

May 2014

## Chinese Ritual and the Practice of Law

Mary Szto

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Comparative and Foreign Law Commons](#)

---

### Recommended Citation

Szto, Mary (2014) "Chinese Ritual and the Practice of Law," *Touro Law Review*. Vol. 30: No. 1, Article 8.  
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol30/iss1/8>

This Excerpts from the Conference: RLT IV: Religious Legal Theory - Expanding the Conversation is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

---

## Chinese Ritual and the Practice of Law

Cover Page Footnote

30-1

## CHINESE RITUAL AND THE PRACTICE OF LAW

Mary Szto\*

*Abstract: While there is much literature about the contemporary practice of law in China, almost no articles discuss the rituals involved. This article describes five common Chinese rituals in the contemporary practice of law: drinking tea, banqueting, drinking alcohol, napping, and karaoke. These rituals are traced to their ancient origins in ancestor worship, traditional Chinese medicine, and Confucian, Daoist, and Buddhist thought. Then they are explicated for their contemporary meaning. Properly observed, these rituals promote just governance, harmony, balance, and physical and spiritual wholeness. They should be celebrated and practiced without excess.*

### I. INTRODUCTION

There is much literature about the practice of law in China. However, there is little mention of the rituals involved in the practice of law. Confucius, China's ancient sage, taught that a nation should be led by virtue and ritual, and not law.<sup>1</sup> Law, although necessary, is subordinate to ritual. The premise of this article is that ritual still rules China. Therefore, by studying contemporary rituals, our under-

---

\* Associate Professor, Hamline Law School. B.A., Wellesley College. M.A.R., Westminster Theological Seminary. J.D., Columbia Law School. Thank you to Prof. Sam Levine for his gracious and expert organizing of the 2013 Religious Legal Theory Conference, the other participants for their inspiring work and encouragement, and the editors of the *Touro Law Review*. Thank you to Candace Groth for her help.

<sup>1</sup> For example, Confucius taught:

If the people be led by laws, and uniformity sought to be given them by punishments, they will try to avoid *the punishment*, but have no sense of shame. If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the sense of shame, and moreover will become good.

CONFUCIUS, CONFUCIAN ANALECTS, THE GREAT LEARNING & THE DOCTRINE OF THE MEAN 146 (James Legge trans., Dover Publications 1971).

standing of the practice of law can be enriched.

First, I will briefly describe the development of the practice of law in China. Then I will explore five rituals: drinking tea, banqueting, drinking alcohol, napping, and karaoke. While Chinese and foreigners alike acknowledge their ubiquity, this article will examine their ancient origins and contemporary meaning. These rituals are tied to ancestral, Confucian, Buddhist, and Daoist tenets. They can also be illuminated by looking at traditional Chinese medicine. Properly observed, these rituals foster virtue, harmony, balance, wholeness of body and spirit, and justice. They should not be taken for granted, but celebrated and practiced without excess. Outside of China, we can also examine what rituals, healthy or otherwise, guide the practice of law.

### A. A Brief Look at the Legal Profession in China

China's current legal system began around 1978, after the political and social upheaval of the Cultural Revolution (1966-1976). Two primary goals of the new system were to ensure that the turmoil of the Cultural Revolution would not repeat itself, and to attract foreign investment so China could advance economically.<sup>2</sup> Since 1979, China has implemented hundreds of laws and regulations and has grown into the world's second largest economy.<sup>3</sup>

In 1980, there were around 200 lawyers.<sup>4</sup> Today, it is estimated that there are around 600 law schools and 220,000 lawyers.<sup>5</sup> Before the 1990's lawyers were considered state workers; since then, they have been allowed to form private firms.<sup>6</sup> It is estimated today that there are 20,000 law firms;<sup>7</sup> and around 200 foreign law firms in China.<sup>8</sup>

---

<sup>2</sup> For further discussion, see ALBERT H.Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 35-36 (3d ed. 2004).

<sup>3</sup> WAYNE M. MORRISON, CONG. RESEARCH SERV., RL33534, CHINA'S ECONOMIC RISE: HISTORY, TRENDS, CHALLENGES, AND IMPLICATIONS FOR THE UNITED STATES 1 (2013).

<sup>4</sup> Wang Huazhong, *China has 220,000 lawyers*, CHINA DAILY (Nov. 13, 2012, 6:39 PM), [http://www.chinadaily.com.cn/china/2012-11/13/content\\_15924473.htm](http://www.chinadaily.com.cn/china/2012-11/13/content_15924473.htm).

<sup>5</sup> Carl F. Minzner, *The Rise and Fall of Chinese Legal Education*, 36 FORDHAM INT'L L.J. 334, 349 (2013); Wang, *supra* note 4.

<sup>6</sup> Minzner, *supra* note 5, at 348.

<sup>7</sup> Wang, *supra* note 4.

<sup>8</sup> *Foreign Law Firms in China-2012 Listings*, CHINA BRIEFING (Feb. 7, 2012), <http://www.china-briefing.com/news/2012/02/07/foreign-law-firms-in-china-2012-listings.html>.

Prior to 1978, China's history of the legal profession can be divided into three main periods, Imperial China (before 1911); Republican China (1912-1949); and Maoist China (1949-1978). In Imperial China, lawyers were not allowed. In Confucian thinking, they were considered troublemakers, stirring up conflict. Magistrates were generalists, handling taxes, property distribution, legal matters, and ritual sacrifices. As with all civil servants, they were not trained in law, but the Chinese classics and arts: poetry, music, painting, calligraphy, and ritual. They were presumed to represent the Emperor, who held the Mandate of Heaven, and therefore, to be acting justly.<sup>9</sup> They were called father-mother officials (*fumuguan*).<sup>10</sup> They were supposed to be concerned with the "happiness and suffering" of the people.<sup>11</sup> Therefore, just as a child would not expect to have a lawyer represent him in a matter with his parents at the dinner table, father-mother officials did not expect lawyer-advocates on behalf of parties.

In the Imperial era, litigation was also discouraged. Confucius taught, "[w]hat is necessary . . . is to cause the people to have no litigations."<sup>12</sup>

In the Republican era, law schools and lawyers were allowed in an effort to "modernize" China.<sup>13</sup> Lawyers were mainly located in large cities like Shanghai. Many laws and legal practices were transplanted from Europe and the US. However, warlordism and civil war disrupted legal reform; the Lawyer Act of the 1940's provided that lawyers were not supposed to aid meritless litigation, and officials could discipline lawyers at will.<sup>14</sup>

In Maoist China, lawyers had first a limited role under a socialist legal regime, and then, no role under the turbulent Cultural Revolution. Today lawyers are active in law firms, companies and government offices. However, the plum job of today is the same as in the Imperial era, that of the civil servant.<sup>15</sup> Such positions afford

---

<sup>9</sup> See PHILIP C.C. HUANG, CIVIL JUSTICE IN CHINA: REPRESENTATION AND PRACTICE IN THE QING 76 (1996).

<sup>10</sup> *Id.* at 199.

<sup>11</sup> *Id.*

<sup>12</sup> CONFUCIUS, THE ANALECTS: YAN YUAN ¶ 13 (James Legge trans.) <http://ctext.org/analects/yan-yuan> (last visited Jan. 6, 2014).

<sup>13</sup> For a longer description of lawyers during this period, see Mary Sztó, *Gender and the Chinese Legal Profession in Historical Perspective: From Heaven and Earth to Rule of Woman?*, 18 TEX. J. WOMEN & L. 195, 230-34 (2009).

<sup>14</sup> *Id.* at 232-33.

<sup>15</sup> *Civil-service exams: The Golden Rice-Bowl*, THE ECONOMIST (Nov. 24, 2012), *availa-*

relative stability, the possibility of promotion, and many perquisites. Also, as in the Republican era, lawyers are concentrated in urban areas, and most densely in Beijing and Shanghai.<sup>16</sup>

Despite the passage of time, ancient ritual practices still pervade legal practice. We now address five common rituals.

## B. Drinking Tea

Drinking tea is probably the first ritual observed in the law office today. This is similar to drinking coffee in the West; however, tea rituals have their origin in medicinal and religious practices.

Every office has a prominent place for making tea and for drinking tea together. Lawyers will also often have a tea set in their offices in addition to a tea mug or thermos for individual use. The tea set consists of several small cups, and a pot for brewing tea. Chinese teacups have no ears and hold around two ounces.<sup>17</sup>

Tea is served between meals.<sup>18</sup> Lawyers will sip tea throughout the day. They will bring their thermoses along with them to meetings, and also serve tea to guests. The offering of tea to a guest is “quintessentially Chinese,” showing politeness, generosity, and togetherness.<sup>19</sup>

Lawyers and judges love serving tea with their tea sets, explicating the virtues of a particular tea blend, reminiscing about tea crops in their home provinces, and relaxing with each sip. There are hundreds of different types of teas;<sup>20</sup> the differences depend on where the leaves are grown and their subsequent handling.<sup>21</sup> A shorter drying time leads to green tea, which is unfermented.<sup>22</sup> A longer drying time leads to fermented (oxidized) black tea, called red tea (*hongcha*) by the Chinese.<sup>23</sup> Oolong tea is semi-fermented.<sup>24</sup> There are also

---

ble at <http://www.economist.com/news/china/21567124-young-graduates-once-risk-takers-now-want-work-government-again-golden-rice-bowl>.

<sup>16</sup> Ethan Michelson, *Access to Lawyers: A Comparative Analysis of the Supply of Lawyers in China and the United States*, 7 NAT'L TAIWAN U.L. REV. 223, 235 (2012).

<sup>17</sup> JACQUELINE M. NEWMAN, FOOD CULTURE IN CHINA 107 (2004).

<sup>18</sup> *Id.* at 112.

<sup>19</sup> Ione Kramer, *Tea Drinking and Its Culture*, in HANDBOOK OF CHINESE POPULAR CULTURE 57, 59 (Wu Dingbo & Patrick D. Murphy eds., 1994).

<sup>20</sup> *Id.* at 58.

<sup>21</sup> NEWMAN, *supra* note 17, at 64.

<sup>22</sup> *Id.*

<sup>23</sup> Kramer, *supra* note 19, at 57-58.

<sup>24</sup> *Id.* at 58.

scented teas which may include blossoms or fruit juice.<sup>25</sup> Of all the teas in China, green tea is the most popular.<sup>26</sup>

Unlike Japan, China has no tea ceremony like the elaborate *chanoyu*.<sup>27</sup> But the procedure for making savory tea can be observed in a law firm, judge's, or arbitrator's quarters. First, the pot and cups are warmed with hot water.<sup>28</sup> Tea leaves are then put into the tea pot; then they are rinsed with boiling water and drained.<sup>29</sup> More boiling water is then added; after a minute the tea is poured.<sup>30</sup> The first serving has the most aroma.<sup>31</sup> The second pot is usually the most flavorful; the third serving still has good flavor, but no aroma.<sup>32</sup> Tea is handed and received with both hands.<sup>33</sup> The tea is slowly sipped, like fine wine.<sup>34</sup> Conversation is spontaneous.

Where does tea come from? The tea tree is a native of the southwest of China and was originally used for medicinal purposes.<sup>35</sup> According to legend, tea was discovered by *Shennong*, the God of Agriculture, when tea leaves fell into his boiling water.<sup>36</sup> Another legend has a monk discovering tea as an aid to staying awake during meditation.<sup>37</sup>

Like other foods and drink, tea was once stored in ritual vessels called *ding*.<sup>38</sup> In the Zhou Dynasty, these ritual vessels symbolized power.<sup>39</sup> This is because ritual vessels contained offerings to ancestors and deities to show honor, gratitude, and to seek blessing. As further explained below, these offerings connected supplicants to divine power.

Around 316 BCE, tea was drunk heavily in today's Sichuan province.<sup>40</sup> In monasteries, caffeinated teas were used to keep monks

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 57.

<sup>27</sup> JOHN BLOFELD, *THE CHINESE ART OF TEA*, at viii (1985).

<sup>28</sup> Kramer, *supra* note 19, at 64.

<sup>29</sup> *Id.* at 59.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> NEWMAN, *supra* note 17, at 112.

<sup>34</sup> Kramer, *supra* note 19, at 59.

<sup>35</sup> NEWMAN, *supra* note 17, at 13-14.

<sup>36</sup> Kramer, *supra* note 19, at 55.

<sup>37</sup> BLOFELD, *supra* note 27, at 3.

<sup>38</sup> NEWMAN, *supra* note 17, at 14.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

and nuns awake during meditation.<sup>41</sup> The spontaneity and informality of Chinese tea drinking may be due to Daoist influence.<sup>42</sup> The Daoist principle *wuwei* means “no action that does not arise spontaneously.”<sup>43</sup> Tea is supposed to be imbibed amid tranquility and harmony.<sup>44</sup> Tea cultivates mindfulness.<sup>45</sup> John Blofeld, tea expert, has written, “[t]he spirit of tea is like the spirit of the Tao: it flows spontaneously, roaming here and there impatient of restraint.”<sup>46</sup>

In terms of Chinese cosmology, tea drinking reflects harmony among heaven, earth and man.<sup>47</sup> Heaven and earth present the conditions for tea leaves, fresh water, and ceramics; man provides cultivation.<sup>48</sup> Drinking tea also encompasses the Five Elements of Chinese cosmology: earth (clay pots); metal (tea kettle); water; wood (tea plant); and fire (heating).<sup>49</sup>

Tea drinking did not become widespread in China until the revered Tang Dynasty (618-907 AD), considered China’s golden era, when Buddhist influence was at its apex.<sup>50</sup> Buddhists promoted tea drinking; until then, alcohol was more prevalent.<sup>51</sup> During the Tang era, tea was a luxury, prized by officials and literati who sponsored tea-tasting contests.<sup>52</sup> Lu Yu, known as China’s Tea Sage, wrote a famous text called the *Chajing* or Classic of Tea, around 760AD.<sup>53</sup>

In the Song Dynasty (960-1279 AD), tea was a daily necessity; many officials constructed gardens for drinking tea.<sup>54</sup> Teahouses provided soups and snacks.<sup>55</sup> They were relaxed and beautiful places for socializing, poetry, music performances, and doing business.<sup>56</sup>

---

<sup>41</sup> LIVIA KOHN, *HEALTH AND LONG LIFE: THE CHINESE WAY* 142 (2005).

<sup>42</sup> BLOFELD, *supra* note 27, at viii.

<sup>43</sup> *Id.* at 116.

<sup>44</sup> *Id.* at viii.

<sup>45</sup> *Id.* at ix.

<sup>46</sup> *Id.*

<sup>47</sup> BLOFELD, *supra* note 27, at ix.

<sup>48</sup> *Id.* at ix–x.

<sup>49</sup> KOHN, *supra* note 41, at 142.

<sup>50</sup> James A. Benn, *Buddhism, Alcohol, and Tea in Medieval China*, in *OF TRIPOD AND PALATE: FOOD, POLITICS, AND RELIGION IN TRADITIONAL CHINA* 213 (Roel Sterckx ed., 2005).

<sup>51</sup> *Id.*

<sup>52</sup> Kramer, *supra* note 19, at 55-56.

<sup>53</sup> Benn, *supra* note 50, at 214.

<sup>54</sup> Kramer, *supra* note 19, at 56.

<sup>55</sup> *Id.*

<sup>56</sup> NEWMAN, *supra* note 17, at 142.



Because teahouses were public venues they were also sites for dispute resolution, e.g., landlord-tenant disputes.<sup>57</sup> In some parts of China, the term *shang chaguan*, meaning to go to the teahouse, means to go settle a conflict.<sup>58</sup> Teahouses today are still venues for doing business.<sup>59</sup> Brokers of all stripes gather there.<sup>60</sup>

The health benefits of tea drinking are reduction of fatigue and “creat[ing] a sense of well-being.”<sup>61</sup> Tea aids digestion and blood flow and helps with joint pain.<sup>62</sup> Drinking green tea with little caffeine also reduces cholesterol, releases toxins, and prevents cell mutation.<sup>63</sup> On a hot day, herbal teas provide relief.<sup>64</sup>

Therefore, tea represents rootedness in nature; it evokes drink offerings to ancestral spirits, seeking harmony with the spirit world, and blessing. Its Daoist roots relay simplicity, purity, and mindfulness.<sup>65</sup> Its Buddhist promulgation points to meditative practices. For centuries teahouses and gardens have been the setting for beauty, culture, friendship, and civility. Teahouses were also places to do business and settle disputes. Tea is good for the body and soul, for the individual and society. Tea today is a “short retreat from the stresses and strains of modern life.”<sup>66</sup> In the West, we look for more civility and mindfulness in the practice of law; we may consider if we have a cultural equivalent to the art of Chinese tea, and a beverage that promotes dispute resolution.

### C. Eating

Communal eating is the most important ritual in China.<sup>67</sup> Very often lawyers in China will eat together, either over lunch or dinner. The law firm may have its own canteen, or a favorite restaurant downstairs or nearby. Those who eat together include partners,

---

<sup>57</sup> Kramer, *supra* note 19, at 62.

<sup>58</sup> *Id.* at 62-63.

<sup>59</sup> *Id.* at 63.

<sup>60</sup> *Id.*

<sup>61</sup> NEWMAN, *supra* note 17, at 64.

<sup>62</sup> KOHN, *supra* note 41, at 142.

<sup>63</sup> *Id.*

<sup>64</sup> Liu Zhihua, *Cooling off, the traditional way*, CHINA DAILY (June 26, 2013, 7:41 AM), [http://www.chinadaily.com.cn/cndy/2013-06/26/content\\_16659239.htm](http://www.chinadaily.com.cn/cndy/2013-06/26/content_16659239.htm).

<sup>65</sup> Kramer, *supra* note 19, at 57.

<sup>66</sup> BLOFELD, *supra* note 27, at viii.

<sup>67</sup> JORDAN PAPER, *THE SPIRITS ARE DRUNK: COMPARATIVE APPROACHES TO CHINESE RELIGION* 49 (1995).

associates, and staff. Over lunch there is light-hearted banter. Courts have their own canteens where not only lunch but also dinner is served.

Meal times are also times to eat with clients and government officials. These meals can be very elaborate. From simple meals to banquets, the seating is around a round table. One person may order dishes for everyone, or each person may order one dish, which is then shared with all. Commonly, there is at least one dish for each person, i.e., if there are ten persons eating together, there will be at least ten dishes.

A meal consists of a staple food, *fan*, such as rice or noodles.<sup>68</sup> This is supplemented by *cai*, or meat and vegetables.<sup>69</sup> The main beverage is usually soup.<sup>70</sup> Everything has been cut into small pieces during cooking; there are no knives at the table because knives were considered weapons.<sup>71</sup> When guests are present, a sign of hospitality and respect is to place food on the guest's plate.<sup>72</sup>

A typical lunch or dinner in the north of China might look like this:

- Radish soup made with pork
- Crispy duck
- Stir-fried shrimp garlic, and leeks with gailan, a Chinese Broccoli
- Lamb sweet like honey
- Boiled rice
- Steamed fruit with silver mushrooms.<sup>73</sup>

A typical lunch or dinner in the east might look like this:

- Chicken with cucumber soup
- Stir-fried shrimp and walnuts
- Red-cooked ham knuckle
- Lemon chicken
- Drunken crabs with ginger

---

<sup>68</sup> NEWMAN, *supra* note 17, at 105.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 107.

<sup>72</sup> *Id.* at 108.

<sup>73</sup> NEWMAN, *supra* note 17, at 118.

- Steamed rice
- Tea and litchi dessert
- Tea.<sup>74</sup>

A typical banquet might include:

- Stars around the moon (five to seven cold appetizers, one centered, others around it)
- Three to five hot appetizer-type dumplings or dishes
- Bird's nest soup
- Abalone with snow pea leaves
- Peking duck with shao bing (a cooked dough to enclose duck skin, scallion, and hoisin sauce)
- Shark's fin with shredded chicken
- Asparagus, sea cucumber, and stuffed bamboo with fungus
- Eel with taro and black beans
- Steamed Shanghai cabbage with a Conpoy white sauce
- Squab with steamed mushrooms in oyster sauce
- Red-cooked bean curd-wrapped carp
- Buddha's delight
- Eight precious rice pudding.<sup>75</sup>

These menus are vastly different from what a lawyer in the U.S. might eat on a typical workday. For example, lunch might be a tuna fish sandwich with potato chips eaten hurriedly at the desk. A bar association dinner might be a hard to chew chicken with a salad and chocolate cake for dessert.

In contrast, the Chinese diet is heavenly. Why is it heavenly? Shared food is China's prime ritual because it is central to ancestor worship and Chinese cosmology. These are the pillars of the traditional Chinese worldview. Although Chinese today may not acknowledge these origins, they reap the benefits of thousands of years of sophisticated food culture.

Traditionally and today, food offerings were made to ancestors and deities out of gratitude and to seek blessing and protection.

---

<sup>74</sup> *Id.* at 118-19.

<sup>75</sup> *Id.* at 133-34.

The traditional Chinese home and business is a temple, with figurines and pictures of deceased loved ones and other spirits. These figurines and pictures are placed with food offerings, often favorite dishes of loved ones. These food offerings provide sustenance for those in the afterlife; satiated ancestors and spirits, in turn, provide fortune for supplicants. Otherwise, they become hungry ghosts. Hungry ghosts roam the world and wreak havoc on neglectful descendants and others.

Once food becomes consecrated through offerings, blessed food is shared among descendants and other favored guests.<sup>76</sup> Eating together thus represents the distribution of blessing.<sup>77</sup> In ancient China, the number of generations of ancestors that could be sacrificed to was regulated.<sup>78</sup> The more ancestors that could be sacrificed to, the more consecrated food was available. The Emperor sacrificed to the most generation of ancestors, and thus had the most lavish meals. Therefore, the size of the meal and number of invitees shows the power and wealth of the host.<sup>79</sup>

Each meal is cosmic. In addition to representing ancestral blessing, each meal is supposed to be in harmony with the *Dao*, or Way, and is medicinal. The *Dao* is the natural ordering of all things. According to the ancient text of medicine, the *Neijing*, also known as the Yellow Emperor's Classic of Medicine, if we eat and live according to this natural order, we will live until the age of one hundred.<sup>80</sup>

The *Dao* manifests itself in *qi*, *yinyang* and the Five Elements. *Qi* can be understood as energy or life force.<sup>81</sup> The ancient character for *qi* found on the Shang oracle bones, among China's oldest extant writings, shows a person eating, and a pot of grain.<sup>82</sup> The modern character still contains the representation for rice 米. We are born with primordial *qi*, and during our lifetime we accumulate postnatal

---

<sup>76</sup> Terry F. Kleeman, *Feasting Without the Victuals: The Evolution of the Daoist Communal Kitchen*, in *OF TRIPOD AND PALATE: FOOD, POLITICS, AND RELIGION IN TRADITIONAL CHINA* 140, 143 (Roel Sterckx ed., 2005).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 144.

<sup>79</sup> FREDRICK J. SIMOONS, *FOOD IN CHINA: A CULTURAL AND HISTORICAL INQUIRY* 26 (1991).

<sup>80</sup> BOB FLAWS, *THE TAO OF HEALTHY EATING: DIETARY WISDOM ACCORDING TO TRADITIONAL CHINESE MEDICINE* 4-5 (1998).

<sup>81</sup> KOHN, *supra* note 41, at 11.

<sup>82</sup> *Id.*

*qi*, through proper eating, breathing, and social interaction.<sup>83</sup> Sickness is the blockage of *qi*.<sup>84</sup> Death is the disappearance of all *qi*.<sup>85</sup>



**Figure 1: The Modern Character for Qi**

The proper and pleasant flow of *qi* is steady, harmonious, and renewing.<sup>86</sup> *Qi* is not only necessary for an individual's health; it is also vital for balance in nature, families, society, and government.<sup>87</sup> Improper or dysfunctional *qi* is called *xieqi*.<sup>88</sup>

The *Dao* and *qi* are further explained through *yinyang*. In Chinese cosmology, everything in the universe can be divided into *yin* and *yang*. Although they are opposite forces, they are complementary and dynamic. In fact *yin* becomes *yang* and *yang* becomes *yin*. Examples of *yin* and *yang* are male and female, night and day, sun and moon. Opposite and dynamic, *yin* and *yang* must be balanced for proper *qi* flow.



**Figure 2: Yinyang**

*Yin* foods are usually grown in the ground, in dark and shady places.<sup>89</sup> They have a calming effect; examples include leafy vegetables, bananas, bean curd, and cucumbers.<sup>90</sup> *Yang* foods are salty and stimulate; examples are meats, apricots, barley, and cherries.<sup>91</sup>

The Five Elements (*wuxing*) represent stages of *yinyang* and

---

<sup>83</sup> *Id.* at 11-12.

<sup>84</sup> *Id.* at 4.

<sup>85</sup> *Id.* at 12.

<sup>86</sup> KOHN, *supra* note 41, at 13.

<sup>87</sup> *Id.* at 12.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 138.

<sup>90</sup> *Id.*

<sup>91</sup> KOHN, *supra* note 41, at 138.

Chinese cosmic principles. All phenomena are part of a five-fold sequence that can be called earth, wind, fire, metal, and water. These elements can be generative and also subjugating or controlling.<sup>92</sup> Wood can be burned; fire leads to ashes and earth; earth generates metal; metal can be molten; water generates more wood.<sup>93</sup> On the other hand, wood subjugates the soil; earth subjugates water; water subjugates fire; fire melts metal; and metal cuts wood.<sup>94</sup> When these processes are balanced, harmony, righteousness and virtue reign.

The Five Elements are related to the Five Virtues: benevolence, justice, propriety, sincerity and wisdom.<sup>95</sup> Each season, dynasty, food, and bodily organ can also be identified with one of the elements.<sup>96</sup> Seasonal and dynastic changes follow the interaction of the Five Elements.<sup>97</sup> We also can prevent and cure disease through proper diagnosis of how the Five Elements work in our bodies.<sup>98</sup>

The Five Elements are related to the Five Flavors; the Five Flavors are spicy, sweet, sour, bitter, and salty.<sup>99</sup> Therefore, different foods will have different effects on our body. Spicy is related to the metal element, and our lungs and large intestines.<sup>100</sup> This flavor promotes blood circulation and includes foods such as green onions and chives.<sup>101</sup> Sweet is related to the earth element, our spleen and stomach; this flavor detoxifies and includes foods such as string beans and honey.<sup>102</sup> Sweet foods and herbs are tonics and full of nutrition.<sup>103</sup> Sour is related to the wood element and the “liver and gall bladder;” and these flavors control excess fluids.<sup>104</sup> Bitter is related to the fire element and “the heart and the small intestine;” this flavor reduces body heat.<sup>105</sup> Salty is related to the water element and the

---

<sup>92</sup> NEWMAN, *supra* note 17, at 186.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 186-87.

<sup>95</sup> *Id.* at 185.

<sup>96</sup> KOHN, *supra* note 41, at 22-24.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 26; *see* HARRIET BEINFELD & EFREM KORNGOLD, BETWEEN HEAVEN AND EARTH: A GUIDE TO CHINESE MEDICINE 96, 99 (1991) (providing diagrams of and explaining the Five-phase Theory of Chinese Medicine).

<sup>99</sup> KOHN, *supra* note 41, at 139.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> NEWMAN, *supra* note 17, at 187.

<sup>104</sup> KOHN, *supra* note 41, at 139.

<sup>105</sup> *Id.*

kidneys; it softens and warms the body.<sup>106</sup>

Every meal should properly balance the Five Flavors to stimulate the organs and regulate *qi*.<sup>107</sup> Therein lies the complexity and medicinal value of each delicious Chinese meal!

Foods are also divided into categories based on temperature: cold, cool, neutral, warm, and hot.<sup>108</sup> Colder foods influence *yin* energy while warmer foods influence *yang* energy.<sup>109</sup> The Chinese are supposed to eat *pu*, or strengthening foods.<sup>110</sup> Banquets usually have *yang* foods.<sup>111</sup>

In traditional Chinese thinking, balancing the Five Flavors, or *hewei*, is a metaphor for governance.<sup>112</sup> Chefs were appointed to powerful administrative posts.<sup>113</sup>

Because a distribution of resources is often obtained by entering into binding agreements, sharing food has significance in contract formation. Eating together under the watchful eyes of ancestors and other spirits was a way to seal contracts. Examples of traditional contracts include the marriage, the guild, and the tomb contract. Tomb contracts were agreements with the earth gods for burial plots.<sup>114</sup> Tomb contracts also ensured safe passage through the underworld courts in the afterlife.<sup>115</sup> Examples of contemporary contracts include joint-venture agreements, land-use right purchase agreements, and manufacturing agreements. These contemporary contracts are also sealed over shared abundant food and drink.

Within a law firm, court, or other legal organization, eating together represents familial unity of purpose and harmony, health and well-being, and seeking prosperity. Eating with clients or during negotiations represents the extension of this bond. The Chinese often consider a business contract a familial arrangement.<sup>116</sup>

---

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 140.

<sup>109</sup> KOHN, *supra* note 41, at 140.

<sup>110</sup> SIMOONS, *supra* note 79, at 25.

<sup>111</sup> E.N. Anderson, *Food*, in HANDBOOK OF CHINESE POPULAR CULTURE 35, 48 (Wu Dingbo & Patrick D. Murphy eds., 1994).

<sup>112</sup> ROEL STERCKX, *Food and Philosophy in Early China*, in OF TRIPOD AND PALATE: FOOD, POLITICS, AND RELIGION IN TRADITIONAL CHINA 34, 44 (Roel Sterckx ed., 2005).

<sup>113</sup> *Id.* at 41.

<sup>114</sup> VALERIE HANSEN, NEGOTIATING DAILY LIFE IN TRADITIONAL CHINA: HOW ORDINARY PEOPLE USED CONTRACTS 600-1400 184-85 (1995).

<sup>115</sup> *Id.* at 185.

<sup>116</sup> For example, one Chinese individual equated a joint venture with a marriage. See Viv-

Interestingly, in the United States, lawyers working late into the night often sustain themselves with Chinese take-out food. I do not think this a coincidence. The tasty and varied dishes evoke camaraderie and harmony among those working late, and a desire for sustaining strength.

#### D. Drinking Alcohol

Alcohol may be consumed at lunch; it may also be consumed during an evening meal. Unfortunately, excessive drinking is now common in China. In fact, it is expected on the job, not only for lawyers, but also for almost all employees. It is common in both interviews and in job advertisements for prospective employees to be solicited for their ability to drink heavily.<sup>117</sup> In the legal context, it is especially used for negotiating.<sup>118</sup>

In traditional Chinese culture, alcohol is supposed to be consumed together, not individually, and with heavy meals. Alcohol is also supposed to be consumed after a toast. This may mean a lot of toasting during a meal.

Two common alcohol rituals today are *jingjiu* and *quanjiu*.<sup>119</sup> In *jingjiu*, a subordinate offers a drink to a senior party. The subordinate employs “negative politeness strategies.”<sup>120</sup> When the senior party is in an especially good mood, the subordinate asks for a favor, such as a job promotion or an increase in salary.<sup>121</sup>

In *quanjiu*, used among peers, a target is repeatedly persuaded to drink more.<sup>122</sup> When the target offers excuses, e.g., having to drive, work the next day, or a disagreeing spouse, the others over-

---

ian C. Sheer & Ling Chen, *Successful Sino-Western Business Negotiation: Participants' Accounts of National and Professional Cultures*, 40 J. BUS. COMM. 50, 63 (2003).

<sup>117</sup> Tania Branigan, *The rise of binge drinking in China*, THE GUARDIAN (Aug. 22, 2011, 3:00 PM), <http://www.theguardian.com/commentisfree/2011/aug/22/rise-of-binge-drinking-china?INTCMP=SRCH>.

<sup>118</sup> *Chinese Business Culture: Entertaining for Business Success*, L.A. CHINESE LEARNING CTR., <http://chinese-school.netfirms.com/entertainment.html> (last visited Jan. 6, 2014).

<sup>119</sup> Yanrong (Yvonne) Chang, *It's All Because of Guan Xi: Group-Based Alcohol Drinking in China*, CHINA MEDIA RES. 104, 105 (Apr. 1, 2011), available at <http://www.thefreelibrary.com/It%27s+all+because+of+Guan+Xi%3A+group-based+alcohol+drinking+in+China.-a0256457450>.

<sup>120</sup> *Id.* at 106-07.

<sup>121</sup> *Id.* at 110.

<sup>122</sup> *Id.* at 107.



come such excuses.<sup>123</sup> For example, the others will say, “[I]f you still consider me your best friend, drink it”; “If you don’t want me to lose face, you will drink”; or “We’ll get you a taxi.”<sup>124</sup> This ultimately leads to group identity supplanting individual identity. Also, by having to give reasons for not drinking, the individual gives information that leads to group intimacy.<sup>125</sup>

There are also many drinking games. One is called *duize*. In this game, the first player says a sentence. The next person must say a different sentence of the same length and grammatical order. Losers drink.<sup>126</sup> Drinking thus produces both harmony and intimacy.

In negotiations, drinking is also used as a bargaining technique. For example, a party might be told, “For every cup you drink, we’ll increase our contract order.” Foreigners are not immune from these rituals. In a *Harvard Business Review* account, an American CEO and Chinese CEO were dining and drinking. “The Chinese CEO proposed a toast: ‘Let’s drink to our friendship! We will have long cooperation! But if you aren’t drunk tonight, there will be no contract tomorrow.’”<sup>127</sup> There are also other accounts of foreigners who have fallen victim to alcohol rituals during business meals.<sup>128</sup> The prime choice of alcohol is *baijiu*, which has been likened to drinking kerosene or gasoline.<sup>129</sup>

Because of this ritual of heavy drinking, many people, especially women, are discouraged from pursuing careers in law firms.<sup>130</sup> Female law school graduates prefer to become judges.<sup>131</sup>

---

<sup>123</sup> *Id.* at 107-08.

<sup>124</sup> Chang, *supra* note 119, at 108.

<sup>125</sup> *Id.* at 107-08, 110.

<sup>126</sup> NEWMAN, *supra* note 17, at 146.

<sup>127</sup> John L. Graham & N. Mark Lam, *The Chinese Negotiation*, HARV. BUS. REV. at 6-7, (Oct. 2003).

<sup>128</sup> See Trista Baldwin, *How to survive a Chinese drinking frenzy*, CNN TRAVEL (Feb. 22, 2012), <http://travel.cnn.com/shanghai/drink/5-chinese-drinking-habits-explains-621771> (providing advice to non-Chinese business people to help navigate their way through Chinese drinking games and rituals); see also *Ganbei culture is killing me with kindness*, PEOPLE’S DAILY ONLINE (Dec. 30, 2009, 2:35 PM), <http://english.people.com.cn/90001/90782/90873/6856101.html> (arguing that there is more cultural significance placed on drinking in China than in the United States).

<sup>129</sup> Michelle Nijhuis, *The Baijiu Bender*, THE LAST WORD ON NOTHING (Aug. 30, 2012), <http://www.lastwordonnothing.com/2012/08/30/the-baijiu-bender/>.

<sup>130</sup> Szto, *supra* note 13, at 257-58.

<sup>131</sup> See *id.* at 259 (explaining how gender roles in China affect women in the law and their career choices); see also Katherine A. Mason, *To Your Health! Toasting, Intoxication and Gendered Critique among Banqueting Women*, CHINA J. 108 (2013) (providing a fascinating

Like drinking tea and eating, contemporary drinking rituals can also be traced to ancient ancestral rites. Along with food, alcohol was also offered to the ancestors. Thus, the ancestors would become drunk.<sup>132</sup> Also, the descendant of an ancestor, usually a grandson, would be given so much alcohol that, once drunk, he would become a medium for the ancestor to be present and to speak.<sup>133</sup> Alcohol is communion with the spirit world. So, even today, the ritual of shared alcohol and drunkenness signals harmony, blessing, and favor.

The practice of excessive alcohol consumption today, however, has become so dangerous that Chinese business people take classes in how to refuse toasts.<sup>134</sup> The ways to do this include driving to the banquet, not drinking because of health reasons, and using a spouse as an excuse.<sup>135</sup> Employers use drinking surrogates too.<sup>136</sup> Having a drinking surrogate is similar to the ancient practice where descendants acted as mediums for their deceased ancestors. Job interviews that include questions about drinking appear to be about soliciting drinking surrogates for senior employees.

Excessive drinking is now a public health hazard. Experts warn that “excessive drinking, frequent drinking, and binge drinking behaviours have reached epidemic proportions among current drinkers in China.”<sup>137</sup> A 2007 survey of male and female drinkers found that 57.3% of the males were binge drinkers and 26.6% of the females were binge drinkers.<sup>138</sup> Also, there are reports of government officials dying after drinking excessively during lunch.<sup>139</sup>

Throughout China’s history, excessive eating and drinking have been regulated. For example, the Zhou Dynasty (1046–256 BC) promulgated laws limiting alcohol consumption.<sup>140</sup> This was to avoid

---

look at how women in the public health field in China handle drinking obligations).

<sup>132</sup> PAPER, *supra* note 67, at 32.

<sup>133</sup> *Id.* at 114-15.

<sup>134</sup> Zhou Huiying & Ma Zhenhuan, *Learning to refuse toasts in the season of ganbei*, CHINA DAILY (Jan. 26, 2012, 9:05 PM), [http://www.chinadaily.com.cn/cndy/2012-01/26/content\\_14492606.htm](http://www.chinadaily.com.cn/cndy/2012-01/26/content_14492606.htm).

<sup>135</sup> *Id.*

<sup>136</sup> Cui Jia, *Ganbei culture killing officials*, CHINA DAILY (July 20, 2009, 7:10 PM), [http://www.chinadaily.com.cn/china/2009-07/20/content\\_8446843.htm](http://www.chinadaily.com.cn/china/2009-07/20/content_8446843.htm).

<sup>137</sup> Yichong Li et al., *Drinking behaviour among men and women in China: the 2007 China Chronic Disease and Risk Factor Surveillance*, 106 ADDICTION 1946, 1952 (2011) (noting that frequent drinking is five to seven days per week).

<sup>138</sup> *Id.* at 1950.

<sup>139</sup> Jia, *supra* note 136.

<sup>140</sup> Xu Gan Rong & Bao Tong Fa, *Chinese Culture of Drinking*, 8.1.1,

the excesses of the previous dynasty, the Shang (approximately 1600 BC to 1046 BC), which was noted for its profligate alcohol consumption.<sup>141</sup> The Zhou taught that the Shang Dynasty lost the Mandate of Heaven, leading to its collapse.<sup>142</sup>

More recently, in late 2012 China's military and other government organizations have banned lavish banquets and drinking.<sup>143</sup> Along with measures to curb corruption, extravagant meals have been excoriated. However, there are reports that the banqueting and drinking have not disappeared but have gone underground.<sup>144</sup>

This perilous alcohol consumption appears to signal both China's reformed wealth and increasingly stressful society. Accelerated economic development, urbanization, and displacement understandably lead to higher stress and the need to use *guanxi* networks. *Guanxi* networks are groups of people that one can rely on for job and school openings and government contracts. Drinking cultivates *guanxi*.<sup>145</sup>

Hopefully, with more awareness about the dangers of heavy drinking rituals, public health officials, lawyers, businesspeople, and others will encourage drinking in moderation.

### E. Napping

In law firms, courts, and other governmental offices, the day pauses after lunch for *wuxiu*, or afternoon nap. It used to be that people could go home and nap. In fact, under Maoist China, people lived and worked in *danwei*. One's *danwei* provided on-site housing, schools and health care. With urbanization and longer commutes, afternoon naps take place in the office. Lawyers keep cots in their offices and set them up after lunch. The office quiets down. From 1-

---

<http://www.sytu.edu.cn/zhgjiu/umain.htm> (last visited Jan. 6, 2014).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Chinese Military Bans Luxury Banquets*, CHINA DAILY (Dec. 22, 2012, 2:45 AM), [http://usa.chinadaily.com.cn/china/2012-12/22/content\\_16040813.htm](http://usa.chinadaily.com.cn/china/2012-12/22/content_16040813.htm) (discussing military bans on excess and drinking); Benjamin Carlson, *The Incredible Waste of Chinese Banquets*, GLOBAL POST (Feb. 8, 2013, 7:01 AM), <http://www.globalpost.com/dispatch/news/regions/asia-pacific/china/130207/banquets-food-waste-corruption-chinese-government> (explaining how the Chinese government instituted Operation Clean Plate to combat food waste).

<sup>144</sup> See Carlson, *supra* note 143 (stating that the lavish banquets simply transferred to other venues).

<sup>145</sup> Mary Szto, *Contract in My Soup: Chinese Contract Formation and Ritual Eating and Drunkenness*, 25 PACE INT'L L. REV. 1, 16-18, 19 (2013).

3pm, the offices are quiet while lawyers and judges slumber. Some lawyers and judges even have pajamas or comfortable clothing that they change into for naps.

Cultivating napping and quiet has powerful support in Daoist, Confucian and traditional Chinese medicine principles. Daoism promotes *wuwei*, or inaction. This principle of inaction leads to orderliness, virtue, and contentment. Therefore, inaction is just as important as action.

In terms of traditional Chinese medicine, napping allows for balance in activity. The Doctrine of the Mean (中用) [zhōngyòng], a Confucian tenet, urges moderation. Too little activity leads to phlegm, dampness, turbidity, and blood stasis.<sup>146</sup> Too much activity, whether physical or mental, without rest, leads to burnout.<sup>147</sup> Burnout is referred to as “*qi* and yin vacuity”.<sup>148</sup>

In traditional Chinese medicine, essence turns into *qi*, which turns into *shen*, or spirit.<sup>149</sup> *Shen* is our “consciousness and mental/emotional activities.”<sup>150</sup> Too much mental or emotional activity consumes *qi*, so physical rest and mental relaxation are critical.<sup>151</sup> Reducing *qi* leads to being prone to disease and early death.<sup>152</sup>

The nap thus refreshes both the body and soul. The communal nap is particularly potent when a whole office, court, and city shut down simultaneously.

The power of the nap has been noted elsewhere as well. A study by the Harvard School of Public Health found that working men who nap mid-day have a “sixty-four percent lower risk of d[ying] from heart disease.”<sup>153</sup> According to Michael Twery, who directs the National Heart Lung and Blood Institute’s National Center on Sleep Disorders Research in the United States, “[t]he biological clock that drives sleep and wakefulness has two cycles each day, and one of them dips usually in the early afternoon. It’s possible that not engaging in napping for some people might disrupt these process-

---

<sup>146</sup> FLAWS, *supra* note 80, at 3.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 6.

<sup>150</sup> *Id.* at 5.

<sup>151</sup> FLAWS, *supra* note 80, at 5.

<sup>152</sup> *Id.* at 7.

<sup>153</sup> Rob Stein, *Midday Naps Found to Help Fend Off Heart Disease*, WASH. POST (Feb. 13, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/12/AR2007021200626.html>.

es.”<sup>154</sup> Napping also boosts memory and productivity.<sup>155</sup>

Unfortunately, the nap may be vanishing from some Chinese law firms, and especially among younger associates. While partners may be found on their cots, younger associates sometimes forgo the *wuxiu* to catch up on work quietly on their computers and smart phones.

I hope the nap does not disappear.

## F. Karaoke

*“Music is (an echo of) the harmony between heaven and earth.”*<sup>156</sup>

After an evening meal, it is common for lawyers and others to gather in a karaoke club for rounds of singing. A group can reserve a private room that can hold ten to twenty people comfortably. There is a large video screen and several microphones, sofas, and snacks. Sophisticated equipment allows song selection from catalogues. Everyone is expected to sing, both solos and in groups. Singing is also done on firm outings, which occur at least once a year. Law professors may get together once a week for recreation and outings (e.g., hiking and badminton). They sing to and fro on the van. Unfortunately, some karaoke bars are also places for male bonding through singing, conversing, and then seeking favors from prostitutes.<sup>157</sup> This goes back to China’s long tradition of courtesans.<sup>158</sup>

What songs are sung? During the 1980’s sentimental songs from Hong Kong and Taiwan were popular in China; they contrasted with the revolutionary songs of China from the 1970’s.<sup>159</sup> Today, songs from many eras, countries, and genres are sung. Singing revolutionary songs is still popular, however, for those who grew up with

---

<sup>154</sup> *Id.*

<sup>155</sup> SARA C. MEDNICK WITH MARK EHRMAN, TAKE A NAP! CHANGE YOUR LIFE 8 (2006).

<sup>156</sup> Record of Music, BOOK OF RITES ¶ 14, (James Legge, trans.), available at <http://ctext.org/liji/yue-ji> (last visited Jan. 6, 2014) [hereinafter BOOK OF RITES].

<sup>157</sup> DANIEL A. BELL, CHINA’S NEW CONFUCIANISM: POLITICS AND EVERYDAY LIFE IN A CHANGING SOCIETY 62-63 (2008).

<sup>158</sup> CATHERINE VANCE YEH, SHANGHAI LOVE: COURTESANS, INTELLECTUALS, AND ENTERTAINMENT CULTURE, 1850-1910 4 (2006).

<sup>159</sup> Ringo Ma & Rueyling Chuang, *Karaoke as a Form of Communication in the Public and Interpersonal Contexts of Taiwan*, in CHINESE COMMUNICATION STUDIES: CONTEXTS AND COMPARISONS 147, 160 (Xing Lu et al. eds., 2002). Although this describes karaoke in Taiwan, similar activities occur on the mainland. *Id.*

them.<sup>160</sup> Choosing difficult songs, and being able to sing in different languages and dialects adds to the entertainment.<sup>161</sup>

Karaoke means orchestra “without [the voice]” in Japanese.<sup>162</sup> This technology and singing style began in Kobe, Japan, among male middle-aged bar patrons who sang alongside live musicians in the 1970’s.<sup>163</sup> They were devotees of *enka*, “traditional Japanese songs of unrequited love.”<sup>164</sup> However, the tradition of singing goes much further back in Japanese culture. Japanese grow up singing on all occasions and individuals take turns singing.<sup>165</sup>

Karaoke involves indirect communication. By choosing songs to express their feelings, the Chinese avoid embarrassment or offending others.<sup>166</sup> One’s choice of song reflects one’s personality and mood.<sup>167</sup> Others can then signal their approval by joining in the singing wholeheartedly.<sup>168</sup>

Karaoke participants are simultaneously audience and potential performers.<sup>169</sup> This creates an intense group consciousness and trust level.<sup>170</sup> Because one expects to sing before the group, one is not as critical of others’ performances.<sup>171</sup> Karaoke is empowering because its participants can “create, maintain, and transform social realities and meanings that are true and significant to them.”<sup>172</sup>

*Guanxi* happens in the karaoke box.<sup>173</sup> In a study done of karaoke in Taiwan, it was found that karaoke releases tension, and creates better relationships and belonging.<sup>174</sup> One woman remarked that she and her close friends became their “real” or “unmasked” selves when they sang karaoke together.<sup>175</sup> A young man remarked

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 154.

<sup>162</sup> CASEY MAN KONG LUM, IN SEARCH OF A VOICE: KARAOKE AND THE CONSTRUCTION OF IDENTITY IN CHINESE AMERICA 1 & n.1 (1996) (second alteration in original).

<sup>163</sup> *Id.* at 8.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 9.

<sup>166</sup> Ma & Chuang, *supra* note 159, at 159.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 159-60.

<sup>169</sup> LUM, *supra* note 162, at 12.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 13.

<sup>172</sup> *Id.* at 112.

<sup>173</sup> Ma & Chuang, *supra* note 159, at 160.

<sup>174</sup> *Id.* at 157.

<sup>175</sup> *Id.*

that karaoke facilitated business deals: “Through informal interactions at a karaoke center, you have a better understanding of your business partner. When both parties are relaxed, they become less defensive and more frank with each other. Therefore, mutual trust can be easily established. In addition, conflicts are often avoided under the circumstance.”<sup>176</sup>

What are the ancient roots of karaoke? In Daoist thought, the universe consists of sounds.<sup>177</sup> The proper flow of *qi* is “vibrational harmony.”<sup>178</sup> The ideal of perfect peace is achieved when nature and humans are on the “same wavelength.”<sup>179</sup>

The *Book of Rites (Liji)*, one of the five Chinese classics that officials studied, describes music as governance. In the chapter titled “Record of Music” (*Yue Ji*), music is described as descending from Heaven.<sup>180</sup> Music complements ritual, which represents Earth.<sup>181</sup> Music cultivates virtue.<sup>182</sup> The ancient sages governed through music, ritual, laws, and punishment.<sup>183</sup> Music was present in the ancestral temple, district and village clan meetings, and in the family, leading to harmony and peace everywhere.<sup>184</sup>

Thus, the *Book of Rites* demonstrates that music was essential to a system of governance:

[T]he ancient kings . . . [instituted] ceremonies to direct men’s aims aright; music to give harmony to their voices; laws to unify their conduct; and punishments to guard against their tendencies to evil. The end to which ceremonies, music, punishments, and laws conduct is one; they are the instruments by which the minds of the people are assimilated, and good order in government is made to appear.<sup>185</sup>

Ceremonies afforded the defined expression for the (affections of the) people’s minds; music secured the

---

<sup>176</sup> *Id.*

<sup>177</sup> KOHN, *supra* note 41, at 16.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 17.

<sup>180</sup> BOOK OF RITES, *supra* note 156, ¶ 14.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* ¶ 45.

<sup>183</sup> *Id.* ¶¶ 2, 48.

<sup>184</sup> *Id.* ¶ 48.

<sup>185</sup> BOOK OF RITES, *supra* note 156, ¶ 2.

harmonious utterance of their voices; the laws of government were designed to promote the performance (of the ceremonies and music); and punishments, to guard against the violation of them. When ceremonies, music, laws, and punishments had everywhere full course, without irregularity or collision, the method of kingly rule was complete.<sup>186</sup>

Music is also essential for the cultivation of virtue, which leads to peace and order throughout the country; “He who has apprehended both ceremonies and music may be pronounced to be a possessor of virtue. Virtue means realisation (in one’s self).”<sup>187</sup> “The character is cultivated; the family is regulated; and peace and order are secured throughout the kingdom. This is the manner of the ancient music.”<sup>188</sup>

Music is necessary in every venue, including the temple, the village, and the family, for all members of society:

[I]n the ancestral temple, rulers and ministers, high and low, listen together to the music, and all is harmony and reverence; at the district and village meetings of the heads of clans, old and young listen together to it, and all is harmony and deference. Within the gate of the family, fathers and sons, brothers and cousins, listen together to it, and all is harmony and affection. Thus in music there is a careful discrimination (of the voices) to blend them in unison so as to bring out their harmony; there is a union of the (various) instruments to give ornamental effect to its different parts; and these parts are combined and performed so as to complete its elegance. In this way fathers and sons, rulers and subjects are united in harmony, and the people of the .[sic] myriad states are associated in love. Such was the method of the ancient kings when they framed their music.<sup>189</sup>

It is no wonder that China’s spoken language, in all of its hundreds of dialects, is tonal and has been likened to singing. Ritual

---

<sup>186</sup> *Id.* ¶ 9.

<sup>187</sup> *Id.* ¶ 5.

<sup>188</sup> *Id.* ¶ 42.

<sup>189</sup> *Id.* ¶ 48.



opera and plays have also always been means for cultivating virtue and justice. Chinese opera is an “integral part of religious ceremonies, calendrical festivities, and rites of passage . . . the operas . . . [were] an arbiter of moral standards . . . .”<sup>190</sup> These moral lessons included “loyalty, brevity, chastity, piety, honesty, and faithful love.”<sup>191</sup> Ritual operas were often about icons of justice such as Judge Bao from the Song Dynasty.<sup>192</sup>

Thus, the ritual of karaoke resonates with ancient wisdom about harmony in the universe. Karaoke blends tradition and modern technology.<sup>193</sup> The sages chose to govern through music, because music fosters unity, harmony, hope, and healing, especially when singing songs from an era like the Cultural Revolution. Today, singing together continues to provide venues for bonding among lawyers and business partners. It evokes heavenly harmony and justice; thus, singing together should be celebrated. However, using karaoke bars for soliciting prostitution should be avoided.

## II. CONCLUSION

The contemporary practice of law in China is full of daily ritual. No doubt this is the case in other countries as well. What distinguishes China’s rituals are their bases in ancestor veneration, traditional Chinese medicine, Confucian, Buddhist, and Daoist thought.

Five prime rituals are tea drinking, banqueting, drinking alcohol, napping, and singing karaoke. Tea drinking reflects Daoist alignment with nature and purity and Buddhist reflection. It highlights Confucian genteelness and hospitality. The teahouse was a traditional Chinese venue for dispute resolution.

Communal banqueting and drinking have their origins in ancestral worship. By first offering food and alcohol to ancestors and other spirits, shared food and drink became the means for sharing blessing and prosperity. Harmonizing the five flavors, or *hewei*, was a traditional Chinese metaphor for governance. Today, eating and drinking are still venues for fostering harmony, *guanxi*, and negotiat-

---

<sup>190</sup> LUM, *supra* note 162, at 38 (quoting BELL YUNG, CANTONESE OPERA: PERFORMANCE AS CREATIVE PROCESS 8 (1989)).

<sup>191</sup> *Id.*

<sup>192</sup> See JEFFREY C. KINKLEY, CHINESE JUSTICE, THE FICTION: LAW AND LITERATURE IN MODERN CHINA 29 (2000); SIU WANG-NGAI WITH PETER LOVRICK, CHINESE OPERA: IMAGES AND STORIES 114 (1997).

<sup>193</sup> Ma & Chuang, *supra* note 159, at 160.

ing contracts.

The afternoon nap shows Daoist influence, which honors nonaction (*wuwei*). This is especially important for balancing hard mental work with rest in order to achieve maximal *qi*. Karaoke after work, where both soloists and the group sings, emphasizes further the primacy of harmony. By singing songs together that evoke different eras, different geographies, including foreign countries, the singers are empowered to be unified in purpose, but also in defining the past, present and future. The ancient *Book of Rites* records the sages' efforts to achieve justice and virtue through music.

These five rituals should not be taken for granted or ignored. However, especially eating and drinking alcohol should be practiced without excess. Practiced properly these rituals do invoke virtue, harmony, communion, balance, and wholeness. These are essential for pursuing justice. Those of us outside of China can consider these and other rituals as well in the practice of law.