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Paperwork Before Paper: Law and Materiality in Early Imperial China

By

Jesse David Watson

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in

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in the

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University of California, Berkeley

Committee in charge:

Professor Michael Nylan, Chair  
Professor Nicolas Tackett  
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## ABSTRACT

Paperwork Before Paper: Law and Materiality in China's Early Empires

by

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Doctor of Philosophy in History

University of California, Berkeley

Professor Michael Nylan, Chair

This dissertation examines the role of law in the formation of China's earliest empires (221 BCE-220 CE). Using thousands of manuscripts written on bamboo and wood which have been excavated in China in the last several decades, I argue that legal practice was central to the formation of imperial identity. Building on theoretical insights from the anthropology of paperwork, as well as from recent studies of manuscript culture, I argue that legal manuscripts can be read not only as representations or records of social conditions, but as material objects whose production and circulation itself constituted new forms of sociality. Eschewing a conventional law and society approach, my dissertation follows a diverse array of actors—women, servants, magistrates, foreigners—as they use practices of writing and law to lodge claims of status, identity, kinship, and property.

In linking newly excavated manuscripts with discussions of law and materiality, this dissertation aims to challenge multiple orthodoxies derived from notions of European legal and bureaucratic modernity. Accounts of early law have long cited certain types of legal text, such as penal statutes, as evidence for the idea that early law was informed by the rationality of state and directed at social control. By locating legal practice not in state sanction but in the circulation of legal manuscripts, I am able to reframe this persistent debate to take account both of newly discovered manuscripts and also to interpret received sources in new ways. My dissertation thus complements and provides crucial context for revisionist trends in the historiography of imperial China that query the central presumption of despotism and legal orientalism. By linking law to material practices, I am further able to sidestep teleological narratives of rationalization and state control, and to provide a plausible explanation of why imperial legal culture could persist both beyond the geographic reach of the imperial court and long after its collapse.

*To my parents*

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My mother and father may not have anticipated that in fostering my curiosity about the world they would encourage me to wander far from New Mexico. Though it has meant that I have spent too much time away from them, I am grateful that they did, and for their unquestioning support and love. I dedicate this dissertation to them.

## Chapter 1: Paperwork: an Introduction

Hundreds of thousands of discarded manuscripts recovered in China in the last forty years represent the largest volume of paperwork to survive from the ancient world outside Egypt and the Near East.<sup>1</sup> Written on bamboo, wood, clay, silk and paper, manuscripts bear witness to a world in which social relations came to be mediated by inscribed objects. From birth to old age, and even in death, women and men, imperial subjects and indigenous people, servants and nobles navigated the world armed with records, receipts, contracts, petitions, and even directives to the underworld. Discarded in pits and disused wells across the former territory of the Qin and Han empires (221 BCE-220 CE), newly discovered caches of manuscripts reveal a constant generation of paperwork.

Voluminous but fragmentary, routine yet lacking cohesion, paperwork (and bamboo-, wood- and silk-work) presents a specter at once strange and familiar. Discarded manuscripts show the myriad ways in which people used written media to pursue business, enact vendetta, claim inheritance, exchange property, right injuries, construct kinship, and even to imagine birth, old age and death. Taken as a whole, however, such manuscripts defy easy characterization in terms of social control or state rationality. Despite extravagant claims sometimes made for government-by-manuscript, it is clear that the problem of coherence plagued court officials and local governors, who sought to portray order in their reports even as they struggled with the

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<sup>1</sup>Excavation reports routinely supply numbers of inscribed fragments which might be taken as a very rough suggestion of the magnitude of recent finds. Compiling these totals, one scholar estimated that by 2002, 240,000 manuscripts and manuscript fragments had been found at over one hundred discreet sites from across the territory of the former empires. See Xie Guihua 謝桂華 et al., “Ershi shiji jianbo de faxian yu yanjiu 二十世紀簡帛的發現與研究,” *Lishi yanjiu*, no. 6 (2003): 144–69. Subsequent finds, including those of Tuzishan (2013; 20,000 fragments) and May 1<sup>st</sup> Square (2010; nearly 7000 fragments) bring this number higher. It should be noted that what is being enumerated varies widely, to the extent that such numbers may be more misleading than helpful. A tablet inscribed with hundreds of graphs, for example, might be counted alongside a small fragment. For manuscript assemblages from Egypt, the Mediterranean and the Near East, see Roger S. Bagnall, *Reading Papyri, Writing Ancient History, Approaching the Ancient World* (London; New York: Routledge, 1995); Maria Brosius and Oxford Workshop, *Ancient Archives and Archival Traditions Concepts of Record-Keeping in the Ancient World* (Oxford: Oxford Univ. Press, 2011).

inexorable accumulation of manuscripts too voluminous for any one person to read.

If individual manuscripts are intelligible (if we are lucky), in the aggregate discarded paperwork adds up to something less than a coherent picture, less than a panoptic vantage. How can one write a history if fragmentary texts amount to something less than a whole? Can the material history of the manuscript enable the historian to narrate a story when the text itself is too fragmentary to reconstruct “what really happened”? How does a history written from the perspective of the production and circulation of manuscripts differ from one which imagines the manuscript as text?

The very opacity of paperwork suggests a potential for the historian. In this dissertation I propose that discarded manuscripts bear witness to a phenomenon that has been written out of social and legal histories of the early empires: the widespread use and generation of paperwork which both preceded and served as a condition of any potential use of writing as an instrument of surplus extraction or social control. If accounts produced at imperial courts sometimes describe the emperor at the hub of an empire of texts, and social and legal histories of the early empires often imagine writing as an instrument of an emergent bureaucracy, discarded manuscripts suggest a competing story in which coherence rose out of legal practice, in the narratives of petitioners, the learned use and interpretation of statutes by magistrates, the collation of imperial edicts by the elderly and the disabled. In following the life-cycle of manuscripts from composition to destruction, we discover a world dominated not by the univocal will of the state, but instead one inhabited by women, servants, the elderly, foreigners, high magistrates and officers; a world in which the *summa divisio* between law and society, between bureaucracy and subject is continuously traversed.

### *Miraculous Archives and Paperwork Pileups*

Court histories reveal a deep ambivalence about paperwork in the early empires. On the one hand, court rhetoricians and others whose expertise lay in writing sometimes sought to portray documents as a source of power equal or superior to other forms of knowledge. In such accounts, documents present their possessor with a panoramic view of the empire: statutes and ordinances describe a vision of social order, household registers reveal a tax base and a source of conscription, maps indicate where strategic strengths and weaknesses lie. In more candid moments, however, historians describe how manuscripts often fell short of their promise: falsified or incomplete, out-of-date or misplaced, and always, inexorably, accumulating.

In some court histories, household registrations, maps, statutes and other

documents are depicted as more valuable than money and more powerful than military force. Take, for example, the exemplary first Han chancellor, Xiao He (late 3<sup>rd</sup> century - 193 BCE), himself a former officer and an early companion of the future first emperor of Han, Liu Bang. When at the fall of the Qin dynasty Liu Bang “first marched in to the capital of Xianyang,” the *Shiji* (*Archivist’s Records*, c. 100 BCE) tells us,

...all the generals rushed to the storehouses and fought with each over how to divide the gold, silk and other riches, while Xiao He alone entered the offices of the Qin’s Chancellor and Imperial Counsellor and gathered up all the statutes, ordinances, maps and documents and stored them away. When Liu Bang became King of Han, Xiao He served as his Chancellor. Xiang Yu [Liu Bang’s rival] arrived later and with the other nobles, massacred the inhabitants of Xianyang, burned the capital, and then marched away. But because Xiao He had collected all of the Qin maps and documents, Liu Bang was able to inform himself of the strategic defense points of the realm, the household and capitation tallies and relative strength of various districts, and the ills and grievances of the people.<sup>2</sup>

沛公至咸陽，諸將皆爭走金帛財物之府分之，何獨先入收秦丞相御史律令圖書藏之。沛公為漢王，以何為丞相。項王與諸侯屠燒咸陽而去。漢王所以具知天下阨塞，戶口多少，彊弱之處，民所疾苦者，以何具得秦圖書也。<sup>3</sup>

The strategic lay of the land, the wants and desires of the people, the relative wealth of the districts: to someone as perspicacious as Xiao He, statutes, ordinances, household registrations and maps offered knowledge to be treasured more than riches sought by venal generals, and more useful than the brute, destructive force of rivals such as Xiang Yu. The *Shiji* depicts the empire embodied and made legible by the archives of the chancellor. It was through manuscripts rather than royal pedigree or heavenly intervention that the empire passed to Liu Bang, the first commoner to become emperor. As Wang Chong (27- c. 100 CE) was later to write in a comment on Xiao He’s lust for manuscripts:

The power of documents enabled the Han to rule the world.

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<sup>2</sup> Adapted from Sima Qian, *Records of the Grand Historian, Volume 1*, trans. Burton Watson (New York: Columbia University Press, 1971), 125–26.

<sup>3</sup> *Shiji* 53.2014.

漢之所以能制九州者，文書之力也。<sup>4</sup>

That court historians and rhetoricians would make extravagant and even fantastic claims for the “power of documents” (*wenshu zhi li* 文書之力) is unsurprising: such after all was their own livelihood. Yet the historian’s efforts to lionize paperwork over other work are sometimes exaggerated, as in an improbable speech attributed to the first emperor of Han. In this speech, Liu Bang responds to veteran generals who complain that Xiao He was rewarded with the largest fief of all, despite the fact that he “merely sat there with brush and ink deliberating and debating, never campaigning on the sweaty steeds of battle”:

“Gentlemen,” the emperor asked, “do you know anything about hunting?”

“We do,” they replied.

“And do you know anything about hunting dogs?”

“We do.”

“Now in a hunt,” the emperor said, “it is the dog that goes out and kills the prey. But the one who unleashes the dog and points out where the prey is hiding is a person. You gentlemen have only succeeded in capturing the fleeing beast, so your achievement is that of dogs. But it is Xiao He who released you and pointed out the place. His achievement is that of a person.”<sup>5</sup>

高帝曰：「諸君知獵乎？」曰：「知之。」「知獵狗乎？」曰：「知之。」高帝曰：「夫獵，追殺獸兔者狗也，而發蹤指示獸處者人也。今諸君徒能得走獸耳，功狗也。至如蕭何，發蹤指示，功人也。」<sup>6</sup>

Xiao He was the huntsman, the military men are but hunting hounds: indelicate words placed in the mouth of Liu Bang, a man whom the *Shiji* paints with a crude yet penetrating honesty. Only the strength of that depiction allows the writer to skirt the implications of his words: in a society which viewed the hunt as a royal prerogative, a macrocosm of military command, the assertion that Xiao He rather than the emperor himself directed the hunt fell little short of *lèse-majesté*. It was one thing to suggest that Liu Bang had profited from the power of manuscripts, quite another to suggest that literate courtiers were truly those in charge.

If the *Shiji* presents Xiao He as an argument for the extra-human power of

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<sup>4</sup> Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋, 4 vols. (Beijing: Zhonghua shu ju, 1990) vol. 2, 591 (14.38 “Bie tong”).

<sup>5</sup> Adapted from Sima Qian, *Records of the Grand Historian, Volume 1*, 127.

<sup>6</sup> *Shiji* 53.2015.

the archive, other accounts make clear that manuscripts and documents proved to be more than human in other ways too. At a basic level they presented a problem of limited time: who could read them all? Chu Shaosun (fl. late 1<sup>st</sup> century BCE), for example, tells of one memorial, submitted by the enigmatic Dongfang Shuo, which consisted of three thousand tablets that two able-bodied men of the palace were “barely able to carry”:

The emperor began reading from the first tablet. Each time he stopped reading he made a hook-shaped mark 乙 [so as not to lose his place.] After two months, the emperor reached the end.

人主從上方讀之，止，輒乙其處，讀之二月乃盡。<sup>7</sup>

A single memorial took two months to read: even if manuscripts did contain all that one needed to rule the world, what help was it if reading them absorbed all one’s time?

A second, inevitable problem concerned whether information contained in manuscripts could be trusted to be true or accurate. Meritless or not, suspicion of falsification and forgery spoke to a sort of trauma of paperwork, a paranoia of officers that became a persistent trope of court rhetoric.<sup>8</sup> Gong Yu (d. 44 BCE), for example, suggested in a memorial to the throne that local governments

select nimble officers whose specialty is making accounts and records that can be used to deceive higher offices.

擇便巧史書習於計簿能欺上府者。<sup>9</sup>

Willful falsification of accounts by officers whose special skill lay in creating manuscripts real enough to pass muster raised the prospect that supposedly invaluable documents received by the court were worth little more than the wood or bamboo on which they were written. Such tropes were not confined to memorials: in a quixotic edict instructing officials to quarantine “real records from fabricated ones, lest they become confused,” Xuandi (r. 74-49 BCE) himself complained that

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<sup>7</sup> *Shiji* 126.3204. The emperor is Wudi (r. 141-87 BCE).

<sup>8</sup> Such rhetoric was particularly associated with those court factions opposed to expansionist court policy, factions which Michael Loewe has labelled “reformist,” see Michael Loewe, *Crisis and Conflict in Han China, 104 BC to AD 9* (London: Allen & Unwin, 1974).

<sup>9</sup> *Han shu* 72.3077

The annual accounts and records are no more than so much paperwork; officials concentrate on deception in order to avoid making a [real] count.

上計簿，具文而已，務為欺謾，以避其課<sup>10</sup>。

Annual accounts amounting to no more than stuff: false records, or merely the suspicion of the presence of falsified records, induced a sort of document paralysis, a state in which manuscripts were useless until verified, audited, and the source of suspicion excised, like some malignant yet elusive malady. Even elaborate measures to guarantee authenticity, to assign responsibility and to supply independent verification could not always forestall the shadow of a doubt.<sup>11</sup>

More than forgery, however, officials were threatened by the constant generation of new manuscripts. Take the first two items on the *Shiji*'s list of manuscripts Xiao He collected from the Qin chancellor's office: statutes and ordinances (*lüling* 律令). As these translations suggest, statutes and ordinances were rules and procedures broadly legal in character, but they were also, judging from the *Shiji*'s account (in which Xiao He made off with them) and from archaeological evidence, material objects. A "Statute on Agriculture" found in Sichuan province, for example, is inscribed on a tablet nearly half a meter long, the extraordinary length marking an object with royal pedigree.<sup>12</sup>

Copied, excerpted, collected and replicated, such manuscripts had a tendency to accumulate. If the statutes and ordinances that Xiao He of the *Shiji* encountered in the chancellor's office gave him the lay of the land, the Xiao He of the *Han shu* (*Han Documents*, c. 100 CE) is instead confronted with a paperwork pile-up: his heroism lies not in using volumes of legal manuscripts to control the realm, but in culling them down to a human scale, in this case a collation of statutes reduced to multiple sections.<sup>13</sup> Even in the

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<sup>10</sup> *Han shu* 8.273.

<sup>11</sup> Such elaborate measures are too numerous to cite, but see for example the "Statutes on Checking" in A. F. P. Hulsewé, *Remnants of Ch'in Law* (Leiden: E.J. Brill, 1985), 94–101.

<sup>12</sup> Or perhaps "to again prepare a statute on the making of fields." See Sichuan sheng bowuguan 四川省博物館, "Qingchuan xian chutu Qin gengxiu tian lü mu du 青川縣出土秦更修田律木牘," *Wenwu*, no. 1 (January 1982): 1–18; Hulsewé, *Remnants of Ch'in Law*, 212.

<sup>13</sup> Lit. "nine sections" (*jiu zhang* 九章), but the word "nine" may signify "many sections," see *Han shu* 23.1096. The identity of this collation of statutes in nine (or many) sections is the subject of nearly endless controversy, due in part to the fact that evidence from excavated manuscripts does not corroborate the account of the *Han shu*, and the fact that the *Shiji* does mention a collation in "nine (or many) sections."

*Han shu* account, despite the miraculous talent of Xiao He, the problem of pileup only gets worse. By the reign of Wudi in the late second century:

Statutes and ordinances (contained) three hundred and fifty-nine sections, for the death penalty four hundred and nine cases (covering) one thousand eight hundred and eighty-eight cases, and thirteen thousand four hundred and seventy-two cases of judicial precedents for crimes (deserving) death. Manuscripts piled up on tables and filled cupboards; officials tasked with arranging them were unable to look at them all.<sup>14</sup>

律令凡三百五十九章，大辟四百九條，千八百八十二事，死罪決事比萬三千四百七十二事。文書盈於几閣，典者不能徧睹。<sup>15</sup>

In 75 BCE, Xuandi again complained in an edict that “statutes and ordinances are vexatiously numerous,” asking for proposals of what could be “removed, expunged, lightened or decreased.”<sup>16</sup> A half century later, Chengdi complained once more that “the statutes are vexatiously numerous (consisting of) over a million words; ‘extra requests’ and irrelevant precedents increase by the day.”<sup>17</sup>

Ten thousand precedents and a million words of statutes: the force of such manuscripts was the force of gravity on tables and cupboard shelves. So far from promoting social control, statutes and ordinances had themselves become uncontrollable.<sup>18</sup> Sheer volume rendered manuscripts opaque; even those

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For a recent review of the scholarship on this question see Xu Shihong 徐世虹 and Zhi Qiang 支強, “Qin Han falü yanjiu bai nian (san) --1970 niandai zhongqi zhi jin: yanjiu fanrong qi 秦漢法律研究百年 (三) ——1970 年代中期至今: 研究繁榮期,” in *Zhongguo gudai falü wenxian yanjiu di liu ji* 中國古代法律文獻研究第六輯 (Beijing: Shehui kexue wenxian, 2012), 104–6.

<sup>14</sup> Adapted from A. F. P. Hulswé, *Remnants of Han Law* (Leiden: E.J. Brill, 1955), 338.

<sup>15</sup> *Han shu* 23.1101.

<sup>16</sup> 律令煩多而不約可蠲除輕減者。 *Han shu* 23.1103; Hulswé, *Remnants of Han Law*, 339.

<sup>17</sup> 律令煩多，百有餘萬言，奇請它比，日以益滋。 *Han shu* 23.1103; Hulswé, 340.

<sup>18</sup> It would not be until the middle of the 3<sup>rd</sup> century BCE, long after the fall of the Han empire, that officials were able to produce something resembling a “code,” and it is an open question to what degree such a code circulated or influenced legal practice. For an overview of the debate about codification in the scholarly literature, see Xu Shihong 徐世虹 and Zhi Qiang 支強, “Qin Han falü yanjiu bai nian (san) --1970 niandai zhongqi zhi jin: yanjiu fanrong qi 秦漢法律研究百年 (三) ——1970 年代中期至今: 研究繁榮期”; Xu Shihong 徐世虹, “Chutu falü wenxian yu Qin Han

tasked with organizing tablets and scrolls were unable to look at them all. Despite the constant urging of emperors (themselves nominally the source of law), no one seemed able to stem the constant generation of stuff.

### *The Discipline of Writing*

The hope that writing can impose rationality on the world implies a confidence that writing itself can be disciplined. How then should we understand the inexorable onslaught of paperwork, against which so many eminent courtiers and emperors struggled in vain? What is the meaning of this accumulation of stuff? Contemporary sources make clear that even in Han times people struggled to rationalize paperwork. The scholar Wang Chong, for one, lamented that although many people produced it, no one was able to explain what paperwork was doing. Classicists, whom the court relied on to explain things, were unprepared to explain changes in the media landscape because they spent their time reading the ancient sages in deluxe editions composed on bamboo or wooden strips of “two feet and four inches” in length, and thus knew nothing of “the affairs of the Han, which are not recorded in classics,” but instead in “vulgar records” (*su ji* 俗記), “one foot files” (*chi ji* 尺籍), “short documents” (*duan shu* 短書) and “routine writings on bamboo and silk” (*zhu bo yin wen* 竹帛胤文).<sup>19</sup> But the problem wasn’t confined to book-bound classicists; even those who worked with paperwork were unable to give an account of what they were doing. Officers themselves, writes Wang Chong, “do not know the Way of officers”:

the only thing they know is how to investigate suits and examine cases, how to send documents back and forth.

文吏不曉吏道，所能不過案獄考事，移書下記<sup>20</sup>

The expertise required to produce manuscripts (*zhi shu* 治書) was described as a practice (*xi* 習) which one learned by doing; the training of officers likened to that of woodworkers and excavators. If woodworkers learned to make beams and pillars, and excavators learned to dig cellars and

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ling yanjiu 出土法律文獻與秦漢令研究,” in *Chutu wenxian yu falü shi yanjiu di yi ji* (Shanghai: Shanghai Renmin Chubanshe, 2012), 58–79.

<sup>19</sup> Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋 3 (11 “Gu xiang”), 112; 12 (36 “Xu duan”), 557.

<sup>20</sup> Huang Hui 黃暉, 12 (36 “Xu duan”), 577.

ditches, officers learned to “carve and finish [bamboo and wood] manuscripts”(*diao zhuo wen shu* 彫琢文書).<sup>21</sup> Like the knowledge of a woodworker, the knowledge of officer was embedded in practice, a sort of procedural memory, stored in the cerebellum rather than the temporal lobe. It was of no use to ask them why they were doing what they were doing:

Officers say of themselves that they know the work of offices and that they understand registers and documents. But ask them if in knowing the work they thoroughly comprehend the duty of it or if they clearly understand its meaning, and they will certainly be at their wits’ end.

文吏自謂知官事，曉簿書。問之曰：「曉知其事，當能究達其義，通見其意否？」文吏必將罔然。<sup>22</sup>

Classicists were at a loss to explain something they did not practice, officers received lawsuits and processed cases but could not elucidate the why of it all: if paperwork amounted to a social policy or a program of resource extraction so much was obscure to its practitioners. Officers busied themselves in constantly working on disputes, suits, claims and complaints, in other words in reacting to legal questions and legal narratives generated by people through paperwork. It is in this spirit that Wang Ji, in the second quarter of the first century BCE, memorialized the throne complaining that the court and its officials “had no long-term policy” but instead they

focused only on documents and registers, on hearing complaints and deciding cases.

務在於簿書斷獄聽訟而已。<sup>23</sup>

Hearing lawsuits and deciding cases: the wearied and disdainful tone of officials speaking of what we might call civil law betrays the fact that complaints, petitions and lawsuits occupied much of any magistrate’s time.<sup>24</sup>

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<sup>21</sup> 夫文吏之學，學治文書也，當與木土之匠同科。Huang Hui 黃暉, 12 (35 “Liang zhi”), 552.

<sup>22</sup> Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋 12 (36 “Xu duan”), 567.

<sup>23</sup> 未有建萬世之長策。 *Han shu* 22.1033

<sup>24</sup> For an important correctives to the notion that early China lacked civil law see Xu Shihong 徐世虹, “Han dai minshi susong chengxu kaoshu 漢代民事訴訟程序考述,” *Zhengfa luntan (Zhongguo zhengfa daxue xuebao)*, no. 122–130 (2001); Zhang Zhaoyang, “A Note on Civil Cases in Early China,” *The Journal of the American Oriental Society* 128, no. 1 (2008): 121.

## *Previous scholarship*

Perhaps the clearest sign that the court did not always imagine law as sanction and writing as an instrument of state is that courtiers such as Wang Ji recommended remedying paperwork not with statutes, but with ritual.<sup>25</sup> Indeed, when guides to paperwork first emerged in the first and second centuries CE, they were often associated with a genre of writing devoted to court ritual and etiquette.<sup>26</sup> Of these the only work to survive in substantial form is the *Duduan* of Cai Yong (133-192 CE), the subject of important studies by Enno Giele and Wang Guihai.<sup>27</sup> The title of the work, which means something like *Independent Assessments*, is open to at least two interpretations according to Giele. One reading understands the title as referring obliquely to the emperor, who hears the opinions of his courtiers but issues an independent judgment. In the second reading, the assessor is Cai Yong, who is giving his opinion on the proper composition of court manuscripts. Whichever interpretation one takes, it is clear that, in portraying the emperor “as the hub of all decision making,” Cai Yong is making a statement about the way manuscripts *should* operate. The *Duduan* describes manuscript forms and the formulae used therein, beginning with four types of manuscript issued in the name of the emperor, and then proceeding to four types of manuscript composed by courtiers.

Implied in Cai Yong’s work is the danger that manuscripts might not mirror courtly etiquette, that lack of care in the material production of manuscript forms and the composition of formulas might lead to political disorder, and thus that the composition of paperwork is a matter that requires the subtlety and masterful expertise of which Cai Yong himself is an exemplar. As a sort of guidebook to manuscripts, Cai Yong’s work is an expert opinion, a sort of best practice, proscriptive rather than descriptive in character.

The proscriptive nature of the *Duduan* is particularly apparent in Cai

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<sup>25</sup> *Han shu* 22.1033. The emperor Xuandi and his court did not accept Wang Ji’s memorial.

<sup>26</sup> For example such works as the *Han zhidu* 漢制度 of Hu Guang’s (91-172 CE), the *Han jiuyi* 漢舊儀 of Wei Hong (25-57), the *Han guan dianzhi yishi xuanyong* 漢官典職儀式選用 of Cai Zhi (fl. 175 CE), and the *Han guanyi* 漢官儀 of Ying Shao (140-204 CE), see Sun Xingyan 孫星衍, *Han guan liu zhong* 漢官六種 (Beijing: Zhonghua shu ju, 1990). The relation of these sources to the *Duduan* is discussed in Enno Giele, *Imperial Decision-Making and Communication in Early China: A Study of Cai Yong’s Duduan* (Wiesbaden: Harrassowitz, 2006), 37–42.

<sup>27</sup> Giele, *Imperial Decision-Making and Communication in Early China: A Study of Cai Yong’s Duduan*; Wang Guihai 王桂海, *Handai guan wenshu zhidu* 漢代官文書制度 (Guilin: Guangxi shifan daxue, 1999).

Yong's statements about the use of the imperial forms *zhi* 制 and *zhao* 詔, variously forms of imperial speech, formulas used in manuscripts, and names of manuscripts wherein such formulas are used.<sup>28</sup> In search of a systematic difference between these two terms Giele devotes sixteen pages of close analysis to Cai Yong's statements on these subjects. Finding it impossible to completely disentangle Cai Yong's usage of the two terms, Giele concludes that Cai Yong employed "a double standard," by which he means that Cai Yong uses the terms to refer both to the utterances of the emperor (in which case there is no distinction between *zhi* and *zhao*) and to refer to manuscript forms (in which the distinction is consequential). Despite this "double standard," Giele suggests that,

Cai Yong must be given credit for his definitions.... [which are] much more consistent than what the authors and editors of the various dynastic histories have left us with.... The historiographers were perhaps not even conscious of any inconsistency [i.e. double standard] because the language allowed them to get around a classification. In this way, a *zhizhao*, "an imperial decision instructed....," may have been abbreviated to a simple *zhao*, "instructed....," without anyone taking notice.<sup>29</sup>

If Cai Yong's definitions are better than those of earlier writers, it is not because he has given us a better account of what paperwork is; rather it is because he has suggested a refinement of practice, in which the distinction between formula and form was necessarily and productively fluid. Read as a definition, a statement of what a *zhao* or a *zhi* is or does, Cai Yong's statement, like those of predecessors like Shusun Tong, falls short, failing to resolve paperwork into rational categories. Read as a courtly guide to paperwork etiquette, however, it is precisely Cai's ability to resolve "double standards" that marked him off as a virtuoso of manuscripts. One should no more take Cai Yong as a description of the way manuscripts worked than one should take etiquette books like those of Emily Post as a description of social practice in the US the early 20<sup>th</sup> century; in both cases the need for an expert suggests that practice itself was fraught.

The problems with using Cai Yong's typology as a guide to the way manuscripts worked in early China are apparent in Wang Guihai's 1999 study of Han administrative documents, which adopts the typologies of received texts, particularly the *Duduan* and the *Wenxin diaolong* 文心雕龍 (6<sup>th</sup> century CE), to classify excavated manuscripts, beginning with edicts and progressing

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<sup>28</sup> Giele renders these terms as "decision" and "instruction," respectively.

<sup>29</sup> Giele, *Imperial Decision-Making and Communication in Early China: A Study of Cai Yong's Duduan*, 260.

through the imperial hierarchy.<sup>30</sup> Here Wang's often useful and suggestive ideas are marred by an ahistorical methodology which uses late Eastern Han and post-Han categories to classify earlier manuscripts.

Another form of rigor is introduced in Li Junming's *Typological Division of Qin and Han Manuscripts* (2009), a sophisticated attempt to create a typology of excavated manuscripts.<sup>31</sup> Li builds upon earlier studies by Michael Loewe, Nagata Hidemasa, Li Tianhong and others, and represents perhaps the most comprehensive and ambitious of manuscript catalogues, the culmination of a lifetime of editing manuscripts, particularly discarded manuscript assemblages of the Northwest.<sup>32</sup> In his catalogue, Li Junming adopts a strict protocol in which he eschews later categories and attempts to discover the innate logic (*benshen de guiliu*) of early manuscripts, using names by which people in the early empires themselves referred to manuscripts. The result is a collation of over one hundred and fifty manuscript types, which Li Junming divides into six categories 1) those whose operation is self-contained, like letters and dispatches 2) a special category of statutes and ordinances and other manuscripts which are valid for a long time 3) registrations and account books which are divided into columns and can be used in accounting 4) records and audits which are objective records of things or behaviors 5) tallies and contracts that are used to establish credit and often come in duplicates, to be kept by various parties 6) sealed manuscripts and manuscript labels.<sup>33</sup>

Li Junming also suggests that the same manuscripts might also be divided in different ways according to 1) by the person who dispatched the manuscript, from emperor to commoner, 2) by the affair described (illness, amnesty, emergency) 3) by material object described (horses, grain, weapons, tiles), 4) by the status of the persons described therein: officials, conscripts 5) by hierarchical direction of the transmission—up or down 6) by the spatial direction of the transmission—south, north, east, west 7) by the physical nature of the manuscript—dimensions, number of copies, shape 8) by character, whether copy or original 9) by the temporal validity of the manuscript: daily, monthly, in all seasons, constant. Of course, there are also manuscripts that

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<sup>30</sup> Wang Guihai 王桂海, *Handai guan wenshu zhidu* 漢代官文書制度.

<sup>31</sup> Li Junming 李均明, *Qin Han jiandu wenshu fenlei jijie* 秦漢簡牘文書分類輯解 (Beijing: Wenwu, 2009).

<sup>32</sup> Some earlier studies include Michael Loewe, *Records of Han Administration*, University of Cambridge Oriental Publications, no. 11-12 (London: Cambridge U.P., 1967); Nagata Hidemasa, "A Diplomatic Study of the Chü-Yen Han Wooden Strips," *Acta Asiatica* 58 (1990): 38–58; Li Tianhong 李天虹, *Juyan Han jian buji fenlei yanjiu* 居延漢簡簿籍分類研究 (Beijing: Kexue, 2003).

<sup>33</sup> Li Junming associates these categories with names found in early manuscripts, with the result that one is confronted simultaneously with a philological argument about the meaning of a term and an argument about the nature of a manuscript.

are labelled, or that refer to themselves internally by a title, or again manuscripts that themselves don't carry names.

Li Junming's attempts to classify paperwork suggest the difficulty of seeking a single order in paperwork. The social embeddedness of manuscripts meant that a single manuscript might be classified in a number of different ways. Just why a manuscript might be so difficult to tie down might be explained, for example, by reference to the Qingchuan manuscript from Sichuan described above, which is at once a statute, a royal command, a piece of correspondence, and a tomb artifact. Should we classify the same manuscript in different categories? Or does the heterogenous nature of the manuscript itself suggest a history unto itself?

In demonstrating the elusiveness of reducing writing to function, Giele and Li Junming open up the possibility of describing the social life of paperwork. An emphasis on the ontology of language tends to preclude the narration of what might one call the social biography of manuscripts. Just as the embeddedness of paperwork forecloses the potential stitching together manuscripts into a single rationality (the ruler's will, for example), the materiality of manuscripts opens up the possibility of tracing coherence in a narrative of production and use.

Each chapter of the dissertation provides what one might call a "collective biography" of a kind of manuscript. The opening chapter is devoted to the petition, a form of paperwork almost completely unknown prior to recent discoveries. Employing the formula "I myself speak," and taking the form of "speech conveyed by manuscript," the petition supplied a wide variety of people—servants, women, indigenous people—with a manuscript voice, which they adapted to a wide variety of purposes and physical formats. Petitions were used to claim property, to dispute inheritance, to pursue debts, and even to communicate with the underworld. The first chapter reveals how a wide variety of people in the early empires including servants, indigenous people and women, generated law in part by generating stuff: first, petitions in great volume, second, new forms of petitions that enabled the petitioner to do new things and make new claims, and finally, when considered in aggregate, new normative orders. In such cases, so far from exerting social control, the magistrate reacts passively to the great volume of petitions and new legal claims that confront him. Even if the magistrate holds the "jurispathic" power to reject certain normative arguments and to deny petitions, the material accumulation of petitions attests that the corresponding "jurisgenerative" production of legal norms by petitioners.

The following chapter turns to statutes, particularly statutes on kinship. Many scholars have commented both on the resemblance of statutes to secular, positivist law, and have also noted how statutes seem to function almost mechanistically. Using a series of "doubtful cases" (wherein the doubt is not

a doubt about the guilt of a suspect, but a doubt in the magistrate's mind about how to use statutes in a particular case), the chapter demonstrates how legal experts deliberated carefully about the use of statutes, precedents, ritual models, and weighed the relevance and significance of evidence. So far from mechanistically applying laws, legal experts decried decisions that "accorded with the letter of the law," while being "unacceptable to people's minds." A particular focus in this chapter is on the ways in which kinship is used as a legal technique to create or break bonds of obligation.

If the first chapters focus mainly on paperwork in discreet spheres, first petitioners then magistrates, the final chapter opens the scale to a sort of panorama, tracking the conditions under which a particular kind of manuscript—the edict--came to be conceived, and then tracing its history on an imperial scale, before finally encountering the edict in use. The edict is ostensibly the command of the emperor and thus presumably an excellent example of the idea of positive law, that is law as the rational expression of the ruler's will. This chapter investigates edicts on the elderly. It first tracks the contingent steps by which the elderly came to made an object of legislation: the creation of birth registries, the adoption of numerical age in place of stature in the determination of fitness for service, the subsequent creation of over twenty gradations of old age based on numerical age and orders of merit, the emergent imperial practice of periodically granting privileges to different categories of the elderly. Like the ordinances and statutes that pile up in the second section of this introduction, two centuries of periodical edicts amount not so much to a rational program, but to a confusion of rules and precedents. If such confusion makes imperial policy on the elderly difficult to codify, it offered an opening to the litigious septuagenarians who use private collations of rules and precedents to pursue cases against local officials. In other words, we see the edict used by subjects against officials, the ruler's will used by private individuals against people who are typically imagined as agents of the state.

### *Law's Many Emperors*

At the core of a materialist account of legal writing is the fact of accumulation. Piles of manuscripts are a reflection of the way that legal actors generated new normative accounts of the world.<sup>34</sup> In this way,

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<sup>34</sup> For a classic account of the normative generation of law see Robert M Cover et al., *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press, 1992); Important studies in the emergent yet heterogenous study of law and materiality include Cornelia Vismann, *Files* (Palo

paperwork suggests an account that stands in contrast with studies of early China that equate writing with discipline, the emperor's laws with *raison d'état*.<sup>35</sup>

Arguments that early imperial law functioned as an instrument of social control can be read as a response to the “legal orientalism” of figures from Thomas Staunton to Max Weber, who shared the premise that Chinese law fell short of the rationality of Western law.<sup>36</sup> To ascribe rationality to early imperial law is to put it on par with legal traditions that progress rather than stagnate. Read in this light, A.F.P. Hulsewé's characterization of early imperial law, to take one example, is a radical corrective, placing the early empires in a global trajectory toward legal modernity:

The main body of the laws was rational and political, consisting of

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Alto, Calif.: Stanford University Press, 2008); Bruno Latour, *The Making of Law*, trans. Marina Brilman and Alain Pottage (Cambridge, UK, 2010); Ben Kafka, “Paperwork: The State of the Discipline,” *Book History* 12 (2009): 340–53; Ben Kafka, *The Demon of Writing: Powers and Failures of Paperwork* (New York: Zone, 2012); Christopher Tomlins, “Historicism and Materiality in Legal Theory,” in *Law in Theory and History: New Essays in a Neglected Dialogue* (Oxford: Hart Publishing, 2016).

<sup>35</sup> Among those writing in English, scholars as diverse as A.F.P. Hulsewé, Robin Yates, Anthony Barbieri-Low, and Ernest Caldwell have all suggested that the function of statutes and ordinances, and written law more generally, is social control. A.F.P. Hulsewé writes that “main body of the laws was ... aimed at the smooth functioning of government and the maintenance of its stability by the preservation of law and order in society,” while Robin Yates and Anthony Barbieri-Low's list of ten functions of law emphasizes the use of statutes and ordinances to manage, control, monopolize, and project state power into society. Ernest Caldwell likewise writes that “written statutory law” was a “means for maintaining administrative and social control.” A. F. P. Hulsewé, “Ch'in and Han Law,” in *Cambridge History of China Volume 1: The Ch'in and Han Empires 221 B.C.-A.D.220* (Cambridge: Cambridge University Press, 1986), 523–24; 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), 210–42; Ernest Caldwell, *Writing Chinese Laws: The Form and Function of Legal Statutes Found in the Qin Shuihudi Corpus* (London: Routledge, 2018), 1. Charles Sanft's revisionist critique, which frames law in terms of cooperation, is an important counterpoint to this literature, see Charles Sanft, *Communication and Cooperation in Early Imperial China: Publicizing the Qin Dynasty* (SUNY Press, 2014).

<sup>36</sup> Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, Mass: Harvard University Press, 2013); Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (Columbia University Press, 2015).

specific regulations aimed at the smooth functioning of government and the maintenance of its stability by the preservation of law and order in society. These rules represent a great step in the process of secularization of Chinese society. They are far from archaic and are no longer based only on "natural law" or on time-hallowed custom and usage; they are quite clearly expressions of the will of the ruler. They constitute a body of rules with purely pragmatic connotations, uniformly applicable to the whole population except in those spheres where the hierarchic principle continued to apply.<sup>37</sup>

The progression from archaic to rational, from custom to policy, the pragmatic will of the ruler, all examples of what one writer has succinctly labelled "the use of writing to command assent and obedience."<sup>38</sup>

Yet if some statutes are phrased in rational terms and edicts purport to be the speech of the ruler, it is worth considering 1) whether the rationality of some rules implies a systematic body of law given the fact that the earliest codification occurred only *after* the imperial period, 2) whether the speech of the ruler amounted to the same thing as the will of the state, and finally 3) whether legislation constitutes a body consisting of the "whole population," clearly demarcated from the state, given that no such division is to be found in the sources.

Contrasting modern (or modernist) accounts of early imperial law with ancient descriptions of cabinets overflowing with statutes, a disjunction emerges between a single rationality and many, between the idea of writing as an instrument of discipline and the material proliferation of manuscripts which suggest that writing itself could not be controlled. If recent scholarship emphasizing similar dilemmas in modern bureaucracies is anything to go by, it may not be that early imperial law is less archaic than we anticipate but perhaps that we are less modern than we sometimes assume.<sup>39</sup>

I should make clear that an account of paperwork is by no means a narrative of general resistance to power, nor is it a narrative of complication or fragmentation.<sup>40</sup> Power struggles are central to legal practice, and they

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<sup>37</sup> Hulsewé, "Ch'in and Han Law," 523–24.

<sup>38</sup> Mark Edward Lewis, *Writing and Authority in Early China*, SUNY Series in Chinese Philosophy and Culture (Albany: State University of New York Press, 1999), 1. For an important critique, see Michael Nylan, "Textual Authority in Pre-Han and Han," *Early China* 25 (January 1, 2000): 205–58.

<sup>39</sup> Kafka, *The Demon of Writing: Powers and Failures of Paperwork*.

<sup>40</sup> Though of course it does not preclude narratives of resistance, see especially chapter 2. For critiques of "adversariality" as a mode of argument, see K. E. Brashier, *Ancestral Memory in Early China*, Harvard-Yenching Institute Monograph Series 72 (Cambridge, Mass: Harvard University Asia Center for theHarvard-

clearly contradict the notion that the early empires were held together by a hierarchical, patriarchal vision of harmony. At the same time, they do not imply the hegemony of a centralized power against which all contestations of power were arrayed. If manuscripts themselves are fragmented and laconic, together they point to a general condition in which the trauma and promise of paperwork were shared by courtier and commoner, magistrate and petitioner alike.

This dissertation proposes that writing had not one but many emperors; not only successive generations of imperial clan members, but also the emperor appealed to in a servant's petition or embodied in a collation of edicts copied by a septuagenarian a thousand miles distant from the capital. Law as paperwork reveals this generative character of early imperial law, the ways in which people used legal forms to imagine normative worlds of which mounds of discarded paperwork are the residue.

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Yenching Institute : Distributed by Harvard University Press, 2011), 37–40; Sanft, *Communication and Cooperation in Early Imperial China*, 7–8.

## Chapter 2 “I Myself Speak”

The petition, a type of manuscript identifiable by its format and its formula “[I] myself speak,” is remarkable for giving a voice—mediated by manuscript form—to a wide swath of people: commoners, women, foreigners, “submitted” peoples, and even servants, all of whom found themselves in an early imperial world governed by paperwork.<sup>41</sup> Unlike legal rules which sought to regulate, control and sanction, the normative force of the petition was derived from its formula and from its material form. For this reason, and because the content of the petition was not determined in advance, petitioners adapted petition manuscripts to a range of purposes: to sue neighbors, to complain of violent threats, to recover private debts, to lay claim to property and will it in testaments, and even to convey people and things to the underworld.<sup>42</sup> The crucial feature of the petition was thus that it tended to generate both new kinds of petitions and an ever-widening circle of petitioners.

Taken as a whole, this constant generation meant that petitions piled up and threatened to overwhelm officers and relay runners, a scenario vividly recorded in contemporary histories.<sup>43</sup> But if the petition itself has been overlooked in accounts of early imperial law because court historians invariably viewed petitions and petitioners with condescension, newly discovered manuscripts suggest that the paperwork pileup nevertheless forced officials to action. Taken together such actions shaped the scope and content of legal practice both in terms of who had access to the law and what they could do with it, making it far more open than traditional accounts would have us believe. In this way newly discovered petitions provide the opportunity not merely to add new details to what is already known of early imperial practice, but also to reinterpret it.

In this chapter my aim is not to provide a comprehensive study of petitions, but rather to survey new discoveries of petitions from across the

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<sup>41</sup> I am grateful to Mitra Sharafi and the participants in the 2019 Hurst Institute of Legal History for their extensive comments on an earlier version of this chapter.

<sup>42</sup> After completing this chapter, Nick Tackett noted the similarities of some of the themes in this chapter with those of Valerie Hansen’s work on contracts from later periods, a felicitous consonance. Petitions were, by nature, addressed to officials, and thus form a contrast with later contracts, which as Hansen points out, actively rejected state intervention. Contracts from the later periods thus represent an even more stark example of paperwork that does not rely on the force of state. Valerie Hansen, *Negotiating Daily Life in Traditional China: How Ordinary People Used Contracts, 600-1400* (Yale University Press, 1995).

<sup>43</sup> For such accounts see the introduction and especially *Han shu* 83.3399, discussed below.

imperial period in order to suggest how the practice of petitioning drove legal practice. Needless to say, the selection is driven by accident or preservation bias, but it is nonetheless striking that petitions are replete with actors largely absent from doctrinal accounts of law and court histories (for example, a great deal of the surviving petitions were made by women).

I have organized the chapter by archeological site, in a roughly chronological order, admittedly somewhat at the expense of thematic coherence. I begin with a set of petitions from the late 3<sup>rd</sup> century BCE assemblage of manuscripts from a county office found at the site of Liye 里耶 in the remote mountains of Hunan province. I next proceed to a series of funerary petitions found in tombs near Jiangling (modern Jingzhou, Hubei) dating to the second century BCE which show the variety of material forms and uses to which petitions could be put. A series of reports from the relay station of Xuanquan in the desert northwest, near Dunhuang, Gansu province, bear witness to the use of petitions by foreigners in international trade disputes and by so-called “submitted” peoples. Only one of these manuscripts is dated (38 BCE), while the others may date anywhere in a two-hundred year range, from the first century BCE to the first century CE. I end with a decision of 108 CE, rendered at Changsha (Hunan province) in response to a petition from a woman who sued her mother-in-law over some property.<sup>44</sup>

The petitions thus cover distinct geographical regions, from the desert northwest to the deep south, as well as distinct political formations: the Qin both as a kingdom prior to 221 BCE and as an empire after that date, in addition to the Western Han (202 BCE-9 CE) and Eastern Han empires (25-220 CE).<sup>45</sup> In largely ignoring changes of power at court, I do not mean to suggest the period was one of continuity, though it is true that the assemblages themselves often span more than more than one regime. Nor do I mean to suggest that political changes had little effect at the local level, or that the practice of petitioning did not vary from region to region. Extant petitions make clear that it did.

Although the chapter is not organized thematically, I have attempted to emphasize certain themes, notably the variety of people of different statuses and situations who made petitions (throughout), the generation of new material forms of petitions (seen in especially in funerary petitions and petitions from Liye), and finally the degree to which petitions spurred local officials to action on behalf of petitioners, especially in cases whose outcome was not related to

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<sup>44</sup> The selection represents a small proportion of the total petitions from the sites I have selected. Notably, I have also ignored a large volume of petitions from the Edsen Gol region, most of which concern the movement of conscripts and colonists: petitions for conscripts and family members to travel to and from the frontier for various purposes, including trade.

<sup>45</sup> And possibly, in the case of the Xuanquan manuscripts, the Xin (9-23 CE) period.

interests of the court (especially Xuanquan and Changsha).<sup>46</sup>

### *Speech changed into writing*

What is a petition? In its most basic sense, the petition was a type of manuscript that gave the petitioner a voice in a world governed largely through manuscripts, part of a larger category called *yuan shu* 爰書, literally, “[speech] changed into writing.”<sup>47</sup> The name “petition” (*ziyan* 自言) is derived from the written formula used in the petition: “I myself speak”(also *zi yan* 自言).<sup>48</sup>

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<sup>46</sup> In doing so, I follow Zhang Zhaoyang in arguing against the still prevalent notion that early imperial law is exclusively administrative and penal in character, a characterization which takes “law” as synonymous with certain legal forms such as statutes and ordinances. See Zhang Zhaoyang, “A Note on Civil Cases in Early China.”

<sup>47</sup> Early commentators make this meaning clear: Wei Zhao 韋昭 (201—273 CE): “*Yuan* means ‘to replace’” 爰、換也; Su Lin 蘇林 (211-238 CE): “*Yuan* means ‘to change.’” 爰, 易也 *Shiji jijie* 122.2b. Yan Shigu 顏師古 (581-645 CE): “*Yuan* means ‘to replace,’ [that is,] to replace an oral statement with a manuscript.” 爰, 換也, 以文書代換其口辭也. *Han shu* 59.2637. See also Ōba Osamu 大庭修, *Shin Kan hōseishi no kenkyū* 秦漢法制史の研究 (Tokyo: Sōbunsha, 1982), 626–71, and more generally the discussion in the appendix below.

<sup>48</sup> For the use of *ziyan* as the noun “petition,” see Xuanquan II01142② : 292; Wuyi Guangchang Xuanshi 82-84,88, 122-123, *Han shu* 76.3213; 83.2299. The translator faces a choice in rendering *ziyan* as a formula: should it be rendered as direct or indirect speech? From a textual point of view, one could render the formula *ziyan* 自言 as reported speech, i.e. “they themselves say,” but this obscures the significance and uses of *zi* 自 “myself” in legal manuscripts where it is intended as an expression of agency. Compare other common formulas used in manuscripts: “I myself (truthfully) register” [my age, household members, etc.] *zi shi zhan* 自(實)占, “I myself open this” [correspondence] *zi fa* 自發, “I myself receive this tally” *zi shou quan* 自受券. Translated as indirect speech--“so-and-so themselves truthfully registers,” “so-and-so themselves opens this,” and “so-and-so themselves receives a tally”—these formulas seem to describe an act rather than instantiate it. Another case: “I myself speak: I request to give over [property] to my adult daughter” *zi yan ye yi X yu zi da nü* 自言謁以 X 予子大女. As indirect speech this is “she herself says she requests to give over [property] to her adult daughter.” Only the first translation is recognizable as a will. Indirect speech obscures the agency that petitioners are claiming in their use of manuscripts. Cf. Xu Shihong who writes “here the formula *ziyan* means ‘I myself personally make suit before the officials *benren qinzi xian guanfu tiqi susong* 本人親自向官府提起訴訟” (at the time of this

What is meant by “speech changed into writing” is important is not that writing replaces oral practice, but instead that the speech is performed through the manuscript. Like imperial speech in edicts, whose authority is produced through written formulae and material format, the petition is a special type of speech that can only be staged in a manuscript. As the noted legal historian Xu Shihong has observed, petitioning “is not an oral practice but must be done through a manuscript.”<sup>49</sup>

The technical knowledge of how to make a *yuanshu* 爰書, of how to make a manuscript perform speech, circulated in the form of “templates” or “models” (*shi* 式). Rather than attempting to delineate the scope of what a *yuanshu* could possibly do in advance through a series of regulations, such templates use the normative force of example to suggest the sorts of uses to which manuscripts could be put. An example is a collation titled “Templates for Sealing and Investigating” found in Shuihudi Tomb No.11 (before 217 BCE) which reproduces twenty-five examples of *yuanshu* “speech changed into writing.”<sup>50</sup> Such models show how one can compile a manuscript to denounce a neighbor for a crime, or produce a manuscript to request to have one’s children banished, or create a manuscript containing a confession or a sworn statement.<sup>51</sup> In each case, the staging of speech (denunciation, request,

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2001 article it was less apparent that petitioning covered a wide range of actions including but not limited to lawsuits), Xu Shihong 徐世虹, “Han dai minshi susong chengxu kaoshu 漢代民事訴訟程序考述,” 125. For a linguistic perspective on direct and indirect speech, see Christoph Harbsmeier, “Indirect Speech, Premodern,” in *Encyclopedia of Chinese Language and Linguistics*, ed. Rint Sybesma, 2015, [http://dx.doi.org.libproxy.berkeley.edu/10.1163/2210-7363\\_ecll\\_COM\\_00000197](http://dx.doi.org.libproxy.berkeley.edu/10.1163/2210-7363_ecll_COM_00000197).

<sup>49</sup> Xu Shihong 徐世虹, “Han dai minshi susong chengxu kaoshu 漢代民事訴訟程序考述,” 125.

<sup>50</sup> Others have translated the word *shi* 式 as “model” or “form.” I find that “template” captures the function most evocatively. McLeod and Yates suggest the translation “transcription” for *yuanshu* in this context, but this I think obscures the fact that what *yuanshu* presented was not transcribed speech, but rather a peculiar type of “speech” that it was necessary to “stage” through format and formula, hence the necessity of multiple types of template. See Shuihudi Qin mu zhujian zhengli xiaozu (Li Xueqin 李學勤 et al.), *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu, 1990), 69–77; Hulsewé, *Remnants of Ch’in Law*, 183–207; Katrina C. D. McLeod and Robin D. S. Yates, “Forms of Ch’in Law: An Annotated Translation of The Feng-Chen Shih,” *Harvard Journal of Asiatic Studies* 41, no. 1 (1981): 111–63, <https://doi.org/10.2307/2719003>.

<sup>51</sup> Since its discovery, this manuscript has often been taken as paradigmatic of what *yuanshu* are, such that many have assumed that the *yuanshu* is used mostly in criminal investigations. A careful reading of the title however, suggests that these are a subset of *yuanshu*, specifically those used in investigations, not a selection of *yuanshu* as a category.

testimony) allows the manuscript to perform much work. Inherent in the notion of the model is the idea that the template (*shi* 式) can be adapted to generate new types of *yuanshu*.

### *Petitions and Petitioners from Liye*

Petitions from the discarded manuscript assemblage of Qianling county, composed of some 17,000 fragments discovered at Liye in western Hunan in 2003, give us a glimpse of what petitions might look like toward the end of the 3<sup>rd</sup> century BCE<sup>52</sup> (figure 1):

35<sup>th</sup> year (212 BCE), Third Month, *bingchen* day of a month beginning *gengyin* (27<sup>th</sup> day). Report [recorded by] Zi [overseer] of Erchun district<sup>53</sup>:

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<sup>52</sup> I avoid the term “archive” which suggests that such manuscripts were assembled for the purpose of preservation. For an introduction to the Liye finds in English see Robin D. S Yates, “Evidence for Qin Law in the Qianling County Archive: A Preliminary Survey,” *Bamboo and Silk*, no. 1 (2018): 403–45. Two of five planned volumes of the edition have now been published as Hunan kaogu yanjiu suo 湖南考古研究所 (Zhang Chunlong et al.), *Liye Qin Jian (Yi)* 里耶秦簡（壹） (Beijing: Wenwu, 2011); Hunan kaogu yanjiu suo 湖南考古研究所 (Zhang Chunlong et al.), *Liye Qin Jian (Er)* 里耶秦簡（貳） (Beijing: Wenwu, 2017). I have also consulted first volume of annotated transcriptions produced at Wuhan University under Chen Wei (the second volume has apparently been published, but is not yet available at time of writing), see Chen Wei 陳偉 et al., *Liye Qin jian jiaoshi (di yi juan)* 里耶秦簡校釋（第一卷） (Wuhan: Wuhan Daxue, 2012). One should note that there are two numbering schemes in use for Liye. The first is an excavation numbering scheme *chutu dengji hao* 出土登記號 given in Arabic numerals, e.g. 9-14, in which the number 9 refers to the stratum in which the manuscript was found (stratum 9) and the second is the number of the manuscript (the 14<sup>th</sup> manuscript from stratum 9). A second numbering system corresponds to the way that the manuscripts are presented in the folio edition. Somewhat unfortunately, the numbering system in the folio edition is quite similar to the excavation numbering system, because the folio also presents manuscripts by excavation stratum. The result is that the folio numbering and the excavation numbering are only slightly different, e.g. 9-14 in the excavation numbering system is identical to 9-15 in the folio numbering system. The folio system is standard, and I will follow it here, but it is important to realize that many earlier publications use the excavation system (e.g. publications referencing the ninth strata published between 2003 and 2018 are use the excavation numbering system, not the edition system). Museum displays will presumably continue to follow the excavation numbering system.

<sup>53</sup> Zi 茲 is known from other manuscripts from Liye; in 212 BCE he is mentioned

The widow Yin of South Village: I myself speak. I request to cultivate an overgrown field<sup>54</sup> [that was] formerly a mulberry orchard one hundred twenty paces [in measure]. [The area] to the north of the [one hundred twenty paces] of the former [mulberry orchard]<sup>55</sup> shall remain a mulberry orchard.

*Bingchen* day (27<sup>th</sup> day) Zi, [the overseer of] Erchun district: I dare to report this. Submitted. I dare to report this.

Hand of Qu.

*Reverse*

(*In another hand.*) Fourth month, *renxu* day (six days after dispatched), at the sundown watch delivered by the conscript Ji. Shen opens this.

(*In the first hand*) Hand of Qu

卅五年三月庚寅朔丙辰貳春鄉茲爰書南里寡婦愁自言謁猥草田故桑地百廿步在故

步北恒以為桑田

三月丙辰貳春鄉茲敢言之上敢言之 / 誦手

*Reverse*

四月壬戌日入戌卒寄以來 / 暉發

誦手

9-15<sup>56</sup>

Here a widow named Yin petitions to have the Qianling county magistrate recognize a claim over about 230 square meters of fallow land which she wishes to cultivate.<sup>57</sup> The manuscript is a *yuanshu* 爰書, an embodiment of a

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as overseer of Erchun district in other manuscripts including 8-661, 8-962+8-1087 and 8-1565. Judging from 9-50, he may also have served here in the previous year.<sup>54</sup> Following the interpretation of the Wuhan University reading group interpretation of *caotian* 草田 as an overgrown field. See note 4 of the annotation to 9-14 (*sic*) in Liye Qin jian du jiaoshi xiaozu 里耶秦簡牘校釋小組, “Xin jian Liye Qin jian du ziliao xuanjiao (er) 新見里耶秦簡牘資料選校(二),” *Jianbo wang* (blog), September 2014, [http://www.bsm.org.cn/show\\_article.php?id=2069](http://www.bsm.org.cn/show_article.php?id=2069).

<sup>55</sup> I interpret the phrase *gu bu* 故步 to be a contraction of the foregoing phrase *gu sang di bai nian bu* 故桑地百廿步.

<sup>56</sup> For the numbering of manuscripts, see previous footnote.

<sup>57</sup> Judging from other petitions such as 9-2344, it may be that she is requesting to registering this as privately cultivated land (*si tian* 私田 or *qianshou tian* 黔首田), but this is not specified in the petition. 120 paces would be the equivalent of one half of a 240 pace *mu*, or 230 square meters. 8-1519 suggests that in 212 BCE there were about 243 hectares cultivated by 152 households in Qianling county, Erchun accounting for roughly half. This is a very small piece of land, which may be the reason that no one went to the trouble of asking the village head to register (*zhan* 占)

verbal statement in material form. This material instantiation of the verbal form is reflected in the formula used by the woman: *ziyan* 自言, literally “I myself speak.” This use of direct speech means that the manuscript does not witness, record, or document the widow’s speech, but rather conveys it.

In order for this speech to be correctly conveyed, the manuscript must follow certain conventions. In this case, the district overseer Zi and Qu, the person recording the petition, are responsible for ensuring that the petition is correctly composed, perhaps because the widow Yin was not able to compose her own petition. (Still, in other cases, petitioners are known to have composed their own petitions.)<sup>58</sup> The inscription on the tablet (see figure 1) begins at the upper right of the front side of the tablet with the date, the forwarding authority, and the petitioner’s name, place of registration and status (here “widow”). The person who composed the manuscript signs it twice, per convention, once at the end of the inscription on the front, and a second time at the lower left corner of the back side of the tablet. This method leaves back side of the tablet open for the magistrate or his representative to inscribe a decision.

The manuscript is then carried to Qianling county, where six days later it arrives and is received by a certain Sui, who records that the manuscript has been received, in other words that the widow’s request has been approved. In more complex cases, a more complex judgment from the magistrate might be recorded here.<sup>59</sup>

All in all, the petition is quotidian and unremarkable, except that it reveals something remarkable to the historian: it is the first evidence we have for a woman making a civil claim before a county magistrate. As such (and as part of a larger body of evidence) it overturns two long-held assumptions about early imperial law: first that there was no private or civil law and second that women could not hold property.<sup>60</sup> The very quotidian quality of the petition suggests that it was not anomalous.

An even more fragmentary piece of evidence reveals something more extraordinary in its mundaneness (figure 2):

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the land as in 9-2344.

<sup>58</sup> See, for example, Liye 8-1466 and 8-1008+8-1461+8-1532.

<sup>59</sup> In 8-1008+8-1461+8-1532, for example, the acting assistant magistrate issues a decision on a private debt which is inscribed in this position.

<sup>60</sup> Evidence from Zhangjiashan makes clear that women could inherit property, but this is the first evidence for women making claims to property in court. For discussions of “civil law” see Xu Shihong 徐世虹, “Han dai minshi susong chengxu kaoshu 汉代民事诉讼程序考述”; Zhang Zhaoyang, “A Note on Civil Cases in Early China”; Michael Nylan, “Administration of the Family (*Qihuai Bisi* 齊懷必死),” in *China’s Early Empires: A Re-Appraisal* (Cambridge, UK: Cambridge University Press, 2010), 266–95.

.... Wa, the adult female servant of Yixia, rank of *bugeng*, household head at Dongcheng village: I myself say...

....carry this out with the copy. I dare to report this. Hand of Wu.

*Reverse*

Hand of Wu.

☐ 東成戶人不更已夏隸大女子瓦自言<sup>61</sup>

☐ 以副從事。敢言之。/吾手。

*Reverse*

☐ 吾手。

9-328

Because of the fragmentary nature of this fragment, we have little clue as to what the content of the petition is. What is remarkable about this manuscript, however, is that it provides evidence that a woman of servile status could make a petition, and that she could do so on her own initiative, even though she was registered in another person's household.<sup>62</sup> Both this petition and that of the widow suggest that a wide variety of people could and did make use of petition, as is evident in other contexts (see below).

Much as the widow's petition above allows the widow to make a claim for land, the petition could also be used to alienate property. In the following case, a father uses a petition to convey property to his daughter (figure 3), who holds a separate household registration:<sup>63</sup>

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<sup>61</sup> The Wuhan University seminar suggested that the graph at the end of the first line here, originally read as 𧑦 *ken* ("to cultivate") by the edition, might in fact be 謁 *ye* ("to request"). See Liye Qin jian du jiaoshi xiaozu 里耶秦簡牘校釋小組, "Xin jian Liye Qin jian du ziliao xuanjiao (er) 新見里耶秦簡牘資料選校(二)." The graph is indistinct to me, so I leave it untranslated.

<sup>62</sup> It is not entirely clear what the status of a "servant" 隸 *li* was, but it appears to have been a sort of domestic servant who was registered as part of the household, perhaps distinct from other statuses like *bi* 婢 and *qie* 妾. For a young woman Miao registering as a "servant" 隸 *li* in the household of an adult woman Ying, see 8-863+8-1504 and 8-1546. For an adult women registered as *li* in a household register, see K4 from Liye pit 11.

<sup>63</sup> Some have suggested that this manuscript and the similar manuscript 8-1443+8-1455 may be wills or testaments, a suggestion which I find plausible. As a later statute found in the tomb M77 at Shuihudi (after 157 BCE, but the statute is now attested as early as 186 BCE, see below) shows, by Western Han times certain types of petition had become the object of legislation, and it was permissible for commoners *min* 民 to pass on land, servants and money. This should be done with

35<sup>th</sup> year (212 BCE) Seventh Month *jiyou* day on a month beginning *wuzi* (22<sup>nd</sup> day). Report (*yuanshu*) of Shen, Acting Overseer of the central district: Guang, a commoner of Gao village: I myself speak: I request to give over to my adult daughter, Hu, of Yang village all [of the following]: the adult male bondservants Liang and Wan, and the minor male bondservants Chou and Rao, the adult female bondservants Lan, Yuan, Duo...<sup>64</sup> grain, clothing,<sup>65</sup> and sixty thousand cash, eleven items altogether. In accord with the teeth of the tally. The village Head Hong is registrar.

*Reverse*

Seventh Month *jiyou* day on a month beginning *wuzi* (22<sup>nd</sup> day), the Acting Head of the Central District Shen dares to report this. Submitted. I dare to report this. Hand of...

[Seventh] Month, *jiyou* day at the sundown watch, brought by Shen.

Hand of Shen.

(all in one hand)

卅五年七月戊子朔己酉都鄉守沈爰書高里士五廣自言謁以大奴良 L完  
L小奴疇 L饒大婢闌 L愿 L多 L

L□禾稼衣器錢六萬盡以予子大女子陽里胡凡十一物同券齒

典弘占

*Reverse*

七月戊子朔己酉都鄉守沈敢言之上敢言之 L 沈手

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a tripartite tally, one copy of which was to be kept under seal at the county in case of a dispute (strips 46-49). See Xiong Beisheng 熊北生, Chen Wei 陳偉, and Cai Dan 蔡丹, “Hubei Yunmeng Shuihudi 77 hao Xi Han mu chutu jiandu gaishu 湖北雲夢睡虎地 77 號墓西漢墓出土簡牘概述,” *Wenwu*, no. 3 (2018): 48–49. These newly discovered manuscripts show convincingly that some of the strips in the reconstructed manuscript of the “Statute on Households” from Zhangjiashan No. 247 are out of place. (The correct order is 334, 426, 335, 270; 336 should replace 270 after 269.) Another manuscript that makes reference to a will of 5 CE was found in Yizheng in Anhui. See Chen Ping 陳平 and Wang Qinjin 王勤金, “Yizheng Xupu 101 hao Xi Han mu 儀征胥浦 101 號西漢墓《先令券書》初考,” *Wenwu*, no. 1 (1987): 20-25 + 36. The interpretation of the manuscript in this article assumes that women could not leave testaments, now disproven by new discoveries. The word *yu* 媼 “married woman” or “old woman” should now be read as a first person humilific of the petitioner herself, i.e. Zhu Ling.

<sup>64</sup> The undecipherable graph here is the name of an adult female bondservant.

<sup>65</sup> Or perhaps “clothing and effects.” Like the foregoing *hejia* 禾稼 (“grain” in a generic sense), the word *yiqi* 衣器 is a binome, see also 8-1552.

七月己酉日人沈以來ノ口手  
沈手  
8-1554

The father, a commoner of Gao village, first registers the property with the village Head, before asking the District Overseer to record his petition. As the District Overseer worked in or near to the offices of the magistrate of Qianling, the overseer delivers the petition himself and “receives” the petition on behalf of the magistrate.<sup>66</sup> The petition conveys a substantial amount of property over to the daughter, eleven items to be precise: eight human beings, a certain amount of grain, clothing, and sixty thousand cash. What is remarkable about this petition, other than the implication that the woman Hu now owns a great deal of property, is the way in which this petition shows an innovation in form, combining the form or template (*shi* 式) of the petition with that of a tally (*quan* 券), a type of wooden text commonly used in contracts and receipts characterized by the use of notches or “teeth” as a form of security.

A series of “tooth” notches on the left edge of the manuscript thus duplicates the numbers mentioned in the manuscript as a security precaution (figure 3). At the top is a notch of the pattern  which indicates the number “ten.” In theory this should be followed by a subtle notch of the form  indicating the number “one,” for a total of eleven, thus corresponding to the number (eleven) of items mentioned, but if there is indeed such a notch it is not visible in the photographs. Following this are six notches of the form  that indicates “ten thousand,” rendering a total of sixty thousand, corresponding to the number of cash mentioned in the petition.<sup>67</sup>

This manuscript reveals two fundamental qualities of the petition in general. Rather than documenting or recording a social interaction (in this case, the transfer of property), the petition serves to embody it or instantiate it; were the petition to be lost, the transaction itself would be invalidated. It is for this reason that the petitioner fused the form and format of a petition with that of a tally *quan* 券. This fusion demonstrates what I think is a second fundamental quality of the petition: the form and format of the petition are

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<sup>66</sup> A similar petition, 8-1443+8-1455, is also carried to the magistrate’s office by the district overseer of the central district. In this case, a different officer in the office notes that he has received the petition.

<sup>67</sup> Zhang Chunlong 張春龍, Ōkawa Toshitaka 大川俊隆, and Momiyama Akira 初山明, “Liye Qin jian kechi jian yanjiu -- jian lun Yuelu Qin jian ‘Shu’ zhong de wei jiedu jian 里耶秦簡刻齒簡研究--兼論岳麓秦簡《數》中的未解讀簡,” *Wenwu*, no. 3 (2015): 53-69+96.

normative but not determinative. Petitions allowed a wide range of innovation and adaptation; it was a generative form that could be adapted to a great variety of purposes, among them communication with the underworld, as we will see.

### *Form and Variation: Petitions adapted for the underworld*

In death, as in life, the problem of having the right paperwork was unavoidable. Among the more intriguing instances of the ubiquity of paperwork in the lives of people in the early empires is a variety of petition, found in tombs, addressed to the underworld.<sup>68</sup> Such manuscripts have been typically understood as private, ersatz imitations of “true” legal documents, the assumption being that true legal documents were the province of Officers engaged in matters of state and public interest. As we have already seen, however, commoners and others acting in a private capacity produced manuscripts with normative, legal power by copying and adapting the form and formulae in the template (*shi* 式) of petitions to new uses. In this way, the main problem facing the dead—how to take it all with you—came to be construed as a legal problem necessitating a proper paperwork strategy. Seen in this light, petitions for communication with the underworld are not categorically different from other types of manuscripts; rather they form part of a continuum with quotidian practices in which normative forms were adapted to new purposes.<sup>69</sup> Take a petition submitted by a man on behalf of his deceased mother (figure 4):

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<sup>68</sup> There is a relatively extensive literature on these manuscripts, mostly written from the point of view of religious studies. The most up-to-date and comprehensive account (which contains an extensive and up-to-date bibliography) is Guo Jue, “Western Han Funerary Relocation Documents and the Making of the Dead in Early Imperial China,” *Bamboo and Silk*, no. 2 (2019): 141–73. This article appeared after I had completed the writing of this section, so I have not fully incorporated its arguments, but in general, I agree strongly with Guo’s notion that such manuscripts were used to claim agency. That said, my interpretations sometimes diverge from hers, in particular with regard to whether these manuscripts form a category of “relocation documents.” In English, see also Anna Seidel, “Traces of Han Religion in Funerary Texts in Tombs,” in *Dōkyō to Shūkyō bunka* 道教と宗教文化, ed. Akitsuki Kanei 秋月観暎 (Tokyo: Hirakawa, 1987), 21–57.

<sup>69</sup> For the notion of a continuum between belief and legal practice, see Elizabeth Meyer’s work on Roman *tabulae*. Elizabeth Meyer, *Legitimacy and Law in the Roman World: Tabulae in Roman Belief and Practice* (Cambridge: Cambridge University Press, 2004).

Fifth year (184 BCE), 27th day. Chen, [Overseer] of the West District, dares to report this: Chang, Gentleman of the Palace, of the ninth rank: I myself speak: [my] mother, the adult woman Hui (?) has died. The clothing, funeral objects, and followers: son, [son's] wives, secondary and lesser wives, male and female bondservants, horses, cattle, objects, and people (?), [are each listed] one per strip, in altogether 197 strips. The family of Chang are exempted and there are no levies. There are edicts and ordinances. I request to inform the Assistant Magistrate of the underworld to proceed as per this [document]. I dare to report this.

五年十一月癸卯朔庚午西鄉辰感言之郎中大夫=昌 (?) 自  
言母大女子恚 (?) 死以衣器葬具及從者子婦偏  
下妻奴婢馬牛物 人一牒=百九十七枚昌家復  
毋<sup>70</sup>有所與有詔令謁告地下丞以從事感言之

The core of the petition is a request by a man to the magistrate of Jiangling to confirm for the officials of the underworld that no taxes or labor levies are due with regard to a series of 197 items listed in an inventory. As in the notched petition-tally (Liye 8-1554) above, it was important to enumerate the items, but rather than using notches, the sheer scale of this rather well-to-do household obliged the petitioner to come up with a different paperwork strategy. In the petition-tally, the number inscribed on the manuscript was repeated in the notches carved in the left side of the manuscript as a security or accounting precaution; here the petitioner instead attached a long list enumerating 197 items, each written on a separate strip.<sup>71</sup> Of course, listing one item per strip left many of the strips mostly blank, and it would have been far more economical as bamboo strips were concerned to list multiple items per strip. This seems deliberate, then: apparently, the petitioner has decided to use the number of strips to increase the security of the paperwork in much the same way as the petitioner using the tally-petition above used notches. Both instances represent adaptations and innovations on the part of petitioners which allow them to do ever more and more complex things with the form of the petition.

But what is the petition asking for? The itemized list suggests the conveyance of property (as in the tally-petition), and indeed archeologists have been able to identify objects in the tomb which correspond to nearly all of the 197 items listed. And yet the language of the petition does seek to alienate

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<sup>70</sup> Hu Pingsheng (and others) read the graph *wu* 無, but it looks like *wu* 毋 to me. In any case, the meaning is the same.

<sup>71</sup>The list is 208 strips long: additional strips listed subtotals for increased auditability.

property, but instead requests that the magistrate of Jiangling confirm that the son's household does not owe any taxes. The household members, moreover, have been reproduced in lacquer as human figurines (figure 5), each corresponding to a named item/individual on the list attached to Chang's petition, including Chang himself, as well as three other sons, one daughter, four wives, three grandsons, four granddaughters, three lesser concubines, two minor wives, five adult male bondservants, three minor male bondservants, and four adult female bondservants. Is this a case of filial emotion, in which the son wishes that the family accompany the mother in death?<sup>72</sup> Does the paperwork reveal that the tomb figurines are viewed as objects that stand in for people? Or could it be that the lacquer figurines are placeholders for the living who will rejoin the deceased when in turn they die? (Poor bondservants!)

Another bamboo tablet attached to the petition confirms that the magistrate of Jiangling has accepted it and duly forwarded it on to the underworld:

Eleventh month, *gengwu* day. Yi, the Assistant Magistrate of Jiangling, dare to report this: forward this to the Assistant Magistrate of the underworld. Officials can be ordered to carry this out as per this [manuscript]. Hand of Zang.

十一月庚午江陵丞廩敢言之移地下丞可令吏  
從事ノ 臧手

An officer named Zang here records the magistrate's response, issued on the same day as the petition is written, which may indicate the high status of the petitioner. (A photograph of the verso of the first tablet might reveal whether Zang is the same officer who composed the petition itself.) Both manuscripts, along with the long household inventory, were then bound together in a large document along with a third tablet which served as a title:

The family of the mother of Chang, gentleman of the palace of the rank *wudafu*, are warranted to be exempted and there are no levies.

Ⅱ 郎中五大夫=昌母家屬當 復毋所興

The whole of the dossier thus labelled was tied together with cattail leaves and placed in the burial.

What the inventory-petition found at Xiejiaqiao shows, I think, is an early

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<sup>72</sup>For emotion and the filial bond between sons and mothers, see Miranda Brown, *The Politics of Mourning in Early China* (Albany, N.Y: SUNY Press, 2007).

adaptation of the petition to a funerary context. The solution that Chang has hit upon—to petition for a tax-exempt receipt for the household—is perhaps an idiosyncratic one, but it nevertheless shows how people adapted the textual and material form of the petition to new purposes.

The inventory-petition reflected one way of imagining paperwork in a mortuary context, that is by conceiving of death as a possible tax exemption, but another paperwork strategy which emerged was to petition for a change of registered address. A good example of the “change of address” strategy is found at the nearby tomb no. 18 at Gaotai.<sup>73</sup> Instead of the inventory-petition format found at Xiejiaqiao, the petition from Gaotai is attached to two manuscripts, the first a description of lacquerware and other objects interred in the grave, the second, a household register. In terms of paperwork, this household-register/inventory/petition manuscript represents an innovation over the Xiejiaqiao manuscript, in that the medium is used to distinguish between funeral objects (which can be conveyed by inventory) and people (who are registered to a household). The household registration is as follows:

The household head of Xin’an [village] Yan, an adult woman and widow  
of a Noble of the Interior  
Adult male bondservant A  
Adult male bondservant B  
Adult female bondservant Fang  
Privileged household: no capitation tax, no corvée levy.

新安戶人大女燕關內侯寡  
大奴甲  
大奴乙  
大婢妨  
(*at bottom left*) 家優不算不願[=繇]<sup>74</sup>

The household members of the widow Yan included three bondservants, at least two of which had only generic names. These may correspond to the two lacquer figurines found in a compartment along with the manuscript. At the bottom left of the registration there is a note that, due to the special status of

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<sup>73</sup> Hubei sheng Jingzhou diqu bowuguan 湖北省荊州地區博物館 (Zhang Wangao 張萬高 et al.), “Jiangling Gaotai 18 hao mu fajue jianbao 江陵高臺 18 號墓發掘簡報,” no. 8 (1993): 12-20+ plate 3.

<sup>74</sup> Following Hu Pingsheng and Li Tianhong in reading *yuan* 願 as *yao* 繇=繇. Hu Pingsheng 胡平生 and Li Tianhong 李天虹, *Changjiang liuyu chutu jiandu yu yanjiu* 長江流域出土簡牘與研究 (Wuhan: Hubei Jiaoyu, 2004), 373.

the household head, there is to be no capitation tax and no corvée levy. The petition follows (figure 6):

Tenth year, *geng[zi]* day of month beginning *bingzi* (25<sup>th</sup> day), Qi, overseer of the central district dares to report this: Yan, adult woman of Xin'an: I myself speak: along with the adult male bondservants Jia and Yi...female bondservant Fang, [I request to] transfer [my place of household registration] to the Capital of Peace [a euphemism for the underworld]<sup>75</sup>. I request to inform [the magistrate of] Capital of Peace and [see that this registration is] received. When the document arrives, report back. I dare to say this.

[In a different hand] Tenth month, *gengzi* day.<sup>76</sup> Mr. Long, Assistant Magistrate of Jiangling, respectfully forwards this to the Assistant Magistrate of Andu. / Hand of Ting.

*Reverse*

Hand of Chan

十年丙子朔庚...中鄉起敢言之新安大  
女燕自言與大奴甲乙...婢妨徙安都謁告安都受  
...數書到為報敢言之

[In a different hand] 十月庚子江陵龍氏丞敬移安都丞ノ亭手

*Reverse*

產手

Instead of a living member petitioning the magistrate on behalf of the deceased, here the petitioner is the deceased woman herself who (presumably while still alive? What presence of mind!) has/have petitioned the above-ground official at Jiangling to get in touch with the netherworld about a change of address. If she had any living family, the petitioner is thoughtful enough not to change their residence to the underworld; servants were not so lucky.

The petition is composed by Chan, who signs the petition on the back of the tablet. Chan adopts the form of a change of registration petition which

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<sup>75</sup> For the identification of the Capital of Peace, see Guo Jue, "Western Han Funerary Relocation Documents and the Making of the Dead in Early Imperial China," 240 n.137.

<sup>76</sup> As Hu Pingsheng and Li Tianhong point out, this is not, as the original report claimed, the 25<sup>th</sup> of October, a misreading which mistakes the imperial month for the western one. Hu Pingsheng 胡平生 and Li Tianhong 李天虹, *Changjiang liuyu chutu jiandu yu yanjiu* 長江流域出土簡牘與研究, 372.

requires one to forward along the household registration and confirm that the household is not in arrears on its taxes. Chen even goes so far as to ask for a receipt from the underground officials. Note: not all officers are so keen to tempt the underworld: a similar manuscript from Kongjiapo changes the regular official formulae into something more appropriate for mortuary use: “receive the registration, and *do not* report back” (*shou shu wu bao* 受數毋報.) The presence of a second hand in the manuscript representing the authority of Mr. Long suggests the lengths that the petitioner went to achieve manuscript verisimilitude, or perhaps the use of a religious specialist, or, just conceivably, the way that local officials handled funerary petitions.

Funerary petitions from Jiangling demonstrate a range of paperwork strategies: at Xiejiaqiao a productive ambiguity arises from the use of a petition/inventory to claim tax exemption for a household which is, at that point, partly living and partly dead, while at Gaotai the household-registration/petition format suggests a stronger break, in which death is understood as a permanent change of address. These are but two of a number of such manuscripts, not all of which use the petition format. What these manuscripts suggest is not only that the form of the petition could be adapted to generate new uses, but more broadly that people inhabited and made use of paperwork in ways that belie conventional divisions between state and society, official bureaucracy and commoner. Having no doubt tried the reader’s credulity, I now return to the land of the living.

### *Xuanquan: Frontiers of Petitioning*

Archives from the Xuanquan Station discarded manuscript assemblage of some 17,000 manuscripts and manuscripts fragments found on the frontier in the far northwestern desert provide evidence that both foreigners and non-Han subjects (“submitted peoples”) made use of petitions.<sup>77</sup> Manuscripts from

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<sup>77</sup> Only a small portion of the manuscripts excavated at Xuanquan Station from 1990-1992, which amount to some 17,000 thousand manuscripts and manuscript fragments on wood and bamboo, as well manuscripts written on silk and paper, have yet to be published, though a notice in June of 2018 suggested that volumes 1-8 of the edition were “soon to appear.” 271 items are transcribed in Hu Pingsheng 胡平生 and Zhang Defang 張德芳, *Dunhuang Xuanquan Han jian shicui* 敦煌懸泉漢簡釋粹 (Shanghai: Shanghai Guji, 2001). A subsequent volume by Hao Shusheng and Zhang Defang amends numerous mistaken transcriptions, see Hao Shusheng 郝樹聲 and Zhang Defang 張德芳, *Xuanquan Han jian yanjiu* 懸泉漢簡研究 (Lanzhou: Gansu wenhua, 2008). Some additional manuscripts are transcribed in Wu Rengxiang 吳初驥, “Dunhuang Xuanquan yizhi jiandu zhengli jianjie 敦煌懸泉遺

Xuanquan excavated from 1990-2 were discarded by officials at an official relay station in use from c. 111 BCE-107 CE, which was fortuitously situated on the main route between the capital and points westward. As the station at Xuanquan was used by diplomats and envoys travelling on the main route to Yumen and other passes on the frontier, the cache provides rich evidence of relations between the Han empire and other polities beyond the frontier. It provides much evidence, for example, of the interaction between Han settlers and the Qiang peoples living south of Dunhuang. As Xuanquan was a relay station, many of the records found there relate to petitions sent between various authorities, so they allow us a glimpse of how officials responded to petitions.

One manuscript found at the Xuanquan Station, composed of seven strips bound together, summarizes a petition submitted by several envoys of Central Asian kings who claimed to have been deceived by Han officials.<sup>78</sup> On previous occasions, the petition claims, the envoys were permitted to enter the pass at Dunhuang and to proceed at government expense to trade camels, which they would then sell to government officials at Jiuquan, a major settlement several hundred kilometers from the frontier. Once they arrived, they expected to assess the value of the camels they had brought, along with the Governor. On this occasion, however, the envoys claimed that they did not ever receive the promised provisions and the Governor excluded the envoys from the evaluation process, so that the camels were undervalued. In particular, three white camels brought on behalf of the King of Suxie were misidentified as yellow or tan (i.e. less valuable) camels, while camels brought on behalf of the King of Kangju were found to be “under nourished,” perhaps because they had not received proper fodder. The petitioners claimed that a grave injustice has occurred.

Because this is a diplomatic matter, the petition is relayed to the capital.<sup>79</sup>

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址簡牘整理簡介,” *Dunhuang Yanjiu*, no. 4 (1999): 98-106 + 188. A introductory study in English is Yang Jidong, “Transportation, Boarding, Lodging, and Trade along the Early Silk Road: A Preliminary Study of the Xuanquan Manuscripts,” *Journal of the American Oriental Society* 135, no. 3 (September 2015): 421–32. Charles Sanft’s important monograph on literate communities in the Northwest, which appeared as I was finishing this dissertation and thus had insufficient time to respond to here, also analyzes the manuscript from Kangju, Charles Sanft, *Literate Community in Early Imperial China: The Northwestern Frontier in Han Times* (Albany, N.Y: State University of New York Press, 2019).

<sup>78</sup> II 90DXT0216②: 877-883. I follow the corrected transcription in Hao Shusheng 郝樹聲 and Zhang Defang 張德芳, *Xuanquan Han jian yanjiu* 懸泉漢簡研究, 217. I offer a summary rather than a translation here as the manuscript has been partially translated in Yang Jidong, “Transportation, Boarding, Lodging, and Trade along the Early Silk Road: A Preliminary Study of the Xuanquan Manuscripts,” 430.

<sup>79</sup> It is an intriguing question how the petition reached the palace; the surviving

In response to the petition, the palace assigns two officials, an Advisory Counsellor (*jian dafu* 諫大夫) and a Gentleman in Attendance (*shilang* 侍郎), to be special envoys to attend to this affair involving foreign diplomats (*shi zhuke* 使主客).<sup>80</sup> On the first day of the sixty month of 39 BCE, the envoys send out from the capital a request for local officials to carry out an investigation which reaches Dunhuang more than a month and a half later. The petition is copied and sent down to Xiaogu county where it is once more copied and sent down to Xuanquan Station with the request that the officials report back with statistics on the provisions consumed by the caravan from Kangju. The officials are to report back within three days “as per the edict” (*zhaoshu bao* 詔書報).

The manuscript shows that foreigners could use petitions to lodge formal complaints against Han officials and that such petitions were dealt with by those in charge of foreign relations. These were not, in other words, undifferentiated barbarians, but rather emissaries of specific foreign powers involved in a trade dispute. The word used here for selling is *xian* 獻, literally “to bestow” “to offer,” but it is clear from the manuscript that, contrary to the self-aggrandizing mythology of “tribute systems,” both sides regard this as trade conducted by bilateral agreement.<sup>81</sup> The central complaint of the petition is that two provisions of the trade agreement (that caravans were to receive provisions at government relay stations and that envoys were to participate in determining the value of livestock) have been breached, and the investigation by the palace seeks to determine whether this was the case.

If the petition from the envoys from Kangju shows how foreigners might use petitions in trade disputes, other manuscript provides evidence of the ways in which indigenous peoples made use of petitions. A fragment of a petition shows that individual Qiang made petitions<sup>82</sup>

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manuscript offers little evidence.

<sup>80</sup> Wu Wenling has demonstrated that such envoys are palace officials appointed by the emperor for special missions, and not regular officials under the Superintendent of State Visits (*da honglu* 大鴻臚) as the gloss of the commentator Fu Qian 服虔 has often been taken to suggest (*Han shu* 68.2963). See Wu Wenling 鄔文玲, “Han dai ‘shi zhuke’ lüekao 漢代‘使主客’略考,” *Zhongguo shi yanjiu*, no. 3 (2016): 49–56.

<sup>81</sup> For an expression of the persistent and chauvinistic notion of “tribute systems,” see Yu Ying-shih, *Trade and Expansion in Han China: A Study in the Structure of Sino-Barbarian Economic Relations* (Berkeley, Calif.: University of California Press, 1967). As A.F.P Hulsewé aptly noted in his review, “materially there existed no such thing as a ‘tribute system.’” A. F. P. Hulsewé, “Reiview of ‘Trade and Expansion in Han China: A Study in the Structure of Sino-Barbarian Economic Relations’ by Ying-Shih Yü,” *Bulletin of the School of Oriental and African Studies, University of London*, 31, no. 3 (1968): 638–40.

<sup>82</sup> The date of this manuscript is unclear, but it likely dates to the first or second

Ganmang, adult male of Yuanquan county, of the Longye group of the submitted Lei Qiang people: I myself speak: this year in the ninth month...

淵泉歸義壘羌龍耶種男子翰芒自言，今年九月中... (II 0114 ④): 53)

Ganmang identifies himself as a member of a group of “submitted” (*guiyi* 歸義) Qiang, a distinction that suggests he has accepted Han sovereignty voluntarily rather than through conquest. Despite the ideological coloring of the term “submission,” it is not seldom clear that such peoples felt constrained by Han sovereignty or, indeed, that local officials were charged to extend it to them assiduously. In one case, a Qiang person used a petition to draw officials into a local dispute, only for the officials to eventually claim that they lacked jurisdiction:

...year in the middle of the eighth month, moved to reside in Guizou Valley, outside the jurisdiction of Wannian Post in Bowang, abutting on Guihe’s [pasture] to the east.<sup>83</sup> Last year, in the ninth month, Mangfeng, the male son of Lüzhang, quarreled and fought with Guihe’s younger brother Fengtang. Fengtang stabbed Mangfeng in two places with a dagger.<sup>84</sup> Lüzhang and his younger brother Jialiang along with others, ten persons in total, together seized forty horses and four hundred head of sheep [of his?]. Guihe petitioned the officials, and the officials retrieved twenty horses and fifty-nine head of sheep, which they [returned to] Guihe. With regard to the [recovery] of the remaining horses and sheep, the representatives [of Lüzhang and Guihe, Fengtang and Mangfeng]...<sup>85</sup> assaulted each other beyond the frontier. This happened before the amnesty and thus it will not be punished. We suspect that Guihe

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century CE. For an introduction to the Qiang people, see Rafe De Crespigny, *Northern Frontier: The Policies and Strategies of the Later Han Empire* (Faculty of Asian Studies, Australian National University, 1984).

<sup>83</sup> Hu Pingsheng and Zhang Defang suggest that Bowang may have been a *houguan* unit under the commandant of Yangguan 陽關, a pass southwest of the modern city of Dunhuang. Hu Pingsheng 胡平生 and Zhang Defang 張德芳, *Dunhuang Xuanquan Han jian shicui* 敦煌懸泉漢簡釋粹, 163, n.2.

<sup>84</sup> *Gudao* 股刀 (lit. “thigh dagger). Perhaps this signifies a dagger in the shaped to resemble a thigh, or a dagger kept at the thigh.

<sup>85</sup>I am unsure of the meaning of the graph transcribed as *tiao* 條 here.

harbored a grudge and falsely denounced Lüzhang and the others, saying that they plotted to rebel. The Qiang move according to the availability of water and pasture...

....年八月中徙居博望萬年亭傲外歸葭谷，東與歸何相近，去年九月中，驢掌子男芒封與歸何弟封唐爭言鬪，封唐[124]  
以股刀刺傷芒封二所，驢掌與弟嘉良等十餘人共奪歸何馬卅<sup>86</sup>匹、羊四百頭。歸何自言官，官為收得馬廿匹、羊五十[26]  
九頭，以其歸何。餘馬羊以使者條相犯傲外，在赦前不治，疑歸何怨恚，誣言驢掌等謀反。羌人逐水草移徙... [440]  
(II 0214①: 124、II 0214①: 26、II 014③: 440)

In this fragment of a case, Guihe petitions a local official asking for assistance in retrieving stolen livestock, and the officials succeed in returning to Guihe a large number of Guihe's flock. In doing so, however, the officials discover that the claims in Guihe's petition may have been misleading or worse. First of all, Guihe had suggested the reason that Lüzhang and his associates stole the horses and livestock was that they were plotting a rebellion.<sup>87</sup> Instead, the officials discover that Lüzhang's theft seems to have been a reaction to an altercation between Lüzhang's son and Guihe's younger brother which left the former with two stab wounds.

Normally, the perpetrator of a violent attack of this nature would be prosecuted, as would someone who made a false accusation of rebellion, but in this case the officials cite a series of reasons why they decided to drop the case. First, there was the question of jurisdiction. As pastoralists, the Qiang travelled to higher pastures in summer and returned to the lower altitudes only in winter. Such movement was seen by Han officials as travel across a sort of frontier (*jiao* 徼): indeed, one manuscript describes a special edict that was issued permitting Qiang people to enter the frontier in the tenth month for winter pasture.<sup>88</sup> But what did this mean with regard to criminal liability?

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<sup>86</sup> Hu Pingsheng and Zhang Defang transcribe this graph as *nian* 廿 “twenty,” but Hao Shusheng and Zhang Defang transcribe it instead as *xi* 卅 “forty” in a later publication, so I use that number here. Hao Shusheng 郝樹聲 and Zhang Defang 張德芳, *Xuanquan Han jian yanjiu* 懸泉漢簡研究, 267.

<sup>87</sup> The language here suggests some ambiguity. Normally an accusation of rebellion would be a denouncement (*gao* 告), not a petition. A false denouncement (*wu gao* 誣告) would in turn make the denouncer criminally liable, but the report uses a more ambiguous phrase: *wu yan* 誣言 (“falsely say”).

<sup>88</sup> The manuscript is II 90DXT0114②194 is partially transcribed in Wu Rengxiang 吳初驤, “Dunhuang Xuanquan yizhi jiandu zhengli jianjie 敦煌懸泉遺址簡牘整理

The answer here is ambiguous: the officials did make an effort to recover the stolen livestock, but when they could only recover a fraction of the stolen goods, they declined to pursue a criminal case with regard to the assault, because it had occurred beyond the frontier. This suggests that crimes committed by “submitted people” during time they spend outside the frontier are not to be prosecuted. Because the officials are also able to cite an amnesty as a reason to drop the case, and because the case is fragmentary, the answer is unclear. In successfully petitioning officials to recover his livestock, however, it is hard to escape the conclusion that Guihe has drawn the officials into something resembling a feud.

*May First Square: A woman’s suit against her mother-in-law*

Since 1997, over one hundred thousand manuscripts have been found in and around May 1<sup>st</sup> Square in Changsha, Hunan.<sup>89</sup> These manuscripts represent the product of centuries of paperwork generation at a site that has served as an administrative center for millennia, from the beginning of the imperial period down to the present. The discovery of so many manuscripts distributed more or less evenly over the swath of the early imperial period, from the 2<sup>nd</sup> century BCE to the 3<sup>rd</sup> century CE, promises one day to enable a study of Changsha in the administrative *longue durée*, though in the meantime the work of cleaning, reconstructing and transcribing the manuscripts, and presenting them in expanding series of large folio volumes will occupy teams of scholars for years.

The manuscripts now labelled May 1<sup>st</sup> Square (Wuyi Guangchang) represent a discarded manuscript assemblage related to the offices of Linxiang county and Changsha commandary dating from about 90-110 CE. Whereas the manuscripts from Liye were all from a county-level office, that of Qianling, those found at May First Square encompass manuscripts produced at both the county and commandary levels. This allows us to follow the more complex

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簡介,” 103.

<sup>89</sup> Among the well deposit discoveries found in the vicinity of May 1<sup>st</sup> Square are 1) Zoumalou Well No. 22 (discovered 1997; over one hundred thousand manuscripts from the 3<sup>rd</sup> century CE), 2) Kewen dasha six wells numbered J2,4,5, 18, 21, 25 (discovered 1997; several hundred manuscripts of c. 100 BCE), 3) Zoumalou well no. 8 (discovered 2003; 2188 from the late 2<sup>nd</sup> century BCE), 4) Dongpailou (discovered 2004 436; manuscripts from J7 ten or more from J32; late 2<sup>nd</sup> century CE), 5) Wuyi Guangchang (discovered 2010, 6859 manuscripts from J1, c. 100 CE), 6) Shangdejie (discovered 2011; nine different wells, 257 manuscripts, c. 100 CE), and 7) Qingshaoniangong (discovered 2014, about 100 manuscripts according to contemporary news reports).

investigations that commandary officials carried out in response to petitions, of which I will present a single example: the case of a woman suing her mother-in-law. As the complexity of the case and the fragmentary nature of the evidence for it make for difficult exposition, I beg the reader's indulgence.

The progress of this commandary investigation can be traced through four fragments of a report compiled by commandary officials in response to the petition. The fragments are all parts of this report and consist of 1) a label "Petition of the adult woman Wang Liu" and 2) three complete wooden tablets inscribed with two lines of text each, which were once bound together along with some number of now missing tablets. The report was compiled by Ge Chong, the chief of the section in charge of lawsuits and copied by his officer Ling.

**83** [CWJ③: 325-1-132]

Petition of the adult woman Wang Liu

*Front*

女子王劉自

*Reverse*

言本

The report concerns a woman named Wang Liu who makes a petition against her mother-in-law, a woman named Ji. The investigation report is dated September, 108 CE and it begins by citing an earlier petition of the woman Wang Liu. The petition narrates events of May of 105 CE, when Wang Liu's father-in-law commanded Wang Liu's husband to redeem eleven items of clothing:

**70** CWJ1③: 325-5-9

Yongchu 2 in the intercalary month on the 28<sup>th</sup> day *renxu* in a month beginning *yiwei* [September 21, A.D.108] [Ge] Chong, the chief [of the section] in charge of lawsuits, and the officer Ling bow their heads to the ground and risking penalty of death report this: the adult woman Wang Liu: I myself speak: In Yongyuan 17 in the 4<sup>th</sup> month on an unspecified day [May, A.D.105?]<sup>90</sup>, [my, Wang] Liu's husband

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<sup>90</sup> According to the Sinica electronic calendar the year Yongyuan 17 ended on the last day of the third month, hence there was no fourth month in Yongyuan 17. The graphs are clear. Perhaps this is a mistake for Yongxing 1, fourth month (which

Sheng's father Zhu commanded Sheng to redeem all of [my, Wang] Liu's clothing that was held by [Sheng's] mother Ji,<sup>91</sup> eleven items in total, from...

[Reverse]

Seal of Ge Chong, head of the section in charge of lawsuits.

In the intercalary month on [blank] day, brought by the relay person [blank].

Opened and reported by [blank] officer.

永初二年閏月乙未朔廿八日壬戌，領訟掾充、史凌叩頭死罪死罪感言之。女子劉自言

永元十七年四月不處日，劉夫令盛贖母基持劉所有衣，凡十一種，從。

Reverse

領訟掾葛充名印

閏月 日 郵人以來

史 白開

The core problem here concerns the eleven items of clothing that belonged to Wang Liu but were in the possession of the mother-in-law Ji. Why did Wang Liu's father-in-law command Wang Liu's husband (his son) to redeem the eleven items of clothing? The manuscript here breaks off, but another fragment of the report allows us to piece together the story.

According to the investigation, sometime prior to May 105 CE, Ji pawned the eleven items of clothing belonging to Wang Liu, handing them over to a lender named Sui. Three years later May or June of 108 CE, the lender Sui learns that Ji's husband has made some money transporting cloth and the lender sends a servant (*nu*) along to see if Ji will redeem the clothing, now that her husband has money:

**60** CWJ1③: 325-2-32

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immediately succeeded the third month of Yongyuan 17), the equivalent to May of A.D. 105.

<sup>91</sup> The phrasing here is vague. In **71** it appears that Liu claimed that Ji was her mother. The investigation concludes that Ji is not Liu's ("true") mother, hence it is possible that this sentence should be understood either as "Sheng's mother," i.e. Liu's mother-in-law, or as "Liu's mother," i.e. Liu's stepmother. Strip **60** describes Wang Liu's father-in-law holding the clothing on his boat and a slave speaking to Ji about whether the clothing has been redeemed, hence it is likely that Ji is Wang Liu's mother in law.

.... In the seventh month of the second year [May/June 108 CE?]<sup>92</sup> Zhu's boat was heavy with cloth. Sui heard that Zhu obtained *you*<sup>93</sup> cash, whereupon he ordered the adult male servant from his household called Zhu<sub>2</sub> to call upon Ji, to whom he was to say: 'Now the boat belonging to Zhu earned *you* cash for transporting [goods], is it appropriate that the clothing be redeemed or not?' Ji said: I have already informed (Wang) Liu. (Wang) Liu has no cash. Sell the clothing at the regular (price) to repay my debts.<sup>94</sup> Eight had months passed. Sui sold...

錢贖衣。到二年七月，諸船（載）布重、綏聞諸得油錢、即令戶下大奴呼基，謂曰：今諸船以（載）得油錢，當贖衣不？基曰：已告劉、劉無錢。平賣衣以自償，中間相去積八月綏賣。

The lender Sui sends a servant to Ji asking if she will redeem the clothing that she has given him as a sort of collateral for a loan. Ji responds that she has already informed Wang Liu, her daughter-in-law, that the clothing should be redeemed. She is referring to the event in the petition when in May 105 CE, her husband commanded Wang Liu's husband to redeem the clothing. Ji's logic seems to be that she is entitled to appropriate her daughter-in-law's property as collateral for a loan, but that she herself is not responsible for redeeming the collateral. Evidently, custom or law dictate that the lender should inform the owner of his intent to sell the collateral, before disposing of it in order to recover debts, and this is why the lender Sui contacts Ji, and that Ji informs him that she has duly informed Wang Liu of what to do. In doing so, Ji acknowledges the claim made in the petition that the clothing belongs to Wang Liu, and that she is merely in possession of it (*chi* 持). Nevertheless, Ji also acknowledges that the clothing is sold "to pay off my debts" *zi shu* 自贖. What is the logic of Ji's contention that she is entitled to dispose of her

<sup>92</sup> The editors suggest that this is Yongchu 2, relying on 70. The problem is that the seventh month of Yongchu was an intercalary month, so we would expect that the date would read 二年閏月 as we find in 70. Here I follow the editors.

<sup>93</sup> The editors suggest that the phrase *you qian* seems to refer to a fee for conveyance, and that perhaps You is a name.

<sup>94</sup> The editors suggest the reading: "Ping sold the clothing to repay (his) own debts," where Ping is a name. However, this reading does not make sense in the larger context of the document—it adds an individual "Ping," who is otherwise unidentified. "Standard prices" (*ping jia* 平價) appear regularly in the statutes, thus I suggest *ping jia* 平賣 is an abbreviation for *yi ping jia mai* 以平價賣 ("to sell at a standard price"). *Zi shu* 自贖 is "repay my debts."

daughter-in-law's property even if she does not strictly own it? The report is incomplete and therefore somewhat inconclusive, but the final tablet of the investigator's report suggests an answer: that her claim is based on kinship ties (figure 7):

71CWJ1③: 325-5-11

...The opinion and analysis of Zhi is attached at left. Notified and dispatched (to?) [Wang] Liu. [Ge] Chong and Ling bow to the ground with fear and trepidation and twice risking penalty of death dare to report this.

[*In another hand.*]

Seventh (?) month. Ji is not (Wang) Liu's birth mother; the clothing also does not belong to Ji....

附社議解左。曉遣劉。充、凌惶恐叩頭死罪死罪感言之。  
泰月。基非劉親母，又非基衣也。

The final tablet of the report is written in two different hands. The first portion, like the rest of the report, is written in the clear and measured hand of Ling. The second portion is written in a loose hand which betrays the authority of the Governor of Changsha commandary, or perhaps his assistant or delegated representative.<sup>95</sup> Here the governor rejects Ji's claims, noting first, that as the mother-in-law, whatever claims she might have over Wang Liu are invalid because she is not her birth mother, and second, that the clothing did not belong to Ji in the first place.

This suit's resolution, in which the magistrate decides in favor of Wang Liu over her mother-in-law, is informative on a number of levels. We know already that a woman could use a petition to make claims to property in court, but it seems even more remarkable that a woman could do this to lodge a suit against her mother-in-law. Ji wants to elide kinship relations and to claim that as a mother-in-law she has the same rights as a mother to dispose of her daughter's property.<sup>96</sup> But her own actions suggest otherwise, for we know

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<sup>95</sup> This phenomenon is parallel to the widely discussed practice in which commandary officials or county magistrates would approve proposals by inscribing them with the graph *nuo* 諾 written in large graphs composed in an individual or idiosyncratic style, see Hsing I-tien [Xing Yitian] 邢義田, "Han Jin gongwenshu shang de 'jun jiao nuo' 漢晉公文書上的'君教諾,'" [http://www.bsm.org.cn/show\\_article.php?id=2638](http://www.bsm.org.cn/show_article.php?id=2638) (blog), 2016.

<sup>96</sup> Whether or not and under what conditions the mothers might have had such privileges is not clear from the present evidence, but it is clear 1) that a woman could

that initially, after she had taken Wang Liu's clothing and pawned it, she didn't ask Wang Liu directly to redeem it, but instead had her husband command her son to redeem the daughter-in-law's property. She is thus exploiting not her relationship as mother or mother-in-law, but rather her status as wife to the father of the husband of Wang Liu. Crucially, we do not in fact know if Ji is the mother of Wang Liu's husband or if she is his father's second wife, although, judging from her behavior, the latter case seems more likely. Ji's own actions, specifically, the indirectness of her command to Wang Liu, thus undercut her claim by acknowledging that a parent could only make such claims on their own children, not on their children by marriage.

This case shows how seriously petitions were taken, even when they were from impecunious daughters-in-law, and reveals the lengths to which commandary officials would go to investigate a dispute over private property between two individuals. At the same time, it shows how very mistaken it is to imagine law as merely an instrument of social control. Instead we see two narratives in which competing visions of the obligations incurred by different degrees of kinship are introduced. In Ji's narrative, the central idea is that her status as a mother allows her to exploit her daughter-in-law; Wang Liu counters Ji's claims, ably showing how Ji's own actions reveal the inconsistency of her claim.

### *Conclusion*

Sometime after 33 BCE, the *Han shu* informs us, an official named Zhu Bo travelled to Jizhou as the newly appointed Regional Inspector. Travelling in his new domain, Zhu Bo was accosted by "people and officials in the hundreds" who mobbed the official residence and "crowded the road with petitions." Zhu Bo's staff, locals who were supposed to guide the new-to-the-job Officers in the way of government, suggested that Zhu delay his journey in order to receive the petitions and render judgments.<sup>97</sup> Instead, Zhu summons the petitioner to his carriage and addresses them, demonstrating an impressive command of procedure:

If you wish to petition in regard to the Assistant Magistrate or county

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be household head and 2) even if she was not, the present case suggests that a person might hold certain types of property independently of the household head.

<sup>97</sup> The phrase is "to hear and to record" (聽錄 *ting lu*). I think this means to have the petitions read to him, and to have his decision recorded on the petition.

Commandant, [know] that the regional inspector does not inspect [low officials holding the] yellow sash, and that these [petitions] can each be taken to the commandery. If you wish to report the 2,000 picul officials [i.e., the commandary Governors] and the black sash senior officials, when I have completed my circuit you can bring these petitions to me at my place of business. As for those people who have been mistreated by officials, and those who wish to report to me regarding thieves, robbers, lawsuits, or complaints, have each of them dispatched to the appropriate section.<sup>98</sup>

欲言縣丞尉者，刺史不察黃綬，各自詣郡。欲言二千石墨綬長吏者，使者行部還，詣治所。其民為吏所冤，及言盜賊辭訟事，各使屬其部從事。

When he had completed his speech, the *Han shu* notes, four or five hundred people dispersed. Suspecting that something is awry, Zhu Bo investigates and discovers that the petitioners had been put up to the task by nefarious local officials who had hoped to use this method to slow his investigative zeal.

Even if the Zhu Bo's petitioners seem to have received illicit encouragement, I think the episode shows that the practice of petitioning was deeply embedded in imperial life: it was easy to encourage people to make petitions because it was something people knew how to do. The petition, as we have seen, was open both in terms of the people who could use it and in terms of the uses it could be put to. This made petitioning very popular, as huge assemblages of discarded manuscripts attest.<sup>99</sup> By the late first century CE, protocols and offices had been established to deal with the volume of petitions, as Zhu Bo's speech demonstrates.

But the larger question is, of course, what does petitioning tell us about legal practices of the time more broadly? The conventional answer has been

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<sup>98</sup> *Han shu* 83.3399. This passage would seem to suggest that county magistrates hold black sashes and are implied in the phrase "senior officials" (*zhang li* 長吏). If this reading is correct, there is a discrepancy between this passage and other Han passages regarding the ranks of county magistrates which suggest that county magistrates became black-sash officials only after 8 BCE. For a discussion of the relation of the ranks expressed through sashes, the office of regional inspector, and efforts at reform under Chengdi, see Abe Yukinobu 阿部幸信, "Jusei yori mita Zen Kan matsu no chuō--chihō kansei 綬制よりみた前漢末の中央・地方官制," *Jūkan Tōyōgaku* 84 (2000): 37–53. Abe suggests that the changes usually attributed to the reforms of 8 BCE may have been more gradual than previously thought, and that this is the reason we see county magistrates listed as holding black sashes in this early Chengdi period passage from Zhu Bo's biography.

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that petitioning was an informal practice concerned only with private interests, and thus that it did not rise to the level of or have any effect on “law.” There is a way in which this dogma replicates the way that individual, private interest is inherent in the way “speech” performed in petitions (as opposed to, say, the public, third-person speech found in the formulaic edict, “the emperor decrees.”) This chapter argues against the conventional accounts, contending that they have misread petitions, insofar as they have assumed that the function of the petition is to record or document individual speech, rather than to transmit it. If we examine the petition from the perspective of paperwork, we find that there was nothing private about the production, circulation and ultimate disposal of petitions among piles of other official manuscripts. Rather, the formula *zi yan* should be understood from the perspective of the petitioner: “I myself say” suggested that ostensibly public legal norms were to be interpreted not in terms of the interest of the court (as all legal norms allegedly were, according to the conventional accounts), but in terms of the interests of individuals—even of Qiang people, of daughters-in-law, and of servants.

#### *Appendix: Earlier Scholarship on Petitions*

Despite the rapid growth of secondary literature on early legal manuscripts (a bibliography of scholarship on one set of manuscripts extends to over 1,500 items), the literature on petitions is relatively scant, partly because evidence for petitions was sparse prior to recent finds, partly because descriptions of petitions are largely absent from court histories, and partly because the content of the petitions overturns many preconceived ideas.<sup>100</sup> Perhaps this explains why only a few scholars have taken note of their significance. This relative lack of interest is also due to a persistent notion that petitions do not represent “formal” legal practice, which is assumed to have been confined to penal and administrative law and to have been more codified than it was. Legal scholars who have addressed the petition have struggled to make the evidence fit the received wisdom in various and sometimes illuminating ways.

Because arguments about the nature of petitions are often made through textual analysis or philology, it is necessary to reconstruct the train of philological argument and to account for this argument in terms of the material

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<sup>100</sup> The bibliography is Li Li 李力, *Zhangjiashan Ersiqi hao Han mu falü wenxian yanjiu ji qi shuping* (1985.1-2008.12) 張家山 247 號墓漢簡法律文獻研究及其述評 (1985.1-2008.12) (Tokyo: Tokyō Gaikokugo Daigaku Ajia, Afurika gengo bunka kenkyūsho, 2009). Petition manuscripts were first found in 1930-31, but the character of these manuscripts attracted little attention.

available in the late 1950s. At the same time, such arguments are never purely founded in philological analysis, but instead simultaneously represent arguments about the legal, social, and political history, as all scholars would agree. I have thus tried to achieve a balance between the technical level of philological argument and the (sometimes implicit) historical claims.

Ōba Osamu was the first scholar to draw attention to the link between orality and manuscript forms in an article of 1958 entitled “A Study of the *yuanshu*.” Using finds from the Juyan manuscripts excavated in 1930-31, Ōba presented a new argument about a type of manuscript mentioned only fleetingly in received sources but prominent in the Juyan manuscripts, that is the *yuanshu* 爰書. Ōba’s central argument was that the *yuanshu* 爰書 was a type of manuscript that took the place of an oral statement, and that, following early commentators such as Su Lin 蘇林 (early 3<sup>rd</sup> century), the word *yuan* 爰 should be understood as “to change” or “to replace,” in this instance to change an oral statement into a written one.<sup>101</sup>

In the same article, Ōba was also among the first to take note of the formula *ziyan* 自言 (“I myself speak”) and to notice that this type of manuscript allowed one to petition officials regarding private matters.<sup>102</sup> Ōba paid particular attention to a set of *ziyan* petitions about private debts, yet Ōba was nevertheless reluctant to believe that the local government offices might intervene on behalf of commoners in a private dispute. Noting that he has not found cases of disputes between *two* private parties, Ōba concluded: “For the government to interfere in an affair of debt collection, it must have been that one or both of the parties was related to [some official in] the government, or that this represented a special situation on the frontier.”<sup>103</sup> Ōba, in other words, clearly noted that manuscripts marked with the formula *ziyan* allowed one to petition officials with regard to private matters, but he nevertheless hesitated to believe that such petitions could lead officials to intervene in private affairs.

In his 1958 article, Ōba identified the *yuanshu* with the formula *ziyan* and suggested that the formula *ziyan* identified *yuanshu*, in particular a variety of *yuanshu* called *zizheng yuanshu* 自證爰書 (“reports of testimony”). With the benefit of subsequent finds, Momiyama Akira was able to demonstrate in a 1992 article that Ōba was wrong to identify *ziyan* manuscripts with what by that time was clearly a separate type of manuscript called *zizheng yuanshu* 自

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<sup>101</sup> This article, originally published in 1958, is reprinted with two addenda in Ōba Osamu 大庭修, *Shin Kan hōseishi no kenkyū* 秦漢法制史の研究, 626–71.

<sup>102</sup> *Shitekina jikō o kan ni shinkoku suru* 私的な事項を官に申告する. Ōba Osamu 大庭修, 645.

<sup>103</sup> Ōba Osamu 大庭修, 645.

證爰書。<sup>104</sup> Momiyama showed that *ziyan* documents are used to register private claims of debts to officials, and that such disputes were sometimes resolved voluntarily, but in others not (*bu fu* 不服). In the latter case, it became necessary for officials to take a report of testimony, and this is called a *zizheng yuanshu* 自證爰書, which, *contra* Ōba, was distinct from the *ziyan* manuscripts. Momiyama further showed that *ziyan* manuscripts were referred to as *ziyan*, that is to say that the formula could function as a metonymy or a synecdoche for the type of manuscript itself.

Momiyama's core contention is undoubtedly correct; Ōba (with fewer sources at hand) had mistaken *ziyan* manuscripts for *zizheng yuanshu* manuscripts. Yet Momiyama goes further, suggesting that *yuanshu* and *ziyan* manuscripts are different in nature, the former official and public and the later essentially private and unofficial. The *yuanshu* is, according to Momiyama, "a manuscript compiled by officials in order to provide public testimony of a certain fact."<sup>105</sup> He thus rejects Ōba's description of some *yuanshu* "as manuscripts in which a private matter is reported to the officials."<sup>106</sup> A *yuanshu* for Momiyama instead is a form of manuscript on the model of the examples that are seen in Shuihudi "Models on Sealing and Investigating," that is a manuscript compiled for public rather than private purposes.<sup>107</sup> For Momiyama, then, the gap between *ziyan* manuscripts and *yuanshu* manuscripts is that between private and public manuscripts. As I will show, I believe the private/public distinction cannot be maintained in this instance.

Both Ōba and Momiyama agree 1) that *ziyan* manuscripts represent petitions to officials regarding private matters and 2) that the *yuanshu* is a public document. As they disagree as to whether a *ziyan* manuscript is a *yuanshu*, they disagree as to whether a *ziyan* manuscript is public or official manuscript. For Ōba, the *yuanshu* is an oral statement changed into written form, while for Momiyama the *yuanshu* is an official manuscript compiled by officials for a public purpose. Tellingly, Ōba is uncomfortable with the idea that a private complaint could lead to official action. Momiyama, in claiming that a *ziyan* manuscript is not a *yuanshu*, sidesteps the problem that Ōba raised,

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<sup>104</sup> Momiyama Akira 初山明, *Chūgoku kodai soshō seido no kenkyū* 中国古代訴訟制度の研究 (Kyoto: Kyōto Daigaku, 2006), 165–229, esp. 202–14. As I will show below, however, Ōba was right (*contra* Momiyama) to regard these both as types of *yuanshu*.

<sup>105</sup> *Tantō kanri ni yotte sakusei sareta tokutei jijitsu o kōteki ni shōmei suru tame no bunsho ga, sunawachi enshō de aru* 担当官吏によって作成された特定事実を公的に証明するための文書が、すなわち爰書である。Momiyama Akira 初山明, 223.

<sup>106</sup> Momiyama Akira 初山明, 223.

<sup>107</sup> Momiyama's term is *kōshō bunsho* 公證文書.

even though he has inadvertently demonstrated what Ōba stopped short of suggesting: that a private dispute could, in fact, lead to an official investigation.

In a 2001 article, the prominent legal scholar Xu Shihong argued that Han law did include civil suits, by using evidence to summarize discrete steps in the process, citing Momiyama's work.<sup>108</sup> Xu argued that suits (*song* 訟) were generally brought at a district (*xiang* 鄉) level, and that this was often done through the use of the formula *ziyan*. The formula *ziyan*, Xu noted, is not an oral formula, but rather was a written one, to be deployed in a manuscript. This helps to explain why, as Momiyama had earlier suggested, the formula *ziyan* could refer also to the category of manuscript employing that formula. Xu suggests that the *ziyan* document must have had a standard form, but she does not address whether a *ziyan* manuscript might be a *yuanshu*. Having shown the existence of civil suits, Xu stopped short of drawing further conclusions, and of addressing the problem that Ōba's work raised, i.e. whether or not public officials might adjudicate private, civil disputes. In a 2017 article delineating the names and qualities of various types of legal manuscripts, Xu does not mention *ziyan* manuscripts under the category *yuanshu*, nor does she include *ziyan* manuscripts under the category of "legal manuscript."<sup>109</sup> This omission suggests that Xu continued to view *ziyan* manuscripts as distinct from *yuanshu*, and that only the later can be regarded as having "legal" force.

Bu Xianqun and Liu Yang's article of 2013 situates *ziyan* manuscripts at the juncture of the local administration and society, suggesting that it is an important means of maintaining a link between state and society, between which Bu and Liu draw a stark division.<sup>110</sup> Bu and Liu cast *ziyan* manuscripts as a form of *yuanshu*, but argue that the basic nature of the *yuanshu* is a record of a criminal confession, in this case adopted to another purpose. Therefore its function, in keeping with Bu and Liu's stark division between state and society, is to maintain "communication" between commoners and the administrative state. By defining petitions as private communications (transcribed in the same manner as criminal confessions) rather than manuscripts which gave individuals legal power, Bu and Liu are able to define

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<sup>108</sup> Xu Shihong 徐世虹, "Han dai minshi susong chengxu kaoshu 漢代民事訴訟程序考述."

<sup>109</sup> Xu Shihong 徐世虹, "Chutu jiandu falü wenxian de dingming, xingzhi yu leibie 出土簡牘法律文獻的定名、性質與類別," *Gudai wenming* 11, no. 3 (July 2017): 84-85.

<sup>110</sup> Bu Xianqun 卜憲群 and Liu Yang 劉揚, "Qin Han richang zhixu zhong de shehui yu xingzheng guanxi chutan--guanyu 'ziyan' yi ci de jiedu 秦漢日常秩序中的社會與行政關係初探--關於'自言'一詞的解讀," *Wen shi zhe*, no. 4 (2013): 81-92.

petitions as part of a unidirectional “authoritarian centralized bureaucracy” *zhuanzhi zhuyi jiquan guanliao zhi* 專制主義集權官僚制 which is “unified rather than pluralist” *yiyuande er fei eryuande* 一元的而非二元的。

Unfortunately, much of the scholarship on *ziyan* manuscripts has revolved around the question of what if anything petitions suggest about the relation between state and society. Ōba, though the first to write about the subject, went furthest to consider the possibility that commoners could produce official documents, even as he suggested that this could only have happened when official concerns were somehow involved. Evidence from Liye now shows clearly that *ziyan* petitions were indeed considered *yuanshu*,<sup>111</sup> *contra* Momiyama, which also allows us to revisit Ōba’s earlier arguments about the nature of the *yuanshu* in general, namely the notion that the *yuanshu* represented “speech changed into writing.” Evidence from Shuihudi makes it abundantly clear that *yuanshu* were not exclusively about making private claims to officials, but at the same time they weren’t only about officials taking testimony or confessions. In other words, the strong divide between state and society, between private and public doesn’t capture the early imperial language, something that is evident when we look to petitions as material objects with histories. After all, a single manuscript might contain evidence of the petitioner’s request, of the record of its conveyance by a relay runner and its receipt by an officer, and of an endorsement by a magistrate. The story told by the manuscript is thus one of the laws operating *in* society, and it dissolves the very dichotomy through whose lens much of ancient history has been seen.

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<sup>111</sup>See Liye 8-1554, 9-15, and 9-2344.

### Chapter 3: The Magistrate's Doubtful Cases<sup>112</sup>

Legal practice in early imperial China is often described in terms so formal that its practitioners recede from the picture. Criminal complaints are confirmed by investigation, interrogations follow procedures, facts are matched to statutes, sentences are executed. Law operates automatically, autonomously, without friction. Alternately, if it grinds to a halt, ineptitude, venality and inefficiency are to blame. In either case, the role of the magistrate is only to implement law. This formalist vision prevalent in current scholarship draws in part from a healthy respect for the technicalities of early Chinese law and a fidelity to its operative terms. Yet if the terms of law seem to evoke rigid hierarchies and mechanical procedures, it is well to recall that magistrates themselves were careful to avoid formalism, arguing that a decision may accord with the letter of the law (*wen zhi yu fa* 文致於法) and still be a bad decision.<sup>113</sup> In this paper, I will thus attempt to uncouple the technicalities of law from the assumptions of the formalists. In doing so, I hope to resurrect the reputation of the magistrates, and to place them in a social environment, not precisely a law and society model, but one in which the apparent frictionlessness of the law is slowed down to the point where the sociality in the making of law becomes apparent.<sup>114</sup>

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<sup>112</sup> An earlier version of this paper was delivered at the Association for Asian Studies Annual Meeting in March 2018. I would like to express my gratitude in particular to Karen Turner for her insightful comments at that meeting, as well as to my fellow panelists at that meeting, Luke Habberstad and Zhang Zhaoyang.

<sup>113</sup> An edict of 145 suggests that even when “the letter (of the decision) agrees with the law” (*wen zhi yu fa* 文致於法), a case may be “doubtful” if it “does not satisfy people’s minds” (*yu ren xin bu yan* 於人心不厭.) *Han shu* 5.148; Dubs, 323; (a shorter excerpt from the edict, with slight differences of phrasing, is found in *Han shu* 23.1106; Hulsewé, *Remnants of Han Law*, 343. I follow Hulsewé’s translations.)

<sup>114</sup> My use of the term magistrate may be unacceptable to some. I use it in the first instance as a generic term meaning “officer charged with the administration of the law.” The term is also used to translate the title of the administrator of a county (長 or 令), and as it was in the name of this administrator that many legal opinions were issued, the term magistrate may also be appropriate in this sense, though it is clear that much of legal work was carried out by assistants and specialists who were supervised by the assistant magistrate. I am well aware of the argument of Miyake Kiyoshi and more recently Robin Yates and Anthony Barbieri-Low that county administrators were only minimally involved in legal work. I concur with this argument to a degree, but the legal decisions were issued in the name of the county magistrate and I am not sure that it is possible to prove that the magistrate did not

One legacy of the law and society tradition of legal history is that, while enquiry is often directed toward many types of informal legal actors (“society”), the sociality of magistrates, who are often equated with law or the state, is largely neglected. Because law and bureaucracy are at the core of many definitions of modernity there is a parallel tendency to naturalize two extraordinary and influential phenomena of the early imperial period in China, namely the formation of a large body of literate officials and the proliferation of legal writing embodied in bamboo and wood, at precisely the moment in which they hold the most potent possibility for doing what history does best, that is to denaturalize presentist assumptions. In this chapter, I try to see the sociality of magistrates and the circulation of legal writings as part of the same process, and concurrently to try to understand legal authority not as textual interpretation on the one hand and sociality on the other, but instead as a new, and sometimes unfamiliar social form of textual practice.<sup>115</sup>

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supervise and influence some cases closely. For reasons that should become apparent in this paper, I disagree with the larger notion that legal specialists were low-level functionaries, which is usually taken as a corollary to the notion of early Chinese law as rigidly mechanical. Miyake Kiyoshi 宮宅潔, “Shin Kan Jidai no zaiban seido 秦漢時代の裁判精度,” *Shirin* Vol. 61 No. 2 (1998): 35–68. Barbieri-Low and 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* esp. 119–123.

<sup>115</sup> My sources here include received texts such as the *Shiji*, *Han shu*, and the *Tongdian*, as well as cases from the “Zouyanshu” from tomb no. 247 at Zhangjiashan (I use this edition: Peng Hao 彭浩, Chen Wei 陳偉, and Kudo Motoo 工藤元男, *Er nian lü ling yu Zouyanshu: Zhangjiashan er si qi hao mu chutu falü wenxian shidu* 二年律令與奏讞書：張家山二四七號漢墓出土法律文獻釋讀 (Shanghai: Shanghai guji chubanshe, 2007). For excavated sources from Zhangjiashan and Shuihudi, I will supply the initials of the title of the manuscript in transliteration followed by the strip number. Thus for the 17<sup>th</sup> strip of the manuscript known as “Zouyanshu” from Zhangjiashan, I will write *ZJS ZYS 17*, in the first instance and *ZYS 17* subsequently. I will also provide a reference to the equivalent English translations of the manuscripts from Shuihudi and Zhangjiashan: Hulsewé, *Remnants of Ch’in Law*; Barbieri-Low and 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*. These are abbreviated as *RCL* and *LSS* respectively; *RHL* is Hulsewé, *Remnants of Han Law*. I have also made some use of the unprovenanced manuscripts now stored at the Yuelu Academy, which will be cited where appropriate. The well-known cases attributed to Dong Zhongshu are often cited as a foil for the “legalist” spirit of the Qin, in which the rigidities of the Qin are finally replaced by a “Confucian” interest in subjectivity and the textual authority of the Classics; Charles Sanft, among others, has shown how inaccurate this account is. Because of the rich scholarship on the Dong Zhongshu cases, I have decided here to focus on other material. See Gary Arbuckle, “Former Han Legal Philosophy and the *Gongyang*

## Questions about statutes

One of the most remarked upon features of legal statutes (*lü* 律) and other rules in the early imperial period is the rationality of their language. To Anthony Hulsewé, these rules suggested an advance, something almost modern: “the main body of laws was rational and political” and they thus “represent a great step in the process of secularization of Chinese society.” “They are” he concludes “quite clearly expressions of the will of the ruler” and no longer based only on “‘natural law’ or on time-hallowed custom and usage.” “They constitute a body of rules with purely pragmatic connotations, uniformly applicable to the whole population...”<sup>116</sup>

Yet it is worth noting that Hulsewé thought of early imperial law as an admixture both of “archaic” and rational law, and he saw the archaic quality of early imperial law coming to the fore precisely at the moment that legal decisions were made. Here a central problem lay in the interpretation of the word *dang* 當. Uncharacteristically, Hulsewé seems to have struggled to come up with a translation of this term, eventually deciding on what he admitted was an unidiomatic usage: he translated the word as “to be warranted.” Hulsewé writes that he hopes his reader will be reminded by this strange translation “that *tang* basically means “to be equivalent; to outweigh; to counterbalance”, in the sense that the negative effect of the crime is neutralized by the punishment. In theory, it is the crime which is *tang*. and not the criminal.”

Hulsewé’s formulation may serve as an introduction to an issue that we can see at play in a remarkable manuscript from the Qin Shuihudi Tomb No.11 that paleographers have dubbed “Answers to Questions concerning Ch’in statutes” (before 218 BCE).<sup>117</sup> At first this text seems to respond to precisely the sort of problem that one would expect from positive law, that is, what to do

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*Zhuan*,” *B.C. Asian Review* 1 (1987): 1–25; Sarah A. Queen, *From Chronicle to Canon: The Hermeneutics of the Spring and Autumn According to Tung Chung-Shu* (Cambridge: University of Cambridge Press, 1996); Michael Loewe, “Dong Zhongshu as a Consultant,” *Asia Major* 22, no. 1 (2009): 163–82; Nylan, “Administration of the Family (*Qihuai Bisi* 齊懷必死) ”; Charles Sanft, “Dong Zhongshu’s *Chunqiu Jueyu* Reconsidered,” *Early China* 33/34 (November 2010): 141–69.

<sup>116</sup> Hulsewé, “Ch’in and Han Law,” 524.

<sup>117</sup> Sometimes this text is referred to as “Questions and Answers about Law,” a more accurate title.

with liminal cases. In one case, for example, there is a question about a man who has stolen a goat with a rope attached to its neck. Should the value of the rope be assessed in addition to the goat when calculating the value of the stolen goods to determine the thief's punishment? The answer given is that the value of the rope should not be assessed, because the mind of the thief was on the goat, and the rope was merely attached to the goat and it was not the thief's intent to profit from the rope.<sup>118</sup> At first the question of the rope seems simply to be a liminal question that the legislator had neglected to cover with a rule. But on closer examination, it becomes clear that the question arises not because the statute does not cover the case, but because the strict application of the rule, that the punishment of the thief be based on the value of what he stole, would, as the question implies, *bu dang*, unwarranted. In some cases, the dilemma arising from the tension between the surface reading of the statute on the one hand and an unwarranted outcome is made explicit:

When a thief-catcher pursues and arrests a malefactor, the malefactor beats the thief-catcher and kills him. Question: is the killer to be considered as having killed a person with murderous (intent) or as having killed him in a fight? It is killing a person in a fight, but in the practice of courts this is considered as murderous (intent).<sup>119</sup>

求盜追捕罪人，罪人格（格）殺求盜，問殺人者為賊殺人，且斲（鬪）殺？斲（鬪）殺人，廷行事為賊。[strip 66]

Generally, “killing in a fight” is considered a lighter crime than what Hulsewé translates as “killing with murderous intent,” but it would be unwarranted to treat the killing of thief catcher in this way, even though this is what the statute says.

Indeed, many of the questions in “Answers to Questions” text are dilemmas that arise not because the statutes are unclear, but because the strict application of the rule would seem unwarranted, *bu dang*. One might hazard then that one of the purposes of the “Answers to Questions” text is to show how the format of questioning allows legal specialists to avoid unwarranted judgments. If this is the case, it may explain why many of the questions are left unanswered, or why in several cases more than one opinion is offered.<sup>120</sup>

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<sup>118</sup> Shuhudi Qin mu zhujian zhengli xiaozu (Li Xueqin 李學勤 et al.), *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡, 100, “Falü dawen” 29. Hulsewé, *Remnants of Ch'in Law* 128-29, D24.

<sup>119</sup> This is Hulsewé's translation with a slight modification. *SHD FLDW* 66; Hulsewé, *Remnants of Ch'in Law*, 138, D53.

<sup>120</sup> *SHD FLDW* 8, 44, 121, 122, 174, and 196.

The question and answer itself suggests that legal rationality functioned not solely at the level of the ruler's will, but also as a dialectic of doubt and resolution that allowed warranted outcomes to emerge from a social context, in this case the conferral of legal experts. A more developed instance of this phenomenon may be seen in the so-called doubtful cases.

### *Doubtful cases*

A series of “doubtful cases” (*yi yu* 疑獄) from the second century BCE provides evidence of the learned sometimes virtuosic work of experts, the ample deliberation of magistrates, the difficulty of law's passage in the Han period. The “doubt” in these cases is not the familiar doubt about the guilt of a suspect, but instead a doubt, one might say a hesitation, in the minds of the magistrates which leads them to consult colleagues, and to relay cases up the ladder of authority for a decision.<sup>121</sup> The word “doubt” should thus be read as expression of humility on the part of the magistrate in the context of

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<sup>121</sup> The history of doubtful cases is usually told as one of institutional development. An edict of 201/200 BCE, which in light of the manuscripts now kept at the Yuelu academy should be regarded as a continuation or confirmation of earlier practice, suggested that lower officials should be permitted to send those judicial cases about which there is doubt up first to the commandery governor and then to the commandant of justice, and eventually up to the emperor. *Han shu* 23.1106; *RHL*, 343. A further edict of 145 suggests that even when a decision is in accord with the letter of the law (“the letter (of the decision) agrees with the law” (*wen zhi yu fa* 文致於法), a case may be “doubtful” if it “does not satisfy people's minds” (*yu ren xin bu yan* 於人心不厭.) *Han shu* 5.148; Dubs, 323; (a shorter excerpt from the edict, with slight differences of phrasing, is found in *Han shu* 23.1106; *RHL*, 343. I follow Hulsewé's translations.) Another edict of 143 BCE acknowledges that “some people are wise and some are ignorant; some officials are superior and others inferior,” removes a penalty for “referring matters that should not be referred.” For a more detailed discussion see Cai Wanjin 蔡萬進, *Zhangjiashan Han jian “Zouyanshu yanjiu”* 張家山漢簡《奏讞書》研究 (Guilin: Guangxi Shifan Daxue chubanshe, 2006), 121–53; Ikeda Yūichi 池田 雄一, *Chūgoku kodai no ritsuryō to shakai* 中国古代の律令と社会 (Tokyo: Kyūko Shoin, 2008), 580–679. For the Yuelu manuscripts see Zhu Hanmin 朱漢民 and Chen Songchang 陳松長, *Yuelu shuyuan cang Qin jian (san)* 嶽麓書院藏秦簡(叁) (Shanghai: Shanghai Cishu Chubanshe, 2013); Thies Staack, Ulrich Lau, and Yuelu shu yuan, *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: Brill, 2016).

communication with his superiors, part of the larger bureaucratic culture of humilifics and humble forms, the underlying conceit of which is that higher officials and ultimately the emperor are, by degrees, progressively more knowing.<sup>122</sup> Often the magistrate's hesitation is expressed in a doubt about whether to apply a particular statute in a particular case, but it would be wrong to conclude that the doubt was merely one of uncertainty in the strict application of rules and texts to things, as if, to use a hackneyed example, one were uncertain whether a bicycle or a toy car was a vehicle in the context of a sign saying "no vehicles in the park." Instead, I suggest that one resist adopting the emperor's apparent condescension toward his officials, in whose hands hesitation or doubt was wielded with great art to ensure the progress of legal deliberations and the discovery of legal means. Doubtful cases thus represent a virtuosic practice of the law, something which explains the extraordinary involvement of high-level officials in what appear to be trivial matters.

### *Filial piety as a legal technique*

Like the form and formulas of paperwork, legal language formed part of a generative medium whose utility lay in its broad adaptability. Words like *zei* 賊 and *dao* 盜 (sometimes translated "banditry" and "theft," respectively) came to refer not to discreet acts, but instead to the legal techniques that could be brought to bear in a case, techniques whose usage changed, developed and expanded over time. A philological approach to legal history, in so far as it demands a consistency absent from the original context, must be supplemented with an emphasis on practice and change over time. .<sup>123</sup>

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<sup>122</sup> As the edict on submitting doubtful cases 143 BCE makes clear: "...some people are wise and some are ignorant; some officials are superior and others inferior: [therefore] those cases in which there is doubt should be submitted to the authorities...."

<sup>123</sup> Early observers readily admitted that the usage of such terms was inconsistent. Writing of Han law, the *Jin shu* (648 CE) notes that "the statutes on theft include instances of banditry, and the statutes on banditry include examples of theft." 盜律有賊傷之例，賊律有盜章之文 *Jin shu* 30. 922. It is difficult, for example, to account for the fact that the bandits were referred to not as *zei* ("bandits") but as *dao* ("thieves"), without some reference to contingent, historical development of legal practice. For a philological approach to defining "theft," see A. F. P. Hulsewé, "The Wide Scope of Tao 盜 'Theft,' in Ch'in-Han Law," *Early China* 13 (1988): 166–200.

The prominence of *xiao* (“filial piety” 孝) in the Western and Eastern Han dynasties, the ubiquity of the term and what one might call its wide semantic field--its apparent application to all sorts of relations besides that of parent and child—is often attributed to the imperial promotion of *xiao* as a virtue and the parental relation as a norm. Taking issue with this characterization, scholars of the early empires have demonstrated that *xiao* was never the patriarchal lynchpin that Legge, Weber and others imagined it to have been.<sup>124</sup> If social practice diverged from official orthodoxy, and if official discourse was in turn less orthodox than has been assumed, one might expect to find in law, at least, a firmer ground, a clearer enunciation of the hierarchical principle.

Surprisingly, perhaps, legal definitions of *xiao* are elusive: one recent study, for example, arrives at no less than ten major types of unfilial behavior, from neglect to disrespect, from violence to incest, and even, as we shall see, illicit sex.<sup>125</sup> What is interesting here is not only that *xiao* itself is difficult to define, but so too is its negation. Law resists a definition of *xiao*; instead *xiao*, like kinship itself, emerges as something that is both ubiquitous and difficult to essentialize. This is precisely where law can offer some help, for in the hands of magistrates *xiao*--or rather its negation *buxiao* (“unfilial behavior” 不孝)—clearly functioned as a technique that developed over time. Law shows *xiao* not as an epistemological artifact but as a sort of divergent thinking. What interests the magistrate is not what *xiao* is, but the conditions under which a *xiao* relation can be made or broken. *Xiao* and *buxiao*, filial and unfilial, is thus a divergent mode of thinking.<sup>126</sup>

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<sup>124</sup>The neat equation of filial piety and patriotic duty described in texts such as the *Xiao jing* 孝經, the *Han shi wai zhuan* 漢詩外傳 and the *Lüshi chunqiu* 呂氏春秋 was both contested, and also came to prominence at the court quite late. In practice, filial piety was more closely tied to sentiment than duty, perhaps most strikingly, as *xiao* became more prevalent, mothers were more prominent than fathers. See Keith Knapp, “The *Ru* Reinterpretation of *Xiao*,” *Early China* 20 (1995): 195–222; Michael Nylan, “Confucian Piety and Individualism in Han China,” *Journal of the American Oriental Society* 116, no. 1 (March 1996): 1–27; Brown, *The Politics of Mourning in Early China*.

<sup>125</sup> Jia Liying 賈麗英, “Qin Han *buxiao zui kao lun* 秦漢不孝罪考論,” *Shijiazhuang xueyuan xuebao*, no. 1 (2008): 68–79.

<sup>126</sup> I am inspired by Marilyn Strathern’s notion of “divergent thinking” that arises from her discussion of the conundrum of the anthropologist (one could say equally the historian) who wants to use kinship which must be both ubiquitous and particular: “Although anthropologists want to go on deploying the notion of kinship, and although common sense tells them they must find it everywhere, their analytical constructs keep pushing kinship back into the contingencies of the constructs themselves. In particular, they (the constructs) regularly flounder on the ubiquity or

Contrary to the hackneyed description of early imperial law as exclusively penal in character, in its earliest form, *buxiao* constituted what (in baldly anachronistic terms) could only be considered a “private” wrong. Thus while most studies of *buxiao* or “unfiliality” have sought to define specific acts (“crimes”) that constitute *buxiao*, what newer evidence from Shuihudi and Zhangjiashan shows is that *buxiao* in its earliest form did not involve a crime at all but rather was a procedure available for a parent to use against a child for an unspecified wrong.<sup>127</sup> Qin manuscripts from Shuihudi show that, in the late 3<sup>rd</sup> century BCE, a parent might bring an accusation of *buxiao* 不孝 (“unfilial behavior” certainly, but also “disobedience”) against a child. It was enough that the parent wished to make the denouncement; the law did not concern itself with what *buxiao* entailed. According to a model (*shi* 式) for using the *buxiao* procedure from Shuihudi, a parent would make a denouncement stating that a child had been unfilial and requesting (*ye* 謁) to have the child killed. An official was then charged with confirming that it was indeed the person’s own child (*qinzi* 親子).<sup>128</sup> In this case a behavior need not be specified: the formula of the denouncement and the confirmation of the relation between the two people was sufficient. The fact that the wrong of *buxiao* was constituted by the formula for denunciation and the confirmation of

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otherwise of ‘biology,’ ‘substance,’ ‘conception’ and so forth, notions evidently part of cultural thinking. For without that substratum, what then distinguishes kinship from any other phenomenon? This is the old question. But anthropologists are not easily going to say that there are peoples without kinship. So what is it that they go on finding everywhere? It cannot be these locally laden notions, obviously, but must be something else... Perhaps what anthropologists find everywhere [is] the realization that relationality summons divergent thinking.” Marilyn Strathern, *Kinship, Law and the Unexpected: Relatives Are Always a Surprise* (Cambridge: Cambridge University Press, 2005), 7.

<sup>127</sup> The best discussion of the *buxiao* procedure in the context of the Zhangjiashan and Shuihudi finds is Xu Shihong 徐世虹, “Qin Han jiandu zhong buxiao zui susong 秦漢簡牘中的不孝罪訴訟,” *Huadong Zhengfa Xueyuan xuebao*, no. 3 (2006): 124–29. Xu describes *buxiao* as a procedure available to parents, who could denounce a child for *buxiao* without needing to substantiate the complaint by reference to specific behaviors, in other words, *buxiao* was based solely on the subjective displeasure of the parent. Most discussions of *buxiao*, on the other hand, have sought to show that *buxiao* involves specific behaviors, an approach influenced by Tang legal definitions. Given that no known Han rules or statutes define *buxiao* in terms of specific behaviors, such scholars have had to infer what statutes might have said on the basis of Tang law, or even a general notion of what “filial piety” entailed, see for example Wakae Kenzō 若江賢三, “Shin Kan ni okeru ‘fukō’ tsumi 秦漢律における「不孝」罪,” *Tōyōshi kenkyū* 55, no. 2 (1996): 249–82; Jia Liying 賈麗英, “Qin Han buxiao zui kao lun 秦漢不孝罪考論.”

<sup>128</sup> <sup>128</sup> *SHD FZS* 45-48; *RCL* E16.



accepted, presumably because she was a stepmother and not a mother. Both these cases show that the use of the *buxiao* procedure was defined by the act of denunciation by someone to whom one was directly linked by household registration or kinship, implying that only kin could make use of the *buxiao*.

By the second century BCE magistrates themselves seem to have begun to employ *buxiao*, not through denunciation, but, in a remarkable development, by suggesting that some act constituted *buxiao*. In itself this was a tremendous arrogation, made all the more remarkable for the reason that, because the crime of *buxiao* did not entail any specific behavior, magistrates claimed a certain flexibility in the designation of acts that might be considered *buxiao*.

We see this flexibility with regard to acts that constituted *buxiao* in a decision from reign of Jingdi (157-141 BCE) which, because it involved an amnesty, was issued as an edict.<sup>133</sup> The law on plotting rebellion (*mou fan* 謀反) required that a rebel's father and other kin be executed for a son's rebellion, even if they had no foreknowledge or complicity in the crime.<sup>134</sup> In this case, the crux of the legal problem that the edict seeks to address is that the law does not allow for a defense against a charge of rebellion based on ignorance.<sup>135</sup> The emperor resolves this problem by using the legal fiction that the son's plotting to rebel was itself an act of *buxiao* (despite the absence of a denunciation.) In this case, Ji Huiyue plotted to rebel, and the edict suggests that in doing so he has been unfilial (*bu xiao* 不孝) because (and here is the legal fiction) the intent of Ji's rebellion was that his father (whose name was Jia) would be executed (*mou fan, yu yi sha Jia* 謀反，欲以殺嘉). The assumption is that Ji Huiyue knew that the punishment for rebellion calls for the father of a rebel to be executed. The emperor issues an amnesty for the father, the father's wife, and his children (other than Ji Huiyue), while Ji

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<sup>133</sup> *Han shu* 5.142 has the edict in the third year of Jingdi's reign (Jan/Feb 155 BCE), but *Shiji* 18.947 and *Han shu* 16.593 both have this in the third year of the *middle* period (孝景中三年) of Jingdi's reign, i.e. 147 BCE.

<sup>134</sup> *ENLL* 1-2; *LSS* 3.1.1.

<sup>135</sup> Jin Zhuo (fl. c. 300 CE) suggests that Ji Huiyue has falsely reported (*yan* 言) that his father had foreknowledge of the rebellion, but that in fact the father was ignorant of it. Yan Shigu (581-645 CE) rejects Jin Zhuo's interpretation, suggesting that Ji Huiyue held "private resentment" toward his father, and that he rebels on his own account with the intention of having his father executed. This is, I think, the correct interpretation of the legal theory that the edict is endorsing. It seems the edict is proposing that by seeking to have his father executed, Ji Huiyue has committed a prior crime of *buxiao* 不孝 (of which his rebellion in itself is evidence?) which allows the emperor to exempt Ji Huiyue's father, mother, and siblings from execution—but not his wife and children—because it effectively dissolves ties of kinship between father and mother.



felt it necessary to assemble no less than thirty-one experts to deliberate the case is a sign of its technical difficulty. The record consists of the draft of a response to Du based on a consensus of the legal experts, followed by the record of a discussion between the legal experts and another officer who arrives late and who leads the discussion in a new direction.

The Commandant of Justice’s recapitulation of the case is as follows:

...The adult woman A’s<sup>138</sup> husband, D, of the rank of *gongshi*, fell ill and died. The coffin was placed in the hall and had not been buried. [A] along with the D’s mother Su mourned through the night, [walking] around the coffin and wailing. A, along with the adult male B, together went behind the coffin into the interior (of the house) and engaged in consensual illicit sex. The next morning, Su denounced A to the officials. The officials arrested A. [The magistrate of Du] is in doubt regarding A’s crime.

[...]女子甲夫公士丁疾死，喪棺在堂上，未葬，與丁母素夜喪，環棺而哭。甲與男子 *strip 183* 丙偕之棺後內中和奸。明旦，素告甲吏。吏捕得甲，疑甲罪。[...] *strip 184*<sup>139</sup>

A’s mother-in-law, Su, makes the initial denunciation, and this marks the formal beginning of the case. The summary-case suggests that the mother in law has denounced her son’s widow for “consensual illicit sex” (和奸 *he jian*.) A crucial detail is that the mother-in-law waited until the morning to make her denouncement, making it invalid. For a denunciation of illicit sex to be valid, it was necessary that the couple be apprehended in the act.<sup>140</sup>

Let us follow the Commandant of Justice and his thirty experts along their difficult and winding path as they attempt to resolve the magistrate’s

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fornicated. I would suggest that the magistrate of Du has only expressed his doubts as to the crime of the widow, so we would not expect to see a discussion of her lover. Who is meant by the “errant officials” is unclear, but perhaps it is the Commandant of Justice and his experts, who surely were not liable for any crime, as their decision was still under discussion. Whether or not the widow was to be punished at all is left unclear, but in any case, strips 15-16 of the ZYS provide another instance of a case where no definite decision was returned.

<sup>138</sup>The name of the husband, along with that of the widow and her lover have been replaced as D, A and C. There is no B.

<sup>139</sup>My transcriptions (with changes noted) are based on Peng Hao 彭浩, Chen Wei 陳偉, and Kudo Motoo 工藤元男, *Er nian lü ling yu Zouyanshu*, 374.

<sup>140</sup> See ZYS 182-83; LSS 4.21, esp. 1380-81. Cf. *SHD FZS 98*; *RCL E25*. The difficulty of the phrase *jiao shang* 校上 notwithstanding, perpetrators must be apprehended (*de* 得) on the scene rather than merely denounced (*gao* 告).

doubts (if it weren't difficult there would be no need for so many experts!):

The Commandant of Justice, Gu, the corrector Shi, the supervisor Hong, the court officer, Wu, and others, [altogether] thirty persons, give their opinion as to what [the punishment] should be. They all say:  
The statutes say: in the sequence in establishing an heir after death, a wife follows the father and mother; the rule for returning to mourn for a [deceased] wife is the same as that for [deceased] fathers and mothers. If calculated by statute for establishing an heir and by human affairs, a wife is honored differently than a husband. The wife serves her husband and when mourning for him, she is liable to inherit<sup>141</sup> after the parents, as per the statute. In designating heirs, the wife comes after the husband's father and mother. When a husband's father (or) mother have died but have not been buried, having illicit sex beside the burial is equal to being unfilial. "Unfilial" [acts warrant] execution in the marketplace. A degree below unfilial warrants tattooing and being made a wall builder or a grain pounder. If she is obstreperous, keep her intact...

...廷尉穀、正始、監弘、廷史武等卅人議當 *strip 184* 之，皆曰：律，死置後之次，妻次父母；妻死歸寧，與父母同法。以律置後之次人事計之，夫異尊于妻。*strip 185* 妻事夫，及服其喪，資當次父母如律。妻之為後次夫父母，夫父母死，未葬，奸喪旁者，當不孝，不孝之 *strip 186* 次，當黥為城旦舂。髡(敖)悍，完之。

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<sup>141</sup> Hsing I-tien is correct in introducing Zheng Xuan's gloss that *zi* 資 is *qu* 取 "to take" or "to acquire." Here the meaning is "to acquire money or property," more specifically "to inherit," Hsing I-tien [Xing Yitian] 邢義田, "Qin huo Han chu hejian an zhong suo jian de qinshu lunli guanxi (dingbu ben)--Jiangling Zhangjiashan 247 hao mu 'Zouyanshu' jian 180-196 kao lun" 秦或西漢初和姦案中所見的親屬倫理關係 (訂補本)--江陵張家山 247 號墓《奏讞書》簡 180-196 考論." Ikeda Yūichi's suggestion that *zi* 資 should be read as a borrowing for the second graph of the word *zicui* 齊衰 (a type of mourning dress) cannot be correct because *zicui* is after all a binome. Ikeda Yūichi 池田 雄一, *Kandai o sakanoboru Sōgen*, 122 n.31. The editors of *ENYZYS* suggest that *zi* 資 should be read as *ci* 次, meaning "nearby" or "mourning hut," but they do not venture to suggest how the resultant phrase or sentence is to be understood. Peng Hao 彭浩, Chen Wei 陳偉, and Kudo Motoo 工藤元男, *Er nian lü ling yu Zouyanshu*, 376 n.15. I have changed the punctuation to accord with my reading.

For the law to function properly, it is important for the magistrates to restrict their vision to each operation at hand, to approach each statute as a tool with a specific and limited application. Kinship is a tool of relation in which “wife,” “husband,” and “parents” are not fixed relations or real people, but instead become denaturalized legal objects whose relative positions shift as magistrates apply various rules. The first two rules suggest different relations between “parents” and “wives” in the case of funerals. In one instance they are treated in the same way (*tong fa* 同法), and in the other, the wife is placed after the parents. But whose funeral are we talking about? So far, the magistrates have not been concerned with a “husband,” so one might say that the “husband” was implicit. Yet we must remain careful to stay on the surface of the magistrates’ reasoning: implicit “husbands” will lead us astray, they foul up the operation. Only after citing the first two rules do the magistrates introduce the “husband,” who can now be used to triangulate between the “wife” and the “parent” in a smooth operation: the “wife” serves the “husband,” and the obligation of “wife” to “husband” if the “husband” dies should be one step below “parents.” It is only when we slow down to notice that these last “parents” are both dead (because we are reasoning about funerals) and alive (because we are reasoning about succession) that we begin to see why the “husband” had to remain concealed in order that the carefully placed stepping stones could achieve their purpose.

Now, the magistrates introduce “*buxiao*” in a subtle operation: a “wife” comes after “husband’s parents;” to have illicit sex by “husband’s parents” if they are unburied is unfilial and warrants execution. Because the magistrates have already set up the fact that at a funeral, a “wife” is a degree below “parents” (“parents,” of course, who are at once dead and alive, both being mourned by and acting as heir to their son), the final operation can proceed smoothly, and we thus arrive at the extraordinary crime warranting punishment a degree below that for *buxiao*. The steps by which a “wife” was put into a filial relationship with her “husband” are almost obscured.

The magistrates are not engaged in a long line of analogical reasoning, or a problem of a legal penumbra like that of a bicycle or a toy truck which may or may not be a vehicle in the context of the regulations of the city park. Rather, the magistrates have created a sort of *fictio legis*, a state of fact contrary to reality, in which husband and wife are considered analogous to parent and child and parents both outlive and predecease their son.<sup>142</sup> Legal

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<sup>142</sup>Yan Thomas, “Fictio Legis: L’empire de La Fiction Romaine et Ses Limites Médiévales,” in *Les Opérations Du Droit* (Paris: Seuil/Galimard, 2011), 133–86. Fiction consists in “disguising the facts, of declaring them other than they really are, and drawing from this very adulteration, this false supposition, the legal consequences that would result from the truth that is pretended, if it existed under the guise that one gives to it.”





## *Kinship as a tool of relation*

Like *xiao* 孝 (“filial piety”), the prominence of kinship in Han law has long been explained by reference to ideology or to one or more social or political agendas, the assumption being that law should be the expression of a coherent vision of kinship in society. Doubtful cases in which kinship plays a central role tell a different story. Paradoxically, these cases tell us relatively little about kinship as such; instead I would like to suggest that kinship rules in these cases, in the hands of the magistrate, function not as an ontological status, but as a tool of relation. At its base, this tool of relation has a binary function: it can either form a bond or separate it.<sup>148</sup> Take a set of parallel cases concerning step- and adopted son and their step- or adoptive mothers:

In the first case, dating to the mid 40s BCE, a woman of Meiyang denounces her adopted son<sup>149</sup> for acting unfilially, saying that “[my] son (兒

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instead to imagine real parents, husbands and wives.

<sup>148</sup> I am inspired here by Strathern, *Kinship, Law and the Unexpected* esp. 6-9.

<sup>149</sup> *Han shu* 76.3227 The terms *jiamu* and *jiazi* appear in a statute on inheritance in ENLL 240; LSS 3.18.19. I think Tomiya Itaru is correct in suggesting that the term *jiazi* can refer both to step- and adoptive children, and that the term *jia* 假 (borrowed/acting kin) can be opposed to *qin* 亲 (one’s own kin) Tomiya Itaru 富谷至, ed., *Kōryō chokasan 247 go 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, 2006), 222 n3. Thus, a *jia* father stealing from his *jia* child is taken as theft, whereas a father stealing from his son is not considered as theft. (SHD FDW 19; RCL D17.) The term “borrow” 假 *jia* perhaps means “acting” (as in 假吏 *jia li* acting official) with the technical legal meaning that the person is acting in this kinship capacity for a specific purpose: guardianship, inheritance etc. Given that the term appears frequently in legal rules, one might expect some sort of formal process by which a person might take the status of “acting parent.” Shen Qinhan(1775-1831) cites the *Lienü zhuan* 1.13 to the effect that a *jiazi* is (or can be) a son of a former wife, but the use of kinship in this passage is complex, and it seems that the *jiazi* in question is also in some sense “adopted” (the woman has been formally tasked with caring for the stepchildren), so that this hardly shows conclusively that *jiazi* is equivalent to “stepson,” see Wang Xianqian 王先謙, *Han shu buzhu* 漢書補註, (Changsha, preface 1900) 76.21a. In this instance, Shen Jiaben believes we have an adopted son 義子 *yi zi*, Shen Jiaben 沈家本, *Lidai xingfa kao* 歷代刑法考, 145–46. Hulsewé translates the term *jia* in this context as “foster” a term which, at least in contemporary usage, carries a meaning opposed to adoption, and implies that the state stands *in loco parentis*, RCL D17. There is a reference to a *jiazi* in one of the manuscripts stored at Yuelu academy, but the manuscript is too fragmentary to shed much light on the issue, Staack, Lau, and Yuelu shu yuan, *Legal Practice in the Formative Stages of the Chinese Empire*, 266. Miranda Brown and Rafe



as an improper denunciation, or to make use of laws forbidding stepsons from beating stepmothers.<sup>154</sup> Instead he discovers potential in the woman's words, "my *son* once took me as his *wife*," which allow him to replace one legal notion of kinship *bu xiao* ("unfilial") with another *qi mu* ("marrying one's mother") and thus to argue for a punishment.

In the second case, the commandant hesitates to make use of kinship to sentence Fangnian with Great Refractoriness, a crime which would have ensnared Fangnian's surviving kin. The case is then referred to the emperor who allows Liu Che to comment on it, and the legal reasoning to take a different tack. Liu Che is thus able to dissolve the relation between the erstwhile stepmother and stepson.

In both these two cases what I wish to highlight is not variation from (purported) kinship norms, but the ways in which magistrates use the legal instruments of kinship and the transformation that occurs as a result, specifically the forming and dissolving of kinship bonds. We can imagine that these magistrates felt the pull of various prejudices and beliefs. Wang Zun is developing a reputation for brilliance and harshness, the Liu Che, by contrast, demonstrates competency with legal practice while cultivating a preference for ritual norms over statutes, befitting his status. Yet it would be inaccurate to claim that such prejudices and beliefs precluded objectivity in the work of the magistrates. Both cases appear make a legitimate use of legal rules and, if not incontrovertibly just, are at least more so than what the formalist interpretation of the law seemed to suggest, i.e. that the woman of Meiyang's adoptive son would go unpunished because she was not liable to denounce him for unfiliality or that Fangnian's family would be executed as a result of his vengeance against the woman who murdered his father.

### *Coda: Luring and seducing*

In the summer of 197 B.C., three years after an edict was issued calling officials to submit those lawsuits that "officials have not dared to resolve, or (those in which) the guilty have long gone without sentencing, or the innocent have long been locked up and (their cases) have gone unresolved," the magistrate Zhuang, and his assistant, Xi, submitted a difficult case to the higher courts involving an illicit attempt to cross a sort of internal frontier or

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<sup>154</sup> Perhaps Wang Zun felt that the punishment for illicit sex would not be sufficient to address this offence. But there were technical issues as well: denunciation for illicit sex usually required that the couple be caught in the act by the denouncer; whether there were rules for self-denunciation (*zi gao* 自告) is unclear.

border.<sup>155</sup> At this early juncture in the Han period, the first Han emperor Gaozu's control beyond the core area within the passes was far from complete. Laws from Zhangjiashan give the impression that the geopolitics of the late Warring States were hardly a distant memory: various internal frontiers and passes, including the famous Hangu pass, were maintained in an effort to cordon off and preserve the security of the core Han territory against the incursions of Gaozu's erstwhile war allies, whose loyalties were far from sure. Like the regional lords of the Warring States, they are referred to as *zhuhou*, and the highest penalties were decreed for those who were caught committing espionage or conspiring on their behalf, as well as for those who travelled to their territory without authorization from Gaozu's court.<sup>156</sup> Not so distant attempts at restoration by pretenders to Warring States thrones no doubt inspired Gaozu to take the measure of relocating the old aristocratic families of pre-imperial times to the area within the passes, where he could keep an eye on them, and where they could lend prestige to his new capital.<sup>157</sup>

An officer from Linzi named Lan had thus been tasked with conveying members of the Tian clan, former rulers of the kingdom of Qi, from their ancestral home to the capital at Chang'an. Along the way, an intimacy between Lan and one of his charges seems to have developed into a romance, and when he arrived at the capital, Lan married a woman of the Tian clan named Nan. His official duty complete, the officer was obliged to return to his home in Linzi, and so he conspired to take the woman back with him by providing her with a passport and disguising her as a sick man. At the frontier, they were discovered and reported to the magistrate and his assistant, Zhuang and Xi, whose jurisdiction covered the famous Hangu Pass.

We are not informed about the charges against the woman Nan, but those against Lan presented a case in which the magistrates Zhuang and Xi were at pains to specify a charge. The furtiveness of the act suggested culpability, but what precisely had the man done wrong? He was, after all, travelling legitimately, presumably on an official passport. In their initial complaint, the magistrate and his assistant settled on charging the man for “ordering” the woman to commit a crime: “the officer Lan ordered the woman Nan to wear a silk cap, feign illness and lie in a carriage, and to appropriate the passport of (an individual named) Yu (with the rank of merit) *dafu* and with it exit a pass without authorization.” While statutes give punishments for the appropriation (*xi* 襲) of another person's passport and exiting a pass without

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<sup>155</sup> ZYS 17-27; LSS 4.3

<sup>156</sup> The Warring States connotations of the term must have been resonant in the early Han, though the institution eventually developed in quite distinct ways.

<sup>157</sup> For a discussion of the political and legal dynamics of the early Han see Cai Wanjin 蔡萬進, *Zhangjiashan Han jian “Zouyanshu yanjiu”* 張家山漢簡《奏讞書》研究, 95–120.

authorization (*lan chu* 闌出), there is no mention of punishment for “ordering” (*ling* 令) others to do these things. It is unclear whether “ordering” suggested duress or coercion or whether was this more analogous to the normal charge of collusion or plotting (*mou* 謀) to commit a crime.

Lan responds to the official complaint by recounting how he accompanied Nan to Chang’an as part of his duties in conveying the Tian clan, and how he later married Nan and was in the process of transporting her *back* to Linzi. Yet instead of exonerating Lan, these new details inspire the magistrates Zhuang and Xi to attempt a different means of charging Lan, and, as in so many cases in the early Han, it involves kinship. Abandoning the charge of “ordering” Nan to appropriate a passport, Zhuang and Xi cite a statute that punishes those who “come from the noble kings (*zhuhou*) to seduce.” If Lan came from the noble kings to seduce (the charge may sound strange; I will come to the reason for this presently), Lan’s marriage is not only illegitimate, but Lan is also guilty of illicit sex (*jian* 奸) and concealing Nan, who herself is no longer guilty of using another person’s passport, but “absconding to the noble kings” (*wang zhi zhuhou* 亡之諸侯.)

In accordance with the legal procedure, Lan is given an opportunity to dispute these criminal charges; he admits to the charges of illicit sex and concealing Nan, but disputes the charge of “seducing”: “(I) Lan transported Nan and then took her as my wife. This is not ‘coming to seduce.’” In response, Zhuang and Xi suggest a reading of the statute:

“The reason the statute prohibits ‘coming from the noble kings in order to **seduce**’ is to order people of certain territories not to be permitted to marry people of other territories. Although Lan did not come for this reason, in fact he has **seduced** a Han [subject, bringing her] to the territory of Qi, which is ‘coming from the noble lords to **seduce**.’ What is the explanation?” Lan responded, “I have committed a crime, there is no explanation.”

...律所以禁從諸侯來誘者，令它國毋得取（娶）它國人也。闌雖 *strip 21* 不故來，而實誘漢民之齊國，即從諸侯來誘也。何解？闌曰：罪。毋解... *strip 22*

The “seducing” statute, Zhuang and Xi claim, is intended to prevent marriages between persons from different territories. Of course this would hardly have prevented Nan and Lan—both of Qi—from marrying, except that, according to Zhuang and Xi, at some point this scion of the royal clan of Qi had ceased to be a Qi person and had become a Han subject (*Han min* 漢民.) For Nan to thus “seduce” Lan and (attempt) to take her to Qi, was effectively the same as if he had come expressly (*gu* 故) to seduce.



hard labor);<sup>163</sup> the other, that Lan is guilty of “coming from the noble kings to seduce,” a crime which would theoretically carry the extreme punishment of quartering. Declaring that the sentencing is suspended (*xuan lun* 懸論), the magistrates add a further argument for using the “coming from the noble kings” statute:

The female bondservant Qing aided [in building?] the walls of Handan city in Zhao and afterwards absconded, following her older brother into the land of Zhao. (Qing?) was sentenced with absconding to the noble kings. Now Lan came as part of the relocation [of the Tians] and seduced Nan.

Officials are of the opinion: Lan and Qing are of the same category. [Lan] should be sentenced with “coming from the noble kings to seduce.”

人婢清 *strip* 23 助趙邯鄲城。已，即亡，從兄趙地，以亡之諸侯論。今闌來送徙者；即誘南。•吏議：闌與清 *strip* 24 同類。當以從諸侯來誘論。

Here the magistrates separate “come to lure/seduce” into two constituent pieces: “come” (*lai* 來) and “lure/seduce” (*you* 誘). Thus “luring/seducing” is separated from the action of coming (*lai* 來), and the question of why Lan came is avoided. In this way, the action of Qing, who performed labor at Zhao, and only afterward absconded with her older brother (“afterwards, she absconded” (*yi ji wang* 已，即亡)), is of the same category as Lan who first came (*lai* 來) to relocate, and only then seduced Nan (*ji you nan* 即誘南.)

The case is submitted to the court, which returns the decision that Lan should be tattooed and made a wall-pounder, the equivalent of Nan’s punishment, which he receives because one who conceals a criminal is liable for the same punishment as the criminal. The court says nothing of the notion that Lan “has come to seduce” or the extreme punishment of quartering. One must conclude, I think, that the court has rejected this use of the statute on “luring.”

### *Conclusion*

By following magistrates as they progress hesitatingly through a set of conundrums, one can begin to appreciate the frequent changes of direction and

<sup>163</sup>Presumably this was the punishment for “absconding to the noble kings.”

the friction of legal practice in early China. To the formalist, the law is applied panoptically from the perspective of the emperor, but what makes doubtful cases at once so necessary and arduous to follow is not only that they contain within them expressions of law as seen from many successive, partial viewpoints, but that such shifts in perspective were essential to the passage of law itself. The dialectic of doubt and resolution, in other words, corresponds closely to the social progress of the reasoning and weighing that lent law authority. Given that from at least the early third century BCE through the 14<sup>th</sup> century CE, doubt was actually written into law, it may be worth considering whether legal hierarchies were as rigid and hermetic as some have suggested.<sup>164</sup>

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<sup>164</sup>According to Wallace Johnson doubt was on the books right up until the early Ming, see Wallace Johnson, “The Concept of Doubt in T’ang Criminal Law,” in *Chinese Ideas About Nature and Society: Studies in Honour of Derk Bodde* (Hong Kong: Hong Kong University Press, 1987), 271–79.



to curse, revile or beat” a staff-holder will be executed; so too officials who try to summon staff holders for service or corvée labor. Because the elderly “cease to hold malice in their minds,” septuagenarians are also exempt from most types of prosecution. An extraordinary rule states that unless “they take the lead in murdering or assaulting someone” septuagenarians are not to be sentenced for a crime. To bring the point home, the manuscript includes the summary of the case of an unfortunate official named Wu Shang from far away Runan commandery (roughly, modern Anhui province) who was executed for having had an altercation with a seventy-year old named Xian.

You Bo was not an anomaly. Recent discoveries of tombs with turtledove staffs from Gansu to Hubei to Jiangsu (see figures 4.8 and 4.9 and table five below) manuscript finds, and visual depictions in stone and brick (see figures 4.9-13) suggest the ubiquitous character of the turtledove staff. In Donghai commandery (one of roughly one hundred administrative divisions of the empire at the time) alone, officials in c. 10 BCE were able to count no less than 2,823 staff holders.

Exempt from prosecution from everything except murder and assault, demanding the deference due to high officials, having people executed for insults: septuagenarians armed with birth records and turtledove staffs do not conform to the notion of law as an instrument of social order. Nor is it the case that these privileges derive from an ancient, pre-imperial reverence for the elderly, despite the best efforts of classicists to justify Han practice on the basis of the ancients. Instead as this chapter will demonstrate, the social identity of the elderly was born out of the contingent, material, bureaucratic practice of paperwork and law.

To You Bo, material objects such as the staff, the birth record, the edict and the casebook were so vital to his status that he—and others—took them to the afterlife. That You Bo’s status is embodied in such objects is illustrated by the fact that no differentiation was made between the turtledove staff and the person of a seventy-year old. Thus we learn, for example, that individuals named Zhang Tang and Wang Anshi were executed for harming the staff of a septuagenarian (*zhe shang qi zhang* 折傷其杖).<sup>167</sup>

But it was not only that the staff and the manuscripts that embodied You Bo’s status, but that the social identity of the elderly was born of and was contingent upon a larger circulation of objects. Materials such as the turtledove staff, and but also more prosaic artifacts like birth records, edicts

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*Times*, Cambridge Studies in Chinese History, Literature, and Institutions (Cambridge ; New York: Cambridge University Press, 1980), 100.

<sup>167</sup> Wuwei District Museum (Dang Shoushan 黨壽山), “Wuwei xin chutu wang zhang zhaoling ce 武威新出土王杖詔令冊,” in *Hanjian yanjiu wenji* 漢簡研究文集 (Gansu: Gansu renmin, 1984), page 35, strips 23-26. For more on these manuscripts, see section four below.



parents of the elderly (for as “the father and mother of the people” they must act as children), but also as exemplary children who care for the elderly to provide an example for others with elderly parents to follow. This ambivalence is demonstrated by widely varying edicts on the elderly. In sharp contrast with the notion of codified law, such edicts decreed paradoxical and even contradictory but nevertheless ever-expanding privileges for the elderly. In section four, I will look at how the elderly themselves inhabited and redefined the newly created imperial categories, focusing particularly on those old people who, being seventy years of age or more, were entitled to carry the turtle dove staff. Finally, in section five I will show how, once legislation was in place, classicists (*rusheng* 儒生) in the employ of the court sought to justify or devise ancient origins for “modern” Han imperial practices related to the elderly, origins that obscure the work of paperwork.

### *The Elderly Enter the Files (via a Winding Path)*

There was no legislative or political project for the elderly in the early Han; no legislator set out to classify, enumerate and develop a social program for the elderly. Instead the elderly entered the files via, a contingent, winding path. Though scholars have attempted to rationalize Han policy in terms of a “proto-welfare state,” Han legislative ambitions were neither cohesive, nor, as becomes obvious from the legislation analyzed in section two, did Han legislators have a consistent notion of the elderly as a sociological category. As I will argue below, Han policy toward the elderly was from beginning haphazard, contradictory, and multifaceted: the consistent theme was a practical one: that the elderly were on file and hence could be the object of legislation. Because there was no *a priori* agenda for the elderly, it is necessary to follow the technical logics of files and registers as they develop over time. By triangulating between legal rules, excavated registrations, labor lists, and calendars it is possible to trace, albeit in a fragmentary and incomplete manner, the accretive fashion by which perhaps a million people came to be constituted as a legislative, and eventually a social, category.





correlation with aging in, say, the biological, psychological or epigenetic senses, but from the standpoint of the administrator it has the triple merit that it can be quantified, tabulated and verified.<sup>177</sup> Han administrators, were moreover, uniquely ambitious among administrators of the ancient world in seeking to track chronological age not through a periodic census, but through birth registration.<sup>178</sup> Legislation of 186 BCE shows that officials had already begun tracking births in order to obtain an accurate count of the age of household members: parents, or lacking parents, elder siblings, are to register newborns each year in the annual household registration period, and significant penalty (shaving and being made a bondservant) is provided for those parents or siblings who distort the age of a newborn by three years or more. In the case that parents or siblings are absent, officials are to determine the age of young children.<sup>179</sup>

If the maintenance of birth registers was simply a refinement of the system of using chronological age to determine fitness for service begun in 231 BCE, legislators quickly discovered new potential in the use of chronological age to categorize people. The Shuihudi laws (c. 217 BCE) call for enrolling men when they are fit and exempting them when they are diminished, essentially creating three categories: young, adult, and old. With the new measure of chronological age in years, further categories were possible. Instead of a single category of aged persons, the Zhangjiashan legislation (c. 186 BCE) envisions four: semi-exemption from labor and service duties, full exemption, an honorary status signified by the bestowal of a staff, and a status wherein one

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<sup>177</sup> It is a commonplace of the gerontological literature that people become old at different ages, that old age arrives gradually, and there are different types of old age. For a classic description see Simone de Beauvoir, *La Vieillesse* (Paris: Gallimard, 1970).

<sup>178</sup> In Roman Egypt, for example, Tim Parkin concludes that the census of every fourteen years functioned to ensure that youths were registered as adults, while the declaration of births seems to have been relegated to those of privileged status who used the declaration as supporting evidence for a petition seeking exemptions. Tim Parkin, *Old Age in the Roman World: A Cultural and Social History* (Baltimore: The Johns Hopkins University Press, 2003), 178–80. Augustan legislation seems to have introduced a system of birth registration, but it does not seem to have been given as much weight as the census (no penalties known for not registering, birth declarations treated ambivalently as proof). Birth registrations were “not seen as essential or necessarily conclusive,” according to Parkin, 80–81. Parkin concludes: that there was “no reliable or universal system for the calculation or substantiation of a person’s age,” 189.

<sup>179</sup> Cf. strips 325-27 of “Statutes on Households” of the “Laws of the Second Year” Barbieri-Low and 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*, 796–97.

was supposed to receive a monthly ration of gruel. Nor were these statuses achieved at the same age for all people. Instead the Zhangjiashan statutes set enrollment against the orders or ranks of honor (*jue* 爵).<sup>180</sup> Since the age-standard for each of these grades depends on rank, those of high rank receive full exemption at the age of 58, while the lower order must wait until 66; high-ranked individuals begin to receive monthly gruel at ninety years, while those of lower order would wait till ninety-five (Table 2). The result is twenty-four gradations of old age.

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<sup>180</sup> Loewe once translated the term *jue* 爵 as “aristocratic rank” but now prefers the translation “orders of honor.” I have found the term “order” awkward in some instances, and so I have also used “rank” here in the sense of a classification within a hierarchy. It should be clear that these “orders of honor” are quite distinct from the salary grades expressed in bushels (*shi* 石) which also designate a rank for officials. Important discussions of *jue* 爵 “orders of merit” include Nishijima Sadao 西嶋定生, *Chūgoku kodai teikoku no keisei to kōzō: nijittō shakusei no kenkyū* 中国古代帝国の形成と構造:二十等爵制の研究 (Tokyo: Tokyō daigaku, 1961); Michael Loewe, “The Orders of Aristocratic Rank of Han China,” *T’oung Pao* 48, no. 1/3 (1960): 97–174; Michael Loewe, “Social Distinctions, Groups, Privileges,” in *China’s Early Empires* (Cambridge: Cambridge University Press, 2010), 293–96.

Table 4.2: System of registration using both rank and age c. 186 BCE

	<i>No rank</i>	<i>Rank 1</i>	<i>Rank 2</i>	<i>Rank 3</i>	<i>Rank 4</i>	<i>Rank 5+</i>	<i>Rank 10+</i>
registration	20	20	20	20	20	22	24
<i>Partial retirement</i>	62	61	60	59	58	none (?)	
<i>Full retirement</i>	66	65	64	63	62	58	
Receive a staff	75	74	73	72	71	70	
Receive monthly gruel	95	94	93	92	91	90	

Legislators have imagined a hierarchy that is a product of several, heterogeneous factors: the registration of statute labor, the technologies of tracking chronological age, and the elaborate hierarchy of orders of honor. The legislator has discovered recombinant potential in technologies of classification by gradients of rank and age; but the two are not entirely compatible. While making different corvée labor exemptions for age based on rank seems consistent with certain legislative goals (it is surely a privilege to be exempted at the age of 58 rather than 66), distinguishing between a 94- and 95-year old when distributing gruel would seem to undermine the notion that the intent of the legislation is to honor and alleviate hunger among the elderly.

It is apparent that legal gradients of chronological age are in no way products of a pre-bureaucratic practice of honoring the elderly, one which can be contrasted with the synthetic use of orders of merit, as some have claimed.<sup>181</sup> Indeed, for early administrators the two modes of classification could be combined precisely because they were both derived from bureaucratic practice. It is clear that one must begin from the bureaucratic notion of counting to arrive at an outcome in which 94 year olds are less deserving than 95 year-olds, as is equally true of other age distinctions. What the example of Zhangjiashan suggests that the practice of counting manufactures its own rationale.

<sup>181</sup> Nishijima Sadao 西嶋定生, *Chūgoku kodai teikoku no keisei to kōzō: nijittō shakusei no kenkyū* 中国古代帝国の形成と構造:二十等爵制の研究.



perhaps not all seventy year olds received staffs.<sup>185</sup>

Beginning in 231 BCE, Officers began to use chronological age as a measure of fitness, replacing an earlier emphasis on stature. Categories of old age first found expression in service rolls, probably not dissimilar to those found at Songbai, which distinguished between the elderly and the disabled. By 186 BCE, the notion of release from service had acquired honorary connotations and as such, chronological age was fused with the orders of merit to produce four categories of old age subdivided into twenty-three gradations. Age reporting and tabulation made it possible to arrive at some knowledge of the total population of elderly. It was this bureaucratic object, an empire-wide social category whose existence was not reflected but rather constituted by the circulation of lists and registrations that was embodied ultimately in the form of a tablet, a summary of summaries, which could in turn become the object of legislation to and for the elderly.

### *Classicists and Officers*

“Officers (*wen li* 文吏) say they understand office procedures and know registers and documents,” wrote Wang Chong (27- c. 100 CE). “But ask them whether ‘knowing something’ means they can plumb its significance or fathom its meaning, and such officials will be at a loss.”<sup>186</sup> For an officer, the idea that meaning lies behind or outside the paperwork or underneath the files comes is contrary to the discipline of being an officer. Tax receipts, wills, contracts, registers, conscription lists, the household, the village, the county, marriage, birth and death: all were constituted by files, by lampblack ink

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<sup>185</sup> Gao Dalun compares these figures to modern populations and concludes that proportions of elderly are too high, and that the Yinwan figures cannot possibly represent a natural population. Indeed, the Yinwan represents a *bureaucratic* population. Comparative research suggests that over reporting of age is typical among such cadastral surveys as the Florentine Catasto of 1427, but this may well imply not that the numbers themselves are “fake”, but instead that large numbers of people registered as elderly even if they had not reached the chronological threshold by modern standards. Extant statutes give no restriction on seventy-year olds who receive staffs, but the low number in Yinwan suggests that there must have been some reticence to bestow this privilege.

<sup>186</sup> 文吏自謂知官事，曉簿書。問之曰：「曉知其事，當能究達其義，通見其意否？」文吏必將罔然。Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋, 12.36 (“Xu duan”), 567. I follow *Lun heng jiaoshi* in reading 罔然 as *wangran* 惘然 “perplexed, at a loss.”

inscribed on innumerable strips of wood and bamboo, 23.1 cm in length.

As if from the bureaucrat's silence another type of writing specialist is born: the classicist (*rusheng* 儒生) in the employ of the court, who uses classic texts to devise origins or to explain administrative practice. Despite the fact that “both use pen and ink,” warns Wang Chong, classicists and officers are not to be confused: “The fields grow grasses; the mountains grow trees ... officers and classicists are like this.” Wang Chong shows how classicists (among whom he includes the jurists *fali zhi jia* 法律之家) are able to explain things which they have never experienced, just as officers are able to do things despite “not knowing what they should know.”<sup>187</sup>

In staged dialogues like the *Debates on the Salt and Iron Monopolies*, classicists inevitably defeat officers with their eloquence. Wang Chong, however, insists that it is “ignorant” (*bu zhi* 不知) to pretend that one group is superior to the other in talent or intelligence. The difference is not one of tradition and reform, of contrasting frames of mind or systems of thought; rather the divide between the two breeds of writer is simply irresoluble, they do different things; what officers do “classicists don't practice.”<sup>188</sup> The classicists know better than officers because they spend their time reading books in deluxe editions, inscribed on bamboo strips “two feet four inches in length, on which the sayings of the sages are written.” “The affairs of the Han” empire, however, “are not recorded in the classics,” but on office stationary, on utilitarian “one-foot strips and short documents.”<sup>189</sup>

Inquiring minds were continually confounded by the residue of bureaucratic practice, by ways of doing which persisted long after ordinary rationales had been forgotten. Bureaucratic formula intended to instantiate legitimate hierarchy, for example, could become unmoored. Why is it that “when commandaries send letters to each other they use the formula ‘I dare to report to the guard,’ but when counties [address each other in correspondence] they do not use this formula,” asks Wang Chong, citing one example of an inconsistency.<sup>190</sup> Continuing in this line of argument Wang Chong wonders

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<sup>187</sup>文吏所當知，然而不知。Huang Hui 黃暉, 12.36 (“Xu duan”), 577.

<sup>188</sup>文吏更事，儒生不習也。 Cf. Loewe's use of the terms modernists and reformists in Loewe, *Crisis and Conflict in Han China, 104 BC to AD 9*.

<sup>189</sup>二尺四寸，聖人文語，朝夕講習，義類所及，故可務知。漢事未載於經，名為尺藉短書。Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋, 12.36 (“Xu duan”), 567–68. During the Han period, special stationary was used for certain special texts, including classics and certain types of edict. Quotidian official correspondence generally used stationary of one Han foot (approx. 23.1cm) in length. For an example of classics inscribed on strips two feet four inches in length (approx. 56 cm) see Loewe, “The Wooden and Bamboo Strips Found at Mo-Chü-Tzu (Kansu)”; Gansu sheng bowuguan 甘肅省博物館 et. al., *Wuwei Han jian* 武威漢簡.

<sup>190</sup> Tellingly the formula itself is obscure. Liu Pansui (1896-1966) believes that

why when a commandary official addresses the three highest officers of state, the formula used to address the Chancellor and the Supreme Commander “is ‘we dare to report,’ whereas when addressing the Imperial Counsellor they only write ‘submitted.’” Other practices were confounding simply because no one knew any longer what they meant: “By what rule is it that there are eight orders of merit for the people, and why are [two of the orders of merit called] *shangzao* and *zanniao*,” he asks, referring to titles whose meanings by the Eastern Han had apparently become obscure.<sup>191</sup> Bureaucratic distinctions of age might appear particularly arbitrary: “What is the reason that people are registered at the age of twenty-three, become subject to the *fu* tax at fifteen, and are assessed a capitation tax of twenty-three cash at the age of seven,” Wang Chong inquires.<sup>192</sup>

With examples of contradictory hierarchies of formulas, titles whose meanings had become obscure, and arbitrary gradations of age Wang Chong is not arguing against specific practices but rather cautioning a mode of explaining paperwork practices through reference to origins and essences. Having shown how it is possible to follow bureaucratic practice using material objects without privileging a particular epistemology, in this section I turn to classicists who were called to answer why staffs given to the elderly were topped with turtle doves, why sexagenarians deserved different privileges than septuagenarians, or why the distribution of grain was to take place in the fall rather than the spring. Rarely, if ever, were they in a better position to more accurately explain the actions of a bureaucracy than the officers themselves. At best they called attention to the ethical implications of bureaucratic practice, but just as often “vulgar” classicists in the employ of the court attempted to make a classic text fit current practice. Conversely, when called upon to sort out inconsistencies in a text, classicists could call upon contemporary ways of doing things. Modern scholars interested in explaining Han phenomena have, perhaps not surprisingly, borrowed the accounts of classicists, privileging them over the inarticulate practice of the officers. In this section, I have sought to invert the relationship between what one might call epistemological and

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addressing the guard rather than the governor himself is a way of avoiding a direct form of address. Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋, 12.36 (“Xu duan”) 572.

<sup>191</sup> 賜民爵八級，何法？名曰簪裹、上造，何謂？ Most scholars have left these titles untranslated. A recent effort to render their meaning arrived at “Sovereign’s Accomplished” and “Embellished Horse.” See Barbieri-Low and 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*, xxii. Even in Wang Chong’s time their meaning was obscure.

<sup>192</sup> 年二十三儒(傅)，十五賦，七歲頭錢二十三，何緣？ Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋, 12.36 (“Xu duan”), 568.

ontological accounts. Instead of looking for origins in classical texts, I will demonstrate how classicists in the employ of the court used classics variously to retroactively devise origins, to justify administrative practice, or to challenge it.

### *The multiple origins of the turtledove staff*

The turtledove staff, a two meter long staff surmounted with carved turtledove, is emblematic of bureaucratic practices, which although obscure in origin, came to be imbued with narrative significance. Wang Chong recognizes the turtledove staff (*jiu zhang* 鳩杖) staff, distributed to the elderly upon reaching the age of seventy, as an artifact of bureaucratic practice which functions, like the formulas used in official correspondence, despite the fact that no one is entirely sure what it is or how it came about. “When did the practice of giving out turtledove staffs arise?” he asks rhetorically. Wang Chong has heard stories: he seems to be aware of competing theories of the origin of the staff, among them that live turtledoves were given to the elderly in ancient times, and also a juristic explanation of the staff: that it is like (*bi* 比) an order of honor.<sup>193</sup> Wang Chong rejects these accounts: “A turtledove is a good thing. But if you bestow a turtledove staff, not a turtledove, and the [staff] is also not an order of merit, how is it to be explained?”<sup>194</sup> “If a turtledove is placed at the top of such staffs,” he continues, “and it is not marked as an order of merit, of what use is the staff?” Through his questions Wang Chong shows that neither the classicizing origin story nor the juristic explanation can account for the chimera that is the turtledove staff. Neither a turtledove nor an order of merit, the turtledove staff appears to be a discreet object, but it can only function within a network of statutes, interpretations, and files; without these, it would be of no use.

Addressing both the theory that the true origin of the staff lay in the ancient practice of giving out actual turtledoves and an alternate theory that held that the staff was similar to a rank of merit, Wang Chong insisted that as the staff was neither a dove nor a rank of merit, it could not be of any use. To Wang Chong, accounts of origins and other explanations failed to account for

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<sup>193</sup>Another explanation was that it was like (*bi* 比) an official of a salary of six hundred bushel, see section two below. For these theories see section three below.

<sup>194</sup>七十賜王杖，何起？著鳩於杖末，不著爵，何杖？苟以鳩為善，不賜鳩而賜鳩杖，而不爵何說？Huang Hui 黃暉, *Lun heng jiao shi* 論衡校釋, 12.36 (“Xu duan”), 573.

the staff itself. The sheer multiplicity of accounts demonstrates that the question of the origin and meaning of the staff presented Han observers with fertile ground was a fertile ground for generating meaning, for theorizing about the nature of law, empire and old age.

An edict of 72 BCE states that “from the time of Gaozu to the present time, We (*zhen* 朕) have greatly pitied the elderly. To those of advanced age we bestow royal staffs topped with turtle doves, so that people may see the staffs and compare them to official emblem-staffs (*jie* 節).” The edict is typically “administrative” in a number of ways: 1) its sense of linear time (“from Gaozu to the present time”), 2) the idea of the continuity of the ruler’s body over more than a hundred years (the Kantorowiczian “We”) and 3) its sense of administrative formula: staffs of a certain form are given to certain people for a particular purpose. As Wang Chong predicts, questions of meaning-- why did Gaozu give staffs, and what is the meaning of the pigeon—are left untouched.

Han classists on the other hand left no shortage of explanations of the two issues. A fragment preserved in the *Taiping yulan* (comp. 977-83 CE), and attributed to the *Feng su tong*, but which is not included in the Qing recension of that text, provides the following anecdote:

It is commonly said that when Gaozu and Xiang Yu were battling in Jing and Suo, Gaozu was wandered in the undergrowth while Xiang Yu was pursued him. A turtledove paused above Gaozu and made its call. Xiang Yu thought there must be no one there, and thus Gaozu got away. When he came to the throne, Gaozu distinguished the turtledove for special favor. This was the reason turtledove staffs were made to support the elderly.<sup>195</sup>

俗說高祖與項羽戰于京、索，遁于薄中，羽追求之，時鳩止鳴其上，追之者以為必無人，遂得脫。及即位，異此鳩，故作鳩杖以扶老。

Here turtledoves are tied to the founding of the Han dynasty, allowing Gaozu to escape by acting contrary to what is known of turtledoves: timid birds they are easily frightened, and thus would not normally be at rest near an intruder. In gratitude, Gaozu had turtledove staff, but the question of what connection there might be between the elderly and turtledoves is left unplumbed.

An alternate version of the same story, preserved in the *Taiping yulan*, but attributed to an otherwise unknown “Dili zhi” or “Geographical treatise”:

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<sup>195</sup>*Taiping yulan* 921.8

In Xinyang, Gaozu hid from Xiang Yu in a well. A pair of turtledoves flew down and roosted above the well. [Seeing them,] Xiang Yu imagined there must be no person there, and thus [Gaozu] escaped. [It] got its name in this way. This was the reason that under Han rule, turtledoves were released on the first day of the new year.<sup>196</sup>

滎陽有井，漢王避項羽于中。雙鳩飛集井上，羽以為無人，故沛掛免，因以為名。故漢世正旦放鳩，為此也。

The idea that turtledoves were released in memory of Gaozu's own escape has a symmetry that lends it more plausibility than the *Fengsutong*'s account of the origin of the staffs. At least it seemed so to the editors of the *Tai ping yulan* who felt compelled to explain the logical leap between turtledoves and the elderly in a comment. "The *Zhou li* 'Master of nets' [notes that] turtledoves were given to the elderly. In Han times there was no "Master of Nets," so they made turtledove staffs [instead] to support the elderly." In other words, the elderly are tied to turtledoves via the vestigial official practice of the Zhou. But in making this connection, the editors of the *Tai ping yulan* have unwittingly exposed another potential exegetical problem: did the Han give out staffs because turtledoves saved Gaozu, or because giving out turtledoves was the ancient practice of the Zhou?

The *Tai ping yulan* editors seem content to allow paradoxical resonances remain. But Han commentators, too, had noticed the *Zhou li* reference. The *Zhou li*, probably a third century BCE text, states:

The officer of nets oversees the netting of birds and crows. In the second month of spring, he nets spring birds. He presents turtledoves as nourishment for the elderly of the realm and distributes birds.

羅氏掌羅鳥鳥。中春，羅春鳥，獻鳩以養國老，行羽物。<sup>197</sup>

In explaining this passage Zheng Xuan notes that goshawks become turtledoves in the springtime.<sup>198</sup> Because turtledoves "change the old into the

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<sup>196</sup> *Tai ping yulan* 921.8

<sup>197</sup> *Zhou li zhengyi* 4.93.

<sup>198</sup> For a discussion of such metamorphoses, see Roel Sterckx, *The Animal and the Daemon in Early China* (Albany, N.Y: SUNY Press, 2002), 191.

new,” it is suitable to “nourish the elderly” with them as they promote life breath.<sup>199</sup> But other scholars were less scrupulous. Gao You (late 2<sup>nd</sup> century to early 3<sup>rd</sup> century CE) in annotating an entry in the *Lü shi chun qiu* about the distribution of “stools and staffs” to the elderly in mid-autumn argues that the practice has roots in the Zhou. Gao argues that when the *yin* breath arises in autumn, the elderly suffer, and that this is the reason they are given stools and staffs.

Today in the eighth month, households are inspected, and the elderly receive turtledove staffs and gruel. The *Zhou li* describes the great [*sic*] officer of the nets who is responsible for bestowing turtledove staffs [*sic*] to the elderly. It also describes the Master Yinqi who is in charge of giving staffs to the elderly.

陰氣發老年衰故其養之授其几杖賦行飲食糜粥之惺今之八月比戶賜高年鳩杖粉菜是也周禮大羅氏掌獻鳩杖以養老又伊耆氏掌共老人之杖。<sup>200</sup>

One might be tempted to iron out the temporality of Gao You’s rather circular commentary, to make the causation more linear. The *Zhou li* purports at least to be Zhou text, while the *Lü shi chun qiu* is probably a text of the late 3<sup>rd</sup> century BCE. The present day that Gao You refers to is perhaps the second century CE. One would be tempted to argue that Zhou practice influenced the Qin, which in turn influenced the present. But for a classicist like Gao You, the *Lü shi chun qiu* expresses some wisdom that is not grounded in linear temporality, but is efficaciously resonant both with other revered texts, and with the wise practice of the current ruler. One might point out that the *Zhou li* master of nets catches birds in the spring not the fall, and bestows birds, not wooden staffs. The “elderly of the realm” of the *Zhouli* are usually understood to be retired officers, not the elderly at large. The partial analogies and the circularity of an argument like Gao You’s are problematic only if we lose sight of the commentator’s goal, which is not to give a genealogy of turtledove staffs, but rather to show the efficaciousness of the text.

The commentator Zheng Zhong (?-86 BCE) comments on the same passage regarding Master Yinqi, who the *Zhou li* says was responsible for giving out “Royal staffs,” saying that these were given out by royal decree (*yi wang ming* 以王命) to those who reached the age of seventy, as was still done

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<sup>199</sup> 是時鷹化為鳩。鳩與春鳥變舊為新，宜以養老助生氣。 *Zhou li zhengyi* 4.93.

<sup>200</sup> *Lüshi chunqiu ji jie* 8.176.

in Zheng's own time.<sup>201</sup> This almost seems like an argument about the origin of the Han institution, but I doubt this is the case; rather I think Zheng Zhong is arguing that the Zhou and the Han are efficaciously congruent.

Still further arguments are possible regarding the turtledove staffs. A fragment of Sun Ruozhi's (6<sup>th</sup> century CE) explication of portents explains that if a white dove arrives at court, the emperor has nourished the elderly and respected morality, and has not lost the old in search of innovation.<sup>202</sup> White doves could also be a sign of the efficaciouslyness of mourning. Thus the *Yiwen leiju* records a fragment from the *Biographies of Past Worthies of Guangzhou* 廣州先賢傳 in which a white dove attends a son's mourning for his dead father. The dove leaves when others approach but remains when the son is there, while in the *Records of Kuaiji* 會稽典錄, a filial white dove holds vigil.<sup>203</sup>

The explanation of the *Hou Han shu* "Treatise on Ritual and Music" has no sanction in classical texts, but it is the most direct:

The turtledove is a bird that does not choke. The wish is that the elderly too should not choke.<sup>204</sup>

鳩者，不噎之鳥也。欲老人不噎。

Alongside textual descriptions of the turtledove staff, we might also consider visual depictions. Three pictorial bricks from Sichuan emphasize the connection between the turtledove staff and grain distribution to the elderly. Figure 4.11 is a rubbing of a pictorial brick depicting distribution of grain to the elderly, excavated in Taiping district, Pengzhou, Sichuan. A tile-roofed, windowless granary, with inward-tapering timbered wattle-and-daub walls, and two doors secured by bolts, sits on a high platform; two open towers provide ventilation (from the Song onward, if not before, these were called "air towers" *qi lou* 氣樓). Two birds with long tail feathers fly to the left and right of the building. A figure at left, seated on a mat, observes as a second figure pours grain into a vessel in front of a kneeling (?) man holding a turtledove staff.

Figure 4.12 is rubbing of a similar pictorial brick with an image of old man with dove-finished stick, excavated in Xindu county, Sichuan. A tile-roofed granary building with inward-tapering timbered wattle-and-daub walls sits on a high platform. A figure emerges from the granary with a bag of grain over his shoulder. An official, seated on a mat, observes from the right side of the granary platform. At lower right, kneeling (?) beneath a wispy tree, is an elderly man with a turtledove staff who holds a sack open to

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<sup>201</sup> 鄭司農云謂年七十當以王命受杖者今時亦命之爲主. *Zhou li zhengyi* 37.49

<sup>202</sup> 養耆老，尊道德，不以新失舊，則至. *Yiwen leiju* 92.5.

<sup>203</sup> *Yiwen leiju* 92.5.

<sup>204</sup> *Hou Han shu* 95.3124

receive the grain.

Figure 4.13 is a rubbing of a pictorial brick recovered in June of 1990 from Liji district in Xindu county, Sichuan. A tile-roofed granary building with inward tapering walls, two ventilation towers, wooden columns with brackets, and a raised central door accessed by two ladders at either side. A figure facing left sits at the right side of the building, and a second smaller figure sits underneath a ladder supported by a column with a bracket. At left, a man with a turtledove staff kneels (?) facing right and holding a sack to receive grain (?).

If the three depictions of the turtledove staff from Sichuan emphasize the distribution of grain, images from Shandong depict the turtledove staff as an emblem of old age in different contexts. Figure 4.14 is a portion of a rubbing of a pictorial stone with an image of a vigorous old man flanked by a dove-finialed staff from the southern portion of the western wall of the central chamber of the Han tomb at Yinan, Shandong, excavated in 1954 and restored in 1994. Figure 4.10 is a rubbing from a stone sarcophagus, tomb no.2, Wohushan, Zoucheng, Shandong. (Late 1<sup>st</sup> c. BCE to early 1st c. CE). This image depicts an elderly couple, the man on the left holds a dove-finialed staff, and the woman holds two peaches of immortality. A child kneels before the woman, while an animal receives the peaches. Behind them another person, a bird and a tree (Fusang?) are visible.

Visual depictions and classical descriptions alike suggest that the turtledove staff became a repository for narratives about the elderly and their place in the empire. The turtledove staff is unknown prior to the Han period, and some commentators suggested that the staff itself originated with Gaozu, while others suggested that the staff might have resonances with earlier texts and practices.<sup>205</sup> Similarly the staff itself was depicted in different contexts

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<sup>205</sup>Gaozu's behavior treatment of the elderly was the subject of many narratives that plumb the distinction between kinship obligations and duties of state. In 201 BCE, a year after ascending to the position of emperor on the banks of the Si River, Gaozu returned to his father at Yueyang and began to pay homage to him once every five days. The household steward of Gaozu's father admonished Gaozu's father, remarking that just as there are not two suns in the sky, there cannot be two sovereigns over the land, and asking him, "How can you cause the lord of men to bow to his servant?" Apparently chastened, when he next encounters Gaozu, Gaozu's father meets him at the gate, holding a broom as a sign of obeisance. Startled, Gaozu rushes to supported his father, who says to him, "The emperor is lord of men, how can the order of the realm be overturned on my account?" Afterwards Gaozu is said to appreciate the steward's words and gives him five hundred catties of gold. The episode suggests that Gaozu, as emperor, should not bow to his father, who is his subject. Gaozu the man is educated about Gaozu the emperor by the servant of his father, through his father, who is also his servant. The problem of how the emperor is to behave toward his living father is nevertheless a fleeting one, not often

in visual narratives from Sichuan and Shandong, sometimes as an elderly man receiving government assistance, and in other cases invested with contrasting valences. Together these accounts suggest that the turtledove staff—an object invested with legal significance and a bureaucratic chimera—invited the elaboration of narratives and interpretations even as officers themselves resisted or were unable to explain it. Among these elaborations were a diverse set of imperial edicts.

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addressed in ritual literature, presumably because it could only arise in the case of a newly founded dynasty, or in the case that an emperor should abdicate. *Shiji* 6.82.



Table 4.4 Increasing privileges for the elderly in edicts

Date	Age		Source
	70+	80+	90+
195 BCE	Exemption from mutilating punishments		HS 2.85
179 BCE		Monthly: 1 bushel threshed grain; 20 catties meat; 10 liters wine	Monthly: 2 bolts of cloth; 3 catties of silk floss HS 4.113; SJ 10.420
155 BCE		Not to be bound in interrogations	HS 23.1106
140 BCE.		Poll tax exemption for two people in the household	HS 6.156
140 BCE		Sons/grandsons exempted from service	HS 6.156 SDF 084
122 BCE		One time: 3 bushels threshed grain	HS 6.174
110 BCE	2 bolts of silk in counties near Mt. Tai		HS 6.191
72 BCE	Insults to turtle dove holders punishable by statutes for impiety; privileges in government offices; market tax exemption; service exemption for caretakers		Mozuizi 1959; 1981
62 BCE		Except for those who falsely accuse and those who murder and injure people; not to be adjudicated for crimes	HS 8.258
31 BCE	Turtle dove staff holders not charged by two-foot strip procedure for crimes liable for punishment less than shaving		Mozuizi 1959; 1981
3 CE		Except for those with family members charged with impiety, or those specified in an edict as liable to arrest, do not bind them; it is permissible to question them	HS 12.356
27 CE		Except for those who themselves are impious or named in an edict, should not be bound.	HHS 1.35

Table 4.4 Turtledove staffs found in tombs

<b>Tomb</b>	<b>Area</b>	<b>Tomb notes</b>	<b>Staff position</b>	<b>Description</b>	<b>Date</b>	<b>Discovered</b>	<b>Image</b>
<b>Zhangjiaashan no. 247<sup>206</sup></b>	Jingzhou, Hubei	guan/guo single burial, pit	Placed on top of coffin (?)	Lacquer	186 BCE	1983	Line drawing of tomb, unclear
<b>Haizhou He Huo tomb<sup>207</sup></b>	Lianyungang, Jiangsu	guan/guo "husband wife" pit tomb	Placed in side chamber next to man's coffin	Turtledove missing head 18.2 cm long 5cm wide, staff broken in two, with the dove, total length 2.01m	c. 1st BCE	1973	Line drawing of tomb
<b>Yiji Yao tomb<sup>208</sup></b>	Lianyungang, Jiangsu	guan/guo "husband wife" pit tomb	Placed on top of man's coffin	1.85 m, black lacquer with red lacquer linear decoration	c. 1st BCE	1973	Line drawing of tomb
<b>Hantampo 209</b>	Wuwei, Gansu	two cypress wood coffins "husband and wife" earthen chamber	Placed on top of man's coffin	Turtledove 15.6 cm in length, painted in white powder with black line decoration, small hole in bottom to affix staff. Staff made of poplar wood, polished and slick; 3cm thick, three fragments, together 110 cm in length.	after 43 CE	1989	None
<b>Mozuizi no. 18 (You Bo)<sup>210</sup></b>	Wuwei, Gansu	earthen chamber tomb	Placed on coffin, with strips	40cm remains of one staff, the other 1.94m long and 4cm in circumference.	after 72/73 CE	1959	Photograph
<b>Mozuizi no. 13<sup>211</sup></b>	Wuwei, Gansu	earthen chamber tomb	Not specified	One turtledove staff 1.81M	c. 1st CE	1959	Photograph
<b>Hantampo 212</b>	Wuwei, Gansu	one guan coffin, male	Stood upright in front of the coffin	Partially remnants about 1 m, less than 3 cm in diameter; turtledove beak holds food	c. 1st CE	1972	Photograph of turtledove finial
<b>Wubashan 213</b>	Wuwei, Gansu	earthen chamber tomb	?	"wooden turtledove staff(s)"	c. 1st CE	1984	none
<b>Tomb at Lianyungang<sup>214</sup></b>	Lianyungang, Jiangsu	?	?	?	?	2003	?

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- <sup>206</sup>The report of the Jingzhou Museum identifies the staff as having a “bird shaped” finial, while the description by the team assembled to transcribe the texts from Zhangjiashan identifies it as a turtledove staff. In the line drawing of tomb 247 (figure 4, page 1) item no. 58 appears to be only the finial of a turtledove staff, but as it is placed on top of the coffin as in other instances from Mozuizi, Lianyungang, etc., I find plausible the identification in Zhangjiashan Han mu zhujian zhengli xiaozu 張家山漢墓竹簡整理小組, “Jiangling Zhangjiashan Han jian gaishu 江陵張家山漢簡概述,” *Wenwu*, no. 1 (1985): 8-15 + 1 plate. Cf. Jingzhou diqu bowuguan 荊州地區博物館 (Wei Si 衛斯), “Jiangling Zhangjiashan san zuo Han mu chutu da pi zhujian 江陵張家山三座漢墓出土大批竹簡,” *Wenwu*, no. 1 (1985): 1-8.
- <sup>207</sup> Nanjing Bowuyuan 南京博物院, “Haizhou Xi Han Huo He Mu Qingli Jianbao 海州西漢霍賀墓清理簡報,” *Kaogu*, no. 3 (1975): 178-86.
- <sup>208</sup> Nan Bo 南波, “Jiangsu Lianyungang shi Haizhou Xi Han Shiqi [Yiji?] Yao Mu 江蘇連雲港市海州西漢侍其繇墓,” *Kaogu*, no. 3 (1975): 169-77.
- <sup>209</sup> Wuwei District Museum (Zhong Changfa 鐘常發), “Gansu Wuwei Hantanpo Dong Han mu 甘肅武威旱灘坡東漢墓,” *Wenwu* 10, no. 1993 (23-34).
- <sup>210</sup> Gansu sheng bowuguan 甘肅省博物館 (Chen Xianru 陳賢儒), “Gansu Wuwei Mozuizi Han mu fajue 甘肅磨咀子漢墓發掘.”
- <sup>211</sup> Gansu sheng bowuguan 甘肅省博物館 (Chen Xianru 陳賢儒).
- <sup>212</sup> Gansu sheng bowuguan 甘肅省博物館 and Gansu sheng wuwei xian wenhua guan 甘肅省武威縣文化館, “Wuwei Hantanpo Han mu fajue jianbao--chutu da pi yiyao jian 武威旱灘坡漢墓發掘簡報--出土大批醫藥簡牘,” *Wenwu*, no. 12 (1973): 18-21 + 4 plates.
- <sup>213</sup> Zhongguo kaogu xue hui 中國考古學會, ed., *Zhongguo kaogu xue nian jian 1985* 中國考古學年鑒 1985 (Beijing: Wenwu, 1985), 245-46.
- <sup>214</sup> Guo Hao cites a report in the March 20, 2003 edition of *Yangzi wan bao* 揚子晚報, page A7, which I was unable to find.

### *The legislative history of old age*

Having entered the files, the elderly became the subject of successive imperial edicts. At the same time, legislation on the elderly was never intended to be understood as part of a complete system or a code. Instead, edicts were compiled for special occasions: visits to Mt. Tai, the establishment of imperial heirs, accession to the throne (see Table 3). Emperors were thus at pains to demonstrate their virtue by exceeding and increasing the legal and material benefits given to privileged groups like the elderly by their predecessors. Legislation sought not to codify previous rules, but to exceed them, with the effect that edicts accumulated.

*Table 4.5 Occasions for some edicts giving privileges to the elderly*<sup>215</sup>

<b>Source</b>	<b>Occasion</b>	<b>Year</b>
HS 2.85	Accession of Huidi	195 BCE
HS 4.113	Establishment of Empress Dowager Dou	179 BCE
HS 6.156	Soon after Wudi accession	140 BCE
HS 6.156	Soon after Wudi accession	140 BCE
HS 6.174	Establishment of heir	122 BCE
HS 6. 191	Return from Feng and Shan sacrifices	110 BCE

Scholars have conventionally understood this legislation in terms of “nourishing the elderly” (*yang lao* 養老) or even a “proto-welfare state.”<sup>216</sup>

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<sup>215</sup> The occasions on which other edicts were issued are not specified in received sources.

<sup>216</sup> A. F. P. Hulsewé, “Han China: A Proto ‘Welfare State’? Fragments of Han Law Discovered in North-West China,” *T’oung Pao* 73, no. 4/5 (1987): 265–85; Hong Shumei 洪淑湄, “Han dai zhi ci zhang 漢代之賜杖,” *Xingda renwen xuebao* 33 (June 2003).

This aspect of imperial munificence is most evident in the measures decreed in the edict of 179 BCE which foresaw the monthly distribution of food and wine to eighty-year olds and the distribution of silk to ninety-year olds, though there is no evidence that monthly distributions were ever carried out. The fact that elderly of high rank were given preference to those of lower rank, that distributions included luxury items like meat, wine and silk, and that the distributions were made by top officials, suggests that the notion of a response to “need” implicit in the notice of welfare was less important than the performative aspect of the distributions. As Table 4 makes clear, welfare was hardly the primary concern. A general trend seems to be that later emperors prefer to bestow legal privileges rather bestowing wine, money and food.<sup>217</sup>

An edict of 179 BCE issued in celebration of the accession of Empress Dou describes the emperor caring for the elderly both in his role as “father and mother to the people” and also as example to for filial children to follow. The *Han shu* account splits the edict up into two portions; in the first, the regenerative exuberance of spring vegetation is contrasted with the suffering of people who have no means of social support: widowers, widows, orphans and the childless. While spring grasses and trees and the many growing things have the means “to make themselves flourish” (*zi le* 自樂), those distressed people without support are at the point of death. “What,” asks the emperor of his counselors, “should the one who would be father and mother to the people do?” In the second half of the edict, the emperor shifts to a filial posture. Now it is not that the elderly are without support (to be cared for like children), but rather that they are deserving of special care (as one cares for one’s parents): “Now at the beginning of the year if there is no one sent to inquire after the elderly and there is no bestowal of silk, wine and meat, how will the sons and grandsons of the realm be aided in taking filial care of their relations? Unless the aged have silk, they will not be warm; unless they have meat, they will not be sated.”<sup>218</sup>

The edict specifies that for those eighty years of age or older there will be 1) monthly distribution of grain one bushel (c. 20 liters) of grain and 2) a

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<sup>217</sup> Too little is known of the bestowals of wine, food, and clothing to guess, for example, whether the monthly outlays stipulated in the edict of 179 BCE continue beyond that time.

<sup>218</sup> *Han shu* 4.113; *Shiji* 10.420

one-time distribution of twenty catties of meat (c. 5 kg) and five *dou* of wine (c. 10 liters), and that for those ninety years of age or older there will be 3) a further distribution of two bolts of silk and three catties of silk floss (for wadding). The edict envisions an ostentatious procedure whereby for those aged above eighty, the (district?) overseer *sefu* 嗇夫 and prefectural clerk *lingshi* 令史 are to make the distribution of meat and wine, while for those aged ninety years or above, the chief official *zhangli* 長吏 is to oversee the distribution, and his assistant *cheng* 丞 or commandant *wei* 尉 is to hand out the meat, wine and silk.<sup>219</sup> Even if nearly constant war meant that ninety-year-olds made up a smaller portion of the population than in the records from Yinwan (approximately 0.8%), the edict implied an expensive outlay. What is perhaps more significant is the requirement that the distributions be made in person by top officials, making the distributions highly visible. As representatives of the emperor, officials managed to perform filial piety (*xiao* 孝) at once as the parents of the people and as models of filial children. The next known edict on the subject of old age of 154 BCE appears not in the imperial annals, but in the “Treatise on Punishment,” in an abbreviated form that tells us little of the context of its passing. The edict sets out number of categories of people who are to have their fetters/shackles loosed *song xi* 頌繫, if they are liable to be interrogated or bound *ju xi* 鞠繫. Once more the edict ties together the categories of the elderly and the vulnerable: “People respect seniors and the elderly; people pity widows, widowers and those not summoned (for service).” Given this justification based on social vulnerability, it is strange that the edict does not exempt widows or widowers from being bound. Instead pregnant women, along with dwarves and blind music masters, those aged eighty years and above, and children of eight years or younger are exempted; in essence those categories of people whose

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<sup>219</sup>The term chief official (zhangli 長吏) is somewhat obscure. It may instead designate a senior official on the magistrate’s staff. As he is listed prior to the assistant cheng 丞 and commandant wei 尉 he may be the most senior official, i.e. the magistrate, which in Han times was either a zhang 長 or ling 令 depending on the size of the county. The term zhangli may thus be a generic term for “chief official,” perhaps encompassing either of the two types of magistrate.

vulnerability was due to physical disability rather than lack of social support.<sup>220</sup>

Two edicts were issued in 141 BCE, shortly after Wudi's accession. The first removed two types of taxes: for those of eighty years and older, the *er suan* 二算 tax, a type of capitation or poll tax, and for those ninety and over, the *jiazu* 甲卒 tax, a tax in lieu of military service. The second edict returns to themes of filial piety found in the 179 BCE edict, but whereas in that edict the elderly were deserving of gifts because of their appetite and fear of cold, here age symbolizes a sort of natural, spontaneous social hierarchy opposed to the synthetic courtly hierarchy of rank, expressed in the phrase: "in the countryside, by teeth; at court, by rank," teeth being a by now archaic marker of age.<sup>221</sup>

The edict echoes the spirit of pity, but here the pity is not for the aged themselves, but for those would-be filial children and grandchildren of the realm who ardently desire to express their filial devotion:

Now the filial sons and grandsons of the realm wish to exhaust themselves in undertaking the care of their kin, [but are impeded by] public distributions for those holding the honorary titles of *sanlao* and *litian*. Those aged eighty years and above are to receive three bushels of grain (c. 60 liters.)

The elderly have lost their meat and wine allowance and have now become recipients of a generic benefaction. In one respect, however, the edict of 122 BCE seems to expand upon that of 179 and that is in display. The edict names Royal Messengers 謁者, rather than local officials, to greet the recipients of the bounty and to distribute it, and even goes so far as to provide them with a script:

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<sup>220</sup> *Han shu* 23.1106

<sup>221</sup> *Han shu* 6.156

Send royal messengers to travel the empire and ask them [about their state] and distribute [the silk], saying: the emperor has sent (me,) a royal messenger to bestow.... [(amounts of silk to the categories of people mentioned above)] If there are those who have suffered wrong or [officials who have been] derelict in duty, [I,] the messenger shall make it known [to the emperor.]

其遣謁者巡行天下，存問致賜。曰皇帝使謁者賜[···]有冤失職，使者以聞。<sup>222</sup>

A further clause instructs the messenger to travel to the counties and districts to make distributions and hear complaints, and not to have the people assembled in order to make grants.

An edict of 110 BCE on occasion of the completion of the Feng and Shan sacrifices issued two bolts of silk to those over seventy (not ninety) and to orphans and widows, but was restricted to four counties through which the emperor had travelled. As it was issued alongside extensive tax exemptions and forgiveness, it must have represented in some measure an act of munificence intended to recompense for the expenses incurred during the emperor's stay. Silk cloth being a form of currency, this was merely a distribution of money.

An edict of 63 BCE, reprises the theme of the 154 edict, that is the treatment of respected criminals. In that edict, I noted the contradiction between the narrative of the edict which called for pity for widows and widowers, but instead exempted pregnant women and children, exemplifying some disjunction between rule and rationale. Here we find again a striking theme:

We [the emperor] have reflected upon the fact that old people's teeth and hair fall out, and that their *qi* is diminished and faint and moreover they have do not have violent or cruel minds.

朕惟耆老之人，髮齒墮落，向氣衰微，亦亡暴虐之心。<sup>223</sup>

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<sup>222</sup> *Han shu* 6.174.

<sup>223</sup> *Han shu* 8.258.

The edict goes on to exempt those of eighty years or more from adjudication except in instances of false accusation and injury or murder. This would appear to present a paradox: elders do not commit violent crimes because they are old and lack violent impulses, therefore they are exempt from all criminal prosecution, except in the case that they commit a violent crime.

Taken as a whole, then, edicts on the elderly do not add up to a social policy or even a consistent notion of who the elderly are and what is due to them, whether privilege or pity, deference or care. Edicts variously decree the distribution of money, food, clothes or wine and the establishment of special privileges. Edicts vary by age at which such privileges are to be distributed and the often paradoxical rationales given to justify these outlays. In this way legislation on the elderly is a reflection not a solution to a problem, but an effort to come to terms, through law, with the human dilemmas of aging.

### *Conclusion*

Bureaucratic objects—whether turtledove staffs, exquisitely gradated distinctions of chronological age, or even the notion of an empire-wide body of the elderly—arose contingently from the practice of law and the circulation of registers, lists, and edicts. Historians have long suggested that imperial identity emerges from the classical discourses of the court, but by giving precedence to the working, material knowledge of magistrates, officers and the elderly themselves, the perceived hierarchy of labor is reversed, and it is possible to trace a different trajectory. Here I have followed Wang Chong's suggestion that bureaucratic practitioners generated things but were unable to account for them, leaving the elderly (like You Bo), artisans, classicists and emperors (through edicts and ritual celebrations) to elaborate meaning for innovations they encountered.

The preponderance of evidence related to the legal history of the elderly allows one to trace how this group came to be constituted through the practices of paperwork. The paradoxical newness of the elderly (at least as an identity, a group within the empire) that I have dubbed the “birth of old age” belies the notion that people in the Han were merely following ancient precedent. At the same time, the multiplicity of (often contradictory) narratives suggests that

material practices of law allowed for the generation of many possible meanings of what the status of being elderly entailed. If the notion of state rationality often forecloses the possibility of interpreting beyond a narrowly demarcated instrumentality, the history of the elderly suggests that efforts to describe that rationality run up against the sorts of paradox that Wang Chong describes: why distinguish between people at the age of ninety-four and ninety-five? What is the meaning of terms like *shangzao* and objects like the turtledove staff? Who are the elderly? Are they deserving of pity or are they to be raised to positions of authority?

Conventional accounts suggest that paperwork is used to surveille, discipline and control society, assumed to be more-or-less ready-formed, to achieve some aim of the state. The history of the elderly suggests that paperwork did more than document or record: it shaped and constituted notions of what it meant elderly. As such registrations, turtledove staffs, even arbitrary distinctions of age, all came to take on special meaning as constructive of identity. These meanings were not necessarily connected to the origins of practice--themselves obscure, hard-to-pinpoint, sometimes, as in minute distinctions of chronological age, even arbitrary—but rather evolved, shaped by the overlay of new narratives.

## Epilogue

Manuscript discoveries of the last decades have garnered a great deal of fascination: witness the tens of centers established in universities across China for the study of manuscripts; the expanding ranks of folio volumes in which each manuscript is photographed in color and in infrared, transcribed and annotated; the founding of specialist journals; and even museums of paperwork. What, if anything, is the significance of these disordered piles of manuscripts, and why have they garnered so much interest and state investment?

To some, the emergence of the past in salvage excavations on construction sites of hydroelectric dams, subway tunnels and high-rise buildings of the present is little short of providential. Contemporary efforts to achieve bureaucratic rule, centralization of power, and social control seem sanctioned by the ancient past. Witness three plenary sessions of the Politburo between 2014 and 2018, chaired by a specialist in early imperial legal manuscripts, and convened to discuss the insights early empires have to bear on such contemporary subjects as “rule by officials” and “bureaucratic remedies to corruption.”<sup>224</sup> Despite the baldly presentist terms in which such efforts are presented, they are clearly informed by a larger scholarly debate framed by the question of imperial law’s compatibility with the modernity.

If discussion of the legal legacy of the empires has largely revolved around the question of law’s commensurability with the present this is due in part to the terms in which scholars have chosen to understand early law. One might trace contemporary efforts to exploit early imperial evidence back to the nineteenth century tradition of legal orientalism, which sought to use law to

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<sup>224</sup>The specialist is Professor Bu Xianqun. Sessions occurred 19<sup>th</sup> April, 2013, 13<sup>th</sup> October, 2014, and 26<sup>th</sup> November, 2018. For reports of these “collective study sessions,” see “Xi Jinping: Jiejian lishi shang youxiu lianzheng wenhua 習近平：借鑒歷史上優秀廉政文化,” *Renmin ribao*, April 21, 2013, <http://cpc.people.com.cn/n/2013/0421/c64094-21215627.html>; “Xi Jinping: laoji lishi jingyan shang lishi jiaoxun lishi jingshi 習近平：牢記歷史經驗上教訓歷史警示,” *Renmin ribao*, October 14, 2014, <http://cpc.people.com.cn/n/2014/1014/c64094-25827156.html>; “Xi Jinping: yanba biao zhun gongzheng yongren tuokuan shiye jili 習近平：嚴把標準公正用人拓寬事業激勵,” *Renmin ribao*, November 27, 2018.

demonstrate China's incompatibility with European modernity. Many scholars, sharing vastly different intellectual and political commitments, have sought to counter the orientalist idea of primitive law with variations on the modernist notion of law as an expression of the reason of the state, of law as social control, and of writing as discipline.

In this dissertation, I have suggested that a focus on paperwork allows one to tell a competing story in which the social production of manuscripts sheds light on the generative role of law. If a disciplinary account of law begins with the codification of a rational body of law, a paperwork history begins from the social generation of legal norms, norms which find form not in imperatives of state, but rather in the narratives of petitioners, the deliberations of magistrates, and the local interpretation of imperial edicts. Mounds of discarded paperwork bear witness to the vibrancy of legal practice in the early empires *despite* successive failed attempts by the court to assert central control over legal practice. That codification was only achieved after the fall of the empire, suggests the effort to bring legal practice under central control represents, if anything, an endpoint to the legal history of the early empires.

Figures

昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
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一五五上  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...

一五五下  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...

一五六  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...  
昔者... 東... 西... 感... 義... 鄉... 昔... 是... 書...

Figure 2.1 Liye J1 9-15 From left to right: recto top, recto bottom, verso top, verso bottom. Note the signature of the first scribe Qu (Qu *shou* 詘手) at the bottom left of verso bottom and at the end of the last column of text (proceeding right to left) of recto (top left of recto bottom). The text on verso top is written in a different hand—that of the clerk who received the petition at the county offices. Hunan kaogu yanjiu suo 湖南考古研究所 (Zhang Chunlong et al.), *Liye Qin Jian (Er)* 里耶秦簡（貳） (Beijing: Wenwu, 2017), 10.



Figure 2.2 Liye J1 9-328. Fragment from a petition from a woman servant. Hunan kaogu yanjiu suo 湖南考古研究所 (Zhang Chunlong et al.), 49.

日本書紀卷之六十四 武烈天皇十四年  
秋八月己未 皇太后崩于大津宮  
大津宮者 大津郡大津也 皇太后崩于大津宮  
大津宮者 大津郡大津也 皇太后崩于大津宮

一五五四背

大津宮者 大津郡大津也 皇太后崩于大津宮

日本書紀卷之六十四 武烈天皇十四年  
秋八月己未 皇太后崩于大津宮  
大津宮者 大津郡大津也 皇太后崩于大津宮  
大津宮者 大津郡大津也 皇太后崩于大津宮

一五五四正

大津宮者 大津郡大津也 皇太后崩于大津宮  
大津宮者 大津郡大津也 皇太后崩于大津宮

Figure 2.3 Liye J1 8-1554 Verso at left, recto at right. A series of “tooth” notches on the left edge of the manuscript duplicates the numbers mentioned in the manuscript as security precaution (figure 3). At top is a notch of the pattern  which indicates the number “ten.” In theory this should be followed by a subtle notch of the form  indicating the number “one,” for a total of eleven, thus corresponding to the number (eleven) of items mentioned, but if there is indeed such a notch it is not visible in the photographs. Following this are six notches of the form  which indicates “ten thousand”, rendering a total of sixty thousand, corresponding to the number of cash mentioned in the petition. Hunan kaogu yanjiu suo 湖南考古研究所 (Zhang Chunlong et al.), *Liye Qin Jian (Yi)* 里耶秦簡（壹） (Beijing: Wenwu, 2011), 202.

鄧中正先生母家屬當復安有所與

十月 奉 仁 江 際 永 遠 智 地 下 必 可

... 奉 正 月 號 加 那 ... 鄧中正先生 ... 母家屬當復安有所與

Figure 2.4 Xiejiaqiao petition manuscript. At left is the petition itself, in the middle is the receipt from the magistrate at Jiangling, and at right is a label. Originally these were bound together with an inventory written on over two hundred strips. This petition-inventory manuscript scroll was bound together, wrapped with reeds, and placed in the tomb. Yang Kaiyong 楊開勇, “Xiejiaqiao 1 hao Han mu 謝家橋 1 號漢墓,” in *Jingzhou zhongyao kaogu faxian* 荊州重要考古發現 (Beijing: Wenwu, 2009), 191.



图一二 木俑 (M1 北室: 82)

Figure 2.5 Lacquer figurine from Xiejiaqiao This figurine apparently corresponds to one of the deceased's living family members, who is listed on the petition-inventory. Jingzhou Bowuguan 荆州博物馆 (Wang Mingqin 王明钦 et al.), "Hubei Jingzhou Xiejiaqiao yi hao Han mu fajue jianbao 湖北荆州谢家桥一号汉墓发掘简报," *Wenwu*, no. 4 (2009): 32.

十季一肖可予了翔垂  
 士蒸自言與大奴甲  
 醫患制異報臥言乞  
 青季子以陵能氏以強移卸部水一京十

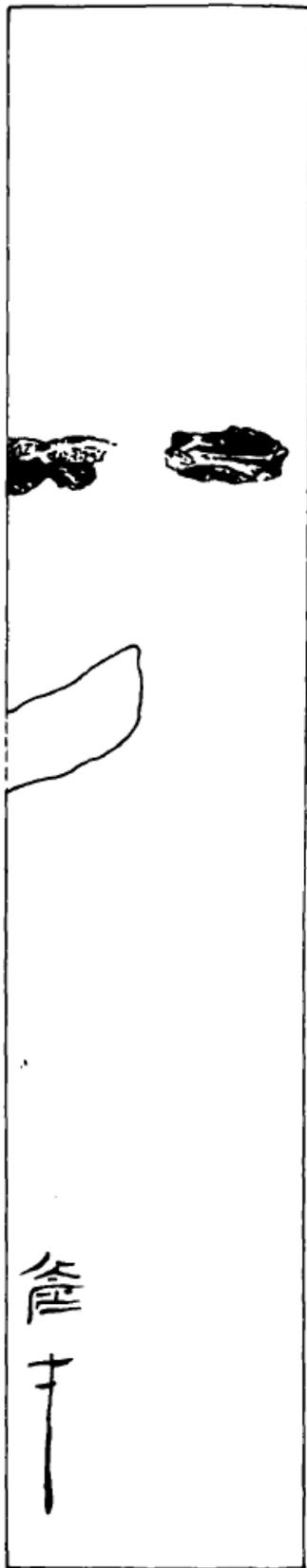


Figure 2.6 Gaotai petition. manuscript Recto at left, verso at right. Note that the last column counting right to left on the recto side is in a different hand (that of Ting, whose signature is at the end of the column after the exaggerated comma-like mark: Ting *shou* 亭手), purportedly the assistant magistrate of Jiangling, who is addressing the magistrate of the dead. The scribe who composed the first three columns (Chan) has signed the manuscript on the recto side, hand of Chan (Chan *shou* 產手). Hubei sheng Jingzhou diqu bowuguan 湖北省荊州地區博物館 (Zhang Wangao 張萬高 et al.), “Jiangling Gaotai 18 hao mu fajue jianbao 江陵高臺 18 號墓發掘簡報,” no. 8 (1993): 17.

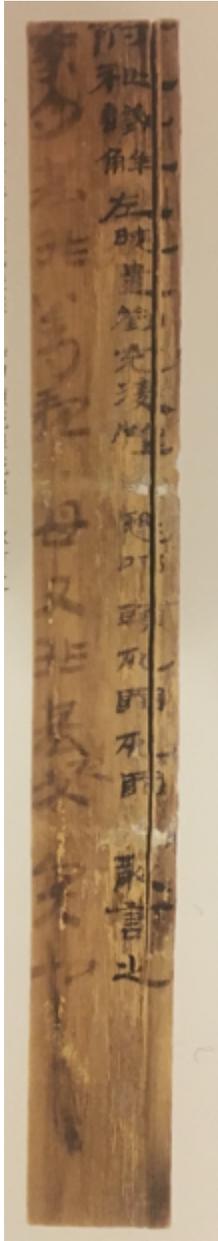


Figure 2.7 Final tablet of the investigation in response to Wang Liu's petition. Note the contrast between the neat handwriting of the clerk at right and the magistrate's handwriting at left. 71CWJ1③: 325-5-11 Changsha shi wenwu kaogu yanjiusuo 長沙市文物考古研究所 et al. (Li Junming 李均明 et al.), *Changsha Wuyi guangchang Dong Han jiandu xuanshi* 長沙五一廣場東漢簡牘選釋 (Shanghai: Zhong Xi shu ju, 2015), 25.

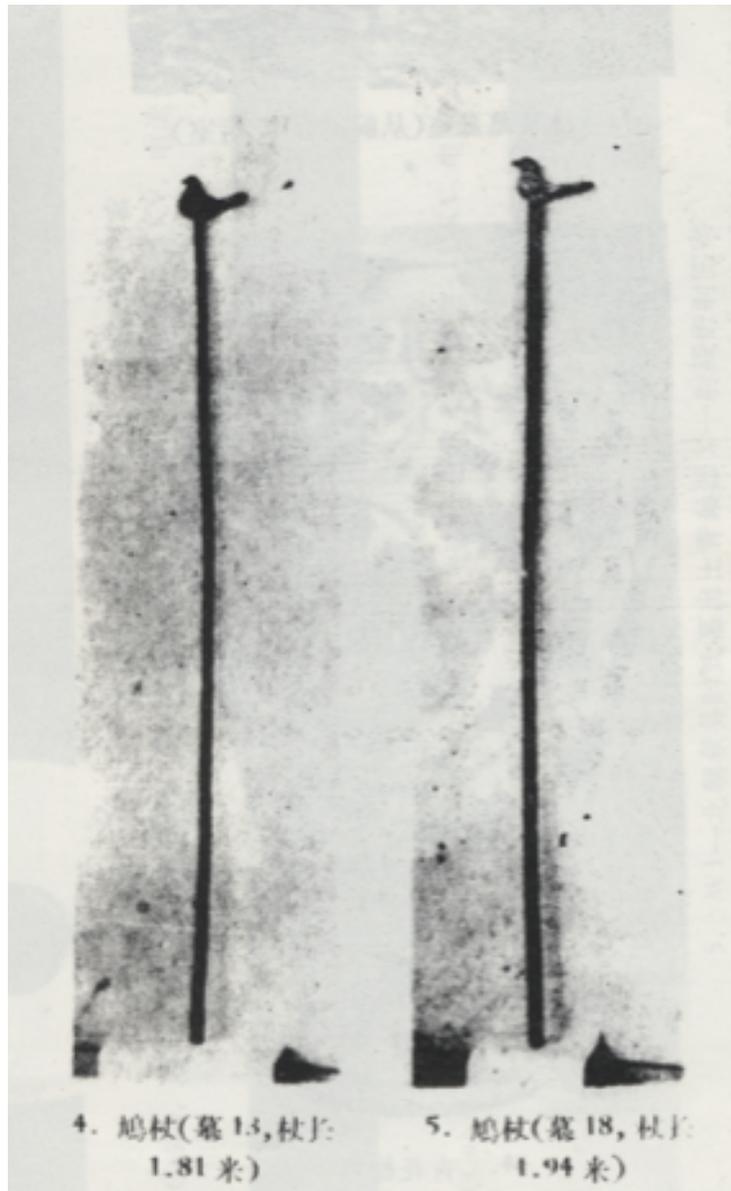


Figure 4.1 Two turtledove staffs from Mozuizi, tomb no. 13 at left, tomb no. 18 at right. Gansu sheng bowuguan 甘肅省博物館 (Chen Xianru 陳賢儒), “Gansu Wuwei Mozuizi Han Mu Fajue [Excavation of Han Tombs at Mozuizi, Wuwei, Gansu] 甘肅磨咀子漢墓發掘,” *Kaogu* 9 (1960): plate 7.



Figure 4.2 Turtledove staff from Mozuizi Tomb No.18. The Metropolitan Museum of Art. "Age of Empires: Chinese Art of the Qin and Han Dynasties (221 B.C.–A.D. 200)," April 3, 2017–July 16, 2017.



Figure 4.3 Detail from turtledove staff from Mozuizi Tomb No.18. The Metropolitan Museum of Art. "Age of Empires: Chinese Art of the Qin and Han Dynasties (221 B.C.–A.D. 200)," April 3, 2017–July 16, 2017

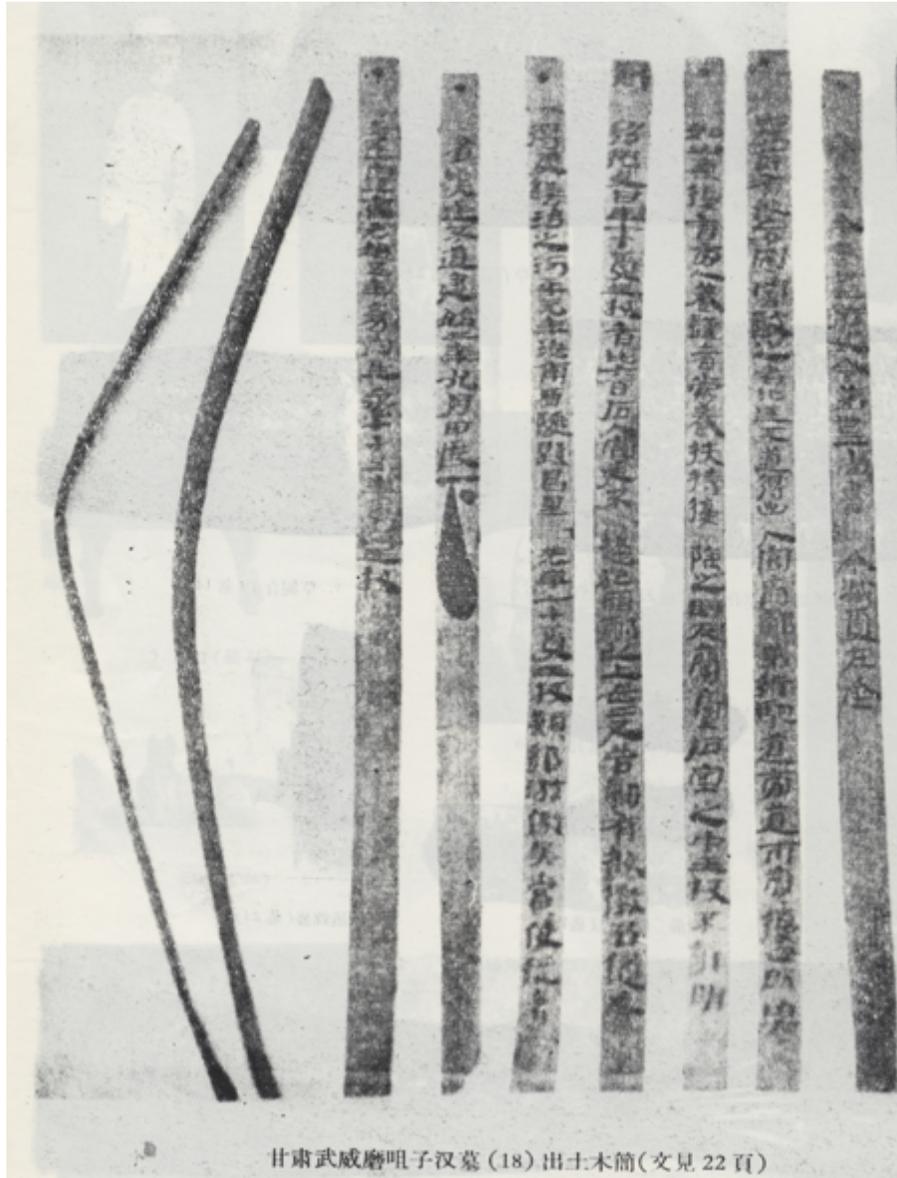


Figure 4.4

Photograph of ten strips with inscription containing edicts on staffs. Originally attached to turtledove staff from Tomb No. 18, Mozuizi, Gansu. Gansu sheng bowuguan 甘肅省博物館 (Chen Xianru 陳賢儒), “Gansu Wuwei Mozuizi Han Mu Fajue [Excavation of Han Tombs at Mozuizi, Wuwei, Gansu] 甘肅磨咀子漢墓發掘,” *Kaogu* 9 (1960): plate 6.

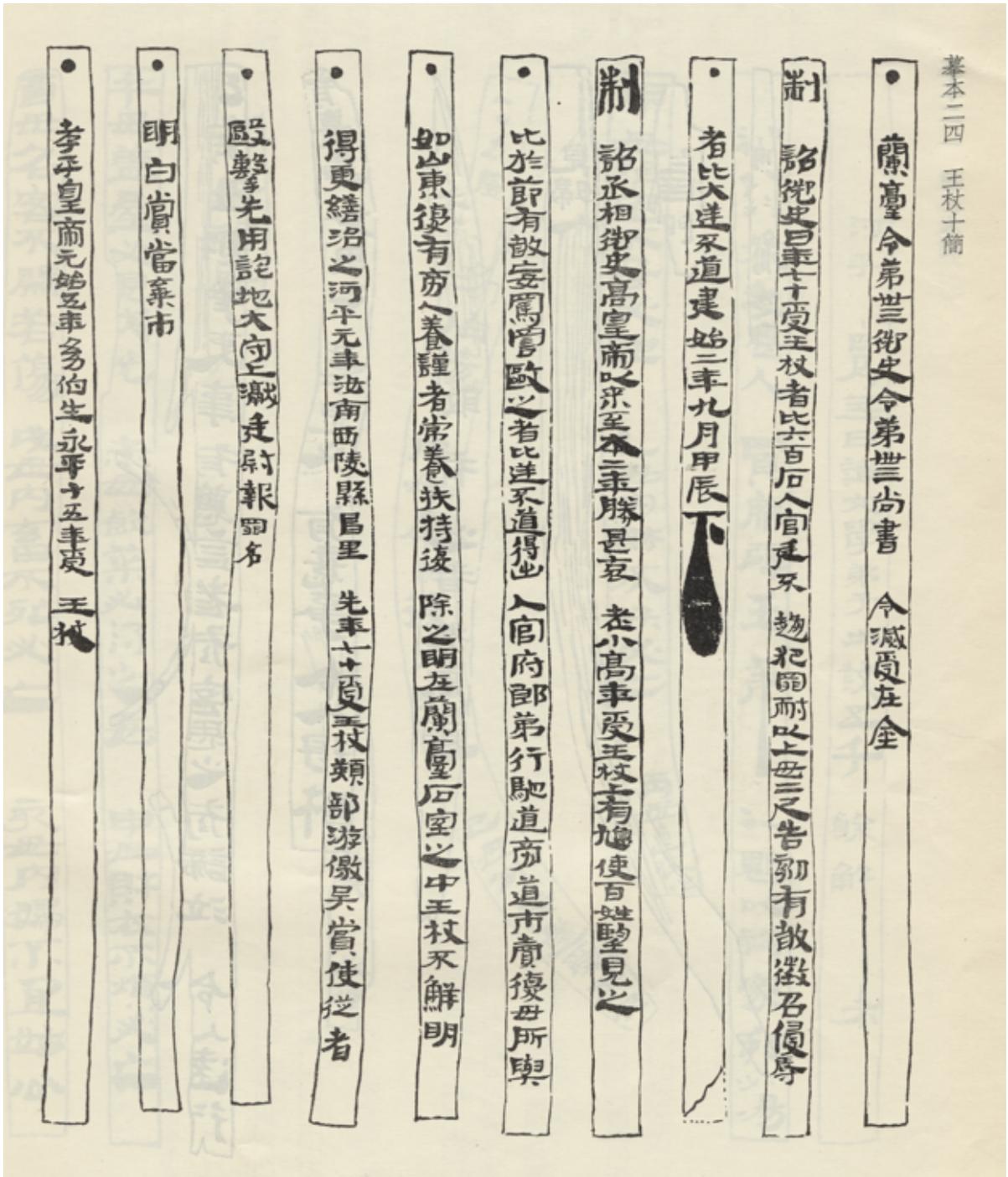


Figure 4.5 Facsimile of ten strips with inscription regarding royal staffs from Tomb No. 18, Mozuizi, Gansu. Gansu sheng bowuguan 甘肅省博物館 (Chen Xianru 陳賢儒), 23.

Figure 4. 6 (*At right*) Strip 23 of the “Yeshu” or “Biannian ji” annals from tomb no.11 Shuihudi, BCE 217. The words “I registered my age” (*zi zhan nian* 自占年) appear at bottom under the entry for the sixteenth year of King Zheng, the future First Emperor of Qin. Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, *Shuihudi Qin mu zhu jian* 睡虎地秦墓竹簡 (Beijing: Wenwu, 1977), 649. (The images from the 1977 edition are far more clear than those from the 1990 edition.)

Figure 4.7 (*Next page*) Yinwan M6D1: the summary of registers showing the totals for the thirty-eight administrative subdivisions of Donghai commandery account for 1,397,343 individuals from 266,290 households. Of these 706,064 are male and 688, 142 are female. Those of age eighty or more years number 33,870, while those of ninety and older number some 11,670. Those aged seventy who have received staffs number only 2,823, implying that perhaps not all seventy year olds received staffs. Lianyungang Muncipal Museum 連雲港市博物館, *Yinwan Han mu jiandu* 尹灣漢墓簡牘 (Beijing: Zhonghua shu ju, 1997), plate 1.



Handwritten text on the reverse side of a wooden tablet, oriented vertically. The characters are small and densely packed, typical of ancient inscriptions.

YM6D1反

Handwritten text on the obverse side of a wooden tablet, oriented vertically. The characters are small and densely packed, typical of ancient inscriptions.

YM6D1正

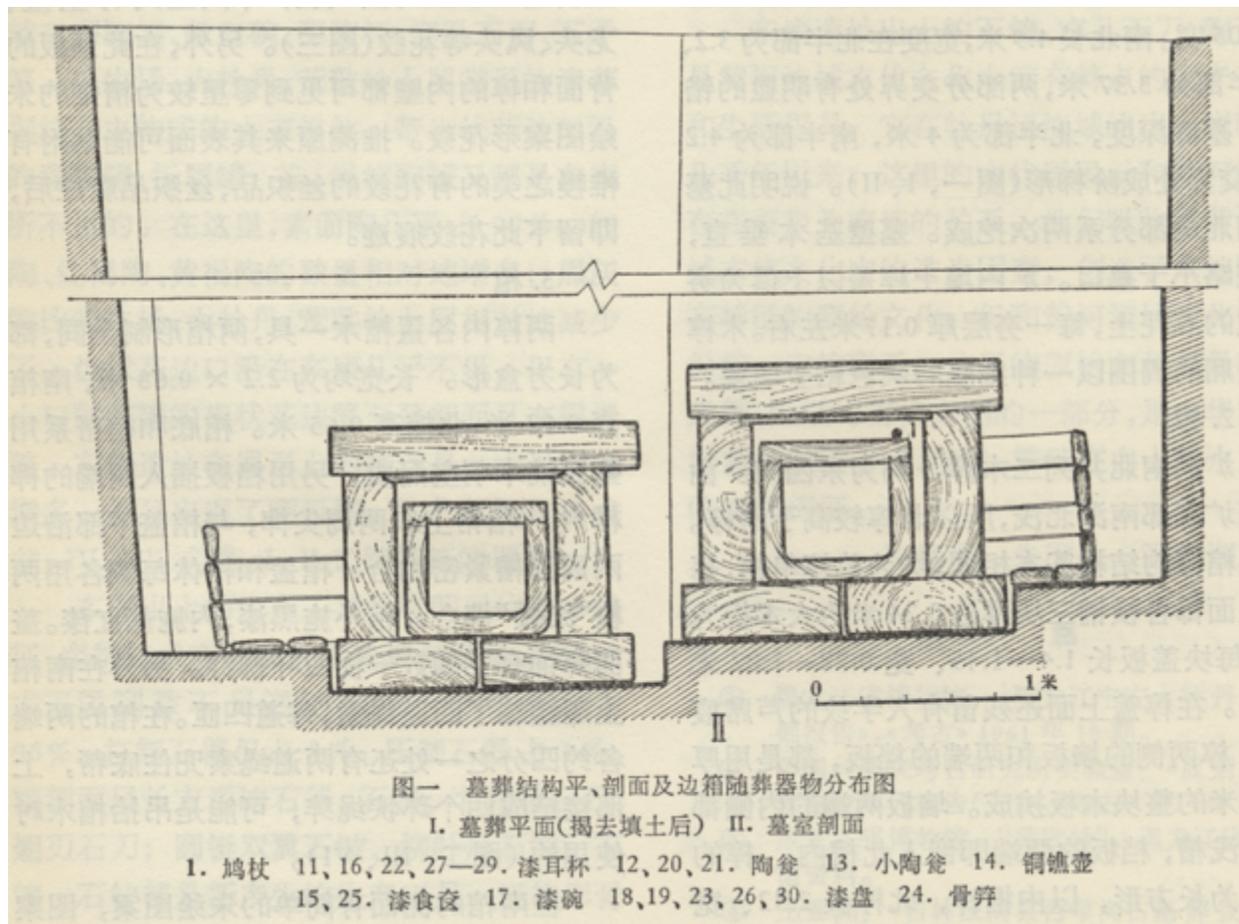


Figure 4.8 Diagram showing the placement of a turtledove staff in the Yiji Yao tomb from Haizhou, Lianyungang, Shandong (late second to early first century BCE). The staff is numbered 1, and as at Mozuizi No.18, is placed on top of the coffin. Nan Bo 南波, "Jiangsu Lianyungang shi Haizhou Xi Han Shiqi [Yiji?] Yao Mu 江苏连云港市海州西汉侍其繇墓," *Kaogu*, no. 3 (1975): figs. 1, 170.

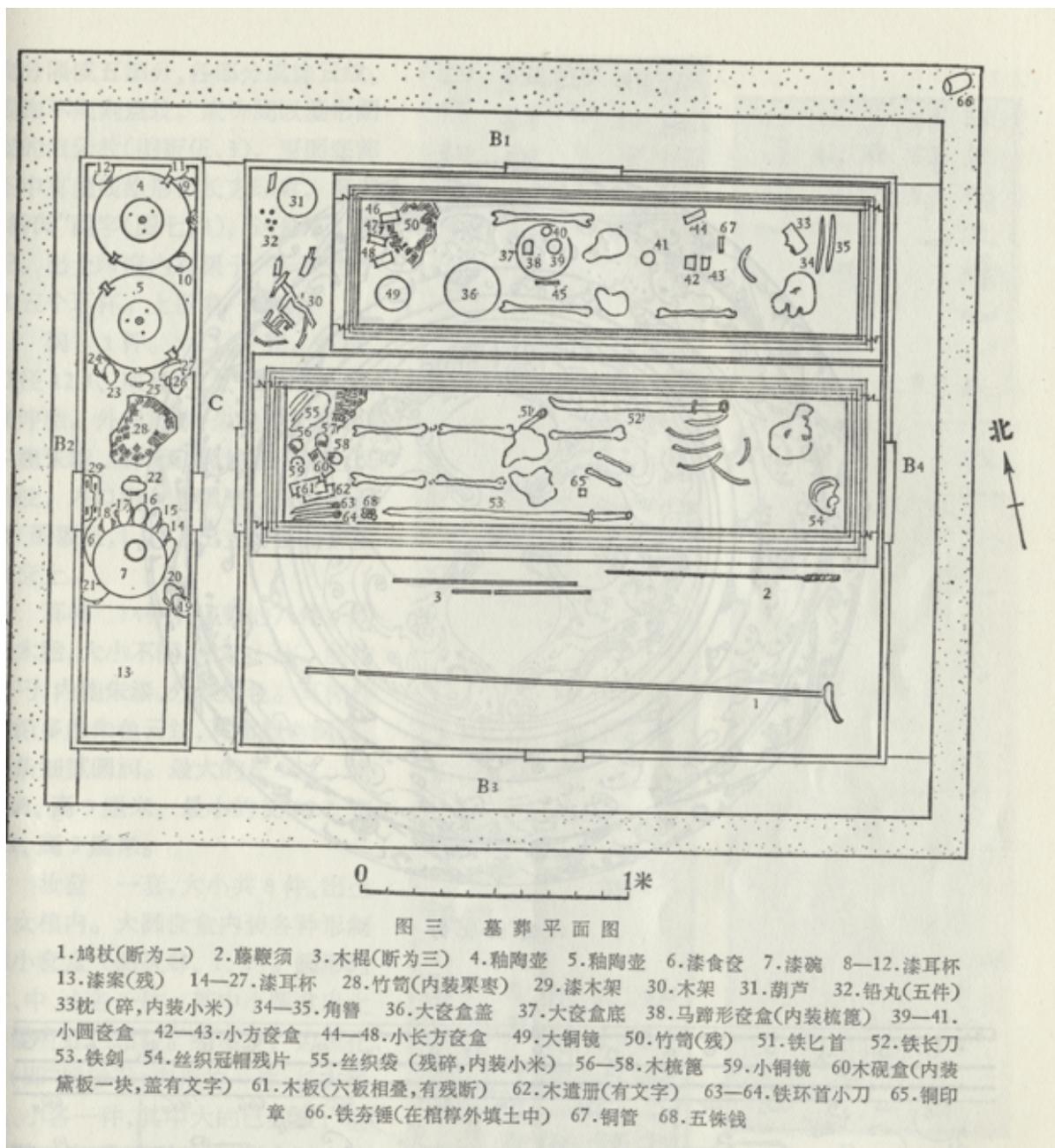


Figure 4.9 Diagram showing the placement of a dove-finialed staff in the Huo He tomb, Haizhou, Lianyungang, Jiangsu (late first century BCE). The turtledove staff is numbered 1, and is placed to the right of the man’s coffin. Nanjing Bowuyuan 南京博物院, “Haizhou Xi Han Huo He Mu Qingli Jianbao 海州西漢霍賀墓清理簡報,” *Kaogu*, no. 3 (1975): figs. 3, 181.



Figure 4.10 Rubbing from a stone sarcophagus, tomb no.2, Wohushan, Zoucheng, Shandong. (Late 1<sup>st</sup> c. BCE to early 1st c. CE) depicting an elderly couple, the man on the left holds a dove-finaled staff, and the woman holds two peaches of immortality. A child kneels before the woman, while an animal receives the peaches. Behind them another human, a bird and a tree (Fusang?). Zoucheng shi wenwu guanli ju [Hu Xinli] 鄒城市文物管理局 [胡新立], "Shandong Zoucheng shi Wohu shan Han huaxiangshi mu 山東鄒城市臥虎山漢畫像石墓," *Kaogu*, no. 6 (1999): figs. 13, 49.

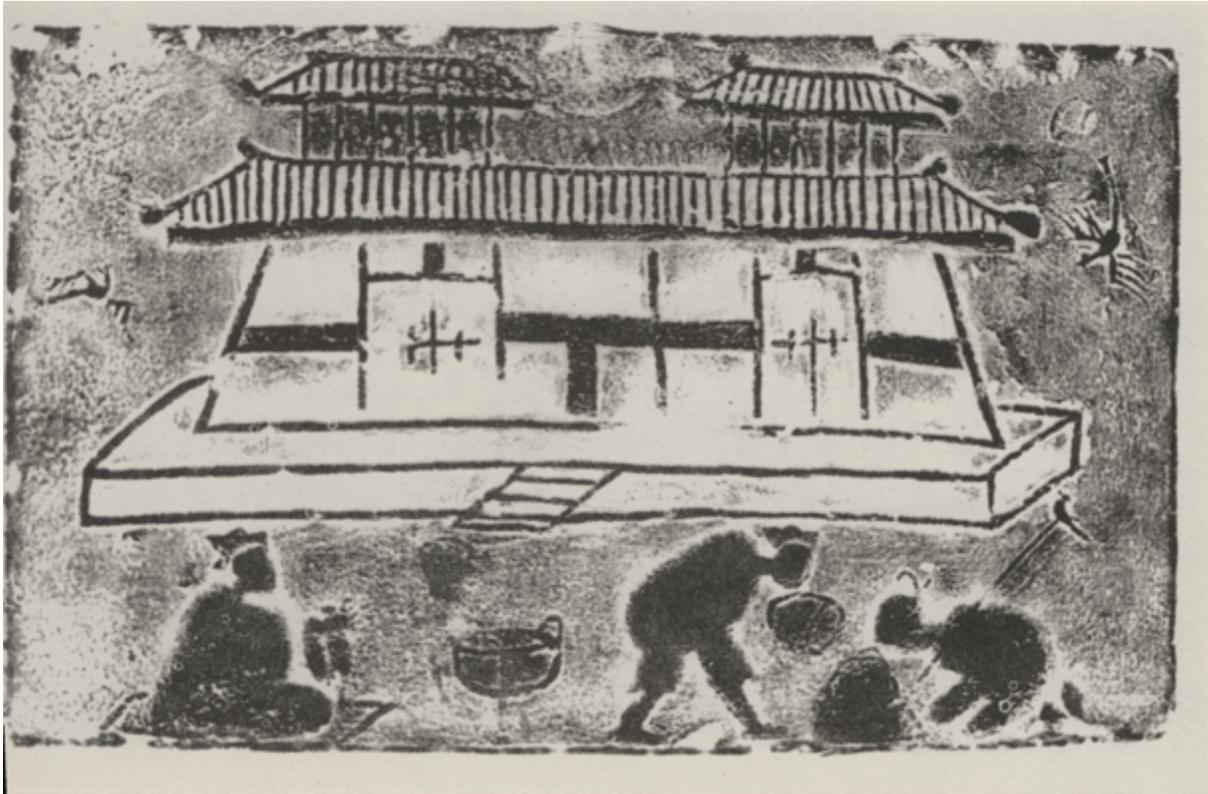


Figure 4.11 Rubbing of a pictorial brick depicting distribution of grain to the elderly, excavated in Taiping district, Pengzhou, Sichuan. A tile-roofed, windowless granary, with inward-tapering timbered wattle-and-daub walls, and two doors secured by bolts, sits on a high platform; two open towers provide ventilation (from the Song onward, if not before, these were called “air towers” *qi lou* 氣樓). Two birds with long tail feathers fly to the left and right of the building. A figure at left, seated on a mat, observes as a second figure pours grain into a vessel in front of a kneeling (?) man holding a turtledove staff. Sichuan Provincial Museum collection. Gao Wen 高文 and Wang Jinsheng 王錦生, eds., *Han huaxiang zhuan daquan* 漢代畫像磚大全 (Macau: Guoji aomen, 2002), 46, plate 44.



Figure 4.12 Rubbing of a pictorial brick with image of old man with dove-finiaed stick excavated in Xindu county, Sichuan. A tile-roofed granary building with inward-tapering timbered wattle-and-daub wall walls sits on a high platform. A figure emerges from the granary with a bag of grain over his shoulder. An official, seated on a mat, observes from the right side of the granary platform. At lower right, kneeling (?) beneath a wispy tree, is an elderly man with a turtledove staff who holds a sack open to receive the grain. Sichuan Provincial Museum collection. Gao Wen 高文 and Wang Jinsheng 王錦生, 46, plate 44.

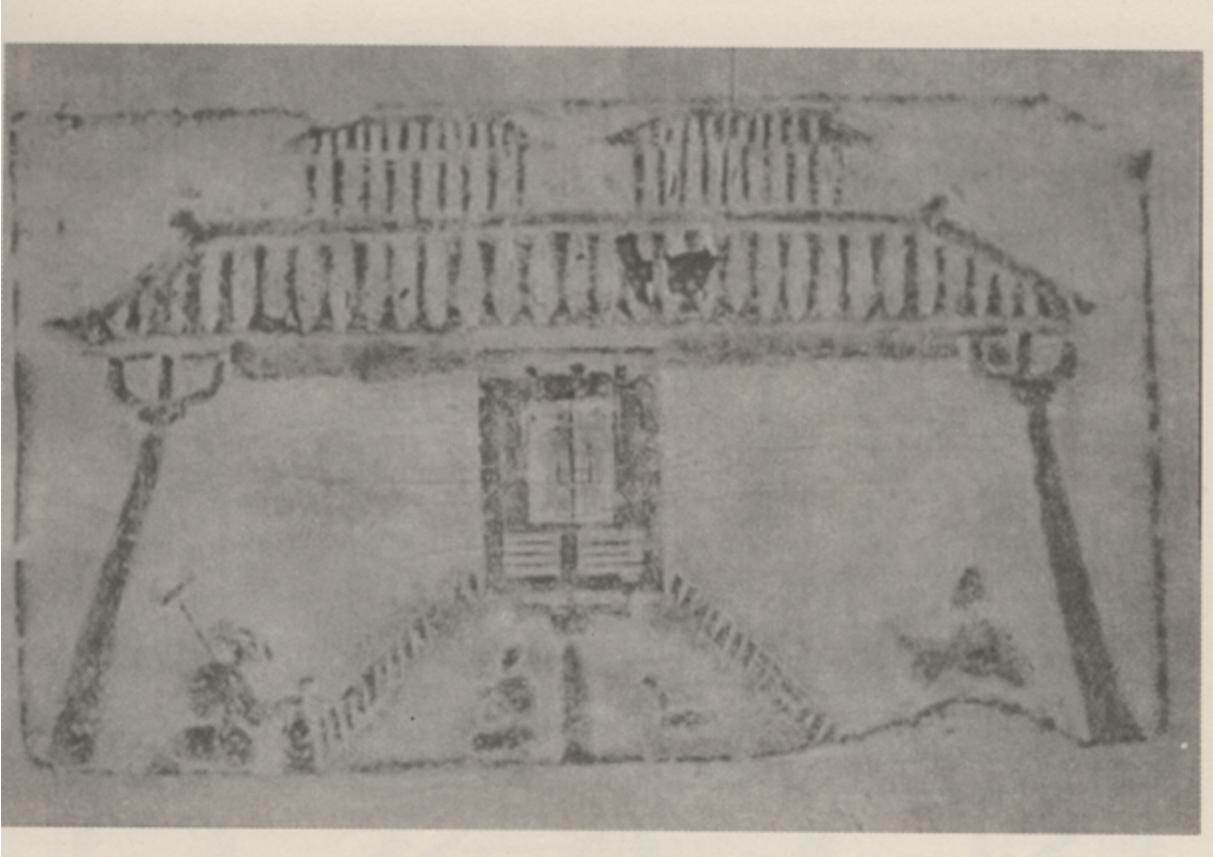


Figure 4.13 Rubbing of a pictorial brick recovered in June of 1990 from Liji district in Xindu county, Sichuan. A tile-roofed granary building with inward tapering walls, two ventilation towers, wooden columns with brackets, and a raised central door accessed by two ladders at either side. A figure facing left sits at the right side of the building, and a second smaller figure sits underneath a ladder supported by a column with a bracket. At left, a man with a turtledove staff kneels (?) facing right and holding a sack to receive grain (?). Gao Wen 高文 and Wang Jinsheng 王錦生, 47, plate 45.



4.14 Portion of a rubbing of a pictorial stone with an image of an old man carrying a dove-finaled staff from the southern portion of the western wall of the central chamber of the Han tomb at Yinan, Shandong, excavated in 1954 and restored in 1994. Cui Zhongqing 崔忠清, ed. *Shandong Yinan Han Mu Huaxiang Shi* 山東沂南漢墓畫像石. Jinan: Qi Lu, 2001, page 50 plate 42

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