

LAW, STATE, AND SOCIETY IN EARLY IMPERIAL CHINA: A STUDY WITH CRITICAL EDITION AND TRANSLATION OF THE LEGAL TEXTS FROM ZHANGJIASHAN TOMB NO. 247. By ANTHONY J. BARBIERI-LOW and ROBIN D. S. YATES. (Sinica Leidensia 126) 2 vols. pp. cxiv, 1416. Leiden and Boston, Brill, 2015. doi:10.1017/S1356186316000626

This book achieves something that I did not think I would see in my lifetime: a scholarly English translation of the legal texts from the Han-dynasty tomb at Zhangjiashan 張家山. There was a fine German translation of one set of documents from the corpus, the so-called *Zouyanshu* 奏讞書,¹ but Anthony J. Barbieri-Low and Robin D. S. Yates have added the much longer *Ernian lüling* 二年律令, as well as an extensive introductory study (which takes up an entire volume), producing not only a reliable translation of all the legal texts from Zhangjiashan currently available, but also an authoritative overview of early imperial Chinese law. They are to be commended for offering an enormously useful work that will undoubtedly be consulted for decades. Scattered comments (e.g., pp. xv and 46) attest to the considerable help that they received over the years from students and research assistants.

Volume 1 (pp. 1–377) of this work contains what is now the first book to be consulted—certainly in English, but perhaps in any language—on the workings and specialised terminology of early Chinese law. After a careful review of the discovery of the tomb and its contents (pp. 3–47), Barbieri-Low and Yates move on to a long and copiously annotated discussion of major legal topics, including forms of legislation (pp. 68–88), the prosecution of criminal cases (pp. 111–186), and types of punishment (pp. 187–209). This introductory study is a good indication of how far our understanding of early Chinese law has come in the past forty years, informed by a bonanza of previously unimagined excavated documents. The authors' discussion of legal terminology is consistently persuasive, as are their proposed English renderings. Surprisingly, the keyword *fǎ* 法 is not accorded any explicit treatment; their regular translation of the term as “[legal] principles” is unquestionably, if silently, indebted to the work of Tomiya Itaru 冨谷至.²

One of many possible benefits of the authors' survey is that it will help historians trace continuities and discontinuities with later legal practice. Occasionally, Barbieri-Low and Yates note parallels with later dynasties (e.g., p. 101 n.22, converting testimony into standardised language that witnesses themselves would not have used; and p. 151, the perceived importance of qualified medical witnesses), and I noticed a few others, including the pattern that legal cases would be prepared by low-ranking officials (p. 4); and the employment of convicts in law enforcement (pp. 193–195), which led to notorious abuses in later eras.³ In one case (pp. 1394–1416), the investigators' decision to search for the suspect among male prostitutes reminded me of the Qing 清 fixation on *guanggun* 光棍 (literally “bare branches”, or surplus males who had no hope of establishing a normal family, and were accordingly regarded as social pests),⁴ and made me wonder whether there was a significant sex-ratio imbalance as early as the Western Han.

¹U. Lau and M. Lüdke, *Exemplarische Rechtsfälle vom Beginn der Han-Dynastie: Eine kommentierte Übersetzung des Zouyanshu aus Zhangjiashan/Provinz Hubei* (Tokyo, 2012).

²“Ninen ritsuryō ni mieru hōritsu yōgo—Sono (ichi)” 二年律令に見える法律用語—その(一), *Tōhō gakuhō* 東方學報 76 (2004), pp. 222–228. See also the limitations of Tomiya's view laid out in M. Brown and C. Sanft, “Categories and Legal Reasoning in Early Imperial China: The Meaning of *fǎ* in Recovered Texts,” *Oriens Extremus* 49 (2010), pp. 290–92. Barbieri-Low and Yates list Brown and Sanft in their bibliography, but do not ever cite it. The same, incidentally, goes for a publication of my own: “Han Law and the Regulation of Interpersonal Relations: ‘The Confucianization of the Law’ Revisited”, *Asia Major* (third series) 25.1 (2012), pp. 1–31, which touches on many of the themes that they discuss, often with a different perspective.

³See, e.g., B.E. McKnight and J. T. C. Liu (translation), *The Enlightened Judgments: Ch'ing-ming chi: The Sung Dynasty Collection* (Albany, 1999), pp. 400–413.

⁴Cf. M. H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford, 2000), pp. 96–101.

Perhaps the authors' most original observation is that the legal materials include considerable sections that are embellished, if not simply fictitious. A good example is an infamous case (by far the most widely studied in the corpus) involving a young widow who dared to copulate with another man while her unburied husband lay in the next room (pp. 1376–1385). Barbieri-Low and Yates argue that the first part consists of the humdrum facts and records, whereas the second, which starts on a new strip marked by a black dot, “appears to derive from a highly polished written exemplar” and is intended to demonstrate “the brilliance of low-level scribes in solving difficult cases” (p. 1378; cf. pp. 100–101). They contend that much of Zhangjiashan corpus has to be interpreted as an artful re-composition of this kind.⁵ In support of this thesis, they also observe that many of the names in the documents are suspiciously meaningful, including an eloper named Border Jumper and a violent fugitive named Martial (pp. 103–104). Such telltale names are a newly appreciated feature of early Chinese prose, including both philosophical and economic literature.⁶

With the understanding that I place this study at the pinnacle of the field, I must point out some weaknesses. Most important is the authors' neglect of legal philosophy. Disappointingly, they are content to attribute the Zhangjiashan materials and underlying legal thinking to “Legalists” (e.g., “the Legalist-leaning editors”, p. 103; also the discussion of whether a certain magistrate could be considered “a hard-core Legalist official”, p. 1334 and p. 1355, n.47). Here too, I suspect the silent influence of past scholarship, in this case the work of A. F. P. Hulswé,⁷ but this paradigm is outdated and inadequate. First, there is the problem that the category of “legalism” (as well as the original Chinese term, *fajia* 法家) is incoherent and anachronistic,⁸ and thus it is far from clear who these supposed Legalists were and what they believed in (other than that they opposed Confucianism, as Barbieri-Low and Yates frequently assert). Second, the authors do not address the difficulty that the tenets of the philosophers most commonly identified as “Legalist” conflict with the principles of the legal texts from Zhangjiashan in several respects. For example, both the *Shangjun shu* 商君書 and *Han Feizi* 韓非子 affirm that the ruler's protocols must apply to all members of the population, without regard for their status or reputation,⁹ but in reality, subjects with different formally conferred ranks and privileges were treated by the law very differently too (as even *Shangjun shu* observed).

And this leads to a related misconception that also seems to be inherited from Hulswé: that there was no “notion of ‘rights’ of individuals or of groups” (p. 36). The authors themselves present enough evidence to refute this obsolete cliché. Just some examples: special rights of the aged (pp. 85 and 226); the right of women, children, and the elderly to be interrogated at home instead of being arrested (p. 145); the right of ordinary subjects not to be detained for an extended period of time without due documentation (p. 146, as well as other rights relating to interrogation and detainment); the right of defendants not to be intimidated by their interrogators (p. 156); the very important right of holders of certain legally recognised ranks (called *jue* 爵), when convicted, to surrender such honours in exchange for their release (p. 167—or to be punished more leniently, pp. 198 and 222, or to redeem their punishment with a fine, p. 207); the right of ordinary subjects not to be tried solely on the basis

⁵See also Lau and Lüdker, pp. 20–27.

⁶Cf. P. R. Goldin, *After Confucius: Studies in Early Chinese Philosophy* (Honolulu, 2005), pp. 6–11; and T. T. Chin, *Savage Exchange: Han Imperialism, Chinese Literary Style, and the Economic Imagination* (Cambridge, Mass., and London, 2014), pp. 40–48.

⁷In particular, “The Legalists and the Laws of Ch'in,” in *Leyden Studies in Sinology*, (ed.) W. L. Idema (Leiden, 1981), pp. 1–22.

⁸See P. R. Goldin, “Persistent Misconceptions about Chinese ‘Legalism’,” *Journal of Chinese Philosophy* 38.1 (2011), pp. 88–104.

⁹Cf. Y. Pines, *The Book of Lord Shang: Apologetics of State Power in Early China* (New York, 2017), p. 207; and P. R. Goldin, “Introduction: Han Fei and the *Han Feizi*,” in *Dao Companion to the Philosophy of Han Fei*, (ed.) P. R. Goldin (Dordrecht, Holland, 2012), p. 6.

of an anonymous accusation (p. 169); and the frequently cited right of any convicted defendant, or his or her immediate family, to appeal for a review (pp. 180–182).

As I have written elsewhere,¹⁰ these were not *equal* rights, as some people enjoyed rights that others did not, nor were they *inalienable* (or endowed by a Creator), inasmuch as they were overtly bestowed by the state, but they were rights nonetheless, and the law sedulously enumerated and protected them. They correspond to what are called *jura* in the Western legal tradition. That is simply the Latin word for “rights”, and it is high time that we abandon the unproductive preconception that there was no analogous notion in early China.

A few other minor comments:

P. 13: “The texts had originally been rolled in scrolls (*juàn* 卷)”. I do not think the term *juan* can be used like this. Bamboo texts were typically rolled into bulky bundles of strips (called *pian* 篇) rather than “scrolls”; in fact, I have never seen *juan* used with reference to texts on any material other than silk or paper.

P. 157. Characterising *jie* 詰 as “cross-examination” is misleading. When investigators found errors or inconsistencies in someone’s testimony, they could follow up with a second (and harsher) round of interrogation. This was called *jie*. “Cross-examination”, in most modern legal contexts, refers to questioning a witness by one party *after the other party* has had its opportunity. Without a concept of right to counsel, the very notion of “cross-examination” is inappropriate. Moreover, the authors might also have considered the word’s connections with demonology and apotropaic ritual, which was noticed long ago by Donald Harper.¹¹

P. 164. The technical term *lún* 論, meaning “to sentence [a defendant]”, is read in the fourth tone, not *lún*, as Barbieri-Low and Yates have it. (In the second tone, *lún* means “to sort” or “to select”).

P. 209. The translation *Historical Records* for the title *Shiji* 史記 reflects a misunderstanding of *shi*. We know from such alternative titles as *Taishi ji* 太史記 that *shi* referred to Sima Qian’s 司馬遷 office.¹² Hence the more common and correct *Records of the Historian*. In addition, it seems unfair to call this text’s treatment of the early Han “propagandistic” (p. 227), since Sima Qian was by no means a cat’s-paw for the regime. On the contrary, as Michael Puett and others have shown, Sima’s account of the rise of the Empire is suffused in ambivalence.¹³

P. 237. The surname 長孫 is read Zhangsun, not Changsun.

P. 865, n.19. Barbieri-Low and Yates explain *xiaqi* 下妻 (which literally means “lower wife”) as “unofficial wives, basically sex slaves who were bought from human traffickers and resided with the other wives and concubines”. But because a lower wife’s son could inherit a noble title if there was no son by the principal wife to serve as heir (p. 855), lower wives were probably freewomen.¹⁴

¹⁰Review of M. Nylan and M. Loewe (eds.), *China’s Early Empires: A Re-Appraisal*, in *Journal of Chinese Studies* 53 (2011), p. 322.

¹¹“A Chinese Demonology of the Third Century B.C.,” *Harvard Journal of Asiatic Studies* 45.2 (1985), pp. 471–479. See also S. R. Weld, “Grave Matters: Warring States Law and Philosophy,” in *Understanding China’s Legal System: Essays in Honor of Jerome A. Cohen*, (ed.) C.S. Hsu (New York and London, 2003), p. 162.

¹²See, e.g., Zhu Ziqing 朱自清 (1893–1948), *Jingdian changtan* 經典常談 (Hong Kong, 2001), p. 54; and Zhu Dongrun 朱東潤 (1896–1988), *Shiji kaoxun* 史記考索 ([1940]; reprint Hong Kong, 1962), pp. 242–243.

¹³M. J. Puett, *The Ambivalence of Creation: Debates Concerning Innovation and Artifice in Early China* (Stanford, 2001), pp. 182–209; also Zhang Qiang 張強, *Sima Qian xueshu sixiang tanyuan* 司馬遷學術思想探源 (Beijing, 2004), pp. 410–482; and J. Levi, “Sima Qian, Han Wudi et l’éternité,” in *Hommage à Kwong Hing Foon: Études d’histoire culturelle de la Chine*, (ed.) J.-P. Diény, (Paris, 1995), pp. 43–57.

¹⁴Cf. G. Vankeerberghen, “A Sexual Order in the Making: Wives and Slaves in Early Imperial China,” in *Sex, Power, and Slavery*, ed. G. Campbell and E. Elbourne (Athens, Ohio, 2014), p. 125. On “lower wives” more generally, see Sasaki Mami 佐佐木満實, “Handai hunyin xingtai xiaokao—Guanyu *Ernian liling* suojian ‘xiaqi,’ ‘pianqi’ 漢代婚姻形態小考—關於《二年律令》所見“下妻”、“偏妻”, in *Jianbo wenxian yu gudaishi: Di erjie chutu wenxian qingnian xuezhe guoji luntan lunwenji* 簡帛文獻與古代史: 第二屆出土文獻青年學者國際論壇論文

Despite the disagreements sketched above, there is no doubt that Barbieri-Low and Yates have made a fundamental and lasting contribution to the field. Those interested in purchasing it should be forewarned that book is not cheap (€299/\$389), even for its length. (Moreover, with the dollar now zooming toward parity with the euro, it is no longer understandable how Brill can justify a 30% markup in dollars.) My one regret relating to the production is that Volume 2, containing the translations, lacks an index. Researchers who intend to read through the cases sentence by sentence might therefore prefer the e-book version. (prg@sas.upenn.edu)

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THE CULTURAL REVOLUTION: A PEOPLE'S HISTORY, 1962–1976. By FRANK DIKÖTTER. London and New York, Bloomsbury, 2016.
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Forty years after his death and the end of the Cultural Revolution, Mao Zedong and his final most extensive mass campaign continue to fascinate China-watchers as well as many Chinese. As Professor Dikötter reminds readers, when, in 1981, the then leaders of the Chinese Communist Party issued their Resolution on the party's history much of which dealt with the Cultural Revolution, they hoped to discourage discussion of such sensitive topics, at least within China. Nevertheless, since then numerous memoirs by Chinese of their experiences during the campaign have been published in mainland China, in Hong Kong and in the West, while some substantial studies of the period by western scholars have appeared.

Professor Dikötter's is the latest of these. It complements the major work on the Cultural Revolution by Roderick MacFarquhar and Michael Schoenhals published in 2006¹ by using information that has become available since then. Dikötter observes that the experiences of ordinary people have often been missing from earlier studies of the Maoist era and says that his book "brings together the broad historical sweep with the stories of men and women at the centre of this human drama". Remarkably, he was able to gain access to the official archives of several Chinese provinces and municipalities for this work, as he did for his earlier studies of the first years of communist rule and of the famine years from 1958.² These archives, together with the recently published memoirs by Chinese, are the main source for his accounts of ordinary people's experiences. He also draws on reports by British diplomats who were in Beijing and Shanghai during the Cultural Revolution, which are now in the UK National Archives and on information in the Hong Kong Public Record Office.

From all these sources, Dikötter has produced an account of the campaign which covers the experiences of the general population as well as the manoeuvring and infighting among leaders. The violence of the campaign, including persecution and torture of perceived opponents of Mao, even extending to cannibalism in some places, is well known. Reliable figures for the number of killings are unavailable, but Dikötter estimates the total to be between 1½ and 2 millions.

集 (Shanghai, 2015), pp. 157–64; and Wang Zijin 王子今, *Gushi xingbie yanjiu congkao* 古史性别研究丛稿 (Beijing, 2004), pp. 219–31.

¹Discussed in my review article in the October 2008 issue of this journal.

²*The Tragedy of Liberation* (2013) and *Mao's Great Famine* (2010).