

# Law and Society in Premodern East Asia

## 古代東亞之法律與社會

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### Abstracts 摘要

1. Li Xuemei 李雪梅: 汉《张景碑》公文结构与命名探讨 (Analysis on the Structure of Official Document and Nomenclature about *Stele of Zhang Jing* in Han Dynasty) .....2
2. Reinhard Emmerich 艾默理希: Chinese Legal Culture of Late Imperial China as Witnessed by *The Chinese Repository*. Some Problems of Sources .....2
3. Kang Youn Ok 姜允玉: 侯马盟书与春秋时期法制的变化 (Houma Covenant and a change of the law in the Chun-Qiu Period) .....2
4. Kogachi Ryuichi 古勝隆一: *Lü Shu* (律疏) and the *yishu* (義疏) scholarship .....3
5. Miyake Kiyoshi 宮宅潔: A Reexamination of the Qin Systems of Corvée and Military Service (秦代徭役・兵役制度再考) .....4
6. Nan Yuquan 南玉泉: 再论秦及汉初的“执法”官 (A Further Research on the Zhifa of Qin-Han Period) .....4
7. Liu Hsinning 劉欣寧: “Contracts” during the Qin-Han Period (秦漢時代的「契約」) ....5
8. Wang Anyu 王安宇: 汉代经学与法制——再论“引经决狱”的法律性质 (Confucian Classics and Legal Practice in Han Dynasty – Further Discussion on the Legal Nature of Confucianism Moral Principles Decide the Case) .....5
9. Zhang Chuanxi 张传玺: 张家山 247 号墓所出〈二年律令·告律〉129—131 简小识 (New Light on Slip nos. 129 ~ 31 of “Statutes on Denunciations” in the Statutes and Ordinances of the Second Year from Zhangjiashan Tomb no. 247) ..... 6
10. Chan Chun-Keung 陳俊強: The Transformation of Chinese Penalty System between the Third and Seventh Centuries (三至七世紀之間中國刑罰制度的轉型) .....7
11. Annette Kieser 安然: Law and material culture – a case study (法律條款與物質文化——一個六朝時期的案例研究) ..... 8
12. Monique Nagel-Angermann 丁慕妮: Some remarks about acts of grace during the Jin dynasty (論晉代恩赦二三事) ..... 8
13. Kerstin Storm 施可婷: Age and Aging in China: Aspects of Tang Law .....9
14. Chen Liping 陈丽萍: 淺議唐代戶絕家庭財產的處理（初稿）——以 BDo9352 號為中心 (The Disposal of the Asset of Distinguished Household in the Tang Dynasty——Centered on the Dunhuang Manuscript BDo9352) .....9
15. Zhao Jing 赵晶: 灵异、犯罪与司法——笔记所见唐代法律文化之一端 (Supernatural, Crime and Justice: One Aspect of Legal Culture in Tang Dynasty from Biji) ..... 10
16. Tang Wen 唐雯: 唐代墓誌中的父祖書寫 (Exaggerated information of father and grandfathers in Tang dynasty epitaph) ..... 10
17. Qiu Luming 仇鹿鸣: 法理與孝思：士人遷葬與誤掘墳塋 (When Juridical Principles Encounters Filial Piety Factors: The Mis-excavation of Other’s Grave When an Official Scholar Moving that of Ancestors) ..... 11
18. Chen Dengwu 陳登武: Zhang Jiuling’s Approach to Governance and Legal Philosophy (張九齡的國家治理與法律思想) ..... 12

19. Yu Hsiaowen 于曉雯: The Legal Philosophy in the 'Military Statutes' (Bingdian) of the "Tongdian" (《通典·兵典》的法律思想) ..... 12
20. Kang Yunmei 康韻梅: 唐代小說的撰作與士人生活——以李公佐為考察中心 (Fiction Writing and Life of Intelligentsia in Tang Dynasty — Take Li Gongzuo as the Focus of Study) ..... 14
21. Christian Wittern: Changes and continuities in the Chan School during the Song, as observed through lamp history texts from the 景德傳燈錄 Jingde chuandenglü (1004) to the 五燈會元 Wudeng huiyuan (1252) ..... 15
22. Lu An 陸岸: What was the accusation for? — The background clarification of a judgment in *Qing-Ming Ji* (因何而訴? — 《名公書判清明集》一則判詞的背景試探) ... 15
23. Gui Tao 桂涛: 文字狱与 18 世纪社会转型 (The literary Inquisition and Social Change in the 18th century) ..... 15
24. Sun Xu 孙旭: 清代北京地方职官请托犯罪的特点 (Crime of Qing Tuo (请托) Implemented by Bei Jing Local Officials in the Qing Dynasty) ..... 16
25. Guo Ruiqing 郭瑞卿: 清代民俗医疗的法律规制 (Legal Control of folk medical treatment in Qing Dynasty China) ..... 16
26. Zhang Yu 张雨: 明治维新与清末新政中“行法”“行政”的概念嬗变——以中日学者对译 administration 词汇为中心 (How to Translate Administration into Chinese or Japanese during the Late 19th Century: Focusing on Attempts of Chinese and Japanese scholars) 17

### 1. Li Xuemei 李雪梅: 汉《张景碑》公文结构与命名探讨 (Analysis on the Structure of Official Document and Nomenclature about *Stele of Zhang Jing* in Han Dynasty)

在纪功、铭赞体碑文盛行的东汉时期，公文体式鲜明的《张景碑》是规范性公文碑的先导。本文在对《张景碑》碑文进行整理的基础上，就碑文结构、公文组合、郡县行政过程、张景承包政府工程的权利义务、行政监管以及碑石命名等方面进行分析探讨，以期对中国古代早期公文碑的形态和功能研究，有所助益。

关键词：张景碑 公文碑 府告 府君教

In the Eastern Han Dynasty, it was prevalent to use glorification in the inscription on a tablet. Because of the form of official documents, *Stele of Zhang Jing* became the precursor of the normative official monument. On the basis of text arrangement, this article analyzes the inscription structure, the combination of official documents, the county administration, the rights and obligations of contracting government projects, and the naming rules of stone monuments. Based on above discussion, it is expected there will be helpful in the study of morphology and function about the early ancient Chinese normative official monuments.

Key words: Stele of Zhang Jing; official monuments; Fugao; Fugaojun

### 2. Reinhard Emmerich 艾默理希: Chinese Legal Culture of Late Imperial China as Witnessed by *The Chinese Repository*. Some Problems of Sources

### 3. Kang Youn Ok 姜允玉: 侯马盟书与春秋时期法制的变化 (Houma Covenant and a change of the law in the Chun-Qiu Period)

本世纪80年代，山西省侯马市大量出玉刻盟书，它进一步印证了《左传》等文献中所载春秋时期盛行的盟誓制度，它为研究东周盟书提供了可信的实物。我们将侯马盟书作为东周法律史料来考察先秦法制变化，可以得出如下结论：

(1) 有些学者把史籍和金文中的“誓”与春秋时期的“盟誓”等同,值得商榷;金文中的“誓”并非一种法律形式。确切地讲,侯马盟书是一种特殊的法律形式,即在春秋战国之际大变革过程中,它不仅具有一般成文法的特质,同时又具有一般成文法所不具备的特殊性。

(2) 侯马盟书的盟誓制度是春秋时期社会政治生活中出现的一种特殊现象。在诸侯国内部,公室衰微,政出家门,卿大夫之间也纷纷争权,但是谁也没有力量最终冲破周礼的束缚,因而只能通过盟誓活动,订立盟约,以维持社会安定。这种独特的现象夏、商、西周时期从未出现过的,与春秋末期“铸刑书(鼎)”以后的成文法也有本质的区别。我们与战国时期各国所颁布的一系列成文法相比,盟书具有强制约束力,与一般的法律相比,盟书的制定程序是由一套比较固定的礼仪构成的,并且采用的惩罚方式也相当特殊,带有浓厚的宗教色彩。

(3) 侯马盟书在从西周“礼”制到战国、秦“法”制的新旧制转变过程中起了不可替代的、承上启下的法律规范作用,它是“信”的维系和转换方式。春秋中晚期其作用较大,相对而言,战国时期“盟誓”之风表现,结盟的频繁性、普遍性均不及春秋时期,其盟书的约束力也远不如春秋时期的。其作用也相应减小,战国后期至秦“法治”社会建立,盟书的历史使命便告完结。

In December 1965, archaeologists in Shanxi Province unearthed a large number of jade and stone tablets with red characters in the eastern suburb of Houma City. According to the archaeological reports, more than five thousand copies of the covenant were unearthed at that time, from which the recognizable 656 items were selected and compiled as Houma Covenant by the Committee of Cultural Relics of Shanxi Province. The excavation of Houma Covenant reinterpreted Zuozhuan's truthfulness and the Chun-qiu period allied oath system, and made it possible to study the legal system changes at that time. The results of the research are summarized as follows.

(1) Some scholars argue that the "book" of the ancient books and the seou period bronze inscription have the same meaning as the "Covenant" of the Chun-qiu period, but they need to be reviewed. If the allied oath of Houma Covenant adopts the notion of a "collective pledge", the "oath" of the golden text is not an "individual promise" This is because they judge it to be different.

(2) The allied oath of Houma Covenant is a product of the rapidly changing political and social processes of the late Chun-qiu period. When the Lord's Royal House weakened and became no longer able to redeem each nation as a law of propriety, the battle of the regime of the senior minister became fierce and the society tried to secure itself through Houma Covenant. Houma Covenant thus had a stronger binding power than the statutory law of the nation's era, and became a benchmark for judging the political capacity of the lender. Also, compared to the provisions of the general law, Criminal has chosen a punishment method that is rich in religious colors that "want to be punished in the sky", and can be considered special.

(3) Houma Covenant's statutory provisions played a significant role in the transition of the Xizhou period patriarchal clan system to the law system of the national and Qin dynasties, and to convert them to the rule of law system. In the age of the nation, when the Allied auth clause was violated, its binding power weakened and it became a decline. After the conversion of the Qin Dynasty into the rule of law, this system also ended in history.

#### 4. Kogachi Ryuichi 古勝隆一: *Lü Shu*(律疏) and the *yishu*(義疏) scholarship

In October 653, Zhangsun Wuji (長孫無忌) and other scholars completed 30 volumes of *Lü Shu* (律疏), the subcommentary on Tang code, which content is also known as *Tanglü Shuyi* (唐律疏議) in the later ages. *Lü Shu* is the subcommentary which explains both the text of

the Tang code and its commentary (注). In the history of Chinese law, commentaries on legal codes were written repeatedly, but subcommentary was never written before Lü Shu. During the period of the Northern and Southern Dynasties, Confucian and Buddhist scholars developed the style of subcommentary, which explains the meaning of the classics and the religious texts. This style of subcommentary is called shu (疏) or yishu (義疏) in Chinese. In this article, I will discuss the reason why authors of Lü Shu adopted this style of commentary, and try to demonstrate the close relationship between Lü Shu and the Confucian scholarship.

## 5. Miyake Kiyoshi 宮宅潔: A Reexamination of the Qin Systems of Corvée and Military Service (秦代徭役・兵役制度再考)

秦代的徭役是爲了土木作業、物資運輸等不定期地需要相應勞動力的工作，以每年累計三十天爲基準徵用人員的制度。各人的服役天數被詳細記錄，義務天數的超過與不足被轉入下一年，以求負擔的均衡。另一方面，作爲持續性勞役的防守邊境的任務，則以輪流的形式動員了士兵。對絕大多數的一般人來說屬於輪流形式的「踐更」，應當就是服役，但一部分有特殊技能的人是作爲官府的勤雜人員以輪流的形式服役的。無論何種工作，輪流服役都有記錄，「踐更」了一個月（約三十天）的話，應該就被視爲已經盡了那一年的勞役義務。筆者認爲，這就是說無論徭役還是兵役，每年三十天左右是這種義務天數的一個基準。

## 6. Nan Yuquan 南玉泉: 再论秦及汉初的“执法”官 (A Further Research on the Zhifa of Qin-Han Period)

执法在文献中虽有提及，但一般以为是秦、汉初御史中丞的副手。岳麓秦简的材料证明，执法应是秦朝在关中设置的郡一级的监察机关。分析现有材料，秦关中的中县道、上郡应设有执法，其秩级应为二千石。秦在推行郡县制时，在郡级设置监郡（监御史），因此，关东各郡设置监御史是没有问题的。监御史与执法应是同级、同职掌，只是分别设置在关东、关中。然而，有些材料在解读上还有分歧，本文的结论还需进一步验证。

关键词: 岳麓秦简 执法 监郡御史 中县道

Although the ZhiFa (执法) is mentioned in the literature, it is generally considered to be the assistant to Yushizhong cheng (御史中丞) in the early Qin and Han Dynasty. The bamboo slips of Qin Dynasty in YueluShuYuan (岳麓书院) proves that the ZhiFa (执法) should be a county supervisory organ established in Qin dynasty in Guanzhong region. The position of ZhiFa (执法) has been hold in prefectures Shangjun (上郡) in Guanzhong region ranking two thousands Shi of millet according to the analysis of existing materials. With establishment of the system of prefecture (县级) and county (郡级) in Qin Dynasty, they also created the position of Jianjun censor in counties, therefore, there should be no problem for the setting up JianJun censors in the counties of GuanDong. Jianjun censor (监郡御史) and the ZhiFa (执法) of Qin Dynasty should be in the same rank, and holding the same right. The only difference between them is that they are set up seperately in GuanDong regions (east of HanGuGuan 函谷关东部) and Guanzhong (关中) regions. Though some materials have different interpretations to these, and the conclusions of this paper need to be further proved.

Key words: The bamboo slips of Qin Dynasty in YuluShuYuan; (岳麓书院); ZhiFa (执法); Jianjun censor- this title is created in Qin Dynasty (officers for supervision and control of the officials of in Qin Dynasty in prefectures); prefectures of the Guanzhong region

## 7. Liu Hsinning 劉欣寧: “Contracts” during the Qin-Han Period (秦漢時代的「契約」)

In the Qin-Han period, contracts took the form of “quan.” The same text was written twice on a single wooden tablet; the tablet was then divided, and one half given to each party. The legitimacy of a contract could be proven only when each party was willing to match the copies they possessed. This paper focuses on the source of the authority of contracts, that is, what forces compelled parties to contracts to have to recognize and comply with the terms of contracts. In the earliest times, religion and interpersonal relationships could be recognized as powerful forces within society. Nevertheless, religion was losing its place during this period, and although interpersonal relationships could confirm the authenticity of contracts, they had limited power to enforce them. Signatories expected the public authority to carry out their justice. At the same time, the public authority also hoped to intervene in private contracts in order to maintain social order. The best way for the public authority to intervene in contracts was to participate in the making of contracts at the beginning. By making public administrators the witnesses to contracts, and keeping one copy in the official archive, the authority of contracts could not be doubted. However, this practice could not be applied to all contracts. For contracts without public notarization, witnesses recorded in the contracts might be required to testify regarding the authenticity of contracts in a lawsuit. The severe penalty for perjury guaranteed the veracity of witness testimony. After performing a truth-finding investigation and making their decision, the public authority no doubt had the coercive power to enforce the decision. Criminal penalties were also utilized to guarantee the performance of contracts.

秦漢時代的「契約」採取「券」的形式，亦即將大致相同的兩份文書書寫在同一簡牘上，剖分後交付雙方。因此只有當雙方願意合券時，券的真實性才能得到驗證。本文目的在於探究契約權威的來源，何種力量驅使訂約者願意承認並遵守契約。首先，宗教與人際關係可視為來自社會內部的力量。但宗教力量逐漸失去影響力，而人際關係雖可確認契約的真實性，強制力卻較為有限。訂約者必然期待公權力能為其伸張正義，同時公權力也希望介入民間契約，以維持社會秩序。公權力介入的最佳途徑，是在一開始即參與契約的訂定。藉由官吏擔任見證人，並將契約收藏於官方，可賦予契約無可懷疑的權威。唯並非所有契約皆能有此待遇。未公證的契約若引發訴訟，契約上所載見證人可能會被要求在法庭上提出證言，而偽證的嚴峻刑罰確保了證言的可信度。釐清事實並作出判決後，公權力無疑具有強制力，甚可能動用刑罰作為無法履約的懲罰。

## 8. Wang Anyu 王安宇: 汉代经学与法制——再论“引经决狱”的法律性质 (Confucian Classics and Legal Practice in Han Dynasty – Further Discussion on the Legal Nature of Confucianism Moral Principles Decide the Case)

传世文献所存董仲舒《春秋决狱》的案例中，养父匿养子案例不可能案发于汉武帝时期，此案例当为汉宣帝地节四年后，由董仲舒后学或其他汉儒假托董仲舒之名编入《春秋决狱》中。而需基于所谓《春秋》“原心定罪”原则所断的案件，其罪名本身就是“因心而罪”，其罪名成立的核心要件即是主观心态。即使在奉行法治主义的秦朝，这类案件也需推定犯罪者的犯罪动机，只是到了汉朝，法官的个人推理逐渐被官方认定的儒家经义取代而已。以官方承认的经义限制法官对这类罪名是否成立的推理，是汉代司法活动更加规范化的表现。汉代“引经决狱”，并非因为经义与法义存在矛盾，汉儒追求的不是以经义取代法义，而是经义与法义的统一。在汉儒看来，经义即法义，法义也是经义的体现，故经义可以填补法律规定的空白，而现存法律因符合经义而合理。

关键词：“引经决狱” “原心定罪” 犯罪构成 经义 法义

The case Foster father hid foster son in Dong Zhongshu's Adjudicating Suit in Line with the Spirit of Spring and Autumn which remains in the handed-down literature, could not had occurred in the period of Emperor Wudi of Han Dynasty. This case should had occurred after 66 B.C., and the judge was not Dong Zhongshu, but his descendants or other Confucians.

The core condition of this crime involved in those cases that need to be judged according to the principle of "Judgment Based on Subjective Mentality" in the Spring and Autumn Period was subjective mentality in Han Dynasty. Even in Qin Dynasty, which pursued the rule of law, such cases also needed to presume the criminal motivation. In Han Dynasty, the judge's personal reasoning was gradually replaced by the official Confucian classics argumentation. Restricting judicial discretion on such charges with the official Confucian classics argumentation was a more standardized manifestation of judicial activities in Han Dynasty. Confucianism Moral Principles Decide the Case was not due to the contradiction between Confucian classics argumentation and Legal sense. The Confucian scholars of Han Dynasty did not pursue replacing Legal sense with Confucian classics argumentation, but the unity the two things. In the view of Confucian scholars of Han Dynasty, Confucian classics argumentation was also the embodiment of Legal sense, so Confucian classics argumentation can fill the gap of legal provisions, and the existing law was reasonable because it conformed to Confucian classics argumentation.

Key words: Confucianism Moral Principles Decide the Case; Judgment Based on Subjective Mentality; Criminal Constitution; Confucian classics argumentation; Legal Sense

**9. Zhang Chuanxi 张传玺: 张家山 247 号墓所出<二年律令·告律>129—131 简小识 (New Light on Slip nos. 129 ~ 31 of "Statutes on Denunciations" in the Statutes and Ordinances of the Second Year from Zhangjiashan Tomb no. 247)**

《二年律令·告律》129—131 简被认为是“减罪一等”之制的规定。不过，对原编联方案的若干质疑尚未得到解释。根据新出岳麓书院藏秦简（伍）所收秦令可知，基于职务连坐的刑罚减等既可以规定成“减罪一等”，也可以直接规定出减等后刑罚，因此 129、130 简的财产刑减等规定与 130 简“令、丞、令史或徧先自”文义可顺承。“令、丞、令史”应是受连坐者，“或徧先自”构成免除条件的规定。130 简残缺部分原应包含关于对盗罪告不审及先自告的单独减等规定。131 简不应与 130 简连排，“或徧先自”后应接他简的“告”或“劾”的内容，规定的是受连坐者先自告劾得免刑罚。此句应是对本条“告不审及有罪先自告减罪一等”的但书。

The text on slip nos. 129~31 of "Statutes on Denunciations" in the *Statutes and Ordinances of the Second Year* is regarded as the stipulation of reducing punishments by one degree. There are some challenges upon the editors' arrangement, and they have not been solved yet. According to ordinances of Qin from the volume V. of the *Yuelu Academy Manuscript Collection*, which were published in 2017, it can be well understood that when the rule, namely, to reduce punishment of an official co-adjudicated for a crime committed by a person in the charge of him, is to be made, the text may express the official's punishment as "to reduce (the criminal's) punishment by one degree", or simply provide the very punishment, the result of having been reduced by one degree. So the text on slip nos. 129~30 concerning reduction of punishments of redemption fees and fines should be followed consecutively by the text from "the Magistrate, the Assistant magistrate or the Scribe Director 令、丞、令史" on slip no.130. "The Magistrate, the Assistant magistrate or the Scribe Director" is the official who is co-adjudicated, and "personally to make a preemptive (denunciation or official accusation) against himself totally 或徧（徧）先自<告/劾>" is a condition for being exempt of punishment. There may be texts concerning reducing punishments for making a careless denunciation against robbery or being guilty of robbery and making a preemptive self-denunciation, on the missing part of slip no.130. Slip no.131 should not be connected to slip no.130, because "huo bian xian zi 或徧先自" should be followed by "gao or he 告劾"; and "ling cheng lingshi huo bian xian zi (gao he) 令丞令史或徧先自<告/劾>" can be translated as "when the Magistrate, the Assistant magistrate or the Scribe Director personally makes a preemptive (denunciation or official accusation) against

himself totally(, he is exempt of punishment)”. That is a *proviso* clause to the preceding article “being guilty of a crime and making a preemptive self-denunciation, reduce the punishment by one degree 有罪先自告，減其罪一等”.

### 10. Chan Chun-Keung 陳俊強: The Transformation of Chinese Penalty System between the Third and Seventh Centuries (三至七世紀之間中國刑罰制度的轉型)

In 167 BC, Emperor Wen (漢文帝) of the Western Han Dynasty categorically abolished the corporal punishment that had been used more than a thousand years. This can be named a major change in the ancient China's penalty system. However, many people thought that since the abolishment of corporal punishment which was considered as a "mid-level punishment"(中刑), the penalty system was clearly out of equilibrium.

In the Eastern Han Dynasty, the imperial court used 'migration punishment' to solve the problem, but this effective measure became impossible in the end of Han Dynasty due to the change of external environment. The Wei and Jin Dynasties tried to solve the problem by aggravating the punishment of penal servitude, but its drawbacks were also revealed at the same time. In the late Han and Wei Dynasties, there had been repeated attempts to restore the corporal punishment for more than 200 years, but the corporal punishment had never been restored. Therefore, created a new penalty was the last resort. After a long period of exploration – 'banishment' was created in the middle of the Northern Dynasties. It could fill the gap between the death penalty and the penal servitude. Why the banishment was finally established in the Northern instead of the Southern Dynasty? This involved the use of different means by the North and South regimes to resolve the loopholes caused by the abolition of the corporal punishment, and also involved the unique military system of the Northern Dynasty.

Banishment finally became an appropriate means of punishment between the death penalty and the penal servitude. To a certain extent it solved the issue of 'death penalty is too heavy, and other punishments are too light' after the abolition of corporal punishment. Its maturity helped to transform the five punishments in ancient China to the New Five-Punishments. These were all statutory and criminal punishments in the criminal law, which were implemented for more than 1200 years till the end of the Qing Dynasty.

Since the execution of the banishment, the controversy over the restoration of the corporal punishment had subsided and disappeared completely. Also, banishment reduced the sentence of penal servitude. The establishment of banishment directly led to the reduction of the execution of the death penalty. If the main theme of the change of penalty between Han and Tang Dynasties was from the corporal punishment to exile, then the main focus of the Tang Dynasty was undoubtedly unfolding around the abolition of the death penalty. The problem facing the new era was how to abolish it. However, shortly after the establishment of banishment since Sui and Tang Dynasties, it became the most unstable punishment within the Five Punishments.

漢文帝十三年(前 167)，皇帝斷然廢除行用千百年的肉刑，堪稱古代中國刑罰制度的一大變革。然而，肉刑廢後，刑罰呈現「死刑太重，生刑太輕」，明顯輕重失衡的困境。東漢以減死徙邊措施解決刑罰的困境，但在漢末魏晉之世，因客觀條件的丕變而不得不放棄。魏晉的解決方案是加強徒刑的力道，但卻衍生「以刑生刑」、「繫囚猥畜」之弊端，朝廷不得不經常大赦。結果是「刑不制罪，法不勝姦」。另一種解決之道，則是恢復肉刑。魏晉二百多年間不斷有人倡議，但因過於殘酷，肉刑始終未能恢復。解決刑罰失衡的困境，捨創制新的刑罰，別無他途。北魏孝文帝太和十六年(492)，流刑創制入律，成為法定正刑。流刑在北朝創制，與北朝刑罰失衡情況更為嚴重以及獨特的世兵制有關。

流刑的確立正反映出歷經漫長的歲月，終於在死刑和徒刑之間，找到了一種輕重較為適中的刑罰，相當程度解決了數百年來被一再提出的刑罰失衡問題。流刑的成熟也造成新

五刑的確立，中國刑罰正式從古典的五刑——墨、劓、宮、刖、大辟，完全過渡到傳統的新五刑——笞、杖、徒、流、死。唐律五刑二十等的規定為後世所繼承，直到清末，都是刑律中法定的正刑，施行了一千二百多年之久。

流刑的創制與成熟，完全取代了肉刑的地位，自此恢復肉刑的爭議為之平息，上古肉刑的陰魂終於完全消散。不僅如此，流刑的成立亦造成徒刑刑期縮短。此外，流刑的成立導致死刑執行的減少。倘若漢唐之間刑罰變遷的主調是從肉刑到流刑，唐代以降的主調無疑是圍繞廢死而展開。新時代面臨的課題，就是如何廢除殘害生命的死刑。最終在唐玄宗天寶六載(747)除削絞斬刑，正式將死刑「虛刑化」。然而，相對於死刑與徒刑的穩定，流刑自隋唐確立後不久，就變成五刑中最不穩定的刑種。

#### **11. Annette Kieser 安然: Law and material culture – a case study (法律條款與物質文化 — 一個六朝時期的案例研究)**

六朝時期（220-589）的青瓷以其變化複雜，形式多樣而著稱。動物造型器皿，以及那些雕塑作品和家居用品、房屋建築模型，在西方博物館的展覽中屢見不鮮，從而形成了人們對六朝時期中國南方文化的印象。

這些瓷器是專門為了喪葬儀式而生產的，作為陪葬品用於達官貴族的墳墓。一個令人不解的現象是，南朝的青瓷傳統，除了一些造型簡單的容器以外，在東晉（317-420）初年戛然而止。

在考古材料以及相關文本分析的基礎上，我將就其可能原因提出我的解釋，為什麼這些陪葬品忽然之間從南朝墓葬儀式中消失殆盡，同時我還想以此說明，皇帝諭旨和法律條款對當時物質文化所產生的巨大影響。

Six Dynasties celadon ware is well-known for its variety. Not only different vessel types were produced, pieces were also shaped as animals, others were decorated with various figures or architectural elements. Museums in and outside China display examples of these beautiful pieces, and they thus shape our picture of the southern Chinese culture during the Six Dynasties.

While it is well known that this ware was made for burial usage exclusively and was placed in tombs of members of well-to-do land-owning families, it is rarely noticed that – apart from simple vessel types – the tradition of southern celadon ware rather suddenly disappears after the beginning of the Eastern Jin (317-420). Analyzing the burial goods as well as relevant historical sources my paper will discuss possible reasons for the waning of this tradition from the burial rites in the south and will show that imperial edicts and statutes had a profound influence on the material culture of the times.

#### **12. Monique Nagel-Angermann 丁慕妮: Some remarks about acts of grace during the Jin dynasty (論晉代恩赦二三事)**

The time of the Western Jin (265-316) and Eastern Jin 東晉 (317-420) is characterized by great political and social instability. The invasion of foreign mounted tribes and internal struggles led to several waves of massive migration, especially to the south, where the Eastern Jin 317 reconstituted its realm after the downfall of the Western Jin. At the same time, the north was dominated by several short-lived regimes known as the "Sixteen States" 十六國. They were mostly led by rulers of the Xiongnu Group, Xianbei, Jie, Di, and Qiang. The emperors of the Jin Dynasty as well as the rulers of the Sixteen States proclaimed a large number of amnesties. By means of amnesties, penalties were cancelled or mitigated as acts of mercy. Records of the practice of amnesty during the Jin Dynasty therefore provide a valuable basis for studying this phenomenon in Chinese legal history. The presentation will focus on two aspects. It begins with a critical input of Liu Song 劉頌 (died 300) to Jin Huidi 晉惠帝 (reigned 290-306), whose reign is characterized by a



particularly high number of amnesties. Another focus will be on dealing with amnesties among the rulers of the Sixteen States, as recorded by historiography.

西晉（265-316）東晉（317-420）時代以其政治與社會之劇烈動蕩不安為特點。北方遊牧民族不斷進犯中原，朝廷內部派別鬥爭日益激化，導致民眾大規模向中國南部遷徙，直至 317 年建立東晉。與此同時，中國北方由眾多短命政權統治，史稱“十六國”，他們主要來自匈奴、鮮卑、羯、氐、羌五個民族。在此期間，晉朝皇帝和十六國統治者頒布一系列大赦令，以免除罪責或減輕刑罰。有關晉朝施行大赦令之記錄為研究中國法律史上這一現象提供了有價值的依據。本文研究重點包括兩個方面：首先關注劉頌（死於 300 年）上疏晉惠帝（290 年-306 年在位）勸諫其頻繁頒布大赦令，其次考察史書如何記載十六國統治者期間大赦令之施行。

### 13. Kerstin Storm 施可婷: Age and Aging in China: Aspects of Tang Law

#### 14. Chen Liping 陈丽萍: 淺議唐代戶絕家庭財產的處理（初稿）——以 BD09352 號為中心 (The Disposal of the Asset of Distinguished Household in the Tang Dynasty—Centered on the Dunhuang Manuscript BD09352)

本文以中國國家圖書館藏敦煌文書 BD09352 號為中心，關注到文書涉及了戶絕財產的糾紛問題，轉而在唐《喪葬令》復原 33 條中找到了有關絕戶概念的確定，分析了如何由“本服”親收查財產變賣，以為主人營辦喪事，余財由女兒、親屬、官府依次繼承或查收。遺囑的效力又在這些繼承或查收關係之上。不過，在民間社會，因為參雜了很多的人為因素，使戶絕財產的處理充滿了各種變數，BD09352 號就是某戶絕阿張侄子張勿勿的訴狀。張氏生病癡呆後，曾被鄰居趙豬子誘騙失財，而且口頭上還將財產分配給多人，因此張氏死後，其他人以口頭遺囑為由來分割財產，而張勿勿兄弟等在實行了贍養照顧義務後，作為血親，要求分得合理的財產份額。敦煌文書中存在的其他有關戶絕文書，提供了更多不見載于令文的現實糾紛，如申請或侵佔戶絕家庭的田地，戶絕家庭中的女兒財產被各種侵奪等，這些都為我們研究這一命題提供了無限可能。

This thesis, which is centered on the Dunhuang Manuscript BD09352 in the National Library of China, notices the issue of disputes involving the property of the household, and ascertains the concept of “jue hu” (the extinguishing of a household because of no male offspring) appeared in the 33rd article of the reinstated decrees on funerals in Tang dynasty, and analyzes how the closest relative received the property and sold it, and ran the funeral for the master. The remnant wealth was inherited or accepted in accordance with the sequence of daughter, relatives, and government. The validity of the dying wish was above this inheritance or acceptance sequence. However, in civil society, because of the many human factors involved, the handling of the property of the household was filled with various variables, and BD09352 was the complaint filed by Zhang Wuwu, the nephew of a person Zhang who was a “jue hu”. After Zhang’s illness and dementia, he was deceived by neighbor Zhao Zhuzi, and he also distributed his property to many people verbally. Therefore, after Zhang’s death, others used the verbal testament to divide the property. Zhang Wuwu’ and his brothers required a reasonable share of the property after they fulfilled the obligation of support and taking care, as a blood relative. Other “jue hu” documents in the Dunhuang Manuscript provide more real disputes that did not appear in the decrees, such as applying for or encroaching on the land of a distinguished household, and the property of the daughters in the distinguished household being invaded by various means, etc. Our study of this proposition offers endless possibilities.

### 15. Zhao Jing 赵晶: 灵异、犯罪与司法——笔记所见唐代法律文化之一端 (Supernatural, Crime and Justice: One Aspect of Legal Culture in Tang Dynasty from Biji)

唐代的笔记记录了许多时人误信灵异与制造灵异的事例，不论是误信者还是制造者，都涵盖从平民到权贵的各个阶层，可见当时浓厚的迷信灵异的氛围。其中，许多事例都涉及到对个人财产利益、人身安全、亲属关系乃至社会秩序、政权稳定的侵害，这些行为皆为《唐律疏议》以及诏敕所禁，因此在当时属于犯罪，无论是侵害者还是受害人，同样广涉达官显贵、士农工商。受害者或选择忍气吞声，或付诸自力救济，或寻求仲裁调解，或诉请依法审判，司法途径从来都不是、也绝不可能是解决问题的唯一方式。一旦进入司法程序，官员即使也身处笃信灵异的氛围之中，但也能够做到依法审断，如首先会搜求证据来验证当事人关于灵异的说法是否可信，又因为客观证据很难证明行为发生时的主观心态，所以误信灵异也很难成为减免刑罚的量刑条件。更加重要的是，由于灵异与妖邪的界限并不分明，为了防止“惑众”进而危害统治，官员往往还会主动出击，严惩灵异现象的制造者，“邪不胜正”的观念应是他们恃以消除心理恐惧的精神资源之一。然而，令人沮丧的是，无论是立法、司法还是灵异，其原初的目的都是劝善诫恶，但最终的结果却往往事与愿违，或开启冤狱制造、诬告胁迫之门，或提供了可资效仿的犯罪手法，或径直沦为作奸犯科的手段。

Biji 笔记(miscellaneous notes) produced in the Tang Dynasty recorded many cases on misunderstandings and creations of supernatural, in which both believers and creators covered every class from ordinary people to elites, showing the strong superstitious atmosphere at that time. Many cases of them involved violations of personal property, physical security, kinship, even social order and political stability, which were banned by the Codex *Tanglv shuyi* 唐律疏议 and zhaochi 诏敕 (edicts), therefore, these acts were treated as crimes at that time. Both perpetrators and victims of crimes widely came from all fields and classes. The victims either chose to swallow, implemented self-remedy, sought mediation, or appealed for trial according to law, the access to justice was never the only way to solve the problem. Once entering into the justice process, even if the official was in an atmosphere of devout faith on supernatural, he can also judge according to law. For example, the evidence would be searched first to verify whether the parties' statements about the supernatural were credible, and because the objective evidence was hard to prove the subjective attitude of behavior, the misunderstandings of supernatural were challenging to be regarded as conditions for the sentence reductions. However, it's frustrating that the original purpose was to encourage virtue and punish evil, whether for legislation, justice or supernatural, but the results were often counterproductive, instead, they either led to the miscarriages of justice and false accusations, provided criminal methods that could be imitated, or became the means of committing crimes directly.

### 16. Tang Wen 唐雯: 唐代墓誌中的父祖書寫 (Exaggerated information of father and grandfathers in Tang dynasty epitaph)

見諸於幾乎每一方唐代墓誌有關志主近世父祖信息來源於唐人家牒，而這些記載提供了唐代家牒的線索，將來源於同一家族的墓誌合而觀之，可以發現唐代家牒並非學界所熟知的圖表狀的譜牒，而是至少包含了父祖傳記的具有豐富內容的家族文獻，有關父祖的信息會隨著子孫顯達而屢加贈官等事件而時時更新。雖然家牒中記載著父祖較為準確的信息，但是文士或顯宦家族子孫仍舊會利用各種方式抬高父祖的生前官職，以提高自身門第。與此形成對比的，行伍出身的武官家族則對於利用父祖身份顯榮自身則不甚措意，亦未形成完整的家牒。雖然唐人墓誌中有抬高父祖官職的現象，但相對於姓氏郡望遠祖書寫中所存在的隨意虛構改變的狀況而言仍相當克制，顯示了唐人對於遠祖與近世父祖不同的情感與記憶。

Almost every Tang dynasty epitaph had the information of father and grandfathers which extracted from their home genealogies. And the home genealogies were rich in contents and included biographies of father and grandfathers which were updating when they got grants officer after death. Literate people in Tang dynasty liked to raise their father and grandfathers ' official position to make the honor of themselves. By contrast , families of illiterate military officer were not care the honor and official position of father and grandfathers, and they were likely not keep the records of official father and grandfathers. Although people of Tang dynasty liked to raise their father and grandfathers ' official position, but it was restraine because their respect of their father and grandfathers by contrast the remote ancestors.

### **17. Qiu Luming 仇鹿鸣: 法理與孝思：士人遷葬與誤掘墳塋 (When Juridical Principles Encounters Filial Piety Factors: The Mis-excavation of Other's Grave When an Official Scholar Moving that of Ancestors)**

蕭遇墓志记载他備嘗艱辛，時隔半個世紀之後，尋訪生母陸氏的葬地，起初誤掘了他人墳塋，最終孝思感天，得異人指點，最終完成遷葬的傳奇經歷。這則故事之前已被唐人傳奇《通幽記》所記載。既往文學史的研究者從西方現代小說的觀念出發，建構起了從六朝志怪到唐傳奇虛構性逐漸增強的線索。但從唐人本身的觀念而言，更多的是將這些故事視為可能發生的真實事件。比較墓誌與《通幽記》兩個文本，其中反映唐人喪葬儀式中買地信仰的影響。唐人墓地地面上能標識墓地範圍和墓主身份的要素有墓田、封土、神道碑碣、石獸、樹木等，但除了封土和樹木，其他都與官員的品級有關，非庶民所能使用。因此對於蕭遇母親陸氏這樣被臨時安葬的人而言，除了木質的墓表，可能並無明顯標識身份的物品，由此可以推測，在之後的遷葬中尋訪不到墓地的現象並不罕見。如蕭遇的案例，誤解掘他人墳塋之後，所涉及的法律問題也值得進一步探究。蕭遇的父親蕭晉先後娶了兩任妻子（陸氏與韋氏），蕭遇本人則三次娶妻（崔氏、盧氏、鄭氏），與哪一位妻子合祔，也涉及複雜的家庭關係。蕭晉、蕭遇死後最初都是單獨安葬，未能和任何一位妻子合祔，反映了在世的後妻韋氏、鄭氏的意願，但最終相隔半個多世紀後，在嫡子蕭遇、蕭澈的主持下完成了前妻陸氏、盧氏的合葬，為我們理解唐代一夫多妻的士人家庭中，前妻與後妻及嫡子之間的複雜關係。

As Xiao Yu's epigraph declared, Xiao suffered many privations in searching and moving Madame Lu, his own mother's grave. His legendary experience was recorded in Tongyou Ji (通幽記), a collection of tales of marvels in Tang Dynasty. It was told that Xiao mis-excavated the other's grave when searching that of his own mother's. However, his love and devotion to mother moved the heaven lord. With direction of extraordinary men, Xiao successfully move his mother's grave. Past schoalrs of Literature History, based on concepts of modern Western Novel, revealed and constructed a clue that fictional percentage of the story was gradually increased from the Six Dynasities to Tang. Yet for people in Tang dynasty, they believe that these tales are exactly real historical events. By comparing Xiao Yu's epigraph and the tale recorded in Tongyou Ji, we can reveal the land-purchase conviction from Land god in funeral ceremonies in Tang Dynasty. As is known, notable items include scope of the graveyard, seal soil, spirit path and stele, stone animals, and trees identify both scope of graveyard and societal status of the grave owner. However, other than seal soil and trees, the above items relaed to official levals of the owner, and were forbbidend in common people's graveyards. This also applied to people who were interim buried like Madame Lu. It is highly inferred that other than wodden tomb ornamental columns, nothing shown her identity, and it is highly possible that people couldn't find her graveyard when they have chance to move her grave. As for the case of Xiao Yu, his mis-evacuation of other's grave, not only the event itself, but also legal issues need further discussion. Xiao Jin, Xiao Yu's father successively married with Madame Lu and

Madame Wei. Xiao Yu himself also married with Madame Cui, Madame Lu and Madame Zheng successively. The complicated family relationship also raised a question that whom should the Xiaos buried with. Instead of being buried with any of their wives, both Xiao Jin and Xiao Yu were buried on their own at first, which presented the step-wives, Madam Wei and Madame Zheng's will. However, after 50 years, hosted by sons of the legal wives, Xiao Yu and Xiao Che, Xiao Jin and Xiao Yu buried with their legal wives successively. These factors provided strong evidence to understand the complicated relationships between legal and step wives, as well as first sons in Tang Dynasty.

#### **18. Chen Dengwu 陳登武: Zhang Jiuling's Approach to Governance and Legal Philosophy (張九齡的國家治理與法律思想)**

Zhang Jiuling was a famous Prime Minister during the reign of emperor Xuanzong, and there has been no shortage of academic research into his life, the vast majority of which is concerned with his literary accomplishments. However, there has been almost no investigation of either his involvement in the governance of the empire, or of his legal philosophy. This paper uses the term "legal philosophy" to include his understanding of order, the establishment of administrative systems, the relationship between ceremonial and law, as well as his interpretation of laws, among other things.

On the whole, we can see that Zhang Jiuling was profoundly influenced by his Confucian education, and that his understanding of order included the supervisory power of heaven, as well as role of human striving. He believed in the existence of a heavenly will which functioned as a judge to all worldly beings, with the power to reward righteousness and punish evil -- an master of the order of the world. As a response to the supervisory power of heaven, he advocated the use of systematization as a method to remedy the phenomenon of highly valuing the central government while despising the local officials among Tang dynasty officials, thus ensuring the quality of governance at the local government. With regards to maintaining social law and order, he believed that the Confucian ethics were far more useful than the law. And, while he valued the preservation of the legal system, he simultaneously believed that the law should be adjusted as society changed.

張九齡是玄宗朝名相，學界對他的研究不少，其中絕大部分都是關於他的文學成就，幾乎沒有探討過他參與國家治理及其法律思想。本文所說法律思想，包含對秩序的理解、制度的建立、禮法的看法、法律的見解等。

整體而言，我們看到張九齡受到傳統儒學教養影響深遠，對於「秩序」的原理，既有來自天的監督力量，也有來自人為的努力空間。他相信有一個「人格天」的存在，能對於世間萬物具有裁判的功能，並能夠獎善罰惡，可說是世間一切秩序的主宰者。在回應「天」的監督力量時，他主張用「制度化」的手段，解決唐代官員「內重外輕」（或說「重中央、輕地方」）的現象，確保地方治理的良善。對於維護社會治安方面，他相信「禮教」遠高於「法律」的作用。他既重視司法體制的維護，也相信「法」應該隨著社會變遷而有所調整。

#### **19. Yu Hsiaowen 于曉雯: The Legal Philosophy in the 'Military Statutes' (Bingdian) of the "Tongdian" (《通典·兵典》的法律思想)**

In the table of contents of the Tongdian, 'Military Statutes' (Bingdian) and 'Penal Law' (Xingfadian) are listed under 'Penalty.' The Bingdian and Xingfadian record historical military affairs and wars, while the Xingfadian records historical legal systems as well as specific legal cases. The latter is organized separately according to the following logic: "For grand punishments, use military force; for all else, use the five punishments." Researchers hold differing positions on the issue of whether the 'Military Statutes' and the 'Penal Law'

are two independent chapters, or whether they are separate subsections of the same chapter, a problem which reflects the sources and development of Traditional Chinese Law. In his forward to the 'Military Statutes,' Du You divides his discussion into the following two topics: 1) The origins of the military; and 2) An assessment of the military allocation of historical kingdoms. In these two parts, Du You devotes a majority of his writing to the discussion of the allocation of military force in ancient kingdoms, investigating the balance between soldiers stationed in the capital and those stationed in the countryside. Du You believes that the only historical system worth considering is the Han Dynasty with its "Strong Trunk, Weak Branches," and "After The war, Soldiers Return To Work The Fields" philosophies. Though external military campaigns were numerous during the early Tang, by the reign of Emperor Xuanzong these had already begun to result in heavy troop deployments to secure the outer territories, which disrupted the country's balance of power, as well as leading to the An Shi rebellion. Du You rationally contemplates the influence of the establishment of military institutions on the peace and unrest of the country. In each chapter of the Tongdian, Du You discusses the historical development over time of each topic, but the Bingdian is unique in its absence of historical military systems. However, in reading the sections Xubing and Lijun after the Bingdian, one finds a treatise on historical military systems, and the content and style of discourse of these sections are taken from 'The Treatise on Punishment and Law' (Xingfazhi) from the 'Book of Han' (Han Shu). 'The Treatise on Punishment and Law' is structured into the following three parts: preface, law, punishment. Bingdian follows the written tradition of the 'Law' section of 'Treatise on Punishment and Law' from the 'Book of Han,' while the Xingfadian follows in the written tradition from the 'Punishment' section of the same work. The Bingdian comprises fifteen volumes in total, respectively recording historical military strategy and wars. The second volume collects and recounts various military regulations and degrees. Du You's understanding of military law does not deal primarily with the various military interdictions, but rather focuses on the use of instruments (drums, bells, etc.) and banners in regulating the daily life of the military as well as the troop movements and campaigns.

在《通典》的目錄中，〈兵典〉、〈刑法典〉列在「刑」之下。〈兵典〉、〈刑法典〉記述歷代軍事、戰爭，〈刑法典〉記述歷代法律制度與特殊法律個案，二者是從「大刑用甲兵，其次五刑」的思考脈絡下分開討論。研究者對於〈兵典〉、〈刑法典〉各自屬於獨立的篇章，或是同屬於一門而在門下分項，有不同的看法，此問題反映了中國傳統法律的起源與演變。

〈兵典〉序言中，杜佑分為兩個面向進行論述：（一）兵之起源，（二）歷代國家兵力配置評論。在這三個面向中，杜佑花了較多的篇幅談論歷代國家兵力配置，探討首都與地方的駐兵是否平衡。杜佑認為歷代制度可參考者，唯有漢代的「強幹弱枝」、「兵散皆歸」。唐前期雖然對外征戰頻繁，但是到了玄宗朝才造成重兵駐守邊疆，打破了國家駐兵內外輕重之勢，並引發安史之亂。杜佑從理性的角度，思考制度之設置影響國家治亂。

杜佑在《通典》各篇中，皆會論述該主題的歷代沿革，唯獨〈兵典〉不見歷代兵制。然而，觀察〈兵典〉序後的「敘兵」、「立軍」，可見到歷代兵制之論述，而且其文字內容與敘述脈絡，皆出自於《漢書·刑法志》。《漢書·刑法志》結構分為序言、法、刑，〈兵典〉承襲《漢書·刑法志》「法」的書寫傳統，而〈刑法典〉承襲了《漢書·刑法志》「刑」的書寫模式。

〈兵典〉共十五卷，分項記載歷代戰略、戰爭，在卷二中集中收錄各種軍事規範與法令。杜佑對於軍中法制的理解，並不是從各種軍令禁制為先，而是將論述置於金（鉦鐸）鼓、旗幟如何規範軍隊的起居作息與行軍征戰。

## 20. Kang Yunmei 康韻梅: 唐代小說的撰作與士人生活——以李公佐為考察中心 (Fiction Writing and Life of Intelligentsia in Tang Dynasty – Take Li Gongzuo as the Focus of Study)

關於唐代小說的發展因由，歷來有不同的說法，宋代趙彥衛提出的溫卷之說，魯迅接受此一觀點，進而形成討論唐代小說興起的重要議題。現今多數的學者對於此觀點，採取比較保留的態度。但從作者多為參加科舉考試或在各地遊宦的士人，以及小說文本內容亦多涉及士人參與考試或是遊宦經歷而觀，唐代小說與唐代士人生活確實密切相關。本篇論文嘗試以中唐的小說家李公佐為核心，來探究唐代小說撰作與士人生活之間的關係。之所以選擇李公佐為探討對象，主要因為李公佐的小說作品是目前唐代單篇小說流傳於世較多者，且具有代表性；同時在其小說文本中往往出現關於撰作背景的背景敘述。本篇首先依據李公佐〈南柯太守傳〉、〈謝小娥傳〉、〈廬江馮媼傳〉、〈古岳瀆經〉等四篇文本的自述，以及白行簡〈李娃傳〉、李復言〈尼妙寂〉中述及李公佐的內容，並佐以史傳等文獻資料，參酌前人研究成果，推論小說家李公佐為《新唐書·宗室世系表》所記「千牛備身李公佐」，並勾勒出李公佐生平，特別是其遊宦的歷程。接著分別針對李公佐遊宦歷程於行旅中與士人聚會話奇，和親身所證奇事，來談李公佐小說撰作的源由，進而從李公佐生活經歷所生發的情思，來抉發其小說文本對當時政治、社會關切的意蘊。本篇的探究目的不僅在於說明唐代小說撰作並非源於溫卷，更重要的是藉由李公佐的生活與小說撰作，揭示唐代士人生活經歷與唐代小說撰作流傳的互涉面貌，甚至小說撰作之於士人生活的意義。

There are different opinions about the reasons for the development of fiction in Tang Dynasty. Lu Xun accepted Zhao Yanwei's theory called "wenjuan" in Song Dynasty, and then formed an important issue to discuss the rising of fiction in Tang Dynasty. Nowadays most scholars take a relatively reserved attitude towards this view. However, most of the authors were intelligentsia who took part in imperial examinations or traveled in various places as officials, as well as the content of the fictions also involved the experiences of intelligentsia who took part in examinations or traveled as officials, and from this perspective, the fictions in Tang Dynasty are indeed closely related to the life of intelligentsia in Tang Dynasty. This paper attempts to explore the relationship between the fiction writing in Tang Dynasty and the life of intelligentsia through taking Li Gongzuo as the focus of study. The reason why Li Gongzuo is chosen as the research object is mainly because compared to other Tang Dynasty fictions, there are more works of Li Gongzuo spread in the world and his fictions are representative, too. At the same time, the meta-narrative about the background often appears in his fictions. This paper first bases on the biography of four works named < Nanke Taishou Zhuan >, < Xie Xiao-e Zhuan >, < Lujiang Feng-ao Zhuan > and < Guyuedu Jing > which were written by Li Gongzuo, as well as the contents of Li Gongzuo which were mentioned in < Liwa Zhuan > written by Bai Xingjian and < Ni Miaoji > written by Li Fuyan. Then this paper bases on historical biography and other documents, refers to previous research results, infers that the fiction writer Li Gongzuo was mentioned as "Qianniu Beishen Li Gongzuo" in < Imperial Clan Genealogy Table > of < New Tang Book >, and draws the outline of Li Gongzuo's life, especially his journey as an official. Then, the article focuses on Li Gongzuo's experience during his journey as an official. In the travel time he met intelligentsia and talked about strange stories with them, and he also personally witnessed some strange cases. The article discusses the origin of Li Gongzuo's fictions writing in these views as well as the implication in the content of Li Gongzuo's fictions to the political and social concerns at that time through his feelings and thoughts arisen from his life experience. The purpose of this study is not only to explain that fiction writing in Tang Dynasty were not the result from "Wen Juan", but also to reveal the interrelation between the life experience of intelligentsia and fiction writing, spread in Tang Dynasty, and even the significance of fiction writing towards the life of intelligentsia.

## 21. Christian Wittern: Changes and continuities in the Chan School during the Song, as observed through lamp history texts from the 景德傳燈錄 *Jingde chuandeng lu* (1004) to the 五燈會元 *Wudeng huiyuan* (1252)

In the roughly 250 years between the publication of the *Jingde chuandeng lu* 景德傳燈錄 (1004) and the compilation of the *Wudeng huiyuan* 五燈會元 (1253), four more similar texts have been compiled, which together form the nucleus of the genre of Lamp histories. The latest of these, the *Wudeng Huiyuan*, literary the ‘Combined essence of the Five Lamps’, takes the content of the previous five texts and merges it into one new compilation, which subsequently achieved wide distribution and readership among the literary elite and was one of the very few Buddhist texts included in the Qing collection *Siku quanshu* 四庫全書 (1782).

In this presentation, I will report on attempts to use text analytic methods on digital surrogates of the texts to compare these six texts, aggregate similar content to gain some insight in the compilation methods and speculate about the shifting ground of the power balance in the Chan school that might be reflected in these changes. In this presentation, this is mainly constructed as an opposition of the *Nanyue* 南嶽 (or *Linji* 臨濟) lineage and the competing *Qingyuan* 青原 (or *Caodong* 曹洞) lineage. While the *Wudeng Huiyuan* is compiled at one of the most important temples of the *Linji* lineage, the text itself actually devotes considerably more space to the opposing *Caodong* lineage. On the other hand, the presence of the sayings of *Linji Yixuan* 臨濟義玄, name patron of this lineage, dominate the list of most influential masters as measured by their influence on other masters.

## 22. Lu An 陸岸: What was the accusation for? – The background clarification of a judgment in *Qing-Ming Ji* (因何而訴? — 《名公書判清明集》一則判詞的背景試探)

《名公書判清明集》有《爭住持》一則，述知事越級訴住持，為提刑吳勢卿駁回。語詞簡率，惟首尾不明。於是籠絡閑情，考證當時、當地，僧、寺、官、民之情形，雖終無補於案情，但求有資於研究，以觀宋末亂世佛教、法制、社會之微奧。

## 23. Gui Tao 桂涛: 文字狱与 18 世纪社会社会转型 (The literary Inquisition and Social Change in the 18th century)

清代文字狱案通常被放置在皇帝-士大夫框架中理解，认为其肇因于满洲统治者清除汉族士大夫反满意识。然而，乾隆朝文字狱案一半以上牵涉处于下层社会的生员和平民，他们坠入文网，部分由于希图通过呈递文字获得进身之阶，部分由于误用文字僭越儒家等级秩序。这意味着文字狱案频发的缘由必须到当时的社会脉络中寻找。识字率显著提高而社会流动处于紧缩期的 18 世纪，制造出一个识字人口具有可观规模的基层社会。伴随文字普及，各种异端思想在乡野中滋生蔓延，逾出朝廷管控的范围，衍生出所谓的“人心风俗”问题。可是，文字狱恰恰显示出王朝在处理“人心风俗”问题上的无能。透过文字狱，王朝常常被拉入基层社会日常纠纷之中，变成基层社会成员报复其对手的武器。

关键词：文字狱，乾隆，识字率，社会流动，人心风俗

Literary Inquisition in Qing Dynasty was usually interpreted in the framework of emperor-literati, which was attributed to the elimination of anti-Manchu references in literature. However, more than half of the Literary Inquisition during the reign of Ch'ien-lung involved Sheng-yuan and civilians in grassroots communities. The cases showed that the grassroots people fell into Literary Inquisition was partly because they wanted to climb the social ladder by presenting their writings to the government, partly because they misused words which were thought overstepped the Confucian hierarchical order by the government. This meant its origin must be found in the social context at that time. In the 18th century, with

the literacy rate increased and social mobility reduced significantly, a considerable literate population was created in the grassroots communities, which caused various heretical ideas spreading beyond the control of the government, and the so-called “thought and customs” issues appeared. However, the government showed its incompetence when tried to use literary censorship dealing with the issue of “thought and customs”. It was often dragged into the daily disputes of the grassroots communities and turned into the means of fighting each other by the grassroots members.

Keywords: Literary Inquisition; Ch’ien-lung; literacy; social mobility; “thought and customs”

#### **24. Sun Xu 孙旭: 清代北京地方职官请托犯罪的特点 (Crime of Qing Tuo (请托)**

##### **Implemented by Bei Jing Local Officials in the Qing Dynasty)**

请托是人情社会特有的一种文化现象，对行政司法造成干扰以至威胁。从中国第一历史档案馆所藏司法档案，可见清代北京地方职官请托犯罪的特点：1.求托人、请托人身份复杂，高下皆有；2.有时也充当请托人甚至求托人；3.请托人有口头承诺，虚与委蛇的情况；4.单纯的请托少，常与金钱相关联，成为“贿赂”；5.行事比较谨慎。对北京地方职官的请托犯罪的惩处，多能依据《大清律例》的请托罪条文进行，但也有加重惩处甚至任情惩处的情况，短期内有一定效果，长远来看降低了法律的威信，不利于法制环境的养成与对请托的根本治理。

[关键词] 清代 北京地方职官 请托 受托 求托 人情

Qingtuo phenomenon threatened justice in traditional Chinese society. The cases of judicial records of Qing Dynasty from First Historical Archives of China reveal the Characteristics of Qingtuo crimes that the local officials in Beijing committed. 1) Qiutuo offenders may come from higher class or lower class. Qingtuo offenders may be high-ranking officials or clerks. 2) In some cases, Shoutuoren played a role of a Qingtuoren or Qiutuooren. 3) Qingtuoren sometimes put the Qiutuooren off with fair words. 4) Qiutuooren often bribed Qingtuoren with money. 5) Qiutuooren knew they had to walk a fine when they did Qiutuo, and so did Qingtuoren when they got Qingtuo. Although the officials in Bei Jing who committed Qingtuo crimes received severe punishments, their crimes had bad impact on society.

Key words: Qing Dynasty; local officials in Beijing Qingtuoren Shoutuoren Qiutuooren

#### **25. Guo Ruiqing 郭瑞卿: 清代民俗医疗的法律规制 (Legal Control of folk medical treatment in Qing Dynasty China)**

清代民俗医疗的法律规制始于康熙时期，其立法经康熙、雍正、嘉庆三朝皇帝修订完成，民俗医疗也因此成为了异端法术，邪术医疗。国家通过司法惩治民间以巫术治病行为，同时也控制官员的疾病医疗，禁止并惩治他们以巫治病的行为。于民间以巫治病现象，地方官员在严惩师巫的同时，教化民众改变医疗观念。

关键词: 清代 民俗医疗 巫术 异端法术 邪术 法律规制

The statute on folk medical treatment in Qing Dynasty was first enacted during the reign of Emperor Kangxi. It was amended during the reign of Emperor Yongzheng and Jiaqing. The method of folk medical treatment was evil under the statute. The people who used the evil method of folk medical treatment to treat the sick would be received punishment. If governmental officials chose the method of folk medical to treat his illness, they would be punished. The local officials educated the herd under their control to choose the method of traditional medical treatment and not the evil one of folk medical treatment. The officials severely punished the sorcerers who used the evil method to treat the sick.

Key words: Qing Dynasty folk medical treatment witchcraft heresy spell cult legal control



**26. Zhang Yu 张雨: 明治维新与清末新政中“行法”“行政”的概念嬗变——以中日学者对译 administration 词汇为中心 (How to Translate Administration into Chinese or Japanese during the Late 19th Century: Focusing on Attempts of Chinese and Japanese scholars)**

在前人研究基础上，本文重新梳理了在 19 世纪后期，中日学者在译介西方三权分立理论时，对 executive /administration、legislate、justice 等概念进行翻译时所选择的汉字词汇的变化脉络。其中，尤其关注于在对译 executive /administration 时，从“行法”（中国学者的翻译，并影响了幕末明初的日本学界）到“行政”（日本学者的翻译，并在清末新政时影响了中国学者）的概念嬗变。这一变化的背后，是天皇对日本政府特有的构造图式以及“行政国家”产生的影响。这一影响，最终使得“行政”一词被解放出具体官职之名，成为一般化的概念，并成为对译 administration 的标准汉字词汇。进而希望在“行政国家化”的知识背景下，提出并构建“司法政务运行”概念。

关键词：明治维新、清末新政、行法、行政

In the mid-19th century, Chinese scholars who had just come into contact with the theory of separation of powers chose the Chinese word 行法 to translate executive or administration. Affected by this, Japanese scholars also chose Japanese kanji 行法 to translate executive or administration. But after the Meiji Restoration, they gradually chose another Japanese kanji 行政 to translate administration. This change was affected by the Japanese Mikado system and Administrative state. At the beginning of the 20th century, as a result of the New Deal at the end of Qing Dynasty, Chinese scholars gave up the Chinese word 行法. 行政 becomes the standard Chinese vocabulary for translation administration.