

Central Asian Law: An Historical Overview

**A Festschrift for
The Ninetieth Birthday
of
Herbert Franke**

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Edited by

Wallace Johnson
Irina F. Popova



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Contributors

Françoise Aubin
Ildikó Bellér-Hann
Schuyler Jones
S. G. Klyashtorny
Ashirbek Muminov
Alexei Nasilov
Morris Rossabi
Claire Weber

Bakhtiyar M. Babadjanov
Herbert Franke
Janna Khagai
Irina Morozova
Hisae Nakanishi
Irina F. Popova
Veronika Veit



Professor Herbert Franke

Dedication

Professor Herbert Franke has spent his academic life in research on Asia. While his publications cover many fields, it is very fitting that this tribute to him should consist of articles on law. Few people know that he also took a degree in law in addition to the one that concentrated on East Asia. After the publication of his first festschrift in 1979 and his retirement from the University of Munich, he served two terms as President of the Bavarian Academy of Sciences. Since then he has continued his research there in the section devoted to Central Asian Studies. His publications have continued to appear – perhaps the one most widely known to the general academic public is *The Cambridge History of China 6. Alien Regimes and Border States, 907-1368*. Cambridge: Cambridge University Press 1994, which he edited together with Denis Twitchett.

When the Alexander von Humboldt Foundation awarded funding for a conference on Central Asian law, Professor Franke was clearly the person to invite to serve as a discussant and critic for the papers. During the conference, when the participants learned that his ninetieth birthday was fast approaching, it was their unanimous wish that the publication of the papers should be in the form of a festschrift dedicated to him. The Foundation graciously agreed to pay for its publication.

The conference was held in Leiden, The Netherlands, with the support of the International Institute for Asian Studies of the University of Leiden from the 13th to the 17th of October 2003. The IIAS, as it is known, also invited Professor Franke to give its annual lecture. Thus on Friday, October 17, 2003, he spoke to the university community on “Reflections on Multinationality: Examples of former East Asian Empires.” The talk was given in the building called De Waag, the old customs house, the formerly open court of which has been covered over and modernized without destroying its charm. Following the talk, those present enjoyed wine and hors d’œuvres.

That evening, the last of the conference, Professor Wim Stokhof, Director of the Institute entertained the participants and their spouses, together with some members of the University faculty, at a formal dinner in what had been a farm house some centuries ago. Now it has become a wonderful restaurant and we were treated to an excellent dinner and fine conversation. The next day we all left Leiden vowing to return again to that lovely city. Now the work of the conference ends with the publication of this book dedicated to Professor Herbert Franke.

Preface

Central Asia has recently stimulated a concern internationally that has not existed since the 19th century, when Great Britain and the Russian Empire struggled over who would win “The Great Game.” There are several causes for this revival of interest in the region. First, the collapse of the Soviet Union ended its domination of large parts of the area and brought new nations into being. Then the discovery of rich oil and natural gas deposits stimulated investment by foreign countries that wished to exploit these resources. Lastly, the attention of the world became focused on Afghanistan after the events of Sept. 11, 2001, once it became known that this small country was the center of the Al Qaeda movement headed by Osama bin-Laden. But despite this newly awakened interest, our knowledge about many of the most important aspects of these countries is sadly lacking.

A particularly rewarding way to examine any society is through its laws. Laws not only embody the ethical and religious ideals of a people but their leaders have the power to enforce these views through courts and by fines, detention and physical punishment if necessary. This topic is especially relevant at the present time when many of the countries in the region are trying to make changes in their societies that will enable them to adapt to present day international standards. None of this is easy and perhaps nothing is harder than the reform of laws that have a long history. But this history cannot be ignored. Will the trappings of democracy that have been instituted really be allowed to function? It seems that at least in some of these states, presidents have in fact become dictators and their security systems are primarily concerned with the suppression of unpopular views. Protesters are imprisoned – even executed in some instances. Socially, will the hoped for changes be allowed? And will women really be permitted more freedom to obtain education and participate in the political process? The papers presented here try to inform us on these and other questions.

We wish to express our gratitude to The Alexander von Humboldt Foundation for the grant that supported first the conference and then the publication of the papers. We also would like to thank Professor Wim Stokhof, Director of The International Institute for Asian Studies of the University of Leiden, both for affording us space for the conference and for having his staff take over the burden of administration that freed us from many difficulties. Here I am glad to have the chance to recognize the invaluable aid of Ms. Marloes Rozing, Drs, who is the Conference Supervisor and Financial Manager of the Institute. She booked rooms, arranged food, paid bills, and performed a multitude of other services with the greatest good will and and more patience than could reasonably have been expected. She has our most sincere thanks for all of this.

During the conference, Brian Vivier took extensive notes on the discussions about the papers that helped the participants make needed revisions. At the University of Kansas, The Hall Center for the Humanities has supported our efforts to spread knowledge of Asian law and the Center for East Asian Studies has helped as well with financing. As this whole effort of several years now comes to a close, I wish particularly to thank Vickie Doll, Head of the East Asian Library, who gave a great deal of her time to searching references and Pamela LeRow of the College of Liberal Arts and Sciences Center for Word Processing

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List of Contributors

Françoise **Aubin** is Director Emeritus of Research at the French National Center for Scientific Research, CNRS. She has many publications to her credit and has recently contributed two articles to a special issue entitled *L'islam en Chine* that she also edited for *Etudes orientales*, No. 19-20, 2003.

Bakhtiyar M. **Babadjanov** is a Senior Researcher in the Islamic Studies Department at the al-Biruni Institute of Oriental Studies in Tashkent, Uzbekistan. He has more than 100 publications on Islamic culture and law. He is currently doing research on the social aspects of sufi rituals.

Ildikó **Bellér-Hann** is a Lecturer in Turkish Studies at the Martin Luther University in Halle. She specializes in Central Asia and in recent years has done much research on the Uyghurs. Her book on *Community Matters. A historical anthropology of the Uyghur in Xinjiang* will soon be published.

Wallace **Johnson** is Professor of East Asian Languages and Cultures at the University of Kansas. He has translated *The Tang Code* and is editor of the *Journal of Asian Legal History*.

Schuyler **Jones** is the Former Director of the Pitt Rivers Museum (1985-1997), and Head of the Department of Cultural Anthropology (till 1997) at the University of Oxford. He has published several books, most recently *Tibetan Nomads: Environment, Pastoral Economy, and Material Culture*. New York: Thames and Hudson, 1996.

Janna **Khegai** is a graduate of the Moscow State University in the Faculty of Foreign Languages and is presently completing her Ph.D. at the Institute for International and European Policy at the Catholic University of Leuven.

S. G. **Klyashtornyi** is the Section Head of Turcology and Mongolistic at the St.Petersburg Branch of the Institute of Oriental Studies of the Russian Academy of Science. In addition to directing archeological and ethnographic-sociological expeditions in Central Asia, he has published more than 240 monographs and articles.

Irina **Morozova** is a research fellow at the International Institute for Asian Studies in the Netherlands. Her research interests include the modern history of Central and Inner Asia, and she has recently published a book entitled *The Comintern and Revolution in Mongolia*.

Ashirbek **Muminov** is a Professor at the Institute of Oriental Studies of The Academy of Sciences in Tashkent, Uzbekistan. His specialty is the Islamic religion and particularly its history in Central Asia. He participates regularly in international conferences and has many publications in German, Russian and French as well as in English.

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Hisae **Nakanishi** is Professor and Dean of the Graduate School of International Development, Nagoya University. She specializes in women's status in Muslim societies and international relations of the Middle East. She has published several books and articles about Iranian women in post-revolutionary Iran.

Alexei **Nasilov** is a graduate of St. Petersburg State University's Oriental Department. He then did graduate studies at the Institute of Oriental Studies of the Russian Academy of Science, St.-Petersburg Branch and took a Ph.D. in history) in 1987. He has some ten publications on the history of medieval law in Mongolia.

Irina F. **Popova** is Director of the St. Petersburg Branch of the Institute of Oriental Studies of the Russian Academy of Sciences. She has published some fifty articles and a book on the political thought and ideology of the early Tang dynasty.

Morris **Rossabi** is Professor of East and Inner Asian History at Columbia University. He has published four books and many articles. His book on Modern Mongolia will appear in January of 2005 from the University of California Press.

Veronika **Veit** is a Professor in the Department of Central Asian Studies at Bonn University. Her research interests lie in the fields of Mongol culture, history and Language as well as the early history of the Manchus. She has extensive publications in these fields.

Brian **Vivier** is a Ph.D. candidate in the History Department of Yale University. His research interest is in China and Central Asia trade during the Song dynasty and particularly in the movement of books and money between China and the Liao and Jin states.

Claire **Weber** has served as a legislative liaison for the American Bar Association in Central Europe and the Eurasian Initiative program (ABA/CEELI). In that capacity, she has advised parliamentary members, staff, law students and citizen groups in Kazakhstan, Tajikistan, Uzbekistan, Slovakia and Montenegro.