

Suicide Legislations in Conquest Dynasties

A Socio-Legal Study on Xianbei, Tangut and Jurchen Regimes

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IV

Abstract

Suicide can be a good breakthrough point to study on the relationship between individual and the society; and if we narrow our research objective down to a smaller one---to the suicide legislations, we can reach an even better perspective, a perspective that comprehensively reveals the social, political and cultural aspects the target society is involved with. In this research, I will reach to some areas which have been neglected due to the lack of resources in the history of the conquest dynasties in China, namely the regimes that have been built by Xianbei, Tangut, Jurchen and Mongol. These inner Asian groups, on the other hand, have all gone through the transformation from a tribe society to a nationalized one; therefore, through a study to check their ways of dealing with suicide in both of the two eras, we can obtain a dynamic perspective to understand their nationalization, or the so-called sinicization.

The research attempts to find out what the suicide legislations have been in the respective northern groups, with an expectation that they come with different ways and attitudes from the Chinese traditions. I try to figure out each of their ways as well as some possible common ideas. After all, these inner Asian groups share a great deal of similarities due to their similar ways of producing, living, and maybe believing. Then will their commonness be totally different from their Chinese counterparts? Or have there been any interaction between the Chinese traditions and the inner Asian ways? If yes, then what is the outcome of such interactions?

I will be very cautious about the term “sinicization” since it is too empty and generalized to look into the fact that, even the Chinese institution itself may have alien origins.

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1 Introduction

As the title goes, my research is on the suicide legislations among conquest dynasties of Chinese history. Conquest dynasties, or northern ethnics, in this research mainly refer to Xianbei, Jurchen, Tangut; Khitan as well as Mongols, will be discussed or referenced to though, no independent chapters will be on them.

The topic is by far a virgin area in academic study. Due to the limited resources, studies on conquest dynasties traditionally have a smaller amount of consequence compared to significant dynasties like Tang, Song or Ming, Qing. Studies on suicide legislations are no better in terms of both second hand and first hand resources. Researches on traditional Chinese suicide legislations mostly go to the Coercing Law 威逼人致死条 in Ming and Qing era, with some researches on Han or Song etc., though. But for intersection part of the two areas---suicide legislations in conquest dynasties---there are merely direct-related resources.

However, the study is still approachable as long as I narrow down my research questions and goals: do they have suicide legislations in the conquest dynasties? What are they like then? Why do they have such-like suicide legislations? Even though there might be no direct records or resources, indirect or extensional resources will be reasoned and inferenced. Any tiny findings will be appreciated.

A study on suicide legislations offers a unique perspective to see into the society of the conquest dynasties, since the establishment of laws have taken too many factors into consideration, as Baron de Montesquieu has argued, *“the climate..., ...the quality of its soil, ...its situation and extent, ...the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have a relation to the degree of liberty which the constitution will bear, ... the religion of the inhabitants, ... their inclinations, riches, numbers, commerce, manners, and customs”*.

Moreover, to study on suicide legislations we also should take social integration and social regulations into consideration, as what Durkheim has done in *On Suicide*. In this way, we obtain a unique as well as comprehensive perspective to examine the society in the conquest dynasties, to glean those factors that could be easily ignored but might be of great significance.

1.1 Research approach

Even though there are few direct research findings, my research is still built on previous studies, especially social, political and cultural researches in relevant areas, due to the fact that laws are built on the interactions of all the social factors listed above.

In Xixia area, Shi Jinbo's Xixia Society has made quite complete and thorough researches on its society, among which studies on its legal systems, female and marriage etc. forms the foundation of my own research on Xixia; researchers from Russian and western researchers provide a more theoretical perspective in building insights into Xixia, Ruth Dunnel's *The Great State of White and High*.

For the Xianbei part, Dr. Deng Yiqi's *On Northern Dynasties' Legislations* has organized a clear routine of northern dynasties legal development, with not only abundant historical facts but also strong argument in explaining the trend of planting 'propriety 礼' into laws; Dr. Wang Qi, wrote on northern dynasties legal development in a great passion and both his master and doctoral thesis offer insightful and professional legal history research methods. As for the social and political development from northern dynasties all the way to Sui and Tang, Tian Yuqing, Yan Buke and Luo Xin who hold a North Exit 北朝出口说 construct my understanding of the era, also set examples in digging out the "inner asian" tradition, not only for understanding the relevant part of Chinese history, but for "inner asian" itself.

For the Jurchen Jin part, Chinese scholars have done the work in clarifying the historical facts and deciding the periods and phases of Jin's legal development; for the social and political or other institutional development Herbert Franke, Mikami Tsugio, Zhang Boquan and Liu Pujiang have done detailed researches and my own research is built on their research conclusions.

Moreover, my research is built on the theories that explain the trend of social transformation between Tang and Yuan, since the conquest dynasties I look into are mostly centered in this era. Chen Yinke, Tang Changru and Tian Yuqing etc. all care about what important role northern dynasties have played in constructing the later Sui Tang institutions; both Northern Exit 北朝出口说 theory and Southernization theory 南朝化 will applied to examine the facts I've observed in my study; as for the history in post-Tang era, Japanese scholars have

contributed excellent theories in explaining the trend in social transformation, among which Naito Konan's Tang Song Transformation Theory is the most discussed, also scholars like 宫崎市定 did quite a lot of work in improving and implementing such theory.

On the other hand, the research on traditional Chinese suicide legislations is founded on Dr. Tsuta Horo's research on the origins of Ming Code Coercing Law. Professor Tsuda Yoshiro 高桥芳郎 traced the origin of the Browbeat-to-Death Code to the Intimidate-to-Death Code 恐迫人致死条 of Tang Code 唐律 by examining the application of the Intimidate-to-Death Code 恐迫人致死条 in Song dynasty. His research sheds a light on a study on the suicide legislations before Ming. Besides, the historical research on suicide phenomenon in China has seen quite a lot of achievements in recent years. Quite a few work has been done in exploring the suicide among chaste women in Ming and Qing era; researches on suicide in Han and Song dynasty also contribute a lot inspirational conclusions.

And one last but most valuable theorists in constructing my research is Durkheim. His inspirational methodology as well as findings is my guide along the study.

All in all, my research is built upon the soil of previous social, political and cultural etc. researches, from which I collect the traces of suicides and suicide legislations. I set keywords in search for first-hand historical records: from zisha 自杀, zichen 自沉 for self-drowning, zijin 自尽 for self-ending, zijing 自经 for self-hanging, to more oral words such as 上吊 hanging, 赴水 go to water, 服毒 taking poison, or even 赐死 granting death, 殉 martyrdom and so on. However, quite a few resources actually come from previous researches where they were not used for discussing about other topics other than suicides or suicide legislations. As soon as they were examined in suicide legislation context, some even plays the key role in defining the situation.

Besides historical records, I also look to literatures of relevant eras. Su Li's Law and Literature inspired me to look into the play scripts in Jin and Yuan era since the era sees the flourish of plays of all kinds. And the most important reason is that scripts probably carry the realest social realities. My research on Jurchen Jin is based on scripts of its time--- Zhugongdiao 诸宫调, which literally means the palace melodies .

1.2 Structure and overview

My research begins with Xixia due to the fact that Xixia is relatively independent from Chinese way of politics and social life; in Xixia's case, the unique social circumstances and social needs result in unique legislations which forms a model of "authentic inner Asian"; and this model will become a reference in evaluating the degree Xianbei and Jurchen way in merging into Chinese social realities.

The Xixia part starts with a brief introduction of Tangut and Xixia history, then comes to profile the suicide legislations, aiming to find out its legal purport and deal with the important parts where it is also difficult to understand in the suicide legislation; while in the last section I will parallel the 'love suicide' fashion in Xixia with the 'love suicide' tradition among some ethnic groups in modern Yunan, trying to understand the origins of Tangut love suicide tradition.

In chapter two I will talk about suicide legislations in Xianbei era which refers to all the histories that are related to Xianbei (mainly Tuoba tribe), from Sixteen Kingdoms, northern Wei to northern Qi and northern Zhou, then to the foundation of Sui. I will brief the development of Xianbei regime and especially introduce the social and political context the Xianbei regime, as an alien regime, faces to. Then in the last section, I will inference the origins of Tang Code Intimidation Law through background analysis.

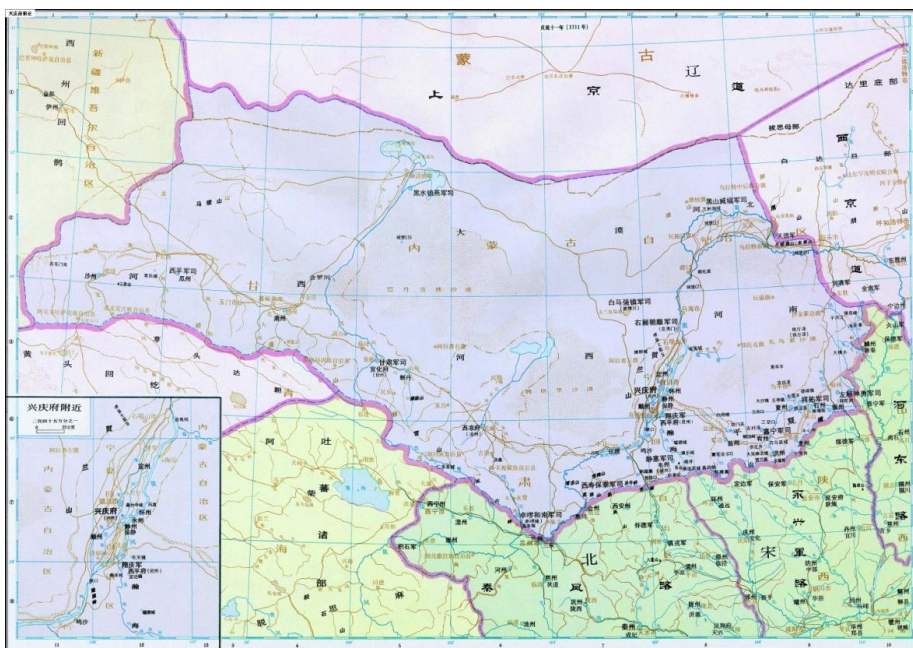
Chapter 3 is on Jurchen Jin. In the first section a brief history of Jurchen regime is necessary, attached with a brief history of legal development; in the second section I will try to reveal what the suicide phenomenon and suicide legislations are like in Jurchen Jin; and in the last section I will explain the reason for Jurchens develop such ways in dealing with suicides by looking into social structures and social classes.

Finally, in the conclusion part, I will try to wire the histories of the conquest dynasties together, to reach some theoretical findings in both Chinese and inner Asian history.

2 Suicide legislation in XiXia

Xixia is built at around the beginning of 11th century by Tanguts, which in Chinese means 唐兀, an ethnic group called Tuyuhun 吐谷浑 that resided in today's Qinghai; Tanguts call themselves Mi-niah (or Mi)¹ 蕃. Like all the other nomadic groups, Tanguts have complex origins. Chinese history records believe that Tanguts come from the Qiangic groups 羌 in western China, and linguistic proof also shows that Tangut language is closely related to Naxi language and belongs to the Tibetan-Myanmar family².

Same with other nomadic inner Asian groups, Tanguts practice levirate marriage, wear feather, believes in shamanism and Buddhism. they came to enjoy more significance in the post-Tang era and eventually built their own regime capital in Xingqing 兴庆, today's Yinchuan 银川. The founding father of Xixia is Yuanhao 元昊, who has traced his family origin to the imperial family of Northern Wei---the Tuoba clan of Xianbei, therefore refers himself Yuanhao 元昊 in Chinese, following Tuoba's Chinese surname 元.



Picture: The territory of Xixia³

¹ Ruth W. Dunnell, *The Great State of White and High: Buddhism and State Formation in Eleventh-Century Xia* (Honolulu: University of Hawai'i Press, 1996).

² Hongkai Sun, "Xixia and Qiang 西夏与羌," *Journal of Aba Teachers University* 33, no. 2 (June 2016): 5–9.

³ Qixiang Tan, *The Territory of Xixia*, n.d., ccamc.co/chinese_historical_map/index.php#atlas/14/西夏.jpg.

Xixia created its own script, which was widely used during the several hundred years along its history, until it's taken-down by Mongols. It's interesting to notice that Tanguts adopted the similar word-building system as Chinese characters, which probably can be seen as a proof that Tangut language belong to sino-Tibetan language family.

As for the legal development in Xixia, we can say that they've developed really great legal systems and the country is well organized by the rule of law; there is even a saying declaring that ‘the west miyak is a kingdom rule by the law, (while) the east Han is by propriety’ .

There exists several codes including the military law *A Military Law on the Jade mirror of Zhenguan* 贞观玉镜统, *The New Laws in Pig Year* 猪年新法, and *The Revised and Newly Endorsed Law Code for the Tiansheng Era* 天盛改旧新定律令, which is generally referred to as Tiansheng Code 天盛律令。

Thanks to the discovery of the Tiansheng Code, we got to know many different sides of Tangut society and how the legislators view the different social phenomenon at that time, and most importantly, what they do to control crimes and control the society.



Picture: Photocopy of the front page of Tiansheng Code⁴

⁴ Jinbo Shi, trans., *Tiansheng Gaijiu Xinding Lvling* 天盛改旧定律令 (Beijing: Legal Press, 2000).

Suicide legislations is one of the serendipities from the Tiansheng Code. Comparing to the suicide legislations in its counterpart Song dynasty which concerns more about the guilty of “browbeating” someone into a suicide, Tangut suicide legislations put in the first place the legitimacy of suicide itself. Why did such contrast exist in the two neighboring countries? What does such contrast imply? it’s clear that Tangut legislators view suicide in a different way from Song legislators. Then why?

In order to answer these questions, I will reach to Tangut suicide legislations from three perspectives in this chapter:

1. The legal principal of suicide legislations in the Tiansheng Law Code;
2. The social problems the code targets at;
3. The actual effect of the code.

2.1.1 Defining the research objective

The items related to suicide in the Tiansheng Law Code are listed in two different categories: the Category of Burning-Injuring-Killing 烧伤杀门 in Volume VIII and the Category of Trial-Punishment 行狱杖门 in Volume XI.

As we can see from the titles of these categories, the two codes are used in different circumstances that involves suicide. Then should we discuss both of them equally or with a specified focus?

My choice is to focus on the suicide code in the Category of Burning-Injuring-Killing 烧伤杀门 of Volume VIII, because it is only in this category “suicide” is morally judged and disapproved. While its counterpart in the Category of Trial-Punishment 行狱杖门 functions as a law of supervision and inspection on officials other than a legal judgment on the legitimacy of suicide.

Table 1. Suicide Code in Volume IX of Tiansheng Code

Light	Commoners: 13 lashes Officials: One horse	Inform prisoner about his crime, no intimidation, prison kill himself to escape punishment
Medium	Jailers: 1 years in jail for a prisoner’s suicide attempt	Provide prisoners with knife, sticks or ropes which can be used to kill himself; or remove prisoners’ handcuffs that he can seek for tools to kill himself
	Jailers: 2 years in jail for a prisoner’s complete suicide	
Heavy	Hanging	Heavy tortures that lead to prisoner’s suicide
	12 years in jail	Physical or verbal abuse that leads to prisoner’s suicide
	5 years in jail	Intimidating in a kidding way that leads to prisoner’s suicide

For the items in the Category of Trial-Punishment 行狱杖门, the keynote is “The jailers get punished if the prisoner commits suicide”; therefore the legitimacy of suicide is not of the legislators’ concern in this code, but jailers or judiciaries’ norms of behaviors are; the first and foremost target of this code is to regulate jailers or judiciaries’ behavior other than regulating suicide.

Moreover, if we look into items such as “provide prisoners with knife, sticks or ropes which can be used to kill himself; or remove prisoners’ handcuffs that he can seek for tools to kill himself..... (the jailer will face) 1 year in jail for a suicide attempt or 2 years in jail for a complete suicide”, we can see the logic of these items complies with how “assisted suicide” is processed in modern law. However, the theme of this chapter is “suicide” itself.

2.1.2 The profile of Tangut suicide legislation

Suicide code in the Category of Burning-Injuring-Killing 烧伤杀门 in Volume VIII sees suicide as a crime. Therefore, all the items in the code aim to combat different suicide phenomenon among various groups. In this section I will center on why Tangut legislators view suicide a crime, or so-called legal principle; the exploration on significant suicide phenomenon in Tangut society will be left to the following section.

Table 1 is a full picture of the suicide code in volume VIII, from which we can see how detailed and complete it is , and the main ideas can be concluded into:

1. Suicide is illegal, while suicides resulted from mental disorders are not guilty;

2. “Love suicide” is at the center of what the code strikes, while females face harsher punishment than males do;
3. The punishments for suicide attempts among imperial bodyguards make a distinction from those for others.

Table 2. Suicide code in Volume VIII of Tian Sheng Code

	Love suicide		Suicide		
Complete suicide	Male	Female	No penalty; No collective punishment for the parents		
	No punishment	Unmarried women: Collective punishment for the parents			
	Body disposed separately; collecting allowed	Married women: 1. Collective punishment for the parents; 2. Bride-price refund; 3. Body dumped apart; collecting allowed			
Suicide attempt	Both survive: 3 years in jail		Guilty pre-suicide	UngUILTY pre-suicide	Mental disorder
	One survive: 12 years in jail		Penalty based on the original crime, No extra punishment for suicide	Commoners: 13 lashes Officials: One horse	ungUILTY

2.1.3 How Tangut legislators view suicide

The location of suicide code

Before we get to the specific items of the code, it’s worthwhile to check the location of the code first. It will help us speculation on the legislators’ standpoint in viewing suicide. What kind of crime is suicide seen as? Why is the code placed in volume VIII other than the rest parts of the law book?

The Category of Burning-Injuring-Killing(烧伤杀门) is the first category among all the 7 categories of Volume VIII. The rest 6 categories are:

*harming(相伤门); wife-kidnapping(夺妻门); wife-encroaching(侵袭妻门);
wife-concealing(威势藏妻门); sexual harassment(行非礼门);
and marriage-establishing(为婚门);*

According to Shi Jinbo, most of the 79 codes in volume VIII are codes related to marriage and domestic affairs . It seems that to maintain a system of stable marriage and family life is of the first concern to Tangut legislators.

As we can see from the title of these categories, crimes related to wife-kidnapping or wife-concealing etc. are classified in such detailed way; if we see this problem in reverse, we will know that such crimes must be very common and therefore cause much disturbance for the society.

If we relate it to the bride-kidnapping phenomenon which still exists in Kirgizstan today, we will probably get more insight. Bride-kidnapping, according to ethnographic records, is believed to have widely existed across the Euro-Asian continent along history; To be more specific, more often practiced in nomadic cultures .

Therefore, I argue that volume VIII is a volume that is to fight against the indigenous customs of Tangut tribes, which now cause troubles for a nationalized and authoritarian regime---West Xia as a country; I would say the Tangut legislators show an ambition in this volume to transform their social traditions 移风易俗;

Then what does it imply for suicide code to be placed in volume VIII?

The answer probably is, the typical suicide phenomenon in Tangut society---love suicide, is also seen as a stubborn social disease of that time. We can see from a Chinese record how severe the phenomenon is:

“Their custom is to value death more than life, to scorn on laws and be ungrateful to their social responsibilities. As soon as the daughters grow up, they will fall in love freely and start relationships without parents’ interference. If the affection runs deep enough, the couple will run to a sheltered place in the mountains, lying together, holding ropes in their hands, hanging each other until they have no breath; when their families find their bodies, they won’t

cry because they believe that as long as the couple die for love, it's not a sad story at all..... (I therefore) go deep into the desolated lands where I saw so many 'girl's shelters' (where the corps are laid as burial as well as sacrifice), of which some are so new that even the felt is still firm”

Moreover, volume VIII aims to combat crimes in civil affairs, aiming to set up norms based on propriety; even though criminal offences such as injuring and killing are also involved in this volume, the convicts are confined to domestic affairs therefore differ from the general criminal law, the penalty are correspondingly different from that of criminal law. As for the codes related to burning, we can see that the legislators see it as one of the most typical crimes in regard of domestic conflicts in Tangut society, the same is wife-kidnapping related crimes.

2.1.4 Special regulations

We've discussed above the regulations for ordinary people. However, ahead of which there are special regulations for a certain group of people who are called Daiming 待命⁵:

The Daiming who holds a title should be dismissed from the position, and afterwards he also has hard labor to do which cannot be reduced due to his title or position, but can be exiated(官当) by his title; the Daiming who is on call to assist the central administration won't be allowed to enter into the inner palace anymore.

The Daiming who is responsible for specialized services, his office can be succeeded to his descendant if he has one, when there's no one to succeed he should continue his service but under the supervision of someone else; besides, his guilty should be trialed according to the regulations below⁶.

Daiming 待命, is the translation to the Tangut terminology that refers to imperial guards, whom serve the imperial family not only as bodyguards but also in some specialized services such as medical care or sacrificing etc., therefore their duty is literally what the two Chinese character 待命 suggests as “on call or to standby”.⁷ In this sense, Daiming is the Tangut counterpart to Mongol Kesig/Kheshig, which refers to imperial bodyguards as well⁸.

⁵ see Appendix 1, the photocopy of the law code.

⁶ here it refers to the regulations for the common people that we've discussed above, but in the code text such regulations come after the special regulations we are discussing here.

⁷ Jianlu Du, “Xixia de Neisu Zhidu 西夏的内宿制度 The Imperial Guard System in Xixia,” *Guyuan Shizhuan Xuebao 固原师专学报*, no. 4 (1997).



Picture: Tally of Daiming in Xixia⁹

However, even if it is similar to the Mongol kesig, Daiming in Xixia seems not as prestigious as kesig in Mongol system who work even as part of the administrative system. But still, it is still extremely demanding and glorious in Xixia to be Daiming, since they are so close to the imperial family that they can virtually be part of the authority. Therefore, candidates who want to be Daiming have to go through rigorous and thorough censorship to be absolutely clean and for some positions they need to have a prestigious guarantor in order to be entitled to the position¹⁰.

It's impressive that among such a group there are suicide cases that even the law has to stress on the punishment for such people ahead of the main text. In this way, we can actually sense the authority's loath to have suicide cases among its soldiers. After all, as a military regime soldiers are the most precious assets of the state.

It is noticeable that, for common people a suicide attempt faces a punishment of "13 lashes" (for officials it is "one horse"), but for suicide attempts among senior Daiming who has a title, they won't be put into jail, but facing with demotion and hard labor, and for those who are on call to assist the central administration, they won't be allowed to enter into the inner palace anymore. And this forbidden probably is out of a universal taboo on suicide.

⁸ 怯薛者，犹言番直宿卫也，from History of Yuan

⁹ source: Tangut Institution of Ning Xia University, <https://xixia.nxu.edu.cn/info/1024/2121.htm>

¹⁰ Du, "Xixia de Neisu Zhidu 西夏的内宿制度 The Imperial Guard System in Xixia."

The reason that imperial bodyguards don't have to face the criminal punishment such as being jailed might be that it is really demanding to enlist an imperial bodyguard. But even though they can continue their royal service they are seen as unclean, therefore are not allowed to enter the inner palace which means they are tabooed to be too close to the imperial family.

Taboos on suicide exists in all societies around the world since suicide is seen as an “unnatural death” , which shed an ominous light.

However, if an imperial bodyguard kills himself because of mental disorders, he can retrieve the right to enter the inner palace as soon as he is proved of rehabilitation.

To care about a suicidal person's mental status shows that Tangut legislators are quite realistic, knowing well about the realities in their society. Moreover, it might be because they attach so great importance to the autonomy in suicide behavior that only suicides out of complete autonomy is seen as guilty.

2.1.5 Why is suicide illegal in Xixia?

Baron de Montesquieu argues in his great work “The spirit of law” that there are too many factors that can influence laws--- *“the climate..., ...the quality of its soil, ...its situation and extent, ...the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have a relation to the degree of liberty which the constitution will bear, ... the religion of the inhabitants, ... their inclinations, riches, numbers, commerce, manners, and customs”*.

The way a society viewing and dealing with suicide directly reflects the relationship between its individuals and the society. Due to Durkheim's typology of suicide, social integration and social regulations play an important role in influencing suicide phenomenon in a society. There is a positive correlation between social integration and suicide rate---when a society has a higher level of social integration, it will see a lower suicide rate.

Xixia is a highly integrated society. And the fundamental reason for Xixia to view suicide illegal just lies in its high degree of social integration. There are two institutions that integrate Tangut society: militarized social institutions and Buddhism. Both institutions show a negative attitude toward suicide.

Buddhism is of objection to killing. Suicide is seen as a kind of killing . Moreover, Buddhism, as the state religion of Xixia, runs in an institutionalized way. With its influence penetrates not only into the mental layer, but also to the layer of social life . In this way Buddhism works similar to the church in middle-aged Europe , plays an important role in saying no to suicide in Xixia.

Moreover, Xixia is ruled by law and therefore its law code provides a set of norms of behaviors in a concise and detailed way. Suicide, is accordingly judged and controlled by the law. In this way suicide legislations in Xixia contrast to the Chinese way, which doesn't set clear norms of behavior but looks into responsibilities of the “wrong doings” . “The eastern Han is rule by propriety, while western Miyak is ruled by law”¹¹, according to this Tangut saying, Tangut people surely know the difference in terms of ruling philosophy.

The last factor, which has probably contributed the most to Xixia's suicide prohibition, is the fact that Xixia is a militarized society with a relatively small population (comparing with its counterpart Song)---around 20,000,000 people--- according to Du Jianlu; moreover, Xixia has had constant wars with Liao and Song; the government therefore is urged to have a tight control over its population, especially military forces to keep the stability of the society .

In fact, Xixia wouldn't have been the only military regime that has a tight control over suicide. The Xiagasi regime must have been holding an anti-suicide attitude historically, due to the fact that the Kirgiz people now still prohibit suicide rigidly¹².

Therefore I have to admit here that, Durkheim is proved to be right again. When he discusses on the prominent suicide phenomenon that occurs in the army, he refers to army as a chronical environment for altruistic suicide.¹³ This explanation also works in Xixia's case.

2.2 Love suicide, suicide legislation and Tangut society

¹¹ 西蕃法王国，东汉礼王国

¹² Jiongzhe Shen, “A Study on the Altaic Ethnic Groups's Taboo Culture 中国阿尔泰语系诸民族禁忌文化研究” (Doctoral, 中央民族大学, 2003).

¹³ Emile Durkheim, *Suicide: A Study in Sociology* (Beijing: Taihai Publishig House, 2016).p231

In the last section, I introduce the general ideas of suicide legislations in Xixia and try to figure out why Tangut legislators hold such strong opposition to suicide, from the perspectives of social integration, taboos on suicide and social change. However, a static profile of Tangut suicide legislation is not enough for us to know better about the society we are looking into. We are urged to look into the dynamics in Tangut society, to see how suicide interacts with social backgrounds and the laws.

Moreover, it is noticeable that love suicide related items in Tangut suicide code covers almost 90% of the document. And the punishments for love suicides are much heavier than that for general suicide. Such facts reveal that love suicides are at the center of what Tangut suicide legislations target at. And love suicides must be a very serious social problem. Shangguan Rong's record is a direct proof.

Tangut researchers in China are not alien to Shangguan Rong's record. Both Shi Jinbo and Du Jianlu mentioned the phenomenon of love suicides in Xixia based on Shangguan Rong's record, but they use it just as a historical fact or something special about Tangut society, without pursuing the backgrounds behind or its social significance, which is exactly what we commit to in this section:

1. Why were there so many love suicides in Xixia?
2. How love suicides were perceived by Tangut people (not only legislators)?
3. Did suicide legislations work in Xixia?

Facing with all these questions, the only historical material we can apply to is Shangguan Rong's record. But as long as we notice the love suicide problems among some peoples in southwest China at even contemporary times, questions above may become approachable.

2.2.1 Love suicide, as an ethnical tradition?

In his book *Forgotten Kingdom* Peter Goullart believes Lijiang, a city inhabited by Naxi people in Yunnan province, "could really hold the doubtful honour of being the world's suicide capital", where the most common suicides he witnesses are love suicides which involve a man and a woman in escaping from "a tangled love affair" or "an unhappy married

life”¹⁴. Peter Goullart is not the only one who have noticed the love suicide phenomenon among Naxi people. So does Joseph F. Rock . In fact, the phenomenon is so prominent that “not a family that did not number a suicide or two among its members” , observers can hardly ignore it.

However, not only Naxi people, but aslo Lahu people---another ethnical group in Yunan whose language is in the same language family to that of Naxi¹⁵---have experienced high rate of love suicides during historical times until very recently . And if we relate the two groups, Naxis and Lahus, to Tanguts in Xixia, we will find that the three of them are believed to have close connection in language, if not equally close in culture and blood.

Moreover, according to some researchers there is an area in China where a high incidence of love suicide motif can be seen from the folk literatures: an area that covers today’s Xin Jiang, Gansu, Shanxi and Sichuan. Zhao Kuifu even relates the love suicide motif to the origin of Di people (氐), which is better known as in Di-Qiang(氐羌). In this way, love suicide seems to be something culturally related to peoples with a Di-Qiang origin, which is also shared by Naxi and Lahu .

However, the aim of this section is not to discuss the origins or the relations of the Naxi, Lahu or Tangut people¹⁶, but to use it as a presumption to relate love suicides in Xixia to that in Naxi and Lahu; since the research on Lahu love suicides is not as much as on Naxi love suicides, I will mainly use Naxi materials to compare with Tangut records in the following discussions.

I will firstly identify the similarities or the association between Naxi and Tangut love suicides, then reference to what has been known from Naxi love suicides in hopes of obtaining some insights onto Tangut love suicides.

2.2.2 Love suicide traditions in comparison: Naxi vs Tangut

¹⁴ Peter Goullart, *Forgotten Kingdom* (London: READERS UNION • JOHN MURRAY, 1957).

¹⁵ James A Matisoff, “Tone, Intonation, and Sound Symbolism in Lahu: Loading the Syllable Canon,” *Linguistics of the Tibeto-Burman Area* Volume 12:2 (n.d.): 147–63.

¹⁶ James A Matisoff, “The Lahu People and Their Language,” in *Minority Cultures of Laos*, ed. Judy Lewis (California: Southeast Asia Community Resource Center, Folsom Cordova Unified School District (Rancho Cordova, CA), in consultation with the California State Department of Education Bilingual Education Office, 1992), 125–247.

Shangguan Rong's record on Tangut love suicides mainly talks about two aspects of the phenomenon:

1. The common way of suicide:

the couple will run to a sheltered place in the mountains, lying together, holding ropes in their hands, hanging each other until they have no breath;

2. The way the family deals with the deaths:

when their families find their bodies, they won't cry because they believe that as long as the couple die for love, it's not a sad story at all;

they shroud the dead with colored silk and then wrapped them with the felt. They hold a memorial ceremony, killing the cattle as sacrifice and cutting the leather into stripes with which they twine the dead tight and dense;

thereafter, they choose a high mountain to set up a rack called "girl's shelter", on which the corps would be put, and by doing so they wish the dead could fly up to the heaven.

Finishing all the steps above, the two families would drink and drum around the shelter for days.

In fact, in Naxi traditions we can see quite a few similar customs in the way the sacrificing ceremony is held.

The ceremony is called *halaliken* 哈拉里肯 in Naxi language, means The Grand Jifeng Ceremony 大祭风, which aims to send a prayer to the wind asking it to take away the spirit of the dead.

The word feng (wind) refers to a collection of supernatural forces represented by the wind spirits. The Naxi people believe that these spirits come both from nature and human society respectively. The Jifeng Rite is mainly an offering for "spirits of nature", but "spirits of society" are also involved. The Grand Jifeng ceremony, which focuses on propitiating the spirits of the dead, is mainly an offering for "spirits of society", but "spirits of nature" remain a part of the ceremony¹⁷.

¹⁷ Qirui Hu, "The Naxi Romeo and Juliet – An Introduction to the Jifeng Rites in the Naxi Scripture Migration of Youth," e-learning and digital archives, n.d., http://culture.teldap.tw/culture/index.php?option=com_content&id=2282.

In the ceremony, Naxi people use “two pigs, two sheep, two goats, six chickens, also grains that weigh over 0.3 kilogram; the whole sacrificing ceremony will last up to 5 days, covering all the procedures that range from setting the sacrificing table 设祭, inviting the gods 请神, calling up the spirits 招魂, comfort the ghosts 安鬼, to sacrificing for the dead 祭祀死者; then in the final stage all the sacrificial offerings will be moved to the mountains to send away the ghost 送鬼, redeem lost souls 超度, and close the door of death 关死门. Then finally, everything ends up with a banquet to thank the Shaman that is called Dongba 东巴¹⁸.

Shangguan Rong's record is not as detailed as the Naxi report, however, the procedures in Naxi Halariken can actually be classified accordingly into the key parts in Shangguan's writing: killing the cattle as sacrifice 椎牛设祭 and choosing a high mountain 择峻岭, and the mountain is supposed to be a sacred place to fly up to the heaven 于飞升天, and the heaven here corresponds to the realm of eternal happiness in Naxi folk beliefs, where the spirit of love suicidal person can finally settle down.

2.2.3 Presumptions of the roots of the Tangut love suicide

Some researchers on Naxi love suicides incline to place the blame on the patriarchal system and the Confucian way of propriety oppression, for such researchers Naxi couples kill themselves because they cannot get married out of their own will, so their suicides are to accomplish their love¹⁹; while some other researchers believe that Naxi love suicide tradition is rooted in the native Shamanist beliefs that to obtain eternity in dying for real and complete love²⁰.

I would argue that, both of the two factors that work for Naxi suicides work for Xixia as well. But I would also like to point out that, the patriarchal system other than Confucian or the sinicization might be a more accurate factor in Xixia's case. And I have to start my discussion from the female agency in love suicides.

¹⁸ Yufei Shen, “A Study on Rites of Religious Die-for-Love of Naxi Nationality,” *Guizhou Ethnic Studies* 28, no. 120 (2008): 101–7.

¹⁹ Fuquan Yang, “Change of Political Systems and Dying for Love,” *Journal of South-Central University for Nationalities (Humanities and Social Sciences)* 25, no. 5 (September 2005): 5–9. Qiliang Wang, “The Formation of the Non-Formal Institution and the Failure of Law: An Interpretation of the Naxi's 'Dying for Love' from the Perspective of Legal Anthropology,” *Journal of Yunnan Nationalities University* 23, no. 5 (2006): 65–70.

²⁰ Shen, “A Study on Rites of Religious Die-for-Love of Naxi Nationality.”

Female agency

One of the most noticeable fact from the suicide code in Tiansheng Code is, females will be punished more severely in a complete love suicide. Even if they've died their parents have to bear the punishment of 13 lashes; in case the dead women had been married (of course she committed love suicide with someone else other than her own husband), her parents also have to repay the bride-price they'd got to her husband. And meanwhile, the only punishment for her male counterpart, is to have his dead body disposed away from his dead lover.

The Tangut legislators obviously are supposed to make such a law out of certain reasons, then what are the reasons?

We can try to answer this question from looking into the Xixia female images.



Picture: Xixia buddhist supporters, left for female, right for male;²¹

Comparing to the general slim and delicate image of Han women in the traditional portraits, Xixia women in this picture are portrayed tall and robust, even in comparison with the male portrait next to them these Xixia women is no less fragile. I tend to believe the painting has revealed the truth in Xixia society, based on the what the historical resources have described as Xixia women.

First and foremost, Xixia women are not inferior to men in all senses. They have fought as warriors in the battles; they have been employed to take revenge by burning down the one's

²¹ Tsugio Mikami, *Dunhuang Xixia Exhibition* 『敦煌・西夏王国展』図録 (Tokyo, 1988).

houses²²; they are even able to do the same job that is traditionally done by men in the winemaking industry. Even in the Tangut script, the word for 男女 is written with 女 ahead of 男! Shi Jinbo believes that it is a legacy of the matriarchical system that Tanguts have been with in ancient time²³.

However, in a society where women enjoy their agency in almost all senses, they can't choose her own husband out of her own wishes. They are virtually warriors with great power and creativity, but they are still suppressed by their male counterparts due to the fact that they are not the one who made and patroned the country---the male military force.

In this way, I have to argue that the fundamental reason for women in Xixia leading men to commit love suicide, is the patriarchy that constrains them everafter the matriarchy disassembled.

Lastly, we will end up our discussion by reading another observation made by Peter Gullart about Naxi women. From which we can depict our own picture of Tangut women in 1000 years ago.

Continuous manual work was the women's lot. They did not revolt; they did not even protest. Instead, silently and persistently like the roots of growing trees, they slowly evolved themselves into a powerful race until they utterly enslaved their men. They learned all the intricacies of commerce and became merchants, land and exchange brokers, shopkeepers and traders. They encouraged their men to loaf, lounge and to look after the babies. It is they who reaped the golden harvest of their enterprise, and their husbands and sons had to beg them for money, even if only a few pennies to buy cigarettes. It was the women who started courting men and they held them fast by the power of their money. It was the girls who gave their lovers presents of clothes and cigarettes and paid for their drinks and meals. Nothing could be obtained or bought in Likiang without women's intervention and assistance.

.....

Likiang women had developed superior physical characteristics. The women became tall and husky, with great bosoms and strong arms. They were self-assured, assertive and bold. They were the brains of the family and the only foundation of prosperity in the household.

.....

²²有力小不能复仇者, 集壮妇, 享以牛羊酒食, 趋仇家, 纵火焚其庐舍. 俗曰, 敌女兵不祥, 辄避去; from *The History of Liao 辽史*, vol. 115, n.d.

²³ Jinbo Shi, *Tangut Society 西夏社会* (Shanghai: Shaanxi Renmin Press, n.d.). p747

Thus the women in the little Nakhi world were despised creatures in theory but powerful and respected in practice. Men were the privileged beings, but weak and of little account in the economic life. Even in physique they seldom appeared the equals of their husky mates. When young, they sponged on their mothers and sisters and spent the time in picnicking, gambling and dalliance. When old, they stayed at home, looking after the children, talking to cronies and smoking opium. Like drones, they would have quickly died of starvation had their wives stopped the money-making.²⁴

2.3 Conclusion

Love suicide in Xixia attests to Durkheim's argument on altruistic suicides among primitive societies. In Tangut case, the indigenous belief in a heaven for love suicide is the most significant factor that leads to the love suicide fashion. And such a fashion in state-era, turns a problematic issue which needs to be governed and corrected.

Here I have to argue that, love suicide in Xixia is not a result but a holdback to nationalization. The tolerance of altruistic suicide ends up when the tribal society starts its nationalization since a tighter control is generally what nationalization brings. For Tanguts, such control represents in two ways:

1. The militarization. The founding of the country Xixia is based on military forces. According to this research, the most influential factor that has contributed to Xixia's prohibition of suicide is the militarization of the society.
2. Nationalization brings a transformation onto basic social relations such as family and marriage. We can see the legislators' intention in volume 8 of Tiansheng Code to transform the old conventions 移风易俗. In fact, volume 8 aims to strike on the old tribal customs and set up new social institutions.

On the other hand, the religious belief and social customs in Tangut tribal era function as a positive relevance to suicide; whereas after entering into the state era, the authoritarian government tried to build new social orders through eliminating the old tribal customs, for the better strengthened social control and social integration, hence came out the suicide-prohibition law. The loose control in the tribal era therefore contrast clearly to the tight and

²⁴ Peter Goullart, *Forgotten Kingdom* (London: READERS UNION • JOHN MURRAY, 1957).

institutionalized social control from a military authority, and such contrast is revealed through suicide legislation.

The Tangut females, who have been brought up tough and capable, gradually became the subject to a more refined patriarchal system. The only way for them to realize a more equal world is by sinking into their native beliefs in the heaven. Therefore, they assert their agency in encourage their lovers to commit love suicide with them, they initiate the love suicide tradition in Xixia.

On the other hand, the Tangut reality we've found above provides us with a scope to observe and understand the development of suicide legislations among northern ethnic groups: from this perspective we can see that the way people in the tribal era viewing and dealing with suicide will shed great influence on the suicide legislation in the state era; however, it is the interaction between the tribal cognition with the political and social background in the new era of state that explains why such suicide legislation was set up.

3 Suicide legislations in Xianbei era

3.1 Introduction

Xianbei, in fact, built the first conquest dynasty in China---Northern Wei. Being a major dynasty other than a regime that existed for merely a couple of years, Northern Wei grew out of the dozens of alien kingdoms in the Age of Division, or the so-called Sixteen Kingdoms, from a tribe that had almost vanished to an empire that covered not only north China but also the most part of the steppe south to Rouran.



Picture: China in Northern and Southern Dynasties, source: China Historical Atlas²⁵

When Tuoba Shiyijian 拓跋什翼犍 started to build palaces and nominate administrators in Pingcheng 平城 in 338AD, he probably had never imagined his nomadic tribe-state would one day grew so huge and influential that, out of which the world empire Sui and Tang would

²⁵ Qixiang Tan, *The Complete Map in Northern and Southern Dynasties 南北朝宋、魏时期全图*, n.d., n.d., http://ccamc.co/chinese_historical_map/.

be born²⁶. Xianbei belonged to Eastern Hu (Donghu 东胡) ethnic groups but was closely related to Xiongnu 匈奴, to a degree that Tuoba 拓跋 Xianbei was believed to have “Xianbei father Xiongnu mother”²⁷. Recent researches based on DNA analysis have revealed strong genetic affinities between Xianbei and Xiongnu populations and thus attests to this inner Asian connection that comes from the nomadic way of life²⁸.

There are several Xianbei clans that have left their names in history: Tuoba, Murong, Yuwen, and even Tufa of the west, which is believed to be the origin of Tanguts²⁹. In total they had built 8 regimes, including Southern Liang, Western Qin, Northern Wei, Eastern Wei, Western Wei, Former Yan, Later Yan, and Southern Yan³⁰. But when I mention about Xianbei in this study, most of the time I’m referring to Tuoba Xianbei which built Northern Wei, since Tuoba is the starter and the core of the later northern dynasties. The Tuoba clan had primarily “ruled the north of Youdu, the wilderness of the desert, herding the cattle and making a living by hunting with arrows³¹”. And Xianbei people enjoy a nice fame of being masters of archery.

Like other steppe ethnicities, Xianbei tribes had led a typical nomadic life, they “were divided into collections 邑落, which included around twenty households and each with about one hundred people; the collections 邑落 were then divided into sub-collections 落 that covered two or three households, located across the grassland like stars”³²

However, since Tuoba Shiyijian set up the kingdom Dai in 338 AD, Xianbei has started to get involved into Chinese politics. Later the regime grew to be the overlord of the north and Emperor Xiaowen decided to move the capital from Pingcheng to Luoyang, the traditional Chinese capital. and this move marginalized the military forces in the northern border and eventually led to their revolt and Northern Wei was broken apart into the Eastern Wei and

²⁶ Charles Holcombe, “The Xianbei in Chinese History,” *Early Medieval China* 19 (2013): 1–38.

²⁷ For another ethnic group called Tiefu Xiongnu 铁弗匈奴, the origin is Xiongnu father Xianbei mother 胡父鲜卑母, recorded in *Wei Shu* 魏书 vol. 95

²⁸ “Genetic Analyses on the Affinities between Tuoba Xianbei and Xiongnu Populations,” *Hereditas*, no. 10 (2007): 1223–29.

²⁹ Holcombe, “The Xianbei in Chinese History.”

³⁰ Holcombe.

³¹ 统幽都之北，广漠之野，畜牧迁徙，射猎为业。Shou Wei, *Wei Shu* 魏书, vol.1.

³² Egami Namio, *The Regimes of Horse-Riding Ethnicities 骑马民族国家*, trans. Chengzhi Zhang (Beijing: Guangming Daily Publishing House, 1988).

Western Wei, and then Northern Qi and Northern Zhou, then eventually Sui and Tang. Northern Dynasties is the name given to this series of regimes. The Xianbei factors which kept being prominent until Tang can be traced in two perspectives: first, the royal family of both Sui and Tang were of Xianbei origin; second, also the most important, the institutions of Sui and Tang are built on the Northern Dynasties foundations.

3.1.1 Xianbei traditions and customary law

Xianbei in generally, live in a society that is heavy featured with altruism, “highly praise those who die in the wars”俗贵兵死, “despise the old while value the strong”贵壮贱老; the culture is based on Animism and the people are deeply religious, to a degree that they pray before each meal; they seem to have had a ceremony called *burning meals* 烧饭, which is to burn up all the sacrifice after the sacrificing ceremony, a ceremony that aims to send all the sacrifice to the dead through fire. This custom of 烧饭 is interesting if we realize that the similar or even the same ceremony is practiced among Khitan and Jurchen as well³³.

As for the marriage custom, Xianbei youth enjoy the real autonomy, they are free to choose their spouse as long as the man can afford the bride-price to the woman’s natal family. Even if he cannot afford it financially, he will still be allowed to serve for 3 years in the natal family, which is called Servant marriage 仆役婚; levirate, as in other inner Asian groups, is practiced to guarantee the clan’s the property and labors. Women enjoy a status that is no inferior to men, since women virtually take all kinds of living and producing activities, even the war.

As for the criminal law, since there weren’t written criminal laws until 388AD, what we are talking about here is how customary law dealt with killings or hurting. From which we can try to infer the attitude Xianbei holds toward life and killing. The Three Kingdom 三国志, describes Xianbei as “so fierce and tough in nature that can kill his own father or brother out of rage, but will never hurt his mother because his mother’s natal clan will take revenge for her while his father’s clan won’t, since they are his own clansmen”. It is easy to understand that Xianbei doesn’t dare to kill his mother due to the fear that it will bring revenge from her natal clan, while it’s not easy to understand why they won’t get revenge from his own clansmen. It seems that the logic behind goes like, you bear the loss if you kill your own

³³ Pujiang Liu, “On Khitan Human Sacrifice 契丹人殉制研究,” in *History Writings on Song Liao Jin 宋辽金史论集* (Beijing: China Books Company, 2017), 59–95.

father or brothers, therefore no punishment will shed on you. However, economic consideration might be a better reason. In nearly all the inner Asian groups, the life-price 赔命价 system is accepted. In this system, life is seen as an entity of production, therefore once a man got killed his family will expect to get some livestock as substitute for their loss. Then when a man kills his own father or brother, whom should he compensate on? Therefore, there won't be any punishment.

Then what if one kills himself? The answer is that it's very likely that there won't be any punishment or blame for him, either.

3.2 Suicide phenomenon in Xianbei tribal era

As what we can see in Tangut part, as the state power in Xixia get consolidated, the inference from the state to the individual life also get intensified. Some customs or even laws and beliefs in tribal era need to be corrected and governed in state era. In this way, there comes the struggles between the habitual ways and the new standards, since the native customs surely will continually linger along and assert influence on legislations. In the case of Tangut suicide legislation, Tangut people's innate religious beliefs in the afterlife, plays a key role in promoting the custom of love suicide; on the other hand, the authoritarian military sovereign assert a rigorous control over individuals, thus there comes out the suicide-prohibited law.

Then back into Xianbei history, how did people in the tribal era perceive suicides? How did such perception set an influence onto the legislations in the state era?

3.2.1 Suicides among Xianbei tribes

What kind of picture can we draw on the suicide phenomenon among Xianbei people? It's not an easy question, because we don't have direct resources to look into for a definite answer.

In Wei benji 魏本纪 of History of the North 北史, there is a short story about emperor Tuoba Shiyijian 拓跋什翼犍, who has virtually built the state Dai 代国. Shiyijian is believe to be a wise emperor in the primary state era, and in the following story he also shows his kindness and soft heart.

Back to the 4th century AD, silk products are supposed to be very precious, and especially for Dai, which at that time is no other than a tribe in the cold north where life is hard and in lack of materials. Xuqian 许谦, an official of Han origin, who actually has played an important part in building the regime Dai, since together with another Han minister Anfeng 安凤 they even set up the first written laws for Xianbei. Xuqian, however, once stole two sets of silk and the stealth was reported to emperor Shiyijian. The emperor, instead of being glad to catch such an indecent crime (stealing is not seen a light crime in inner Asian traditions³⁴) from his Han minister, or being ready to punish him, tried very hard to conceal the crime.

The only person he referred the problem to is his henchman, and we can sense out of his words his agony in trying to hiding his feeling:

“I can’t stand seeing into Xu Qian’s eyes since I’m afraid that he would probably kill himself because of the shame. Therefore, please keep it (the stealth) secret. It’s not right to insult a man for the goods.”

The story was written down to show the kindness of emperor Shiyijian, whereas discloses a fact inadvertently: decent people will kill themselves easily to show his dignity. And for such suicides there is not only no prohibition from the law, there is even no condemnation of any kind in moral level. If we notice how cautiously when Shiyijian has dealt with Xu Qian’s stealth, we can reach to the idea that for those who are with dignity, killing themselves out of shame is seen as nothing but natural. Xu Qian is of Han origin, as his biography in Wei Shu 魏书 has recorded. Therefore, here comes the question: does this fashion of killing oneself for dignity exist merely among Han Chinese or be a universal phenomenon among both Han and Xianbei, if not among all the peoples in the north.

Zhao Yi, a historian in Qing dynasty, defines the most prominent feature of the East Han society as “make light of one’s life and value integrity”. Throughout the East Han era, people acted like not valuing life but dignity, face or morality. In a tale recorded in “In search of gods” 搜神记, a man had to face with rumors that accuses him being incest by keeping living with his adult sister and both remaining single; the siblings eventually killed themselves in front of the county government to prove their innocence.

³⁴ Yiqi Deng, *Beichao Fazhi Yanjiu. 北朝法制研究 Studies on Northern Dynasties’ Legislations* (Beijing: Zhonghua Book Company, 2005).

Compared to Han dynasty, the post-Han era has witnessed even more violence since the warfare seems to never stop. Therefore the fashion that “despises life and values integrity 轻生尚气” seems not very likely to be terminated. On the contrary, violence has even enhanced the “life contempt” fashion. Suicide, turns out to be one of the less violent ways comparing to all the wars and brutal fights that happen casually in the Age of Division. Along the Sixteen Kingdoms’ history, records of suicides are numerous, and virtually all the ethnic groups of north origin have seen quite a few such cases. When Xianbei’s northern neighbor that had also been its hereditary enemy---Rouran 柔然 got broken by the Turks, the chief man Anagui 阿那瑰 killed himself.

Based on the discussion above I’d like to conclude that, the impulsive fashion that has terrified emperor Shiyijian exists not only among Han, but also common to Xianbei and other inner Asian groups. Due to its traditions, religious beliefs, as well as the altruistic social features, Xianbei primarily holds no objection or prohibition toward suicide. Moreover, if we can switch our focus to some other ethnic groups that may culturally or genetically related to Xianbei, we are supposed to obtain more insight.

Anthropological observation around the 19th century can lead us to know more about the suicide phenomenon among peoples who reside in Hyperboreans. “*where it is the least rare is impossible to tell, but I am inclined to the opinion that it is most frequent among the Hyperboreans and the North American Indians.*”³⁵ In general, most Hyperboreans have no specific social, moral or legal restrains on suicidal behaviors³⁶. With their tribal way of social construction, their social control is obviously weak. Xianbei, therefore, is very likely to share a similar attitude with those Siberian or Hyperboreans toward suicide. But we also have to notice that it is only the case in the tribal era and the early stage of state era.

Pre-xianbei era suicide legislation in china

There is no suicide legislation in the early stage of xianbei state era, as we can see from Emperor Shiyijian’s reaction to the possible suicide of his minister.

³⁵ S.R Steinmetz, “Suicide among Primitive Peoples,” *American Anthropologist* 7, no. 1 (1894): 53–60.

³⁶ Steinmetz.

Then do they have suicide legislation when xianbei united north china and build up a central government which develops an authoritarian governance? In order to answer this question, we have to first of all see the legislations of that era in general, then have further discussion based on the social and political background of that era. But before that, we have to figure out whether china has suicide legislation before xianbei comes into play.

Furthermore, does the era see high suicide rate? What kind of typical suicide do they have? How does suicide relate to the social, political and cultural factors of that time? Thus how does xianbei state see and deal with suicides?

3.2.2 Suicide legislation before Northern Wei

There is obvious lineage and consistence among legislations in different dynasties in china. The code of Han is the heritage of The code of Qin while the blueprint of The code of Jin. Before the xianbeis built up northern wei, the universal law in use is the code of Jin, even though much effort had been put in building more practical legislations from the Sixteen Kingdoms era. while southern dynasties keep using the code of jin, reigns in the north has been keeping trying to develop the legislation for the changing world.

There's no direct record about suicide legislation. However, a case recorded in The Book of Song 宋书 might give us some inspiration on this problem. In this case, a mother killed herself because of her bad relationship with her son and daughter-in-law. And the judge in the end sentenced the son to death, because even though he didn't kill his mother, he is responsible for her death since she killed herself due to his disobedience³⁷.

According to this case, we can infer that there was no suicide legislation by the time of Song era of Southern Dynasties. And the way the judge dealt with such suicide cases, is of no different with the way the judges do in the dynasties that have the *kongpo code* 恐迫条.

3.3 Suicide legislation in Xianbei state

3.3.1 Intimidation law in Tang Code

³⁷ Deng, *Beichao Fazhi Yanjiu. 北朝法制研究 Studies on Northern Dynasties' Legislations.*

The law used for dealing with suicide related case in Ming&Qing era is the Coercing to death law in Ming Code . but scholars have noticed there is an intimidation law in Tang Code, which is similar to the Coercing to death law.

Shen Jiaben noticed their similarity but thinks that they are different: “intimidate to death, is not the same as the person kills himself”³⁸. Xue Yunsheng, also notice their similarity and wondered “ (I) have no idea why Ming Code didn’t copy (the intimidation law) but set up this (coercing to death) law” , in this way Xue shows his consent on using intimidation law to deal with suicide cases. Tsuda Yoshiro³⁹ in his *The origin of Coercing Law 明律威逼人致死条之渊源*⁴⁰, discusses the similarities between the two; by discussing how intimidation law has been applied in suicide related cases before Ming, he believes the origin of coercing to death code in Ming Code can be traced to the intimidation code in Tang Code.

3.3.2 Is Tang Code the first to set up Intimidation Law?

Tang Code is the foundation of later Chinese legal system, with an influence beyond china. By tracing the coercing law of Ming Code to the intimidation law of Tang Code, Dr. Tsuda horo shed a deeper understanding on Chinese legal attitude to suicide and the emotional logic behind along history; Tang Code is clear and complete with all the legal items well reserved, while all law books of pre-Tang dynasties have all been lost, therefore for Dr. Tsuda it is academically discreet to trace to Tang Code. However, with the awareness that Tang Code is essentially the heritage of North Dynasties’ legal construction, it is easy to raise a question: Is Tang Code the first law code that set up the Intimidation Law? Is it possible that the law codes of Northern Dynasties or Sui Code first set up the Intimidation Law?

To answer this question, the first challenge we are facing is the lack of direct resources, since all the codes of northern dynasties as well as Sui Code have been lost. Moreover, it seems unnecessary to check whether they have intimidation law in northern dynasties and Sui. After all, northern dynasties are an era of transition and nothing seems steady or mature.

³⁸ Jiaben Shen, *Li dai xing fa kao*, Di 1 ban (Bei jing: Zhong hua shu ju, 1985).

³⁹ 津田芳郎 is the real name for the written name 高桥芳郎

⁴⁰ Hoshiro Tsuda, “On the Origins of Coercing Law in Ming Code 明律威逼人致死条的渊源,” *Dongyang Xuebao 东洋学报*, 3, 1981.

I see this question in a different way.

First of all, it is very likely that the Intimidation Law is set up before Tang and Tang Code just retains the law like the way they do with most of the items. According to Cheng Shude, Tang Code is actually Northern Qi Code; even though Northern Zhou Code is proved to be underestimated in terms of its influence on Tang Code; according to Dr. Niida Noboru, Tang Code is built upon the blueprint of Sui Code 以隋律为蓝本誊抄出来的⁴¹.

More importantly, the background and motivation of setting up the Intimidation Law remains unclear if we don't search further on when and why it is set up. If it is true that Tang Code first introduced the Intimidation Law, then why did this happen? What is the social significance of this legislation? Did Tang dynasty meet a different social circumstance with that of its previous dynasties? Which group of people is the target of this law and why should it be put into use?

All these questions remain unanswered but of significant meaning for us to truly understand the Intimidation Law---the first suicide legislation in China.

Therefore, in the following section I will explore the possibility of setting Intimidation Law before Tang Code, in search of the law's legal target and social significance, also in the hope of figuring out the possible Xianbei influence in setting this law.

3.3.3 Who set up the Intimidation Law?

Since we can confirm that there is no intimidation law in as late as Jin Code, and due to the backward situation of Southern Dynasties in legislation development, the suspects of setting up the law fall onto heads of Northern Wei, Northern Zhou, Northern Qi and Sui Dynasty. All of these dynasties have put great effort in legislation constructions and the law codes in all these dynasties have so close connection to Tang Code in both content and format that it seems they all have the suspicion in creating the Intimidation Law.

We have to go back to the law itself at first.

3.3.4 The word origin of Kongpo 恐迫

⁴¹ Noboru Niida, *Chinese Legal History 中国法制史* (Shanghai: Shanghai Classic Publish House, 2011).

Kongpo is the emphasis of “intimidating people to death” . when applying to this code in reality, the first step is to confirm the “intimidation” exists. there are two codes related to “intimidation”, one is in “zeidao”of volume 18, the other in “duanyu”of volume 30.

Table 3. Intimidation Law in Tang Code

Items of law	Official explanation
V18 Insert items into holes like ears/eyes; intimidate people	intimidating people, means frightening and forcing people which makes them terrified and therefore leads to their injury or death
V30 Beat people with sticks to death; intimidate people to death	on behalf of trialing, jailors and janitors frighten or coerce the prisoner which makes the latter terrified and take their own lives

Kongpo in vol.18 is interpreted to “frightening and forcing” and in vol.30 it is “frighten or coerce”, even though there is no difference in the nature of these two explanations. Compare to other items in vol.30, kongpo is the only terminology that gotten an explanation on its meaning. In fact, kongpo is not a common word in chinese. It is a combination of two single words: kong(恐) and po(迫), and is not commonly used in ordinary life.

Kongpo, as a combined word, first appeared in the Chinese translation of *大百度经* in the east-han era:

必深法心中，不满热嫌其为苦也，必欢喜受此法，不以恐迫，故受此法强学之也。不为疲，不以为劳也。不息者，不懈也。 To learn the way of Buddhism one has to do it out of real passion, not out of frightening or being forced.

In *佛说菩萨行五十缘身经* Kongpo is also used:

不以钱财故恐迫人 don't frighten or force people because of money.

Among all the written resources, kongpo as a word appeared exclusively in the Buddhist text. Therefore, Kongpo is probably a Buddhist item at first. The Tang government tried hard to lower down the Buddhist influence on the society, therefore for Tang legislators to set up a new law with a title related to buddhist influence is less possible.

But during the era of Jin and northern&southern dynasties, Buddhism shed such huge and deep influence on every aspects of the society that not only oral language but also legal language has got a Buddhist penetration. Therefore, it's very likely that *kongpo* was put into

the law code in these dynasties, before Tang. The problem is, except for the Wudi of Northern Zhou, all the other emperors in northern dynasties were pro-buddhism. It's hard to say who is the genesis.

3.3.5 Forced suicide in Northern Dynasties

The purpose of the Intimidation Law is to claim justice for a person's death or injury which isn't brought about out of his/her own will but results from others' forcing or threatening actions. The law has been used for dealing with suicide cases in which there are identified "intimidation or coercing" in the later history, to call the intimidator to account.

Therefore, if see this problem in a contrary perspective that we try to look into the "forced suicide" cases along northern dynasties' history, we will probably get more insight.

Table 4. Forced suicide cases in Northern Dynasties

Dynasty	Intimidator	Sufferer	Sources
Northern Zhou	Yuwen Hu	Li Yuan	Vol. 59
Northern Zhou	Yuwen Hu	Houmochen Chong	Vol. 60
Northern Zhou	Yuwen Hu	Heruodun	Vol. 68
Northern Zhou	Yuwen Hu	Dugu Xin	Vol. 61
Northern Zhou	Emperor Wen?		Vol. 98
Northern Wei	Emperor Xiaowen	Empress You	Vol. 13
Northern Qi	Empress Hu	two concubines	Vol. 14
Sixteen Kingdoms	Murong Bao	Empress Duan	Vol. 93
Sui Dynasty	Emperor Yang	Daoheng	

There were 9 records on forced suicide in the History of the North (北史), of which 5 cases took place in Northern Zhou and the rest 3 distribute evenly over all the other dynasties--Northern Wei, Northern Qi and Sui; one exception happened in the Sixteen Kingdoms era with the protagonists being Xianbei.

It is noticeable that in Emperor Xiaowen's time, most of the officials who are found severely guilty can "kill himself at home" instead of being executed. Forced suicide was

almost an official penalty that along Emperor Xiaowen's time “是后大臣有罪, 皆自杀不受刑”, but “恩发于衷, 未著永制”; Li Biao, an official in Xiaowen's time believes that Emperor Xiaowen is following the example of Emperor Wen of Han dynasty to show his mercy and respect for officials.

Buddhist, victim of “forced suicide”, legislator---there is a person who bears all the features above: the founding father of Sui, Emperor Wen of Sui.

Yang Jian: A Buddhist Emperor

First of all, the founding father of Sui and his family are devout believers in Buddhism.

Yang Jian was born and raised in a devoted Buddhist family. He grew up in a Buddhist temple and even his Chinese name Jian 坚 is closely related to the Buddhist term “Nryana”, which was given as his name by a nun who saved his life at his birth; Nryana, means 金刚力士 or 坚固力士 in Chinese, it seems 坚 is a translation from this Buddhist term.

Yang Jian's empress, Dugu Jialuo 独孤伽罗, was also named with a Buddhist term.伽罗 can be seen frequently in Buddhist cannons. As a Sanskrit borrowed word, Jialuo means “Tagara”, the Indian Valerian. In fact, Empress Dugu is not the only one in her natal family who got a Buddhist name, her brother 独孤藏 were nicknamed 达摩 while another brother 独孤善 were nicknamed 伏随, and the two names are clearly related to Buddhism. Therefore Luo Xin and Ye Wei believe that Jialuo 伽罗 is also a Buddhist name rather than a Xianbei name.

Moreover, the royal couple hold Canon Preaching Meeting 听经会 every month in the palace, build Buddhist temple for the great monks, and even call themselves the “son-disciple” and “daughter-disciple” of Master Chongtan 崇昙.

Secondly, Yang Jian loves his empress deeply. The ten children of the emperor were all born by Empress Dugu; it is said that the couple “took an oath promising to have all their children come from the same mother” 誓无异生之子, which is really uncommon along Chinese royal history. The couple were so affectionate and devoted to each other that they not only share their beliefs in Buddhism, but also consult from each other in governing the country. They

were called “two holiness” at the time, from which we can see the power and influence of Empress Dugu.

The death of the Emperor’s father-in-law

As we can see from table 1, empress Dugu’s father Dugu Xin was forced to kill himself under the pressure from Yuwen Hu. Empress Dugu was only 14 years old at the time and his father’s death was just around the time she got married to Yang Jian. History of North records her sorrow ---“the empress lost her parents at an early age that she fills herself with everlasting sorrow and yearning”.

What’s more, the oldest daughter of the couple---Yang Lihua, who was the empress of Emperor Xuan of northern Zhou, was once forced by her husband to kill herself⁴². In order to save her daughter, Empress Dugu went to kowtow to Emperor Xuan in the palace, to a degree that the blood that ran out of her head couldn’t be stopped.

Forced suicide, the ostrich-play of killing, must have brought deep pains to the couple. And it is reasonable to infer that such painful personal history might shed a delicate influence on the terminator of northern dynasties---to the extent that they might set up the Intimidation Law. And in choosing the terminology Intimidation 恐迫, we can sense the Buddhist influence on the legislators.

It is not uncommon that the personal experiences of legislators’ lead to the creation of some laws. In Yang Jian’s case, Kaihuang Code---the blueprint of Tang Code as well as a code that was virtually built upon Emperor Wen’s will---was deeply influenced by the Buddhist belief of Yang Jian.

With a discussion on the connection between Buddhism and Sui, Buddhism and Kaihuang Code, Zhou Dongping believes the terminology “the ten sins” 十恶 comes from the Buddhist term Ten Sins 十恶 rather than the “ten items of severe crimes” that is recorded in Northern Qi Code 北齐律⁴³.

⁴²帝大怒，遂赐后死，逼令引诀

⁴³ Dongping Zhou, “On the Origins of the Ten Sins in Kaihuang Code of Sui 隋<开皇律>十恶渊源新探,” *Legal Research 法学研究*, 4, 2005, 133-37.

Yang Jian, in this way becomes a great suspect in setting up the intimidation law.

Even if legislators can have a direct influence in setting up certain laws, laws in general are not out of anyone's subjective needs or fancy but of reflection of a society's problems.

Legislation is an instrument that subordinates to politics; however, laws not only reflect the political needs but also the needs of the era and the society.

Qu Tongzu in his book Chinese law and Chinese society concludes that, "laws in any society are set up to maintain and strengthen their corresponding social system and social orders.

Only if we can fully understand the background in which a certain law is established, can we know the meaning and effect of the law.

In the case of intimidation law, if we want to know the time the law was created, we have to first of all know why it is created and what the social problems it was supposed to solve.

What is the offset political needs? What is the social background? And how did the cultural factor influence on it?

Sui&Tang is the outcome of Northern Dynasties. Gone through numerous wars and ethnic mingles, northern dynasties reached to an intensified and strengthened imperial authority, from which bore the unified and authoritarian Sui&Tang institution. Kaihuang Code of Sui, as well as Tang Code, are both institutional means ensuring such authoritarian governance. For the authoritarian imperials, threats come from two perspectives: nobles and ministers in the central government level; powerful aristocracy families in the local administrations.

To enforce the imperial control in both central government and local society, the emperors in Northern Dynasties had, from a very early age, put in great effort, which is clearly much more than that was put in the south. No doubt that it is the north that unified China in the end, with a more efficient authority.

Tian Yuqing, in his An Exploration of the Tuoba History, discussed the two policies that showed the primary effort the Tuoba emperor had put in strengthening the imperial power: separating the tribes and matricide of the prince. Separating tribes is to weaken the power that the tribal nobles have on their tribe members, to rob away the tribe members' loyalty to their tribal heads and transfer the loyalty to the Tuoba emperor; while matricide of the prince is to avoid the natal clan's influence on the court. Both of the policies aim at weakening the original power system in nomadic era and building the absolute power of Tuoba imperial

family⁴⁴. Later in Emperor Xiaowen's time, to strengthen the authoritarian control over the Han areas, the emperor strived to carry out Three-old-system 三长制 and Equal-field-system 均田制, to shed the government's direct control over individuals, in both administrative and economical level.

均田制 made it possible for people to have their own land and to tax directly to the government other than the local aristocracy families. The government thus shed direct control over local issues, weakening the power of local powers and built the absolute authority over the society.

3.4 The nature and severity of “Intimidation Law”

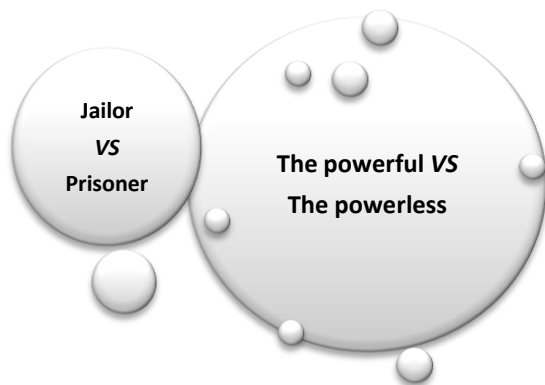
There are two Intimidation Laws in Tang Code: in Judging&Jailing Code, and Rebels&Robbery Code respectively.

For the Intimidation Law in Judging& Jailing Code, the legal aim and targeting group are very clear---to monitor judges and jailors in exercising their power legally and reasonably, preventing them from torturing criminals excessively; Jailors and prisoners, formed a “strong--weak” contrast which makes “coerce” possible;

Based on this “prison” model, we can infer that the Intimidation Law in the Rebels& Robbery Code also need a “power contrast” to make the “coerce” possible---it is set up to monitor the more powerful groups in a larger extent: the whole society. Then who are the “powerful groups” referring to? Who are the “Intimidation Law” targeting at? If we can answer this question, we will be able to speculate about the social and political background under which the law was created, and eventually the era and time it was created.

⁴⁴ Yuqing Tian, *Tuoba Shitan 拓跋史探* (Beijing: Sanlian Bookstore, 2011).

Chart . A world order according to northern dynasties legislators



3.4.1 Rebels and the Rebel Law

There are 4 volumes in the Rebel&Robbery Law, of which volume 17 and 18 are rebel laws while volume 19 and 20 are robbery laws; the Intimidation Law is listed as the first item of volume 18.

The character 贼 in 贼盗律 the Rebel&Robbery Law doesn't refer to thieves as in modern Chinese, but severe crimes such as rebels. Cheng Shude believes that 贼 refers to “rebels and homicides 叛逆杀伤之类” ; however, crimes such as frauds, rebellions and surrenders are all seen as 贼 since these crimes carry stronger elements of malice than that in ordinary killing or hurting; therefore, 贼 crimes generally bring much higher perniciousness to the society and “贼 crimes are seen as the biggest threat to the regime, thus the core target of the laws” .

The rebel 贼 crimes were all listed below:

Crimes in Volume 17

248 Rebellion

249 property disposition after collective punishment

250 remarks on rebelling but no actions

251 rebellion and exile

252 murder magistracies or officials ranked higher than grade 5

- 253 murder elder relatives; murder the lower and the young*
- 254 slaves murder the owner and owner's relatives*
- 255 wife murders ex-husband's father or grandfathers; slave murders ex-owner*
- 256 homicides*
- 257 prisoner robbery or theft*
- 258 keeping hostages*
- 259 killing 3 members of a household; dismembering people*
- 260 secret settlement on father being killed*

Crimes in Volume 18

- 261 put articles into people's ears noses or other holes; Intimidate people*
- 262 make venoms out of animals*
- 263 poison people; feed people with poisonous meat knowingly*
- 264 make renvofitement and magic figures or curses to kill*
- 265 expel the amnestied murderers out of the hometown*
- 266 mutilate corpse; abandon corpse into rivers*
- 267 dig out corpse without burying; burn the coffin when besmoking foxes*
- 268 make up, spread heresy or evil doctrines to mislead the mass*
- 269 break-into one's house not for infringement; intruder got killed or injured when the owner knows he intends no harm*

The Intimidation Law, as the first item of volume 18, is supposed to be the severest crime of volume 18; since rebellion in volume 17 is ranked first and doubtlessly it is the severest crime of all the 賊 crimes; the ranking system in this way, should be based on the severity of the crimes.

Crimes in volume 17 are direct defiance toward the regime, the authority and the social hierarchy, while crimes in volume 18 are mainly sorceries and evils that are not easy to detect;

crimes in volume 17 are severer than those in volume 18 in terms of their social hazard, and they are also more violent and direct;

However, crimes in volume 17 are vicious enough that code 262 “making venom 造畜蛊毒” and code 264 “making renvofitement and magic figures or curses to kill 造厌魅及造符书咒诅欲以杀人” are classified as “ten evils 十恶”; and for code 268 “make up and spread heresy or evil doctrines to mislead the mass 造袄书袄言及传用惑众”, even though the crime itself is not one of the “ten evils”, the punishment to it is quite heavy ---hanging, which is the same to that of making venom or making renvofitement , since “make up and spread heresy” is seen to be of great undermining to the regime;

Therefore, crimes in volume 18 are also very severe crimes that were considered undermining the foundation of the society and the authority, only less violent but trickier compared to those in volume 17;

In this sense, volume 18 are closely related to political crimes. According to Northern Dynasties histories, most of the crimes in volume 18 can be seen in political upheavals and conspiracies, thus being widely used in the power conflicts of the ruling class ; code 263 “poison people 以毒药药人” even becomes the most frequently-used means in killing bureaucrats or even emperors ; however, as researches show, venoms, poisons and sorceries are all scarce resources that can only be approached by upper classes in early Chinese history, and it was still the case even in Tang dynasty . Therefore, no surprise that these means are most-used in political conflicts. Volume 18 in this sense is a complement to volume 17, aiming to maintain the authority and guarantee the ruling class’ benefits, thus full of political significance.

Then as the top crime in volume 18, how does the Intimidation Law relate to politics? In fact, we cannot read out the political implication between the lines of Intimidation Law; and one of the most obvious reasons for the Intimidation Law being ranked top seems to be the crime’s probable result in death or wounds, which seems more violent and direct comparing to other crimes such as “making venoms” or “poison people” etc.; then how can we perceive the political implication of the Intimidation Law?

Qian Daqun points out that, only when the intimidation results in death or injury can it be applied to the code. however, death or injury is necessary but not sufficient condition; to

apply to the intimidation law, first and foremost, intimidation itself should be identified. In cases that applied to the Intimidation Law in both northern and southern Song, there always exist great disparities in either social class, social status, or power and influence between the opposite parties⁴⁵.

And besides this, since the Coercing Law in Ming Code descends from the Intimidation Law in Tang Code, we can also reference to the application of the Coercing Law in Ming and Qing cases in order to get more insight on the Intimidation Law. In the novel *The Golden Lotus*, after the maid Huilian hanged herself, her father planned to accuse her master Ximen Qing of coercing her daughter to death.

Therefore, I'd like to argue that both the Intimidation Law and the Coercing Law aim to restrain the stronger and higher groups of people, especially local powers; as in the "jailing model", legislations function as a monitor and regulation on jailors behavior, to defend the basic human rights of prisoners'; with the Intimidation Law, a power triangle is built among authorities, powerful jailors, and powerless prisoners; then in social level, the power triangle is built among the authority, the powerful local powers, and the powerless individuals. The authority, in this sense, admit the unbalanced power status between the local powers and the lower class or weaker individuals, and put itself on a position to oversee and arbitrate.

Deng Yiqi in his book *A Study on Northern Dynasties Legislations* explained on the Chinese tradition of '*valuing the authoritarian central government, while restraining local clans and overlords*'; Chinese history sees the great development of local landlords' power and influence in the post-Han era; based on the traditional clan system, local landlords obtain power and influence gradually and compete with central government both economically and politically. Therefore, the conflicts between local clans and central authority got really intense. People in northern China, after several hundred years of wars and chaos, are thirsty for a unified and authoritarian regime; on the other hand, the Xianbei reign is born out of a military state which demands highly centralized and authoritarian government; therefore, an authoritarian regime not only reflects a common social and mental need, but also a prerequisite condition for the existence of northern dynasties regimes. Therefore, the legislations in northern dynasties have always focused on maintain its authoritarian.

⁴⁵ Tsuda, "On the Origins of Coercing Law in Ming Code 明律威逼人致死条的渊源."

The primary purpose to set up the Intimidation Law in the 贼 code, therefore aims to maintain the authoritarian system and its fundamental values.

The research object in this chapter is Xianbei who leads the northern dynasties all the way to Tang and leaves its significant influence on almost all the institutions of Tang. Contrast to Tanguts who build its reign relatively independent from china proper, xianbei is the first ethnic group from the north integrating into Chinese politics and society, therefore from all aspects of legal construction---social\political\cultural---shed a contrast from tangut in xixia. The pre-tang legal development which is dominated by the north , is the foundation of tang's legislations. Is suicide legislation part of the development? If so, how does the xianbei elements play a part in it? And how does it interact with Chinese tradition and realities? These are the questions I dedicate to in this chapter.

4 Suicide legislations in Jurchen Jin

Sukiyama shokira once named his book *The rapid-riding pastoralist conquerors*, to define his own version of history of Khitans, Tanguts, Jurchens and Mongols. However, among all these ethnic groups, the Jurchens are the most ‘rapid-riding’.

The Kitans built Liao Empire which last over 200 years; and if the West Liao which was built after the collapse of the empire should be include into Liao’s history, the Kitans have been active for over 300 years. Tanguts, who built Xixia, have played an important part for over 200 years. And for Mongols, even though the Yuan has only ruled China for about 90 years, Mongols continued to play a key role in central Asia in the centuries after Yuan’s collapse.

The Jurchen Jin is the dynasty that shares the shortest history among all the four ‘conquerors’ listed above. In 1115, Jurchens named their country ‘Jin’ and this ethnic group ‘Jurchen’ officially stepped onto the historical stage. Within 12 years the new country terminated both Liao and Song and became the owner of the north.



Map: Territory of Jin in 1142, source: ⁴⁶

⁴⁶ Qixiang Tan, *Jin and Southern Song in 1142*, n.d., n.d., http://ccamc.co/chinese_historical_map/index.php#atlas/15/%E9%87%91%EF%BC%8C%E5%8D%97%E5%AE%8B%E6%97%B6%E6%9C%9F%E5%85%A8%E5%9B%BE%E5%88%E4%B8%80%E5%89.jpg.

then in 1234, with the last emperor hanged himself, the Jurchen Jin vanished and the Jurchens as an ethnic group vanished too.

Moreover, Jurchens are not ‘pastoral conquerers’. They live in today’s Manchuria with diverse lifestyles; in some areas they live on fishing and hunting while in areas which are suitable for agriculture their lifestyle can be very agrarian . But they can hardly be called nomads, as in Kitan, Tangut or Mongol cases.



Jurchens, with such ‘rapid’ history but somehow different features to the typical nomadic culture, have long been underscored in the research area. Various historians in different versions of history of China share one thing in common---spares Jurchen Jin only several lines as if it is not so important as Southern Song. Another important reason for such neglect is due to the limited historical resources on Jurchen Jin. When it comes to the suicide related research in Jin era, the resource available is even more scarce, since both the legal and social research on Jin are limited. As for the research conducted in English, the situation is only worse.

4.1.1 Jurchen studies in general

Herbert Franke is the most influential researcher on Jurchen studies. He and Ho-lam Chan’s co-work *Studies on Jurchen and ...*, as well as the Jurchen part of *Cambridge Chinese History* volume 6 provide the foundation for the current research; as for the Jurchen studies in Soviet and Russia, when it comes to arguments on Jurchen Jin’s ‘social nature’ (社会性质), I will discuss it in reference to scholars who come from different social backgrounds, such as Japanese scholars.

Jurchen studies in Japan has been quite fruitful. Mikami Jinan focuses on the development of “meng-an mou-ke 猛安谋克” institution throughout Jurchen history, seeing it as a thread in understanding Jurchen Jin before and after the Jurchen immigration into north China. Among Chinese scholars Zhang Boquan, Song Dejin and Liu Pujiang are the most influential ones. Song Dejin focuses on the social history of Jurchen Jin, and his book *The Social History of Jin Dynasty* is still a good reference on Jurchen Jin’s social reality in general. Zhang Boquan’s study involves almost all the aspects of Jurchen Jin society, and he cares more about the institutional development, such as the economic system and social classes of Jurchen Jin; Zhang’s research has been deep influenced by the socialist methodology since most of his influential researches were conducted previous to 1990s. therefore, it is very important for me to pick up my own methodology in this study. Liu Pujiang is the leading researcher in 21st century Chinese Jurchen study, his study inclines to deprive of the socialist methodology in understanding Jin dynasty.

as for the legal study of Jurchen Jin, there is Ye Qianzhao’s *Study on Jin Code*, and Zeng Daiwei’s *Legal studies of Jin dynasty*. Some Japanese legal history researchers have all talked about legislations in Jin era and built very reliable framework in understanding the relationship between legal and social development of Jin⁴⁷.

4.1.2 Research Structure

The researches listed above are the foundation of my research on suicide legislations in Jin. However, since there are few direct resources on suicides or suicide legislation in Jin, the research in this chapter is built on reasoning and assumption; by digging and revealing Jin’s suicide phenomenon and legislations, I hope to disclose more aspects of Jin society.

I will carry out the research from 3 perspectives:

1. Exploring whether there were suicide legislations and what are they;
2. Looking into suicide phenomenon in Jin to find out how suicide legislations interact with social realities;
3. Research for the social, political and cultural backgrounds of Jin suicide legislations.

⁴⁷ Niida, *Chinese Legal History 中国法制史*. Ichisada 宫崎市定 Miyazaki, *Gongqi Shiding Zhongguo Shi. 宫崎市定中国史 Ichisada Miyazaki’s Chinese History* (Hangzhou: Zhejiang People’s Publishing House, 2015).

4.2 Suicide legislation in Jurchen Jin

It is for sure that the Song Code is a copy from the Tang Code, and the intimidation law is doubtlessly kept in the code and has been carried out through the dynasty. Then what about the successor of Song in northern China? What is the principle for the Jurchen reign in dealing with suicide cases? Since the Jin Code has disappeared, we have to find the indirect evidence.

In the year Mongols took over northern China and named its new reign Yuan, the new government gave an order---no judicial interference to the suicide cases. 轻生自害勿理。

This order is the direct evidence that there was judicial interference to suicide cases before Yuan. The several records in 元典章, shed a light on the typical suicide cases that were supposed to be interfered prior to Yuan.

On the other hand, due to the short history of Jurchen Jin, which is only 120 years, the institutional innovation in Jin is not prominent. Even though recent scholars on Jin argues that some of the institutional innovation in Jin is amazing, such as the. As for the law code, the two big event in developing laws are 皇统制 in the era of Xizong(1130-1135), and 泰和律义 in the era of Zhangzong(1189-1210). the former one is believed to have quite a lot influence from Jurchen customary law and maybe because of this the code wasn't well carried out or fit for the society. therefore Zhangzong's era endeavored to make another code---the Taihe Code, which hadn't been carried out through the late years of Jin and continued to be applied several years after Yuan .

Taihe Code got vanished as well, but according to some researchers, Taihe Code was also built on Tang Code, with some deletions of the unfittable laws. According to Ye Qianzhao, the Intimidation Law was kept in the Taihe Code⁴⁸.

Based on the two facts above, I argue that the Intimidation Law was still used to deal with suicide case in Jurchen Jin, in contrast with the 'forbidding and denying' attitude in Tangut legal practice toward suicide. Therefore, we have to answer some questions first:

⁴⁸ Qianzhao Ye, *Jinlv Zhi Yanjiu. 金律之研究 A Study on Jin Law* (Taipei: Taiwan Commercial Press, 1972).

Why should Jurchen Jin keep the Intimidation Law? Being the counterpart to Xixia in the same era, what is the social significance for Jurchen legislators to keep and carry out Intimidation Law?

The Jurchen legislators, who had invented the law of “毆妻致死不加刃者不加刑”, was striving to put their understanding and logic into legal practices. Why did they identify with the Intimidation Law?

4.3 Suicides in Jin: A sensible society?

4.3.1 A perspective from West Chamber stories

Similar to many other primitive societies, suicides are not uncommon among Jurchen tribes, especially when it comes to altruistic suicides. Also as we have referred to in the Tangut part, suicides rate among the arctic societies were relatively high compared with other primitive societies. Jurchens, however, seemed not sharing the ‘love suicide’ fashion among Tangut people, but their attitude toward suicides were open, if not agreeable.

As far as I can see from the historical materials on Jurchen customs and laws, no prohibitions or taboos on suicide has been found. But if we allow ourselves to enter into the reflection of the secular life in Jin dynasty---the theatre plays, we will be able to sense a fashion of “life despising”.

4.3.2 The Jin version of West Chamber story

As one of the most well-known Chinese traditional plays, *The Tale of West Chamber* 西廂记 from Wang Shifu of Yuan dynasty might be the most widely known and beloved. However, Wang Shifu’s Tale of West Chamber is actually built upon the *Dongjieyuan West Chamber* 董解元西廂諸宮調 of Jin dynasty. Although both of them are based on Yuan Zhen’s *A Tale of Yingying* 鶯鶯傳 in Tang Dynasty.

Each of the three versions of west chamber stories has its own features, reflecting their respective social backgrounds. Yuan Zhen’s A tale of Yingying doesn’t end up with a happy marriage: Zhang Sheng discards Yingying because she is not from a renowned family; and

such a setting is in accordance to the social reality of Tang dynasty which is an aristocratic society 门阀社会.

The story was altered in Jin dynasty to a successful love story by Dong Jieyuan, in which Zhang Sheng and Yingying broke through all the barriers and managed to get married; Zhang Sheng won not only love, but also a bright future---by taking the Keju examination and winning the first place. Dong's version set the structure and the tone of the story and Wang Shifu inherited most of the plots with some deletions and language rewritten. However, two of the plots that are deleted from Wang's version deserve a further research.

4.3.3 A suicidal Zhang Sheng in Jin VS A non-suicidal Zhang Sheng in Yuan

In Dong's version, the suicide intention occurs to Zhang Sheng twice when he feels hopeless in winning Yingying. But in Wang's version, both of such suicide intentions are deleted and no one in Wang's West Chamber Story ever talks about suicide any more.

Without doubt, when Zhang Sheng acted suicidal he's showing his deep affection on his lover, or at least it is what the play writer wants to impress his audience with; Then why did Wang Shifu in Yuan discard such plots?

Dong and Wang, in this way, showed two different attitudes toward suicide; For Dong, suicide represents Zhang Sheng's love and a strong will in pursuing his love; For Wang, it is obviously not the case. The different choices of two play writers come not only from their different tastes, but also have something to do with their respective backgrounds. As theatre plays have to directly face to their audience and it is necessary for all the plots to fit their audience's (the common people) values and perceptions, which were often featured by the time.

In his book *Law and literature* Su Li agrees that, as an art of performance theater plays are closer to commoners compared to literatures that were to be read. At least it is the case in a society that doesn't have a high literacy rate. Moreover, in order to survive theater plays

deeply reply on or even cater to their audience. In this way, plays might be deeply influenced by their audience's taste and values. Thus, theater plays reflect more of folk cultures⁴⁹.

Therefore, when Dong Jieyuan set the "suicide intention" for Zhang Sheng, he's more likely to cater to his audience's values and expectations other than his personal sense and attitude. With such plots, we can sense a social trend in which people are familiar with or even showing an empathy on suicides in Jin dynasty.

However, compared to the understanding or even empathetic attitude toward suicide shown in Dong's West Chamber, Wang Shifu's deletion of suicide plots showed something different, and I'd like to argue that he deleted suicide plots not only for the story itself---critics believe that Wang Shifu has deleted some plots to make the story smoother ---but also out of his perception and negative attitude on suicides.

As a former official, Wang Shifu is very likely to hold a disapproving attitude on suicides. Since as we can imagine, where the Intimidation Law is carried out the law itself becomes quite an encouraging factor on suicide, to an extent that local officials became really desperate in facing with serious suicide problems.

In Jin, suicide problems are no less serious. In fact, the problem is so serious that as soon as Mongols set up their new country Yuan in 1272---the year Mongols took over north China---the new government made a decree of "stop legal intervention on suicide cases" 轻生自害勿理. Wang Shifu's deletion of suicide intention, therefore probably represents the social trends in condemning suicide throughout Yuan dynasty.

Then it comes to the question: why did Jurchens follow the Intimidation Law while Mongols acted the other way?

4.4 Jurchen legislations: a result of sinicization?

Pastoralists on the open steppe grasslands generally clustered in larger units than did the forest tribes, and it was perhaps for this reason that Khitan and Jurchen chiefs were quicker to appreciate the organizational strategies of the Chinese... While the Khitan and Mongols were purely nomadic before seizing power in agrarian China, the Jurchen had long engaged in

⁴⁹ Li Su, *Law and Literature 法律与文学* (Beijing: SDX Joint Publishing Company, 2017).

marginal agriculture in addition to hunting and fishing. Thus it is not surprising that the Jurchen adapted more quickly and more thoroughly to Chinese lifestyles and culture⁵⁰.

A popular standpoint in evaluating Jurchen Jin's history is sinicization, researchers who hold this viewpoint believe that Jurchens in Jin have been sinicized to the extent that they lose their native language and identity, let alone their acceptance of all the Chinese institutions such as laws and so forth. Thus shall we conclude that Jurchen legislators kept the Intimidation Law because they are too sinicized?

The sinicization of Jurchens, like that of all the other conquest dynasties, has been a popular topic when discussing its interaction with Chinese culture. But such discussion is no other than what Karl A. Wittfogel and Feng Chia-sheng called the "simple," "one-sided" or "traditional absorption theory."⁵¹ Such theory was built upon a belief that Han culture is superior to the barbarians therefore sinicization is the only way for them to be civilized. But it is obviously not the case. Julia Schneider in her 2010 research made a sensational rejoinder against this tone: "The Jurchen also left their imprints on the Han, ranging from the most politically important one being the abolishing of two of the Three Departments, to such rather minor ones as probably the use of the heated brick- or oven-bed (kang 炕) as well as aspects of their dress⁵². Another argument viewing Jin history as "short of institutional innovation" and attribute it to the short history Jin has. I, first of all, don't agree that Jin is lack of institutional innovation. The social control of Jin is compact and strong, it kept such a complete household registration system 户籍制度 that it surpassed all the other dynasties along Chinese history. The Bao-wu system 保伍制度 is strictly carried out and rural population were asked to live together(聚居) and such lifestyle is still the case in today's north China. This kind of institution grows out of the native culture of Jurchens and eventually influences the whole north China. Without doubt, the influence of Jurchens is huge and deep.

Therefore, I will never agree that the Jurchens just passively accept the laws the previous dynasties left behind; as an outcome of a comprehensive interactions of social factors such as

⁵⁰ Hoyt Cleveland Tillman, "An Overview of Chin History and Institutions," in *China under Jurchen Rule*, n.d., 23–38.

⁵¹ Julia Schneider, "The Jin Revisited: New Assessment of Jurchen Emperors," *Journal of Song-Yuan Studies* 41 (2001): 343–404.

⁵² Schneider.

the social and cultural aspects, as well as the political backgrounds, the law making is never an easy job and there is no room for sinicization influencing the laws. Therefore, to understand Jurchen legislators' motives in keeping the Intimidation Law as well as the social significance of the law, the only way is to look into the comprehensive social, political and cultural backgrounds of the time. And I will approach the research goal from the following two perspectives.

4.4.1 Perspective I: “Following in death” as a Jurchen custom

The first perspective is the martyrdom among the Jurchens, from which we can see the cultural factors that influence Jurchen legislators' choice.

When Durkheim talks about the high rate of altruistic suicide in “primitive society”, he sees the collective nature of such a society where individuals see themselves inferior to something bigger. The love suicides among Tanguts is an example of such a theory. Then what about Jurchens? Do they show any tendency in altruistic suicide?

History of Jin keeps a chapter on “The loyal”, which includes the biographies of 121 martyrs at the collapse of the dynasty. Li Haonan in his doctoral research finds out the total number of the martyrs at the end of the dynasty is 473, of which 280 are Han Chinese while 156 are Jurchens, and 11 for Khitans; Li believes such numbers almost equals to that at Southern Song's collapse, while the Taiwanese scholar Yang Yuxun argues that the martyrs for Jin is no less than that for Southern Song.

For Han martyrs, Confucian ethics which praise ‘loyalty’ seem to explain their choice. While for the Jurchens, even though Confucian ethics attribute to their martyrdom to some extent, the Jurchen tradition of “following in death” plays an important role as well. Liu Qi, in his *Gui Qian Zhi* 归潜志 A journal of restoration and preoccupation, records a Jurchen intellectual 秀才 who sank himself after the collapse of the country. Jurchens who migrant to north china under the institution of Meng'an Mouke 猛安谋克, share a clear identity as Jurchens and cannot separate themselves from the regime, and such identity might revoke a strong sense of martyrdom.

Furthermore, those Jurchens who migrate to north China got into poverty in the later history of the dynasty. They largely depended on the economic privileges when they were new to

north China and didn't develop pragmatic means to make livings. Therefore, when the regime was overthrown, the Jurchen individuals share a sense of failure and desperation.

All in all, there's no restraint on suicides in Jurchen culture and this fact becomes the foundation of Jurchens' acceptance of the Intimidation Law.

4.4.2 Perspective II: changes in social relations throughout Jin dynasty

From this perspective, we will check the social and political backgrounds for Jurchen legislators to accept the Intimidation Law. And I argue that the Intimidation Law hadn't been listed into Jin code until Taihe Code came out.

The legal development of Jin underwent three stages: the first stage is around Jin's founding and conquering when the customary law is applied among Jurchens while the Khitan and Han laws were also referenced to sometimes; the second stage is Xizong, Hailing and Shizong's time when the emperors made continuous attempts to set up new codes, among which 皇统制 is a representative; 皇统制 is built on Jurchen customary law 以本朝旧制, while partly adopt the Sui&Tang codes and partly reference to the Liao& Song laws 兼采隋唐之制, 参用辽宋之法; The notorious item “殴妻致死, 不加器刃者不加刑” is an example of such attempts, which shows that Jurchen legislators try to use their native experience and understanding to make new laws rather than passively accept the “Chinese” way; however, some of the attempts fail to be compatible with north China society at the time and was eventually abandoned; the third stage is Zhangzong's(the 6th Emperor) effort in setting up Taihe Code 泰和律义, which was seen as a success in Jin's legal history and still came into play until the early years of Yuan .

There is only one reason for Jurchen legislators to keep and follow the Intimidation Law: they believe the society need such a law to settle down disputes and adjust social relations.

The social relations that the Intimidation Law aims to adjust is between the powerless and the powerful, between the lower class and the higher class, between the two opposite social relations that are obviously contrast in power and status. When the Sui legislators created the Intimidation Law, their ultimate aim is to exert the authoritarian power directly over individuals, to jostle for subjects with privileged local clans; by protecting human rights of the

powerless locals who cling to the local clans, the Intimidation Law helps the authority weaken the attachment between local individuals and clans, to make them the authority's subjects other than the local clans'. In this way, the Intimidation Law is in accordance with Sui Tang's attempts in strengthening the authoritative power.

Besides the economic and political institutions such as the Equal-field system and the Three-heads system in macro perspective, the authority subtly used the Intimidation Law to stretch its power over commons.

Since the Taihe Code kept the Intimidation Law, we can infer that the Jin society in Zhangzong's time admitted the law to intervene its power triangle, then what about the time prior to Zhangzong? In the era of transitions, namely from Xizong to Shizong, was the Intimidation Law in use?

4.5 Perspective II: A comparison between Jurchen Jin and Mongol Yuan

Another perspective to understand why the Jurchen keep the Intimidation Law in use, is to compare the differences between Jurchen Jin and Mongol Yuan. To some extent, Jurchen and Mongol are similar in terms of customs and many of the cultural heritages, which is common to inner Asian groups. The concepts of "loyalty" and "martyrdom" as we have discussed above, virtually exist not only among Jurchen but also Mongol traditions, which are universal values rather than ethnic features; as for other institutions such as life prices 命价, which even though seems to be a possible explanation on Jurchen's psych in identifying with the Intimidation Law, turns out to be another custom that is shared among Mongols.

Then why do these two groups differ in their ways of keeping or denying the Intimidation Law? If we answer this question based on the political significance of the Intimidation Law---to suppressing the local powers---we can reach to an assumption that Jurchen need the law for its political statement while Mongols don't.

Then is this assumption reasonable?

4.5.1 The social control in Jin Dynasty

Jin, to some degree, is similar to Northern Dynasties in terms of their endeavors in promoting the authoritarian rule. Even the two layers of their endeavors are the similar: first, to strengthen the authority as an alien regime in a national level; second, to consolidate the imperial authority through dissolving the original military democracy in tribe era.

Tian Yuqing, in his *An Exploration of the Tuoba History*, discussed the two policies that showed the primary effort the Tuoba emperor had put in strengthening the imperial power: separating the tribes and matricide of the prince. Separating tribes is to weaken the power that the tribal nobles have on their tribe members, to rob away the tribe members' loyalty to their tribal heads and transfer the loyalty to the Tuoba emperor; while matricide of the prince is to avoid the natal clan's influence on the court. Both of the policies aim at weakening the original power system in nomadic era and building the absolute power of Tuoba imperial family. Later in Emperor Xiaowen's time, 三长制 and 均田制 were carried out to steal subjects away from the aristocratic families 门阀 and the local powers 豪强, to eventually strengthen Xianbei regime's authoritarian control over north China. This endeavor to be authoritarian last into Sui and Tang and led to the creation of the Intimidation Law, which is another tentacle of the authoritarian control⁵³.

The political routine of Jin is, in some ways a mirror image of Northern Dynasties.

In order to strengthen its control over the vast territory in north China, the most well-known strategy is to scatter the Meng-an mou-ke 猛安谋克 among the Han villages, as a deterrent as well as a monitor. On the other hand, Jurchen have carried out a rigid but efficient system of household registration, to a degree that they *"has preserved much clearer information about the system of population control and census taking than most of the other Chinese dynastic histories have"*; the information is so ambiguous that *"not only the age groups but also the methods by which the population was enumerated every three years"*. What's more, the Jurchen have implemented a rigorous system of Bao-Wu 保伍, a neighborhood administrative system that demands villagers to cluster intensively other than dwell alone or separately⁵⁴. And this custom of dwelling concentrate is still the case in north China today.

⁵³ Tian, *Tuoba Shitan 拓跋史探*.

⁵⁴ *Cambridge*, n.d.

The second layer of authoritarianism---the imperial authoritarianism---along the history of Jin has been concealed by some licentious and violent stories about Emperor Xizong and his successor prince Hai-ling 海陵王. And Hai-ling wang in particular, by viciously butchering the descendants of other royal clans, virtually “marks the last phase of transition from a more collective and clan-dominated leadership to monarchic autocracy”⁵⁵

If we compare Jin and Yuan in terms of their differences in how they strengthen the authoritarian power, we probably will obtain the insights in understand the ultimate reasons Jurchen legislators have preserved the Intimidation Law. Because Mongol rulers have never tried to use the Intimidation Law for any political purpose, and neither had they tried to strengthen their imperial power as much as the Jin rulers had. Even though all its power and the whole empire belong to one person---the Khan, in fact all the sons grandsons and uncles and cousins they share the power and the wealth⁵⁶.

⁵⁵ Franke Herbert, ed., *Alien Regimes and Boarder States 907-1368*, The Cambridge History of China (Cambridge University Press, n.d.).p239

⁵⁶ Feizhini, *Shijie Zhengfuzhe 世界征服者* (Beijing: Shangwu Yinshu Guan, 2004).

5 Conclusion

The primary goal of this research, is to find out what the suicide legislations are in the conquest dynasties and to what degree they are influenced by the cultural heritage of the respective conquerors. Since the conquerors share a common background of nomadic or semi-nomadic lifestyle, I'm also curious about its significance as a third perspective besides Chinese and European legal traditions in dealing with suicides.

Even though the resources are quite limited, we still reach some findings.

First, altruistic suicides are encouraged in the tribal era of these northern ethnic groups, and they share a similar tradition of martyrs like 'love suicide' 'following death' or 'martyr for the country'; while on the other hand, there is no control over suicides in a narrow sense, or the so-called egoistic suicide.

Secondly, in the era of nationalization Tanguts and Mongols took a clear side in condemning and punishing suicides while Xianbei and Jurchens got involved with the Intimidation Law which represents the Chinese way of dealing with suicides; the one who most likely created the Intimidation Law is Emperor Wendi of Sui, who is Xianbei descendent. It seems that the key factor in deciding which side to take is how deeply it got involved with a Chinese way of polity.

5.1 Intimidation Law, conquest dynasties, peaks and troughs in Chinese history

In his book *Peak and Trough*, Yan Buke points out that there are certain features that are constantly resembled along Chinese history: imperial authoritarianism, central government authoritarianism, and bureaucratic administration⁵⁷. These features though, in different eras perform differently in terms of intensity---the eras where the features function intensively are the peaks of Chinese political and institutional history and the eras where they are weak are the troughs---Sui&Tang therefore, is a peak while northern and southern dynasties a trough.

⁵⁷ Buke Yan, *Bofeng Yu Bogu. 波峰与波谷 Peaks and Troughs*, 2nd Edition (Beijing: Peking University Press, 2017).

While in this study of suicide legislations, the eras where the Intimidation Law is applied or not applied seem to form another kind of peaks and troughs:

a northern dynasties trough VS a Sui&Tang peak

a peak in Jurchen Jin VS a trough in Yuan

Every time the Intimidation Law come into use, there is a restoration of authoritarian governance.

This theory of peak and trough, therefore well explains why the Ming founding father upgraded Intimidation Law into Coercing Law. Legislators in Ming realized that the political significance of Intimidation Law is way out of its legal significance. They are not unaware of the law' s positive attribution to suicides, but for them the political ends of “suppressing the powerful” and “strengthening the authoritarian governance” is of fundamental importance, therefore, instead of abandoning Intimidation Law they updated it to emphasize on its real purpose: to compress the powerful and the higher classes other than those physically or verbally powerful.

5.2 A pastoralist legal tradition

Both Tangut and Mongol regimes forbid suicides, at least in their nationalized era; and such way of dealing with suicides shed a clear contrast with the Chinese ‘intimidation law’ model. And this contrast in my point of view, comes from the two parts’ difference in the spirit of law.

“East Han is a kingdom ruled by propriety, while Miyak is a kingdom ruled by law”. This saying reveals the fundamental difference between Xixia and Chinese legal systems. It’s astonishing to find out that people in their own time have already realized the fundamental difference between the two cultures.

The ruled-by-law tradition is closely related to the militarized social structure, while on the other hand, it’s also due to the fact that Xixia and Mongols have never needed imperial authoritarian as much as traditional Chinese authorities did.

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Appendix

Appendix 1: the original copy of the law code in Tiansheng Code

一節上人與節下人等相互因口角爭鬥動手，致節下人死者，依他人毆打爭鬥相殺法判斷。

一對自三個月喪服至一年喪服節上人毆打爭鬥動手而殺時，庶人以劍斬。

一諸人上吊、斷喉、自投水火中，或避自身有罪，或與他人妻淫亂已分離欲分離，心存死意而未鮮潔，以及待命中有執職位等當革，官職革去有苦役，則不須依待命減，可以官當。待命者入輔主中，一律不許出入內宮。若思另有異疑，無□□、疾病、癲狂、酒醉，不自主上吊、斷喉、自投水中者，待命職位等不革，先背內宮出入暫勿住留。後謂疾病已癒，則當於職管處來狀，醫人看視。疾病實癒，病根已絕，則依前法，不可出入內宮中，依時節舉奏實行。其中出入內宮時，先有疾病重犯不止，而後病根未絕，未為實癒，有所疑等，一律不許出入內宮。有待命執事者，有製抄者則製，無製抄者，則當派遣與任職位人以外一同任職，罪狀依以下所定判斷：

一等與他人妻上吊、斷喉、自投水火中雙雙死者，婦人住於其父母家則其父母連坐，庶人十三杖，有官罰馬一，夫主之婚價依數償還，拋擲其人屍分別五里之外，死拋擲後有收去者則收去。其中與未嫁女上吊、斷喉、自投水

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火中者，與許配他人住於其父母家上吊、斷喉、自投水火中者一樣判斷。

一等諸人男女上吊、斷喉、自投水火中，男女一人死其一者，未亡人十二年，雙雙未亡則一律三年。

一等諸人獨自上吊、斷喉、自投水火中而不死者，免去有罪，則依所有罪法判斷。先無罪則有官罰馬一，庶人十三杖。其中疾病、癲狂、酒醉而自心無主不覺者不擔罪。

一諸人傷後母從子時，比他人罪，同居則減二等，異居則減一等。殺者同居異居一樣，依他人相殺法判斷。

一諸人娶妻子，後與他人行淫亂而懷有雜子女者，不許取狀尋問。已產出而為父母所殺時，為母所殺與殺己子罪相同，為父所殺則殺一人徒六年，自二人以上一律徒八年。無心失誤動手而殺時，殺一人徒五年，自二人以上一律六年。若命未絕而但傷時，比他人有意及無心失誤相互傷之各種罪狀減四等。

相傷門

一諸人女、子、妻子、媳、使軍、奴僕等與父母、丈夫、頭監等言語不和而被打

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