The Places of the Law in the Late Chinese Empire

Abstracts

(speakers' names in alphabetical order)

Frédéric Constant, (Associate Professor, University Paris X Nanterre)
"Mapping Exile: territory and distances as basis for the graduation of punishments in China".

Ancient China instituted exile as a degree of punishment just below death penalty and the location of exile was supposed to be determined according to equivalence between distances of exile and seriousness of the crimes. Prior to the Qing, no clear standard was fixed to ascertain where to send criminals sentenced to exile. By drafting the *Chart for the three exiles* (*san liu biao* 三流道里表) and the *Chart for the five military exiles* (五軍道里表) the Qing attended to implement principles of the code carefully for the first time in Chinese history, so that each district was ascribed one or several locations of exile conform to the legal distances. Through the mapping of exile's destinations, we will discuss how the Qing streamlined distances of exile and how Chinese territory was shaped as an outdoor jail to allot a place for those criminals condemned to exile.

Alice Crowther (Masterante**,** École Pratique des Hautes Études, Paris)
"Reserved Spaces: The concept of poaching under Qing dynasty law"

The concept of poaching establishes bounds that exclude the majority of the inhabitants of a region from exploiting its resources. This paper will present an analysis of the laws on poaching, and on illegally cutting wood, recorded in the Mongolian code and in the 1680 *Xingbu xianxing zeli*, and of cases tried under the sub-statutes of the Laws of the Board of Military Affairs that established exceptional hunting regulations for the north-eastern provinces. Laws on poaching are not to be found in earlier Chinese law codes, and to trace their origin a comparison with ethnographic material on Manchu and Mongolian concepts of rights to the usage of land and hunting etiquette will be made. This paper represents part of the preliminary findings of a study on the legal foundations of the imperial hunting reserves that the Qing dynasty established in the north-east, and on the interactions between their day-to-day administration and the local inhabitants.

Maura Dykstra (An Wang Postdoctoral Fellow, Harvard University Fairbank Center for Chinese Studies)
"Finding the Local in the Law: A Legal and Institutional Approach to Defining a 'Local Case' in the Qing Dynasty"

Ever since David Buxbaum's seminal article on "civil cases" in the Tan-Hsin Archives, the study of Chinese legal history has been revolutionized by a focus on the local practice of law. In the intervening decades, dozens of new works have employed several previously unexploited genres of legal history sources to try to illustrate the local practice of law in the late Chinese empire. This paper seeks to consolidate and clarify some of the gains that historians have made in understanding "local law" by pinpointing exactly what a local case is.

It summarizes the bureaucratic, legal, and phenomenological dimensions that defined the *locality* of a given case, and then theorizes from that basis how future studies of Qing legal history might further contextualize the *local* phenomenon of law and its place in the larger world of the Chinese empire.

Devin Fitzgerald (Doctoral Student in Chinese history, Harvard University)
"Building the Archive: Finding the Space for the Qing Legal Case"

During the Ming dynasty, numerous types of official documents lived on shelves and in files in government offices. Despite inhabiting the same place, these records existed in disparate conceptual categories. No word for 'Archive' unified them, and their essential similarity as 'archival' remained unstated. The Manchu invention of the word *dangse*, the basis for the later Chinese *dang'an*, unified these scattered official documents and their storage spaces. In this paper, I will explore the implication of Manchu concepts of the 'archive' as both space and document. I argue that Manchu visions of archives represented a new turn in ideas of documents and collections in the governance of local society.

E. John Gregory (Academy Professor of Chinese, West Point)
"Militarized versus Routine Criminal Adjudication as a Function of Time and Space"

This paper describes the late imperial militarized mode of adjudication (*yi junfa congshi* 以軍法從事) – modal *junfa* – and its relationship to eighteenth-century cases of summarized execution under the imperial standard (*gongqing wangming* 恭請王命牌). It shows that during the late Ming and early Qing, militarized adjudications, which were essentially summary in nature, occurred along a spatial-temporal gradient of military operations which was a function of proximity to and intensity of active military operations. The paper also demonstrates that prior to the eighteenth century, militarized adjudications were situated in a different paradigm from the routine adjudicative system (*zhuanshen*, *heshen*, *qingzhi* 轉審, 核審, 請旨) associated with the Qing Code (DaQing lüli 大清律例). When norm-violating behavior occurred closet to the battlefield at the time of battle, it was more likely that the offender would be summarily adjudicated under modal *junfa*. This relationship changed over time. Imperial standard executions, primarily an eighteenth-century phenomenon, developed out of the practice of militarized adjudications. The paper relies on various late Ming and early Qing scholars, such as Wang Yangming, and criminal cases to delineate the two different paradigms of modal *junfa* and the routine adjudicative process. It demonstrates the change in time in the relationship between militarized adjudication, routine adjudication, and the military operations gradient.

Fabienne Jagou (Maitre de Conférence, EFEO)
« Jugements rendus à Lhassa par les Amban, représentants des Qing : Application locale du code des Qing ou de droits extraterritoriaux ? »

After a first attempt to demonstrate that according to its location within and outside the Lhasa city, the status of the Amban Manchu yamen in Lhasa, as a building, is questionable and evolutional, I will continue to analyse the legal status of the Amban living in Tibet. Here, the legal documents issued or received by the amban will serve to determine the extent of their authorities in terms of space, territory and subjects. The main trend would be to evaluate if the

Amban applied the Qing code in Tibet and to what extent or if they only got authority within their yamen territories instead.

Max Oidtmann (Assistant Professor of History Georgetown University School of Foreign Service in Qatar)
The "Warring States" of Amdo: Qing Jurispractice and the Creation of the "Tibetan World," 1772-1911

In the late 18th century, the arrival of Qing colonial magistrates in the Amdo region presented new opportunities for Tibetan litigants to resolve conflicts. Although reluctant to get involved lawsuits, Qing officials soon found themselves dragged into a variety of matters ranging from natural resource disputes among Tibetan laypeople to large scale feuding between monasteries over issues such as the appointment of abbots, pilgrimage, and rights over property—both animate and inanimate, belonging to the estates of reincarnate lamas. Qing-supervised jurispractice in Amdo not only resulted in the creation of a new "Tibetan" code derived from Mongol law and other indigenous practices, but also generated a large body of decisions and compacts, composed in both Tibetan and Chinese, that profoundly shaped the organization of indigenous society in Amdo. By the late nineteenth century, Tibetans had become accustomed to seeking legal redress in a Qing-centered legal order that drew on the empire's diverse traditions of jurisprudence. The fractious communities of Amdo met together in the colonial yamen to demand "Tibetan" jurisprudence. A "Tibetan world" was forged in the process. This paper is based on newly available Tibetan and Chinese language archives from Qinghai and Gansu.

Eric Schluessel (Doctoral Student in Chinese history, Harvard University)
"Immediate Execution: Spatializing Danger and Dealing Death in Late-Qing China"

The people of late-Qing Xinjiang could legally be put to death by their county magistrate following cursory investigation and without imperial approval under a policy dubbed "immediate execution" (Ch. *jiùdì zhèngfǎ* 就地正法). The practice began during the Hunanese reconquest in 1877 and persisted through 1911, as this nominally temporary measure was extended time and again in the name of "flexibility" in opposing an ill-defined threat of mass violence. "Immediate execution" had a long and tangled history: it began much earlier in the Qing as a minor and occasional means of punishment in a few remote regions under "military law," particularly Xinjiang. It was retheorized in the Statecraft literature as a frontier solution for foreign encroachment from the sea, and then expanded across China proper wherever Statecraft adherents fought the Taiping, Nien, or other "rebellions." Over time, immediate execution receded, as this tool of "pacification" had no place in the ideal civil order. Yet it lingered in the Northwest, whence it seemed to have sprung, but transformed once again, this time into a tool of local politics. This paper places the theory and practice of immediate execution into comparison with borderland and frontier law under other colonial regimes. It argues that the dialogue between place and criminality expressed through immediate execution coded elite anxieties about class, ethnicity, and sovereignty and mapped them onto a national space where they could be and were reproduced through the judicial system. In essence, a political class seeking greater control transformed a practice applied in rare cases into a technology of the state of exception.

Michael Szonyi (Professor in Chinese history, Harvard University)
"Soldier-civilian disputes in late Ming and the issue of multiple jurisdictions"

Under the Ming legal system, military commanders served as judges for matters involving their subordinate soldiers. This division of judicial labor may have functioned in the early part of the dynasty, but by the late Ming it was clearly inadequate to deal with the complexity of litigation. Where hereditary soldiers lived interspersed with civilians, disputes crossing jurisdictional lines were common. This paper uses the late Ming casebook of Zhang Kentang to ask how judges and litigants operated within a system of multiple, overlapping jurisdictions. In modern law, forum-shopping refers to litigants' efforts to have their cases heard in the jurisdiction most likely to render a favorable verdict. How did Ming jurists like Zhang Kentang conceive of and deal with forum-shopping's Ming equivalent?

Ulrich Theobald (Professor, Tübingen University)
"Space and Place in Administrative Military Regulations of Qing China"

Between 1680 and 1780 the Qing empire vastly expanded by military conquest. In the course of several long-lasting campaigns it had become evident that, for the sake of smoother administration, a nation-wide arrangement of military regulations was necessary. The compilers of such regulations balanced out those of various provincial codes that in some cases differed substantially from each other. In the Military Supplies and Expenditure Code (*Junxu zeli* 軍需則例), the two weapons and military equipment codes (*Junqi zeli* 軍器則例) and the Disciplinary Code of the Ministry of War (*Bingbu chufen zeli* 兵部處分則例) such standardization was effected by evening out conflicts between local norms.

This article shows under which conditions these codes came into being and how the compilers unified differing norms. It will be demonstrated that in spite of all attempts at standardization in respect to allowances for troops and persons labouring in the supply train, as well as in the field of types of weaponry and equipment, their production methods and manufacturing cost there was still a considerable degree of autonomy left to the provinces and even the garrisons. The concept of 'space' played an important role for military administration because it defined not only what was a 'war', but also how troops and military labourers were paid and supported by the state, and which extent of independency was given to individual decision-makers and administrative units.

Xie Xin-zhe (Doctorante, CECM-EHESS)
« Lieux de la loi, lieux du savoir : maîtriser l'espace et le temps dans les règlements sur la procédure des autopsies sous les Qing »

Résumé : Les lois qui encadraient la procédure d'autopsie sous les Qing comportent deux principes cardinaux : 1) l'efficacité et 2) la compétence exclusive au magistrat. Le premier exigeait que le magistrat arrive dans les plus brefs délais sur les lieux d'autopsie. Le second n'octroyait le droit de superviser les autopsies qu'aux magistrats « titulaires de sceau » (yinggyan 印官). Or, l'étendue et le nombre des circonscriptions et le faible effectif de la magistrature locale imposèrent ds dérogations de plus en plus souples à l'égard du deuxième principe. Ces dispositions ad-hoc (li 例) attachées à l'article 412 (spécialisé en procédure d'autopsie) du Code des Qing, seront au centre de cette communication. Ces efforts législatifs,

en élaborant des mesures accommodantes, traduisent une tentative de maîtriser l'espace et le temps concernant les autopsies. En second lieu, on retracera en détail le parcours législatif de ces mesures, dans le but est de mettre en évidence les stratégies de persuasion déployées par les initiateurs des réformes, et les arguments de résistance à leur encontre. La nature de l'expertise que les magistrats étaient censés posséder en matière d'autopsie sera évoquée en conclusion.

Wang Zhiqiang (Professor, Fudan University Faculty of Law)
"Rethinking Geographical Diversities in Imperial Chinese Law: The Qing Dynasty"

Seen by the theory of legal pluralism and from the geographical point of view, imperial Chinese law displays regional diversities in many fields such as customary law, minorities law, local administration of law, provincial regulations, and even in the central legislations. The geographical analysis sheds new lights on the realm of Chinese traditional law, which has been long since treated a unitary conception. Meanwhile, the legal pluralism theory that justifies the diversified and co-existing legal systems in the history of Europe is not fully applicable to the geographical diversities in Chinese law. From a comparative perspective, this paper intends to systematize a political explanation in order to interpret the regional differences widely existing in imperial Chinese law and its enforcement, particularly in the Qing dynasty, by seeing them against the context of a centralized political structure.

Laure Zhang (Professeur Associé, Université de Genève)
« Entre « loi des Miao » et loi sur les Miao Le cas du trafic d'êtres humains dans le Guizhou au 18ème siècle »

Le contrôle du territoire des Miao sous les Qing s'accompagne d'une connaissance progressive par le pouvoir mandchous des populations barbares du Sud et du Sud-Ouest, dans le prolongement de ses projets expansionnistes en Chine. Ce pouvoir s'exerce par des procédés administratifs, militaires et judiciaires, par la coercition ou négociation. La reconnaissance partielle des coutumes judiciaires et la création des lois particulières sur les Miao intégrées dans le code des Qing en sont l'expression. Dans la présente étude, je m'appuierai sur des documents, des archives disponibles et des travaux existants. J'essayerai de cartographier ce territoire où l'on distingue toujours les Miao cuits et les Miao crus, mais qui s'organisent de manière relativement autonome, par-delà les obstacles naturels ou les frontières provinciales. J'étudierai un cas particulier, celui du trafic des humains entre provinces habitées par des populations Miao mais pénétrées aussi par des individus Han.

Discussants /Regards extérieurs

Pär Cassel (Associate Professor of History, University of Michigan)

Jean-Louis Halpérin (Professeur de Droit, ENS Paris).

Jérôme Bourgon (Directeur de Recherche au CNRS, Institut d'Asie Orientale)