Editor's Introduction

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In this issue, contributions by Lesley Allport, Chen Ding, Richard Wagner, Cedric Tang, and Zhou Ling examine various issues in dispute resolution. Patrick Birkinshaw offers an extended appreciation of the work of Professor Paul Craig in the field of administrative law and justice. Analysis of legal and human rights developments in mainland China are provided in contributions by Mou Yu, and by Mattias Burney and Eva Pils. Issues in legal education are examined in contributions by Faye Wang and Lisamarie Deblasio. Finally, Zhou Ling reviews work on the Singapore Convention and makes a Visual Law contribution, looking at specialized courts in Shenzhen, southern China.

Leslie A Allport's paper, titled 'Mediation: Alternative? Or a First Choice for Resolving Disputes', reminds us that in the emergence and development of ADR from the 1970s onwards an important setting in which the use of mediation was initially emphasized was community dispute resolution. In the subsequent growth and institutionalization of ADR processes, the need to understand the lessons from the community mediation experience—the place of social norms in the mediation process and the ways in which collective as well as individual interests could be taken into account by mediation—have tended to be overlooked. Mediation practice today should consider these important features and see mediation as a process of much broader significance than achieving settlement in disputes between parties, offering as it does the possibility of generating and refurbishing social norms and consideration of a wide range of interests. In addition, if mediation is seen as the first choice of process in responding to conflicts and potential conflicts, it has the considerable potential to serve not just as an educative process for disputing parties but also as an important means for preventing disputes.

Chen Ding's contribution, entitled 'Old Wines in New Bottles? Private Securities Litigation in China's New Securities Law', examines problems that arise from the fact that the securities industry in the People's Republic of China (PRC) has long been weak in terms of remedies for aggrieved investors, especially remedies available to the small investor involved in a

securities dispute and seeking justice through litigation. Typically, in a Chinese securities dispute, the number of aggrieved investors is large, but the value of each of their claims is small. The Chinese stock market is dominated by retail investors and their reluctance to engage in litigation results in very low levels of litigation. This reflectance, the essay argues, cannot be satisfactorily explained in terms of procedural complexities, costs of litigation or limited access to class-type actions. Rather, it is to be explained by a lack of investor confidence in the ways in which the people's courts handle such cases—these failings include the courts' refusal often even to accept securities cases, or if accepted then there is significantly delayed case filing, and, even if an award favourable for the plaintiff is made, enforcement difficulties will likely follow. As a result, the litigation track is generally inhospitable to the small investor. Much of this difficulty, it is argued, is to be explained by the vulnerability of the people's courts to local pressures and personal connections, which are used to protect the defendant. The current conservative drift in official policies on the people's courts is unlikely to resolve such problems. Thus, although changes are introduced by a new 2020 Securities Law—which in part borrows from Taiwan experience—such reforms are likely to have only a modest impact in the absence of more meaningful judicial independence.

Richard Wagner's contributed essay, 'Proving Chinese Law in the Courts of the United States: Surveying and Critiquing the Article 277 Cases' examines treatment in the US courts of cross-border disputes involving PRC parties and issues of PRC law and business culture. The contribution considers the process of proving PRC law in US courts and explores some of the difficulties involved in this process. These include the absence of clear standards for assessing expert testimony and a lack of familiarity on the part of many US judges with China and its legal system. Attention is also given to difficulties in the interpretation of Article 277 of the PRC's code of Civil Procedure dealing with judicial assistance issues—difficulties leading sometimes to erroneous outcomes. The contributed essay offers suggestions on how US judges might best deal with such difficulties.

Faye Wang (WANG Fangfei) contributes an essay—'Online Dispute Resolution (ODR) Simulation: Shaping Curriculum for Digital Lawyering'—which examines how the development of online processes (such as ODR) encourages us to consider curriculum innovation so as to better prepare students for their future participation in a world of 'digital lawyering'. She reports on

a long-term educational project intended to shape modern legal education so that it better suits a professional world in which the work of lawyers and others is increasingly digitalized. Her essay describes her experience over more than a decade with ODR simulation workshops which offer students a virtual learning environment for the development of both legal and digital skills. Students participate in online arbitration and mediation sessions, and their involvement will likely include submission of arbitral awards and mediation settlements, taking technical observation notes and participating in group presentations. Such activities are felt to provide many additional benefits in addition to helping students to learn to cope better with the challenges lawyers and others are likely to face using e-technology in dispute resolution and other aspects of their work. The teaching and learning strategy is thus intended to shape the law curriculum in order to meet the upcoming new rules and the standards of the Solicitors Qualifying Examination.

In his Review Article, Professor Patrick Birkinshaw assesses the book edited by Elizabeth Fisher, Jeff King and Alison L Young and entitled *The Foundations and Future of Public Law: Essays in Honour of Paul Craig*. This volume celebrates the work of Professor Craig and its value for public law discourses. The book speaks directly to its title and considers in detail six key foundations (theory, case law, legislation, institutions, process and constitutions) and their future development. Birkinshaw's review offers carefully balanced and insightful commentaries on each contributed chapter. Moreover, encouraged by the quality of the contributed essays, including Craig's own analysis of the chosen six key dimensions of public law in the Brexit process up until May 2019, Birkinshaw's commentary concludes by offering his own expansive view of the tasks of public law both now and in the foreseeable future. These include: establishment of the public realm and maintenance of the effectiveness and sustainability of the public realm; regulating relations between public organs and the powers they exercise on behalf of the public in the public interest; ensuring that public power in its numerous forms is accountable; protecting equally under law those affected by such power and facilitating their effective contribution to the political and social context in which they exist; and the protection of human rights and promotion of transparency. These are the tasks of public law and will remain its tasks for the future.

The contribution by Matthieu Burnay and Eva Pils entitled 'Human Rights, China and the UN: A UPR Mid-term Assessment' reports on a workshop, held late last year, which considered the

Universal Periodic Review (UPR) of the evolving human rights situation in the People's Republic of China. The workshop was convened by the Jean Monnet Network on EU–China Legal and Judicial Cooperation.[1] It explored issues in the PRC' expanding presence in and impact on the human rights system of the UN, and also considered the recommendations made during the PRC's third UPR carried out by the UN Human Rights Council on human rights developments, in particular in Xinjiang and Hong Kong. The authors of the Note suggest that, while there are serious divisions in the international community on how best to respond to the deteriorating human rights situation in China, there are also indications that the negative conclusions reached by experts and others about the PRC's recent human rights performance are helping to change minds. There is evidence of declining support for draft resolutions on human rights cooperation proposed by the PRC at the UN, and indications also of continuing commitment to the value of an international rule of law.

Lisamarie Deblasio provides a Note entitled 'From PhD Thesis to Monograph: A Reflective Account of the Process'. This is based on her personal experiences in adapting a PhD thesis, for which the most significant readers are members of the examining panel for the dissertation, and for whom the most important function is to determine academic competence, for publication as a book. The latter will likely have a wider audience—one which includes students, fellow academics and others—and aim to communicate findings and ideas to that audience and thereby enrich the relevant discourse(s). Her observations will likely encourage and be useful to doctoral graduates contemplating submission, based on an adapted version of their PhD thesis, of a book proposal to a publisher. Dr Deblasio's doctoral dissertation[2] addressed a hitherto under-researched but important area of child law, namely, adoption and the impact of adoption on birth mothers, within a social-legal context. As a relatively specialized area of analysis and perhaps not of general interest, such a study would need modification if it was to be successfully turned from thesis into book. But the experience of writing a doctoral dissertation and preparing a book for publication both suffer from the common ailments of feeling alone and isolated and, oftentimes, plagued by an unjustified lack of confidence in one's own abilities. Such pressures are to be overcome by

[1] This traces its ancestry back to the EU–China Legal and Judicial Cooperation Programme that Bernard Dewit (Avocat, Dewit Law Office, Brussels) and myself designed on behalf of the EU Commission in the late 1990s.

[2] Now published as Lisamarie Deblasio (2020) *Adoption and Law: The Unique Personal Experiences of Birth Mothers in Adoption Proceedings* London: Routledge.

determination, and she concludes with the encouraging advice that any 'lack of belief in your academic aptitude should not prevent you from trying to persuade a publisher to accept your proposal'. Key dimensions of securing publication include clear identification of the novel aspects of the work as a book, taking seriously the guidance provided by the publishers to whom the proposal is to be submitted and then careful consideration of the assessment of the book by external reviewers and, while likely needing to shorten the text at the publisher's request, avoiding overzealous cutting so that a sense of the author's passion is retained and shared by the reader.

Grace Mou's (MOU Yu) Note on 'Miscarriages of Justice and the Construction of Criminality in the People's Republic of China'[3] looks in particular at a high-profile miscarriage of justice reported recently by the media in the PRC. The victim in this case, Mr Zhang Yuhuan, having spent more than two decades in a prison in Jiangxi Province, was China's longest-serving wrongfully convicted prisoner by the time he was released. Mr Zhang was convicted in 1995 of murdering two boys, but, in common with various other wrongful convictions, it was his confessions that were the crucial evidence in his conviction. However, there were no less than six versions of the confession, and these were in many places inconsistent with other evidence and secured by a variety of means of torture. At the heart of the problem of wrongful convictions, Dr Mou argues, is the unhappy fact that the relevant criminal justice institutions—especially the police and, to a lesser extent, the procuracy—lack sufficient autonomy to check impartially the credibility of evidence used in a prosecution. Miscarriages of justice are manifestations of a very imperfect criminal justice system—one which is in need not only of legal reform but also a transformation in its legal culture.

Cedric Tang's Note 'Medical Negligence Dispute Resolution in China: Social Stability and Preventative Measures' explores another issue in access to justice in China, namely, remedies for medical negligence. In essence the approach taken in the PRC's healthcare system is one that offers both administrative and litigation possibilities for aggrieved patients seeking remedies, but with mediation playing an important role throughout. However, issues of medical negligence, the disputes that may be created by perceived negligence, and assessment of liability in China is situated in a political legal environment in which

[3] See also Yu Mou (2020) *Construction of Guilt in China: An Empirical Account of Routine Chinese Injustice* Oxford: Hart Publishing.

disputes are not seen as a legitimate assertion of rights but, rather, as undermining social stability. The Chinese system concentrates on enhancing the effectiveness of dispute resolution regimes in securing social stability, and gives insufficient attention to possibilities of dispute prevention, and to better regulating healthcare culture by greater use of non-compensation-based accountability for individual healthcare workers.

In her book review of the study of the Singapore Convention by Nadja Alexander and Shouyu Chong (2019, *The Singapore Convention on Mediation—A Commentary*) Dr Ling Zhou (ZHOU Ling) examines the insights and analysis offered by the two authors of this innovative and important Commentary. The latter is based substantially on UNCITRAL experience of, and policies on international commercial dispute resolution and is an attempt to strengthen the role of mediation as a resolution process in such disputes, for example, by enhancing prospects for enforcement of mediated agreements. Dr Zhou also contributes to 'Visual Law', where she discusses the development of new courts in Shenzhen in southern China. The establishment of such courts is indicative of the PRC's policies to make Shenzhen, lying just across the border with Hong Kong, not only a major commercial centre[4] for China's Greater Bay Area but also an arena for significant judicial innovation (especially in relation to international commercial disputes in response to China's economic transformation and ever-increasing involvement in international trade and investment.

The Editor thanks all the authors for their contributions to this issue, and also Amy Kellam, Maria Federica Moscati, Patricia Ng, Zhou Ling, and Marie Selwood, for their kind efforts in making this issue possible.

[4] See also Dr Zhou's recently published study: (2020) *Access to Justice for the Chinese Consumer: Handling Consumer Disputes in Contemporary China* Oxford: Hart.