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## Administration of Law among the Chinese in Chicago

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# ADMINISTRATION OF LAW AMONG THE CHINESE IN CHICAGO

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CHU CHAI

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The following study of the Administration of Law among the Chinese in Chicago was made by one of my students, Mr. Chai, as a part of my course in Administrative Law in Northwestern University Law School. It is designed to be the beginning of further research. Its chief value lies in the fact that it was made by an intelligent Chinese and reflects the Chinese atmosphere and attitude of mind. Such being the case, I have not changed the diction or method of treatment in any way. I may add, also, that in my own personal desire to obtain some intelligent estimate of the extent and methods of the administration of the law by the Chinese in America among themselves, I am actuated by no hostile spirit but am inclined to believe that there is much good in the practice.

It is to be remembered, indeed, that in America today Boards of Trade and numerous other organizations have tribunals of arbitration and largely settle their own disputes without any resort to the civil courts. It is also to be remembered that through many centuries the Hebrews have largely administered their own law and that even the early Christians for at least three hundred years after the time of Christ did the same thing. The purpose of the study and of this introductory report is to obtain an intelligent estimate of the nature and extent and methods of the Chinese administration and the extent to which it relieves the civil courts of the burden of litigation.—*Andrew A. Bruce.*

## I. *The Condition of the Mother Land*

As I intend to write about the administration of laws among the Chinese in Chicago, I will introduce the subject with a brief account of the condition of their mother land at the time when they came to this new land. If an interest should be felt in this subject, there would be naturally the wish to know something of the country and the people.

1. *The Family; the Father:* The Chinese came to this country at the time when China was a despotic empire. In the despotic empire there were practically but few laws. There were customs and

manners that entered so materially as determining factors into the administration of laws among the people. What the community must have was a decider or an arbitrator of disputes. It was obviously that in the family the father, who by virtue of his wisdom, power and position could command the love and obedience of all its members, would be the one to fulfil the function of judge. The authority of the father over his children generally continued throughout life and was almost absolute in its extent. Politically the government of China at that time turned on the reciprocal duty of parents and children, and hence the position of the emperor was modelled on that of the father. In fact the family during that period was the center about which everything revolved. What is conservative in the Chinese character is directly traceable to the family influence, and during all the centuries through which China lived, that influence has been fundamental and sustaining.

2. *The Village; the Headman:* It was to the single family that the number of families was added which made the village; it was from the group thus formed that a headman was selected by the inhabitants as practically the arbitrator of disputes and dispenser of justice. While the headman was exempted from official interference, he was still held accountable for the peace and order of his village. Thus by the addition of the family unit, the village was formed, which custom had invested with the right of local self-government, and through that medium a democratic element was introduced. The headman of a village was in fact not beyond the official influence, because after he was selected by the people, he should receive the confirmation of the district magistrate, before entering upon his duties. This was due to the fact that the duties of a headman had occasionally relation to the government of the district; and it was an assistance to the magistrate to communicate with him.

3. *The District; the Magistrate:* As a number of families became a village, so the union of villages became a district. Just as the family was the unit of the society, the district magistrate became the unit of the administrative system. Although the district was the lowest division of the administrative system and the magistrate who presided over it was the lowest grade officer of the civil hierarchy, the district was nevertheless the most important division, and to a large majority of the people was the embodiment of all the essentials of government. The magistrate, as representative of the emperor, appointed by him, was the presiding officer of the district court and was invested with both the criminal and civil functions. But as a matter

of fact, the administration of the law among the Chinese seemed to have been largely in the hands of the headman. The people at that time were inclined to rely on court action only as a last resort. The reason for this will be noted in the next section.

4. *The Settlement of Disputes by the Headman; the "Headman Adjustment"*: With no general tribunal to enforce the principles of the law and justice in a village, the people had no other way of exercising their legal capacities and securing their rights. Thus they took up the law in their own hands and settled the disputes peacefully among themselves, in a practical and simple way, through the medium of the headman. This was perhaps largely brought about by oaths, both in business transactions and in extra-judicial proceedings. The complainant first stated the case orally to the headman and the latter approached the accused and then brought the party litigants together, in order to settle the dispute among themselves. If not successful, the head would call up a committee, the members of which were selected by him, with the consent of the party litigants, and which would give a final settlement. In the process of reaching the conclusion, the justice would be observed, custom and tradition would be considered, the case brought to light, and the matter be decided according to what is right. If no satisfactory settlement of the dispute would be reached, appeal might be made to the authorities, but if the complainant had recourse to the official direct, without first referring to the settlement of the headman, he should be subjected to the public reprimand. In fact, this rarely happened, for as the extra-judicial method of administering the disputes, called "headman adjustment," had grown out of the need of the people for a speedy and efficient administration of justice, the custom and tradition compelled the submission of disputes to it, simply because it was to the benefit of the people to do so. But the law has regulated and controlled this kind of adjustment more and more, until today it is narrowly limited.

II. *Associations of the Chinese in Chicago*: 1. *The Origin and Purpose of the Association*: Any knowledge of the Chinese in Chicago in the administration of the law would be superficial without a clear understanding of the origin, power, and influence of their associations. The associations were organized upon carefully defined principles, and their scope and influence in business among the Chinese cannot be overlooked. Their power had subdued all the Chinese in Chicago under their influence and they in fact have more than a semi-official status among the Chinese.

These associations have enjoyed a long life not only in Chicago, but in this country as well. They were organized for the purpose of mutual aid and protection. It would seem that in a foreign land, the necessities of the Chinese demanded some such organizations for their mutual aid and protection. They associated themselves as a means of advancing the business relations and promoting mutual welfare by regulating and adjusting them according to rules which were framed by each association for its special guidance. The rules may be summarized as having the two-fold object of protecting its members against the sectional prejudices, to which the Chinese immigrants from distant places are subject, and preventing litigation among its members.

Of course the regulations of each association are to promote the objects for which it was organized, as each association has its own peculiar function and "spherical influence." As the Chinese migrated into this country from different localities of their mother land, frictions between them always followed; the reason of this friction is more from economic than other purposes; consequently different types of associations were organized in order to meet the individual needs.

2. *Types of Associations in Chicago:* Having stated the purpose and power of the associations, it will be useful to note the different types of associations of the Chinese in Chicago. Many of the larger and more wealthy associations have their headquarters with the palatial buildings in the principal cities with branch offices in the smaller cities and towns.

The first type of the associations is that which is organized by those who are of the same family, such as the "Lee's Family Association," whose membership is limited to the members of the Lee's family. The second type is that which is organized by those who come from the same locality, such as the "Lin-yang Association." Thus the second type is broader than the first type, so far as the membership is concerned. The third type is still broader than the second; because it combines the first and second types; that is to say, that the membership of the third type is extended to anyone who is subject to its regulations. This type may be represented by the "An-liang Association."

These three types of associations scattered all over the United States are linked in the fourth type of a powerful nation-wide body known as the Chinese Consolidated Benevolent Association, which was at first organized at San Francisco, California, for the purpose of

adjusting the conflicting interests of the member associations and maintaining the peace and harmony among the Chinese merchants in this country. The drawbacks of the private associations and the importance of the fourth type of association will be discussed in the next section.

3. *The Importance of the Chinese Consolidated Benevolent Association:* Having described the various types of associations, let us enter into a close examination of those private associations as a means of advancing the business interests and relations among the Chinese. It is no exaggeration to say that these private associations are full of permanent drawbacks which constitute the principal counts against their existence and the reason for the establishment of the Chinese Consolidated Benevolent Association. They are as follows:

1) *The Domineering Commercial Authority of these Private Associations:* These associations no doubt had their origin in the necessities of the times, but the authorities which they have assumed have about ceased to be beneficial to the development of the legitimate business interests of the Chinese in this country. There are some businesses which have been arbitrarily and absolutely under the influence and recognition of the associations. Their present status is not only one of a domineering commercial authority, but they have extended their powerful influence to other questions. To incur the displeasure of an association means social isolation and business ruin. Thus the Chinese would hesitate to consider, against the known wishes of the associations, almost any subject, whether its bearing were commercial or otherwise.

2) *No Protection Afforded to Those Who Are Not Members of Associations:* If there is any dispute between the members of associations and those who are not, the latter would be helpless. Under certain circumstances, associations defend their members when litigants, and scarcely would those who are not members be so bold as to deal with them for that purpose, although the associations are careful not to give any protection to a member who has done something unlawful or committed any act illegal. However, under the shelter of the associations, there has grown a number of illegal practices on the part of their members, and therefore a Chinese who fails to join any association would find it impossible to maintain a business in competition with that maintained by the members of associations.

3) *Conflict Interests of the Different Associations:* Since its competence is limited only to its members, the function of the association is personal. The duty of the association as a protector of its

own members conflicts with its capacity as arbitrator, being always susceptible to bias in the administration of justice in favor of its own members against the members of other associations. These conflict interests of the various associations have contributed virtually to the cause of "Tong War," when there is no other way of peacefully settling the dispute instead of resorting to the violent mode of redress.

Such, then, are the principal counts, against these private associations as now maintained by the Chinese in this country. (1) They have a domineering commercial authority which has defeated the ends for which they were organized. (2) On account of their bias and prejudice for the protection of their members, justice is practically denied to those who are not members of associations. (3) On account of their conflict interests, it is difficult to maintain order and peace among the members of the different associations.

At present the Chinese merchants in this country have made up their mind to promote a genuine friendship and harmony among themselves by neutralizing the power of the private associations and establishing the Chinese Consolidated Benevolent Association, so that their differences can be composed and the justice can be administered in an impartial way. In view of the above enumerated abuses of the private associations and the necessity for the organization of the Chinese Consolidated Benevolent Association, the importance of the latter can hardly be overlooked. It is this type of association which has fostered the creation and maintenance by member associations of what is called a "Chinese Court," which handles the justice and legal problems among the Chinese in Chicago to a large extent.

4) *The Officers and Their Functions:* The regulations of the private associations are more or less the same, inasmuch as the mode of administering the justice is concerned. The officers, as a rule, consist of a general manager and a committee, who are elected annually, but are eligible for reelection. There is a permanent secretary, who is the medium of correspondence. He is regarded as the legal representative of the association, in defending its accusation or in demanding redress for its injured members. The number of other officers and committees varies with the size of the association.

The Chinese Consolidated Benevolent Association is in charge of a chairman, executive officers, and a permanent committee. The chairman, apart from other duties, serves as an arbitrator of disputes and his position is largely modelled on that of a headman in a Chinese village, as has been shown. The chairman and the executive

officers are elected annually. The committee consists of its member associations, other organizations, and individuals who are elected by its members.

Thus the officers of these associations, apart from their commercial duties, are well-nigh overburdened with judicial functions; they perform the numerous roles pertaining to law, not only of a "judge" having charge of disputes instituted by their members, but also of "police magistrate" governing their respective rights and liabilities and their dealings one with another. The technique used in the administration of justice will be fully discussed in the following sections.

### III. *The Administration of Laws Among the Chinese in Chicago:*

1. *The Extra-Judicial System:* The reasons for this extra-judicial system of handling disputes among the Chinese in Chicago are not difficult to find and they are as follows:

1) *The Inherency of the "Headman adjustment":* As the "Headman adjustment" grew out of the need of party litigants for a speedy and efficient settlement of disputes, so this extra-judicial system of settling disputes among the Chinese has grown out of the need for a peaceful, simple and practical administration of justice instead of resorting to violent modes of redress. As newcomers in this country, the Chinese transplanted this "Headman adjustment" which has become a part of their heritage.

2) *Exclusiveness of the Chinese from the American Society.* As racial prejudice excludes them from the American society, this extra-judicial settlement of disputes among the Chinese is the only policy under which to do business in this country, because they have no other way of exercising their legal capacities and securing their legal rights, although the Government of the United States has assumed the responsibility of protecting their trade, firms, and individuals!

3) *Unfamiliarity with the Technicality of the United States Court Procedure:* As the Chinese are not acquainted with the procedural technique of the United States Courts, they are not inclined to rely on court action, simply because the procedure is too costly and too intricate for them. On the other hand, the Chinese have an entirely different viewpoint concerning the extra-judicial system, because they find this system free from the expenditure of time and money which attends the formality of the court proceedings.

Such are the principal reasons for the extra-judicial system. The chief characteristic of this system is that it need adhere to no

rigid outline of procedure such as laid down by the common law courts. The party litigants in the extra-judicial settlement of disputes do not work through intervention of a court, but through their associations, either consolidated or private—a unit which is now an integral part of all the Chinese organizations not only in Chicago, but throughout the United States as a whole. It is a type of settlement founded on the "headman adjustment," under which the relations of parties are governed, not as a status prescribed by the law, but as a contract voluntarily entered into between the parties litigant.

2. *The Sources of the Law:* The principal sources of the law governing the respective rights and liabilities of the Chinese and their dealings one with another are few in number. They are (1) traditions and customs, (2) regulations and rules of associations, and (3) decisions of disputes.

1) *Traditions and Customs:* The original sources of the law may be said to be the traditions and customs, which were brought over with the Chinese from their mother land. In the course of time, these traditions and customs, which entered so materially as determining factors into the administrative system of justice, might have been changed and supplemented by the American customs and manners, in order to meet their new needs and improve their present conditions.

2) *Regulations and Rules of Associations:* These rules and regulations of associations are the important and principal sources of the law governing the relations between the Chinese in Chicago. These rules and regulations would arise gradually and finally acquire the force of custom. They are in general followed by the members of associations under the pain of heavy penalty. In case of disputes between members, the rules and regulations of associations are read as if they were a part of statutory law and consequently such rules and regulations determine the decision of the dispute as if conclusive on the law relating thereto. It is such power over members that gives an association its compact organization and its influence among the Chinese in Chicago.

At stated intervals, generally semi-annually, all interested in an association meet together and discuss matters relating to their business and alter their rules if change be found necessary. But whenever a question comes up affecting the association or its members a meeting is called for discussion and settlement. Generally in these meetings, they fix rates of commission, provide penalties against tricks of trade and enact trade regulations.

3) *Decisions of Disputes*: In all the disputes,<sup>1</sup> the party litigants present the case, argue and defend orally. Only the final settlement is written as a confirmation with the signature of all the parties involved. These decisions must inevitably reflect the current ideas of justice and in course of time the points of likeness in many cases are observed and consequently these decisions may be resorted to as evidence of what is the principle of the law on a certain question.

3. *The Machinery of the Extra-judicial System*: Having traced the nature of this extra-judicial system, it will be useful to enter into a close examination of the machinery of this system: (1) Where the law is administered; (2) what kind of procedure is used; (3) how remedies are given. While no two cases are adjudged in precisely similar fashion by the private associations, and their inner workings are not generally known to the public, the techniques described in this section will be largely based on the procedure of the Consolidated Association.

1) *Place Where the Law Is Administered—"Court"*: We have noted that in Chicago, there are two kinds of associations, private and consolidated; and therefore there is a dual system of "courts," the private and consolidated. Over certain matters and persons they have exclusive authority; over other matters and persons they have concurrent authority. Each of these two system will be discussed in the following:

A. *The System of Private Association*: As has been shown, the authority of the private association is personal, since its competence is limited only to its own members. Thus if there is any dispute among its members or any crime committed by them, the private association will handle the case in question with ease and effect. But if the question involves those who are not its members, it will be left in an embarrassed condition. In fact the interrelation of these private associations has contributed virtually to a state of confusion and conflict, when one injured party has reason to complain of members of several associations. In such a case, the injured party will be left no choice except either to turn over his or her claim to

<sup>1</sup>The author at first had in mind to write a section on the analysis of all cases decided by the various associations, but in his effort of research in the Chinese Consolidated Association, there are no complete written reports of cases which can be used for such purpose. Inasmuch as in all the records which have been read, most of the cases decided are closely related to business interest. Some of them are related to the minor offenses, concerning the violation of the regulations of associations, while others are of miscellaneous nature, such as the payment of entrance and clearance fees, of membership, rents of property owned by the association or by individuals, and so on.

the courts of the United States or to resort to the Consolidated Association, for adjudication.

B. *The System of Consolidated Association:* In the system of the Consolidated Association, the authority will extend to all the Chinese in Chicago. On account of its impartiality and justice, all the Chinese are likely inclined to rely on it and to turn over their claim to it rather than to the private association, simply because the Consolidated Association is itself an organization maintained by and for all Chinese without any discrimination, whether they are members of the private associations or not. Thus the status of the party litigants in the Consolidated Association is equally assured and on the same ground.

2) *Procedure:* In this extra-judicial system, there is procedure, but the procedure is not bound by rigid rules of pleading and evidence. The summoning of the attesting witnesses, the quantitative effect of oath, the conclusiveness of seal and the production of the original document may give certain evidential effects. The steps which must be taken to set up in motion and carry through to execution the machinery of the system are as follows:

A. *Notification to the Association:* The Procedure of the extra-judicial system is set in motion to the association by the complainant orally or with a brief statement of the case. The association, thus notified, starts action by asking the defendant to appear and answer the complaint. It is here that the chairman of the association will be of excellent service by settling the case in a simple and efficient way. He will approach the party litigants and make a thorough investigation of the case. Then he, with the consent of the party litigants, is in a position to determine whether the case will be, (1) settled in a friendly way by him as an arbitrator, or (2) put on a trial by committee. If the case is simple and if the party litigants are all willing to submit to the arbitration of the chairman, the former way is usually taken. This friendly arbitration is an extremely efficient and speedy administration of disputes. But if the case is somewhat complicated or of some importance, the second way must be taken. Then the chairman will call a meeting of committee and sum up issue before the committee and require the final decision.

B. *Trial by the Committee:* This is the second step for the association to call a meeting of committee for the final settlement of the dispute. Notification of the meeting will be sent to all members of the committee, although the quorum of the committee consists of

at least eleven members or above. Then the party litigants come before the committee; the complainant first states his case and presents the issue which forms the cause of action and then demands the redress. The defendant answers the complaint and defends the redress. Then the witnesses of complainant make the statement; and then the witnesses of the defendant. Finally all facts and issues involved in this case will be decided by the committee. Thus it will be noted that the whole course of the trial of the case is under the non-partisan control by the committee and that there is no bickering over rules of evidence. In this point of view, the beneficial characteristic of the trial by committee is noticeable.

C. *Final Settlement*: The decision is on the basis of the majority vote of the committee. The substitution of the majority rule in the committee trial for the unanimity in jural trial will avoid many unnecessary disagreements among the committee members and prevent corruption, because it is much easier to find one among the eleven who is susceptible to act from prejudice or caprice than to find five. In the process of reaching the final settlement, rules and regulations of associations will be observed, customs and justice considered, and the facts of the case brought to light.

Under this extra-judicial system, no appeals can be conducted; and the committee renders the final settlement. This settlement, although not binding on the party litigants legally, could hold them morally by the public reprimand. If the defeated party does not submit to the decision, he can appeal to the court of the United States. But this rarely happens. If any appeal is taken to the court, the association has no choice but turns the case over to the latter for adjudication, but at the same time the association will side with the other party.

3) *Remedies*: There are remedies under the extra-judicial system for wrongs, but the remedies are not in the sense in which that term is understood in the Anglo-Saxon common law action. The fines and penalties give certain remedial rights for the wrongs committed. Yet there is no rule of awarding for damages; the question whether the fine or penalty shall be given depends upon the nature of the wrong committed or the character of the damage done. In most cases the remedies are essentially fines. If the offender pays, that ends the matter. If he refuses to pay or is too poor to pay, he will be subject to some kind of penalty. But in case of capital offenses, the associations are all willing to submit the accused to the American courts. Thus the existence of this extra-judicial system

does not constitute a derogation and an infringement of the sovereignty of the United States, but instead, its continued existence as to any unprejudiced observer at least, will aid the courts of the United States to promote and administer justice among the Chinese in Chicago.

IV. *Conclusions: The Extra-judicial System: Reformation, not Abolition:* 1) *Some Principal Objections:* With the beneficial characteristics of the extra-judicial system, as have been shown above, let us consider some principal objections against it and the suggestions for its improvement. These principal objections are as follows:

First, the concentration of all the judicial functions in the person of a commercial agent, especially in view of the fact that there is no right of appeal from the committee decisions, is the most dangerous. The administration of justice is not an easy task to which anyone is competent; it requires special knowledge and special preparation, in order to protect against corruptions, prejudice, class feeling or incompetence. But under the present extra-judicial system, the justice is administered in the hands of these associations, their principal concern, either the consolidated or the private, being commercial matters.

Second, under the present system, the members of the committee are selected by the chairman at random, and their qualifications cannot be challenged by either parties. This method of selection of committee for trials will likely result in an open door for fraud. So I suggest that a member of the committee must possess certain general and special qualifications to be eligible to act in a particular case. For example, he must not be related within certain degree of consanguinity to either party and must be able to try the issue fairly and impartially. In order to check up the qualifications of the members of committee, the consent of the party litigants must be first obtained in their selection.

Third, there are no rules of procedure. Thus the individual member of the committee looks at cases one by one and measures them at his individual sense of right and wrong; consequently the case is decided not by law, but by the personal opinion. Thus I suggest that although the rigid outline of procedure is not desirable, yet some rules for the guidance in administering the justice is indispensable.

And lastly, under this system, no written complaint is required and no written opinion is taken in the final settlement. This verbal message and verbal decision may sometimes miscarry or be interpreted. Hence I suggest that the facts of the case and the reasons for the decision should be written in the final settlement and be pre-

served. The systematic preservation of the cases decided can hardly be underestimated for purpose of building up the stability and certainty of rules administering the justice and settling the disputes among the Chinese in Chicago.

On further analysis, the first two objections relate to the problem of the personnel of the extra-judicial system, while the last two objections concern the problem of its mechanics. Under each of these two major problems lies the common cause for both—the lack of a centralized judicial organization.

2) *The Creation of "Judicial Bureau"*: This study of the Administration of the law among the Chinese in Chicago brings home to any unprejudiced observer at least one fundamental fact. It is that under the present circumstance of the Chinese in Chicago, this extra-judicial system of settlement of disputes among themselves is the only policy under which to maintain peace and order among themselves and to do business in this country. To abolish it means ruin to them.

As the different associations of the Chinese in Chicago are overburdened with commercial duties, so I suggest to create a judicial bureau. The detailed suggestions for such bureau designated to remove the cause of all the objections against this extra-judicial system, facilitate the practice and increase the efficiency of its judicial administration of justice, will not be discussed in this article. Suffice it to say here that such a bureau (1) should seek the cooperation of the Chinese consul in Chicago; (2) should be a non-profit-making, incorporated unit in dealing with all legal problems among the Chinese; (3) should be invested with rule-making power, so that it can enact necessary rules governing the dealings of the Chinese one with another.