

New work on women and family in early China

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CASE itself:

In the present case, A, a woman of Du prefecture was married to D, a *gongshi*, who died suddenly. The coffin was in the main room of the [two-room?] house. He was not yet buried, and A (?) and D's mother, Su 素, were mourning at night, walking around the coffin and wailing. A then went together with male C into the room behind the one in which the coffin had been placed, and they engaged in consensual illicit sex. At daybreak the next morning, Su reported (gao 告) A to the officer. The officer apprehended A, but he was in some doubt about what crime to charge A with. The Superintendent of Trials (*tingwei* 庭尉) Xiao, the Trial Judge (*tingzheng* 庭正) Shi, the Inspector (*jian* 監) Hong, the Court Scribe (*tingshi* 庭史) Wu, and others – thirty men altogether – discussed [the precedents] that fit the case.

first judgment: main considerations

The wife serves her husband, and when it comes to mourning the dead, she adopts [the style and degree of mourning suitable to] the person next in line *after* the parents [of her husband], as the statutes mandate. The wife inherits [property and the position of head of household] after her parents-in-law. Let us consider the case where one of the parents-in-law died. Were the wife then to engage in illicit sex in the vicinity of the corpse before it was buried, this would be adjudged "unfilial," and that unfilial act would deserve execution in the marketplace. A second-degree unfilial act would deserve tattooing and a sentence of wall-building [if male] or grain-pounding [if female]. If the crime was committed through arrogance or anger [rather than with malice aforethought], the guilty parties are to be punished by hard labor without mutilation.

first judgment (expected?)

A woman is to honor her husband. Her place comes after his parents. But here, when A's husband died, she expressed no deep sorrow; neither did she wail. Quite the contrary. She engaged in consensual sex in the vicinity of the dead. She should be charged according to the two statutes about unfilial conduct and "crimes committed through arrogance or anger." And even though the officer who apprehended her did not prepare a proper case against her for adjudication his superiors, A ought to be shaven and sentenced to grain-pounding.

reversal of judgment (unexpected!)

"If a wife marries herself off while her husband is alive, then both partners in the second marriage are tattooed and sentence to wall-build or grain-pound, but when a husband dies and the wife marries herself off, neither she nor the man she takes in marriage have committed a crime."

"Which is more serious, to cheat a living husband or to cheat a dead husband?" "One who cheats on a dead husband commits no crime."

"Now let us suppose that a husband was an officer living in official quarters, and his wife lived at home. Were she to engage in illicit sex with a male on a daily basis, and [her husband], the officer, went to apprehend them, but he failed to catch them in the act, [but he beat (?)] her, how would she be sentenced?"

"It would not be considered a crime to be adjudicated."

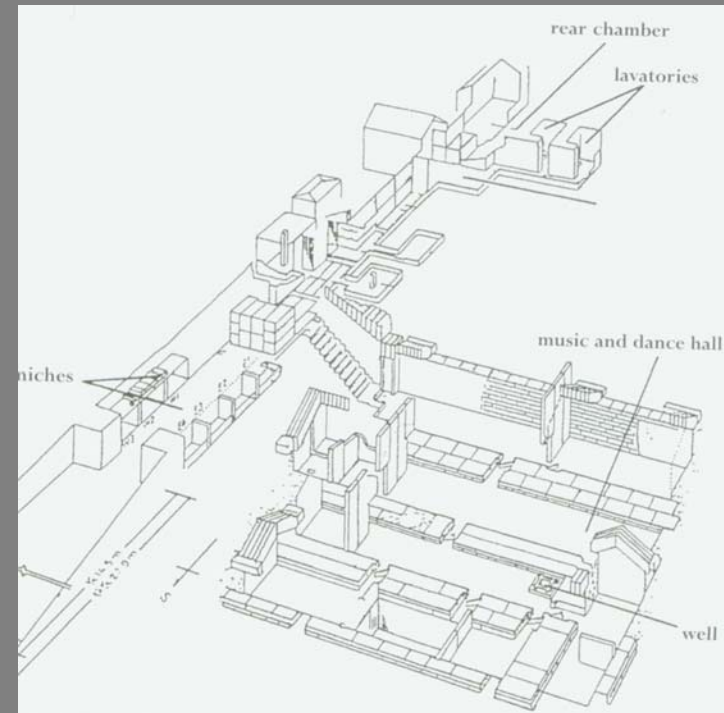
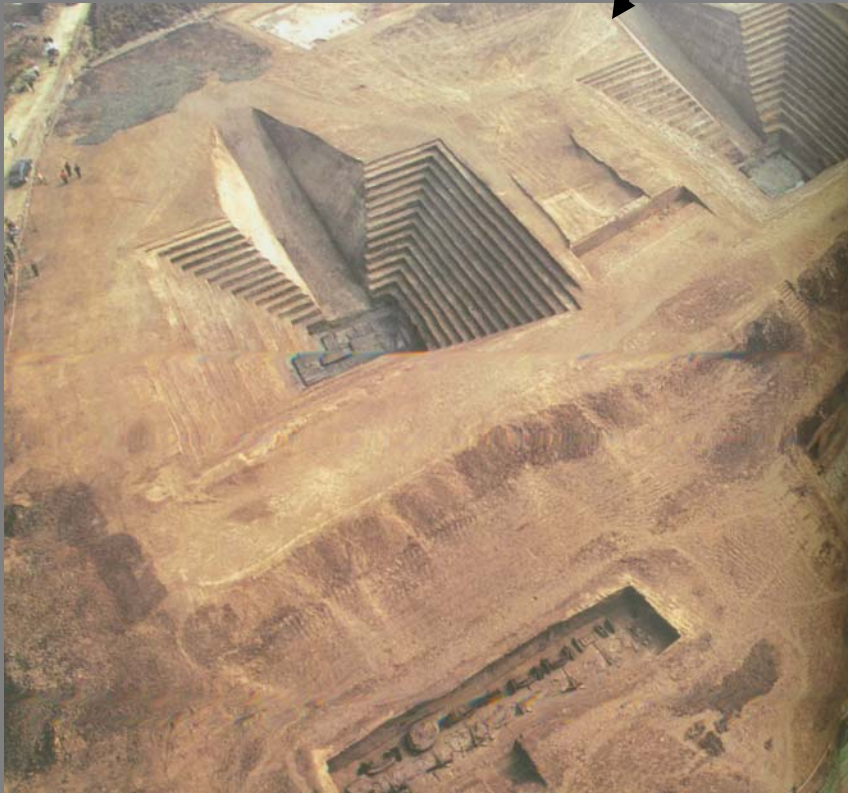


two additional famous cases testify to jurists' willingness to accept the idea of family ties as "socially constructed"

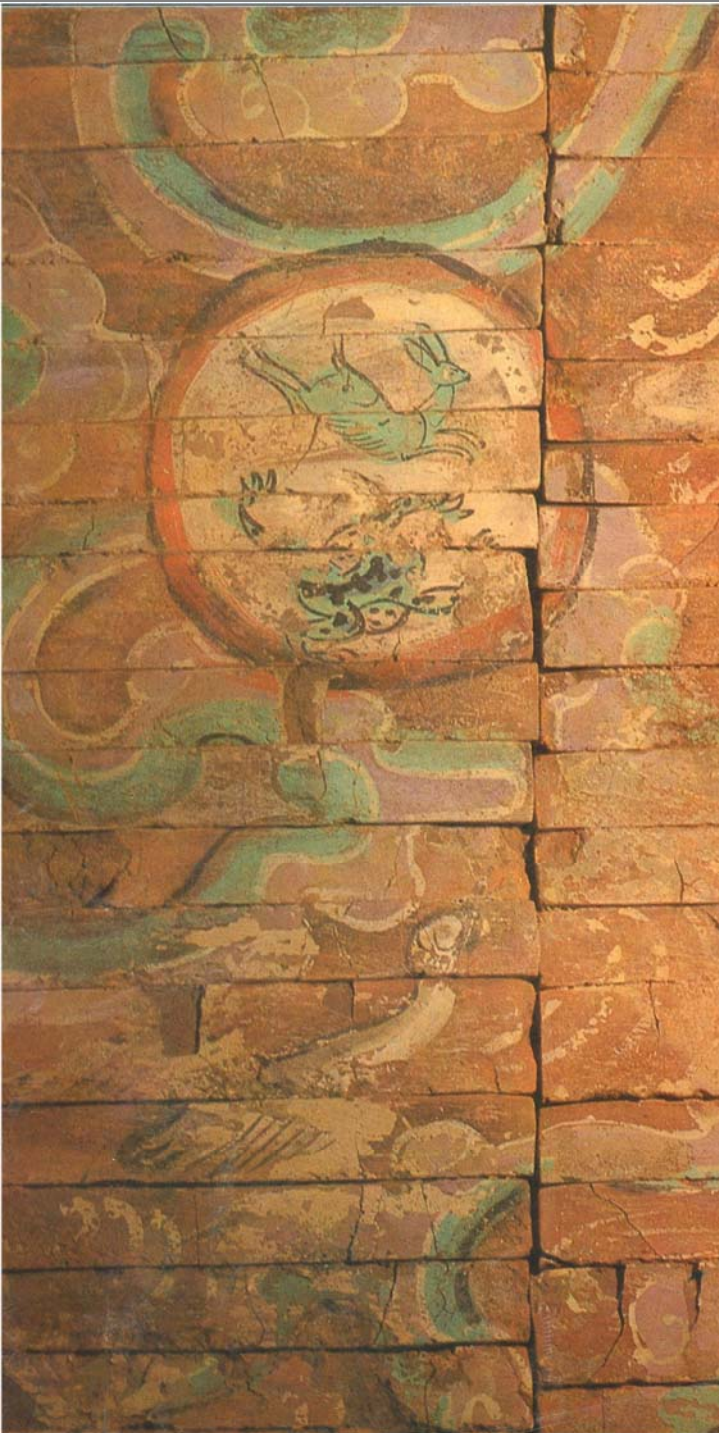
Case 1: A had a son B, who was given to C. B was raised until he was an adult by C. Once, A in his cups revealed to B that he was his son. B, in his fury, beat A with a staff, for a total of 20 blows. A, unable to contain his anger since B was his own son, reported him to the prefectural officials. By Han law, a son who beat his father merited public execution. However, when Dong Zhongshu (ca. 100 BC), a “Confucian” expert, judged the case he ruled that while A had sired B, A was unable to raise him and so he handed him over to C. A had thus already severed the obligations binding father and son. "Even though B beat A, B's case does not warrant adjudication."

Case 2: A had no son. He came upon a baby boy (B) abandoned by the side of the road. A raised B as his own son, and then B, when an adult, murdered a man. He told A about it, and A hid B [as the law allowed close family members to do]. Dong ruled that A, although he was not B's sire, would not have exchanged B for another.... A was right to conceal his [adopted] son; the case was dismissed.

vertical shaft tomb for one
horizontal tomb



Jiaotong daxue:
typical ceiling, with
sun, moon, and stars

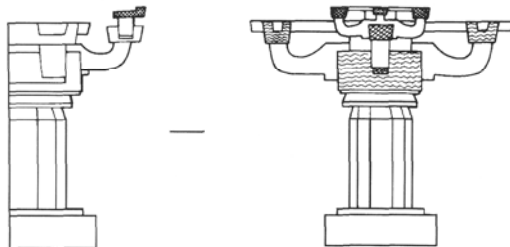




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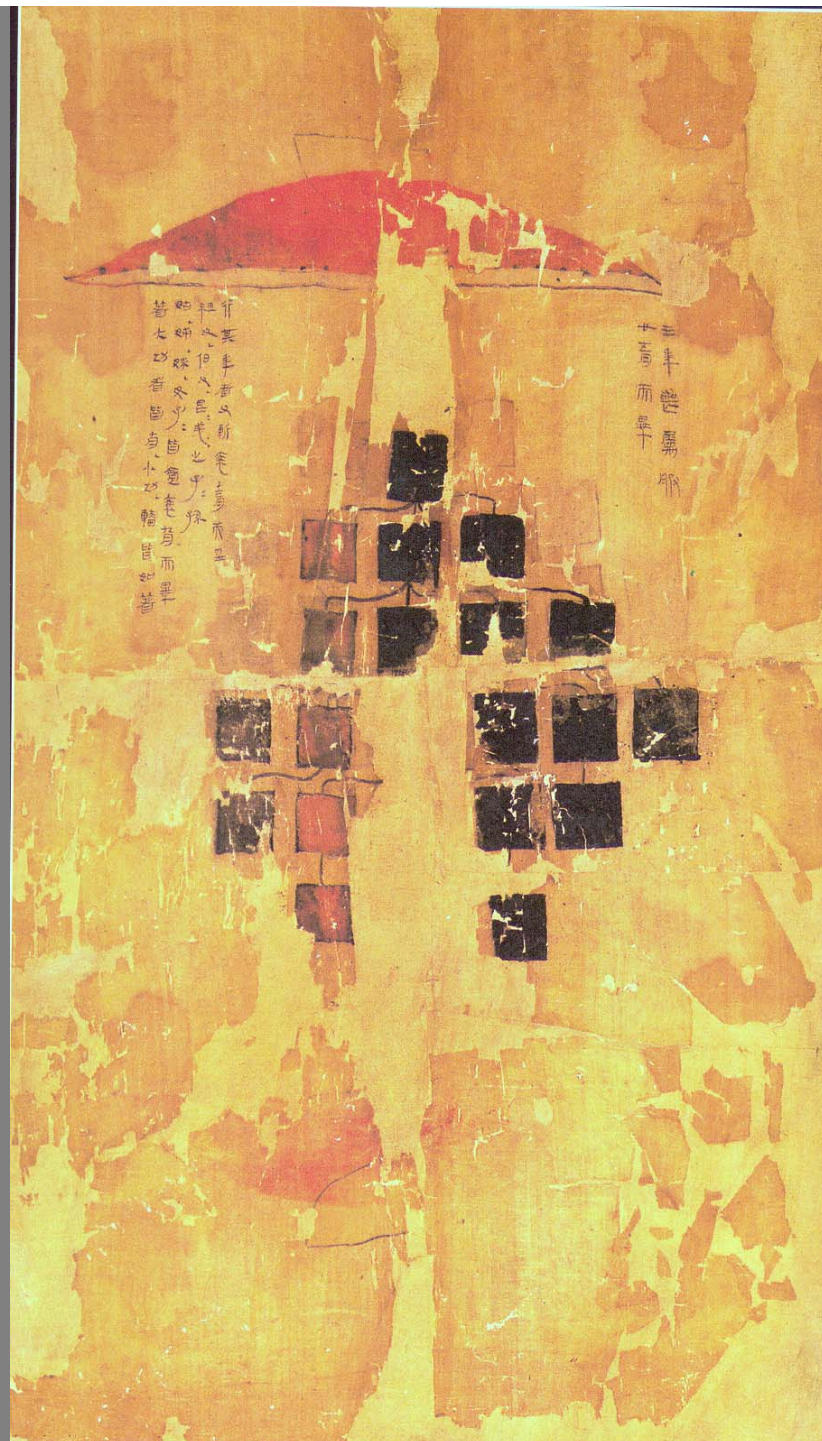


bracket/corbel
in tomb, home









Note the lengthy inscription below the reclining figure, which is typical



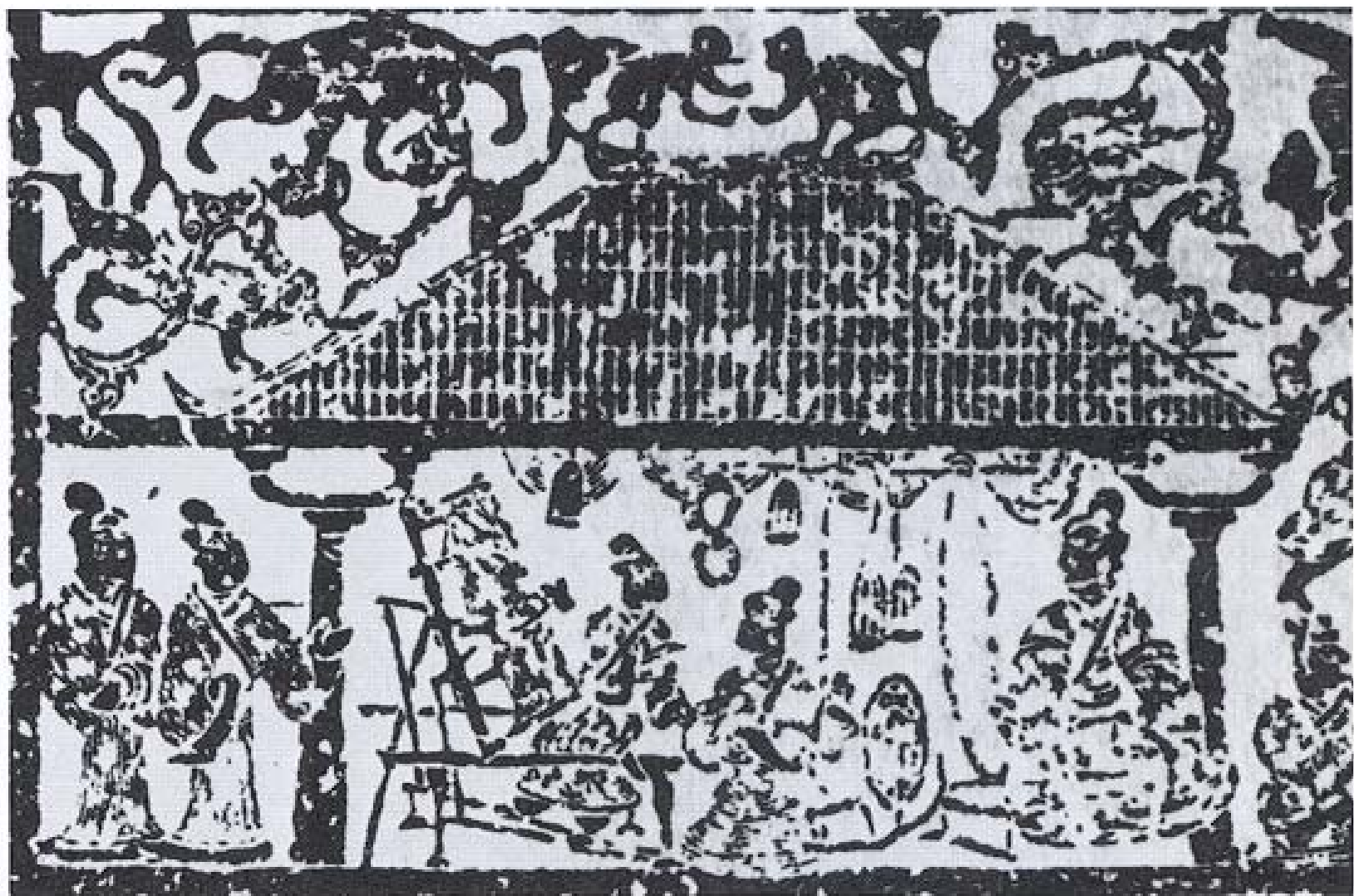
three standard claims made about early China

- 1) that women were invariably considered the social and intellectual inferiors of men in Han China;
- (2) that over the course of the late Western Han and Eastern Han, society became more "Confucianized," and therefore conditions substantially worsened for women; and (
- 3) that the chaotic conditions prevailing in the post-Han period, combined with the influences of religious Daoism and Buddhism, prompted a "reversion" to pre-Confucian gender morality after Han.



Figure 10.5. Female (bare-breasted) ploughing the field. South wall, M5 Dingjiazha, Jiuquan, Gansu; between 304 and 439 CE.

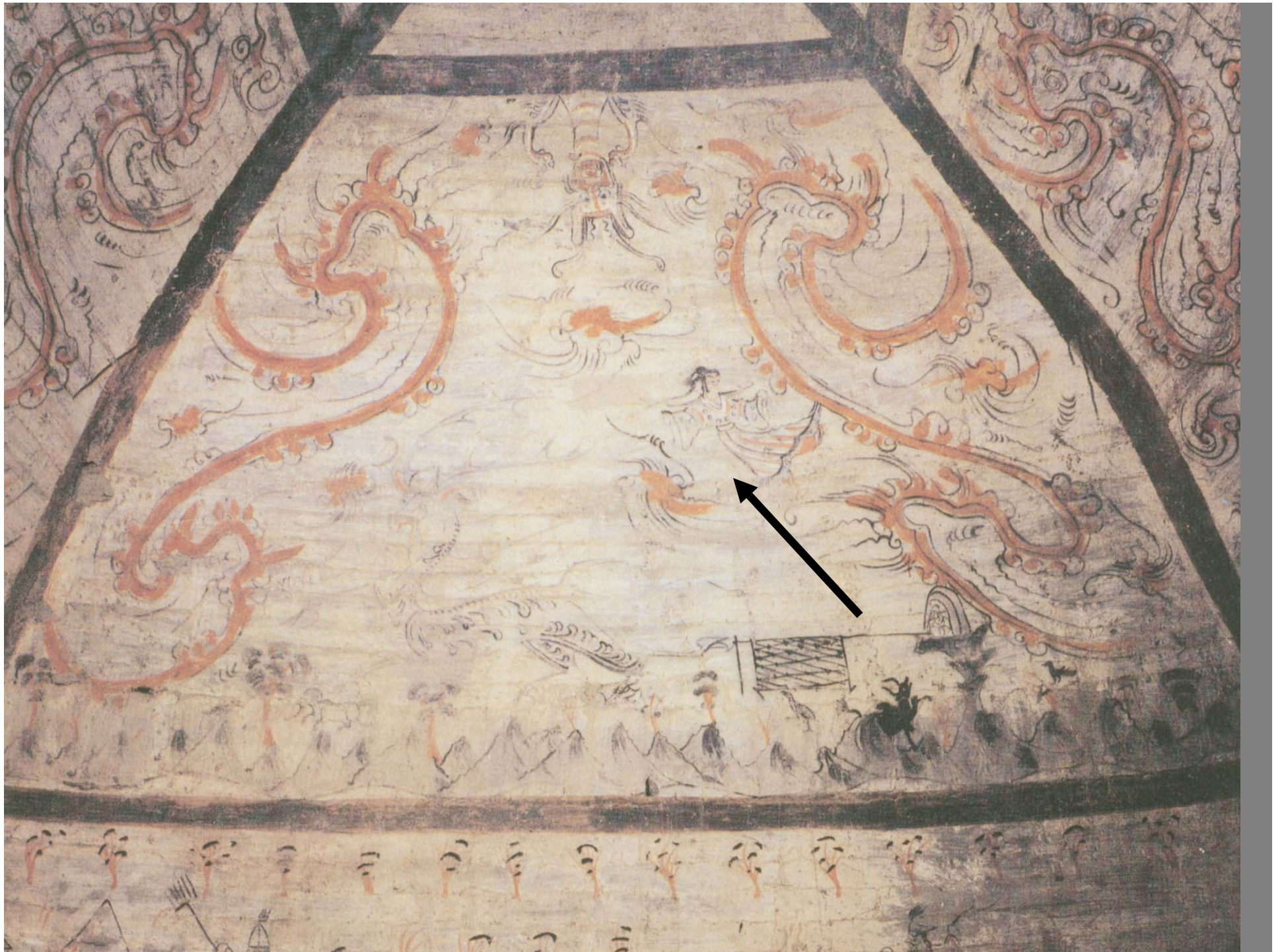




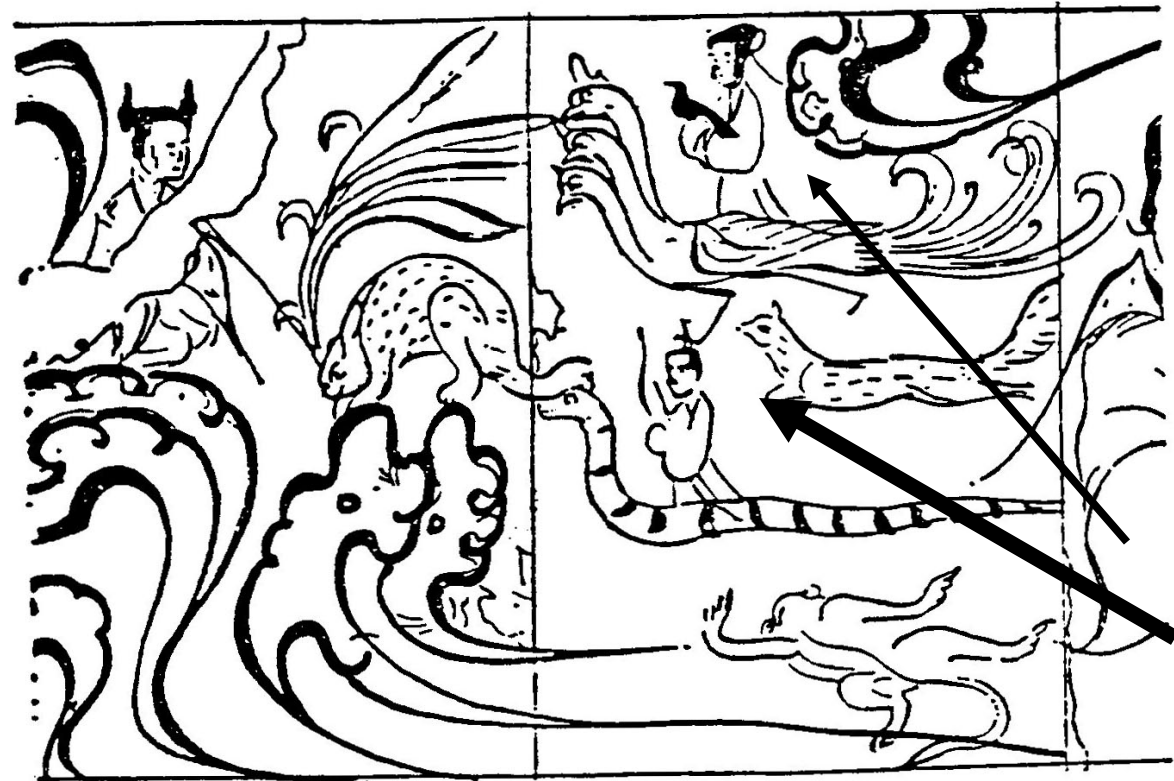
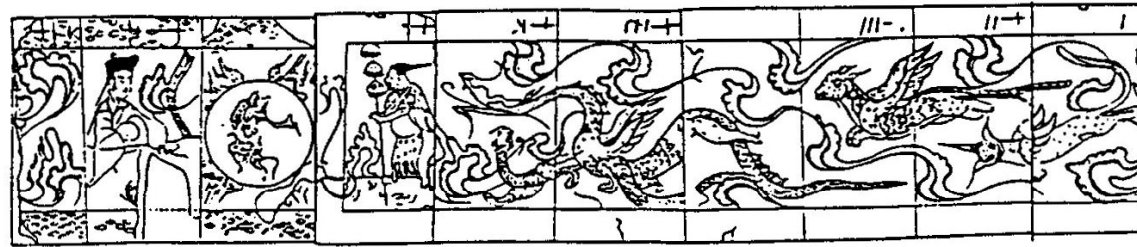
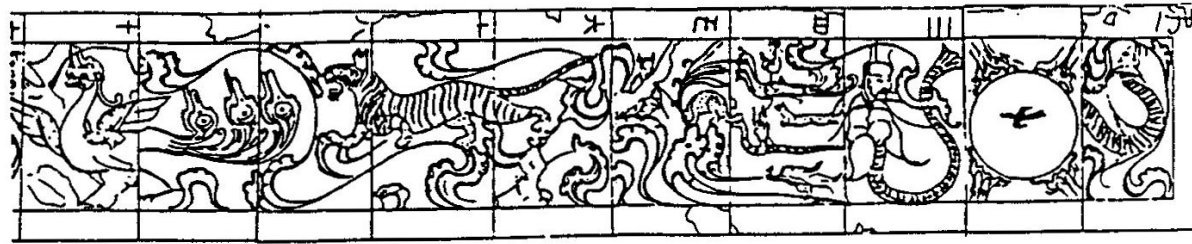
239 江蘇銅山洪樓画像

host and wife entertaining





ancestors
into gods



cross-cousin marriages among the elite families of Han

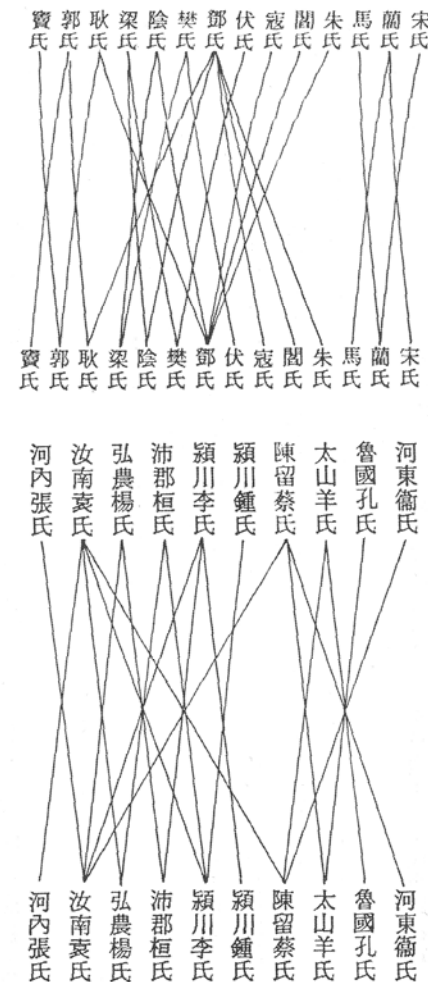


Figure 10.3. Charts of cross-cousin marriages. As marriage bound two families together, imposing obligations on the households of both husband and wife, those of stable income and high status often resorted to cross-cousin marriages, thinking thereby to strengthen existing marriage bonds and minimize the risks entailed in going beyond the mourning circle. The so-called “Partisans” of late Eastern Han were but one group based in a very small group of families bound by frequent marriage alliances, including the Yuans of Runan, the Yangs of Hongnong, the Huans of Pei, the Lis of Yingchuan, and the Zhongs of Yingchuan. The chart above shows marriage ties among the imperial distaff relatives; that below, among high officials.







