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黄宗智

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法律顾问 于 静

OPEN TIMES**3rd ISSUE, 2019****CONTENTS****FEATURE TOPIC: UNDERSTANDING CHINA: A DIALOGUE BETWEEN
PHILIP C. C. HUANG AND ZHOU LI'AN**

Rethinking “the Third Sphere”: The Dualistic Unity of State and Society in China, Past and Present

12

Philip C. C. Huang

Abstract: This article reconsiders the author’s multiple pieces over the years about “the third sphere” between state and society in China, past and present, to explain more clearly its connection with the “centralized minimalism” tradition of Chinese governance, and summarize multiple positive and negative empirical examples to make explicit how state and society interacted, complemented or mutually shaped one another in a dualistic whole. The article examines the logics and mechanisms in that changing third sphere from imperial to modern times, and from the collective era to the Reform era of China. The article includes also a discussion of and dialogue with Zhou Li’an’s theory of “administrative contracting and subcontracting.” The article further attempts to provide a prospective vision for a distinctively Chinese political-legal and political-economic system.

Keywords: centralized minimalism, county magistrates and clerks-runners, administrative “internal contracting and subcontracting” and “external contracting and subcontracting”, semiformal legal administration, degenerative phenomena in the third sphere

Understanding China: A Dialogue with Philip C. C. Huang

37

Zhou Li'an

Abstract: This article aims at engaging in a constructive dialogue with Philip C. C. Huang. We approach China’s administrative governance and economy from different perspectives but arrive at similar and complementary characterizations. I argue that what makes any theory about China valuable and valid lies in its ability to penetrate both China’s history and its present, link theory and evidence, go beyond left and right, and combine East and West. Since it has been dominated by Western standards, academic research about China should stand firmly on historical reality as well as constructive dialogue with Western doctrines, but with full awareness of their implicit assumptions, some of which are bundled with Western-specific experiences, and of their potential

conceptual traps when applied to China. As an ambitious goal, we also should seek to generalize the experiences of both East and West.

Keywords: involuted commercialization, the third sphere, centralized minimalism, administrative contracting, dual-market competition model

HUMANITIES

The Political Scheme and Philosophical Foundation of “Revolutionary Confucianism”: Centering on Xiong Shili’s *The Universe Unfolded* 65

Zhou Zhan’an

Abstract: This study is focused on Xiong Shili’s thinking in his late years and his “definitive work in the declining years” — *The Universe Unfolded* (*Qiankun Yan*), with an attempt to outline his “revolutionary Confucianism”, in particular his association of Confucianism with socialism to let the two ideologies inspire each other. Xiong makes the distinction between “School of the Big Way” and “School of the Well-to-do” in Confucianism, giving new interpretations to the classics that represent the former, including *The Book of Change* (*Yi Jing*), *The Annal of Spring and Autumn* (*Chun Qiu*), *The Book of Zhou’s Officialdom* (*Zhou Guan*), and *The Book of Rituals* (*Li Yun*). In so doing, he connects Confucianism with socialism and develops both the practical and the spiritual aspects of his “revolutionary Confucianism”. Through radical interpretations of traditional Confucianism, in particular the idea of “the unity of the ontological and the functional” which is the philosophical foundation of the “School of the Big Way”, Xiong infiltrates the established socialist theory with new factors and drastically revises materialism. Judged as whole, Xiong’s radical work of philosophical distinction is a positive attempt on a Confucian version of socialism.

Keywords: Xiong Shili, socialism, Confucianism, *The Universe Unfolded*

Settled Mind and Settled Body: Li Zehou’s Later Thoughts and the Problematic of “History-Philosophy” 81

Luo Cheng

Abstract: In the sphere of Chinese academic thoughts during the recent forty years, Li Zehou deserves a deeper study. From 1990s to date, Li Zehou has devoted himself to Confucianism, particularly the combination of Confucianism, Kant and Marx. Li Zehou’s later style is represented in his “untimely” re-interpretation of Chinese early “rational Shamanism” and the origin of Chinese civilization which has been cast into oblivion by modernity and progressivism. The later Li Zehou faces the difficult issue of “the philosophy of history” by sorting out the “history of philosophy”, and he asks, “How is the Chinese possible?” To answer this question, he re-con-

structs three Confucian propositions. By the proposition of “sageliness within and kingliness without”, he demonstrates the dialectic relationship between moral philosophy and political philosophy. By the proposition of “the union of Heaven and Man”, he hints at the integration of natural philosophy and religious philosophy. By the proposition of “settling down in good faith”, he resuscitates historical philosophy and educational philosophy in their traditional sense. His own creative propositions, “the ontology of measure” and “the ontology of emotion”, provide answers to the question “how Chinese culture and Chinese mind are possible?”.

Keywords: Li Zehou, Confucianism, sageliness within and kingliness without, the union of Heaven and Man, settling down in good faith

LAW AND POLITICS

The Expression and Essence of De-Sovietization in Chinese Legal Studies: Focusing on the Criminal Law 100

Shao Liuyi

Abstract: Eliminating the impact of the former Soviet Union has been an important trend in legal studies after the Reform and Openness. “De-Sovietization” has been considered as a way of de-politicization in the academic sector, helping towards a value-free approach and the scientific development. After analyzing the status quo in criminal law studies, this article contends that de-Sovietization means acceptance of an alternative type of political discourse rather than rejection of politics altogether. Both the principles of statutory crime and penalty and the dogmatic of criminal law assume the basic hypotheses typical of liberal legal thoughts, such as the supremacy of civil rights, the evil of the public power, etc. The pre-requisitions of liberalism have been taken for granted among most legal researchers. De-Sovietization in legal studies was not only an academic phenomenon, but also had historical and political connections. The transition from Sovietization to liberalism, in some sense, was a side-effect of the collapse of the Soviet Union in the later 1980s, and Westernization or Americanization made up the other side of the coin. De-Sovietization and liberalism mark a cornerstone in Chinese legal studies in the new era and the beginning of intergenerational synthesis in legal knowledge.

Keywords: transition in legal studies, de-Sovietization, criminal law, liberal legal thoughts. intergenerational synthesis

Carl Schmitt on the League of Nations and the Decay of the European Order: A Reflexive Reading Based upon Chinese Historical Experiences 126

Zhang Yongle

Abstract: Carl Schmitt’s analysis of the inter-state system is characterized by a double perspective of both the

dominator and the dominated. After the First World War, Schmitt persistently criticized the post-war inter-state system against the background of the classical international law and the Vienna system. According to his judgment, the Versailles-Washington system, epitomized by the League of Nations, violated many fundamental principles of the Vienna system and abandoned various doctrines of the classical international law. The great powers failed to reach any stable political consensus on the spatial arrangement of Europe and the world. However, it could be argued that the decaying concert of great powers was conducive to China's revival in the 20th century. As the conflict between the great powers weakened the oppressive power structure, Chinese revolutionaries made breakthroughs in the weak link of the imperialist system. China's rich experience of guerrilla warfare, although at odds with the classical law of war that Schmitt venerated, greatly inspired Schmitt's post-World War II reflection on the "guerrilla theory". A reflexive reading of Schmitt's thought on the inter-state system could throw lights on China's own historical situation and her constructive role in the upcoming new international order.

Keywords: inter-state system, concert of powers, balance of power, law of war

ECONOMY AND SOCIETY

The Dried-up Wells: Capital Flow to Countryside and the Water Grabbing: with the Vegetable Industry in Huang Gao County as An Example 150

Chen Hangying

Abstract: Taking the vegetable industry of Huanggao County in the southern part of Ningxia as an example, this paper examines the changes in the relationship between people and water brought by the capital flow to the countryside. The study found that the phenomenon of water grabbing has emerged as a result of grassroots governments promoting capital to the countryside to upscale vegetable production. The dangerous phenomenon arises from the interaction between the grassroots governments, capital, and the local farmers. The result is that the ecological base and the social and cultural base of the village community are destroyed, which in turn leads to the inevitable decline of the village community itself. Taking this as a lesson, policy makers should explore an alternative development path based on rethinking "for whom to develop" and "how to develop".

Keywords: capital flow to the countryside, water grabbing, relationship between people and water

The Emergence of Agricultural Mechanization Service Market: Dynamics and Impact 169

Chen Yiyuan

Abstract: This study explores the impact of the emergence of agricultural mechanization service (AMS) on China's agrarian change, in the context of an excess capacity of agricultural machinery manufacturing. The paper studies the dynamics of AMS and its impact on family farming. By adopting the framework of "appropriation-

ism”, this study argues that the nature of AMS is the reshaping of agricultural activities and the appropriation of agricultural surplus by capital. Meanwhile, the fierce competition on the AMS market promotes agricultural machinery operators to involve in land transfer, in order to ensure a minimum working area, which is reshaping the relations of production. Under the development of AMS, family farming is being dissolved both from inside and from outside. On the one hand, household producers are excluded from farming by the land transfer practice, which is driven by the competition of the AMS market. On the other hand, individual producers are marginalized from the inside due to the appropriation of their agricultural surplus under the appropriationism logic.

Keywords: agricultural mechanization, agricultural mechanization service, appropriationism, family farming, land transfer

Farmer Organization and Village Community Reconstruction 186

He Xuefeng

Abstract: Organizing farmers is the basic prerequisite for implementing the rural revitalization strategy. How to organize the farmers? This paper presents a proposal for discussion by scholars and policy makers alike. The key point is to exploit the advantages of the collective ownership system of rural land in China. Given the tripartite system of ownership, contracting, and management of land, it is advisable to materialize these three rights separately and restore agricultural land to the nature of production means so as to rebuild a new collective economy and village communities. Only by establishing an interest-related mechanism based on profit distribution will the villagers participate in village affairs and be organized as farmers.

Keywords: rural collective economy, production means, tripartite right system of land, farmer organization, village revitalization

“THE WORLD OF ALTERITY”

Comparing State-diaspora Relations: A Typological Analysis 198

Long Dexin & Jiang Hualin

Abstract: To categorize diasporas and their relations with their state of origin and their state of residence is an important way of figuring out the rules that govern the relationship between diaspora and nation-state and of analyzing and reconstructing the relationship between state and nation in the context of globalization. It is also an important way of reinterpreting the fundamental issues pertaining to the central and marginal misplacement of the world system, inter-state relations, and transnational tensions. In this paper, we classify state-diaspora relations into six types, namely, diaspora dominated by the state of origin, diaspora dominated by the state of residence, diaspora dominating the state of origin, diaspora dominating the state of residence, suspended diaspora, and mutual embedded diaspora. Initial analysis shows that the suspended type is an important factor lead-

ing to ethnic feuds, territorial disputes, and religious conflicts. It is even connected with such non-traditional security issues as terrorism. A typological analysis of diaspora communities can illuminate researches on overseas Chinese communities and help towards informed policy-making regarding overseas Chinese affairs.

Keywords: diaspora, typology, identity, power dependence

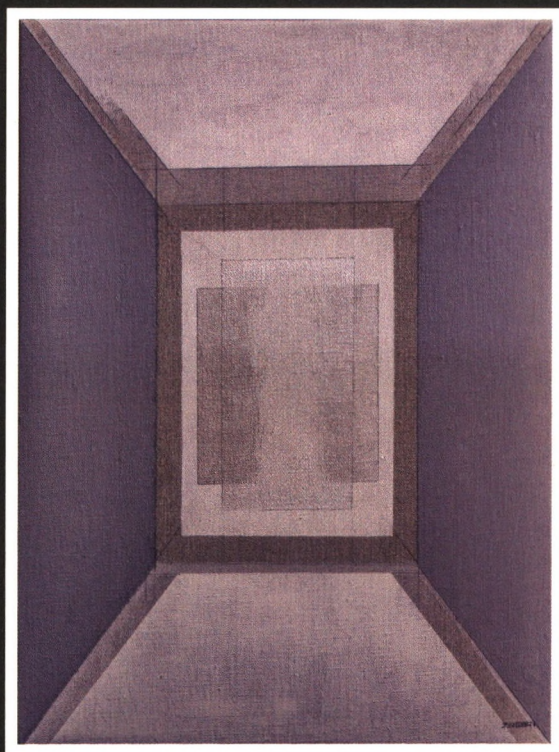
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The Monographs Tradition and Chinese Scholarship: Beginning with the “Best Young Scholar’s Monograph Prize in the Social Sciences of Practice” 215

Philip C. C. Huang

Abstract: This article first explains why our “Best Young Scholar’s Monograph Prize in the Social Sciences of Practice” selection committee has chosen the three books *International Law and Late Qing China: Texts, Events, and Politics*, *Rural Development in Contemporary China: Micro Case Examples and Macro Changes*, and *Urbanizing Children: Identity Production and Political Socialization of Peasant-Worker Sons and Daughters* for the award, and then goes on to discuss how monograph production is faced with deeply contradictory forces in the scholarly environment of China today when compared with the American scholarly environment, to explain the purpose of the prize.

Keywords: Lai Junnan, Gao Yuan, Xiong Yihan, similarities and contrasts between the Chinese and American environments for monograph production



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周钦珊