

CALS SEMINAR SERIES: CHINESE LAW

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Federal Bartholomew Conference Room, Federal Building, NUS (BTC)

Confucian Jurisprudence, Dworkin and Hard Cases

by Assistant Prof Norman Ho

Peking University School of Transnational Law

ABSTRACT

This talk argues that Confucian jurisprudence can accurately be analogized to Dworkin's adjudicative theory of law, in particular, his interpretive theory of law. To more effectively reveal the methods of Confucian jurisprudence and therefore carry out a comparison with Dworkin's interpretive theory of law, I adopt Dworkin's methodology of focusing on "hard cases." Specifically, this talk identifies and then examines an actual hard case (from Tang dynasty China) which is arguably representative of Confucian jurisprudence in action – the controversial case of Xu Yuanqing, who committed a revenge killing against a low-ranking official who had killed his father. In particular, this talk presents (in translation) and analyzes two diverging legal opinions authored by Confucian officials on the case (one calling for Xu's execution, the other calling for Xu to be spared), attempting to show the similarities between Confucian jurisprudence and Dworkin's interpretive theory of law.

This talk concludes by discussing the implications of such similarities on legal theory more generally. To that end, it will argue that Dworkin's adjudicative theory of law need not necessarily be confined to Anglo-American jurisprudence, and, that despite Dworkin's own assertions to the contrary, Confucian jurisprudence is in fact not incompatible with Dworkinian approaches to law. Finally, this talk will also highlight some unique, different features of Confucian jurisprudence and how such features might contribute to comparative jurisprudence more generally.

ABOUT THE SPEAKER



Norman P. Ho is an assistant professor of law at Peking University School of Transnational Law (PKU-STL). He previously taught as a lecturer in the University of Hong Kong Faculty of Law. He is also a non-resident research fellow of the Netherlands China Law Center and an honorary fellow of the Asian Institute of International Financial Law. He writes in the areas of premodern Chinese legal history, Chinese legal thought, legal theory, and comparative jurisprudence. Prior to joining the PKU-STL faculty, Norman practiced law in the law firms of Morrison & Foerster LLP and Slaughter and May.