Han Law and the Regulation of Interpersonal Relations:
‘The Confucianization of the Law’ Revisited

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One of several reasons why Western historians were slow to take Chinese law seriously as an area of study was their mistaken assumption that Chinese law was static (and hence timelessly unedifying). Certain long-term continuities of Chinese law are striking—as but one example among many, consider the technical term yan 讫, “to review a case/to submit a case for review,” which seems to have been used, albeit not always in exactly the same sense, for a good two millennia—but newly available documents, combined with a more open-minded approach to the material, have revealed significant discontinuities that demand historical explanation.

The thesis of this paper is that in pre-Han and early Han sources, law was regarded as an administrative tool used by the state to protect its real-political interests. In practice, law focused on people’s obligations to the state, not their obligations to each other. But long before the fall of the dynasty, law had come to be regarded by many writers, including officials of state, as an implement of moral instruction. The surviving sources stress the role of Dong Zhongshu 董仲舒 (fl. 152-119 B.C.) in this transition.

Since T’ung-tsu Ch’ü’s Law and Society in Traditional China (1961), this process has been called “the Confucianization of the law,” but his phrase needs to be unpacked and carefully defined. The records that can be regarded as evidence of Confucianized law are always based, explicitly or implicitly, on two tenets: (1) the purpose of law is moral instruction; and (2) the textual foundation of law must be the Confucian canons (which hence override any conceivable statute or decree). In Han times, the most frequently cited Confucian source was the Springs and Autumnns (Chunqiu 春秋). This is quite different from Ch’ü’s own use of “the Confucianization of the law,” but it is more precise and more suitable for analytical purposes.