

Towards a Behavior-Based Model of Inheritance?: The Chinese Experiment

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INTRODUCTION

The breakdown of the family challenges the very foundations of American inheritance law. For centuries, the United States has followed a rigid,¹ mechanical² rule of inheritance by status,³ under which a decedent's closest relatives by blood, adoption, or marriage automatically inherit, irrespective of their actual conduct toward the decedent.⁴ With the escalating violence⁵ and neglect⁶

¹ See Lawrence M. Friedman, *The Law of Succession in Social Perspective*, in DEATH, TAXES AND FAMILY PROPERTY: ESSAYS AND AMERICAN ASSEMBLY REPORT 9, 13 (Edward C. Halbach, Jr. ed., 1977) (describing U.S. inheritance rules as "rigid scheme").

² See LAWRENCE W. WAGGONER ET AL., FAMILY PROPERTY LAW: CASES AND MATERIALS ON WILLS, TRUSTS, AND FUTURE INTERESTS 71 (2d ed. 1997) (stating that "[u]nder American law, as under the English canons of descent and the Statute of Distribution, intestate shares are determined mechanically").

³ Some scholars use the term "inheritance by rule" rather than "inheritance by status." See John G. Fleming, *Changing Functions of Succession Laws*, 26 AM. J. COMP. L. 233, 233 (1978) (providing comparative discussion of "inheritance by rule"); Friedman, *supra* note 1, at 13 (referring to "inheritance by rule").

⁴ See Lawrence M. Friedman, *The Law of the Living, the Law of the Dead: Property, Succession, and Society*, 1966 WIS. L. REV. 340, 354. Friedman states:

The intestacy laws are also inflexible. They recognize no exceptions to their formulas based on particular family circumstances If the deceased leaves behind as his closest blood relatives two brothers and two sisters, they will share equally. It does not matter whether he was friendly to one, unfriendly to another; whether one is rich and another poor; one a minor, one not; one blind and destitute, another not — they share equally in the estate. No discretion to alter the scheme is vested in the probate court or in any other legal agency.

Id. For extended discussion of common patterns and goals of American intestate succession statutes, see JESSE DUKEMINIER & STANLEY M. JOHANSON, WILLS, TRUSTS, AND ESTATES ch. 2 (5th ed. 1995); WAGGONER ET AL., *supra* note 2, at ch. 2; John H. Beckstrom, *Sociobiology and Intestate Wealth Transfers*, 76 NW. U. L. REV. 216 (1981); and Mary Louise Fellows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RES. J. 319.

⁵ For grim statistics on U.S. family violence, see Robin L. Preble, *Family Violence and Family Property: A Proposal for Reform*, 13 LAW & INEQ. J. 401, 403-06 (1995).

⁶ Parental neglect of children has received the most public attention. For extended discussions of recent legal responses, see Linda D. Elrod, *Child Support Reassessed: Federalization of Enforcement Nears Completion*, 1997 U. ILL. L. REV. 695, and Pamela Forrestall Roper, Note, *Hitting Deadbeat Parents Where it Hurts: "Punitive" Mechanisms in Child Support Enforcement*, 14 ALASKA L. REV. 41 (1997). In fact, however, the problem of family neglect is far more pervasive due to the end of "true reciprocity between generations." See Jan Ellen Rein, *Preserving Dignity and Self-Determination of the Elderly in the Face of Competing Interests and Grim Alternatives: A Proposal for Statutory Refocus and Reform*, 60 GEO. WASH. L. REV. 1818, 1849 (1992). As John Langbein has shown, "today's elderly no longer expect much financial support from their children." John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 743 (1988). This lack of family support has had a profound, negative impact on America's elderly population. For a sobering report on how

within today's family, however, many Americans have come to question the fairness and continued viability of a model that focuses solely on status and not behavior. They claim that, under present conditions, an inflexible, status-based model effectively permits wrongdoers to inherit from their victims.⁷

Thus far, U.S. legislatures, courts, and scholars have addressed this concern principally by expanding the category of so-called "unworthy heirs" — those heirs whose conduct toward the decedent is deemed so "reprehensible" that they are disqualified from inheritance.⁸ Originally limited almost exclusively to "slayers" of the decedent,⁹ this category now increasingly extends to heirs who abandoned, deserted, or refused to support the decedent.¹⁰ Nonetheless, in the majority of U.S. jurisdictions today, heirs can abandon, neglect, and even physically or emotionally abuse the decedent without any loss of inheritance rights.¹¹

the breakdown of the family has affected the elderly, see Rein, *supra*.

⁷ See Paula A. Monopoli, "Deadbeat Dads": *Should Support and Inheritance Be Linked?*, 49 U. MIAMI L. REV. 257, 259-60 (1994) (discussing inconsistency between distribution of inheritance under status-based statutes and distributive outcome occurring under most Americans' evaluation of heir's worthiness). The "public response" of "outrage and disbelief" to the Brindamour case in Rhode Island, which awarded a father who had abandoned his child for 10 years a share in his daughter's wrongful death settlement, was telling. Monopoli relates that "[m]any citizens felt it was unfair and unjust to allow a father to reap a benefit from the tragic death of a child for whom he had provided almost no emotional or financial support." *Id.*; see also Preble, *supra* note 5, at 439 (proposing family violence statute "to deny abusers any [inheritance] benefits from those they abused"); Anne-Marie E. Rhodes, *Abandoning Parents Under Intestacy: Where We Are, Where We Need to Go*, 27 IND. L. REV. 517, 532-47 (1994) (discussing reform of intestate succession laws to prevent inheritance by parents who abandoned or failed to support their children).

⁸ See WAGGONER ET AL., *supra* note 2, at 462 (referring to homicide as one of the "reprehensible acts that result in forfeiture").

⁹ For comprehensive analyses of the relevant statutes and case law, see Mary Louise Fellows, *The Slayer Rule: Not Solely a Matter of Equity*, 71 IOWA L. REV. 489 (1986); William M. McGovern, Jr., *Homicide and Succession to Property*, 68 MICH. L. REV. 65 (1969); and Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. CIN. L. REV. 803 (1993).

¹⁰ See WAGGONER ET AL., *supra* note 2, at 81-82 n.8 (citing statutes and cases preventing surviving spouses from inheriting in cases of desertion, abandonment, or adultery); Monopoli, *supra* note 7, at 260 n.11, 265-76 (reviewing statutes and case decisions barring parents and spouses from inheritance in cases of abandonment, desertion, or failure to support); Alison M. Stemler, Note, *Parents Who Abandon or Fail to Support Their Children and Apportionment of Wrongful Death Damages*, 27 J. FAM. L. 871 (1989) (discussing legislative and judicial responses to prevent distribution of wrongful death awards to parents who abandoned or failed to support their children).

¹¹ For example, despite recent reform proposals, most states still do not bar inheritance by a parent who abandoned, deserted, or refused to support the decedent and "[n]o jurisdiction has considered denying a parent inheritance rights based on evidence of physical or emotional abuse." WAGGONER ET AL., *supra* note 2, at 57. Interestingly, Puerto Rico does address sexual abuse of a daughter by a parent. P.R. LAWS ANN., tit. 31, § 2261 (1) (1993) (providing that "[t]he following are disqualified to succeed by reason of unworthiness: (1)

In response to these perceived shortcomings of the status-based model, some legal scholars have suggested that the United States adopt a "behavior-based model of inheritance."¹² The current proposal for a behavior-based model in the United States, however, is little more than a "carefully crafted"¹³ exception to existing rules that allows judges to "deviat[e] from a status-based model"¹⁴ in cases of misconduct by close family members. This narrow vision of a behavior-based model punishes "bad" behavior but disregards "good" behavior. As a result, it fails to explore the full potential of a behavior-based model to use inheritance for "encouraging and rewarding"¹⁵ exemplary conduct within the family and society.

In the People's Republic of China ("P.R.C."), a behavior-based model of inheritance is not a scholarly proposal but a practical reality. Since enacting its first inheritance law in 1985,¹⁶ China has embarked on an ambitious experiment to determine inheritance rights in accordance with the conduct of heirs and claimants toward the decedent. Under the banner of "reciprocity of rights and duties,"¹⁷ this scheme permits Chinese courts to consider the

Parents who have abandoned their children or prostituted their daughters or made attempts against their chastity").

¹² See Monopoli, *supra* note 7, at 291; see also Preble, *supra* note 5, at 429 (rejecting notion that "all standards for considering the behavior of the surviving spouse or other beneficiaries should be eliminated").

¹³ See Monopoli, *supra* note 7, at 298.

¹⁴ *Id.* at 297.

¹⁵ See Judith Younger, *Responsible Parents and Good Children*, 14 LAW & INEQ. J. 489, 492 (1996). "Ideally, the law should act as teacher, clearly articulating societal expectations that parents will be responsible, and that children will be good, and encouraging and rewarding such behavior." *Id.* It should be noted, however, that Illinois legislation recognizes exemplary conduct by family members in one situation — care of a disabled close relative. It authorizes courts to award "conditional gifts from the estate of a disabled person to any spouse, parent, brother or sister of the disabled person who dedicates himself or herself to the care of the disabled person by living with and personally caring for the disabled person for at least 3 years." 755 ILL. COMP. STAT. ANN. 5/11a-18.1 (West 1993). The statute also provides for a "statutory custodial claim" against the estate of a disabled person by "[a]ny spouse, parent, brother, sister, or child of a disabled person who dedicates himself or herself to the care of the disabled person by living with and personally caring for the disabled person for at least 3 years. . . ." *Id.* at 5/18-1.1.; see Rhodes, *supra* note 7, at 541-46 (discussing Illinois statute and other possible schemes for caregiver parent to claim share of child's estate).

¹⁶ See Zhonghua Renmin Gongheguo Jicheng Fa [Inheritance Law of the People's Republic of China] (Apr. 10, 1985), in FAGUI HUIBIAN 1 (1985) [hereinafter Inheritance Law]. See generally Louis B. Schwartz, *The Inheritance Law of the People's Republic of China*, 28 HARV. INT'L L.J. 433 (1987) (discussing 1985 Inheritance Law). For extended discussion of Chinese inheritance law and practice prior to the 1985 Inheritance Law, see Frances Foster-Simons, *The Development of Inheritance Law in the Soviet Union and the People's Republic of China*, 33 AM. J. COMP. L. 33 (1985).

¹⁷ MIN SHANG FA XIN LEIXING ANLI JINGXI [ESSENTIAL ANALYSIS OF NEW TYPES OF CIVIL

full range of behavior in inheritance cases. Moreover, unlike its American counterpart,¹⁸ China's evolving behavior-based model of inheritance explicitly considers positive as well as negative acts by heirs and claimants.

Thus, while American scholars debate the merits of a behavior-based model of inheritance, China is actually implementing such a scheme. Yet, U.S. reformers have overlooked this important precedent because the texts documenting it are published in Chinese only. This Article seeks to fill this gap in the literature by presenting the first Western report on China's evolving behavior-based model of inheritance. It offers the Chinese experiment as a contrast to existing American approaches to inheritance. In so doing, the Article hopes to serve as a springboard for future discussion and reform of our own system.

This examination of evolving Chinese approaches toward inheritance is based on an analysis of more than one hundred recently published Chinese inheritance law decisions.¹⁹ These cases are neither binding legal precedents nor verbatim transcripts of Chinese court proceedings and rulings.²⁰ China has no official

AND COMMERCIAL LAW CASES] 1183 (Liu Zhixin et al. eds., 1996) [hereinafter NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES] (stating that "[t]he principle of reciprocity of rights and duties is an important principle of our country's 'Inheritance Law.' . . . [I]t is the manifestation of a tradition of thousands of years of respecting the elderly and supporting the weak. It reflects socialist spiritual culture. Thus, it should be emphasized and applied in estate distribution.").

¹⁸ But see *supra* note 15 (discussing Illinois statute).

¹⁹ The "letter of Chinese law" seldom depicts the reality of P.R.C. legal development. See William P. Alford, "Seek Truth From Facts" — Especially When They Are Unpleasant: America's Understanding of China's Efforts at Law Reform, 8 UCLA PAC. BASIN L.J. 177, 184, 186 (1990) (citing example of Chinese intellectual property law in which "although the forms, formalities and functionaries were in place, the spirit that might breathe life into them remained elusive throughout the decade" and criticizing Western commentators for being "far too concerned with the letter of Chinese law"); Stanley B. Lubman, *Introduction to DOMESTIC LAW REFORMS IN POST-MAO CHINA* 3, 14 (Pitman B. Potter ed., 1994) (criticizing "some American lawyers and law professors who have been so enthusiastic about the program for reform that they have taken it to depict reality"); see also William C. Jones, *The Imperial and Republican Background of Chinese Law*, in DONALD C. CLARKE ET AL., *INTRODUCTION TO THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA* ch. 1 (1998) (unpublished manuscript) (asserting that "[a]lthough on paper modern China has all of the apparatus of a western legal system, it is a country that is still heavily influenced by tradition, and any study of Chinese law that concentrates solely on the statutes and institutions copied from the West is bound to come to wrong conclusions"). Accordingly, this Article looks beyond the text of China's Inheritance Law to consider how courts have applied this statute in practice.

²⁰ For an extended discussion of P.R.C. approaches to judicial precedent, see Liu Nanping, "Legal Precedents" with Chinese Characteristics: Published Cases in the Gazette of the Supreme People's Court, 5 J. CHINESE L. 107 (1991). See generally RONALD C. BROWN, *UNDERSTANDING CHINESE COURTS AND LEGAL PROCESS: LAW WITH CHINESE CHARACTERISTICS* 71-83 (1997)

court reporter system and restricts direct citation of even its highest court's decisions.²¹ The research materials for this Article contain edited and, occasionally, rewritten accounts of actual cases²² with extensive²³ analytical and critical commentary by Chinese scholars and judges.

Although these are not "official" cases in the American sense, they nonetheless represent an invaluable source of information on P.R.C. legal practice for both the domestic audience and the foreign observer. According to Chinese officials and commentators, case compilations and publications perform important functions in today's China.²⁴ These case materials respond to the "practical need for more predictability, certainty and consistency in judicial decision-making."²⁵ They help guide Chinese officials, judicial personnel, ordinary citizens, scholars, and students alike through the thicket of "new circumstances, new issues, and new types of cases"²⁶

(discussing status, publication, and dissemination of Chinese judicial decisions).

²¹ See Liu, *supra* note 20, at 122 (quoting Supreme People's Court internal document of October 28, 1986 stating that "[a]ll opinions and instructions given by the Supreme People's Court on the application of laws shall be followed, but it is not appropriate, however, to cite them directly").

²² See Susan Finder, *The Supreme People's Court of the People's Republic of China*, 7 J. CHINESE L. 145, 215-16 (1993) (discussing Supreme People's Court editing of cases); Liu, *supra* note 20, at 118-19 (discussing editing and rewriting of cases).

²³ Collections of cases issued in the past three years are particularly notable for their lengthy, detailed, and sophisticated analyses and critiques of decisions. Two prime examples are ZHONGHUA RENMIN GONGHEGUO XIANXING FALU PANLI FENXI QUANSHU [THE COMPLETE VOLUME OF ANALYSES OF CURRENT P.R.C. LEGAL PRECEDENTS] (1995) [hereinafter CURRENT P.R.C. LEGAL PRECEDENTS], and NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17. This represents a major change from earlier collections of cases, which tended to be written in simpler language, emphasizing ideological precepts rather than legal reasoning. Often, the cases resembled morality tales, accompanied with illustrations of "good" and "evil" parties. See, e.g., YI AN SHUO FA: JICHENG FA [USING CASES TO EXPLAIN LAW: INHERITANCE LAW] (Li Qizhi et al. eds., 1986) [hereinafter USING CASES TO EXPLAIN LAW].

²⁴ See Introduction to '95 SHANGHAI FAYUAN ZUI XIN ANLI JINGXUAN ['95 SELECTION OF THE SHANGHAI COURTS' LATEST CASES] 1, 1 (1995) (asserting that compilation and publication of cases serve "important functions").

²⁵ Liu, *supra* note 20, at 129.

²⁶ See Introduction, *supra* note 24, at 1 (emphasizing that published case materials provide guidance for responding to "new circumstances, new issues, and new types of cases"); *id.* at 1-2 (stating that publication of collected cases can "better serve the leading cadres of every level;" "enlighten the thinking of judicial personnel and guide judicial practice;" "transform abstract, theoretical statutory provisions into concrete behavioral norms and make it easier for the common person to grasp the meaning and essence of statutory provisions;" "reflect the basic conditions of judicial work and the level of law enforcement in a given period," which "is beneficial for identifying problems in a timely fashion and for summing up the lessons of experience;" and "serve as an absolutely indispensable foundation for jurisprudential theory and research"). This new emphasis on publication and distribution of cases may ultimately signal a decisive change in overall Chinese treatment of precedent. One scholar

that have emerged in the wake of China's dramatic economic, social, and legal reforms of the post-Mao era. At the same time, these case collections also offer the foreign scholar new insight into Chinese implementation of statutory provisions, common judicial fact patterns, and evolving styles and techniques of legal reasoning and dispute resolution.

This Article is organized into three parts. Part I examines Chinese approaches to penalizing "bad" behavior. It emphasizes two key differences between U.S. and Chinese treatment of unworthy heirs. First, unlike the traditionally narrow American definition of unworthy heirs, China's behavior-based model encompasses a broad range of misconduct. P.R.C. legislation expressly targets forms of misconduct not conventionally covered in American inheritance law. Moreover, liberal judicial interpretation of this statutory language has only further extended the reach of China's scheme for penalizing unworthy heirs. Second, in contrast with the all-or-nothing American approach under which an heir is either totally disqualified from inheritance or allowed to take, China's more flexible scheme also permits courts to reduce a wrongdoer's inheritance share. Thus, unlike its U.S. counterpart, the Chinese model extends to lesser as well as severe misconduct.

In Part II, this Article turns to an area long neglected in American inheritance law — the use of inheritance to reward "good" behavior. It demonstrates that China's behavior-based model explicitly considers and recognizes exemplary conduct in the division and distribution of estates. Most notably, unlike the rigid American status-based model, the Chinese scheme even allows inheritance by "worthy" non-relatives at the expense of a decedent's closest family members.

Part III considers potential legal and practical limitations on China's behavior-based model of inheritance. I conclude that although this scheme meets the current needs of the Chinese state and society, it faces serious challenges in the future. I show that expanding Chinese definitions and protections of private property rights already present a significant legal restriction. I argue that China's ongoing socioeconomic and legal reforms will likely pose practical problems as well. If current trends continue, increased

has already concluded that "the Chinese judicial system is in a transition period from complete reliance on statute law to a mixed system of statute and case law." Finder, *supra* note 22, at 216.

social mobility, accumulation of private property, and a rise in the popular use of courts will bring about an increase in the number and complexity of inheritance disputes. In its present form, the behavior-based model appears fundamentally unsuited to this new environment. It is highly time- and labor-intensive, requiring courts to evaluate on a case-by-case basis the conduct of all potential claimants and the most appropriate division of each estate. The flexibility that is the hallmark of the behavior-based model today may prove to be its greatest drawback in the future.

This Article concludes that China's behavior-based model has significant advantages over existing U.S. approaches to inheritance. Although this model was originally designed and implemented in an environment fundamentally unlike our own, recent Chinese legal, economic, and social reforms make China's approach to inheritance increasingly relevant to the United States. Thus, Chinese efforts to adapt this model to a changing environment may ultimately yield lessons for American inheritance reforms as well.

I. PENALIZING MISCONDUCT

China's evolving behavior-based model features extensive restrictions on inheritance by unworthy heirs. Part I.A summarizes the relevant Chinese legislative provisions and shows how courts have expanded the coverage of these provisions through liberal interpretation of statutory language. It presents three specific examples of such interpretation: judicial extensions of "heir" (*jicheng ren*), "killing" (*shahai*), and "serious circumstances" (*qingjie yanzhong*). Part I.B identifies the other distinctive component of the behavior-based model that makes the Chinese definition of unworthy heirs broader than its American counterpart. It examines the flexible remedies that allow courts to penalize lesser as well as severe misconduct by heirs and beneficiaries.

A. *China's Sweeping Definition of Unworthy Heirs*

China's Inheritance Law ("Inheritance Law") contains a lengthy but skeletal list of wrongful acts by unworthy heirs. Like many U.S. probate codes,²⁷ China's statute expressly bars slayers from inherit-

²⁷ For citations to such statutes, see Preble, *supra* note 5, at 427 nn.114-15.

ing from their victims.²⁸ However, China's statute also targets the very acts that have prompted recent calls for reform in the United States. In marked contrast with most U.S. probate codes, China's Inheritance Law penalizes heirs for abandonment,²⁹ maltreatment,³⁰ and failure to support³¹ the decedent.³²

China's Inheritance Law does not confine its definition of misconduct to acts directed against the decedent's person, however. It also incorporates offenses that "infringe the decedent's lifetime wishes."³³ Thus, the Inheritance Law penalizes unworthy heirs for a variety of wrongful acts against the decedent's written will. For example, article 7(4) mandates forfeiture of inheritance rights for "forging, tampering with or destroying the will under serious circumstances."³⁴ Similarly, the Inheritance Law restricts inheritance by heirs who obstructed proper disposition of the decedent's estate. Such misconduct includes nonperformance of obligations specified in a will or codicil,³⁵ misappropriation of

²⁸ See Inheritance Law, *supra* note 16, art. 7(1) (stating that heir forfeits inheritance rights for "intentionally killing the decedent").

²⁹ See *id.* art. 7(3) (stating that heir forfeits inheritance rights for "abandoning the decedent").

³⁰ See *id.* (stating that heir forfeits inheritance rights for "maltreating the decedent under serious circumstances").

³¹ See *id.* art. 13 ¶ 4 (stating that "an heir who had the ability and conditions to support the decedent but failed to fulfill his or her duty of support, should receive a smaller share or no share when the estate is distributed").

³² Many U.S. probate codes bar inheritance rights for spousal abandonment, desertion, or adultery. See, e.g., MO. REV. STAT. § 474.140 (1992) (barring inheritance by spouse who "voluntarily leaves his spouse and goes away and continues with an adulterer or abandons his spouse without reasonable cause and continues to live separate and apart from his spouse for one whole year next preceding his death, or dwells with another in a state of adultery continuously, or if any wife after being ravished consents to her ravisher . . ."). States are increasingly moving in the direction of requiring forfeiture of inheritance for parental misconduct as well. See, e.g., N.Y. EST. POWERS & TRUSTS LAW § 4-1.4(a) (McKinney 1998) (disqualifying parent from intestate succession if parent "failed or refused to provide for, or has abandoned such child while such child is under the age of twenty-one years, whether or not such child dies before having attained the age of twenty-one years, unless the parental relationship and duties are subsequently resumed and continue until the death of the child"). Chinese law goes further in penalizing all potential heirs and claimants, not simply spouses and parents, for abandonment and failure to support the decedent. Moreover, it also expressly bars or reduces inheritance for "maltreatment" of the decedent.

³³ Li Huawu, *Dui Shiyong Sangshi Jichengquan de Jidian Renshi* [Some Thoughts About the Applicability of Forfeiture of Inheritance Rights], FAXUE, no. 4, 35, 35 (1986).

³⁴ Inheritance Law, *supra* note 16, art. 7(4); see also *id.* art. 22 ¶¶ 2, 3 (providing that "[a] will must express the testator's genuine intent. A will made under duress or as a result of fraud is void. A forged will is void. Where a will has been tampered with, the affected parts of it are void.>").

³⁵ See *id.* art. 21 (providing that "[w]here there are obligations attached to testate succession or a legacy, the heir or legatee should perform them. If he or she fails to perform

estate property,³⁶ and murder of another heir.³⁷

In practice, Chinese courts have expanded the scope of these unworthy heirs provisions considerably to encompass the widest possible range of potential estate claimants and offenses. Judicial applications of article 7 of the P.R.C. Inheritance Law illustrate this trend. Article 7 sets out the grounds for what one Chinese scholar has called “the most severe legal sanction in civil law”³⁸ — total forfeiture of inheritance rights. It provides in full:

An heir who commits one of the following acts forfeits his or her inheritance rights:

- (1) intentionally killing the decedent;
- (2) killing another heir in fighting over the estate;
- (3) abandoning the decedent or maltreating the decedent under serious circumstances;
- (4) forging, tampering with or destroying the will under serious circumstances.³⁹

Judicial interpretations of article 7 often focus on the meaning of three critical words within the statute: “heir” (*jicheng ren*), “killing” (*shahai*), and “serious circumstances” (*qingjie yan-zhong*). Through broad construction of these three terms, Chinese courts have significantly extended the reach of this provision.

1. “Heir”

On its face, article 7 bars only “heirs” from inheritance.⁴⁰ Chi-

the obligations without just cause, upon request by the relevant *danwei* or individual, a people’s court can nullify his or her rights to receive the estate.”).

³⁶ See *id.* art. 24 (stating that “no one is allowed to misappropriate” estate property). Article 24 also provides two additional potential offenses against a decedent’s estate — “fighting over” estate property or failing to meet article 24’s requirement that “[a]nyone who has estate property in his or her possession should take care of such property.” *Id.*; see also *id.* art. 23 (stipulating that “an heir who has knowledge of the decedent’s death should inform other heirs and the executor of the will in a timely manner”); *id.* art. 29 (catchall provision requiring that estate be divided in manner “beneficial to the needs of production and livelihood and not diminish the usefulness of the estate”). For a case involving violations of all three articles, see Inheritance Case No. 1, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 81.

³⁷ See Inheritance Law, *supra* note 16, art. 7(2) (stating that heir forfeits inheritance rights for “killing another heir in fighting over the estate”).

³⁸ Li, *supra* note 33, at 36.

³⁹ Inheritance Law, *supra* note 16, art. 7.

⁴⁰ See *id.* (stating that “[a]n heir who commits one of the following acts forfeits his or her inheritance rights”).

nese courts have interpreted this language broadly, however, to include not only intestate heirs but also will beneficiaries.⁴¹ Less than six months after the Chinese legislature enacted the Inheritance Law, China's highest court, the Supreme People's Court, directed lower courts to apply article 7(1) and (2) forfeiture provisions in testate as well as intestate succession homicide cases.⁴² Since that time, Chinese courts have further extended this definition to include will beneficiaries who commit any of the offenses listed in article 7(1)-(4).⁴³ Some courts have even applied article 7 to claimants under so-called "bequest and support agreements," quasi-contractual arrangements under which one party agrees to provide "lifetime support and burial after death" in return for a specified portion of the other party's estate.⁴⁴ For example, in one inheritance dispute, the court cited the "spirit" of article 7 to nullify Zhao Lanying's rights to inherit Xie Zhaohe's entire estate under a valid bequest and support agreement.⁴⁵ The court found that Zhao had not only failed to fulfill her promise to feed and clothe Xie, but had also stolen his property and "beat and cursed" him.⁴⁶

In another liberal reading of the term "heirs," Chinese courts not only require the wrongdoer to forfeit inheritance rights, but also bar the claims of lineal descendants who would otherwise inherit by representation the wrongdoer's intestate share of the es-

⁴¹ This reading of "heirs" to include will beneficiaries as well as intestate heirs is consistent with general U.S. treatment of slayers of the decedent. Indeed, many U.S. probate codes contain explicit provisions to this effect. See, e.g., ALA. CODE § 43-8-253(a) (1991) (stating that "[a] surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will . . ."); CAL. PROB. CODE § 250(a) (West Supp. 1998) (providing that "[a] person who feloniously and intentionally kills the decedent is not entitled to . . . [a]ny property, interest, or benefit under a will of the decedent . . .").

⁴² In its "Opinion on Certain Matters Concerning the Implementation of the 'P.R.C. Inheritance Law,'" the Supreme People's Court announced that if a will beneficiary commits one of the homicide offenses specified in article 7(1) and (2), article 7 governs disposition of the estate and "the will can be declared void." See Zui Gao Renmin Fayuan Guanyu Guanche Zhixing "Zhonghua Renmin Gongheguo Jicheng Fa" Ruogan Wenti de Yijian [Opinion of the Supreme People's Court on Certain Matters Concerning the Implementation of the "P.R.C. Inheritance Law"] art. 12 (Sept. 11, 1985), in ZUIGAO RENMIN FAYUAN GONGBAO, no. 4, 9 (1985) [hereinafter Inheritance Law Opinion].

⁴³ See ZHONGHUA RENMIN GONGHEGUO JICHENG FA QUANSHI [ANNOTATED P.R.C. INHERITANCE LAW] 61 (Zhou Xianqi ed., 1995) [hereinafter ANNOTATED INHERITANCE LAW] (stating that forfeiture of inheritance rights applies generally to intestate heirs and will beneficiaries).

⁴⁴ For extended discussion of bequest and support agreements, see *infra* Part II.D.

⁴⁵ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 188 (reproducing case involving Zhang Shenpu and Zhao Lanying) [hereinafter Zhang Shenpu v. Zhao Lanying].

⁴⁶ See *id.*

tate or will bequest.⁴⁷ This stands in direct contrast with the American scheme, which generally permits the wrongdoer's descendants to inherit by representation.⁴⁸ In at least one instance, a Chinese court applied the article 7 forfeiture provisions to ascendants of a wrongdoer.⁴⁹ Courts have consistently denied claims by an offender's close relatives even when it results in escheat of the decedent's estate to the Chinese government or a collective organization rather than distribution to family members.⁵⁰

A third judicial definition of "heirs" has further extended the reach of article 7. Under article 7(2), slayers who kill other "heirs" in a fight over the estate forfeit their inheritance rights.⁵¹ According to recent commentary, it has become common judicial practice to read "heirs" in this context to encompass a wide variety of potential victims. These include "heirs of the same intestate order" as the slayer, "heirs of a different intestate order" than the

⁴⁷ See Inheritance Case No. 19, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 113 (stating that lineal descendants of heir who forfeited inheritance rights under article 7 do not inherit); Inheritance Case No. 425, in NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1201 (stating that children should not inherit article 7 wrongdoer's share by representation). The Supreme People's Court's Inheritance Law Opinion, however, exempts two categories of lineal descendants from forfeiture of inheritance rights: (1) descendants who "are unable to work and have no source of income;" and (2) descendants who "performed considerable support duties toward the decedent." See Inheritance Law Opinion, *supra* note 42, art. 28.

⁴⁸ The general pattern in the United States is to distribute the decedent's estate as if the killer predeceased the decedent. See DUKEMINIER & JOHANSON, *supra* note 4, at 136; see, e.g., S.C. CODE ANN. § 62-2-803(a) (Law Co-op. 1987) (providing that "the estate of the decedent passes as if the killer had predeceased the decedent"). Thus, the killer's descendants can and often do inherit the killer's share by representation. See, e.g., *Misenheimer v. Misenheimer*, 325 S.E.2d 195, 198 (N.C. 1985) (allowing children of slayer to inherit slayer's share and stating that "[w]hile it may be true that 'the gods visit the sins of the fathers upon the children,' Euripides, *Phrixus* (see also *Exodus* 20:5; Shakespeare, *Merchant of Venice* III v 1), this Court will not do so"). For extended discussion, see sources cited *supra* note 9.

⁴⁹ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 64 (reproducing case). A man named Gu Wenbing killed his wife, daughter, parents-in-law, and sister-in-law in the three room house they jointly inhabited. He then burned down the house and committed suicide by setting himself on fire. Citing article 7(1), the court ruled that Gu's parents, his sole intestate heirs, were not entitled to inherit his share of his wife's and daughter's estates. See *id.* at 66. Interestingly, the major issue in the case was not forfeiture of inheritance rights, but the order of the victims' deaths. Because their bodies were incinerated in the fire, the court found that "it was impossible to establish" when each victim died and, hence, applied simultaneous death rules to determine intestate succession rights. See *id.*

⁵⁰ See, e.g., Case No. 10, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 19 (ruling that murderers and their heirs lost inheritance rights resulting in estate escheating to collective).

⁵¹ See Inheritance Law, *supra* note 16, art. 7(2) (stating that heir forfeits inheritance rights for "killing another heir in fighting over the estate").

slayer, or “will beneficiaries, etc.”⁵²

2. “Killing”

Under article 7(1) and (2), “killing” the decedent or other heirs results in total forfeiture of inheritance rights.⁵³ Most of the published article 7 slayer cases involve direct, physical murder of the decedent or heir.⁵⁴ Yet, Chinese courts have not limited forfeiture of inheritance rights to such cases. Rather, courts have defined “killing” to include independent acts by an heir or beneficiary that lead to the death of the decedent or another heir. An early case under the Inheritance Law illustrates this expansive interpretation. In 1984, a man named Gan Siqiang struck and injured his older half brother while their father lay on his deathbed.⁵⁵ This violent act so upset the father that it “caused [him] to die prematurely” two days later.⁵⁶ The court held that pursuant to article 7(1), Gan had “killed” the decedent and, hence, lost all intestate succession rights to his father’s estate.⁵⁷

Chinese courts have also ruled that an act qualifies as “killing” for article 7 purposes regardless of whether or not it was ultimately “accomplished.”⁵⁸ Courts simply require that the heir or beneficiary possess the requisite “murderous” intent⁵⁹ and “put into effect”⁶⁰

⁵² ANNOTATED INHERITANCE LAW, *supra* note 43, at 62.

⁵³ *See* Inheritance Law, *supra* note 16, art. 7(1), (2).

⁵⁴ In one published case, the heir actually managed to forfeit rights to his father’s estate under *both* article 7(1) and (2) by “killing” his father and subsequently his brother in a battle over their father’s estate. This case is reproduced in FAXUE ANLI JINGXUAN [SELECTED LAW CASES] 75 (Li Liangpin et al. eds., 1994) [hereinafter SELECTED LAW CASES], and JICHENG FA ANLI XIANG JIE [DETAILED EXPLANATION OF INHERITANCE CASES] 18 (Cui Qinglan et al. eds., 1990) [hereinafter DETAILED EXPLANATION OF INHERITANCE CASES].

⁵⁵ *See* DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 18.

⁵⁶ *See id.* at 20.

⁵⁷ *See id.* Gan Siqiang also received life imprisonment for his crimes. *See id.*

⁵⁸ *See* Inheritance Law Opinion, *supra* note 42, art. 11 (according to Supreme People’s Court, heir who intentionally kills decedent, “regardless of whether the act was completed or not,” forfeits inheritance rights).

⁵⁹ *See* Li, *supra* note 33, at 35 (stating that intent to murder is all that is required under article 7(1) and (2)). Interestingly, the P.R.C. Inheritance Law uses the term “intentionally” (*guyi*) only with respect to murder of the decedent and not murder of other heirs. *Compare* Inheritance Law, *supra* note 16, art. 7(1) (providing forfeiture of inheritance rights for “intentionally killing the decedent”) *with id.* art. 7(2) (providing forfeiture of inheritance rights for “killing another heir in fighting over the estate”). Nonetheless, annotated commentary on article 7 applies the term to both article 7(1) and (2). *See* ANNOTATED INHERITANCE LAW, *supra* note 43, at 61 (using “intentionally” in summary of requirements for article 7(1) and (2)).

⁶⁰ *See* Inheritance Case No. 19, *supra* note 47 (referring to requirements for forfeiture

the act of killing. Under this definition, it is irrelevant whether the intended victim died or even sustained injury as a result of the "killing."⁶¹ The wrongdoer still loses inheritance rights.

Furthermore, courts have interpreted the broad language of article 7 to mean that motive is only relevant in article 7(2) cases. Thus, as in the United States,⁶² under article 7(1), slayers of the decedent forfeit intestate and testate succession rights even if the "killing" was not specifically inheritance related. For example, in a 1985 case, the court rejected the intestate succession claim of Wang Kehong, who had hacked his father to death with an ax.⁶³ The court applied article 7(1) even though the principal reason for the murder was that Wang "harbored hatred in his heart" because his father had denied his request a few days earlier for 2000 yuan and instead had given Wang a "stern lecture."⁶⁴

In contrast, Chinese courts and commentators have explicitly stated that article 7(2) forfeiture is limited to situations where the "killing" was for inheritance purposes.⁶⁵ Some of the published cases have easily met this requirement. For instance, in one case, a brother lost inheritance rights under article 7(2) after he "savagely bludgeoned his brother to death" with a wooden cudgel in a fight over their father's estate.⁶⁶ Other cases, however, suggest that even in article 7(2) situations courts may interpret the motive requirement liberally. For example, in a gruesome case from southern China, two brothers murdered their younger retarded brother, carved him into eight pieces, and buried him in the backyard under a fruit tree.⁶⁷ They reportedly committed this murder because

of inheritance rights in homicide cases).

⁶¹ For example, if two heirs plot to poison a third heir in order to increase their intestate shares, prepare the poison, investigate the intended victim's regular patterns of activity, but for some reason or other fail to complete the murder, they still forfeit their inheritance rights under article 7(2). See Li, *supra* note 33, at 35 (setting out poisoning example).

⁶² See WILLIAM M. MCGOVERN, JR. ET AL., *WILLS, TRUSTS AND ESTATES* 72 (1988) (stating that although Georgia and Virginia once required inheritance-related motive now "[v]irtually all courts hold that a murderer's motives are immaterial"); WAGGONER ET AL., *supra* note 2, at 467 (asserting that "[t]he fact the killing wasn't motivated by greed is appropriately treated as irrelevant to whether the state requires a forfeiture of succession rights").

⁶³ See Case No. 9, in *USING CASES TO EXPLAIN LAW*, *supra* note 23, at 18. Because Wang voluntarily surrendered himself to the authorities, he escaped the death penalty and instead received a sentence of "death with reprieve." See *id.* at 19.

⁶⁴ See *id.* at 18-19.

⁶⁵ See Inheritance Case No. 19, *supra* note 47 (emphasizing that unlike article 7(1), article 7(2) requires that killing occurred for purpose of "fighting over the estate").

⁶⁶ See DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 20.

⁶⁷ See Case No. 10, *supra* note 50, at 19-20. The murderers reported their brother miss-

they feared that the younger brother would divide the four room house the three men had inherited from their parents and that, because of his disability, he would become an increasing burden on them.⁶⁸ The court applied article 7(2) to deprive the surviving brothers of their parents' house.⁶⁹ The case summary offered no explanation of the court's reasoning in reaching this result. It simply stated: "It goes without saying that this was fighting over the estate."⁷⁰

3. "Serious Circumstances"

Under article 7(3) and (4), heirs forfeit inheritance rights only if their acts of "maltreating the decedent" or "forging, tampering with or destroying the will" occurred "under serious circumstances."⁷¹ This language would appear to constitute a significant limitation on judicial application of these provisions. In actual implementation, however, courts have adopted a broad definition of the "serious circumstances" standard. For example, in the article 7(3) context, China's highest court expressly stated that courts can impose forfeiture even where the heirs are not criminally responsible.⁷² The Supreme People's Court simply directed courts to consider the "duration, means, outcome, and societal impact" of an heir's actions to determine whether those actions satisfy the "serious circumstances" standard.⁷³

Unlike its expansive interpretation of identical language in article 7(3), the Supreme People's Court limited application of the forfeiture provisions in article 7(4) to cases involving a narrow class of individuals adversely affected by the heir's misconduct. In its 1985 Inheritance Law Opinion, the Supreme People's Court instructed courts to find "serious circumstances" when one of the

ing and launched a not unsurprisingly unsuccessful search for him. Their crime was not discovered until years later when a relative of one of the murderers inadvertently let slip in casual conversation that the youngest brother had been "carved up into eight pieces." *See id.* at 20. One brother received the death sentence; the other received death with reprieve. *See id.*

⁶⁸ *See id.* at 19.

⁶⁹ *See id.* at 20.

⁷⁰ *Id.*

⁷¹ Inheritance Law, *supra* note 16, art. 7(3), (4).

⁷² *See* Inheritance Law Opinion, *supra* note 42, art. 10 ¶ 2 (stating that in case of maltreatment under serious circumstances it is irrelevant whether there is "criminal responsibility").

⁷³ *Id.* art. 10 ¶ 1.

acts against the will prescribed in article 7(4) “infringes the rights and interests of an heir who is unable to work and has no source of income.”⁷⁴ In practice, however, Chinese lower courts have already eroded this stricter definition of “serious circumstances” for article 7(4) cases.

Chinese lower courts have expanded this definition of “serious circumstances” under article 7(4) to permit evaluation of the wrongdoer’s motive. In some cases, courts have considered the wrongdoer’s motive in conjunction with the physical and financial circumstances of the intended beneficiary or heir. For example, in a much-reported case from a small mountain village in China, the local court applied article 7(4) to a dispute between an elderly, disabled, and destitute man, Yuan Baocai, and his half sister, Yuan Qiaoling, over inheritance of their parents’ estate.⁷⁵ Yuan Qiaoling claimed the entire estate as sole beneficiary under her parents’ joint holographic will.⁷⁶ Yuan Baocai contested the will as a forgery and proposed that he and his half sister divide the estate equally under intestate succession rules.⁷⁷ Court examination of the will revealed that the document was in fact written by Yuan Qiaoling after her parents’ death in an “attempt to monopolize her parents’ estate.”⁷⁸ Because of this improper motive as well as the poor physical and financial condition of Yuan Baocai, the court found “forgery under serious circumstances,” deprived Yuan Qiaoling of her inheritance rights, and held that Yuan Baocai was entitled to inherit the entire estate.⁷⁹

In other article 7(4) cases, however, courts have apparently ignored the Supreme People’s Court’s definition of “serious circumstances” altogether and made motive the principal determinant of whether the “serious circumstances” standard is met. In will destruction cases, for instance, courts reportedly impose forfeiture only when the destructive act was “intentional,” not “accidental.”⁸⁰ Yet this focus on motive rather than on the victim’s circumstances

⁷⁴ *Id.* art. 14.

⁷⁵ The case is reported in DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 23, MIN SHANG SHIWU YANJIU: JICHENG JUAN [A STUDY OF CIVIL AND COMMERCIAL LAW PRACTICE: INHERITANCE VOLUME] 26 (Yang Zhenshen ed., 1993) [hereinafter CIVIL AND COMMERCIAL LAW PRACTICE], and SELECTED LAW CASES, *supra* note 54, at 79.

⁷⁶ See DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 23.

⁷⁷ See *id.* at 24.

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 62.

is not limited to will destruction cases. A will tampering case reproduced in several published case collections illustrates this departure from the Supreme People's Court's definition of "serious circumstances."⁸¹

The case involved a battle between two brothers, Lu Huaming and Lu Huapeng, over inheritance of their father's estate.⁸² Lu Huapeng produced a deathbed note from his father that allegedly left his entire savings of 7000 yuan to "my son Lu Huapeng" (*erzi Lu Huapeng*).⁸³ The court determined that the father's note had originally read "to my eldest son Lu Huaming" (*zhangzi Lu Huaming*).⁸⁴ It found that Lu Huapeng had committed the "abominable" act of altering two characters in the note "with the intent to deprive another person of his inheritance rights."⁸⁵ The court applied the article 7(4) forfeiture provisions to Lu Huapeng even though the person harmed by his act met none of the Supreme People's Court's criteria for "serious circumstances."⁸⁶ According to the facts of the case, the intended legatee, Lu Huaming, was a college graduate, gainfully employed in Wuhan, with a steady source of income.⁸⁷

B. *Reaching the Full Range of Misconduct by Heirs: China's Scheme of Flexible Remedies*

U.S. treatment of unworthy heirs is an all-or-nothing approach. Courts can either bar such heirs from inheritance or allow them to take.⁸⁸ In contrast, China's behavior-based model of inheritance

⁸¹ The case is reproduced in DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 25, and SELECTED LAW CASES, *supra* note 54, at 80. A case with similar facts but slightly different party names appears as Case No. 13, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 24.

⁸² See DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 26.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 27.

⁸⁶ See *id.*

⁸⁷ See *id.* at 25-26.

⁸⁸ Courts bar unworthy heirs from inheritance by two principal means. They apply a statute that expressly disqualifies heirs from inheritance for specified misconduct toward the decedent (most commonly murder) or they impose a constructive trust. See sources cited *supra* notes 9-10. A few courts, however, have "awarded the inheritance directly to the victim's other heirs." MCGOVERN ET AL., *supra* note 62, at 71 (discussing *Maine Sav. Bank v. Bridges*, 431 A.2d 633, 637 (Me. 1981)). Under all of these approaches, courts either bar the unworthy heir from inheritance or allow that heir to take the full amount. Courts do not have the discretion to reduce inheritance shares to reflect lesser degrees of misconduct toward the decedent.

gives courts an arsenal of remedies for penalizing misconduct by heirs. Chinese courts can impose forfeiture,⁸⁹ nullify inheritance rights,⁹⁰ declare a will partially or entirely void,⁹¹ and reduce the wrongdoer's share of the estate.⁹² In this way, Chinese courts are able to address lesser as well as severe misconduct toward the decedent. For example, as one case commentary explained, if an heir or beneficiary commits one of the offenses specified in article 7(4) but does not meet the "serious circumstances" standard required by statute, then he is "not deprived of his inheritance rights."⁹³ This does not mean that the wrongdoer necessarily escapes without penalty, however. The court can still "take into consideration whether it is appropriate to reduce his share as a form of punishment."⁹⁴

To illustrate the potential interplay of Chinese inheritance remedies, the remainder of this section examines how Chinese courts respond to the situation that has inspired recent U.S. calls for reform — an intestate succession claim by an heir who neglected or abused a close family member. It shows that in contrast with the American status-based model, China's behavior-based model allows courts to respond to the full range of possible misconduct toward the decedent.

As the published collections of Chinese cases reveal, family neglect and abuse are by no means exclusively American phenomena. Unlike U.S. probate codes, however, China's Inheritance Law explicitly gives courts the flexibility to impose total forfeiture of inheritance rights under article 7(3), or to reduce inheritance shares under article 13, depending on the severity of the heir's misconduct.⁹⁵ As a result, unlike their American counterparts, Chinese courts can penalize heirs for abandonment, maltreatment, or less severe misconduct toward family members.

1. Addressing Severe Neglect of Family Members: Abandonment

In cases of severe neglect of a family member, Chinese courts

⁸⁹ See *supra* notes 38-39 and accompanying text.

⁹⁰ See *supra* note 35.

⁹¹ See *supra* note 34.

⁹² See *supra* note 31.

⁹³ See Case No. 13, *supra* note 81, at 25.

⁹⁴ *Id.*

⁹⁵ See Inheritance Law, *supra* note 16, arts. 7(3); 13.

can use article 7(3) to disqualify the heir from inheritance for the offense of "abandoning the decedent."⁹⁶ Under the conventional abandonment fact pattern, the estate claimant refused to provide shelter, care, or financial assistance to an elderly, ill, and destitute parent or grandparent.⁹⁷ Often the claimant had no contact with the decedent for an extended period of time. For example, in one case, a son who lived in the same city as his mother did not visit his mother for fourteen years, even when he knew his mother was critically ill.⁹⁸ In the worst cases, the claimant responded to his parent's or grandparent's pleas for assistance with insults, humiliation, and physical assault.⁹⁹

The P.R.C. Inheritance Law does not provide any guidance as to what constitutes abandonment under article 7. A close reading of cases and commentaries indicates some of the factors that Chinese judges consistently use to establish abandonment. First and foremost, they consider the decedent's physical and financial condition at the time of the alleged abandonment. Almost invariably the decedent had no independent source of income and was unable to support himself due to age or disability.¹⁰⁰ Although the vast majority of cases involve elderly decedents, a few feature minor children deserted by parents.¹⁰¹ Second, courts also look at the heir's behavior. To constitute abandonment, the misconduct must be suffi-

⁹⁶ *Id.* art. 7(3).

⁹⁷ For a classic such case, see Inheritance Case No. 2, in ANLI XUANBIAN [COLLECTION OF CASES] 129 (1986) [hereinafter COLLECTION OF CASES]. The decedent, who was unable to have children of her own, raised her two stepsons and, after their marriages, took care of their children and household chores. When she became paralyzed at the age of 73, the stepsons refused to allow her to live with them, failed to bring her into the hospital for treatment, and so neglected her that she ultimately "starved and froze to death in a frigid house without a fire." The court deprived the stepsons of their inheritance rights due to "abandonment" of their mother. *See id.* at 130.

⁹⁸ *See* DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 21 (reproducing inheritance case involving Gu Lusheng and Gu Luyun) [hereinafter Gu Lusheng v. Gu Luyun].

⁹⁹ *See, e.g.*, Case No. 93, in ZHONGGUO MINFA JIAOXUE ANLI XUANBIAN [COLLECTION OF CHINESE CIVIL LAW CASES FOR TEACHING] 221 (Lu Jialin et al. eds., 1996) [hereinafter COLLECTION OF CASES FOR TEACHING]. The district people's court found a "serious act of abandonment" where a grandson not only failed to support his grandmother but also "spoke maliciously" to her, "hurled insults," and "had the effrontery to throw his grandmother, who was old, weak, and unable to work, and without any source of income, out the door." *Id.* at 221-22.

¹⁰⁰ In fact, some commentators argue that one of the requirements of "abandonment" is that it involve an "elderly, minor, ill, or other decedent who lacks the capacity to support himself/herself independently." ANNOTATED INHERITANCE LAW, *supra* note 43, at 62.

¹⁰¹ *See, e.g.*, Inheritance Case No. 19, *supra* note 47 (rejecting, on grounds of abandonment, inheritance claim of mother who deserted her two small children).

ciently egregious to put the decedent in “perilous circumstances.”¹⁰² As in the murder context, Chinese courts emphasize behavior not result. Thus, courts will find abandonment even when the misconduct did not ultimately lead to serious illness or death of the decedent.¹⁰³

Finally, courts consider the status and circumstances of the claimant. Courts routinely find abandonment when the wrongdoer had a “legally-prescribed obligation to support” the decedent.¹⁰⁴ Under the P.R.C. Marriage Law and Constitution, the following family members have formal duties of support: (1) spouses,¹⁰⁵ (2) parents and children (including natural, adoptive, and stepparents and stepchildren),¹⁰⁶ (3) grandparents and grandchildren (if the grandchildren’s parents are deceased),¹⁰⁷ and (4) siblings (if their parents are dead or destitute).¹⁰⁸ Courts are particularly likely to find abandonment when the claimant was physically and financially capable of performing support obligations but failed to do so. For example, in one article 7(3) case, the court specifically emphasized that the plaintiff had a substantial household income but was more concerned about installing electricity in his home than helping his aged, infirm mother meet her living expenses.¹⁰⁹

2. Addressing Severe Abuse of Family Members: Maltreatment Under Serious Circumstances

In cases of severe abuse of family members, Chinese courts can

¹⁰² See *id.* at 113 (stating that “[a]bandonment is behavior that puts the decedent in perilous circumstances”); ANNOTATED INHERITANCE LAW, *supra* note 43, at 62 (describing abandonment as “serious, illegal behavior that puts the decedent in perilous and difficult circumstances”).

¹⁰³ See Inheritance Case No. 19, *supra* note 47, at 113 (asserting that “regardless of whether or not the consequences are serious,” individual who abandoned decedent forfeits inheritance rights).

¹⁰⁴ Case No. 93, *supra* note 99, at 222.

¹⁰⁵ See *Zhonghua Renmin Gongheguo Hunyin Fa* [Marriage Law of the People’s Republic of China] art. 14 (Sept. 10, 1980), in *FAGUI HUIBIAN 6* (1984) [hereinafter *Marriage Law*].

¹⁰⁶ See *id.* arts. 15, 19, 20, 21; *XIANFA* art. 49 (1982).

¹⁰⁷ See *Marriage Law*, *supra* note 105, art. 22 (stating that “[g]randparents who can afford it have the duty to raise their minor grandchildren whose parents are dead. Grandchildren who can afford it have the duty to support their grandparents whose children are dead.”).

¹⁰⁸ See *id.* art. 23 (providing that “[e]lder brothers and sisters who can afford it have the duty to raise their minor younger brothers and sisters if their parents are dead or have no means to raise them”).

¹⁰⁹ See *Gu Lusheng v. Gu Luyun*, *supra* note 98, at 22.

also order total forfeiture of the wrongdoer's inheritance rights. In this situation, courts apply article 7(3)'s provision for "maltreating the decedent under serious circumstances."¹¹⁰ According to recent commentary, maltreatment requires physical or mental abuse or torment of the decedent.¹¹¹ Such offenses include subjecting the decedent to "beating and cursing, corporal punishment, and cold and hunger."¹¹² The heir's behavior must reach the point of creating "serious circumstances," however, for forfeiture to be the appropriate sanction.¹¹³ As discussed above, courts implement the "serious circumstances" standard liberally and flexibly.¹¹⁴ They evaluate on a case-by-case basis the "duration, means, outcome, and societal impact" of the heir's maltreatment of the decedent.¹¹⁵

The published Chinese case collections provide some insights into judicial applications of the "serious circumstances" language in the maltreatment context. For example, in one maltreatment case that "truly fell within the serious circumstances category," the court deprived Gu Liang of his intestate rights to his mother's estate.¹¹⁶ According to the facts, Gu and his wife beat and cursed his elderly mother, gave her insufficient food, allowed her to sleep in a cold bed during winter, and refused her medical treatment when she was ill.¹¹⁷ Finally, the old woman could no longer bear her son's and daughter-in-law's maltreatment and killed herself with a pair of scissors.¹¹⁸ The case summary stressed the methods of maltreatment, the tragic outcome, and the societal impact of the couple's actions.¹¹⁹

¹¹⁰ See Inheritance Law *supra* note 16, art. 7(3) (stating that heir forfeits inheritance rights for "maltreating the decedent under serious circumstances").

¹¹¹ See Inheritance Case No. 19, *supra* note 47, at 113 (defining maltreatment under serious circumstances).

¹¹² ANNOTATED INHERITANCE LAW, *supra* note 43, at 62 (providing examples of "maltreatment").

¹¹³ See Case No. 12, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 22, 24 (distinguishing between maltreatment under serious circumstances and ordinary maltreatment).

¹¹⁴ See *supra* Part I.A.3. The "elastic" serious circumstances standard has been the topic of intense scholarly debate. For a summary of this debate, see CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 29. The two sides differ over whether the "serious circumstances" language promotes unpredictability and uncertainty or, instead, "creative" and "stable" judicial implementation of "lifeless" statutory text. See *id.*

¹¹⁵ See *supra* note 73 and accompanying text (discussing Supreme People's Court directions on applying serious circumstances standard).

¹¹⁶ See Case No. 12, *supra* note 113, at 23.

¹¹⁷ See *id.* at 22.

¹¹⁸ See *id.*

¹¹⁹ See *id.* at 23.

Chinese courts and commentators have made a point of emphasizing that article 7(3) does not reach “ordinary” mistreatment such as “treating the decedent with insufficient respect,” “not being attentive to [the decedent’s] care,” or “occasionally quarreling with the decedent over trivial matters of daily life.”¹²⁰ This does not mean, however, that in the case of such ordinary mistreatment the wrongdoer avoids punishment altogether.¹²¹ Under China’s behavior-based model, courts can respond to lesser as well as severe forms of misconduct within the family through flexible readjustment of inheritance shares.

3. Remedies for Less Severe Misconduct Toward Family Members

Under article 13 of the Inheritance Law, Chinese courts can reduce the inheritance share of any heir who had the physical capability and financial resources to support the decedent but failed to “fulfill his or her duty of support.”¹²² This provision gives courts an additional tool to penalize heirs for neglect or abuse that does not rise to the level of “serious circumstances” required for article 7(3) abandonment or maltreatment.¹²³

For example, in one case, a court had to determine the intestate succession rights of four sons to their parents’ estate.¹²⁴ Normally, the sons would divide the estate equally as intestate heirs of the same order.¹²⁵ In this case, however, after mediation by the court, one son, Zheng Guiping, received a reduced share of the estate.¹²⁶ The court found that, after his marriage, Zheng had left his parents’ home, moved in with his wife’s family, and, hence, “performed fewer support duties” toward the decedents than his siblings.¹²⁷ However, he did continue to visit his parents regularly.¹²⁸

¹²⁰ Inheritance Case No. 19, *supra* note 47, at 113.

¹²¹ For example, although the summary of the *Gu Liang* case carefully distinguished the facts from “ordinary” maltreatment, it emphasized that such cases can be addressed with “persuasion” and “education.” See Case No. 12, *supra* note 113, at 24. As the next section will show, courts can also reduce the heir’s inheritance share for “ordinary” maltreatment.

¹²² See Inheritance Law, *supra* note 16, art. 13.

¹²³ See *id.* art. 7(3).

¹²⁴ See Case No. 77, in COLLECTION OF CASES FOR TEACHING, *supra* note 99, at 180.

¹²⁵ See Inheritance Law, *supra* note 16, art. 10 (stating that “spouse, children, parents” are first order heirs); *id.* art. 13 ¶ 1 (providing that heirs of same order should generally inherit equal shares).

¹²⁶ See Case No. 77, *supra* note 124, at 181.

¹²⁷ See *id.*

As the case commentary explained, Zheng did not abandon his parents and, thus, his “inheritance rights c[ould] not be nullified.”¹²⁹ Nonetheless, it was “appropriate to give him a smaller share of the estate.”¹³⁰

Chinese courts have interpreted the duty of support expansively to include not only financial assistance, but also personal care of the decedent and “spiritual comfort.”¹³¹ Past practice suggests that courts are particularly likely to penalize heirs who failed to return home to look after an elderly or seriously ill family member.¹³² For example, one court cut in half the shares of three intestate heirs, emphasizing that they refused to return home even when the decedent became critically ill with thrombosis and hemiplegia.¹³³

China’s flexible scheme for addressing misconduct within the family allows courts to consider mitigating factors as well. Specifically, courts may consider whether an heir failed to perform support duties due to illness,¹³⁴ poverty,¹³⁵ military service,¹³⁶ or “historical reasons,” such as forced separation from family members dur-

¹²⁸ *See id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *See* CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 77-78 (analyzing cases and concluding support duties “should not be understood as confined to providing money” but also include caring for decedent’s livelihood and providing “spiritual comfort” and offering examples of such support).

¹³² For a case where an heir failed to care for a decedent who was both elderly and ill, see DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 119. The court denied a woman’s claim to inherit her sister’s entire estate as sole intestate heir. *See id.* at 120. It ultimately awarded her only miscellaneous household furnishings because “she did not visit her older sister for more than a decade when old lady Yang was elderly and ill many times.” *Id.* A non-relative who had cared for the decedent for more than 20 years received the bulk of the estate. *See id.*

¹³³ *See* Case No. 30, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 55. The decedent’s youngest son, who had assumed full responsibility for the support and care of his father, received 2500 yuan; his brothers each received 500 yuan. *See id.* at 56.

¹³⁴ *See, e.g.*, Inheritance Case No. 9, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 93. In this case, an elderly, infirm woman, Xu Zhen, was physically incapable of taking care of her husband, Ji Ren, during the final six months of his life. *See id.* The court did not reduce or nullify her intestate succession rights to his estate. *See id.* As the accompanying case analysis explained, “Due to illness, Xu Zhen was unable to care for Ji Ren. Thus, it cannot be said that Xu Zhen did not fulfill her duty of support.” *Id.* at 95.

¹³⁵ *See, e.g.*, Inheritance Case No. 14, in COLLECTION OF CASES, *supra* note 97, at 140, 141 (rejecting claim that because retarded son had never been able to earn living, he had not fulfilled his duty to support his parents).

¹³⁶ *See, e.g.*, DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 117, 118 (summarizing case holding that son’s inability to support his parent during military service “was not abandonment of the old man” and that son continued to possess inheritance rights).

ing the Cultural Revolution.¹³⁷ Similarly, if the decedent explicitly declined an heir's offer of support, courts generally excuse non-performance and leave the heir's share intact.¹³⁸

Finally, under China's behavior-based model of inheritance, courts also evaluate evidence of reform or repentance by unworthy heirs toward family members. For example, in one article 13 case, the court readjusted the intestate shares of the decedent's three sons to reflect their misconduct toward their father.¹³⁹ It found that although all three claimants were gainfully employed with steady incomes, they "had refused to support the decedent."¹⁴⁰ When the decedent became seriously ill, however, one son, Peng Shunyi, visited him, sent food, and provided "spiritual comfort."¹⁴¹ The court considered this good behavior in its ultimate decision to deprive Peng's brothers of their entire intestate shares but to award Peng a reduced share of 2000 yuan.¹⁴²

Chinese courts give considerable weight to a wrongdoer's reform and repentance even in the most severe cases of family neglect and abuse — those cases falling within the ambit of article 7(3)'s provision for "abandoning" and "maltreating the decedent under serious circumstances."¹⁴³ Under an express directive from the Supreme People's Court, courts can elect not to order forfeiture of inheritance rights if evidence indicates that the wrongdoer subsequently "repented and mended his or her ways," and the decedent "forgave" the wrongdoer during her lifetime.¹⁴⁴ Such

¹³⁷ See, e.g., Inheritance Case No. 13, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 100, 102 (excusing heir's lack of contact with decedent during Cultural Revolution).

¹³⁸ See, e.g., Inheritance Case No. 6, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 88 (allowing inheritance by daughter whose father had refused her offer of support). The Supreme People's Court has stated:

If an heir who has the ability and conditions to provide support is willing to fulfill his/her duty of support but the decedent clearly states he/she does not require such support because he/she has regular income or is able to work, then this should generally have no impact on [the heir's] inheritance share when the estate is distributed.

Inheritance Law Opinion, *supra* note 42, art. 33.

¹³⁹ The case is reported in CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 47.

¹⁴⁰ *Id.* at 49.

¹⁴¹ See *id.*

¹⁴² See *id.* The decedent's stepson received the bulk of the estate because he had assumed the major responsibility for the decedent's financial, physical, and emotional needs. See *id.*

¹⁴³ See Inheritance Law, *supra* note 16, art. 7(3).

¹⁴⁴ See Inheritance Law Opinion, *supra* note 42, art. 13. Several of the article 7(3) cases

evidence can take either written or oral form but must be “definite” and “unambiguous.”¹⁴⁵

As the next Part of this Article will show, this emphasis on an heir’s “good” as well as “bad” behavior permeates Chinese legislation and judicial practice. Unlike existing and proposed U.S. approaches to inheritance, China’s behavior-based model not only penalizes misconduct but also rewards exemplary conduct.

II. REWARDING EXEMPLARY CONDUCT

As in the unworthy heir context, Chinese legislation offers courts an array of flexible mechanisms for rewarding exemplary conduct toward the decedent. China’s Inheritance Law stipulates four principal methods for recognizing special contributions to the decedent’s welfare by family members, relatives by marriage, and non-relatives alike. It authorizes courts to readjust inheritance shares; elevate non-heirs to intestate heir status; allocate “appropriate” legacies to non-heirs; and distribute estates in accordance with bequest and support agreements between decedents and distant

specifically mention the offenders’ failure to repent or improve their behavior. *See, e.g.*, Gu Lusheng v. Gu Luyun, *supra* note 98, at 22 (stating that Gu Lusheng “consistently refused to change” despite repeated “criticism and education”); Case No. 11, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 20, 22 (emphasizing that son who had abandoned elderly, ill parents did not repent or mend his ways nor did his parents forgive him). The Inheritance Law Opinion only states that this exception applies in article 7(3) cases of “abandoning” or “maltreating the decedent under serious circumstances.” Inheritance Law Opinion, *supra* note 42, art. 13. In one case, however, a divided panel of judges reportedly considered extending it to a will forgery case, in which the wrongdoer “recognized her error and repented and mended her ways” during the trial. *See* CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 27. The court ultimately decided not to do so and imposed forfeiture of inheritance rights under article 7(4). *See id.* at 27-28.

¹⁴⁵ *See* CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 31-32 (discussing, in case commentary, permissible forms of evidence to demonstrate heir’s repentance and reform or decedent’s forgiveness of wrongdoer). One Chinese commentator has suggested that a “harmonious, close relationship” between the decedent and wrongdoer during the period immediately prior to the decedent’s death could be sufficient evidence that the decedent “forgave” the wrongdoer. *See* Li, *supra* note 33, at 36. Under this approach, the wrongdoer would not be disqualified from inheritance despite prior abandonment or maltreatment of the decedent. Some American jurisdictions take a similar approach in cases of spousal or parental abandonment or failure to support the decedent. *See, e.g.*, N.Y. EST. POWERS & TRUSTS LAW § 4-1.4(a) (McKinney Supp. 1998) (allowing parent “who has failed or refused to provide for, or has abandoned” minor child to inherit from that child if “the parental relationship and duties are subsequently resumed and continue until the death of the child”); *id.* § 5-1.2(6) (McKinney Supp. 1998) (permitting spouse who “failed or refused to provide for” decedent to inherit if “such marital duty was resumed and continued until the death of the spouse having the need of support”); N.C. GEN. STAT. § 31A-2(1) (1984) (permitting inheritance “[w]here the abandoning parent resumed its care and maintenance at least one year prior to the death of the child and continued the same until its death”).

relatives or non-related individuals or organizations.

A. *Readjustment of Inheritance Shares*

Under article 13, paragraph 3 of the Inheritance Law, courts “can” (*keyi*) distribute a larger share of the estate to any heir who “fulfilled the main duty of support toward the decedent or lived with the decedent.”¹⁴⁶ This provision is optional, not mandatory; courts have full discretion to determine on a case-by-case basis whether circumstances warrant such a readjustment.¹⁴⁷ The published case collections suggest that Chinese courts in fact frequently exercise this power to alter statutory intestate distribution rules.¹⁴⁸

In applying article 13, paragraph 3, courts have interpreted the statute expansively to reach the largest possible number of “deserving” heirs. They have adopted a broad definition of “duty of support” to reward heirs for contributions to the decedent’s financial,¹⁴⁹ physical,¹⁵⁰ or emotional¹⁵¹ well-being during life, as well as

¹⁴⁶ Inheritance Law, *supra* note 16, art. 13 ¶ 3.

¹⁴⁷ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 92 (stating that “in practice, it must be emphasized that this provision reads that [heirs] ‘can’ receive a larger share of the estate and not that they must receive a larger share of the estate. In actual cases, the issue of whether or not they should receive a larger share and also the size of such share should be determined on the basis of concrete circumstances.”).

¹⁴⁸ Under Chinese statutory intestate succession rules, the surviving spouse first takes one-half of all “jointly-owned property acquired by spouses during their marriage.” The remaining one-half constitutes the intestate decedent’s estate. *See id.* The decedent’s spouse, children, and parents are heirs of the first order and generally divide the estate in equal shares. *See id.* art. 10 ¶ 1. Children of deceased children generally can take their parents’ share by representation. *See id.* art. 11. If there are no surviving intestate heirs of the first order, then heirs of the second order generally divide the estate in equal shares. *See id.* art. 10 ¶ 2. Heirs of the second order are the decedent’s brothers and sisters, paternal grandparents, and maternal grandparents. *See id.* art. 10 ¶ 1. If there are no surviving heirs of the first or second orders, then the estate usually escheats to the state or a collective organization. *See id.* art. 32. Unlike the American status-based model, however, these “rules” are not rigid. Chinese courts often depart from this distribution scheme in practice.

¹⁴⁹ *See, e.g.*, Inheritance Case No. 3, in COLLECTION OF CASES, *supra* note 97, at 130 (awarding daughter who was sole source of financial support to her mother for more than 20 years bulk of mother’s estate); DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 111 (decision giving son who assumed full financial responsibility for parents and requested no funds from other son two-thirds of deceased father’s retroactive wage and restitution payments).

¹⁵⁰ *See, e.g.*, Inheritance Case No. 433, in NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1226 (reporting People’s Court of Jiading County, Shanghai’s application of article 13 paragraph 3 to decedent’s son who had been his mother’s main caregiver after she became paralyzed); Inheritance Case No. 16, in COLLECTION OF CASES, *supra* note 97, at 142 (recognizing that two of decedent’s children brought him to hospital for treat-

funeral arrangements and expenses after the decedent's death.¹⁵² Moreover, Chinese courts have read "lived with the decedent" liberally to require an extensive, but not continuous, period of cohabitation.¹⁵³ The only limitation is that the heir who "lived with the decedent" must also have supported the decedent if physically and financially capable of doing so.¹⁵⁴

Chinese courts have also significantly expanded the scope of article 13, paragraph 3 to encompass all heirs who provided support to the decedent and not merely those who "fulfilled the main duty of support."¹⁵⁵ The text of article 13, paragraph 3 appears to authorize courts to reward solely those heirs who constituted the "main" source of the decedent's support.¹⁵⁶ In some cases, courts have done precisely that. They have identified a single heir who assumed principal responsibility for the decedent's well-being and augmented that heir's share of the estate accordingly. For example, one court awarded an extra room of the decedent's house to one of the decedent's eleven children, Zhou Guang.¹⁵⁷ The court found that Zhou alone had taken care of his elderly parents for more than a decade and, hence, "fulfilled the main duty of support" toward the decedent.¹⁵⁸

Chinese courts have not restricted application of article 13, paragraph 3 to such cases, however. Under the principle of "reci-

ment and paid his medical expenses).

¹⁵¹ See, e.g., CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 47, 49 (applying article 13 paragraph 3 to increase share of stepson who provided emotional comfort as well as financial assistance and physical care to decedent).

¹⁵² See, e.g., Inheritance Case No. 416, in NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1173, 1176 (holding that, in opinion of Intermediate People's Court of Jinhua City, Zhejiang Province, one heir had "performed the duties of supporting his mother during life and burying her after death").

¹⁵³ See, e.g., CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 52 (applying article 13 paragraph 3 to son who lived with and cared for parents during their final years). For a case that did not meet this requirement, see Inheritance Case No. 3, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 84, awarding most of decedent's estate to his parents rather than his spouse because the couple had been married only three months prior to decedent's death.

¹⁵⁴ See Inheritance Law Opinion, *supra* note 42, art. 34 (stating that if heir "who had the ability and conditions to provide support" "did not fulfill his/her duty of support toward the decedent who required support" then he/she can receive "smaller share or no share" of estate "even though he/she lived with the decedent").

¹⁵⁵ See Inheritance Law, *supra* note 16, art. 13 ¶ 3.

¹⁵⁶ See *id.* (authorizing courts to distribute larger share of estate to heir who "fulfilled the main duty of support toward the decedent") (emphasis added).

¹⁵⁷ See Inheritance Case No. 13, *supra* note 137, at 101.

¹⁵⁸ See *id.* at 101-02.

procuity of rights and duties,”¹⁵⁹ courts routinely consider the respective support contributions of all heirs and then readjust each heir’s inheritance share to reflect that heir’s behavior toward the decedent. In some cases, this leads to complex judicial fact-finding, evaluation, and redivision of estates.¹⁶⁰ For example, in one case, a court had to assess the behavior of seven “worthy” heirs to determine the appropriate distribution of an estate.¹⁶¹ The court found that three of the decedent’s children had “lived with” and “fulfilled the main duty of support” toward their parents at different time periods.¹⁶² A fourth child, a married daughter, had frequently visited, provided financial assistance, and looked after her parents when they were ill and elderly.¹⁶³ A fifth child, now deceased with three sons, had also performed “definite” duties of support during his lifetime.¹⁶⁴ Finally, to complicate the situation further, those three sons had themselves regularly contributed funds for their grandparents’ upkeep.¹⁶⁵

Under China’s behavior-based model of inheritance, courts do

¹⁵⁹ Indeed, many of the published case collections reproduce such cases under the very title of “reciprocity of rights and duties.” See, e.g., Case No. 29, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 54 (appearing under title “The Reciprocity of Rights and Duties. If One Performs More Duties, One Inherits More — Discussing the Fact that an Heir Who Performs More Duties Can Inherit a Larger Share.”); CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 47 (appearing under title “The Inheritance Principle of Reciprocity of Rights and Duties — A Person Who Performs More Duties Receives a Larger Share of the Estate, a Person Who Does Not Perform Duties Receives No Share or a Smaller Share of the Estate.”); see also Inheritance Case No. 418, in NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1180, 1183 (setting forth case commentary “emphasiz[ing]” and explaining distribution of estates in accordance with “principle of reciprocity of rights and duties”).

¹⁶⁰ These tasks become particularly challenging when the estate contains property that was jointly owned by two deceased spouses, each of whom had had multiple marital or non-marital partners and children during their lives. For one such case, see Inheritance Case No. 433, *supra* note 150.

¹⁶¹ The case appears in DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 108.

¹⁶² *Id.* at 110.

¹⁶³ See *id.* at 109-10.

¹⁶⁴ See *id.*

¹⁶⁵ See *id.* The estate consisted of 15 rooms in residential buildings. The court ultimately divided the estate as follows. It awarded the largest share (four rooms) to the daughter who had lived with and supported her parents for 10 years and had performed the main duty of support toward her mother during her mother’s final years; three rooms each to the other two living children who had lived with and supported their parents for shorter periods of time; two rooms to the married daughter; and three rooms to be divided by the three grandchildren. The court also ordered two of the grandchildren to reimburse the third grandchild for their share of the 180 yuan he had expended to pay off the mortgage and to repair the three rooms they inherited.

not confine their inquiry to contributions by the decedent's heirs, however. As directed by articles 10, 12, 14, and 31 of the Inheritance Law, courts also consider and reward exemplary conduct by blended family members and non-relatives.

B. *Elevation to Intestate Heir Status*

Like most American probate codes,¹⁶⁶ Chinese legislation generally excludes steprelatives and other relatives by marriage from inheritance of an intestate decedent's estate. The P.R.C. Inheritance Law contains two key exceptions to this rule, however. Article 10 grants stepchildren, stepparents, and stepsiblings who had a "support relationship" with the decedent equal inheritance status with the decedent's biological or adoptive children, parents, and siblings.¹⁶⁷ Similarly, article 12 elevates widowed daughters-in-law or sons-in-law who "fulfilled the main duty of support" toward the

¹⁶⁶ See, e.g., FLA. STAT. ANN. § 731.201(3) (West 1995) (excluding stepchildren, foster children, and grandchildren from intestate definition of "child"); MINN. STAT. ANN. § 524.1-201(5) (West Supp. 1998) (excluding stepchildren from taking by intestate succession from parent). A notable exception is the California Probate Code, which allows stepchildren, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law to inherit if the decedent is not survived by a spouse, issue, parents, issue of parents, grandparents, or issue of grandparents. See CAL. PROB. CODE § 6402(e), (g) (West 1991). California also gives a stepchild who has a "parent or child relationship" with a stepparent intestate succession rights equal to those of biological or adopted children if the "relationship began during the person's minority and continued throughout the joint lifetimes" of the stepchild and the stepparent and "[i]t is established by clear and convincing evidence that the . . . stepparent would have adopted the person but for a legal barrier." *Id.* § 6454 (West Supp. 1998). See generally Margaret M. Mahoney, *Stepfamilies in the Law of Intestate Succession and Wills*, 22 U.C. DAVIS L. REV. 917 (1989) (describing and evaluating treatment of steprelatives under intestate succession laws and law of wills); Thomas M. Hanson, Note, *Intestate Succession for Stepchildren: California Leads the Way, but Has It Gone Far Enough?*, 47 HASTINGS L.J. 257 (1995) (discussing traditional treatment of stepchildren in intestate succession and focusing on judicial construction of California statute effecting stepchild intestate succession).

¹⁶⁷ See Inheritance Law, *supra* note 16, art. 10 ¶ 2 (stating that "sons and daughters include . . . stepsons and stepdaughters who had a support relationship" with decedent); *id.* art. 10 ¶ 3 (stating that "father and mother include . . . stepfather and stepmother who had a support relationship" with decedent); *id.* art. 10 ¶ 4 (stating that "brothers and sisters include . . . stepbrothers and stepsisters who had a support relationship" with decedent). It should be noted that the term "support relationship" refers not only to a steprelative who supported the decedent but also to a steprelative whom the decedent supported. See SHIYONG CAICHAN JICHENG 260 WEN [260 PRACTICAL QUESTIONS REGARDING INHERITANCE OF PROPERTY] 27 (Liu Qunmao et al. eds., 1991) [hereinafter 260 PRACTICAL QUESTIONS] (stating that P.R.C. Inheritance Law protects rights and interests of minors, disabled, and other heirs who are unable to support themselves independently and who relied on decedent by, for example, giving stepchildren supported by their stepparents inheritance rights equal to those of natural, legitimate children). Thus, Chinese courts use article 10 to protect dependents of the decedent as well as to reward exemplary conduct.

decedent to the same intestate heir status as the decedent's children.¹⁶⁸

Just as in the article 13, paragraph 3 cases, Chinese courts have interpreted this statutory language liberally to give the fullest possible recognition to "good" behavior toward the decedent. For example, they have read the "support"¹⁶⁹ requirement of both articles 10 and 12 expansively to encompass a vast array of services benefiting the decedent. These services include financial assistance, care of the decedent's physical and emotional needs, and cohabitation with the decedent.¹⁷⁰ For example, in a 1991 Shanghai case, the court easily applied article 12 to reward a model daughter-in-law who, after her husband's death, had lived with her parents-in-law for forty years, helped them with their household chores, taken care of their everyday needs, nursed them through illness, and even stayed with them in the hospital.¹⁷¹ Courts have not required that the claimant meet such a high standard, however, to qualify under articles 10 and 12. They have also recognized less extensive support as well. For example, under current Chinese judicial practice, if a son-in-law provided physical care only to a decedent who was financially well-off, he could still receive intestate heir status under article 12.¹⁷²

Courts have also expanded the scope of article 12 by defining the term "widowed" to include a decedent's former daughters-in-law or sons-in-law who subsequently remarried after the death of their spouses.¹⁷³ Some courts and commentators have attempted to

¹⁶⁸ See Inheritance Law, *supra* note 16, art. 12 (providing that "a widowed daughter-in-law or a widowed son-in-law who fulfilled the main duty of support toward her or his parents-in-law is regarded as a first order heir").

¹⁶⁹ The Chinese texts of articles 10 and 12 use slightly different words for "support." See *id.* art. 10 (using *fuyang*); *id.* art. 12 (using *shanyang*). Although courts have generally rewarded the same types of support services in both contexts, they have placed special emphasis on an older steprelative's efforts to educate and raise the decedent. For a detailed discussion of the differences between *fuyang* and *shanyang*, see 260 PRACTICAL QUESTIONS, *supra* note 167, at 66-67.

¹⁷⁰ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 78-79, 88-89 (discussing articles 10 and 12).

¹⁷¹ See Succession Case No. 17, *translated in* 2 CHINA L. REP. 76, 80 (1991). Another version of the case appears in ANNOTATED INHERITANCE LAW, *supra* note 43, at 89. For a case involving a model stepson, who was awarded the bulk of his stepfather's estate because he had assumed the major responsibility for the decedent's financial, physical, and emotional needs, see CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 47.

¹⁷² See ANNOTATED INHERITANCE LAW, *supra* note 43, at 89 (discussing judicial practice).

¹⁷³ See Inheritance Law Opinion, *supra* note 42, art. 29 (providing that widowed daughter-in-law or son-in-law qualifies under article 12 for first order intestate status "regardless of whether or not she/he has remarried"); Inheritance Case No. 8, *in* CURRENT P.R.C. LEGAL

extend article 12 still further to allow inheritance by meritorious spouses of the decedent's living children¹⁷⁴ and widowed spouses of the decedent's grandchildren.¹⁷⁵

Finally, courts have generally interpreted articles 10 and 12 to permit the full range of intestate shares to go to qualifying claimants. In some cases, courts have allowed the steprelative, daughter-in-law, or son-in-law to divide the estate equally with other heirs of the same order. Thus, one court ruled that both the decedent's natural father, Zhang, and stepfather, Guo, constituted "parents" for article 10 purposes and received equal shares of the estate.¹⁷⁶ According to the facts of this case, Zhang had cared for and educated the decedent until age eleven.¹⁷⁷ After the decedent's mother divorced Zhang and married Guo, however, Zhang ceased all contact with the decedent up to the decedent's death twenty years later. Guo assumed full paternal responsibility for raising the decedent from age eleven to adulthood.¹⁷⁸

In the majority of published article 10 and article 12 cases, however, courts have adopted an even more flexible approach to estate division. They often apply article 13 in conjunction with article 10 or 12 to readjust intestate shares and award the qualifying steprelative, son-in-law, or daughter-in-law a "larger share" of the decedent's estate.¹⁷⁹ For example, one county people's court gave special consideration to the decedents' daughter-in-law, who had lived with and supported her parents-in-law for seventeen years.¹⁸⁰ The court held that she was an intestate heir of the first order and enti-

PRECEDENTS, *supra* note 23, at 92 (awarding remarried daughter-in-law three-fifths of decedent's estate).

¹⁷⁴ See Inheritance Case No. 8, *supra* note 173, at 93 (discussing and rejecting this approach).

¹⁷⁵ See Inheritance Case No. 82, in COLLECTION OF CASES FOR TEACHING, *supra* note 99, at 192, 194-95 (discussing and rejecting this approach). It should be noted, however, that "worthy" individuals who do not qualify under article 12, can still obtain "appropriate" amounts under article 14. See *infra* Part II.C.

¹⁷⁶ The case appears in SELECTED LAW CASES, *supra* note 54, at 66.

¹⁷⁷ See *id.*

¹⁷⁸ See *id.* For other cases in which the court permitted equal division of the decedent's estate, see, for example, Case No. 26, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 49, a case that allowed a widowed daughter-in-law who supported decedent to divide his estate equally with other first order heirs, and Inheritance Case No. 11, in COLLECTION OF CASES, *supra* note 97, at 137, a decision permitting a stepmother who had raised the decedent since age nine to split the estate with the decedent's spouse and son.

¹⁷⁹ See *supra* Part II.A (discussing text and application of article 13 paragraph 3 of the P.R.C. Inheritance Law).

¹⁸⁰ See Inheritance Case No. 13, in COLLECTION OF CASES, *supra* note 97, at 139.

tled to receive a larger share of the estate than the decedents' son, who had taken care of his parents for only the final three years of their lives.¹⁸¹

Thus, unlike its American counterpart, China's behavior-based model of inheritance allows courts to prefer relatives by marriage over natural and adoptive relatives. In some cases, it actually permits such "worthy" individuals to exclude a decedent's blood relatives altogether from intestate succession.¹⁸² Yet, in the ultimate reward for "good" behavior, China's Inheritance Law allows qualifying steprelatives, daughters-in-law, and sons-in-law to retain dual inheritance rights.¹⁸³ That is, under China's behavior-based model, these individuals can inherit from the decedent without surrendering any rights to inherit from their own natural or adoptive relatives.¹⁸⁴

C. Allocation of an "Appropriate" Legacy to Worthy Non-Heirs

Article 14 of the P.R.C. Inheritance Law gives courts another flexible mechanism to reward exemplary conduct by individuals who would not normally qualify for inheritance of the decedent's estate. It authorizes courts to distribute an "appropriate" amount of the estate to any "person who is not an heir but provided considerable support to the decedent."¹⁸⁵ In practice, article 14 has served as a catch-all provision, ensuring judicial recognition of all "worthy" individuals' contributions to the decedent's welfare.

In some cases, courts have applied article 14 to reward close family members who lack formal intestate succession rights. For example, in a Fujian inheritance dispute, the decedent's biological

¹⁸¹ See *id.*

¹⁸² For example, if a stepmother or widowed daughter-in-law is elevated to first order heir status under article 10 or article 12 respectively, she will cut off claims by a decedent's second order intestate heirs (the decedent's siblings and grandparents). See Inheritance Law, *supra* note 16, art. 10 ¶ 1 (providing that decedent's brothers and sisters, paternal grandparents, and maternal grandparents are second order heirs); *id.* art. 10 ¶ 2 (providing that second order heirs inherit only if there are no first order heirs).

¹⁸³ See Case No. 20, in USING CASES TO EXPLAIN LAW, *supra* note 23, at 39, 39 (discussing "dual inheritance rights of stepchildren who had a support relationship" with decedent).

¹⁸⁴ See Inheritance Law Opinion, *supra* note 42, art. 21 (stating that stepchildren's and stepparents' inheritance from decedent has "no impact" on their rights to inherit from their natural parents and children); *id.* art. 24 (stating that stepsiblings' inheritance of decedent's estate has "no impact" on their rights to inherit from their own siblings).

¹⁸⁵ Inheritance Law, *supra* note 16, art. 14. This provision also allows courts to distribute an "appropriate" amount of the estate to a "person unable to work and with no source of income who is not an heir but relied on the decedent's support." *Id.*

daughter was put up for adoption in her youth and, hence, lost her legal status as the decedent's "child" and "heir."¹⁸⁶ Nonetheless, when she reached adulthood, she established contact with her birth mother and, "during her mother's final years, looked after her in every possible way."¹⁸⁷ Citing article 14, the district court awarded her 6000 yuan of her mother's estate,¹⁸⁸ an amount that the appellate court declared "on the low side" and raised to 8000 yuan.¹⁸⁹

In addition, Chinese courts often use article 14 to reward the

¹⁸⁶ See Inheritance Case No. 420, in *NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES*, *supra* note 17, at 1186. Most U.S. jurisdictions take the same approach as China to the out-of-family adoption situation. Like China, they consider the adoption a "rebirth" into a new family, treat the adopted child as the child of her adoptive parents only, and cut off her rights to inherit from her natural parents and relatives. See *Hall v. Vallandingham*, 540 A.2d 1162, 1163-64 (Md. Ct. Spec. App. 1988) (discussing general approaches to adoption and inheritance and applying Maryland statute). Several states, including those that have adopted the Uniform Probate Code, create an exception for children adopted by the spouse of a natural parent. See UNIF. PROBATE CODE § 2-114(b) (amended 1993), 8 U.L.A. 91 (1998) (providing that "[a]n adopted individual is the child of his [or her] natural parents, but adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendent of the child to inherit from or through the other natural parent"). For examples of statutes based on Uniform Probate Code ("U.P.C.") section 2-114(b), see, for example, HAW. REV. STAT. ANN. §560:2-114(b) (Michie 1997); N.D. CENT. CODE § 30.1-04-09(1) (1997). For a list of non-U.P.C. statutes with similar stepparent exceptions, see Patricia G. Roberts, *Adopted and Nonmarital Children — Exploring the 1990 Uniform Probate Code's Intestacy and Class Gift Provisions*, 32 REAL PROP., PROB. & TR. J. 539, 543 n.11 (1998). Some jurisdictions, however, allow the adopted child to inherit from both adoptive and natural parents and relatives even where there is no stepparent adoption. See, e.g., TEX. PROB. CODE ANN. § 40 (West 1998) (permitting adopted child to inherit "from and through the parent or parents by adoption and their kin" and to inherit "from and through its natural parent or parents"). For discussions of the various approaches to inheritance by adopted individuals, see generally DUKEMINIER & JOHANSON, *supra* note 4, at 92-96; Jan E. Rein, *Relatives by Blood, Adoption, and Association: Who Should Get What and Why*, 37 VAND. L. REV. 711 (1984); and Lisa A. Fuller, Note, *Intestate Succession Rights of Adopted Children: Should the Stepparent Exception Be Extended?*, 77 CORNELL L. REV. 1188 (1992).

¹⁸⁷ Inheritance Case No. 420, *supra* note 186, at 1186.

¹⁸⁸ See *id.* at 1187.

¹⁸⁹ See *id.* Contrast this result with what would occur in the United States. In a jurisdiction that, like China, cuts off the rights of an adopted child to inherit from her natural relatives, the "worthy" daughter would not inherit from her birth mother. Interestingly, however, if the case involved a natural relative other than a parent, one state — Pennsylvania — might permit inheritance. Pennsylvania allows an adopted person to inherit from "a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person." 20 PA. CONS. STAT. ANN. § 2108 (West Supp. 1998). This statute resembles the Chinese approach in giving courts considerable discretion to evaluate the actual relationship between the decedent and the non-heir (to determine whether it constituted "family relationship"). The end result is different, however. The adopted individual receives intestate heir status, not an "appropriate legacy." This result is similar to the result reached with "worthy" steprelatives and widowed daughters-in-law and sons-in-law under articles 10 and 12 of China's Inheritance Law. See *supra* Part II.B.

decendent's more distant relatives who voluntarily supported and assisted the decedent. Thus, in one article 14 case, the court distributed "appropriate compensation" of 250 yuan and a black-and-white television set to the decedent's nephew because "out of a spirit of humanitarianism, [he] assumed responsibility on his own initiative for looking after [the decedent] and making funeral arrangements."¹⁹⁰ Similarly, in a 1995 case reported by the Supreme People's Court, a Shanghai court cited article 14 to reward a more distant relative for his exemplary conduct toward the decedent.¹⁹¹ The court held that the decedent's house should go to her great-nephew rather than escheat to the state because he had "performed the main duty of support toward the owner of the house."¹⁹²

Chinese courts also routinely distribute substantial legacies to "worthy" non-relatives of the decedent. The published case collections feature numerous such cases, involving decedents' non-marital partners,¹⁹³ neighbors and friends,¹⁹⁴ or local collective organizations.¹⁹⁵ For example, in one article 14 inheritance dispute, the court awarded all but the decedent's household furnishings to a neighbor who had looked after the decedent "with meticulous care" for nearly twenty years.¹⁹⁶

¹⁹⁰ Inheritance Case No. 9, *supra* note 134, at 94.

¹⁹¹ See *Chen Yixi Shengqing Rendeng Caichan Wuzhu An* [The Case Involving Chen Yixi's Petition to Declare Property Unowned], *Zuigao Renmin Fayuan Gongbao*, no. 4, 141 (1995).

¹⁹² *Id.*

¹⁹³ See, e.g., Inheritance Case No. 20, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 114 (awarding unmarried cohabitant "appropriate" legacy of 2500 yuan under article 14). In many of the disputes involving non-marital partners, however, Chinese courts have found a de facto marriage and allowed the partner to inherit as a surviving "spouse." See, e.g., Inheritance Case No. 416, *supra* note 152, at 1175 (finding that Chen Jiaolian and Wang Yonghan satisfied de facto marriage requirements and, hence, Wang had the right to inherit Chen's estate).

¹⁹⁴ See, e.g., DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 119 (awarding bulk of estate to neighbor's daughter). In some of these cases, courts have used other techniques to reward individuals not related to decedent by blood or marriage. See, e.g., Inheritance Case No. 15, in COLLECTION OF CASES, *supra* note 97, at 141 (declaring neighbor who took care of decedent first order heir and will beneficiary entitled to inherit decedent's entire estate).

¹⁹⁵ In many of the mid-1980s cases, Chinese courts awarded decedents' estates to collective organizations that had provided decedents care and assistance rather than to relatives who had neglected decedents. See, e.g., Inheritance Case No. 2, *supra* note 97, at 130 (depriving stepsons of inheritance rights due to "abandonment" of decedent and giving entire estate to production brigade that had "cared for [the decedent] until her death"); Inheritance Case No. 9, in COLLECTION OF CASES, *supra* note 97, at 135 (awarding entire estate to electric light factory that had provided decedent "medical treatment, care, and burial").

¹⁹⁶ See DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 119.

The text of article 14 gives courts considerable discretion to change statutory intestate succession rules on a case-by-case basis. Like article 13, paragraph 3,¹⁹⁷ judicial application of article 14 is optional, not mandatory. Article 14 simply states that a qualifying non-heir “can” (*keyi*) receive a portion of the estate.¹⁹⁸ Article 14’s use of the term “appropriate” (*shidang*)¹⁹⁹ only adds further judicial flexibility. This term effectively authorizes courts to make an individualized determination of which estate distribution scheme will best reflect actual conduct toward the decedent.²⁰⁰ In practice, Chinese courts have made full use of this power. They often depart from the statutory intestate succession scheme and award “worthy” non-heirs “appropriate” amounts, ranging from small legacies²⁰¹ to the decedent’s entire estate.²⁰² As the next section will show, China’s behavior-based model offers courts an additional remedy to recognize non-heirs’ contributions toward the decedent’s welfare — enforcement of bequest and support agreements.

D. *Enforcement of Bequest and Support Agreements*

Article 31 of the P.R.C. Inheritance Law codifies a quasi-contractual mechanism for the disposition of estate property.²⁰³ It

¹⁹⁷ See *supra* notes 147-48 and accompanying text.

¹⁹⁸ See Inheritance Law, *supra* note 16, art. 14; ANNOTATED INHERITANCE LAW, *supra* note 43, at 96 (emphasizing article 14’s use of “can” not “must”).

¹⁹⁹ See Inheritance Law, *supra* note 16, art. 14. For an analysis of “appropriate,” see ANNOTATED INHERITANCE LAW, *supra* note 43, at 96.

²⁰⁰ Article 14 also allows courts to determine the optimal estate distribution scheme to protect non-related dependents of the decedent. See *supra* note 185.

²⁰¹ See, e.g., Inheritance Case No. 9, *supra* note 134 (awarding 250 yuan and television set to decedent’s nephew); Succession Case No. 23, *translated in* 2 CHINA L. REP. 116, 118 (1991) (citing article 14 to give defendant one room of decedent’s house in recognition of defendant’s “significant contribution to the funeral expenses” of decedent and “difficulty in getting accommodation”).

²⁰² See, e.g., Case No. 31, *in* USING CASES TO EXPLAIN LAW, *supra* note 23, at 57 (awarding entire estate to niece who lived with and supported elderly decedent).

²⁰³ The closest equivalent in the U.S. context is a “contract to devise,” under which one party promises to leave part or all of her estate to another party in exchange for care or support. See Clifton B. Kruse, Jr., *Contracts to Devise or Gift Property in Exchange for Lifetime Home Care — Latent and Insidious Abuse of Older Persons*, 12 PROB. L.J. 1, 4 (1994) (stating that “contract to will property to another in exchange for future services is valid and enforceable”). Chinese commentators claim, however, that bequest and support agreements are a uniquely Chinese phenomenon. For a detailed such analysis of how Chinese bequest and support agreements differ from other countries’ contracts regarding succession, see CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 178-84. One striking difference between Chinese and U.S. practice is their respective attitudes toward such arrangements. Chinese

authorizes citizens to conclude so-called “bequest and support agreements,” under which one individual promises to leave all or part of his estate to another individual or a collective organization in return for “lifetime support and burial after death.”²⁰⁴ In practice, enforcement of such agreements has emerged as yet another flexible tool for courts to reward good conduct toward the decedent.²⁰⁵

For Chinese courts and commentators, bequest and support agreements exemplify the behavior-based model of inheritance. Such agreements reinforce traditional Chinese and socialist values by encouraging China’s younger generation to support and assist elderly and disabled citizens.²⁰⁶ In so doing, these agreements also offer a practical as well as ethical response to China’s welfare crisis. They help “lighten the burden” on state and society.²⁰⁷ Because

courts and commentators view bequest and support agreements as positive mechanisms that should be “vigorously developed and promoted.” Inheritance Case No. 428, *in* NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1211, 1213. They argue that such arrangements encourage socialist morality, care for the elderly and disabled, and social stability. *See infra* notes 206-07 and accompanying text. In the United States, in contrast, “contracts to make wills are looked upon with disfavor.” *Craddock v. Berryman*, 645 P.2d 399, 402 (Mont. 1982). Courts view contracts to devise “with misgivings and suspicion” and impose high evidentiary standards to restrict their enforcement. *See Fahringer v. Estate of Strine*, 216 A.2d 82, 85 (Pa. 1966) (stating that “traditionally the courts have been reluctant to give recognition to such contracts and have viewed claims based on such contracts with misgivings and suspicion”); *Thompson v. Henderson*, 591 P.2d 784, 786 (Wash. Ct. App. 1979) (stating that oral contracts to devise “are regarded with suspicion” and that “[t]he standard of proof in such cases is not ‘a preponderance of the evidence’ but rather, one of ‘high probability’”).

²⁰⁴ Inheritance Law, *supra* note 16, art. 31. The law provides:

A citizen can enter into a bequest and support agreement with a person who supports him or her. By such agreement, the supporting person assumes the obligation to provide said citizen lifetime support and burial after death, and has the right to receive a bequest.

A citizen can enter into a bequest and support agreement with a collective organization. By such agreement, the collective organization assumes the obligation to provide said citizen lifetime support and burial after death, and has the right to receive a bequest.

Id.

²⁰⁵ Courts can also use their powers to enforce bequest and support agreements to penalize misconduct toward the decedent. *See infra* notes 224-28 and accompanying text.

²⁰⁶ *See* Inheritance Case No. 428, *supra* note 203, at 1213 (stating in case analysis that “[t]he signing of a bequest and support agreement can also encourage the younger generation to support the elderly and nurture the disabled and minors”); Inheritance Case No. 427, *in* NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1205, 1210 (discussing background and nature of bequest and support agreements and asserting that they “encourage the socialist ethical practice” of supporting elderly, disabled, and minors).

²⁰⁷ *See* Inheritance Case No. 428, *supra* note 203, at 1213 (stating that bequest and sup-

bequest and support agreements play such a positive role in promoting “good” behavior, China’s behavior-based model of inheritance gives them the highest legal status and protection. In practice, such agreements actually supersede and even bar claims by the decedent’s intestate heirs²⁰⁸ and will beneficiaries²⁰⁹ alike.

In cases involving bequest and support agreements, Chinese courts place primary emphasis on the conduct of the parties, rather than the form, terms, or effect of the agreement. If the parties entered into the agreement in good faith and “scrupulously observed” its terms, courts make every effort to uphold the agreement.²¹⁰ The published case collections provide numerous examples of liberal judicial enforcement of bequest and support agreements. These cases suggest that courts impose few formal requirements as a prerequisite to finding such agreements valid.

Chinese courts have enforced agreements made with a wide variety of collective organizations²¹¹ and individuals.²¹² Only family members with legally prescribed support duties toward the legator are automatically disqualified from participation in these arrangements.²¹³ Similarly, although courts insist that bequest and support agreements must satisfy contractual formalities, in practice they have emphasized substance over form²¹⁴ and have even upheld rela-

port agreement “lightens the burden on society”).

²⁰⁸ See, e.g., Case No. 88, in *COLLECTION OF CASES FOR TEACHING*, *supra* note 99, at 209 (allowing claimants under bequest and support agreement to take decedent’s house rather than allowing decedent’s daughter, her sole intestate heir, to inherit).

²⁰⁹ See, e.g., Case No. 12, in *CIVIL AND COMMERCIAL LAW PRACTICE*, *supra* note 75, at 177 (ruling that bequest and support agreement superseded will that disposed of same property); see also *Inheritance Law Opinion*, *supra* note 42, art. 5 (providing that if there is conflict between bequest and support agreement and will, agreement prevails).

²¹⁰ See *Zhang Shenpu v. Zhao Lanying*, *supra* note 45, at 189 (stating in appellate opinion that “[t]he supporting party also should scrupulously observe the agreement and perform support duties”).

²¹¹ See, e.g., Case No. 57, in *USING CASES TO EXPLAIN LAW*, *supra* note 23, at 103 (upholding bequest and support agreement with village collective organization); Case No. 12, *supra* note 209 (upholding bequest and support agreement with Wooden Junk Transport Cooperative).

²¹² See, e.g., Case No. 88, *supra* note 208 (upholding bequest and support agreement with nephews); Case No. 56, in *USING CASES TO EXPLAIN LAW*, *supra* note 23, at 101 (considering agreement with “fellow villager”).

²¹³ See *ANNOTATED INHERITANCE LAW*, *supra* note 43, at 181 (stating that supporting party must be non-heir and that intestate heirs with statutorily prescribed support duties cannot conclude bequest and support agreement with legator).

²¹⁴ See, e.g., *Inheritance Case No. 428*, *supra* note 203, at 1212 (disregarding title “bequest document” and concluding that “the basic terms of said ‘bequest document’ actually constituted a bequest and support agreement”).

tively informal oral bequest and support agreements.²¹⁵ Moreover, Chinese courts have placed no restriction on the size of the stipulated bequest. They routinely enforce agreements under which the decedent left the entire estate to a non-related supporting party to the detriment of the decedent's closest family members.²¹⁶

Remarkably, Chinese courts also disregard the respective values of the "bequest" and the "support." If the claimant provided the decedent "lifetime support and burial after death," courts allow that party to inherit even if the value of the bequest grossly exceeds the value of actual support services rendered. For example, in one published case, an elderly woman, Lin Xiu, concluded a bequest and support agreement with her two nephews, Liu Wu and Liu Mao.²¹⁷ She promised to devise her house in return for "food, clothing, care, and burial" as well as cash payments of five yuan per month.²¹⁸ Lin Xiu died shortly thereafter and her daughter contested the agreement on grounds that Liu Wu and Liu Mao "had performed relatively few support duties but reaped a large reward."²¹⁹ Because the two nephews had fulfilled their obligations to the decedent, the court rejected the daughter's claim and upheld the agreement.²²⁰

In fact, under China's behavior-based model of inheritance, courts reward good behavior toward the decedent even when a bequest and support agreement is formally defective. The inheri-

²¹⁵ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 182 (stating that bequest and support agreements can be in oral as well as written form). China's permissive attitude toward oral bequest and support agreements stands in marked contrast to the U.S. approach to oral contracts to devise. Unlike China, many U.S. jurisdictions require that proof of such contracts appears in writing. See, e.g., MICH. COMP. LAWS ANN. § 700.140 (West 1995) (providing that contract to devise "can be established only by 1 of the following: (a) A provision of a will stating material provisions of the contract. (b) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract. (c) A writing signed by the decedent evidencing the contract."). Jurisdictions that permit oral contracts impose strict evidentiary standards. See, e.g., *Kahn v. First Nat'l Bank of Chicago*, 576 N.E.2d 321, 324 (Ill. App. Ct. 1991) (stating that "evidence of the existence of the contract and its terms must be clear and explicit and 'so convincing that it will leave no doubt in the mind of the court'"); *In re Estate of Boothby*, 532 A.2d 1007, 1008 (Me. 1987) (requiring "clear and cogent proof" of oral contract to devise). Strict judicial construction of dead man's statutes may also constitute a significant obstacle to enforcement of oral contracts to devise. See, e.g., *Farah v. Stout*, 684 A.2d 471 (Md. Ct. Spec. App. 1996) (strictly construing Maryland dead man's statute to bar only evidence of oral contract to devise).

²¹⁶ See ANNOTATED INHERITANCE LAW, *supra* note 43, at 183 (stating that bequest and support agreements generally dispose of decedent's entire estate).

²¹⁷ See Case No. 88, *supra* note 208, at 209.

²¹⁸ See *id.*

²¹⁹ *Id.*

²²⁰ See *id.* at 209-10.

tance dispute over Tang Lihua's estate is illustrative.²²¹ The court found the bequest and support agreement invalid but nonetheless recognized the supporting party's contributions to the decedent's welfare with an "appropriate" share of one-half of Tang's estate.²²²

Most notable, however, is the impact of behavior on cases involving premature termination of bequest and support agreements. Courts generally allow compensation for past services rendered only if the supporting party bore no responsibility for the termination. Thus, if the legator rescinded the agreement with or without just cause, courts reimburse the "worthy" supporting party for expenses incurred.²²³ If the supporting party improperly terminated the agreement, however, courts generally deny that "unworthy" party any rights to compensation.²²⁴ For example, in one case, the claimant, Wang Shuncheng, had supported his aunt for two years under a bequest and support agreement.²²⁵ At that point, however, he reportedly decided that "supporting and caring for an old person was too much trouble and washed his hands of the whole affair."²²⁶ When his aunt died seven years later, Wang reappeared to claim her estate pursuant to the bequest and support agreement.²²⁷ Citing Wang's misconduct toward the decedent and his breach of the agreement, the court denied Wang not only the estate, but also any compensation for expenses incurred during the two years he supported his aunt.²²⁸

²²¹ See Case No. 13, in CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 185.

²²² See *id.* at 186-87. The court applied article 14 of the Inheritance Law to award an "appropriate" share. See *id.*

²²³ See Inheritance Law Opinion, *supra* note 42, art. 56 (providing that "[i]f the legator without just cause fails to perform, to the point that the agreement is terminated, then he/she should reimburse the supporting individual or collective organization for any expenses already incurred in providing support"). For a case applying this sentence of article 56 to a legator's termination "with just cause," see DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 239, where legator reimbursed supporting party for expenses of three years' support after the legator terminated their agreement — with other party's consent — because his daughter returned to look after him.

²²⁴ See Inheritance Law Opinion, *supra* note 42, art. 56 (stipulating that "[i]f a supporting individual or collective organization that has signed a bequest and support agreement with a citizen without just cause fails to perform, to the point that the agreement is terminated, that supporting individual or collective organization cannot enjoy the right to receive the bequest and generally will not be reimbursed for any expenses incurred in providing support").

²²⁵ The case appears in DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at 240.

²²⁶ *Id.*

²²⁷ See *id.*

²²⁸ See *id.* at 241.

Thus, China's behavior-based model of inheritance offers courts diverse remedies for rewarding exemplary conduct as well as penalizing misconduct. Unlike existing and proposed U.S. approaches, the Chinese approach gives courts wide latitude to readjust estate distribution to reflect actual patterns of behavior between decedents and claimants as well as blood and marital ties.²²⁹

China's behavior-based model of inheritance is, at heart, a blueprint for individualized justice. It emphasizes judicial fact-finding, evaluation, and creativity, but at the expense of efficiency and predictability. To what extent can this model remain viable in a changing China? In the final part of this Article, I consider the future of China's behavior-based model of inheritance and conclude that it faces serious challenges that may well prove insurmountable.

III. CHALLENGES TO CHINA'S BEHAVIOR-BASED MODEL OF INHERITANCE

Since its codification in 1985,²³⁰ China's behavior-based model of inheritance has performed important functions for Chinese society. It has served as an essential mechanism to activate private sources of support for China's elderly, disabled, and minors.²³¹ It has assisted the Chinese government and communist party in inculcating new norms of behavior, such as gender equality.²³² According to some reports, it has even reduced conflict within the family and society at large.²³³ Moreover, China's behavior-based model has played the role that our own scholars deem so critical for inheritance law — it has promoted popular respect for China's evolving legal system by establishing a system of estate distribution

²²⁹ See Inheritance Case No. 8, *supra* note 173, at 93 (stating that under Chinese inheritance law, "an actual rights and duties relationship can supersede a blood relationship or marital relationship. This is a pioneering development in world inheritance legislation.").

²³⁰ See Inheritance Law, *supra* note 16 (codifying behavior-based model of inheritance).

²³¹ For an extended discussion of the support function of Chinese inheritance law, see Frances H. Foster, Linking Support and Inheritance (1998) (unpublished manuscript, on file with author).

²³² Article 9 of the Inheritance Law guarantees that "[m]en and women have equal inheritance rights." Inheritance Law, *supra* note 16, art. 9. For discussion and examples of how Chinese inheritance law promotes gender equality, see CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 41-46, and ANNOTATED INHERITANCE LAW, *supra* note 43, at 75-78.

²³³ See, e.g., Case No. 428, *supra* note 203, at 1213 (stating that bequest and support agreements have "definite role in reducing conflict and promoting stability and unity").

that participants believe is fair.²³⁴ Despite these impressive past and present accomplishments, however, the behavior-based model of inheritance may not continue to suit China's needs and conditions in the twenty-first century.

China has undergone radical economic, social, and legal reforms since 1985. These reforms pose serious legal and practical challenges to the behavior-based model of inheritance. In the economic sphere, China has adopted new definitions and protections for private property rights that have already undermined this model. To encourage individual initiative and productivity, the P.R.C. government has expanded citizens' legal rights to accumulate, use, and transfer private property, including freedom of testation.²³⁵ Freedom of testation directly conflicts with the behavior-based model of inheritance because it effectively authorizes Chinese citizens to disregard behavior altogether in disposition of their estates.²³⁶

In practice, freedom of testation has emerged as a major limitation on the behavior-based model. It actually preempts courts from rewarding exemplary conduct and from penalizing all but the most egregious misconduct toward the decedent.²³⁷ Chinese cases

²³⁴ See WAGGONER ET AL., *supra* note 2, at 34 (stating that "objective" of U.S. inheritance law is "to produce a pattern of distribution that the recipients believe is fair and thus doesn't produce disharmony within the surviving family members or disdain for the legal system").

²³⁵ For an overview of Chinese property law, see generally Jonas Alsén, *An Introduction to Chinese Property Law*, 20 MD. J. INT'L L. & TRADE 1 (1996). In practice, Chinese citizens disposed of property by will even prior to the formal enactment of the 1985 Inheritance Law. See Foster-Simons, *supra* note 16, at 46-47 (discussing pre-1985 testate succession). It was unclear, however, to what extent Chinese authorities would permit genuine freedom of testation. See *id.* at 47 (discussing possible limitations on testate succession). Moreover, until the recent economic reforms, Chinese citizens generally had only minimal estates to leave by will. See *China Mulls Inheritance Tax as Millionaires Fatten on Reforms*, AGENCE FRANCE PRESSE, June 21, 1995, available in LEXIS, Asiapc Library, Allnws File (reporting that due to Mao's "collectivisation and abolition of the right to private property," "[p]eople were left with almost nothing to bequeath"). Under Chinese economic reforms, however, citizens can now accumulate substantial estates. For recent reports on private wealth in China, see, for example, Seth Faison, *For Sale at Last in China — Dream Homes, but No Sink*, N.Y. TIMES, Sept. 3, 1998, at F1; Elisabeth Rosenthal, *China's Middle Class Savors Its New Wealth*, N.Y. TIMES, June 19, 1998, at A1. Thus, freedom of testation assumes increasing importance in China today.

²³⁶ *But see* Case No. 10, in CURRENT P.R.C. LEGAL PRECEDENTS, *supra* note 23, at 95 (claiming that freedom of testation in fact promotes "mutual support and mutual assistance" as well as "protection of citizens' lawful property rights" because testator is in best position to devise appropriate estate distribution scheme to recognize actual support relationships with family members and individual financial circumstances).

²³⁷ As discussed earlier, Chinese courts have extended article 7 of the Inheritance Law to apply to will beneficiaries who kill the decedent or other heirs, abandon the decedent, maltreat the decedent under serious circumstances, or forge, tamper with or destroy the will.

and commentaries emphasize that in testate succession cases, the key question before the court is the validity of the will, not the behavior of the claimants.²³⁸ Thus, Chinese courts will typically enforce a will that satisfies the legal requirements for validity, even if it excludes the decedent's closest, most "deserving" family members from inheritance.²³⁹ For example, in one published case, three sons, who were in straitened financial circumstances themselves, supported their father, stepmother, and two half siblings for twelve years.²⁴⁰ Their father's will left them nothing but the instruction that they "must live independently, relying on their own labor, and become good children of China."²⁴¹ Citing the decedent's right to dispose of his own property during his lifetime, the court nonetheless upheld the will and ignored the sons' exemplary conduct.²⁴²

Economic reforms have also put pressure on the existing model by creating urgent social welfare demands on China's inheritance system that outweigh behavior-based distribution of estates. To promote national development, the P.R.C. government has launched a comprehensive program to dismantle the collective

See supra note 43 and accompanying text.

²³⁸ *See* Inheritance Case No. 85, in COLLECTION OF CASES FOR TEACHING, *supra* note 99, at 201, 202. The case analysis states:

The key to handling a testate succession case is to determine the validity of the will It should be made clear that even if an heir performed duties toward the decedent, the decedent can, nonetheless, make a will leaving his/her estate to another person. To be effective, the will need only conform with the requirements stipulated in the inheritance law.

Id.

²³⁹ If the will excludes heirs who are unable to work and have no source of income, however, courts generally declare the will partially void and distribute a portion of the estate to such heirs. *See* Inheritance Law, *supra* note 16, art. 19 (stating that "[a] will should reserve a mandatory share of the estate for an heir who is unable to work and has no source of income"). For extended discussion and cases applying article 19, see, for example, CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 103-08, 140-49, which reproduces and analyzes two cases in which courts declared wills partially void because the testators failed to provide for minor or disabled children, and Case No. 1, in '95 SELECTION OF THE SHANGHAI COURTS' LATEST CASES, *supra* note 24, at 1, for a ruling that a will "violated statutory provisions" and was partially void because it did not reserve a mandatory share of estate for testator's mother, who was "unable to work and was without a source of income."

²⁴⁰ *See* Inheritance Case No. 85, *supra* note 238, at 201.

²⁴¹ *Id.*

²⁴² *See id.* at 202. As a result, the sole beneficiary of the will, the decedent's second wife, inherited the entire estate. *See id.* If the sons had been "unable to work and ha[d] no source of income," they would have qualified for a mandatory share of the estate under article 19 of the Inheritance Law. *See supra* note 239 (citing and discussing article 19).

and state-owned enterprises that have traditionally guaranteed Chinese citizens cradle-to-grave support services.²⁴³ In response to the looming welfare crisis, China has turned to its inheritance system to supply private support for dependents.

P.R.C. law and practice directly reflect this critical support function of inheritance. The Inheritance Law expressly authorizes courts to give priority to elderly, minor, disabled, and impoverished estate claimants²⁴⁴ and requires that wills reserve "mandatory shares" for heirs who are "unable to work and [have] no source of income."²⁴⁵ In judicial practice, a claimant's support needs make behavior irrelevant for inheritance purposes. For example, one court awarded a mandatory share of the decedent's estate to her fifteen-year-old son, Yu Lai, the archetypal unworthy heir.²⁴⁶ A juvenile delinquent and truant since age seven, the boy was so "tainted with evil habits" that he disobeyed, mistreated, and neglected his mother even during her final illness and hospitalization.²⁴⁷ Because Yu was a minor and unable to support himself, the court ruled that he was still entitled to inherit from his "broken-hearted"²⁴⁸ mother's estate.²⁴⁹

Recent P.R.C. economic policies may further threaten the behavior-based model of inheritance by eventually redefining the role of

²⁴³ Since 1978, China has implemented radical rural and urban economic reforms, including the contracted responsibility system, enterprise decentralization, contract labor system, and enterprise bankruptcy law, which have had a profound effect on P.R.C. welfare services. For comprehensive analyses of Chinese economic reforms, see, for example, BARRY NAUGHTON, *GROWING OUT OF THE PLAN: CHINESE ECONOMIC REFORM, 1978-1993* (1996), and DAVID ZWEIG, *FREEING CHINA'S FARMERS: RURAL RESTRUCTURING IN THE REFORM ERA* (1997). For an extended discussion of the impact of economic reform on Chinese welfare, see, for example, LINDA WONG, *MARGINALIZATION AND SOCIAL WELFARE IN CHINA* (1998), Guo Zhenglin & Zhou Daming, *Rural Development and Social Security*, in *FAREWELL TO PEASANT CHINA: RURAL URBANIZATION AND SOCIAL CHANGE IN THE LATE TWENTIETH CENTURY* ch. 10 (Gregory Eliyu Guldin ed., 1997), and Kathleen Hartford, *Socialist Agriculture is Dead; Long Live Socialist Agriculture! Organizational Transformations in Rural China*, in *THE POLITICAL ECONOMY OF REFORM IN POST-MAO CHINA* 31 (Elizabeth J. Perry & Christine Wong eds., 1985).

²⁴⁴ See Inheritance Law, *supra* note 16, art. 13 ¶ 2 (stating that "heir who is unable to work and whose life is especially difficult should receive consideration when the estate is distributed"); *id.* art. 14 (providing that "appropriate legacy can be distributed to a person unable to work and with no source of income who is not an heir but relied on the decedent's support"); *id.* art. 28 (reserving share of estate for unborn children).

²⁴⁵ *Id.* art. 19 (requiring that will "reserve a mandatory share of the estate for an heir who is unable to work and has no source of income").

²⁴⁶ The case is reported in *CIVIL AND COMMERCIAL LAW PRACTICE*, *supra* note 75, at 103.

²⁴⁷ See *id.*

²⁴⁸ *Id.*

²⁴⁹ See *id.* at 104.

Chinese courts. According to some observers, economic reforms have created "a practical need for more predictability, certainty and consistency in judicial decision-making."²⁵⁰ If this trend continues, Chinese courts will soon be asked to perform functions that are fundamentally incompatible with the behavior-based model of flexible, individualized adjudication of inheritance disputes. Indeed, Chinese scholars have already proposed on "practical" grounds to repeal elastic language in the P.R.C. Inheritance Law and, hence, limit judicial discretion in inheritance cases.²⁵¹

Finally, Chinese reforms may ultimately make the behavior-based model of inheritance unmanageable. The existing scheme already puts heavy demands on courts. It is highly labor- and time-intensive, requiring courts to identify on a case-by-case basis the "appropriate" recipients and allocation of each decedent's estate. Recent Chinese policies have only added to this burden.

P.R.C. economic reforms in particular have significantly increased the complexity of inheritance cases. In the past, the principal task of Chinese courts in inheritance cases was to evaluate the behavior and needs of estate claimants. The estate itself generally presented few problems. The typical estate was comprised of a small house and miscellaneous household items of minimal value.²⁵² New forms of ownership and increased accumulation of private property, however, have made the work of Chinese courts infinitely more difficult. Courts now confront estates with a wide variety of tangible and intangible assets.²⁵³

²⁵⁰ Liu, *supra* note 20, at 129. It should be noted, however, that thus far Chinese economic reforms have succeeded without a scheme of clear, unambiguous property rights. See Lan Cao, *The Cat That Catches Mice: China's Challenge to the Dominant Privatization Model*, 21 BROOK. J. INT'L L. 97, 103 (1995) (analyzing China's distinctive model of economic reform and arguing that China's experience demonstrates that "clear private property arrangements are not always required to generate economic growth"). As one scholar has noted, "unclear property rights, or . . . 'soft' property rights, are part of China's traditional heritage." Lubman, *supra* note 19, at 11 (citing David Zweig).

²⁵¹ See CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at 29 (discussing proposals to repeal "under serious circumstances" language).

²⁵² See, e.g., Inheritance Case No. 16, *supra* note 150 (dividing estate consisting of five rooms of house, household utensils, clothes, and pocket watch).

²⁵³ For extended discussion and cases involving a variety of "lawful" private property, see, for example, ANNOTATED INHERITANCE LAW, *supra* note 43, at 18-45. This increased wealth of Chinese decedents may also threaten the behavior-based model by encouraging corruption. Corruption is already "rampant and pervasive" in China. Anna M. Han, *China's Company Law: Practicing Capitalism in a Transitional Economy*, 5 PAC. RIM L. & POL'Y J. 457, 486 n.121 (1996). See generally JULIA KWONG, *THE POLITICAL ECONOMY OF CORRUPTION IN CHINA* (1997) (discussing corruption in China). In recent months, Chinese leaders have expressed particular concern about the growing problem of judicial corruption. See, e.g., Chen Weiwei

A Guangdong case illustrates this growing complexity of Chinese estates and inheritance disputes. The suit involved inheritance rights to a newly constructed two story house, a hardware and furniture store under contract to the decedent, a debt, a telephone, a television, a washing machine, other unspecified electrical appliances, and a motorcycle.²⁵⁴ The court could not even reach the question of proper distribution of the estate until it resolved the legal status of the estate's two major assets.²⁵⁵ It had to determine whether the house was wholly owned or partially owned by the decedent,²⁵⁶ and whether the store constituted a "sole proprietorship" inheritable by the decedent's heirs or a "joint enterprise" transferable to the decedent's "partners."²⁵⁷ Moreover, the court had to hire special experts to appraise the value of the store inventory, furnishings, and reserve fund.²⁵⁸ Only then could the court turn to its more familiar assignments and evaluate the personal relationships between the decedent and estate claimants, determine if the heirs had any special needs, and decide on an equitable division of the estate.²⁵⁹

& Chen Yan, *Wei Jianxing Meets Representatives to the National Forum of Presidents of Higher People's Courts and Gives a Speech*, XINHUA, July 2, 1998, translated in BBCSWB, July 10, 1998, available in LEXIS, Asiapc Library, BBCSWB File (quoting senior communist party leader, Wei Jianxing, as saying that judicial corruption could "seriously damage the prestige and image of the people's courts and even the party and the government"); Peng Weixiang, *China: Efforts Urged to Eradicate Judicial Corruption*, ZHONGGUO XINWEN SHE, Sept. 25, 1998, translated in FBIS-CHI-98-270 <<http://wnc.fedworld.gov>> (reporting speech by Supreme People's Court President Xiao Yang on efforts to punish judicial corruption); *Li Peng Speaks on "Heated Topic" of Corrupt Judicial Officials*, XINHUA, Sept. 16, 1998, available in LEXIS, Asiapc Library, BBCSWB File (reporting critique of judicial corruption as "threat to social stability" by Li Peng, top communist party official and Chairman of National People's Congress Standing Committee). If this trend continues, a discretionary scheme of estate distribution may well provide fertile ground for judicial corruption.

²⁵⁴ See Inheritance Case No. 430, in NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at 1216, 1217.

²⁵⁵ See *id.* There was also a dispute over whether the debt had been repaid during the decedent's lifetime. See *id.*

²⁵⁶ One of the defendants claimed that the decedent had contributed only 1000 yuan toward the construction of the house and, thus, did not have full ownership rights to the house. See *id.* The court rejected this argument and held that the house was the joint marital property of the decedent and his spouse. See *id.* at 1218.

²⁵⁷ See *id.* The court found that one of the defendants and a third party had forged the "contract" that allegedly created a "joint enterprise." Accordingly, the court held that the store was part of the decedent's estate and imposed a fine of 200 yuan on the wrongdoers and also "subjected them to reprimand and education." See *id.* at 1217-18.

²⁵⁸ See *id.*

²⁵⁹ The court divided the estate among the decedent's surviving spouse, son, and parents. It gave three-fourths of the estate to the son because he was "only five years old and [was] not yet able to work." *Id.* at 1218. The court found that the decedent's parents had "several fishponds under contract and . . . [were] relatively well-to-do" and the surviving

Chinese legal reforms have further strained the behavior-based model. In the post-Mao era, the P.R.C. leadership has placed major emphasis on developing a modern Chinese legal system and on promoting popular respect for and use of law and legal institutions.²⁶⁰ One product of this effort has been a dramatic rise in litigation.²⁶¹ This has been particularly true of civil law cases, more than half of which involve family and inheritance matters.²⁶² Thus far, courts have alleviated this pressure on the judicial system largely through informal, community-based dispute resolution mechanisms, such as neighborhood or workplace mediation.²⁶³ These alternatives become less and less effective, however, with increasing social mobility in China.

Social mobility promises to have a significant impact on Chinese inheritance law and practice. Inheritance cases increasingly will involve estate claimants from different Chinese localities and even foreign countries. Thus, unlike the past, parties will not have to coexist in the same village, workplace, or even house after the decedent's death. With no common "community," they likely will lose both the practical incentive and peer pressure to submit to informal, community-based dispute resolution. As a result, Chinese courts will likely face growing demands for their services in the future. Recent reports from China indicate that even now, "litigation [is] fast overtaking mediation as the forum of choice."²⁶⁴ There is a real question whether the behavior-based model can accommodate this rapidly expanding judicial caseload.

To compound the problem, social mobility also threatens to

spouse was "in the prime of her life and able to work." *Id.* Accordingly, the other three heirs split the remaining one-fourth. *See id.*

²⁶⁰ For a sampling of the literature on Chinese legal development, see CHINESE LAW: SOCIAL, POLITICAL, HISTORICAL, AND ECONOMIC PERSPECTIVES, 4 vols. (Tahirih V. Lee ed., 1997).

²⁶¹ *See* BROWN, *supra* note 20, at 132 (describing "explosive increase in the use of the courts"); Finder, *supra* note 22, at 223 (discussing "profound increase in litigation in the lower courts").

²⁶² According to Chinese statistics, civil cases increased nearly 239.3% from 1984 to 1995, from 800,000 cases in 1984 to 2,714,665 cases in 1995. *See* BROWN, *supra* note 20, at 132 (citing Supreme People's Court Work Report Statistics).

²⁶³ *See* Edward J. Epstein, *Law and Legitimation in Post-Mao China*, in DOMESTIC LAW REFORMS IN POST-MAO CHINA, *supra* note 19, at 19, 39 (stating that "[n]ot surprisingly, this explosion in litigation recently led to the reassertion of informal dispute resolution techniques"). For a detailed examination of Chinese dispute resolution techniques, see Donald C. Clarke, *Dispute Resolution in China*, 5 J. CHINESE L. 245 (1991), and Jun Ge, *Mediation, Arbitration and Litigation: Dispute Resolution in the People's Republic of China*, 15 UCLA PAC. BASIN L.J. 122 (1996).

²⁶⁴ BROWN, *supra* note 20, at 133.

overwhelm Chinese courts with new evidentiary problems and costs. As discussed earlier, the behavior-based model requires courts to act as independent fact-finders as well as adjudicators.²⁶⁵ When this scheme was codified in 1985, judicial investigation and collection of evidence were relatively simple tasks. The conventional inheritance case involved the estate of a decedent who had lived, acquired assets, interacted with estate claimants, and died all in the same locality. With increased social mobility, however, Chinese courts will confront far more complex fact patterns and issues. They will be called upon to identify and determine title to assets located throughout China and even the world.²⁶⁶ Moreover, courts will face the daunting challenge of investigating and evaluating claimants' behavior toward a "migrating" decedent with multiple domiciles during life. These new demands on Chinese courts will only add to the time, labor, and expense of implementing the behavior-based model.

CONCLUSION

China's behavior-based model of inheritance presents what our own scholars have declared impossible — a workable inheritance scheme of individualized justice that emphasizes judicial discretion rather than fixed rules.²⁶⁷ As this Article has shown, the Chinese

²⁶⁵ See *supra* Part II.A. Because of this independent fact-finding role, Chinese courts often reject both the plaintiff's and the defendant's proposed estate distributions and devise their own schemes. For one example of this approach see *supra* notes 75-79 and accompanying text (reporting case in which court followed neither parties' proposed schemes and awarded entire estate to decedent's son).

²⁶⁶ For extended discussion and examples of inheritance cases in which Chinese courts have already dealt with foreign property interests, see, for example, CIVIL AND COMMERCIAL LAW PRACTICE, *supra* note 75, at ch. 5, DETAILED EXPLANATION OF INHERITANCE CASES, *supra* note 54, at ch. 5, and NEW TYPES OF CIVIL AND COMMERCIAL LAW CASES, *supra* note 17, at ch. 7.

²⁶⁷ For the most influential statement of the U.S. view, see Mary Ann Glendon, *Fixed Rules and Discretion in Contemporary Family Law and Succession Law*, 60 TUL. L. REV. 1165 (1986). This is not to say that fixed rules in fact eliminate judicial discretion. As Walter Weyrauch has emphasized, there is a fundamental "discrepancy between myth and reality of American Law." Walter O. Weyrauch, *Aspirations and Reality in American Law*, in LAW, MORALITY, AND RELIGION: GLOBAL PERSPECTIVES 217, 225 (Alan Watson ed., 1996). The "myth" is that judges will mechanically apply written rules even when these rules conflict with community standards and norms. The "reality" is different: "The actual outcomes of cases tend to be influenced by norms of unwritten law which are never fully articulated. These unwritten norms may prevail in clashes with the traditional printed sources of law because such norms have greater persuasiveness." Walter Otto Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the "Gypsies"*, 103 YALE L.J. 323, 379 (1993). For discussion and examples of inheritance cases in which courts applied societal sexual taboos

model has significant advantages over the existing American approach to inheritance. First, unlike the status-based U.S. model, China's behavior-based model directly addresses the scenario that inspired public outrage and calls for reform in our own country.²⁶⁸ It explicitly bars intestate succession claims by heirs who abused or abandoned the decedent.²⁶⁹ Second, China's broader definition of unworthy heirs gives courts the flexibility to penalize the full range of misconduct toward the decedent, not merely the most egregious offenses.²⁷⁰

Third, China's behavior-based model performs a function that our own system is only beginning to explore — the use of inheritance to encourage and reward good behavior.²⁷¹ In the process, China has demonstrated that inheritance can play a vital social welfare role by activating private mechanisms of support.²⁷² Fourth, unlike the inflexible American status-based model,²⁷³ China's behavior-based model recognizes the reality of support relationships today. It rewards contributions to the decedent's welfare by individuals outside the nuclear family, including blended and ex-

to deny probate to properly executed wills, see DUKEMINIER & JOHANSON, *supra* note 4, at 172-81, reprinting cases involving a relationship between an older woman and a younger man and homosexual relationship. See also Joseph W. deFuria, Jr., *Testamentary Gifts Resulting From Meretricious Relationships: Undue Influence or Natural Beneficence?*, 64 NOTRE DAME L. REV. 200, 201 (1989) (arguing that "because it is often impossible for judges or juries to decide cases in a moral vacuum, the [undue influence] doctrine often functions instead as a barometer of society's mores"). DeFuria also writes, "Nowhere is this tendency more prevalent than in those cases where the testator has given a significant portion of his estate to a person with whom he has had a meretricious relationship." *Id.* This divergence between formal inheritance rules and their actual application is by no means limited to the modern American context. See, e.g., Robert M. Cover, *Forward: Nomos and Narrative*, 97 HARV. L. REV. 4, 21 (1983) (demonstrating that biblical narratives consistently deviated from "the 'normal' order of succession — a pillar of the legal civilization that is formally enunciated in the code portions of Deuteronomy itself"); William H. Page, *Professor Ehrlich's Czernowitz Seminar of Living Law*, PROC. ASS'N AM. L. SCH. 46 (1914), reprinted in READINGS IN JURISPRUDENCE 825, 826-28 (Jerome Hall ed., 1938) (discussing Eugen Ehrlich's finding that in German regions of Austria, "the peasant law of succession," rather than official Austrian Civil Code rules, actually governed inheritance of peasants' property).

²⁶⁸ See *supra* notes 5-12 and accompanying text.

²⁶⁹ See *supra* Part I.B.1, 2.

²⁷⁰ See *supra* Part I.

²⁷¹ See *supra* Part II.

²⁷² For extended discussion of this point, see Foster, *supra* note 231.

²⁷³ For critiques of the current American status-based model and its failure to recognize nontraditional families, see, for example, Ralph C. Brashier, *Children and Inheritance in the Nontraditional Family*, 1996 UTAH L. REV. 93; Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 CASE W. RES. L. REV. 83 (1994); Mary Louise Fellows et al., *Committed Partners and Inheritance: An Empirical Study*, 16 LAW & INEQ. J. 1 (1998); Mahoney, *supra* note 166; and Lawrence W. Waggoner, *Marital Property Rights in Transition*, 59 MO. L. REV. 21 (1994).

tended family members, non-marital partners, and other unrelated parties.²⁷⁴

Fifth, the Chinese model, surprisingly, is more transparent than its American counterpart and, hence, better promotes judicial legitimacy and credibility. Chinese courts openly alter intestate, testate, and contractual schemes to ensure inheritance by “deserving” claimants.²⁷⁵ This approach stands in marked contrast to the much-criticized American tradition of judicial subterfuge, in which courts claim to follow statutory rules and testators’ intent rigidly but in fact manipulate equitable doctrines to effect estate distributions that comport with judges’ individual standards of fairness and justice.²⁷⁶

It is important to remember, however, that China’s behavior-based model of inheritance was conceived and implemented in an environment fundamentally unlike our own. It is questionable whether this model as currently configured could succeed in the United States or even in the China of the near future. As this Article has shown,²⁷⁷ however, China is undergoing radical economic, legal, and social changes that make its approach to inheritance increasingly relevant to the United States. Thus, the future of China’s behavior-based model may ultimately provide guidance for our own reform efforts as well.

John Langbein has remarked that Americans should be grateful to foreign legal systems that serve as “laboratories for testing and perfecting” inheritance reforms.²⁷⁸ If China succeeds in adapting its behavior-based model to fit a wealthy, complex, and mobile society, we should be grateful indeed.

²⁷⁴ See *supra* Part II.B-D.

²⁷⁵ See *supra* Part II.

²⁷⁶ For examples of such critiques by American scholars, see, for example, Lawrence A. Frolik, *The Biological Roots of the Undue Influence Doctrine: What’s Love Got to Do With It?*, 57 U. PITT. L. REV. 841 (1996); Melanie B. Leslie, *The Myth of Testamentary Freedom*, 38 ARIZ. L. REV. 235 (1996); Ray D. Madoff, *Unmasking Undue Influence*, 81 MINN. L. REV. 571 (1997); and Jeffrey G. Sherman, *Undue Influence and the Homosexual Testator*, 42 U. PITT. L. REV. 225 (1981).

²⁷⁷ See *supra* Part III.

²⁷⁸ See John H. Langbein, *Excusing Harmless Errors in the Execution of Wills: A Report on Australia’s Tranquil Revolution in Probate Law*, 87 COLUM. L. REV. 1, 54 (1987) (stating that “Americans should be grateful indeed to the Australians (and Canadians and Israelis) who turned their legal systems into laboratories for testing and perfecting the harmless error rule”).