QIN CRIMINAL CASE RECORDS OF THE COLLECTION *WEI YU DENG ZHUANG*

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Our understanding of early Chinese jurisdiction has been greatly improved by the discovery of two Chinese collections of criminal case records from the late 3rd and early 2nd century BC during the last decades. These legal manuscripts belong to a type of sources previously unknown in the received literature of this time. The first collection from the beginning of the Han 漢 dynasty titled *Zou yan shu* 奏讞書 was excavated from Zhangjiashan 張家山 tomb no. 247 near Jingzhou 荊州, Hubei 湖北 Province, around the end of the year 1983. The edition of this collection was not published for almost 20 years[1] and immediately attracted considerable attention within the scientific community. The second compilation of criminal cases from Qin 秦 called *Wei yu deng zhuang si zhong* 爲獄等狀四種 (hereafter abbreviated as *Wei yu deng zhuang*) by the editors was discovered among the manuscripts which were purchased in 2007 on the antique market in Hongkong by the Yuelu Academy 嶽麓書院 Changsha 長沙.[2] The *Wei yu deng zhuang* contains several criminal cases which are written on about 250 bamboo and wooden slips. Twelve case records are more or less complete, while a further three have been preserved only fragmentarily. The cases can be partly dated to the last years of the pre-imperial period of Qin, to the reign of King Zheng 政 (from 246 to 222 BC). The investigation of the slips shows that the *Wei yu deng zhuang* originally consisted of four separate manuscript rolls (*juan* 卷) that differed in terms of material (bamboo as opposed to wood), the length

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1 Zhangjiashan ersiqi hao Hanmu zhujian zhengli xiaozu 2001, 51–72; Peng Hao et al. 2007, 59–83, 329–382; for the detailed analysis cf. Ikeda Yūichi 2002; Cai Wanjin 2006; Gao Heng 2008, 341–407; Lau and Lüdke 2012.

2 For the initial outline of the purchased manuscripts, cf. Chen Songchang 2009, in particular pp. 85–87.

of the slips (27,5 cm, 25 cm, 23 cm), the number and position of the bindings, as well as the style of the script.[3] While the collection was called *Zou yan shu* in the first introductory report due to its similarities with the Zhangjiashan manuscript from early Han times,[4] the editors have been able to reach a consensus on the composite title – *Wei yu deng zhuang si zhong* 爲獄等狀四種 "Four types of documents for trying criminal cases and other [procedures]" – based on the four manuscripts and three different headings on the verso of the slips, which contain the term *zhuang* 狀.[5] It should be emphasized that these titles were only found on the slips of the second manuscript (II), whereas no headings have been found on the slips belonging to the other three manuscripts. It is therefore uncertain exactly how – or indeed if at all – the titles relate to the other three manuscripts and why there are three different titles in the same manuscript. The editors are nonetheless in agreement that *zhuang* in these headings refers to a type of document describing the facts of a criminal case.[6]

The criminal case records of the *Wei yu deng zhuang* were made available for scientific analysis after the edition was published by the *Qinjian zhengli xiaozu* 秦簡整理小組 of the Yuelu Academy.[7] Over the past few years, the present author and his colleague Thies Staack have worked on an annotated English translation of this collection. This

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3 Yuelu shuyuan cang Qinjian zhengli xiaozu 2013, 78, 83; Staack, forthcoming.

4 Chen Songchang 2009, 85.

5 *Yuelu WYZ* 139*verso*: *Wei qi ju zou zhuang* 爲乞鞫奏狀; *Yuelu WYZ* 140*verso*: *Wei fu zou zhuang* 爲覆奏狀 and *Yuelu WYZ* 137*verso*: *Wei yu (?) zhuang* 爲獄□狀. The visible left part of the damaged character after *yu* 獄 represents the semantic determinative 言; the character can probably be read as *xun* 訊 "to interrogate" (*yu xun* 獄訊 in *ENLL* 508; cf. *xun yu* in *FZS* 2=*RCL* E 2; *Liye* 8-1556, 2008). The identification with *ji* 計 "annual account [of criminal cases]" (cf. *yu ji* in *Yuelu Lüling* unpulished slips no. 1102, 1624, 1986; *Juyan* 293.7; *Huchang* cited from *Sanjian* 1061) seems to be unlikely because *ji* only contained the decision or at most a summary of the finding of facts, but not a complete documentation of the trial. The reading *yan* 讞 is out of the question as well because *yan* during Qin and early Han times was exclusively written with the variant 讞 (Zhang Shouzhong 1994, 173: *QLSZ* 121=*RCL* A 64; *FLDW 53, 72=RCL D 43, 58*; *Yuelu WYZ* 025, 028, 030, 040, 042, 046, 064, 095, 236; Zhang Shouzhong 2012, 299: *ENLL* 102; *ZYS* 1, 6, 8, 15, 17, 23, 26, 28, 33, 35, 36, 47, 49, 51, 53, 54, 56, 59, 60, 61, 228v; *Shuowen* 11*shang er*, 566a; *Wang zhang shi jian* cited from *Sanjian* 22).

6 Zhu Hanmin and Chen Songchang 2013, 177, footnote 4. For a detailed explanation of the reasons for this interpretation, which is mainly based on references to *zhuang* from the dynastic histories, see Su Junlin 2013. See Barbieri-Low (2011, 132), who regards *zhuang* in some official charges from Juyan as a "narrative description of the crime" and Giele (2006, 170), who translates *zhuang* in the dynastic histories as "circumstances of a crime" or loosely as "eyewitness report." For other meanings of *zhuang*, see footnote 140.

7 Zhu Hanmin and Chen Songchang 2013.

translation is now complete and has already been submitted for publication. The systematic analysis – whose preliminary results will be presented in the following – aims to better understand the function of this collection of criminal case records. Research that takes due account of the archaeological context faces considerable difficulties, as there is no reliable information on the excavation site of the *Wei yu deng zhuang*, possible other burial objects, or the arrangement of the manuscripts at the excavation site.[8] It cannot be excluded that they in fact derive from more than one site.

Since the provenance of the slips is unknown, doubts may be raised about their authenticity. Nonetheless, it should be kept in mind that Staack was able to completely reconstruct the structure of the first manuscript roll of the *Wei yu deng zhuang* from the evidence provided by the long-neglected lines and imprints on the verso of the slips, although the slips constituting the first roll were completely scattered. Both phenomena, namely, the verso lines and verso imprints, which also occur in most other manuscripts of the Yuelu Academy corpus and – as has recently been shown[9] – in legally excavated manuscripts, lend support to the collection's authenticity. At the time the Yuelu Academy manuscripts were purchased, the two phenomena were still largely unknown and neglected in the research. It is therefore highly unlikely that a potential forger would have been aware of these phenomena or, for that matter, their significance.[10] Moreover, in previous research on the *Wei yu deng zhuang* the present author found some semantic and syntactic peculiarities, which also occur in other manuscripts from the Qin and early Han period, but had yet to be analyzed or discussed by scholars.[11] This further suggests that the respective passages of the *Wei yu deng zhuang* are genuine.

A comparison with the other tombs where Qin and early Han times legal manuscripts have been found (most prominently Shuihudi 睡虎地 no. 11; Longgang 龍崗 no. 6; Zhangjiashan no. 247) suggests that the occupant(s) of the tomb(s) where the *Wei yu deng zhuang* and the other legal manuscripts of the Yuelu Academy were looted was probably a scribe in charge of the administration of justice at the level of the prefecture (*xian* 縣).[12] Xi 喜, the occupant of tomb no. 11 at Shuihudi, may be considered a case in

8 The same problems arise in studying unprovenanced manuscripts purchased by the Shanghai Museum, cf. Goldin 2013, 156.

9 Sun Peiyang 2011 provides examples of verso lines in legally excavated manuscripts.

10 Staack, forthcoming.

11 Examples are *suo* 所 as a postposition (*Yuelu WYZ* 048, 056, 114, 163, 210 – 211; *ZYS* 8, 10, 29, 41, 51; *QLSZ* 126=*RCL* A 74; *FLDW* 51=*RCL* E 18) and the term *wei shi* 未蝕 "having not yet carried out [the planned offence]" (*Yuelu WYZ* 164, 171–183; *FLDW* 65=*RCL* D 52); for an analysis, see Lau, forthcoming.

12 For the status and training of hereditary scribes at lower authorities who were buried with legal manuscripts, see in detail Yates 2011, 345–360.

point. According to a calendar buried beside a large number of legal manuscripts, Xi was appointed a scribe in 244 BC at the age of 19[13] and promoted to the responsible position of a *ling shi* 令史 "secretary of the prefect"[14] in Anlu in 241 BC.[15] He held the same office in the prefecture of Yan, where he tried criminal cases for the first time in 235 BC at the age of 28.[16]

Among the manuscripts which were purchased by the Yuelu Academy, three different calendars (*zhi ri* 質日) were found that recorded important activities of the tomb occupant(s). On two slips, which were attributed in the preliminary report to the second calendar for the 34th year of the reign of Zheng, the First Emperor of Qin, it is mentioned that an official, who probably kept this calendar, became the scribe of the Controller of Works (*si kong* 司空) in the 24th year of the same ruler and was transferred in the subsequent 25th year to the position of a *ling shi*.[17] The reason for the later exclusion of these two slips and two further ones from the three calendars for the 27th, 34th, and 35th year of the reign of Zheng in the final edition was probably due to the fact that the details mentioned about the tomb occupant's career in the previous years do not, at least at first sight, fit into any of these calendars, which refer to different periods in time. The slips that provide information about the official's career seem to belong to another type of calendar resembling the one from Shuihudi mentioned above. The information on the official activities of the presumed tomb occupant relating to his scribal duties, including the conduct of criminal proceedings, would fit into the context of the *Wei yu deng zhuang* and the other legal manuscripts purchased by the Yuelu Academy.

The aim of this study is to determine the criteria according to which the cases were compiled and what the purpose was for their compilation. The cases collected in the *Wei yu deng zhuang* were obviously considered exemplary for the administration of justice. The investigation has shown that there were different reasons for why a particular case had exemplary character and was suited for being included into the collection. The reasons varied depending on the category to which a case belongs. An attempt will therefore first be made to classify the cases of the *Wei yu deng zhuang* according to inherent formal and content-related criteria. As a result of this classification, it is possible to establish four

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13 *Bian nian ji* 10.2.

14 For this new interpretation, see Takamura 2008, 11; Lau and Lüdke 2012, footnote 835; cf. Yates 2011, 347. The influential position of the *ling shi* is illustrated by the fact that they ranked third in the list of the prefecture's leading officials after the prefect and vice prefect who were held liable for undetected serious offences within their jurisdiction (*ENLL* 130, 488–489).

15 *Bian nian ji* 13.2.

16 *Bian nian ji* 14.2, 19.2. Cf. Yates 2011, 357.

17 Slips no. 0687, 0625; Chen Songchang 2009, 77.

categories of exemplary cases. Based on these categories, the legal issues of the particular cases and their specific function will then be examined.

The similarities and differences between the *Wei yu deng zhuang* and *Feng zhen shi* 封診式, another Qin legal manuscript excavated in Shuihudi tomb no. 11, will subsequently be illustrated in order to differentiate the collections of criminal case records as a text genre from similar contemporaneous manuscripts. Because the *Wei yu deng zhuang* might be regarded as a private collection, it seems appropriate to compare this collection with the official court precedents which are quoted in the legal manuscripts. In conclusion, an attempt will be made to answer questions concerning whether the *Wei yu deng zhuang* had the characteristics of a narrative text and how the collection might be related to administrative documents.

In analyzing difficult legal problems, it is often necessary to clarify the legal basis on which sentences were passed. In contrast to the *Zou yan shu*, where we know a great deal about the legal basis of many proposed sentences on account of the wording of the relevant statutes from the *Ernian lüling* 二年律令[18] excavated from the same tomb, in the cases of the *Wei yu deng zhuang*, we have to rely on Qin legal manuscripts from other tombs in Shuihudi[19] or Longgang[20] or on administrative records from Liye 里耶,[21] since the Qin statutes (*lü* 律) and ordinances (*ling* 令) from the collection of the Yuelu Academy have not been published.

The classification of criminal cases in both case collections

The classification of criminal cases draws upon previous research results. The five distinct categories of cases that have been proposed by Lüdke and the present author[22] for the formal classification of the *Zou yan shu* are based on criteria which were inherent to the sequence of cases in the manuscript. The order of these cases is not only determined by the date of the judicial proceedings (early Han: cases no. 1–16; Qin: cases no. 17, 18, 21, 22, interrupted by the two cases no. 19 and no. 20 from Chunqiu times), but also by their category:

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18 Zhangjiashan ersiqi hao Hanmu zhujian zhengli xiaozu 2001, 5–50; Peng Hao et al. 2007, 1–57, 85–328; cf. Zhu Honglin 2005; Tomiya Itaru 2006.

19 Shuihudi Qinmu zhujian zhengli xiaozu 1990; cf. Hulsewé 1985.

20 Zhongguo wenwu yanjiusuo, Hubei sheng wenwu kaogu yanjiusuo 2001.

21 Hunan sheng wenwu kaogu yanjiusuo 2012.

22 In the first classification of the cases within the *Zou yan shu* (Lau and Lüdke 2012, 52–55) these were divided into four categories (*yi zui*, *dang*, *yi shi*, *lun* 論). Petitions for retrial and recommendations of competent investigating officials for promotion were still subsumed under the category *lun*. The revision of this classification results from a comparison with the *Wei yu deng zhuang*.

— The first 13 cases of the *Zou yan shu* and case no. 21 belong to the category *yi zui* 疑罪 "being in doubt about the punishment."
— They are followed by the cases no. 14–16 and 18 of the category *dang* 當 "proposed sentences." These were sentences against certain groups of privileged people (senior officials appointed by the emperor; holder of the ninth or higher meritorious ranks) that required imperial approval.
— The case no. 17 (Qin) was a petition for retrial (*qi ju* 乞鞫) filed by a convict who considered his punishment to be unjustified.
— The cases no. 19 and 20 were fictitious cases from another time (*yi shi* 異時), giving account of lawsuits from the Chunqiu period.
— The case no. 22 was a criminal case which was submitted to the higher authorities in order to recommend a competent investigator for promotion.

The following three categories of the *Zou yan shu* correspond to those of the *Wei yu deng zhuang*:
— category "doubtful legal decisions/doubts about the punishment" (*yi zui*), to which five cases from roll I (in reverse chronological order) and the unique case from roll III belong;
— category "petitions for retrial (*qi ju*)," to which two cases from roll II belong;
— category "recommendations of competent investigators for promotion," to which two cases from roll II belong.

Two further cases from roll I of the *Wei yu deng zhuang* that cannot be subsumed under the categories determined in the *Zou yan shu* will be separately discussed below.

Cases of the category doubtful legal decisions

Procedure of submitting doubtful cases and formal characteristics of the submissions

The cases of this category constitute the largest group of cases in the *Wei yu deng zhuang*. They are extremely instructive, because they illustrate the regularized procedure of review over several administrative levels which is called *yan* 讞 "to submit [a doubtful case] for a decision [to the higher authorities]." According to this procedure, the officials at the court of the first instance (*xian*) were obliged to submit criminal cases to the head of the provincial authority (*jun* 郡), to whom they were subordinated, if they were in doubt about the matters of law in the case concerned. The agency of the province, in turn, was to carry out a legal examination, name the applicable sentence, and return its decision to the lower authorities. If the judicial officials at the province level were not able to arrive at a decision, they had to pass the case on to the agency of the minister of trials (*ting wei* 廷尉) at the imperial court. Again, the minister of trials had to either decide the case himself and, in a reply to the prefecture's submission, name the applicable sentence, or, if also in doubt, compile a memoran-

dum (*zou* 奏) for the emperor to which all relevant precedents (*bi* 比), statutes (*lü* 律), and ordinances (*ling* 令) were to be attached. Until the discovery of the Yuelu Academy manuscripts, legal historians thought that successive stages of appeal were first regulated in 200 BC by an edict of emperor Gaozu 高祖.[23] Now the manuscripts of the *Wei yu deng zhuang* prove that the *yan* procedure of submitting criminal cases to the higher authorities for a decision already existed in pre-imperial Qin. It is quite likely that corresponding provisions formed the legal basis for this procedure in this period, although there is no evidence for the key formula *yi zui* in the collection of statutes and ordinances purchased by the Yuelu Academy.[24]

These cases were mostly submitted to the higher authorities because of legal doubts about the appropriate punishment or the punishability of an offence that could not be resolved at the lowest level of jurisdiction (prefecture *xian*). In the *Zou yan shu* manuscript, legal rules applicable to the case in question were sometimes lacking[25] or there were conflicting regulations in force.[26] In other cases, the judicial officials were reluctant to pass a judgment according to the letter of the law if it seemed contrary to the generally accepted principles for determining punishment at that time.[27]

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23 *Hanshu* 23, 1106. Cf. the translations of this edict by Hulsewé (1955, 343), Lüdke (2003, 36) and by Lau and Lüdke (2012, 8–9).

24 Cf. an imperial decision instructing the chief prosecutor (*zhi zhao yu sh i* 制詔御史) quoted in *Yuelu Lüling* unpublished slips no. 1125+0968+1781 according to which delayed criminal proceedings in which no decision had been made for several years were to be submitted to the chief prosecutor.

25 Cf. cases no. 9 and 10 of the *Zou yan shu* (*ZYS* 54–57) where the competent official made a false entry in an authentic document. None of the existing legal regulations was applicable to this fraudulent activity, since the statutory offence of *wei wei shu* 爲僞書 usually covered the forgery of a document. The court decided that making a false entry was also to be treated as a case of *wei wei shu*. For another example of the analogous application of this statutory offence, see case no. III.14 on page 23 and footnote 111. A further example for an analogous application of a norm to a situation not directly covered by an existing legal requirement is found in case no. I.1 on pages 21–22.

26 Cf. the sentence against a border guard who failed to catch an absconder while illegally crossing the border in case no. 8 of the *Zou yan shu* (*ZYS* 53) with the conflicting regulations in *ENLL* 404 (fining X ounces of gold for not noticing that an absconded person leaves or enters the country through the area of one's post) and in *ENLL* 488 (redeeming penal labor of the category *nai* for not arresting people who climb over the frontier fortifications).

27 Cf. cases no. 4 and 5 of the *Zou yan shu* (*ZYS* 30–34, 41–47). In case no. 4 of the *Zou yan shu*, a mutilated ex-convict married a maidservant without knowing that she had previously absconded. Although the ex-convict did not know about the absconding, by law judgment was to be passed on him for the statutory offence of taking an absconder as a wife. The insistence

Among the formal characteristic of cases concerning doubtful legal decisions in the *Zou yan shu* is that the judicial officials of the prefecture only provide the summarized finding of facts (*ju zhi* 鞫之) for the case in question[28] and voice their doubt about the punishment with the formula *yi (mou ren) zui* 疑［某人］罪. The key formula *yi zui* is only explicitly used in three of the six cases of this category in the *Wei yu deng zhuang*.[29] In two other cases, this formula is modified; the doubts concerned the stipulated amount of rewards for arresting two different categories of robbers[30] or the question of whether a senior official should be punished for each of his eight misdemeanors in the execution of his office[31] or only for the most serious one. Another case (no. III.14) without the formula *yi zui* can also be classified as belonging to this category, because the competent authority was not able to reach consensus on the legitimate sentence, but rather made two different proposals for the appropriate punishment.[32]

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on full punishment even in the face of a lack of knowledge was unusual in Qin and Han law, for in other cases the lack of knowledge mentioned in the provisions from 186 BC leads to a reduced punishment (*ENLL* 63, 74, 76, 170; cf. Lau and Lüdke 2012, footnote 732). The fact that the present case was submitted for a decision despite the explicit rule denying a reduced punishment also indicates that the officials involved felt that the rule did not accord with the accepted principles for determining punishment. In case no. 5 of the *Zou yan shu*, a former slave was to be punished severely for the statutory offence of *zei shang ren* 賊傷人 "injuring somebody with malice," because he injured the officer who attempted to arrest him as an absconded slave. Although this punishment was in accordance with the existing law, the competent officials were reluctant to apply the letter of the relevant provisions when it turned out that the arrest was not legitimate because the accused alleged to have absconded as a slave managed to get entered into the household register as a free man after having submitted to the Han during the Chu-Han civil war. See page 14.

28 Cf. *Yuelu Lüling* unpublished slips no. 1707/1712: 其獄奏毆，各约爲鞫審，具傳其律令，令各與其當比编而署律令下曰，以此當某某及具署辠人轂不轂。"As far as the submissions of the criminal cases in question are concerned, in each case summarize the finding of facts and assure that [the facts] have been firmly established, compile and append the relevant statutes and ordinances, let each of them be put together with the applicable precedents, then record the following note below the [quotations from] statutes and ordinances: 'This is applicable to XYZ' and also completely record whether the offenders are kept in detention or not." I thank Prof. Chen Songchang for the permission to quote from these and the following unpublished ordinances (*ling*) of the Yuelu Academy's collection.

29 These are cases no. I.1 (*Yuelu WYZ* 28), I.5 (*Yuelu WYZ* 92) and I.7 (*Yuelu WYZ* 134–135).

30 *Yi gou* 疑購 (*Yuelu WYZ* 39).

31 *Yi mou ren bu dang lei lun* 疑某人不當纍論 "we are in doubt whether X by law is not to be convicted [according to the method of] totalizing" (*Yuelu WYZ* 105–106).

32 *Yuelu WYZ* 235.

In all six cases, the judicial officials submitted the case to the higher authority for a decision with the formula *gan yan zhi* 敢讞之. There often followed two proposals of the competent authorities. According to the editors' analysis of case I.1 of the *Wei yu deng zhuang*, the divergent pleas for a judgment must be attributed to the officials of the prefecture (*xian*).[33] The first plea, with the formula *li yi* 吏議 "the officials argue for,"[34] may be the proposal of the majority; the second one, with the formula *huo yue* 或曰,[35] could be an alternative proposal of the minority within the agency of the prefecture.

Doubtful legal decisions: case no. I.7

In case no. I.7 of the *Wei yu deng zhuang* from 229 BC, there arose a dispute concerning two buildings (a market stall for selling cloth 市布肆 and a house for accommodating guests 舍客室) stemming from the inheritance of the merchant Pei 沛. The opposing parties were Wan 婉, a former female slave of the merchant, and Shi 識, the merchant's former menial. The criminal procedure was initiated by the following self-denunciation of Wan, who reported herself to the authorities prior to the discovery of her offence (*xian zi gao* 先自告):

> 七月爲子小走馬義占家訾，義當責大夫建公卒昌、士五（伍）積、喜、遺錢六萬八千三百，有券。婉（婉）匿不占吏爲訾。[36]
> "In the 7th month I declared the family property for my son Yi, minor holder of the third meritorious rank. Yi is entitled to claim debts [from] Jian, holder of the fifth meritorious rank, the *gong zu* commoner Chang, and the rank-and-file-men Tui, Xi and Yi [amounting to overall] 68,300 cash. There is a bond tally [as evidence] for it. I concealed and did not declare [this amount of money] to the officials as property."

In her report, the former female slave Wan admitted that she concealed 68,300 cash (*qian* 錢) when she declared the family property for her minor son Yi 義. Since she ran a market stall for him, she was obliged to declare the amount of her revenue to the competent authorities every year and to pay sales tax (*shi zu* 市租). During the Qin dynasty, evading taxes was obviously classified as an offence against property (*dao* 盜 "theft") as in the statutes from early Han times. For this crime an offender had to be punished by law according to the value of the misappropriated goods (*zang zhi* 贓值). In addition, the stall of any

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33 Zhu Hanmin, and Chen Songchang 2013, 110, footnote 42. For an overview of the different opinions on the official levels to which the competent authorities belong that submitted divergent proposals for the sentence, see Lau and Lüdke 2012; 58 and footnotes 282–284; Lau, forthcoming, footnote 132.

34 *Yuelu WYZ* 24, 39, 94, 107, 136, 235; *ZYS* 24, 33; cf. the synonymous phrase *li dang* 吏當 in *ZYS* 7, 15, 47.

35 *Yuelu WYZ* 24, 39, 94, 136, 235; *ZYS* 7, 16, 25, 33.

36 *Yuelu WYZ* 108–109.

trader who committed tax evasion was to be confiscated.[37] Besides the sales tax, merchants had to pay property tax (*zi shui* 訾稅). We still do not know the exact amount of the property taxes during the Qin dynasty.[38] As a guardian of the successor of the merchant Pei, Wan had failed to declare as taxable property outstanding monetary claims of the deceased merchant to the amount of 68,300 cash.[39] These claims had been recorded on tallies (*quan* 券) that were split in two parts and served as debt contracts between the creditor Pei and five of his junior partners (*she ren* 舍人). They used the shopkeeper's loans for financing transactions and in return gave him a share of the profits. These junior partners suffered losses, which were documented on the bond tally.

In her statement during the interrogation, the accused Wan explained how she became Pei's wife. She had previously been a private female slave (*qie* 妾) of the deceased merchant, who had sexual relations with her. Wan gave birth to the boy Yi and a girl. When the spouse of Pei died, Pei did not take another wife, but manumitted Wan, made her a *shu ren* 庶人,[40] and treated her like a wife.[41]

The merchant Pei was free to decide on the manumission (*mian* 免) of his private female slave.[42] As Wan bore her master children, she was entitled to be manumitted as *shu*

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37 Cf. *ENLL* 260: 市販匿不自占租，坐所匿租臧爲盜，沒入其所販賣及賈錢縣官，奪之列。"When engaging in a trade transaction, evading the sales tax by not declaring one's own proceeds is prosecuted according to the provisions applying to theft of the amount misappropriated by evading the tax; [in addition,] the [goods] sold in the transaction as well as the proceeds are to be confiscated into the government coffers and the market stall is to be taken away from the trader in question."

38 Later in early Han times, the term *zi suan* 訾算 was used for the property tax (*Hanshu* 5, 152), the rate being one *suan* (ca. 120 cash) for each 10,000 cash of the declared property. According to the proposal of Kong Jin from 119 BC, the merchants should pay one *suan* for every 2,000 cash (*Shiji* 30, 1430=*Hanshu* 24B, 1166–1167; cf. Swann 1950, 279–283).

39 Cf. the summarized finding of fact (*ju zhi* 鞫之) where Wan is prosecuted for evading the property tax (*ni zi shui* 匿訾稅) to the value of more than 660 cash (*Yuelu WYZ* 132).

40 *Shu ren* 庶人 refers to persons who were released from bondage. This status was granted to manumitted male (*ENLL* 382; *Hanshu* 4, 130) and female slaves (*ENLL* 162, 385), usually after the death of their master, or to released penal labor convicts (*Hanshu* 23, 1099; *Longgang mudu*; *QLSZ* 151, 156=*RCL* A 72, 91; *ENLL* 205, 436), viz. offenders who were exempted from punishment with the simultaneous loss of their meritorious rank (*Shiji* 18, 919; 20, 1062; *Hanshu* 65, 2852; 74, 3144; 83, 3396) or those who were included in an amnesty (*FLDW* 125=*RCL* D 105; *Juyan xinjian* E.P.T5:105). Cf. Hafner 2012.

41 *Yuelu WYZ* 112–113.

42 Cf. *ENLL* 162: 奴婢爲善而主欲免之，許之。奴命曰私屬，婢爲庶人。"If the owner of a male or female slave wishes to manumit him/her on account of good conduct, this is to be granted. A [male] slave then is declared a 'private dependant,' a female slave is made a released person."

ren at the latest after her master's death.[43] Whereas Pei had informed the district authorities (*xiang* 鄉) of the manumission of his female slave, he failed to register Wan as his wife.[44] However, he asked the members of his ancestral lineage (*zong* 宗) in the same residential quarter (*li* 里) to admit her as his wife to the ancestral community. Wives joining this community had to provide financial aid to its destitute[45] members. In her statement, Wan argued that she had fulfilled her duties just like the other wives and cited this as evidence that she had been accepted as the legitimate wife of the merchant Pei by the members of his ancestral community.

One of the doubts expressed by the competent judicial officials of the prefecture after the summarized finding of fact (*ju zhi*) concerned the legal status of the accused woman,[46] which had a direct effect on the level of sentence. The judicial officials were unable to decide whether Wan should be considered a released person (*shu ren*), as recorded in the household registers of the district (*xiang*), or the wife of a holder of the fifth meritorious rank (*da fu* 大夫), as accepted by neighbors and members of Pei's ancestral lineage. It was undisputed that Wan committed the statutory offence of evading property taxes (*ni zi shui* 匿訾稅), for which she was to be punished in the same way as in a case of theft, namely, according to the value of the misappropriated goods. As a released person, Wan would have to be tattooed and made a grain-pounder convict (*qing wei chong* 黥爲舂) for a theft valued at more than 660 cash. As the wife of a holder of the fifth meritorious rank, Wan was however allowed to perform this most severe penal labor in the privileged standing of a rice-sifter convict (*nai wei bai can* 耐爲白粲).[47] In any case, it was determined

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43 Cf. *ENLL* 385: 婢御其主而有子，主死，免其婢爲庶人。"If a female slave had sexual intercourse with her owner and has children with him, she is manumitted after her owner's death and made a released person."

44 *Yuelu WYZ* 126.

45 *Dan* 單 is probably used here for the homophonous *dan* 殫 (cf. Feng Qiyong, and Deng Ansheng 2006, 223). *Dan*, usually in the sense of "to be exhausted/at the end of one's tether," also especially means "to use up/exhaust the resources/funds" (*Mo* 6, 20: 單財 "to use up the means"; *Xun* 10, 129: 貨寶單 "movable goods and treasures will be exhausted"; *Hanshu* 67, 2908: 單幣 "using up their money"; *Hanshu* 86, 3498: 單貨財 "to use up the means"). In the present passage, *dan* 殫 seems to refer to people whose means were used up, i.e. "the destitute."

46 *Yuelu WYZ* 134–135: 疑婉（婉）爲大夫妻，爲庶人。"We are in doubt whether Wan is [to be considered as the] wife of a holder of the fifth meritorious rank or a released person."

47 Cf. *ENLL* 82: 上造、上造妻以上[...]有罪，其當刑及當爲城旦舂者，耐以爲鬼薪白粲。"If a holder of the second or higher meritorious rank, or a wife of an holder of the second or higher meritorious rank [...] are liable to punishment, those who by law would have to be subjected to mutilating punishments as well as those who by law would have to be made earth-pounder or grain-pounder convicts are instead to be shaven and made firewood gatherers or rice-sifter convicts."

that this punishment would have to be reduced by one degree (penal labor of the category *nai* 耐 as *li qie* 隸妾 convict), because Wan reported herself to the authorities prior to the discovery of her offence.[48]

In her self-incrimination, Wan also reported Pei's former menial Shi for blackmailing her:

> 婉（婉）有市布肆（肆）一、舍客室一。公士識劫婉（婉）曰：以肆（肆）、室鼠（予）識。不鼠（予）識，識且告婉（婉）匿訾。婉（婉）恐，即以肆（肆）、室鼠（予）識；爲建等折棄券，弗責。[49]
>
> "I possessed one stall for selling cloth and one house for accommodating guests [from the inheritance of the deceased merchant]. Shi, holder of the first meritorious rank, blackmailed me saying:
>
> 'Assign me the stall and the house. If you do not assign [these buildings] to me, I shall report you [to the authorities] for concealing property.'
>
> I was frightened and so assigned the stall and the house to Shi. In favor of Jian and his partners I broke and discarded the bond tally and did not claim [the debts from them]."

In her statement during the interrogation, Wan explained how she acquired possession of the contested buildings. Because the former wife of Pei died childless, Yi, the eldest son of Wan fathered by Pei, was eligible to become the heir (*hou* 後) of the merchant. After his father's death, he took his place as head of the household (*hu* 戶), inherited his meritorious rank (*jue* 爵) – reduced by two degrees – and took possession of the merchant's stall and dwelling houses.[50]

Furthermore, Wan informed the officials about the background of the blackmail attempt. She told the officials that she formerly lived together with the menial Shi in the household of Pei. Shi had served his master as a *li* 隸 from an early age. In the household registers of the Qin dynasty, private servants were called *li*.[51] Shi had apparently proven himself as a menial at the market stall, for the merchant Pei arranged Shi's marriage as he

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48 Cf. *ENLL* 127–128: 有罪先自告，各減其罪一等。"For those who, being liable to punishment, report themselves prior to discovery, the offence is classified as one degree less serious."

49 *Yuelu WYZ* 109–111.

50 *Yuelu WYZ* 115.

51 *Li* 隸 designated members of the private menial staff who had to be enlisted in the household register of their master. In the present case, a male menial was called *li*; in other manuscripts, *li* referred to maidservants (*Liye Huji* 9 [K4]; *ZYS* 29). Sometimes the gender of *li* is uncertain (*FLDW* 22=*RCL* D 19). Besides *li*, slave women (*qie* 妾) are also enlisted in the household registers of the Qin dynasty (*Liye Huji* 9 [K30/45]). The exact distinction between *li* and private slaves, who were called *chen qie* 臣妾 *or nu qie* 奴妾 in the Qin manuscripts, is unclear. A formal manumission of *li* does not seem to have been an established practice in contrast to the manumission of male and female slaves.

would have for his own son and bought the couple a house. Pei also gave Shi a draught horse and a rice field of 20 *mu* 畝 (0.9 ha) for additional nourishment, which enabled his protégé to establish his own household.[52] The usage of *fen* 分 "to allot/assign to"[53] indicates that the horse and the field were originally owned by the merchant. In pre-imperial Qin, merchants were obviously still allowed to acquire fields.

In his own statement, the menial Shi partly confirmed Wan's statement, while adding further relevant details. In speaking of his marriage, he claimed that this bride's father had only consented to the marriage between them, because Pei had promised to bequeath the market stall and the guest house to Shi.[54] This suggests that Pei might have originally planned for his menial to continue his business. A particular point of contention in this case was whether the merchant had kept this promise until his death. Wan denied that her husband before he died had ordered the two buildings to be bequeathed to his former menial. Therefore, in her opinion, Shi was not legally entitled to take over these properties.[55] The merchant Pei evidently failed to register his last will (*xian ling* 先令) on a tripartite tally (*quan*) with the district (*xiang*) authorities. In the beginning of the Han dynasty, a person could only assert an inheritance claim if a written will of the deceased on a tally had been made available to the authorities.[56] It is not clear whether the authorities in pre-imperial Qin only had to hear disputes if the claims could be substantiated by certificates on tallies. However, as there were examples of verbal agreements to lend money or to marry during Qin times, a period when agreements did not originally have to be in written form in order to be valid,[57] the claims of the former menial in the present case were probably not automatically rejected by the authorities, even though there was no written will.

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52 *Yuelu WYZ* 115–116.

53 *Yuelu WYZ* 116.

54 *Yuelu WYZ* 120.

55 *Yuelu WYZ* 117.

56 Cf. *ENLL* 334–335: 民欲先令相分田宅、奴婢、財物，鄉部嗇夫身聽其令，皆參辨券書之，輒上如戶籍。有爭者，以券書從事；毋券書，勿聽。"If common people wish to order by [means of their last] will that their fields and residence, slaves and belongings be distributed among their family or household members, the overseer of the district should personally hear the order [of the testator] concerned and without exception document it (the order) on a triplicate tally. [A part of] the triplicate tally is immediately submitted to the higher authorities in the same way as the household registers. If somebody contests [the will], the case has to be dealt with according to certificates on tally. If there are not certificates on tally, the case is not to be heard."

57 *Yuelu Lüling* unpublished slip no. 1099: 取婦嫁女必參辦券，不券而訟，乃毋聽，如廷律。前此令不券者，治之如內史[律]。"[Promises] to take [sb.] as a wife or marry off a daughter [to sb.] must be certified on a triplicate tally. If a legal dispute arises without [the promise of marriage being] certified on a tally, the disputants are not to be heard according to

Because Shi did not admit to being guilty of committing the statutory offence of blackmail during the first stage of the interrogation, the judicial officials initiated the second stage of interrogation (*jie* 詰), which confronted the accused with the inconsistencies of his statements and contradicting evidence. The interrogation also served to give the accused the opportunity to defend himself against the charge of blackmail in order to prevent a miscarriage of justice. The competent authority tried to obtain the alleged offender's admission of criminal liability (*zui* 罪), as such a confession seems to have been an indispensable prerequisite for a valid conviction. The interrogating officials concluded from Shi's statement that he had accepted the house, horse, and rice field from his master and had not claimed the other buildings before Pei's death that these donations should be counted as substitutes (*geng* 更) for the originally promised buildings.[58]

At the end of the second stage of the interrogation, Shi admitted that he was guilty of blackmail, provided that the legal premises presented to him by his interrogators were valid.[59] This passage can be compared with the expression *cun li dang, zui* 存吏當，罪 "if I pay attention to what you, the officials, consider lawful, I am liable to punishment," in case no. 5 of the *Zou yan shu*.[60] *Cun* 存 here means "(to dwell on sth. in thought:) to pay

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the statutes concerning the court. [Promises of marriage which had been given] before this ordinance was enacted and which had not been certified on a tally will be tried in court according to the statutes concerning the minister of finance." *Yuelu Lüling* unpulished slips no. 0631+0608: 相貸資緡者，必券書吏，其不券書而訟，乃勿聽，如廷律。前此令不券書訟者，爲治其緡，毋治其息，如內史律。"Lending each other cords of cash [cf. *min qian* 緡錢] must be certified by/registered with the authorities on a tally. If a legal dispute arises without [the lending of concerned cash being] recorded on a tally, the disputants are not to be heard according to the statutes concerning the court. [If agreements on lending cash had been made] before this ordinance was enacted and had not been certified on a tally, one should deal with the cords of cash lent, but should not deal with its interest earnings according to the statutes concerning the minister of finance."

58 Cf. *Yuelu WYZ* 121: 識【亦弗求】，識已受它。"I, Shi, [for the time being refrained from demanding them, since] I had [...] accepted something else." with *Yuelu WYZ* 127–128: 識弗求，已爲識更買室，分識田、馬，異識。"You refrained from demanding [these buildings, because Pei] as substitute for this had already bought a house for you, allotted you a field and a horse and separated you [from his household]."

59 *Yuelu WYZ* 130: 上以識爲劫婉（婉），辠（罪）識，識毋（無）以避。毋（無）它解。辠（罪）。"If you, the authorities, regard me as someone who blackmailed Wan and will [therefore] punish me/consider me liable to punishment, I have no means to avoid this and cannot offer another explanation. I am liable to punishment." Using the construction *yi* 以 *X wei* 爲 *Y* "to regard X as Y," Shi referred to the legal interpretation of the officials.

60 *ZYS* 43.

attention to" or the character is used as loangraph for *zun* 遵 "to abide by."[61] In case no. 5, a former slave named Wu 武 is to be given sentence for the statutory offence of *zei shang ren* 賊傷人 "injuring somebody with malice," because he injured the arresting robber hunter (*qiu dao* 求盜) in a fight (*dou* 鬥).[62] However, Wu put up a fight in order to resist his unlawful arrest on a charge of absconding as a slave (*nu wang* 奴亡), which had been brought against him by his former owner. In fact, it was not legitimate to arrest him as an absconded slave, because Wu had already been entered into the household register as a free man (*min* 民) after having submitted to the Han during the Chu-Han civil war.[63] When the officials confronted Wu with their interpretation of his crime as the statutory offence of *zei shang ren*, he replied:

> 自以非軍亡奴，毋罪。視捕武，心恚，誠以劍擊傷視。吏以爲即賊傷人，存吏當，罪，毋解。[64]
>
> "Since I am of the opinion that I am not Jun's absconded slave, I am not liable to punishment. When Shi came to arrest me, I got infuriated, and it is true I then attacked and injured Shi with my sword. But you are of the opinion that this is just a case of [the statutory offence of] 'injuring somebody with malice', and only if I pay attention to what you consider lawful, I am liable to punishment and cannot offer an explanation."

The accused thus expressed doubts about his guilt in this way, which had two effects: Since the accused waived any further defence, it was possible to conclude the interrogation and summarize the finding of facts (*ju*). The case was, in any event, to be submitted to the higher authorities (*yan*) as doubtful (*yi*), which meant that they would have to check the validity of the legal premises before making a decision.

The judicial officials were in doubt about whether Shi was the legitimate heir of the two buildings, since Pei's promise to bequeath the two buildings to his former menial was attested to by several witnesses. Likewise, the officials were uncertain whether Shi's activities constituted the statutory offence of blackmail (*jie* 劫). These doubts were voiced after the finding of facts[65] and also became apparent in the alternative proposals for the sentence. A majority argued (*li yi*) in favor of not severely punishing Shi for blackmailing and

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61 Cf. Lau and Lüdke 2012, 102, footnote 604.

62 The statutory provisions from 186 BC provided that an offender who injured an officer during an attempted arrest was held guilty, regardless of the circumstances, for the more serious offence of *zei shang ren* (*ENLL* 152+45). For a discussion about this sentencing, see Lau and Lüdke 2012, 142, footnote 767.

63 *ZYS* 37–38.

64 *ZYS* 43–44; cf. *ZYS* 5.

65 *Yuelu WYZ* 134–135: 疑[...]及識皋（罪）。 "We are in doubt whether [...] and [in doubt] how Shi is to be punished."

instead only imposing a fine of two suits of armor (*zi er jia* 貲二甲).[66] According to the law of the Qin and early Han dynasties, officials were usually fined in this way for breaching their supervisory duty.[67] However, sometimes the same fine seems to have been imposed on those who failed to report the offences of their neighbors (members of the unit of five *wu* 伍) or members of their household (*tong ju* 同居) to the authorities.[68] As Shi originally lived in the same household with Wan, he had been able to report her to the authorities for evading property taxes.

A minority of officials within the prefectural authorities proposed (*huo yue*) sentencing the former menial Shi to the most severe form of penal labor as an earth-pounder convict (*cheng dan* 城旦) and transporting him in fetters (*xu zu shu* 纍（纼）足輸) to the province of Shu 蜀. Even so, as a holder of the first meritorious rank (*gong shi* 公士),[69] he was left unmutilated (*wan* 完).[70] According to the proposal of this minority, it appears that Shi was to be punished for blackmailing (*jie*). But the punishment for this offence differed from what was stipulated by early Han law since *jie ren qiu qian cai* 劫人求錢財 "extorting sb. in order to get money or valuables" was obviously classified in the present case as *dao* "theft," punishable according to the value of the misappropriated goods (*zang zhi*) and not with quartering (*zhe* 磔) as in the *Ernian lüling*.[71]

Doubtful legal decisions: case no. I.5

In case no. I.5, which is only fragmentarily preserved, the competent judicial officials of the lower authorities again expressed doubts about the condign punishment for a particular offence. A fugitive from Qin, who had been arrested by Qin soldiers after the conquest of his place of exile in Chu 楚,[72] was charged with conspiring to abscond from the state of

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66 *Yuelu WYZ* 136: 吏議：[...]貲識二甲。 "The [competent] officials argue [for the following]: [...] Shi is to be fined two suits of armor."

67 *XL* 51=*RCL* B 25; *QLZC* 8, 9–10, 15, 39=*RCL* C 5, 6, 8, 24; *FLDW* 25, 147=*RCL* D 125.

68 *FLDW* 20, 22=*RCL* D 18, 19; *ENLL* 201; *Yuelu Lüling* unpublished slips no. 2069, 0159, 1597.

69 Cf. *ENLL* 83: 公士、公士妻[...]有罪當刑者，皆完之。"If holders of the first meritorious rank as well as their wives [...] are liable to punishment/have committed an offence for which they by law are to be subjected to a mutilation, they are without exception left intact/without mutilation."

70 *Yuelu WYZ* 136: 或曰：[...]完識爲城旦，纍（纼）足輸蜀。"Some say: [...] Leave Shi without mutilation and make him an earth-pounder convict. Shackle his feet and transport him to [the province of] Shu."

71 Cf. *ENLL* 68: 劫人、謀劫人求錢財，雖未得若未劫，皆磔之。"For blackmaling somebody or conspiring to blackmail somebody in order to demand money or valuables, one is without exception executed by quartering, even if one has not yet gained [the money or valuables] or not yet blackmailed [the person in question]."

72 *Yuelu WYZ* 88.

Qin (*mou bang wang* 謀邦亡). Conspiracy denoted participation in an offence without actually carrying out the offence.[73] It was only punishable if the statutes explicitly decreed that it should be.[74] In that case, the punishment was the same for having carried out the offence. During the Qin dynasty, absconding from the state was punishable with the most severe penal labor, for which the offenders were made tattooed earth or grain pounder convicts (*qing wei cheng dan chong*).[75]

According to his statement, the arrested fugitive was a minor holder of the third meritorious rank (*xiao zou ma* 小走馬).[76] This implied that he had not been registered (*fu* 傅) for military and labor service, although at the time he was charged and tried he had reached the age of 22.[77] The accused admitted that he had absconded from Qin ten years earlier together with his mother and sought refuge in Chu. He denied, however, that he had been capable of conspiring to commit the offence of absconding because of his young age.[78]

The problem the judicial officials needed to solve was whether the fugitive was under the age of criminal liability at the time he committed the offence of absconding from the

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73 *Mou* 謀 "to conspire, plot" here refers to the joint planning to commit an offence as in *yu mou ren mou* 與某人謀 (*ZYS* 84, 99, 106; *ENLL* 23, 71; *Yuelu WYZ* 007, 028, 053–054, 069). For the different meanings of *mou*, see in detail Hafner 2009, 421–424, footnote 66.

74 *Mou* during the Han dynasty was punishable with regard to several offences, such as "staging a rebellion against the imperial dynasty" (*fan* 反) (*ENLL* 1–2; *Shiji* 90, 2594; *Hanshu* 4, 128; 84, 3436; *Juyan xinjian* E.P.T53:140), "killing somebody with malice" (*zei sha ren* 賊殺人) (*ZYS* 94), "injuring somebody with malice" (*zei shang ren* 賊傷人) (*ENLL* 22, 26; *Hanshu* 83, 3395), "stealing" (*dao* 盜) (*ZYS* 99–101), "illegally casting cash" (*dao zhu qian* 盜鑄錢) (*ENLL* 208), "blackmailing sb. in order to extort money or valuables" (*jie ren qiu qian cai* 劫人求錢財) (*ENLL* 68, 71; *Hanshu* 54, 2460; 94B, 3823) and "freeing (a remand prisoner) by force (and letting him break out of jail)" (*cuan qiu* 篡囚) (*Hanshu* 47, 2218; 81, 3345).

75 *Bang wang* 邦亡 was a particular statutory offence during Qin times, which was not punished according to the duration of the escape as other forms of absconding. For the punishment, see *FLDW* 48=*RCL* D 93: 告人曰邦亡，未出徼闌亡，告不審，論可（何）毆（也）？爲告黥城旦不審。"To report somebody saying that he has absconded from the state, when he did not yet cross the border and did not abscond without permission, constitutes 'unfounded reporting.' How should this be sentenced? This is a case of 'unfounded reporting' [an offence punishable by] being tattooed and made an earth-pounder convict." Cf. *FLDW* 5, 181=*RCL* D 4, 160 as well *Yuelu WYZ* 005, 033, 228. In Han times, this offence was replaced by the capital crime *wang zhi zhu hou* 亡之諸侯 "absconding to the feudal lords" (*ENLL* 3; *ZYS* 20, 24).

76 *Yuelu WYZ* 89. On *xiao jue* 小爵, see Lau and Lüdke 2012, footnote 1012.

77 *Yuelu WYZ* 91. In 186 BC, minor holders of the third meritorious rank were to be registered for military and labor service at the age of 22 (*ENLL* 364).

78 *Yuelu WYZ* 89.

state. According to statutes from 186 BC, a minor was exempted from punishment for all offences except for homicide[79] until he reached the age of 10 and was not subjected to mutilation until the age of 17.[80] In some Qin legal manuscripts, criminal liability depended on the height the offender had reached at the time he committed the offence.[81] From the evidence of this case, it seems likely that during the Qin dynasty minors the age of 12 were not yet considered criminally responsible.[82] The majority within the agency of the prefecture therefore argued for exempting the fugitive from punishment (*chu* 除). The minority proposed that the state's punishment for absconding be imposed on the fugitive as required by the statutes,[83] since the accused, who had been deprived of his meritorious rank soon after his arrest,[84] had already reached the age of full criminal responsibility. As a consequence, it was determined that no mitigation of the punishment should be taken into account.

Doubtful legal decisions: case no. I.1

Case no. I.1[85] stands out, because the competent judicial officials of the prefecture of Zhouling 州陵 initially passed judgment on individuals under their jurisdiction without submitting the case to the higher authorities for a decision. Before the sentence had been

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79 *ENLL* 86.

80 *ENLL* 83.

81 It seems that males of at least six feet five inches (c. 1.50 m.) reached their majority (*QLSZ* 51=*RCL* A 12: 隸臣、城旦高不盈六尺五寸[...]，皆為小。"Bond-servants and earth pounder convicts whose height is not fully six feet and five inches [...] all are considered as 'minor'."). Cf. *FLDW* 158=*RCL* D 138: 甲小未盈六尺，有馬一匹自牧之，今馬爲人敗，食人稼一石，問當論不當？不當論及賞（償）稼。"A is a minor and not fully six feet [tall]. He has a horse which he personally takes to graze. Now the horse is frightened by another person and eats one bushel of another person's grain. Question: Is he (A) by law to be sentenced or not? He is by law not to be sentenced nor must he compensate for the grain." and *FLDW* 6=*RCL* D 5: 甲盜牛，盜牛時高六尺，毄（繫）一歲，復丈，高六尺七寸，問甲可（何）論？當完城旦。"A steals an ox; at the time he stole the ox, he was six feet tall. Having been held under detention for one year, he was measured again; he was six feet and seven inches. Question: How is A to be sentenced? He by law is to be made an intact earth-pounder convict."

82 Cf. *Yuelu Lüling* unpublished slips no. 0998, 1004, 1996, 0187, 2030 where the completed 14th year seems to be the age of criminal responsibility.

83 *Yuelu WYZ* 94: 吏議曰：除多。或曰：黥爲城旦。"The officials argue [for the following]: 'Duo is to be exempted from punishment.' Some say: 'He is to be tattoed and made an earth-pounder convict.'"

84 *Yuelu WYZ* 92.

85 For a detailed analysis of this case, see Lau, forthcoming.

executed, however, it was reviewed by the imperial supervisory prosecutor (*jian yu shi* 監御史) in charge of inspecting the province of Nanjun 南郡, who considered the judgment to be unlawful (*bu dang* 不當) and ordered the prefecture to pass a new ruling (*geng lun* 更論).[86] In this controversial case from 222 BC, lower-ranking law enforcement officers[87] of the prefecture of Zhouling fraudulently laid claim to a reward (*gou* 購) which was given for arresting bandits (*qun dao* 群盜). These officers had been ordered to pursue a gang of bandits who however had already been arrested by patrolling conscripts (*shu zu* 戍卒) of the neighboring prefecture of Shayi 沙羡. The officers talked the conscripts into handing over the bandits to them, promised the conscripts that they would later get the reward, and even made a partial payment in advance of 2,000 cash. Before the reward was issued, the illicit deal with the conscripts had been discovered,[88] probably by the leading officials of the prefecture of Shayi. This prefecture brought an ex-officio charge (*he* 劾)[89] of fraud against the officers and forced the neighboring prefecture to initiate criminal proceedings against their subordinates.

In reaching the verdict, the prefecture of Zhouling based the sentence on different statutes and ordinances (*lü ling*), whose exact wording however is still unknown. The illicit arrangement concerning the reward was obviously classified as an offence against property (*dao* "theft"),[90] as in statutes from early Han times.[91] Here, the accused by law had to be punished according to the value of the misappropriated goods (*zang zhi*), which in the present case exceeded 660 cash. For this amount, an offender by law had to be punished by being tattooed and made an earth-pounder convict (*qing wei cheng dan*).[92] The competent officials considered this type of penal labor too severe because the offenders had not yet received the intended ill-gotten reward (*dao wei you qu* 盜未有取).[93] According to the legal provisions of the Qin dynasty, offenders who could not carry out their plot

86 *Yuelu WYZ* 014.

87 The commanding officer was a *xiao zhang* 校長 at a police station *ting* 亭 who probably can be identified with the *ting zhang* 亭長. For the duties of a *xiao zhang*, see Lau and Lüdke 2012, footnote 748.

88 Cf. the summarized finding of fact (*ju zhi* 鞫之) in this case (*Yuelu WYZ* 18–21).

89 *He* 劾 refers to a criminal charge brought by a judicial official against persons under his jurisdiction. This ex-officio charge initiated formal criminal proceedings. In all case records of the *Zouyanshu* and most other early Chinese legal texts that contain *he,* the *ex-officio* charge is brought against persons serving in an official capacity (*ZYS* 17, 19, 63, 64, 77, 81, 134, 154, 162; *XL* 54–55=*RCL* B 26–27; *Yuelu ZSZ* 014, 044, 097–099, 105).

90 *Yuelu WYZ* 15.

91 *ENLL* 155.

92 Cf. *ENLL* 55.

93 *Yuelu WYZ* 13.

were allowed to redeem the punishment for the planned theft.[94] Therefore, the officials of the prefecture let the offenders pay only the fee for redemption from being tattooed (*shu qing* 贖黥),[95] which amounted to 16 ounces of gold according to statutes from 186 BC.[96]

In addition, the officers of Zhouling were sentenced to three-year punitive military service in the neighboring province for misconduct on a military campaign.[97]

The imperial supervisory prosecutor initiated the retrial to clarify whether the sentence passed by the prefect on the officers and the conscripts was legitimate. The judgment here depended on if and to what extent the prefect was to be prosecuted for an error of judgment (*lun shi zhi* 論失之) by imposing punishments that were too lenient. The subsequent decision of the province shows that it was the prefect of Zhouling that finally submitted the doubtful case to the higher authority for a decision.[98] In this way, he made it clear that the prefecture as the court of the first instance was unable to reach a consensus on the legitimate sentences and its own criminal liability.

Two alternative proposals for the sentence are attached to the submission of the prefecture which again start with the formulae *li yi* and *huo yue*. The majority approved the

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94 See two examples where redemption fees were imposed on persons who did not carry out a planned theft, as in *FLDW* 4=*RCL* D 3: 甲謀遣乙盜，一日，乙且往盜，未到，得，皆贖黥。"A plots to send B out to steal. On the same day B is about to go and steal, but before he arrives, he is caught. Both pay the fee for redemption from being tattooed." *FLDW* 30–31=*RCL* D 25: 且未啟亦爲抉？抉之弗能啟即去，一日而得，論皆可（何）毆（也）？抉之且欲有盜，弗能啟即去，若未啟而得，當贖黥。"Furthermore, when it (the lock) has not yet been opened, is this also 'forcing'? If by forcing one is unable to open it (the lock) and leaves, [but] is then caught on the same day, how are both [these cases] to be sentenced? If one forced it with the desire to steal, [but] one is unable to open it and then leaves, or one is caught before having opened it, one is by law to pay the fee for redemption from being tattooed." Cf. the two ordinances from early Han times *ENLL* 488: 請闌出入塞之津關，黥為城旦舂。"I request [to stipulate] that those who enter or exit through a frontier post on a border pass or ford without permission are to be tattooed and made earth- or grain-pounder convicts" and *ENLL* 496: 請諸詐（詐）襲人符傳出入塞之津關，未出入而得，皆贖城旦舂。"I request [to stipulate] that all those who fraudulently misuse an official token or passport in order to enter or exit through a frontier post on a border pass or ford have without exception to pay the fee for redemption from [penal labor as] earth- or grain-pounder convicts, if they are caught before they have entered or exited." The last quotation is the only example in legal manuscripts of early Han times for applying this principle to determine punishment.

95 *Yuelu WYZ* 013.

96 *ENLL* 119.

97 *Yuelu WYZ* 013.

98 *Yuelu WYZ* 025/028.

sentence of the prefecture of Zhouling as lawful and pleaded for acquitting the leading officials from any liability to prosecution. A minority suggested punishing the accused officers and conscripts more severely with penal labor of the category *nai* 耐 as watchmen (*hou* 候).[99] The legal basis for this proposal is still unknown. The slip documenting the sentence on the prefectural officials proposed by the minority is missing. The possibility of an acquittal is out of the question, since the leading officials were to be prosecuted for the erroneous judgment on the delinquent officers and conscripts.

In the final decision (*bao* 報), the higher authorities of the province of Nanjun found fault with their prefecture, taking the view that it was not necessary to submit the case for a decision.[100] The legal rules that were cited were considered irrelevant to the case in question. On the contrary, the higher authorities thought that the statutory offence of *shou ren huo cai yi wang lü ling* 受人貨材（财）以枉律令 "accepting bribes/valuables offered by somebody to the effect of bending the statutes and ordinances" was applicable to the case, which was based on the same principles as theft.[101] This was an analogous application of a norm to a situation not directly covered by an existing legal requirement, since the applicable statutes imply that judicial officials were the addressees of bribes.[102] The sentence finally passed by the provincial authorities was not based on the illegal claim to the reward, which the offenders had not yet received, but on the 2,000 cash given by the officers as partial payment in advance, which was considered a bribe offered in order to evade the law. Therefore, the fact that the theft that was not carried was not deemed a mitigating factor, with the result that the delinquent officers and conscripts had to be punished much more severely. Because the value of the offered and the accepted funds exceeded 660 cash, the law mandated that they were to be tattooed and made earth-pounder convicts.[103]

The competent officials of the prefecture of Zhouling were also considered liable to punishment because they imposed overly lenient punishments on the offenders. As a consequence, the leading officials were fined one shield (*zi yi dun* 貲一盾) for committing an error of judgment (*lun shi zhi*).[104] A fine of one shield, which was equivalent to $^{2}/_{3}$ ounces of gold or 384 cash,[105] was the most lenient penalty in Qin times.

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99 *Yuelu WYZ* 024.

100 *Yuelu WYZ* 030.

101 *Yuelu WYZ* 29–30. Cf. ENLL 60.

102 Cf. case no. 7 of the *Zou yan shu* where a woman was bribed by her absconded slaves in order to prevent her from reporting them to the authorities (*ZYS* 51–52).

103 Cf. *ENLL* 60 with *ENLL* 55.

104 *Yuelu WYZ* 30.

105 Cf. *YLSY Shu* 82–83; Yu Zhenbo 2010, 38.

Doubtful legal decisions: case no. III.14

In case III.14, a trainee scribe pretended to be the son of the famous general Feng Wuze and in his name wrote a letter to the head of the treasury of the neighbouring prefecture in which he requested a loan of 20,000 cash and provisions for one year to set up a farm.[106] In actuality, the trainee scribe wanted to buy clothes and weapons to abscond from the state of Qin, because he felt hatred toward Qin officials who had mistreated his father.[107] The head of the treasury became suspicious after opening the letter and placed the suspected scribe under detention without granting his request.[108] While in custody, the scribe wrote a second letter to the prefect in which he repeated his request, complained about officials who had already rejected it, and extolled his own virtues.[109]

The inter-agency inquiries about sentencing-relevant particulars (*wen* 問) revealed that the accused was a minor of 15 years of age who had not yet been called up for military service and who in his forged letter arrogated a meritorious rank.[110]

Although the key formula after the end of the finding of fact is missing, this case clearly belongs to the category of *yi zui* because it was submitted to the higher authority for a decision together with the two proposed alternative verdicts. The judicial officials of the prefecture were obviously in doubt about which statutory provisions were applicable to this case, since the offence of forging documents (*wei wei shu* 爲僞書) in the statutes probably only referred to the forgery of official documents, not private letters.[111] The majority of the officials argued for imposing less severe penal labor on the accused of the category *nai* as a bondservant convict (*li chen* 隸臣), i.e. they reduced the punishment which the law prescribed for the offence in question by two degrees, since according to the statutes the guilty forger of official documents was to be punished with the most severe category of penal labor as tattooed earth-pounder convict (*qing cheng dan*).[112] The age of the offender was most likely regarded as mitigating factor. At the age of 15, he had already

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106 *Yuelu WYZ* 215–217.

107 *Yuelu WYZ* 225, 227–228.

108 *Yuelu WYZ* 212.

109 *Yuelu WYZ* 218–222.

110 *Yuelu WYZ* 232–233.

111 In the comparable cases no. 9–12 of the *Zou yan shu*, the investigated offences also did not directly constitute the statutory offence of *wei wei shu*. The legal problem was solved with an analogy. The statutory offence of making a forged document was applied (*ZYS* 55, 57, 59, 60), because the effects of forging a document and of intentionally making a wrong entry in a genuine document (*zha bu* 詐簿 "manipulate the registers" in *ZYS* 54, 56; *zha geng qi xi shu* 詐更其徼書 "fraudulently alter the note covering an express letter" in *ZYS 60*) are the same. Cf. Lüdke 2003, 45–46, 59.

112 Cf. *ENLL* 13.

reached the age of criminal liability, but not of majority, since the offender had not yet performed military service and was probably also not registered in this regard. It seems that during the Qin dynasty minors who did not commit capital offences were often not sentenced to the most severe penal labor until the age of majority.[113] A minority within the agency of the prefecture even proposed to only sentence the accused to pay the fee for redemption from penal labor of the category *nai* (贖耐).[114]

Doubtful legal decisions: case no. I.2

In case no I.2, the competent judicial officials were not in doubt about the level of the sentence, but the amount of the reward for arresting offenders. In 222 BC, a military unit from the prefecture of Zhouling under the command of a robber hunter (*qiu dao*) was ordered to arrest bandits who had been reported for having killed and injured people for the purpose of theft (*dao sha shang ren* 盜殺傷人). After the successful arrest, the senior officials of Zhouling could institute proceedings against the robbers. During the interrogation, it turned out that the accused belonged to two different groups. The first group consisted of offenders who originally came from Qin, but then had absconded to Chu. Refugees from Chu who failed to submit to the king of Qin formed the second group. They were nevertheless to be considered subjects of Qin because their home town had been conquered before they committed robbery in the territory of Qin.

Two statutory provisions are quoted concerning the amount of the rewards for arresting robbers in a gang alive or arresting "those who came from abroad." Unfortunately, there is a lacuna in the wording of the second provision. It is therefore not entirely clear if the amount of rewards differed depending on whether the robbers came from abroad or operated in a gang or whether the arresting conscripts had been mobilized to combat banditry.

The judicial officials of the prefecture were in doubt about the appropriate reward for arresting the two different categories of robbers. Therefore, they submitted this question to the higher authorities for a decision, thereby admitting that they were unable to reach a unanimous decision. Two diverging proposals based on the two statutory provisions were attached to this submission.

In their final decision, the superior officials of the province of Nanjun made a legal evaluation of this submission of this case. They supported the proposed differentiation between robbers who absconded from the state of Qin and those who came as refugees from Chu. According to this distinction, robber hunter Shi should receive different re-

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113 Cf. *Yuelu Lüling* unpulished slips no. 0187, 2030.

114 According to provisions from 186 BC this redemption fee amounted to 12 ounces of gold (*ENLL* 119).

wards for arresting the offenders from Qin and from Chu. From the amount of the rewards for arresting the offenders from Qin, we can infer that these were not classified as gang robbers due to their small number, but in compliance with the statutes as offenders liable to the death penalty. Not only in this regard did the decision of the province deviate from the proposals of the prefecture. The reasons for why the agency of the province did not apply the statutory provisions to the rewards for arresting criminal refugees from abroad are not known, leaving the slightly increased amount open to conjecture.

Doubtful legal decisions: Case no. I.6

Case no. I.6 from 226 BC must be regarded as a special case as well. The competent judicial officials of the lower authorities were not able to resolve their doubts concerning the question of whether it would be lawful to punish a senior official of a prefecture for each of his eight misdemeanors and therefore pass a total sentence (*lei lun* 纍論)[115] as required by law or to only punish him for the most serious of these misdemeanors.[116] The senior official, who had been charged eight times for violating ordinances, making a major mistake and being liable for undetected misconduct of subordinate officials under his direct authority,[117] requested that his case be submitted to the higher authorities for review. He considered the total sentence for the misdemeanors that were all committed during the execution of his office to be too severe.[118]

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115 *Yuelu WYZ* 105–106: 鞫之：暨坐八劾：小犯令二，大誤一，坐官、小誤五。已論一甲，餘未論，皆相遝。審。疑暨不當贏（纍）論。"Finding of fact: 'Ji is prosecuted for eight *ex officio* charges: Two minor violations of ordinances, one major mistake, five liabilities for [subordinates in his] office or [his own] minor mistakes. He was already sentenced to [pay a fine of] one suit of armor [because of the liability for his subordinate Dan]. For the rest, he has not to been sentenced, the misdemeanors are all connected with each other. [All these] are established facts. We are in doubt whether Ji by law should not be convicted [according to the method of] adding up [individual sentences for several offences].'" *Lei* 贏 (*GSR* 14c) *roj here is used as loan graph for *lei* 累 (*GSR* 577r) *roj? which occurs in the sense "to add up, totalize" as in *XL* 1=*RCL* B 1: 其有贏、不備，物直（值）之，以其賈（價）多者罪之，勿贏（纍）。"When there is a surplus or a shortage, the goods are to be evaluated, and [the persons responsible] are to be punished for the highest price among them; they are not to be added up."

116 This was an accepted principle for determining punishment according to the provision from 186 BC in *ENLL* 99: 一人有數／罪毆，以其重罪=（罪罪）之。"If it is the case that one person commits [...] several offences, he is to be punished for the most serious offence/sentenced to the most severe punishment."

117 *Yuelu WYZ* 96–99, 105.

118 *Yuelu WYZ* 95.

At the end of the first proceedings, the prefecture had already reached the decision that all the investigated cases were connected with the administration of the reprimanded official. Accordingly a total sentence would not be justified.[119] This decision, however, was rejected by another agency[120] that was charged with making a legal assessment.[121]

During the second proceedings, the prefecture confronted the senior official with their interpretation of an ordinance which constituted the legal basis for the total sentence. In his reply, the senior official stated that he never intended to violate the law or to abuse his authority for private purposes.[122] Therefore, his misdemeanors should not be classified as an intentional breach of duties.

Although the judicial officials submitted the case to the agency of the superior province, they only attached one proposal to this submission, suggesting that the senior official should be fined one suit of armor.[123] The same fine had already been imposed on him after the former proceedings.[124] As a result of the second proceedings, the submitting authority obviously took the view that nothing but the penalty for the most severe misdemeanor would be appropriate.

Doubtful legal decisions: further development and function

Criminal cases of the category *yi zui* were considered to be particularly difficult. Only under narrowly defined conditions was it allowed to submit criminal cases to the higher authorities for a decision. Officials of a prefecture who forwarded criminal cases to their superior authorities because of doubts about the appropriate punishment, although the existing statutory provisions were clear (*bai* 白),[125] were censured by their superiors and could be prosecuted for making an erroneous legal interpretation. Many officials obviously shied away from the risk of being reprimanded. They therefore often did not dare to trouble their superiors with doubtful cases. In 143 BC, Jing Di 景帝 issued an edict prohibiting the further prosecution of officials for the unwarranted submission of criminal cases[126] in order to remedy this situation.

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119 *Yuelu WYZ* 99.

120 In comparison with other criminal cases from the *Zou yan shu*, it can be assumed that the decision of the prefecture had been rejected by the superior province or a neighboring prefecture.

121 *Yuelu WYZ* 100.

122 *Yuelu WYZ* 102–103.

123 *Yuelu WYZ* 107.

124 *Yuelu WYZ* 99.

125 *ZYS* 35; cf. *Yuelu WYZ* 30: 有律不當讞. "There is a statute on this, the case by law should not have been submitted."

126 *Hanshu* 5, 150.

Difficult legal issues are dealt with in all six criminal cases from the *Wei yu deng zhuang* discussed above. Judicial uncertainty concerned the application of statutory provisions and principles for determining punishment, the question of legal status or criminal liability, as well as the validity of a verbal last will. In two of these doubtful cases (cases I.1, III.14), ingenious techniques of legal reasoning were demonstrated, i.e. the analogous application of a regulation to a situation not directly covered by existing regulations.[127] A further purpose of compiling cases that were in doubt was to provide models for the *yan* procedure. Lower judicial officials or candidates for the corresponding offices could learn from these models what type of legal problems required a decision by the higher authorities and how such submissions were to be drawn up in a formally correct way. The doubtful cases from the *Wei yu deng zhuang* emphasized that any statement of the accused potentially exonerating him must be fully considered, and that the case has to be submitted to the higher authorities for a decision if there is any doubt about the validity of the accused's arguments.[128]

Cases requiring approval of the higher authorities

Two cases in the first manuscript of the *Wei yu deng zhuang*, on the other hand, cannot be subsumed under the category of *yi zui* or any other category found in the *Zou yan shu*, although both use the introductory and concluding formulae *gan yan zhi*.[129] These formulae indicate that both criminal cases were also submitted to the higher authorities for a decision, but not because of doubts about the punishment.

Cases requiring approval of the higher authorities: case no I.4

In the criminal case of the *Wei yu deng zhuang* no I.4, a conflict was caused when several merchants asserted claims to the same plot of commercially usable land. One of these merchants named Rui 芮, whose request for the plot of land in question had been rejected, used criminal means to achieve his objectives. Together with his brother-in-law Duo 朵, he first won the bond servant convict (*li chen*) Geng 吏 for commercial participation. The convict Geng was employed as a bond clerk (*chen shi* 臣史), probably within the market administration and therefore suitable as a straw man. In response to an approved request, the vacant plot was handed over to Geng, but the building development could not be carried out, because another merchant named Cai 材 had asserted his claims to the plot in the meantime and the vice prefect brought charges against Geng for his illegal acquisition.[130]

127 Cf. Lüdke 2013, 59.
128 Cf. Lüdke 2013, 58–59.
129 *Yuelu WYZ* 44, 61, 62, 87.
130 *Yuelu WYZ* 64–67.

Cai originally owned the contested plot and the market stall for selling coffins (*guan lie* 棺列). The following circumstances culminated in his loss of the market stall: The royal house first deprived Cai of his market stall in order to turn it into a storehouse (*fu* 府) and assigned him a less profitable stall. When the government storehouse was later closed, Cai tried to take over the plot and his former stall again, but without success. In response to his objection (*ci* 辭) to the decision of the competent market station (*shi ting* 市亭), the prefect gave the order to reassign the market stall to Cai, if no other person contested his claims. Because another merchant named Xi 喜 vied with him for the stall, Cai did not succeed with his claim to have it reassigned to him. He therefore tried to conclude a private agreement regarding commercial use with his rival Xi and offered in return to develop and build up the plot at his own expense. Finally, Rui contacted both merchants and threatened to lodge a complaint if they did not share the stall with him.[131] As the conflict escalated, the three rivals were brought before the authorities by the head of the market station, who gave a report to the prefect that ran as follows:

> 皆故有棺肄（肆），弗鼠（予），擅治蓋相爭。[132]
> "They all formerly owned the coffin market stall [in question]. When I refused to assign it to them [again], they developed and built on [the ground] without authorization and contested each other's claims to [the market stall]."

Consequently, the prefect decided that the plot where the market stall was to be constructed should not be assigned to any of the disputants.

We can infer from this evidence that market stalls and the associated land were assigned to the merchants with the rights of inheritance[133] and sale by the competent market station (*shi ting*); the plots, however, could be confiscated from the owners, if the governmental administration needed the property for its own enterprises. Former claims could be asserted with the authorities and objections against administrative decisions could be raised, but it was left to the discretion of the competent authorities to grant or refuse such requests. The head of the market station who brought the disputants before the prefecture agency gave the following reasons for rejecting the claims:

> 材、喜、芮妻佞皆已受棺列，不當重受。[134]
> "Cai, Xi, and the wife of Rui, Ning, have all already taken over a coffin market stall [in the past], they were not entitled to take over [a market stall] again."

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131 *Yuelu WYZ* 67–70.

132 *Yuelu WYZ* 71.

133 Cf. *Yuelu WYZ* 128: 沛死時有（又）不令。義已代爲戶後，有肄（肆）宅。"When Pei died he also did not order it [in his last will]. Yi had already taken his place, become the heir of the household and had taken possession of the stall and the residence."

134 *Yuelu WYZ* 79–80.

The legal basis for this appears to have been similar to statutory provisions from 186 BC which were applied to land allocation to peasants. Peasants were entitled to obtain land plots only once in their lifetime. If they disposed of the land assigned to them, they were not entitled to receive another plot afterwards.[135] Likewise, the merchants registered in the market places were obviously only entitled to receive one stall. If this stall was confiscated due to governmental interests, they could accept another one in exchange.

After the decision of the prefect, the merchant Rui made a confidential agreement with Cai. They erected a market stall for selling coffins on the vacant site, even though the competent authority had refused to grant the plot for the stall to any of them. Due to the unfavorable legal situation, Rui finally did not risk occupying this market stall, but instead sold his share to his brother-in-law Duo for the total price of 1,400 cash and led Duo to believe that he had received the plot for the market stall with the authorities' permission. Fang 方, the son of Duo, paid Rui 1,000 cash in advance, which the latter completely spent. Rui later feared that the authorities would discover his illegal sale of the land. He tried to rescind the sale, but he was ultimately unable to repay the money.

It is interesting to note that Rui was not prosecuted for deceiving his partner, but for the illegal sale of governmental land for market stalls.

For selling his share of the market stall, Rui was charged with the offence of *dao dai ren mai gong lie di* 盜紿人買公列地 "illegally/for the purpose of theft deceiving a person into buying governmental land for market stalls."[136] The officials either referred to this unlawful act or the offence of *dao mai gong di* 盜買（賣）公地 "illegal sale of governmental land"[137] during the confrontation, as mentioned in the reply of the accused. Both crimes were classified as statutory offences of theft (*dao*) and sanctioned accordingly. As the value of the misappropriated land exceeded 660 cash, the commoner (*gong zu* 公卒) Rui had to be sentenced to the maximum punishment for offences against property, i.e. he had to be tattooed and made an earth-pounder convict (*qing wei cheng dan*).[138] The officials of the prefecture of Jiangling 江陵 who passed this sentence were not in doubt about the punishment.
However, after the governor of the province of Nanjun, the immediate superior of the prefecture, read the prefecture's report, he complained that the report on the criminal proceedings against Rui did not clarify whether the price for the misappropriated land that was the basis of the judgment had been separately fixed by the offender during the illegal sale or was derived from separate evaluations carried out by

135 Cf. *ENLL* 321: 受田宅，予人若賣宅，不得更受。"Those who have already taken over fields and residences, but hand them over to other people or sell the residences, are not allowed to take over [fields and residences] again."

136 *Yuelu WYZ* 82.

137 *Yuelu WYZ* 84.

138 Cf. *ENLL* 55.

the competent officials. The governor reminded the subordinate officials how to proceed if different items that had been sold together were separated in the course of an official evaluation:

> 問芮買（賣）與朵別賈（價）地，且吏自別直。別直（值）以論，狀何如？勿庸報。鞫審，讞（讞）。[139]
> "I [would like to] enquire whether Rui, in selling [the market stall], separately negotiated the price of the land with Duo or whether the officials on their own accord separately evaluated [the land and the stall]. How should one (behave:) proceed[140] in case where a judgment is based[141] on separate evaluations? Do not give a reply [with a decision]. Find the facts, [assure] that they are firmly established, and submit the case [to us, the higher authorities, for a decision]."

In all cases of theft, the judicial officials were obliged to evaluate the misappropriated goods immediately after the thief's capture without regard to the value declared by the accused.[142] In the present case, the combined price of the land and the stall stated by Rui (1,400 cash) and the price reported by the prefecture after the official evaluation (1,000+269=1,269 cash) differed by 131 cash.[143] As the value of the land already exceeded 660 cash, this differ-

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139 *WYZ* 63–64.

140 *Zhuang he ru* 狀何如. For *zhuang* in the sense "behavior," see *ZYS* 42: 武宜聽視而後與吏辯是不當狀。"It would be proper for you to obey Shi and only later clarify with us, the officials, whether your conduct was correct or unlawful." and *Yuelu WYZ* 155: 苛（訶）視不狀〈狀〉者 "cross-examine and check up on [persons with] irregular behavior." *Zhuang he ru* could also refer to circumstances (*ZYS* 107: 復謂講盜牛狀何如 "he asked me again under which circumstances I had robbed the cattle") or design (*FLDW* 162=*RCL* D 142: 「履錦履」之狀可（何）如？"what is the design of 'brocade shoes'?"). Cf. *Liye* 8-1564: 弗應而云當坐之狀何如？其謹案致，更上。"how to behave in case an action does not correspond to [the ordinances], but the [provisions] say that it is by law to be prosecuted? You may examine it diligently and submit the case to again higher authorities," where the phrase *zhuang he ru* is also followed by an instruction.

141 Cf. *FLDW* 12=*RCL* D 11: 甲乙雅不相智（知），甲往盜丙，毚（纔）到，乙亦往盜丙，與甲言，即各盜，其臧（贓）直（值）各四百，已去而偕得。其前謀，當并臧（贓）以論；不謀，各坐臧（贓）。"A and B never knew each other. A goes to rob C. After he has just arrived, B also comes to rob C. He talks with A, whereupon both [decide to] steal. The value of the misappropriated goods is 400 [cash] for each. After they have already left [the scene], they are both caught. If they conspired beforehand, they are by law to be sentenced for the combined [value of] the misappropriated goods; if they did not conspire, each is to be prosecuted for the misappropriated goods [he personally acquired]." For another reference to *dang bing zang yi lun*, see *FLDW* 49=*RCL* D 39.

142 *FLDW* 33, 35=*RCL* D 27, 28.

143 Cf. *Yuelu WYZ* 63 with *Yuelu WYZ* 75, 86.

ence had no effect on the level of sentence. But it becomes clear that the value of the land, upon which the judgment is based, was in fact determined by the officials, for the accused had sold the land together with the stall for a total price of 1,400 cash. Rui was punished for the 1,000 cash he had actually misappropriated through the sale and which according to the official evaluation corresponded to the value of the land. The prefecture of Jiangling therefore complied with the request of its governor and provided the complete documentation of the criminal proceedings against the merchant Rui, including the formal criminal investigation and the judicial decision. This decision, which was mainly based on the official evaluation, apparently had to be approved by the higher authorities.

Cases requiring approval of the higher authorities: case no. I.3

The case just described is comparable to case no. I.3, where the prefecture of Jiangling was again ordered to submit the finding of facts to the governor's province agency, together with the assurance that these had been firmly established (*ju shen* 鞫審).[144] In this case, two individuals were prosecuted for participating in a grave robbery (*dao chu zhong* 盜埱冢).[145] Both of the accused who had joined a band of vagrant absconders originally neither committed the grave robbery nor conspired with the perpetrators: The first remained as a cook in the hide out of the band[146] and the second only joined the band some time after the grave mound had been dug up.[147] The robbers, however, informed both accomplices about the grave robbery and finally gave them a share of the clothes and bronze vessels excavated from the grave in order to prevent them from revealing their knowledge.[148] According to Qin and Han law, anyone who had knowledge of a theft or even only received a tiny fraction of the loot for himself was punished like the thief for the full stolen amount.[149] Since the value of the misappropriated goods exceeded 660 cash, the offenders by law were to be sentenced to the most severe category of penal labor as tattooed earth-pounder convicts (*qing wei cheng dan*). As holder of the second meritorious rank, one of

144 *Yuelu WYZ* 45–46. The same procedure was stipulated if persons delivered anonymous letters (*tou shu* 投書) to the authorities for which they were to be subjected to a formal criminal investigation (*FLDW* 53–54=*RCL* D 43).

145 *Yuelu* WYZ 44–45.

146 *Yuelu WYZ* 53.

147 *Yuelu WYZ* 57.

148 *Yuelu WYZ* 55, 58, 60.

149 *FLDW* 9=*RCL* D 8: 甲盜，臧（贓）直（值）千錢，乙智（知）其盜，受分臧（贓）不盈一錢，問乙可（何）論？同論。"A steals; the value of the misappropriated goods is one thousand cash. B, knowing that he [A] had committed theft, accepts a share of the misappropriated goods [at a value of] less than 1 cash. Question: How is B to be sentenced? He is to be sentenced in the same way [as A]." Cf. footnote 161 for the statutory provisions on complicity in a theft from 186 BC.

them was entitled to perform the mitigated version of this penal labor as firewood gatherer (*gui xin* 鬼薪).[150] When the two accused were to be convicted for participating in a grave robbery, their offence was covered by an amnesty (*she* 赦). The offenders, therefore, needed to be exempted from punishment and made released persons (*shu ren*).[151] The officials of the prefecture, however, were not authorized to pardon them without the approval of the higher authorities.

Cases requiring approval of the higher authorities: Characteristics and function

Cases no. I.4 and I.3 form a category that is not found in the *Zou yan shu*. They are, however, to some degree similar to those cases of the category *dang* 當 "proposed sentences,"[152] in which the lower authorities had to submit a request for the imperial approval of a punishment. Imperial approval was necessary for passing sentence on members of certain privileged groups[153] and for punishing certain serious offences.[154] From these submissions, lower judicial officials or candidates could learn which types of sentences required the higher authorities' approval and which rules were to be observed for the corresponding proceedings.

Petitions for retrial

The legal basis

Another comparable category is the cases of *qi ju* 乞鞫 "petition for retrial," a procedure by which a convicted person could request a retrial of his case if he considered his conviction unjust. This right of appeal against a verdict had already been incorpo-

150 *Yuelu WYZ* 60–61.

151 *Yuelu WYZ* 45, 61.

152 According to the formal classification of the *Zou yan shu* by Lau and Lüdke (2012, 45–51) cases of this category all use *dang* 當 "proposed sentences" instead of *lun* 論 "judgment" in reaching a decision (*ZYS* 65, 69, 96, 159).

153 The accused officials were appointed as prefects by the emperor in cases no. 18 from 220 BC (*ZYS* 124), no. 16 from 201 BC (*ZYS* 86, 92 [in addition holder of the 18th meritorious rank]) and no. 15 from 200 BC (*ZYS* 69, [in addition holder of the 9th meritorious rank]). In case no. 14 from 199 BC, the criminal official is holder of the 9th meritorious rank (*ZYS* 64). In case no. I.3 of the *Wei yu deng zhuang*, the term *dang* is used for the proposed judgments as well (*Yuelu WYZ* 60).

154 These included the offences of killing somebody with malice (*zei sha ren* 賊殺人), of conspiring to kill somebody with malice (*mou zei sha ren* 謀賊殺人) and of leaving a suspected murderer unpunished (*zong qiu* 縱囚) (*ZYS* 93–96); cf. the stipulation that offences punished with the death penalty as well as all offences of homicide were to be submitted to the province authorities for a decision (*ENLL* 396).

rated in the statutes from the pre-imperial period of the Qin dynasty.[155] A convicted person could only petition for a new finding of facts on the condition that he had been informed earlier of the contents of the original finding of facts. That this was indeed the case can be seen in at least three examples from pre-imperial Qin, which are analysed below. It is likely that already at this time the finding of facts was read out to the accused at the end of trial (*du ju* 讀鞫), although the earliest explicit mention of this procedural step is only found in the commentary of Zheng Zhong 鄭眾 (as the commentator known as Zheng Sinong 鄭司農, who died in 83 AD) to the *Zhouli*.[156] If the petition was granted, it resulted in a review (*fu* 覆)[157] connected with a second criminal investigation and was concluded by a new finding of facts, which, if substantially different, would require a different sentence. At the beginning of Han times, the procedure of *qi ju* was based on the following statutory provisions:

> 罪人獄已決，自以罪不當，欲乞鞫者，許之。乞鞫不審，駕罪一等。其欲復乞鞫，當刑者刑，乃聽之。死罪不得自乞鞫，其父母，兄姊弟，夫妻子爲乞鞫，許之。其不審，黥爲城旦舂。年未盈十歲爲乞鞫，勿聽。獄已決一歲不得乞鞫。乞鞫者各辭在所縣道，縣道官令，長，丞謹聽，書其乞鞫，上獄屬所二千石官，二千石官令都吏覆之。都吏所覆治，廷及郡各移旁近郡；御史，丞相所治移廷。[158]
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> "If a person liable for punishment wishes to petition for a [new] finding of facts after his case has already been decided because he considers his punishment to be unjustified, this is granted. However, if the petition for a [new] finding of facts is unfounded, then his punishment is increased by one degree. If the same person [after having been sentenced for making an unfounded petition] wishes to yet again petition for a [new] finding of facts, then, in a case where he is by law to be subjected to a mutilating punishment, the petition is only heard after he has been mutilated. [Persons liable to] the death penalty are not permitted to petition for a [new] finding of facts themselves. However, if their father, mother, elder brother, elder sister, younger brother, husband, wife or child wishes to petition for a [new] finding of facts on their behalf, then this is granted. If a petition [by any of these relatives] is unfounded, then [the relative in ques-

155 Cf. the commentary of *FLDW* 115=*RCL* D 95: 以乞鞫及爲人乞鞫者，獄已斷乃聽，且未斷猶聽毆（也）？獄斷乃聽之。"Is a petition for a [new] finding of facts as well as a petition for the same on behalf of another person only accepted when the case has already been decided, or is it already accepted before the case has been decided? It is only accepted after the case has been decided."

156 *Zhouli* 35, 873b.

157 *ZYS* 99, 122; *Yuelu WYZ* 139v, 175, 202, 206; *ENLL* 116–117.

158 *ENLL* 114–117.

> tion] is tattooed and made an 'earth-pounder' or 'grain-pounder' convict. Petitions for a new finding of facts made on behalf [of a relative] by persons not yet fully ten years of age shall not be heard. If the case in question has already been decided for one full year, then it is not permitted to petition for a [new] finding of facts. In every case, the person who petitions for a [new] finding of facts makes his statement at the prefecture or county with non-Chinese population where he resides. The prefecture's or county's prefect or vice prefect carefully hears and writes down his petition for a [new] finding of facts. The official then submits the case to the superior province-level office, where the office then orders provincial investigators to review the case. The imperial court and the provinces, respectively, transfer cases to neighboring provinces that have been [originally] tried in a review by provincial investigators. Cases [originally] tried by the chief prosecutor or by the chief minister are transferred to the imperial court."

Petitions for retrial: case no. 17 from pre-imperial Qin and its consequences

In one case of the *Zou yan shu* (no. 17), a musician who could not resist torture falsely incriminated himself for being the accomplice of a cattle thief.[159] The musician became a victim of judicial error under the following circumstances: The actual thief, who had likewise been subjected to torture for the purpose of forcing him to reveal his accomplices, felt that he had no choice but to falsely accuse the innocent musician of conspiring to steal a cow with him.[160] For conspiring to steal something, the same legal rules were to be applied as for the actual crime of theft.[161] As the value of the misappropriated cattle obviously exceeded 660 cash, the musician accused of conspiring by law was to be sentenced to the most severe penal labor as a tattooed earth-pounder convict.[162] Instead of verifying the musician's alibi with independent witnesses (a step which exonerates him during the retrial), the investigating officials resorted to torture to extort a confession. This contrasts with the positive example of case no. 22, where the accused is only threatened with torture as a means to extract a confession after his explanations become unjustifiable in the view of both hard physical evidence and the mutually consistent statements of multiple inde-

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159 *ZYS* 99–123, especially *ZYS* 109: 講恐復治（笞），即自誣曰與毛謀盜牛。"I, Jiang, was afraid that I would again be caned, therefore I falsely incriminated myself saying: I conspired with Mao to steal the cattle."

160 *ZYS* 113–114.

161 Cf. the applicable statutory provisions on complicity in theft from 186 BC: 謀遣人盜，若教人可盜所[...]及智人盜與分，與盜同法。(ENLL 57) "For conspiring/hatching the plot and dispatching another person to commit theft or to instruct another person about a place where a theft can be committed, [...] as well as for sharing with another person [profits] if one knows that the latter has stolen, the same legal rules as for theft apply."

162 Cf. *ENLL* 55.

pendent witnesses.[163] As a result of the criminal proceedings and a judicial error, the musician was innocently subjected to a mutilating punishment due to a judicial error. After the execution of the sentence, the musician continued to protest his innocence and petitioned for a retrial. This petition was granted and resulted in a second criminal investigation, which was concluded by a substantially different finding of facts. The musician repudiated the accusation of having conspired to steal the cattle and stated that he was forced to give a false confession under the threat of further torture. The interrogation of the witnesses confirmed that the convicted musician had been absent when the theft was committed and when he was alleged to have attempted to rob the cattle for the first time. The traces of torture were closely inspected. The agency of the minister of trials, which probably also conducted the retrial, found that the competent officials committed a judicial error, reversed the judgment, and undertook measures for an acquittal as well as the complete rehabilitation of the accused, including the return of family members and compensation for the confiscated goods.[164] As the accused had suffered an irreversible mutilation, after his acquittal he was placed in a hidden government institution (*yin guan* 隱官)[165] in order

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163 *ZYS* 220. Cf. Lüdke 2013, 55.

164 *ZYS* 122–123: 其除黥城旦以爲隱官，令自常（尚），毋其收。收妻子已賣者，《者》縣官爲贖。它收已賣，以賈（價）毋之。及除坐者貲=；貲已入環（還）之。"You shall exempt the tattooed earth-pounder convict [Jiang from his punishment] and make him an inmate in a concealed office/place of work. Orders are to be given that he is allowed to be responsible for himself. He is to be given back things which have been confiscated from him: If his wife and children, jointly liable for his offences, have already been sold [into bondage as convicts], they are to be redeemed by the prefecture authorities. For everything else which has been confiscated and already sold, he is to be refunded according to the purchase price. Furthermore, those prosecuted [for Jiang's offence within the system of collective liability] are to be exempted from their fines; if the fine already has been paid, it is to be returned."

165 *Yin guan* 隱官 "hidden office" or "hidden place of work" refers to the place where people were employed who had received a mutilating punishment, but whose sentence was later reversed retroactively (*FLDW* 125–126=*RCL* D 105) or to the people themselves who were employed in this situation (*ZYS* 29). There were different circumstances under which people became *yin guan*:
— convicts who wrongly received a mutilating punishment because they were victims of a judicial error (*shi* 失) or even because of an intentional perversion of justice (*bu zhi* 不直). They were employed in/as a *yin guan* (*ENLL* 124) when the wrongful conviction was discovered, for example as a result of a retrial requested by the mutilated convict (*qi ju* 乞鞫) (*ZYS* 122);
— in Qin, at least mutilated convicts who worked as artisans in government workshops could be relieved from their punishment if they themselves, or somebody else on their behalf, acquired military merits (*QLSZ* 156=*RCL* A 91); they were then employed as artisan *yin guan*, because they had been mutilated;
— when in Qin gang robbers who had been amnestied and made released persons allowed manacled remand prisoners they were leading, who had committed an offence punishable by

to remove him from the public eye and safeguard him against the ridicule and disdain he would have met in his former community where people kept their distance to *xing ren* 刑人 "people marked/stigmatised by mutilation."[166]

This case can be read as a warning to not use torture before all other means have been exhausted and when the statements of the suspect are not contradicted by hard evidence.[167] It illustrates the great danger of passing a wrong judgment as a result of forced confessions and of making the judicial officials liable to prosecution for judicial error (*lun shi zhi* 論失之)[168] when torture is applied too early and indiscriminately and not all of the clues have been investigated. The case thus implies that judicial authorities should instead endeavor to protect suspects from false incrimination. The application of torture to extract confessions was accordingly restricted. In the *Feng zhen shi* 封診式, a Qin guide for correct procedure in criminal cases of the late third century BC, it is emphasized that finding out the truth about a suspect without the use of torture by caning is considered superior, while using torture by caning is, on the other hand, deemed inferior.[169] In this guide, detailed instructions are given concerning the use of torture:

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mutilation and more, to abscond during transportation, the sentence formerly suspended was executed and the gang robbers were punished with having their left foot cut off. If they could make amends by arresting (*bu* 捕) the absconders, the mutilated robbers were employed as *yin guan* (*FLDW* 125–126=RCL D 105);

— slaves (*nu* 奴) who were relieved from slavery by their owner on account of their good conduct were obliged to continue to work for their owner as 'personal dependants' (*si shu* 私屬) for the time being; they became *yin guan* if they previously had been mutilated (*ENLL* 163). After the excavation of the Shuihudi manuscripts, the term *yin guan* has been identified by some scholars with *yin gong* 隱宮 which in the *Shiji* in all likelihood refers to convicts who have been subjected to castration (commentaries to *Shiji* 88, 2566; 6, 256). For a survey of the different interpretations including *yin gong*, see Jiang Feifei 2004 and Li Chao 2009. Where the mutilation of the ex-convicts *yin guan* is mentioned in the legal manuscripts from Shuihudi and Zhangjiashan, they were not castrated, but had been tattoed (*ZYS* 32, 99, 122) and had their nose or their left foot cut off (*ZYS* 32, 34; *FLDW* 126=RCL D 105). Therefore, it is doubtful whether *yin guan* can be identified with *yin gong*.

166 Cf. *Gongyang* 21, 2313a.

167 Lüdke 2003, 55.

168 The responsible judicial officials who inadvertently committed a judicial error by passing judgment had to pay the fee for redeeming the wrongly imposed punishment (*ENLL* 95–96). During the later course of the Han dynasty, this redemption fee was reduced to half (*Xuanquan* 12). Classifying miscarriages of justice such as *shi* implied that the competent officials did not act with intent in contrast to a deliberate perversion of justice (*bu zhi* 不直), which was to be punished more severely.

169 *FZS* 1=*RCL* E 1. Cf. McLeod and Yates 1981, 130–131.

訊獄凡訊獄，必先盡聽其言而書之，各展其辭，雖智（知）其詘，勿庸輒詰。其辭已盡書而毋（無）解，乃以詰者詰之。詰之有（又）盡聽書其解辭，有（又）視其它毋（無）解者以復詰之。
詰之極而數詘，更言不服，其律當治（笞）諒（掠）者，乃治（笞）諒（掠）。治（笞）諒（掠）之必書曰：爰書：以某數更言，毋（無）解辭，治（笞）訊某。[170]

"Interrogation in a criminal case.—As a general rule for conducting interrogations in criminal cases, you have to first hear fully the statements of those concerned and record their statements in writing, [letting] each of the persons [interrogated] to make his statement [without interruption]. Even if you know that the person concerned lies, there is no need to confront him immediately [with other evidence or inconsistencies]. If someone's statement has been completely recorded in writing, and there is still no [full] explanation, confront him with confronting issues. When confronting him, again fully hear and write down the statements he offers in explanation. Then look again at further points for which he has no [full] explanation and confront him again with these points.

If he has been confronted to the utmost and still repeatedly lies, changes his statements and does not confess, then subject him to torture by caning, if the statutes concerned warrant [the application of] torture by caning. If you torture him by caning, it is mandatory to write down: 'Protocol: Because X repeatedly has changed his statement and has not offered a statement which would provide a [full] explanation, I interrogated X with the application of the cane.'"

Petitions for retrial: case no. II.11

In the two cases of the *Wei yu deng zhuang* that belong to the category of petitions for retrial, both of the accused were charged with the statutory offence of illicit sexual intercourse (*jian* 奸), for which an offender according to Qin law had to be shaven and made a bondservant convict (*nai wei li chen qie*).[171]

In the first case (no. II.11), the convicted man protested that he could not carry out (*wei shi* 未蝕) the illicit sexual intercourse with his repudiated wife.[172] In Qin, an abortive

170 *FZS* 2–5=*RCL* E 2. Cf. McLeod and Yates 1981, 131–133; Lüdke 2003, 117, 127; Barbieri-Low 2011, 127.

171 See the quotation from Qin statutes in *ZYS* 182: 律曰[...]奸者，耐爲隸（隸）臣妾。According to the statutory provisions of the Han dynasty, the conditions for a criminal offence were only fulfilled if the male had illicit sexual intercourse by mutual consent with the wife of another person (*yu ren qi he jian* 與人妻和奸). The offender here was punished with the most severe penal labor as an unmutilated earth- or grain-pounder convict (*ENLL* 192; *Xuanquan* 7).

172 *Yuelu WYZ* 186: 當陽隸臣得之气（乞）鞫曰：□□，不強與棄婦尪奸，未蝕。"The bond servant convict Dezhi from Dangyang [prefecture] petitioned for a [new] finding

attempt seems to have been punished less severely than the completed offence.[173] Therefore, the accused considered the first conviction by the prefecture of Dangyang,[174] as well as the second sentence[175] passed by the agency of the minister of trials as a result of the retrial, to be unjustified. The second retrial started with the review of the records of the original proceedings. The investigation had established that the convicted man attempted to have sexual intercourse with his former wife by force without being able to implement his plan. Because his attempt was not successful, the prefecture did not sentence the offender to the more severe punishment for illicit sexual intercourse by force.[176] Since he contradicted the statement of the victim during the first retrial conducted by a secretary of the minister of trials (*ting shi* 廷史), the convicted man had no choice but to confess that he attempted to rape his former wife. The secretary subsequently concluded that the petition for retrial was unfounded (*bu shen* 不審).[177] Accordingly, the agency of the minister of trials decided to place the convicted under detention among the earth-pounder convicts for six years (*xi cheng dan liu sui* 鼷（繫）城旦六歲).[178] This punishment was evidently imposed on him for filing an unfounded petition for a retrial. Bondservant convicts who committed an offence punishable by penal labor of the category *nai* were by law to be sentenced to the same penalty.[179] During the second retrial, it again turned out that the objections of the convicted, who this time even escaped from the detention place, were not substantiated. The interrogation proved that the offender used force and was only interrupted when an outsider saw he was attempting to rape his former wife. As a result of the second retrial, the convicted man was sentenced to a further twelve years of detention among the earth-pounder convicts: This cumulative sentence consisted of six

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of facts stating: '[...] I did not have illicit sexual intercourse with my repudiated wife Yu by force, [because] I did not carry it out.'"

173 Cf. *FLDW* 65=*RCL* D 52 with the explanations in Lau, forthcoming.

174 *Yuelu WYZ* 174: 其鞫（鞫）曰：得之強與人奸，未蝕。審。丞□論耐得之爲隸臣。"In the finding of facts concerned it said: 'Dezhi [wanted to] have illicit sexual intercourse with somebody by force, [but] he did not carry it out. [These] are firmly established facts.' Vice-prefect [...] sentenced Dezhi to be shaven and made him a bond servant convict."

175 *Yuelu WYZ* 177: 廷報之：鼷（繫）得之城旦六歲。"Reply of the court [containing the decision]: Place Dezhi under detention among the earth-pounder convicts for six years."

176 Cf. *ENLL* 192–193: 強與人奸者，府（腐）以爲宮隸臣。"Those who have illicit sexual intercourse with somebody by force are castrated and made bond servant convicts in the [rear part of the] palace."

177 *Yuelu WYZ* 176.

178 *Yuelu WYZ* 177.

179 *ENLL* 90: 隸臣妾及收人有耐罪，鼷城旦舂六歲。"If bond servant or bond women convicts and relatives of offenders who were taken into custody are liable to punishment of the category *nai*, they will be placed under detention among the earth-pounder convicts for six years."

years for absconding as bondservant convict[180] and six years for filing an unfounded petition for a retrial. The convicted man was to first serve these twelve years of detention and only after this the remaining six years of his first conviction.

Petitions for retrial: case no. II.12

In the second case exemplifying a petition for retrial (II.12), a bondservant convict (*li chen*) was likewise charged with the offence of illicit sexual intercourse. This time the accused was prosecuted for having illicit sexual intercourse by mutual consent with a woman interned at a government workshop to work off a payment obligation towards the government. He had first acknowledged the offence directly after being caught *in flagranti* by a convict guard without being subjected to torture. In his petition, however, he argued that he had not been arrested on the spot when he was alleged to have had illicit sexual intercourse (*bu bu jiao shang* 不捕校上). The convicted man obviously knew that the guard had to observe a special provision for the arrest of offenders suspected of illicit sexual intercourse.[181] He appears to have hoped that the guard, as an eyewitness to whom bribes had been offered by the woman's relatives, would amend his former statement to the extent that he did not actually arrest the couple *in flagranti*. During the first stage of interrogation of the retrial, the guard admitted that he had initially accepted the bribes, but later returned them. When the convicted man was confronted with the statements of his sexual partner and witnesses, which were contradictory to his own, he was unable to explain the discrepancies. Consequently, the judicial officials inferred that the petition for retrial was unfounded. Although the original punishment for the unsubstantiated petition was supposed to be increased by twelve years of detention among the earth-pounder convicts, the offence was covered by an amnesty, with the result that the convicted remained a bond servant.

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180 *ENLL* 165: 隸臣妾，收人亡盈卒歲，繫城旦舂六歲。"If bond servants and bond women convicts and relatives of offenders who were taken into custody have absconded for a full year, they will be placed under detention among the earth-pounder convicts for six years."

181 Cf. the stipulation in *ZYS* 182–183: 捕奸者必案之校上 "Whoever arrests persons who have illicit sexual intercourse needs to ascertain [at the scene] that they were having sexual intercourse with each other," and the model for investigating in *FZS* 95=*RCL* E 25: 某里士五（伍）甲詣男子乙、女子丙，告曰：「乙、丙相與奸，自晝見某所，捕校上來詣之。」"A, rank-and-file man from quarter X, presented man B and woman C to the authorities. His report ran: 'B and C had illicit sexual intercourse with each other. In the daytime, I just happened to see them at the place X. I arrested them while they were having sexual intercourse with each other and come to present them to the authorities." Cf. McLeod and Yates 1981, 162.

Petitions for retrial: formal characteristics and function

The officials of the prefecture had to record the petition for a retrial and forward it to the higher authorities. All three retrials mentioned above seem to have been conducted by the agency of the minister of trials (*ting wei*).[182]

The final section of the petitions for retrial also differs from that of the submitted doubtful cases. First, the agency of the minister of trials notified (*wei* 謂) the head of the prefecture, where the petitioner was held under detention of the result of the retrial (*fu zhi* 覆之).[183] Afterwards, a copy of the notification was to be forwarded (*teng* 騰) to those prefectures which were also dealing with the case.[184]

The two cases of the *Wei yu deng zhuang* fulfilled a specific function other than that of the *Zou yan shu*: They served as a warning against lodging unfounded appeals. In this way, judicial officials were instructed about how to proceed in such cases.

Recommendation of competent investigators for a promotion

Legal basis

The fourth category concerns recommendations for promoting competent investigating officials. One case in the *Zou yan shu* (no. 22)[185] from pre-imperial Qin and cases no. II.9[186] and no. II.10[187] in the *Wei yu deng zhuang* belong to this category. A special ordinance enacted by the Qin ruler formed the legal basis for positive testimonials:

> 令曰：「獄史能得微難獄，上。」
> "The ordinance reads: If a judicial clerk is able to solve an obscure and difficult case, this is to be reported to the higher authorities." [188]

The letters of recommendation to the superior authorities were framed pro forma by the introductory and concluding formulae *gan yan zhi* 敢言之 "we venture to report it."[189]

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182 In one case, the minister of justice (*ting wei* 廷尉) notified the competent prefecture that his agency had reviewed the decision of the lower authority (*ZYS* 121); in another case, a secretary of the minister (*ting shi* 廷史) conducted the retrial and notified the competent prefecture of his decision (*Yuelu WYZ* [II.11] 175, 186; cf. *Yuelu WYZ* [II.12] 205).

183 *ZYS* 121–122; *Yuelu WYZ* 186–187, 205–206.

184 *ZYS* 123; *Yuelu WYZ* 207.

185 *ZYS* 197–228.

186 *Yuelu WYZ* 142–149. This case is only fragmentarily preserved.

187 *Yuelu WYZ* 150–170.

188 *ZYS* 227–228; cf. *Yuelu WYZ* 147.

189 *Yuelu WYZ* 147/149, 170. Cf. *ZYS* 227/228 in the other recommendation of a competent official for a promotion as well as two submissions of cases concerning criminal officials in *ZYS* 68, 92/98.

Similarities in the content

There are noteworthy similarities to the contents of the three cases. In each case, the offender committed armed robbery (robbery and bodily harm[190] or robbery and murder[191]) on a deserted road or in a secluded field hut. It was very difficult to solve the crime because the offenders actively diverted suspicion away from themselves. One of the accused put a tally for traders next to the injured woman to cast suspicion on the local merchants;[192] another left behind the clothes of a penal-labor convict at the scene of the crime in order to make the officials believe that the murderer was a convict.[193] At first, the responsible officials were unable to gather usable evidence relating to the crime.[194]

All three offenders were described as perpetrators who represented a serious threat to common people,[195] because they had no scruple about killing their victims[196] and were ingenious in covering up all their traces.

These cases did not pose any problem for the legal assessment. The detailed description of the investigation was rather intended as a textbook example for solving criminal cases which at first sight seemed to be hopeless. The responsible officials used resourceful investigating methods including the confidential questioning of the victims' neighbors,[197] using undercover informers to scope out the suspect's living conditions and economic

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190 *ZYS* 224: 賊刺人，盜奪錢。"[Kong] stabbed somebody with malice and stole money [from the person concerned]."

191 *Yuelu WYZ* 142, 166.

192 *ZYS* 221–222: 盜置券其旁，令吏求賈市者，毋言（意）孔。"During the robbery, I placed the tally at this person's side in order to induce the authorities to search for a trader, so that I, Kong, would not be suspected."

193 *Yuelu WYZ* 161: 求城旦赤衣，操，已（已）殺人，置死（屍）所，令人以爲殺人者城【旦】。"I looked for the red clothes of an earth-pounder convict, which I [intended to] take and place by the corpses after having killed my victims in order to make people believe that the murderer was an earth-pounder convict."

194 *ZYS* 225–226: 求弗得，[...]毋徵（證）物。"[The judicial officials] searched for [the culprit], but did not catch him. [...] There was no piece of evidence." Cf. *WYZ* 148: 毋（無）徵物，難得。"There were no pieces of evidence and [the case] was difficult to solve."

195 Cf. *ZYS* 225: 未嘗有！黔首畏害之，出入不敢；若恩（斯）甚大害也。"[Such a crime] had never been seen before! The common people lived in fear of being harmed, and did not even dare to leave their homes – if they had done so, then it would have caused extremely great harm [to the people]." *Yuelu WYZ* 148: 此黔首大害殹（也）。*Yuelu WYZ* 167: 民大害殹（也）。

196 *ZYS* 223: 孔自以爲利，足刺殺女子奪錢。"I considered this a favorable opportunity to stab the woman to death and to steal the cash"; cf. *WYZ* 163–164.

197 *Yuelu WYZ* 154.

circumstances,[198] and the meticulous first-hand inspection of different pieces of evidence.[199] In one case, the officials posted guards along the roads in order to intercept suspected persons and check up on them.[200] The various measures that were applied finally enabled the officials to discover the offender. During the first stage of interrogation, the suspect did not confess to the crime. At that point, the investigating officials confronted the accused with evidence contradicting his account, forcing him to amend his former statements.[201] In the course of this cross-examination, the officials, partially by threatening to carry out torture,[202] succeeded in obtaining the suspect's confession of guilt.[203]

The formula of the letter of recommendation

At the end of the letter of recommendation, the specific ethical standards of a judicial official were emphasized which make him suitable for the task as clerk-in-chief (*zu shi* 卒史) within the provincial agency:

> 皆請（清）絜（潔）毋（無）害，敦敦（慤）守吏，心平端禮。
> "They are all officeholders who have integrity and moral purity and are impeccable,[204] honest, and faithful.[205] In their hearts, they are impartial, upright and in conformity with the rites."[206]

The wording of this recommendation of an official for a promotion corresponds to a large extent to that in the *Zou yan shu* and case no. II.9 from the *Wei yu deng zhuang*.[207] These

198 *ZYS* 206–211, *WYZ* 143.
199 *ZYS* 215–216.
200 *Yuelu WYZ* 155.
201 *ZYS* 217–220; *Yuelu WYZ* 158–159.
202 *Yuelu ZYS* 220.
203 *ZYS* 224, *WYZ* 164.
204 *Wu hai* 無害 is a term that refers to the professional competence of officials. The classification of an official such as *wu hai* was a precondition for recommending a person to office (*Mo* 90, 358 with commentary by Sun Yirang; *Shiji* 122=*Hanshu* 90, 3661; *Hanshu* 39, 2005). The qualification *wu hai* was required of officials who assumed responsible tasks, such as reviewing trials in cases of serious offences that could result in death verdicts (*ENLL* 396).
205 For *jie* 潔 and *dun que* 敦慤 as required character traits of a good official in the Qin administration, see *Yushu* 9: 凡良吏明法律令，事無不能毆（也）；有（又）廉絜（潔）敦慤而好佐上。"In general, good officials understand the law, the statutes and ordinances and there is no official business where they are incompetent. Furthermore, they have integrity and moral purity, are honest and faithful and like to assist their superiors." Cf. Yates 1995, 333–335 for the interpretation of this passage and the topic of the purity and pollution of officials in the Qin manuscripts from Shuihudi.
206 *Yuelu WYZ* 169.

similarities are hardly coincidental. They rather suggest that there were common models for this type of recommendation letter and that related exemplary criminal cases circulated among the judicial officials.

Officials of the prefecture concluded their letter of recommendation with the the standard formulation:

> 任謁以補卒史，勸它吏。[208]
> "I/we [recommend the investigating official] and guarantee[209] him and request that he fill the rank of the clerk-in-chief [of the province] so that his example may be a major inspiration for other officials."

In this way, they expressed the hope that other officials would follow their colleague's example.

The function of presenting these three criminal cases was to train local judicial officials in techniques for conducting an effective investigation[210] and to provide models for submitting such recommendations.

All of the criminal cases compiled in the *Wei yu deng zhuang* were submitted to the higher authorities, which clearly demonstrates their significance. As can be seen from the above classification, however, there were different reasons for their submission.

Functional comparison with the *Feng zhen shi*

The specific function of the case collection *Wei yu deng zhuang* can also be illustrated by way of comparison with other legal manuscripts from the tombs of Qin officials that overlap in certain respects. Especially the *Feng zhen shi* 封診式 "models for sealing and investigating" from Shuihudi are worth close consideration.[211]

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207 Cf. *ZYS* 228: 舉闕毋害，謙（廉）絜（潔）敦慤（愨）守吏也，平端。and *Yuelu WYZ* 148: 洋精（清）絜（潔）毋（無）害，敦毅（愨）守吏，心平端（？）禮（？）。

208 *Yuelu WYZ* 149; cf. the variants of these concluding formulae in *ZYS* 228: 謁以補卒史，勸它吏。and *Yuelu WYZ* 169–170: 任謁課以補卒史，勸它吏。

209 For *ren* 任 meaning "to stand surety for someone/guarantee someone [to carry out his duties]," see *QLZC* 1=*RCL* C 1: 任法（廢）官者爲吏，貲二甲。"To [recommend and] guarantee as an official a person that has been permanently removed from office is fined two suits of armor." *FLDW* 145=*RCL* D 123: 任人爲丞 "[an official recommends and] guarantees a person [to be appointed] as vice-prefect." *QLSZ* 196=*RCL* A 106: 官吏有重罪，大啬夫、丞任之。"[...] the officials of the offices will have committed a serious offence and the great overseer and the assistant will be held responsible for it." Cf. Yates (1995, 350) on guarantees of performance in the Qin bureaucracy.

210 Cf. Lüdke 2003, 54–55.

211 For the comparison between the *Feng zhen shi* and the *Zou yan shu* and the differences of

Although the title of the *Feng zhen shi* suggests otherwise, this manuscript not only provides examples and instructions on to how to seize and seal (*feng* 封) the property of an accused charged with serious offences, to place his closest relatives under surveillance (*shou* 守),[212] and to secure evidence at the scene of a crime for judicial inspection (*zhen* 診).[213] It also contains a number of model records of investigation and interrogation which might be used for conducting correct criminal proceedings.[214] The information from the *Feng zhen shi* gives researchers a better understanding of the *Wei yu deng zhuang*. The *Feng zhen shi* explains under what conditions the second stage of interrogation (*jie*) is to be initiated and how and by what means the accused is to be cross-examined in order to obtain a confession from him.[215] It provides a concrete example of the procedural requirements, which are mentioned in case no. II.12 of the *Wei yu deng zhuang*,[216] for arresting a fornicating couple.[217] Case no. II.10 of the *Wei yu deng zhuang*, which describes in detail the measures for inspecting armed robbery,[218] bears similarities to a model presented in the *Feng zhen shi*, which documents the steps taken during the investigation of a burglary.[219] In both cases, the investigating officers first tried to gather evidence at the scene of the crime. All traces, such as a tunnel used for the burglary or the wounds of the killed persons and the clothes of a convict left behind at the scene, were carefully inspected. Afterwards, neighbors or other witnesses who could provide information about the stolen clothes or an unknown female corpse were interrogated.[220]

Nevertheless, there are significant differences between the two types of legal manuscript, which have been summarized by Lüdke.[221] The *Feng zhen shi* only deals with the

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both legal manuscripts, see the comprehensive discussion in Lüdke 2003, 40–42. In an analysis of the genre *shi* 式 in the Han manuscripts, Gao Heng (2008, 230–238) also dealt with the different types of *shi* in the *Feng zhen shi*. This research has been continued by Barbieri-Low who compares the model forms of the *Feng zhen shi* with corresponding documents from the Han (2011, 126–130).

212 *FZS* 7, 11–12, 41=*RCL* E 4, 3, 15.

213 *FZS* 30, 32–33, 35–36, 39, 53, 56, 63–64, 74–75, 86–87, 98= *RCL* E 12, 13, 14, 15, 19, 20, 21, 22, 23, 6.

214 *FZS* 13–14, 15–16, 17–18, 19–20, 21–22, 23–24, 42–45, 46–49, 50–51, 95, 96–97=*RCL* E 5, 7, 8, 9, 10, 11, 16, 17, 18, 25, 6.

215 *FZS* 2–4=*RCL* E 2, translation on pages 36–37. Cf. *Yuelu WYZ* 80, 102, 127, 184, 201.

216 *Yuelu WYZ* 198, 204. Cf. *ZYS* 183, 188, 194, 195.

217 *FZS* 95=*RCL* E 25, translation in footnote 181.

218 *Yuelu WYZ* 151–159. Cf. *ZYS* 203–213.

219 *FZS* 73–83=*RCL* E 22. Cf. McLeod and Yates 1981, 157–159.

220 For further ingenious methods of investigation which finally enabled the officials to discover the offender, see page 41.

221 Lüdke 2003, 42.

procedure, not with the legal issues in question. This is illustrated by the fact that it largely ignores the judicial decision. In contrast, difficult legal issues are the main focus of the *Wei yu deng zhuang*. For this purpose, it was necessary to document the entire criminal proceedings, including the sentence.

Unlike the *Wei yu deng zhuang*, the *Feng zhen shi* does not deal with individual cases. For all persons involved, it generally uses the cyclical characters of the *tian gan* 天干 "heavenly stems" as blank names or *mou* 某, which refers mostly to names of places or officials. In this way, the *Feng zhen shi* provides a formula that needs to be filled in by replacing the cyclical characters and *mou* with the actual information from the case. As model documents, the *Feng zhen shi* standardized the written communication between officials, minimized the number of exceptions to be handled, and contributed to the smooth functioning of the bureaucracy.[222]

Comparison with official court precedents

On the basis of the sources available at present, however, it is difficult to answer the question of exactly how the *Wei yu deng zhuang* as well as the *Zou yan shu*, as apparently private collections of criminal cases, related to official court precedents, which had already been used for determining punishment in the formation of the early Chinese Empire.

The precedent of the absconded private female slave from early Han times

An early example for such a precedent is mentioned in case no. 3 of the *Zou yan shu*. In this case, Lan 闌, a judicial official in Qi 齊, accompanied a woman from the former ruling house of Qi on her forced resettlement to the capital area of Chang'an 長安.There, he fell in love with her, took her as his wife without permission, and attempted to return with her to Qi. The two were caught before they had crossed a border control station of the empire's central region.[223] The judicial official was prosecuted for the statutory offence of "coming from the feudal lords in order to lure sb. [to their territory]" (*cong zhuhou lai you* 從諸侯來誘),[224] although he had not talked the woman into absconding and returning home for the purpose of persuading her to go over to the feudal lords, but rather for the personal reason of living together. Since they were uncertain whether Lan's illegal activity actually constituted the offence of *cong zhuhou lai you*, the competent judicial officials submitted the case to the higher authorities for a decision.[225] They further attached a precedent according to which a

222 Barbieri-Low 2011, 125–126, 153.
223 *ZYS* 18–19.
224 *ZYS* 19–22.
225 *ZYS* 23.

private female slave, who had been put to work at a city wall of the state of Zhao 趙 and had absconded after having finished her employment for the private reason of joining her older brother in Zhao, was sentenced for the offence of "absconding to the feudal lords" (*wang zhi zhu hou* 亡之諸侯).[226] The majority of the judicial officials argued that the case of the absconded female slave was of "the same category" (*tong lei* 同類) as that of Lan.[227] Therefore, they argued for sentencing the judicial official in the same way, since the consequences of Lan's illegal activity and the intentional luring of a person to convert to the feudal lords were in fact the same. The record of the precedent only provides the results of the finding of facts and the decision. In contrast to the *Zou yan shu* or the *Wei yu deng zhuang*, no details are provided of the investigation or interrogation.

The precedents of the court from Qin

During the Qin dynasty, similar support in adjudication was denoted as *ting xing shi* 廷行事 "precedents of the court."[228] As a second important pillar of legal practice besides statutes (*lü*) and ordinances (*ling*), they were also called *bi xing shi* 比行事 "analogous precedents."[229] The function of the *ting xing shi* shall be demonstrated with the following example:

> 告人盜百一十，問盜百，告者可（何）論？當貲二甲。盜百，即端盜駕（加）十錢，問告者可（何）論？當貲一盾。貲一盾應律，雖然，廷行事以不審論，貲二甲。[230]
>
> "A person is reported for having stolen 110 [cash]; the [inter-agency] inquiries [shows] that he stole 100 cash. How is the reporting person to be sentenced? He is by law to be fined two suits of armor. The theft was 100 cash. If this is intentionally increased by add-

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226 *ZYS* 23–24.

227 *ZYS* 24.

228 *FLDW* 38, 42, 56, 59, 60, 66, 142, 148–152=RCL D 30, 33, 45, 47, 48, 53, 120, 126–130. There are alternative translations of the term *ting xing shi*, such as "practice of the court" (Hulsewé 1985, 131) or "matters administered by the court" (Lüdke 2003, 46). For the controversy over the meaning of *xing shi*, see Lau and Lüdke 2012, 27.

229 *Yuelu Lüling* unpublished slip no. 1009: • 制詔御史：吏上奏當者，具傳所以當者律令、比行事。"Imperial decision instructing the chief prosecutor: Officials who submit what they consider to be justified/lawful to their superiors, compile and attach those statutes, ordinances and analogous precedents because of which they consider [their proposal for a judgment] to be justified." *Yuelu Lüling* unpublished slip no. 1008: 以其律令、某比行事當之，"according to these relevant statutes, ordinances and the analogous precedent X, we consider it to be justified [in case of the offender]."

230 FLDW 38-39=RCL D 30.

> ing 10 cash, the question is: How is the reporting person to be sentenced? He is by law to be fined one shield; the fine of one shield corresponds to the statutes. However, according to the precedents of the court, he is to be sentenced for [reporting] which does not correspond to the facts and fined two suits of armor."

To understand this example, it is helpful to recapitulate the hierarchy of punishments for offences against property during the Qin dynasty. The offender was to be punished according to the value of misappropriated goods: For theft to the amount of 1 to 21 cash, the fine was one shield (*dun*), and to the amount of 22 to 109 cash, it was two suits of armor (*er jia*). For thefts amounting to 110 cash or more, the offender was to be punished with penal labor of the category *nai* as a bondservant or bondwoman convict (*li chen qie*). In this example, the reporting person is first punished for a report which does not correspond to the facts (*gao bu shen* 告不審), but contains unintended inaccuracies. This implied that the reporting person did not mean to increase the value of the misappropriated goods. Reporting which did not correspond to the facts was punished with a sentence that was one degree less severe than the sentence that was carried out due to the inaccurately reported offence. In the present case, the reporting person was fined two suits of armor, which ranked directly behind penal labor of the category *nai* as a bondservant or bondwoman convict, the punishment that was applied for theft amounting to the value of 110 cash. In the second case, the judicial officials assumed that the reporting person had intentionally increased the value of the misappropriated goods by ten cash. The report was now classified as false incrimination (*wu gao* 誣告), which was to be punished, according to the *fan zui* 反罪 principle, in the same way as the alleged theft. Therefore, the reporting person was fined one shield as stipulated by law for theft with a value of 10 cash. In the last case, the intentionally committed offence was to be punished more leniently than the one committed without intent. Because this apparently contradicted the accepted principles for determining punishment in Qin law, the supreme judicial authority decided as a rule to impose the more severe sentence for *gao bu shen* in such cases.

Ting xing shi like these were judicial decisions made in specific cases that were not covered by the relevant legal provisions nor conform to the wording of the statutes. They could nonetheless be included later in the statutes. This is exemplified by the case of an offender who killed officials while resisting his arrest. This actually constituted the statutory offence of *dou sha ren* 鬥殺人 "killing during a fight," because no premeditation was involved. In any case, the *ting xing shi* classified the killing of an arresting law enforcement officer as the more serious offence of *zei sha ren* 賊殺人 "killing somebody with mal-

ice,"[231] although the sentence for either offence did not seem to differ. This legal interpretation was incorporated into the statutes from 186 BC.[232]

The decisions of *ting xing shi* did not always conflict with the statutes. Sometimes they treated illegal actions not covered by existing rules in the same way as statutory offences because the effects of both crimes were the same.[233] Other *ting xing shi* stipulated a measure be imposed for a certain group of persons in addition to a regular punishment: Officials who committed fraud and forgery, for which they were to be fined by law one or more shields, were also permanently dismissed from office (*fa* 灋 for *fei* 廢).[234] Family members who stood as surety (*bao* 包) for the arrival of their banished relative at the place of banishment were to go to the place of banishment in his stead if the offender himself died or absconded.[235] On the basis of *ting xing shi*, victims of crimes like *shan qiang zhi* 擅強質 "on one's own authority taking pledges by force" could be exempted from punishment. According to the statutes, those who took pledges from debtors under coercion and those who accepted pledges by mutual consent were fined in the same way. The *ting xing shi*, however, stipulated that persons who were forced to give pledges were not to be sentenced, while both those who accepted or gave pledges by mutual consent were to be sentenced.[236] In other instances, the *ting xing shi* simplified statutes by combining comparable statutory offences[237] or made amendments to the existing legal provisions.[238]

In contrast to the *Wei yu deng zhuang*, the *ting xing shi* from Shuihudi only mentioned in concise form alternative decisions in particular cases, but provided no details of investigation or interrogation. It is not clear whether they directly refer to precedents in regard to which more detailed records were kept in the archives or only to an established practice to settle particular cases.

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231 *FLDW* 66=*RCL* D 53. Cf. the case of the former slave Wu on page 15 who injured the arresting robber hunter in a fight (*dou shang ren*), but was nevertheless punished for the statutory offence of *zei shang ren* 賊傷人 "injuring somebody with malice."

232 *ENLL* 152.

233 *FLDW* 56=*RCL* D 45. Cf. Lüdke 2003, 45f.

234 *FLDW* 59=*RCL* D 47.

235 *FLDW* 60=*RCL* D 48.

236 *FLDW* 148=*RCL* D 126. Victims of rape were likewise exempted from punishment (*ENLL* 191).

237 *FLDW* 142=*RCL* D 120.

238 *FLDW* 149–152=*RCL* D 127–130.

Conclusions

During the textual and functional analysis of the *Wei yu deng zhuang*, it was possible to establish substantial reasons for including criminal cases in a collection of exemplary cases. They functioned as model records for correct criminal procedure and the effective investigation of crimes. In studying these models, future judicial officials were apt to insist on due process. Moreover, the case records demonstrated sophisticated techniques for legal reasoning.

According to the available sources, it is hard to decide whether the individual cases were based on authentic documents which were more or less adapted or were merely fictitious cases. Three cases of the *Zou yan shu* that have obvious features of narrative texts suggest that they were in fact fictitious. These include cases no. 19 and 20 from Chunqiu times. Their formal structure is revealing. First, legal provisions from a different time or former statutes are quoted. Then, the finding of facts introduced by *jin* 今 "in the present case" is succinctly summarized. A dialogue follows between the judge, who is a well-known sage of Chunqiu times, and the sovereign. The judge next reports his decision to the sovereign, whereupon the sovereign expresses deep consternation and reacts unfavorably. The judge gives a detailed, sophisticated account of the reasons for his decision, and, finally, the sovereign has no choice but to approve the proposed judgment. A climax is used as a rhetorical device: Suspense is built up by first indicating the decision and the disapproval of the sovereign; it is further intensified when the judge gives an account of his investigation. The decisive argument is made at the very end. In these two cases from Chunqiu times, the original sequential order of legal reasoning and a decision is reversed for the sake of narrative impact.[239] In its structure, the *Zou yan shu* case no. 21 from Qin times corresponds to a certain extent to the literary cases no. 19 and 20.[240]

Narrative texts like these are not included in the *Wei yu deng zhuang*. The different case records of this collection follow the example of excavated official documents from Qin and Han times. An introductory cover letter usually provides the exact date of the submission, the place of the submitting office as well as the position and the name of the prefectural officials responsible for conducting the criminal proceedings. At the beginning and the end of the submissions, the inferior agency used polite formulae when it addressed its superiors like *gan yan zhi* 敢讞之, *gan yan zhi* 敢言之 or *ye* 謁.[241] These are commonplace in official communications, but not in narrative texts. A note that a copy of the

239 For an analysis of the narrative cases no. 19 and 20, see Lüdke 2003, 27–31.

240 There are also arguments for subsuming this case under the category of doubtful legal decisions, see Lau and Lüdke 2012, 44–45.

241 *Yuelu WYZ* 095, 149, 169.

present document should be forwarded to another prefecture for its information[242] or a reference to the number of submitted bamboo slips,[243] which permitted control of the delivery, were typical of official correspondence. In two cases, the submission concludes with a dated letter in which the governor of the province evaluates the prefecture's submission and notifies the prefect of his decision.[244] The form of this notification is also indicative of the administrative practice.

In their basic structure, the case records of the *Wei yu deng zhuang* follow the typical sequence for administrative documents. First, a person is reported to the authorities for having committed an offence. A report or an ex-officio charge is used by law as a precondition for initiating criminal proceedings. When the suspect and the witnesses are questioned, the correspondence between the statements is recorded. If required, the suspect is subjected to a cross-examination in compliance with the relevant directives. After the confession, the results of the forensic inspection and the inter-agency enquiries on particulars relevant to sentencing are added and compared with the results of the interrogation. In conclusion, the finding of facts is summarized by the competent officials who assured that the facts were firmly established. The introductory and concluding terms *ju* 鞫 and *shen* 審 occur in the summarized finding of facts in the *Wei yu deng zhuang* and in the excavated administrative documents from the Qin dynasty,[245] as well as from the last years of the Western Han dynasty.[246] In some cases, which are submitted to higher authorities for a decision, the applicable legal provisions are attached or it is noted whether the accused remains in detention. Although the purpose of the submission is to arrive at a decision, it does not anticipate this decision as in other official documents.

Even if the cases were invented by an author who was versed in the law, they follow in their sequence and frequent repetitions the pattern of authentic administrative documents. This structure suggests that the cases of the *Wei yu deng zhuang* were not simply designed for the amusement of an official audience. It is more likely that they provided precedents or procedural models for the advanced legal training of candidates who would be given jurisdiction at lower administrative levels. The *Wei yu deng zhuang* seems to have

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242 *Yuelu WYZ* 207.

243 *Yuelu WYZ* 148, 169.

244 *Yuelu WYZ* 028–029, 030; *Yuelu WYZ* 042.

245 Cf. the file note on a case of officials who privately ordered convicts or conscripts to work as paid laborers where *ju zhi* and *shen* are used at the beginning and the end of the summarized finding of facts (*Liye* 8-1743v+8-2015r).

246 Cf. the file note on a case of an official who misappropriated public funds where *ju* and *shen* are also used as introductory and concluding terms (*Tuzishan* slip no. J3⑤:1 quoted from "Zhongguo wenwu bao" 中國文物報 dated 06/12/2013 http://kaoguwang.com/index.php/eight/detail/1024).

been compiled as a kind of private manual. This does not rule out the possibility that it followed the example of the case collections issued by government agencies.

Several problems concerning the function of legal manuscripts as burial offerings have still not been convincingly solved. It is not easy to distinguish between manuscripts which served as a status symbol, insofar as they showed that the deceased was a literate official, and texts that were entombed because of the departed official's professional interests.[247] The question remains as to whether the tomb occupant had also used the manuscripts during his lifetime or whether the manuscripts were exclusively compiled for the sake of the funeral. On the basis of the limited information on the ancient Chinese beliefs currently available from the sources, it is hard to say exactly how or for what purpose the deceased official might use exemplary criminal cases in his afterlife.

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