

Chapter 1 : Milestone work on Chinese civil law

Civil Law in Qing and Republican China (review) Brian McKnight China Review International, Volume 3, Number 1, Spring , pp. (Review) Published by University of Hawai'i Press.

Additional Information In lieu of an abstract, here is a brief excerpt of the content: Reviews 93 Kathryn Bernhardt and Philip C. Civil Law in Qing and Republican China. Stanford University Press, This important book should help reduce the widespread, persistent misunderstanding of the role of legal process in traditional Chinese society. The received opinion has been that the Chinese people avoided law whenever possible and that the Chinese government did not participate in a major way in the solving of civil issues or, when it was involved in civil issues, that it used mediation according to widely accepted social norms. Scholars dealing with legal issues from periods like the Han, Song, and Qing dynasties for which there is material that reflects the actual working of the legal system have long been aware that this conventional view was far off the mark. The use of formal courts, which ruled using codified law, was widespread in traditional China. Civil Law in Qing and Republican China will also be of major importance because it illuminates some aspects of the role of law during the critically important era between the end of the empire and the end of the Republic. The work contains eight essays by specialists in traditional and Republican law, preceded by an introduction that defines the issues and places the contributions in context. This introduction discusses past scholarship, noting especially its emphasis on Chinese criminal law and its preoccupation with codes rather than law in practice though the authors do take note of important Chinese and Japanese studies on customary and civil law. The authors also note the woefully inadequate state of our understanding of law in the Republican period, a weakness that this volume begins to address. Professor Scogin raises important questions regarding the appropriate framework for approaching legal history, pointing in particular to the tendency of legal history to be the servant of political and ideological agendas. This makes comparative study potentially both fruitful and misleading. Professor Scogin highlights the danger inherent in using contemporary, value laden vocabulary. He recognizes that we cannot avoid the use of all such vocabulary but suggests that we use terms in full awareness of their emotional and intellectual overtones. He goes on to note the danger that scholars will be tempted to assume that superficial structural similarities reflect a similarity of social function. He closes by noting the great value that studies of the Chinese case can have for scholars trying to break free from the intellectual limitation imposed by an excessive concern with the Western legal tradition. The following four essays focus on different facets of Qing civil law. His piece is based almost entirely on the analysis of codes statutes and substatutes. The essay demonstrates that it is possible to use the codes, supplemented in some relatively minor ways, to illuminate practice and the historical evolution of economic law. He provides a clear and cogent analysis of some implications of these codified provisions. However, having provided us with a good elucidation of the legal side of this situation, the author notes in his conclusions the very important point that official practice was often widely at variance with the rules. He also stresses in my opinion overstates the considerable continuity of Chinese law.

Chapter 2 : Civil law in Qing and Republican China (Book,) [calendrierdelascience.com]

Drawing on records of hundreds of cases from local archives in several parts of China, it considers such questions as the relation between codified law and legal practice, the role of legal and paralegal personnel, and the continuity in civil law between Qing and Republican China.

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Chapter 3 : Melissa Macauley: Department of History - Northwestern University

This pioneering volume shows that contrary to previous scholarly understanding, the courts in Qing () and Republican () China dealt extensively with civil matters such as land rights, debt, marriage, and inheritance; and, moreover, did so in a consistent and predictable way.

Perdue American scholars of Chinese legal history have so far concentrated their endeavors on criminal law, and Chinese and Japanese specialists have focused more on the imperial era than on the Republican years. This is the first major attempt to deal with civil law extensively during the Qing and Republican periods. Taken together, these essays challenge traditional assumptions and assert that the Qing and Republican courts not only handled large numbers of civil disputes, deciding with striking consistency and in conformity with the written code, but provided access to peasants as well as to the rich. The first group, in particular the article by Hugh T. A second group of authors have written local case studies. While Huang emphasizes the abidance by the law in magisterial adjudication, Mark A. Allee examines the relative importance of code, culture, and local custom in nearby nineteenth-century Taiwan. Their opposite readings might indicate the diversity of legal practices in China. The third group of authors presents chapters discussing changes from the Qing to the Republican period, Madeleine Zelin studies merchant dispute mediation in twentieth-century Zigong, the center of the Sichuan salt industry. Conner argues that the legal profession made reasonable progress in the Republican period. Perdue Some of the papers in this volume argue over the relation between legal codes, social customs and judicial practices. This has become the major approach in studying Chinese law of the Qing and Republic periods. They show decisions as based on mixtures of statutes, customs and cultural norms although they disagree on the relative importance of each , and they believe that examining judicial practice in counties is critical to understanding the legal system. Rankin A controversy is carried out between Huang and Allee. A leading writer of this trend, Huang strongly asserts, on the basis of three Sichuan county archives, that magistrates rendered judicial decisions in many civil cases by applying provisions in the Qing code relating to civil affairs as opposed to mediating between the parties. This proposition develops into the key theme of his later book Representation and Practice as well as Code, Custom and Legal Practice. Based on is local studies, Allee argues the opposite. A second main theme is continuity and changes, which are demonstrated in their study of commercial law, lawyer, law about women, etc. Besides, on Page 2 the book gives a brief introduction to the previous scholarship, scare though, on the topic of civil law in China. This book is the first volume of a new series, Law, Society, and Culture in China. It opens space for further study of both civil and criminal laws in the Qing and Republic periods. I might not be overstating that someone says it has opened a new era in the study of law in China.

Chapter 4 : History of the Republic of China - Wikipedia

"This pathbreaking volume demonstrates that, contrary to previous scholarly understanding, Qing and Republican courts dealt extensively with such civil matters as land rights, debt, marriage, and inheritance, and did so with striking consistency and in conformity with the written code.

Despite the fact that various warlords gained control of the government in Beijing during the warlord era, this did not constitute a new era of control or governance, because other warlords did not acknowledge the transitory governments in this period and were a law unto themselves. These military-dominated governments were collectively known as the Beiyang Government. The warlord era is considered by some historians to have ended in World War I and brief Manchu restoration[edit] Main article: The Provisional Constitution was reinstated and the parliament convened. Premier Duan Qirui was particularly interested in joining the Allies as an opportunity to secure loans from Japan to build up his Anhui clique army. The two factions in the parliament engaged in ugly debates regarding the entry of China and, in May , Li Yuanhong dismissed Duan Qirui from his government. This led provincial military governors loyal to Duan to declare independence and to call for Li Yuanhong to step down as President. Li Yuanhong summoned Zhang Xun to mediate the situation. Zhang Xun had been a general serving the Qing Court and was by this time the military governor of Anhui province. He had his mind on restoring Puyi Xuantong Emperor to the imperial throne. Zhang was supplied with funds and weapons through the German legation, which was eager to keep China neutral. On 1 July , Zhang officially proclaimed the restoration of Qing dynasty and requested that Li Yuanhong give up his presidency, which Li promptly rejected. The Manchu restoration ended almost as soon as it began. During this period of confusion, Vice President Feng Guozhang, also a Beiyang general, assumed the post of Acting President of the republic and took his oath of office in Nanjing. Duan Qirui resumed his post as the Premier. The Zhili clique of Feng Guozhang and the Anhui clique of Duan Qirui emerged as the most powerful cliques following the restoration affair. Duan dissolved the parliament upon his return and declared war on Germany and Austria-Hungary on 14 August Around , Chinese workers volunteered for labor battalions after being enticed with money, some even years before war was declared. Some 10, died, including over on ships sunk by U-boats. The Constitutional Protection War continued through As a result, the Guangzhou government was reorganized to elect a seven-member cabinet system, known as the Governing Committee. Sun was once again sidelined by his political opponents and military strongmen. He left for Shanghai following the reorganization. They felt negotiation was the solution to unify China and forced Duan to resign in October. President Feng Guozhang, with his term expiring, was then succeeded by Xu Shichang , who wanted to negotiate with the southern provinces. In February delegates from the northern and southern provinces convened in Shanghai to discuss postwar situations. The Constitutional Protection War essentially left China divided along the north-south border. In China declared war on Germany in the hope of recovering its lost province, then under Japanese control. On 4 May , there were massive student demonstrations against the Beijing government and Japan. The political fervor, student activism and iconoclastic and reformist intellectual currents set in motion by the patriotic student protest developed into a national awakening known as the May Fourth Movement. The intellectual milieu in which the May Fourth Movement developed was known as the New Culture Movement and occupied the period “ The student demonstrations of 4 May , were the high point of the New Culture Movement, and the terms are often used synonymously. Chinese representatives refused to sign the Treaty of Versailles due to intense pressure from both the student protesters and public opinion. Fight against warlordism and the First United Front[edit] The May Fourth Movement helped to rekindle the then-fading cause of republican revolution. In Sun Yat-sen had become commander-in-chief of a rival military government in Canton in collaboration with southern warlords. The latter, under a succession of warlords, still maintained its facade of legitimacy and its relations with the West. By Sun had become president of the southern government. He spent his remaining years trying to consolidate his regime and achieve unity with the north. His efforts to obtain aid from the Western democracies were fruitless, however, and in he turned to the Soviet Union , which had recently achieved its own revolution. The

Soviets sought to befriend the Chinese revolutionists by offering scathing attacks on Western imperialism. For political expediency, though, the Soviet leadership initiated a dual policy of support for both Sun and the newly established Chinese Communist Party CCP. In the Kuomintang-warlord alliance in Guangzhou was ruptured, and Sun fled to Shanghai. By then he saw the need to seek Soviet support for his cause. Soviet advisers—the most prominent of whom was an agent of the Comintern, Mikhail Borodin—began to arrive in China in to aid in the reorganization and consolidation of the Kuomintang along the lines of the Communist Party of the Soviet Union and establish the First United Front. The CCP was under Comintern instructions to cooperate with the Kuomintang, and its members were encouraged to join while maintaining their party identities to form a "bloc within. The CCP was still small at the time, having a membership of just in and only 1, by By contrast, the Kuomintang in already had , members. Chiang consolidates power[edit] National Revolutionary Army soldiers march into the British concessions in Hubei during the Northern Expedition. Sun Yat-sen died of cancer in Beijing in March , as the Nationalist movement he had helped to initiate was gaining momentum. During the summer of Chiang, as commander-in-chief of the National Revolutionary Army , set out on the long-delayed Northern Expedition against the northern warlords. Within nine months half of China had been conquered. By , however, the Kuomintang had divided into left- and right-wing factions, and the Communist bloc within it was also growing. The Soviet Union, still hoping to prevent a split between Chiang and the CCP, ordered Communist underground activities to facilitate the Northern Expedition, which was finally launched by Chiang from Guangzhou in July In early the Kuomintang-CCP rivalry led to a split in the revolutionary ranks. Chiang, whose Northern Expedition was proving successful, set his forces to destroying the Shanghai CCP apparatus and established an anti-Communist government at Nanjing in the Shanghai massacre of There now were three capitals in China: The Comintern cause appeared bankrupt. A new policy was instituted calling on the CCP to foment armed insurrections in both urban and rural areas in preparation for an expected rising tide of revolution. Unsuccessful attempts were made by Communists to take cities such as Nanchang , Changsha , Shantou and Guangzhou, and an armed rural insurrection, known as the Autumn Harvest Uprising , was staged by peasants in Hunan province. The Communists had been expelled from Wuhan by their left-wing Kuomintang allies, who in turn were toppled by a military regime. Nanjing decade — [edit] See also: The "Nanjing Decade" of was one of consolidation and accomplishment under the leadership of the Nationalists, with a mixed but generally positive record in the economy, social progress, development of democracy and cultural creativity. Some of the harsh aspects of foreign concessions and privileges in China were moderated through diplomacy. In May the government regained the right to set its tariff , which before then had been set by the foreign powers. On 3 November , the government instituted the fiat currency fapi reform, immediately stabilizing prices and also raising revenues for the government. Great strides also were made in education and, in an effort to help unify Chinese society, in a program to popularize Modern Standard Chinese and overcome other varieties of Chinese. Newspapers, magazines and book publishing flourished, and the widespread establishment of communications facilities further encouraged a sense of unity and pride among the people. The Rural Reconstruction Movement was one of many which took advantage of the new freedom to raise social consciousness. Although the central government was nominally in control of the entire country during this period, large areas of China remained under the semi-autonomous rule of local warlords, provincial military leaders or warlord coalitions. Nationalist rule was strongest in the eastern regions around the capital Nanjing, but regional militarists such as Feng Yuxiang and Yan Xishan retained considerable local authority. Hungry for raw materials and pressed by a growing population, Japan initiated the seizure of Manchuria on 18 September and established ex-Qing emperor Puyi as head of the puppet state of Manchukuo in The loss of Manchuria, and its vast potential for industrial development and war industries, was a blow to the Kuomintang economy. The League of Nations , established at the end of World War I, was unable to act in the face of the Japanese defiance. The Japanese began to push from south of the Great Wall into northern China and the coastal provinces. Chinese fury against Japan was predictable, but anger was also directed against Chiang and the Nanking government, which at the time was more preoccupied with anti-Communist extermination campaigns than with resisting the Japanese invaders. Joseph Stilwell in Burma The Chinese resistance stiffened after 7 July , when a clash occurred between Chinese and Japanese

troops outside Beijing then named Beiping near the Marco Polo Bridge. This skirmish led to open, though undeclared, warfare between China and Japan. Shanghai fell after a three-month battle.

Chapter 5 : civil law in qing and republican china | Download eBook PDF/EPUB

This study examines how law, custom, and social norm interacted in civil justice in Qing and Republican China by looking into civil cases tried in , right after the founding of the Republic of China, and a body of legal interpretations from the Supreme Court during , and certain provisions in the Civil Code of the very first one in Chinese history.

Chapter 6 : Civil Law in Qing and Republican China - Kathryn Bernhardt - Google Books

Shows that contrary to previous scholarly belief, the courts in Qing and Republican China dealt extensively with civil matters and, moreover, did so in a consistent and predictable way.

Chapter 7 : Civil Law in Qing and Republican China | Kathryn Bernhardt and Philip C. C. Huang

Civil Law in Qing and Republican China will also be of major importance because it illuminates some aspects of the role of law during the critically important era between the end of the empire and the end of the Republic.

Chapter 8 : Civil Justice in China : Philip C. C. Huang :

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"Civil and Uncivil Disputes in Southeast Coastal China, " In Kathryn Bernhardt and Philip C.C. Huang, eds. Civil Law in Qing and Republican China. Stanford, CA: Stanford University Press, , pp.