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- sponsor/fidepromissor 同 同, fideiussoris autem etiam heres tenetur. Gai. 3.120
- lex Appuleia: 同 同 同 同 同 同 (inter sponsores et fidepromissores lex Apuleia quandam societatem introduxit Gai. 3.122)
- lex Furia (c. 200BC): 同 同 sponsor/fidepromissor 同 同 – 2 同 同, 同 同 同 同
- fideiussor 同 同 同, 同 同 同 同 同, 同 同 同 同 同 fideiussor 同 同 同 同 同 同 同
- 同, 同 同 同 (eius recipiendi causa habent cum eo mandati iudicium. Gai. 3.127)
- condictio certae rei / actio ex stipulatu (Dig. 12.1.24)

2. 同

- 同 mutuum
 - 同, 同 同 Dig. 12.1.3 (... ut eiusdem generis et eadem bonitate solvatur, qua datum sit. 同 同 同, 同 同 同 ...)
 - Si tibi dedero decem sic, ut novem debeas, proculus ait, et recte, non amplius te ipso iure debere quam novem. sed si dedero, ut undecim debeas, putat proculus amplius quam decem condici non posse. 同 同 10 同 9 同 同 同, 同 同 9 同 同 同 同 同 同 同 同. 同 10 同 同 11 同 同 同 同 同 同 同 10 同 同 同. Dig. 12.1.11.1
 - S.C. Macedonianum: 同 同 同 同 同 (Dig.14.6.1pr), 同 同 同 同 同 同 同 同, peculium castrense 同 同 同 同
- 同 depositum
 - 同 同 同: dolus
Si vestimenta servanda balneatori data perierunt, si quidem nullam mercedem

omni custodia remanente in locum, ubi rem
commodatam esse oportet, ubi rem
commodatam esse oportet. *Dig. 16.3.32*

- infamia
- custodia rei – 200 annis
- custodia commodatum
 - custodia rei:
 - (custodiam praestare) – Quae de fullone aut sarcinatore diximus, eadem transferemus et ad eum, cui rem commodauimus. nam ut illi mercedem capiendo custodiam praestant, ita hic quoque utendi commodum percipiendo similiter necesse habet custodiam praestare. *Dig. 16.3.32*
 - In rebus commodatis talis diligentia praestanda est, qualem quisque diligentissimus pater familias suis rebus adhibet, ita ut tantum eos casus non praestet, quibus resisti non possit, veluti mortes servorum quae sine dolo et culpa eius accidunt, latronum hostiumve incursus, piratarum insidias, naufragium, incendium, fugas servorum qui custodiri non solent. *Dig. 13.6.18pr*
 - custodia rei (et culpam praestandam et

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Syllabus and Reading

Ancient Chinese Law and Philosophy

– Syllabus –

What is a good government? What is good law, or a good method of bringing people to the state of ultimate, collective happiness? How to explain human conduct? How to understand the role of law and other normative apparatuses available in society for shaping and guiding human behaviour? How to justify the State-sponsored violence carried out against individuals? Why do we observe law? Do we have to observe law? Why? These are questions of fundamental importance which may interest many students. This course aims to tackle these questions by examining some of the influential schools of thought which arose from pre-Han (before 206BC) China. The ancient Chinese approaches to these questions will widen the intellectual horizons of many students. The legal and philosophical texts of ancient China will be presented not merely as an object of veneration or exotic and esoteric interest, but as vital sources of inspiration which could open up new possibilities of inquiry into the questions which have so far been approached from European or 'Western' angles of analysis. The course will attempt to establish a connection between the way these questions are explored and the way we understand Nature, human-beings and the purpose of our existence in this Universe. Students will also have an opportunity to study how these early ideas were transformed and manipulated during the Han empire (206BC – 220AD) and become the orthodox political ideology which was to have a decisive impact in determining the overall character and ethos of the East Asian culture until today. No knowledge of the Chinese language is required. No background in ancient history is necessary.

1. Outline understanding of pre-Confucian legal and political institutions of China
2. Confucian vision of law, ethics and human conduct
3. Continuations and variations of the Confucian system
4. Legalist ideas of law, human nature and statecraft
5. Daoist outlook on human-beings, Nature and Universe; ideas of Yin and Yang
6. Creation of State orthodoxy in Han empire
7. The limits of law, language and human understanding

READING

1. Essential (Students should all obtain a copy of their own for the following):
 - Annping Chin, *The Analects* (2014)
 - D. C. Lau, *Mencius* (1970)
2. General texts:
 - Loewe and Shaughnessy, *The Cambridge History of Ancient China* (1999)
 - pp. 292-351, 'Western Zhou history';
 - pp. 545-586, 'The Spring and Autumn Period'
 - Liu Yongping, *Origins of Chinese law: penal and administrative law in its early development* (1998), ch. 1, pp.19-60, 'Law in Shang-Zhou China'
 - Denis Twitchett and Michael Loewe, *The Cambridge history of China, vol. 1. The Ch'in and the Han Empires, 221 BC – AD 220* (1986), pp. 520-544, 'Ch'in and Han Law'
 - Fung, Yu-lan (Feng, Youlan), *A history of Chinese philosophy*, 2 vols. trans. Derk Bodde (1952-53) vol II, ch. 2, pp. 7-87, 'Dong Zhongshu and the new text school'
 - de Bary et al., ed. *Sources of Chinese Tradition*,
 - vol. I, ch. 1, pp. 3-23, 'The oracle-bone inscriptions of the late Shang dynasty'
 - vol. I, ch. 4, pp. 64-76, 'Mozi: Utility, uniformity and universal love'

- vol. I, pp. 159-183, 'Xunzi'
- vol. I, pp. 199-212, 'Han feizi; Li si'
- vol. I, pp. 292-310, 'Dong Zhongshu'
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- 荀子, 荀子 荀子, 荀子 荀子: 荀子 荀子 (荀子 荀子, 2012)
- 荀子, 荀子 荀子 荀子 (荀子) (荀子 荀子, 2013)
- 荀子 荀子, 荀子 荀子, 荀子 荀子 (荀子, 1999)
 - vol.1, pp. 177-213, '荀子 荀子 荀子 荀子'
 - vol.1 pp. 79-128, '荀子 荀子 荀子'
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3. Occasional references will be made to the following:

- Yao, Xinzhong, An introduction to Confucianism (2000)
- Shun, Kwong-loi, Mencius and early Chinese thought (1997)
- John Knoblock, Xunzi: a translation and study of the complete works (1988-94)
- J J L Duyvendak, The book of Lord Shang (1928)
- Burton Watson (trans.), Basic writings of Mo Tzu, Hsün Tzu, and Han Fei Tzu (1967)
- Wang, Hsiao-po and Leo Chang, The philosophical foundations of Han Fei's political theory (1986)
- Angus Graham, Disputers of Dao (1989)
- R. P. Peerenboom, Law and morality of ancient China: the silk manuscripts of Huang-Lao (1993)
- Sarah Queen, From Chronicle to Canon: the hermeneutics of the Spring and Autumn according to Tung Chung-shu (1996)
- Mark Lewis, Writing and authority in early China (1999)
- Anthony Hulsewé, Remnants of Ch'in law (1985)
- Anthony Hulsewé, Remnants of Han Law (1955)
- Michael Loewe, Early Chinese texts: A bibliographical guide (1993)
- Theodore de Bary et al., Sources of Chinese

¶¶ (conventio)

1. ¶¶¶ ¶¶

- ¶¶¶ ¶¶¶ ¶¶¶: Huius edicti aequitas naturalis est. quid enim tam congruum fidei humanae, quam ea quae inter eos placuerunt servare? Dig.2.14.1pr.
- ¶¶¶¶: igitur nuda pactio obligationem non parit, sed parit exceptionem. Dig.2.14.7.4

2. Ulpianus ¶ ¶¶ Dig. 2.4.7

- Iuris gentium conventiones quaedam actiones pariunt, quaedam exceptiones.
- ¶¶¶¶: Quae pariunt actiones, ... transeunt in proprium nomen contractus: ut emptio venditio, ...
- '¶¶¶¶': Sed et si in alium contractum res non transeat, subsit tamen causa, ... esse obligationem
- ¶¶¶¶: Sed cum nulla subest causa, propter conventionem hic constat non posse constitui obligationem

3. ¶¶¶¶¶ ¶¶ ¶¶ **constitutum debiti**

- Debitum autem ex quacumque causa potest constitui (Dig.13.5.1.6)
- ¶¶¶¶¶¶¶¶ ¶¶
- ¶¶¶¶¶ ¶¶ (Dig.13.5.4)
- ¶¶¶ ¶¶ ¶¶ (Dig.13.5.5pr.)
- ¶¶¶ ¶¶ ¶¶ (Dig.13.5.26)
- ... quoniam grave est fidem fallere. (Dig.13.5.1pr.)

4. 買賣契約 買賣契約 買賣契約 買賣

5. 買賣契約 買賣

‘買賣’契約

1. actio praescriptis verbis

2. 買賣契約/買賣契約 aestimatum

Aestimatio autem periculum facit eius qui suscepit: aut igitur ipsam rem debet incorruptam reddere aut aestimationem de qua convenit. Dig.19.3.1.1

3. 買賣 permutatio

- 買賣 買賣 買賣 買賣: Item emptio ac venditio nuda consentientium voluntate contrahitur, permutatio autem ex re tradita initium obligationi praebet. Dig.19.4.1.2
- 買賣 買賣 買賣 買賣 買賣 買賣 買賣:
 - 買賣 買賣 (in id quod interest nostra illam rem accepisse, de qua convenit) 買賣 買賣 買賣 買賣: actio praescriptis verbis
 - 買賣 買賣 買賣 買賣: sed ut res contra nobis reddatur, conditioni locus est quasi re non secuta. Dig.19.4.1.4
- 買賣 買賣: actio in factum 買賣 Dig.19.4.1.1

4. 買賣/買賣 買賣 transactio

- 買賣 買賣 買賣 買賣: Qui transigit, quasi de re dubia et lite

incerta neque finita transigit. Dig.2.15.1

- Aquiliana stipulatio [] pactum [] []
- [] [] [] [] [] [] []: Qui fidem licitae transactionis rupit, non exceptione tantum summovebitur, sed et poenam, quam, si contra placitum fecerit rato manente pacto, stipulanti recte promiserat, praestare cogetur. Dig.2.15.16

5. [] [] **precarium**

- Precarium est, quod precibus petenti utendum conceditur tamdiu, quamdiu is qui concessit patitur. Dig.43.26.1pr.
- Meminisse autem nos oportet eum, qui precario habet, etiam possidere. Dig.43.26.4.1
- culpam non praestat is qui precario rogavit, sed solum dolum praestat, quamquam is, qui commodatum suscepit, non tantum dolum, sed etiam culpam praestat. Dig.43.26.8.3

[] **societas**

1. []

- [], []
- [] [] [] [] []
- [](bona fides) [] []:
 - Societas si dolo malo aut fraudandi causa coita sit, ipso iure nullius momenti est, quia fides bona contraria est fraudi et dolo. Dig.17.2.3.3
 - Quod autem ex furto vel ex alio maleficio quaesitum est, in societatem non oportere conferri palam est, quia delictorum turpis atque foeda

communio est. plane si in medium collata sit,
commune erit lucrum. Dig.17.2.53

▪ **Quis socius**

- Qui admittitur socius, ei tantum socius est qui admisit, et recte: cum enim societas consensu contrahatur, socius mihi esse non potest quem ego socium esse nolui. (nam socii mei socius meus socius non est) Dig.17.2.19-20
- Nemo potest societatem herede suo sic parere, ut ipse heres socius sit. Dig.17.2.35
- Heres socii quamvis socius non est, tamen ea, quae per defunctum inchoata sunt per heredem explicari debent: in quibus dolus eius admitti potest. Dig.17.2.40 [I]n heredem autem socii proponitur actio, ut bonam fidem praestet. Dig.17.2.35

2. **Quae societas**

▪ **Coita societas**:

- Cum specialiter omnium bonorum societas coita est, tunc et hereditas et legatum et quod donatum est aut quaqua ratione acquisitum communioni acquiretur. Dig.17.2.3.1
- Coiri societatem et simpliciter licet: et si non fuerit distinctum, videtur coita esse universorum quae ex quaestu veniunt, hoc est si quod lucrum ex emptione venditione, locatione conductione descendit. Dig.17.2.7

▪ **Culpa socii**:

- Socius socio etiam culpa nomine tenetur, id est desidiaae atque negligentiae. culpa autem non ad exactissimam diligentiam dirigenda est: sufficit etenim talem diligentiam communibus rebus adhibere, qualem suis rebus adhibere solet, quia qui parum diligentem sibi socium acquirit, de se queri debet. Dig.17.2.72
- socios inter se dolum et culpam praestare oportet.

si in coeunda societate, inquit, artem operamve pollicitus est alter, veluti cum pecus in commune pascendum aut agrum politori damus in commune quaerendis fructibus, nimirum ibi etiam culpa praestanda est. Dig.17.2.52.2

3. **actio pro socio**

- Dissociamur renuntiatione morte capitis minutione et egestate. Dig.17.2.4.1
- **actio pro socio**:
 - si, cum omnium bonorum societatem inissemus, deinde cum obvenisset uni hereditas, propter hoc renuntiavit: ideoque si quidem damnum attulerit hereditas, hoc ad eum qui renuntiavit pertinebit, commodum autem communicare cogetur actione pro socio. Dig.17.2.65.3
 - Item si societatem ineamus ad aliquam rem emendam, deinde solus volueris eam emere ideoque renuntiaveris societati, ut solus emeris, teneberis quanti interest mea. Dig.17.2.65.4
- **actio pro socio** **actio pro socio**: Morte unius societas dissolvitur, etsi consensu omnium coita sit, plures vero supersint, nisi in coeunda societate aliter convenerit. nec heres socii succedit: sed quod ex re communi postea quaesitum est, item dolus et culpa in eo quod ex ante gesto pendet tam ab herede quam heredi praestandum est. Dig.17.2.65.9
- **actio pro socio** **actio pro socio**: proculus enim ait hoc ipso quod iudicium ideo dictatum est, ut societas distrahatur, renuntiatam societatem, sive totorum bonorum sive unius rei societas coita sit. Dig.17.2.65pr.
- **actio pro socio** **actio pro socio**, **actio pro socio** **actio pro socio**

4. **actio pro socio**

5. 〇〇 〇〇〇〇〇 〇〇

- Si quis societatem contraxerit, quod emit ipsius fit, non commune: sed societatis iudicio cogitur rem communicare. Dig.17.2.74