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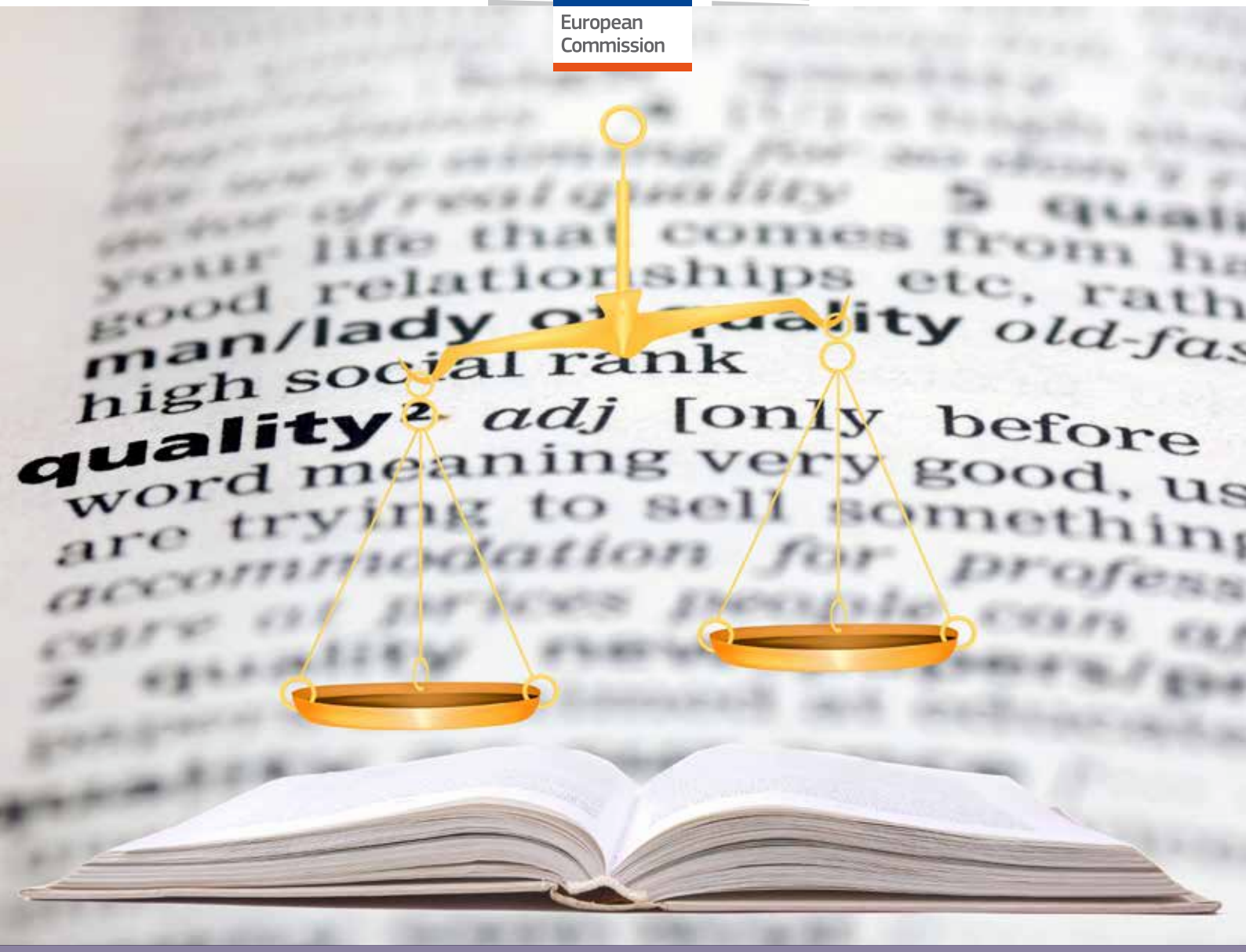

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In England, as early as 1975, the Renton Committee made a recommendation to Parliament in a well-known document.[45] This was the beginning of a process of reform in the drafting of legislation:[46] an ongoing process that is changing, for example, the use of 'shall' to express an obligation (often abandoned), of cross referencing, of punctuation, and of Latin words. The tensions between a conservative Bar and pleas for using less hermetic jargon in the law have had some effect: the Civil Procedure Rules 1998[47] have led to simplification of the terminology of trials in civil matters; words such as 'plaintiff', 'pleading', 'writ of summons', and 'leave to appeal' have been transformed into more user-friendly expressions ('claimant', 'statement of claim', 'claim form', 'permission to appeal').

In less official form, the Statute Law Society journal, the 'Statute Law Review', provides a particularly rich source of articles for those with an interest in plain language drafting. British efforts are matched by similar experiences in other common law countries such as Ireland[48], Scotland[49], Australia[50], New Zealand and the US.

Looking further afield, it should be remembered that the British Empire had a special challenge to face in areas governed in distant parts of the world: the experience of the British Raj in India deserves special mention.

Where Bentham failed to enact codification in England, the need to govern the distant regions of the British Empire succeeded: in Victorian England work was done to codify the law in India.[51] Macaulay, one of the four members of the Governor-General's Council after the reform by Stuart Mill, drafted the Indian Penal Code. It was not passed until 1860, after it had been revised by Sir Barnes Peacock. This code, after twenty-one years' trial, won the highest commendation from Stephen in his history of Criminal Law.[52] It has served as a model for all later Indian codes, and was part of a systematic scheme for codification since carried out. Now, as further clarified below, India has a penal code, contract act, bills of exchange act, limitation act, registration act, evidence act, easement act, and others, and drafts for further codifying acts have been prepared.

4. Eastern Europe experience

Looking beyond the traditional boundaries of western law, attention should be paid to experience in eastern Europe, distinguishing the socialist period from subsequent experience in the so-called post-socialist era.

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[45] Report by the Committee appointed by the Lord President of the Council, chaired by Rt. Hon Sir (later Lord) David Renton (The Renton Committee), *The Preparation of Legislation*, Cmnd. 6033, HMSO, London, 1975; *Renton Committee Report on Legislation*, HL Deb 10 December 1975 vol. 366 cc945-1038, online: <http://hansard.millbanksystems.com/lords/1975/dec/10/renton-committee-report-on-legislation>.

[46] BENNION, Francis, *Statute Law*, 2nd ed., Longman, London, 1983.

[47] <http://www.justice.gov.uk/courts/procedure-rules/civil>.

[48] THE LAW REFORM COMMISSION (IRELAND), *Report on Statutory Drafting and Interpretation: Plain Language and the Law*, LRC 61 – 2000, Dublin, 2000, available at: <http://www.lawreform.ie/_fileupload/Reports/rPlainLanguage.htm>; see also the preceding consultation paper: IRELAND, THE LAW REFORM COMMISSION, *Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law*, LRC – CP14, Dublin, 1999, available at: <http://www.lawreform.ie/_fileupload/consultation%20papers/cpPlainLanguage.htm>.

[49] Scotland is here presented as a common law country, although it is more generally classified as a mixed jurisdiction for comparative law purposes: <http://www.scotland.gov.uk/Publications/2006/02/17093804/5>.

[50] LAW REFORM COMMISSION OF VICTORIA, *Plain English and the Law*, Report No 9, Melbourne, 1987. LAW REFORM COMMISSION OF VICTORIA, *Access to the Law: The Structure and Format of Legislation*, Report No 33, Melbourne, 1990.

[51] BAKER, *An Introduction*, *supra* fn. 34, at p. 190.

[52] Sir James Fitz J. Stephen became legal member of the Indian Council in 1869, and was successor to Sir Henry Maine. He applied himself to drafting or revising codes for India on various subjects, such as contracts, wills, and evidence. On his return to England he was employed by the Government to prepare a draft evidence bill, which just failed to be approved in 1873. He transported Indian Code ideas and methods into his repeated attempts at codifying in England.

In the 1960s, contrary to some expectations or stereotyped ideas,[53] socialist countries codified extensively. Socialist countries in the area of influence of the USSR often reproduced the structure of the German BGB in the 1960s when codification became a frequent exercise in the area.[54] Obviously the notion that all laws should be accessible to the public did not apply in the USSR and some countries under its influence: on the contrary, secrecy was a huge obstacle to appropriate description of the legal framework at the time. The rule of law could not be implemented as long as unpublished provisions limited the effect of published rules.[55]

In the post-socialist era, as is well known, a significant wave of codification has taken place in this European area: in Russia itself a civil code has come into force in separate successive parts between 1994 and 1995, with a final text on inheritance which entered into force in 2002.[56]

The implementation of rules on the drafting of legal documents in eastern European countries emerging from the socialist experience has been closely linked to the process of building a social and democratic constitutional State. Therefore in these countries the technical rules for drafting legal documents often receive great attention, because they aim to realise the principles of a constitutional State and to achieve national purposes through the clarity and the consistency of legislation.

Language and linguistic issues in legislation are also a matter of great importance in many eastern European countries, especially where the national language has long been neglected in official documents for historical reasons.

The deliberate predominance of the use of the Russian language in all legislative and administrative activities during the time of the Union of Soviet Socialist Republics has in fact been the source of economic and social discrimination among Russian speaking populations and the part of the population using other, previously national (but not only) languages. Predictably, after the dissolution of the USSR, national languages assumed an important role in shaping the national identity of the newly independent countries and great attention was devoted to their usage, development and teaching.[57]

The experience of the Baltic States is highly representative of these historical events and of subsequent legal and cultural developments. Lithuania, Estonia and Latvia endured Russian domination for many years. At that time they all experienced a significant amount of immigration from Russia, with consequent considerable changes in the ethnic composition of their populations and replacement of national personnel

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[53] SACCO, Rodolfo, *La codification, forme dépassée de législation*?, *Rapports nationaux italiens au XI Congrès international de droit comparé (Caracas, 1982)*, Giuffrè, Milan, 1982, pp. 65-81; BARRY, Donald D., FELDBRUGGE, Ferdinand J. M. & LASOK, Dominik (eds.), *Codification in the Communist World*, Sijthoff, Leiden, NL, 1975; FELDBRUGGE, Ferdinand J. M., VAN DEN BERG, Gerard P. & SIMONS, William B., *Encyclopedia of Soviet Law*, 2nd ed., Martinus Nijhoff, Dordrecht, NL, 1985; IOFFE, Olimpiad S. & MAGGS, Peter B., *The Soviet Economic System*, *A Legal Analysis*, Westview Press, Boulder, CO, 1987; AJANI, Gianmaria, *Diritto dell'Europa Orientale*, UTET, Turin, 1996.

[54] SACCO, Rodolfo, 'Il substrato romanistico del diritto civile dei paesi socialisti', *Rivista di diritto civile*, Vol. I, 1969; ZWEIGERT, Konrad & KÖTZ, Hein, *Einführung in die Rechtsvergleichung*, Mohr Siebeck, Tübingen, 1984, Chap. 5.

[55] AJANI, Gianmaria, *Le fonti non scritte nel diritto dei Paesi socialisti*, Giuffrè, Milan, 1984; VAN DEN BERG, Gerard P., 'Joint Party and Government Decrees in the USSR and Other Socialist Countries', *Review of Socialist Law*, Vol. 11, 1985, pp. 47-73; PESCHKA, Vilmos, 'The Relation of Written and Unwritten Sources of Law in Contemporary Hungarian Legal System', in PÉTERI, Zoltán (ed.), *Hungarian law – comparative law (essays for the 8th International Congress of Comparative Law)*, AkadémiaiKiado, Budapest, 1970, pp. 13-22.

[56] BUTLER, William E., *Russian Law*, Oxford University Press, Oxford, 2004; AJANI, *Diritto dell'Europa Orientale*, *supra* fn. 53, at p. 264.

[57] For a first reference to the issue of language questions and political factors, see MAURAIS, Jacques, 'A Sociolinguistic Comparison between Québec's Charter of the French Language and the 1989 Language Laws of five Soviet Republics', *Journal of Multilingual and Multicultural Development*, Vol. 12, Iss. 1&2, pp. 117-126, 1991.

with Russian personnel, especially in the most important and prestigious jobs. All ethnic and linguistic minority schools and cultural associations were closed, as were journals and newspapers. Russian became the first language in many areas, the second in schools, and it also the language used by the ethnic and linguistic minorities. Independence from the USSR finally became possible in 1990 in Lithuania and in 1991 in Latvia and Estonia.

First of all, the issue of national language became immediately central to the building of the new States. The Estonian Declaration of Sovereignty of 1988 was in fact quickly followed by proclamation of Estonian as the official language, with the Language Law of 18 January 1989; this was later repealed and substituted by the Language Act of 1995, in use today, which regulates usage and proficiency of the national language in the public administration and local government bodies. In 1990 Estonia established the Language Board (now Language Inspectorate) to oversee implementation of the Language Law.[58] Its many duties include oversight of normative and technological words. Shortly after in 1995, the Estonian Legal Language Centre, initially known as the Estonian Legislative Support Centre, started operating as a State agency under the governance of the Estonian State Chancellery.[59] The mandate of the centre was to translate Estonian legislation into English and European Union legislation into Estonian, and to set up and manage a full-text database of translations and a terminology database. From 1 May 2004 the Estonian Legal Language Centre was charged, among others, with the task of developing and protecting Estonian legal language, organising legal terminology and revising Estonian legislation. The Centre has thus become a linguistic support to legislative drafting.[60] The centre relies solely on in-house translators and revisers, former linguists especially trained to become translators, occasionally with the help of area specialists.

In Lithuania in 1994, the national Parliament, the Seimas, enacted the Law on the State Language, aimed at the enforcement of the use of Lithuanian as the sole national language in legislation and administrative affairs. The same law provided that the State must enforce correct use of the Lithuanian language and give assistance to its studies. The State Lithuanian Language Commission was established to define policy and tasks of State language protection and approve linguistic norms and terminology.[61] One of the main aims of Lithuanian language policy is to develop and render more effective the usage of Lithuanian language, especially in specialised fields such as technology and legislation, and to 'further improve the methodology for the implementation of the State language status and for the control over the correctness of public language use'.[62]

Slovenia is another area that was under the influence of the USSR in the past. Great importance was given to the issue of the historical development of Slovenian, leading it to acquire its own technical, scientific and legal terminology and to achieve official status, first alongside other official languages, then after independence as the only national language. The predominance of Slovenian was in fact finally proclaimed by the Assembly of the Republic of Slovenia with the enactment of the Act on Public Usage of the Slovenian Language.[63] The Act ensures protection of the Slovenian language, fosters study and research on the subject and provides for its mandatory

[58] The website of the Language Inspectorate is <http://www.keeleinsp.ee/?lang=1>.
[59] The website of the Estonian Legal Language Centre is <http://www.legaltext.ee/indexen.htm>.
[60] For further information on the Estonian Legal Language Centre please read MERIT-ENE, Ilja, 'Estonian Legal Language Centre: Legal Translation and Terminology Work', 33 *International Journal of Legal Information* 274 (2005).
[61] Law on the State Language Commission, <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=157640>.
[62] <http://vlkk.lt/i/u/file/policy-guidelines_2003-2008.pdf> (unofficial English translation).
[63] The English text can be found at:
<http://www.arhiv.mk.gov.si/fileadmin/mk.gov.si/ pageuploads/min_eng/legislation/APUSL.pdf>.

adoption in administrative and business activities. The same Act specifies that the Ministry of Culture shall be responsible for monitoring implementation of the Act, with the assistance of other ministries responsible for their specific sectors, and, especially, for monitoring implementation of the provisions of the Act regarding usage of Slovenian in all laws and regulations. A report is made annually to the Government of the Republic, which informs the National Assembly of the Republic of Slovenia. Lastly, the same Act sets up an inter-ministerial consultative coordination body, with the purpose of ensuring that government bills and regulations comply with the provisions of the Act and language policy aims.

In eastern European countries the same attention devoted to language is often dedicated to the drafting of legislative acts. In the Republic of Estonia, for example, the Board of the Riigikoku, the Estonian Parliament, is responsible for establishing the rules for drafting parliamentary legislation. These rules set out the substantive and formal requirements for drafting legislative acts and give instructions concerning the wording of legislative acts, presentation of references, and provisions delegating authority. In line with this duty, in 1993 the Board established the rules to be observed in preparing draft legislation to be submitted to the Parliament and in formatting them as enacted legislation. In the same year, the Government of the Republic established the procedure for obtaining the required approvals and organising legal expert analysis of draft legislation to be submitted to the Government. In 2000, the Normative-technical Rules for Drafting Legal Acts, issued by the Government, entered into force. These rules emphasise equally substantial and formal issues of legal drafting; in fact, on the one hand they require compliance with rules concerning the substance of the laws, providing in an explanatory letter a preliminary listing of the opinions of those who will be impacted by the new legislation, and a study on the social and economic impact of the same. On the other hand, they also ask drafters to verify the conformity of the new legislation to the Constitution and other pre-existing laws. At the end of 2011 the Estonian Government approved the Rules of Good Legislative Drafting, for the reason that good legislative drafting rules are essential to improve quality in drafting and content of legislative acts; in February 2011 the Riigikoku approved the Guidelines for Development of Legislative Policy, to be followed until 2018,[64] aimed at public policymaking, improving the quality of targeted legislation and enhancing the predictability and openness of policymaking. These rules explicitly provide, at Art. 9, technical instructions regarding the clarity of legal provisions.[65]

Similar inspiration drives the Regulations of the State Chancellery of the Latvian Republic,[66] while the Legal Drafting Guidelines issued by the Government Office for Legislation of Slovenia in 2004[67] stress the need for unified drafting rules, seen as an

[64] The annex to the *Guidelines* can be found at: <http://www.just.ee/orb.aw/class=file/action=preview/id=55852/GuidlinesforDevelopmentofLegislativePolicyuntil2018.pdf>.

[65] '9. Law shall be clear.

9.1. Estonian Draft Acts shall be developed in a language as simple as possible, clearly and precisely, primarily in consideration of the persons who are expected to be the main target group for the legislation as to both implementing the Act and being the addressee. In particular:

9.1.1. provisions shall be worded briefly and be as harmonised as possible, and avoid provisions and sentences that are too long, complicated wording and use of abbreviations;

9.1.2. terminology used in the draft Act shall be harmonised and consistent with the existing Acts, in particular with legislation in the same area, and also with the generally known terminology of the regulated area;

9.1.3. giving a different meaning to one and the same term shall be avoided both within one legislation and the legal order as a whole;

9.1.4. it shall be ensured that all draft acts submitted for approval have been edited by the ministry that drafted the draft act taking into account the instructions and explanations provided by the Ministry of Justice.'

[66] <http://www.mk.gov.lv/en/vk/nolikums/reglaments/>.

[67] <http://www.svz.gov.si/fileadmin/svz.gov.si/pageuploads/Dokumenti/Nomotehnicne_smer.pdf>.

important constituent element of legal certainty based on clear, unambiguous, and understandable regulations that are well drafted in legal terms, and that define in advance the position, rights and obligations of bodies and individuals implementing the regulations. Consistent and legal implementation of regulations is given equal consideration as a fundamental aspect of legal certainty.

In Lithuania the Legal Department of the Seimas is charged by the Statute of the Seimas with drawing up '[…] conclusions on whether or not the draft is in conformity with the Constitution, laws, principles of legislation and technical rules of law-making, and whether or not the submitted documents conform to the requirements of this Statute'.[68] Monitoring of drafting of laws and regulations is carried out in compliance with the Law on Procedure of Drafting of Republic of Lithuania Laws and other Regulatory Enactments, as amended in 1999.[69]

In other eastern European countries the process of formulating drafting procedures was less spontaneous, and rather the consequence of duties imposed on national governments and parliaments by EU accession negotiations. An example of this is Bulgaria: the task of drafting for the approximation of national legislation was given to specialised units in the central State administration, established by an official government act, and supported by European financial and technical aid. However the know-how and technical competencies acquired by these units during the integration process were not lost once the process of approximation of national legislation ended and were not limited to European legislation. These units successfully transferred their acquired expertise and competencies to the drafting of national legislation.[70]

A similar procedure was adopted in Croatia, where the task of legislative approximation was mainly supported by the Independent Service for Translation of the *acquis communautaire* and Croatian Legislation, attached to the Ministry of Foreign Affairs and European Integration of the Republic of Croatia.[71] Efforts to gather information from other eastern European countries were less successful. With regard to Poland, for example, informal sources indicated that for the time being there is little information available on administrative procedures, and that there are apparently no official guidelines regarding the translation of EU or foreign documents in Polish, and no instructions for translators of European law.

5. Beyond Europe and western experience

Elsewhere the role of codification was perceived quite differently. Experts in Chinese law believe that in the 19th century Europeans misinterpreted the function of the Qing codification of the law in China.[72] Even though a large number of imperial provisions were collected in official form, they never became an exclusive source of law, judges never felt bound by the written rules, and the ability to adapt to features of individual cases and to surrounding circumstances was always reserved to the imperial functionaries in charge of administering justice.[73] Misinterpretation of the role of these

[68] See Art. 136 (3) of the Statute of the Seimas at <http://www3.lrs.lt/pls/inter3/ dokpaieska.showdoc_e?p_id=284135>.
[69] At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=96262&p_query=&p_tr2=2>.
[70] On the subject, reference is to MANEVA, Gergana, 'Drafting for Accession: Bulgaria's Way to Success', *European Journal of Law Reform*, Vol. 7, 2005, pp. 111-134, at p. 127.
[71] On the issue of the integration of the European *Acquis* in Croatia see ŠARČEVIĆ, Susan, *Legal Translation: Preparation for Accession to the European Union*, University of Rijeka, Rijeka, 2001 and BAJČIĆ, Martina, 'Challenges of Translating EU Terminology' in WILLIAMS, Christopher & GOTTI, Maurizio (eds.) *Legal Discourse across Languages and Cultures*, Peter Lang, Bern, 2010, pp. 75-94.
[72] JONES, William C., *The Great Qing Code*, Oxford University Press, Oxford, 1994.
[73] HUANG, Philip, *Code, Custom and Legal Practice in China. The Qing and the Republic Compared*, Stanford University Press, Stanford, 2001, pp. 124-125.