

A New Study of the half-share Law in the Division of Family Property between the Brothers and Unmarried Sisters

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Abstract

What share an unmarried daughter could get vis-a-vis her brother when they divided the family property after mourning their deceased parents for 27 months? Did she have inheritance rights? A statute on households (*hu-ling*) regarding "property division" in the Penal Code of the early Northern Sung stipulated that she get half of her brother's betrothal gifts (the betrothal-gift rule), but some judicial decisions collected in a mid-Southern Sung case book, *Enlightened Judgments of Famous Officials*, gave her half of her brother's inheritable share (the half-share rule). How to explain this discrepancy and its legal and social significance? No conclusion has been reached over 50 years of debates, while doubts arose that the Famous Officials might have misapplied the rules.

This essay argues that the betrothal-gift rule and the half-share rule were applicable at the same time but to different situations. The betrothal-gift rule was applied to cases where a precedent of a betrothal-gift or dowry existed before the division of family property, while the half-share rule was applied when there was no such precedent. Mutually they were neither contradictory nor replaceable. Their coexistence implies that the share an unmarried daughter got under the half-share rule was the same in nature to the share she got under the betrothal-gift rule: both shares were dowry instead of inheritance. Her brother's

inheritance was only used as a marker to calculate her share, not to bring upon her any inheritance right as a coparcener. The half-share rule did not violate the traditional patrilineal principles which only permitted men to inherit the family line and property.

This essay also tries to explain why the half-share rule emerged in the mid-Southern Sung, and why the dowry increased tremendously from half a son's betrothal gift to half of his inheritance. Reasons included the prevalence of large dowry, the government's approval of private property within a family that upheld "communal living and common property" (*t'ung-chu kung-ts'ai*), the independence of women in south China and their contribution to family finance, the restrictions on the parental rights to divide family property in the mid-Southern Sung, the loopholes in the betrothal-gift rule, and the unreliability of human nature and kinship. The half-share principle also entitled a daughter to half of her deceased and heirless father's share when the family property was divided among him and his living brothers.

Why was it that the preponderant male law-makers and adjudicators were so lenient towards women? This essay suggests that it was due to their respect and defense of legal justice that outweighed their sexual and class discriminations. The plaintiff and the defendant ought to be held equal before the law, regardless of their differences in gender, family status, and social standing.