between patent protection and copyright. In its extreme form, this stance led to Parliamentary discussion of the relative merits of Wordworth's poetry and the steam engine. The radicals, predictably, thought that the steam engine won without real contest, and thus would have limited the term of copyright protection in line with the term of patents. Talfourd, an author and literary critic as well as a Member of Parliament and a lawyer, found the unwillingness to acknowledge the intangible nature of literary property intensely frustrating, but it was a point of view he felt obliged to counter.

Bently and Sherman explore the use of the language of creativity in pre-modern intellectual property law, and note that it was not limited to literary property; all areas of law that granted property rights in mental labour share a concern with creativity. They give an interesting account of the "mentality of intangible property", and the legal difficulties this gave rise to. One particular problem is the definition of infringement, the authors arguing that the nature of intellectual property law changed fundamentally once it was accepted that it was necessary to protect against non-identical copies. The law thus moves from the concrete to the abstract, to "the shadowy ephemeral world of *essence* of the creation". The argument is an extremely tempting one, applied as it is here to patents, designs and literary property. It should not, of course, be carried too far: the reader is legitimately warned against using this way of thinking as a template of the model of creation used in law. However, this "single gesture" is characterised as setting intellectual property law on a course from which it has been unable to escape. This course is traced from pre-modern law, to the emergence of modern law, with its emphasis on public rather than private control, and the first moves towards abstract and forward looking modes of organisation. A crystallisation of the categories of intellectual property law is evident in the 1850s, and the bifurcation into *industrial* property and copyright law was sustained for a brief period only, before a return to relative autonomy.

Throughout this book it would be easy to multiply examples of alternative models and pressures on intellectual property law, but this would be to miss the point. Bently and Sherman take a wide legal perspective and offer helpful readings and insights, although always acknowledging the fluidity of the themes and concepts they address. It is an ambitious project, persuasively executed. They make a convincing case for their argument that a sensitive appraisal and understanding of past narratives is essential if—as we must—we are to create the new narratives needed to meet new demands.

CATHERINE SEVILLE

Origins of Chinese Law. By YONGPING LIU. [Hong Kong, Oxford, New York: Oxford University Press. 1998. xiii, 340, (Bibliography) 12 and (Index) 8pp. Hardback. £27.50 net ISBN 0–19–590344–7.]

DR LIU'S book will mark a new era in the study of ancient Chinese legal history. With a remarkable vision of synthesis, Dr Liu proposes an original, and singularly powerful tool of analysis for studying the laws of Eastern *Zhou, Qin* and *Han* (770 BC-220 AD): namely, the disintegration of *zu*. Archaeologists, oracle bone and bronze inscription scholars all agree that the most important organisational unit of *Shang* society (c. 1600–1027 BC) was *zu*: an agnatic family group of varying size and importance which could, on the average, mobilise about 100 male warriors. How this quasi-autonomous military unit (each *zu* was living separately and independently in a walled town, had its own chief and its own customary rules)

gradually lost its significance after *Shang* was conquered by *Zhou*, is convincingly demonstrated with wide-ranging sources. We may briefly recount Dr. Liu's thesis here. To consolidate and stabilise their military conquests, the ruling *zu* of *Zhou* adopted the policy of entrusting to their agnatic family members the governorships of various areas which fell under the *Zhou* hegemony. This arrangement (known as the *zongfa* feudalism) entailed the relocation and cohabitation of many different *zu* groups. For the newly organised population of *Zhou*, therefore, the fragmented and *zu*-centred customary rules soon became inadequate and obsolete. The importance of *zu* organisation waned and individual family, *jia*, emerged as the basic organisational unit of society.

Having thus set the stage, Dr Liu re-examines the Confucian theory of *li* (law as well as morality; earlier generations of Sinologists attempted to translate it into "etiquette"). By reinterpreting the *Zhou li* (rules of sacrificial rituals and court rites observed by the ruling *zu* of Western *Zhou*, c. 1027–771 BC), Confucius (c. 555–c. 479 BC) injected a new meaning to *li*. Shifting the focus from *zu* (family group) to *jia* (individual family), Confucius re-located *li* firmly on the family ethics of *xiao* (filial reverence) and *ti* (fraternal affection). As these family ethics have a universal appeal, Confucius' re-worked version of *li* could claim a validity which transcends the particularity of individual *zu* organisation. The re-working of *Zhou li* into the "natural" *li* was consummated through a conflation of family ethics (*xiao, ti*) and political morality (*zhong*: the right attitude for the ruled to adopt towards the ruler). According to Confucius, one should revere one's ruler as one should revere one's father. Also, one should respect and observe one's proper place in one's dealings outside the household just as one should do the same within the household. Domestic virtues and political virtues were thus synchronised: the pacemaker, or the overarching principle holding together the Confucian system of law, public morality and private ethics is *ren* (compassionate benevolence).

Now, one cannot help but make a couple of comparisons, which will bring out as much contrast as similarity between Chinese and European legal histories. The importance of household (*familia*) and its head (*pater familias*) in Roman law is relatively well-known. But we know much less about *gens*. That it was a family group with considerable religious significance, we can say without risking too much. Some traces also remain which may suggest its military significance in the remote past. In other words, *zu* and *gens* may have some parallel features. But in its original meaning, *gens* was a *patrician* family group. Not all Roman families could belong to a *gens*. According to Mommsen and Marquart, in the last years of the Republican Rome, there were about 14 *gentes*. Oracle bone and bronze inscription scholars have so far identified about 200 totemic emblems from *Shang* period. Although it is generally accepted that each *zu* identified itself with a totemic emblem, more recent research seems to indicate that not all of the emblems can be associated with *zu* organisation. This would mean that the number of *zu* must be smaller than the number of totemic emblems so far identified. Depending on the size of *Shang* society, it can be envisaged, at least as a hypothesis, that not every family in *Shang* period could belong to a *zu* organisation. This may open up (or, rather, re-open) an area of research which has suffered most from the cold-war mentality: the law of personal status in ancient China. After a fascinating account of early punishments (*xing*) appearing in divination and other records preserved in oracle bone and bronze inscription materials, Dr Liu concludes that during *Shang* period, gentler punishments (scolding or ceremonial humiliation) were applied to the members of the same *zu* and that relatively harsh punishments (leg-cutting, head-cutting, for example) were applied to "the people of other *zu* [captured enemies]". It may, however, just as well be possible that those who did not belong to a *zu* did not necessarily belong to another *zu*. Some of the materials which Dr Liu

considers as relevant to the inter-*zu* relationships may in fact hold a key to an understanding of the divisions between patricians/plebeians and free-men/slaves in *Shang* society.

Another comparison can be made, which is between *Zhou* feudalism and medieval European feudalism. In an age of rapid social change and upheaval, Confucius provided the theoretical foundation for transforming the *zongfa* feudal arrangement of *Zhou* into a comprehensive and generalised system of law, morality and political philosophy which could function as the new organising principle for the changed society. His originality lies in imbuing the private morality (family ethics of *xiao* and *ti*) with a public significance (family loyalty became the basis of the political loyalty, *zhong*). In 802 AD, the emperor Charlemagne attempted to reinforce the efficaciousness of the oath of fealty (*sacramentum fidelitatis*) by insisting that all his subjects (free males of certain age) must swear that they ought to be faithful to the emperor *as a man ought to be to his lord (sicut per drictum debet esse homo domino suo*). No doubt, the oath of fealty where subjects had to swear their political loyalty to the ruler, was certainly in existence well before Charlemagne. But frequent rebellions and armed conflicts where insurgents were mobilised through the network of private loyalty (vassalic relationships) seriously undermined the importance of the oath of fealty (public, political loyalty). Charlemagne attempted to overcome this problem through politicising the private loyalty. According to the new formula of oath, one should be faithful to one's ruler *as a vassal should be faithful to his lord*. Private, contractual loyalty was thus conflated with the public, political loyalty. The "bond of fidelity" accordingly became the unshakeable foundation of the medieval European law, morality and political philosophy. The fidelity which binds the parties to a promise—an actual (private) consent of the parties or the supposed (political) consent or the transcendental (religious) consent—has been ceaselessly and tirelessly exalted by a long list of writers throughout European history. The ancient Chinese, it seems to me, were not terribly impressed by the bond of fidelity. *Zhou* feudalism was not based on the bond of promise. It relied entirely on blood-ties among the agnatic family members. Confucius did not challenge the supreme importance of blood-tie. Rather, he found a universal application for it. Patrilineal ancestors, as they are the roots of the agnatic family structure, were understandably given an exalted and quasi-religious status by Confucian scholars.

We know, however, that Confucius and his disciples were not successful initially. The death of Confucius roughly coincided with the start of what is known as the Warring States period (475–221 BC). This was a period when the family-ties branching out from the ruling house of *Zhou* could no longer provide the organising principle of the Chinese world. Instead, various states entered into covenants (*meng*) as a *modus vivendi* in an age of extreme uncertainty and shifting alliances. Dr Liu offers a fresh reappraisal of the institution of covenant (chapter 5). Unearthing the ceremonial details of the covenant, Dr Liu demonstrates that the contractual device was nevertheless rooted in the tradition of blood-ties. By smearing the sacrificial animal's blood around their lips or face, the parties to a covenant forged an artificial blood-tie, without which the contractual tie could claim no binding force.

In the latter half of his book (chapters 6–8), Dr Liu studies the laws of *Qin* and *Han* (221 BC-220 AD). Dr Liu's critical mind and rigorous historical method are at full swing here. A number of long-standing "commonplaces" of Chinese legal history are dissipated or seriously challenged. To name but a few: (a) Ever since *Shang* period, Chinese penal law had five punishments (tattooing, nose-cutting, leg-cutting, castration, and head-cutting) which were uniformly applicable to all people. (b) Laws of *Qin* (which unified China in 221 BC but collapsed in less than

two decades) were based on *Fa jing*, a sketchy treatise on law attributed to Li Kui (of Warring States period). (c) *Qin* penal law was particularly harsh. (d) Laws of *Han* (206 BC–220 AD) originated from *Jiuzhang Lü* (statutes in nine sections) allegedly compiled by Xiao He, the Chancellor to the emperor Wu (141–88 BC) of *Han*. (e) Chinese law underwent "Confucianisation" during *Han*.

Making full use of *Qin* bamboo strips excavated from Shuihudi area (Hubei province) in 1975 and relying in part on the outline contents of *Han* legal documents excavated in 1985 from a tomb at Zhangjiashan (also in Hubei province), Dr Liu challenges powerfully and convincingly a number of theses repeatedly upheld by great names in the study of Chinese legal history such as Liang Qichao, Chü T'ung-tsu, Anthony Hulsewé and Derk Bodde. Refuting, point by point, Professor Chü's influential thesis about the Confucianisation of *Han* laws, Dr Liu puts forward an argument that the penal and administrative laws of *Han* maintained a great deal of continuity with *Qin* laws, which were based on the ideas of the Legalist School. The influence of Confucian theory of natural *li*, according to Dr Liu, was probably limited to the customary laws of the local people. The allegedly "Confucian" features appearing in the post-*Han* imperial written codes can be explained as the official recognition of the basic undercurrents of Chinese moral values which had been in existence well before Confucius was born. Confucius merely endorsed and made use of some of those basic moral values.

Dr Liu's book will add the much-needed "depth" to the study of Chinese legal history. After his book, it is perhaps no longer possible to hold on to the "flat" vision where the legal development spanning over a millennium in ancient China is reduced to a series of dialectic exchanges between the Confucian School and the Legalist School supposedly taking place in a timeless Empire where law and punishments were, from the very beginning, uniformly applied throughout. Dr Liu's challenge of Professor Chü's "Confucianisation" thesis must not be regarded as an attempt to side with the Legalist School. It is, I think, an attempt to demonstrate the inadequacy of the two-dimensional, dualistic (Legalist/Confucian) approach to the study of early history of Chinese law. It is, I think, a most fruitful attempt to situate the source materials—both long known and newly discovered—in their proper historical context, the disintegration of *zu*, thus opening up a wholly new horizon of meanings for these sources. Those who read Chinese may be interested in having Yu Rong-gen, *Rujia Fa Sixiang Tonglun* (A general survey of the legal thought of the Confucian School) Guangxi People's Press (1992) alongside Dr Liu's book as they offer remarkable and illuminating contrasts both in their conclusions and in their methodology.

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Insolvency in Private International Law: National and International Approaches. By IAN FLETCHER [Oxford: Clarendon Press. 1999. lxvii, 371, (Appendices) 81 and (Index) 9 pp. Hardback. £75.00 (net). ISBN 0–19–825864–X.]

PROFESSOR Fletcher has produced a much-needed and timely book on insolvency in private international law. International insolvency is increasingly complicated and immensely topical. Recent years have given us the collapse of the Maxwell empire, BCCI and Polly Peck among others and all have given rise to difficult but fascinating issues relating to the winding up of such multinational enterprises. The English courts have been involved in a myriad of ways, either as the major focus of the insolvency proceedings or in assisting foreign courts to collect in assets or provide information from individuals concerned in events leading up to the