized here together.

the offense is not very serious, the violator shall pay a fine. If it is a serious crime, the criminal shall be taken before the authorities.

At the end of the text, there is a list of various types of prohibition similar to those in the encyclopedias of the Ming dynasty.

This is also an example of where all the villagers are organized into a neighbourhood watch to restrain violent behaviour. This agreement was made by Huan Aojin 黃粵欽, a *ganshi* 幹事 (a powerful member of the community who collected taxes among other things), Wu Hengji 吳恒記, a *yezhu* 業主 (a major land owner and land developer under the Taiwanese land system) and forty *toujia* 頭家 (small landowners under the Taiwanese land system, corresponding to a general landowner in other areas). The names of those involved in the agreement are listed at the end of the document. From its format, we learn how local people came together, discussed the regulations, came to an agreement by mutual consent, and gave form to their decisions in terms of contracts or mutually-binding compacts. The format of these compacts is reminiscent of how agreements by an assembly (*huizhong yiyue* 會衆議約) were made during the Ming dynasty, as discussed above.

However, it is still not clear in what capacity those whose names are listed in the agreements represented community members. Furthermore, an example of an agreement contained in the Danshui-Xinchu Archives (Tanxin dang'an 淡新檔案, administrative documents from Tanshui sub-prefecture and Hsinchu district in Northern Taiwan) suggests strongly that an examination of those directly involved in setting up the *heyuezi* agreement should be enough to know that it was not necessarily made through the mutual consent of those of equal position.¹⁷

This document, a *heyuezi* agreement dated the tenth year of Dongzhi (1871) concerning the eight villages of Donglewan 銅鑼灣 is found as an attachment to an appeal to a local official in Tanshui sub-prefecture. The process by which the regulations were established is explained according to the following format. "I and others witnessed some problems, and gathered local villagers to discuss the regulations." It goes on to say that if "those involved in the agreement" ignore the agreement and try to protect one another, they would be sent to the magistrate for further investigation. Following the main discussion, it is stated that, "in each clan in each village, fathers shall instruct children and brothers shall instruct younger brothers; all will engage peacefully in their own work." Regulations almost identical with those of the above-quoted document dated 1860 are listed and at the end appear twenty-seven signatures.

The appeal document was signed by twenty-three people (of whom five names also appear in the 1860 document), as well as the heads of Donglewan. It is summarized as follows. As there is the "administration of the penal code" (律令之政) for the nation, there are "regulations" (條約之規) for local communities; if "these regulations are ignored, then local public morality will decline." In recent years, public order has deteriorated dramatically in the area, and so the signatories gathered together in order to "make a mutual agreement to restore order to the local community." The document states that "at that time, we recommended Li Fengnian. Li is familiar with public affairs. He is a sincere person and has

17 Document No. 12212, *Tanxin dang'an xuanlu xingzhenbian chujì*, vol. 295, p. 481 et seq. In this "petition," a "letter of guarantee" co-signed by twenty-odd people including the general supervisor (*zongli* 總理) to guarantee the leader, Li Fengnian, is included as an attachment to a *heyuezi* agreement I will discuss later. (Ed. note) For a discussion of the Archives, see Buxbaum 1971.

his own household to care for. He initiated the compact, and he is capable of dealing with the authorities. We would like to appoint him a ‘compact chief’ (*yueshou* 約首), and control the wrong-doers” (the *heyuezi* was probably attached to add weight to the appeal, although there is no direct reference made to why this was done). If some incident occurred, “it is possible to use the compact to take care of the matter privately.” However, if there was an unforeseeable accident (this seems to refer to casualties when capturing criminals), “how should the matter be handled at the magistrate’s court?” Because it should not be treated in the same manner as regular murder, the county officials were asked to issue the official seal to Li Fengnian as compact chief, and give him authority to handle affairs in the villages of the compact, in order to bring order to the district.

Upon receiving the request, the magistrate “inspected the regulations and found them simple and appropriate.” Nevertheless, he ordered further discussion since it was not clear where the funds to pay bounties or compensation for the severely injured were to come from; the provisions merely stated “discuss with the villagers and provide” and “consult the villagers and discuss.” When the revised version was submitted, the magistrate remained unsatisfied, maintaining that some words had merely been manipulated and ambiguities remained. He came to the decision that the compact was an attempt by the supervisor and other leaders forcibly to collect “funds from the village people” in the name of “maintaining public order,” and therefore, was a case of “benefiting the self by using the public.” The request to issue the official seal to the compact head was therefore refused.

In this case, the formation of a “mutual compact” (*heyue* 合約) was accompanied by the recommendation of someone to act as its chief (*yueshou* 約首), who “initiated the compact.” Local officials criticized this as being self-seeking at the expense of the public, and as a selfish decision by a group of people led by the village head victimizing the villagers as a whole. No further details can be gleaned, but it is clear that the driving force behind the compact was a system of regional control comprising the village head, supervisor and other power-holders in the villages in question. Thus even a cursory examination of instances where mutual compacts were formed strongly suggests that we should not automatically presume they were made by social equals. Such compacts were often “orders” (*yueshu* 約束) made by those of higher social rank to those beneath them.

Village Compacts

By the middle of the Ming period, village compacts (*xiangyue* 鄉約; sometimes called “community covenants”) were being formulated by public-spirited gentlemen and local officials. They had specific formats, which will be discussed below.¹⁸ Initially they were modelled

18 If we look at the scope of the term, it is clear that “*xiangyue*” includes at times prohibitory regulations, as indicated by the title “Types of Village Compact” (*xiangyue tilei* 鄉約種類) in the *Santai wanyong zhengzong*. In actuality, distinctions between the two became rather ambiguous, with the development of the community self-defence system through the community pacts. However, in this paper, I will focus on the fact that they were distinguished one from the other when they first appeared. I am also motivated by the convenience of calling them by different terms. I will follow the usage of the terms as they appear in dictionaries (to follow the custom of the study of Chinese history in Japan). Thus, when I use “*xiangyue*,” I refer only to pacts of the same genre as the *Lushi xiangyue* 呂氏鄉約 which I will discuss later. However, the Chinese scholar Chen Keyun includes even *huiyue* 會約 (association) like the one I mention at the beginning of this paper as *xiangyue* in Chen 1990.

on the village compact outlined by the scholar Lü Dafang and his brothers for their hometown of Lantian in Shaanxi province around 1077, as amended by Zhu Xi (1130–1200) in his *Zengsun Lüshi xiangyue* 增損呂氏鄉約 (The Lü Family Village Compact, with Additions and Deletions). An even more popular community compact was that introduced in 1518 by Wang Yangming (1472–ca. 1528) in his *Nangan xiangyue* 南贛鄉約 (The Village Compact for Southern Jiangxi). Though community compacts date back to the Song period, it was not actually until the middle of the Ming period that they began to be used widely.¹⁹

The *Zengsun Lüshi xiangyue* has four main injunctions concerning the community compact:

- (a) members should encourage virtuous behaviour in each other and undertake virtuous actions
- (b) members should correct the wrongs of others
- (c) members should associate with each other according to the rules of propriety
- (d) members should assist each other in cases of illness and calamities.

Members of the compact should choose an upright person to serve as its head (*yuezheng* 約正), two men, of learning and character, to assist him, and a monthly helper. There were to be three registers; the first containing the names of members, the second to record virtuous conduct, and the third to record bad deeds. Members of the compact were expected to discipline and train themselves on a daily basis, encourage each other in virtuous conduct, and admonish the errors of others (for example, gambling, failing to fulfill obligations as a member of the pact, not disciplining and training oneself). Monthly meetings were to be held where virtuous conduct was recorded and rewarded, and recidivists admonished and reprimanded by the head of the compact. If they then apologized, they would not be punished, other than having their name recorded in the appropriate register. If, however, they did not amend their ways, they would be expelled. In the course of daily interactions, as well as at times of celebration, funerals or misfortune, members had to fulfill their duty according to social decorum (for example, attending each other's funerals). If any member fell victim to a calamity such as flood or fire, or to theft, sickness or poverty, other members were expected to assist him (specifically, by lending accommodation, tools, horses or servants). If neighbours in the same village were devastated by a calamity, compact members were required to help them directly, or devise appropriate assistance, even though the victims were not fellow members. Not doing so would be considered a violation of the compact, while members who helped the victims would have their virtuous conduct recorded in the register.

Wang Yangming's version, which became the subsequent model, states:

From now on, all of you who enter into this compact should be filial to your parents, respectful to your elders, teach your children, live in harmony with your fellow villagers, help one another when there is a death in the family and

19 See Shimizu 1951, vol. 2, chapter 3. For an understanding of *xiangyue*, I learned much from Inoue 1986 as well as from other works. For reference to the rich previous scholarship on the subject, see Inoue 1986. For the main texts (*Zhu Xi zengsun Lüshi xiangyue* and *Nangan xiangyue*) see Wada 1939. The texts are included in his attached collection of sources.

assist one another in times of hardship, encourage one other to do good and warn one another not to do evil, refrain from litigation and rivalry, cultivate faithfulness and promote harmony, and be sure to be good members of society so that together you may establish the custom of humanity and kindness.²⁰

Though there are differences in wording, Wang is clearly in the same tradition as the Lü/Zhu Xi version described above. Members should “elect from the compact membership an elderly and virtuous person respected by all to be the compact chief (*yuezhang* 約長).” Three registers were recommended, and regular gatherings were to be held where good conduct was praised and bad conduct admonished. “Each member should contribute three *fen* of silver at each banquet meeting to the comptroller (*zhiyue* 知約) who will provide food and drink.” “Those who fail to attend the monthly meetings without cause will be recorded for bad conduct, and in addition will be fined one *liang* (100 *fen*) of silver for the use of the group.” Community compacts were thus supported by membership fees and full attendance was the norm.

“Village compact” refers both to the rules and regulations set down to encourage the moral improvement of members, as well as to the organization itself. The former sense can be seen in expressions such as “violating the compact” (*fanyue* 犯約), and the latter in phrases like “those wishing to join the compact,” (*ruyue* 入約), “members of the same compact,” (*tongyue* 同約) and “expulsion from the compact” (*chutue* 出約). In short, community compacts were groups of people who obeyed the same rules and acted according to them.

As we learn from the regulations given at the end of the *Zengsun Lushi xiangyue* stipulating what had to be done when neighbours who were not members of the compact suffered hardship and crisis, those belonging to a compact always assumed the existence of those who did not; that is, village compacts were usually organized by only some of the members of the village. In terms of their functionality, regulations such as helping one another at weddings, funerals and other ceremonial events are obviously linked to groups such as the “parental associations” (*fumuhui*) mentioned above, which had a single purpose, such as funeral arrangements. Again, injunctions referring to mutual encouragement may be associated with the societies that literati and men of the gentry class formed to study the classics and practice poetry (these societies too sometimes had regulations called “compacts made by so-and-so [- *yue*]). In this regard, village compacts can be understood to be a type of the association popular at the time, which operated under certain agreed terms.

If, on the other hand, we focus on the function of village compacts as a means to prevent bad conduct such as gambling, they can be associated with community regulations such as the compact to prohibit gambling found in the encyclopedia *Wuche bajin* 五車拔錦. This compact begins with the sentence, “concerning a compact to prohibit gambling” and continues: “people gathered for this purpose, and discussed making the prohibition. In the future, the wrongdoer will be made to regret his fault and be more conscientious about his work. If he does not do so, members will decide his punishment in the case of a casual fault. If however the case is severe, the wrongdoer may be sent to the county authorities for a decision.” In addition, methods for promoting the regulations are similar to those

20 Ed. note. The full text in English translation may be found in Wang 1963, pp. 298–306.

found in a prohibitory regulations contained in the *Wanjin quanshu* 萬錦全書. These too were in the form of regulations for the community, but they were not carried out because the leader was not capable of enforcing them. Therefore it was decided to bring the various households of the village together and to divide them into groups to “prepare wine and gather people together on the first and the fifteenth of each month to awaken their minds.” Again, it is easy to see the functional similarity between the injunctions in Wang Yang-ming’s village compact (that states “among relatives and neighbours, there have often been cases where, because of some minor resentment, people would join bandits in order to get revenge, thus doing great harm to good people and causing serious problems. In the future, all cases of injustice or disputes must be reported to the compact chief and other leaders so that they can hold a public discussion on who is right and who is wrong”), and the attempt to place a control over private action, as is seen in the 1860 *heyuezi* from Taiwan, mentioned above. In this sense, village compacts are very close in character to the various kinds of village prohibitory regulations known broadly as community agreements.²¹

Previous studies have shown how village compacts developed from the late Ming period.²² The ethical injunctions that were at their centre changed over time into the moral instructions that were promulgated throughout the empire by state decree, such as the Six Maxims of the Founding (Ming) Emperor (*Taizu liuyu* 太祖六諭; 1652) and the Amplified Instructions of the Sacred Edict (*Shengyu guangxun* 聖諭廣訓; 1724). Eventually ritualized lectures on them became the core of compact meetings. Also, a large number of compacts were instituted under the leadership of local officials, and organizationally came to be combined with the traditional *baojia* 保甲 system of mutual surveillance based on five-family mutual-responsibility units, so that the village compact-*baojia* system became the norm. This trend became ever stronger in the Qing period, to the point that village compacts became part of a nation-wide system carried out under the direction of county officials. At the same time their meetings changed into fortnightly public lectures disseminating moral ideology as expressed in the Sacred Edicts and other state-ordained moral injunctions. These meetings were open to the public and were no longer the preserve of registered members only. In the process, the defining character of the mid-Ming village compacts – local groups comprised of registered, named members and the regulations they issued – was lost. Furthermore, the fortnightly public lectures began to include the reading of the penal law (see the statute dated tenth year of Qianlong [1745] concerning “public reading” contained in the Standards of Official Behaviour in the Administrative Law division of the Qing Code [*Da-Qing lüli* 大清律例]) and *yue* became more and more analogous with the regulations posted by local officials. Following the comparison I used before, *yue* shifted from being “mutual agreements” to “one-directional promulgations and orders,” and finally became identical with the promulgation of laws by the state. In general, although there were some exceptions (occasionally, very dedicated local officials would appear, encouraged by the central government), village compacts became increasingly

21 However, a discussion of the relations these three types of agreement had with one another in the development of Chinese legal history, going beyond their similarities in format and content, requires separate treatment. One of the most comprehensive works on this theme is Yamada 1934.

22 For the development of *xiangyue* after the late Ming, see Shimizu 1951 and Sakai 1960.

formal in nature and *xiangyue* finally became the title of an official position, referring to supervisors of local communities.²³

On the other hand, if we turn our attention again to the local people themselves, during the Qing period too there reemerged in regions all over the empire independent movements to implement village compact associations much like those which appeared in rural society during the late Ming period when people came together to resist banditry. This coincided with the rise in tension caused by the Taiping Rebellion of the mid-nineteenth century. This phenomenon has been analyzed in detail by Nishikawa Kikuko and Inada Seiichi, taking the example of the Anliang compact from Guiping district in Guangxi province.²⁴ In this sense, the historical changes within village compacts discussed above represent certain tendencies only, and at the level of local society, individual conditions determined how compacts functioned, even during the Qing period.

Conditions surrounding community agreements unexpectedly demonstrate the unique dynamic that bridges mutual compacts (*hetongyue* 合同約 or *huiyue* 會約) and unilateral orders (*yueshu* 約束).

Compacts and Alliances in the Rent-Resistance Movements

Records concerning “compacts” (*yue*) and “pledged alliances” (*meng*) can also be found in documents concerning rent-resistance movements by tenants in the Ming and Qing periods. Since they were also agreements made within village communities, I will summarize them here briefly. The most representative of such records is considered to be the *Zhengzuyi* 征租議 by Huang Zhongjian 黃中堅, written in the middle of the seventeenth century. It states: “At present, all the poor people in the villages pool their money for play performances. They make pledges, take blood oaths, and form compacts to resist the landlords. Despite being warned many times by all the officials, they are fearless. Among them there are one or two good tenants who are willing to hand over rent, but if they do, the mob (*zhong* 衆) rises en masse to attack them. They even sink their boats, scatter their rice around, and destroy their houses. The same thing is happening everywhere. . . . Landlords are all afraid of upsetting the mob, and do not dare say anything. Such bad customs are to be feared.”

The resistance movement described here consisted of tenant farmers who had “banded together and pledged their unity” by drinking the blood of a slaughtered animal.²⁵ We can also find an example of villagers “offering sacrifice and making a pledge to the gods” in the eleventh volume of the *Wuxuanzhi* 吳縣志, dated the Zhongzhen era (1628–1644) which says, “Tang Zuogen and others of Hengjin made the locust plague the reason to lead the public with deceptive words. They gathered together [the people of] thirty and more

23 These *xiangyue* had some role in mediation, which I will discuss below (documents often refer to them as mediators). However their exact position is yet to be ascertained. Saeki 1971 specifically discusses this, claiming that, “in reality, the self-government of village communities was managed by those representatives.” If Saeki had clearly defined what he meant by “self-government,” his theory would have been much clearer.

24 Nishikawa 1978, Inada 1986.

25 There were also cases where written documents were used to seal the agreement rather than this magical type of pledge. For example, *Wuqing zhenzhi* 烏青鎮志, vol. 2 by Qian Long 乾隆, quoted in Shigeta 1975, p. 186 et seq.

villages along the lake, offered a sacrifice and made a pledge to the gods, nominated a leader in the villages, listed up names, and made tenant farmers swear not to pay rent to landlords.” In another instance, recorded in the gazetteer *Danghuwaizhi* 当湖外志 of the Gan Feng 感豐 era (1851–1862), people discussed “forming an association and united their will” to stop rent payments: “Zhen Quande of Jin village, proposed forming an association and uniting the will of the people to stop rent payments. Those who did not comply were beaten.”²⁶

The alliances are depicted as always being accompanied by some form of violence, reflecting the negative opinions of the authors of the documents. In the first document, the “mob” that made the alliance banded together and destroyed the possessions and houses of tenants who attempted to pay their rents. In the second, the leaders nominated by each village according to the alliance agreement listed all the residents in the village and “ordered”/“bound” (*yue*, i.e. *yueshu*) tenants not to pay their rents. In the third as well, people “raised an issue and formed a group” (*qiyiduanshe* 起議團社), attacking any who refused to “be of the same mind” (*qixin* 齊心).

It is difficult to determine whether this violence was an act of control within the group or whether the group was exercising violence against those who did not join them. Thus in the first example, had the tenant farmers who were attacked for paying their rents joined in the blood-drinking ritual pledging the alliance, or in the second example, were the tenant farmers who joined the alliance and nominated a leader identical with those whose names were listed and were ordered by the leader not to pay? The answer is not clear from these documents. What remains apparent, though, is that while these movements were based on alliances, such alliances were not always formed and maintained solely on the voluntary agreement of members. Instead, violence was used as a means to force some members to be part of the alliance and to maintain unity. Thus, anti-rent alliances could have been quite violent at times.

On the other hand, the format of such alliances (nominated leaders who made promises to members) suggests a similarity between rent resistance alliances and the *heyuezi* document of the eight villages of Donglewan (1871). The *heyuezi* even presupposes the possibility of death and injury in the course of its implementation, as is clearly indicated by the item regarding compensation. Prohibitory regulations too could well have been rather violent, and so we should not assume that the types of compact and alliance mentioned in this section were necessarily of a different nature to those we have been discussing.

Translated by Mayumi Yoshida and Gaynor Sekimori

26 Quoted in Hamajima 1990, p. 1332.

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