

## Book Reviews

*Marriage and the Law in the Age of Khubilai Khan: Cases from the Yuan dianzhang*. By Bettine Birge. Cambridge, MA and London, England: Harvard University Press, 2017. Pp. vii + 324. \$55.00/£39.95.

This important, fascinating, and eminently readable book is the fruit of Bettine Birge's long engagement with the social history of marriage and law in middle-period China (tenth to fourteenth centuries). It comprises two hundred pages of translations from the *Yuan dianzhang* 元典章 (1322), prefaced by a thorough and clear introduction to the text and its social context. Anyone who works on the Yuan period is acquainted with difficulty of accessing, reading, and understanding the *Yuan dianzhang*, or in its full title, *Da Yuan shengzheng guochao dianzhang* 大元省政國朝典章 (Statutes and precedents of the sacred administration of the great Yuan dynastic state), a source that Birge characterizes as "one of the most remarkable and valuable texts that we have for the study of medieval Chinese history" (p. 57). Her work joins a growing body of pioneering Anglophone research based directly on the *Yuan dianzhang*, which includes works such as Elizabeth Endicott's 1989 study of Yuan local government.<sup>1</sup>

*Marriage and the Law in the Age of Khubilai Khan* models a clean and reader-friendly structure. Part I, in four short chapters, provides an overview of the historical and social context of the *Yuan dianzhang* (Chapter 1); the Yuan administrative and legal system (Chapter 2); the origins, contents, and transmission of the text of the *Yuan dianzhang* (Chapter 3); and a translation guide (Chapter 4). Part II, Chapters five to eight, presents the translation of all seventy-five cases from Chapter 18, "Marriage," out of the sixty extant chapters in the *Yuan dianzhang*. Birge arranges the cases in the order in which they originally appear, each with a number that combines the chapter (18) and case numbers (1 to 75). As in the original text, the cases are divided into eight topical subsections and arranged chronologically within each section; a short translator's preface summarizes and comments on each case. The translations are meticulously formatted and annotated with footnotes that assist a reader unfamiliar with Yuan documentary style and structure to follow the path of each case as it travelled up and down the bureaucratic hierarchy, and concluded with a final ruling. Birge guides the reader through every step of each case, pointing out how each concerned agency in the bureaucracy communicated with others below, above, or of the same rank as itself. Charts of the documentary route accompany a

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<sup>1</sup> Elizabeth Endicott-West, *Mongolian Rule in China: Local Administration in the Yuan Dynasty* (Cambridge, MA: Council on East Asian Studies, Harvard University, 1989).

few cases. Although some users may find the annotations repetitious, to this reader the regular guideposts proved extremely helpful, given the complexity of details to track and terms to remember. They make the text accessible to students at all levels.

The book's further value as an essential resource is ensured by its extensive bibliography and index, both with Chinese characters. Three appendices provide a translation of the *Yuan dianzhang*'s original title page, and lists of the cases by chronological order and by original order with dates, for cross-referencing and tracking change over time. A testament to the author's excellent and careful editing, this book is virtually free of typographical errors and misprints. Outside of the translations, which I am not qualified to evaluate, very few errors came to my attention, and only of a minor sort. For example, in note 113 on p. 121, Ministry of Rites seems to be a mistake for Ministry of Revenue, as in the chart on that page. In note 39 on p. 55, Ch'en 1997 appears twice, an obvious typo for Ch'en 1979.

Because the Yuan government never promulgated a formal legal code, numerous unofficial drafts of legal and administrative collections emerged; the *Yuan dianzhang* was compiled in the early fourteenth century "as a handy legal reference" (p. 65), and first published in 1322. Although not an official or government-sponsored compilation, it reproduces on its front page a Central Secretariat (*Zhongshu* 中書) communication of 1303, endorsing a Jiangxi official's request to compile the "statutes and precedents" (*geli* 格例) issued since the Zhongtong 中統 era (1260–1264) (pp. 60–61). In the complicated social conditions of Yuan China, the absence of formal legal guidelines, especially after Khubilai declared the Jin *Taihe* 泰和 code null and void in 1271 (p. 54), prompted such private undertakings and attracted publishers. One can imagine the frustrations of bureaucrats and officials at all levels, trying to make sense of a hybrid, multilayered, and ever-shifting administrative apparatus. Here was a market that Jianyang 建陽 publishers rushed to supply (pp. 62–64).

The difficulties of access and reading the *Yuan dianzhang*, at least, have been alleviated by the 2016 publication of Hung Chin-fu's 洪金富 new punctuated edition of this key Yuan source.<sup>2</sup> The *Yuan dianzhang* shares the complex linguistic features and "hasty production" or "lack of editing" (p. 64) that prompted later Chinese scholars to disparage it and other products of Sino-Mongolian literature and historiography as coarse and unrefined. These qualities, of course, are precisely what makes such intercultural mediations so precious: their messiness, inconsistencies, and irregularities tax the researcher, but as Birge emphasizes, "the documents reveal disagreements within the bureaucracy over fundamental legal principles and social values. They also reveal the fluidity of the law and allow one to track changes in policy over time" (p. 65).

<sup>2</sup> *Hong Jinfu jiaodingben Yuan dianzhang* 洪金富校訂本元典章 (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 2016).

Many readers will be familiar with Birge's earlier work, especially her 2002 book *Women, Property, and Confucian Reaction in Sung and Yüan China (960–1368)* (Cambridge University Press), and a compact version of its argument presented in the chapter, "Women and Confucianism from Song to Ming: The Institutionalization of Patrilineality," in Paul Jakov Smith's and Richard von Glahn's collection of groundbreaking essays, *The Song-Yuan-Ming Transition in Chinese History* (Harvard University Asia Center, 2003). There Birge lays out her argument regarding the crucial role played by agents of the Yuan government in shaping a new legal regime that eliminated the rights of women to take property (dowry) out of an original marriage upon divorce or death of a husband, and then to leave a deceased husband's family at all without their permission. Even though Birge emphasizes the necessity of the Chinese encounter with Mongol rule as providing the opportunity and impetus for these changes, her argument nevertheless demonstrates the intentionality driving a complex and protracted process of negotiation among different actors with differing incentives but similar goals.

In this regard, Birge's work constitutes a response to Jennifer Holmgren, whose influential 1986 article concludes that Yuan changes to laws regarding widows and inheritance occurred "[m]ore by accident than design," a result of pre-existing elements of Chinese culture coming into "contact with Mongol society."<sup>3</sup> Both scholars see the development as an example of the contingency of history: the future cannot be predicted by the past. Birge advances Holmgren's argument by pointing to the growing influence of Zhu Xi's neo-Confucianism in the thirteenth and early fourteenth centuries (late Song and Yuan), among Chinese *and* non-Chinese, with its "moral agenda, which aimed to strengthen patriarchal authority and reduce women's autonomy" (p. 35). If there was any "accident" at work, it encompassed the historical forces that brought Chinggis Khan to power and his army's expansion out of the Mongolian plateau and into North China, or, to put it another way, all of the forces at work in the post-Tang East Asian world. In any event, the Mongols' own unification of the East Asian subcontinent was the product of hard work, sustained design, and yes, luck—not accident, but it also favoured the flourishing of neo-Confucianism across exterior and interior space, in its psychological appeal to Chinese scholars frustrated with government or lacking employment prospects. Eventually enough neo-Confucian educated men (and not just Chinese) gained key official positions in the Yuan bureaucracy, a circumstance that allowed them to issue rulings in legal cases and set precedents that shaped Chinese society thereafter. Thus, what facilitated the strengthening of the patriline and its corporate assets was how indigenous

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<sup>3</sup> J. Holmgren, "Observations on Marriage and Inheritances Practices in Early Mongol and Yüan Society, with Particular Reference to the Levirate," *Journal of Asian History* 20, no. 2 (1986), p. 191.

developments in the Song period played out in a newly conquered and unified China ruled by the Mongols and their partners.

On the other hand, as Birge's cases drive home to the reader, the process whereby these developments unfolded was not linear, uniform, or predictable. Nor was the neo-Confucian victory over women's mobility complete; at any rate, it did not deprive women of resources and options. While these cases chart the advance of neo-Confucian ideals as standards for legislation, they also "provide evidence that wives and widows still enjoyed considerable legal and economic prerogatives and many possibilities for exerting agency" (p. 35). For example, Birge argues that a 1276 ruling that allowed a widow to avoid levirate remarriage (case 18.60) "opened up new avenues for female agency that came to be significant in later centuries" (p. 241). Regional and class exceptions to the new normative practices also remained a feature of the late-imperial Chinese social landscape. The cases presented here allow us, at least for the time period they span (1268–1319), to assess the difficulties of legislating or regulating social change.

Birge's translations open up an enticing window on the inner workings of the Yuan government and society. Reading them feels almost voyeuristic, an impression of "listening in" shared by the author with her readers (p. 68). As the revelations unfold, the reader is by turns amazed, amused, bemused, impressed, and, finally, hooked on the little consequential dramas spilling out beyond the confines of each individual case. And yes, enlightened. These cases expand the corpus of sociological and cultural data that can be gleaned from legal or criminal cases, such as those in the collection *True Crimes in Eighteenth-Century China: Twenty Case Histories* (University of Washington Press, 2009), translated by Robert E. Hegel. Further, they give us intimate, if episodic, insight into the workings of the Yuan bureaucracy and the reasoning behind the decision-making process occurring at each level, as the cases work their way through the various concerned agencies and different officials weigh in with their views on how to resolve the issue at hand. The range of disagreements among offices and officials, though intriguing and revealing, was surely not unique to the Yuan. However irregular, ad hoc, and chaotic one may imagine the Yuan bureaucracy to have been, reading these cases inspires a new appreciation for the dedication of many officials in addressing the confusing issues occasioned by a complex society in a tumultuous transition.

Other recurring themes stand out: the popularity of levirate among Chinese in North and South China (Chapter 7, Sections 6–8, "When the Husband Dies; Levirate Marriage; No Levirate Marriage"); the number of legal suits brought by widows or mothers (e.g., cases 18.56, 18.58, 18.60, 18.63, 18.68); the relative leniency of punishment for violation of marriage contracts or for adultery, often owing to frequent imperial amnesties; and the variety of circumstances that elicit official concern about widows' behaviour. A reader might wonder how plaintiffs' ethno-cultural origins factored into these cases.

In this connection, in note 69 on p. 234, Birge states that Han'er 漢兒 or Han, which generally denotes residents of North China in the Yuan era, could include "Jurchens, Tanguts, Uighurs, and so forth." My general understanding is that Tanguts and Uighurs were classified as Semu 色目, and distinguished from Han or Han'er, which included Jurchens and Khitans (and Koreans), although those distinctions were far from impermeable, often confusing to people on the ground, and frequently transgressed.<sup>4</sup> In the case at hand (18.56), dated to the seventh year of the Zhiyuan 至元 period (1270), Birge observes that the use of Han (which she translates as "from a Han Chinese lineage") intends to distinguish the nephew seeking to marry his aunt, a Chinese example of levirate, from Jurchens and Khitans (also "Han'er") who *did* practise levirate. The author comments that even before Khubilai decreed the levirate for all peoples in 1271, "Chinese in the north were beginning to practice" such steppe customs, or at least cite them as justification for marital unions ordinarily prohibited by Chinese custom (p. 232).

This case raises several questions that Birge's study does not address in-depth: to what extent had the practice of levirate already spread among Chinese (and which Chinese?) in the north before the Mongol era? And to what extent did other non-"Chinese" and non-Mongols, in fact, continue or begin to practise levirate in the Yuan period, or, as Birge suggests, cite the Mongol practice of levirate to justify desired marital unions? The overwhelming majority of cases in Chapter 18 of *Yuan dianzhang* seem to involve Han Chinese. Very few refer to what appear to be non-Chinese. In most of the cases, regardless of the plaintiffs' origins, the exchange of betrothal gifts, the willingness of the two parties, completion of mourning for the deceased, and the difference in age between the proposed levir and the woman emerge as key points of consideration. Consider two cases involving non-Chinese. Case 18.44, dated 1269, rules on a marriage dispute between two Muslim families (Arab traders, Birge speculates), one of whom seeks to marry a younger son to the older son's intended bride after the premature death of the latter (pp. 210–11). The officials consult a qadi, or Muslim judge, in reaching their verdict: the marriage may proceed if the girl's parents are willing, and if they are not willing, they should return half the betrothal gifts. This is not a real case of levirate, it seems, rather an attempt to win a case by appealing to the conquerors' own customs.

Case 18.60, dated 1276, cites the precedent of a recent plaint filed by a woman named Fatima, against her brother-in-law Hasan (pp. 243–44), evidently Central Asian Muslims. Hasan was claiming his brother's widow in a levirate union. Fatima wins her case because of her resolve to "stay chaste" and raise her son, and because she has already observed mourning for her husband. Case 18.61 mentions a "lay Confucian" plaintiff, Wanyan Sizheng, evidently Jurchen judging by his name, whose petition to have his older son's widow, who had returned home, marry his younger

<sup>4</sup> Endicott-West, *Mongolian Rule in China*, esp. Chapter 3.

son, was overturned in 1277 (p. 245). The reasons cited are 1) the widow helped to raise her young brother-in-law, who was “a whole generation” younger than her, and 2) she was unwilling to marry him. She should be allowed to stay home and care for her father instead. It may be that the supposed Jurchen identity of the plaintiff is not terribly important; he could easily have been Han Chinese, as are all the rest of the plaintiffs in this section concerning levirate remarriage, apart from the cases mentioned above.

In other words, North Chinese had been living in proximity to people who practised levirate for centuries. Scholars like Holmgren assume that on the basis of elite Chinese statements of loathing for the custom, levirate did not therefore find a toehold in North China until the Mongol period. The fact that the Jin government first outlawed levirate for Chinese and Bohai 渤海 in 1169, as Birge notes (p. 24), then reversed the ban in 1170, before finally enshrining it in the *Taihe* code in 1201, suggests the opposite.<sup>5</sup> It would be reasonable to suppose that some North Chinese commoners had been practising levirate long before the Mongols arrived on the scene. The question is which Chinese and how to document this practice. Likewise, the question of which Semu and non-Chinese Han'er continued to practise, or took up the practice of, levirate in the Yuan era remains a subject for further research. Bettine Birge's work constitutes an indispensable contribution to that task.

Errors of fact or interpretation remain unavoidable in any work of history, much less an ambitious and complex translation project like this one. Experts in different disciplines or fields will find points of interpretation meriting debate, correction, or clarification. A minor example arises in Chapter 1, p. 26, where the author writes that in 1264 “Khubilai established his main capital at Beijing, called Dadu 大都.” This is a somewhat misleading, though understandable simplification. The date of Dadu's founding appears variously in different accounts. According to Hok-lam Chan, in 1264 Liu Bingzhong 劉秉忠, the emperor's Chinese Buddhist monk-advisor, persuaded Khubilai to move the Mongol capital from Shangdu 上都 back to Yanjing 燕京, the former Jin capital of Zhongdu 中都. In 1265 or 1267 Khubilai ordered Liu to “found a new capital” there, and in 1272 renamed it Dadu.<sup>6</sup> In another

<sup>5</sup> Linda Cooke Johnson, *Women of the Conquest Dynasties: Gender and Identity in Liao and Jin China* (Honolulu, HI: University of Hawai'i Press, 2011), pp. 109–10; Herbert Franke, “Jurchen Customary Law and the Chinese Law of the Chin Dynasty,” in Herbert Franke and Hok-lam Chan, *Studies on the Jurchens and the Chin Dynasty* (Aldershot, Hampshire and Brookfield, VT: Variorum, 1997), citing *Jinshi* 金史, *juan* 6, p. 144 (Dading 大定 9:1).

<sup>6</sup> See Hok-lam Chan's biography of Liu Bingzhong in *In the Service of the Khan: Eminent Personalities of the Early Mongol-Yüan Period (1200–1300)*, ed. Igor de Rachewiltz et al. (Wiesbaden: Harrassowitz Verlag, 1993), pp. 258–59; idem, *Legends of the Building of Old Peking* (Hong Kong: Chinese University Press; Seattle: University of Washington Press, 2008), pp. 7–8 and 39, state that Qubilai commissioned Liu to design a new city in “early 1267.”

example, the name Yeli Buhua (top of p. 262, case 18.68) is explained in footnote 22 as a Mongolian name. Yeli 野利, however, was a common Tangut or Hexi 河西 surname, and many Tanguts or people of Hexi origin followed the Yuan fashion of adopting Mongol personal names like Buqa. Birge does not give the Chinese graphs for the name, but the proposed reading of the name as Er-Bukha or El-Bukha seems unnecessary. Neither of these points, however, detracts from the immense value of this work, or the pleasure awaiting a reader who delves into it.

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***Confucianism: Its Roots and Global Significance.*** By Ming-huei Lee. Honolulu, HI: University of Hawai'i Press, 2017. Pp. xiii + 156. \$58.00.

This slim yet wide-ranging volume consists of eight English-language essays published between 2000 and 2013. The book is divided into three sections: “Classical Confucianism and Its Modern Reinterpretations,” “Neo-Confucianism in China and Korea,” and “Ethics and Politics.” The Introduction is a repurposed version of a 2010 article.<sup>1</sup> After briefly rehearsing Yu Ying-shih’s 余英時 “wandering soul” thesis,<sup>2</sup> the author presents a potted two-page history of “Confucian traditions in East Asia,” focusing principally on the education and civil examination systems and the notion of Confucianism as “official ideology.” The Introduction concludes with some material ostensibly addressing the “the prospects of Confucianism in the twenty-first century,” in which Lee briefly introduces Jiang Qing’s 蔣慶 notion of “political Confucianism” (a subject he returns to in the last chapter), followed by an eclectic collection of short notes on “inner sagehood and outer kingliness,” Kantian and Hegelian conceptions of *Sittlichkeit* (ethical, social life) and *Moralität* (individual, rational, and reflective morality), the centrality of the family for the Confucian project, the use of Confucian texts in Taiwan, and the role of the modern academy in sustaining “intellectualized Confucianism.”

It is appropriate that “Mou Zongsan’s Interpretation of Confucianism: Some Hermeneutical Reflections” (originally published in 2000) is the opening chapter, given

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<sup>1</sup> Ming-huei Lee, “Confucian Traditions in Modern East Asia: Their Destinies and Prospects,” *Oriens Extremus* 49 (2010), pp. 237–47.

<sup>2</sup> Yu Yingshi (Yu Ying-shih), “Xiandai Ruxue de kunjing” 現代儒學的困境 (The predicament of modern Confucianism), in idem, *Zhongguo wenhua yu xiandai bianqian* 中國文化與現代變遷 (Chinese culture and its modern changes) (Taipei: Sanmin, 1992), pp. 95–102.