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## Dated Legislation in the Late-Qin State and Early Empire

### ABSTRACT:

This article identifies, translates and analyzes a series of legal documents that are held by the Yuelu Academy, Hunan. The documents were promulgated by the Qin throne and date to the late-Warring States and early-imperial periods. They range from the early years of King Zheng of Qin down to shortly after the establishment of the Qin empire in 221 BC. Their contents range widely, from legal processes, to military affairs, and to economic and family matters. They contain many specific legal terms that became ubiquitous in later-Qin and early-Han times, as determined from scientifically excavated materials. By examining the documents we gain significant insight into the developments within the legal and administrative systems of the Qin and are in a position to challenge the traditional historical narrative that has been accepted ever since Sima Qian composed his *Historical Records* under Emperor Wu of the Han.

### KEYWORDS:

*law, ordinances, Qin, Yuelu Academy, dated documents*

How did the state of Qin reorganize after the legal reforms of Lord Shang 商君 (d. 338 BC) in the mid-fourth century BC?<sup>1</sup> How did it try to administer and control the vast new territories and peoples into which it expanded as it conquered its rival states? Many aspects of the evolving system of government are obscure: the details were not recorded by Sima Qian 司馬遷 (ca. 145–ca. 86 BC) in his *Historical Records* (*Shi ji* 史記). The latter is the largest premodern source of information on the history of the period prior to Sima's own lifetime.<sup>2</sup> Apart from

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<sup>1</sup> The most recent scholarship on Lord Shang has been produced by Yuri Pines. See his translation and textual study, *The Book of Lord Shang: Apologetics of State Power in Early China* (New York: Columbia U.P., 2019), and the many articles and book chapters that he has published in recent years.

<sup>2</sup> *Shi ji* 史記 (Beijing: Zhonghua shuju, [1959] 1985).

the fact that Sima may have been biased against the Qin for personal as well as political reasons when he wrote his work under Han Emperor Wu (r. 141–87 BC),<sup>3</sup> probably he did not know very much about Qin institutions because most of the relevant documents had already been lost by his time, the result not only of the destruction in the long civil war accompanying the fall of the Qin and the establishment of the Han, but also because of the Han's propaganda against the Qin in the early years of the new dynasty. Gradually, more and more evidence has been appearing in the last fifty years or so.<sup>4</sup>

The excavations at the site of the First Emperor's mausoleum have provided a massive amount of new data with which to analyze certain aspects of the Qin military machine, but nothing about the wars and battles in which its armies engaged.<sup>5</sup> Continuing excavations have also revealed much about the early history of the Qin state.<sup>6</sup> New methods of analysis have been developed for the study of both artifacts and transmitted texts.<sup>7</sup> But perhaps the largest body of relevant new inscriptional and textual data consist of legal and administrative documents that have been recovered by archeologists at various sites, both tombs and wells. Most of this vast quantity of new data, which is still in the process of publication, derives from the few years between 221 BC and the fall of imperial Qin shortly after the First Emperor's death in 210 BC.<sup>8</sup> The most significant of the new finds are the legal

<sup>3</sup> Hans van Ess, "Emperor Wu of the Han and the First August Emperor of Qin in Sima Qian's *Shiji*," in Yuri Pines, Lothar von Falkenhausen, Gideon Shelach, and Robin D.S. Yates, eds., *Birth of an Empire: The State of Qin Revisited* (Berkeley: U. California P., 2013), pp. 239–57.

<sup>4</sup> For Western scholarship on the Qin, see Robin D.S. Yates, "Sei Ō gengo ni yoru Shin-shi kenkyū no saishin dōkō" 西歐言語による秦史研究の最新動向, in Momiyama Akira 羽山明 and Lothar von Falkenhausen, eds., *Shin teikoku no tanjō: kodaishi kenkyū no kurosurodo* 秦帝国の誕生, 古代史研究のクロスロード (Tokyo: Rokuichishobō, 2020), pp. 107–30, and for a bibliography of publications on the Qin, see idem, "Sei Ō gengo ni yoru Shinshi kenkyū bunken mokuroku" 西歐言語による秦史研究文献目録, in *ibid.*, pp. 183–207.

<sup>5</sup> The scholarship on the First Emperor's mausoleum runs to hundreds of items. For a recent archeological analysis of the weapons, see Xiuzhen Li, *Bronze Weapons of the Qin Terra-cotta Warriors: Standardization, Craft Specialisation and Labour Organisation* (Oxford: BAR Publishing, 2020).

<sup>6</sup> For a popular review, see Zhu Zhongxi 祝中熹, *Zaoqi Qin shi* 早期秦史 (Lanzhou: Dunhuang wenyi chubanshe, 2004).

<sup>7</sup> For example, Kin Sum (Sammy) Li, "To Rule by Manufacture: Measurement Regulation and Metal Weight Production in the Qin Empire," *TP* 103.1–3 (2017), pp. 1–32; Charles Sanft, *Communication and Cooperation in Early Imperial China: Publicizing the Qin Dynasty* (Albany: SUNY P., 2014).

<sup>8</sup> For a listing of all the Qin inscriptional and textual data recovered up to the publication of the volume, see Wang Hui 王輝 and Wang Wei 王偉, eds., *Qin chutu wenxian biannian dingbu* 秦出土文獻編年訂補 (Xi'an: Sanqin chubanshe, 2014). See also Maxim Korolkov, *The Imperial Network in Ancient China: The Foundation of Sinitic Empire in Southern East Asia* (London and

and other documents excavated from Tomb no. 11, Shuihudi 睡虎地, Hubei,<sup>9</sup> the highly fragmented legal material found in Longgang 龍崗 Tomb no. 6,<sup>10</sup> and the contents of Well no. 1, Liye 里耶, material discarded from the archives of the Qin county of Qianling 遷陵 in western Hunan province.<sup>11</sup> All these materials were scientifically excavated. But there is still scant information available to study the changes that Qin enacted during the years leading up to its unification of China and the establishment of the empire in 221 BC. Given that the Qin seem to have laid emphasis on legal and administrative initiatives, this lack of information is frustrating.

Yet, aside from the above finds, there are two other sets of Qin materials of which one does throw light on the legal and administrative innovations in the period leading up to the unification of China, namely the collection held by the Yuelu Academy 嶽麓書院, Hunan University.<sup>12</sup> The materials in it have been seen to be far more problematic, since they were looted from one or more tombs located probably somewhere in the Yangzi River valley. They were purchased from dealers in the Hong Kong antiques market and subsequently repatriated. The lack of proper scientific provenience of these materials poses two types of issues, one ethical and the other relating to authenticity.

With regard to the former, the looting of sites, tombs, and even of museums, obviously destroys much valuable historical evidence and there is the danger that to publish on such material might encourage further looting. Some scholars in the China field have argued vigorously against doing so,<sup>13</sup> while others have defended the study of unprovenanced materials.<sup>14</sup> Indeed, despite the fact that tomb robbery is outlawed in the People's Republic of China and subject to severe

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New York: Routledge, 2022); Anthony J. Barbieri-Low, *The Many Lives of the First Emperor of China: Tyrant or National Hero? An Interdisciplinary Exploration of China's First Emperor* (Seattle: U. Washington P., 2022); and Chun Fung Tong, "Fall of an Empire: State Power and Governance of the Qin Empire," Ph.D. diss. (Heidelberg University, 2020).

<sup>9</sup> In English, see A.F.P. Hulsewé, *Remnants of Ch'in Law: An Annotated Translation of the Ch'in Legal and Administrative Rules of the 3rd Century B.C. Discovered in Yun-meng Prefecture, Hu-pei Province, in 1975* (Leiden: E.J. Brill, 1985).

<sup>10</sup> Zhongguo wenwu yanjiusuo 中國文物研究所 and Hubei sheng wenwu kaogu yanjiusuo 湖北省文物考古研究所, *Longgang Qin jian* 龍崗秦簡 (Beijing: Zhonghua shuju, 2001).

<sup>11</sup> Chen Wei 陳偉, ed., *Liye Qin jian du jiaoshi* 里耶秦簡牘校釋, vol. 1 (Wuhan: Wuhan daxue chubanshe, 2012); vol. 2 (2018).

<sup>12</sup> The Peking collection of Qin documents still awaits full publication, and I will not discuss them in the present essay.

<sup>13</sup> Paul R. Goldin, "Heng Xian and the Problem of Studying Looted Artifacts," *Dao: A Journal of Comparative Philosophy* 12.2 (2013), pp. 153–60.

<sup>14</sup> Christopher J. Foster, "Introduction to the Peking University Han Bamboo Strips: On the Authentication and Study of Purchased Manuscripts," *EC* 40 (2017), pp. 167–239.

penalties, the practice is still ubiquitous and has gone through several cycles since the 1980s: the demand for Chinese antiquities in the national and international art market seems to be encouraging it despite its legal and ethical unacceptability.<sup>15</sup> I do not believe that discussing the contents of unprovenanced materials in an academic venue will affect the practice of tomb robbery in China – in fact, the government of the People’s Republic has given large grants to scholars working on these manuscripts, and so it obviously does not view the publication and analysis of such materials in a negative light.

As for the question of authenticity, my own views regarding the Yuelu documents that I shall utilize in the present essay coincide with those of Maxim Korolkov who has recently written:

While the authenticity of many unprovenanced documents is being questioned, and appropriately so as some collections have been demonstrated to be downright forgeries, the authenticity of the Yuelu manuscripts is well supported by their codicological, syntactical, and semantic features.<sup>16</sup>

The publication of the documents in the Yuelu hoard started in 2010 in a series edited by Zhu Hanmin 朱漢民 and Chen Songchang 陳松長.<sup>17</sup> At this point, six volumes have been released, the principal legal materials appearing in volumes 4, 5, and 6 (the latter in 2020, but a seventh and final volume is due for publication in 2022). The editors have organized these materials into groups depending on their physical features, such as length and width of slip, number of graphs per slip, and so on. They have published two sets of photographs, the first is in full-color, the second is in black and white made with an infra-red camera. In this latter set of photographs, images of both front and rear have been provided and a transcription into modern regular graphs has been placed alongside each photographed slip. The photo-

<sup>15</sup> Tomb robbery was outlawed by the Qin, as it was in later times, but it has continued unabated into modern times. See Wang Zijin 王子今, *Zhongguo daomu shi* 中國盜墓史 (Beijing: Jiuzhou chubanshe, 2007).

<sup>16</sup> Korolkov, *Imperial Network*, p. 19, cites Ulrich Lau and Thies Staack, *Legal Practice in the Formative Stages of the Chinese Empire: An Annotated Translation of the Exemplary Qin Criminal Cases from the Yuelu Academy Collection* (Leiden and Boston: Brill, 2016), pp. 12–13; this book provides additional references.

<sup>17</sup> Zhu Hanmin and Chen Songchang, chief eds., *Yuelu shuyuan cang Qin jian* 嶽麓書院藏秦簡 (Shanghai: Shanghai cishu chubanshe, 2010–; hereafter cited as *Yuelu*). See also Chen Songchang et al., *Yuelu shuyuan cang Qin jian de zhengli yu yanjiu* 嶽麓書院藏秦簡的整理與研究 (Shanghai: Zhongxi shuju). The legal cases published in *Yuelu*, vol. 3, were translated into English and analyzed in Lau and Staack, *Legal Practice*; they were given the title “Weiyu deng zhuang sizhong” 爲獄等狀四種 (“Four Types of Documents for Trying Criminal Cases and Other [Procedures]”). (See also Tao An 陶安, *Yuelu Qin jian fuyuan yanjiu* 嶽麓秦簡復原研究 [Shanghai: Shanghai guji chubanshe, 2016]).

graphs of the front side of the black-and-white set is then repeated and the transcription has additional notes and commentary appended to it. The volumes conclude with extensive appendices. Since the Yuelu collection provides insights into many aspects of the legal and administrative system of Qin and preserves a significant number of Qin slips whose contents are directly related to matters that arose prior to and immediately after the unification of China, I shall focus here on merely a small selection.

Among the materials are a number of legal pronouncements that include either the date of promulgation and/or the date when the legislation came into effect. With regard to the format of the legislation as presented in the Yuelu hoard, it appears that statutes are always quoted beginning with the clause “A statute on XXX states 某律曰.”<sup>18</sup> Some ordinances, however, preserve the date when they were issued. This format is the same as that found in two bamboo slips in the Longgang Qin collection. These two slips seem to be the beginning of ordinances (slip nos. 98 and 116) because their texts indicate when the item will come into effect (222 and 223 BC, respectively). In addition, two small fragments (slip nos. 138 and 183) use the term *fanling* 犯令 “violate the ordinance,” an expression also implying that the fragments belonged originally to ordinances.

In the following essay, the Yuelu hoard materials are organized into a rough chronology based upon their promulgation, and I comment on some of the significant legal and historical issues that they raise. Because each of the three volumes of legal materials (volumes 4–6) identifies each slip according to both a sequential number and the number in brackets assigned to it by the team responsible for removing it from the clump(s) retrieved from the Hong Kong antiques market, I therefore indicate in which volume of the Yuelu publications each document is to be found.

Many, if not all, of the other statutes and ordinances preserved in the Yuelu collection were promulgated during the reign of King Zheng both before and after he unified the warring states and proclaimed himself Shihuangdi 始皇帝 (First Emperor). Many were doubtless produced in response to pressing contemporary military, fiscal, and administrative issues, since the Qin sometimes gradually, sometimes rapidly, expanded its reach. However, given that they lack identifying dates, it is difficult, if not impossible, except in a few instances, to determine

<sup>18</sup> In volume 4 of the *Yuelu* documents there are sixty such examples.

when they were issued and when they came into legal force.<sup>19</sup> Nor is it possible to reconstruct the precise circumstances or reasons for their promulgation even though on occasion for ordinances, there is a preamble presented by one or more officials explaining the petition: the information provided is insufficient for us today to know the precise background of the request. For example, it is not known for certain when Wang Wan 王綰 retired from the position of (left) chief minister (*zuo chengxiang* 丞相),<sup>20</sup> and when Li Si 李斯 was elevated from the position of commandant of the court (*tingwei* 廷尉) to replace him. The given names of these men appear in the Yuelu documents. In short, I generally ignore these undated materials in the current essay.

### *Key to the Transcriptions*

- 【】 Transcription of the graph is tentative, or is interpolated by modern editors or commentators.
- <> Correction of the copyist's mistaken graph.
- () Substitution or reduplication with the graph in parentheses.
- ⌞ Hook symbol in the original text.
- , • Black dots in the original text.
- A graph is clearly present but is too damaged to transcribe.
- 𠄎 A damaged graph is interpolated by modern editors or commentators.
- 𠄎𠄎 Same as above, but more than one damaged graph.
- ☐ Mark indicating a break in the text, with an unknown number of graphs missing.
- ... Same as the above mark.
- [ ] Graph omitted by the copyist and added by the author.

<sup>19</sup> Several ordinances reveal by their language and/or their use of terminology that they must have been issued after the end of the campaigns of unification. E.g., the clause “The military campaigns are finished... 兵事畢矣” in *Yuelu* 4 slip no. 308 (1918), reprinted in *Yuelu* 6 as slip no. 68/1918, shows that the ordinance must have been promulgated shortly after most of the hostilities were over. In *Yuelu* 5, Ordinance no. 15 (slip nos. 13–18), which details the punishments to be inflicted on “followers” of a leader in the former state of Zhao after they were captured, also must have been issued after the unification, as the ordinance refers to the former states of Dai (i.e., Yan), Qi, Wei, and Jing (i.e., Chu). See Robin D.S. Yates, “The Fate of the Defeated: Qin’s Treatment of Their Enemies,” *Bamboo and Silk* 5.1 (2022), pp. 1–72, for “followers” as a technical term created by the Qin.

<sup>20</sup> All titles will be translated in accordance with the tables in Anthony J. Barbieri-Low and Robin D.S. Yates, *Law, State, and Society in Early Imperial China: A Study with Critical Edition and Translation of the Legal Texts from Zhangjiashan Tomb no. 247* (Leiden: Brill, 2015; hereafter *LSS*).

## DOCUMENT 1: REPARATION PAYMENTS IN PENAL CASES

*Text and Translation**Yuelu 5*

191 (1909) 【●】五年十一月戊寅，令耐臯以下獄已斷而未過六旬者，得以賞除。過六旬不得除。其戍，雖已行，環(還)之。過六旬

On the *wuyin* day, eleventh month, 5th year, it is ordered that, when a case concerning a crime (punished by) shaving on down (i.e., punishments less severe than shaving) has already been decided and it is not yet more than 60 days, it can be commuted by means of a reparation payment. It cannot be commuted after more than 60 days. Should it involve (a sentence of) garrison duty, although it (i.e., the repayment) may have been received, return it. More than 60 days ...

192 (1891) ...司寇，及有臯耐爲司寇，獄已斷過六旬不得以賞除者，或亡及有它臯耐爲隸臣以

193 (1685) 【下】而因以獄斷未過六旬以賞除免爲庶人者，皆當各復故吏(事)，不得爲庶人，各以計櫛籍逐之。●廷甲四

... robber-guards, as well as those who commit a crime and are shaved and made robber-guards, when the case has already been decided for more than 60 days and they have not been able to commute (the punishment) by means of a reparation payment, or they have absconded as well as have committed a crime for which they are to be shaved and made a bondservant on [down], and as a consequence the case has not been decided for more than 60 days and they are manumitted and made freedmen as a result of having (their crime) commuted by means of a reparation payment, in all cases they match being reinvestigated for each original matter, and they may not get to be made freedmen, and in each case at the [time of the] reports<sup>21</sup> pursue them with a *chuan/duo* register.<sup>22</sup> [Ordinances of the] Court A no. 4.

*Dating*

The date in the first slip of the first document probably refers to 242 BC, four years after King Zheng, the future First Emperor, came to the throne. The slip reveals that the order was promulgated on a particular day, but it does not indicate when the law was to come into effect, thus suggesting that the day of promulgation was the same as the day of its effect. Perhaps, at this early date, the Qin authorities made no difference in time between those two days.

<sup>21</sup> The editors note that *yiji* 以計 is probably an abbreviation of *yiji shi* 以計時.

<sup>22</sup> The editors note that a 櫛 was a type of document that is mentioned in *Yuelu* 3, slip no. 1530, where it is stated, “For relocations and transfers submit a *chuan/duo* to higher authorities 移徙上櫛.” Here, it would appear that the authorities order the circulation of a register on which the particulars of a wanted individual are inscribed and thereby they can effect the arrest of the individual.

*Textual matters*

The text consists of a single slip and is cut off at the end: the remaining part of the rule is unknown. The editors may well be correct in the sequence of their transcription, namely that this slip should be linked to two others. However, they have posited that there is a missing slip, missing slip no. 27, between slip no. 191 and slip no. 192, but there may not have been. Given that slip no. 191 contains 41 graphs, then presumably slip no. 192 originally contained roughly the same number. The broken top part of the slip probably contained approximately ten graphs, more than enough, in my opinion, for the sentence starting at the bottom of slip no. 191 with the words 過六旬 to be completed and to start the sentence that continues with the words 司寇.

*Legal and historical implications*

The text reveals that in the punishment system then in place, under chief minister Lü Buwei 呂不韋, there was a light mutilating punishment of shaving the face and that this punishment could be removed by the submission to the authorities of a reparation payment 賞. There was a 60-day (two-month) time limit placed on the payment after which such payment could not be made. However, should the individual guilty person be serving garrison duty (perhaps sentenced to serve a tour of garrison duty in addition to the mutilation), then the reparation payment was to be returned by the state to the individual and, presumably, the mutilation was performed.

Slip nos. 192 and 193 reveal that, in addition to the mutilating punishment of shaving mentioned in slip no. 191, the two criminal statuses of “robber-guard 司寇” and “bondservant 隸臣” were also instituted in the Qin criminal system. Furthermore, criminals sentenced to light mutilation could remove their punishment by means of a reparation payment (the amount is not specified), and thereby they could be classified as “freedmen” 庶人 instead of being labeled as convicts. But if the time limit of sixty days had passed and they failed to submit the payment, or absconded in the meantime, then they were reinvestigated for their original crime and not allowed to be classified as freedmen.

DOCUMENT 2: THE PROMULGATION OF NEW  
LEGISLATION AND ISSUES CONCERNING MARRIAGE DISPUTES

*Text and translation**Yuelu 5*

188 (1099) ●十三年三月辛丑以來,取(娶)婦嫁女必參辦券<sup>L</sup>。不券而訟,乃勿聽,如廷律<sup>L</sup>。前此令不券訟者,治之如內史



189 (1087) 律。●謹布令，令黔首明智(知)。 ●廷卒□<sup>23</sup>

From the *xinyou* day, third month, 13th year (234 BC), on, when marrying a wife or marrying off a daughter, (a person) must make a triplicate tally. When (a person) does not make a tally and (still) litigates, then do not hear (the case), as per the statutes of the Court. Formerly this ordinance (stated):<sup>24</sup> “A person who does not make a tally and (still) litigates, judge the case according to the statutes of the Governor of the Capital Area.” Take care to promulgate this ordinance, letting the black-headed ones clearly know (it). Supplementary (Ordinance) of the Court [B].

### Dating

The date on the first slip probably refers to 234 BC and indicates the date on which this ordinance was to come into effect. At the end of the rule, the term “black-headed ones” (*qianshou* 黔首) was employed for the common people. According to Sima Qian’s *Shi ji* 史記, this term was only promulgated to be the replacement of the term *baixing* 百姓 (“a hundred surnames”) at the beginning of the Qin empire in 221 BC.<sup>25</sup> So there are four possibilities: either the date at the beginning of the slip has been miswritten by the copyist; or that it has been mistranscribed by the editors of the Yuelu hoard; or that the text was recopied after 221 BC and the original term, probably *baixing*, was replaced with the term in use after the establishment of the empire. The last possibility is that Sima was incorrect in stating that the term “black-headed ones” was only introduced in 221 BC: it might have been used occasionally earlier. Zhang Boyuan 張伯元, basing himself on the work of previous scholars and his own research into recently excavated texts, has also cast doubt on the claim that the term *qianshou* originated with the First Emperor in 221 BC.<sup>26</sup> But the texts he cites present the same problems as the current document under consideration. Later copyists and scholars might have changed the original term used in the texts and entered the term *qianshou* to replace it. It will be necessary to conduct further research to determine which of these possibilities is the more likely, but my view is that *qianshou* was being used unsystematically in the preimperial period and perhaps was coined by the authorities so that they could distinguish between original subjects of Qin authorities and those who had newly submitted to them (the “new black-headed ones 新黔首”).<sup>27</sup>

<sup>23</sup> The editors suggest that the washed-out graph is “yi 乙 (B).”

<sup>24</sup> An alternative translation might be, “Formerly, this ordered that . . .”

<sup>25</sup> *Shi ji* 6, p. 239.

<sup>26</sup> Zhang Boyuan 張伯元, *Chutu falü wenxian congkao* 出土法律文獻叢考 (Shanghai: Shanghai renmin chubanshe, 2013), pp. 39–41.

<sup>27</sup> For a preliminary analysis of the term “new black-headed ones,” see Yu Zhenbo 于振波,

*Legal and historical implications*

By 234 BC, the Qin government may have recognized that there might be a disparity between the time of promulgation of the ordinance and its receipt by regional and local authorities. In other words, they perhaps recognized that the extension of Qin territory, which would have resulted in the lengthening of lines of communication, might affect the distribution of laws announced at the center. In order to be clear, therefore, a new law specified when rules were to come into effect throughout the territory controlled by the Qin, not the date when it was originally promulgated by the ruler, which would have been earlier. Presumably, individuals who had acted under the previous law would not have been punished for those acts before the date when the new rules actually became effective. In fact, two ordinances published in *Yuelu* 5, slip nos. 106 (1907) and 107 (1888), give precise regulations regarding the promulgation of new statutes and ordinances. In the first of these ordinances, the verb that is used to give royal assent is *zhao* 詔. After imperial unification in 221 BC, the word was changed to *zhi* 制. Thus, this ordinance probably was promulgated before the unification and most likely sometime between the fifth and thirteenth years, in other words, between the dates given on Documents 1 and 2. This ordinance also reveals that prior to the promulgation of statutes and ordinances, the Qin had “prohibitions 禁.” Consequently, one can speculate that part of the development of a complex legal system in the state of Qin was the change from a system based on “prohibitions” to that of one based on the more explicit regulations issued in the form of statutes and ordinances, and later, perhaps, other forms of legislation.<sup>28</sup>

The ordinance in Document 2 reveals that, prior to its promulgation, some disputes relating to marriage were adjudicated according to the Statutes of the Governor of the Capital Area (*Neishi lü* 內史律), thus the latter existed prior to 234 BC. Further, it notes that cases were to be judged according to the Statutes of the Court (*Ting lü* 廷律). So far, no examples of such statutes have been discovered, so their contents cannot be reconstructed, but they obviously included rules regarding how an official was to judge at least this type of case. It is possible that twelve of the items preserved in the Shuihudi Tomb no. 11 hoard be-

“Qin lüling zhong de ‘xin qianshou’ yu ‘xindi li’” 秦律令中的“新黔首”與“新地吏,” *Zhongguo shi yanjiu* 中國史研究 2009.3, pp. 69–78. For the implications of the term “new territories *xin di* 新地” in the military sphere, see Sun Wenbo 孫聞博, *Qin Han junzhi yanbian shigao* 秦漢軍制演變史稿 (Beijing: Zhongguo shehui kexue chubanshe, 2016), pp. 174–91.

<sup>28</sup> For other forms of Qin legislation, see Robin D.S. Yates, “Evidence for Qin Law in the Qianling County Archive: A Preliminary Survey,” *Bamboo and Silk* 1.2 (2018), pp. 403–45.

long to the “Statutes on the Governor of the Capital Area.”<sup>29</sup> However, not only is the word “statute” not used in the title appended at the end to describe them, but also one of them specifies that it is an ordinance, labeled and translated by A.F.P. Hulsewé as no. A101, which ends: “those who violate the ordinance have committed a crime.”<sup>30</sup> A number of the rules specify that they belong to the “*za* 雜” category. This term Hulsewé has translated as “miscellaneous.” In the Yuelu hoard, several statutes and a number of ordinances are identified with the word *zu* 卒. There are several possible interpretations of this word, either as a graphic abbreviation for *za* 雜 and meaning “miscellaneous,” or *zu* 卒 meaning “distribution,” which seems to be the way that the chief editor, Chen Songchang 陳松長, would like to understand the word. Alternatively, *zu* would be understood as short for *zushi* 卒史 “accessory scribe,” or that the written word should be understood as *cui/zu* 粹, with the meaning of “supplementary” or “additional,” a suggestion proposed by Xing Yitian 邢義田. Xing says in his online note that in a personal conversation in Jingzhou 荊州, Peng Hao 彭浩 revealed that a Han tomb on Tuzishan 兔子山, in the city of Yiyang 益陽, contained a board that listed the various Han statutes, including both a “Za lü” (Miscellaneous Statutes) and a “Wei zu lü 尉卒律.” This latter could be understood as “Statutes of the Accessory Scribes of Commandants.”<sup>31</sup> I tentatively agree with Xing that the last possibility is the most likely, but further evidence is necessary to make a final determination.<sup>32</sup>

Finally, it is also significant that in this document the Qin state is laying down rules for the process of marriage: in this case, the state mandates that, when a marriage takes place, a contract in triplicate must be drawn up. Presumably, two parts of the tally were to be held either by the couple or by their respective families, and the third was held by an appropriate county office in case the marriage resulted in a lawsuit. When a suit was brought, perhaps in a divorce case or a matter

<sup>29</sup> Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, ed., *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 rpt. 2001 (Beijing: Wenwu chubanshe, 1990; hereafter, *Shuihudi*), “Qin lü shiba zhong shiwen zhushi” 秦律十八種釋文註釋, pp. 61–64; Hulsewé, *Remnants of Ch’in Law*, A97–A107, pp. 86–90, where he has translated the title of the office as “Ministry of Finance.”

<sup>30</sup> Hulsewé, *Remnants of Ch’in Law*, pp. 87–88; See also Xia Liya 夏利亞, *Shuihudi Qin jian wenzi jishi* 睡虎地秦簡集釋 (Shanghai: Shanghai jiaotong daxue chubanshe, 2019), p. 170.

<sup>31</sup> Xing Yitian 邢義田, “*Weizu lü yijie*: du Yuelu shuyuan cang Qin jian zhaji zhi yi” 尉卒律臆解, 讀嶽麓書院藏秦簡札記之一, at <<http://www.bsm.org.cn/?qinjian/6650.html>>, accessed 5/8/2022.

<sup>32</sup> This is not the conclusion drawn by Zhao Bin 趙斌, who argues that *zu* 卒 refers to officials who manage public affairs 處理公務的人員. See his M.A. thesis, “Qin jian ‘zu’ xiangguan lüling yanjiu” 秦簡“卒”相關律令研究 (Hunan shifan daxue, 2019).

of inheritance, the tallies would have been matched and the officials would have made an appropriate ruling. This, and the next example, clearly demonstrate that the Qin state authorities were involved in trying to oversee judicially what we would call “civil matters” and that the litigants could be expected to take their suits to court. However, the extent to which the Qin were successful in changing local marital customs cannot be known until actual marriage contracts and other related documents are discovered. As can be seen from Case no. 7 in the group of slips named “Weiyu deng zhuang sizhong” 爲獄等狀四種, as noted above,<sup>33</sup> obviously a wide range of marital and cohabiting practices existed that the Qin tried to regulate, but were probably unable to. This situation bears comparison to the differences between much later Tang- and Song-era statutory laws relating to marriage that magistrates attempted to uphold, on the one hand, and the realities of actual social practice, on the other. The latter followed local custom and were far more diverse than was encouraged by official Confucian ideology and permitted under imperial law.<sup>34</sup> Further, as will be seen in Document no. 15, below, promulgated towards the end of the year in which the establishment of the empire took place, the Qin also sought to fix certain aspects of internal family relationships.

### DOCUMENT 3: LOANS BETWEEN PRIVATE INDIVIDUALS

#### *Text and translation*

#### *Yuelu* 4

301 (0630) ●十三年六月辛丑以來, 明告黔首: 相貸資繙者, 必券書吏<sup>L</sup>, 其不券書而訟, 乃勿聽, 如廷律。前此

302 (0609) 令必券書訟者, 爲治其繙, 毋治其息, 如內史律。

From the 13th year (234 BC), sixth month, the *xinchou* day on, (we) clearly inform the black-headed ones: As for those who lend each other goods or strings (of cash), they must (submit) a contract in writing to the officials. Should [those who] have not (submitted) a contract in writing litigate, then do not listen to them, as in the Statutes of the Court. Previously, this ordinance on the necessity of (submitting) a contract in writing when litigating [stated]: “Manage (i.e., rule on) the cash (i.e., the capital), and do not manage (i.e., rule on) the interest, as in the Statutes of the Governor of the Capital Area.”

<sup>33</sup> Lau and Staack, *Legal Practice*, pp. 188–210. See n. 16, above.

<sup>34</sup> See the analysis and discussion of cases from the *Mingong shupan qingming ji* 名公書判清明集 by Christian de Pee, *The Writing of Weddings in Middle-Period China: Text and Ritual in the Eighth through Fourteenth Centuries* (Albany: SUNY P., 2007), chap. 4 “Legal Codes, Verdicts, and Contracts: Universal Order and Local Practice,” pp. 179–220.

*Dating*

The date, 13th year, sixth month (234 BC), is three months after Document 2.

*Legal and historical implications*

The technical legal terminology is similar to that in Document 2, although the contents are quite different. For example, the text refers to the “black-headed ones,” and the same statutes are referred to, but the issue relates not to marriage, but to loans between private individuals. It is interesting to note that at this time lenders were charging interest on the loans that they issued to debtors and that the state officials would judge suits between private individuals relating to economic affairs, but only if there had been a contract signed between the two parties and that the third part of the contract had been filed with the officials. This demonstrates that the Qin state was deeply involved in private economic affairs, much as it was with the economy in general, and was therefore acting in a way that was in direct contravention to the strong recommendations of the “legalist” statesman and philosopher, Lord Shang.<sup>35</sup>

## DOCUMENT 4: PRIVATE OWNERSHIP OF WEAPONS

*Text and translation**Yuelu 6*

05/1357 ●十四年四月己丑以來，黔首有私挾縣官戟、刀沒〈及〉弓、弩者，亟詣吏。吏以平賈(價)買，輒予錢。令到盈二月弗

06/1433 詣吏及已聞令後敢有私挾縣官戟、刀、弓、弩及賣買者，皆與盜同灑。挾弓、弩殊折，折傷不口

07/1464 戟、弓、弩毆(也)，勿買，令削去其久刻<sup>L</sup>。賜于縣官者得私挾。●臣訢與丞相啓、執灑議曰：縣

08/1454 官兵多與黔首兵相鬪者，有或賜于縣官而傳(轉)賣之，買者不智(知)其賜及不能智(知)其縣官

09/1307 兵毆(也)而挾之，即與盜同灑。詣吏有爲自告，減學一等。黔首以<sup>L</sup>其故秦抵削去其久刻，

<sup>35</sup> For the involvement of local county officials in the market under the Qin empire, see Robin D.S. Yates, “The Economic Activities of a Qin Local Administration: Qianling County, Modern Liye, Hunan Province, 222–209 BCE,” in Elisa Sabatini and Christian Schwermann, eds., *Between Command and Market: Economic Thought and Practice in Early China* (Brill Academic Publishers, Leiden, 2022, 244–317), and Maxim Korolkov, “Between Command and Market: Credit, Labor and Accounting in the Qin Empire (221–207 B.C.E.),” in *ibid.*, pp. 160–241, and *idem*, *Imperial Network*. See also Zhu Degui 朱德貴, “Yuelu Qin jian zouyan wenshu shangye wenti xinzheng” 嶽麓秦簡奏讞文書商業問題新證, *Shehui kexue* 社會科學 2014.11, pp. 154–65.

10/0198+2189 折毀以爲銅若棄之，不便。更之。諸挾縣官戟、刀、弓、弩詣吏者，皆隄其鼻，有(又)以平賈(價)予錢。

11/1523 ... 受買者亦得私挾之，它如其令。 □ 之 □ ...

12/1460 ... ● 五

From the *jichou* day, fourth month, 14th year on, as for the black-headed ones who privately hold state halberds and bladed (weapons) as well as bows and crossbows, they are to immediately report to functionaries. The functionaries are to buy them at the fair market price and straightaway give the cash. It is ordered that when it comes to a full two months and they have not reported to the functionaries as well as when they have already heard the ordinance and afterwards dare to privately hold state halberds and bladed (weapons), bows and crossbows, as well as buy and sell (them), in all cases they share the same [categorical principle] with robbers. [Holding bows and crossbows that have come apart<sup>36</sup> and split, or the split and damage] is not... halberds, bows, and crossbows; do not buy (them), but order that they scrape away the brand-marks<sup>37</sup> or inscriptions. Those who have been given bestowals by the state, get to hold (them) privately.

● Your subject Xin, together with chief minister Qi and controller of standards Yi state: “Many of the state weapons are of the same category as those of the black-headed ones. There are instances of those who are bestowed (with weapons) by the state and they pass them on or sell them, and the buyers do not know that they were bestowed and they hold them being incapable of knowing that they were state weapons, and immediately [they share the same categorical principle as robbers. When they report to the functionaries that they possess (such items), it is considered as a self-denunciation and the crime is diminished by one degree. For] that reason generally [the black-headed ones] scrape off the brand-marks and inscriptions and [break] and destroy them to make [bronze] or they throw them away. (This) is not convenient. [Change] a part [of it] (i.e., of the law). As for all those who hold state halberds, bladed (weapons), bows, or crossbows and report to the functionaries, in all cases [remove] (the liability for) their crime, and further give them cash at the fair market price.”

... [those who accept or buy, also may get to hold them privately.] The rest as in accordance with the ordinances... [...] <sup>38</sup> it [...]...

<sup>36</sup> The Yuelu editors note that the term *shuzhe* 殊折 in relation to crossbows appears in fragment 8-1028 in the Liye documents (see Chen, *Liye Qin jian du jiaoshi*, vol. 1, pp. 264-65). The term also appears in the Zhangjiashan legal texts referring to cash (made of bronze and cast in the shape of a round ring with a square hole) that have split and come apart. See *LSS*, sect. 3.9, p. 636, n. 5.

<sup>37</sup> Although *jiu* could just mean “old,” it is more likely that the graph should be understood as an alternate form of *jiu* 灸 “cauterize or inscribe by burning,” as the term *jiuke* 久刻 appears in the Shuihudi Tomb no. 11 Qin “Statutes on Checking” 效律 (*Shuihudi*, “Qin li shiba zhong shiwen zhushi,” p. 59) in the sentence, “When public vessels are not branded or inscribed, fine the office bailiff one shield 公器不久刻者，官番夫贖一盾。” See Hulsewé, *Remnants of Ch’in Law*, p. 82 A89, for a somewhat different translation.

<sup>38</sup> The editors comment that the radical for this graph appears to be 貝.

## ● No. 5

*Dating*

The date in the first slip refers to 233 BC, one year after the previous two documents, and the same year that Sima Qian states that the “legalist” philosopher Han Feizi 韓非子 came to Qin as an envoy from his home state of Han 韓, was then arrested due to a conspiracy 謀 engaged in by Li Si,<sup>39</sup> and thrown in prison where he subsequently died.<sup>40</sup>

*Legal and historical implications*

The ordinance appears to be divided into two or three sections. The first gives the wording of the original ordinance. Then there is an intervention and a modification of the original proposed by three leading officials, who give their reasons for their proposal. It is unclear what the final section said, due to the fragmentation of the slip.

While nothing further is known about the high minister with the given name of Xin, nor about Yi, a controller of standards, who was presumably serving in one of the commanderies 郡,<sup>41</sup> the name of chief minister Qi appears in inscriptions on three Qin weapons.<sup>42</sup> The general scholarly consensus has been that Qi refers to Xiong Qi 熊啓, otherwise known as Lord of Changping 昌平君. But this identification has been challenged by Zhou Haifeng 周海鋒 on the basis of the appearance of Qi’s name in two Liye documents that show that Qi was still chancellor in the 25th year of King Zheng’s reign.<sup>43</sup> As above, it is rather sur-

<sup>39</sup> *Mou* 謀 was a technical legal term (*LSS*, sect. 3.1, p. 412, n. 11).

<sup>40</sup> *Shi ji* 6, p. 232; William H. Nienhauser Jr., ed., *The Grand Scribe’s Records Vol. 1, The Basic Annals of Pre-Han China* (Bloomington, Ind.: Indiana U.P.; Nanjing: Nanjing U.P., 2018), p. 246.

<sup>41</sup> “Controller of standards” seems to have been an important Qin official post at the commandery, and possibly the central, level of government that was eliminated at the beginning of the Han dynasty. It only appears once or twice in transmitted texts. For recent studies on this official, see Tsuchiguchi Fuminori 土口史記, trans. He Dong 何東, “Yuelu Qin jian ‘Zhifa’ kao” 嶽麓秦簡“執灋”考, *Falu shi yiping* 法律史譯評 6 (2018), pp. 50–72 (originally pub. *THGH* 東方學報 92 (2017)); Wang Siwei 王四維, “Qin jun ‘Zhifa’ kao: jianlun Qin junzhi de fazhan” 秦郡“執灋”考, 兼論秦郡制的發展, *Shehui kexue* 社會科學 2019.11, pp. 153–62; and Peng Hao 彭浩, “Tan Yuelu shuyuan cang Qin jian (si) de ‘zhifa’” 談嶽麓書院藏秦簡(肆)的“執灋,” *Chutu wenxian yu falu shi yanjiu* 出土文獻與法律史研究 6 (2017), pp. 84–94.

<sup>42</sup> Chen Lin 陳林, “Qin bingqi mingwen biannian jishi” 秦兵器命文編年集釋, M.A. thesis (Fudan University, 2012).

<sup>43</sup> Zhou Haifeng 周海鋒, “Qin chengxiang Qi fei Changping jun shuo” 秦丞相啓非昌平君說, <<http://www.bsm.org.cn/?qinjian/8260.html>>, accessed 5/8/2022. Eventually, Xiong Qi rebelled against the Qin in the 22nd year of King Zheng’s reign and fled to Chu, where he commanded the army that defeated Li Xin’s 李信 forces. He took over the throne of the state of Chu as king but was defeated and killed by the Qin in the 24th year. Since the Liye documents reveal that chancellor Qi was still at his post in the 25th year, after Xiong Qi had fled to Chu and been killed, it is impossible that chancellor Qi and Xiong Qi were the same man.



prising that the people are referred to as the “black-headed ones” and that the state is referred to as *xianguan* 縣官: perhaps the ordinance was recopied after 221 BC, when those two terms came into regular usage after the general renaming that was promulgated when the unification had been completed. Alternatively, perhaps the terms “black-headed ones” and *xianguan* were occasionally used in the preunification period but not systematically. What happened after the establishment of the empire was that terms were standardized and universalized; in other words, functionaries were obliged to use the prescribed terminology in official communications.

As for the substance of the law, it strongly suggests that even prior to the unification in 221 BC, ordinary members of the Qin population were not officially allowed to keep state-owned weapons. Indeed, the state clearly marked all its property, including weapons, as can be seen from the many inscriptions that have been identified and studied, including those excavated from the pits of pottery warriors and horses at the First Emperor’s mausoleum. Probably soldiers were issued with weapons when they were levied for military duty and then were obliged to return them to the authorities after the end of the campaign or the end of their service. Some obviously did not, for it is clear that there was a thriving market in weapons during the Qin. Of course, some weapons must have been privately cast in Qin and therefore lacked official inscriptions, others could have been taken from enemy soldiers, and then all of them circulated among the population. However, included in that trade were Qin state weapons, not only because soldiers had failed to return what they had been issued, but also because the state bestowed weapons on deserving members of the population. But, with the official inscription marked on them, these remained the property of the state, even though those who had been given them could keep them “privately.” But when those who were bestowed with such weapons sold them on, the buyers were held liable for theft, the crime of illegally possessing state property. The technical legal expression 與盜同澆 “share the same categorical principle with robbers” appears in the Shuihudi Tomb no. 11 legal documents and was carried over into the Han, for example, in the early-Han-dynasty Zhangjiashan legal manuscripts. It was an important term and it is significant that this principle was already in use prior to 233 BC.<sup>44</sup> In order to maintain control of the

Zhou Haifeng also concludes that Chancellor Qi was at his post from roughly the 11th year of King Zheng to the 25th year. The Liye documents refer to the archive of the Qin county of Qianling 遷陵, currently in the process of publication.

<sup>44</sup> For an extensive discussion of “*yu dao tong fa*,” see *LSS*, sect. 3.1 “Statutes on Assault,”



metal weapons that the state had cast, the petitioners ask for a modification of the law so that the state could buy back its property “at the fair market price,” whatever that was at the time.

This ordinance puts into perspective the universal confiscation of the weapons held by private individuals ordered by the First Emperor after the unification in 221 BC which were then melted down to cast bells, bell-racks, and twelve giant statues.<sup>45</sup> Prior to the unification, the state did not permit the free trade of weapons and wanted to prevent individuals from scraping off the inscriptions of state-owned weapons and selling them. Since after 221 BC there continued to be armed resistance against the imposition of Qin authority, the state also wanted to remove as many weapons out of the hands of potential rebels as possible.

#### DOCUMENT 5: MONEY IN THE PENAL SYSTEM

##### *Text and Translation*

##### *Yuelu* 4

66 (2047) 十四年七月辛丑以來，諸居贖責（債）未備而去亡者，坐其未備錢數，與盜同灋。

67 (1947) 其隸臣妾毆（也），有（又）以亡日臧（贓）數與盜同灋。

From the *xinchou* day, 7th month, 14th year (233 BC), on, all those who are resident for fines, redemption fees or debts, when it is not yet complete<sup>46</sup> and they leave and abscond, they are liable for the amount of cash that is not yet complete, sharing the same categorical principle with robbers.

As for those who are bond servants and bondwomen, in addition use the days of abscondence as the amount of illicit profit, sharing the same categorical principle with robbers.

##### *Dating*

This was promulgated a few months after Document 4, in 233 BC.

##### *Legal and historical implications*

The officials who proposed the law, which was probably an ordinance, but which has been grouped with the Statutes on Abscondence (*Wang lü* 亡律) by the Yuelu editors, are not specified.<sup>47</sup> One large ele-

pp. 431–32, n. 102.

<sup>45</sup> See *Shi ji* 6, p. 239; Nienhauser, ed., *Grand Scribe's Records Vol. 1*, p. 254. These statues have been the subject of numerous studies.

<sup>46</sup> In other words, they have not yet paid off the sum owed.

<sup>47</sup> The title “Statutes on Abscondence” is to be found on the verso side of one slip in Group 1 of *Yuelu*, vol. 4 documents, and the editors have placed just over 100 slips in that group.

ment of the system of punishment seen in both the Shuihudi Qin-era laws and the early-Han Zhangjiashan laws, that of paying off fines and redeeming punishments by means of working for the state, had evidently been instituted by 233 BC, although the amount of cash that was worked off per day is not specified as it is in the Shuihudi laws.<sup>48</sup> It is also noticeable that the same technical terminology relating to theft was applied to individuals who owed fines, redemption fees or debts to the government and were working off the amounts owing as in the previous ordinance. When such debtors absconded from the post to which the government had assigned them before the amount due was completely paid off, they were classified as having stolen from the government and were liable 坐 for the cash.<sup>49</sup> It is not entirely clear why the last sentence has been appended, specifying that for bond servants and bondwomen the number of days that they were absent would be calculated to determine the amount of “illicit profit” that was due to the state. In later law, this was the way to calculate all such cases, whether the individuals were of that convict status or not. Might this method of calculation have started by its having been applied to such convicts? Alternatively, this second part may have been added by the copyist who prepared the document for placement in the tomb and the two parts may not originally have had any connection with each other.

This rule also reveals that the state was calculating payments in cash by 233 BC, showing that the economy was quite well monetized early in King Zheng’s reign, although it is likely that the poorer members of the society did not have much access to cash.

#### DOCUMENT 6: SECURITY IN THE CAPITAL AREA

##### *Text and translation*

##### *Yuelu 4*

297 (0443) 廿年二月辛酉內史言：里人及少吏有治里中，數閉門不出入。請：自今以來敢有□來□□□ ...

298 (0544) 晝閉里門，擅贖偽□□□□□□□者，縣以律論之。鄉番[夫]吏智(知)而弗言，縣廷亦論。鄉

Some items of the early Han statutes on the same topic are found in the Zhangjiashan Tomb no. 247 documents. For a study of the crime of abscondence prior to the publication of the Yuelu evidence, see Zhang Gong 張功, *Qin Han taowang fanzui yanjiu* 秦漢逃亡犯罪研究 (Wuhan: Hubei renmin chubanshe, 2006).

<sup>48</sup> A debt was paid off at the rate of 8 cash per day or 6 cash per day, depending on whether or not the debtor received food from the state. For a discussion of the sums involved, see *LSS*, p. 203, n. 57.

<sup>49</sup> For an explanation of the technical meaning of *zuo* as “liable,” see *LSS*, sect. 3.1, p. 412, n. 10.

299(0665) 番夫吏<sup>L</sup>令典、老告里長, 皆勿敢爲。敢擅晝閉里門, 不出入口口, 贊鄉番夫吏, 智(知)弗言, 縣廷賞...

In the 20th year (227 BC), second month on the day *xinyou*, the Governor of the Capital Area stated: Members of wards/villages and lesser officials who manage affairs in the wards/villages frequently close the gates [so that people] do not exit or enter. I petition: "Henceforth, [those who] venture ... come ..."

Those who close the gates of the ward/village in daytime, or without authorization fine falsely..., the county is to sentence them according to the statutes. When the bailiff of the district and officials know about it, but do not report it, the county court is also to pass sentence; when the bailiff of the district and the officials order the village chief and the elder to inform the heads of the ward/village (5-family groups), in all cases they are not to venture to do (this). When they venture without authorization to close the gates of the ward/village in the daytime, not (letting) exit or entry..., fine the bailiff of the district and the officials; when they know and do not report it, the county court is to fine...

### *Dating*

This fragmented document is dated early in 227 BC.

### *Legal and historical implications*

The official who brings attention to the closing of the gates of wards or villages during the daytime is the governor of the capital area (*nei shi* 內史) and so perhaps the behavior of the villagers and local officials was prevalent in the capital region. There is no mention of the reasons that these individuals were acting in this way, but presumably they were concerned about the security in their neighborhood. Perhaps it related to campaigns that had taken place against the state of Zhao in the previous two years and possibly related to the famous assassination attempt by Jing Ke 荊軻 on the life of King Zheng that also took place in this year. The situation in the countryside may have been tense, but none of this background information is mentioned in the text. Lastly, it should be noted that regulations regarding the opening and closing of the gates of a ward or walled settlement and of possession and rotation of the keys are the subject of the first item in the Statutes on Households contained in the early-Han Zhangjiashan laws.<sup>50</sup> Perhaps these regulations ultimately derived from Qin precedent.

## DOCUMENTS 7–10: SOME REGULATIONS ON ARREST

### *Texts and translations*

<sup>50</sup> For the translation of the statute, see *LSS*, p. 789.

*Document 7; Yüelu 6 :*

82/1897+C7-7-1 𠄎𠄎𠄎𠄎𠄎捕 訶告者。廿年八月乙巳以來，皆以捕死臯𠄎

... those who later arrest or provide information [to the officials, as a means of] making a denunciation. From the yisi day, eighth month, 20th year, on, in all cases ... by means of arresting (those guilty of) crimes punishable by death...

*Document 8; Yüelu 4 :*

44 (2089) 廿年後九月戊戌以來，其前死及去乃後選者，盡論之如律。卿，其家畜夫是坐之。

From the *wuxu* day, intercalary ninth month, 20th year (227 BC), onward, in cases of (criminals) dying prior (to their arrest) as well as departing (i.e., leaving Qin), and then later an arrest (warrant is issued for them), in all cases sentence them according to the statutes. As for ministers, it is their family bailiff who is to be liable for them.

*Document 9; Yüelu 4 :*

70 (2010) 廿年後九月戊戌以來，其前死及去而後選者，盡論之如律。

From the *wuxu* day, intercalary ninth month, 20th year (227 BC), onward, as for those who die prior (to their arrest) as well as those who depart and later are subject to an arrest warrant, in all cases sentence them according to the statutes.

*Document 10; Yüelu 4 :*

76 (1985) 廿年後九月戊戌以來，取罪人、羣亡人以爲庸，雖前死及去而後選者，論之如律。

From the *wuxu* day, intercalary ninth month, 20th year (227 BC), onward, taking criminals and men who have absconded in a group and making them indentured laborers, although they may have died beforehand as well as departed, and then they are subject to an arrest warrant, sentence them (i.e., those taking criminals as indentured laborers) according to the statutes.

*Dating*

Documents 7–10 were promulgated in 227 BC, but later in the year than Document 6. They are all closely related, perhaps originating in the same set of ordinances, although Document 7 was clearly issued two months before the other three.

*Legal and historical implications*

The Qin authorities give special consideration to those of *qing* 卿 rank,<sup>51</sup> but it is the “family bailiffs” who are to be held liable, not the *qing* themselves. Here again we see a distinction between what Lord Shang recommended and actual Qin practice: all were not equal be-

<sup>51</sup> This may refer to ranks 10 through 18 in the Qin ranking system. See *LSS*, p. 690, n. 41.

fore the law, even though the concept of mutual liability was applied to those of higher rank. Exactly what level of rank was categorized as being “ministerial” at this moment is not clear. The term also appears several times in the Zhangjiashan early-Han legal documents and in those cases Tomiya Itaru 富谷至 suggests that such rank indicates all ranks from leader of the masses of the left (no. 10) through great leader of the masses (no. 18) on the 20-rank Han ranking-scale.<sup>52</sup> Document 10 reveals that the Qin authorities were aware that some officials were engaging in corrupt practices: they were taking criminals for whom they were responsible as well as groups of men who had absconded and were turning them into indentured laborers, forcing them to work for them privately, out of reach and oversight of the Qin government.

#### DOCUMENT 11: AN INCOMPLETE REGULATION ON FUNCTIONARIES IN THE NEW TERRITORIES

##### *Text and translation*

##### *Yuelu 6*

83/1594 廿四年十一月丙辰，御史下丞相。●自今以來，新[地吏]...

On the *bingchen* day, eleventh month, 24th year, the chief prosecutor sent (a memorandum) down to the chief minister. ●Henceforth, when a functionary [in the new territories]...

##### *Dating*

The date in this law probably refers to the end of 223 BC. Although fourteen or so graphs are washed out on the slip below the last decipherable graph and the document then breaks off, the fact that the text mentions the term “functionary [in the new territories] 新[地吏]” indicates that the term “new territories” had already been coined for the areas that the Qin had conquered and absorbed from its rival states. By the last few months of 223 BC, Qin had taken over the lands of Han, Zhao, Wei, and had occupied large parts of the state of Chu, after capturing its king, Fuchu 負芻.

##### *Legal and historical implications*

There are considerable numbers of documents in the Yuelu collection that refer to the “new territories” and/or concern functionaries assigned to them, as well as to “new black-headed ones.”<sup>53</sup> After

<sup>52</sup> Tomiya Itaru 富谷至, *Kōryō Chōkasan nihyakuyōjōnana-gō bo shutsudo Kan ritsuryō no kenkyū* 江陵張家山二四七號墓出土漢律令の研究 (Kyoto: Hōyū shoten, 2006) 2, p. 155, n. 20.

<sup>53</sup> See, e.g., references to “new territories” that occur in *Yuelu 5*, slip nos. 30 (1018); 39

the unification and the promulgation of new nomenclature, the “new territories” seem to have been contrasted administratively to territories within the “old frontiers 故徼.”<sup>54</sup> Perhaps because of a shortage of qualified functionaries given the rapidly expanding area under Qin control, functionaries who committed crimes in their official duties were punished by being assigned to serve in the “new territories” for two to four years.<sup>55</sup> Judging by the origins of functionaries in the Qin county of Qianling, modern Liye, the Qin also hired functionaries who had served as officials under the previous regimes, as well as sending officials from areas conquered and absorbed earlier, such as Shu and Ba commanderies in modern Sichuan, into those territories.<sup>56</sup>

## DOCUMENT 12: A LAW ON ABSCONDERS AND VAGRANTS

*Text and translation**Yuelu 4*

45 (2088) 廿五年五月戊戌以來，匿亡人及將陽者，其室主匿贖死罪以下，皆與同罪。亡人罪輕于

46 (2054) ...有(又)以亡律論之。

(0895); 51 (0831); 54 (1010); 129 (1914); 225 (2013); 267 (1149+C4-3-7); 268 (1926); 269 (J38); and 276 (1865). On the term *xin qianshou*, see Yu Zhenbo 于振波 and Zhu Jincheng 朱錦程, “Chutu wenxian suo jian Qin ‘xin qianshou’ juewei wenti” 出土文獻所見秦“新黔首”爵位問題, *Hunan shehui kexue* 湖南社會科學 2017.6, pp. 177-82; also n. 27, above, and n. 55, below.

<sup>54</sup> For the term *gujiao* 故徼, see *LSS*, sect. 3.2, p. 478, n. 24, where it is observed that Liye document no. 8-455 (461) (recto), row 2, line 18, listing various changes in nomenclature after the establishment of the empire, states “those without border garrisons are to be called ‘ancient frontiers’ 毋塞者曰故徼.” Line 17 states: “border garrisons are to be called ancient garrisons 邊塞曰故塞.”

<sup>55</sup> The scholarship on the terms “new territories” and “functionaries in the new territories” and the types of men who were seconded to serve in those territories is expanding. See Yu Zhenbo 于振波, “Qin lüling zhong de ‘xin qianshou’ yu ‘xindi li’” 秦律令中的“新黔首”與“新地吏”, *Zhongguo shi yanjiu* 中國史研究 2009.3, pp. 69-78; Zhu Jincheng, “Qin dui xin zhengfu di de teshu tongzhi zhengce: yi ‘xindi li’ de xuanyong wei li” 秦對新征服地的特殊統治政策, 以“新地吏”的選用為例, *Hunan shifan daxue shehui kexue xuebao* 湖南師範大學社會科學學報 2017.2, pp. 150-56; Wu Fangji 吳方基, “Liye Qin jian ‘ri bei gui’ yu Qin dai xindi li guanli” 里耶秦簡“日備歸”與秦代新地吏管理, *Gudai wenming* 古代文明 2019.7, pp. 63-75; Zhang Menghan 張夢晗, “‘Xindi li’ yu Weili zhi dao: yi chutu Qin jian wei zhongxin de kaocha” “新地吏”與“為吏之道”, 以出土秦簡為中心的考察, *Zhongguo shi yanjiu* 中國史研究 2017.3, pp. 61-70; Yuan Yuan 苑苑, “Qin jian ‘xindi li’ zaitan: jianlun Qin ‘xindi’ tongzhi zhengce” 秦簡“新地吏”再探, 兼論秦“新地”統治政策, *Xueshu tansuo* 學術探索 2019.05, pp. 125-29; Jingrong Li, “The Governance of New Territories during the Qin Unification,” *TP* 108.1-3, pp. 1-35.

<sup>56</sup> Zou Shuijie 鄒水杰, “Yuelu Qin jian ‘Shu Ba jun’ kao” 嶽麓秦簡“蜀巴郡”考, *Jianbo yanjiu* 2018 (*qiudong juan*) 簡帛研究 2018 (秋冬卷), pp. 114-26, argues that Shu was occupied first and made into a commandery with subordinate counties while Ba was still nominally under the government of a native Ba leader. Then, on the eve of the unification, Ba was amalgamated with Shu commandery and made into a Shuba commandery, with subordinate counties; after the unification, Ba commandery was split off from Shu commandery.

From the *wuxu* day, fifth month, 25th year (i.e., 222 BC), on, in cases of hiding an absconder or vagrant, the persons in charge of their residences who hide a crime of redeemable death on down, in every case share the same crime. Should an absconder's crime be lighter than...

... also sentence him according to the Statutes on Abscondence.

### *Dating*

Document 12 was promulgated in 222 BC, the year before the unification in 221 BC.

### *Legal and historical implications*

An ordinance, not a statute, it may indicate that there were considerable numbers of refugees and other migrants whose lives had been disrupted by the wars and were wandering around the countryside, perhaps trying to avoid being registered and controlled by the Qin authorities. Clearly, the Statutes on Abscondence had been promulgated before this ordinance was issued. The term “*yu tongzui* 與同罪” is defined in *Falü dawen* 法律答問 (*Answers to Questions on Legal Principles and Statutes*) according to some unnamed statute, perhaps the Statutes on the Composition of Judgments 具律, only a few items of the Qin version of which have been discovered. “Sharing the same crime” was distinguished from “sharing the same categorical principle 與同法,” and was related to the system of “mutual responsibility,” the criminal's co-residents, the members of the five-family group, and the village chief all being held liable for the same crime.<sup>57</sup> It was a legal notion that was continued into the Han dynasty.<sup>58</sup> The term “*jiangyang* 將陽” also appears in the legal texts from Shuihudi tomb no. 11.<sup>59</sup>

## DOCUMENT 13

### *Text and Translation*

#### *Yuelu* 5

30 (1018) 廿六年正月丙申以來,新地爲官未盈六歲節(即)有反盜,若有敬(警),其吏自佐史以上去繇(徭)使私謁之

31 (1014) 它郡縣官,事已行,皆以彼(被)陳(陣)去敵律論之。吏遣許者,與同臯。以反盜敬(警)事故<sup>L</sup>,繇(徭)使不用

<sup>57</sup> *Shuihudi*, “Falü dawen” 法律答問 slip no. 20, p. 98, translated by Hulsewé, *Remnants of Ch'in Law*, D 18, pp. 125–26.

<sup>58</sup> See *LSS*, sect. 3.2, p. 480, n. 36.

<sup>59</sup> *Shuihudi*, p. 131 “Falü dawen” slip nos. 163; “Fengzhen shi” 封診式 slip no. 97, pp. 163–64. Hulsewé (*Remnants of Ch'in Law*, p. 167 D143, and pp. 187–88 E6) translates it as “vagrancy” or “to wander.” The graphs could also be written *changyang* 徜徉 or *xiangyang* 相羊, 相羊, 相羊. The term also appears in the Zhangjiashan Tomb no. 247 texts.

32 (1015) 此令

●十八

From the *bingshen* day, first month, 26th Year (i.e., 221 BC), on,<sup>60</sup> as for those who have been acting for offices in the new territories for not yet a full six years, when there is a rebellion or banditry, or there is an emergency, as for those functionaries from Assistant Scribe on up, should they leave government service and privately a pay visit, going to offices in another commandery or county, after the affair is over, in all cases sentence them according to the Statute on Abandoning the Formations and Leaving the Enemy.<sup>61</sup> Functionaries who send (them) or permit (them) (to go), share the same crime. If the reason (for going to another commandery or county) is for a matter involving rebellion, banditry, or an emergency, those performing government service are not to use this ordinance. No. 18

### *Dating*

The first ordinance in this group was probably promulgated towards the end of the 25th year of King Zheng as it became effective on the 14th day of the first month of the 26th year, before the king proclaimed himself First August Sovereign.

### *Legal and historical implications*

The law concerns officials in the recently conquered territories who left their posts to pay private visits to other counties or commanderies when there was a rebellion or banditry in progress. After the suppression of the disturbance, they were to be punished according to a statute that obviously had been previously promulgated to control desertions in the armies engaged in the campaigns of unification. Thus, they were to be treated as though they had contravened a statute of military law, although it is not clear whether the Qin made a hard-and-fast distinction between laws applied to the military and those applied to civilians.<sup>62</sup> The ordinance testifies to the fact that there was ongoing resistance to the Qin conquest and imposition of Qin administration. This resistance can be amply documented in other sources, such as the Liye

<sup>60</sup> As the day *guiwei* was the first day of the first month of the 26th year, the *bingshen* day was the 14th of that month.

<sup>61</sup> This would not be the title of a statute itself, but rather an item within an unnamed statute. In excavated legal texts, and in the Yuelu Academy hoard, this format appears frequently to identify for the officials a particular item.

<sup>62</sup> Some statutes obviously applied solely to the military forces, such as the “Statutes on Garrison Soldiers” (*Shu lü* 戍律) and the “Statutes on Hastening to an Emergency” (“Benjing lü” 奔敬(警)律), whereas many other statutes included matters of direct relevance to the military while containing other rules concerning civilian affairs; e.g., statutes concerning the quality of products, including weapons, produced by state workshops. For a discussion of the “Statutes on Hastening to an Emergency,” see Chen Songchang, “Yuelu Qin jian ‘Benjing lü’ ji xiangguan wenti qianlun” 嶽麓秦簡“奔警律”及相關問題淺論, *Hunan daxue xuebao* 湖南大學學報 31.5, pp. 5-9.



archive<sup>63</sup> and in a case recorded in the so-called “Zouyan shu” 奏讞書 (“Book of Submitted Doubtful Cases”) in the Zhangjiashan Tomb no. 247 legal documents, but such resistance not recorded in Sima Qian’s *Historical Records*.<sup>64</sup>

## DOCUMENT 14: THE FIRST EMPEROR AND TREE CONSERVATION

*Text and translation**Yuelu* 5

56 (1001-1+1020) 廿六年四月己卯丞相臣狀、臣綰受制相(湘)山上: 自吾以天下已并, 親撫晦(海)內, 南至蒼梧, 凌涉洞庭之

57 (1001-2) 水<sup>L</sup>, 登相(湘)山、屏山, 其樹木野美, 望駱翠山以南樹木口(頰)<sup>65</sup> 見亦美, 其皆禁勿伐。臣狀、臣綰請: 其

58(1104) 禁樹木盡如禁苑樹木, 而令蒼梧謹明為駱翠山以南所封刊。臣敢請。制曰: 可。 ● 廿七

On the *jimao* day, fourth month, 26th year, the chief ministers, the subject (Wei) Zhuang and the subject (Wang) Wan, received an Imperial decision regarding Mount Xiang from the Emperor: “From the fact that I myself have pacified the All-under-Heaven; I personally comfort (the area) Within the Seas; I have traveled south reaching to Cangwu and have approached and crossed the waters of (Lake) Dongting, and have climbed Mount Xiang and Mount Ping; the wilds of the trees and woods are beautiful; and I have gazed on the trees and woods of Mount Luocui and southward and spied from afar that they are also beautiful. They should all be forbidden and not cut down.”

The subject Zhuang and the subject Wan petitioned: “May the trees and the woods be forbidden entirely like the trees and the woods in the Forbidden Parks and may it be ordered that Cangwu be attentive and clearly make the places from Mount Luocui on south be sealed from cutting. Your subjects venture to petition.” The Imperial decision stated: “It is permissible.” No. 27

*Dating*

Document 14 has elicited considerable scholarly discussion because it contravenes an important story told by Sima Qian in his *Historical Records*.<sup>66</sup> The Yuelu editors note that the graph for *liu* 六 “six” identifying the year is rather washed out, but it does not look like

<sup>63</sup> Yates, “Fate of the Defeated.”

<sup>64</sup> *LSS*, sect. 4.18, “The Benevolent Magistrate and the Chu Insurgency,” pp. 1332–58.

<sup>65</sup> Chen Wei proposes this reconstruction of the obscured graph; see “Yuelu shuyuan Qin jian ‘Wu’ jiaodu (xu san)” “嶽麓書院藏秦簡[伍]校讀(續三), at <<http://www.bsm.org.cn/?qinjian/7763.html>>, accessed 5/8/2022.

<sup>66</sup> The scholars who have discussed the substance of this document include: Yan Changgui 晏昌貴, “Jinshan yu zhesan: Qin Shihuang de duochong mianxiang” 禁山與赭山, 秦始皇的多重面相, *Huazhong shifan daxue xuebao (renwen shehui kexue ban)* 華中師範大學學報(人文

the graph *jiu* 九 “nine.” It is possible that it is a scribal error for *ba* 八 “eight,” given the fact that the Qin were still fighting the state of Qi in the 26th year and Sima Qian recorded that the First Emperor made a progress south in the 28th year of his reign. Calculating the days of the month on the basis of the first days of the month specified in documents in the Liye archive, it can be determined that the third month of the 26th year contained 30 days and began on the *renwu* 壬午 day, the fifth month also contained 30 days and began on the *xinsi* 辛巳 day. Therefore, the fourth month must have contained 29 days, and the *jimao* 己卯 day would have been the 28th day of that month. So, the day specified at the beginning of the ordinance is possible. The given names of the chief ministers also correspond with those given by Sima Qian for the 26th year. And given that the First Emperor is reporting an earlier visit to the southeast then it must have occurred prior to the 28th day of the fourth month, but when it occurred is not stated. It would have been dangerous for him to have traveled in that region while the Qin were still at war with the Chu, but perhaps not impossible, so the travel must have occurred not long before the First Emperor recounted his visit.

#### *Legal and historical implications*

The details of the story recounted by Sima Qian are at complete variance with what is described in this ordinance. In Sima’s story, in the 28th year the First Emperor was held up crossing the waters of Lake Dongting by an adverse wind and was told that those responsible for the inclement weather were the female deities of Mount Xiang. In a rage, the First Emperor ordered that all the trees be cut down and the mountain painted ochre, as though the trees and the mountain were criminals. In this Yuelu version, the First Emperor is instead a protector of the environment.

What might have been the reason for Sima Qian to have recounted the story of the cutting down of the trees and painting the mountain ochre? Zhao Zhenhui 趙振輝 suggests that it was because Sima Qian himself traveled in this area of the former state of Chu while compiling his history and this was a story circulating among the local residents.<sup>67</sup>

社會科學版) 57.4 (2018), pp. 129–37; Zhao Zhengui 趙振輝, “Qin Shihuang zhe Xiangshan zaitan” 秦始皇緒湘山再探, *Qin Han yanjiu* 秦漢研究 13 (2019), pp. 278–85; Yu Zhenbo 于振波, “Yuelu shuyuan cang Qin jian Shihuang jinfa shumu zhao kaoyi” 嶽麓書院藏秦簡始皇禁伐樹木詔考異, *Hunan daxue xuebao (shehui kexue ban)* 湖南大學學報 (社會科學版) 2018.3 (32.3), pp. 41–45.

<sup>67</sup> Zhao Zhenhui, “Qin Shihuang zhe Xiangshan zaitan” 秦始皇緒湘山再探, *Qin Han yanjiu* 秦漢研究 13 (2019), pp. 278–85.

He believes that this Yuelu version is more historically reliable. But this view still leaves a number of questions unanswered: did the First Emperor travel again to this region in his 28th year, as Sima Qian claims, and did he then have a completely different experience than he did two years earlier? Did he really then order the cutting down of the trees? These questions will have to remain unanswered until further evidence appears.

DOCUMENT 15: VARIOUS ISSUES  
CONCERNING MARRIAGE LAW AND CUSTOM

*Text and translation*

*Yuelu 5*

- 1 (1025) ●廿六年十二月戊寅以來，禁毋敢謂母之後夫段(假)父，不同父者，毋敢相仁(認)爲兄、姊、弟<sup>L</sup>。犯令者耐隸臣妾而
- 2 (1107) 毋得相爲夫妻，相爲夫妻及相與奸者，皆黥爲城旦舂。有子者，毋得以其前夫、前夫子之財嫁及入姊夫及予
- 3 (1108) 後夫、後夫子及予所與奸者，犯令及受者，皆與盜同灋。母更嫁，子敢以其財予母之後夫、後夫子，棄
- 4 (1023) 市，其受者，與盜同灋。前令予及以嫁入姊夫而今有見存者環(還)之，及相與同居共作務錢財者亟相
- 5 (1024) 與會計分異相去。令到盈六月而弗環(還)及不分異相去者，皆與盜同灋<sup>L</sup>。雖不身相予而以它巧詐(詐)
- 6 (1027) 相予者，以相受予論之。有後夫者不得告臯其前夫子<sup>L</sup>。能捕耐臯一人購錢二千，完城旦舂臯
- 7 (1026) 一人購錢三千，刑城旦舂以上之臯一人購錢四千。女子寡，有子及母子而欲田稼(嫁)者，許之。謹布令，令黔首盡
- 8 (0916) ...【智(知)之，毋】巨(距)臯。有口口除，毋用此令者，黥爲城旦。 ●二

From the *wuyin* day, twelfth month, 26th year (221 BC), onward, it is forbidden to venture to call the later husband of a mother “stepfather.” Those with different fathers are not to venture to recognize each other as “elder brother,” “elder sister,” or “younger brother.” For violating the ordinance, shave and make them bondservants or bondwomen and, further, they are not to get to make each other husband and wife. Those who make each other husband and wife, as well as those who engage in mutual illicit intercourse, in all cases tattoo them and make them wall-builders and grain-pounders.

Those who have children (i.e., widows) are not to get to (re-)marry by means of the property of the former father, nor that of the children of the former father; and they are not to pay the husbands of the sisters; nor are they to give (gifts) to the later husband nor to the later husband’s children, nor give (gifts) to the person with whom they have fornicated.

Those who violate the ordinance as well as receive (such gifts) all share the same categorical principle with robbers.

When a mother changes her marriage and the children venture to give their property to the mother's later husband or to the children of the later husband, cast them away in the marketplace; those who receive (such property) share the categorical principle with robbers. Previously, it was ordered that those who give (such gifts) as well as pay the husbands of the sisters in order to marry and now they possess what presently survives<sup>68</sup> and they return it, as well as when they are co-resident with each other and work together (and share) cash and property, they are immediately to engage in a mutual accounting and to leave each other, separating the households. It is ordered that when it reaches six months and they have not returned (it) as well as have not yet left each other, not separating the households, in every case they share the categorical principle with robbers.

Although they may not personally give to each other but give to each other by means of another crafty fraud, sentence (them) with giving to and receiving from each other. Those who have later husbands are not to get to denounce the crimes of their former husbands and children.

For those who are able to arrest: per one person (having committed) a crime punishable by shaving, reward two thousand cash; per one person (having committed) a crime punishable by "intact" wall-building or rice-pounding, reward three thousand cash; per one person (having committed) a crime punishable by mutilation and wall-building or rice-pounding on up, reward four thousand cash.

When a woman is a widow and she has a child, as well as when she has no child, and does not wish to (re-)marry, permit her.

Take care to publish the ordinance and order the black-headed ones completely... to know it and not fall into crime. For those who have... exonerate (them), do not use this ordinance, tattoo and make them wall-builders.

No. 2

### *Dating*

*Wuyin* was the 26th day of the 12th month, 26th year (221 BC), and the first day of the month was *guichou* according to the *Liye* documents 8-1516 and 8-652 + 8-67, the latter reconstructed by Chen Wei 陳偉 et al.<sup>69</sup>

### *Legal and historical implications*

Document 15 addresses a topic that seems far from the political or economic interests of the state, the interpersonal relationships within a family, especially after a woman remarries. It is concerned in a very detailed way with a variety of possible behaviors of children of the

<sup>68</sup> For the term *xiancun* 見存, see *LSS*, p. 477, n. 19.

<sup>69</sup> Chen, ed., *Liye Qin jiandu jiaoshi* (2012), pp. 343-44 and 52-53, respectively.

former father and their relations with their stepfather and stepbrothers and stepsisters, not only with regard to possible incestuous activities but also with regard to the disposition of property. That the state took these matters extremely seriously can be judged by the heavy penalties that it proposed meting out to those who violated the various elements specified in the ordinance, the rewards given to those who reported illicit behavior to the authorities, and that the ordinance was listed as number 2 in whatever set of ordinances it belonged to. At present, only a few studies have been devoted to this ordinance, but they focus on the first sentence and the term “*jiafu* 段父,” and not on the rest of the ordinance.<sup>70</sup> I do not believe that this ordinance has anything to do with the feelings of King Zheng (the First Emperor) about his mother’s relationship with Lao Ai 嫪毐 more than fifteen years earlier, as Zhang Yijing 張以靜 and Yang Zhenhong 楊振紅 believe.

Why were the Qin authorities so concerned about regulating these interpersonal relationships and what was the background for the promulgation of this ordinance? I believe that there are a number of possible considerations. The Qin authorities were determined to extend their system of mutual liability 連坐 and the organization of families and wards/villages 里 to all those in the conquered territories. That would ensure that the Qin could apply their legal system equally throughout their new empire and enable them to exploit the human and economic resources of the people in the form of corvée labor, military service, and other taxes. There is a good chance that the family systems and marriage customs of the lands that they had absorbed were not always exactly the same as those of the original Qin homeland. This latter point can perhaps be seen in the letter that Teng, the governor of Nan 南 commandery, circulated to all the functionaries within his jurisdiction in 227 BC – recovered from Tomb no. 11, Shuihudi. In the letter he complained about the “evil customs 惡俗” of the people.<sup>71</sup> Different marriage customs and problems of defining intra-family relationships would undoubtedly have caused great difficulties for the Qin authorities

<sup>70</sup> Zhang Yijing 張以靜, “Qin Han ‘jiafu’ chengwei ji ‘butong fuzhe’ jian de guanxi shitan: yi *Yuelu shuyuan cang Qin jian (wu)* yize lingwen wei zhongxin” 秦漢“段父”稱謂及“不同父者”間的關係試探, 以《嶽麓書院藏秦簡[伍]》一則令文為中心, *Jianbo yanjiu 2019 (Chunxia juan)* 簡帛研究 2019 春夏卷, pp. 123–35; Zhang Yijing, “*Yuelu shuyuan cang Qin jian (wu)* suojian ‘jiafu’ shiyi: jiantan Qin Han ‘butong fuzhe’ jian de guanxi yanbian” 嶽麓書院藏秦簡[伍]所見“段父”釋義, 兼談秦漢“不同父者”間的關係演變, Wang Zijin 王子今, chief ed. (Beijing: Zhongguo shehui kexue chubanshe, 2020), pp. 443–58; Yang Zhenhong 楊振紅, “*Yuelu shuyuan Qin jian (wu)* youguan nüzi chongzu jiating de faling yu Lao Ai zhi luan” 嶽麓書院藏秦簡[伍]有關女子重組家庭的法令與嫪毐之亂, *Jianduxue yanjiu* 簡牘學研究 8 (2019), pp. 175–86.

<sup>71</sup> *Shuihudi*, “Yu shu shiwen zhushi” 詔書釋文註釋, slip nos. 2 and 3, p. 13.

in determining legal liability as well as certifying inheritance, among many other issues. Clearly, the Qin wished to preserve the lines and patrimony of the original father and to separate the households of later husbands (that is, stepfathers) from them. This would have been in accordance with the Ordinance on Separating (Households) 分異令 said to have been proposed by Lord Shang in the fourth century. One can agree with Zhang Yijing that the state of Wei also seems to have treated stepfathers in an extremely harsh manner.<sup>72</sup>

The text implies that in some unspecified communities it was acceptable for children of the same mother but different fathers to marry each other. This was totally anathema to the Qin authorities who viewed such marriages as incestuous. In fact, in the Shuihudi “Falü dawen” text, it states that children of the same mother and different fathers who fornicate with each are to be executed (literally, “cast away in the market-place”).<sup>73</sup> Whether this more serious punishment existed prior to the current one, or was a later revision, is hard to tell.

Finally, it is to be noted that the Qin specified in this ordinance that widows, whether or not they had children, should not be forced to remarry. It may have been a custom in some communities to require such remarriages and here local officials are enjoined to permit a widow to refuse remarriage. This may be the first mention in a legal source of a protection of widows from forced remarriage and this may be one of the origins of the later practice of chaste widowhood.<sup>74</sup>

In short, one can determine the types of intra-family behavior that the Qin wished to suppress, and the level of their displeasure, by the degree of the punishments they proposed to inflict for violation of the rules and how the infringement of the rules was to be categorized according to preexisting Qin legal classifications.

#### DOCUMENT 16: DELAYING IN SENDING OR FORWARDING DOCUMENTS AND PROBLEMS OF SENTENCING

##### *Text and Translation*

##### *Yüelu 6*

<sup>72</sup> See note 70, above, and *Shuihudi*, “Wei li zhi dao shiwen zhushi” 爲吏之道釋文註釋, pp. 174–75.

<sup>73</sup> *Shuihudi*, p. 134 slip no. 172, 同母異父相與奸, 可(何)論? 棄市. This is translated by Hulsewé, *Remnants of Ch'in Law* p. 169 D 151, as, “When (children) of the same mother (but) different fathers fornicate with each other, how are they to be sentenced? By beheading.”

<sup>74</sup> The scholarship on female chastity and widowhood in Chinese premodern culture is too extensive to cite here.

32/1438 廿七年三月乙卯御史言：留書，數書同日偕留，皆犯令殿（也）。其當論者，皆不當相逮（逮），其駕（加）者亦不

33/1445+1441-2 當相逮，及皆不當與它論相逮。及論獄失者，其同獄一鞠有數人者，皆當人坐之。執灑、縣

34/137 官所已前論不應律者，皆當更論。請【亟】更論、論失者。☐

On the day *yimao*, third month, 27th year, the chief prosecutor stated: “With respect to delaying documents, when several documents are together delayed on the same day, in all cases it is ‘violating the ordinances.’ As for those who match being sentenced, in all cases they do not match being pursued and arrested together; should they have an additional (penalty), also they do not match being pursued and arrested together, and, in addition, in all cases they do not match being pursued and arrested together with all other (crimes) for which they are to be sentenced. In addition, when those have made a mistake in sentencing cases, and when in the same case there are several persons in one trial: in all (these) cases each person<sup>75</sup> matches being liable for them. Those whom controllers of standards and officials of counties have already sentenced not in correspondence with the statutes in all cases match being sentenced again. I petition for an immediate ordinance about ‘resentencing’ and about ‘making a mistake in sentencing’...”

### Dating

The date in the first slip of Document 16 refers to 220 BC, the year after the unification. By not indicating the existence of a missing slip between slip nos. 34 and 35, the Yuelu editors imply that there are five slips in this ordinance, slip nos. 32–36. However, as the copyist has placed a large black dot at the top of slip no. 35, and since slip no. 34 is broken after the place where the string would have been located, as well as since the rules laid out in slip nos. 35 and 36 are not related to the matter presented in the first three slips, nos. 32–34, probably there are two separate ordinances here: slip nos. 32–34, with the date given at the beginning, and slip nos. 35 and 36, comprising Ordinance no. 14, which I therefore translate in the footnote below.<sup>76</sup>

<sup>75</sup> This follows the Yuelu editors’ interpretation of *ren* 人.

<sup>76</sup> The text reads as follows (35/1456 and 36/1484):

When all those who are detained as well as prisoners (i.e., those who are incarcerated in prison) commit fornication, although it be by mutual consent, in all cases sentence them according to the statute on forcible fornication with others but exonerate the women and children (in other words, do not charge the women and the underage with forcible fornication). As for bailiffs of the office and functionaries in charge of detainees who are cognizant of their fornication but do not officially accuse them, sentence them according to

*Legal and historical implications*

The translation of this document is tentative, as it is not entirely clear what the clause 不當相逮 (逕) means, and the Yuelu editors do not offer any comment or guidance. The graph “*dai* 逮” (“to reach to”) is a graphic variant of *dai* 逕 (“to attempt arrest/to request extradition of a criminal/pursue and arrest”) that appears several times in the Zhangjiashan laws. In the Shuihudi Tomb no. 11 “Falü dawen” text a short sentence appears: 法(廢)令、犯令、逕免、徒不逕? 逕之.<sup>77</sup> This Hulswé has translated as: “Are (officials) who have been dismissed or transferred, pursued for having set aside or transgressed the Ordinances? Pursue them.”<sup>78</sup> In slip nos. 32–33 “*xiangdai* 相逕” appears to mean “to pursue and arrest for multiple crimes and to consider these crimes together as a single crime.” In other words, in the present instance, each case of delaying a document is to be considered as a separate crime. The additional (penalty) (*ja* 駕 [加]) is applied to a crime of holding up a document for an extended period of time. This can be seen in the following documents in *Yuelu* 6, where there seems to be reduplication of the ordinance and/or statute copied onto slip nos. 32–34. The immediately preceding slip, no. 31, which is somewhat washed out and split, contains the following incomplete statute:

*Yuelu* 6

31/1310 ● 律曰：[治書]，【書】[已]具，留弗[行]，[盈]五日[到]十日，貲一甲，過十日到廿日，貲二甲。後盈十日，輒駕(加)一甲。有

The statute states: In managing documents, when the documents have been prepared, to delay and not forward them, for a full five days to ten days, fine one set of armor; more than ten days to twenty days, fine two sets of armor; after (that) for a full ten days, immediately add one set of armor. When there are...

As a statute, it gives a general rule about the delaying of documents and the punishments to be inflicted on functionaries who delay forwarding them to the relevant authorities. The “addition” here is a fine of one set of armor for delaying a document for an additional ten days beyond the twenty days specified in the law.<sup>79</sup> I would argue that the phrase 其駕(加)者 in Document no. 17 refers to this additional penalty.

the statute on letting guilty persons go. When they are not cognizant of it, fine them each two sets of armor. No. 14.

<sup>77</sup> *Shuihudi*, slip no. 143, p. 126; Xia, *Shuihudi Qin jian wenzi jishi*, p. 269.

<sup>78</sup> Hulswé, *Remnants of Ch'in Law*, D 121 p. 160.

<sup>79</sup> A fine of one set of armor was the equivalent of 1,344 cash, according to the calculation of Yu Zhenbo, “Qin li zhong de jiadun bijia ji xiangguan wenti” 秦律中的甲盾比價及相關問題, *Shixue jikan* 史學集刊 2010.5, pp. 36–38.



A document parallel to this one is to be found in slip nos. 256–259. It reads as follows:

256/1893 □(令)曰：治書，書已具，留弗行，盈五日到十日，貲一甲；過十日到廿日，貲二甲；後盈【十】日，罰【駕(加)一甲。有】□

257/1895 數書同日偕留，皆犯令殿(也)。其當論者，皆不【當相逮】，其駕(加)者，亦不當相逮及皆不當與它論相逮。及論

258/1676 獄失者，其同獄一鞠，有數人者，皆當人【坐】之，執【灋縣官】所已【前論】，不(應)律者，皆當更論。請亟令更論、論

259/1682 失者。 ● 曰：可 ● 廷戊十二

The [Ordinance] states: “In managing documents, when the documents have been prepared, to delay and not forward them, for a full five days to ten days fine one set of armor; [more than ten days to twenty days, fine two sets of armor; after (that) for a full ten days, immediately add one set of armor. When there are] several documents and they are delayed together on the same day, in all cases it is ‘violating the ordinances.’ As for those who match being sentenced, in all cases they do not match being pursued and arrested together; should they have an additional (penalty), also they do not match being pursued and arrested together, and, in addition, in all cases they do not match being pursued and arrested together with all other (crimes) for which they are to be sentenced. In addition, when those in sentencing cases have made a mistake, and when in the same case there are several persons in one trial: in all (these) cases each person matches being liable for them. Those whom controllers of standards and officials of counties have already sentenced not in correspondence with the statutes in all cases match being sentenced again. [I] petition that You issue an ordinance regarding ‘resentencing’ and ‘making a mistake in sentencing.’” ● [The Imperial decision] stated: “It is permissible.” ● (Ordinances of the) Court E No. 12

In a comment on the first washed-out graph, the editors observe that it appears to be *ling* 令 and not *lü* 律, while noting the direct equivalence of the wording of the two examples.<sup>80</sup>

The last relevant quotation that parallels the first part is to be found in *Yuelu* 4 that the editors have attributed to a Statute on Levies (*Xinglü* 興律); in an earlier article, Chen Songchang attributed the second slip (no. 239 (0792)) that contains the parallel wording to the Statutes on Forwarding Documents (*Xingshu lü* 行書律).<sup>81</sup>

238 (0992) ● 興律曰：發徵及有傳送殿(也)，及有期會而失期，事乏者，貲二甲，廢其非乏事【殿(也)，及書已具...】

<sup>80</sup> The editors have placed the two examples in different groups, 1 and 4, because of the physical differences in the length and width of the slips, the number of graphs per slip, and the calligraphy.

<sup>81</sup> Chen Songchang, “Yuelu shuyuan cang Qin jian zhong de Xingshu lüling chulun” 嶽麓書院藏秦簡中的行書律令初論, *Zhongguo shi yanjiu* 中國史研究 2009.3 (123), pp. 31–37.

239 (0792) 留弗行, 盈五日, 賞一盾; 五日到十日, 賞一甲; 過十日到廿日, 賞二甲; 後有盈十日, 輒駕(加)一甲。

A Statute on Levies states: “When issuing [an order for] a levy, as well as when delivering [something or someone], or for cases in which there is an appointed time for the assembly, and the appointed time is missed, and when there is deficiency in service: fine two sets of armor. When it is a case of abandoning (an office), but it is not a case of being deficient in service [as well as when the documents have already been prepared]...delay and not forward them for a full five days, fine one shield; from five days to ten days, fine one set of armor; more than ten days up to twenty days, fine two sets of armor. After that for a full ten days, immediately add one set of armor.”<sup>82</sup>

In the preface to *Yuelu* 6, the editors argue that the first group of slips, of which there are 130 with 89 comparatively complete, belongs to the “(Ordinances of the) Court E 廷戊” and “Ordinances D and other ordinances,” with the former having 99 slips; 63 of the latter are comparatively complete, and 17 of those 63 can be spliced together. Most of these have a number at the end, but lack the identifying graphs “Ordinances of the Court E.” The editors note that the end of the ordinance in *Yuelu* 6 written on slip nos. 37-42, where the number at the end is given as 15, with a line or stroke above it, is the same as a slip in *Yuelu* 5, no. 223 (1797), where the number at the end is given as 17. And they further observe that the slip no. 31/1310, quoted above, that starts with “The statute states... ●律曰” but is broken off and lacks an ending, is essentially the same as the beginning of *Yuelu* 6 slip no. 256/1893 quoted above, which is an ordinance □(令)曰. Thus, in their opinion, all of these slips belong to Ordinances of the Court E. While this argument is possible, the editors have failed to observe that in the text quoted above as Document 3 there is mention of Statutes of the Court 如廷律 and they do not note the parallel in 239 (0792) that they have attributed to the Statutes on Levies, also quoted above. It is entirely possible that slip no 31/1310 is actually a passage of the Statutes of the Court, or of another statute, and may not be an ordinance at all. And, of course, it is possible that the copyist mistakenly wrote 律曰 instead of 令曰 at the top of slip no. 31/1310.

A further issue is the differences in the fines assessed for delaying the forwarding of documents and the length of time that the documents were delayed. In fact, there are several other ordinances and statutes in the *Yuelu* collection that list fines for delaying documents and it might have been the case that the fines to be levied depended on the type of

<sup>82</sup> This item is practically identical with item 4 in the Statutes on the Forwarding of Documents in the Zhangjiashan tomb no. 247 hoard. See *LSS*, pp. 740-41.

document as well as the official or functionary who was holding up the transmission of the material. For example, slip no. 226/C8-5-2+1726 in *Yuelu* 6 concerns postmen 郵人 who delay forwarding documents; again in *Yuelu* 6, slip nos. 123/0130, 124/0114, 125/2152, 126/2152, and 127/0174 concern the delaying of transit documents 致 that belong to the “Ordinances Common to Food Offices B” (*Shiguan gongling yi* 食官共令乙). There is another example in Document 17, an “Ordinance on the Fields of County Offices,” given below. So perhaps the Qin had developed relatively standard terminology for the delaying of documents and then applied it slightly differently as circumstances seemed to warrant over time and as the administrative procedures grew more complex. However, should there be particular circumstances, such as bad weather conditions or swollen rivers that prevented the transmission of documents (or the movement of officials), these had to be reported, as in the following example from *Yuelu* 5:

323 (1182) 圜守及縣官各以其事難〈易〉易、道里遠近，善爲期。有失期及竊去其事者，自一日以到七日，貲二甲；過七日

324 (1177+C10-3-10) 贖耐；過三月耐爲隸臣<sup>L</sup>，其病及遇水雨不行者，自言到居所縣，縣令獄史診病者令、丞<sup>簡</sup>，<sup>簡</sup>有<sup>廖</sup>百言

325 (1155) 廖所縣，縣移其診牒及病有廖、雨留日數，告其縣官，縣官以從事診之，不病，故...

Governors of commanderies as well as county governments in each case according to the difficulty or ease of a matter and the distance of the road are well<sup>83</sup> to make a time limit. As for those who miss the limit as well as stealthily abandon the matter, from one day to seven days, fine two sets of armor; for more than seven days, (impose) redeemable shaving; for more than three months, shave and make them a bondservant. Those who are sick as well as do not travel because they encounter floods or rain are to make a personal statement in the county where they are resident. The county is to order a judicial scribe to make a physical examination of the sick person in the presence of the magistrate and/or assistant. When the sickness is cured, [the person] is to make a personal statement in the county where he is cured, and the county is to transmit the boards (detailing) the physical examination as well as when the sickness was cured and the number of days of the rain delay; he is to inform his county government and the county government is to physically examine him in order to carry out the matter. When he is not sick and intentionally...

To return to Document 16, the term *genglun* 更論 “resentencing” and the term *lunshi* 論失 “making a mistake in sentencing” both appear

<sup>83</sup> *Shan* “well” here may mean “to make a reasonable time limit.”

in Case 1 “Gui Suo xiang yimou gou an” 癸、瑣相移謀購案 in *Yuelu* 3, translated by Lau and Staack.<sup>84</sup> The term *lunshi* appears also in the Zhangjiashan “Zouyan shu,” “A Successful Appeal of a Conviction,”<sup>85</sup> and in the “Statutes on the Composition of Judgments.”<sup>86</sup> Obviously an ordinance on these two legal procedures was issued, and probably was “Ordinances of the Court E no. 12,” but the text of the ordinance says nothing about “resentencing.” What is preserved in the text of Document 16 seems to be only the preamble, not the actual ordinance itself on that topic. So, there may have been another ordinance that concerned “resentencing” and perhaps one that concerned the procedures to be followed when a mistake in sentencing had been made (perhaps they were combined into a single ordinance). And given that the term *lunshi* appears in the Zhangjiashan legal documents, probably the Han continued the Qin legal procedure in this instance. Whether it continued using the procedure of “resentencing” (*genglun*) will have to be determined when more documents are discovered and/or published.

DOCUMENT 17: AN ORDINANCE ON  
THE FIELDS OF COUNTY OFFICES

*Text and Translation*

*Yuelu* 6

228/1612 ●廿田年十二月己丑以來，縣官田田徒有論(繫)及諸它缺不備穫時，其縣官求助徒穫者，各言屬所執灑，執灑口<sup>87</sup>

229/1611 爲調發<sup>L</sup>。書到執灑而留弗<sup>發</sup>，留盈一日，執灑、執灑丞、吏主者，賞各一田；過一日到二日，賞各二田；過二日【到三】

230/1599 日，贖<sup>耐</sup>；過三日，耐<sup>L</sup>。執灑發書到縣官，縣官留弗下，其官遣徒者不坐其留如<sup>耐</sup>。書下官，官<sup>耐</sup>

231/1180 徒而留弗遣，留盈一日，官<sup>耐</sup>夫、吏主者，賞各一甲，丞、令、令史賞各一盾；過一日到二日，官<sup>耐</sup>夫、吏<sup>耐</sup>...

232/1176 令、令史賞各一甲；過二日到三日，官<sup>耐</sup>夫、吏贖耐，丞、令、令史賞各二甲；過三日，官<sup>耐</sup>夫、吏耐，丞、令、令史爲

233/1159 江東、江南郡吏四歲。智(知)官留弗遣而弗趣追，與同臯，丞、令當爲新地吏四歲以上者輒執灑、【執】灑口<sup>88</sup>

234/1153 丞、主者坐之，賞各二甲。執灑令吏(史)<sup>89</sup>有事縣官者，謹以發助徒...

235/1115 如律令。●曰：可 ●縣官田口口<sup>90</sup> 田【甲】九

<sup>84</sup> Lau and Staack, *Legal Practice*, pp. 83–117; see especially notes 548 and 549, p. 102.

<sup>85</sup> *LSS*, p. 1329, n. 63.

<sup>86</sup> *LSS*, sect. 3.3 no. 9, slip nos. 95–96.

<sup>87</sup> The editors suggest that the obscure graph may be *ji* 亟.

<sup>88</sup> The editors state that the incompletely written graph may be *cheng* 丞.

<sup>89</sup> Probably the graph should be read as *shi* 史 not as *li* 吏 as the *Yuelu* editors have taken it.

<sup>90</sup> Possibly the two obscure graphs are *tiantu* 田徒 “field workers,” as in the first line of this

From the day *yichou*, twelfth month, 27th year, onward, when field workers of the fields of county offices are subject to a sentence and are detained, as well as when all other absentees do not prepare the harvest, the county office is to seek additional workers to harvest, and in each case is to inform the controller of standards to which it is subordinate. The controller of standards is to [immediately] make the adjustment. When the document arrives at the controller of standards and he delays it and does not send it out, when the delay is a full day, fine the controller of standards, the assistant to the controller of standards, and the functionaries in charge each one set of armor; for more than one day to two days, fine each two sets of armor; from more than two days [to three days], redeemable shaving; more than three days, shaving. [When the controller of standards sends out the documents to the county office, and the county office delays and does not send it on down, an office that sends workers] is not liable for the delay as is the controller of standards. When the documents are sent down to an office and the office [matches sending] workers, but delays and does not send them, when the delay is a full day, fine the office bailiff and the functionaries in charge each one set of armor, and fine the assistant, the magistrate, and the scribe director each one shield; more than [one day to two days] fine the office bailiff and the functionaries each... and the magistrate and the scribe director each one set of armor; more than two days to three days, the office bailiff and the functionaries redeemable shaving; and fine the assistant, the magistrate, and the scribe director each two sets of armor; more than three days, the office bailiff and the functionaries shaving; and the assistant, the magistrate, and the scribe director are made functionaries in Jiangdong or Jiangnan commanderies for four years.<sup>91</sup> Those who know that an office delays and does not send them and does not urgently pursue (the matter) will share the same crime. When the assistant and the magistrate match being made functionaries in the new territories for four years on up, immediately the controller of standards, the assistant to the controller of standards, and those in charge are liable for them; fine each two sets of armor. When scribe directors of controllers of standards are dealing with county offices, they are to take care to send out additional workers according to the statutes and ordinances.

(The Imperial decision) stated: "It is permissible." Ordinances of the ... Fields of County Offices A no. 9

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ordinance, but the title of the ordinance in other examples is "Ordinance of County Fields" (*Xianguan tian ling* 縣官田令).

<sup>91</sup> Neither of these two commanderies appear in other items of the Yuelu documents. Jiangdong, however, does appear once in the Liye archive and the comment on it cites the Yuelu document. See document no. 9-2519, Chen, ed., *Liye Qin jiandu jiaoshi*, vol. 2, p. 501. The Yuelu editors suspect that they are names of Qin commanderies and state that further research needs to be done on them. Obviously, they were in the south somewhere along the lower Yangzi River, but their location in relation to other known commanderies and how long they were in existence awaits either new evidence and/or further study.

*Dating*

The date in the first slip, no. 228, refers to 220 BC. Although in the Liye archive there is no slip that mentions the first day of the month 朔日 in the twelfth month of this year, Chen Wei and his team have calculated that the first day must have been *dingchou* 丁丑.<sup>92</sup> Thus the day specified in this document when the legislation came into effect must have been the 13th day of the month. Presumably, the ordinance was issued some days prior to that.

*Legal and historical implications*

In the only article that has been published to date on this set of ordinances, Chen Songchang has made a number of important observations.<sup>93</sup> The first is that there are 21 slips that can be assigned to this type of ordinance and that 6 of them have a dot of ink at the end, and after that comes the name of the ordinance. These can be divided into two groups, *jia* 甲 (A) and *bing* 丙 (C) – both numbered. This reveals that there must have been a group *yi* 乙 (that is, B), and possibly others. As Chen states, what has been preserved in the Yuelu hoard is obviously only “the tip of the iceberg” of this type of ordinance. Chen also discusses the differences between these ordinances and the “Statutes on Fields” (or Agriculture), preserved in both the Shuihudi Tomb no. 11 collection and the early-Han Zhangjiashan documents, as well as the implications of the term “*xianguan* 縣官,” and some other technical vocabulary.

The earliest item from the “Statutes on Agriculture” was excavated from tomb no. 50 at Haojiaping 郝家坪, Qingchuan county, Sichuan, sometime between 1979 and 1980, and is dated precisely to September 27, 309 BC. The contents have been the subject of many scholarly analyses. What is clear, however, is that the rules stated in the Haojiaping document are directly ancestral to some of the later laws contained in the Zhangjiashan statutes.<sup>94</sup> The ordinances are of a different nature and concern primarily the management of the county (*xian* 縣) and metropolitan office (*duguan* 都官) fields in contrast to the fields of the ordinary tax-paying people, the “black-headed ones”.<sup>95</sup> Not mentioned by Chen Songchang is that it can be seen from this ordinance that the controller

<sup>92</sup> Chen, ed., *Liye Qin jian du jiaoshi*, vol. 2, document no. 9.23, pp. 36–37, n. 6.

<sup>93</sup> Chen Songchang, “Yuelu Qin jian zhong de ‘Xianguan tianling’ chutan” 嶽麓秦簡中的“縣官田令”初探, *Zhongzhou xuekan* 中州學刊 2020.1, pp. 124–28.

<sup>94</sup> *LSS*, sect. 3.13 no. 7 (slip nos. 246–48).

<sup>95</sup> See *LSS*, p. 71, n. 8, a note discussing the Haojiaping statute and the original title of the “Statutes on Checking” 效律.

of standards, an important official at the commandery level of regional government, was responsible not only for legal matters originating in the counties below him, but also for the management of labor. In his office, he had both one or more assistants (*cheng* 丞) and scribe directors (*lingshi* 令史). Undoubtedly, then they would have had other lesser assistants and scribes to manage the administrative business. Clearly, the Qin government was very concerned about agricultural production as can be seen not only in these ordinances but also in the Statutes on Agriculture as well as in the daily activities of counties as revealed in the Qianling county archives.<sup>96</sup> Finally, it is possible that the title of this set of ordinances was also an abbreviation.<sup>97</sup>

## DOCUMENT 18: FRAUDULENT BEHAVIOR OF SCRIBES

*Text and Translation**Yuelu 6*

252/1807 中縣史學童今茲會試者凡八百卅一人<sup>L</sup>，其不入史者百一十一人。臣聞其不入者泰抵惡爲吏而與其

253/1810 口繇(徭)故爲詐(詐)，不肖(肯)入史，以避爲吏<sup>L</sup>。爲詐(詐)如此而毋罰，不便。• 臣請：令泰史遣以爲遼東縣官佐四歲，日備免之。

254/1871 日未備而有遷(遷)鼻，因處之遼東<sup>L</sup>，其有耐鼻，亦徙之遼東而皆令其父母、妻子與同居數者從之，以罰其

255/1859 爲詐(詐)，便。• 臣昧(昧)死請。制曰：可。廿九年四月甲戌到胡陽。• 史學童詐(詐)不入試令。出廷丙廿七

... As for the student scribes in the central counties<sup>98</sup> who attended the examinations this year, altogether there were 841 persons. Those who did not enter the scribal (profession) were 111 persons. • Your subject has heard that of those who did not enter (and become functionaries), for the most part hated to become functionaries or that, together with their ... government service and therefore acted fraudulently<sup>99</sup> and were unwilling to enter the scribal (profession) and thereby avoided becoming functionaries. To act fraudulently like this and receive no punishment is not advantageous. • Your subject petitions: “Order the grand scribe to send and make them office assistants in counties in Liaodong (commandery) for four years. When the time is up, dismiss them. When the time is not up and they commit a crime (for which the punishment is) banishment, as a consequence locate them in Liaodong. As for those who commit a crime (for which the punishment is) shaving, also trans-

<sup>96</sup> See Yates, “Economic Activities of a Qin Local Administration.”

<sup>97</sup> See note 90, above.

<sup>98</sup> The term *zhong xian* 中縣 appears in *Yuelu* 4, slip no. 24 (1978), and most likely refers to counties under the jurisdiction of the governor of the Capital Region (*neishi* 內史).

<sup>99</sup> Without knowing what the washed-out graph at the beginning of the slip is, it is hard to decipher the meaning of the sentence.

fer them in Liaodong and in all cases order their fathers and mothers, wives and children, together with those enumerated as their coresidents, to follow them, and thereby punish them for acting fraudulently. That would be advantageous. Your subject, on pain of death, petitions.” The Imperial decision stated: “It is permissible.” • 29th year, fourth month, on the day *jiaxu*, it arrived in Huyang. • Ordinance on Student Scribes Fraudulently not Entering (the Scribal Profession) or Taking the Examination. • Taken from the (Ordinances of) the Court C no. 27

### *Dating*

The date at the end of this document probably refers to 218 BC. The county mentioned at the end of the document, Huyang, could also be written with the graphs 湖陽. It appears in the “Statutes and Ordinances of the Second Year” and was subordinate to Nanyang commandery under the Western Han state. It was located approximately fifty km southwest of the modern Tanghe 唐河 county, Henan province.<sup>100</sup> Given that this notation at the end of the ordinance indicates the day when it arrived in Huyang, the ordinance itself must have been promulgated a few weeks earlier. The notation also suggests the possibility that the ordinance was used in this county or that whoever inscribed the text on the slip used the version that arrived in Huyang. Whether or not this inadvertently reveals the origin(s) of the Yuelu hoard remains to be determined.

### *Legal and historical implications*

Document 18 concerns the fraudulent behavior of scribal students in the “central counties,” which probably were subordinate to the governor of the Capital Region, the *neishi* 內史. The students were deemed to have acted fraudulently because they refused to become scribes 入史. The text indicates that 111 students out of the 841 who attended the scribal examinations balked at becoming a scribe and taking up the post of a functionary, a significant refusal rate (a little over 13%), especially given the shortage of functionaries in the recently conquered territories. The petitioner, who may have been the governor himself, given that he knew the exact number of students who had taken the examination and how many had refused to take up a position, believes that for them to act like this and not be punished would neither be beneficial nor advantageous. In the early-Western Han statutes from Zhangjiashan, it is written that scribes, diviners, and invocators who do not take up their duties are to be fined four *liang* (approx. 62 g) of gold, and study-mentors half that amount.<sup>101</sup> So by the Western Han,

<sup>100</sup> *LSS*, sect. 3.26, p. 1040, n. 249.



the statutes had been revised, and heavy punishments for such recalcitrant behavior were specified.

The petitioner requests that the grand scribe send those scholars to be punished by forcing them to serve for four years in Liaodong 遼東, which probably refers to the commandery of Liaodong (otherwise written as 遼東) far in the northeast – newly acquired from the defeated state of Yan.<sup>102</sup> Note here that it would appear to be the responsibility of the grand scribe in the central administration to assign posts to new scribes. If these men sent to Liaodong were to commit further crimes there, then the petitioner recommends that they be forced to stay more permanently. He also urges that all their fathers and mothers, wives and children as well as coresidents accompany them to Liaodong as punishment for their refusal to take up posts as scribes.

#### DOCUMENT 19: A STATUTE ON THE ESTABLISHMENT OF OFFICIALS

##### *Text and Translation*

##### *Yuelu* 4

212 (1389) 置吏律曰：有辜以罷（遷）者及贖耐以上居官有辜以廢者，虜、收人、人奴、羣耐子、免者、贖子，輒傳其

213 (1378) 計籍。其有除以為冗佐、佐吏、縣匠、牢監、牧馬、簪裹者，毋許，及不得為租。君子、虜、收人、人奴、羣耐子、免者、

214 (1418) 贖子，其前卅年五月除者勿免，免者勿復用。

A Statute on the Establishment of Officials states: “As for those who have committed a crime (punished by) banishment, as well as those resident in an office for crimes (punished by) redeemable shaving on up who commit a crime for which they are cast aside, [as well as] captives, impounded persons, slaves, the sons of all those (punished by) shaving, the dismissed, and sons of those (punished with) a redeemable (crime), immediately add them to the registers of accounts. Should some of them be appointed as assistants without set appointments, assistants to officials, county carpenters, supervisors of prisons, horse herders, embellished horse (guards?), this is not permitted, and they are not to get to collect taxes. Regarding sons of gentlemen, captives, impounded persons, slaves, the sons of all those (punished by) shaving, the dismissed, and sons of those (punished with) a redeemable (crime), as for those who were appointed before the fifth month of the thirtieth year (217 BC), do not dismiss them. As for those who have been dismissed, do not use them again.

<sup>101</sup> *LSS*, sect. 3.27 no. 5, p. 1097. The post of “study mentor” (*xue'er* 學師) was established at least in imperial Qin times, as the term appears in the Liye archive.

<sup>102</sup> See Hou Xiaorong 后曉榮, *Qin dai zhengqu dili* 秦代政區地理 (Beijing: Shehui kexue wenxian chubanshe, 2009), pp. 380–81.

*Dating*

This statute must have been promulgated after 217 BC, given the date that is (unusually) included in the statute, but exactly when is not clear. However, the term “*rennu* 人奴” appears and this is a term for slaves that seems to have been dropped from use in favor of plain “*nu* 奴” sometime shortly after the unification. “Nu” then becomes the standard word for male slaves down to modern times. I suspect, therefore, that this statute was promulgated in 217 BC, or shortly thereafter.<sup>103</sup>

*Legal and historical implications*

The reason for not dismissing the individuals listed is not stated, but it is probably because the Qin authorities were short of manpower to fill all the posts that opened up to them after the conquest. They needed “all hands on deck,” even for such low posts as those listed in the statute, which is also the reason why they transferred officials who had committed administrative infractions to posts in the new territories for up to four years. The “captives” referred to those members of the enemy states who had been captured by the Qin during the wars of unification,<sup>104</sup> and the “impounded persons” referred to family members who had been enslaved by the government for serious crimes. Last, it is to be observed that the term *junzi* 君子, “sons of gentlemen,” was still being used as a social and legal category, not purely as a moral one. Exactly how this term was defined – who were considered “sons of gentlemen” – is not clear, but it probably referred to those whose fathers were of a certain rank, perhaps above that of *bugeng* 不更 (“Service Rotation Exempt”), the fourth rank.<sup>105</sup>

## CONCLUDING REMARKS

In this article, I have translated and commented on a few documents in the Yuelu hoard that contain the dates when they were promulgated or when they came into legal effect. The documents range from the early years of King Zheng’s reign down to shortly after the establishment of the Qin empire – more than twenty years. Their contents range widely, from issues relating to the legal process, to military affairs, and to economic and family matters. The latter is surprising,

<sup>103</sup> In addition, the written form of *zui* 臬 was also changed to 罪 soon after the unification, and this is another indication that this statute was promulgated in the early 210s.

<sup>104</sup> See Yates, “Fate of the Defeated.”

<sup>105</sup> For an extended discussion of the various meanings of *junzi* in Qin (and Chu) manuscripts, see Li Yuening 李玥凝, “Qin wenshu jian ‘junzi’ hanyi tanyan” 秦文書簡“君子”含意探研, in Wang Zijin 王子今, chief ed., *Qin shi yu Qin wenhua lunji* 秦史與秦文化論集 (Beijing: Zhongguo shehui kexue chubanshe, 2020), pp. 428–42.

since there was no previous evidence to suggest that the Qin authorities were concerned with civil affairs. None of these documents appear in transmitted historical texts. Documents nos. 13–15 were all promulgated (or, in the case of Document no. 13 became effective) in the same year as the establishment of the empire, that is, the 26th year of King Zheng's reign (221 BC), when he changed his title to First August Sovereign (*Shi huangdi* 始皇帝). They cover a range of issues and raise serious questions about the completeness and accuracy of the information recorded by Sima Qian in his *Historical Records*. At the very least, they show that there were alternative versions of the history of the Qin empire than what he presented in his great work and that legal matters were not of particular interest to him. Furthermore, they show that the First Emperor and the highest Qin officials were not just concerned about military affairs in the years leading up to and including the unification of China: they were concerned with a wide range of economic and social issues, among others, that they chose to address using the legal system that they were creating. Law in its various forms, therefore, was a crucial instrument for institutionalizing and developing the new era of a united subcontinent.

Referred to in the texts of these documents are many specific legal and technical terms that became ubiquitous in late-Qin and early-Han times that are known from properly scientifically excavated materials. They throw a significant amount of light on the development of the legal and administrative system of the Qin in the years immediately preceding and following the imperium. Notable, too, are the names and titles of the officials who requested decisions from King Zheng, later First Emperor. Many of these men have been lost to history, as they do not appear in Sima Qian's *Historical Records*, but these new materials, although they were not scientifically excavated, do in a small way bring their existence back into view.

#### LIST OF ABBREVIATIONS

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|-----------------|--|
| <i>LSS</i>      | Anthony J. Barbieri-Low and Robin D.S. Yates, <i>Law, State, and Society in Early Imperial China</i> |
| <i>Shuihudi</i> | Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, ed., <i>Shuihudi Qin mu zhujian</i> 睡虎地秦墓竹簡      |
| <i>Yuelu</i>    | Zhu Hanmin 朱漢民 and Chen Songchang 陳松長, chief eds., <i>Yuelu shuyuan cang Qin jian</i> 嶽麓書院藏秦簡        |