

## Researching Chinese Legal History in Europe: The State of the Field Workshop

Thursday 4 to Friday 5 June 2015

G3, SOAS, University of London

### **Abstracts** – *(in alphabetical order)*

#### **Jennifer Altehenger (Kings College London)**

“Putting Laws on Paper in early Communist China”

For a brief period in the early years of Communist rule in China, the CCP regime tried to inculcate in ‘the masses’ a basic knowledge of national laws. The purpose of this experiment to promote mass legal knowledge was fairly straightforward: get people to observe New China’s (slim) body of laws, include legal knowledge in ‘thought reform’, and reaffirm the primacy of the political function of these laws. If everyone – common people and cadre alike – commanded crude knowledge of laws and could identify ‘illegal’ behaviour, then legal professionals would be made obsolete and laws would become a tool of the people’s democratic dictatorship. People were asked to study first the Common Programme, then Regulations on the Punishment of Counterrevolutionaries, the Marriage Law, the Election Law, and finally the 1954 Constitution. Clear-cut as this kind of education seemed on paper, it posed an array of challenges to the publishing world. This paper examines how the still quite diverse publishing world of the early 1950s – made up of state-owned, joint managed but also many private publishers – responded to the call to produce materials that imparted basic legal knowledge, how they interacted with state authorities, and how state authorities in turn tried to get word out about the need for people to study laws. Authorities clung to the printed word in legal education because it promised the stability of interpretation that law seemed to demand. Yet the working realities of a publishing world that was not yet fully state-controlled greatly complicated the attempt to control the diversity of legal interpretations and publishing in the field of law.

#### **Ernest Caldwell (SOAS, University of London)**

“Hunting the Xiezhai: Mythography, Historiography, and Chinese Legal Iconography”

For over two millennia, the xiezhai (獬豸 or 獬廌)—a mythical, one-horned goat-like creature possessing the ability to discern truth from perfidy—has been inextricably linked to Chinese concepts of fairness and justice. Drawing on methods derived from the fields of mythography, visual studies, historiography, and Chinese palaeography, this paper first considers the origins of the xiezhai myth and the development of its link to early Chinese conceptions of justice and fairness, particularly within legal proceedings. The second part of the paper examines the various manifestations of xiezhai iconography over the past millennium and highlights the multiple interpretations such imagery has elicited from a variety of audiences.

**Frederic Constant (Paris X Nanterre University)**

“Compensation in Chinese Law, Past and Present”

Through the issue of compensation, I will raise the question of the persistence of Chinese legal culture in modern institutions shaped by Western models. The Chinese legal tradition was reluctant to order the payment of compensation as reparation for the damage suffered by the victim. In the case of homicide, Chinese law did not provide for civil remedies to the family of the victim, except for situations where the perpetrator was allowed to redeem his crime with money. I will present origin of these principles as well as the evolution of their implementation from the Tang dynasty to the Qing period. I will then discuss their remaining influence on the way judges adjudicate such cases.

**Rogier Creemers (University of Oxford)**

“The Past Is a Different Country - Longitudinal Developments in Chinese Press Law”

While many scholars of Chinese law happily refer to China’s long and distinguished legal tradition, few have attempted to explore the continuities and discontinuities in China’s legal system on the trajectory from Empire to Republic, and to People’s Republic. Consequently, the question of how such evolutions should be studied and understood remains largely open. This presentation will, on the basis of analysing the development of press law in Late Qing, Republican and early People’s Republic China, seek to identify institutional, ideological and organizational factors that may act as a starting point for further longitudinal studies.

**Roger Greatrex (Lund University, Sweden)**

“False Accusation and its Judicial Consequences during the reign of the Qianlong Emperor”

This paper discusses the commonly found phenomenon of false accusation (*wugao* 誣告) on the basis of thirty cases that were adjudicated during the reign of the Qianlong Emperor (1730-1795). Chinese traditional law, as formulated in Article 342 of the Tang Code, stipulated that anyone falsely accusing another of a crime would receive the punishment for that crime, in the case that the accusation was unfounded. This paper examines the judicial consequences of false accusation, by noting in what way and to what extent the occurrence of false accusation is noticeable in sentencing in redirected cases (*bo’an* 駁案). The materials are drawn from the well-known printed collection the *Bo’an xinbian* 駁案新編, the anonymous hand copied *Tizi bo’an* 題咨駁案, and the widely used *Xing’an huilan* 刑案匯覽. Only three cases derive from the last mentioned work since the cases included in the *Xing’an huilan* predominantly date from the reigns of the Jiaqing and Daoguang Emperors.

**Fernanda Pirie (University of Oxford)**

“Tibetan law and legal ideologies: socio-historical themes”

Research on the social history of Tibetan societies is generating increasing interest in legal history among Tibetan scholars. In this presentation I outline some of the principle questions and themes that emerge, including the ways in which Tibetans thought about rules, legal documents, legal obligations, and judicial processes, as well as what they achieved in practical terms. I will outline three periods in Tibetan legal history, from the early empire of the sixth to ninth centuries, to a politically-unstable intermediate period when Tibet was dominated by the Mongols, to the state-building of the Dalai Lamas’ Ganden Phodrang government of the seventeenth to twentieth centuries. Different issues—concerning the interpretation of laws and legal documents, the development of a legal ideology, and the creation of bureaucratic records and legalistic agreements—arise in different periods. One question that runs throughout, is the role of religion and the extent to which Tibetan law was based on Buddhist ideas and principles. To address this means interpreting what Tibetans say when they claim that law is based on Buddhism, as well as how we should understand the significance of references to ancient and religious laws, protector deities, and support for the dharma in legal documents.

**Cecile Wang (École des Hautes Études en Sciences Sociales)**

“The Legal System from the 7th to the 10th centuries, a study of Judge Cui figure”

Based on the history of an underworld judge, Judge Cui, I study the legal system from the 7th to the 10th centuries. This belief of the underworld judgment, which combined the Chinese imaginary on an underworld for the dead and the Buddhist belief of purgatory, flourished during the Tang dynasty, as some literary works reported. The underworld court reflects the judicial institution of the real world with its detailed depiction and iconography. It is in this period that a new literary figure is created: a living person who is at the same time a local official and an underworld judge. Judge Cui is one of them. He is said to be a xianling in the real world in the day time and one of the underworld judges at night. These deities were integrated in the Taoist pantheon, which developed into a divine administration dealing with human affairs during the Song dynasty. The underworld court worked in a legal bureaucracy as in the real world. I’ll compare the legal system in the underworld court and that in the real world in studying the Judge Cui figure. The available sources are various, such as legal texts, literary works, ritual and canonical texts, and iconographic documents.