

# The Origins of the Modern Sacrificial Fields System in China

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**Abstract:** Sacrificial fields' all three kinds of transformational practice in various parts of modern China about the same time were actually determined by its internal factors. The major theoretical controversies that occurred in the process of the transformation of sacrificial fields system could all be re-interpreted by those internal factors. And in the sense of how a traditional moral ideal could be realized under modern social conditions, the relationship between the tradition and modernity might also be re-understood with such internal factors. This article, which focused on the transformation of Chinese sacrificial fields system in early 1920s, would illustrate a highly contradictory truth: formally, the transformation of China's legal system was subject to various framework of modern and western legal systems; but on its essence, this progress can also be seen as a process determined by its internal factors.

## 1. Introduction

Generally speaking, the transformation of the Chinese traditional sacrificial fields system had three relatively successful experiences, resulting in three different "modern sacrificial fields legal systems".

One was recognizing the sacrificial fields as a kind of Common Property, which was initiated by the Dali Court in China mainland in early 20th.[1] The second, according to the Japanese civil law, was promoted by the Japanese colony government in Taiwan after Sino-Japanese War of 1895. Taiwan's sacrificial fields was identified as a kind of customary legal person until 1945.[2] The third was advanced by the British colonists in Hongkong (especially in its New Territories) after the Opium War. The British colonists identified Hongkong's sacrificial fields as a family-based trust according to the British trust law.[3]

Most previous researches describing, summarizing, and analyzing sacrificial fields system's transformation inevitably implied one common standpoint: as a whole, it was a typical changing progress from tradition to modernity. Based on this kind of view, their methods also have some commonality: summarizing the basic content of modern sacrificial fields systems in each region by their specific judgments and then clarifying their rationality or unreasonableness by taking the modern legal systems as standard templates.[4] Meanwhile, the tradition factors not completely eliminated in those progress, such as distributing sacrificial fields' wealth only in certain family, were the sign of those changing progress from tradition to modernity not yet fully completed.[5]

However, in the judicial adjudication of sacrificial fields system that time, there are many "exceptions".[5] Secondly, hardly could the transformation of sacrificial fields system be identified as a complete modernized result.[3] These situations indicate us that: although directly affected by the modern legal systems, its transformation and so called modern sacrificial fields legal systems as its result were ultimately dictated by not-so-modern factors. In my opinion, the key to determine the transformation of sacrificial fields system is not about fitting the modern legal systems but about finding a way to solve a very fundamental contradiction deeply buried in its long history.

## 2. The Internal Contradictions of Traditional Sacrificial Fields System

### 2.1 Traditional Sacrificial Fields System and Its Faultiness

From the appearance point of view, the practice of sacrificial fields in the late Qing Dynasty generally showed such a relatively unified institutional logic: people would set up a certain amount of land property within family, using its income (such as annual tenant rent) to carry out family sacrifices (this is why it is called sacrificial fields) and to subsidize the old, young, weak, disabled, orphaned, widowed, wedding, funeral and ones passed the imperial examination in family.[5] Essentially, the purpose of all activities supported by family sacrificial fields was complete consistent: to instill, strengthen, and promote all family members' filial piety.

However, in reality, it wasn't difficult to find the real mechanism by which the sacrificial fields unite the clan was based on a financial way to acknowledge, allow, and satisfy people's desire of property basically as long as they were family members. For this reason, although it wanted to create an ideal life model in which the morality of filial piety governed people's all actions, its actual effect was making people to struggle for the wealth and profits of the sacrificial fields.

It is also worth noting that in terms of the moral ideals it pursues, the traditional sacrificial fields system's negative effects can also act on people's morality. The reason for this, in my opinion, is that ancient Chinese people's desire of acquiring and dominating the wealth and profits of the sacrificial fields was unrecognized, suppressed or denied from the beginning. In this way, the morality of filial piety was ultimately degenerated into a means of profiting in the institutionalized practice of sacrificial fields system.

## **2.2 The Immoral Customaries Formed by the Traditional Sacrificial Fields Practice**

In traditional sacrificial system's practice, people would secretly transfer, mortgage or pawn their potential future benefits from the sacrificial fields to others in a similar manner to their own properties.[6] This kind of behavior seriously deviated from sacrificial fields system's original purpose and would substantially damage the realization of its moral ideals. Therefore, theoretically, under no circumstances was it possible for such acts to get morally positive judgements.

Actually, the politicians and philosophers in ancient China were actually already aware of sacrificial fields system's this contradiction. And they had been proposing targeted improvements to rectify and to reinforce the sacrificial fields system by more specific regulations. However, their efforts could only be counter-productive.[7] In short, the practice of Chinese traditional sacrificial fields seems to prove that the subsidy and its supporting system for morality just could not produce true moralities.

And we may conclude the inherent contradictions of traditional sacrificial fields system into two systematical key problems:

First, how to make the property of the sacrificial fields be reconciled with the people's desire for wealth and profits? Second, how to make those acts catalyzed by the sacrifice fields system match with the filial piety in people's hearts?

These were the most important difficulty for sacrificial fields systems' transformation that how to respond these two questions under modern conditions.

## **3. The Transformation of Sacrificial Fields System: Modern Legal System Encountered Traditional Problems**

### **3.1 The Inheritance of the Traditional Sacrificial Fields System's Use and Purpose**

In China mainland, the transformation of traditional sacrificial fields system was begun with a case judged by Dali Court in 1914: the case on appeal No. 1144.[8] In my opinion, the most important point of this case was that its judgment also stated a significant limitation for sacrificial fields as a common property: for its original use and purpose.[1] 214 Similarly, this was a ubiquity in Hong Kong and Taiwan areas that the judicial authority strived to maintain sacrificial fields' relative integrity and original use and purpose roughly 1920s.[3]

Whether it was understood as a kind of common property, or as a trust property, or as the property of a legal person, the problems they encountered were basically the same, and the judgements they made were also effectively the same. This institutional need could be described

just as that: under a circumstance of modern institutional transformation, how various modern sacrificial fields systems would make fundamentally different arrangements and adjustments with the traditional sacrificial fields system.

In the meantime, a large number of immoral customaries formed in ancient China were now mostly understood within the framework of various modern legal systems and interpreted according to the basic principles of modern civil laws in Taiwan areas.[2] And similar situation also occurred in China mainland too.[4] According to the theory of rights, there was also no absolute legal persuasiveness to prohibit people as owners of the sacrificial fields to divide up or freely deal their own property.[9]

In fact, the rights and its significance generated in the process of the transformation of sacrificial fields system should and must be analyzed in conjunction with sacrificial fields' original purpose too. For example, the court of Hong Kong also recognizes that people had the right to profit from sacrifice-trust, but it was generally a kind of decentralization approach. Theoretically, as beneficiaries of the sacrifice-trust, the family members only enjoyed some kind of beneficiary right that depended on identity rather than deriving from the land, but could not become the owners of the sacrifice-trust property. In this way, the original use and purpose of the sacrifice-trust were completely entrusted to the appointed managers of the sacrifice-trust to implement.

Actually, if leaving aside the general framework of the trust system, Taiwan's practice of sacrificial business could be said to be extremely the same as Hong Kong.[2] And in terms of actual effect, the practice in China mainland could also be seen as a kind of decentralization arrangement for the property rights of the sacrificial fields.[4] And this, in a sense, constituted another important common point for all three modern sacrificial fields systems.

### **3.2 The Common Significance of All Modern Sacrificial Fields Systems**

In the transformation of sacrificial fields system, people's behavior promoted by the property was legally no longer bound to their filial piety. Ideally, the sacrificial fields itself could be able to continue its past familial use and moral purpose by exercising its legal person property right, or the right to manage the trust property, or communal property ownership in modern legal systems. In reality, people could have a relatively restricted but legally protected "right" to benefit, which could make their desire to profit from sacrificial fields relatively satisfied.

Once we recognized this, we shall finally find that, from the perspective of balancing ideals and reality, all three modern sacrificial fields systems proposed one essentially same answer with common characteristics to the fundamental problems of the traditional sacrificial fields system. And it is in this sense that we can say the modern transformation of the Chinese traditional sacrificial fields system can also be regarded as a process of change determined by its internal factors. And the traditional sacrificial fields system could be rebuilt with the power of modern legal systems.

## **4. The Integration of Traditional Customaries and Modern Legal Systems**

### **4.1 Review the Modern Sacrificial Fields Systems on Its Original Use and Purpose**

#### **4.1.1 Women's Rights to Sacrificial Fields**

A dedicated study found that women's rights to sacrificial fields were immersed an extremely complex situation that they were neither absolutely rightful nor definitely un-rightful the mainland region during early 1920s.[4]

A more comprehensive explanation to this is that whether women had rights about sacrificial fields should only be understood in a complex context of realization of family moral ideals in a modern legal circumstance. The puzzle here was totally caused by Chinese people's different family identities. And this was why all cases of sacrificial fields would present a unified familial characteristic, no matter they happened in Taiwan, Hong Kong or China mainland.[2]

#### **4.1.2 The Dissolution of the Sacrificial Fields**

Traditionally, there was no mechanism for the dissolution of sacrificial fields.[7] However,

realistically, there were many instances of the dissolution of sacrificial fields.[1] This situation, on the one hand, indicated that the moral ideal of sacrificial fields could not be purely realized by people's morality. On the other hand, it also highlighted that pawning or selling sacrificial fields in reality always lacked legalized regulation.[3]

In fact, the dissolution of sacrificial fields in its transformation not only avoided people's immoral race-to-the-bottom but also objectively maintained an open space for people to willingly choose their real filial piety. Of course, the results would not be consistent with the ancient's recognition. But who can say that the transformed practice of modern sacrificial fields system was no sincerer or purer than a kind of family filial piety caused by the external coercion or the attraction of wealth of sacrificial fields?

#### **4.1.3 Defining Family Branch as the Subject**

In the modern times, the individuals of the sacrificial fields were all connected to a traditional concept of family branch. Its key point was appointing an individual, usually male members in the family, to participate the proceedings as the representative of their own branch.[9] However, this was almost as same as the practice of ancient China. No matter how much emphasis was placed on the effectiveness of this practice, it still could not contribute to the legally modernized explanation for family branch.

In fact, it was the concept of family branch containing stronger explanatory power and applicability that forced the judiciaries to retain this concept. As an analytical concept, family branch could greatly reduce the pressure of the judiciaries in determining the sacrificial fields' right holder. Here, the ambiguity and inclusiveness of the concept of family branch, which was most opposed by any modern legal systems, were just left a certain room for the family's future change.

#### **4.2 The Integration of Tradition and Modernity**

The above discussion has demonstrated that the values, ideals, and concepts of the traditional sacrificial fields system do play an important role in the construction of the modern sacrificial fields systems.

However, the above discussion doesn't assume that there is absolutely no problem in it. In fact, in Taiwan area nowadays, the debate about the rights of women, the dissolution of sacrificial business, and the family branches and the individuals had been sustaining for decades.[10] Naturally, similar situations do exist in Hong Kong too.[3] Here, I mentioned this at the end of the article only to point out again that the major theoretical controversies in modern sacrificial fields systems nowadays are still obviously rooted in the values, ideals, problems and contradictions arising in distant ancient times.

### **5. Conclusions**

This article has shown that the modern transformation of traditional sacrificial fields system has never been or should not be understood as a simple process dominated by the modern legal systems. In essence, the fundamental issues and the arrangements to solve them in various modern sacrificial fields systems are determined by the moral ideals carried in the traditional sacrificial fields system. This also indicates that with the power of the modern legal systems, even the oldest Chinese moral ideals will possibly be re-interpreted and re-expressed in the modern social conditions.

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