EAST 494/HIST 478
Pre-modern Chinese Society and Law
WINTER 2021
DRAFT

Instructor: Robin D.S. Yates
Place: Online via Zoom
Time: Friday 2:35-5:25
Office: Online
Office Hours: TBD
Email: robin.yates@mcgill.ca

Course Description:
This course examines the history of Chinese law and society from early pre-imperial to late imperial times. Course themes include the philosophical basis of Chinese legal institutions; the development of different forms of legislation; the practice of pre-modern Chinese law; social and political change and the law; and legal cases translated from primary sources. Some consideration may be given to military law and the transmission of Chinese law to Japan, Vietnam and Korea depending on student interest.

Law was a primary means by which the pre-modern Chinese state and the elite maintained social control of the most populous country in the world and one of the principal means by which Confucian morality was disseminated to lower levels of the social hierarchy. At the same time, it was influenced by Buddhist beliefs and practices and by the customs of the many non-Chinese peoples who conquered China. In addition, many new legal documents and statutes have recently been excavated by archaeologists while others have been rediscovered by historians working in China’s voluminous and newly-opened archives. These newly discovered documents throw much light on the origins of Chinese law and its practice in later times. This course will therefore give students important insights into a long legal tradition and will reveal many dimensions of daily life and administrative practice not covered in other courses offered at McGill University. Needless to say, these legal materials are also very instructive for understanding the role of law in China today.

ALL CLASSES WILL BE RECORDED VIA ZOOM AND POSTED ON MYCOURSES

Course Requirements:
Students will be expected to participate actively in the class. The first three weeks of classes will be led by the instructor. After that, students will select one session for which they will be responsible for presenting the issues arising from the main readings each session, and leading the class discussion. They may choose from the readings suggested in the syllabus, or from other material, depending on their interest and focus.

Topics for the final research paper must be discussed with the instructor at least three weeks before the end of term. Research papers can address issues and/or periods of time not covered in class.

Knowledge of the Chinese language is not required
Course Readings
Course readings for each week will be decided in consultation with the instructor the week before they are to be covered. Readings will accord with the interests of the students and, for the class as a whole, be limited to no more than 50-100 pages per week. However, students responsible for leading the class discussion should expect to read more widely than just the materials they will be presenting in class. Articles listed in the readings will be posted as pdfs on myCourses. Books listed as selected readings in the syllabus may be put on reserve in the Humanities and Social Sciences Library.

Book Strongly Recommended for Purchase:

Grades:
Grades will be based on:

20% class presentations of weekly readings; each student will be required to lead one discussion session during the course of the term; the student will discuss with the instructor what reading(s) to assign (whether required or recommended), and will be expected to prepare an outline and a PowerPoint for the presentation as well as questions for discussion. The PowerPoint will be posted on myCourses for the benefit of the students, whether they are able to attend the class in person or whether they watch the recorded class;

10% class participation in the form of joining in the discussions; if a student is not able to attend the class discussions, the instructor will post one or more questions on the readings in myCourses and the student will be asked to respond in writing to it/them and send the response(s) to him;

20% annotated bibliography for the final research paper; the annotated bibliography should consist of a minimum one-page outline of the topic of the research paper, its methodology and theoretical focus, followed by at least 10 items, with half a page on each item, explaining the main thesis of the book, chapter, article, or primary source, a critique, and how the item will contribute to the main argument in the final research paper;

15% presentation of research proposal; preferably, this will be done in the synchronous Zoom class. If that is not possible, then a student unable to attend will be asked to prepare a short PowerPoint of her/his/their presentation; this will be posted on myCourses. If the student so wishes, s/he/they may also prepare a short statement of the research and/or prepare a video of the presentation with the link to posted on myCourses;

35% final research paper; the research paper will preferably, but not necessarily, be based on the presentation of the reading material in the session chosen by the student, developed in the Annotated Bibliography, and presented in the Research Presentation. It should consist of at least 12-15 pages—precise instructions with technical requirements (type of font, spacing, etc.) for the preparation of this paper will be posted on myCourses.
Policies on Academic Integrity:

In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded. This does not apply to courses in which acquiring proficiency in a language is one of the objectives.” (Approved by Senate on 21 January 2009 - see also the section in this document on Assignments and Evaluation.)

“McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures” (see www.mcgill.ca/students/srr/honest/ for more information). (Approved by Senate on 29 January 2003)

Syllabus

Week 1
Jan. 8 Introduction to the Course and to Chinese History
Introduction to Chinese Legal History and How It has been Represented

Recommended Reading:
ONLINE


Week 2
Jan. 15 Theoretical Considerations and Early Views

Reading:


Recommended:


Ch’ü T’ung-tsu (Qu Tongzu), *Law and Society in Traditional China* (1965).

**Reading:**


**Recommended:**


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**Week 3**

**Philosophy of Law in the Warring States Period**

**Jan. 22**

**Readings:**


**Recommended:**


**Pre-imperial Chinese Law**

**Reading:**


**Recommended:**


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**Week 4**

**Jan. 29**

**Law in the Qin State and Empire Part 1: General Background**

**Readings Selected from:**
Law in the Qin State and Empire Part 2: The Statutes and Ordinances

Readings Selected from:

Recommended:

Week 5
Feb. 05 Law in the Qin State and Empire and Han Law: Part 3: Cases

Readings Selected from:
Barbieri-Low and Yates, *Law, State and Society*, parts 2.5 and 2.6.

Han Law: The Statutes and Ordinances
Readings Selected from:
Xueqin Li and Wen Xing, “New Light on the Early-Han Code: A Reappraisal of the
Yongping Liu, Origins of Chinese Law: Penal and Administrative Law in Its Early Development,
Ch. 8 “A Preliminary Study of Han Law,” pp. 252-317.
Ōba Osamu, “The Ordinances on Fords and Passes Excavated from Han Tomb #247,
Zhangjiashan,” translated by David Spafford, Robin D.S. Yates, and Enno Giele with Michael
Robin D.S. Yates “Chinese Law, History of Han Empire (206 b.c.e.–220 c.e.),” in The Oxford

Recommended:
A.F.P. Hulsewé, “Weights and Measures in Ch’in Law,” in Eikemeier and Franke eds., State and
200.

Week 6
Feb. 12 Women in the Law of Early and Middle Empires
Readings Selected from:
Robin D.S. Yates, “Female Commoners and the Law in Early Imperial China: Evidence from
Recently Recovered Documents with Some Comparisons with Classical Rome,” in Rulers
and Ruled in Ancient Greece, Rome, and China, ed. Griet Vankeerberghen and Hans Beck
Robin D.S. Yates, “The Changing Status of Slaves in the Qin-Han Transition,” in The Birth of
Empire: The State of Qin Revisited, pp. 206-23, ed. Yuri Pines, Gideon Shelach, Lothar von
Jack L. Dull, “Marriage and Divorce in Han China: A Glimpse at ‘Pre-Confucian’ Society,” in
David C. Buxbaum ed., Chinese Family Law and Social Change in Historical and
Comparative Perspective, pp. 23-74.
Bret Hinsch, “Women, Kinship and Property as Seen in a Han Dynasty Will,” T’oung Pao 84.1-3
Bret Hinsch, “Law,” Ch. 4, in Women in Early Imperial China (Lanham: Rowman and Littlefield
Ulrich Lau, “The Scope of Private Jurisdiction in Early Imperial China: The Evidence of

Private Law and Contracts in the Early and Middle Empires
Anthony Barbieri-Low, “Model Legal and Administrative Forms from the Qin, Han, and Tang and
Their Role in the Facilitation of Bureaucracy and Literacy,” Oriens Extremus 50 (2011): 125-
56.
Hugh T. Scogin, Jr., “Between Heaven and Man: Contract and the State in Han Dynasty China,”
Southern California Law Review 63.5 (1990): 1325-1404. ONLINE


**Week 7**

**Feb. 19** **Tang Law**

**Readings Selected from:**


**Song Law Part 1: Administration of Justice and Forensic Medicine**

**Readings Selected from:**


**Forensic Medicine**


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**Week 8**

**Feb. 26**  
**Song Law Part 2: Court Cases**

**Readings Selected from:**


**Recommended:**


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**Mongol and Inner Asian Law**

**Readings Selected from:**


**March 05 Spring Study Break**

**Week 9**

**Mar. 12** Law in Late Imperial China: Part 1: Ming Law

Readings Selected from:

Alison C.D. Bailey, “Reading between the Lines: The Representation and Containment of Disorder in Late Ming and Early Qing Legal Texts,” *Ming Studies* 59 (2009), 56-86.


**Law in Late Imperial China: Part 2: The Qing Codes**

Readings Selected from:


William C. Jones et al., The Great Qing Code (1994).


Week 10
Mar. 19 Law in Late Imperial China: Part 3 Gender and the Law
Readings Selected from:
Matthew H. Sommer, Sex, Law, and Society in Late Imperial China (2000).

Law in Late Imperial China: Part 4 Gender and the Law: Problems of Masculinity
Readings Selected from:
Matthew H. Sommer, “The Penetrated Male in Late Imperial China: Judicial Constructions and Social Stigma,” *Modern China* 23.2 (1997), 140-80. ONLINE

**Week 11**
**Mar 26 Law in Late Imperial China: Part 5 Legal Cases**
Readings Selected from:

**Law in Late Imperial China: Part 6 Criminal Justice and Social Practice**
Readings Selected from:

**Apr. 2 Good Friday Holiday No Class**

**Week 12**
**Apr. 9 Law in Late Imperial China: The Administration of Justice**
Readings Selected from:


Li Chen, “Legal Specialists and Judicial Administration in Late Imperial China, 1651–1911,” Late Imperial China 33.1 (2012): 1-54. ONLINE


Melissa Macauley, “Small Time Crooks: Opium, Migrants, and the War on Drugs in China, 1819-1860,” Late Imperial China 30.1 (2009), 1-47. ONLINE


Melissa A. Macauley, Social Power and Legal Culture: Litigation Masters in Late Imperial China (1998).

Bradly Reed, Talons and Teeth: County Clerks and Runners in the Qing Dynasty (2000).


Civil Justice and Later Developments

Readings Selected from:

Jérôme Bourgon, “Uncivil Dialogue: Law and Custom Did Not Merge into Civil Law under the Qing,” Late Imperial China 23.1 (2002), 50-90. ONLINE


Philip C.C. Huang, Civil Justice in China: Representation and Practice in the Qing (1996).


Week 13

Apr. 12 (Monday) Presentation of Student Research

Note: This class may be held in person on campus if circumstances permit; those not in Montreal will present virtually or in another form (see Grading above)

Apr. 16 Presentation of Student Research

Apr. 23 Final Research Papers Due