The so-called “civil law” in ancient China dealt with properties and interpersonal relations among individuals, while criminal law focused on guaranteeing public rule and punishing illegal behaviors which harmed the community. The term “civil law” stems from ancient Rome rather than China. The term 民律 or 民法 began to be used to mean “civil law” in the period of the late Qing dynasty and the Republic of China, when rulers attempted to reform the traditional Chinese legal system with reference to that of the West. Given the relatively short history of the term, it is difficult to distinguish 民律 or 民法 (civil law) from “criminal law” in ancient China. In the book under review, ZHANG Zhaoyang 張朝陽, after conducting an enormous literature review, summarizes three main arguments that are popular in academia.

The first argument claims that there was no civil law in ancient China. Ancient Chinese laws were only concerned with safeguarding public rule and the power of the ruler. Laws, therefore, were enacted to punish those whose behaviors offended public, rather than private, interests. The second argument looks at the syncretism of criminal and civil law: the concept of civil law existed in ancient China, but the boundary between criminal and civil law was vague. The third argument draws no distinction between criminal law and civil law. Ancient Chinese law had its own logic, and civil law issues tended to be treated like criminal cases.

Based on unearthed materials, Zhang objectively points out the flaws of these three arguments. On the one hand, they have some defects due to the limitation of the materials available; on the other hand, their understandings toward civil law are dogmatic. Some of them believe that there were no such concepts as individualism,
rights, and private law autonomy in ancient China. Laws were enacted to protect the interests of those in power rather than civilians’ human rights, which simply did not exist.

Against the flaws of the existing studies, Zhang redefines the concept of civil law in ancient China. He points out that there were two aspects of civil law in early China. One was regulations in the Warring States period, the Qin and the Han dynasties. These regulations dealt with the properties and interpersonal relations among individuals, regarding compensation, debt, inheritance, separation of property, and so on. These regulations aimed to manage individuals’ interests rather than public rule. The second aspect of early civil law included judicial practices which had civil law’s features. The government did not arrest, torture, or exact criminal punishments on the responsible party; rather, it aimed to clarify the merits and demerits as well as to protect the interests of the individuals. Based on the above arguments, Zhang is trying to show that civil law in ancient China had an origin in Chinese legal concepts and practice and that it should not be shaped by modern judicial concepts and theoretical framework. He also discusses the possibility of a public-private dichotomy in early Chinese law, based on the results of his sorting and analyzing of unearthed materials.

Chapters 1 to 5 of the book under review show the civil law ideology in the Western Zhou, Qin, and Han dynasties by discussing the cases of various bronze vessel inscriptions, the “Juyan Bamboo Slips of the Han Dynasty” (Juyan Han Jian), as well as the legal provisions of the “Shuihudi Bamboo Slips of the Qin Dynasty” (Shuihudi Qin Jian) and “Zhangjiashan Bamboo Slips of the Han Dynasty” (Zhangjiashan Han Jian). For example, researchers point out that there was a civil litigation system in the Western Zhou dynasty, according to slave trade disputes recorded in the inscriptions on the bronze vessel “Wu Gui”; land disputes recorded in the inscriptions on the vessel “Five, Six Years Diao Sheng Gui”; and land rent disputes recorded in the inscriptions on the vessel “Li You Cong Gui”. They present the above evidence to show that Chinese civil law concepts and practices were more advanced than those in the Hammurabi Code or the Roman Law of the Twelve Tables. However, through analysis of these bronze vessel inscriptions, Zhang argues that the noncriminal concept was in the embryonic stage and no related regulations were found.

Actually, “noncriminal litigation” at that time was actually disputes among aristocrats. There was no evidence for the existence of noncriminal litigation among the common people. The situation, however, changed in the Spring and Autumn era. Zhang points out that there were many diverse noncriminal cases, according to the “Baoshan Bamboo Slips of the State of Chu” (Baoshan Chu Jian). At that time, common people had the freedom to participate in commercial activities and to own land. Economic disputes, therefore, became popular. Though there are only cases but no legal articles ascribed in the “Baoshan Bamboo Slips of the State of Chu,” at least they reflect the growing trend of noncriminal cases from bronze vessel inscriptions of the Zhou dynasty to bamboo slips of Chu and Qin. In this process, common people were gradually involved in civil activity and their awareness of civil issues increased.

Studies on criminal law in the Han dynasty did not get enough attention due to the insufficiency of materials. Relevant research on case litigation process began to emerge when the “Juyan Bamboo Slips of the Han Dynasty” was unearthed in 1973–1974, especially after the “KOU En Book” (Houshujun Ze KOU En) was