

## **HSEA G8888 Graduate Colloquium on Chinese Legal History**

### **Description:**

An introduction to Chinese legal history (particularly of the Qing period). Issues covered include civil and criminal law, formal and informal justice, law and the family, law and the economy, the search for legal history beyond the law codes, and the question of a rule of law in China.

### **Prerequisites:**

Permission of the instructor. Open to graduate students in GSAS and the professional schools. Advanced Chinese language is required. Students without advanced Chinese language skills are encouraged to enroll in Law and History in China.

### **Requirements:**

1. Attendance at weekly class sessions and participation in class discussions.
2. Completion of exercises in the use of Chinese materials pertaining to the law.
3. Final essay (approximately 20 pages) on a controversial issue in the study of legal history in general and/or Chinese legal history in particular. Depending on the size of the class student may work in pairs or in groups.

### **Purchase**

Philip Huang and Kathryn Bernhardt, eds., *Civil Law in Qing and Republican China*, Stanford: Stanford University Press, 1994. (paperback)

### **Syllabus**

#### **1. Introduction**

#### **2. Legal Thought in Ancient China**

*What was the nature of man as understood by key ancient Chinese philosophers? How did these ideas influence their understanding of the role of the state and of social norms? Do any of them present what could be termed a “legal sensibility?” Think about the originals and how they are depicted in later analyses of Chinese legal attitudes.*

#### Readings:

Selections from Confucius, Mencius and Xunzi  
Selections from Laozi  
Bodde and Morris, *Law in Imperial China*, pp.1-51

#### Recommended:

Liang Zhiping, “Explicating ‘Law’: A Comparative Perspective of Chinese and Western Legal Culture” *Journal of Chinese Law* 3 (1988):55-91.

#### **3. Codes from Tang to Qing (Technical Issues)**

#### Readings:

William C. Jones, *The Great Qing Code*, "Introduction"  
Translation of the Tang Code by Wallace Johnson, Volume I, pp.  
Thomas Metzger, *The Internal Organization of the Ch'ing Bureaucracy*,  
pp. 167-232.  
Bodde and Morris, *Law in Imperial China*, pp. 52-75

#### Discussion

##### \*\*Construction of the Code

Chart Comparing Chapter Headings of Selected Chinese Codes  
Sample page from the Qing Code showing code structure

##### The Process of Revision

Introduce uses of *Duli cunyi*

##### Administrative Law

Qing Compilations of Administrative Law

Board regulations

Salt Administration Regulations

Administrative punishments statutes

Many are part of the Code

Six Boards: Liu-pu ch'u-fen tse-li zeli

Hsing-an hui-lan [See Bodde & Morris, *Law in Imperial China*. ]

Exercise: Using the Chart of the Contents of Codes, find the relevant law relating to one of the following issues and discuss its evolution:

Rape

Usury

Bearing False Witness

Inheritance when there is no surviving male heir

Others

#### 4. Law and Custom I

Readings:

P. Bohannan, "The Differing Realms of the Law," *67 American Anthropologist*, no. 6, pt. 2 (1965), pp.33-42.

Philip Huang, "Codified Law and Magisterial Adjudication in the Qing," in Bernhardt and Huang, eds., *Civil Law in Qing and Republican China*

Mark Allee, "Code, Culture, and Custom," in Bernhardt and Huang (above)  
van der Valk, "Custom in Modern Chinese Private Law", *Monumenta Serica* 30, 1972-73, pp. 220-258.

Exercise: Using *Minshang shih xiguang diaocha baogao lu* Compare local practices on a specific issue. What significance should we give to these practices?

#### 5. Administration of the Law—Formal Law

Readings:

- Huang Liu-hung, *A Complete Book Concerning Happiness and Benevolence*, pp. 251-306.
- Chang Wejen, "Legal Education in Ch'ing China", pp. 292-321 in Benjamin Elman and Alexander Woodside, eds. *Education and Society in Late Imperial China, 1600-1900*
- Melissa Macauley, *Social Power & Legal Culture: Litigation Masters in Late Imperial China*, pp. 18-46; 100-102 and 105-119.
- Mark Allee, *Law and Local Society in Late Imperial China, Northern Taiwan in the Nineteenth Century*, pp. 148-249.
- Jonathan Ocko, "I'll Take It All the Way to Beijing: Capital Appeals in the Qing" *Journal of Asian Studies*, Vol. 47, No. 2. (May, 1988), pp. 291-315.

Exercise: Translation of Sample of an Official Plaint

## 6. Administration of Law at the Local Level—Informal Justice

Readings:

- Philip Huang, *Civil Justice in China: Representation and Practice*, pp. 51-75 ("Informal Justice"), 110-137 ("The Third Realm of Justice")
- Madeleine Zelin, "Merchant Dispute Mediation in Twentieth-Century Zigong, Sichuan," in Bernhardt and Huang
- Brad Reed, *Talons and Teeth: County clerks and Runners in the Qing Dynasty*, pp. 200-245 ("The Economics of Justice")

## 7. Civil Law—Law and Custom II

Readings:

- Jing Junjian, "Legislation Related to the Civil Economy in the Qing," in Bernhardt and Huang, eds. *Civil Law in Qing and Republican China*
- Zelin, "The Case for Strong Rights of Property in Pre-War China," in Zelin, Ocko, and Gardella, *Contract and Property in Early Modern China*
- Jerome Bourgon, "Uncivil Dialogue: Law and Custom did not Merge into Civil Law under the Qing" *Late Imperial China* 23.1 (June 2002): 50-90.
- Hugh Scogan, in Huang and Bernhardt, pp. 13-41.

Translation Exercise: Economic Issues in the Qing Code (each student will translate and discuss the evolution of one such issue using *Duli cunyi* as a reference)

## 8. Contract in Chinese Legal and Economic Culture

Readings:

- Articles from Zelin, Ocko, and Gardella, *Contract and Property in Early Modern China*, Stanford University Press, *forthcoming*

Myron Cohen, "Writs of Passage in Late Imperial China: One Rural Community's Documentation of Practical Understandings,"

Man Bun Kwan, "Contracts, Customs, and the Law: The Salt Merchants and the Legal Culture of Late Imperial China,"

Shaoting Feng, "Supplemental Payment in Urban Property Contracts in mid to late Qing China,"

Robert Gardella, "Contracting Business Partnerships in Late Qing and Republican China: Paradigms and Patterns"

Madeleine Zelin, "Managing Multiple Ownership"

Matthew Sommers, "Wife-Selling Contracts in Qing China: The Customary Enforcement of Illegal Transactions" Paper prepared for the *Annual Meeting of the AAS*, Boston, 1999.

Translation Exercise—Sample Contracts for land and partnerships

## 9. Law and the Family

Readings:

Ocko, "Hierarchy and Harmony: Family Conflict as Seen in Ch'ing Legal Cases," pp. 212-230 in Liu, ed. *Orthodoxy in Late Imperial China*

Huang Liuhung, *Fuhui ch'üan-shu: A Complete Book Concerning Happiness and Benevolence*, pp. 448-454.

Kathryn Bernhardt, *Women and Property in China, 960-1949*, pp. 39-46; 62-72; 168-78

"Magistrate T'eng and the Case of Inheritance" pp. 485-501 in Ma and Lau, eds., *Traditional Chinese Stories*

Section of the Code on Family Law

"Six Rites of Marriage"

Chart of mourning relationships

"Family Instructions"

Exercise: Translation of a Family Division Contract

## Put in a Session on Women and Gender

## 10. Law and Order—Homicide, Robbery, Theft and Dissent

Readings:

Bodde and Morris, (The Penal System), pp. 76-112

Meijer, *Murder and Adultery*, pp. 8-38 ("The Section Entitled "mousha" [premeditated murder])

Huang, *Fu-hui ch'üan-shu: A Complete Book Concerning Happiness and Benevolence*, pp. 454-62.

Joanna Waley-Cohen, "Collective Responsibility in Qing Criminal Law" in Turner, Feinerman and Guy, *The Limits of the Rule of Law in China*, pp. 112-131.

Recommended Readings:

Kuhn, *Soulstealers*, pp. 72-93 ("The Crime Defined") and pp. 187-222 ("Political Crime and Bureaucratic Monarchy")

## **11. Alternative Sources of Knowledge about Law and Legal Culture**

### **12. Rule of Law in China?**

Readings:

Turner, Feinerman, Guy, *The Limits of the Rule of Law in China*, pp. 20-44, 88-111, 132-162.

Teemu Ruskola, "Legal Orientalism," *Michigan Law Review*, 101.1 (Oct. 2002)

## **13 and 14. Presentation of Student Papers**

