

Anatomy of Data and Questions in the Study of Song Legal History

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Abstract

The study of history is a discipline that trains us to find out questions of importance, and then to analyze and answer them.

Importance here means being important to the people in the past, not necessarily to us at present. Most of the important questions can be found in edicts, memorials to the throne, and legal cases, as people do not go to court for matters they considered unimportant. Concerning these sources, three points are to be heeded. First, their types must be differentiated. Usually the most carefully formed are the legislative data that they must be used first. Second, their nature must be clarified. Even of the same type as legislative data, laws and ordinances are different in nature, and thus varying in focuses. Third, whatever data at hand, researchers must first find out their internal logical structure and connections. Usually legislative data are sufficiently self-explanatory that we ought to “discover” instead of “create” their meanings. Reading data “out of context” should always be avoided.

In analyzing and answering questions, four points must be noted. First, a big question must first be broken down into medium questions and then into small questions in order to reveal how complex the big question is and how to cut into it. Questions concerning daily-life such as what property right a person may have can be analyzed by a common-sense approach, and quite often by asking the six old historical questions: what /

which, who / whom, when, where, why, how. Second, all major terms must be clearly defined. Due to a mix-up of “concubine” with “maidservant”, some historians argued that concubines of the Song dynasty became more and more like commodities, while others argued that they were more and more like family members. One way to tell them apart is to compare their rights and duties with those of a wife. Third, the differences between legislation and enforcement of law should always be born in mind. In the study of illegal temples, for example, we should never assert that legislators had not clearly defined what is illegal on the ground that legal enforcers had always failed to abolish certain illegal temples. There are numerous causes, such as corruption, that could have hindered the abolition. Forth, to see whether a ruling is based on law, the judgment on the offender and that on the defender must be weighed separately. Especially in disputes between family or clan members, the rights of the defender might be protected in full accordance with the law, but the crimes of the offenders might not be punished to the same degree. As such, law is stable and predictable to the defender but not necessarily to the offender.

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