

Huang's attitudes toward women's property are not revealed in his funerary inscriptions. He wrote six for women, but they are all impersonal and lack detail of dowry or household management (except to praise mothers for educating sons).¹⁴² Huang used the medium to expound on key Learning of the Way issues of filiality, education, and anti-Buddhism. It is likely that Huang Kan did not know any of the women well enough to comment on an issue like dowry donation, but it is also possible that none of his subjects donated her dowry. (Given that Huang's contemporaries continued to note incidents of dowry donations in their inscriptions, it is unlikely that Huang considered it to be routine and therefore omitted it from his eulogies.)

Nevertheless, any lack of expressed opinion about women's property in Huang's funerary inscriptions is more than made up for by a body of written judgments that survives in Huang Kan's collected works. In his legal decisions Huang Kan aggressively applied Learning of the Way ideals, even if this meant reversing decisions by other judges. He minced no words in his harsh opinions and showed little tolerance of traditional practices. He went against established custom and law by insisting that women with children did not have private property rights within marriage.¹⁴³ He tried to take away the financial independence that had made remarriage an attractive option for Sung widows and their second husbands.

The following case best illustrates Huang's thinking on women's property and is cited in full. The lawsuit was filed in Lin-chiang prefecture, Kiangsi, in the 1210s, and was being appealed to the Circuit Intendant at Chi-chou prefectural seat (see Map 2 in the Introduction).¹⁴⁴ Huang Kan, who was magistrate of Hsin-kan county in Lin-chiang prefecture, was probably rendering a decision on the Intendant's behalf, which did not have the force of law until confirmed by him.¹⁴⁵

142 See *Mien-chai chi*, 37:20a, 28a; 38:4a, 6b, 35a, 48a.

143 But note that in the case described in Chapter 2 of a woman with no children, whose husband had abandoned her, he ruled that her property stay with her corpse, both in the possession of a previous husband's family.

144 CMC Appendix 2:603-4. *Mien-chai chi*, 33:30b-32a. For dating, see also *Lin-chiang fu chih* (1871 ed.), 16:6b; and *Hsin-kan hsien-chih* (1873 ed.), 6:7b. The cases before and after this one in his collected works are also from Lin-chiang, and several are appeals from Chi-chou; *Mien-chai chi* 33:25b-34b.

145 When a case was appealed to the Judicial Intendant, he would routinely choose some lower level magistrate to render a decision. This lower judge could be outside the prefecture in question, and Huang Kan received several cases from the Judicial Intendant of Kiangsi, located in neighboring Chi-chou prefecture. Huang prefixes his verdict in this case with "yü," "I wish" or "I suggest," to indicate the advisory nature of his decision. For a general discussion of these procedures, see Miyazaki Ichisada, "SōGen jidai no hōsei to saiban kikō," in *Ajiashi kenkyū*, Vol. 4 (Kyoto: Dōhōsha, 1975), esp. 194-214. Cf. Gudula Linck, *Zur Sozialgeschichte*, 55-9, esp. 57-8.

Huang Kan's Enforcement of Way Ideals

The first part of the case, which as usual in written judgments sets out the moral framework of his argument, is a forceful articulation of the orthodox Confucian concept of marriage. The subsequent facts of the case, however, also reveal how these ideal concepts could clash with established practice in the Sung of widows returning to their natal homes. The written judgment is as follows:

The Hsü family accuses the Ch'en family of taking their daughter-in-law and her fields and property.¹⁴⁶

by Huang Kan

I

When a daughter is born, you want to find her a family. That is to say, you take her husband's family and make it her family. When a woman gets married, you call it "going home" (*kuei*). This means that when she obtains a family to marry into she is obtaining a home to go home to. No one is more important than her husband. No one is more venerable than her mother-in-law. No one is more beloved than her son. These relationships are all alike and cannot be changed. Can feelings change just because a person has died?

II

Madam Ch'en is the wife of Hsü Meng-i. Therefore Hsü Meng-i's home is her home, and she has obtained a place to "go home to." Unfortunately her husband has died. She must take his place to fulfill the purpose of his life, and serve her mother-in-law for the rest of her life. Even if she had no children, she still could not go home to her parents. Since she has three daughters and one son, she may still less be permitted to pick them up and return to her father's house. And even less may she abandon them and leave, thereby not serving her mother-in-law herself, and additionally burdening her mother-in-law with her children. Can this be the way of a human being?

Her father gave her lands when he gave her in marriage. This became land of the Hsü family. When her husband bought land and called it her "dowry" (*chuang-lien*), it was also land of the Hsü family. How can the Ch'ens get it into their possession?

If Mr. Hsü had no children, then Madam Ch'en could take her land and claim it to be her own. But since she has four children, she should divide her land among them. How can she take away her land and abandon her children? If indeed Madam Ch'en had such an intention, her father Ch'en Wen-ming and her brother Ch'en Po-hung should have exerted themselves to warn her against such action. How could they allow her to return home and even assist her in being undutiful (*pu i*)?

When I investigated the circumstances of this case, I found that it did not necessarily arise from the ideas of Madam Ch'en. Rather, Ch'en Wen-ming and his

146 CMC Appendix 2:603-4. *Mien-chai chi*, 33:30b-32a. I have added roman numerals I, II, III, to indicate the three sections of the case.

Women's Property and Confucian Reaction

son Ch'en Po-hung actually brought the matter up on her behalf. But does not Ch'en Wen-ming have a son and daughter-in-law? If Ch'en Po-hung died and his wife also abandoned her children, burdening his father and mother with them, and taking her property returned home, would not Ch'en Wen-ming file a lawsuit? Madam Ch'en is just a simple wife, and Ch'en Wen-ming is already old. Thus Ch'en Po-hung is surely the guilty party.

III

The prefect Wu Ssu-pu did not investigate the significance of this case. On the contrary, he ruled against Hsü Meng-i's younger brother Hsü Shan-ying, saying that he should not have told his mother to file a suit. This amounts to indulging the undutiful actions of Madam Ch'en. I wish to rule that Ch'en Po-hung be given 60 strokes of the bamboo, and that Madam Ch'en be escorted in custody back to the Hsü household. Furthermore, as for the two *ch'ing*¹⁴⁷ of land, the Hsü family should be allowed to take over its management for their benefit. [Madam Ch'en should] teach her son and marry off her daughters so that they all fulfill their life stations.

Report this to the office of the Judicial Intendant and have the court receive the orders from him. Have the concerned parties submit bonds [to be sure they do not flee while waiting for the verdict].

This case warrants considerable comment. In the introduction Huang Kan uses the double meaning of the word *kuei*, "to marry" or "to go home," to argue that a girl's family was not the one into which she was born but the one into which she married. In this view a woman did not properly belong, even temporarily, to her natal family. Rather, marriage bestowed on a woman her first true home, and her husband's family was her only true family. (Note how this perspective contrasts with Han Yüan-chi's (1118–1187) praise for the Lady Shang-kuan, who when widowed took her children back to her own parents and administered their estate.) For Huang Kan, a woman's attachment to her husband's lineage was to be permanent and final.

In Part II of the judgment, Huang peppers his description of the events of the case with his own opinion of how the principals should have behaved. Instead of remarrying, Madam Ch'en should have acted in the place of her deceased husband to "fulfill the purpose" of his life (*tang-t'i ch'i fu chih i*).¹⁴⁸ This was to be done by serving her mother-in-

147 The text reads *hsiang* 頃, which I take to be a mistake for *ch'ing* 頃. A *ch'ing* was a common unit of land equal to 100 *mou*, or about 33 acres. The term appears frequently in court records.

148 Shiga emphasizes this point. He sees the role of a woman in the family as being to "take the place" of her husband in a legal sense. She preserved the inheritance of her children by acting as a sort of place holder until her sons (natural or adopted) were grown. *Gemi*, 415ff.

law, relinquishing her dowry to the household, and providing her husband's family with heirs.

Huang then describes three unacceptable scenarios for widows, and by including them reveals that they must have been quite usual. One was for a widow without children to return to her natal family. Another was for a widow with children to take these back with her to her father's house. The third was for a woman to leave her children behind, "to abandon" them, and return home, thereby forcing her mother-in-law to take care of them. (Ironically, Huang Kan uses the verb *kuei* "to go home" in these three instances to mean "go home to one's natal family," thus contradicting his semantic argument in Part I.) The third offense (that of Madam Ch'en) was the worst, since a daughter-in-law had a duty to raise heirs for her in-laws and to relieve her mother-in-law of any burden in the household. He disregarded the possibility – indeed likelihood – that the in-laws would rather have the children than let them be taken away.

The lines quoted speak to the ritual and reproductive obligations of a wife: to serve her mother-in-law and create progeny to ensure no break in the line of descendants who would perform ancestral sacrifices.¹⁴⁹ The next paragraph, however, speaks to the material patrimony. Here Huang Kan's views were in even more conflict with Sung practice.

Huang Kan states categorically that the dowry a father provided to his daughter belonged to her husband's family ("this land became land of the Hsü family"). Moreover, he describes the situation warned against by Yüan Ts'ai and witnessed by T'ien Shui and other judges, in which a husband purchased land and registered it as an addition to his wife's "dowry." He states that such land also belonged to the husband's common estate and not to the wife *even if it were registered in her name as "dowry."* This line specifically contradicts the statutes in the T'ang and Sung codes, which state that a wife's dowry was *not* part of her husband's estate. Moreover it was precisely these laws that had forced judges like T'ien-shui to allow an "unfaithful" widow to take away property from her husband's son and caused Yüan Ts'ai to warn that a man who purchased land and registered it in his wife's name was liable to lose it. Huang Kan was acting contrary to previous law and custom and was changing the rules of female property rights.

Nevertheless, in the next breath, Huang Kan had to qualify his statement, obviously to accord with the law that was plainly in force. Thus he wrote, "if Mr. Hsü [the husband] had no children, then Madam Ch'en

149 Actually, from this perspective, Huang's implication that leaving the children behind is the worst offence seems inconsistent. At least in that case, the husband and in-laws would have heirs, contrary to his first two scenarios.

could take her land and claim it to be her own." In other words, Huang had to acknowledge that a woman's property was legally her own and *could* be taken out of a marriage. It was not "land of the Hsü family" under all circumstances. But he imposed a new condition, namely that it was only her own if she had no children. If she did have children, her property had to be left for them to inherit. Moreover, "her children" were those fathered by her husband, not necessarily those born to her. Even if he had children from another marriage or by a concubine, since the principal wife was technically speaking their "mother," she had to leave them her property. This view was a radical imposition of the same Confucian ideals that T'ien-shui could only lament had rarely been followed in modern times.

With regard to inheritance for children, it is interesting to note that Huang Kan meant girls as well as boys. He ordered Madam Ch'en not to take her fields with her but to leave them to be "divided among her several children" (*fen ch'i chu-tzu*).¹⁵⁰ He tells us in an earlier passage that these "several children" were one son and three daughters.¹⁵¹ Huang Kan was thinking of inheritance by Madam Ch'en's daughters, and firmly included them in references to family division. The wording of the text also suggests that a wife's dowry could be an important source of endowment for children.

Huang Kan thus supported the basic Sung practices of female inheritance (described in Chapter 2), but he clearly saw women only as conduits for inheritance by others. Rather than holding independent rights to property from her parents, a woman merely conveyed property into a marriage for her husband or *his* children to enjoy. When her husband died, she was to hold her property in trust for his children rather than take it back home or into a second marriage (the way many Sung women did).

Part III of the judgment, the final verdict, further reveals Huang Kan's belief that women were mere conduits of property that was rightly controlled only by males. It also shows his opinion that women were incapable of financial initiative (in this he differed from Chu Hsi). He scolded Madam Ch'en's father and brother for her actions and concluded that she had been put up to taking her property from the Hsü household by her two male relatives. It follows that Huang also placed the blame on the man most likely to benefit from the deal – Madam Ch'en's brother Ch'en Po-hung. Accordingly, this unlucky fellow was given the harshest sentence, sixty blows of the

150 CMC Appendix 2:604.

151 Note that here, as we saw elsewhere, the word *tzu*, "son" or "child," specifically includes girls.

bamboo.¹⁵² The father escaped punishment on account of being old, and Madam Ch'en was ordered back to the Hsü household to live as a model Confucian wife. This meant "teaching her [one] son" and "marrying off her daughters" (presumably complete with dowry). It also meant giving over the management and profits of her land to her in-laws. Note that ownership itself is not mentioned, since the land would have continued to be registered as Madam Ch'en's dowry property. Moreover Madam Ch'en herself was forced to go back to the Hsü household (in custody even). She was *not* being separated from her property or being forced to leave it behind. In the Sung, even Huang Kan maintained some connection between a woman and her property. This was to change in the Yüan.

The last striking point of this case is that Huang was reversing an earlier decision that had gone against the Hsü family in favor of the Ch'ens. County Magistrate Wu Ssu-pu had already ruled that Madam Ch'en had the right to take away her dowry lands and leave her children behind with their father's relatives. He placed blame for the trouble on the Hsü brother for urging his mother to sue (again attributing the initiative to a man). Magistrate Wu's approach was in keeping with many judgments in the *Collected Decisions* and was in accord with contemporary Sung practice. But Huang Kan chose to go against customary practice and accused Magistrate Wu of disregarding deeper principles.¹⁵³ Huang wanted to use the legal process to enforce Confucian doctrine that had previously been mostly ignored.

Huang Kan was not entirely alone in his radical approach. Weng Fu (c.s. 1226), a judge from Chien-an county in Chien-ning, took a position similar to Huang's, arguing in a case in the *Collected Decisions* that a woman's dowry was given by her parents to her husband's family and could not be taken away by her if her husband had other heirs.¹⁵⁴ This is in keeping with Huang Kan's ideas but ran counter to other verdicts. It is interesting to note that the judge was from Chien-an, Chu Hsi's hometown and the cradle of Learning of the Way Confucianism. Moreover, the case did not involve dowry per se, but was about a widow who sold some of her husband's land and diverted some of the remainder to her own daughter (by another husband), rather than preserving it all for her stepson. Weng Fu's wording implies that he expected the

152 These punishments were routinely reduced in the Sung; 60 blows becoming 13; McKnight, *Law and Order in Sung China*, 335.

153 It should be noted that Huang's cases do not appear in the *Collected Decisions* (they are merely appended to the 1987 edition by the modern editors).

154 CMC 5:141-2. Shiga, *Genri*, 431; Burns, "Private Law," 187. A similar sentiment is expressed in CMC 5:140 by Weng Fu.

husband and wife to merge their property, which should then go to the husband's children, not the wife's.

In another of his written judgments also from Hsin-kan, Kiangsi, Huang Kan seconded the point that a woman's property was conjugal property and should be inherited by her *husband's* children. In this second case, the wife had already died, and Huang wanted all of her husband's children to inherit her dowry, not just the son she bore herself.¹⁵⁵

A man named Liu Hsia-pang was married to Madam Kuo. He had one son by her, Liu Kung-ch'en, and two others by a concubine, Kung-li and Kung-wu. He owned land taxed at six strings of cash, and his wife had dowry lands that she brought with her (*tsu-sui t'ien*) that were also enough to be taxed at six strings.¹⁵⁶ Liu Hsia-pang and his wife both died, and in 1185 a division was arranged by the eldest brother, Madam Kuo's son Liu Kung-ch'en. He divided his father's estate into three equal portions for himself and his half-brothers, but he kept his mother's dowry lands for himself.¹⁵⁷ (Consistent with the picture I present in Chapter 2, the mother's dowry lands were maintained separately and identified as hers even after her death.) The settlement lasted sixteen years, until the eldest brother died. At that point, in 1201, the widow of one of the younger brothers, Miss Kuo (not to be confused with the mother also named Kuo) and the remaining brother Liu Kung-li sued the eldest brother's two surviving sons for a share of the dowry land. Huang Kan conjectures that the younger siblings had refrained from suing earlier out of fear of their older half-brother, but the results of the suit show that not everyone thought the younger brothers had been wronged.

Over the next few years, the case came to trial *six* times before it reached Huang Kan. It started with a magistrate previous to Huang in Hsin-kan, Kiangsi, and then was repeatedly appealed to judicial offices at the prefectural and circuit level.¹⁵⁸ The six offices that tried the case

155 CMC Appendix 2:606; *Mien-chai chi*, 33:34b.

156 Note that the wife's property was equal to the entire estate of the husband.

157 My wording reflects Huang Kan's version that the eldest son was responsible for the division. It is possible, and indeed more probable, that other people were involved, and that the terms were agreed to by all three brothers. Huang Kan suggests later that the younger brothers were intimidated by the eldest into accepting this unequal division.

158 Some of the appeals were heard by judges in Chi-chou, the seat of the neighboring prefecture, where the Judicial Intendant for Kiangsi resided. The case was presumably appealed to the circuit, assigned to a judge in Chi-chou, but eventually tried again in the local county by Huang Kan. This case presents a classic example of the Sung procedure whereby civil cases could be retried virtually ad infinitum. Such cases could not be appealed to the central government, and no court in the provinces had final jurisdiction over them.

came up with three different solutions: two judges for each solution. Two judges said that the sons of the eldest brother, Liu Kung-ch'en, should be able to keep all of the dowry land, not sharing it with the other brothers (according to the original division). Two said that the land should have been divided equally between the three brothers, and that accordingly the two sons had to give up two-thirds of the dowry land to the two plaintiffs. Two more judges opted for a compromise and ruled that the dowry land be divided in half, half being kept by Liu Kung-ch'en's sons and half being shared by their two uncles, the plaintiffs.

The last of the six verdicts (corresponding to the third just described) was delivered by the Military Intendant of the circuit, Mr. Chao.¹⁵⁹ His orders had come down to the county, but not surprisingly the younger Liu brothers had refused to give up any of the property. Under these circumstances, the case came again before the county magistrate, who at this time was Huang Kan. Huang was appalled at the history of the case, and wrote a careful brief that detailed, with his usual eloquence, his views on dowry.

First he spoke "from the legal (*fa*) perspective," arguing that the law on equal division between brothers nowhere stated that the wife's property went only to children she bore herself. He said it could not be used "to set up a separate woman's household" (*pu te li nü-hu*) but rather "should go with the husband's property and thus be treated as his property."¹⁶⁰ As the husband's property, it would be inherited equally by all of the husband's sons.

Second, he argued from the perspective of "principle" (*li*). Since Madam Kuo was the principal wife of Liu Hsia-pang, his sons were her sons.¹⁶¹ They had to give her filial care while she was alive and mourn her after her death. Thus they were just like her own sons. He noted that even if from the mother's perspective the sons were not from the same womb, from the father's view, they all had his "material essence" (*ch'i*).¹⁶² Thus Huang Kan ruled that the land should be divided equally

159 This judge must be Chao Hsi-i, who was the Military Intendant of Kiangsi circuit from 1209 to 1210, during which time he must have delivered this verdict. See Wu T'ing-hsieh, *Nan-Sung chih-fu nien-piao* (Beijing: Chung-hua shu-chü, 1984), 457; and *Hsi-shan chi*, 45:1a, 4b.

160 CMC Appendix 2:607. This line has been cited to show that women did not separately own property within marriage; see Shiga, *Gemi*, 527; Burns, "Private Law," 133ff.

161 There was a legal basis for this perspective. The children of concubines and maids were legally the offspring of the principal wife. Lists of "children" in funerary inscriptions routinely include sons of concubines. For more discussion, see Ebrey, "Concubines in Sung China," esp. 4-5.

162 CMC Appendix 2:607. See Shiga's discussion of the concept of the father providing *ch'i* to his offspring; "Family Property and the Law of Inheritance," 122-4.

among the brothers, just as the father's land was divided. He reiterated the position he took in the case above, that a woman's dowry belonged to the children of her husband, whether or not she had borne them herself. He accused the two judges who had allowed the eldest brother to keep all the property of having the narrow vision of "selfishness" (*ssu*) instead of the broad vision of "public-mindedness" (*kung*). Arming himself with classic Confucian precepts, he said they had failed to promote filial piety and brotherly love and instead were encouraging people to disregard cardinal moral principles. Then came his most telling statement:

When judicial officials decide a case, their job is to change customs by educating people for the good. How can they lead people to be unfilial and unloving, and themselves consider this to be correct?¹⁶³

Here Huang Kan makes his intent explicit. Other judges based their decisions on custom, law, and human feelings. But to Huang Kan, they had followed "the selfish desires of worldly custom" (*shih-su chih ssu-ch'ing*) rather than "the public principles of all under heaven" (*l'ien-hsia chih kung-li*). By doing this, judges had taught people to hold widows and orphans in contempt and disregard the law to their own advantage, as the young Liu brothers had done. Huang was determined to *change* vulgar customs to accord more with the idealistic principles of Confucian teaching. Judges must not follow behind the wishes of the people but must lead them forward on a new path of good. In this way Huang was tacitly acknowledging that he advocated something new with which not all judges would agree. His actions went against general Sung practice and common expectation.

Nevertheless, in the final analysis, Huang made a major concession to previous views and practices. Despite his rhetoric, in his final verdict he did not insist that the dowry land be parceled evenly into three, but only that the last ruling of Military Intendant Chao be carried out. According to this compromise, the dowry land was to be divided into two, half for the eldest brother's heirs and half to be split between the other two brothers or their survivors. He thus still maintained a separate status for the dowry and did not divide it evenly between the three brothers. The plaintiffs had sued to have this order carried out, and Huang Kan dared not push his principles any farther than this. Even though two of six judges had sided with Huang's fundamentalist Confucian opinion, in the end, he too had to make some concessions to the vulgar customs of the Sung.

163 CMC Appendix 2:608.