



Max Planck Legal History Quarterly Forum

History of Private Law in East Asia

Abstracts



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Tempering Custom: Bridewealth, Bride Service, and Law in the Seventeenth- and Eighteenth-Century Philippines

The indigenous customs of bridewealth and bride service played an important part in negotiating marriage in pre-Hispanic Philippines. Their persistence through the early Spanish colonial period may be deduced from the repeated injunctions against bride service and the reduction and even abolition of bridewealth from both secular and ecclesiastical authorities. The main concerns regarding these customs were freedom of marriage, the prevalence of premarital relations between the betrothed parties, and the question of restitution arising from broken betrothals. The royal decree originally issued for New Spain in 1628 was applied to the Philippines: “Que los indios no puedan vender a sus hijas para contraer matrimonio.” Beyond the terms of commodification used, however, attempts to understand these practices using Hispanic legal grammar may be found in moral-legal consultations and ethnographic works.

How effective were the injunctions? Documentation from the eighteenth century indicates that these continued to be practiced as essential to betrothals. In matrimonial cases, for example, Filipino indio litigants invoked these customs as arguments or evidence. On the other hand, there is initial evidence that compliance with the law was more vigorously sought and in some degree achieved.

Qu, Jian (Universität Heidelberg)

What is A Contract? Definition and Designation in the Context of Late Imperial China

“Is a flying boat a ‘vessel’? Is it still ‘chess’ if the game is played without a queen?” (H. L. A. Hart, *The Concept of Law*) A recognition of the distinction between “clear standard cases and challengeable borderline cases” in Hart’s sense is also of great importance to the question of “what it a contract” in the context of late imperial China. It is a familiar fact that more attention has been paid to civil and commercial contracts as they are the most visible ones. Contracts at the borderline, by contrast, along with the extreme diversity of traditional Chinese contracts were therefore neglected to a large extent. However, a study trying to define “contract” must face, or rather largely rely on this diversity, for it is believed that the summary of only the “standard cases” will not come out with an applicable definition, the dividing line can only be found through a careful analysis of the “borderline cases”.



Thus, through the investigation of both undisputed and seemingly questionable contracts, this study intends to figure out that, practically, how contracts can be identified in numerous raw manuscripts, and, at a slightly more theoretical level, can a definition, or criterion of contracts be found or given in the context of late imperial China?

Shen, Xiaojun (Shanghai University of International Business and Economics)

The Methods of Legal Reception of German Civil Law in China

At the beginning, the author will generally introduce the social background of the late Qing Dynasty of China, when China began to accept the German civil law. In particular, it refers to the pressures from the revolutionaries, demonstration effect of the success of Japan's legal reform and the necessity to abolish consular jurisdiction.

In part two, the author will analyze the judicial practice in Jiaozhou, Shandong, China, which was conducted by the German Imperial Court. The author believes that the relevant unequal treaties only give the German Imperial Court a limited jurisdiction. Strictly speaking, it is not legal reception, and did not exert influence on the subsequent civil legislation and justice in China.

In part three, the author will explore the influence of German civil law on the China's civil legislation activities in different historical periods, including the late Qing dynasty, the Republic China period, the period from the establishment of the People's Republic of China to the reform and opening up and the contemporary society.

In part four, the author will examine the legal succession achieved through the judicial activities. Two typical examples are the acceptance of the specific system, including the judicial interpretation made by the Supreme People's Court, and the impact of theories from German civil law reflected in the reasoning of judgment.

In part five, the author will analyze the great significance of different levels of academic exchange activities in terms of the succession of German civil law. The translation of legal provisions and academic literature, methods of research and academic communication are all meaningful academic activities. Finally, the author will summarize the key factors about the legal reception of German civil law in China.