

The *Ernian lü ling* Manuscript

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ABBREVIATIONS

ENLL	<i>Ernian lüling</i> 二年律令
FLDW	<i>Falü dawen</i> 法律答問
FZS	<i>Feng zhen shi</i> 封診式
HS	<i>Han shu</i> 漢書
HHS	<i>Hou Han shu</i> 後漢書
QLSBZ	<i>Qin lü shiba zhong</i> 秦律十八種
QLZC	<i>Qin lü zachao</i> 秦律雜抄
RCL	<i>Remnants of Ch'in Law: An Annotated Translation of the Ch'in Legal and Administrative Rules of the 3rd Century B.C., Discovered in Yun-Meng Prefecture, Hu-Pei Province, in 1975.</i> Sinica Leidensia, Vol. 17. Leiden: E.J. Brill, 1985.
RHL	<i>Remnants of Han Law, Volume I: Introductory Studies and an Annotated Translation of Chapters 22 and 23 of the History of the Former Han Dynasty</i> Leiden: E. J. Brill, 1955.
SJ	<i>Shi ji</i> 史記
XL	<i>Xiao lü</i> 效律
ZJS 2001	Zhangjiashan ersiqi hao Han mu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組. <i>Zhangjiashan Han mu zhujian (ersiqi hao mu)</i> 張家山漢墓竹簡（二四七號墓）. Beijing: Wenwu, 2001.
ZJS 2006	Zhangjiashan ersiqi hao Han mu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組. <i>Zhangjiashan Han mu zhujian (ersiqi hao mu): shiwen xiuding ben</i> 張家山漢墓竹簡（二四七號墓）：釋文修訂本.
ZJS 2007	Peng Hao 彭浩, Chen Wei 陳偉, and Kudō Moto'o 工藤元男 eds. <i>Ernian lüling yu Zou yan shu (Zhangjiashan ersiqi hao Han mu chutu falü wenxian shidu)</i> 二年律令與奏讞書（張家山二四七號漢墓出土法律文獻釋讀）. Shanghai: Shanghai guji, 2007.
ZYS	<i>Zou yan shu</i> 奏讞書

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Introduction

Though the statutes of China are supposed to have their beginning in the late Spring and Autumn Period (770-476 BCE) and Warring States period (475-221BCE),¹ the knowledge of China's early law is rather limited. This is due to the fact that the earliest law code that has been handed down to us is the Tang Law Code of 700 CE. Only very scattered and limited quotations concerning the law of the earlier period can be found in the received literature. These fragments cannot give us a full view of the early law.

Nevertheless, scholars have attempted to collect materials on Han law, in order to reconstruct the Han law and Han legal system. The well-known Qing legal historian Shen Jiaben 沈家本 (1840—1913) gathered the materials on Han law found in received literature, as well as research results from other scholars, and then organized and analyzed them systematically in his famous book *Han lü zhi yi* 漢律摭遺.² This book enlarged our knowledge of Han law and legal procedures, and it also has become significant source for research on Han law. In the west, Hulsewé has gathered and analyzed various materials on Han law from the received literature and new archeological findings in his book *The Remnants of Han Law*.³ This book broadens our knowledge of Han law and the functioning of the Han legal system greatly.

Since the 1970s, several Qin and Han legal manuscripts were excavated in China. Those new materials contain a wealth of information on the early Chinese law and the judicial procedures, so that they have become valuable first-hand materials for doing research on Qin and Han law and their legal system. I will now give a short overview

¹ The historical recordings of the earliest written law is that in 536 BCE, the Prime Minister of the state Zheng 鄭, Zi Chan 子產, ordered to inscribe *Book of Punishments* (*Xing shu* 刑書) on bronze tripod vessels, HS 23, 1093.

² Shen Jiaben 1985.

³ Hulsewé 1955.

over the newly discovered manuscripts.

In 1975, numerous Qin bamboo strips were found in the Yunmeng Qin tomb Shuihudi M11 云梦睡虎地. Altogether, five legal manuscripts of Qin were found in this tomb. Among them, three manuscripts are made up of Qin administrative statutes: one is *Qin lü shi ba zhong* (Eighteen Qin Statutes; hereafter QLSBZ), the second is *Qin lü za chao* 秦律雜抄 (Miscellaneous Excerpts of Qin Statutes; hereafter QLZC), and the third is *Xiao Lü* 效律 (Statutes on Checking; hereafter, XL). The manuscript *Falü dawen* 法律答問 (Answers to Questions Concerning Qin Statutes; hereafter FLDW) consists of questions and answers concerning Qin statutes and judicial practice.⁴ Some quotations of Qin penal statutes can be found in this manuscript. The manuscript *Feng zhen shi* 封診式 (Models for Sealing and Investigating; hereafter FZS) consists of heterogeneous “documents,” the first two of which contain instructions for judging a criminal case and interrogating suspects, while the other documents are mainly transcripts (*yuan shu* 爰書) recording accusation, investigation and sealing procedures.

In the end of 1983, different manuscripts were found in the Hubei Jiangling Zhangjiashan Han Tomb M247 湖北江陵張家山. Among them there are two legal manuscripts: the first is *Ernian lü ling* 二年律令 (Statutes and Ordinances of the Second Year; hereafter ENLL), which includes twenty-seven different statutes and one ordinance. This manuscript has been regarded as one of the most important discoveries of legal materials since it contains previously unknown penal statutes from Han times. The other legal manuscript is *Zou yan shu* 奏讞書 (Writings on Doubtful Cases [to a Higher Authority or the Emperor] for Further Decision, hereafter ZYS), which contains heterogeneous “documents:” most of them are recordings of procedures of Qin and Han criminal cases that were forwarded to a higher authority for further decision; while some are historical legal stories. This manuscript sheds

⁴ The translation of the titles of the Shuihudi legal manuscripts are taken from Hulsewé 1985.

light on the criminal procedures and legal system in Qin and early Han times. Besides the legal manuscripts found in Zhangjiashan M247 and Shuihudi M11, only scattered and fragmentary legal materials can be found in other manuscripts.⁵

In the end of 2007, Yuelu Academy has bought about 2000 Qin bamboo strips from the Hong Kong antique market. Owing to the unclear provenance, it is not sure whether all the bamboo strips originate from one cache or from several caches. The largest part of the bamboo strips acquired by Yuelu Academy 岳麓書院, more than 1000 bamboo strips, consists of legal texts. According to their content, these legal manuscripts can be classified into two parts: First, legal manuscripts consisting of 282 bamboo strips make up a collection of Qin legal cases, which were named *Wei yu deng zhuang si zhong* 爲獄等狀四種 (Four Kinds of Writings for Criminal Cases) by the editors of Yuelu Academy. This collection of manuscripts contains Qin legal cases that were submitted to the higher authorities for further decision, comparable to those of the ZYS manuscript from Zhangjiashan Han tomb M247.⁶ The second group of manuscripts with about 1000 bamboo strips is made up of excerpts from Qin statutes and ordinances (*Lü ling zachao* 律令雜抄).⁷

In my dissertation, I will focus on the ENLL manuscript in order to broaden the understanding of Han law. Since the publication of the annotated transcription and the photographs of all the bamboo strips of the ENLL manuscript in 2001, a remarkable number of articles and several books have been published. Scholars have discussed the ENLL manuscript from different perspectives. Originally, scholars mainly took an interest in the interpretation of the statutes and ordinances in the ENLL manuscript based mostly on the text, in order to gain insights into Chinese early law and its judicial system. Recently, more and more scholars have begun to discuss the nature

⁵ Li Mingxiao and Zhao Jiuxiang have introduced and studied the fragmentary legal materials in manuscripts of Zhanguo, Qin and Han in their book; see Li Mingxiao and Zhao Jiuxiang 2011.

⁶ Zhu Hanmin and Chen Songchang eds., 2013.

⁷ Zhu Hanmin and Chen Songchang eds., forthcoming.

and function of this manuscript. In 2009, Li Li has published a book *Zhangjiashan ersiqi hao mu Han jian falü wenxian yanjiu ji qi shuping* 張家山 247 號漢墓漢簡法律文獻研究及其述評.⁸ In this book, he summarized the results of researches on the ENLL and ZYS manuscripts in China and Japan in detail.

In the first chapter of my thesis, I will discuss the nature and the function of the ENLL manuscript because of the following reasons: First, though a few scholars have attempted to discuss this, their opinions differ significantly, and many questions remain unresolved. Second, the significance of understanding the nature and the function of the ENLL manuscript cannot be overestimated. According to Giele:

In view of many claims to the contrary, it has to be stressed that excavated manuscripts are not inevitably better (i.e. more “scientific” or reliable) sources than texts in the received tradition. Their value depends on the questions one asks of them and on how the texts, whether excavated or received, are put into context. Of all the considerations, the archaeological context of the excavated manuscripts is most important, for it may tell us something about authenticity and date (usually *terminus ad quem*, if the site is undisturbed), completeness and the history of textual transmission, and the original use of the writings.⁹

Just as Giele argues, the ENLL manuscript is a manuscript with Han statutes and ordinances found in a Han tomb, rather than a law code or a law document that has been officially handed down to us. In order to use the ENLL manuscript as historical research source for Han law, we first have to examine its nature and the function by considering it in its special archaeological context. Only then can we really interpret its text, and estimate reliability of the ENLL text and its role in the legal history of early China.

In the first chapter, I am going to analyze the following aspects concerning the archaeological context and physical features of this manuscript:

⁸ Li Li 2009.

⁹ Giele 2010, 114.

1. The excavation, dimension, dating and style of the Zhangjiashan Han tomb M247, as well as manuscripts found in it;
2. The layout, appearance, preservation and production of the ENLL manuscript;
3. The writing and punctuation marks in the ENLL manuscript.

After considering the ENLL manuscript in its archeological context, I will further examine other questions regarding its nature and function:

1. The status of the owner of the Zhangjiashan Han tomb M247;
2. Does the text of the ENLL manuscript contain all the Han statutes and ordinances or only a selection?
3. Did there exist an official legal text entitled “Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令);
4. Dating of the manuscript through a discussion of its title;
5. Was the manuscript privately produced?
6. Why was this manuscript put into the tomb as part of the funeral objects?

By addressing these points, I am going to show that this manuscript is a privately made manuscript, and not as previously assumed, an officially made document. It appears that this manuscript, which must have been finished near to the death of the owner, was produced for the funeral of the owner.

The legal language used in Qin and Han is specially terse and obscure; as a result, it is extremely difficult to understand Qin and Han legal texts. After publication of the Shuihudi legal manuscripts, scholars have begun to interpret and translate these texts, as well as to analyze their legal terms.

In the west, McLeod and Yates have translated the legal texts in the FZS manuscript into English with detailed annotations.¹⁰ Hulsewé translated all the legal texts from

¹⁰ McLeod and Yates 1981, 111-163.

Shuihudi M11 into English with detailed thought-provoking commentaries in his famous book *Remnants of Qin law: An Annotated Translation of Ch'in Legal and Administrative Rules of the 3rd Century B.C. Discovered in the Yün-meng Prefecture, Hu-pei Province, in 1975* (hereafter, RCL).¹¹ His translation of the legal texts and explanations of the legal terms contribute significantly to our understanding of Qin law and its judicial and administrative system. In my thesis, when I cite the texts from the Shuihudi legal manuscripts, I use Hulsewé's translation. As I decided on using Hanyu Pinyin in my thesis, I changed the Wade–Giles Pinyin in his book into Hanyu Pinyin.

Lau and Lüdke have translated all the legal texts in the ZYS manuscript into German with detailed commentaries in their book: *Exemplarische Rechtsfälle vom Beginn der Han-Dynastie: eine kommentierte Übersetzung des Zouyanshu aus Zhangjiashan/Provinz Hubei*.¹² This book increases our knowledge of Han judicial system and legal procedures. Besides, they have also been working together to explain all the legal terms used in Qin and Han legal materials in their forthcoming book: *Dictionary of Early Chinese Legal Terminology*. However, up to now, no English translation of the ENLL manuscript has been published.

In the second part of my thesis, I am going to translate part of the ENLL manuscript, explain legal terms, and analyze some words that are specially used in the legal language of Qin and Han. The law in imperial China was predominately penal and the ENLL manuscript is an important large corpus of Han penal statutes. My translation will only cover the penal statutes. An annotated English translation of the penal statutes will extend and deepen our knowledge of Han penal statutes and legal terms. It will also help researchers with an interest in early Chinese law to read and understand its legal texts, and allow readers with limited knowledge of Chinese to use

¹¹ Hulsewé 1985.

¹² Lau and Lüdke 2012.

these materials to carry out their research.

The legal language in Qin and Han was already comparatively mature. The lawmakers of Qin and Han used technical legal terms and formulas in a unified and consistent way. In the third chapter of my thesis, I will explain three formulas, *yu dao tong fa* 與盜同法, *yu tong zui* 與同罪, and *zuo zang wei dao* 坐贓為盜 that are frequently used in the ENLL manuscript, as well as in other Qin and Han legal manuscripts. Though several scholars have discussed them, scholarly opinions differ a lot on how to explain them. Once we have explained these three formulas and analyze the circumstances in which they are used, we will better understand the legal reasoning and logic behind them.

In the third part, I am going to explain these three formulas with the following method:

1. I will explain and clarify all the terms and words used in the formulas;
2. I will analyze the grammatical structure of the formulas, as well as the construction of the sentences where they are used.
3. I will examine all the occurrences where the three formulas are used in the ENLL manuscript and in the Shuihudi legal manuscripts, in order to understand the legal logic and reasoning behind these three formulas.

Chapter One

The Archaeological Context and the Nature of the *Ernian lü ling* Manuscript

1.1 Han Tomb Zhangjiashan M247

1.1.1 Excavation, Location, Dimension and Style

In 1983, a construction project of the Jiangling Brick Factory 江陵磚瓦廠 led to the discovery and excavation of three Han tombs: M247, M249, and M258. The tombs are located in the Zhangjiashan area of the Jiangling District of Hubei Province 湖北省江陵縣張家山地區 (previous Nanjun 南郡, Southern Commandery).¹³ Between December 1983 and January 1984, the tombs were excavated by Jingzhou District Museum 荊州地區博物館 together with the Jiangling Brick Factory.¹⁴

The Han tomb Zhangjiashan M247 was oriented at 275°. The tomb was built in the

¹³ Many tombs dating from the Warring States period, Qin and Han have been excavated in this area. For a concise summary of the tombs found here; see Tomiya 2010, 296-297.

¹⁴ In January of 1983, Jingzhou District Museum 荊州地區博物館 published the archaeological report *Jiangling Zhangjiashan sanzuo Han mu chutu dapi zhujian* 江陵張家山三座漢墓出土大批竹簡 in the scholarly journal *Wenwu* 文物. This article provides information on the structure of the three Han Tombs: Zhangjiashan M247, M249 and M258, the funeral objects in the tombs, the dating of the tombs; see Jingzhou diqu bowuguan 1985, 1-8. In the same issue, Zhangjiashan ersiqi hao Han mu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組 publishes the article *Jiangling Zhangjiashan Han jian gaishu* 江陵張家山漢簡概述. They briefly present the content of the manuscripts found in Zhangjiashan M 247 and analyze the status of the tomb owner. According to them, the ENLL manuscript consists of more than five hundred bamboo strips with a text of Han statutes and ordinances. No photos of the ENLL manuscript are published in this article; see Zhangjiashan Han mu zhujian zhengli xiaozu 1985, 9-15).

vertical-pit type with an underground outer wooden chamber (*guo* 槨). The pit has a length of 3.48 m, a width of 1.58 m. The depth of the tomb pit could not be measured because the pit had already been damaged during the construction work that was carried out by the Jiangling Brick Factory. The outer wooden chamber was divided into a head compartment and an inner wooden coffin (*guan* 棺). The coffin had decayed; the corpse of the tomb owner had already completely decomposed at the time of excavation, so it is unknown in which position the corpse was placed in the inner coffin.

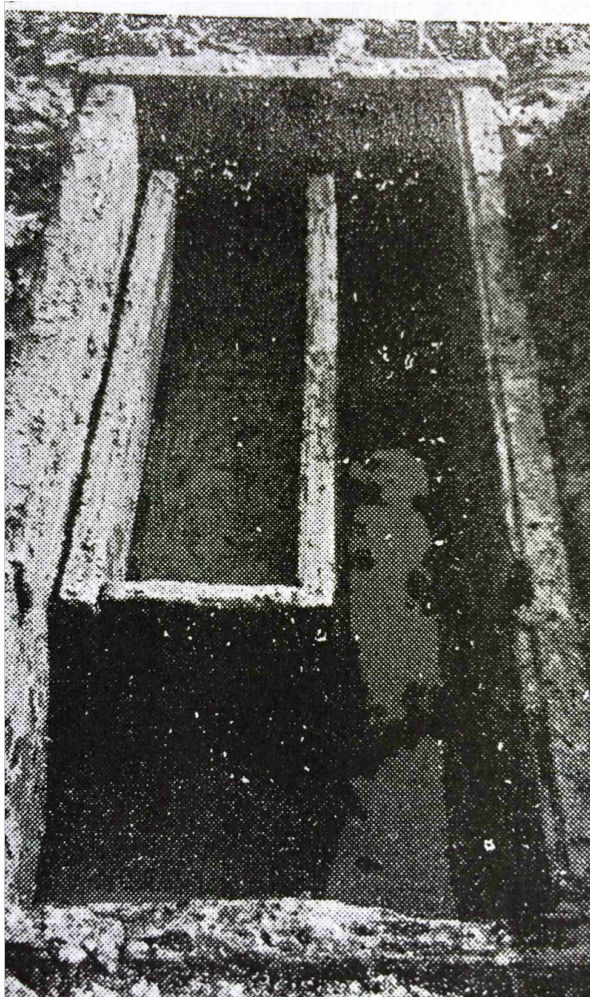


Fig. 1. Han Tomb Zhangjiashan M247

1.1.2 Funeral Objects

The tomb yielded a number of funeral objects, including a wealth of inscribed

bamboo strips. Most of the funeral objects were situated in the head compartment of the chamber. It is noteworthy that only one funeral object, a dove-head staff, was found inside the inner coffin at the time of excavation.¹⁵ Most of the funeral objects are bronzes, potteries, lacquer-wares, and wooden or bamboo objects. As the chamber was choked up with silt and water had penetrated into it, the funeral objects were in a rather poor state of preservation. Especially, the wooden lacquer-wares had seriously

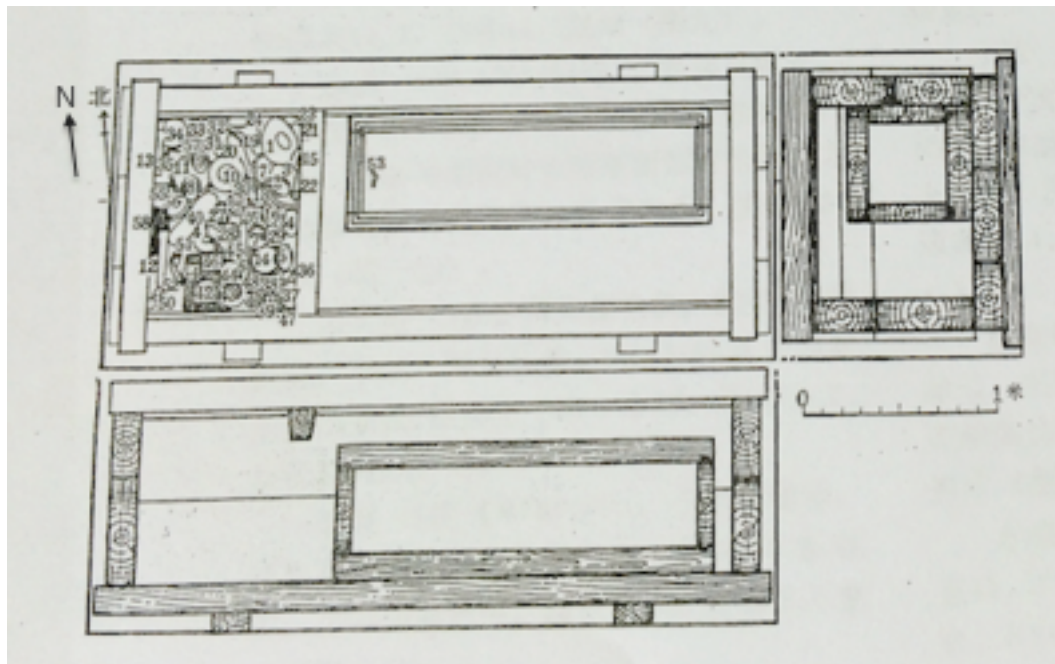


Fig. 2. The Cross-section Drawing of the Han Tomb Zhangjiashan M247

decayed. The structure of the tomb as well as the form and the ornamentation of the funeral objects suggests that the Han tomb Zhangjiashan M247 dates back to the early Former Han period.¹⁶

Not accounting for the broken fragmentary bamboo strips, 1,236 strips were found altogether in the tomb. The strips were located in two places in the head compartment.

¹⁵ It cannot be precluded that there may have existed some other funeral objects that later decayed.

¹⁶ Jingzhou diqu bowuguan 1985, 7-8.

The first place lay above the wooden bottom board close to the western side of the chamber, the bamboo strips located here had been strongly pressed by the silt and wooden lacquer-wares on top of them, so that most of them were only fragments at the time of excavation. The second place was situated above the bottom board near to the southern siding of the chamber, where pottery, lacquer-wares and silt were piled up on a bamboo basket (*zhu si* 竹筥). The bamboo strips there were all packed vertically into this bamboo basket, whose lid had already completely decayed.¹⁷ A few wooden tablets (*mu du* 木牘) without writing were placed on top of the bamboo strips. Water had penetrated into the bamboo basket; consequently, the bamboo strips have been soaked. Owing to the destructive pressure of silt and the funeral objects stacked in the chamber, the bamboo strips were poorly preserved and saturated with silt, some of them had been distorted, broken off or become fragments. The binding strings of the bamboo strips had decayed, but they left discernable traces on the strips. Due to the disintegration of the strings, some individual strips were detached from the rolls, and changed their position; however, strips of one roll were still more or less located together.

1.1.3 Manuscripts

The archaeologists have drawn a Cross-section Drawing of the Locations of the Bamboo Strips (*Zhujian chutu weizhi shiyitu* 竹簡出土位置示意圖; hereafter, the drawing) in the Han tomb Zhangjiashan M247 at the time of excavation. This drawing was then published in 2001.¹⁸ Originally seven bamboo rolls (*juan* 卷) were placed in the bamboo basket.¹⁹ Afterwards, through the textual analysis, it has become clear, that each roll comprised one codicological unit, viz. a manuscript. Thus, the

¹⁷ Ibid., 2-3.

¹⁸ ZJS 2001, 322, appendix B.

¹⁹ The editors note in the caption of the drawing that the blank wooden tables, which were put on top of the inscribed bamboo strips inside the bamboo basket, are not included in the drawing; see ZJS 2001, appendix B.

individual manuscripts had first been rolled up together, and then the seven rolls were stacked into the bamboo basket. Although some strips had been separated from their roll, it is comparatively easy to determine to which manuscript such bamboo strips belong by comparing the size of the strips and their texts.

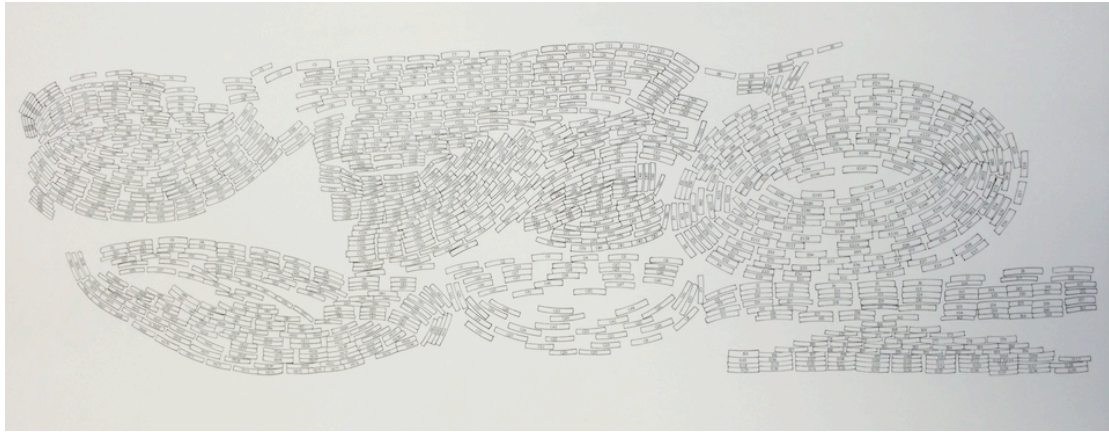


Fig. 3. The cross-section drawing of the bamboo strips found in the bamboo basket in the Han tomb Zhangjiashan M247 at the time of excavation

According to the locations in the drawing from top to bottom, the seven manuscripts are: *Calendar* (*Li pu* 曆譜), *Statutes and Ordinances of the Second Year*, *Writings on Doubtful Cases [to a Higher Authority or the Emperor] for Further Decision*, *Writings on Channels* (*Mai shu* 脈書), *Writings on Mathematics* (*Suan shu shu* 算數書), *He Lü* (*He Lü* 蓋廬), *Writings on Therapeutic Gymnastics* (*Yin shu* 引書). Except for the title “Calendar” (*Li pu* 曆譜) that was given by the editors of ZJS 2001, all other titles were originally written in the manuscripts.

Besides these seven manuscripts, an inventory of funeral objects (*qian ce* 遣冊) was also found in the tomb M247. The bamboo strips of this inventory were haphazardly scattered throughout the outer chamber and most of them had broken. The funeral objects recorded in it mostly correspond to those excavated in the tomb. The item “writings of one basket” (*shu yi si* 書一筥) is recorded in the text, which most probably refers to the inscribed bamboo strips positioned in the basket. This suggests

that they have been buried as part of the funeral objects.

On the basis of their texts, the manuscripts of Zhangjiashan M247 tomb can be classified into different categories. The ENLL manuscript and the ZYS manuscript fall into the category of legal manuscripts. The calendar and the ENLL manuscript will be later discussed in detail.

The ZYS manuscript consists of 228 bamboo strips with a length varying from 28.6 cm (about 1.2 feet) to 30.1 cm (about 1.3 feet).²⁰ Though the manuscript has the single title “*Zou yan shu* 奏讞書,” which means the doubtful or controversial criminal cases submitted to the Emperor or the higher authority for further decision, the twenty-two legal documents in the ZYS manuscript cannot all be included into this category. The manuscript is actually composed of two types of documents: the first type, documents 1-18 consist of trials of criminal cases from Qin and Han; the second type, documents 19-22, are narrative legal stories dating from the Warring States Period and Qin.

The manuscript *Writings on Mathematics* (*Suan shu shu* 算數書) consists of 190 bamboo strips, having a length of 29.6 cm to 30.2 cm (about 1.3 feet). The manuscript

²⁰ The first transcription of the ZYS text was published in the archaeological journal *Wenwu* 文物. The ZYS documents 1-16 were first published in *Wenwu* 1993, issue 8 accompanied by two explanatory articles, written by Li Xueqin and Peng Hao respectively. The remaining ZYS documents 17-22 were published in *Wenwu* 1995, issue 3 along with two articles, also by Li Xueqin and Peng Hao. The editors transcribed the text into modern, simplified Chinese characters, without publishing any photograph of the ZYS manuscript. This transcription does not reflect the writings on the bamboo strips and deviates from the actual form of the graphs in the manuscript. It does not meet the needs for a scholarly research. The photographs and a transcription with annotations were first published in ZJS 2001. For the infrared photographs and a transcription with annotations of this text; see ZJS 2007. Lau and Lüdke translated this text into German with detailed commentaries; see Lau and Lüdke 2012.

is a collection of mathematical exercises.²¹ The title “Writings on Mathematics” (*Suan shu shu* 算數書) was written on the back side of the six bamboo strip of this manuscript. This strip is also the last one of the first mathematical exercise. This manuscript is one of the oldest texts with a considerable amount of mathematical exercises and sheds light on the development of mathematics in ancient China. According to Peng Hao, some of the mathematical exercises date from the early Former Han period; while many of them date from the Warring State period in the domain of Qin.²²

The two manuscripts, *Writings on Channels* (*Mai shu* 脈書) and *Writings on Therapeutic Gymnastics* (*Yin shu* 引書)²³ can be classified as medical manuscripts. The manuscript *Writings on Channels* is made up of sixty-six bamboo strips, with a length from 34.2 cm to 34.6 cm (about 1.5 feet). The title “Writings on Channels” (*Mai shu* 脈書) was written on the back side of the first bamboo strip. This manuscript can be divided into two parts: the first part introduces more than sixty illnesses and their symptoms; the second part treats the different channels inside the human body and diseases.²⁴ The content of the second part is almost identical to that of the three medical manuscripts, *Moxibustion Canon of the Eleven Vessels of the Arms and Legs* (*Zu bi shiyi mai jiu jing* 足臂十一脈針灸經), *Models of the Channels* (*Mai fa* 脈法), and *Prognosis of Death from the Yin and Yang Channels* (*Yin yang mai si hou* 陰陽脈死候) found in Han Tomb Mawangdui M3 馬王堆 3 號漢墓 (Changsha guo 長沙國, present-day Changsha, Hunan 湖南長沙). Due to the damage to these three manuscripts in Mangwangdui M3, their texts are not as complete as that of *Writings on Channels*. Consequently, a comparison of these

²¹ For a detailed research on *Writings on Mathematics* (*Suan shu shu* 算數書); see Peng Hao 2001. This text has been translated into English with explanatory commentaries; see Cullen 2004.

²² Peng Hao 2001, 5.

²³ For the photographs and an annotated transcriptions of these two manuscripts; see ZJS 2001. For a detailed research on them; see Gao Dalun 1992 and 1995.

²⁴ ZJS 2006, 115.

manuscripts may offer scholars the possibility to supplement the text of the three manuscripts in Mawangdui M3.

The manuscript *Writings on Therapeutic Gymnastics* (*Yin shu* 引書) is composed of 112 bamboo strips with a length from 30 cm to 30.5 cm (about 1.3 feet). The title “Writings on Therapeutic Gymnastics” (*Yin shu* 引書) was written on the back side of the first bamboo strip.²⁵ This text explains the theory of nurturing life (*yang sheng* 養生) in the four seasons and the way of practicing therapeutic gymnastics to cure some diseases and ensure good health. This manuscript bears a textual resemblance with the manuscript *Charts of Therapeutic Gymnastics* (*Dao yin tu* 導引圖) excavated in Mawangdui M3.

He Lü (*He Lü* 蓋廬, ? - 496 BCE, the king of Wu 吳 in the Spring and Autumn Period) is a military manuscript and is not found in the received literature.²⁶ The fifty-five bamboo strips of this manuscript have a length from 30 cm to 30.5 cm (about 1.3 feet). The title “He Lü” (*He Lü* 蓋廬) was found on the back side of the last bamboo strip.²⁷ It is composed of nine military and political questions put forward by He Lü 蓋廬 and detailed answers by Shen Xu 申胥. It mainly illustrates the military and political thoughts of Shen Xu 申胥. According to Milburn, this manuscript contains textual problems and mistakes, which are neither a result of the damage of the physical text nor of the poor literacy of the scribe. The textual problems “are indicative of many generations of copies prior to the Zhangjiashan version of the text being written out at the very beginning of the Western Han dynasty.”²⁸

²⁵ ZJS 2006, 171.

²⁶ For photographs and an annotated transcription of this text; see ZJS 2001. For the English translation of this text and an analysis on it; see Milburn 2012, 102-140.

²⁷ Milburn suggests that *He Lü* 55, the last strip of this manuscript assigned by the editors of ZJS 2001, is likely to be the first strip instead of being the last. It summarizes some kind of information of the text; see Milburn 2012, 103-104.

²⁸ Milburn 2012, 107.

1.2. The Editions of the *Ernian lü ling* Manuscript

1.2.1 ZJS 2001

In 2001, Zhangjiashan ersiqi hao Han mu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組 (hereafter, the editors of ZJS 2001) published a book under the title *Zhangjiashan Han mu zhujian (ersiqi hao mu)* 張家山漢墓竹簡 (二四七號墓) (hereafter, ZJS 2001) in hardback.²⁹

The book contains a brief introduction of Han Tomb Zhangjiashan M247 and all the manuscripts found in it, as well as black and white full-size photographs of all the inscribed bamboo strips found in Zhangjiashan M247.³⁰ Following the photographs, the editors of ZJS 2001 present an annotated transcription of all the manuscripts in traditional characters with modern punctuation. Preceding the transcription of each manuscript, the editors provide information about the size of the bamboo strips, the title of the manuscript, and its main content. The photographs enable scholars to observe the size and shape of the bamboo strips as well as the writings, punctuation marks and other features.

In the appendix, the editors of ZJS 2001 publish the cross-section drawing and the table “A Comparative Table of the Edited Publication Numbers and the Excavation Registration Numbers of the Bamboo Strips” (*Zhujian zhenglihao yu chutuhao duizhaobiao* 竹簡整理號與出土號對照表; hereafter, the table). Using the drawing and the table, scholars have the chance to reconstruct the sequence of the bamboo strips on a scientifically sound basis. However, the editors of ZJS 2001 do not give any information about the scale used in the drawing, and which end surface of the

²⁹ The publication of ZJS 2001 started research on legal manuscripts found in Zhangjiashan Han tomb M247, for a detailed summary study; see Li Li 2009.

³⁰ The numbering of the bamboo strips in my dissertation follows this edition. The photographs of the ENLL bamboo strips are also taken from this book.

bamboo strips was included in the drawing.³¹

Although the editors of ZJS 2001 have made great contributions to the research on the ENLL manuscript, some problems exist in this edition. First, though the editors present readers with a relatively plausible transcription, they do not elaborate on their methodological principles for transcribing the graphs of the manuscripts.³² According to the photographs, in some cases, the ink of some characters had faded, leaving them illegible; nevertheless, the editors of ZJS 2001 still transcribe them. For example, only half of the bottom part of ENLL 148 is left, and the last three characters on it cannot be distinguished from its photograph; and the ink on the middle part of ENLL 318 had largely faded so that the characters written there are impossible to be read.³³ In both cases, the editors of ZJS 2001 still provide us with a transcription. We do not have any information how the editors transcribed the text. Were these characters still legible during the transcription procedure so that the editors recognized them at that time? Or did the editors transcribe such characters directly from the original bamboo strips, on which the characters are much clearer than on their photographs? Or did the editors surmise the characters on the basis of their blurred traces left on the strips and the content of the preceding or following text? Since only the editors had access to the original bamboo strips, and they did not explicate the principles and methods for their transcription, readers have no choice but to rely on their transcription, even if they are

³¹ Chun Shibin discusses the end surface of the bamboo strips included in the drawing. He infers that the drawing shows the top end surface of the manuscript *He Lü* (*He Lü* 蓋廬), while it displays the bottom end surface of the ZYS manuscript; see Chu Shibin 2006, 174.

³² Since the publication of the ENLL manuscript in this edition, many scholars examined the photographs of its bamboo strips, and commented on the transcription; see Zhangjiashan Han jian yanbuban 張家山漢簡研讀班 2006, 205-228; Chu Shibin 2004, 175; Wu Wenling 2004, 158-174; Yun 2010, 324-327. Ōba mentions some problems and mistakes existing in the transcription, in the drawing and in the table in ZJS 2001, and notes his anxiety regarding their methodology; see Ōba 2001, 138-140.

³³ In the photographs of ZJS 2007, the strip of ENLL 318 has broken into two; the characters written on it are much clearer.

suspicious of it.³⁴

It should be mentioned as well that ZJS 2001 contains some minor mistakes. For example, according to the photographs of ENLL 359-362, the scribe wrote ENLL 359-360 as one article, and wrote another article on ENLL 361-362. Textually, the text of ENLL 359-369 consists of one article, and the text of ENLL 361-362 constitutes another one. Accordingly, the scribe made no mistake. However, the editors mistakenly transcribe the text on ENLL 359-362 continuously as a single article.³⁵ According to the photograph of ENLL 414, its top part had broken away from the main part and had been lost, so that about four characters are missing; however, without pointing out the missing characters, the editors of ZJS 2001 transcribe the texts on ENLL 413 and on the remaining part of ENLL 414 continuously.³⁶

1.2.2 ZJS 2006

In 2006, the editors of ZJS 2001 published all the Zhangjiashan manuscripts in a revised edition entitled *Zhangjiashan Han mu zhujian (shiwen xiuding ban)* 張家山漢墓竹簡 (釋文修訂版) (hereafter, ZJS 2006) in paperback. Compared to ZJS 2001, some mistakes are rectified; the photographs of the bamboo strips, the cross-section drawing and the table of ZJS 2001 are not included. Three articles concerning the reconstruction of the original sequence of the bamboo strips and the transcription of

³⁴ I include my transcription of the penal statutes in the ENLL manuscript in the appendix. In case that I cannot discern the characters or punctuation marks on the bamboo strips, and the editors of ZJS 2001 or the editors of ZJS 2007 transcribe them in their editions, I have to trust their transcriptions. I marked them in 【】 in my transcription.

³⁵ The editors of ZJS 2007 noticed this problem and noted that a new article begins on ENLL 361. However, they still transcribe the text on ENLL 359-362 as one article; see ZJS 2007, 233.

³⁶ The editors of ZJS 2007 use “☐” to designate the missing characters on the lost part of ENLL 414 in their transcription; see ZJS 2007, 248.

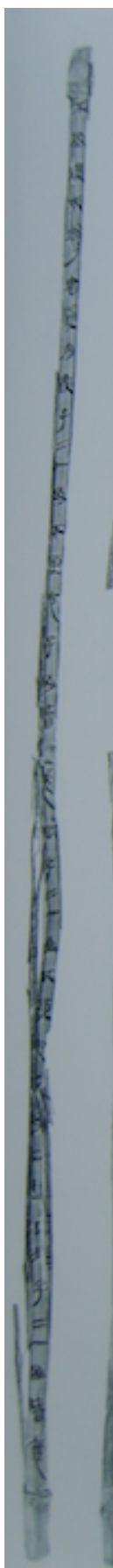


Fig. 4. ENLL 359



360



361



362

the ENLL manuscript are appended to this book.³⁷ The editors do not list the revisions they have made in this edition, so that it is inconvenient for readers to check what has changed.³⁸

1.2.3 ZJS 2007

In 2007, Peng Hao 彭浩, Chen Wei 陳偉, and Kudō Moto'o 工藤元男 (hereafter, the editors of ZJS 2007) together published a book with the title *Ernian lü ling yu Zou yan shu: Zhangjiashan ersiqi hao Han mu chutu falü wenxian shidu* 二年律令與奏讞書：張家山二四七號漢墓出土法律文獻釋讀 (hereafter, ZJS 2007) in hardback.³⁹ As the title indicates, the editors of ZJS 2007 only concern themselves with the two legal manuscripts, the ENLL manuscript and the ZYS manuscript, found in Zhangjiashan M247. This edition follows the publication number of the bamboo strips as given in ZJS 2001. The editors of ZJS 2007 also maintain the black dot “●” and the black rectangular mark “■” used in the manuscripts in their transcription, and leave out other original punctuation marks.

More importantly, this edition improves upon the preceding editions, ZJS 2001 and ZJS 2006, in certain aspects. First of all, the editors publish new full-size infrared photographs of the individual bamboo strips of the two manuscripts. By means of advanced infrared photographing and printing technology, the photographs of this edition are comparatively distinct, and some characters that were illegible in the photographs of ZYS 2001 can now be recognized and transcribed.

However, unfortunately, some bamboo strips that were still complete or well

³⁷ Peng Hao 2006, 193-200; Li Junming 2006, 201-204; Zhangjiashan Han jian yanduban 2006, 205-228.

³⁸ Li Li compares ZJS 2001 and ZJS 2006, and notes all the revisions made by the editors in ZJS 2006; see Li Li 2009, 181-222.

³⁹ Yun wrote a review of ZJS 2007, and also points out the problems and mistakes existing in the book; see Yun 2008, 311-329. For a detailed review of ZJS 2007; also see Li Li 2009, 267-342.

preserved in the photographs of ZJS 2001, have become fragmentary, twisted, cracked or have broken in the photographs of ZJS 2007 (e.g. ENLL 3, 46, 101). There may be several reasons for this: In order to keep the form of the bamboo strips, they have to be preserved in water with some kind of ether. For the process of re-photographing, the bamboo strips have to be removed from the liquid and dried. Since the strips had already been fragile at the time of excavation, it must have been inevitable for some of them to break and become fragmentary when they were moved again and re-photographed.⁴⁰ However, the editors of ZJS 2007 do not give any information about this.

The editors also provide the readers with a new transcription of these two manuscripts based on their infrared photographs as well as the texts.⁴¹ In case that a transcription is different from that of ZJS 2001, the editors explain the reasons for putting forward the new transcription and the methodological principle behind their transcription. The editors also offer us a more detailed explanatory commentary of the two texts and a comprehensive summary on the research results in the last years.

Additionally, the editors of the ZJS 2007 publish full-size infrared photographs of all the strips and fragmentary ones of the ENLL manuscript that have been newly found and were not included in ZJS 2001 and ZJS 2006. They give such bamboo strips and fragments new publication numbers and classify them into group X. According to the editors, most of these bamboo strips had been stuck to other bamboo strips of the ENLL manuscript, and were later separated. For those newly published bamboo strips,

⁴⁰ Li Li examines the change of the form of the bamboo strips based on the photographs of ZJS 2001 and ZJS 2007. He notes that only few readers care about the status of the preservation of the bamboo strips; see Li Li 2009, 315-337.

⁴¹ Yun publishes a table to show readers the differences between the transcriptions of the ENLL and ZYS text given by ZJS 2001, Tomiya 2006 and ZJS 2007; see Yun 2008, 314-324. Li Li compares different transcriptions in ZJS 2001, ZJS 2006 and ZJS 2007, and comments on them in detail; see Li Li 2009, 268-314.

whose writing can still be recognized, the editors do not only transcribe and explain their text, but also point out the bamboo strips, to which they were stuck. They also suggest to which statute they may belong and their sequence in the ENLL manuscript. For those strips whose writing had largely faded and become illegible, the editors indicate where they were located at the time of excavation.

The editors of ZJS 2007 also develop the sequence of the bamboo strips of the ENLL manuscript according to their content and their positions found in the basket. At the same time, they also take the sequence of the bamboo strips proposed by other scholars into consideration. The newly revised sequence of the ordinances in the ENLL manuscript serves as a good example for a successful reconstruction of the original sequence of the bamboo strips.⁴²

Furthermore, the editors of ZJS 2007 correct some mistakes in ZJS 2001 and ZJS 2006. For instance, the bamboo strip with the title “Statutes on Arresting” (*Bu lü* 捕律) is actually ENLL 156 according to its photograph, however, in the transcriptions of both ZJS 2001 and ZJS 2006, the editors of ZJS 2001 have mistakenly published it with the publication number ENLL 155. In ZJS 2007, the editors correct the mistake and publish it as ENLL 156.

1.3 The Physical Features of the *Ernian lü ling* Manuscript

The ENLL manuscript consists of at least 528 bamboo strips,⁴³ which occupy more

⁴² Yun 2008, 328-329.

⁴³ According to ZJS 2001, the ENLL manuscript is composed of 526 bamboo strips; see ZJS 2001, 133. The editors of ZJS 2007 note that they found two new bamboo strips and twelve fragmentary ones of the ENLL manuscript. It is difficult to determine to which bamboo strips the fragments belong; however, it is sure that the ENLL manuscript originally consisted of at least 528 bamboo strips; see ZJS 2007, 87.

than half of the strips found in the tomb, and thus constitute the largest manuscript. These strips have a uniform length of 31 cm (about 1 foot) and a width of about 0.7 cm⁴⁴ and carry the text of statutes and ordinances dating from early Han. Each bamboo strip carries a single column of writing; each article starts on a new strip, therefore, if one article ends, the rest of the strip was just left blank, with another new article starting on the next strip. The titles of the statutes and the ordinance are written on a separate bamboo strip and placed after those strips that carry the statutes and ordinances of this category.

1.3.1 Binding

Though the binding strings of the ENLL manuscript had decayed, based on the their remaining traces, it is clear that these bamboo strips were bound together by three sets of strings, which had been inserted at three positions that are regularly spaced horizontally across the strips: one at the top, one in the middle, and one at the bottom. Accordingly, the bamboo strips were divided into four parts. The margin between the top of the strip and the upper binding string (*tiantou* 天頭) is identical to the margin between the bottom of the strip and the lower binding string (*diwei* 地尾), with a length of ca. 1.5 cm. The distance from the middle binding string to the lower and upper binding string amounts to ca. 14 cm respectively.

In most cases the writing is found only between the top and the bottom binding strings. However, there are three exceptions where the writing occurs beyond the upper binding string: first, the sequence number preceding the beginning of each

⁴⁴ No information is given about the width of the bamboo strips of the ENLL manuscript in the excavation report, ZJS 2001, ZJS 2006 and ZJS 2007. According to the preface of ZJS 2001, the photographs of the bamboo strips in this book are of the same size as the original ones. I used a ruler to measure the width of a number of bamboo strips in the photographs of ZJS 2001 and got the numeric data.

ordinance;⁴⁵ second, the mark “■” preceding the titles of the statutes and the ordinance as well as the two titles of the ENLL manuscript; third, the black dot “●” made before two clauses within the ordinance with the sequence number twenty-two. As a consequence, the upper and the bottom binding strings function to let the writing begin and finish at the same horizontal, so that the whole manuscript looks neat.

There is recognizably wide spacing between the two characters written directly above and below the middle binding string in most instances, as we can see from the following photographs of ENLL 444-455. As a result, the characters avoid the middle binding string. It appears that the scribes started writing the text after the strips had been fastened together. However, a closer observation shows us that the binding strings cover the writing in a few instances (ENLL 19, 36, 90, 172, 174, 195, 204, 319, 325, 362), which suggests that the bamboo strips were bound together with binding strings after they had been written. But if so, how can we explain the spacing at the position where the middle binding string was bound and the exact margins left at the top and the bottom? There were two ways in which this could have been accomplished: The first possibility is that in order to insure the right position for the binding strings later and to arrange the writing in an orderly way, certain points where the three sets of binding strips would be inserted into the bamboo strips were marked in preparation for the writing itself. Alternatively, the bamboo strips with marks at every third length may have been used as scales and placed beside strips, which were to be written.⁴⁶

⁴⁵ Originally, a sequence number was written before the beginning text of each ordinance on the bamboo strips. Though ENLL 493, 494, 496, 498, 500, 504, 506, and 518 carry the beginning text of a ordinance: The ink of the top part of ENLL 493, 494, 496, 498, 500 had seriously faded so that the numbers cannot be distinguished; the upper part of ENLL 504, 506, 518 had broken away.

⁴⁶ Xing Yitian notes that, according to his colleague, Lin Suqing 林素清, bamboo strips with marks at every third length along the strips were found in the manuscripts from Juyan 居延 (Zhangye jun 張掖郡, present-day Gansu 甘肅). They could have been used as scales for writing bamboo strips; see Xing Yitian 2011, 29.

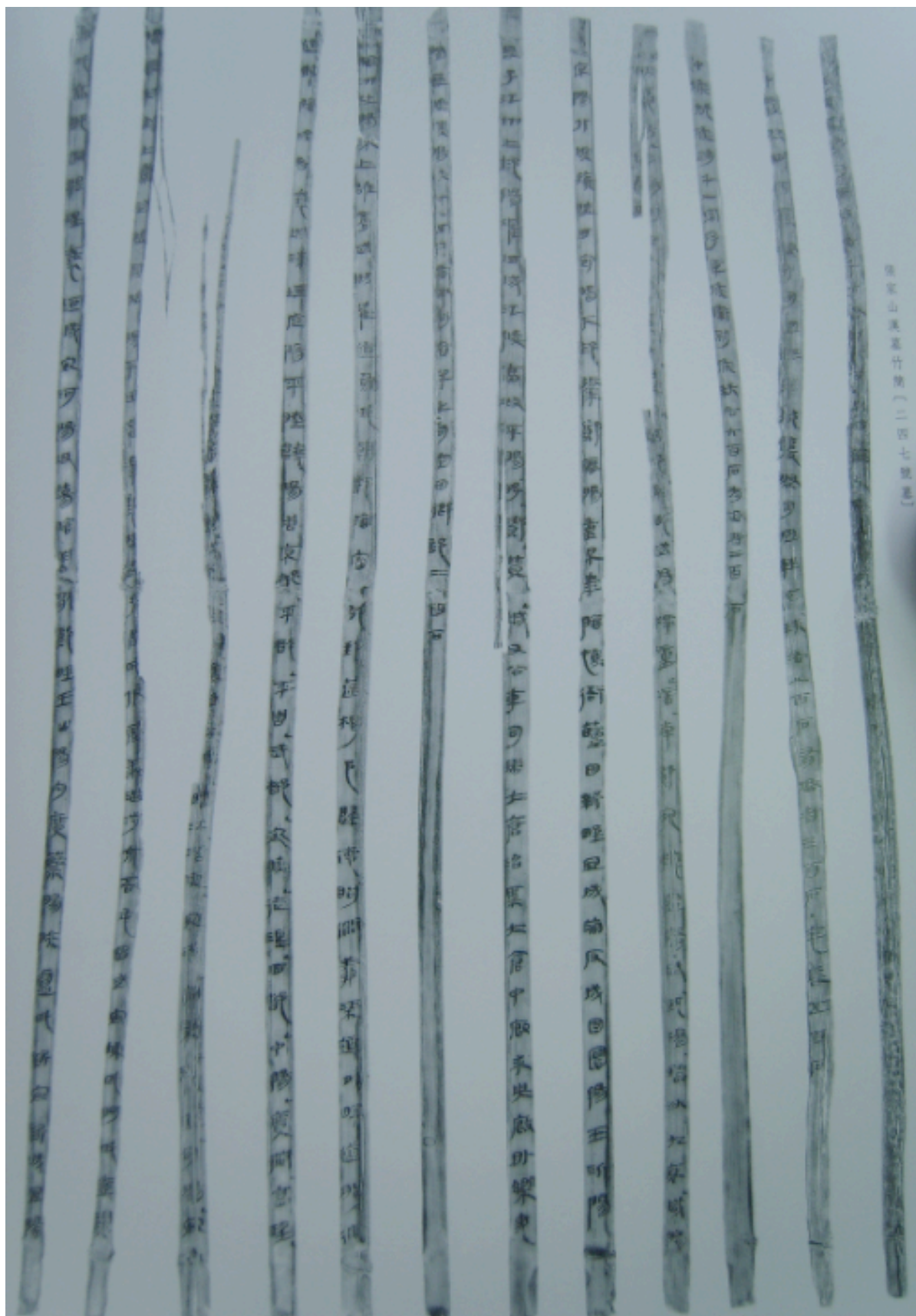


Fig.5. ENLL 444-455

It would have been reasonable to bind the manuscript after the bamboo strips had been written.⁴⁷ Since the ENLL manuscript is a large manuscript with a long text, it must have been difficult to estimate how many bamboo strips would be used for writing the ENLL text at first; it could also be the case that the scribes or someone who was responsible for selecting and writing the text had not even planned which statutes and ordinances were to be written, and just selected the articles to be written during the process of writing. Furthermore, it must have been more flexible and practical for the scribes to write the text on separate bamboo strips than on those of a long and unwieldy roll.

According to the photographs, the middle binding string of ENLL 19, 36, 174, 204, 319, 325, and 362, and the lower binding string of ENLL 90, 172 and 195 cover the writing. The scribe seems to have done this on purpose in the case of ENLL 172 and 195. The space above the lower binding string of the strip did not suffice to write the last character of an article onto the strip. However, the scribe still wrote the last character onto this strip, so that the lower binding string covers it. This flexible way of dealing with the last character of an article by the scribe makes sense: first, it benefits the format of the manuscript, as it would have appeared comparatively abrupt if only one character had occurred on a long bamboo strip; second, the article runs more fluently and continuously. Despite the use of marks or scales to indicate the position of the binding strings, it still must have been hard for the scribes to avoid the middle binding string and leave each spacing precisely between the characters written

⁴⁷ Xing Yitian discusses the procedures of producing a manuscript. In his opinion, long manuscripts consisting of a large number of bamboo strips were normally produced in the following steps: first, writing; second, binding. The reasons for doing so are: first, it is difficult to estimate how many strips will be needed for a long manuscript; second, once the manuscript has been bound together, it would be inconvenient to replace the bamboo strips containing mistakes. Normally, the first step of making bamboo strips (*zhi jian* 製簡) was cutting holes (*qikou* 契口), where the binding strings would be inserted later, along the strips; second, writing the manuscript, during writing, the spacing for the binding strings was left by scribes intentionally; third, binding; see Xing Yitian 2011, 27-30.

directly above and below it during the writing process. This may be the reason why in a few cases the middle binding string covers the writing.

1.3.2 The Roll

All the bamboo strips in the ENLL manuscript were rolled up together to form a large roll, as we can see from the cross-section drawing. However, due to the pressure, the middle part of the roll had collapsed, so that it was separated into two parts. Accordingly, the archaeologists⁴⁹ assign the bamboo strips of the two parts to Groups C and F respectively in the cross-section drawing with the only exception of ENLL 366.⁵⁰ Group C was located on the left side, while group F was situated on the right side. The edge of group F still shows more or less the form of a roll; in contrast, the form of group C had changed considerably, and some bamboo strips at its bottom side were mixed with strips belonging to the manuscript *Writings on Channels* (*Mai shu* 脈書).

The perimeters of different layers become gradually shorter and shorter from the outer layers to the inner layers. Through the textual analysis, the outer layers correspond to the beginning of the text and the inner layers correspond to the end. Accordingly, this manuscript was rolled up together with the last strip in the middle and the first at the external edge, and the inscribed front side inside. By checking the drawing and the

⁴⁹ It is not clear who made the cross-section drawing. According to the caption of the drawing, it was made at the time of excavation. It seems unlikely that the drawing was made by the editors of ZJS 2001, Zhangjiashan ersiqi hao Han mu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組. This research group must have been formed some time after the excavation. We may assume that the archaeologists who excavated this tomb provided the drawing.

⁵⁰ This bamboo strip had become fragmentary and only its upper part with the writing “Statutes on Registration” (*Fu lü* 傅律) remains, which proves that it belongs to the ENLL manuscript. The editors give it the excavation number I fragmentary 6; in fact, group I belongs to *Writings on Therapeutic Gymnastics* (*Yin shu* 引書). According to the cross-section drawing, the strips of Group I are located far from those of the ENLL manuscript. It is very unlikely that it could actually have been found there. Besides, Yin shu 28 has the excavation number I6.

table, and through the textual analysis, it can be inferred that the manuscript was rolled up from left to right and the top end surface of the strips is included in the drawing.

The title “The Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令) written on the back side of the first bamboo strip was located at the outermost edge of the roll. In this way, once the manuscript had been rolled up, the title could still be read. Since the title was exposed outside, the ink of the writing had largely faded and only some blurred traces remain on the bamboo strip.⁵¹

The second title “The Twenty-? Statutes and Ordinances” (*Lü ling er shi ? zhong* 律令二十? 種)⁵² can be found on ENLL 526. This is the last publication number given by the editors of ZJS 2001. However, the editors of ZJS 2001 did not give a corresponding excavation number to ENLL 526 in the table. Since the bamboo strip with the excavation number C161 is located in the center of the roll in the drawing,

⁵¹ It should be mentioned that a slant cut line can be found on the lower part of its back side. This is the only bamboo strip of the ENLL manuscript on which the back side carries writing. The editors of ZJS 2001 and ZJS 2007 did not publish the photographs of the back side of other strips or give us any information concerning this phenomenon. As a result, it is impossible for readers to know whether the line can be found on the back side of other bamboo strips as well, not mentioning to judge its function. The cutting line or ink line on the back side of the bamboo strips has been attracting the attention of a few scholars; see Sun Peiyang 2011, 449 – 458; Li Tianhong 2011, 102-106; Staack 2013, 20-25. In their articles, they examine the phenomenon of the line crossing the back side of the bamboo strips, discuss the functions of the line, and attempt to use the line as a clue to reconstruct the original sequence of bamboo strips of manuscripts.

⁵² It should be noted that the editors of ZJS 2001 and ZJS 2007 believe that it is a summary of the number of statutes and ordinance; instead of the title of the ENLL manuscript. I think “The Twenty-? Statutes and Ordinances” (*Lü ling er shi ? zhong* 律令二十? 種) is also a title of the ENLL manuscript based on the following reasons: First, the whole manuscript shares a unified text layout, all the titles alone occupy a separate bamboo strip. Second, though part of the top part of ENLL 526 above the upper binding string has broken away; black ink traces, probably from the rectangular mark, can still be seen there. This punctuation above the upper binding string is used in the ENLL manuscript to indicate a title. Furthermore, it is common to write a title of a manuscript on the last bamboo strip.

which is not included in the table with a publication number, Wang Wei suggests that ENLL 526 may correspond to C161.⁵³ The editors of ZJS 2001 give a publication number to a bamboo strip based on its sequence in the manuscript, so ENLL 526 is most probably the last bamboo strip of the ENLL manuscript and positioned in the center of the roll.

1.3.3 Reconstruction of the Original Sequence

With the aid of the table and the cross-section drawing, scholars have proposed reconstruction of the sequence of the bamboo strips. However, the reconstruction is hindered by the following aspects: First, the ENLL manuscript is badly preserved and a number of strips have become cracked, twisted, fragmentary; additionally, the binding strings had already decayed, and a large number of individual bamboo strips had moved from their original locations; furthermore, several mistakes exist in the table and the cross-section drawing,⁵⁴ “some bamboo strips with the excavation numbers in the drawing cannot be found in the table (C27, C44, C63, C69,⁵⁵ C87, C154, C161, C220, C217, C233, F31, F110 and F183),”⁵⁶ and their photographs are not published and they have no corresponding publication numbers. On the other hand, we also have some bamboo strips with a publication number, transcription and photograph, but without a corresponding excavation number: for some (ENLL 3, 138, 349, 402) the editors point out to which group (C, or F) they belong; for some (ENLL 169, 263, and 327) the editors just mention that they

⁵³ Wang Wei 2006, 367.

⁵⁴ Milburn mentions some mistakes in the table for the bamboo strips of the *He Lü* manuscript; see Milburn 2012, 104-105, note 17.

⁵⁵ This is a mistake made by Wang Wei. The editors of ZJS 2001 have given the strip ENLL 447 with the excavation number C69 in the table.

⁵⁶ Wang Wei discusses the problems existing in the reconstructed sequence of the ENLL manuscript given by the editors of ZJS 2001, and suggests a different reconstruction in his article; see Wang Wei 2006, 355-367.

are fragmentary strips; for ENLL 526, the bamboo strip with the last publication number, no information is given. The editors of ZJS 2001 mention that they do not include a small part of the bamboo strips in the drawing, because they have changed their positions so that their end surfaces cannot be seen.⁵⁷ However, they do not explain exactly which bamboo strips are not included in the drawing and where they were located inside the basket at the time of excavation. Is it possible that the strips that are not included in the drawing are those with publication numbers, but no excavation numbers?

We have several cases, in which “the editors assign the same excavation numbers to two different bamboo strips: ENLL 83 and ENLL 87 share the excavation number C21, ENLL 218 and ENLL 447 share the excavation number C96,⁵⁸ ENLL 340 and ENLL 426 share the excavation number C153, ENLL 294 and ENLL 460 share the excavation number C219, ENLL 77 and ENLL 441 share the excavation number F20, ENLL 408 and ENLL 468 share the excavation number F44, and both ENLL 43 and 246 share the excavation number F83.”⁵⁹ At first, I thought that two separate bamboo strips might have been stuck together, so that they appeared to be one strip, when seen from the top end surface at the time of excavation; hence, the editors gave them the same excavation number in the table. However, a closer examination lead me to abandon this assumption. Most of these bamboo strips are complete, they could not easily have been stuck together like fragmentary strips; besides, according to their position in the manuscript, in most instances, the two strips sharing the same excavation number must have originally been located far from each other in the roll. Even if the strips had moved from their original place due to pressure, it is still very unlikely that they would move to the same location and then stick together.

⁵⁷ ZJS 2001, appendix B.

⁵⁸ Wang Wei made a small mistake here. The editors of ZJS 2001 have given ENLL 218 the excavation number C96, and ENLL 447 the excavation number C69.

⁵⁹ Wang Wei 2006, 353, footnote 2.

Let us consider another example, the excavation numbers of ENLL 170 are C62 A, B, C, D, which means that this strip must have broken into four parts, and its four parts were still present at the time of excavation. Nevertheless, the photograph of ENLL 170 in ZJS 2001 shows only two parts of the bamboo strip. Still, the editors transcribed some characters, which cannot be found on these two parts. The infrared photograph of ENLL 170 in ZJS 2007 shows the other two parts of ENLL 170 that are not included in ZJS 2001. It appears that the editors of ZJS 2001 forgot to publish the photographs of the other two parts.

Unfortunately, the editors of ZJS 2001 do not explain their methodological procedures for using the cross-section drawing and producing the table.⁶⁰ Owing to the problems mentioned above, as readers, we cannot determine the exact location of some bamboo strips at the time of excavation by looking them up in the table and drawing.

Because of the poor state of the ENLL manuscript, as well as the problems in the drawing and the table, it is impossible to completely reconstruct the original sequence of the bamboo strips; still, we have some methods to approach it as far as possible. This process can start with determining the texts of which bamboo strip(s) constitutes an article. If a complete article was written on a single bamboo strip, it is easy for us to determine. If multiple bamboo strips carry an article, in order to find these bamboo strips, both the text written on them and their locations must be taken into consideration. After this step, we can use the content to decide the sequence of the strips within an article.

⁶⁰ As I have mentioned above, it seems that the archaeologists, rather than the editors of ZJS 2001, made the cross-section drawing. The editors of ZJS 2001 probably made the table after they had received the drawing and had given the publication numbers to the bamboo strips. This may be one of the reasons that the table, the drawing, and the photographs of some bamboo strips do not correspond to one other.

The next step is to assemble different strips belonging to the same statute and ordinance together. This can be done by checking whether the subject of an article matches the title of the statutes or the ordinance, as well as taking the position of the strips into consideration. Since Han law was not handed down and we do not really know the sphere of one statute; if it is uncertain to which category some strips belong, we have to rely on their excavation position. The strips near to each other are more likely to belong to the same category.

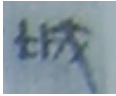







After the above step, the sequences of the bamboo strips belonging to the same statute and ordinance must be ascertained. It is comparatively easy to reconstruct the order of the articles belonging to the ordinance, as there is a sequential number written before every article; except for a few, whose numbers are illegible. For those articles with illegible numbers, the sequence has to be decided according to the positions of the bamboo strips. Unlike articles of the ordinance, the sequence of articles within individual statutes must be based on the excavation positions of their strips. Since the manuscript was rolled up from left to right, and the top end surface was included in the drawing, the articles at the upper side of the roll continue from left to right, while those at the bottom side run from right to left.

The sequence of the statutes and the ordinance must also be reconstructed on the basis of the excavation position of their bamboo strips. Since the manuscript was rolled up with the last bamboo strip in the middle and the first one at the outermost, the bamboo strips of a statute that occupy an outer layer are before those that occupy an inner layer.




















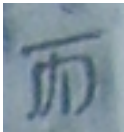

1.4 Writing and Punctuation Marks of the *Ernian lü ling* manuscript





1.4.1 Writing

The bamboo strips of the ENLL manuscript carry writing in the form of clerical script (*li shu* 隸書). Compared to small seal script (*xiao zhuan* 小篆), it allows the scribe to write more quickly and it also facilitates writing on bamboo strips with ink and brush. Since the ENLL manuscript is a legal manuscript with statutes and ordinances, there are fixed legal terms that occur frequently in the text, and several characters that are common to most texts. The morphology of those recurrent characters as they appear in the manuscript is an ideal criterion for the distinguishing of the hands. Three distinct handwriting can be identified in this manuscript: which I am going to call scribe A, B and C.⁶¹ The following table demonstrates the contrast between some frequently occurring characters written by these three scribes:


Characters	Scribe A	Scribe B	Scribe C
城	 ENLL 48	 ENLL 55	 ENLL174
旦	 ENLL 48	 ENLL55	 ENLL174
春			



⁶¹ Chen Yaojun and Yan Bin mention in their article that the ENLL manuscript must have been written by more than one scribe; see Chen Yaojun and Yan Bin 1985, 1126. Tomiya and Zhang Zhongwei also mention it; see Tomiya 2010, 308; Zhang Zhongwei 2012, 21.



	ENLL 48	ENLL55	
及	 ENLL 1	 ENLL 182	 ENLL 176
若	 ENLL 18	 ENLL 57	 ENLL 176
罪	 ENLL 15	 ENLL 60	 ENLL 176
為	 ENLL 18	 ENLL 55	 ENLL 176
人	 ENLL 36	 ENLL 57	 ENLL 176
毋	 ENLL 15	 ENLL 70	 ENLL 176
而	 ENLL 65	 ENLL 71	 ENLL 174




子	 ENLL 38	 ENLL 68	 ENLL 174
不	 ENLL 1	 ENLL 55	 ENLL 176
妻	 ENLL 38	 ENLL 68	 ENLL 176



The quality of the scribe's writing varies considerably: the characters written by scribe A are relatively elaborate and neat, the strokes do not vary largely in thickness, the angles and curves of the writing run smoothly, the interplay between curves runs flexibly, and the characters were aligned horizontally; accordingly, the characters look neat, regular, balanced and controlled. Contrary to A, scribe B wrote in a hasty and casual way. His characters are narrower and longer than those written by scribe A, and they look less controlled and balanced. The right side of his characters slants

upwards. What is more, the structure of some characters; e.g.  (*chong* 春)

and  (*wei* 為) written by scribe A manifestly differs from that of 

 (*chong* 春) and  (*wei* 為) written by scribe B. Compared to scribes A and B, scribe C wrote characters in a mostly square shape, and we see a strong contrast between their thick and thin strokes, for example, the last right-falling stroke (*na* 捺)

of the characters  (*zhi* 之),  (*ji* 及), and  (*ren* 人) is much thicker than other strokes, which indicates that the hand used more pressure during the writing of this stroke. Though scribe B sometimes also wrote thick

 right-falling strokes, for example,  (*ren* 人) in ENLL 57. Compared to that by scribe C, the whole character is longer and more dynamic, and the angle between the left-falling (*pie* 撇) and the right-falling stroke of the character is not so large as that by scribe C.

In addition to the morphology of their characters, the overall arrangement of the writing differs from scribe to scribe. Take ENLL 48-59 for example: ENLL 48-50, and ENLL 54 were written by scribe A, while ENLL 51-53, and ENLL 55-59 were written by scribe B. A cursory glance suffices to show that the spacing between characters was left more carefully by scribe A, and that the size of his characters stays roughly the same. They were also written regularly onto the bamboo strips; consequently, on the whole, the writing on ENLL 48-50 is arranged neatly and orderly. ENLL 51-53, and ENLL 55-59 are quite the opposite; scribe B did not pay much attention to the spacing between characters and also the size of the characters, and the right part of the characters slant upwards. As a result, the whole text by scribe B appears less disorderly than that of scribe A.


Special attention should be given to scribe A. He had probably received professional writing training, so that he possessed elaborate and polished writing, he was also able






Fig. 6. ENLL 48-59


to switch between two or even three forms of writing the same character.⁶² For



example, the upper left components of  in ENLL 76,  in the upper

part of ENLL 153, and  in ENLL 74 (*dao* 盜) differ from each other. Sometimes he also used a comparatively old form of characters, for example, the

character  (*zhi* 之) in ENLL 86 consists of four strokes. Despite the variations in structure and form, these characters must have been written by scribe A, since they are still written in his style, as we can see from the strokes and components of such characters. Furthermore, such characters are found between other characters that can undeniably be attributed to him. Take ENLL 74 for example, Tomiya argues that ENLL 74 was written by two scribes, indicating that the two occurrences of the

character *dao* 盜,  on its upper part and  on its middle part, have different upper left components.⁶³ Besides this character, there are other

characters occurring twice or even three times on this strip:  on the upper

part of ENLL 74,  on its middle part, and  on its bottom part;

⁶² The articles in *Statutes on Scribes* (*Shi lü* 史律) in the ENLL manuscript explicitly regulate the writing training and examination received by scribes. According to the statutes, scribes should command eight different styles of script (*ba ti* 八體). It seems that the eight styles may correspond to those mentioned by Xu Shen 許慎 in his preface to *Shuowen* 說文. However, what exactly the eight different styles of script were is not clear. Of these eight different styles mentioned by Xu Shen, some are defined by the writing materials; while others are defined by their morphological structure and shape.

⁶³ Tomiya 2010, 308.



and



both on its bottom part,



and



both on its the bottom part;



on its middle part, and



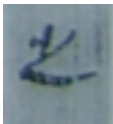

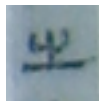






on its





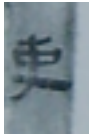
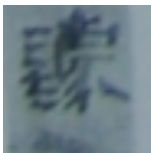






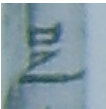
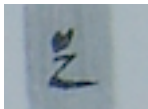

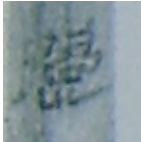

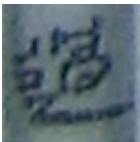
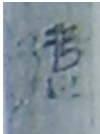



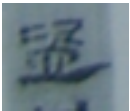
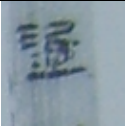






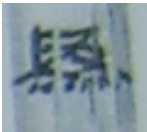


bottom part. By comparison, these recurrent characters are very similar; it is obvious that one scribe must have written them. Aside from such characters, the style of the other characters written on this strip is also the same, the size and the thickness of all characters as well as the spacing between them do not vary, they all prove that this strip was written by one scribe. Hence, the variations between forms or structures of characters alone cannot be the single criterion to decide which scribe wrote them. Having determined that this strip was written by one scribe, we will now judge by

which scribe it was written. Some common recurrent characters

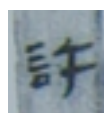





as well as the arrangement of the whole strip suggest that this strip must have been written by scribe A. The following table illustrates the different forms of the characters written by scribe A:





Characters	Different forms of the same character by scribe A				
之					
	ENLL 1	ENLL 15	ENLL 86	ENLL 180	ENLL 262
夫					
	ENLL 6	ENLL 33	ENLL 42	ENLL 42	



吏	    
	ENLL 2 ENLL 6 ENLL 19 ENLL 20 ENLL 210
法	   
	ENLL 20 ENLL 49 ENLL 75 ENLL 77
予	  
	ENLL 216 ENLL 217 ENLL 289
足	  
	ENLL 140 ENLL 241 ENLL 255
過	  
	both on the middle part of ENLL 273 bottom part of ENLL 273
遠	  
	ENLL 312 lower part of ENLL 314 bottom part of ENLL 314
盜	     
	ENLL 1 ENLL 20 ENLL 49 ENLL 66 ENLL 74 ENLL 74
為	     
	ENLL 86 ENLL 88 ENLL 88 ENLL 180 ENLL 189 ENLL 189

Scribe A did not switch between the forms of a character for semantic reasons, since different forms of a character can even be found in the same word, for example,

  (*xu zhi* 許之, allowing to do it) in ENLL 115 and   in

ENLL 343. Another example is:   (*qun dao* 群盜, thieves in a gang)

in ENLL 65,   in the upper part of ENLL 153,   in the










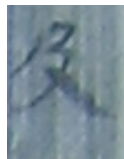



middle part of ENLL 153, and   in ENLL 155. In the above two examples, both the characters, *zhi* 之 and *dao* 盜 were used exactly for the same word, however, scribe A changed their forms on different strips. Scribe A even used two different forms of *dao* 盜 on ENLL 153, just like in ENLL 74 mentioned above.











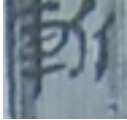














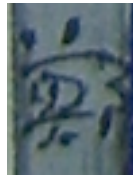


Scribe A switched between the forms of a character frequently when he wrote the same character multiple times onto the same strip, as we can see in the examples of *guo* 過 on ENLL 273, *yuan* 遠 on ENLL 314, *dao* 盜 on ENLL 74 and ENLL 153, and *wei* 為 on ENLL 88 and 189. Scribe A might have done so for aesthetic reasons to avoid monotony of writing. It could be the case as well that scribe A switched the form and structure of a character at whim and that these variations were made habitually without conscious consideration. Besides, although the thickness and size of the characters written by scribe A, as well as the spacing left between them hardly vary within one strip, they vary among different strips in the manuscript. This may be due to the irregular surface of different bamboo strips and the time that has elapsed since the brush had been saturated with ink; both affect the thickness and size of a character.

Since three scribes participated in writing this manuscript, we may ask which scribe

was assigned to which part and how did this assignment take place? ENLL 48-54 discussed above belong to the *Statutes on Banditry* (*Zei li* 賊律), thus it is evident that both scribe A and scribe B wrote the text belonging to a single statute. On the whole, scribe A wrote ENLL 1-50 and ENLL 54 of the *Statutes on Banditry*, ENLL 54 was the last strip of this statute, and its title was written there; scribe B only wrote three strips, ENLL 51-53, of this statute.


Is this the only statute for which multiple scribes took turns to write strips of a single statute? To answer this question, the writing in the whole manuscript will be examined one by one. The writing of ENLL 61-81 belonging to *Statutes on Theft* will be first observed in the following table.

Strips NO.	Scribe	Typical examples		
ENLL 55-57	Scribe B			
ENLL 58 the preceding part	Scribe A			
ENLL 58 the following part	Scribe B			
ENLL 59-60	Scribe B			
ENLL 61	Scribe A			

ENLL 62	Scribe B			
ENLL 63 the beginning 25 characters	Scribe B			
ENLL 63 the following 11 characters	Scribe A			
ENLL 64	Scribe B			
ENLL 65-66	Scribe A			
ENLL 67-73	Scribe B			
ENLL 74-79	Scribe A			
ENLL 80	Scribe B			
ENLL 81: the title	Scribe B			
ENLL 81: a scribe's signature	unknown			

The table above shows us clearly that, again, both scribe A and scribe B had taken part in writing this statute. Even if we take into consideration that the sequence of this statute suggested by the editors of ZJS 2001 may not completely correspond to the original one, it is still manifest that the scribes A and B took turns very often in writing one or two bamboo strips that directly follow each other; there are even two strips of this statute, ENLL 58 and ENLL 63, that were written by both of them.

Special attention should be given to ENLL 81, the last bamboo strip belonging to *Statutes on Theft*. As usual, we find the title “Statutes on Theft” (*Dao lü* 盜律) on its top, however, there is also a scribe’s name written above the bottom binding string:

“written by Zheng Kan ? ” (鄭  書).⁶⁴ It is obvious that these three characters were written more hastily and sloppily than the ordinary “clerical script.” It cannot be determined whether this name was written by scribe A or scribe B, who wrote this statute, since the handwriting of the signature significantly differ from that of both scribes in the ENLL manuscript. Similar to the way that the appearance of modern signatures differs from that of ordinary writing, I guess it may have been normal for a scribe to use a special style different from the one that he had learnt from the scribal school for his signature.⁶⁵ However, it remains an enigma why only the name of one

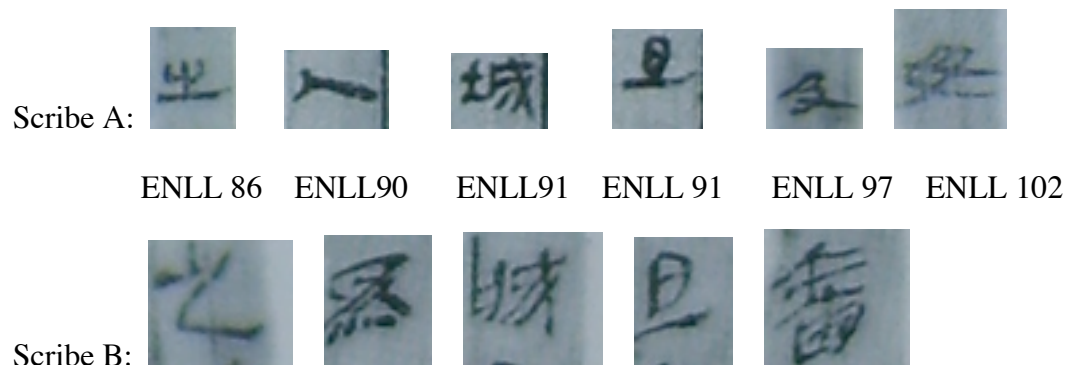
⁶⁴ In Yates’ opinion, “Zheng” written on ENLL 81 is “the name of a copyist either surnamed Zheng 鄭 or deriving from the city of Zheng plus a given name written with a graph with a “woman 女” radical which is otherwise unknown.” He thinks that the text of the ENLL manuscript was not copied by a female copyist whose name is “Zheng X;” instead, it suggests that this slip with her name on it had been used and recycled. Afterwards, the real scribe of the text did not erase the name from the slip; Yates 2014, 209-210. Giele discusses the signatures of “scribes” in the administrative manuscripts in early imperial China; see Giele 2005, 353-387.

⁶⁵ According to one Qin statute, only sons of scribes had the chance to study in scribal schools (*xue shi* 學室). QLSBZ 191: *Ling: Shi wu cong shi guan fu. Fei shi zi yi, wu gan xue xue shi, fan ling zhe you zui. Nei shi za* 令：史毋從事官府。非史子毆，毋敢學學室，犯令者有罪。內史雜, “According to the Ordinances . . . clerks must not be made to work in government storehouses. If (persons) are not sons of clerks, they must not venture to study in study-room. Those who transgress this Ordinance will

scribe can be found here, since this statute was written by both scribe A and scribe B. It is the only signature of a scribe that can be found in the whole manuscript; owing to the fact that the bottom part of the bamboo strips with the titles “Statutes on Issuing Food Rations to Post Stations” (*Zhuan shi lü* 傳食律) and “Statutes on Registration” (*Fu lü* 傳律) are both lost, it is still theoretically possible that a signature was written on one of them or even both.

Besides these preceding two statutes, *Statutes on Banditry* and *Statutes on Theft*, multiple scribes participated in writing other statutes as well. The following examples compare the writings of different hands in one statute:

Statutes on the Generalities (*Ju lü* 具律): ENLL 82-125



The upper part of ENLL 100

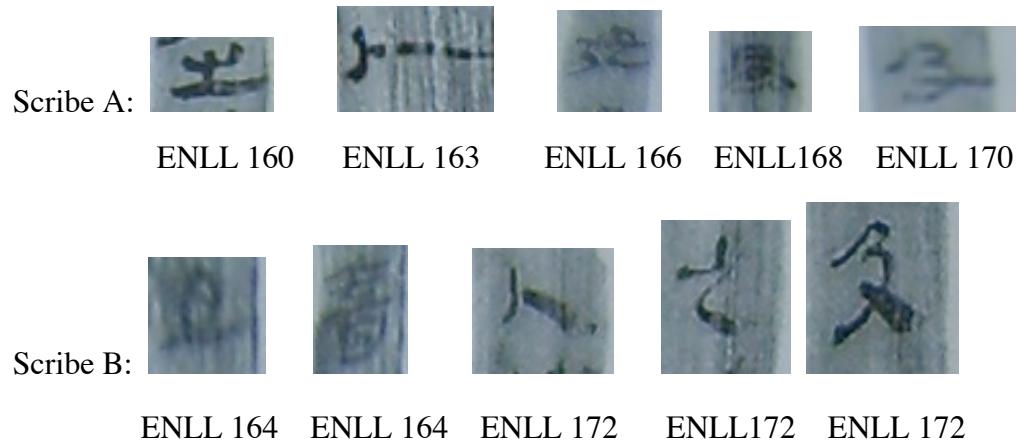


The bottom part of ENLL 100

This statute was mostly written by scribe A, except for the upper part of ENLL 100, which was written by scribe B.

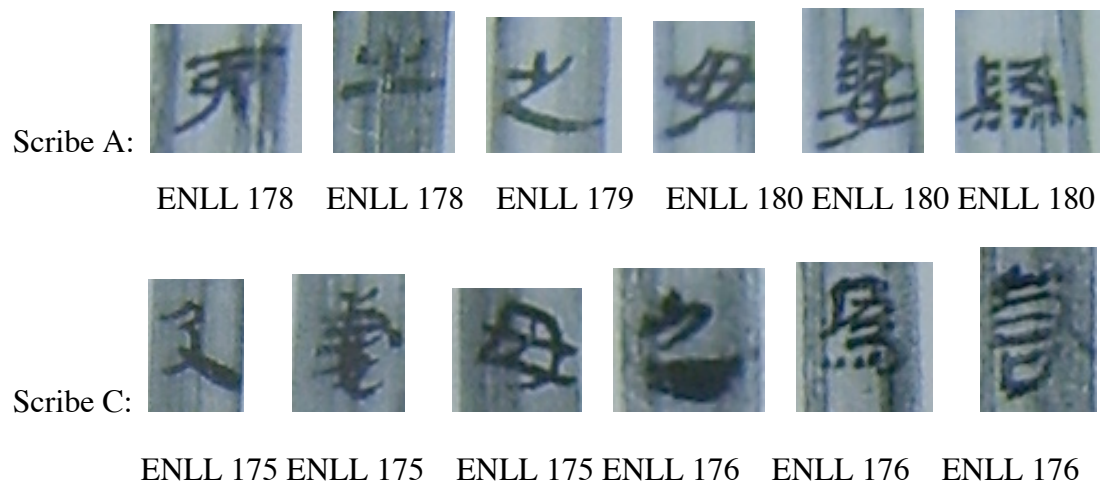
have committed a crime. (Statutes concerning) the Ministry of Finance; miscellaneous” (Hulsewé 1985, A101).

Statutes on Absconding (Wang lü 亡律): ENLL 157-173



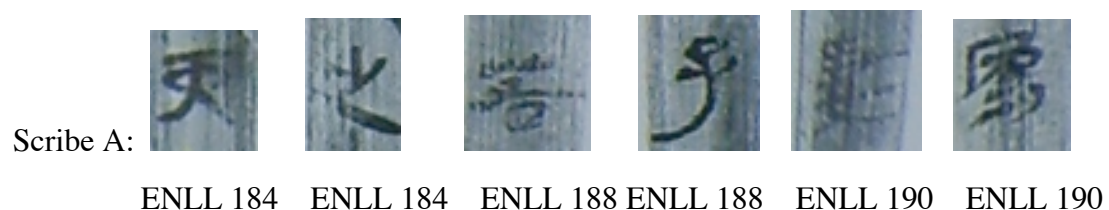
Most of the strips of this statute were written by scribe A, except for ENLL 164 and 172, which were written by scribe B.

Statutes on Enslavement and Confiscation (Shou lü 收律): ENLL 174-181



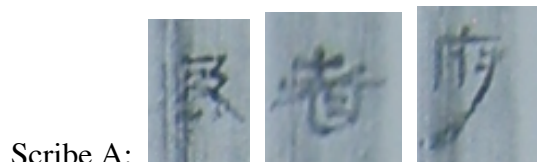
ENLL 177-181 of this statute were written by scribe A, while ENLL 174-176 were written by scribe C.

Miscellaneous Statutes (Za lü 雜律): ENLL 182-196





The beginning three characters of ENLL 193



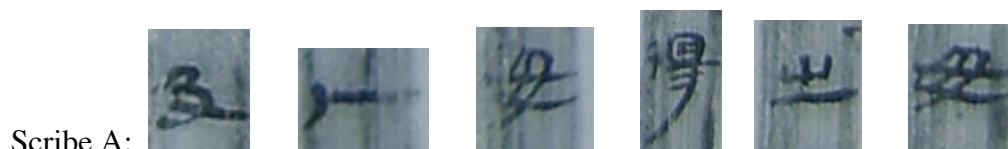
The following characters of ENLL 193



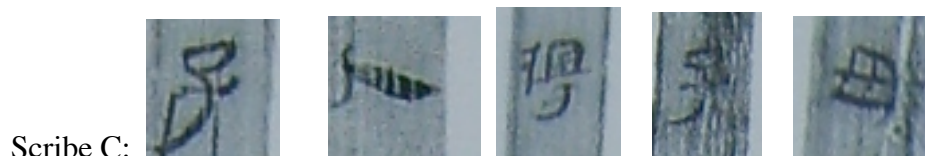
ENLL 182 ENLL 183 ENLL 183 ENLL 191 ENLL 192 ENLL 195

ENLL 184-190 of this statute were written by scribe A, while ENLL 182-183, 191-192, and ENLL 194-196 were written by scribe B. Again, in this statute, they both took part in writing one strip ENLL 193: Scribe B wrote the beginning three characters, while scribe A wrote the following characters.

Statutes on Appointment of Officials (Zhi li lü 置吏律): ENLL 210-224



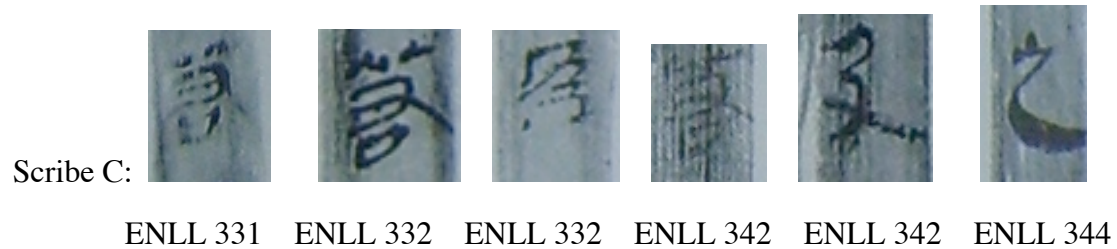
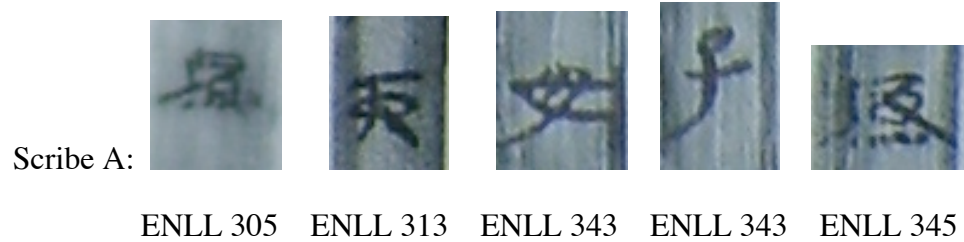
ENLL 210 ENLL 211 ENLL 213 ENLL 219 ENLL 219 ENLL 219



ENLL 221 ENLL 221 ENLL 221 ENLL 222 ENLL 223

ENLL 221-224 were written by scribe C, and all the other strips of this statute were written by scribe A.

Statutes on Household Registration (Hu lü 戶律): ENLL 305-346



ENLL 331-332, 342 and 344 were written by scribe C, and all the other strips of this statute were written by scribe A.

All the statutes mentioned above were written by two scribes. Except for the bamboo strips belonging to *Statutes on Meritorious Rank (Jue lü 爵律)* that are written by scribe B, the other remaining statutes and one ordinance were probably all written by scribe A.⁶⁶

Statutes on Meritorious Rank (Jue lü 爵律): ENLL 392-395



Though three scribes took part in writing, scribe A was the main scribe of this

⁶⁶ It should be mentioned that for certain strips, it is impossible to exactly determine, by whom they were written, either because their ink had heavily faded and the writing cannot be distinguished anymore, or because the strips were only fragments at the time of excavation.

manuscript, as he was responsible for writing more than half of the text; while the scribes B and C are accessory scribes. Scribe A being the main scribe could be explained by the fact that he was skilled in writing and mastered polished writing methods. Compared to the handwriting of the other manuscripts in Zhangjiashan M247, it seems that these three scribes have most probably only written the ENLL manuscript, so their task was only to finish this manuscript among the manuscripts found in this tomb.

If we take into account that all the scribes used the same text layout to write the manuscript, it seems that before writing it, either they all had agreed to use the same layout; or someone responsible for writing the manuscript, probably scribe A, had informed and guided them to write in this way. The fact that the scribes took turns to write strips of a single statute or even a single strip suggests they must have simultaneously participated in writing this manuscript at the same place.⁶⁷ This must be one of the reasons why the manuscript was bound up together after writing had been finished; this allowed the scribes to write this manuscript in turns more conveniently. I guess the kind of particular process of production enabled the scribes to write and produce this manuscript and finish it more quickly and flexibly: they could take turns to write the manuscript when scribe A, the main scribe, temporarily had to deal with something else; or when one scribe, especially scribe A, wrote the strips, the other two accessory scribes could assist him in preparing stationery or polished strips for his writing, drying, arranging and binding the written strips. The

⁶⁷ An examination on the handwriting of the QLSBZ manuscript in the Qin Tomb Shuihudi M11 suggests that it must have been written by one scribe, this is the same case with another legal manuscript found in this tomb, “Miscellaneous Excerpts from Qin Statutes (*Qin lü za chao* 秦律雜抄).” According to Huang Ruxuan, the Chu manuscripts collected by Shanghai Museum, *Bao Shuya yu Xi Peng zhi jian* 鮑叔牙與隰朋之諫 and *Zhou yi* 周易; and four chapters in the manuscript *Yi Li* 儀禮 from Wu Wei 武威 (present-day: Gansu 甘肅) were written by multiple scribes; see Huang Ruxuan 2011, 725-740. The way in which scribes wrote those manuscripts as discussed by Huang Ruxuan is different from the way in which the ENLL manuscript was written.

examination of their handwriting reveals to us the way in which this manuscript was produced and it suggests that the manuscript had to be finished in a short amount of time.

1.4.2 Punctuation Marks

The ENLL manuscript also contains some punctuation marks: the duplication mark “=”, the hook mark “—”, the black rectangular mark “■” and the black dot “●”. When the mark “=” is written below the right side of a character, it indicates that the character should be repeated once. Whereas, when the mark “=” occurs after the character *fu* 夫, it indicates one part of this character and “夫=” should be read as “*da fu* 大夫” (Holders of the Fifth Meritorious Rank). In case that this mark is used below the right side of multiple characters that constitute a word or a phrase, then it indicates the repetition of this word or phrase.

The hook mark “—” divides words, phrases or clauses within statutes or ordinances. For convenience and clarity, only the original marks on the bamboo strips are given in the transcription below, and the hook mark “—” is added in the English translation.

呂宣王內孫外孫內耳孫玄孫諸侯王子—內孫—耳孫—徹侯子內孫有罪，如上=造=妻以上₈₅

King Lü Xuan’s paternal grandsons, maternal grandsons, paternal grand-grand-grandsons, and paternal grand-grand-grandsons; sons of Marquises or Kings, — their paternal grandsons, — their paternal grand-grand-grandsons; — sons of the Holders of the Twentieth Meritorious Rank, or their paternal grandsons; who are guilty of a crime, [are to be punished] the same as Holders of the Second Meritorious Rank, their wives and higher.

The hook mark “—” separates persons within the statute written on ENLL 85.

鬥而以刃及金鐵銳錘棒傷人皆完為城旦舂^一其非用此物而眇人折肢齒指肤體^一斷決鼻耳者耐²⁷其毋傷也下爵毆上爵罰金四兩毆同列以下罰金二兩其有痼瘡及口罰金四兩²⁸

Fighting with blades, metal spears, awls and tenons to injure someone, is all to be punished by [doing labor] as earth pounders or grain pounders without mutilation. ^一 In the case of blinding someone in one eye; tearing off someone's limb, teeth, and finger(s); dislocating one's joint(s); ^一 or breaking off one's nose and ear(s) without such objects: it is to be punished by shaving off the beard. In case that no injury is caused, holders of a lower meritorious rank who beat holders of a higher meritorious rank are to be fined four ounces of gold; those who beat owners of the same or a lower meritorious rank are to be fined two ounces of gold. In case that there are swellings, bruises or [. . .], [the offenders] are to be fined four ounces of gold.

The hook mark “一” is used twice in this article: the first time it divides the above statute into legal clauses, the second time it separates the phrases within the second clause.

The black rectangular mark “■” can be found before the titles of the statutes or the ordinance, and the two titles of the ENLL manuscript; it emphasizes that what follows is a title.

The black dot “●” is used in the ENLL manuscript as a segmentation mark in different ways.⁶⁸ We see it frequently in the text of *Ordinances on Ports and Control stations* (*Jin guan ling* 津關令). The dot enables us to identify the different sections within an ordinance. The text following the black dot is the beginning of a new section. This usage of the black dot is also found in other manuscripts, for instance, in the FZS manuscripts found in Shuihudi M11 (the Southern Commandery, present-day Hubei 湖北) and the ZYS manuscript.

In the ENLL statutes, it occurs in ENLL 142, 176, 407, 440, 444, 445, and 459. Its

⁶⁸ Sasaki and Xu Fuchang examine this mark used in the Shuihudi legal manuscripts; see Sasaki 2004, 51-55; Xu 1993, 194-198.

use in ENLL 440, 444, 445, and 459 will be discussed first, because all these strips belong to *Statutes on Official Salaries* (*Zhi liu* 秩律). The text of this statute was written by scribe A. According to the transcription of ZJS 2001, there is a black dot “●” at the top of ENLL 440. Since its top has broken away, the black dot is not included in the photograph. ENLL 440 is the first bamboo strip of *Statutes on Official Salaries* (*zhi liu* 秩律) and carries the beginning text of its first article, hence, the black dot at the top signifies a new item here. Although this is the only case in the ENLL manuscript where the dot is used at the beginning of a new item, this usage is very common in other manuscripts of Qin and Han,⁶⁹ as well as in other manuscripts of Zhangjiashan M247, like *He Lü*, *Writings on Therapeutic Gymnastics*, and *Writings on Channels*.

After its use in ENLL 440, this mark occurs in ENLL 444 and 445. It is applied to divide different salary levels in a list sorted by the official titles. It functions as a mark, which divides different clauses within one article. The last black dot in *Statutes on Official Salaries* (*zhi liu* 秩律) can be found in ENLL 459⁷⁰ and it occurs in an enumeration of place names: the names preceding it are the names of marches (*dao* 道), where non-Chinese reside; while the places following it are the names of

⁶⁹ According to Guan Xihua, in the manuscripts of *Lao Zi* A 老子甲本 in Mawangdui M3, *the Art of War of Sun Zi* (*Sun zi bing fa* 孫子兵法) in Yinqueshan 銀雀山 (Present-day: Linyi, Shandong Province 山東臨沂), and *Fu zhuan* A 服傳甲本 in Mozuizi 磨嘴子 (Wuwei 武威, present-day: Gansu 甘肅), the black dot was written before the beginning of a new chapter; see Guan Xihua 2002, 65-95.

⁷⁰ Ma Menglong thinks that the prefectures and fiefs listed before the black dot were established before the seventh year of Emperor Hui, while those listed after the black dot were established after this year; Ma Menglong 2013, 91-92.

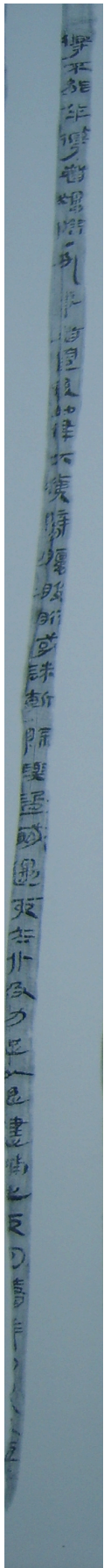
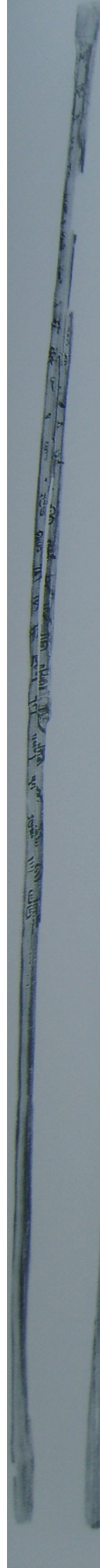


Fig. 7. 142



176



407



440



445

444



459

prefectures (*xian* 縣). Normally the hook mark “一” is used in the text of *Statutes on Official Salaries* to divide different place names. It seems that the black dot “●” is used to divide the names of marches and prefectures in ENLL 459. It must be noted, however, that in two other cases in this article, there is no such dot separating the names of prefectures from the names of marches. In conclusion, the uses of the black dot “●” in ENLL 444, 445 and 459 resemble one another in that it serves to segment words or sentences within an article.

Besides the instances mentioned above, the black dot “●” can only be found on ENLL 142, 176, 407. I retain the black dot “●” in the English translation to make it more vivid for discussion. Let us first consider its use on ENLL 142:

群盜殺傷人賊殺傷人強盜即發縣=道=亟為發吏徒足以追捕之尉分將令兼將亟詣盜賊發及之所以窮追捕之毋敢□₁₄₀界而還一吏將徒追求盜賊必伍之盜賊以短兵殺傷其將及伍人而弗能捕得皆戍邊二歲一卅日中能得其半以上盡除其罪₁₄₁得不能半一得者獨除●死事者置後如律大瘐臂臑股肱或誅斬除與盜賊遇而去北及力足以追逮捕之而官□□□□□逗₁₄₂留畏慄弗敢就奪其將爵一級免之毋爵者戍邊二歲而罰其所將吏徒以卒戍邊各一歲興吏徒追盜賊已受令而逋以畏慄論之₁₄₃

When a gang of thieves kill or injure someone, when persons kill or injure someone with malice aforethought, or when persons steal something by force, after [these crimes] occur in a prefecture or in a march, the prefecture or the march should send enough officials and laborers immediately to pursue and catch them, Commandants [of the Prefecture] should divide and lead them and the Prefect should lead all of them, so that they shall be presented immediately to the places where the thieves or bandits become active or arrive, in order to pursue, arrest all of the thieves or bandits and they are not allowed to venture to [. . .] the boundaries and return. The officials who lead laborers to pursue and search for thieves or bandits must divide them into groups of five. If the thieves or bandits use short weapons to kill or injure the leaders and members of the groups of five, when they do not arrest and catch thieves or bandits, they are all to perform military service at the frontiers for two years. If they catch more than half of the thieves or bandits in thirty days, they are all to be exempted from punishment; if they catch less than half of the thieves or bandits, those who have caught them are to be exempted from punishment alone. ● If someone [who is sent out to arrest and catch thieves and

bandits] dies in the service, his heir is to be settled according to the statutes [on Inheritance]. Those who have serious wounds in arms, upper limbs, hips or the upper part of legs, those who have been killed, or those whose feet have been cut off, are to be exempted from punishment. Those who encounter thieves and bandits escape, those whose strength is enough to pursue and arrest thieves or bandits [. . .] and those who stop [fighting] because of cowardice and dare not get close to the thieves or bandits: are to have one degree of their meritorious rank deprived and be removed from office, those who have no meritorious rank are to perform military service at the frontiers for two years, the officials and laborers who are led by them are to perform military service at the frontiers for one year. Officials and laborers who are conscripted to pursue thieves or bandits, after they have received the order of conscription they avoid it, are to be judged by [stopping fighting] because of cowardice.

The above article was written by scribe A. It regulates the way of pursuing bandits and thieves by officials and laborers, the punishment that they shall receive if they fail in fulfilling their duties, and the circumstances in which they are to be exempted from punishment. The first sentence following the black dot (*Si shi zhe zhi hou ru li* 死事者置後如律) introduces related additional information into this statute. It could be expected that the officials and the laborers responsible for pursuing bandits or thieves would be killed during a battle, based on the information supplied by the sentence, we know that in such case, their inheritance would be settled according to *Statutes on Inheritance* (*Zhi hou li* 置後律).⁷¹ If we leave out this sentence, the whole text would be consistent and coherent. Thus, the sentence does not seem to belong to this article. The black dot also occurs on ENLL 176:

夫有罪妻告之除于收及論 一妻有罪夫告之亦除其夫罪 ● 毋夫及為人偏妻為戶若別居不同數者有罪完舂白¹⁷⁶ 梟以上收之毋收其子內孫毋為夫收¹⁷⁷

When husbands are guilty of a crime and their wives accuse them to the authority,

⁷¹ This sentence is very similar to the text in a statute in QLZC: *Zhan si shi bu chu, lun qi hou. You hou cha bu si, duo hou jue, chu wu ren; bu si zhe gui, yi wei li chen* 戰死事不出，論其後。又後察不死，奪後爵，除伍人；不死者歸，以為隸臣， “When someone has died in battle for the service without surrendering, a decision is taken (to reward) his successor. When again later it is shown that he did not die, the successor is divested of the aristocratic rank. The men of his group of five are freed (of punishment). The man who had not died is made a bond-servant on his return” (QLZC 37 = RCL C23a).

their wives are to be exempted from enslavement by the government and a judgment; if wives are guilty of a crime and their husbands accuse them to the authority, their husbands are to be exempted from punishment as well. • Those who have no husbands, those who are concubines of someone, those (women) who are registered with a separate household or reside separately with a different registration of household, if they are guilty of a crime punished by [doing labor] as grain pounders without mutilation, sorters of white rice or more severe; in case of being enslaved by the government, their children, paternal sons are not to be enslaved. They are not to be enslaved by the government because of their husbands' crimes.

Scribe C wrote the text above continuously on ENLL 176-177 as a single article; nevertheless, the two parts of the text, before and after the dot, do not really connect with each other. The text preceding the black dot stipulates the exemption from enslavement and confiscation that are caused by the linked liability between husbands and wives; while the text following it regulates the enslavement of children and paternal sons of female criminals under different circumstances. Thus, the black dot seems to mark a change in topic. The black dot then occurs in ENLL 407:

皖老各半其爵徭員入獨給邑中事 • 當徭戍而病盈卒歲及繫勿攝。⁴⁰⁷

*Huan lao*⁷² do half of the labor and supply in the county as those with the same meritorious rank as them. • Those who⁷³ by law shall do labor or military service; if they have been sick, fully one year, or if they have been held in detention; are

⁷² The definition of *huan lao* 皖老 can be found in ENLL 357: *Bugeng nian wu shi ba, zanniao wu shi jiu, shangzao liu shi, gongshi liu shi yi, gongzui, shiwu liu shi er, jie wei huan lao* 不更年五十八, 簪裹五十九, 上造六十, 公士六十一, 公卒、士伍六十二, 皆為皖老, “When Holders of the Fourth Meritorious Rank are fifty-eight years old, when Holders of the Third Meritorious Rank are fifty-nine years old, when Holders of the Second Meritorious Rank are sixty years old, when Holders of the First Meritorious Rank are sixty-one years old, when commoners and persons of rank and file of five are sixty-two years old: they are all *huan lao*.”

⁷³ The editors of ZJS 2007 believe that the subject of this sentence is *huan lao* 皖老, which is the same with the preceding sentence. I think this sentence must have been meant to apply to all people. If someone, regardless of age, has been sick for one year, or has been held in detention, practically, it is unlikely for him to do labor or military service.

not required to do the service.⁷⁴

Scribe A wrote the text above onto one bamboo strip as a single article. The text, however, which is separated into two parts by the black dot, must be seen as two articles, since the two parts pertain to different topics. The first article says that on account of their old age, *huan lao* 眊老 have the privilege to do half of the labor and supply. According to the other article, persons having been sick for one year or being in detention, are exempted from doing service. Since these two articles both specify the statutory labor performed by different groups, they both belong to *Statutes on Statutory Labor* (*Yao li* 徭律). Like the black dot in ENLL 176, this dot marks the beginning of a new article.

There are certain similarities among the usage of the black dot “●” in ENLL 142, 176 and 407. In all the above instances, it is used to indicate that the content of the text following it differs from that of the text preceding it. I first suspected that the scribes added the black dots themselves to mark that they had mistakenly written two articles onto one strip (ENLL 407, 176), or added a sentence to an article (ENLL 142). However, a close observation of the photographs of ENLL 142, 176 and 407 shows that the spacing where the black dot occurs is so broad, that the scribes did not squeeze the dot in spacing between the characters below and above it, but rather wrote it as part of the text. Thus, the black dots were probably already present in the original text(s).

⁷⁴ The editors of ZJS 2007 think that the text written on ENLL 407 consists of two articles as well and these two were divided by the black dot; see ZJS 2007, 246-247.

1.5 The Nature and the Function of the *Ernian lü ling* Manuscript

1.5.1 The Owner of the Tomb

In the Han tomb Zhangjiashan M247, the manuscript *Calendar* (*Li pu* 曆譜) was located between the ENLL manuscript and the ZYS manuscript in the basket at the time of excavation. This manuscript consists of nineteen bamboo strips⁷⁵ with a length of 23 cm (about 1 foot). They were badly preserved, five of these nineteen strips had broken and only part of them is left, other strips had been bent by pressure, as can be seen on figure 8.

The writing of this manuscript starts directly at the top of the bamboo strips, without any margin left at the top. Every bamboo strip records the Heavenly Stems (*tian gan* 天干) and Earthly Branches (*di zhi* 地支) of the first day (*shuo ri* 朔日) of each month in a specific year.⁷⁶ Though the calendar covers a long period of time, its text was probably written by one scribe continuously. This suggests that the calendar was written on, or most probably, after the last date recorded in it. The scribe writing the calendar did not possess polished handwriting; his writing seems hurried. For example, the scribe did not pay attention to the size of the characters, as well as the spacing between them. This is evident, since the number of characters to be written on a strip is almost the same with the exception of leap years, but the way in which the bamboo strips were written differs wildly: in some cases the writing of the dates of a year does not occupy the whole bamboo strip, leaving a blank on the bottom after the last character, and then a new year begins on a new strip; in some cases the writing

⁷⁵ The editors of ZJS 2001 note that the calendar consists of eighteen bamboo strips; see ZJS 2001, 129. However, the manuscript was composed of nineteen strips originally. The reasons for assuming this will be discussed in the following passages.

⁷⁶ It should be noted that a year in the Han calendar starts with the tenth month, and ends with the ninth month.

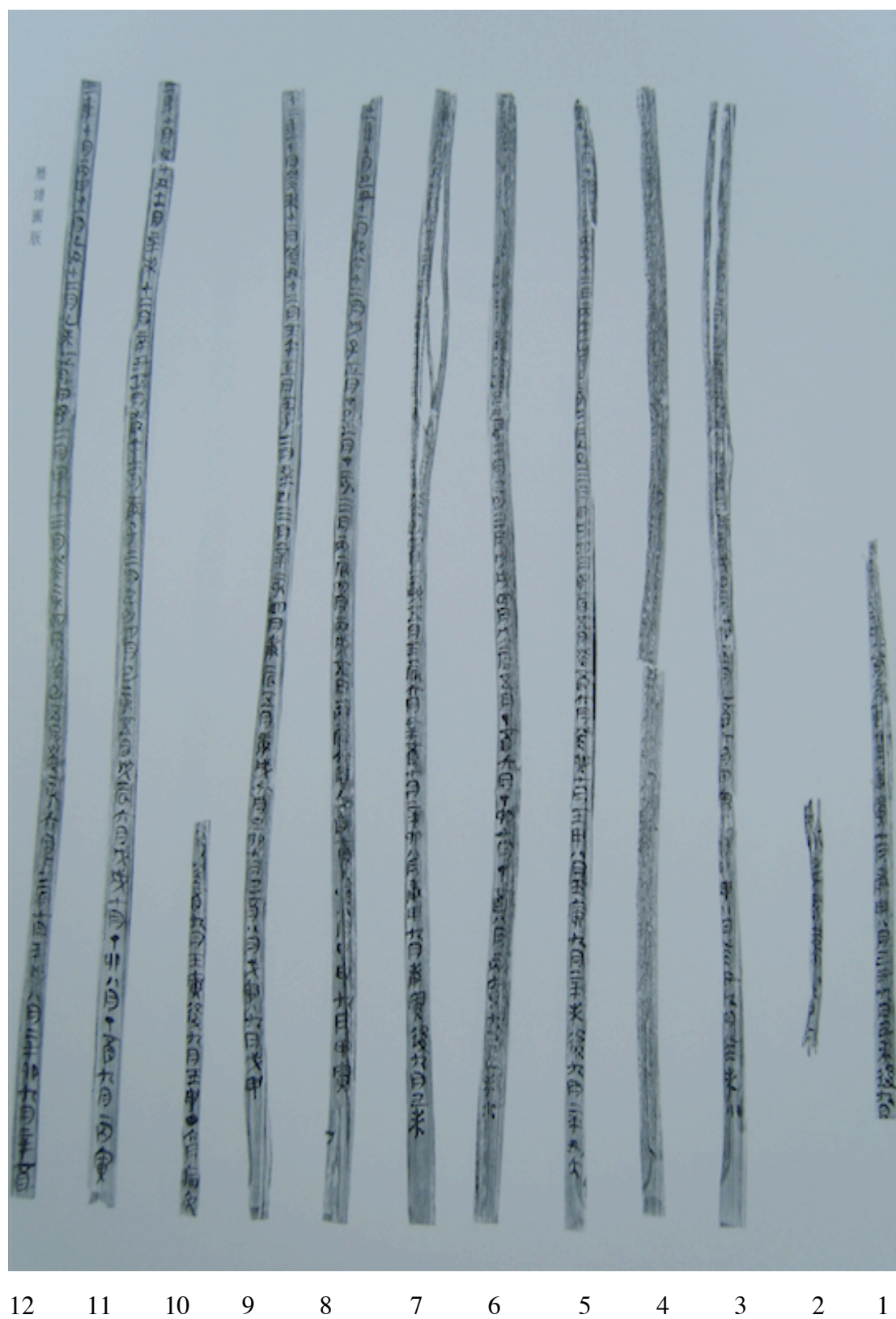


Fig. 8. Calendar 1-12

covers the whole length of the strip, but the characters on it are squeezed (Calendar 12, 14, 16); while in other cases the writing does not finish on the front side of the bamboo strip and continues on its back side (Calendar 13, 15).⁷⁷

Two entries in the calendar seem to be connected to the owner of the tomb: One entry is written at the bottom of Calendar 10, the upper two thirds of which had broken away. According to the remaining dates on this strip, it can be inferred that it records the dates of the first year of Emperor Hui (194 BCE). The entry says: “In the sixth month, being removed from office because of illness (*Liu yue, bing mian* 六月，病免).”⁷⁸ This entry is written after the Heavenly Stems (*tian gan* 天干) and Earthly Branches (*di zhi* 地支) of the first day of the later ninth month (*hou jiu yue* 後九月) in the recorded year, instead of after the sixth month. A big black dot was used to separate this entry from the dates before it. It is possible that the scribe had forgotten to write this item directly after the first date of the sixth month in this year, and then he added the item and indicated it by the black dot later; it is also possible that the text was purposely placed after all the dates of the year. According to this entry, the owner must have worked as an official in Han before his removal in the sixth month of the first year of Emperor Hui (194 BCE).

The other entry is written on Calendar 2. The strip was fragmentary at the time of excavation and contains the text:

☐ 新降為漢，九月 ☐

[. . .] recently surrendering (to Han) and becoming part of Han. In the ninth month

⁷⁷ According to the photographs, a small triangular cut inside the back side of these two strips can be found respectively, no such cut can be found on their front side in the photographs. No information is given about these cuts by the editors.

⁷⁸ Yates notes the differences between *fei* 廢 “be banned” and *mian* 免 “be dismissed” in Qin and Han legal and administrative texts. If an official was banned from office, he could not be reappointed as an official any more. While if an official is dismissed from office, even on account of a less serious violation, he could serve as an official again; see Yates 1995, 347.

[...]

As no other date is found on this fragmentary strip, we cannot easily decide to which year the text belongs. The editors of ZJS 2001 suggest that the entry on Calendar 2 records an event in the fifth year of Emperor Gao (202 BCE). The dates of this year are written on Calendar 1. As a result, though they assign a separate publication number Calendar 2 to the bamboo strip of this entry, they transcribe the text of this entry directly after the text on Calendar 1.⁷⁹ Calendar 1 is incomplete; the remaining part contains only the fourth month to the later ninth month in the fifth year of Emperor Gao (202 BCE), with the top part and a bottom part following the remaining part missing.

As mentioned above, the manuscript *Calendar* possesses a consistent format, insofar as all the dates belonging to a single year were written together on one bamboo strip. If the text written on Calendar 2 belongs to the same year as that on Calendar 1, there would be only two possibilities: Calendar 2 might be the bottom part of Calendar 1; or Calendar 2 might be part of the back side of Calendar 1.

We can more or less estimate the length of the two missing parts of Calendar 1 based on the dates recorded on them. If we piece together all the parts of Calendar 1 and Calendar 2 continuously, the length must have been much longer than 23 cm, the uniform length of the other bamboo strips in this manuscript. Thus, Calendar 2 cannot be the fragmentary bottom part of Calendar 1.

This leaves the second possibility: Calendar 2 was part of the back side of Calendar 1. Only when the writing does not finish on the front side of a strip, it continues on its back side. This means that both sides of Calendar 2 would have contained writing. If this were so, the editors would have easily noticed it. Since this is not the case,

⁷⁹ ZJS 2006, 3-4.

Calendar 2 cannot be part of the back side of Calendar 1. Hence, this entry recorded in Calendar 2 is not part of the text written in the fifth year of Emperor Gao (202 BCE).

This leaves the question: which year is recorded on Calendar 2? The year must have been earlier than that of the second entry in Calendar 10, namely, the first year of Emperor Hui (194 BCE), since only after surrendering to Han, the owner could have had the chance to become an official in Han, and later to be dismissed from the office because of his illness. The bamboo strips, which record the preceding years, are Calendar 1, and 3-9. The possibility of the year that is recorded on Calendar 1 has already been excluded. The texts on strips Calendar 3-9 contain the dates from the sixth to the twelfth year of Emperor Gao. The writings on all these bamboo strips finish in their lower part, leaving a bottom margin. So Calendar 2 could not have broken away from any of them, and must be part of another bamboo strip, on which the year before the fifth year of Emperor Gao (202 BCE) is recorded, that is, his fourth year (203BCE). Therefore, Calendar 2 precedes Calendar 1, and *Calendar* records the time period between the fourth year of Emperor Gao (203BCE) and the second year of Empress Lü (186 BCE).⁸⁰

It is difficult to determine the exact meaning of the first entry: Whether the owner of the tomb himself surrendered to Han, or the area, part of the Southern Commandery (*Nanjun* 南郡), where he probably worked as an official and then resided, was conquered by Han and then became part of Han in the fourth year of Emperor Gao. As no entry in the calendar records the time when he assumed an official position in Han after surrendering, it seems that he had already been an official before the

⁸⁰ Liu Jinhua concludes that the dates of calendar 2 belong to the fourth year of Emperor Gao (203BCE) by analyzing the dates of this year and the fifth year of Emperor Gao (202 BCE); see Liu Jinhua 2004. Zhang Jinguang thinks that the item recorded in calendar 2 should have taken place in the eighth month of the fourth year of Emperor Gao (203BCE) according to the historical records in HS; see Zhang Jinguang 2008.

surrender, and he continued working as an official after surrendering to Han.

A comparison between the funeral objects and the structure of Zhangjiashan M247 and those of other tombs in the Jiangling district suggests that his status was probably not high, and he may have worked as a local lower official.⁸¹ One of the main duties of local officials in Han was applying the law, investigating and preparing criminal cases, and imposing a punishment on offenders.⁸² The two legal manuscripts, the ENLL manuscript and the ZYS manuscript, make up more than half of the bamboo strips found in the tomb. It is possible to conjecture that the owner of the tomb was concerned with legal practice as a local official in early Han.

In the tomb a dove-head staff was positioned in the inner coffin.⁸³ One article in the ENLL manuscript regulates the prerequisites for receiving a dove-head staff in Han.

大夫以上七十，不更七十一，簪褭七十二，上造七十三，公士七十四，公卒、士伍七十五，皆受杖。³⁵⁴

When the Holders of the Fifth Meritorious Rank or higher are seventy years old, when the Holders of the Fourth Meritorious Rank are seventy-one years old, when the Holders of the Third Meritorious Rank are seventy-two years old, when the Holders of the Second Meritorious Rank are seventy-three years old, when the Holders of the First Meritorious Rank are seventy-four years old, when the commoners or the members of the rank and file are seventy-five years old, they are all to receive a staff.

As mentioned above, the owner probably did not possess high status. Even if we

⁸¹ ZJS 2001, 1.

⁸² In Qin and Han, local officials are normally not specialized in particular tasks. They were responsible for various local administrative tasks, for example, collecting taxes, registering population and land, maintaining social security, and enforcing law; see Kiser and Cai 2003, 527-528.

⁸³ The archeologists do not mention this dove-head staff in the excavation report of the Zhangjiashan tombs (M247, M249 and M258). The staff can be found in the plane drawing of the Zhangjiashan M247 tomb and it was located alone on the left side of the inner coffin. As no further information is given, we know nothing about its appearance or its state of preservation.

assume that he had possessed the fifth meritorious rank or higher, he would have been at least seventy years old when he died, in order to receive a dove-head staff. This corresponds to the records in the calendar. The owner's calendar ends with the second year of Empress Lü (186 BCE), he might have died and been buried in the same year or slightly later. The owner had been removed from office in the first year of Emperor Hui (194 BCE) on account of his illness, eight years before the last year in the calendar; if he died when he had been over seventy years old, he would have been over sixty at the time of his removal from office. It is likely that he was not able to fully perform his official duties at this age, and because of poor health, he died a few years later.

A manuscript consisting of ten wooden strips was found in the Han Tomb Mozuizi 磨嘴子 M18 (Wuwei 武威, present-day: Gansu 甘肅) in 1959. These strips were fastened to a dove-head staff in the tomb at the time of excavation. According to the two imperial ordinances written in the manuscript, a dove-head staff granted the elderly certain privileges and symbolized their power and respectable status. This was a special imperial favor to the elderly.⁸⁴ This could explain, why the dove-head staff was regarded as so important to the owner and was placed together with his body in the inner coffin.

1.5.2 The Dating of the *Ernian lü ling* Manuscript

In order to examine the dating of the ENLL manuscript, the title “Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令) found on the back side of ENLL 1 has to be considered. Scholars have heatedly argued about the meaning of this title. The majority of scholars, including the editors of both ZJS 2001 and ZJS 2007, believe that this year must be the second year of Empress Lü (186 BCE); some suggest that this title refers to the second year of Emperor Gao (205 BCE); others

⁸⁴ Loewe analyzes these ten strips found in Mozuizi M18 and translates them into English; see Loewe 1965, 13-26.

claim that it must be the second year of Emperor Hui (193BCE).⁸⁵

To resolve the question to which year the title “Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令) refers, it is indispensable to first examine what the title actually implies: Were the statutes and ordinances in the ENLL manuscript enacted and promulgated in the second year? Were they applied in the second year? Or was the manuscript written in the second year?

In the ENLL manuscript, the date of the enactment of some statutes can be more or less estimated based on related historical recordings in the received literature. For instance, the statute written on ENLL 82 is very similar to an imperial edict enacted by Emperor Hui in the fifth month of the first year of his reign (194 BCE):

上造、上造妻以上，及內公孫、外公孫、內公耳玄孫有罪，其當刑及當為城旦舂者，耐以為鬼薪白粲。⁸²

Holders of the Second Meritorious Rank, their wives and higher, and paternal sons, maternal sons, paternal grand-grand-grandsons and grand-grandsons of Marquises and Kings, who are guilty of a crime and [by law] shall be mutilated and made earth pounders or grain pounders, are to have the beard shaved off and made firewood gatherers for the spirits or sorters of white rice.

上造以上及內外公孫耳孫有罪當刑及當為城旦舂者，皆耐為鬼薪白粲。⁸⁶

Those of [the aristocratic rank of] Superior Accomplished and above, together with the great-grandsons of marquises or kings belonging to the imperial house by male or female descent who had committed crimes and should justly [suffer] mutilating punishment, together with those who should justly be made to [build] the fortifications or [patrol from] the break of day or pound rice, were all to have their whiskers shaved and be made to [cut] firewood for the spirits or [prepare] pure rice.⁸⁷

⁸⁵ Li Li has written a study review about this title; see Li Li 2006, 144-150.

⁸⁶ HS 2, 87.

⁸⁷ Dubs 1938 I, 176-77.

By comparison, it seems that the article may have originated from the imperial edict, so it was made near to the first year of Emperor Hui (194 BCE).⁸⁸

Another example is the statute written on ENLL 85:

呂宣王內孫、外孫、內耳孫玄孫，諸侯王子、內孫、耳孫，徹侯子、內孫有罪，如上造、上造妻以上。⁸⁵

King Lü Xuan's paternal sons, maternal sons, paternal grand-grand-sons, and grand-grand-sons; sons, paternal sons, paternal grand-grand-sons of Marquises or Kings; sons or paternal sons of the Holders of the Twentieth Meritorious Rank, who are guilty of a crime, [are to be punished] the same as Holders of the Second Meritorious Rank, their wives and higher.

It is known that King Xuan of Lü (*Lü Xuan wang* 呂宣王) is the father of Empress Lü. In the first year of Empress Lü's reign (187 BCE), she conferred the title of King Lü Xuan on her father.⁸⁹ Therefore, this article could not have been made earlier than in the first year of Empress Lü (187 BCE).⁹⁰

Besides these two statutes, for which we can estimate the date of their enactment; scholars have attempted to do the same for other statutes in the ENLL manuscript as well.⁹¹ For instance, Gao Min argues that the statutes and ordinances in the ENLL manuscript were not all enacted in the same year, but within a long period of time. Most of them were enacted between the fifth year of Emperor Gao (202 BCE) and the second year of Empress Lü (186 BCE). Among them, many articles of *Statute on Registration* (*Hu lü* 戶律) originate from the ordinances of the fifth month in the fifth

⁸⁸ Gao Min 2003, 32-35.

⁸⁹ HS 18, 679.

⁹⁰ Based on this article, the editors of ZJS 2001 and the majority of the scholars believe that “*Ernian* 二年” in the title refers to the second year of Empress Lü.

⁹¹ For discussions on the date when the statutes in the ENLL manuscript were enacted; see Cao Lüning 2005, 1-12; Zhang Zhongwei 2012, 31-37.

year of Emperor Gao (202 BCE).⁹²

The ordinances in the ENLL manuscript were obviously not made in the same year. Both official titles “Chancellor of the State” (*xiangguo* 相國) and “Chancellor” (*chengxiang* 丞相) occur in the ordinances. According to *Hanshu* 漢書 (hereafter HS), we know that in the eleventh year of Emperor Gao (196 BCE) the title “Chancellor” was changed to “Chancellor of the State”; and then in the sixth year of Emperor Hui (189 BCE), this title was changed back to Chancellor.⁹³ According to Yang Jian, the ordinances in the ENLL manuscript were ordered chronologically, the articles 1-3 were made before the eleventh year of Emperor Gao (196 BCE), the articles 4-15 that include the title “Chancellor of the State” were dated from the ninth year of the Emperor Gao (198 BCE) to the fifth year of Emperor Hui (190 BCE), while the articles 16-17 with the title “Chancellor” were made after the fifth year of Emperor Hui (190 BCE).⁹⁴

Accordingly, the statutes and the ordinances could not all have been enacted in the same year.⁹⁵ Instead, the statutes and the ordinances in the ENLL manuscript were enacted during the early Han period rather than in a single year.⁹⁶ Since we have now excluded the possibility that the title refers to the year in which the statutes and ordinances were made, we are left with two other possibilities: that the ENLL manuscript was written in the second year, or that it contains statutes and ordinances that were in effect in the second year.

⁹² Gao Min 2003, 32-26.

⁹³ On account of this record in HS, Ōba concludes that the ordinances including the title “Chancellor of the State” (*xiangguo* 相國) should have been made in the years between the eleventh year of Emperor Gao (196 BCE) and the fifth year of Emperor Hui (190 BCE), and the ones including the title of “Chancellor” (*chengxiang* 丞相) should have been made after the sixth year of Emperor Hui (189 BCE); see Ōba 2001, 129-130.

⁹⁴ Yang Jian 2010, 25-32.

⁹⁵ ZJS 2007, 87; Zhang Yaojun and Yan Pin 1985, 1124; Zhang Jianguo 1999, 44.

⁹⁶ See Zhang Zhongwei 2012, 31-43; Cao Lüning 2005, 1-12; Li Li 2006, 144-157.

According to one article of the QLSBZ manuscript found in the Qin tomb Shuihudi 睡虎地 M11 (Southern Commandery 南郡, present-day Hubei Province 湖北省), statutes are checked every year: *Sui chou bi lii yu yushi* 歲讎辟律於御史, “Annually, the penal statutes are checked with the Royal Secretary.”⁹⁷ It can be inferred that the statutes, which were newly made and enacted would be added to the existing ones, while the invalid statutes would be deleted every year. Thus, it was ensured that officials on different levels could be informed about the currently binding statutes. A large number of the statutes, and the judicial and the administrative system of early Han originated from Qin.⁹⁸ It is very likely that Han also checked and updated the statutes annually.

Once statutes and ordinances had become invalid and were not used anymore, they were irrelevant to the practice of law, and would be regarded as useless and be quickly forgotten.⁹⁹ This indicates that statutes that were in effect in a certain year would probably have been written around the same time. Vice versa, a manuscript written in a certain year would likely only contain the statutes that were binding at that time. While we cannot definitely determine what the title exactly means, it is highly likely that the text was written in the designated second year either way.

The question which second year is meant in this title still remains: From the examination of the dating of the ordinances 4-15 and 16-17 above, it can be concluded that the manuscript could not have been written in the second year of Emperor Gao (205 BCE) or Emperor Hui (193 BCE), since the aforementioned

⁹⁷ QLSBZ199, translated by Hulsewé, see RCL A108.

⁹⁸ Li Xueqin and Xing Wen 2001, 137-146.

⁹⁹ This may be one of the reasons that no early law was handed down in the received literature until the Tang Law Code. In *Treatises* 藝文志 of HS, the law texts were not included in the catalogues of literature, which are needed to be collated and copied for preservation in the imperial library. The law texts were like administrative texts, they were applied and valid for certain period of time. To preserve the old law texts must not have been regarded as important.

articles were all made after their second year respectively. Here, the ordinance with the number twenty-two deserves a discussion:

廿二、丞相上魯御史書言，魯侯居長安，請得買馬關中。丞相、御史以聞，制曰：可。⁵²⁰

Twenty-two: The Chancellor submits the report from the Chief Clerk of Lu, which requests that the Marquis of Lu residing in Chang'an be allowed to purchase horses in the areas within the control stations. The Chancellor and the Chief Clerk submit [the report to the Emperor] and the [imperial] decree says: "Approved."

丞相上魯御史書言，請魯中大夫謁者得買馬關中，魯御史為書告津關，它如令。丞相、御史以聞，制曰：可。⁵²¹

The Chancellor submits the report from the Chief Clerk of Lu, which requests that Internuncio of Grandee of the Interior of Lu be allowed to purchase horses in the areas within the control stations, and the Chief Clerk of Lu writes a report to Ports and Control stations. Others correspond to the ordinances. The Chancellor and the Imperial Clerk submit [the report to the Emperor] and the [imperial] decree says: "Approved."

丞相上魯御史書言，請魯郎中自給馬騎，得買馬關中，魯御史為傳，它如令。丞相、御史以聞，制曰：可。⁵²¹

The Chancellor submits the report from the Chief Clerk of Lu, which requests that the Gentleman of the Interior of Lu be allowed to purchase horses in the areas within the control stations for personal supply, and the Chief Clerk of Lu makes a certificate. Others correspond to the ordinances. The Chancellor and the Imperial Clerk submit [the report to the Emperor] and the [imperial] decree says: "Approved."

This article consists of three clauses, the Marquis of Lu occurring in the first clause quoted above must be Zhang Yan 張偃, the maternal grandson of Empress Lü.¹⁰⁰ The Internuncio of the Grandee of the Interior of Lu (*Lu zhong dafu yezhe* 魯中大夫謁者) and the Gentleman of the Interior of Lu (*Lu langzhong* 魯郎中) in the following clauses must have been two officials subordinated to Zhang Yan in Lu state.¹⁰¹ Thus, these three articles grant preferential treatments to the maternal

¹⁰⁰ ZJS 2001, 210; Peng Hao 2002, 15; Ōba 2001, 135-136; Yang Jian 2010, 30-31. In contrast, Li Xueqin and Xing Wen think that the state of Lu in the Ordinances on Ports and Pass Stations must be Xi Juan's fief; see Li Xueqin and Xing Wen 2001, 135-137.

¹⁰¹ Yang Jian 2010, 31.

grandson of Empress Lü by allowing him and his subordinates to purchase horses in the areas within the control stations.¹⁰² In the sixth year of Empress Lü (182 BCE), the title King of Lu 魯王 was conferred on Zhang Yan.¹⁰³ It is most probably that he received the title the Marquis of Lu 魯侯 in the first year of Empress Lü (187 BCE), in which his mother, the Princess Lu Yuan 魯元公主, that is, the daughter of Empress Lü, died.¹⁰⁴ So the article was probably made no earlier than in the first year of Empress Lü (187 BCE), no later than in the sixth year of Empress Lü (182 BCE).

Both ENLL 85 and the ordinance with the number twenty-two could have been enacted no earlier than in the first year of Empress Lü's reign (187 BCE). Since the ENLL manuscript includes such articles, the earliest possible "second year" is the second year of Empress Lü, namely, 186 BCE. According to Li Xueqin and Xing Wen, after the death of Empress Lü (180 BCE), her family members lost their power and were executed. Needless to say, such statutes and ordinances, which endowed the family Lü with prerogatives, were abrogated as well. So the latest possible year in which the articles could have been used is the last year of Empress Lü's reign (180 BCE). Between 187 BCE and 180 BCE, only the calendar of Empress Lü was in effect in the central government; accordingly, "the second year" in the title of ENLL 2 can only be the second year of Empress Lü (186 BCE).¹⁰⁵

As argued above, this means that the statutes and ordinances in the ENLL manuscript were those applied in the second year of Empress Lü (186 BCE), and probably also

¹⁰² According to Yates, the cavalry horses were very important constituents of the Chinese army, as they ensured the mobility of the army, when the army had to resist attacks from nomadic people in the north, so the management and control of the horses was very crucial; see Yates 2009, 40.

¹⁰³ There are three possibilities as to when the title the King of Lu was granted to Zhang Yan according to SJ and HS: 187 BCE, 186 BCE and 182 BCE. By examining all the dates recorded in SJ and HS, Li Xueqin and Xing Wen conclude that it is 182 BCE, rather than 187 BCE or 186 BCE, when Zhang Yan became the King of Lu; see Li Xueqin and Xing Wen 2001, 129-133.

¹⁰⁴ Yang Jian 2010, 31.

¹⁰⁵ Li Xueqin and Xing Wen 2001, 127-135.

written in this year. The second year of Empress Lü (186 BCE) is also the last year recorded in the calendar, eight years after the owner of the tomb was removed from office because of his illness (194 BCE). This suggests that the owner of the tomb did not use this manuscript for his official duties, since it contains statutes and ordinances that were made after his removal from office. If this manuscript was not produced for his legal practice, what other reasons could there have been for producing it and why was it put into the tomb? To resolve these questions, we have to explore the nature and the function of the ENLL manuscript.

1.5.3 The Nature of the *Ernian lü ling* Manuscript

Since the publication of ZJS 2001, the nature of the ENLL manuscript has been a highly controversial topic. Scholars have differing views on this subject: some think that the ENLL manuscript is a copy of a supposed Han law code;¹⁰⁶ some argue that it is a copy of the whole text of the Han statutes and ordinances; others believe that this manuscript contains only the text of selected Han statutes and ordinances.¹⁰⁷

Through an analysis of the text in the ENLL manuscript, it is clear that it is a manuscript containing only selected statutes and ordinances from early Han rather than the whole corpus of Han law. The statutes of the manuscript are divided into different categories according to their topics. The length of different individual statutes varies significantly from one another. For instance, we have *Statutes on Banditry* (*Zei lü* 賊律), *Statutes on Theft* (*Dao lü* 盜律), and *Statutes on Registration* (*Hu lü* 戶律) consisting of many detailed and specific articles belonging to their category, while we also have *Statutes on Transportation of Goods* (*Jun shu lü* 均輸律) and *Statutes on . . . Markets* (□ *shi lü* □市律) including only two articles, and the *Statutes on*

¹⁰⁶ I will not discuss the existence of a Han Law Code. First, based on the extant materials in the received literature and in the manuscripts of Han, this question seems to be unsolvable; second, the answer to this question also depends upon the definition of what constitutes “a law code” of Han.

¹⁰⁷ For a comprehensive summary of this topic; see Li Li 2006, 144-150.

Meritorious Rank (*Jue li* 爵律) containing three articles. It cannot be the case that only such a small number of articles existed in these three statutes in early Han, instead, only a few of them were selected and then written in the ENLL manuscript.

Additionally, we find some titles of statutes recorded in the text of the ENLL manuscript; however, their articles are not included, for example, *Nubi li* 奴婢律 (*Statutes on Slaves*) in ENLL 163, and *Shuren li* 庶人律 (*Statutes on Released Persons*) in ENLL 382. Though the words “*nubi* 奴婢” and “*shuren* 庶人” frequently occur in different statutes of the ENLL manuscript, it is clear that those statutes are not the “*Statutes on Slaves*” and “*Statutes on Released Persons*” referred to by the texts of ENLL 163 and ENLL 382.¹⁰⁸ It can be inferred that *Statutes on Slaves* and *Statutes on Released Persons* existed in early Han, however, they were not included in the ENLL manuscript.

Hence, the statutes of the ENLL manuscript are only part of the whole corpus of the statutes in early Han. The statutes in the manuscript must have been selected according to certain criteria. This selection may reflect the interests and intentions of the tomb owner or of the person responsible for this selection. The statutes, which contain a large number of articles, might have been regarded as more important or practical for the owner than those, which include only few articles.

According to records in the received literature and other legal or administrative manuscripts of Han, there existed different kinds of ordinances in early Han. However, only *Ordinances on Ports and Control Stations* (*Jin guan ling* 津關令) was selected and included in the ENLL manuscript. Each ordinance in the manuscript, originally,

¹⁰⁸ For example, “*nubi* 奴婢” occurs in the article written on ENLL 160. This article specifies the punishment for absconding slaves and it belongs to *Statutes on Absconding*. Both “*nu* 奴” and “*shuren* 庶人” can be found in the article written on ENLL 189. Since this article regulates fornication between male slaves and released persons, it belongs to *Miscellaneous Statutes*. Yates suggests that the ENLL text does not include any statute from *Statutes on Male and Female Slaves*; see Yates 2014, 210.

begins with a number written above the top binding string on the top of the bamboo strip. Numbered ordinances can also be found in other manuscripts, for example, the ordinances from the collection of Yuelu Academy 岳麓書院, from Juyan 居延 (Zhangye jun 張掖郡, present-day Gansu 甘肅) and Wuwei 武威 (present-day Gansu 甘肅). The central government probably assigned the numbers to the ordinances chronologically, when they were compiled into an ordinance.¹⁰⁹ Consequently, such numbers can be used as an important clue for the reconstruction of the original sequence of the ordinances in the ENLL manuscript.¹¹⁰ The number of the last ordinance in the ENLL manuscript is twenty-three, nevertheless, only eighteen ordinances were included here. It is manifest that five of the twenty-three articles were not included in the manuscript. Hence, the ordinances of the ENLL manuscript are also a selection.

It still remains a question, whether the text of the ENLL manuscript was originally selected and copied from an official law text entitled “Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令), which had been issued by the central government, and was then copied by offices of different levels.¹¹¹

It is known from the received literature and legal manuscripts, especially the ordinances in the ENLL manuscript, that the process of making and compiling ordinances (*ling* 令) differs from that of statutes (*lü* 律). In Han there were three ways in which an ordinance could be enacted: First, the Emperor issued a decree on specific

¹⁰⁹ According to Kroll, it is likely that part of the Han ordinances were classified into collections according to their subjects. The ordinances in the individual collections were arranged chronologically; see Kroll 1964, 138; also see Ōba 2001, 131-133; Nakada 2007, 105-112; Yang Jian 2010, 25-26.

¹¹⁰ Yang Jian 2010, 25-32; and Ōba 2001, 131.

¹¹¹ In Li Li's opinion, in early Han, there existed an original legal text (*zhengben* 正本) enacted by the central government, which was entitled “*Ernian lü ling* 二年律令.” The second year in this title refers to the second year of Emperor Gao (205 BCE), when the Han law was made and enacted. According to Li Li, the manuscript *Ernian lü ling* 二年律令 is supposed to be a copy of selected statutes and ordinances of this original law text; see Li Li 2006, 150-157.

matters; second, the Chancellor (*chengxiang* 丞相) or the Imperial Clerk (*yushi* 御史) could submit proposals to the emperor that needed to be approved by him; third, local officials could submit requests to the Emperor through the Chancellor or the Imperial Clerk, which also needed to be approved by him.¹¹² The ordinances were first independently and separately enacted, and then those ordinances concerning a particular subject were categorized and compiled together into one ordinance.¹¹³

There were obvious differences between statutes and ordinances.¹¹⁴ The statutes were general legal rules that were finally settled for determining a crime and its corresponding punishment; while the ordinances were enacted by the Emperor, in order to immediately settle a certain problem that occurred. The statutes and the ordinances were also arranged and compiled separately. Accordingly, there could not have existed a single, unified legal text promulgated by the central government in Han that contained both statutes and ordinances.¹¹⁶

¹¹² Yang Jian 2012, 18-25. Ōba classifies the ways of establishing ordinances into three types in his article, besides the two types of ordinances which Yang Jian mentions, he thinks the third way of establishing ordinances was: the Emperor first designed an outline of his policy, and then ordered officials to draft the concrete regulations, after this, the Emperor approved their proposals; see Ōba 2001, 128-129.

¹¹³ Ordinances belonging to one category were arranged in a certain sequence; for instance, the ordinances of the ENLL manuscript were ordered in chronological sequence. Nakada and Zhang Zhongwei examined the compilation and arrangement of Han ordinances; see Nakada 2007, 105-112; Zhang Zhongwei 2012, 108-118.

¹¹⁴ Du Zhou 杜周, the Commandant of Justice between 109 BCE and 88 BCE, defines the distinction between statutes and ordinances: *Qian zhu suo shi zhu wei lü, hou zhu suo shi shu wei ling* 前主所是著為律, 後主所是疏為令, “What the former Emperors considered as right was written down in the *lü*, what the later rulers considered as right was set out as *ling*” (HS 60, 2059; translated by Hulsewé in RHL 1955, 31). Du Yu 杜預 notes the differences between statutes and ordinances: *Lü yi zheng zui ming, ling yi cun shi zhi* 律以正罪名, 令以存事制, “*Lü*, Statutes, are to define correctly the categories of crimes; *ling*, ordinances, are used to preserve regulations for affairs” (*Tai ping yu lan* 638, 2989; translated by Hulsewé in RHL 1955, 32).

¹¹⁶ MacCormack discusses the form of laws, and the arrangement and compilation of different kinds of laws in Han; see MacCormack 2004, 50-57.

Hence, the text of the ENLL manuscript, a composite collection of both statutes and ordinances, could not have been copied or selected from a single law code or a unified official legal text promulgated by the central government. Hence, there probably existed no legal text entitled “Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令) that was enacted by the central government and the text of the ENLL manuscript could not have originated from it.¹¹⁷

It is worthy of further consideration, whether this manuscript is a privately made and owned manuscript or, an officially made manuscript, which was later acquired by the owner of the tomb.

First, various writing mistakes exist in the text of the ENLL manuscript.¹¹⁸ For instance, sometimes the scribes wrote wrong characters: scribe A mistakenly wrote “*lie* 列” as “*si* 死” on ENLL 28,¹¹⁹ “*si* 私” as “*he* 和” on ENLL 405,¹²⁰ “*xia* 下” as “*shang* 上” on ENLL 413.¹²¹ In other cases, a character was mistakenly omitted or repeated; for example, the scribe forgot to write “*guan* 關” after “*Hangu* 函谷” on ENLL 492.¹²²

¹¹⁷ Regarding the statutes in the ENLL manuscript, we do not have enough evidence to determine whether they originated from a single and unified body, which contained different categories of statutes, or whether they originated from independent individual texts consisting of statutes belonging to one category. According to Xu Shihong, “no unified legal code existed in Han, and all of the legal texts consisted of single and independent chapters of statutes and ordinances,” see Xu Shihong 2007, 74-86. Zhang Zhongwei shares this opinion; see Zhang Zhongwei 2012, 91-94.

¹¹⁸ According to the photographs of the bamboo strips in ZJS 2001 and ZJS 2007, there seem to be no traces of someone correcting mistakes in the ENLL manuscript.

¹¹⁹ ZJS 2001, 138. Instead, Yun believes that this is not a mistake made by the scribe, because in Qin and Han manuscripts, the forms of the two characters, *lie* 列 (rank) and *si* 死 (die, or death), are very similar. In order to decide which character was meant by the scribe, the content of the text should be taken into consideration; see Yun 2010, 325.

¹²⁰ ZJS 2001, 187.

¹²¹ ZJS 2001, 189.

¹²² ZJS 2001, 206.

Besides writing mistakes, the scribe sometimes added a passage belonging to an article to another article. The passage does not cohere with the preceding text of the article and marks a sudden change in topics; for example, ENLL 429-432:¹²³

官為作務、市及受租、質錢，皆為鈔，封以令、丞印而入，與參辦券之，輒入錢鈔中，上中辨其廷。質者勿與券。租、質、戶賦、園池入錢，⁴²⁹ 縣道官勿敢擅用，三月壹上見金、錢數二千石官，二千石官上丞相、御史。¶ 不幸流，或能產拯一人，購金二兩；拯死者，購一兩。不知何人，貍而⁴³⁰護之。流者可拯，同食、將吏及津嗇夫、吏弗拯，罰金一兩。拯亡船可用者，購金二兩；不盈七丈以下，丈購五十錢；有識者，予而令⁴³¹自購之。⁴³²

When offices administer handicraft, markets, and receive money from rent or guarantee, they should all make a jar, seal it with the stamps of the Prefects and their Assistants, make a certificate consisting of three parts, and put money immediately into the jar, then submit the middle part of the certificate into the courts [of the prefectures]. Those who give the guarantee are not to receive [part of] the certificate. The money from rent, guarantee, tax per household registration, parks, and ponds are to be given [to the government], the offices of commanderies established in the prefectures and marches are not allowed to use the money without authority and should submit the number of gold and money to Officials [with nominal salary of] Two Thousand Piculs in the third month, who submit the number further to the Chancellor and the Imperial Clerk. ¶ When someone has unluckily drowned, those who save his life, are to receive a reward of two ounces of gold; if they find his corpse, they are to receive a reward of one ounce of gold. If they do not know who the person is, they should bury his corpse and recognize it. In case that the person who drowned can be saved, his colleagues, leading officials, Overseers and official of the ports do not save him, are to be fined one ounce of gold. Those who save lost boats that can still be used, are to receive a reward of two ounces of gold, if the boat is smaller than seven *zhang* (about 233.33 cm), they are to receive a reward of 50 cash per *zhang*, if the boat has a mark, it is to be given to [its owner] and the owner is ordered to give reward by himself.

I added the mark “¶” in the transcription and the English translation in order to emphasize the change of topic. The text above was written continuously together on ENLL 429-432 belonging to *Statutes on Metal and Currency* (*Jin bu lü* 金布律). However, the passage after the mark “¶” was written here by mistake. It is not clear to which statute this passage belongs. The article concerning “*liu sha* 流殺” (drown and die) can be found in *Statutes on Banditry*, while the articles regarding receiving a

¹²³ ZJS 2001, 191.

reward are categorized in *Statutes on Arresting*.

This phenomenon can be found in the text written on ENLL 435 also belonging to *Statutes on Metal and Currency*.¹²⁴

縣官器敝不可繕者，賣之。𠄎 諸收人，皆入以為隸臣妾。⁴³⁵

If the objects belonging to the government cannot be mended, they are to be sold. 𠄎 Those who are enslaved by the government are all to be made to work as male and female bondservants.

Two sentences were written on ENLL 435. The first sentence belongs to *Statutes on Metal and Currency*, since it regulates the disposal of broken objects belonging to the government. However, the second sentence deals with a different topic, namely, the status of those enslaved by the government (*shouren* 收人). It is likely that the second sentence belongs to *Statutes on Enslavement and Confiscation* (*Shou lü* 收律). Thus, the scribe made a mistake in writing this sentence in the text of ENLL 435. The text written on ENLL 436-438¹²⁵ also contains a similar mistake.

Furthermore, scribes sometimes wrote two separate articles belonging to the same category, but pertaining to different topics continuously as a single article. For example, ENLL 86:

吏、民有罪當笞，謁罰金一兩以當笞者，許之。𠄎 有罪年不盈十歲，除；其殺人，完為城旦舂。⁸⁶

Officials or common people who are guilty of a crime and [by law] shall be caned, if they request to be fined one ounce of gold instead of being caned, they are allowed to do so. 𠄎 [Those who] are guilty of a crime, when they are younger than ten years old, are to be exempted from punishment; in case that [they] have killed someone, [they] are to be made earth pounders or grain pounders without mutilation.

¹²⁴ ZJS 2001, 192.

¹²⁵ ZJS 2001, 192.

Scribe A continuously wrote the texts above on ENLL 86 as one article. However, it must be made up of two independent articles belonging to *Statutes on Generalities* (*Ji lü* 具律). The first article allows convicts, who are to be caned, to change their punishment into a fine; while the second regulates the reduction of punishment for those younger than ten years old.

Another example is ENLL 345:

為人妻者不得為戶。¶ 民欲別為戶者，皆以八月時，非戶時勿許。³⁴⁵

Those who are wives of others are not allowed to have their own household registration. ¶ Commoners, who want to set up their own household registrations separately, are all to do it in the eighth month; they are not allowed to register beyond the time for [setting up] a household registration.

The text written on ENLL 345 consists of two single articles belonging to *Statutes on Household Registration* (*Hu lü* 戶律); nevertheless, the scribe A wrote it as one article. The first article forbids the wives of persons to set up a separate household registration, while the second regulates the time for setting up a household registration. There are more such phenomena in the ENLL manuscript; for instance, on ENLL 88-89, ENLL 331-336, and ENLL 435.¹²⁶

Additionally, some comments that could not have been part of the official text of statutes, occur in the statutes in the ENLL manuscript, for instance, the text written on ENLL 18:

有挾毒矢若堇毒、**雞**，及和為堇毒者，皆棄市。或命**雞**謂雞毒。詔所令縣官為挾之，不用此律。¹⁸

Those who hold poisonous arrows, aconite, or monkshood, and those who make a mixture of aconites: are all to be executed in the marketplace. Some call monkshood “chicken poisons.” [In case that] an imperial edict orders the

¹²⁶ ZJS 2001, 191.

government to produce and take possession of poisons, this statute does not apply.

The sentence “*Huo ming cui wei xi du* 或命摧謂齷毒” must be an explanation of a biological term. Such an explanation could not have been included in an actual legal statute.¹²⁷ Perhaps the term was uncommon and would not have been understood without this explanation, so that it was added here intentionally for clarification.

According to two administrative texts in the Qin manuscripts from Liye 里耶 (Dongting jun 洞庭郡, present-day Hunan 湖南), it is clear that in Qin, after the statutes and ordinances had been copied by the offices of different levels, they were strictly checked:

卅一年六月壬午朔庚戌庫武敢言之：廷書曰令史操律令詣廷讎

署書到，吏起時，有追。•今以庚戌遣佐處讎 敢言之（正）

七月壬子日中佐處以來ノ端發 處手（背）（8-173）¹²⁸

On the *gengxu* day of the six month, of which the first day is *renwu* day, in the thirty-first year, Ku Wu dares to report that the court orders a scribe to present statutes and ordinances to the court, in order to collate them.

The date when the document arrives and the date when the official departs should be signed. Trace [the document if it does not arrive on time].

Now the Assistant Zuo has been sent to collate them on the *gengxu* day.

We dare to report it. (Recto)

On the *renzi* day of the seventh month the Assistant Chu came. Duan opens it, Chu writes this. (Verso)

□年四月□□朔己卯遷陵守丞敦狐告船官 令史懷讎律令沅

陵其假船二艘勿 留（6-4）¹²⁹

On the *simao* day of the fourth month, of which the first day is [. . .], in the [. . .] year, the Probationary Assistant of Qianling, Dun Hu, reports to the boat official that [. . .] orders the Scribe Kuang collates statutes and ordinances in Yuanling; and lends him two boats for this task, do not delay.

¹²⁷ ENLL Research Group of Senshu University 專修大學 2003, quoted in ZJS 2007, 97.

¹²⁸ Hunansheng wenwu kaogu yanjiusuo 2012, 21.

¹²⁹ Ibid., 7.

Han inherited the legal and administrative system of Qin, thus, Han official written statutes and ordinances probably also had to be strictly checked. Furthermore, according to the statutes concerning documents in the ENLL manuscript, the official documents had to meet strict requirements and it was penalized to introduce errors into such documents.¹³⁰ It is hard to believe that a large number of mistakes could have occurred in an officially made document consisting of statutes and ordinances. If an official law document could have contained so many mistakes, would it not have been dangerous to use such statutes and ordinances to practice law and judge criminal cases? The writing mistakes, the rearrangement of the articles, and the comments occurring in the statutes of the ENLL manuscript all indicate that it could not have been an official document with statutes and ordinances, instead, it must have been produced privately.

The mistakes in the manuscript are so obvious that they could have been easily found if the scribes or someone else would have checked the ENLL manuscript after it had been written, however, this does not seem to have taken place. This suggests that the scribes did not show much care for writing the manuscript correctly and again proves that they only concerned themselves with finishing the manuscript quickly.

Let us now consider the length and the weight of this large manuscript, which consists of at least 528 bamboo strips with a width of 0.7 cm. Even if we ignore the width of the binding strings between bamboo strips, the manuscript is at least 3.696 meters long, and it is comparatively heavy as well. Xing Yitian used the strips of the Juyan manuscripts as samples to examine the volume and weight of Han strips, among them, one of the most important samples is the manuscript *Yongyuan qi wu bu* 永元器物簿 (Yongyuan Equipage Book), which consists of seventy-seven bamboo strips. According to his measurement, the weight of this manuscript is 243.36 g, its volume amounts to about 1,250 cm³. Based on this data, he further mentions that the volume

¹³⁰ ENLL 12, 13, 15, 16 and 17.

of the ENLL manuscript should be about six times of that of *Yongyuan qi wu bu*, and its diameter should be about 21.56 cm. Accordingly, it would be difficult to hold it with hands. It could not have been used without unfolding it on a long table. Even in this way, only a small part of this manuscript could be read at one time, and then this part had to be rolled up in order to let another part be read.¹³¹

Normally, the manuscripts recording statutes and ordinances were unlike literary manuscripts, they were often used when the officials wanted to look up certain articles, but not to be read from beginning to end. It is imaginable that it would have been very inconvenient for officials to find the articles needed for legal practice in such a clumsy manuscript without an index or a catalogue listing.¹³²

Like in modern times, it is necessary for judges to have access to all the statutes of a law code or all of the legal regulations that are connected to his work, since it is impossible to anticipate which legal cases or affairs would occur, and which statutes

¹³¹ Xing Yitian 2011, 22. He further speculates that all the manuscripts consisting of more than one-hundred bamboo strips, which were found in tombs, were not made for practical use but especially for funerals as burial objects (*ming qi* 明器); see Xing Yitian 2011, 1-23.

¹³² For example, there existed catalogues of imperial edicts in Han administrative manuscripts. Professor Giele has kindly pointed out to me a bamboo strip from the Juyan administrative manuscripts, which most probably contains part of a catalogue of *Class A Ordinances* 甲令: *Xian zhi san lao er, xing shui jian xing chuan shi er, zhi xiao, di, li tian nian er, zheng li er qian shi yi fu sa er, jun guo diao lie hou bing xi er, nian ba shi ji ru zhu xu song xi wu shi er* 縣置三老二, 行水兼興船十二, 置孝、弟、力田廿二, 徵吏二千石以符卅二, 郡国调列侯兵卅二, 年八十及乳朱需頌穀五十二, "Prefectures establish Three Elders, no.2; Requisitioning of boats for traveling on water, no. 12; Establishing the filial, brotherly, and strong farmers, no. 22; Conscribing Officials with [a nominal salary] of two Thousand Piculs with tallies, no. 32; Commanderies and States transfer the soldiers of Marquis, no.42; Commoners of eighty years old, pregnant women, and babies free from chaining, no.52" (*Juyan Han jian shiwen hejiao* 5:3, 10:1, 13:8, and 126:12). It seems that such a catalogue of imperial ordinances must have been practical for organizing and looking up ordinances for administrative use. Besides this, a catalogue of *Statutes on Banditry* has also been found in the manuscripts from Gurendi 古人堤 in Zhangjiajie 張家界 of Hunan province 湖南省; see Hunansheng wenwu kaogu yanjiusuo and Zhongguo wenwu yanjiusuo 2003, 76-77.

shall be used to settle them. The ENLL manuscript consists of selected various statutes and ordinances, which do not even contain all of their respective articles. Such a selection does not seem to meet the needs of legal and administrative practice. If the judicial officials in Han had used the ENLL manuscript for their daily legal practice, how could they judge criminal cases or deal with different administrative affairs, which were all regulated in different statutes or ordinances? All the above suggests that the ENLL manuscript was not made for official legal practice and that it was privately produced.

After this private manuscript had been made, it was probably not even used by the owner of the tomb. Otherwise, he, as an official responsible for practicing law, could easily have noticed the mistakes, and then have revised the mistakes himself. For example, in order to correct the writing mistakes, he could have easily scrapped away false characters, and then replaced them with the right ones on the strips.

1.5.4 The Function of the *Ernian lü ling* Manuscript

In the discussion about the nature of the manuscript we have already seen that it could not have been used by the owner of the tomb, since it is so cumbersome to use and contains obvious, yet various uncorrected mistakes. This is reinforced by the fact the ENLL manuscript was probably written in the second year of Empress Lü (186 BCE), eight years after the owner of the tomb was removed from office on account of his illness (194 BCE), so that the manuscript could not have been used during his official legal practice. As the second year of Empress Lü (186 BCE) is also the last year recorded in the calendar, the time when the manuscript was written was probably near to the time of the owner's death. The reason why someone, probably the owner of the tomb or someone close to him, could have had for ordering such a manuscript with no practical use for the owner, near the end of his life, is that it was most probably wanted for his funeral. Thus his death may be the reason, why this manuscript had to be hastily produced by three scribes simultaneously, which in turn resulted in the high

number of mistakes.

The reasons and motives for producing the ENLL manuscript for the owner's funeral are worthy of consideration.¹³³ It appears that the ENLL manuscript and the ZJS manuscript were buried with the owner because one of his main duties had been practicing law and trying criminal cases when he was a local official in early Han.

Except for the ENLL manuscript and the ZYS manuscript found in Zhangjiashan M247, other legal manuscripts were also found in the Southern Commandery (Nanjun 南郡, present-day Hubei 湖北): Yunmeng Qin tomb Longgang M6 and Shuihudi Qin tomb M11.

The legal manuscript found in Longgang M6 consists of statutes concerning the administration of prohibited gardens (*jin yuan* 禁苑). The wooden strip found in Longgang M6 records a retrial that resulted in an acquittal of a mutilated criminal suspect. This person is likely to be the owner of the tomb, as the feet of the owner were not found in the tomb; he may have received the mutilation of cutting off the feet. It is still controversial whether this retrial judgment is genuine or fabricated for the reputation of the owner of the tomb. Scholars believe that after the owner was proven to be innocent by the retrial, he perhaps became a "hidden official (*yinguan* 隱官)" and worked in a prohibited garden where others could not easily see him.¹³⁴ This corresponds to the fact that the legal statutes in Longgang M6 pertain to the administration of prohibited gardens.

The legal manuscripts found in Shuihudi M11; that is, the QLSBZ, QLZC, XL, FLDW and FZS manuscripts, constitute the largest part of the manuscripts found

¹³³ Giele provides us with six categories of possible motives for putting manuscripts into the tomb; see Giele 2003, 428-435.

¹³⁴ See Li Xueqin 2001, 149-151; Huang Shengzhang 2001, 152-155; Hu Pingsheng 2001, 156-160.

there. They were positioned near to the body of the owner in the inner coffin. It is clear that the owner of the tomb was also concerned with legal practice as an official in Qin according to one entry recorded in the calendar found in the tomb: *Shi er nian , si yue kui chou, xi zhi yu yan* 十二年，四月癸丑，喜治獄鄢, “On the day of kuichou in the fourth month of the twelfth year [of King Zheng], [the owner of the tomb], Xi [was responsible for] trying criminal case in Yan.” This may be the reason why so many legal manuscripts were put into the tomb.

The legal manuscripts found in the tombs resemble one another in that they were all related to the official duties of the tomb owners. It is interesting that such legal manuscripts, which were connected with the official duties of their respective owner, were all put into the tomb. After an examination of the Han tomb structures and the tombs’ contents, Erickson suggests that the tombs of the Han dynasty were regarded as “way stations” for the dead with elements from the living world above the ground. It seems that the Han tombs and their contents were prepared for as “an extension of the living.”¹³⁵ Through a discussion on the informing-the-underground (*gao di* 告地) texts in Han, Guo Jue came to the conclusion that in Han and Qin times there existed the belief that the social structure and the administrative system of the underground world reflected those of the living world.¹³⁶ According to Poo, the bureaucratic netherworld in the Former Han depicts “all signs of a unified empire,” and suggests a kind of life that was accustomed and practiced in the living world.¹³⁷ Loewe argues that the burial of the manuscripts of the statutes in the tomb “could perhaps have been intended to represent the deceased person’s stock-in-trade. With these he would be able to impress the authorities of the underworld with his professional achievements, and secure corresponding privileges of treatment.”¹³⁸

¹³⁵ Erickson 2010, 81.

¹³⁶ Guo Jue 2011, 102-103.

¹³⁷ Poo 2011, 20.

¹³⁸ Loewe 1997, 190-191.

In the mind of Han people, the life of the underworld may mirror the living life. With legal manuscripts related to their official responsibilities, the owners of the tombs may have been able to prove their legal or administrative profession and further continue to perform their duties in the underworld. This may have been the reason why these legal manuscripts were put into the tombs with their owners.

If we assume that the manuscript corpus of Zhangjiashan M247 was purposefully composed of exactly those seven manuscripts found in the basket, we should investigate what function the individual manuscripts served in the corpus. It seems that their position in the tomb is to a certain extent determined by their function and texts.

Among the seven manuscripts found in Zhangjiashan M247, four manuscripts were probably intimately related to the official duties of the owner. The ENLL manuscript, the ZYS manuscript, and the calendar were located near to each other. The two entries in the calendar record the beginning and the end of the official life of the owner in Han. The ENLL manuscript and the ZYS manuscript are related to the judicial practices of the owner. Another manuscript, *Writings on Mathematics*, the third largest manuscript in the tomb, was situated close to the ZYS manuscript. According to Cullen, it seems that *Writings on Mathematics* served as a practical handbook for officials who needed it in order to perform their daily work, as it contains the solutions to many mathematical problems and techniques of calculation that are useful for administrative tasks.¹³⁹

In addition to these four manuscripts mentioned above, three other manuscripts were

¹³⁹ Cullen 2004, 11-13. In her opinion, compared to *Writings on Mathematics*, the *Nine Chapters On Mathematical Procedures* (*Jiu zhang suan shu* 九章算術) seems to be more like a book for mathematicians. The *Nine Chapters On Mathematical Procedures* contains some mathematical problems, which are of no practical use for administrative tasks, so they are only valuable for people with an interest in mathematics.

found in Zhangjiashan M247. As we can see from the drawing, *Writings on Channels* was positioned between the ENLL and the ZYS manuscript, it seems this is because the roll of this manuscript is small and just fits well in the space between the two manuscripts. The military manuscript, *He Lü*¹⁴⁰ is located with the two medical manuscripts: *Writings on Channels* and *Writing on Therapeutic Gymnastics*, in the same corner. These three manuscripts do not seem to have been related to the official tasks of the owner. We may conjecture that the owner might have been interested in the medical and military texts during his lifetime. Loewe suggests that the manuscripts with military or medical contents could have been used as “manuals of instruction,” they may have assured that the owner of the tomb was able to resist diseases or armed opponents.¹⁴¹

¹⁴⁰ According to Milburn, the text of this manuscript can be regarded as “part of a major contemporary literary genre about the ancient south, where some of the key works have been preserved in the *Yuejueshu* anthology.” It corresponds to the fact that the owner of the tomb had probably worked and was finally buried in the south.

¹⁴¹ Loewe 1997, 190-191.

Chapter Two

The Annotated Translation of the Penal Statutes of the *Er nian lü ling* Manuscript

2.1 Principles and Patterns of the Translation

The second chapter of the thesis is devoted to an English translation of the penal statutes in the ENLL manuscript with commentaries. I attempt to present a translation that is faithful to the original language, especially regarding grammatical constructions and legal terms. For my translation, I used my own editorial transcription.

I transcribed the text of the penal statutes by examining the original writing on the bamboo strips and also by taking into consideration the transcriptions of other scholars. The instances where I follow transcriptions of other scholars will be pointed out in the footnotes in this chapter. For the diplomatic transcription of the penal statutes, see the Appendix.

I translate each article separately. The beginning of a new article is marked by a “§;” for example, “§1.1” indicates the first article of the first statute *Statutes on Banditry*. In case that a scribe made a mistake and wrote different articles together as one article, I will divide them into individual articles and translate them independently.

In case that the legal terms used in the penal statutes of the ENLL manuscript also occur in the ZYS manuscript, for the translation of most of such terms, I use the translation Lau gives in “The List of Legal Terms in *Zou yan shu*.” For the glossary of the legal terms used in the penal statutes of the ENLL manuscript, see the Glossary.

For the translation of bureaucratic titles, I refer to *Official Titles of the Former Han Dynasty as Translated and Transcribed by H.H. Dubs.* compiled by Rafe de Crespigny.¹⁴² For the translation of Han measurements, I use Hulsewé's analysis of Qin and Han weights and measures in his book *Remnants of Ch'in Law*.¹⁴³

There were twenty Meritorious Ranks (*jue* 爵) in the Former Han dynasty:

- | | |
|-----------------------------|--------------------------------|
| 1. <i>Gongshi</i> 公士 | 11. <i>You shuzhang</i> 右庶長 |
| 2. <i>Shangzao</i> 上造 | 12. <i>Zuo geng</i> 左更 |
| 3. <i>Zanniao</i> 簪褭 | 13. <i>Zhong geng</i> 中更 |
| 4. <i>Bugeng</i> 不更 | 14. <i>You geng</i> 右更 |
| 5. <i>Dafu</i> 大夫 | 15. <i>Shao shangzao</i> 少上造 |
| 6. <i>Guan dafu</i> 官大夫 | 16. <i>Da shangzao</i> 大上造 |
| 7. <i>Gong dafu</i> 公大夫 | 17. <i>Si ju shuzhang</i> 駟車庶長 |
| 8. <i>Gongcheng</i> 公乘 | 18. <i>Da shuzhang</i> 大庶長 |
| 9. <i>Wu dafu</i> 五大夫 | 19. <i>Guannei hou</i> 關內侯 |
| 10. <i>Zuo shuzhang</i> 左庶長 | 20. <i>Chehou</i> 徹侯 |

I translate them as “Holders of the Meritorious Rank [of Different Degree].” For further information on the meritorious rank system in Han, see Michael Loewe's article “The Orders of Aristocratic Rank of Han China.”¹⁴⁴

2.2 Translation

Ernian lü ling 二年律令

Statutes and Ordinances of the Second Year¹⁴⁵
1 verso

¹⁴² De Crespigny 1967.

¹⁴³ Hulsewé 1985, 19.

¹⁴⁴ Loewe 1960, 97-174.

¹⁴⁵ This title was written on the back side of the first bamboo strip.

2.2.1 Statutes on Banditry (*Zei lü* 賊律)

§1.1 以城、邑、亭、鄣反，降諸侯，及守、乘城、亭、鄣，諸侯人來攻盜，不堅守而棄去之若降之，及謀反者，皆₁腰斬。其父、母、妻、子、同產，無少長皆棄市。其坐謀反者，能¹⁴⁶徧捕，若先告吏，皆除坐者罪。₂

Those who rebel in walls, fortified cities, police posts,¹⁴⁷ fortresses; those who surrender to feudal lords;¹⁴⁸ those who keep guard and climb¹⁴⁹ walls, police posts,

¹⁴⁶ *Neng* 能: I think this word is contrary to the word “*suo* 所.” It refers to a possibility that someone does something actively. This word can be also found in ENLL 2, 61, 63, 64, 71, 73, 141, 144, 148 and 153 as well. *Neng* 能 with this meaning can also frequently be found in Shuihudi texts, e.g. FLDW 125 = RCL D105: *Jiang si ren er wang, neng zi bu ji qin suo zhi wei bu, chu wu zui; yi xing zhe chu yin guan* 將司人而亡，能自捕及親所知為捕，除無罪；已刑者處隱官，“(A person) leads and supervises (incarcerated) people, and they abscond. If he personally is able to arrest them, as well as if his relatives (or) his friends arrest them for him, he is let off and not punished; those already mutilated are placed in the Hidden Office.” Hulsewé translates it as “be able to.”

¹⁴⁷ *Ting* 亭: see HHS 28, 3624: *Ting you tingzhang, yi jin dao zei* 亭有亭長，以禁盜賊， “There is a Chief in every police post, whose duty is to prevent thieves and bandits.” According to Gao Heng, police stations (*ting* 亭) were situated in the important ports and control stations (*jin guan* 津關), on the gates of walls in cities or streets, or in the markets in Qin and Han. The duties of police posts (*ting* 亭) were to protect the local security, arrest offenders, search travellers passing the control stations, mediate civil disputes, accommodate official guests, deliver official letters or documents, and administrate markets (Gao Heng 2008, 109-116). Hulsewé notes that “police posts (*ting* 亭) spread out along the road and their duties are to ensure the safety along the post roads and to maintain official resthouses in their cantonments” (Hulsewé 1955, 16).

¹⁴⁸ *Zhuhou* 諸侯 refers to “the feudal lords, kings or marquises, who were enfeoffed in early Han, including both feudal lords of the Liu family and others.” From this article, ENLL 3 and 150, we can see the obvious tension between the central government of Han and the feudal lords.

¹⁴⁹ *Shou, cheng* 守、乘: see SJ 8, 359-60: *Wan, da du ye, lian cheng shu shi, ren min zhong, ji xu duo, li ren zi yi wei xiang bi si, gu jie jian shou cheng cheng* 宛，大郡之都也，連城數十，人民眾，積蓄多，吏人自以為降必死，故皆堅守乘城， “Wan is the capital of a big vassal state with more than a few dozen continuous city walls, lots of people and stores, officials and commoners think that if they surrender, they will definitely die, so they all insist on keeping guard on city walls.” The commentary of Li Qi on this word: ‘*cheng*,’ *shou ye* ‘乘,’ 守也, “ ‘*cheng* 乘’ means ‘to keep guard.’” The commentary of Wei Zhao on this word: ‘*cheng*,’ *deng ye* ‘乘,’ 登也, “ ‘*cheng* 乘’ means ‘to climb, or to get to the top of something’.” Walls, police posts, fortresses are built high to defend against attacks of

and fortresses, when followers of the feudal lords come to attack and rob them, do not keep guard firmly and leave walls, police posts or fortresses, or surrender to them; and those who devise a scheme to rebel: are all to be cut in two at the waist. Their fathers and mothers, wives and children, brothers and sisters,¹⁵⁰ without distinction between young and old, are all to be executed in the marketplace.¹⁵¹ In case that the persons who are to be co-convicted of rebellion arrest all¹⁵² the offenders, or accuse them to the authority first,¹⁵³ they are all to be exempted from punishment.¹⁵⁴

enemies; *shou cheng* 守乘 describes that the persons are keeping guard on these high military facilities.

¹⁵⁰ The editors of ZJS 2001 offer an explanation for *tongchan* 同產 according to the text of HHS 2, 96: *tongchan, tong mu xiong di ye* 同產，同母兄弟也, “*tongchan*, are brothers of the same mother” (ZJS 2006, 7). The articles written on ENLL 369-371 contains both *nan tongchan* 男同產 and *nü tongchan* 女同產, so *tongchan* 同產 includes “both brothers and sisters.” See ENLL 378 of *Statutes on Inheritance: Tongchan xiang wei hou, xian yi tong ju, wu tong ju nai yi bu tong ju, jie xian yi zhang zhe. Qi huo yi mu, sui zhang, xian yi tong mu zhe* 同產相為後，先以同居，毋同居乃以不同居，皆先以長者。其或異母，虽長，先以同母者, “When *tongchan* 同產 are heirs, the priority is to be given to the siblings within the same household, when all the siblings do not register within the same household, the siblings who do not register within the same household are allowed to be heirs and the priority is to be given to the older siblings. When older siblings do not have the same mother, the priority is to be given to the siblings of the same mother instead of the older siblings.” According to this article, *tongchan* 同產 must include brothers and sisters of the same father as well as the same mother. So I translate *tongchan* 同產 as “brothers and sisters, or siblings.”

¹⁵¹ *Qi shi* 棄市: The editors of ZJS 2001 and most scholars think this punishment means “to execute someone in the marketplace”. In contrast, Li Junming and Zhang Jianguo put forward that the punishment refers to execution by hanging (Li Junming 2011, 32-33. Zhang Jianguo 1996, 12-24).

¹⁵² *Bian bu* 徧捕 is found in ENLL 68 and 73 as well. Wang Zijin notes that *bian* 徧 means “to assist or to benefit” (Wang Zijin 2003, 44-45). I think “*bian* 徧” is used as a loan character of “*bian* 遍” that means “all, all over, all around.”

¹⁵³ *Xian gao* 先告: this technical term means “to accuse an offender to the authority before the authority discovers the crime.”

¹⁵⁴ *Zui* 罪: According to Hulsewé, in HS and SJ texts, this important technical term can mean “a crime,” “a punishment” (Hulsewé 1955, 398, note 242). The term also has these meanings in the ENLL text.

§1.2 【從諸侯】¹⁵⁵來誘及為間者，磔。亡之𠄎₃

[Those who come from feudal lords] lure someone or spy, are to be quartered.
Absconding [...]

§1.3 賊燔城、官府及縣官積聚，棄市。賊燔寺舍、民室屋、廬舍、積聚，黥為城旦舂。其失火延燔之，罰金四兩，債₄所燔。鄉部、官嗇夫、吏主者弗得，罰金各二兩。₅

Burning walls, government buildings,¹⁵⁶ or government¹⁵⁷ storehouses with malice

¹⁵⁵ About three or four characters are illegible at the beginning of this strip. Compared with ZYS 21, 22 and 25, it seems that the missing characters are *cong zhuhou* 從諸侯. See ZYS 21: *Lü suo yi jing cong zhuhou lai you zhe* 律所以禁從諸侯來誘者, “The reason why the statutes prohibit those who are from feudal lords to lure somebody;” and ENLL 150: *bu cong zhuhou lai wei jian zhe* 捕從諸侯來為間者, “arresting someone who comes from feudal lords as a spy.”

¹⁵⁶ *Guan fu* 官府: Lau and Lüdke note that this refers to “guarded government buildings” (FLDW 155 = RCL D133, ENLL 4 and 410). In these government buildings, there were storehouses (RCL A74) and workshops, where persons worked to pay their debts (QLSBZ 133 = RCL A68, FLDW 63, 127 = RCL D51, 106 and ENLL 93, 157). According to evidence from the Shuihudi texts, it is clear that these buildings were guarded by the government (QLSBZ 150 = RCL A71, FLDW 133 = RCL D111) (Lau and Lüdke 2012, 164, footnote 842).

¹⁵⁷ *Xianguan* 縣官: this technical term is frequently used in the ENLL text (in ENLL 4, 18, 20, 51, 161, 253, 260, 288, 319, 409, 411, 418, 421, 427, 433, 434, 435, 436, and 437). The editors of ZJS 2001 explain it as “the authority” (*guanfang* 官方) (ZJS 2006, 8). Though it is so often used in the ENLL text, it is only found once in the Shuihudi manuscripts (in *Yushu* 8). The Shuihudi editors explain it as “the officials in a prefecture” (*xian zhong guan li* 縣中官吏) (Shuihudi Qin mu zhujian zhengli xiaozu 1978, 18). This word is found very often in SJ, HS and other received texts of Han, e.g. HS 5, 140: *Li ji zhu you zhi shou qi guan shu suo jian, suo zhi, suo xing, suo jiang, qi yu yin shi ji chang fei, wu lun. Ta wu, ruo mai gu jian, mai gu gui, jie zuo zang wei dao, mo ru zang xian guan* 吏及諸有秩受其官屬所監、所治、所行、所將，其與飲食計償費，勿論。它物，若買故賤，賣故貴，皆坐臧為盜，沒入臧縣官， “ ‘If an official or anyone who has [official] rank has received anything from his official subordinates, whether from those superintended by him, or those under his rule, or those of whom he is [temporarily] in charge, or those whom he commands [as a military leader], let those who have received food or drink and who calculate [its value] and repay this expense not be tried [for crime; those who receive] other things, [not food or drink, and officials who] have purposely bought things cheap and purposely sold them dear must all be sentenced for having received bribes, and treated as

aforethought shall be punished by execution in the marketplace. Burning hotels,¹⁵⁸ residential houses, houses in the rice fields,¹⁵⁹ or storehouses of commoners¹⁶⁰ with

robbers; their bribes shall be confiscated and paid to the government' " (Dubs 1938 I, 311). Traditional commentators think that in received literature the word *xianguan* 縣官 refers to the emperor, e.g. Si Mazhen' commentary on this word in SJ 57, 2079: *Xian guan wei tianzi ye. Suo yi wei guo jia wei xianguan zhe, Xia guan wang ji nei xian ji guo du ye. Wang zhe guan tian xia, gu yue xian guan ye* 縣官謂天子也。所以謂國家為縣官者，夏官王畿內縣即國都也。王者官天下，故曰縣官也， "The *xianguan* 縣官 is the Son of the Heaven. The reason that the state is called the *xianguan* is that in [the *Zhouli*, sub] the Ministers of Summer, [it says,] 'The inner prefecture (*xian*) of the imperial central domain is the capital of the sate.' The king controls (*guan*) the world. Hence he is called the *xianguan* [i.e. controller of the capital prefecture]" (translated by Dubs, in Dubs 1938 I, 311, note 3.5). However, Dubs notes here that "the *Zhouli* does not seem to contain this statement; the two words referring to that book may be an interpolation" (Dubs 1938 I, 311, note 3.5). It seems that the word *xianguan* 縣官 connoting the emperor is only limited to the special paragraphs where the traditional commentators commented. N. L. Swann notes that the term occurs eighteen times in HS 24 and it refers to "imperial or central government or by implication at least three times for representatives of the central government in local communities" (N.L. Swann, *Food and Money* 167, note 192, quoted in Hulsewé 1955, 381). Hulsewé thinks that this word is "a term very often meaning the central government or even the emperor" (Hulsewé 1955, 381, note 176). According to Liu Dezeng and Li Heng, the term *xianguan* 縣官 preliminarily meant imperial Finance managed by the Superintendent of Lesser Treasury (*shao fu* 少府), and then gradually came to be the substitute for the son of the Heaven (*tianzi* 天子) or the central court (*chao ting* 朝廷) after the time of Emperor Wu in Former Han (Liu Dezeng and Li Yan 2006, 70-74). Loewe argues that *xianguan* 縣官 specifies and stresses the offices that were subordinated to organs of the central government but established in the prefectures or marches, and they bore specific, perhaps technical, responsibilities. However, this word is very often used in many texts to refer to "the government." And in some exceptional cases it denotes the emperor in person (Loewe 2008, 519-527).

¹⁵⁸ *Si she* 寺舍: The editors of ZJS 2001 put forward that this means "the hotels of the government" based on the commentary on it in HHS 24, 837: *Si she, guan she ye* 寺舍，官舍也， "*Si she* 寺舍 are the hotels of the government." I do not think it refers to a kind of government building, because it is mentioned together with other private buildings (*min shi wu, lu she, ji ju* 民室屋、廬舍、積聚) and the punishment for burning up *si she* 寺舍 is lighter than that for burning up government buildings, thus it must have been a kind of private house.

¹⁵⁹ *Lu she* 廬舍 means "the houses that are built in the rice field." See HS 24, 1119: *Lu, tian zhong wu ye, chun xia ju zhi, qiu dong ze qu* 廬，田中屋也，春夏居之，秋冬則去， "*Lu* 廬 are residence houses which are built in the rice fields. [People] live there in spring and summer and leave there in autumn and winter."

malice aforethought: shall be punished by tattooing on the forehead¹⁶¹ and [doing labor] as earth pounders or grain pounders.¹⁶² Burning [the aforementioned buildings] accidentally is to be punished by a fine of four ounces of gold and a compensation for the loss caused by the fire. When district officials,¹⁶³ Bailiffs,¹⁶⁴ and responsible

¹⁶⁰ *Min* 民 refers to “commoners or common people.” They are a group of people different from male or female slaves (*nu bi* 奴婢), holders of a meritorious rank (*jue* 爵), convicts laborers (*tu* 徒) and officials (*li* 吏).

¹⁶¹ *Qing* 黥 “tattooing on the forehead” is the lightest mutilation punishment (*xing* 刑) in Qin and Han. It is very often accompanied by the labor punishment of earth pounders or grain pounder (*qing wei chengdan chong* 黥為城旦舂).

¹⁶² *Chengdan chong* 城旦舂: is the most severe labor punishment. see Yin Shao’s commentary on this word of HS 2, 85: *Chengdan zhe, dan qi xing zhi cheng; chong zhe, fu ren bu yu wai yao, dan chong zuo mi; jie si sui xing ye* 城旦者，旦起行治城；舂者，婦人不豫外徭，但舂作米；皆四歲刑也，“Earth pounders are those who build walls and guard there from early dawn; grain pounders are women, who are not suitable for doing labor outside and pound grains. They are both a four years’ punishment.” From this commentary, we know what tasks were given to earth pounders or grain pounders. In fact, the tasks given to different convict laborers are normally connected with their names. However, we have many passages in Han received texts as well as in manuscripts, which show us that the convicts sentenced to “pound earth or pound grain” were actually sent to perform other different tasks. Just as Hulsewé says, “In actual practice the tasks laid upon the convict laborers had less and less to do with the original appellation of their punishment” (Hulsewé 1955, 130). It is believed by most traditional historians that the penal convict laborers had a time limit. Evidence in the legal manuscripts of Qin and Han suggests that those who are sentenced to do labor as convict laborers are life-long. This idea was first put forward by Gao Heng, see Gao Heng 1977, 43-44. After him, many scholars discussed this topic and related problems; see Xing Yitian 2007, 238-246; Zhang Jianguo 1996, 12-14; Zhang Jinguang 1985, 31-41, Li Junming 2011, 34-36.

¹⁶³ The Shuihudi editors think that *xiang bu* 鄉部 is under the jurisdiction of the local district (*xiang* 鄉) and *ting bu* 亭部 is under the jurisdiction of the local police office (*ting* 亭) in Han (Shuihudi Qin mu zhujian zhengli xiaozu 1990, 22). Liao Boyuan believes that there were big districts (*da xiang* 大鄉) and small districts (*xiao xiang* 小鄉) in Han. Big districts were established by commanderies, and one official with rank (*you zhi* 有秩) was appointed to one big district. In contrast, small districts were established by prefectures, and one Bailiff was appointed by Prefects. *Xiang bu* 鄉部 in the ENLL text refers to officials with rank in big districts (*xiang you zhi* 鄉有秩) or Bailiffs in small districts (*xiang se fu* 鄉嗇夫) (Liao Boyuan 2007, 22-23).

¹⁶⁴ A number of Bailiffs with different responsibilities in official departments are referred to very frequently in the Shuihudi legal texts, for example, *tian se fu* 田嗇夫, *cang se fu* 倉嗇夫, *ku se fu* 庫

officials do not catch offenders, they are to be fined two ounces of gold respectively.

§1.4 船人渡人而流殺人，耐之，船嗇夫、吏主者贖耐。其殺馬牛及傷人，船人贖耐，船嗇夫、吏贖遷。其敗亡粟米它物，出其半，以半負船人。舳艫負二，徒¹⁶⁵負一；其可紐繫而亡之，盡負之，舳艫亦負二，徒負一；罰船嗇夫、吏金各四兩。流殺傷人，殺馬牛，又亡粟米它物者，不負。⁸

Boatmen, who carry passengers, if they drown,¹⁶⁶ are to have the beard shaved off;¹⁶⁷

嗇夫, *sikong sefu* 司空嗇夫 etc. Qiu Xigui put forward that *xian sefu* 縣嗇夫 refers to Prefects; while other Bailiffs are petty officials responsible for different tasks (Qiu Xigui 1981, 226-301). Gao Min thinks that *guan sefu* 官嗇夫, *xian sefu* 縣嗇夫 and *sefu* 嗇夫 are the different names for the same official, who is lower than a Prefect (Gao Min 2000, 135-148). Gao Heng believes that we have two kinds of *sefu* 嗇夫 in legal manuscripts: (1) Prefects, they are called *sefu* 嗇夫, *dasefu* 大嗇夫, or *xiansefu* 縣嗇夫; (2) Bailiffs with respective responsibilities who are subordinated to a prefect or a metropolitan office, they are called *mou sefu* “某嗇夫,” like *tian sefu* 田嗇夫, *cang sefu* 倉嗇夫, *ku sefu* 庫嗇夫, *sikong sefu* 司空嗇夫 or *guan sefu* “官嗇夫” (Gao Heng 2008, 50-54). For a detailed explanation of *sefu* 嗇夫, see Hulseyé 1978, 201-202 as well. I follow the explanations by Gao Heng.

¹⁶⁵ Normally *tu* 徒 refers to “convict laborers or statutory laborers.” From the context of this article, it is clear that *tu* 徒 work with boatmen on the bow and the stern (*zhou lu* 舳艫). We do not know any type of convict laborers or statutory laborers (*tu* 徒) do labor on a boat. So *tu* 徒 does not refer to “convict laborers or statutory laborers” but “boatman apprentices” in this article.

¹⁶⁶ *Liu sha* 流殺: The editors of ZJS 2001 think that it means “to drown” here (ZJS2006, 9).

¹⁶⁷ *Nai* 耐: the way how to shave the convicts (*nai* 耐) is controversial and has been discussed by many scholars. It seems that the convicts receiving this punishment are to have the beard that grows around a man’s chin and cheeks shaved off. Since this punishment is not applicable to women, the article of ENLL 88-89 specifies that women who are to receive this punishment, are to pay a redemption fee for shaving off the beard: *Nü zi dang zhe ruo yao zhan zhe, qi shi. Dang zhan wei chengdan zhe qing wei chong, dang shu zhan zhe shu qing, dang nai zhe shu nai* 女子當磔若腰斬者，棄市。當斬為城旦者黥為舂，當贖斬者贖黥，當耐者贖耐。The punishment of shaving off the beard (*nai* 耐) is never used by itself in the ENLL text, it is always used together with different labor punishments: *nai wei guixin* 耐為鬼薪, *nai wei baican* 耐為白粲, *nai wei lichen qie* 耐為隸臣妾, *nai wei sikou* 耐為司寇。Although in this article it is used by itself and no labor punishment is specified, according to ENLL 90 we can decide the labor punishment accompanied by it: *You zui dang nai, qi fa bu ming nai zhe, shu ren yi shang nai wei sikou, sikou nai wei lichen qie* 有罪當耐，其法不名耐者，庶人以上耐為司寇，司寇耐為隸臣妾。As boatmen belong to commoners or higher, according to ENLL 90, they are to have the beard shaved off and made robber guards (*nai wei sikou* 耐為司寇).

Boat Bailiffs and responsible officials are to pay a redemption fee¹⁶⁸ for shaving off

¹⁶⁸ *Shu 贖*: By analyzing *shu 贖* in different passages of HS and HHS, Hulsewé came to the conclusion that “redemption was an extraordinary permission to pay a fine as the punishment for an act which normally was punished differently and redemption remained for the whole period the result of a special act of the grace of the emperor.” He further notes that “redemption always was bound to certain conditions and that it was never optional; it always remained carefully determined which persons under which circumstances were permitted to avail themselves of this possibility to evade the application of punishments on their person” (Hulsewé 1955, 205-214). Hulsewé had no chance to read the Shuihudi texts when he finished RHL; after he read the Shuihudi legal texts, he further notes in his book RCL that “this term appears to have been frequently allowed, because we find cases of redemption mentioned for banishment, hard labor, mutilation, tattooing, castration, and even the death penalty.” And he thinks that under the Qin, people could be condemned to redeem a punishment; and this peculiar type of redemption was equivalent to a fine (Hulsewé 1985, 18). Im believes that in Han there were two kinds of *shu 贖*. The first kind of redemption (*shu 贖*) is frequently used in received literature and refers to “to pay a certain sum to avoid or decrease the sentenced punishment”, e.g. *qiu jiu yue, ling si zui ru shu qian wu shi wan jian si yi deng* 秋九月，令死罪入贖錢五十萬減死一等 (HS 6, 105). This kind of paying redemptions (*shu 贖*) was issued by the emperor, for this reason they are often quoted in different passages of the received literature in Han times. The explanations of *shu 贖* by Hulsewé in RHL fits the first kind of redemption (*shu 贖*) discussed by Im. Im thinks that the second kind of *shu 贖* is used in the Shuihudi and ENLL legal texts, *shu 贖* refers to “a punishment by paying a regulated sum”, see ENLL 119: *Shu si, jin er jin ba liang. Shu chengdan chong, guixin, baican, jin yi jin ba liang. Shu zhan, fu, jin yi jin si liang. Shu bi, qing, jin yi jin. Nai, jin shi er liang. Shu qian, jin ba liang* 贖死，金二斤八兩。贖城旦舂、鬼薪白粲，金一斤八兩。贖斬、腐，金一斤四兩。贖劓、黥，金一斤。耐，金十二兩。贖遷，金八兩 (Im 2012, 185-213). I basically agree with the explanations of this term by Im. In the ENLL text, this term frequently refers to “a punishment by paying a regulated sum.” However, it should be noted that in few cases, *shu 贖* is also used to mean “to pay a certain sum to avoid or decrease the sentenced punishment.” See ENLL 38: *Zei sha shang fu mu, mu sha fu mu, ou li fu mu, fu mu gao zi bu xiao, qi qi zi wei shou zhe, jie gu, ling wu de yi jue chang, mian chu ji shu* 賊殺傷父母，牧殺父母，毆詈父母，父母告子不孝，其妻子為收者，皆錮，令毋得以爵償、免除及贖。The passage of 皆錮，令毋得以爵償、免除及贖 means “to have their privilege of meritorious ranks deprived and are not allowed to be expiated, be exempted or be redeemed by [taking away or reducing] their meritorious ranks.” Just as Hulsewé mentions in his book, “The practice of redemption is closely connected with the practice of taking away noble rank from a holder of such rank, either partly or wholly, in lieu of other punishment” (Hulsewé 1955, 205). It seems that at first *shu 贖* had the meaning of “to pay a certain sum to avoid or decrease the sentenced punishment,” at that time the sum used for redemption of a punishment is not fixed, it depends on the circumstances and the wish of the emperor. However, gradually, *shu 贖*

the beard. In case that¹⁶⁹ horses or oxen are killed or someone [on the boat] is injured, boatmen are to pay a redemption fee for shaving off the beard, Boat Bailiffs and [responsible] officials are to pay a redemption fee for banishment. In case that grain, rice and other objects are damaged or lost, half of the loss is to be written off,¹⁷⁰ the other half is to be compensated by the boatmen, the boatmen on the bow and the stern¹⁷¹ compensate two thirds, the boatman apprentice compensates one third. In case that [grain, rice and other objects] can be fastened tightly but are lost, the boatmen should compensate all the loss, the boatmen on the bow and the stern compensate two thirds as well, the boatman apprentice compensates one third, Boat

became a punishment like the punishment of paying a regulated fine of gold (*fa jin* 罰金), the offenders who by law receive this punishment have to pay a regulated sum of gold as well. “*Shu 贖*” with this meaning is normally followed by a punishment, as we see in ENLL119. It does not mean that “the offenders are to be redeemed from the punishment;” instead, the sum paid by the offenders is decided upon the punishment used after “*shu 贖*.” For example, *shu si 贖死* does not refer to “being redeemed from death penalty” but specifies “to pay a sum of two *jin* and eight ounces of gold” (ENLL 119). In such cases, I translate it as “to pay a redemption fee for a punishment.”

¹⁶⁹ *Qi 其*: the word “*qi 其*” occurs very frequently in the ENLL manuscript as well as the Shuihudi Qin legal manuscripts. Besides its common meanings, in legal texts it is also used to mean “in case that, or if,” like in the article of ENLL 6-8. “*Qi 其*” with this meaning serves to divide a statute into multiple sub-parts: each “*qi 其*” introduces a different set of circumstances under which the crimes regulated in the article are committed and is then followed by a specification of the punishment to be applied for the crime under the certain circumstances. The lawmakers of Qin and Han used “*qi 其*,” in order to avoid repeating the description of the crimes or a certain circumstance in a statute. Accordingly, in this article, since “*qi 其*” is used, the description of circumstances of the crimes “*chuan ren du ren* 船人渡人” is not repeated.

¹⁷⁰ *Chu 出* means “to write off.” This word is used frequently in Qin legal texts and in Juyan Han texts as well, e.g. see QLSBZ 18-19 = RCL A9: *Qian shao lü zhe, ling qi ren bei zhi er gao guan, guan gao ma niu xian chu zhi* 錢少律者，令其人備之二告官，官告馬牛縣出之， “In case the money (collected) is less than (the sum stipulated by) the Statute, orders are given to the person(s) concerned to make good the deficiency, meanwhile informing the office. The office informs the prefecture (responsible for) the horses or oxen to remove (the animals from the register).”

¹⁷¹ The editors of ZJS 2001 believe that *zhou lu* 舳艫 means the boatmen on the bow and the stern (ZJS 2006, 9). The editors of ZJS 2007 think that this may refer to the skipper of a boat rather than the boatmen on the bow and the stern (ZJS2007, 93).

Bailiffs and officials are to be fined four ounces of gold respectively. In case that [the following things happen together during the trip]: passengers drown or are injured, horses or oxen are killed, and grain, rice and other objects are lost, [the boatmen] are not responsible for compensating the loss.¹⁷²

§1.5 偽寫皇帝信璽、皇帝行璽，腰斬以徇。 9

Forging two kinds of emperor's seals¹⁷³ is to be punished by cutting in two at the waist and taking around for public display.¹⁷⁴

§1.6 偽寫徹侯印，棄市；小官印，完為城旦舂。 10

Forging seal(s) of a Holder of the Twentieth Meritorious Rank is to be punished by execution in the marketplace; forging seal(s) of a petty official is to be punished by doing labor as earth pounders or grain pounders without mutilation.¹⁷⁵ [. . .]

§1.7 矯制，害者，棄市；不害，罰金四兩。 11

Claiming an imperial edict fraudulently¹⁷⁶ and causing harm is to be punished by

¹⁷² According to ENLL 9: *yi ren you shu* [. . .] *zui ye, yi qi zhong zui zui zhi* 一人有數罪也，以其重罪罪之, in this case, when [the following things happen together during the trip]: passengers drown or are injured, horses or oxen are killed, and grain, rice and other goods are lost; the offenders are to be sentenced for the most serious crime, i.e. the passengers drown, and they are to receive the punishment of shaving off the beard, but are not responsible for compensating for the loss of rice, grain and other objects.

¹⁷³ *Huangdi xin xi* 皇帝信璽 and *huangdi xing xi* 皇帝行璽 are two kinds of the emperor's six seals.

¹⁷⁴ For a comprehensive study on this crime and related topics, see Liu Shaogang 2004, 229-37.

¹⁷⁵ *Wan* 完 means "to leave someone intact, or to leave someone without mutilation" and is opposite to the term *xing* 刑 (to mutilate someone). *Wan* 完 is used with the labor punishment of earth pounders or grain pounders together (*wan wei chengdan chong* 完為城旦舂).

¹⁷⁶ *Jiao zhi* 矯制: See HS 3, 102: *Xiangping hou Ji Tong shang fu jie, nai ling chi jie jiao nei Bo bei jun* 襄平侯紀通尚符節，乃令持節矯內勃北軍, "The Marquis of Xiangping, Ji Tong-[jia], was Master of the Credentials, so [Zhou Bo] ordered him to [get and] bear a credential which would fraudulently admit [Zhou] Bo to the Northern Army" (Dubs 1938 I, 205). Yan Shigu's commentary on this word here: *jiao, zha ye, zha yi tian zi zhi ming ye* 矯，詐也，詐以天子之命也, "*Jiao* 矯 means 'to do something

execution in the marketplace; not causing harm is to be punished by a fine of four ounces of gold.

§1.8 諸上書及有言也而謾，完為城旦舂。其誤不審，罰金四兩。¹²

Those who forward documents or report something¹⁷⁷ deceptively¹⁷⁸ are to be made earth pounders or grain pounders without mutilation; in case that [they forward documents or reports that] contain mistakes [because they do it] without careful scrutiny,¹⁷⁹ they are to be fined four ounces of gold.

fraudulently, or to claim the order of the son of the Heaven fraudulently’.” Ru Chun’s commentary on this word in HS 17, 660: *Lü, jiao zhao da hai, yao zhan. You jiao zhao hai, jiao zhao bu hai* 律，矯詔大害，要斬。有矯詔害，矯詔不害，“The statutes say: those who claim an imperial edict fraudulently and it cause serious harm, are to be cut into two at the waist. [There are two different results of] claiming an imperial edict fraudulently: One causes harm, and the other does not cause harm.” According to Sun Jiazhou, *jiaozhi* 矯制 means “to claim an imperial edict in the name of the emperor fraudulently,” which is a political crime in Han times. The punishment for *jiao zhi bu hai* 矯制不害 is to be fined four ounces of gold. As the offenders of this crime are normally holders of a meritorious rank or officials, a fine of four ounces of gold is a rather light punishment if we take their political ranks and economical levels into consideration. However, this corresponds to the legal spirit of Han. Because it can be found in the received literature that in some special cases, the officials who claimed an imperial edict in the name of the emperor fraudulently could even protect the interests of the emperor in some special or urgent circumstances (Sun Jiazhou 2007, 226-237).

¹⁷⁷ *Yan* 言: Lau and Lüdke note that “this word normally refers to ‘to report something’ when it is used in administrative documents; and this kind of reports are made in written form” (Lau and Lüdke 2012, 192, note 931).

¹⁷⁸ *Man* 謾: see *Shuowen* 1963, 54: *man, qi ye* 謾，欺也，“*man* 謾 is to deceive, to do something with deception.” See *Jinshu* 30, 928: *Wei zhong qi shang, wei zhi man* 違忠欺上，謂之謾，“To violate loyalty and cheat one’s superiors is to do something deceptively.”

¹⁷⁹ *Bu shen* 不審: see HS 23, 1106: *San you: yi yue fu shi, er yue guo shi, san yue yi wang* 三宥：一曰弗識，二曰過失，三曰遺忘，“There were three pardons, the first was ignorance, the second was negligence, the third was forgetfulness.” Yan Shigu’s commentary on this word: *Fu shi, bu shen ye. Guoshi, fei yi ye* 弗識，不審也。過失，非意也，“[Committing a crime] without knowledge is doing so without careful scrutiny, [committing a crime] by negligence is doing so without intention.” This word is found very often in the Shuihudi legal texts. For example, see QLSBZ 123-24 = RCL A 64: *Du gong bi ling sikong yu jiang du zhi, wu du ling jiang. Qi bu shen, yi lü lun du zhe, er yi qi shi wei yao tu ji* 度功必令司空與匠度之，毋獨令匠。其不審，以律論度者，而以其實為徭徒計，“When estimating the

§1.9 為偽書者，黥為城旦舂。¹³

Those who forge documents are to be tattooed on the forehead and made earth pounders or grain pounders.

§1.10 凡諸詐增減券書，及為書故詐弗副，其以避負債，若受賞賜財物，皆坐贓為盜。其以避論，及所不當¹⁴得為，以所避罪罪之。所避毋罪名，罪名不盈四兩，及毋避也，皆罰金四兩。¹⁵

[. . .] Those who fraudulently¹⁸⁰ add or reduce the texts in the tally of a document,¹⁸¹ or fraudulently make documents without attached counterpart copies, in order to avoid being charged with debt, or to get a reward of money or property, are to be convicted of [obtaining] spoils as thieves. In case that they do so in order to avoid a

work, it is imperative to have the Controller of Works estimate it together with the Builder, one must not only order the Builder (to estimate it). In case of carelessness the persons who made the estimate are to be adjudicated according to the Statutes, whereas the actual amount is to be accounted as statute labour for the conscripts.” According to Hulsewé, “this word means ‘not to look into, not to investigate’ and implies a reprehensible lack of care or attention, resulting in an untrue or false report, without, however, any criminal intent ” (Hulsewé 1985, A64, note 41). I think *bu shen* 不審 has two meanings in legal manuscripts: normally, when a noun precedes this word, it refers to “something is not confirmed according to the facts” e.g. in ENLL 114, 115 and 135. *Shen* 審 with this meaning is very often used in the ZYS texts, after the judicial officials had made a summary of legal cases, they used *shen* 審 to mean that “all investigations about the case have been confirmed,” e.g. ZYS 6 and 23. When a verb precedes it, it means “to do something without careful scrutiny,” e.g. *gao bu shen* 告不審, “to accuse someone without careful scrutiny.” Contrary to the offenders who have committed a crime with malice aforethought (*zei* 賊) or intent (*gu* 故), the offenders who have committed a crime without careful scrutiny did not have criminal intent.

¹⁸⁰ See *Jinshu* 30, 928: *Bei xin cang qiao wei zhi zha* 背信藏巧謂之詐, “To breach trust and conceal trick is to do something fraudulently.” *Zha* 詐 means “to do something deceptively or fraudulently.”

¹⁸¹ The editors of ZJS 2007 think that *quan shu* 券書 are money, property or commercial contracts. They consist of the right part and the left part, each party holds one part of the document as a certificate; for example, the documents mentioned in ZYS 203-204. Besides documents with two parts, some documents consist of three parts, for example, the testament mentioned in ENLL 334-335 has three parts (ZJS 2007, 96).

judgment or do something that [by law] should not be done,¹⁸² they are to be punished by the avoided crime. If what is avoided is not a crime, the crime avoided is punished by a fine of less than four ounces of gold, or nothing is avoided: [the offenders] are all to be fined four ounces of gold.

§1.11 毀封，以它完封印印之，耐為隸臣妾。¹⁶

Destroying seals and using others' intact seals to stamp [documents] is to be punished by having the beard shaved off and doing labor as male or female bondservants.

§1.12 □□□而誤多少其實，及誤脫字，罰金一兩。誤，其事可行者，勿論。¹⁷

[. . .] that is more or less than [the actual number] mistakenly,¹⁸³ or leaving out characters mistakenly, is to be punished by a fine of one ounce of gold. In case that the administrative activities can be finished in spite of such errors, [the offenders are] not to be judged.¹⁸⁴

¹⁸² Bu dang 不當: according to Lau and Lüdker, this word has two different meanings in Qin and Han legal texts: first, it can be used as an auxiliary verb and means "[by law] should not do something" (e.g. in ENLL 67, 91, 148, 274, 368, and 415). Second, it can be used as well as an adverb and means "illegally, unlawfully, or unjustly" (e.g. in ENLL 105 and 114) (Lau and Lüdker 2012, 150-51, note 799). This word with the meaning of "[by law] should not to do" is used in Shuihudi legal texts as well, see QLSBZ 159 = RCL A80: *Chu li, wei, yi chu zhi, nai ling shi shi ji qian zhi, suo bu dang chu er gan xian jian shi, ji xiang ting yi qian zhi, yi lu lun zhi* 除吏、尉，已除之，乃令視事及遣之；所不當除而敢先見事，及相聽以遣之，以律論之，"When appointing (subordinate) officials and . . . , (only) when they have been already appointed they should be ordered to handle business as well as to be sent out. Those who should not have been appointed but who venture to handle business previously, as well as to make an agreement to have them sent out will be sentenced according to the Statutes."

¹⁸³ *Wu duo shao qi shi* 誤多少其實, a similar passage can be found in XL 58 = RCL B29: *Ji tuo shi yu chu shi duo yu cheng lü, ji bu dang chu er chu zhi, zhi qi jia* 計脫實與出實多于程律，及不當出而出之，值其價，"When in accounting stores are omitted, or when issuing stores one issues more than the norm (established by) the Statutes, as well as when one issues what should not be issued, the value is estimated."

¹⁸⁴ *Lun* 論: this technical term is frequently used in legal texts. McLeod and Yates explain it in a more general way and translate it as "to discuss." For detailed reasons of their translation, see McLeod and

§1.13 有挾毒矢若堇毒、糴，及和為堇毒者，皆棄市。或命糴謂鵠毒。¹⁸⁵ 詔所令縣官為挾之，不用此律。¹⁸

Those who hold poisonous arrows, aconite,¹⁸⁶ or monkshood, and those who make a mixture of aconites: are all to be executed in the marketplace. Some call monkshood “chicken poisons.”¹⁸⁷ [In case that] an imperial edict orders the government to produce and take possession of poisons, this statute does not apply.¹⁸⁸

§1.14 軍吏緣邊縣道，得和為毒毒矢，謹藏。節追外蠻夷盜，以假之，事已，輒收藏。匿及弗歸，盈五日，以律論。¹⁹

Military officials along prefectures or marches¹⁸⁹ at the frontiers are allowed to make a mixture of poisons to poison arrows and [they] should be stored carefully.¹⁹⁰ If¹⁹¹

Yates 1981, 134. Hulsewé believes this term means “to judge, to decide, or to sentence,” see Hulsewé 1985, E4, note 5. He translates this word as “to sentence” in the FLDW text, e.g. FLDW 56 = RCL D45: *Dao feng se fu he lun? Ting xing shi yi wei xie yin* 盜封嗇夫何論？廷行事以偽寫印, “How is ‘thievishly to seal (as) an Overseer’ to be sentenced? (According to) the practice of the court this is considered as ‘counterfeiting a seal.’” From this text of FLDW, it is clear that *lun* 論 refers to “to decide whether someone is guilty of a crime and of which crime the offender is guilty of, or to pass a judgment on someone,” which includes the process of trying a criminal case and convicting someone of a crime. I translate this as “to judge.”

¹⁸⁵ The research group of Senshu University 專修大學 puts forward that the sentence may have been included in explanations of the statutes and was copied here (Research Group of Senshu University 專修大學 2003, quoted in ZJS 2007, 97). It seems such an explanation could not have been part of the official legal statutes.

¹⁸⁶ *Jin* 堇 is the name of a poisonous plant, which was used in Chinese traditional medicine.

¹⁸⁷ The editors of ZJS 2001 think that *xi du* 鵠毒 is the same as *ji du* 雞毒 (ZJS 2006, 11).

¹⁸⁸ *Ci lü* 此律 refers to the statute “有挾毒矢若堇毒、糴，及和為堇毒者，皆棄市。”

¹⁸⁹ *Xian* 縣 “prefectures” and *dao* 道 “marches” were of the same administrative level and they were both the constituent units of *jun* 郡 “the commanderies.” *Dao* 道 “marches” were places where non-Chinese or unassimilated peoples (*man yi* 蠻夷) resided.”

¹⁹⁰ The editors of ZJS 2001 punctuate *de he wei du, du shi jing cang* 得和為毒，毒矢謹藏 (ZJS 2006, 11). The editors of ZJS 2007 punctuate *de he wei du du shi, jing cang* 得和為毒毒矢，謹藏. They think the second *du* 毒 is used as a verb which means using the mixture of toxicants to put on arrows or put arrows in the fluid mixture of toxicants to make toxicant arrows (ZJS 2007, 98).

¹⁹¹ *Jie* 節: The editors of ZJS 2001 read it as *ji* 即, which means “if, or in case that” (ZJS 2006, 11).

[the military officials] pursue robbers of foreign countries so that they borrow the poisonous arrows, immediately after their task is finished, [the poisonous arrows] should be returned and stored well. Concealing [them] or not returning them, fully five days, is to be judged according to the statutes.

§1.15 諸食脯肉，脯肉毒殺、傷、病人者，亟盡熟燔其餘。其縣官脯肉也，亦燔之。當燔弗燔，及吏主者，皆坐脯肉贓，與盜同法。²⁰

In case that someone eats rotten meat¹⁹² causes and it causes his death, injury or illness, the leftovers are to be burned up carefully immediately. In case that the rotten meat belongs to the government, it is to be burned up as well. Those who do not burn up rotten meat that should be burned up, and the responsible officials are all to be punished on account of the spoils of the rotten meat, and share the same method and principle of punishment with thieves.

§1.16 賊殺人，鬪而殺人，棄市。其過失及戲而殺人，贖死；傷人，除。²¹

Killing someone with malice aforethought¹⁹³ or killing someone during a fight is to be punished by execution in the marketplace. In case of killing someone with negligence¹⁹⁴ or during a frolic,¹⁹⁵ it is to be punished by paying a redemption fee for death penalty; injuring someone [in such circumstances] is to be exempted from punishment.

¹⁹² *Fu* 脯: It seems that this word is a loan character of “*fu* 腐”.

¹⁹³ *Zei* 賊 means “with malice aforethought, intentionally, or murderously.” This is used when offenders have criminal intent to injure or kill someone (*zei sha* 賊殺, or *zei shang* 賊傷).

¹⁹⁴ *Guoshi* 過失: See *Jin Shu* 30, 928: *Bu yi wu fan wei zhi guo shi* 不意誤犯謂之過失, “To transgress mistakenly without intention is to do so through faults and errors.” This word refers to “by negligence or involuntarily” and is used to express the criminal psychology of an offender. The offender who has committed a crime by negligence did not have criminal intent to do it.

¹⁹⁵ *Xi* 戲: see Zhang Fei’s definition of this word in *Jin Shu* 30, 928: *Liang he xiang hai wei zhi xi* 兩和相害謂之戲, “To hurt each other in harmony is to frolic.” According to this definition, it is clear that the two who play in a frolic do not have the intent to provoke and kill each other; killing someone during a frolic is a kind of manslaughter.

§1.17 謀賊殺、傷人，未殺，黥為城旦舂。²²

Devising a scheme¹⁹⁶ to kill or injure someone with malice aforethought, [with the result that] he is not killed,¹⁹⁷ is to be punished by tattooing on the forehead and [doing labor] as earth pounders or grain pounders.

§1.18 賊殺人，及與謀者，皆棄市。未殺，黥為城旦舂。²³

Those who kill someone with malice aforethought and those who conspire with [them] are all to be executed in the marketplace. If [the result is that] someone is not killed, [the offenders] are to be tattooed on the forehead and made earth pounders or grain pounders.

§1.19 鬪傷人，而以傷辜二旬中死，為殺人。²⁴

Injuring someone during a fight, so that he dies of the injury in twenty days,¹⁹⁸ is a case of killing someone.

§1.20 賊傷人，及自賊傷以避事者，皆黥為城旦舂。²⁵

¹⁹⁶ *Mou* 謀 is found in this article and the next article, but it has different meanings in these two articles. In this article, it means “to devise a scheme to commit a crime alone”, but in the following article, it is used as *yu mou* 與謀, which means “to conspire with someone else to commit a crime.”

¹⁹⁷ *Wei sha* 未殺 can be understood in different ways, it can mean “the offenders have already committed the crime with the result that someone is not killed”, or it can mean “the convicts do not carry out the scheme of killing someone.”

¹⁹⁸ *Gu* 辜 is found in ENLL 39, 48 and ZYS 49 as well. In Qin legal texts, we have the word *gu* 辜, which means “to guarantee.” See QLSBZ 116 = RCL A64: *Xing tu yi wei yi zhong zhi gong zhe, ling gu du zu sui* 興徒以為邑中之功者，令辜堵卒歲, “When levying conscripts for work inside a settlement, order is given to guarantee the earth walls for a full year.” In later Han, the word is known as *bao gu* 保辜 “to guarantee for the results of one’s crime.” See Yan Shigu’s commentary of *Jijiupian* 4,310: *Bao gu zhe, ge sui qi qing zhong, ling ou zhe yi ri shu bao zhi, xian nei zhi si, ze zuo zhong gu ye* 保辜者，各隨其輕重，令毆者以日數保之，限內至死，則坐重辜也。 According to ENLL 24, if a victim dies in twenty days because of the injury caused by an offender, he is guilty of having killed the victim. Hafner explains this word as “because of, or on account of” (Hafner 2009, 416-421, quoted in Lau and Lüdke 2012, 147, note 789).

Those who injure someone with malice aforethought, and those who injure themselves with malice aforethought to avoid service, are all to be tattooed on the forehead and made earth pounders or grain pounders.

§1.21 謀賊殺、傷人，與賊同法。²⁶

Devising a scheme to kill or injure someone with malice aforethought shares the same method and principle of punishment as for [committing the crime] with malice aforethought.

§1.22 鬪而以刃及金鐵銳、錘、樨¹⁹⁹傷人，皆完為城旦舂。其非用此物而眇人，折肢、齒、指，肤體，斷決鼻、耳者，²⁷耐。其毋傷也，下爵毆上爵，罰金四兩。毆同列以下，罰金二兩；其有瘡瘡及口，罰金四兩。²⁸

Fighting with blades, metal spears, awls and tenons to injure someone, is all to be punished by [doing labor] as earth pounders or grain pounders without mutilation. In case of blinding someone in one eye;²⁰⁰ tearing off someone's limb, teeth, and finger(s); dislocating one's joint(s); or breaking off one's nose and ear(s) without such objects: it is to be punished by shaving off the beard. In case that no injury is caused, holders of a lower meritorious rank who beat holders of a higher meritorious rank are to be fined four ounces of gold; those who beat owners of the same or a lower meritorious rank are to be fined two ounces of gold. In case that there are swellings, bruises²⁰¹ or [. . .], [the offenders] are to be fined four ounces of gold.

¹⁹⁹ The editors of ZJS 2001 interpret this character as 錘. According to the infrared photograph, the editors of ZJS 2007 interpret this character as *sun* 樨 (ZJS 2007, 100).

²⁰⁰ The editors of ZJS 2001 transcribe it as *miao* 眇, which means a person who is blind in one eye.

²⁰¹ *Zhi wei* 瘡瘡 see *Shuowen* 1963, 155: *Zhi, ou shang ye* 瘡, 毆傷也, “*Zhi* 瘡 is a wound caused by beating”. See the commentary on these two words by Zhu Junsheng: *Fan ou shang pi fu qi qing hei er wu chuang ban zhe wei zhi, you chuang ban zhe yue wei* 凡毆伤皮肤起青黑而无创瘢者为瘡, 有创瘢者曰瘡, “The swelling of the skin, which is caused by beating, and has the color of cyan or black without bruises is *zhi* 瘡, [the swelling of the skin, which is caused by beating, and has the color of cyan or black] with bruises is *wei* 瘡” (Zhu Junsheng 1970, 427).

§1.23 鬼薪白粲毆庶人以上，黥以為城旦舂。城旦舂也，黥之。²⁹

Firewood gatherers for spirits or sorters of white rice²⁰² who beat commoners²⁰³ or

²⁰² *Gui xin* 鬼薪, *bai can* 白粲: see Ying Shao's commentary of HS 2, 85: *Qu xin gei zong miao wei gui xin, zuo ze mi shi zheng bai wei bai can, jie san sui xing ye* 取薪給宗廟為鬼薪，坐擇米使正白為白粲，皆三歲刑也，"Those who gather firewood for the spirits are *guixin* 鬼薪, those who sit and sort white rice are *bai can* 白粲. They are both penalties of three years." As mentioned above, current research has shown that the labor punishments are life-long.

²⁰³ *Shuren* 庶人: I translate this as "free persons." According to the texts of ENLL 312 and ENLL 316, free persons (*shuren* 庶人), commoners without a meritorious rank (*gongzu* 公卒) and members of the rank and file (*shiwu* 士伍) were all granted 1 *qing* 頃 rice field and one residence house (*zhai* 宅) in early Han. The origin of free persons (*shuren* 庶人) is different from ordinary "commoners" (*min* 民), because they were former slaves, convicts, or mutilated persons, afterwards they are manumitted or exempted from punishment as free persons according to different reasons regulated by the statutes. ENLL 153: *Qun dao, ming zhe, ji you zui dang ming wei ming, neng bu qun dao, ming zhe, ruo zhan zhi yi ren, mian yi wei shuren* 群盜，命者，及有罪當命未命，能捕群盜、命者，若斬之一人，免以為庶人. ENLL 162: *Nu bi wei shan er zhu yu mian zhi, xu zhi, nu ming yue si shu, bi wei shu ren, jie fu shi ji suan shi zhi ru nu bi* 奴婢為善而主欲免之，許之，奴命曰私屬，婢為庶人，皆復使及算事之如奴婢. ENLL 205: *Bu dao zhu qian ji zuo zhe si zui yi ren, yu jue yi ji. Qi yu yi mian chu zui ren zhe, xu zhi. Bu yi ren, mian chu si zui yi ren, ruo chengdan chong, guixin, baican er ren, lichenqie, shouren, sikong san ren yi wei shu ren* 捕盜鑄錢及佐者死罪一人，予爵一級。其欲以免除罪人者，許之。捕一人，免除死罪一人，若城旦舂、鬼薪白粲二人，隸臣妾、收人、司空三人以為庶人，"If [someone] arrests a person, who has made coins stealthily or has helped someone to commit the crime or someone who is punished by death penalty; one degree of a meritorious rank is to be bestowed upon him. In case that he wants to exempt offenders, he is allowed to do so. Arresting one person is allowed to exempt one person punished by death penalty; two earth pounders, grain pounders, sorters of white rice, or gatherers of firewood for spirits; or three male or female bondservants, persons enslaved by the government, or controllers of work as free persons." ENLL385: *Bi yu qi zhu er you zi, zhu si, mian qi bi wei shu ren* 婢御其主而有子，主死，免其婢為庶人，"If female slaves who had sex with their masters haven't given birth to their children, after their masters die, they are to be manumitted as free persons." From above, we see different reasons for manumitting slaves; or exempting convicts or mutilated persons from punishment as free persons. According to ENLL 382, under regulated circumstances slaves that have been manumitted as free persons could even inherit their masters' property, residence houses, rice fields and one of them is even allowed to take over the household: *Si wu hou er you nu bi zhe, mian nu bi yi wei shu ren. Yi shu ren lu yu zhi qi zhu tian zhai ji yu cai, nu bi duo, dai hu zhe wu guo yi ren, xian yong lao jiu* 死毋後而有奴婢者，免奴婢以為庶人。以庶人律予之其主田宅及餘財，奴婢多，代戶者勿過一人，先用勞久 "When [masters] die and they have no heir, their male or female slaves are to be manumitted as

higher are to be tattooed on the forehead and made earth pounders or grain pounders. If earth pounders or grain pounders [beat commoners or higher], they are to be tattooed on the forehead.

§1.24 奴婢毆庶人以上，黥額，畀主。³⁰

Male or female slaves²⁰⁴ who beat commoners or higher are to be tattooed on the forehead and the cheekbone, and given back to their masters.

§1.25 鬪毆變人，耐為隸臣妾。懷子而敢與人爭鬪，人雖毆變之，罰為人變者金四兩。³¹

Fighting with someone or beating someone, so that it causes her to miscarry²⁰⁵, is to be punished by shaving off the beard and [doing labor] as male or female bondservants. When a pregnant woman ventures to quarrel and fight with someone, though the person beating her causes her to miscarry, he is to be fined four ounces of gold.

§1.26 妻悍而夫毆笞之，非以兵刃也，雖傷之，毋罪。³²

[In case that] wives are impertinent and their husbands beat and cane them without

free persons. They are to be granted the rice fields, residence houses and residual property of their masters according to *Statutes on Free Persons*. When [the master] has more than one male or female slave, it is not allowed that more than one slave takes over the household, the male or female slave who worked hard and long for the master shall take it over first. ”

²⁰⁴ *Nu* 奴 are “males slaves” and *bi* 婢 are “female slaves.” The nomenclature of female and male slaves is different in Qin and early Han. In Shuihudi legal texts, male or female slaves are called *chen qie* 臣妾, *nu qie* 奴妾 or *ren nu qie* 人奴妾, e.g. FLDW 104 = RCL D87: *Zi gao fu mu, chen qie gao zhu, fei gong shi gao, wu ting* 子告父母，臣妾告主，非公室告，勿聽，“ ‘Children denouncing their father or mother (and) male and female slaves denouncing their master are unofficial denunciations; they are not to be accepted.’ ”

²⁰⁵ *Bian* 變 means “to miscarry.” See FZS 93 = RCL E23: *Mou chang huai zi er bian, qi qian chu xue ru jia* 某嘗懷子而變，其前出血如甲...，“ ‘When X was once pregnant and miscarried, her front part as well as the blood coming out were like A...’ ”

using a weapon or a blade, though the wives are injured, their husbands are not to be punished.

§1.27 妻毆夫，耐為隸妾。³³

Wives who beat their husbands are to have the beard shaved off and made female bondservants.

§1.28 子賊殺傷父母，奴婢賊殺傷主、主父母、妻、子，皆梟其首市。³⁴

Children who kill or injure parents with malice aforethought, and slaves who kill or injure their masters, or parents, wives or children of their masters with malice aforethought, are all to be beheaded in the marketplace.²⁰⁶

§1.29 子牧殺父母，毆詈泰父母、父母、假大母、主母、後母，及父母告子不孝，皆棄市。其子有罪當城旦舂、鬼薪白粲以上，³⁵ 及為人奴婢者，父母告不孝，勿聽。年七十以上告子不孝，必三環之。三環之各不同日而尚告，乃聽之。教人不孝，³⁶ 黥為城旦舂。³⁷

If children devise a scheme to kill their parents without success,²⁰⁷ if children beat or scold their grandparents,²⁰⁸ their parents, concubines of their fathers,²⁰⁹ mothers of

²⁰⁶ *Xiao shou* 梟首 means “to behead someone.” See the commentary on this word of HHS 7, 305: *Xiao, xuan shou yu mu shang* 梟，懸首于木上, “To behead someone means to hang someone’s head on a tree.”

²⁰⁷ *Musha* 牧殺: a definition of this word can be found in FLDW 76 = RCL D60: *Chenqie mu sha zhu. He wei mu? Yu zei sha zhu, wei sha er de, wei mu* 臣妾牧殺主。何謂牧？欲賊殺主，為殺而得，為牧，“‘Slaves plot to kill their master’; What is meaning of ‘to plot’? Wishing murderously to kill their master, but before having killed him they are caught, is [a case of] ‘to plot’.” Based on this text, Hulsewé puts forward that *mu* 牧, which literately means “to herd,” is a loan for *mou* 謀 “to plot” here (Hulsewé 1985, D60, note 1).

²⁰⁸ *Tai fu mu* 泰父母: *tai* 泰 is read as *da* 大. Here it means “grandparents.”

²⁰⁹ The editors of ZJS 2001 think that *jia da mu* 假大母 means concubines of one’s father or step-grandmother (ZJS 2006, 14). Wang Zijin and Fan Peisong believe that *jia da mu* 假大母 is one’s grandmother without direct consanguinity, so *jia da mu* 假大母 can be the stepmother of one’s father, or can be the foster mother of one’s father (Wang Zijin and Fan Peisong 2003, 52-56).

their masters, or stepmothers, or if parents accuse their children of being unfilial: the children are all to be executed in the marketplace. In case that children are guilty of a crime and [by law] shall be²¹⁰ punished by [doing labor] as earth pounders, grain pounders, firewood gatherers for spirits or sorters of white rice or more severe, or in case that children are slaves, when parents accuse them of being unfilial, the accusations are not to be heard. If those older than seventy years accuse their children of being unfilial, their accusations are to be refused [by the authority] three times.²¹¹ After their accusations have been refused [by the authority] three times on different days and they still insist on accusing their children, their accusations are to be heard. Instigating others to be unfilial is to be punished by tattooing on the forehead and [doing labor] as earth pounders or grain pounders.

§1.30 賊殺傷父母，牧殺父母，毆詈父母，父母告子不孝，其妻子為收者，皆錮，令毋得以爵償、免除及贖。³⁸

[If Someone] kills or injures their parents with malice aforethought, if someone devises a scheme to kill their parents without success, or when someone beats or

²¹⁰ *Dang* 當: Hulsewé translates this word as “to be warranted; warranting” in his books. In RHL, he notes that the fundamental meaning of this word is “to match, to be equal to, to be adequate to,” which means the negative effect of the crime is neutralized by the punishment. He believes that it reflects “the archaic idea that punishment is an act to redress the harmony of the nature which has been disturbed by the crime” (Hulsewé 1955, 80-81). I have used Lau’s explanation: He puts forward that *dang* 當 means “[by law] shall be, or are to be.” Normally *dang* 當 is used in the standard expression *you zui dang* 有罪當 “someone has committed X crime so that [by law] he shall receive Y punishment” in the ENLL and Shuihudi legal texts as well as in the received literature of Han.

²¹¹ *San huan zhi* 三環之: Xu Shihong believes that this word means “to refuse the accusation for three times.” The reason why the officials were required to refuse the accusation for three times is that the authority wants to prevent parents to accuse their children of being unfilial without proof and lets the parents consider more before their accusations. As a result, it can help parents to avoid the embarrassing situation that they do not have children to support them when they are old (Xu Shihong 2004, 79-89).

scolds their parents,²¹² their parents accuse them of being unfilial to the authority, their wives and children are to be enslaved by the government,²¹³ they are to be deprived of the privileges of [their husbands']²¹⁴ meritorious ranks²¹⁵ and are not allowed to be expiated, be exempted²¹⁶ or be redeemed from punishment by [their

²¹² This statute is similar to one text from Xuanquan 懸泉 (present-day: Gansu 甘肅) 0115: 421: *Zei lü: Ou li fu mu ji tong chan, nai wei sikou, zuo ru si kou. Qi xie li zhi, fa jin yi liang* 賊律: 毆詈父母及同產, 耐為司寇, 作如司寇。其毆詈之, 罰金一兩, “The Statute on Banditry says: Beating and scolding parents or siblings, is to be punished by shaving off the beard and doing labor as robber guards. In case of insulting and scolding them, it is to be punished by a fine of one ounce of gold.”

²¹³ *Shou* 收: the basic meaning of this word is “to collect.” According to Hulsewé, it is used in Qin and Han legal manuscripts with at least three different meanings: the first meaning is “to accept or receive spoils” (in RCL D13 and D14); the second meaning is “to arrest, or to keep someone in custody” (in RCL A41, 110 and RCL D61, 91, 92); the third meaning is “to confiscate, namely persons who are made government slaves,” (RCL D55, 96 and 174) (Hulsewé 1985, A41, note 10). In this article, it means “to enslave someone.” Because of the linked liabilities between family members, wives and children of the offenders are to be enslaved by the government. We have *Statutes on Enslavement and Confiscation* (*shou lü* 收律) in the ENLL text.

²¹⁴ Women are not holders of a meritorious rank in Han times; however, they enjoy some privileges of their husbands’ meritorious rank. See ENLL 84: *Qi sha shang qi fu, bu de yi fu jue lun* 妻殺傷其夫, 不得以夫爵, and ENLL 372: *nü zi bi qi fu jue* 女子比其夫爵, “[the treatment of] woman is according to her husband’s meritorious rank”

²¹⁵ *Gu* 錮: The editors of ZJS 2001 think that it means “to keep someone in custody.” (ZJS 2006, 14). Zhu Honglin holds the opinion that it means “to put chains on one’s hands or feet” (Zhu Honglin 2005, 43). Zhang Boyuan discusses its meaning and believes that it is a punishment that deprives offenders of their privileges, e.g. their meritorious rank and rewards, and forbids them to be exempted or be redeemed from punishment (Zhang Boyuan 2005, 228-230). I follow the explanation of Zhang Boyuan.

²¹⁶ *Mian* 免 refers to “to be exempted from punishment” here. See ENLL 394: *Zhu zha wei zi jue mian, jue mian ren zhe, jie qing wei chengdan chong* 諸詐偽自爵免、爵免人者, 皆黥為城旦舂, “Those who fraudulently disguise themselves as holders of meritorious rank, or use a meritorious rank to exempt others [from punishment], are all to be tattooed on the forehead and made earth pounders or grain pounders.” According to this article, it is evident that in certain circumstances convicts with a meritorious rank can be exempted from punishment (*mian* 免). Based on this word in the ENLL text, Shuihudi legal texts as well as in the received literature of Han, Lau and Lüdke try to analyze in which circumstances the convicts are allowed to be exempted from punishment by using their meritorious rank, see Lau and Lüdke 2012, 187-188, note 914. *Mian* 免 with this meaning is found in ENLL 184 and 204 as well. *Mian* 免 has two other meanings in the ENLL text: first, it can be used to mean “to be

husbands'] meritorious ranks.²¹⁷

§1.31 父母、【主】²¹⁸毆笞子及奴婢，子及奴婢以毆笞辜死，令贖死。³⁹

[In case that] parents beat or cane their children, or masters beat or can their slaves, so that they die of beating or caning, parents or masters are ordered to pay a redemption fee for death penalty.

§1.32 婦賊傷、毆詈夫之泰父母、父母、主母、後母，皆棄市。⁴⁰

Women who injure with malice aforethought, beat or scold their husbands' grandparents, parents, their masters' mothers, and mothers-in-law, are all to be executed in the marketplace.

§1.33 毆兄、姊及親父母之同產，耐為隸臣妾。其隍詢詈之，贖黥。⁴¹

Beating older brothers, older sisters or siblings of parents is to be punished by shaving off the beard and [doing labor] as male or female bondservants. In case of insulting

manumitted from slavery," see ENLL 153, 162, 163, 382, 385; second, it can also be used to mean "to be removed from office," see ENLL 143, 145, 210, 347, 349.

²¹⁷ The editors of ZJS 2001 punctuate *ling wu de yi jue chang, mian chu ji shu* 令毋得以爵償、免除及贖 (ZJS 2006, 14). Zhang Boyuan explains *jue chang* 爵償 as *jue dang* 爵當, "to be expiated by meritorious ranks" (Zhang 2005, 100). Based on the similar passage of ZYS 66: *ping dang nai wei lichen, wu de yi jue, shang mian* 平當耐為隸臣，無得以爵、賞免, "Ping shall have the beard shaved off and be made male bondservants and he is not allowed to be exempted from punishment by his meritorious rank or rewards" and the article of ENLL 179: *you zui dang shou, yu wei jue er yi shang chu zui zhe, shou zhi* 有罪當收，獄未決而以賞除罪者，收之. It is clear that in early Han besides a meritorious rank, a reward can be used to exempt someone from punishment as well. Since the character *shang* 賞 is written very similar to the character *chang* 償, we cannot preclude the possibility that the scribe may have written *shang* 賞 mistakenly as *chang* 償, so the passage should be "皆錮，令毋得以爵、賞免除及贖," which means "the privilege of [their husbands'] meritorious ranks and rewards is to be deprived, and are not allowed to be exempted or be redeemed from punishment by [their husbands'] meritorious ranks or rewards."

²¹⁸ According to the content of this article, I add this character *zhu* 主 here. I think the scribe has left out this character mistakenly.

and scolding them, it is to be punished by paying a redemption fee for tattooing on the forehead.

§1.34 毆父偏妻、父母男子同產之妻、²¹⁹泰父母之同產，及夫父母同產、夫之同產，若毆妻之父母，皆贖耐。其隸詢詈之，罰金₄₂四兩。₄₃

Beating fathers' concubines, wives of parents' male siblings, siblings of grandparents, siblings of husband' parents, siblings of husbands, or parents of wives, is all to be punished by paying a redemption fee for shaving off the beard. Insulting and scolding them, is to be punished by a fine of four ounces of gold.

§1.35 凡母妻子者，棄市。其悍主而謁殺之，亦棄市；謁斬趾若刑，為斬、刑之。其隸詢詈主、主父母妻₄₄²²⁰

[. . .] mothers, wives, or children, are to be executed in the marketplace. In case that the slaves are impertinent and their masters request the authority to execute them, they are to be executed in the marketplace as well; if their masters request the authority to cut off their foot or mutilate them, they are to have the foot cut off or to be mutilated. In case that they insult and scold their masters, wives or parents of their masters [. . .]

§1.36 □□□者，以賊論之。₄₅

[. . .] someone, it is to be judged in the same manner as [committing a crime] with malice aforethought.

§1.37 以縣官事毆若詈吏，耐。所毆詈有秩以上，及吏以縣官事毆詈五大夫以上，

²¹⁹ The editors of ZJS 2001 punctuate it 毆父偏妻父母、男子同產之妻, Wang Wei punctuates it 毆父偏妻、父母男子同產之妻 (Wang Wei 2010, 75-76).

²²⁰ The editors of ZJS 2001 think the texts of ENLL 44 and 45 constitute one article. According to The editors of ZJS 2007, it seems unlikely that ENLL 44 and 45 connect directly, the meaning and the sequence of ENLL 45 is not clear (ZJS 2007, 107).

皆黥為城旦舂。長吏以縣官事詈少吏，⁴⁶

Beating or scolding officials because of administrative activities is to be punished by shaving off the beard. When [Officials with nominal salary] of One Hundred Piculs or more are scolded or beaten, or when officials beat Holders of the Ninth Meritorious Rank or higher because of administrative activities,²²¹ the offenders are all to be tattooed on the forehead and made earth pounders or grain pounders. Chief Officials,²²² who scold Minor Officials²²³ because of administrative activities [. . .]

§1.38 囚者，亦得毋用此律。⁴⁷

[. . .] someone, it is not allowed to apply this statute as well.

§1.39 諸吏以縣官事笞城旦舂、鬼薪、白粲，以辜死，令贖死。⁴⁸

Officials who cane earth pounders, grain pounders, gatherers of firewood for spirits or sorters of white rice because of administrative activities, because of caning they die , are ordered to pay a redemption fee for death penalty.

§1.40 賊殺傷人畜產，與盜同法。畜產為人牧而殺傷囚⁴⁹

Killing or injuring other's livestock with malice aforethought shares the same method and principle of punishment with theft. Livestock is grazed by someone and they kill or injure [. . .]

§1.41 犬殺傷人畜產，犬主償之。它囚⁵⁰

When a dog kills or injures someone's livestock, the owner of the dog shall

²²¹ *Yi xianguan shi* 以縣官事 means “because of administrative activities.” For an analysis of this word, see Loewe 2008, 519-527.

²²² *Zhang li* 長吏: scholars believe that *zhang li* 長吏 includes “Chiefs of the Prefectures (*xian Zhang* 縣長), Prefects (*xian ling* 縣令) and two of their subordinates: their Assistants (*xiang cheng* 縣丞) and Commandants (*xian wei* 縣尉) (Yan Gengwang 1961, vol.1, 7; Lao Gan 1960, 13).

²²³ *Shao li* 少吏 are officials who had nominal salary less than 100 piculs in Han.

compensate for the loss. Other [. . .]

§1.42 亡印，罰金四兩，而布告縣官，毋聽亡印。⁵¹

Losing seal(s) is to be punished by a fine of four ounces of gold. The lost seal(s) shall be reported to the government, so that they are not to be accepted.

§1.43 亡書、符、券、入門衛木久、塞門、城門之鑰，罰金各二兩。⁵²

Losing document(s), passport(s), certificate(s),²²⁴ wood brand(s) [that is used to] enter walls, or key(s) of walls on the frontier or in a city, is to be punished by a fine of two ounces of gold respectively.

§1.44 盜書、棄書官印以上，耐。⁵³

Stamping a document with another office's seal stealthily²²⁵ or removing a seal of an office²²⁶ or higher from a document, is to be punished by shaving off the beard.

²²⁴ *Fu* 符 and *quan* 券 were two different kinds of the documents in Han and they had different functions. For the differences between the two documents: *fu* 符 and *quan* 券, see Lau and Lüdke 2012, 304-5, note 1548.

²²⁵ It seems that this article specifies two crimes: the first crime is *dao shu guan yin* 盜書官印 “to stamp a document with the seal of another office” instead of *dao shu* 盜書 “to steal documents;” and the second crime is *qi shu guan yin yi shang* 棄書官印以上 “to remove a seal of an office or higher from a document.” See FLDW 138 = RCL D116: *Jia bu yi, gao dao shu cheng yin yi wang* 甲捕乙，告盜書丞印以亡, “A arrests B and denounces him for having fraudulently copied the seal of an Assistant (prefect) and having absconded with it.” The Shuihudi editors believe that *dao shu cheng yin* 盜書丞印 means “to use the seal of an Assistant of Prefect to stamp” (Shuihudi Qin mu zhujian zhengli xiaozu 1990 A, 125). See FLDW 56 = RCL D45 as well: *Dao feng se fu he lun? Ting xing shi yi wei xie yin* 盜封嗇夫何論? 廷行事以偽寫印, “How is ‘thievishly to seal (as) an Overseer’ to be sentenced? (According to) the practice of the court this is considered as ‘counterfeiting a seal.’” The two crimes regulated in this ENLL article are two kinds of the document crimes, which fall into the category of *Zei li* 賊律 (e.g. ENLL 9-16).

²²⁶ *Guan* 官: Loewe thinks that “in the institutional terminology of the Qin and Han empires *guan* 官 generally signifies the offices that were established within the regular organs of imperial government, starting with that of the *chengxiang* 丞相 (Chancellor) and reaching down to those of the lowest grade; *li* 吏 denotes the officials appointed to those posts.” After an analysis of this word in different

賊律⁵⁴

Statutes on Banditry

2.2.2 Statutes on Theft (*Dao lü* 盜律)

§2.1 盜賊值過六百六十錢，黥為城旦舂。六百六十到二百廿錢，完為城旦舂。不盈二百廿到百一十錢，耐為隸臣妾。不⁵⁵盈百一十錢到廿二錢，罰金四兩。不盈廿二錢到一錢，罰金一兩。⁵⁶

If the value of spoils obtained by stealing exceeds 660 cash, [the offenders] are to be tattooed on the forehead and made earth pounders or grain pounders. [If the value of spoils obtained by stealing] is from 220 cash, up to 660 cash, [the offenders] are to be made earth pounders or grain pounders without mutilation. [If the value of spoils obtained by stealing] is not fully 220 cash, down to 110 cash, [the offenders] are to have the beard shaved off and made male or female bondservants. [If the value of spoils obtained by stealing] is not fully 110 cash, down to 22 cash, [the offenders] are to be fined 4 ounces of gold. [If the value of spoils obtained by stealing] is not fully 22 cash, down to 1 cash, [the offenders] are to be fined 1 ounce of gold.

§2.2 謀遣人盜，若教人何盜所，人即以其言□□□□□及知人盜與分，皆與盜同法。⁵⁷

Devising a scheme and sending someone to steal, or instructing someone where to steal and he immediately according to the words [...], or knowing that others have stolen and sharing [spoils]: shares the same method and principle of punishment with theft.

§2.3 謀偕盜而各有取也，并值其贓以論之。⁵⁸

[If someone] conspires with others to steal together and each obtains something

passages of the received literature in Han times, he concludes that “it seems likely that it was comparatively late, perhaps in Eastern Han times, that *guan* 官 came to be used regularly to denote officials rather than their posts or the buildings in which they worked” (Loewe 2008, 510-12).

respectively, he is to be judged by the combined value of the spoils.

§2.4 盜盜人，贓見存者，皆以畀其主。⁵⁹

After a thief has stolen²²⁷ from someone, if spoils are still existent, they are all to be given back²²⁸ to their owner.²²⁹

§2.5 受賂以枉法，及行賂者，皆坐其贓為盜。罪重於盜者，以重者論之。⁶⁰

Those who accept bribes and pervert the law, or those who give bribes, are all to be convicted of [obtaining] spoils as thieves. If the punishment for [accepting bribes and perverting the law, or giving bribes]²³⁰ is more severe than that for theft, they are to be judged by the more severe one.

§2.6 徼外人來入為盜者，腰斬。吏所興能捕若斬一人，拜爵一級。不欲拜爵及非吏所興，購如律。⁶¹

Persons outside the fortresses²³¹ who come to steal, are to be cut in two at the waist.

²²⁷ *Dao dao ren* 盜盜人: The first *dao* 盜 is used as a noun, which means “a thief”; the second *dao* 盜 is used as a verb, which means “to steal something from someone.”

²²⁸ *Bi* 畀 normally means “to give; to bestow.” In the ENLL text, it means “to return something or to give something back to the original owner; or to return a slave to his master.”

²²⁹ We have a quotation of a similar article in FLDW 23 = RCL D20: *Dao dao ren, mai suo dao, yi mai ta wu, jie bi qi zhu* 盜盜人，賣所盜，以買它物，皆畀其主，“(The Statutes say) ‘When a robber robs somebody and he sells what he has robbed, thereby buying other things, all are given back to the owner (of the stolen goods)’.”

²³⁰ I think that the *zui* 罪 that is to be compared with the punishment for theft refers to “the punishment for perverting law by taking a bribe, or giving a bribe.” The statute regarding this can be found in ENLL 93-95.

²³¹ *Jiao* 徼 means “forts or fortresses”. See the commentary on this word in SJ 91, 2600: *Jiao, wei bian jing ting zhang* 徼謂邊境亭鄣, “Fortresses are police posts or forts at the frontiers.” See FLDW 5 = RCL D4: *Ren chen jia mou qian ren qie yi dao zhu niu, mai, ba qian xie bang wang, chu jiao, de* 人臣甲謀遣人妾乙盜主牛，賣，把錢偕邦亡，出徼，得, “Somebody’s slave A plots to send this person’s female slave to steal (their) master’s ox; they sell (it) and, taking the money, together they flee the country. When leaving the border they are caught.” According to this, the fortresses (*jiao* 徼) were set up at the frontiers and were guarded, when travellers passed them, they had to be checked.

Someone conscripted²³² by the officials, if he arrests or executes one [of these offenders], one degree of meritorious rank is to be bestowed upon him. If he does not want to receive a meritorious rank, or he is not conscripted by officials, he is to be rewarded²³³ according to the statutes.²³⁴

§2.7 盜五人以上相與攻盜，為群盜。⁶²

Five persons or more who attack and steal together are a gang of thieves.²³⁵

²³² *Xing* 興 means “to conscript someone by the government.” This word is found in ENLL 143 and ZYS 157 as well.

²³³ *Gou* 購: means “to reward someone by gold.” See HS 1, 69: *Shang yue, wu zhi yu zhi yi. Nai duo yi jin gou Xi, Xi jiang duo xiang* 上曰: “吾知與之矣。”乃多以金購猋, 猋將多降, “The Emperor said, ‘Then I know how to deal with them.’ So he bribed the generals of [Chen] Xi with much gold, and many of [Chen] Xi’s generals surrendered” (Dubs 1938 I, 127). Yan Shigu’s commentary on this word: *Gou, she shang mu ye* 購, 設賞募也, “*gou* 購 means to set up rewards.” This word with the same meaning is found in RCL D43 and RCL D112-19 as well, a reward is to be given to someone who has accused, or caught an offender. See FLDW 137 = RCL D115: *Fu, qi, zi shi ren gong dao, dang xing cheng dan, wang, jin jia bu de qi ba ren, wen jia dang gou ji he? Dang gou ren er liang* 夫、妻、子十人共盜, 當刑城旦, 亡, 今甲捕得其八人, 問甲當購幾何? 當購人二兩, “A husband, his wife and his children, (in all) ten persons, together commit robbery; they are warranted to suffer mutilation and be made *chengdan*, (but) they abscond. Now A arrests and catches eight of them. Question: with how much is A warranted to be rewarded? He is warranted to be rewarded with two ounces per person.” From the ENLL text, we know that in Han times the government rewarded someone with a meritorious rank or gold or both. Compared to Han, besides gold, Qin rewards someone with slaves as well, see FLDW 53 = RCL D43: *You tou shu, wu fa, jian zhe fan zhi, neng bu zhe gou chenqie er ren, xi tou shu zhe ju shen yan zhi* 有投書, 勿發, 見輒燔之; 能捕者購臣妾二人, 繫投書者鞠審讞之, “ ‘When there are ‘thrown letters’, these are not to be opened; as soon as they are discovered, they are to be burned. Persons who are able to arrest (the person who threw the letter) are rewarded with two slaves. Detain the person who threw the letter, question him and report.’ ”

²³⁴ Statutes regarding rewarding someone can be found in ENLL 138-39 and 393.

²³⁵ In the Shuihudi legal manuscripts, we have some texts that punish theft committed by five thieves more severely. See FLDW 1-2 = RCL D1: *Hai dao bie jiao er dao, jia zui zhi. He wei jia zui? Wu ren dao, zang yi qian yi shang, zhan zuo zhi, you qing yi wei chengdan, bu ying wu ren, dao guo liu bai liu shi qian, qing yi wei chengdan* 害盜別徼而盜, 加罪之。何謂加罪? 五人盜, 贓一錢以上, 斬左趾, 又黥以為城旦; 不盈五人, 盜過六百六十錢, 黥以為城旦, “When wardens go by different paths to steal, their punishment is increased. What is the meaning of ‘the punishment is increased’? When five

§2.8 知人為群盜而通飲食餽遺之，與同罪；弗知，黥為城旦舂。其能自捕若斬之，除其罪，又賞如捕斬。⁶³

Being aware that persons are members of a gang of thieves and providing them²³⁶ with food or drink, is to be punished the same as [being members of a gang of thieves]; not being aware of it is to be punished by tattooing on the forehead and [doing labor] as earth pounders or grain pounders. In case that [those who provide members of a gang of thieves with food or drink] arrest or execute²³⁷ them by themselves, they are to be exempted from punishment and to be rewarded the same as for arresting and executing [offenders].

§2.9 群盜發，弗能捕斬而告吏，除其罪，勿賞。⁶⁴²³⁸

When a gang of thieves occurs, if [someone]²³⁹ does not arrest or execute them but

men commit robbery and the illicit profit is one cash or more, amputate their left foot and tattoo them and make them *chengdan*. When they are not fully five men and what they rob exceeds 660 cash, tattoo them, slice off their nose and make them *chengdan*.” Besides this, We have the title of FZS E12 “Thieves in a gang” (*Qundao* 群盜). It seems that like Han, Qin statutes also consider five thieves or more who commit theft together as a gang of thieves.

²³⁶ *Kui yi* 餽遺 means to “to give or send someone food”. See FLDW 129 = RCL D107: *Kui yi wang gui xin yu wai, yi yi shang* 餽遺亡鬼薪於外，一以上, according to Hulsewé, the phrase means “when transporting food, one loses more than one *guixin* outside.” Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組 translates the phrase into modern Chinese in the same way as Hulsewé, besides the translation, they also mention another possibility to explain it, “giving food to absconded *guixin* 鬼薪 who are outside for more than one time” (Shuihudi Qin mu zhujian zhengli xiaozu 1978, 206-7).

²³⁷ In this article, *Zhan* 斬 means “to execute someone”. Compared to *sha* 殺, “to kill someone,” which is a crime committed by an offender, *zhan* 斬 means “to execute someone legally.” This word emphasizes the legitimacy of killing offenders. Besides this meaning, *zhan* 斬 can also refer to “the mutilation punishment of cutting off the foot.”

²³⁸ The editors of ZJS 2001 considers §2.8 and §2.9 as one article (ZJS 2006, 17). I divide them into two articles, because §2.8 and §2.9 regulate different crimes.

²³⁹ According to this article, everyone has the responsibility to arrest and execute members of a gang of thieves or accuse them to the authority; otherwise he is to be punished. But it is illogical to specify this article in such a way. I think the scribe may have made a mistake by leaving out the subject when he wrote this article.

accuses them to the authority, he is to be exempted from punishment but not to be rewarded.

§2.10 群盜及亡從群盜，毆折人肢，朕體，及令跛蹇，若縛守、將人而強盜之，及投書、懸人書，恐獨人以求⁶⁵錢財，盜殺傷人，盜發冢，略賣人若已略未賣，矯相以為吏、自以為吏以盜，皆磔。⁶⁶

[Those who] are members of a gang of thieves, or those who abscond and join a gang of thieves, if they beat someone and cause his limbs to break, cause his joints to dislocate or cause him to become lame; [those who] escort and lead [someone], if they rob him by force; [those who] throw anonymous letters [into the government],²⁴⁰ hang anonymous letters [in public],²⁴¹ or threaten someone²⁴² in order to get money or property; [those who] kill or injure someone during theft; [those who] dig tombs to

²⁴⁰ *Tou shu* 投書: The editors of ZJS 2001 believe it means “an anonymous accusation” (ZJS 2006, 18). It is also forbidden to send and open this kind of document in Qin, see FLDW 53 = RCL D43: *You tou shu, wu fa, jian zhe fan zhi, neng bu zhe gou chenqie er ren, xi tou shu zhe ju shen yan zhi* 有投書，勿發，見輒燔之；能捕者購臣妾二人，繫投書者鞠審讞之，“When there are ‘thrown letters’, these are not to be opened, as soon as they are discovered, they are to be burned. Persons who are able to arrest (the person who threw the letter) are rewarded with two slaves. Detain the person who threw the letter, question him and report.” Hulsewé does not agree that *tou shu* 投書 refers to “to lodge an anonymous accusation.” In stead, based on one text of *Mo Zi* 墨子, he believes that this word means “secret communications with the enemy” (Hulsewé 1985, D43, note 1).

²⁴¹ *Xuan ren shu* 懸人書: The editors of ZJS 2001 think that it means “a letter without a writer’s name or with a name of someone who is not the writer” (ZJS 2006, 18). See *xian shu* 縣書 in *Lüshi chunqui: Zheng guo duo xiang xian yi shu zhe. Zi Chan ling wu xian shu, Deng Xi zhi zhi* 鄭國多相縣以書者. 子產令無縣書，鄧析致之，“In the Zheng vassal state, people hanged documents very often, Zi Chan orders to forbid the hanged letters, but Deng Xi supports them” (*Lüshi chunqiu jiaozhu* 1984, 1177). It appears that both *tou shu* 投書 and *xuan shu* 縣書 are two kinds of anonymous letters, the difference between them may be the ways of placing anonymous letters, one is to “to throw anonymous letters into the government office”, while the other is “to hang anonymous letters in public.”

²⁴² *Kong xie* 恐獨: The editors of ZJS 2001 note that it means “to threaten someone by force” (ZJS 2006, 18). See HS 99, 4125: *ge wei quan shi, kong xie liang min* 各為權勢，恐獨良民，“they make use of their power to threaten the good commoners.”

steal; [those who] kidnap and sell someone,²⁴³ or kidnapped someone without selling him; [those who] disguise themselves as an official to steal²⁴⁴ or pretend themselves to be officials to steal: are all to be quartered.

§2.11 知人略賣人而與賈，與同罪。不當賣而和為人賣，賣者皆黥為城旦舂；買者知其情，與同罪。⁶⁷

Being aware that a person has kidnapped someone for selling and making a deal with him,²⁴⁵ is to be punished the same as [kidnapping someone for selling]. When selling someone who is not allowed to be sold for others with mutual consent, the sellers are all to be tattooed on the forehead and made earth pounders or grain pounders; the buyers who are aware of the truth are to be punished the same as [the sellers].

§2.12 劫人、謀劫人求錢財，雖未得若未劫，皆磔之；完其妻、子，以為城旦舂。其妻、子當坐者徧捕，若告吏，吏⁶⁸捕得之，皆除坐者罪。⁶⁹

Those who kidnap someone²⁴⁶ or devise a scheme to kidnap someone for money or property, even if they do not obtain money or property or have not yet kidnapped someone: are all to be quartered. Their wives and children are to be made earth

²⁴³ *Lüe mai* 掠賣: The editors of ZJS 2001 believe it means “to rob someone/something by force” (ZJS 2006, 18). I think it means “to kidnap someone for selling.” See *Lunheng* 1954, 20: *Dou taihou di yue Guangguo, nian si, wu sui, jia pin, wei ren suo lue mai, qi jia bu zhi qi suo zai* 竇太后弟曰廣國，年四、五歲，家貧，為人所掠賣，其家不知其所在， “Empress Dowager Dou has a brother, whose name is Guangguo, when he was four or five years old, his family was poor, he was kidnapped and sold by someone, his family does not know where he is.”

²⁴⁴ Based on a quotation of an ordinance in ZYS 73: *Ling: Li dao, dang xing zhe xing, wu de yi jue jian, mian, shu* 令：吏盜，當刑者刑，毋得以爵減、免、贖， “The ordinance says: ‘When an official steals and [by law] he shall be mutilated, he is to be mutilated, and it is allowed that because of his meritorious rank he shall have his punishment reduced, exempted or redeemed;’” it is clear that stealing as an official is not to be punished by quartering. I think *zi yi wei li* 自以為吏 refers to “pretending to be an official” rather than “as an official”.

²⁴⁵ *Gu* 賈 normally means “to make a deal with someone.” Here it means “to buy someone who has been kidnapped.”

²⁴⁶ *Jie* 劫 means “to kidnap someone.”

pounders or grain pounders without mutilation. In case that their wives or children who shall be co-convicted [because of their crime] assist in arresting all of them or accuse them to the officials, so that officials arrest and catch them, they are all to be exempted from punishment.

§2.13 諸當坐劫人以論者，其前有罪隸臣妾以上，及奴婢，毋坐為民；為民者亦勿坐。⁷⁰

Among those who have been convicted of kidnapping someone and judged, when they were guilty of a crime punished by [doing labor] as male or female bondservants, or more severe,²⁴⁷ [if they] are slaves, common people are not to co-convicted [because of their crimes]; [if they] are common people, [their slaves] are not to be co-convicted [because of their crimes] as well.²⁴⁸

§2.14 相與謀劫人、劫人，而能頗捕其與，若告吏，吏捕頗得之，除告者罪，又購錢人五萬。所捕告得者多，以人數購之，⁷¹而勿責其劫人所得贓。所告毋得者，若不盡告其與，皆不得除罪。諸予劫人者錢財，及為人劫者，同居⁷²知弗告吏，皆與劫人者同罪。劫人者去，未盈一日，能自頗捕，若徧告吏，皆除。⁷³

When offenders have conspired together to kidnap someone or they have kidnapped

²⁴⁷ *Yi shang* 以上 means “or higher, or more”, here it means “a heavier or more severer punishment.”

²⁴⁸ I do not understand this article at all. The editors of ZJS 2007 suggest that we can compared this article with FLDW 22 = RCL D19: *Dao ji zhu ta zui, tongju suo dang zuo. He wei tongju? Hu wei tongju, zuo li, li bu zuo hu wei ye* 盜及諸它罪，同居所當坐。何謂同居？戶為同居，坐隸，隸不坐戶謂也，“(The Statutes say) ‘Robbery and all other crimes where ‘those who dwell together’ are warranted to be adjudicated.’ What is the meaning of ‘those who dwell together?’ The household is (meant by) ‘those who dwell together’. Servants are (co-) adjudicated, (but) for servants’ (crimes) the household is not (co-) adjudicated; that is the meaning.” According to this question and answer, the editors of ZJS 2007 think this article means, the commoners are to be convicted of the crime committed by their slaves and the slaves are to be convicted of the crime committed by their masters as well (ZJS 2007, 118).

someone together, those [among them] who arrest part of²⁴⁹ their accomplices, or those who accuse [their accomplices] to the officials, so that the officials arrest part of them, are to be exempted from punishment and are to receive a reward of 50000 cash per person. Those who accuse more than one offender, so that they are arrested and caught, are to receive rewards according to the number of arrested offenders and not to compensate for the spoils obtained by kidnapping someone. Those who accuse [their accomplices to officials] but they are not caught, or those who do not accuse all of their accomplices, both are not to be exempted from punishment. Those who give money or property to kidnappers, those who kidnap someone for others, and those who live within the same household [with kidnappers]²⁵⁰ and are aware of [the crime] but do not accuse them to the authority, are all to be punished the same as the kidnappers. Kidnappers who escaped, not fully one day, if they arrest part of [their accomplices] or accuse all of [their accomplices who they know] to the official, are all to be exempted from punishment.

§2.15 盜出財物于邊關、徼，及吏部主知而出者，皆與盜同法；弗知，罰金四兩。使者所以出，必有符致。毋符致，⁷⁴吏知而出之，亦與盜同法。⁷⁵

Those who smuggle property or objects stealthily²⁵¹ out of control stations²⁵² or

²⁴⁹ *Po* 頗: According to Liu Zhao, this word is used in the ENLL text to mean “some of, part of;” see Liu Zhao 2008, 229-234.

²⁵⁰ *Tong ju* 同居 means “people living within the same household.” We have a definition of this word in FLDW 201 = RCL D181: *He wei tong ju? Tong ju, du hu mu zhi wei ye* 何謂同居？同居，獨戶母之謂也, “What is the meaning of ‘dwelling together’? ‘Dwelling together’ means ‘only the mother of the household.’”

²⁵¹ *Dao* 盜 is used as an adverb here, which means “to do something stealthily, or to do something without authority.” Here it refers to “to smuggle something stealthily.”

²⁵² *Guan* 關 means “control stations”, which were located at the frontiers and the travellers who wanted to pass them were checked there. Most of the articles in *Ordinances on Ports and Control stations* (*Jin guan ling* 津關令) of the ENLL text are concerning the purchase and sale of horses in the central district and the strict procedures of checking travellers at the frontiers.

fortresses at the frontiers²⁵³, and the responsible officials who are aware of it and let them pass: all share the same method and principle of punishment with theft. Being not aware of it is to be punished by a fine of four ounces of gold. The means by which ambassadors are allowed to pass [control stations or fortresses at the frontiers] is that they must have passport and tallies, if they do not have them, the officials who are aware of it and let them pass share the same method and principle of punishment with theft as well.

§2.16 盜出黃金邊關、徼，吏、卒、徒部主者知而出及弗索，與同罪；弗知，索弗得，戍邊二歲。⁷⁶

When smuggling gold stealthily out of control stations or fortresses at the frontiers, officials, foot soldiers, and the officials in charge of the department of laborers who are aware of it and let them pass without searching them, are to be punished the same as [smugglers]. Not being aware of it and searching them without finding the gold is to be punished by performing military service at the frontiers for two years.

§2.17 □□以財物私自假貸，假貸人罰金二兩。其錢、金、布、帛、粟、米、馬、牛也，與盜同法。⁷⁷

[...] borrow and lend²⁵⁴ property or objects secretly without authority, the borrowers and the lenders are to be fined two ounces of gold. In case that [the objects borrowed] are cash, gold, cotton, silk, grain, rice, horses or oxen, [the borrowers and the lenders] share the same method and principle of punishment with theft.

²⁵³ *Bian* 邊 means “frontiers or boundaries” here. Frontiers marked the edge of states or countries. Control stations and forts were located at the frontiers, so that the travellers who passed them were checked and controlled.

²⁵⁴ *Jia* 假 means “to borrow,” while *dai* 貸 means “to lend.” FLDW 32 = RCL D26 can be compared with this article: *Fu zhong gong jin qian si dai yong zhi, yu dao tong fa* 府中公金錢私貸用之，与盜同法 “stealthily to borrow government money in a storehouse and to use it is (subjected to the) same rules as theft.” Comparing this ENLL article and the FLDW text, I think this article regulates borrowing and lending something belonging to the government without authority.

§2.18 諸有假於縣道官，事已，假當歸。弗歸，盈廿日，以私自假律論。其假別在它所又物故，毋道歸假者，自言在⁷⁸所縣道官，縣道官以書告假在所縣道官收之。其不自言，盈廿日，亦以私自假律論。其假已前入它官及在縣道官非⁷⁹

Those who borrow [objects] from offices of commanderies established in the prefectures and marches,²⁵⁵ after the administrative tasks are finished,²⁵⁶ shall return the objects that have been borrowed. Not returning [the objects borrowed], fully²⁵⁷ twenty days, is to be judged according to the statute on borrowing something secretly without authority.²⁵⁸ In case that the borrowed objects are in other places and are destroyed²⁵⁹, the objects are not allowed to be taken by the borrowers on the way and

²⁵⁵ *Xian dao guan* 縣道官: based on the passage of ENLL 213: *jun shou er qian shi guan, xian dao guan yan bian bian shi ji zhe* 郡守二千石官、縣道官言邊變事急者, “when governors of the commanderies, ranking as officials of 2,000 *shi*, and the *xiandao guan* report emergencies at the borders. . .”, and the text of ENLL 214: *xian dao guan zhi ji, ge guan shu suo er qian shi guan* 縣道官之計，各關屬所二千石官, “*xiandao guan* in providing transport for certain purposes shall be rendered to the offices of 2,000 grade officials, i.e. the governors of the commanderies,” Loewe thinks it is evident that this term refers to “offices of provincial government established in the prefectures and marches, because they were listed after the commanderies or shown to be subordinated to them.” He notes that “a number of matters in which legal formalities were concerned show that *xiandao guan* working directly to the governors of government, who may in their return submit the business to the central government. Such matters include requests to apply the statutes and ordinances in cases where permission is required to do so (ENLL 219-29); criminal cases which involve the death penalty; those who were a secondary investigation has resulted in decisions which are then sent down to the *xiandao guan* (ENLL 396-7); and appeal against a sentence for a crime (ENLL 116-7)” (Loewe 2008, 527-528). Hulsewé thinks that this term refers to “offices of the prefectures and marches” (Hulsewé 1955, 381, note 176). I follow the suggestion made by Loewe and translate this term as “the offices of commanderies established in the prefectures and marches.”

²⁵⁶ *Yi* 已 is used as a verb here, means “to be settled, to be finished.”

²⁵⁷ *Ying* 盈 means “to reach, to full.”

²⁵⁸ *Si zi jia lü lun* 私自假律論 refers to article §2.17 on borrowing something secretly without permission from the government.

²⁵⁹ *Wu gu* 物故 means “to die” in the received literature of Han times. See HS 54, 2466: *Qian yi xiang ji wu gu, fan sui Wu huan zhe jiu ren* 前以降及物故，凡隨武還者九人, “Except those who surrendered and died, nine people followed Su Wu and returned [to Han].” Besides this article, we also have this word in ENLL 265: *you wu gu, qu, zhe dai zhe you qi tian zhai* 有物故、去，輒代者有

the borrowers shall report it by themselves to the offices of the commanderies established in the prefectures and marches where they reside, and the offices shall report it through written documents to the offices of the commanderies established in the prefectures and marches where the objects exist, to collect them. In case that [the borrowers] do not report it by themselves, fully twenty days, they are to be judged according to the statute on borrowing something secretly without authority. The objects had been given to other offices and the offices of commanderies established in the prefectures and marches [. . .]²⁶⁰

§2.19 諸盜□，皆以罪所平價值論之。⁸⁰

Those who steal [. . .], are all to be judged and punished according to the regulated average price of [the spoils].

盜律 鄭欽書⁸¹

Statutes on Theft written down by Zheng (?)

2.2.3 Statutes on the Generalities (*Jū lǜ* 具律)

§3.1 上造、上造妻以上，及內公孫、外公孫、內公耳玄孫有罪，其當刑及當為城旦舂者，耐以為鬼薪白粲。⁸²

Holders of the Second Meritorious Rank, their wives and higher; and paternal sons,

其田宅 as well as ENLL 375: *jue dang ji er you wu gu, duo [. . .], yi qi shu jian hou jue* 爵當即而有物故，奪□，以其數減後爵。In these two articles, this word also means “to die.” However, I think this word does not mean “to die” in article §2.18. Because, the subject of this word is not a person but “the objects borrowed from government;” besides, *jia zhe* 假者 “the borrowers” shall report the state of the preservation of the objects to the offices of commanderies established in the prefectures and marches where they reside, it is impossible that they have died. I guess it may mean “the objects which are borrowed are destroyed and cannot be used anymore.”

²⁶⁰ Because of a lacuna, the meaning of this sentence is unclear.

maternal sons,²⁶¹ paternal grand-grand-sons and grand-grandsons²⁶² of Marquises and Kings; who are guilty of a crime and [by law] shall be mutilated and made earth pounders or grain pounders: are to have the beard shaved off and made firewood gatherers for spirits or sorters of white rice.²⁶³

§3.2 公士、公士妻及□□行年七十以上，若年不盈十七歲，有罪當刑者，皆完之。⁸³

Holders of the First Meritorious Rank, their wives [. . .], and [those who] are older than seventy years or younger than seventeen years old, if they are guilty of a crime

²⁶¹ *Nei gong sun, wai gong sun* 內公孫、外公孫 means here “parenteral sons or maternal sons of Marquis or kings.” See HS 2, 87: *Nei wai gong sun wei wang hou nei wai sun ye* 內外公孫謂王侯內外孫也, “parenteral sons, maternal sons mean parenteral sons or maternal sons of Marquis or Kings of the imperial house.”

²⁶² *Er sun* 耳孫 means “the son of grand-grandson.” See HS 2, 87: *Er sun zhe, xuan sun zhi zi ye, yan qu qi zeng gao yi yuan, dan er wen zhi ye* 耳孫者，玄孫之子也，言去其曾高益遠，但耳聞之也, “grand-grand-grandson is the son of the grand-grandson, he is more distant to his grand-grand-grandfather, so he only hears about his grand-grand-grandfather.”

²⁶³ This article is very similar to one imperial edict from Emperor Hui in the fifth month of his first year as a emperor, see HS 2, 87: *Shangzao yi shang ji nei wai gong sun, er sun, you zui dang xing ji dang wei chengdanchong zhe, jie nai wei guixin baican* 上造以上及內外公孫耳孫有罪當刑及當為城旦舂者，皆耐為鬼薪白粲, “Those of [the aristocratic rank of] Superior Accomplished and above, together with the great-grandsons of marquises or kings belonging to the imperial house by male or female descent who had committed crimes and should justly [suffer] mutilating punishment, together with those who should justly be made to [build] the fortifications or [patrol from] the break of day or pound rice, were all to have their whiskers shaved and be made to [cut] firewood for the spirits or [prepare] pure rice” (Dubs 1938 I, 176-77). See ZYS158 : *Cuan sui zong qiu, si zui qiu, qing wei chengdan; shangzao yi shang nai wei gui xin* 篡遂縱囚，死罪囚，黥為城旦；上造以上耐為鬼薪, “Those who illegally release an incarcerated person by force, if the person is guilty of a crime punished by death penalty, are to be tattooed on the forehead and be made earth pounders; Holders of the Second Meritorious Rank or higher are to have the beard shaved off and be made as firewood gatherers for spirits.” From the quotation of this statute of Qin, we know that in Qin, Holders of the Second Meritorious Rank, who are guilty of a crime and [by law] shall be made earth pounders, are to have their punishment reduced and be made firewood gatherers for the spirits. However, we do not know whether the punishment of their wives can be mitigated or not.

and [by law] they shall be mutilated, are to be left without mutilation.²⁶⁴

§3.3 𠄎【妻】²⁶⁵殺傷其夫，不得以夫爵論。⁸⁴

[. . .] [In case that wives] kill or injure their husbands, they are not allowed to be judged according to their husbands' meritorious ranks.²⁶⁶

§3.4 呂宣王內孫、外孫、內耳孫玄孫，諸侯王子、內孫、耳孫，徹侯子、內孫有罪，如上造、上造妻以上。⁸⁵

King Lü Xuan's²⁶⁷ paternal sons, maternal sons, paternal grand-grand-grandsons, and grand-grandsons; sons, paternal sons, paternal grand-grand-grandsons of Marquises or Kings; sons or paternal sons of the Holders of the Twentieth Meritorious Rank, who are guilty of a crime, [are to be punished] the same as Holders of the Second Meritorious Rank, their wives and higher.²⁶⁸

²⁶⁴ This article can be compared with HS 2, 88: *Min nian qi shi yi shang ruo bu man shi sui you zui dang xing zhe, jie wan zhi* 民年七十以上若不滿十歲有罪當刑者，皆完之, "Common people who are in their seventieth year or over or not fully ten years old, who have committed crimes and should justly [suffer] mutilating punishment, were not to be mutilated" (Dubs 1938 I, 177). According to a quotation of a Qin statute in ZYS 182, the Holders of the First Meritorious Rank also receive the similar mitigation of punishment: *Dang qing gongshi, gongshi qi yi shang, wan zhi* 當縣公士、公士妻以上，完之, "Holders of the First Meritorious Rank and their wives, if [by law] they shall be tattooed on the forehead, are to be left without mutilation."

²⁶⁵ This character is illegible in the manuscript. Judging from the content of this article, I believe that the character here is *qi* 妻.

²⁶⁶ A wife can enjoy privileges of her husband's meritorious rank. See ENLL 372: *Nü zi bi qi fu jue* 女子比其夫爵, "[The treatment of] a woman is according to her husband's meritorious rank."

²⁶⁷ *Lü Xuan wang* 呂宣王 is the father of Empress Lü. See HS 18, 679: *Gao hou yuan nian zhui zun yue Lü Xuan wang* 高后元年追尊曰呂宣王, "In the first year of Empress Lü, she conferred [his father] as King Lü Xuan." Based on this article, the editors of ZJS 2001 and most scholars believe "*er nian* 二年" in the title "The Statutes and Ordinances of the Second Year" (*Ernian lü ling* 二年律令) refers to the second year of Empress Lü.

²⁶⁸ "*Ru shangzao, shangzao qi yi shang* 如上造、上造妻以上" refers to article §3.1.

§3.5 吏、民有罪當笞，謁罰金一兩以當笞者，許之。⁸⁶

Officials or common people who are guilty of a crime and [by law] shall be caned, if they request to be fined one ounce of gold instead of being caned, they are allowed to do so.

§3.6 有罪年不盈十歲，除；其殺人，完為城旦舂。²⁶⁹₈₆

[Those who] are guilty of a crime, when they are younger than ten years old, are to be exempted from punishment; in case that [they] have killed someone, [they] are to be made earth pounders or grain pounders without mutilation.

§3.7 𡗗所與同鬼薪白粲也，完以為城旦舂。⁸⁷

[. . .] Firewood gatherers for spirits and sorters of white rice, are to be made earth pounders or grain pounders without mutilation.²⁷⁰

§3.8 有罪當黥，故黥者劓之，故劓者斬左趾，斬左趾者斬右趾，斬右趾者腐之。

₈₈

[When Persons who] are guilty of a crime and [by law] they shall be tattooed on the forehead, if they formerly had the forehead tattooed, they are to have the nose cut off; if they had the nose formerly cut off, they are to have the left foot cut off; if they [formerly] had the left foot cut off, they are to have the right foot cut off; if they [formerly] had the right foot cut off, they are to be castrated.

§3.9 女子當磔若腰斬者棄市，當斬為城旦者黥為舂，當贖斬者贖黥，₈₈當耐者贖耐。₈₉²⁷¹

²⁶⁹ §3.5 and §3.6 were written continuously on ENLL 86. Since they regulate different subjects, I divide them into two articles.

²⁷⁰ Because of a lacuna the meaning of this article is not clear.

²⁷¹ I think the texts of ENLL 88 and ENLL 89 consist of two different articles, though the scribe wrote them together as one article. The first article §3.8 “有罪當黥，故黥者劓之，故劓者斬左趾，斬左趾

Women who [by law] shall be quartered or cut into two at the waist, are to be executed in the marketplace; [women who by law] shall be made earth pounders and have the foot cut off, are to be made grain pounders and tattooed on the forehead; [women who by law] shall pay a redemption fee for cutting off the foot, are to pay a redemption fee for tattooing on the forehead; [women who by law] shall have the beard shaved off, are to pay a redemption fee for shaving off the beard.

§3.10 有罪當耐，其法不名耐者，庶人以上耐為司寇，司寇耐為隸臣妾。隸臣妾及收人有耐罪，繫城旦舂六歲。繫日未備而復有耐罪，完₉₀為城旦舂。城旦舂有罪耐以上，黥之。其有贖罪以下，及老小不當刑、刑盡者，皆笞百。城旦刑盡而盜賊百一十錢以上，若賊傷人及殺人，而先₉₁自告也，皆棄市。₉₂

When persons are guilty of a crime and [by law] they shall have the beard shaved off, if the method and principle of punishment does not specify²⁷² [the punishment of doing labor accompanied by] shaving off the beard, commoners or higher are to have the beard shaved off and be made robber guards, robber guards are to have the beard shaved off and be made male or female bondservants. Male and female bondservants, and those who are enslaved by the government, if they are guilty of a crime punished by shaving off the beard, are to be held in detention and [do labor as] earth pounders or grain pounders for six years.²⁷³ When they have not fulfilled the days of detention and are again guilty of a crime punished by shaving off the beard, they are to be made

者斬右趾，斬右趾者腐之” stipulates increase of punishment for those who have suffered the mutilation; while the second article §3.9 “女子當磔若腰斬者，棄市。當斬為城旦者黥為舂，當贖斬者贖黥，當耐者贖耐” stipulates the mitigation of punishment for women.

²⁷² *Ming* 名 is used in ENLL 166 as well, and this word means “to name, to specify”

²⁷³ *Xi chengdanchong* 繫城旦舂: this is a labor punishment that has a fixed term of penalty. They are held in detention and do labor like earth pounders or grain pounders, however, compared to earth pounders or grain pounder who are lifelong convict laborers, they do labor only for a fixed term, e.g. three years or six years.

earth pounders or grain pounders without mutilation.²⁷⁴ Earth pounders or grain pounders [without mutilation] who are guilty of a crime punished by shaving off the beard or more severe are to be tattooed on the forehead. In case that [earth pounder or grain pounders without mutilation are guilty of a crime] punished by paying a redemption fee or more lightly, or the persons are so young or old that [by law] they shall not be mutilated, or the persons have suffered all kinds of mutilating punishments:²⁷⁵ they are to be caned one hundred strokes. After earth pounders or grain pounders have suffered all kinds of mutilating punishments, if they steal something worth more than 110 cash, or if they injure or kill someone with malice aforethought and accuse themselves first,²⁷⁶ they are all to be executed in the marketplace.

§3.11 鞠獄故縱、不直，及診、報、辟故弗窮審者，死罪，斬左趾為城旦，它各以其罪論之。其當繫城旦舂作官府償日者，₉₃ 罰歲金八兩；不盈歲者，罰金四兩。

²⁷⁴ We also have an article concerning male or female bondservants who abscond when they are held in detention in FLDW 130 = RCL D110: *Li chenqie xi chengdanchong, qu wang, yi ben, wei lun er zi chu, dang chi wu shi, bei xi ri* 隸臣妾繫城旦舂，去亡，已奔，未論而自出，當笞五十，備繫日，“*Lichen and liqie*, detained among the *chengdan* and the grain pounders, who abscond and who have already run away, but who give themselves up before having been sentenced, are warranted to be bastinadoed with fifty strokes; they have to fulfill their days of detention.”

²⁷⁵ *Xing jin* 刑盡: both Xing Yitian and Zhi Qiang have the opinion that this word means “the mutilation has been executed” (Xing Yitian 2007, 239; Zhi Qiang 2004, 162-164). However, I think this word means “someone has suffered all kinds of mutilating punishments.” They include five different kinds of mutilations: tattooing on the forehead (*qing* 黥), cutting off the nose (*bi* 劓), cutting off the left foot (*zhan zuo zhi* 斬左趾), cutting off the right foot (*zhan you zhi* 斬右趾) and castrating (*fu* 腐). In the ENLL text, the meaning of “the mutilation has been executed” is expressed by the word *xing* 刑 rather than *xing jin* 刑盡, e.g. ENLL 114: *zui ren yu yi jue, zi yi zui bu dang, yu qi ju zhe, xu zhi. Qi ju bu dang, jia zui yi deng; dang xing zhe, xing nai ting* 罪人獄已決，自以罪不當，欲乞鞠者，許之。乞鞠不審，加罪一等；其欲復乞鞠，當刑者，刑乃聽。In this article, *xing nai ting* 刑乃聽 refers to “only after the mutilation has been executed, is the petition for a retrial to be heard.”

²⁷⁶ *Zi gao* 自告 means that “the offender accuses himself voluntarily before the authority discovers his offense.”

94□□□□兩。購、沒入、負償，各以其值數負之。其受賕者，加其罪二等。所予贓罪重，以重者論之，亦加二等。其非故也，而失 95 不審者，各以其贖論之。爵戍四歲及繫城旦舂六歲以上罪，罰金四兩。贖死，贖城旦舂、鬼薪白粲、贖斬宮、贖劓、戍不盈 96 四歲，繫不盈六歲，及罰金一斤以上罪，罰金二兩。繫不盈三歲，贖耐、贖遷、及不盈一斤以下罪，購、沒入、負償、償日作縣 97 官罪，罰金一兩。 98

Those who summarize the facts of a criminal case²⁷⁷ [falsely] in order to release an incarcerated person with intent²⁷⁸ or not straightly with intent;²⁷⁹ those who make forensic examinations,²⁸⁰ report [the results of the investigations of a criminal case]²⁸¹,

²⁷⁷ *Ju yu* 鞠獄: see Yan Shigu's commentary on this word in HS 23, 1102: *yi qiu ci jue yu shi wei ju* 以囚辭決獄事為鞠, "to decide a criminal case according to the statements of the incarcerated person is *ju* 鞠." *Ju yu* 鞠獄 is a judicial process of confirming and summarizing facts and findings of a criminal case.

²⁷⁸ *Gu zong* 故縱 means "to release an incarcerated person intentionally." Its definition can be found in FLDW 93 = RCL D77: *He wei zong qiu? . . . Dang lun er duan fu lun, ji qi yu, duan ling bu zhi, lun chu zhi, shi wei "zong qiu"* 何謂縱囚? . . . 當論而端弗論, 及其獄, 端令不致, 論出之, 是謂縱囚, "what is meant by 'to let go an incarcerated person' ? . . . When a sentence is warranted, purposely not to sentence it, as well as to make light of the case, purposely making it not come up to (a crime) and pronouncing a sentence which acquits him - this is what is meant by letting go an incarcerated person."

²⁷⁹ *Bu zhi* 不直 means "to be not straight." We have a definition of this term in Qin legal texts, see FLDW 93 = RCL D77: *Lun yu he wei bu zhi? . . . Zui dang zhong er duan qing zhi, dang qing er duan zhong zhi, shi wei bu zhi* 論獄何謂不直? . . . 罪當重而端輕之, 當輕而端重之, 是謂不直, "In pronouncing judgment in criminal cases, [what is mean by] 'not straight' ? . . . When a crime warrants a heavy (punishment) and purposely to lighten it, or when it warrants a light (punishment) and purposely to make it heavy, that is the meaning of 'not straight.'" We have a definition of this term in ENLL 112 as well: *Qi qing zui ye er gu yi zhong zui he zhi, wei bu zhi* 其輕罪也而故以重罪劾之, 為不直, "Charging [someone who has committed a] misdemeanor with a felony with intent is a case of not being straight." Comparing these two definitions of the term in the FLDW and ENLL texts, the meaning of this term in early Han is different from that in Qin.

²⁸⁰ *Zhen* 診 means "to make a forensic examination." See QLSBZ 17 = RCL A9: *Qi fei ji si zhe, yi qi zhen shu gao guan lun zhi* 其非疾死者, 以其診書告官論之, "For those who die without having been ill, this is to be reported to the office by means of an investigation report to judge it." We find this term in the ZYS and FZS texts very often as well, normally when the officials try a criminal case, they

or condemn [the offenders]²⁸² without proof of all the facts of [a criminal case] with intent,²⁸³ if [the offenders] are punished by death penalty: are to have the left foot cut off and be made earth pounders or grain pounders; in other circumstances they are to be judged by the respective punishment. In case that [the offenders by law] shall be held in detention, and do labor as earth pounders or grain pounders and work in the

send responsible officials to make a forensic examination of the criminal scene as well as physical conditions of the offender.

²⁸¹ *Bao* 報: based on this word in one passage of the FZS text, I think this refers to “to report [the results of the investigations of a criminal case].” See FZS 6 = RCL E4: *Ke ding ming shi li, suo zuo lun yun he, he zui she, huo fu wen wu you, qian shi zhe yi lü feng shou, dang teng, teng jie wei bao, gan gao zhu* 可定名事里，所坐論云何，何罪赦，或覆問無有，遣識者以律封守，當騰，騰皆為報，敢告主, “You should determine his name, status and village (of ward); for which crime he has been adjudicated and sentenced; which crimes have been amnestied; whether he has perhaps been re-interrogated or not. Dispatch persons who know to seal and guard (his property etc.) according to the Statutes. (These persons) warrant the use of post-horses; for post-horses every case is to be reported. Of this I beg to inform the Head (of the prefecture).” Hulsewé translates *bao* 報 in RHL as “to requite.” According to him, “this word shows that the crime was ‘requited’ by the punishment, the one as it were neutralizing the other. It is not a matter of avenging the deed on the doer, rather it is the one act (the crime) which is counterbalanced by the other (the punishment).” He further notes “the fundamental idea of this word is also expressed by the extremely frequently used word *dang* 當 and the less frequent *di* 抵. All these words have the meaning of ‘to match, to be equal to, to be adequate to’ ” (Hulsewé 1955, 80).

²⁸² *Bi* 辟 means “to condemn someone.” For a detailed explanation of this word, see Lau and Lüdke 2012, 256, note 1270.

²⁸³ I think this passage shows us different procedures of trying a criminal case in early Han. It can be compared to a short story about Zhang Tang, a famous harsh official in Han, who judged a lawsuit when he was still a child. This story gives us an outline of criminal procedures as well. See SJ 122, 3137: *Tang jue ku de dao shu ji yu rou, he shu lüe zhi, chuan yuan shu, xun ju lun bao, bing qu shu yu rou, ju yu zhe tang xia* 湯掘窟得盜鼠及餘肉，劾鼠掠治，傳爰書，訊鞠論報，并取鼠與肉，具獄磔堂下， “[Zhang] Tang dug the hole and got the rat [that had stolen the meat] and the rest of the meat, then he charged the rat and tried it by canning it, and transmitted [its statements] in a transcription, he interrogated it, summarized the facts of the case, judged the case and report the investigation of the case. He took the rat and the meat, finished the case, and quartered [the rat] at the foot of the hall.”

government workshops,²⁸⁴ in order to work off²⁸⁵ their days of [obligations], they are to be fined eight ounces of gold per year; if the obligation days of the offenders are shorter than one year, they are to be fined four ounces of gold. [. . .] ounces. Rewards, things confiscated or compensated for debt are to be compensated by their respective value. Those who have accepted a bribe are to have their punishment increased by two degrees. When the punishment of giving spoils is more severe, they are to be judged by the more severe one and [have their punishment] increased by two degrees as well. In case of having no intent, those who have committed a judicial error without careful scrutiny are to pay a redemption fee for the respective punishment. If the punishment is performing military service at the frontiers for four years²⁸⁶ or being held in detention and doing labor as earth pounders or grain pounders for six years or more severe, [the offenders] are to be fined four ounces of gold. If the

²⁸⁴ *Zuo guan fu* 作官府 means “to work in the government workshops”. This punishment is found in Shuihudi legal texts as well. See FLDW 63 = RCL D51: *Jiang shang bu ren yi li zhe er zong zhi, he lun? Dang xi zuo ru qi suo zong, yi xu qi de, you jue, zuo guan fu* 將上不仁邑里者而縱之，何論？當繫作如其所縱，以須其得；有爵，作官府，“Somebody leading a person who had been unpleasant in his village, to a superior, lets him go; how is he to be sentenced? He is warranted to be detained and to be put to work like the person whom he let go, pending the latter’s arrest; in case he possesses aristocratic rank, he is to work in a government storehouse.” In this case, “to work in a government workshop” (*zuo guan fu* 作官府) is a kind of preferential treatment given to holders of a meritorious rank.

²⁸⁵ *Chang* 償: we know from the Shuihudi texts that when persons are guilty of a crime punished by a fine, or paying a redemption fee; and if they are unable to repay it, they are in debt to the government and shall work off it by working in the government workshops (*chang* 償). See QLSBZ 138 = RCL A68: *You zui yi zi shu ji you zhai yu gong, yi qi ling ri wen zhi, qi fu neng ru ji chang, yi ling ri ju zhi, ri ju ba qian, gong shi zhe, ri ju liu qian* 有罪以貲贖及有債於公，以其令日問之，其弗能入及償，以令日居之，日居八錢；公食者，日居六錢，“Persons who have committed crimes and who therefore (have to pay) fines or redemption-fees, as well as those who have debts towards the government are to be asked on the day the order is given. Those who are unable to pay or to refund are to work off (their obligations) as from the day the order is given. Per day they work off eight cash; those fed by the government work off six cash per day.”

²⁸⁶ *Jue shu* 爵戍: The editors of ZJS 2001 think the character “*jue* 爵” was added by mistake here and the punishment is to perform military service (*shu* 戍) (ZJS 2006, 22).

punishment is paying a redemption fee for death penalty, earth pounders, grain pounders, firewood gatherers for spirits, sorters of white rice, cutting off the foot, castration, cutting off the nose or tattooing on the forehead; performing military service shorter than four years, being held in detention and [doing labor as earth pounders or grain pounders] shorter than six years or fining one *jin*²⁸⁷ of gold or more: they are to be fined two ounces of gold. If the punishment is being held in detention and [doing labor as earth pounders or grain pounders] shorter than three years; paying a redemption fee for shaving off the beard or banishing; fining less than 1 *jin* of gold or lighter, paying a reward, confiscating property to compensate a debt, or doing labor in the offices to work off their days of [obligations]: they are to be fined one ounce of gold.

§3.12 一人有數罪，²⁸⁸以其重罪罪之。⁹⁹

When someone is guilty of several [. . .] crimes, he is to be punished by the more severe one.

§3.13 □□□□□，以其罪論之。完城旦舂罪，黥之。鬼薪白粲罪，黥以為城旦舂。其自出者，死罪，黥為城旦舂；它罪，完為城旦舂。¹⁰⁰

[. . .], are to be judged according to their respective crime. If the punishment is [doing labor] as earth pounders or grain pounders without mutilation, they are to be tattooed on the forehead. If the punishment is [doing labor] as firewood gatherers for spirits or sorters of white rice, [they are] to be made earth pounders or grain pounders and

²⁸⁷ *Yi jin* 一斤: *jin* 斤 is a measure of weight in ancient China, which amounts to sixteen ounces. See HS 21, 969: *shi liu liang wei yi jin* 十六兩為斤, “sixteen ounces is one *jin* 一斤.” The weight of one *jin* 一斤 is about 247,5g in Han time. For more details about the monetary system of Han, see Nishijima 1987, 585-595.

²⁸⁸ *Yi* 毆: this word is normally used as a modal particle in the end of a sentence in Qin texts. In Han, the word *ye* 也 has taken over this function. For a detailed introduction about the usage of these two words, see Ônishi 2001, 614-26.

tattooed on the forehead. If they give themselves up to the authority²⁸⁹ and have committed a crime punished by death penalty, they are to be made earth pounders or grain pounders and tattooed on the forehead; if they are guilty of another crime, they are to be made earth pounders or grain pounders without mutilation.²⁹⁰

§3.14 諸欲告罪人、及有罪先自告而遠其縣廷者，皆得告所在鄉，鄉官²⁹¹謹聽，書其告，上縣道官。廷士吏亦得聽告。¹⁰¹

Those who want to accuse offenders and those who are guilty of a crime accuse themselves to the authority first, when they are far from the court of prefectures, should all accuse the offenders or themselves to the district where they reside. District offices should listen to their accusations carefully, write down the accusations and submit them to the offices of commanderies established in the prefectures and marches. The officials of the [prefecture] court should listen to their accusations as well.

§3.15 縣道官守丞毋得斷獄及讞。相國、御史及二千石官所置守、假吏，若丞缺，令一尉為守丞，皆得斷獄、讞。獄¹⁰²事當治論者，其令、長、丞或行鄉官視它事，不存，²⁹²及病，而非出縣道界也，及諸都官令、長、丞、行離官有它事，¹⁰⁴

²⁸⁹ *Zi chu* 自出 means “to give oneself up to the authority”. See HS 69, 2266: *Yu shi ru qi yan, er sha Su Qin zhe guo zi chu, Qi wang yin er zhu zhi* 於是如其言，而殺蘇秦者果自出，齊王因而誅之，“as expected by Su Qin, the person who has killed him gives himself up, so King Qi is able to kill him.” This word is different from *zi gao* 自告, which means “to accuse oneself before the authority has discovered the crime.” Compared to *zi gao* 自告, the offenders give themselves up to the authority after the authority has discovered the crime and they were probably wanted by the authority.

²⁹⁰ Because of a lacuna at the beginning of this article, its meaning is not clear.

²⁹¹ *Xiang guan* 鄉官: see Yan Shigu’s commentary on this word of HS 89, 3629: *Xiang guan zhe, xiang suo zhi chu ye* 鄉官者，鄉所治處也，“District offices are the places where affairs are settled in districts.”

²⁹² *Bu cun* 不存: This word is used in the Shuihudi legal manuscripts as well. See QLSBZ 161 = RCL A81: *Guan sefu ji bu cun, ling jun zi wu hai zhe ruo ling shi shou guan, wu ling guan zuo, shi shou* 官嗇夫即不存，令君子毋無害者若令史守官，毋令官佐、史守，“If an Overseer is absent, a Master who is

而皆其官之事也，及病，非出官在所縣道界也，其守丞及令、長若真丞存者所獨斷治論有不當者，令真令、長、¹⁰⁵丞不存及病者皆共坐之，如身斷治論及存者之罪。唯謁屬所二千石官者，乃勿令坐。¹⁰⁶²⁹³

Probationary assistants²⁹⁴ in the offices of commanderies established in the prefectures and marches are not allowed to decide criminal cases or submit them for

‘without evil’, or a Prefectural Clerk is ordered to fill the office on probation. Do not order office assistants or clerks (to fill the office) on probation” and FLDW 98 = RCL D81: *Zei ru jia shi, zei shang jia, jia hao kou, qi si ling, dian, lao jie chu bu cun, bu wen hao kou, wen dang lun bu dang lun? Shen bu cun, bu dang lun; dian, lao sui bu cun, dang lun* 賊入甲室，賊傷甲，甲號寇，其四鄰、典、老皆出不存，不聞號寇，問當論不當？審不存，不當論；典、老雖不存，當論，“A murderer enters into A’s house and murderously wounds A. A cries out: “Robbers!”, (but) his four neighbours, the (village) chief and the (village) elders have all gone out and are absent, and they do not hear A crying “Robbers!” Question: are they warranted to be sentenced or are they not warranted? If the investigation shows that (his four neighbours) were absent, they are not warranted to be sentenced, (but) the (village) chief and the elders, although they were absent, are warranted to be sentenced.” Hulsewé thinks that this word in A 81 “might be a euphemism for ‘to die,’ but in D81 it definitely means ‘to be absent’ ” (Hulsewé 1985, A81, note 1). I think *bu cun* 不存 means “the official are absent or do not work in their regular offices because they have been sent out to inspect other affairs” in this article.

²⁹³ The editors of ZJS 2001 think that ENLL 102 and ENLL 103 constitute one article (ZJS 2006, 23). According to Zhangjiashan Han jian yanduban, the placement of ENLL 103 bamboo slip “*jie ling jian lin, bei guan, er wu ling zuo guan* 皆令監臨、卑官，而勿令坐官” is not clear and ENLL 102 is followed by ENLL 104 (Zhangjiashan Han jian yanduban 2006, 213).

²⁹⁴ *Shou chen* 守丞: This term is frequently used in Liye texts as well. Li Xueqin thinks that *shou* 守 in the Liye texts means “on probation” (Li Xueqin 2003, 73-81). Hulsewé believes that “*shou* 守 is used for an appointment made on probation, pending definitive appointment, usually after one year” (Hulsewé 1985, A81, note 4). Lau and Lüdke think that this term in the ZYS and ENLL texts refers to “the Assistant of the Commandery Administrator” (Lau and Lüdke 2012, 189-90, note 922). Sun Wenbo puts forward that *shou chen* 守丞 in the ENLL text does not refer to “the probationary Prefect Assistants,” *shou chen* 守丞 are established when the Assistants of Prefects have to deal with other administrative activities and for this reason they do not work in their offices. After the Assistants come back to their offices, *shou chen* 守丞 were removed from the offices. So *shou chen* 守丞 in the ENLL text are different from probationary Assistants, who were appointed when there were vacancy for Assistants and had to fulfill probationary period before they became real Assistants (Sun Wenbo 2012, 66-75).

further decision.²⁹⁵ Probationary officials, acting officials²⁹⁶ established by the Chancellor of the State,²⁹⁷ the Imperial Clerk²⁹⁸ or [Officials with nominal salary of]

²⁹⁵ *Yan* 讞 means “to submit a doubtful legal case to a higher authority for further decision.” See an edict by Emperor Gao in 200 BCE (HS 23, 1108): “*yü zhi yi zhe, li huo bu gan jue, you zui zhe jiu er bu lun, wu zui zhe jiu xi bu jue, zi jin yi lai, xian dao guan yü yi zhe, ge yan suo shu er qian shi guan, er qian shi guan yi qi zui ming dang bao zhi. Suo bu neng jue zhe, yi tingwei, tingwei yi dang bao zhi. Tingwei suo bu neng jue, jing ju wei zou, chuan suo dang bi lü ling yi wen* 獄之疑者，吏或不敢決，有罪者久而不論，無罪者久繫不決。自今以來，縣道官獄疑者，各讞所屬二千石官，二千石官以其罪名當報之。所不能決者，移廷尉，廷尉亦當報之。廷尉所不能決，謹具為奏，傳所當比律令以聞， “When the legal cases are doubtful, officials often do not dare to decide the case, and consequently for a long time no judgment is passed on those who have committed crimes, while those who have not committed crimes are kept under detention. From now on, officials of commanderies established in the prefectures and marches submit doubtful cases respectively to [the Officials with nominal salary] of Two Thousand Piculs, to whom they are subordinated. [The Officials with nominal salary] of Two Thousand Piculs shall reply with the name of sentence. When the cases cannot be decided by them, they should transfer all the materials to the Commandant of Justice, the Commandant of Justice should reply as well. When Commandant of Justice is unable to decide the case, he prepares a memorial carefully, attaches the appropriate precedents, statutes and edicts and brings them to [the Emperor’s] attention.” The procedure of submitting the doubtful cases to a higher authority or the Emperor for further decision avoids misuse of justice on the lowest administrative level.

²⁹⁶ *Jia li* 假吏: The editors of ZJS 2001 think that these are officials who are charged with different tasks (ZJS 2006, 23).

²⁹⁷ The Chancellor of the State (*xiangguo* 相國) was established in the ninth year of Emperor Gao, he was the highest official in the Western Han dynasty. During the time of Emperor Hui and Empress Lü (196-180 BCE), there were two Chancellors (*chengxiang* 丞相): a Chancellor of the Right (*you chengxiang* 右丞相) and a Chancellor of the Left (*zuo chengxiang* 左丞相), the Chancellor of the Right was the higher position. For a detailed discussion of the Chancellors in Han, see Wang Yü-ch’üan 1949, 143-146.

²⁹⁸ The Imperial Clerk (*Yushi* 御史) is the second important post in the central government of Han. He was regarded as an associate Chancellor. From the Ordinances on Ports and Control Stations (*Jin guan ling* 津關令) in the ENLL text, we know that he and Chancellor could submit proposals of important issues to the Emperor and then the ordinances were issued by the emperor with the single word “approved” (*ke* 可). For a comprehensive introduction of the Imperial Clerk in Han, see Wang Yü-ch’üan 1949, 147-150.

Two Thousand Piculs,²⁹⁹ order a commandant to be an probationary assistant when there is a vacancy for an Assistant, he is allowed to try criminal cases or submit them for further decision. When criminal cases should be tried or judged, if Prefects, Chiefs of the Prefecture,³⁰⁰ and their Assistants³⁰¹ visit the district offices to inspect other affairs and do not work [in their offices], or if they are sick; and do not leave the boundaries of the prefectures or the marches; or the directors, chiefs, and assistants of the metropolitan offices³⁰² visit their subsidiary offices³⁰³ to have other affairs that all

²⁹⁹ *Shi* 石 is the measure of grain in Han and one *shi* 石 is about 20,024 liter.

³⁰⁰ *Xian Zhang* 縣長 “Chief of a Prefecture” is the head of a small prefecture, while *xian ling* 縣令 “Prefect” is the head of a big prefecture. See HS 19, 472: *Xian ling, zhang, jie Qin guan, zhang zhi qi xian. Wan hu yi shang wei ling, zhi qian shi zhi liu bai shi. Jian wan hu wei zhang, zhi wu bai shi zhi san bai shi. Jie you cheng, wei, zhi si bai shi zhi er bai shi, shi wei zhang li* 縣令、長，皆秦官，掌治其縣。萬戶以上為令，秩千石至六百石。減萬戶為長，秩五百石至三百石。皆有丞、尉，秩四百石至二百石，是為長吏，“The Chief of a Prefecture and the Prefect are both officials in Qin and their duties were to administrate and control their prefectures. The heads of a prefecture with more than ten thousand households are Prefects, their salary is six hundred to one thousand piculs. The heads of a prefecture with less than ten thousand households are Chiefs of Prefectures; their salary is three hundred to five hundred piculs. They both have subordinated Assistants and Commandants, whose salary is two hundred to four hundred piculs, and they are all Chief Officials.” Chiefs of a Prefecture (*xian zhang* 縣長) and Prefects (*xian ling* 縣令) were both appointed by the emperor directly in the former Han and their main duties were to administrate prefectures and marches; apply the statutes, ordinances and imperial edicts; judge criminal cases; collect taxes and maintain the social order in Han.

³⁰¹ *Cheng* 丞 are “Assistants of Chiefs of a Prefecture or Prefects.” They assist Chiefs of a Prefecture and Prefects in different tasks. We know from the Shuihudi, ENLL and ZYS texts that they are responsible for deciding and trying criminal cases as well.

³⁰² *Du guan* 都官 means “metropolitan offices.” See QLSBZ 187 = RCL A97: *Xian ge gao du guan zai qi xian zhe, xie qi guan zhi yong lu* 縣各告都官在其縣者，寫其官之用律，“The prefectures each inform the general offices in their prefecture to copy the statutes used in their office.” Hulsewé translates it as “General Offices” and thinks that they are regional branch-offices of government departments in the capital and are appointed by the emperor, or by the central government; and they mainly concerned themselves with economic activities (Hulsewé 1985, A9, note 19; Hulsewé 1978, 200-201). He notes that *li guan* 離官 were in charge of departments situated outside the main government offices or in another locality (Hulsewé 1978, 203). Gao Heng believes that *du guan* 都官 is not an official's name, but are different departments of offices, which were established by the

belong to their official affairs, or if they are sick, and in both cases they do not leave the boundaries of the prefectures or the marches, in case that the probationary assistants, probationary Chiefs of the prefecture, probationary Prefects or their actual assistants who work in the offices alone try and sentence [criminal cases] unjustly, the actual Prefects, actual Chiefs of the Prefectures, or their assistants who did not work in the offices or were sick are all to be co-convicted together and punished the same as those who have personally tried and judged the case and worked [in the offices]. Only when [they present the cases that are unjustly tried and judged to] the [Officials with nominal salary of] Two Thousand Piculs, to whom they are subordinated, are they ordered not to be co-convicted.

§3.16 皆令監臨卑官，而勿令坐官。

[. . .] are all ordered to check and control the lower offices, and are not ordered to sit in the offices.

§3.17 城旦舂、鬼薪白粲有罪遷，耐以上而當刑復城旦舂，及曰黥之若刑為城旦舂，及奴婢當刑畀主，其證不言情，誣¹²¹³⁰⁴告，告之不審，鞠之不直，故縱弗刑，

central government or kingdoms directly and were subordinated to them in Qin and Han. Though they belong to the central government or states directly, they were not all situated in the capital city. Many of the metropolitan offices (*du guan* 都官) and their subsidiary offices (*li guan* 離官) were established in prefectures or marches (Gao Heng 2008, 46-48). Loewe argues that “*zhongdu guan* 中都官 refers to offices of the central government that were situated in the capital city; and that *duanguan* 都官 referred to offices of the central government which bore defined, specialist responsibilities and which were detached from the capital and situated in the provinces” (Loewe 2008, 512-518).

³⁰³ *Li guan* 離官: Gao Heng believes that *li guan* 離官 refers to subsidiary offices of metropolitan offices (*du guan* 都官) and were established in prefectures or marches (Gao Heng 2008, 46-48). Loewe puts forward that “*li guan* 離官 were presumably sub-units or offices which the *duguan* 都官 had themselves detached to work separately” (Loewe 2008, 517).

³⁰⁴ Peng Hao believes that ENLL 121 is not followed by ENLL 122, but followed by ENLL 107-9. Because the first character of ENLL 107 is “*gao* 告” and the last character of ENLL 107 is “*wu* 誣,” they form a word *wu gao* 誣告 “to lodge a false accusation against someone, or to accuse someone falsely,”

若論而失之，及守將奴婢而亡之，篡遂縱之，及諸律令中曰與同法、同罪，其所
107 與同當刑復城旦舂，及曰黥之，若鬼薪白粲當刑為城旦舂，及刑畀主之罪也，
皆如耐罪然。其縱之而令亡城旦 108 舂、鬼薪白粲也，縱者黥為城旦舂。 109

Earth pounders or grain pounders, firewood gatherers for spirits or sorters of white rice who have committed a crime punished by banishment, shaving off the beard or more severe, but they [by law] shall be mutilated and made earth pounders or grain pounders again,³⁰⁵ and if [the statutes] say tattooing them on the forehead or mutilating them and making them earth pounders or grain pounders; slaves who [by law] shall be mutilated and given back to their masters; those who make a testimony and do not tell the truth; those who accuse someone falsely; those who accuse someone without careful scrutiny; those who summarize facts of a criminal case not straightly; those who release an incarcerated person without mutilation, those who commit an error in judging [a criminal case], those who guard and lead slaves but the slaves abscond, and those who let [an incarcerated prisoner] break out [from

which can be categorized together with the following crimes *gao zhi bu shen, ju zhi bu zhi, gu zong fu xing* 告之不審，鞠之不直，故縱弗刑, “to accuse someone without careful scrutiny, to summarize the facts of a criminal case not straightly, to release an incarcerated person without mutilation.” (Peng Hao 2006, 197). The sequence of ENLL 121 and 122 and their meaning have been hotly discussed by scholars, for a detailed summary; see Li Li 2009, 381-396.

³⁰⁵ *Xing fu chengdanchong* 刑復城旦舂: Li Junming explains it as “to be made earth pounders or grain pounders again.” In case that those who were earth pounders or grain pounders have committed crimes and [by law] they shall be punished by banishment or shaving off the beard or more severe, they are to be made earth pounders or grain pounders again, so he thinks that this punishment must be more severe than “to be made earth pounders or grain pounder” (*chengdanchong* 城旦舂) (Li Junming 2011, 41). Xu Shihong thinks that *xing fu chengdanchong* 刑復城旦舂 possibly has nothing to do with the term of the penalty and this word means “the convicts who before were earth pounders or grain pounders are to be made earth pounders or grain pounders again with mutilation,” in contrast, *xing wei chengdanchong* 刑為城旦舂 means that “who were not earth pounders or grain pounders before are made earth pounders or grain pounders with mutilation” (Xu Shihong 2004, 79-89).

imprisonment];³⁰⁶ if different statutes and ordinances say applying the same principle and method of punishment or punishing the same; those who are accomplices shall be mutilated and made earth pounders or grain pounders again; or [different statutes and ordinances] say tattooing them on the forehead, or making firewood gatherers for spirits or sorters of white rice, earth pounders or grain pounders with mutilation, and those who to be mutilated as well as given back to their masters, they are all to be punished the same as shaving off the beard. Those who release or order earth pounders, grain pounders, firewood gatherers for spirits or sorters of white rice to abscond, are to be tattooed on the forehead and made earth pounders or grain pounders.³⁰⁷

§3.18 證不言情，以出入罪人者，死罪，黥為城旦舂；它各以其所出入罪反罪之。獄未鞠而更言請情者，除。吏謹先以辨告證。¹¹⁰

Those who make a testimony and do not tell the truth, in order to punish someone more severely or more lightly,³⁰⁸ if [because of the false testimony he] is to be punished by death penalty, are to be tattooed on the forehead and made earth pounders or a grain pounders. [In other circumstances], those who make a testimony and do not tell the truth are to be punished by the discrepancy between the punishment of the falsely alleged crime and the punishment of the actual crime. Before the facts of a criminal case have been summarized, if they change their testimony and tell the truth, they are to be exempted from punishment. Officials

³⁰⁶ *Zuan sui zong zhi* 篡遂縱之 is very similar to the phrase *zuan sui zong qiu* 篡遂縱囚 in ZYS 158. I use Lau's and Lüdke's translation to explain this word, for a detailed explanation of this phrase, see Lau and Lüdke 2012, 264.

³⁰⁷ I do not understand the meaning of this article at all.

³⁰⁸ *Chu ru zui* 出入罪: we have a definition of this in HS 17, 635: *Lü shuo chu zui wei gu zong, ru zui wei gu bu zhi* 律說出罪為故縱，入罪為故不直, "The commentary of the statutes says that to decrease someone's punishment is to release someone intentionally, to cause someone to suffer punishment is to be intentionally not straight."

should first tell them to make a testimony carefully.³⁰⁹

§3.19 譯訊人為詐偽，以出入罪人，死罪，黥為城旦舂；它各以其所出入罪反罪之。¹¹¹

Those who translate statements³¹⁰ with fraud and counterfeit during an interrogation in order to punish someone more severely or more lightly, if [because of the translation he] is to be punished by death penalty, are to be tattooed on the forehead and made earth pounders or grain pounders. [In other circumstances], those who translate statements with fraud and counterfeit are to be punished by the discrepancy between the punishment of the alleged crime and the punishment of the actual crime.

§3.20 劾人不審，為失；其輕罪也而故以重罪劾之，為不直。¹¹²

Charging³¹¹ someone without careful scrutiny is a case of committing a judicial error. Charging [someone who has committed] a misdemeanor with a felony with intent is a case of not being straight.

§3.21 治獄者，各以其告劾治之。敢放訊杜雅，求其它罪，及人毋告劾而擅覆治

³⁰⁹ Similar legal texts concerning making a testimony or statements can be found in different passages of the Juyan texts. See EPT 52.417: *xian zi zheng bu yan qing lü bian gao* 先以證不言情律辯告, “informing someone of the statutes on making a testimony and not telling the truth” and EPF 22.21: *Xian yi zheng cai wu gu bu yi shi zang wu bai yi shang, ci yi ding man san ri er bu geng yan qing zhe, yi ci suo chu ru zui fan zui zhi lü bian gao* 先以證財物故不以實贓五百以上，辭以定滿三日而不更言情者，以辭所出入罪反罪之律辯告, “Informing someone first of the following statute: When someone did not make a testimony honestly about property or objects of a legal case, where the value of spoils is 500 cash or more; after three days he does not change his testimony and tell the truth, he is to be punished by the discrepancy between the punishment of the alleged crime and the punishment of the actual crime.”

³¹⁰ In ancient China, different regions have different dialects or languages, so judicial officials may need someone to translate statements in criminal cases.

³¹¹ *He* 劾 and *gao* 告 both mean “to denounce someone’s crime to the authority:” *He* 劾 means “those who are officials charge someone with a crime to the authority,” in contrast, *gao* 告 means “those who are non-officials accuse someone of a crime to the authority.”

之，皆以鞠獄故不直論。¹¹³

Those who try criminal cases should try them according to the accusations [by non-officials] or charges [by officials]. In case that they judge criminal cases by setting a trap for someone, to seek to give [him] a different punishment; or in case that they review or try criminal cases without authority when someone does not accuse or charge an offender, they are all to be judged by summarizing facts of a criminal case not straightly with intent.³¹²

§3.22 罪人獄已決，自以罪不當，欲乞鞠者，許之。乞鞠不審，加罪一等；其欲復乞鞠，當刑者，刑乃聽之。死罪不得自乞¹¹⁴鞠，其父、母、兄、姊、弟、夫、妻、子欲為乞鞠，許之。其不審，黥為城旦舂。年未盈十歲為乞鞠，勿聽。獄已決盈一歲，不¹¹⁵得乞鞠。乞鞠者各辭在所縣道，縣道官、令、長、丞謹聽，書其乞鞠，上獄屬所二千石官，二千石官令都吏覆之。都吏所覆治，廷¹¹⁶及郡各移旁近郡，御史、丞相所覆治移廷。¹¹⁷

After criminal cases have been decided, if offenders believe that the punishment is unjust and want to petition for a retrial, they are allowed to do so. If the petition for a retrial is not confirmed [according to the facts of a criminal case], their punishment is to be increased by one degree. When the offenders, who [by law] shall be mutilated, want to petition for a retrial again, only after their mutilation has been executed, their petition for a retrial shall be heard. The offenders who are punished by death penalty are not allowed to petition for a retrial by themselves, if their fathers, mothers, older brothers, older sisters, younger brothers, husbands, wives or children want to petition for a retrial for them, they are allowed to do so. In case that the retrial is not confirmed [according to the facts of the criminal case], [those who petitioned for a retrial] are to be tattooed on the forehead and made earth pounders or grain pounders. When people who are younger than ten years old petition for a retrial, their petition for a retrial shall not be heard. When one year has passed since the trial of a criminal

³¹² For the statute on summarizing facts of a criminal case not straightly, see ENLL 93-94.

case, a petition for a retrial is not allowed. Those who petition for a retrial should state it in the prefectures or the marches where they reside, offices of commanderies established in the prefectures and marches, Prefects, Chiefs of Prefectures, and their Assistants should listen to their petition for a retrial carefully, write it down and submit it to [Officials with nominal salary of] Two Thousand Piculs, to whom the criminal case belong, then [Officials with nominal salary] of Two Thousand Piculs order metropolitan officials to review the criminal case. If the case has been reviewed and tried by metropolitan officials, the court and the commandery shall transfer the case to the neighboring commandery; if the case has been reviewed and tried by the Imperial Clerk or the Chancellor, the case shall be transferred to the [imperial] court.

§3.23 毋敢以投書者言繫治人。不從律者，以鞠獄故不直論。¹¹⁸

It is not allowed to hold someone in detention or sentence someone by the statements of “thrown letters”. Those who do not obey the statutes are to be judged by summarizing facts of a criminal case not straightly with intent.

§3.24 贖死，金二斤八兩。贖城旦舂、鬼薪白粲，金一斤八兩。贖斬、腐，金一斤四兩。贖劓、黥，金一斤。贖耐，金十二兩。贖遷，金八兩。¹¹⁹

Paying a redemption fee for death penalty is 2 *jin* and 8 ounces of gold. Paying a redemption fee for an earth pounder, a grain pounder, a firewood gatherer for spirits or a sorter of white rice is 1 *jin* and 8 ounces of gold. Paying a redemption fee for cutting off the foot or castration is 1 *jin* and 4 ounces of gold. Paying a redemption fee for cutting off the nose or tattooing on the forehead is 1 *jin* gold. Paying a redemption fee for shaving off the beard is 12 ounces of gold. Paying a redemption fee for banishment is 8 ounces of gold.

§3.25 有罪當腐者，移內官，內官腐之。¹¹⁹

Those who are guilty of a crime punished by castration are to be transferred to the

Inner Palace Office³¹³ and it shall castrate them.³¹⁴

§3.26 鬼薪白粲有耐罪到完城旦舂罪，黥以為城旦舂；其有贖罪以下，笞百。¹²⁰

Firewood gatherers for spirits and sorters of white rice who are guilty of a crime punished by shaving off the beard or more severe up to [doing labor] as earth pounders or grain pounders without mutilation are to be tattooed on the forehead and made earth pounders or grain pounders. In case that they are guilty of a crime punished by paying a redemption fee or lighter; they are to be caned one hundred strokes.

§3.27 人奴婢有刑城旦舂以下至遷、耐罪，黥顏頰界主，其有贖罪以下及老小不當刑、刑盡者，皆笞百。刑盡而賊傷人及殺人，先自告也，棄市。有罪¹²²³¹⁵當完城旦舂、鬼薪白粲以上而亡，以其罪命之；耐隸臣妾罪以下，論令出會之。其以亡為罪，當完城旦舂、鬼薪白粲以上不得者，亦以其罪¹²³論命之。庶人以上，司寇、隸臣妾無城旦舂、鬼薪白粲罪以上，而吏故為不直及失刑之，皆以為隱官、女子庶人，³¹⁶毋算事其身，令自尚。¹²⁴

³¹³ See Yan Shigu's commentary on this word of HS 75, 3154: *Nei guan, shu ming ye* 內官，署名也，
“The Inner Palace Office is the name of a office department.”

³¹⁴ Though §3.23 and §3.24 were written on the same bamboo strip ENLL 119, I think the texts on it should be divided into two articles.

³¹⁵ Originally, the editors of ZJS 2001 put ENLL 121 and ENLL 122 together as one article. Peng Hao puts forward that this strip is the beginning of a new article and is not be preceded by ENLL 121. The first three characters of this strip *ren nu bi* 人奴婢 can be used as a single word, because we have a similar word in ZYS 23-24: *ren bi Qing zhu Zhao Handan cheng, yi ji wang* 人婢清助趙邯鄲城，已即亡，“the female private slave Qing has helped Zhao to build the wall of Handan city, after finishing it, they absconded.” (Peng 2006, 197)

³¹⁶ The editors of ZJS 2001 punctuate *jie yi wei ying guan; nü zi shu ren, wu suan shi qi shen, ling zi shang* 皆以為隱官；女子庶人，毋算事其身，令自尚 (ZJS 2006, 25). I punctuate *jie yi wei ying guan, nü zi shu ren, wu suan shi qi shen, ling zi shang* 皆以為隱官、女子庶人，毋算事其身，令自尚. I think men who have received mutilation falsely are to be made “hidden officials,” while the mutilated women are to be made free persons. Not only the female free persons but also male “hidden officials” are to be exempted from paying the poll tax and doing statutory labor. Based on ENLL 312 and ENLL 316, it is clear that the social status of “hidden officials” is lower than that of “free persons,” because free persons received bigger residence house and more rice fields than “hidden officials.” According to this article, though both male and female convicts suffered the false mutilation, women are to be

Private male or female slaves who are guilty of a crime punished by mutilation and [doing labor] as earth pounders or grain pounders or lighter down to banishing or shaving off the beard, are to be tattooed on the forehead and the cheekbone and given back to their masters. In case that they are guilty of a crime punished by paying a redemption fee or lighter, when they are too old or young to be mutilated [by law], or when they have suffered all kinds of mutilations: they are to be caned one hundred strokes. After they have suffered all kinds of mutilations, if they injure or kill someone with malice aforethought and accuse themselves to the authority first, they are to be executed in the marketplace. Those who are guilty of a crime punished by [doing labor] as earth pounders or grain pounders without mutilation, firewood gatherers for spirits or sorters of white rice or more severe, if they abscond, are to be sentenced³¹⁷ [directly]; those who are guilty of a crime punished by shaving off the beard and [doing labor] as male or female bondservants or lighter, are to be sentenced after they have been accused to the authority. Those who are guilty of absconding punished by [doing labor] as earth pounders, grain pounders without mutilation, firewood gatherers for spirits or sorters of white rice or more severe and are not caught, are to be sentenced directly as well.³¹⁸ Free persons or higher, robber guards, male and female bondservants without punishment of being made earth pounders, grain pounders, firewood gatherers for spirits or sorters of white rice or more severe, if the officials have not been straight to them or have committed an error in mutilating

released as free persons and have better social status than men, so the final results are different between men and women. Besides, we know that women receive the mitigation of punishment according to the statutes (ENLL 88-89), I think that some preferential treatments were given to women convicts in early Han, though normally the social status of women is lower than that of men (e.g. see ENLL 32, 33, and 40).

³¹⁷ *Ming* 命 in legal articles means “to sentence someone.” See commentary on this word of HS 23, 1099: *Ming zhe, ming ye, cheng qi zui ye* 命者, 名也, 成其罪也, “*Ming* 命 is to define the punishment and sentence someone.”

³¹⁸ Actually, I do not understand this passage at all. I have used the explanations of the editors of ZJS 2007 to translate it (ZJS 2007, 142).

them, are all to be made “hidden officials”³¹⁹ or female free persons. They are to be

³¹⁹ *Yin guan* 隱官: The editors of ZJS 2001 suggest that those who are hidden officials shall be put to work in places where they could not be observed (ZJS 2006, 26). This word is used in Shuihudi legal manuscripts as well, see QLSBZ 156 = RCL A91: *Gong lichen zhan shou ji ren wei zhan shou yi mian zhe, jie ling wei gong. Qi bu wan zhe, yi wei yinguan gong* 工隸臣斬首及人為斬首以免者，皆令為工。其不完者，以為隱官工，“Artisan bond-servants who cut off the head [of an enemy] as well as persons for whom others have cut off a head in order to have them liberated, are all ordered to become artisans; those who are “incomplete” are to be made artisans in the hidden offices.” See FLDW 125-126 = RCL D105: *Jiang si ren er wang, neng zi bu ji qin suo zhi wei bu, chu wu zui; yi xing zhe chu yinguan. He zui de chu yinguan? Qundao she wei shu ren, jiang dao xie qiu xing zui yi shang, wang, yi gu zui lun, zhan zuo zhi wei chengdan, hou zi bu suo wang, shi wei chu yin guan. Ta zui bi qundao zhe jie ru ci* 將司人而亡，能自捕及親所知為捕，除無罪；已刑者處隱官。何罪得處隱官？群盜赦為庶人，將盜械囚刑罪以上，亡，以故罪論，斬左止為城旦，後自捕所亡，是謂處隱官。它罪比群盜者皆如此，“(A person) leads and supervises (incarcerated) people, and they abscond. If he personally is able to arrest them, as well as if his relatives (or) his friends arrest them for him, he is let off and not punished; those already mutilated are placed in the Hidden Offices. For which punishments is it allowed to place (people) in the Hidden Office? When robbers in a band, who have been amnestied and made commoners, lead manacled incarcerated convicts who have been robbers and who have been (punished by) mutilation or more, and these abscond, (the men who lead them) are sentenced for their former crime: they have their left foot cut off and are made *chengdan*. Later, they personally arrest those whom they had let escape. This is meant by ‘being placed in the Hidden Offices’. Other crimes, comparable to “robbery in a band” are all (treated) like this.” Based on these legal texts, it is clear that in Qin, “hidden officials” (*yin guan gong* 隱官工) refers to “those male convicts who have been mutilated work in a special place, so that they cannot be seen by others,” while “hidden offices” (*yin guan* 隱官) are places where *yin guan gong* 隱官工 are placed for work. In the ENLL text, *yin guan* 隱官 can be found in ENLL 124, 158, 163, 312, 316 and 365. The meaning of *guan* 官 in this word has changed from Qin to Han, in Qin, *yin guan* 隱官 means “the work places where hidden officials (*yin guan gong* 隱官工) were placed,” while in early Han *yin guan* 隱官 refers to “the hidden officials who were mutilated are placed in work places.” The following statutes of the ENLL text regulates the social status of *yin guan* 隱官 in early Han. See ENLL 364-365, *Gongshi, gongzu ji shiwu, sikou, yinguan zi, jie wei shiwu* 公士、公卒及士伍、司寇、隱官子，皆為士伍，“The sons of Holders of the First Meritorious Rank, common people, members of the rank and file, robber guards, and hidden officials, are all members of the rank and file.” ENLL 312 : *Gongzu, shiwu, shuren ge yi qing, sikou, yinguan ge wu shi mu* 公卒、士伍、庶人各一頃，司寇、隱官各五十畝，“Common people, member of the rank and file, and free persons are to receive one *qin* rice fields, robber guards and hidden officials are to receive fifty *mu* rice fields.” ENLL 316: *Gongzu, shiwu, shuren yi zhai, sikou, yinguan ban zhai* 公卒、士伍、庶人一宅，司寇、隱官半宅，“Common people, members of the rank

exempted from paying the poll tax³²⁰ or doing labor and are ordered to be responsible for themselves.³²¹

具律¹²⁵

Statutes on Generalities

2.2.4 Statutes on Accusing [an Offender to the Authority] (*Gao lü* 告律)

§4.1 誣告人以死罪，黥為城旦舂；它各反其罪。¹²⁶

Falsely accusing someone of a crime punished by death penalty, is punished by tattooing on the forehead and [doing labor] as earth pounders or grain pounders. [In other circumstances, the accusers] are to receive the same punishment as for the crime of which they have accused someone.

and file, and free persons are to receive one residence house, robber guards and hidden officials are to receive half residence house.” Jiang Feifei notes there were three kinds of convicts who received mutilation could become “hidden officials” in Qin and Han: first, persons were mutilated falsely because the officials have been unjust to them or have committed an error in mutilating them; second, the mutilated convicts are manumitted because they have won military honors or other who have won military honors used their honors to manumit them; third, the mutilated convicts were pardoned because of an amnesty by the government (Jiang Feifei 2007, 136-139).

³²⁰ *Suan* 算: The editors of ZJS 2001 believe that this refers to “*suan fu* 算賦” (the poll tax charged by the government) (ZJS 2006, 26). According to Hulsewé, “the poll tax was for all adults 120 cash, but traders and slaves paid double the amount in Han” (Hulsewé 1955, 17).

³²¹ *Ling zi shang* 令自尚 can also be found in ZYS 122: *Qi chu jiang yi wei yinguan, ling zi shang* 其除講以為隱官, 令自尚, “They exempt Jiang from punishment, let him be a hidden official and order him to be responsible for himself.” See also the wooden strip from Longgang M6: *Jiu yue bin jia, Shaxian cheng jia, shi bing, mian Bi Si wei shu ren, ling zi shang ye* 九月丙甲, 沙羨丞甲, 史丙, 免辟死為庶人, 令自尚也, “In the *binjia* day of the ninth month, the Assistant Prefect A and the clerk C of the Shaxian prefecture have exempted Bi Si from punishment and freed him as a free person and ordered him to be responsible for himself (Longgang *Qin jian* 2001, 144-45). Lau and Lüdke explain this word in detail in their annotated translation of the ZYS text and translate it as “to be responsible for oneself” (Lau and Lüdke 2012, 236-37, note 1175).

§4.2 告不審及有罪先自告，各減其罪一等。死罪黥為城旦舂，黥為城旦舂罪完為城旦舂，完為城旦舂罪¹²⁷鬼薪白粲及腐罪耐為隸臣妾，耐為隸臣妾罪¹²⁸耐為司寇，司寇、遷及黥顏頰罪贖耐，贖耐罪罰金四兩，贖死罪贖城旦舂，贖城旦舂罪贖斬，贖斬罪贖黥，贖黥罪贖耐，耐罪¹²⁹金四兩罪罰金二兩，罰金二兩罪罰金一兩。令、丞、令史或徧先自¹³⁰得之，相除。³²²¹³¹

[If someone] accuses another person without careful scrutiny³²³, or [if someone] is guilty of a crime and accuses himself to the authority first, his punishment is to be reduced one degree. If the crime is punished by death penalty, it is to be punished by tattooing on the forehead and [doing labor] as an earth pounder or a grain pounder; if the crime is punished by tattooing on the forehead and [doing labor] as an earth pounder or a grain pounder, it is to be punished by [doing labor] as an earth pounder or a grain pounder without mutilation; if the crime is punished by [doing labor] as an earth pounder or a grain pounder without mutilation [. . .] if the crime is punished by [doing labor] as a firewood gatherer for spirits or a sorter of white rice or castration, it is to be punished by shaving off the beard and [doing labor] as a male bondservant or a female bondservant; if the crime is punished by shaving off the beard and [doing

³²² The editors of ZJS 2001 put forward that the passage“令、丞、令史……相除” may belong to another article and was stuck to the strip ENLL 130 by mistake. According to the editors of ZJS 2007, it cannot be precluded that the scribe wrote this passage here mistakenly (ZJS 2007, 145).

³²³ Compared to those accusing someone of a crime falsely (*wu gao* 誣告) with intent, the accusers who have accused someone of a crime without careful scrutiny (*gao bu shen* 告不審) made it unintentionally, this is the reason why the offender's punishment shall be reduced by one degree. In FLDW 43 = RCL D35, we find explanations concerning these two legal terms: *Jia gao yi dao niu ruo zei shang ren, jin yi bu dao niu, bu shang ren, wen jia he lun? Duan wei, wei wu ren; bu duan, wei gao bu shen* 甲告乙盜牛若賊傷人，今乙不盜牛、不傷人，問甲何論？端為，為誣人；不端，為告不審，“A denounces B for having stolen an ox or for having intentionally wounded a person. Now B did not steal an ox, nor has he wounded a person. Question: how is A to be sentenced? If he did it on purpose, this is (a case of) falsely accusing another person; if it was unintentional, it is (a case of) carelessness in denouncing.” In the FLDW text, there are different questions and answers about the punishment of accusing someone of a crime falsely (*wu gao* 誣告) and accusing someone of a crime without careful scrutiny (*gao bu shen* 告不審). According to them, *gao bu shen* 告不審 is also punished one degree less severely than *wu gao* 誣告 in Qin.

labor] as a male or female bondservant, it is to be punished by shaving off the beard and [doing labor] as a robber guard; if the crime is punished by [doing labor] as a robber guard, banishment or tattooing on the forehead and cheekbone, it is to be punished by paying a redemption fee for shaving off the beard; if the crime is punished by paying a redemption fee for shaving off the beard, it is to be punished by a fine of four ounces of gold; if the crime is punished by paying a redemption fee for the death penalty, it is to be punished by paying a redemption fee for doing labor as an earth pounder or a grain pounder; if the crime is punished by paying a redemption fee for doing labor as an earth pounder or a grain pounder, it is to be punished by paying a redemption fee for cutting off the foot; if the crime is punished by paying a redemption fee for cutting off the foot, it is to be punished by paying a redemption fee for tattooing on the forehead; if the crime is punished by paying a redemption fee for tattooing on the forehead, it is to be punished by paying a redemption fee for shaving off the beard; if the crime is punished by shaving off the beard [. . .], if the crime is punished by a fine of 4 ounces of gold, it is to be punished by a fine of 2 ounces of gold; if the crime is punished by a fine of 2 ounces of gold, it is to be punished by a fine of 1 ounce of gold. Prefects, their Assistants or Scribes³²⁴ who catch all of them

³²⁴ *Ling shi* 令史: See the following text of *Bian nian ji* 編年紀: *Liu nian, si yue, wei Anlu ling shi* 六年，四月，為安陸令史, “In the fourth month of the sixth year [of Qin Shishuang], [Xi] became the Scribe of the Prefect in Anlu prefecture” According to Shuihudi editors, *ling shi* 令史 is an official who is subordinated to Prefect and is in charge of preparing and writing documents (Shuihudi Qin mu zhujian zhengli xiaozu 1978, 12). Gao Heng puts forward that *ling shi* 令史 are petty officials without rank and are subordinated to prefectures or marches. There are different *ling shi* 令史 with separate duties in a prefecture. Based on the Shuihudi legal texts, it is clear that they took part in judicial activities. *Yu shi* 獄史, *yu yuan* 獄掾, *yu li* 獄吏 are all *ling shi* 令史 who are responsible for judicial activities. They are also qualified to be appointed as probationary Bailiffs in different departments subordinated to prefectures or marches (Gao Heng 2008, 18-19). See QLSBZ 161 = RCL A81: *Guan sefu ji bu cun, ling jun zi wu hai zhe ruo ling shi shou guan, wu ling guan zuo , shi shou* 官嗇夫即不存，令君子毋無害者若令史守官，毋令官佐、史守, “If an Overseer is absent, a Master who is ‘without evil’, or a Prefectural Clerk is ordered to fill the office on probation. Do not order office assistants or clerks (to fill the office) on probation.” The word *xianlingshi* 縣令史 occurs in *Statutes on Scribes (Shi lü* 史律). See ENLL 475-476: *Shi shi xue tong yi shi wu pian, neng feng shu wu qian zi yi shang, nai de wei*

first are to be exempted from punishment.

§4.3 殺傷大父母、父、母，及奴婢殺傷主、主父、母、妻、子，自告者皆不得減。³²⁵₁₃₂

When [children] kill or injure their grandparents, parents; or when male or female slaves kill or injure their masters, or parents, wives or children of their masters, [the punishment] of those who accuse themselves to the authority is not to be reduced.

§4.4 告人不審，所告者有它罪與告也罪等以上，告者不為不審。₁₃₂

When [the accuser] accuses someone of a crime without careful scrutiny, if he has committed another crime that is punished as severely as or more severely than the accused crime, the accuser is not regarded as having accused someone without careful scrutiny.

§4.5 子告父母，婦告威公，奴婢告主、主父、母、妻、子，勿聽而棄告者市。₁₃₃

When children accuse their parents, when daughters-in-law accuse their mothers-in-law³²⁶ or fathers-in-law, or when male or female slaves accuse their masters, or parents, wives or children of their masters: the accusations are not to be heard and the accusers are to be executed in the marketplace.

shi. You yi ba ti shi zhi. Jun yi qi ba ti ke taishi, taishi song ke, qu zui yi ren yi wei qi xianlingshi, dian zhe wu yi wei shi 試史學童以十五篇，能諷書五千字以上，乃得為史。又以八體試之。郡移其八體課太史，太史誦課，取最一人以為其縣令史，殿者勿以為史，“Test scribe students with the 15 Chapters: In case that they are able to recite [from memory] and write 5.000 characters or more, only then are they eligible to become scribes. Furthermore test them with the eight styles of writing. The commanderies send the test results of the eight styles of writing to the Grand Scribe. The Grand Scribe reads them aloud and chooses the best student [from each prefecture] to become the Scribe of Prefect in his prefecture. The students receiving bad [test results] are not allowed to become scribes.” It seems that the word *ling shi* 令史 in the text of ENLL 130 is the same as “*xianlingshi* 縣令史.”

³²⁵ I have divided the texts written on ENLL 132 into two articles, since they are pertaining to different topics.

³²⁶ *Wei* 威 means “mother-in-law.” See *Shuo Wen* 1963, 259: *Wei, gu ye* 威，姑也，“One’s mother-in-law is the mother of one’s husband.”

§4.6 年未盈十歲及繫者、城旦舂、鬼薪白粲告人，皆勿聽。¹³⁴

When persons younger than ten years, persons held in detention, earth pounders, grain pounders, firewood gatherers for spirits, or sorters of white rice accuse someone to the authority: their accusations are all not to be heard.

§4.7 奴婢自訟不審、斬奴左趾，黥婢顏頰，畀其主。¹³⁵

When the defense made by male or female slaves [during the interrogation]³²⁷ is not confirmed [according to the facts of the criminal case], the male slaves are to have the left foot cut off, female slaves are to be tattooed on the forehead and cheekbone: [they are both to be] given back to their masters.

告律¹³⁶

The Statute on Accusing [an Offender to the Authority]

2.2.5 Statutes on Arresting (*Bu lü* 捕律)

§5.1 𠄎【捕】亡人、略妻、略賣人、強姦、偽寫印者、棄市罪一人，購金十兩。刑城旦舂罪，購金四兩。完城¹³⁷旦舂罪，購金³²⁸二兩。¹³⁸

[. . . arresting]³²⁹ an absconder, an offender who has kidnapped someone and taken her as his wife, a kidnapper who has kidnapped and sold someone, a person who has

³²⁷ See HHS 8, 338: *Song wei shen li zhi ye* 訟謂申理之也, “Arguing is to defend oneself by making statements.” Peng Hao compares *zi gao* 自告 with *zi song* 自訟: the former means “to accuse oneself to the authority before the crime is discovered, while the other means “to defend oneself against the accusation or the charge during the interrogation.” Since the defense of the slaves is made after a charge or a accusation and during the interrogation of a case, Peng Hao argues that this article must have not belonged to *Statutes on Accusation [to the Authority]* (*Gao lü* 告律) but *Statutes on Imprisonment* (*Qiu lü* 囚律) (Peng Hao 2006, 196).

³²⁸ About five characters are illegible here. Based on the content of this article, the editors of ZJS 2007 believe that the illegible characters are “旦舂罪，購金” (ZJS 2007, 147).

³²⁹ Based on the content of this article, it can be inferred that one of the illegible characters should be *bu* 捕.

raped someone, a person who has forged a seal, or a person who is guilty of a crime punished by execution in the marketplace is to be rewarded with 10 ounces of gold. Arresting an offender who is guilty of a crime punished by mutilation and [doing labor] as an earth pounder or a grain pounder is to be rewarded with 4 ounces of gold. Arresting an offender who is guilty of a crime punished by doing labor as an earth pounder or a grain pounder without mutilation is to be rewarded with 2 ounces of gold.

§5.2 訶告罪人，吏捕得之，半購訶者。¹³⁹

When someone detects³³⁰ offenders and denounces offenders to the authority, so that the officials arrest and catch them, the person who detected them is to be half rewarded.

§5.3 群盜殺傷人、賊殺傷人、強盜，即發縣道，縣道亟為發吏、徒足以追捕之，尉分將，令兼將，亟詣盜、賊發及之所，以窮追捕之，毋敢□₁₄₀界而還。吏將徒，追求盜、賊，必伍之，盜、賊以短兵殺傷其將及伍人，而弗能捕得，皆戍邊二歲。卅日中能得其半以上，盡除其罪；₁₄₁得不能半，得者獨除。死事者，置後如律。大瘡臂臑股肱，或誅斬，除。與盜、賊遇而去北，及力足以追逮捕之而官□□□□□₁₄₂逗留₁₄₂留畏懼弗敢就，奪其將爵一級，免之，毋爵者戍邊二歲；而罰其所將吏徒以卒戍邊各一歲。興吏、徒追盜、賊，已受令而逋，以畏懼論之。₁₄₃

When a gang of thieves kill or injure someone, when persons kill or injure someone with malice aforethought, or when persons steal something by force, after [these crimes] occur in a prefecture or in a march, the prefecture or the march should send enough officials and laborers immediately to pursue and arrest them, Commandants

³³⁰ *Xiong* 訶: see Xu Guang's commentary on this word of SJ 118, 3082: *Xiong, ci hou cai cha zhi ming ye* 訶，伺候采察之名也，"to detect is to investigate secretly or spy."

[of the Prefecture]³³¹ should divide and lead them and the Prefect should lead all of them, so that they shall be presented immediately to the places where the thieves or bandits become active or arrive, in order to pursue and arrest all of the thieves or bandits and they are not allowed to venture to [. . .] the boundaries and return. The officials who lead laborers to pursue and search for thieves or bandits must divide them into groups of five. If the thieves or bandits use short weapons³³² to kill or injure the leaders and members of the groups of five, when they do not arrest and catch thieves or bandits, they are all to perform military service at the frontiers for two years. If they catch more than half of the thieves or bandits in thirty days, they are all to be exempted from punishment; if they catch less than half of the thieves or bandits, those who have caught them are to be exempted from punishment alone. If someone [who is sent out to arrest and catch thieves and bandits] dies in the service, his heir is to be settled according to the Statutes [on Inheritance].³³³ Those who have serious wounds³³⁴ in arms, upper limbs, hips or the upper part of legs, those who have been killed, or those whose feet have been cut off, are to be exempted from punishment. Those who encounter thieves and bandits escape, those whose strength is enough to pursue and arrest thieves or bandits [. . .] and those who stop [fighting] because of

³³¹ *Wei* 尉: see HS 28, 3623: *Wei da xian er ren, xiao xian yi ren* . . . *Wei zhu dao zei* 尉大縣二人，小縣一人 . . . 尉主盜、賊, “There are two Commandants in a big prefecture and one in a small prefecture . . . Commandants are in charge of [pursuing] robbers and bandits.”

³³² *Duan bing* 短兵, “weapons like swords and knives.” See SJ 110, 279: *Qi chang bing ze gong shi, duan bing ze dao chan* 其長兵則弓矢，短兵則刀鋌, “Long weapons are bows and arrows, short weapons are knives and short spears with iron handles.”

³³³ They probably refer to the statutes on inheritance of persons who die in the service (ENLL 269-371).

³³⁴ *Da yi* 大瘻: there is a definition about this word in FLDW 208 = RCL D188: *He ru wei da yi? Da yi zhe, zhi huo wei duan, ji jiang zhang ling er ren fu chu zhi, wei da yi* 何如為大瘻？大瘻者，肢或未斷，及將長令二人扶出之，為大瘻, “what is a ‘serious wound’? A serious wound is when a limb has perhaps not been completely severed, (but the injury) goes so far that the leader or the chief has to order two men to support him out – that is a serious wound.”

cowardice³³⁵ and dare not get close to the thieves or bandits: are to be deprived of one degree of meritorious rank and to be removed from office, those who have no meritorious rank are to perform military service at the frontiers for two years, the officials and laborers who are led by them are to perform military service at the frontiers for one year. Officials and laborers who are conscripted to pursue thieves or bandits, after they have received the order of conscription they avoid it, are to be judged by [stopping fighting] because of cowardice.³³⁶

§5.4 盜、賊發，士吏、求盜部者，及令、丞、尉弗覺知，士吏、求盜皆以卒戍邊二歲，令、丞、尉罰金各四兩。令、丞、尉能先覺知，求捕其盜、賊，及自劾，論¹⁴⁴吏部主者，除令、丞、尉罰。一歲中盜、賊發而令、丞、尉所不覺知三發以上，皆為不勝任，免之。¹⁴⁵

When thieves or bandits occur, if military officials,³³⁷ those of the thief-catchers department,³³⁸ Prefects, their Assistants and Commandants are not aware of it, military officials and thief-catchers are all to perform military service at the frontiers for two years, Prefects, their Assistants and Commandants are to be fined 4 ounces of gold respectively. If Prefects, their Assistants and Commandants are aware of it first, so that they pursue and arrest thieves or bandits, or if they charge themselves to the

³³⁵ *Dou liu wei ruan* 逗留畏懦: The editors of ZJS 2001 explain *wei ruan* 畏懦 as *wei nuo* 畏懦, which means “to be timid.”

³³⁶ According to Yates, the squads of five men originated from the household units. Accordingly, one member from each of a group of five households served in the squads of five men in the army. Besides, members of the squads were responsible for each other’s safety (Yates 2009, 31-32).

³³⁷ *Shi li* 士吏: they were subordinate military officials in Han and their duties are to ensure the security, and to pursue and arrest bandits and thieves. For a detailed introduction of military officials (*shi li* 士吏), see Hulsewé 1985, C1, note 7; and Lau and Lüdke 2012, 178, note 879.

³³⁸ *Qiu dao* 求盜: see Ying Shao’s commentary on this word of HS 1, 6: *Ting you liang zu, yi wei ting fu, zhang kai bi sao chu, yi wei qiu dao, zhang zhu bu dao zei* 亭有兩卒，一為亭父，掌開閉埽除，一為求盜，掌逐捕盜、賊，“There were two persons subordinated to the police station in old times, one is *ting fu* 亭父, whose duty is to open and shut the gates, sweep and clean the streets; the other is thief-catcher, whose duty is to pursue and catch thieves and bandits.”

authority, those who are in charge of the official department are to be judged, Prefects, their Assistants and Commandants are to be exempted from punishment. When thieves or bandits occur in one year, if Prefects, their Assistants and Commandants are not aware of it three times or more, they are all incompetent for their work and are to be removed from office.

§5.5 群盜，盜、賊發，告吏，吏匿弗言其縣廷，言之而留盈一日，以其故不得，皆以鞠獄故縱論之。¹⁴⁶

When a gang of thieves, thieves or bandits occur, if [someone] accuses them to the officials and the officials conceal the accusations and do not report them to the court of the prefectures, or they delay reporting them, fully one day, and if because of this [thieves or bandits] cannot be caught, the officials are all to be judged by summarizing facts of a criminal cases [falsely] in order to release an incarcerated person with intent.

§5.6 □□□□發及鬪殺人而不得，官嗇夫、士吏、吏部主者，罰金各二兩，尉、尉史各一兩；而斬、捕、得、不得、所殺傷及贓物數屬所¹⁴⁷ 二千石官，二千石官上丞相、御史。能產捕群盜一人若斬二人，拜爵一級。其斬一人若爵過大夫及不當拜爵者，皆購之如律。所捕、斬雖後會赦不³³⁹₁₄₈ 論，行其購賞。斬群盜，必有以信之，乃行其賞。¹⁴⁹

[. . .] occur, fight with and kill someone but are not caught, the Bailiffs, military officials and those who are in charge of the official department are to be fined 2 ounces of gold respectively, Commandants and officials subordinated to them are to be fined 1 ounce of gold respectively. The number of [offenders who] have been executed, arrested, caught, not caught, the number of [persons who] have been killed or injured [by the offenders], and the number of spoils and objects shall be reported to

³³⁹ Based on the text of this article and the similar text in FLDW 153, the editors of ZJS 2007 interpret these two characters as *she bu* 赦不 here (ZJS 2007, 151).

[Officials with nominal salary] of Two Thousand Piculs, to whom they are subordinated, [Officials with nominal salary] of Two Thousand Piculs submit the numbers to the Chancellor and the Imperial Clerk. Arresting one member of a gang of thieves alive or executing two members of them is to receive one degree of meritorious rank. In case that those who have executed one person have a meritorious rank higher than the fifth one, or they [by law] shall not receive a meritorious rank: they are to be rewarded according to the statutes. If those who are caught or executed are not to be judged because they receive an amnesty afterwards, [those who have caught or executed them] are still to be rewarded. Those who have executed [member(s) of] a gang of thieves, only if they have something to prove it, are to be rewarded.

§5.7 捕從諸侯來為間者一人，拜爵一級，又購二萬錢。不當拜爵者，級賜萬錢，又行其購。數人共捕罪人而當購賞，欲₁₅₀相移者，許之。₁₅₁

Arresting someone who is a spy from feudal lords is to receive one degree of a meritorious rank and a reward of 20,000 cash. Those who [by law] shall not receive a meritorious rank are to be rewarded with 10,000 cashes per degree of [a meritorious rank] and are to be rewarded as well. When several persons have arrested offenders together and [by law] they shall receive rewards, if they want to transfer their rewards to persons among them, they are allowed to do so.

§5.8 捕盜、賊、罪人，及以告劾逮捕人，所捕格鬪而殺傷之，及窮之而自殺也，殺傷者除，其當購賞者，半購賞之。殺傷₁₅₂

When [someone] arrests thieves, bandits or offenders, or when [someone] pursues and arrests them because of a accusation or a charge, if he grapples and fights with them so that he kills or injures them, or if he brings them to end so that they commit suicide, he is to be exempted from punishment. If [by law] he shall receive a reward, he is to

be half rewarded. Killing, injuring [. . .]³⁴⁰

§5.9 群盜，命者，及有罪當命未命，能捕群盜、命者，若斬之一人，免以為庶人。所捕過此數者，贖如律。³⁴¹₁₅₃

A gang of thieves, those who have been sentenced by the authority³⁴² and those who are guilty of a crime and [by law] shall be sentenced by the authority but are still not

³⁴⁰ Lau and Lüdke interpret the first four illegible characters of ENLL 45 as *yi gao he bu* 以告劾捕. Based on FLDW 66 = RCL D53: *Qiu dao zhui bu zui ren, zui ren ge sha qiu dao, wen: Sha ren zhe wei ze sha ren, qie dou sha? Dou sha ren, ting xing shi wei ze* 求盜追捕罪人，罪人格殺求盜，問殺人者為賊殺人，且鬥殺？鬥殺人，廷行事為賊，“When a thief-catcher pursues and arrests a malefactor, the malefactor beats the thief-catcher and kills him. Question: is the killer to be considered as having killed a person with murderous (intent) or as having killed him in a fight? It is killing a person in a fight, but the Precedents of the Court consider it as murderous (intent)” and ZYS case no. 5, they put forward that we can connect ENLL 152 and ENLL 45 together as one article: *bu dao zei, zui ren, ji yi gao he dai bu ren, suo bu ge dou er sha shang zhi, ji qiong zhi er zi sha ye, sha shang zhe chu, qi dang gou shang zhe, ban gou shang zhi. Sha shang yi gao he bu zhe, yi zei lun zhi* 捕盜、賊、罪人，及以告劾逮捕人，所捕格鬪而殺傷之，及窮之而自殺也，殺傷者除，其當購賞者，半購賞之。殺傷以告劬捕者，以賊論之，“When [someone] arrests thieves, bandits or offenders, or when [someone] pursues and arrests someone because of a accusation or a charge, if they grapple and fight with him so that he kills or injures them, or if he brings them to end so that they commit suicide, he is to be exempted from punishment and if [by law] he shall receive a reward, he is to be half rewarded. Those who kill or injure someone arresting them because of a accusation or a charge are to be judged by [doing so] with malice aforethought (Lau and Lüdke 2012, 142, note 767).

³⁴¹ The editors of ZJS 2001 consider ENLL 152 and ENLL 153 to be a single article (ZJS 2006, 29). Based on the locations of these two bamboo slips and their texts, I follow the editors of ZJS 2007 in dividing them into two articles (ZJS 2007, 152).

³⁴² *Ming zhe* 命者: See FZS 20 = RCL E8: *Nan zi jia fu yi nan zi bing, ci yue: “Jia gu shi wu, ju mou li, qiu si yue zhong dao niu, qu wang yi ming* 男子甲縛詣男子丙，辭曰：甲故士伍，居某里，迺四月中盜牛，去亡以命，“The man A bound and brought along the man C. His statement is: ‘(I), A, am a former commoner, living in X village. In the past four month I stole an ox and absconded.’” Though Hulsewé translates the above passage, he notes that the construction of “去亡以命” is incomprehensive (Hulsewé 1985, E8, note 5). McLeod and Yates translate it as “the fugitive erased his name from the population register” (McLeod and Yates 1981, 140-141). I guess the passage of “去亡以命” in FZS may mean that after the man A had stolen an ox, he absconded when he has already been sentenced by the authority.

sentenced, if these persons arrest or execute one member of a gang of thieves or one has been sentenced by the authority, or kill one of them: are to be manumitted as free persons. Arresting more persons than this number is to be rewarded according to the statutes.

§5.10 數人共捕罪人而獨自書者，勿購賞。吏主若備盜、賊、亡人而捕罪人，及索捕罪人，若有告劾非亡也，或捕之而¹⁵⁴非群盜也，皆勿購賞。捕罪人，弗當以得購賞而移予它人及詐偽，皆以取購賞者坐贓為盜。¹⁵⁵

When several persons have arrested offenders together but only one of them reports it, they are all forbidden to receive a reward. When officials make use of thieves, bandits or absconders in order to arrest offenders or search and arrest offenders, if they arrest the offenders who have received the accusations or the charges but do not abscond, or if they arrested those who are not members a gang of thieves, they are not allowed to receive a reward. Those who arrest offenders, if they transfer and give their reward to others without justified [reason], or if they [do so] with fraud and counterfeit, the persons who receive the reward are all to be convicted of [obtaining] spoils as thieves.

捕律¹³⁶

Statutes on Arresting

2.2.6 Statutes on Absconding (*Wang lü* 亡律)

§6.1 吏民亡，盈卒歲，耐；不盈卒歲，繫城旦舂；公士、公士妻以上作官府，皆償亡日。其自出毆，笞五十。給逋事，皆籍亡日，輒數盈卒歲而得，亦耐之。¹⁵⁷

If officials and common people abscond, when one year ends fully,³⁴³ they are to

³⁴³ *Zu sui* 卒歲: We find it in FLDW 4 = RCL C3 as well: *You shi zai, wang fu, ju xian zi yi jia, zu sui, ze zhi* 游士在，亡符，居縣貲一甲；卒歲，責之， “When *you shi* are staying (somewhere) without credentials, the prefecture where they dwell will be fined one suit of armour; at the end of the year it will be charged.”

have the beard shaved off; when one year does not end fully, they are to be held in detention and do labor as earth pounders or grain pounders. Holders of the First Meritorious Rank, their wives and higher are to work in the government workshops to compensate their days of absconding. In case that they give themselves up to the authority, they are to be caned fifty strokes. When someone avoids service,³⁴⁴ the date on which he absconds is to be registered, if the absconding days amount to one year, he is to have the beard shaved off as well.

§6.2 女子已坐亡贖耐，後復亡當贖耐者，耐以為隸妾。司寇、隱官坐亡罪隸臣以上，輸作所官。¹⁵⁸

Women who have been convicted of absconding and [punished by] paying a redemption fee for shaving off the beard, if they abscond again afterwards and [by law] shall pay a redemption for shaving off the beard, are to have the beard shaved off and made female bondservants. Robber guards and hidden officials, who are convicted of absconding and punished by doing labor as male bondservants or more severe, are to be sent to the offices where they work.

§6.3 𠄎【黥顏】³⁴⁵顏畀主。其自出也，若自歸主、主親、所知，皆笞百。¹⁵⁹

[. . .] [tattooed on the forehead and] the cheekbone and given back to their masters. In case that [male or female slaves]³⁴⁶ give themselves up to the authority, or they return

³⁴⁴ *Bu shi* 逋事, we have a definition of it in FLDW 164 = RCL D144: *He wei bu shi ji fa yao? Lü suo wei zhe, dang yao, li, dian yi ling zhi, ji wang fu hui, wei bu shi* 何謂逋事及乏徭? 律所謂者，當徭，吏、典已令之，即亡弗會，為逋事, “What is meaning of ‘to evade service’ as well as of ‘to fail in statutory labor’? What the statute means is, that when one is warranted (to perform) statutory labor, and the officials and the (Village) Chief have already ordered it, then to abscond and not to come to the assembly – that is ‘to evade service’.”

³⁴⁵ There is one lacuna at the beginning of this article. Judging from the following text, the last two missing characters should be *qing yan* 黥顏. Because only slaves receive the mutilation of tattooing on the forehead and the cheekbone (*qing yan kui* 黥顏頰).

³⁴⁶ According to the texts of this and next article, it can be inferred that the subject here is male or female slaves (*nu bi* 奴婢).

to their masters, relatives or acquaintances of their masters of their own accord,³⁴⁷ they are all to be caned one hundred strokes.

§6.4 奴婢亡，自歸主、主親、所知，及主、主父母、子若同居求自得之，其當論畀主，或欲勿詣吏論者，皆許之。¹⁶⁰

If male or female slaves abscond and return to their masters, relatives or acquaintances of their masters of their own accord; or if their masters, parents or children of their masters, or someone within the same household [of their masters] searches for them and catches them, in case that the male or female slaves [by law] shall be judged and then given back to their masters, when [their masters] do not want to present them to officials for a judgment, they are allowed to do so.

§6.5 主入購縣官，其主不欲取者，入奴婢縣官，縣官³⁴⁸購之。¹⁶¹

[. . .] masters send and buy [. . .] the government, in case that the masters do not want to get them, their male and female slaves are to be sent to the government and the government shall buy them.³⁴⁹

³⁴⁷ The editors of ZJS 2001 punctuate *zi gui zhu, zhu qin suo zhi* 自歸主，主親所知 (ZJS 2006, 30), I punctuate *zi gui zhu, zhu qin, suo zhi* 自歸主、主親、所知, because they are three distinct groups of persons: “masters, relatives of masters and acquaintances of masters.” *Qin suo zhi* 親所知 is found in FLDW 125 = RCL D105 as well: *Jiang si ren er wang, neng zi bu ji qin suo zhi wei bu, chu wu zui, yi xing zhe chu yinguan* 將司人而亡，能自捕及親所知為捕，除無罪；已刑者處隱官, “(A person) leads and supervises (incarcerated) people, and they abscond. If he personally is able to arrest them, as well as if his relatives (or) his friends arrest them for him, he is let off and not punished; those already mutilated are placed in the Hidden Office.” Shuihudi Qin mu zhujian zhengli xiaozu explains *suo zhi* 所知 as “acquaintances or friends” (Shuihudi Qin mu zhujian zhengli xiaozu 1990, 123). Xu Shihong explains *zhu qin suo zhi* 主親所知 as “acquaintances or friends of the masters” in the Shuihudi legal texts; however, she thinks that *suo zhi* 所知 refers to “the persons who are known by the masters and their relatives” in the ENLL text (Xu Shihong 2007, 134-135).

³⁴⁸ According to the infrared picture of this article, there is a duplication mark after *guan* 官. The editors of ZJS 2007 suggest “as *xian guan* 縣官 is used very often in the ENLL text, there must have been an duplication mark after *xian* 縣 as well” (ZJS 2007, 155).

³⁴⁹ Because of a lacuna at the beginning of this article, its meaning is not clear.

§6.6 奴婢為善而主欲免者，許之，奴命曰私屬，婢為庶人，皆復使及算事之如奴婢。主死若有罪，¹⁶²以私屬為庶人，刑者以為隱官。所免不善，身免者得復入奴婢之。其亡，有它罪，以奴婢律論之。¹⁶³

If male or female slaves conduct themselves kindly, so that their masters want to manumit them, they are allowed to do so, the male slaves are called “those who belong to a private person”, the female servants are to become “free persons”, they are all free from³⁵⁰ doing labor or paying the poll tax like male or female slaves. If their masters die or are guilty of a crime, “those who belongs to a private person” are to become free persons, among them, those who were mutilated are to become hidden officials. If those who were manumitted do not conduct themselves kindly, they are to be made male and female slaves again. In case that [male or female slaves who were manumitted] abscond or are guilty of another crime, they are to be judged according to the Statutes on Male and Female Slaves.³⁵¹

§6.7 城旦舂亡，黥，復城旦舂。鬼薪白粲也，皆笞百。¹⁶⁴

Earth pounders or grain pounders who abscond are to be tattooed on the forehead and made earth pounders or grain pounders again. Firewood gatherers for spirits and

³⁵⁰ *Fu* 復: See HS 1, 32: *Shu han min gei jun shi lao ku, fu wu zu shui er sui* 蜀漢民給軍事勞苦，復勿租稅二歲, “Because the people of Shu and Han, had been heavily burdened in furnishing the armies with supplies, he exempted them from the land tax and from contributions in kind for [a period of] two years” (Dubs 1938, 74). Yan Shigu’s commentary on this word: “*Fu zhe, chu qi fu yi ye* 復者，除其賦役也. “Being free is to exempt someone from paying taxes and doing labor.”

³⁵¹ Wang Yanhui discusses this article: There are two prerequisites for manumitting male and female slaves in Western Han: the first one is “the male or female slaves conduct themselves kindly”; the second one is the approval of the government. After manumitting, the male slaves are called “those who belong to a private person”, the female slaves are called “commoners”, they should continue to serve their masters as slaves like before, it means that they have to fulfill some obligations to their masters after manumitting. Only when their masters die, or their masters have committed crimes, can they change their status, but those who were mutilated are to be given employment in a hidden office. This article shows that Western Han central court encourages its people to manumit their male and female slaves (Wang Yanhui 2007, 342-352). He thinks that *fu shi ji suan shi* 復使及算事 means “to do labor and pay the poll tax just like before again.”

sorters of white rice [who abscond] are all to be caned one hundred strokes.

§6.8 隸臣妾、收人亡，盈卒歲，繫城旦舂六歲；不盈卒歲，繫三歲。自出毆，笞百。其去繫三歲亡，繫六歲；去繫六歲亡，完為城旦舂。¹⁶⁵

Male or female bondservants, or those who are enslaved by the government abscond,³⁵² when one year ends fully, are to be held in detention and do labor as earth pounders or grain pounders for six years; when one year does not end fully, they are to be held in detention [and do labor as earth pounders or grain pounders] for three years. If [they] give themselves up to the authority, they are to be caned one hundred strokes. In case that they abscond when they shall be held in detention for three years, they are to be held in detention for another six years; if they abscond when they shall be held in detention for six years, they are to be made earth pounders or grain pounders without mutilation.

§6.9 諸亡自出，減之；毋名者，皆減其罪一等。¹⁶⁶

Those who have absconded, if they give themselves up to the authority, are to have their punishment reduced, if [the article] does not specify [the exact method of mitigating the punishment], their punishment is to be reduced by one degree.

§6.10 匿罪人，死罪，黥為城旦舂，它各與同罪。其所匿未去而告之，除。諸舍匿罪人，罪人自出，若先自告，罪減，亦減舍匿者罪，所舍¹⁶⁷

Concealing offenders, [if the offenders] are punished by death, is punished by

³⁵² *Shou ren* 收人 are those who are enslaved by the government because of linked liabilities. See ENLL 435: *Zhu shou ren, jie ru yi wei lichen qie* 諸收人，皆入以為隸臣妾, “Those who are enslaved are to be sent [to the government] and made male or female bondservants.” Li Junming discusses the differences between *shou ren* 收人 and *lichen qie* 隸臣妾, “They have the same social status, but they receive the status because of different reasons. *Lichen qie* 隸臣妾 refers to “those who have committed crimes by themselves and by law they shall be made male or female bondservants,” in contrast, *shou ren* 收人 refers to “those who have not committed a crime by themselves, but by law they shall be enslaved by the government because of linked liabilities” (Li Junming 2011, 161).

tattooing on the forehead and [doing labor] as earth pounders or grain pounders, in other circumstances, it is to be punished the same as [the offenders]. Before the offenders who are concealed leave, denouncing them to the authority is to be exempted from punishment. When someone shelters and conceals the offenders, if the offenders give themselves up to the authority or accuse themselves to the authority first, the punishment of the offenders is to be reduced, the punishment of the person who shelters and conceals them is to be reduced as well. Those who are sheltered [. . .]

§6.11 娶人妻及亡人以為妻，及為亡人妻，娶及所娶、為媒者，知其情，皆黥以為城旦舂。其真罪重，以匿罪人律論。弗知₁₆₈者不【減】。³⁵³𠄎₁₆₉

If someone takes someone else's wife or an absconder as his wife, or if someone is a wife of an absconder, he who takes her as a wife and she who is taken as a wife by him, and the matchmakers, when they are aware of the truth, are all to be tattooed on the forehead and made earth pounders or grain pounders. In case that the actual punishment is more severe, they are to be judged according to the statutes on concealing offenders. [The punishment] of those who are not aware of [the facts] is [not to be reduced]. [. . .]

§6.12 諸舍亡人及罪人亡者，不知其亡，盈五日以上，所舍罪當黥【城旦舂】³⁵⁴𠄎

³⁵³ Some characters are illegible after *fu zhi zhe bu* 弗知者不. Based on a quotation of a statute in the ZYS text, I think the first character after this passage is *jian* 減. See ZYS 30-31: *Lü: Qu wang ren wei qi, qing wei cheng dan, fu zhi, fei you jian ye* 律：取亡人為妻，黥為城旦，弗知，非有減也, “The Statute says: Taking absconders as wives is to be punished by tattooing on the forehead and [doing labor] as earth pounders; not being aware of it is not to be punished more lightly.” Besides this possibility, Lau and Lüdke suggest another way to reconstruct this article, they think that it is possible as well, that ENLL 168 is followed by ENLL 17: *shu nai* 贖耐. According to this alternative, the meaning of the last sentence is “those who are not aware of the truth are to pay a redemption fee for shaving off the beard” (Lau and Lüdke 2012, 132, note 732).

³⁵⁴ The characters following *qing* 黥 are illegible, as *qing* 黥 is always accompanied by *chengdan chong* 城旦舂, I add these three characters *chengdan chong* 城旦舂 here.

贖耐；完城旦舂以下到耐罪，及亡收、隸臣妾、奴婢及亡盈十二月以上¹⁷⁰

Those who shelter³⁵⁵ absconders or offenders who have absconded, if they are not aware that they have absconded, fully five days or longer, if the persons who are sheltered are guilty of a crime punished by tattooing on the forehead [and doing labor as earth pounders or grain pounders. . .] are to pay a redemption fee for shaving off the beard; if they are guilty of a crime punished by [doing labor] as earth pounders or grain pounders without mutilation or lighter, down to the punishment of shaving off the beard; or if the persons are absconders who are enslaved by the government, male or female bondservants, male or female slaves, or those who have absconded fully twelve months or longer [. . .]

§6.13 贖耐。³⁵⁶₁₇₁

[. . .] pay a redemption fee for shaving off the beard.

§6.14 取亡罪人為庸，不知其亡，以舍亡人律論之。所舍取未去，若已去後，知其情而捕告，及訶告吏捕得之，皆除其罪，勿購賞。₁₇₂

³⁵⁵ Lau and Lüdke compare the differences between the terms “to conceal someone” (*ni* 匿), “to shelter and conceal someone” (*she ni* 舍匿) and “to shelter someone” (*she* 舍) based on their usages in ENLL 167 and ENLL 170. They note that it seems that the terms “to conceal someone” (*ni* 匿) and “to shelter and conceal someone” (*she ni* 舍匿) are used when the status of the offenders are known by the persons who conceal them, or who shelter and conceal them, while the term “to shelter someone” (*she* 舍) is used when the status of the offenders or the absconders is unknown by the persons who shelter them (Lau and Lüdke 2012, 183-84, note 902).

³⁵⁶ The editors of ZJS 2001 think that ENLL 170 and ENLL 171 constitute one article (ZJS 2006, 31). According to the texts of these two strips, I believe that ENLL 171 does not follow ENLL 170. It would have been illogical if the statute regulated that the persons who shelter the offenders or the absconders with a punishment of tattooing on the forehead and doing labor as earth pounders or grain pounders (*qing wei chengdan chong* 鯨為城旦舂) are punished the same as the persons who shelter offenders with a punishment of [doing labor] as earth pounders or grain pounders without mutilation or lighter, down to the punishment of shaving off the beard (*wan chengdan chong yi xia dao nai zui* 完城旦舂以下到耐罪). The placement of ENLL 171 is not clear. As mentioned above, Lau and Lüdke suggest that ENLL 168 may have been followed by ENLL 17: *shu nai* 贖耐.

Those who hire absconding offenders as workers,³⁵⁷ if they are not aware of it, are to be judged according to the statutes on sheltering absconders. If the persons who are sheltered by them do not leave them or after leaving them, they are aware of the truth, arrest and accuse them [to the authority], or they detect and accuse them to the officials to arrest and catch them, they are all to be exempted from punishment and not allowed to be rewarded.

亡律¹⁷³

Statutes on Absconding

2.2.7 Statutes on Enslavement and Confiscation (*Shou lǜ* 收律)

§7.1 罪人完城旦、鬼薪以上，及坐奸腐者，皆收其妻、子、財、田、宅。其子有妻、夫，若為戶、有爵，及年十七以上，若為人妻而棄、寡者，¹⁷⁴皆勿收。坐奸、略妻及傷其妻以收，毋收其妻。¹⁷⁵

In case that offenders are guilty of a crime punished by [doing labor] as earth pounders without mutilation, firewood gatherers for spirits or more severe, or when the offenders are convicted of fornication and are to be castrated, their wives and children are all to be enslaved by the government, and their property, rice fields and residence houses are all to be confiscated.³⁵⁸ In case that their children have wives or husbands, they are registered with a separate household or have a meritorious rank, they are seventeen years or older, or the offenders' wives were abandoned by them or are widows: they are not to be enslaved by the government. In case that [the offenders]

³⁵⁷ *Yong* 庸 means “to employ someone or to hire someone.” Here it is used as a noun that means “a hired worker.”

³⁵⁸ Since in English, the word “to confiscate” only refers to “to officially take private property away from someone, usually as a punishment.” I translate *shou* 收 in two different ways: I translate it as “to be enslaved by the government” when the objects of *shou* 收 are relatives of the offenders, and I translate it as “to confiscate” when the objects of *shou* 收 are property, rice fields and residence house of the offenders.

are convicted of fornication, kidnapping persons to take them as their wives or injuring their wives, their wives are not to be enslaved by the government.

§7.2 夫有罪，妻告之，除于收及論；妻有罪，夫告之，亦除其夫罪。¹⁷⁶

When husbands are guilty of a crime and their wives accuse them to the authority, their wives are to be exempted from enslavement by the government and from a judgment; if wives are guilty of a crime and their husbands accuse them to the authority, their husbands are to be exempted from punishment as well.

§7.3 毋夫，及為人偏妻，為戶若別居不同數者，有罪完舂、白¹⁷⁶粲以上，收之，毋收其子、內孫，毋為夫收。³⁵⁹¹⁷⁷

Those who have no husbands, those who are concubines of someone, those who are registered with a separate household or reside separately with a different household, if they are guilty of a crime punished by [doing labor] as grain pounders without mutilation, sorters of white rice or more severe; in case of being enslaved by the government, their children, paternal sons are not to be enslaved. They are not to be enslaved by the government because of their husbands' crimes.

§7.4 有罪當收，獄未決而以賞除罪者，收之。¹⁷⁸

When someone is guilty of a crime so that [by law his wives and children] shall be enslaved by the government and [his property, rice fields and residence house] shall be confiscated, before the criminal case is decided, the offender is exempted from punishment because of a reward, [his wife and children] are still to be enslaved by the government and [his property, rice fields and residence house] are still to be confiscated.³⁶⁰

³⁵⁹ As I mentioned in the first chapter, I think the black dot divides the text written on ENLL 176 and 177 into two articles.

³⁶⁰ It seems that in this article the objects of *shou* 收 are the same as in ENLL 175: the offender's wives and children, and his property, rice fields and residence house. Based on this article, we know

§7.5 當收者，令獄史與官嗇夫、吏雜封之，上其物數縣廷，以臨計。¹⁷⁹

Judicial Clerks, Bailiffs and other officials are ordered to seal together³⁶¹ the objects that [by law] shall be confiscated,³⁶² and submit the number of these objects to the court of the prefectures, in order to check and count the number.

§7.6 奴有罪，毋收其妻、子為奴婢者。¹⁸⁰³⁶³

If male slaves are guilty of a crime, their wives and children who are male or female slaves are not to be enslaved by the government.

§7.7 有告劾未遷死，收之。¹⁸⁰

If [someone] who was accused or charged dies before the authority arrests him,³⁶⁴ his wives and children are to be enslaved by the government, and his property, rice fields and residence house are to be confiscated.

§7.8 匿收，與盜同法。¹⁸⁰

Concealing someone who is to be enslaved by the government, or the things that are to be confiscated shares the same method and principle of punishment with theft.

that though the offender can be exempted from punishment because of a reward, the enslavement of the offender's wives and children and the confiscation of his property, rice fields and residence house cannot be avoided.

³⁶¹ *Za feng* 雜封 can be found in QLSBZ 22-23 = RCL A19 as well: *Sefu mian, xiao zhe fa, jian za feng zhe, yi ti xiao zhi, er fu za feng zhi, wu du* 嗇夫免，效者發，見雜封者，以題效之，而復雜封之，勿度，"When an Overseer is dismissed, the controller opens (the granary); when he observes that it has been sealed (by several persons) together, he checks it by means of the inscription, and it is again sealed by (these several persons) together; he must not measure or weigh it." In Qin and Han, it seems that when official objects should be checked, an official is not allowed to check them alone, but must check them with other responsible officials together. In this way, accuracy is ensured.

³⁶² Judging from the text of this article, *dang shou zhe* 當收者 refers to "the objects that shall be confiscated."

³⁶³ §7.6, §7.7 and §7.8 were written on the same bamboo strip ENLL 180. As they pertain to different subjects, I divided them into three articles: §7.6, §7.7 and §7.8.

³⁶⁴ *Ta* 遷 is a loan character of "*dai* 逮" and means "to arrest."

2.2.8 Miscellaneous Statutes (*Za lü* 雜律)

§8.1 越邑、里、官、市院、垣，³⁶⁵若故壞決道出入，及盜啟門戶，皆贖黥。其垣壞高不盈五尺者，除。¹⁸²

Climbing over encircling walls³⁶⁶ or fences of cities, hamlets,³⁶⁷ offices or markets, breaking passages for exit or entrance with intent, or opening a door of someone else's house stealthily, is all to be punished by paying a redemption fee for tattooing on the forehead. In case that the height of the broken fences is lower than five inches, [the offenders] are to be exempted from punishment.

³⁶⁵ The editors of ZJS 2001 punctuate *yue yi li, guan shi yuan yuan* 越邑里、官市院垣 (ZJS 2006, 33). Zhangjiashan Han jian yanduban punctuates *yue yi, li, guan, shi yuan yuan* 越邑、里、官、市院垣 (Zhangjiashan Han jian yanduban 2006, 216). *Yi, li, guan, shi* 邑、里、官、市 are different places. *Yi* 邑 mean "a small city." *Li* 里 means "hamlets" and is a small district where neighbors live together. *Guan* 官 means "offices." *Shi* 市 means "markets."

³⁶⁶ There is a definition of *yuan* 院 in FLDW 186 = RCL D165: *Yue li zhong zhi yu ta li jie zhe, yuan wei yuan bu wei? Xiang xiang zhi wei yuan, yu xiang zhi zhe bu wei yuan* 越里中之與它里界者，垣為院不為？巷相直為院；宇相直者不為院，"Crossing the wall which forms the border between one ward and another ward – is this wall a *yuan* or is it not? Where lanes are confronted, that is a *yuan*; where houses are confronted, this is not a *yuan*."

³⁶⁷ *Li* 里 refers to "hamlet." According to Nishijima, "The hamlet, the smallest unit, was a walled or fenced area with one or two gateways in which perhaps a hundred families lived; individual families, on average, five or six persons, occupied fenced subdivisions called *zhai*. A hamlet might exist in isolation, but more often several hamlets together formed a district (*xiang* 鄉), or even a prefecture (*xian* 縣) (Nishijima 1987, 551-52). Gao Heng puts forward that the size of hamlets (*li* 里) depends on the places and the time when they were established. There were boundary marks and gates between different hamlets (*li* 里). The duties of hamlets (*li* 里) were to control household registration, conscript laborers, protect local security and assist in investigating criminal cases (Gao Heng 2008, 24-30). Hulsewé thinks that "the counties were subdivided into district (*xiang* 鄉), and these again into hamlets (*li* 里) (Hulsewé 1955, 16).

§8.2 捕罪人及以縣官事徵召人，所徵召、捕越邑、里、官、市院垣，追捕、徵者得隨跡出入。¹⁸³

When arresting offenders or conscripting someone because of administrative activities, if the persons who are conscripted or arrested climb over circling walls or fences of cities, hamlets, offices or markets; those who pursue and arrest them, or conscript them are allowed to follow their trace and enter or exit [these places].

§8.3 吏六百石以上及宦皇帝，而敢字貸錢財者，免之。¹⁸⁴

[Officials with nominal salary] of Six Hundred Piculs or more and personal servants of the emperor,³⁶⁸ who venture to lend money or property³⁶⁹ to someone, are to be exempted from punishment.

§8.4 擅賦歛者，罰金四兩，責所賦歛償主。¹⁸⁵

Those who collect taxes without authority are to be fined four ounces of gold and compensate the owners for what has been collected without authority.³⁷⁰

³⁶⁸ The editors of ZJS 2001 believe that *huan huangdi* 宦皇帝 means “the officials who work in the central government” (ZJS 2006, 33). Qiu Xigui thinks *huan huangdi* 宦皇帝 are officials like *langzhong* 郎中 (Gentlemen of the Palace) and *ye zhe* 謁者 (Internuncio). As *huan* 宦 means originally “to serve someone as a servant,” and *langzhong* 郎中 (Gentlemen of the Palace) and *ye zhe* 謁者 (Internuncio) are part of the emperor’s entourage, they are called *huan huangdi* 宦皇帝 (Qiu Xigui 1992, 152). Yan Buke argues that in Han “*huan huangdi zhe* 宦皇帝者” refers to those special officials who served the emperor directly; for example, *zhong da fu* 中大夫 (Grandee of the Palace), *langzhong* 郎中 (Gentlemen of the Palace), *wai lang* 外郎 (Gentleman of the Exterior), *ye zhe* 謁者 (Internuncio), *zhi du* 執盾 (Bearers of the Shields), *wu shi* 武士 (Warriors), *tai zi she ren* 太子舍人 (Members of the Heir-apparent’s Suite) and so on. They became a military force and were sent to deal with different temporary tasks. Besides, they were different from officials with fixed salary (Yan Buke 2007, 35-54).

³⁶⁹ The editors of ZJS 2001 believe that *zi dai qian cai* 字貸錢財 means “to make profit from usury”.

³⁷⁰ *Shan fu lian shou* 擅賦斂收: The editors of ZJS 2001 believe it means “to collect others’ property or money and send them into the government” (ZJS 2006, 33). Collecting taxes was a legal economic behavior and it was performed by officials of different levels. If the taxes collected amounted to more than what was regulated in the statutes, even if the officials have transferred them to the government, they have committed a crime and shall be punished.

§8.5 博戲相奪錢財，若為平者，奪爵各一級，戍二歲。¹⁸⁶

Those who gamble with property or money while playing chess or games,³⁷¹ or those who are their umpires, are to be deprived of one degree of their meritorious rank, [if they do not have meritorious rank], they are to perform military service for two years.

§8.6 諸有債而敢強質者，罰金四兩。¹⁸⁷

Creditors who take someone as a hostage or take something as collateral [from debtors]³⁷² by force are to be fined four ounces of gold.³⁷³

§8.7 民為奴妻而有子，子畀奴主；主婢奸，若為它家奴妻，有子，子畀婢主，皆為奴婢。¹⁸⁸

If common people who are wives of male slaves give birth to their children, their children are to be given to the male slaves' masters. If masters fornicate with their female slaves, and the female slaves are wives of male slaves of other masters, when female slaves give birth to their children, their children are to be given to the masters of the female slaves, and the children are all to be male or female slaves.

§8.8 奴與庶人奸，有子，子為庶人。¹⁸⁹

If male slaves fornicate with [female] commoners, when they give birth to their

³⁷¹ *Bo* 博 was a chess-like game played in Han times.

³⁷² *Zhi* 質 means two kinds of behaviors to protect the debt illegally, "to take someone as hostage or to take something as collateral."

³⁷³ FLDW 148 = RCL D126 pertains to this subject as well: *Bai xing you zhai, wu gan shan qiang zhi, shan qiang zhi ji he shou zhi zhe, jie zi er jia. Ting xing shi qiang zhi ren zhe lun, yu zhe bu lun, he shou zhi zhe, yu zhe lun* 百姓有債，勿敢擅強質，擅強質及和受質者，皆貶二甲。廷行事強質人者論，予者不論；和受質者，予者論，" 'When the common people have debts, one should not venture unauthorizedly to extort pledges. The unauthorized extortion of pledges, as well as accepting pledges with mutual consent are both fined with two suits of armor.' It is the practice of the court that he who extorts a pledge from another person is sentenced; he who gives the pledge is not sentenced. In case of accepting a pledge with mutual consent, the person who gives the pledge is (also) sentenced."

children, their children are to be commoners.³⁷⁴

§8.9 奴娶主、主之母及主妻、子以為妻，若與奸，棄市，而耐其女子以為隸妾。其強與奸，除所強。¹⁹⁰

Male slaves who take their [female] masters, or mothers, wives or daughters of their masters as wives, or fornicate with them, are to be executed in the marketplace, women [who are taken by them as wives, or fornicate with them] are to have the beard shaved off and made female bondservants. In case that someone rapes someone, the one who has been raped is to be exempted from punishment.

§8.10 同產相與奸，若娶以為妻，及所娶皆棄市。其強與奸，除所強。¹⁹¹

Siblings who fornicate with each other, [the male siblings] who take their female siblings as wives, and [the female siblings] who have been taken as wives, are all to be executed in the marketplace. In case that someone rapes someone, the one who has been raped is to be exempted from punishment.

§8.11 諸與人妻和奸，及其所與皆完為城旦舂。其吏也，以強奸論之。¹⁹²

Someone who fornicates with someone else's wife with consent and she who fornicates with him, are all to be made earth pounders or grain pounders without mutilation. In case that he is an official, he is to be judged by raping someone.³⁷⁵

³⁷⁴ Li Junming compares ENLL 188 and 189, "In ENLL 188, because wives who are commoners have legal marriage with male slaves, their children shall be slaves and given back to the masters of the male slaves. In ENLL 189, because male slaves do not have legal marriage with female commoners and fornicate with them, their children are commoners" (Li Junming 2011, 242).

³⁷⁵ This statute is similar to one text from Xuanquan 懸泉 (present-day: Gansu 甘肅) manuscripts (II 0112: 8): 諸與人妻和奸，及所與□為通者，皆完為城旦舂。其吏也，以強奸論之。其夫居官……，"Someone who fornicates with someone else's wife with consent, she who fornicates with him, and those who give them assistant [. . .]: are all to be made earth pounders and grain pounders without mutilation. In case that he is an official, he is to be judged by raping someone. In case that her husband works in the office [. . .]."

§8.12 強與人奸者，腐以為宮隸臣。¹⁹³

Those who rape someone are to be castrated and made male bondservants in the palace.

§8.13 強略人以為妻及助者，斬左趾以為城旦。¹⁹⁴

Those who have kidnapped women by force to take them as wives and those who have helped them to do it, are to have the left foot cut off and be made earth pounders.³⁷⁶

§8.14 復兄弟、季父、伯父之妻、御婢，皆黥為城旦舂。復男弟子、季父、伯父子之妻、御婢，皆完為城旦舂。³⁷⁷

Having incest with wives or intimate female slaves³⁷⁸ of brothers, younger uncles or older uncles, is to be punished by tattooing on the forehead and [doing labor] as earth pounders or grain pounders. Having incest with wives or intimate female slaves of

³⁷⁶ The punishment of this crime seems strange here: both the offenders who kidnap women as their wives and those who help them to commit the crime are to be made earth pounders and have the left foot cut off (*zhan zuo zhi yi wei cheng dan* 斬左趾以為城旦). Since this punishment is only for men, the offenders and those who have helped them to commit the crime must both be men. The offenders who kidnap persons by force to take them as wives could only be men. However, those who have helped the offenders to commit the crime (*wei zhu zhe* 為助者) can be both men and women logically.

³⁷⁷ The editors of ZJS 2001 place this article as the last one in *Miscellaneous Statutes*. According to Peng Hao, “this article is different from articles concerning fornication, because it is about incest in a family. This article does not belong to *Miscellaneous Statutes*” (Peng Hao 2006, 194).

³⁷⁸ *Yubi* 御婢: this is found in ENLL 385 too: *Bi yu qi zhu er you zi, zhu si, mian qi bi wei shu ren* 婢御其主而有子，主死，免其婢為庶人, “If female slaves who have sex with their masters haven given birth to children of their masters, after their masters die, they are to be manumitted as free persons.” The editors of ZJS 2001 explain this word as “the female slaves who had sex with their masters” (ZJS 2006, 34). Zhang Xiaofeng believes that they are those who serve their masters closely and have legal matrimony or a sexual relationship with their masters. Since in this article, they rank next to the wives of their masters, it is evident that their status is lower than the wives of their masters, but they enjoy some privileges compared to other female slaves (Zhang Xiaofeng 2004, 125-29). I translate it as “intimate female slaves.”

sons of younger or older brothers, younger uncles or older uncles, is all to be punished by [doing labor] as earth pounders or grain pounders without mutilation.³⁷⁹

雜律¹⁹⁶

Miscellaneous Statutes

³⁷⁹ According to this article, the offenders who have incest with wives or intimate female slaves of younger or older brothers, younger uncles or older uncles are punished by tattooing on the forehead and [doing labor] as earth pounders or grain pounders (*qing wei chengdan chong* 黥為城旦舂). The offenders who have incest with wives or female slaves of sons of brothers, younger uncles or older uncles are all to be punished by [doing labor] as earth pounders or grain pounders without mutilation (*wan wei chengdan chong* 完為城旦舂). It is clear that the offenders who have incest with wives or female slaves of their relatives could only be men, however, the punishment of the crimes *qing wei chengdan chong* 黥為城旦舂 or *wan wei chengdan chong* 完為城旦舂 are both for men and women. I think the scribe may have made a mistake in writing the text. The punishment for the male offenders must be *qing wei chengdan chong* 黥為城旦 and *wan wei chengdan* 完為城旦.

Chapter Three

Three Formulas

Three formulas *yu dao tong fa* 與盜同法, *yu tong zui* 與同罪, and *zuo zang wei dao* 坐贓為盜 are frequently found in the ENLL manuscript. They are also found in other Qin legal manuscripts; for example, in the Shuihudi and Longgang Qin legal manuscripts.³⁸⁰ These formulas are crucial for our understanding of the various legal texts in which they are used.

Most of the statutes in the ENLL manuscript are composed of two parts: the first part describes a certain crime, and the second part specifies the punishment for this crime. The formulas always follow the description of crimes, thus it is most likely that the lawmakers of Qin and Han used these formulas to stipulate how the crimes are to be punished.

In this chapter, I intend to explore the meaning of these formulas through an analysis of the terms occurring in them, the structure of the formulas, as well as the context in which the formulas are used. This may shed light on the legal reasoning and thoughts lying behind these formulas.

3.1 The Formula *yu tong zui* 與同罪

The formula *yu tong zui* 與同罪 occurs altogether sixteen times in the ENLL manuscript; among these, five occurrences are found in *Statutes on Theft*. The word

³⁸⁰ In my article, I will use the materials of the Shuihudi legal manuscripts to analyze these formulas. Since the texts of the Longgang legal manuscript, where these formulas occur are incomplete, it is difficult to utilize them for discussion. Hence the materials of the Longgang legal manuscript will not be considered.

“*zui* 罪” is one of the most frequently used technical terms in Qin and Han legal texts. It can either mean “crime” or “punishment” depending on the context.³⁸¹ The two meanings are closely related, since the punishment that shall be meted out to an offender is determined by the crime that he has committed.³⁸² As the formula was used to indicate the punishment meted out for a certain crime, “*zui* 罪” should be translated as “punishment.”

3.1.1 The Form “A *yu* B *tong zui* A 與 B 同罪”

The formula *yu tong zui* 與同罪 is found as “A *yu tong zui* A 與同罪” most of the time. However, it also appears as “A *yu B tong zui* A 與 B 同罪” twice in the ENLL manuscript.

The first occurrence of “A *yu B tong zui* A 與 B 同罪” is found in article §2.14 in *Statutes on Theft*.³⁸³ In this article, A are the persons who supply kidnappers with money or property, kidnap someone on behalf of others, or the persons who share the same household with the kidnappers and are aware of their crime, but do not accuse them to the authority (*zhu yu jie ren zhe qian cai, ji wei ren jie zhe, tong ju zhi fu gao li* 諸予劫人者錢財, 及為人劫者, 同居知弗告吏) and B are the kidnappers (*jie ren zhe* 劫人者). From the context, it is clear that “*yu* 與” is used in this formula as a coordinating conjunction that connects the two parts of the compound subject (A and B), before the predicate “*tong zui* 同罪.” The formula says that A and B are to receive the same punishment.

³⁸¹ According to Hulsewé, in the HS and SJ texts, besides the meaning of “crime,” this important technical term also frequently means “punishment;” see Hulsewé 1955, 398, note 242.

³⁸² Tomiya discusses this word and concludes that it has the two meanings “crime” and “punishment.” He believes that in Qin and Han, the concepts of “*zui* 罪 (crime)” and “*fa* 罰 (punishment)” were still not strictly divided; see Tomiya 2006, 17.

³⁸³ I will not quote the articles belonging to the penal statutes of the ENLL manuscript in this chapter, since I have translated them in the second chapter. The numbering of the articles follows that of the second chapter.

The punishment of the prototype crime³⁸⁴, kidnapping, is not specified in article §2.14. Its punishment is specified in article §2.12. According to it, kidnappers are to be quartered. As a result, the offenders who receive the same punishment as them are also to be quartered.

The second occurrence of “A *yu* B *tong zui* A 與 B 同罪” is found in an article in *Ordinances on Ports and Control stations*:

□、制詔相國、御史，諸不幸死家在關外者，關發索之，不宜，其令勿索，具為令。相國、御史請關外人宦、為吏若徭使、有事關中，⁵⁰⁰不幸死，縣道若屬所官謹視收斂，毋禁物，以令若丞印封櫨槨，以印章告關，關完封出，勿索。櫨槨中有禁物，視收斂及封⁵⁰¹與出同罪。制曰：可。⁴⁹⁹

□ An imperial decision instructs the Chancellor of the State and the Imperial Clerk: It is improper that the control stations open and search in the coffins of those who unluckily die in the service with their families living in the areas outside the control stations. It is ordered that it is forbidden to search in these coffins. This should be made into an ordinance. The Chancellor of the State and the Imperial Clerk request that in case that those who are from the areas out of the control stations serve as personal attendants or officials, do labor, or have some affairs in the areas within the control stations, and unluckily die in the service, prefectures, marches, and their subordinate offices should carefully watch their encoffining to ensure that there are no prohibited objects. Besides, the coffin should be sealed up with the seal of the Prefects and their Assistants, and the writing on the seal should be reported to the control stations. Let the coffins exit the control stations with the intact seals and it is forbidden to search in the coffins. In case that there are prohibited objects in the coffins, watching the encoffining or sealing up the coffins is to be punished the same as exiting [the control stations with prohibited objects]. The imperial edict says: “Approved.”

According to the article, it is clear that in the formula of “A *yu* B *tong zui* A 與 B 同罪:” A is the act of checking and searching the coffins, or sealing them up by the responsible officials (*shi shou lian ji feng* 視收斂及封); while B is the crime of using coffins to take prohibited objects to the areas outside the control stations (*chu* 出).

³⁸⁴ I take the term “a prototype crime” to mean a criminal act B, which can be considered as original, in the sense that there is another criminal act A that is to be punished in the same way as B because of its relation to B.

The formula “A *yu* B *tong zui* A 與 B 同罪” means that the crimes A and B are to receive the same punishment. It seems that, since the officials’ negligence in fulfilling their duty leads to the occurrence of the crime, they are to be punished the same as the offenders.

3.1.2 The Form A *yu tong zui* A 與同罪

The form “A *yu tong zui* A 與同罪” is derived from “A *yu* B *tong zui* A 與 B 同罪,” so the formula is obviously elliptical, and the second part “B” of the compound subject “A *yu* B” is implied. This formula is used to say that A and [B] should be punished alike.

The Occurrences of the Form A *yu tong zui* A 與同罪

We will now consider the occurrences of the form A *yu tong zui* A 與同罪.³⁸⁵ The form A *yu tong zui* A 與同罪 can be found in article §2.8. It says “being aware that persons are members of a gang of thieves and providing them with food or drink” (*zhi ren wei qundao er tong yin shi kui yi zhi* 知人為群盜而通飲食餽遺之) shall be punished the same as the prototype crime, namely, stealing in a gang (*qundao* 群盜). It is obvious that the awareness of the prototype crime or the assistance to it result in the same punishment as the prototype crime, since not being aware of it is to be punished differently.

In article §2.11, the formula occurs twice. In its first occurrence, the criminal act “being aware that a person has kidnapped someone for selling and making a deal with him” (*zhi ren lue mai ren er yu gu* 知人略賣人而與賈) is to receive the same punishment as for kidnapping someone for selling (*lue mai ren* 略賣人). In its second occurrence, “the buyers who are aware of this crime” (*mai zhe zhi qi qing* 買者知其情)

³⁸⁵ The occurrence of the formula in ENLL 107 will not be considered, because the sequence of ENLL 107 and 108, and the meaning of their text are highly controversial.

are to be punished the same as the prototype offenders, the kidnappers. Here, their awareness of the prototype crime leads to them receiving the same punishment.

The punishment of theft in a gang in article §2.8 and kidnapping someone for selling in §2.11 is specified in another article §2.10. This article enumerates the various crimes, which belong to *Statutes on Theft* and are to be punished by quartering. This allows the legislators to avoid superfluous repetition of similar articles. Since the two crimes, stealing in a gang and kidnapping someone for selling, are listed in the article §2.10, it is unnecessary for their punishment to be repeated in the articles §2.8 and §2.11. Accordingly, the offenders who are to be punished the same are also to be quartered.

The formula can further be found in article §2.16. This article stipulates that officials, foot soldiers, and the officials responsible for the department of laborers who are aware of the crime and let smugglers cross without searching them (*li, zu, tu bu zhu zhe zhi er chu ji fu suo* 吏、卒、徒部主者知而出及弗索) are to be punished the same as smugglers smuggling gold out of the frontiers (*dao chu huang jin bian guan jiao* 盜出黃金邊關徼). The reason why they shall receive the same punishment as smugglers is that: first, they neglect their official duty to investigate such crimes and search suspicious offenders; second, they are aware of the crime. The punishment of smuggling gold stealthily out of control stations or fortresses at the frontiers is not specified in article §2.16 and cannot be found in the ENLL text. It is most likely that the article, which regulates its punishment, must have existed in the legal texts of early Han; however, it was not included in the ENLL text.

The formula is also used in §6.10, where it is used to say that the criminal act “concealing offenders” (*ni zui ren* 匿罪人) receives the same punishment as that of the concealed offenders who have committed a crime with a punishment lighter than the death penalty (*si zui, qing wei cheng dan chong, ta ge yu tong zui* 死罪，鯨為城旦

春，它各與同罪). The reason why those who conceal offenders shall be punished the same is that they are aware of the crime and assists the offenders in avoiding being arrested.

The formula can also be found in the following article belonging to *Statutes on Coins* (*Qian li* 錢律):

知人盜鑄錢，為買銅、炭，及為行其新錢，若為通之，與同罪。²⁰³

Being aware that someone stealthily mints money, buying bronze or charcoal for them, using such new money for them, or circulating it for them, is to be punished the same as [minting money stealthily].

According to this article, the acts “being aware of minting money stealthily, assisting in carrying out the crime by buying bronze or charcoal, using or circulating the money for the offenders” are to be punished the same as the prototype crime “minting money stealthily.” The reason that the same punishment is to be meted out to the offenders is that they are either aware of the crime of minting money stealthily, or assist in committing it.

Besides the above article, the formula is also used in the following article belonging to *Statutes on Coins*.

諸謀盜鑄錢，頗有其器具未鑄者，皆黥以為城旦舂。知為及買鑄錢具者，與同罪。²⁰⁸

Those who devise a scheme to mint money stealthily, and those who have some instruments [for minting money] and do not begin doing it, are all to be tattooed on the forehead and made earth pounders or grain pounders. Those who are aware that (the offenders) make or buy instruments for minting money are to be punished the same as [those who devise a scheme to mint money stealthily].

In this case, the particle *zhe* 者 in the phrase “*zhi wei ji mai zhu qian ju zhe* 知為及買鑄錢具者” (those who are aware that the offenders make or buy instruments for minting money) preceding the formula is a mark of nominalization, so that the phrase describes the kind of the persons who are to be punished the same as the

prototype offenders. Again, on account of their awareness of the crime, they are to be punished in the same way as the prototype offenders.

恆以八月令鄉部嗇夫、吏、令史相雜案戶籍，副藏其廷。有移徙者，輒移戶及年籍爵細徙所，并封。留弗移，移不并封，³²⁸及實不徙數盈十日，皆罰金四兩；數在所正、典弗告，與同罪。鄉部嗇夫、吏主及案戶者弗得，罰金³²⁹各一兩。³³⁰

It is ordered that always in the eighth month, the Bailiffs in the district department, officials, and Scribes of the Prefects together check household registrations, and keep a copy in the [prefecture] court. In case that someone moves to another place, [the officials] should immediately transfer the registrations of his household, age, and meritorious rank and seal them together. If the officials keep them without transferring them, or transfer them without sealing them up together, or delay their transfer, fully ten days, they are to be fined 4 ounces of gold. Directors, Heads of the District who keep the registration and do not accuse them, are to be punished the same as [them]. The Bailiffs in the district department, the responsible officials, and those who check the household registration do not catch them, are to be fined 1 ounce of gold respectively.

The article regulates that “the Directors, Heads of the District who keep the registration and do not accuse the crime” receive the same punishment as the officials who fail or delay updating household registrations. Directors and Heads of the District, though they are not officials, as the local chiefs, have the duty to deal with local affairs, including updating and checking household registrations, and accusing offenders of crimes.

The formula occurs in an article in *Statutes on Meritorious Rank* (*Jue li* 爵律):

詐偽自爵、爵免、免人者，皆黥為城旦舂。吏知而行者，與同罪。³⁹⁴

Those who fraudulently disguise themselves as holders of meritorious rank, or use a meritorious rank to exempt others [from punishment], are all to be tattooed on the forehead and made earth pounders or grain pounders. The officials who are aware of the crime and let [it happen], are to be punished the same as [the offenders].

The article says that “the officials who are aware of the crime and let it happen” are to be punished like the prototype offenders who exempted others from punishment by

abusing meritorious rank. As officials, they are responsible for investigating and preventing crimes, if they are aware of this crime and do not prevent it, they are to be punished the same as the prototype offenders.

The formula is found in one article in *Statutes on Scribes (Shi lü 史律)*.

太史、太卜謹以吏員調官史、卜縣道官，縣道官受除事，勿環。吏憊罷、佐勞少者，毋敢擅史、卜。史、卜受調書太史、太卜而逋、⁴⁸²留，及擅不視事盈三月，斥勿以為史、卜。吏擅弗除事者，與同罪：其非吏也，奪爵一級。⁴⁸³
The Grand Scribes and the Grand Diviners carefully select the scribes and diviners from official staffs for the offices of the commanderies established in prefectures and marches. In case that the offices of the commanderies established in prefectures and marches receive such an appointment, they are not allowed to refuse it. If officials are exhausted or Assistants did not serve enough, it is not allowed to appoint them as scribes or diviners without authority. In case that scribes and diviners receive a document that appoints them as the Grand Scribes or the Grand Diviners but they escape, or delay, or they without authority do not deal with official affairs, fully three months, they are to be reprimanded and not to be made scribes or diviners. Officials, who defy such an appointment without authority, are to be punished the same as [them]. In case they [who defy such an appointment without authority] are not officials, they are to be deprived of one degree of meritorious rank.

The phrase “*li shan fu chu shi zhe* 吏擅弗除事者” (officials who defy such an appointment without authority) is used before the formula, accordingly, the second part of the compound subject omitted in the formula is the prototype offenders, namely, the scribes or diviners who fail to do their service according to the appointment. According to this article, the officials have to obey an official appointment; otherwise, they are to be punished in the same way as the prototype offenders.

The formula is used in other three articles in *Ordinances on Ports and Control Stations*:

一、御史言，越塞闌關，論未有令，請闌出入塞之津關，黥為城旦舂；越塞，斬左趾為城旦；吏卒主者弗得，贖耐；令、⁴⁸⁸丞、令史罰金四兩。知其情而

出入之，及假予人符傳，令以闌出入者，與同罪。⁴⁸⁹

One: The Imperial Clerk reports that crossing fortresses or control stations at the frontiers without legal certificates has been judged, but there existed no relevant ordinance. He requests that entering or exiting ports or control stations at the frontiers without legal certificates is to be punished by tattooing on the forehead and doing labor as earth pounders or grain pounders; crossing frontiers [without legal certificates] is to be punished by having the left foot cut off and doing labor as earth pounders; if the responsible officials and infantrymen do not catch them, they are to pay a redemption fee for shaving off the beard; Prefects, their Assistants, and Scribes are to be fined four ounces of gold respectively. Those who are aware of it and let them exit or enter, or those who lend and give certificates to someone in order to let him enter or exit stations, are to be punished the same as [the offenders].

It is forbidden to cross the frontiers without legal certificates. Persons who are aware of it and let offenders enter or exit are to be punished the same as the prototype offenders. Though the article does not clearly indicate the status of the persons who let the offenders pass, it can be inferred that they must be officials, since only the officials had the duty to control the entrance and exit at the frontiers. The punishment results from their awareness of the crime as well as their negligence of their duties. Besides the officials, the persons who lend their certificate to the offenders are also to be punished the same as them. This is due to the reason that they assist the offenders in committing the crime.

The formula then occurs in the following article:

□、相國上內史書言，請諸詐襲人符傳出入塞之津關，未出入而得，皆贖城旦舂；將吏知其情，與同罪。御史以聞。制⁴⁹⁶曰：可，以闌論之。⁴⁹⁷

□ The Chancellor of the State submits the report of the Clerk of the Capital requesting that those who use other's tally and certificate fraudulently in order to enter or exit ports or control stations at the frontiers, in case that they are caught before entering or exiting, are all to pay a redemption fee for doing labor as earth pounders or grain pounders. The leading officials being aware of it are to be punished the same as [them]. The Imperial Clerk submits it to the emperor, the imperial decision says: Approved, judging them according to [the ordinance on crossing ports and control stations at the frontiers] without certificate.

The ordinance first regulates that it is punishable for someone to use other's certificate or tally fraudulently to enter or exit frontiers. Then it says if the officials do not fulfill their duty and let such crimes happen with their awareness, they are to receive the same punishment as the offenders. The formula also occurs in the following article:

議，禁民毋得私買馬以出扞關、鄖關、函谷關、武關及諸河塞津關。其買騎、輕車馬、吏乘、置傳馬者，縣各以所買⁵⁰⁶名匹數告買所內史、郡守，內史、郡守各以馬所補名為久久馬，為致告津關，津關謹以籍、久案閱，出。諸乘私馬入而復以出，若出而當復入者，⁵⁰⁷津關謹以傳案出入之。詐偽出馬，馬當復入不復入，皆以馬價訛過平令論，及賞捕告者。津關吏卒、吏卒乘塞者知，弗告劾，⁵¹⁰與同罪；弗知，皆贖耐。御史以聞，制曰：可。⁵¹¹

[. . .] discuss to forbid commoners to privately buy horses and exit Yu pass station, Yuan pass station, Hangu pass station, Wu pass station and other river ports and control stations at the frontiers. If someone buys horses, carriages, horses for officials or horses for post stations, prefectures should report the number of horses to the Clerk of the Capital and Governors, they should brand the horses with their added names, and report this in a certificate to ports or control stations. Ports or Control stations carefully check their branding and let them exit. In case that someone riding his private horse enters and exits [frontiers] again, or he exits and enters frontiers again, ports and control stations should carefully check his entrance and exit with his registrations. Fraudulently letting horses exit, or not letting horses enter if they should enter again, is to be punished according to the ordinance regarding buying horses fraudulently higher than the average price. Those who arrest and accuse the offenders are to be rewarded. Officials and infantrymen in the control stations, ports, and officials and infantrymen on the frontiers, who are aware of it and do not accuse or charge the offenders, are to be punished the same as [the offenders]. Not being aware of it is to be punished by paying a redemption fee of shaving off the beard. The Imperial Clerk submits this to [the emperor] and the imperial decision says: Approved.

According to the article, if the offenders illegally transport horses to cross the frontiers, the responsible officials and infantrymen who are aware of it and do not charge the offenders with the crime are to be punished in the same way as them. Their awareness of the crime and the negligence of the official duties result in them being punished like the offenders.

3.1.3 The Legal Logic and Reasoning Behind the Formula

In all the occurrences of *yu tong zui* 與同罪, there are two kinds of offenders involved, the prototype offenders and the offenders who are to be punished the same as them. The legal articles do not randomly state that the latter should be punished the same as the prototype offenders without any legal logical classifications.

We see that these persons were all responsible for the fact that the crime could have been committed. They are either persons who were aware of the crimes committed by the prototype offenders or assisted them in committing crimes, in case that someone gives assistance to the offenders, he is like an accessory to the prototype offenders; or they are officials and local chiefs who had the duty to investigate, prevent and deal with various crimes, and failed to perform their responsibilities. Among these, some were aware of the crime, while others neglected their duty and thus let the prototype crime occur without any knowledge of it.

The lawmakers in Qin and Han used this formula to punish these three groups as if they were guilty of the same crime as the prototype offenders. This is supposed to lead non-offenders to abstain from assisting offenders in committing crimes and to entice them to actively report crimes to the authorities, as well as to let officials or other responsible local chiefs conscientiously perform their duties and investigate crimes. This should have made it more difficult for offenders to carry out their crimes, to remain unnoticed and uncharged, or to avoid being pursued and arrested by the authorities after they have committed a crime.

3.1.4 The Occurrences in the Received Literature

The formula “*yu tong zui* 與同罪” is also used in the received literatures. Its usage in the received literature resembles that in the legal manuscripts of Qin and Han.

In the received literature, the formula is also used to punish officials due to the negligence of their official duties or their awareness of a crime. For example, this formula can be found in the quotation of the suggestion for burning up books made by the Chancellor Li Si 李斯 to the first Emperor 秦始皇 in SJ:

臣請史官非秦記皆燒之。非博士官所職，天下敢有藏詩、書、百家語者，悉詣守、尉雜燒之。有敢偶語以古非今者族。吏見知不舉者與同罪。³⁸⁶

I, as your subject, request that the historical officials burn up [all the bureaucratic records] except for those of Qin. Except for the Erudits, who on account of their duty keep books, others who dare to conceal Book of Songs, Book of Documents, and Writings of the various philosophical schools are to be presented to the Governors and Commandants to burn up the books together. In case that persons dare to criticize the present age by studying the past, their families are to be exterminated. The officials, who see and are aware of the violators, if they do not report it, are to be punished the same as them.

The formula is also used to punish persons on account of their awareness of the crime, especially persons of the neighboring five families:

莽以私鑄錢死，及非沮寶貨投四裔，犯法者多，不可勝行，乃更輕其法：私鑄作泉布者，與妻子沒入為官奴婢；吏及比伍，知而不舉告，與同罪；非沮寶貨，民罰作一歲，吏免官。³⁸⁷

Mang punished mining coins privately by death penalty, and not stopping to take treasure to foreign countries. As violators of the law are many, the punishment cannot be carried out, [Mang] revised and lightened the law: The persons who privately mint money of *quan bu*, their wives and children are to be enslaved by the government as official slaves; officials and persons of neighboring five families, when they are aware of the crime and do not accuse the offenders, are to be punished the same as [them]. In case of not stopping to take treasure away, the commoners are to be punished by working [for the offices] for one year, the officials are to be removed from office.

3.2 The Formula *zuo [x] zang wei dao* 坐【x】贓為盜

The formula *zuo zang wei dao* 坐贓為盜 is found six times in the ENLL manuscript.

³⁸⁶ SJ 6, 253.

³⁸⁷ HS 24, 1184.

Following the method of discussion employed for the formula *yu tong zui* 與同罪, I will first examine the words used in the formula separately and then move on to analyze its construction in order to expound its meaning.

3.2.1 The Word “*dao* 盜”

The technical term *dao* 盜 is very frequently used in the ENLL manuscript and other legal manuscripts in Qin and Han. The understanding and interpretation of this word plays a significant role in explaining the formula *zuo zang wei dao* 坐贓為盜 as well as the formula *yu dao tong fa* 與盜同法 that is going to be discussed later. The word *dao* 盜 is used differently in various contexts; accordingly, its different usages deserve a detailed discussion.

The Usages of the Word “*dao* 盜”

The word *dao* 盜 can be used as a verb, meaning “to steal,” as in article § 2.2. Second, *dao* 盜 can be used as a noun with various meanings. It may mean “the crime of stealing or theft,” e.g. its usage in article §2.1. *Dao* 盜 also serves to define the whole category of crimes that are collected in *Statutes on Theft* (*Dao lü* 盜律) in the ENLL manuscript. Hulsewé coined the term “the scope of *dao* 盜” to refer to this second concept (I will follow his term),³⁸⁸ while Brown and Sanft refer to it as “the category of *dao* 盜.”³⁸⁹ *Statutes on Theft* does not only contain the statutes on theft, but also various statutes that regulate crimes other than stealing. As a noun, it can further be used to mean “offenders committing theft, that is, thieves,” for example, the first “*dao* 盜” occurring in article §2.4. It also seems to refer to “the offenders who commit crimes belonging to *Statutes on Theft*”. This can be inferred from the articles in the ENLL manuscript where the words *dao* 盜 and *zei* 賊 are used together. From these articles, it is obvious that *dao* and *zei* are regarded as the two most dangerous kinds of

³⁸⁸ See Hulsewé 1988, 166.

³⁸⁹ See Brown and Sanft 2011, 292.

offenders. Various articles in *Statutes on Arresting* strictly require officials to investigate, arrest and catch *dao* and *zei*; and if they fail to do so, the officials are to be punished; for instance, as regulated in article §5.4. Not only officials, the commoners also have the responsibility to detect *dao* and *zei*, and report them to the local chiefs or officials, as we can see in the article written on ENLL 305 belonging to *Statutes on Household Registration*.

自五大夫以下，比地為伍，以辨口為信，居處相察，出入相司，有為盜賊及亡者輒謁吏典。³⁰⁵

All the persons having a meritorious rank lower than the ninth or those without a rank should live together in a unit of five households in the places neighboring their field. They all use certificates [. . .] to check, and watch each other when they reside, handle, exit or enter. If *dao*, *zei* and absconders occur, they should immediately report them to officials or the Heads of the Districts.

If *dao* 盜 would have only been used in the sense of “thieves,” it could be peculiar that they were regarded as such harmful offenders, because thieves were not so heavily punished. Thus it seems that if *dao* occurs together with *zei*, just like *zei* 賊 refers to “offenders who commit crimes belonging to *Statutes on Banditry*,” it is used in the senses of “offenders who commit crimes belonging to *Statutes on Theft*, that is, offenders committing crimes in the scope of *dao*.” This corresponds to the fact that the crimes in *Statutes on Banditry* and *Statutes on Theft* are normally punished relatively seriously, with some receiving even the heaviest punishments.

Finally, *dao* can also be used as an adverb, meaning “to do something stealthily, or to do something without authority;” for instance, in article §8.1. When *dao* serves as an adverb to describe a certain criminal act, the act is not necessarily related to theft.³⁹⁰

³⁹⁰ Hulseyé translates the adverbial *dao* 盜 as “in a secretive and illegal manner”, see Hulseyé 1988, 168-169.

Statutes on Theft (Dao lü 盜律)

As we have already seen, determining the clear meaning of “*dao* 盜” in a given sentence is rather complicated, as the lawmakers of Qin and Han used *dao* 盜 to refer to two related, but different things: the crime of stealing itself, and the scope of *dao*, which contains the statutes on theft, as well as other statutes concerning various other crimes; and the offenders of both. This leads to problems for our understanding of “*dao*” in the formulas *zuo zang wei dao* 坐贓為盜 and *yu dao tong fa* 與盜同法.³⁹¹ Only when we clearly understand which of the two concepts of *dao* 盜 is used in the legal formulas, can we explain their meaning

I will further classify the various crimes belonging to *Statutes on Theft*. For a better view, all the crimes described in *Statutes on Theft* and their corresponding punishments³⁹² are listed in the following table:

Articles	The crime(s) 罪	Punishment(s) 罰
§2.1	Theft 盜	Based upon the value of the spoils 以贓值論
§2.2	Sending someone to steal, instructing someone where to steal, knowing someone stole and dividing spoils with him 謀遣人盜，若教人何盜所，及知人盜與分	<i>Yu dao tong fa</i> 與盜同法
§2.3	Conspiring to steal together and obtaining spoils separately 謀偕盜	Based upon the combined value of the spoils 并值其

³⁹¹ For example, scholarly opinions differ on the meaning of *dao* 盜 in the formula *yu dao tong fa* 與盜同法: most scholars argue that this word means “theft,” while Brown and Sanft think that it is used in the sense of “the category *dao*,” Brown and Sanft 2011, 292-302.

³⁹² §2.4, §2.7 and §2.9 are not included in the following table, since they do not describe a crime and its corresponding punishment. §2.13 is not included as well, because its meaning is unclear.

	而各有取	贓以論
§2.5	Accepting bribes and perverting law, or giving bribes 受賕以枉法，及行賕	<i>Zuo zang wei dao</i> 坐贓為盜，if the punishment of [accepting bribes and perverting law; or giving bribes] is heavier than theft, being punished by the heavier one 罪重於盜者，以重者論之
§2.6	Persons outside the fortresses coming to steal 徼外人來入為盜	Cutting in two at the waist 腰斬
§2.8	Being aware that persons are members of a gang of thieves and providing them with food or drink 知人為群盜而通飲食餽遺之	<i>Yu tong zui</i> 與同罪
	Not being aware of the crime 弗知	Being tattooed on the forehead and [doing labor] as earth pounders or grain pounders 黥為城旦舂
§ 2. 10	Being member(s) of a gang of thieves, or absconding and joining a gang of thieves, if they beat someone and cause his limbs to break, cause his joints to dislocate, or cause him to become lame 群盜及亡從群盜，毆折人肢，舂體，及令跛蹇	Quartering 磔
	During escorting and leading [someone], robbing him by force 縛守、將人而強盜之	Quartering 磔
	Throwing anonymous letters [into a government office], hanging anonymous letters [in public], or threatening someone in order to get property or money 投書、懸人書，恐獨人以求錢財	Quartering 磔

	Killing or injuring someone during theft 盜殺傷人	Quartering 磔
	Robbing a tomb 盜發冢	Quartering 磔
	Kidnapping and selling someone, or having kidnapped someone without selling him 略賣人若已略未賣	Quartering 磔
	Disguising as an official to steal; or pretending to be an official to steal 矯相以為吏、自以為吏以盜，	Quartering 磔
§ 2. 11	Being aware that someone has kidnapped a person and making a deal with him 知人略賣人而與賈	<i>Yu tong zui</i> 與同罪
	Selling someone who is not allowed to be sold with mutual consent 不當賣而和為人賣	Tattooing sellers on the forehead and [doing labor] as earth pounders or grain pounders 賣者黥為城旦舂
	Buyers who are aware of the truth 買者知其情	<i>Yu tong zui</i> 買者與同罪
§ 2. 12	Kidnapping someone, or devising a scheme to kidnap someone for money or property, even if having not obtained money or property or having not yet kidnapped someone 劫人、謀劫人求錢財，雖未得若未劫	Being quartered 磔
§ 2. 14	Giving money or property to kidnappers, kidnapping someone for others, living within the same household [with kidnappers] and being aware of [the crime] without accusing them to the authority 予劫人者錢財，及為人劫者，同居知弗告吏	<i>Yu tong zui</i> 與同罪
§ 2. 15	Smuggling property or objects stealthily out of control stations or	<i>Yu dao tong fa</i> 與盜同法

	fortresses at the frontiers 盜出財物于邊關、徼	
	Responsible officials being aware of the crime and letting them exit 吏部主知而出者	<i>Yu dao tong fa</i> 與盜同法
	Officials letting someone pass [control stations or fortresses at the frontiers] without passport 毋符致，吏知而出之	<i>Yu dao tong fa</i> 與盜同法
§ 2. 16	Smuggling gold stealthily out of control stations or fortresses at the frontiers, officials, infantrymen and the officials in charge of the department of laborers being aware of it 盜出黃金邊關、徼，吏、卒、徒部主者知	<i>Yu tong zui</i> 與同罪
	Not being aware of it and searching them without finding the gold 弗知，索弗得	Performing military service at the frontiers for two years 戍邊兩歲
§ 2. 17	Borrowing and lending government property or objects without authority 以財物私自假貸	Fining borrowers and lenders two ounces of gold 假貸人罰金二兩
	Borrowing and lending government cash, gold, silk, cotton, grain, rice, horses and oxen without authority 私自假貸錢、金、布、帛、粟、米、馬、牛	<i>Yu dao tong fa</i> 與盜同法
§ 2. 18	Not returning government objects, fully twenty days 弗歸所假，盈廿日	Being judged according to § 2. 17 以私自假律論
	Not reporting broken government owned objects to the authority, fully twenty days 物故，其不自言，盈廿日	Being judged according to § 2. 17 以私自假律論

Theft (*dao* 盜)

Theft belongs to *Statutes on Theft*. However, no description and definition of this crime is included in the statutes in the ENLL manuscript as well as in other manuscripts in Qin and Han. In contrast, different definitions and explanations concerning theft can be found in the received literature. The one which seems to agree with its meaning the most is given by Zhang Fei in the preface of the Jin Law Code, “To take something that does not belong to oneself is to steal (*Qu fei qi wu wei zhi dao* 取非其物謂之盜).”³⁹³ In Qin and early Han, the crime of *dao*³⁹⁴ encompasses both the crime of stealing, “to take (another person’s property) without permission or legal right and without intending to return it”³⁹⁵ and robbing “take property unlawfully from (a person or place) by force or threat of force.”³⁹⁶

The Method and Principle of Punishing Theft

Article § 2.1 in *Statutes on Theft* specifies the way in which the punishment for theft is to be determined. According to it, the same crime, namely theft, depending on the value of the spoils, can result in different punishments. In case that a theft occurs, the official had to use the average market price of the value of the spoils to estimate the value of the spoils,³⁹⁷ and then they could determine the corresponding punishment for theft.

³⁹³ *Jinshu* 30, 928.

³⁹⁴ In some cases, Hulsewé translates *dao* 盜 into English as “theft;” in other cases, he translates this word as “robbery,” See Hulsewé 1985.

³⁹⁵ Definition of “steal” in online oxford English dictionary, see <http://www.oxforddictionaries.com/definition/english/steal?q=stealing> (last accessed on 20, May, 2014).

³⁹⁶ Definition of “rob” in online oxford English dictionary, see <http://www.oxforddictionaries.com/definition/english/rob?q=rob> (last accessed on 20, May, 2014).

³⁹⁷ § 2. 19.

Various Other Crimes in *Statutes on Theft* (*Dao lü* 盜律)

Statutes on Theft (*Dao lü* 盜律) does not only contain the statutes concerning the crime of stealing, but also statutes regulating various other crimes,³⁹⁸ which can be classified into four different categories:

The first category: various crimes different from theft whose punishment also differs from the way in which theft is punished. For instance, the crimes mentioned in the discussion of the formula *yu tong zui* 與同罪: *lüe mai ren* 略賣人 (kidnapping someone for sale) in §2.10, *jie ren* 劫人 (kidnapping someone) in §2.12, *dao chu huang jin bian guan jiao* 盜出黃金邊關徼 (smuggling gold out of the control stations or fortresses at the frontiers). The crimes that are to be punished the same as the crimes above (*yu tong zui* 與同罪) can also be classified into this category.

Besides, the criminal behaviors of throwing anonymous letters [into a government office], hanging anonymous letters [in public], or threatening someone for money or property (*tou shu*, *xian ren shu*, *kong xie ren yi qiu qian cai* 投書, 懸人書恐獨人以求錢財), and kidnapping and selling someone or kidnapping someone without selling him (*lüe mai ren ruo yi lüe wei mai* 略賣人若已略未賣) that are specified in §2.10 as well as the crime of lending government objects except for cash, gold, silk, cotton, grain, rice, horses and oxen to someone without authority regulated in §2.17 also fall into this category.

The second category: these are crimes that, strictly speaking, fall under the definition of stealing. However, due to certain characteristics of the way in which the crime was committed, for instance, due to the status of the offenders, their especially violent and brutal criminal behavior, or seriously harmful effects of the crime, the offenders shall

³⁹⁸ According to Hulsewé, *Statutes on Theft* (*Dao lü* 盜律) did not only contained the felonious appropriation of movable property (*dao* 盜) in Qin and Han, but various other felonies were also in this category; see Hulsewé 1988, 166-200.

be more rigorously punished than they would be punished for theft.

For example, according to article §2.6, in case that the persons out of the fortresses come to steal, they are not to be punished according to the value of the spoils, instead, they are to be cut in two at the waist.

Another example can be seen the following text in the FLDW manuscript:

公祠未，盜其具，當貲以下耐為隸臣。今或盜一腎，盜一腎賊不盈一錢，何論？祠固用心腎及它肢物，皆各為一具，一具之賊不盈一錢，盜之當耐。²⁵⁻²⁶
“When the official sacrifice is not yet over, stealing the preparations warrants a fine . . . , having the beard shaved off and being made a bond servant.” Now somebody steals; he steals a kidney, and the illegal profit of one kidney is not fully one cash. How is he to be sentenced? In sacrifices one uses, of course, hearts and kidneys, as well as other joints; all these are each one preparation. When the illegal profit of one preparation is not fully one cash, stealing it warrants shaving off the beard.³⁹⁹

In case that the offenders have stolen objects that are of particular significance, the lawmakers of Qin and Han gave them more serious punishments than those for theft.⁴⁰⁰ This is the reason why stealing a preparation prepared for an official sacrifice worth less than one cash is to be punished by shaving off the beard.

In the ENLL manuscript, the crimes of attacking and stealing in a gang (*qun dao* 群盜); absconding and joining a gang of thieves (*wang cong qun dao* 亡從群盜); during escorting and leading someone stealing him by force (*fu shou jiang ren er qiang dao zhi* 縛守、將人而強盜之); killing or injuring someone during theft (*dao sha shang ren* 盜殺傷人); robbing tombs (*dao fa zhong* 盜發冢); or disguising oneself as an official to steal and pretending to be an official to steal (*jiao xiang yi wei li, zi yi wei li yi dao* 矯相以為吏、自以為吏以盜) regulated in §2.10 all belong to the second category.

³⁹⁹ Hulsewé 1985, 128, D21.

⁴⁰⁰ See Hulsewé 1988, 170-171.

The third category: there are also four occurrences in *Statutes on Theft*, in which the offenders are to be dealt with in the way of *yu dao tong fa* 與盜同法: one in article §2.2, two in article §2.15, one in article §2.17.⁴⁰¹

The fourth category: the criminal act of accepting bribes and perverting law (*shou hui yi wang fa* 受賄以枉法), or giving bribes (*xing hui* 行賄) regulated in article §2.5 shall be punished according to the formula *zuo zang wei dao* 坐贓為盜.

It seems that the various crimes included in the scope of *dao* 盜 are all somehow related to theft: The crimes in the first category belong to property crimes; like committing theft, the offenders obtained some illicit profit by committing them. The crimes belonging to the second category, to some extent, are theft as well. In the third category and the fourth category, the formulas *yu dao tong fa* 與盜同法 and *zuo zang wei dao* 坐贓為盜 that are related to *dao* are used to punish the offenders.

3.2.2 The Term “*zuo* 坐”

After the discussion of the term *dao* 盜, the meaning of the word “*zuo* 坐”⁴⁰² in the

⁴⁰¹ Article §2.17 regulates two crimes that are to be punished differently. The first crime is: borrowing or lending government property or objects secretly without authority is to be punished by a fine of two ounces of gold. The second crime is: borrowing or lending government cash, gold, silk, cotton, grain, rice, horses and oxen without authority is to be punished in the way of *yu dao tong fa* 與盜同法. The first crime falls into the first category, while the second crime belongs to the third category. The same classification also applies for article §2.18, because the crimes regulated in article §2.18 are to be punished according to article §2.17.

⁴⁰² There exist different translations of this word. McLeod and Yates suggest to “translate this term as ‘liability or to be liable’ because of the similarity of Chinese usage to the range of meanings of liability in English: ‘to be bond by law/to be answerable for someone or something/to be legally subject to.’ The enforcement of liability among or between persons in families, five-man groups, and officialdom was a notable policy of control developed by the centralized states of the Zhanguo period” (McLeod and Yates 1981, 134-35). Hulsewé translates it as “to be adjudicated for” in most cases; however, when “it is followed by a noun – often a name,” he translates it as “to be adjudicated in connection

phrase “*zuo zang* 坐贓” will be examined.

Zhang Guoyan notes that, in the Han manuscripts from Juyan, this word is used as a preposition, which means “because of, or on account of.” The object following the preposition “*zuo* 坐” is normally a crime, a fault, or a shortcoming of someone, therefore, it leads to negative results, such as death, a punishment, a demotion, a removal from office of this person etc.⁴⁰³

In the legal manuscripts of Qin and Han, there are two meanings of *zuo* 坐: The first *zuo* 坐 refers to “to convict someone of a crime of which they are guilty in a court of law (so that they are to be punished),” just as Zhang Guoyuan suggests, *zuo* 坐 literally means “on account of a crime (the offender is to be sentenced and punished).” This process of conviction (*zuo* 坐) is part of the whole process of judging a criminal case (*lun* 論). When *zuo* 坐 is used to mean “to convict someone of a crime,” it is followed by a charge of a crime; for example, *zuo wang zui li cheng* 坐亡罪隸臣 “to be convicted of absconding and to be punished by [doing labor] as male bondservant” in article §6.2, and *zuo jian fu zhe* 坐奸腐者 “those who are convicted of fornication and are to be castrated” in article §7.1.

Besides, *zuo* 坐 also refers to “someone is to be co-convicted due to the linked liabilities among or between members in a family, responsible officials and five-group persons,” as McLeod and Yates suggest;⁴⁰⁴ for example, “those are to be co-convicted” (*zuo zhe* 坐者) in article §1.1; “the wives and children who are to be co-convicted” (*qi, zi dang zuo zhe* 妻、子當坐者) in article §2.12 and “the actual Prefects, actual Chiefs of the Prefectures, or their Assistants who did not work in the offices or were sick” (*zhen ling, zhang, cheng bu cun ji bing zhe* 真令、長、丞不存

with” (Hulsewé 1981, E4, footnote 5). Lau translates this term into English as “to be prosecuted for doing something.”

⁴⁰³ Zhang Guoyan 2012, 371-372.

⁴⁰⁴ McLeod and Yates 1981, 134-35.

及病者) in article §3.15.

3.2.3 The Term “*zang* 贓”

The term “*zang* 贓”⁴⁰⁵ can mean the spoils taken through theft, and its value determines the punishment of theft. However, it can also be used in connection with other crimes in the scope of *dao*, as seen in Hulsewé’s discussion of this word that is based on the Shuihudi legal manuscripts and the received literature of Qin and Han:

In practically all cases of the different varieties of theft, mention is made of *zang* 贓, mostly written 贓, meaning “booty,” that is, stolen goods. On the one hand, *zang* denotes not so much the stolen goods themselves as their value expressed in cash. On the other hand, *zang* refers to the profit obtained by other illegal acts, like bribery, extortion, and embezzlement, as well as receiving stolen goods. I have consistently translated *zang* by “illicit profit.” Whereas Professor Wallacker renders it by “illgotten gains.” The presence of the single word *zang* warns the reader that he is confronted with one of the many misdeeds subsumed under the general Qin Han term *dao*.⁴⁰⁶

Accordingly, we can discern two ways in which *zang* 贓 is used: It either refers to the booty obtained through theft, what I refer to as spoils,⁴⁰⁷ or illicit profit obtained by other crimes regulated in *Statutes on Theft*, that is, the scope of *dao*.

Altogether the word *zang* 贓 occurs fifteen times in the ENLL manuscript and its usages fall into these two categories: First, *zang* 贓 is used to mean the spoils taken from theft five times. Second, it is used twice to refer to illicit goods obtained from various other crimes in *Statutes on Theft*, namely *jie ren* 劫人 (kidnapping someone) in article §2.14, and *shou hui wang fa* 受賄枉法 (accepting bribes and perverting law)

⁴⁰⁵ Zhang Fei explains this term: *huo cai zhi li wei zhi zang* 貨財之利謂之贓, “the profit of goods and property is spoils” (*Jinshu* 30, 928).

⁴⁰⁶ Hulsewé 1988, 167-168.

⁴⁰⁷ I think the English word “spoils” better describes the meaning of *zang* 贓 in Qin and Han law, which means “goods stolen or taken forcibly from a person or place;” see <http://www.oxforddictionaries.com/definition/english/spoil?q=spoil> (last accessed on 20 May, 2014).

in article §3.11. It should be emphasized that the lawmakers in Qin and Han did not punish offenders committing such crimes, in which *zang* 贓 (illicit profit) could also be obtained, according to the value of *zang* 贓. Besides the above two categories, *zang* 贓 is also used six times in the formula *zuo zang wei dao* 坐贓為盜, and twice in connection with the formula *yu dao tong fa* 與盜同法. Although Hulsewé did not consider the usage of *zang* 贓 in the formulas *zuo zang wei dao* 坐贓為盜 and *yu dao tong fa* 與盜同法 in his article, it still corresponds to his explanation, since in both formulas there is a strong connection to *dao*.

3.2.4 The Meaning of the Formula *zuo zang wei dao*

After the discussion of the terms used in the formula *zuo zang wei dao*, we can now consider its construction. In the formula A *zuo zang wei dao*, A that serves as the subject, is either the offender, or the criminal act. The word *wei* 為 serves as a verb, accordingly, the “*dao* 盜” following *wei* can neither be an adverb, nor a verb, so that it must be considered a noun. The coverb “*zuo* 坐” is used in the formula in the sense of “because of, or on account of,” introducing “*zang*” as its object. Thus, the formula A *zuo zang wei dao* A 坐贓為盜 means that “offender A, on account of *zang* 贓, is *dao* 盜; or criminal act A, on account of *zang* 贓, is *dao* 盜.”

So the problem now is to decide which meanings of “*dao* 盜” and “*zang* 贓” are used in the formula. First, the formula *zuo zang wei dao* is used in places where one would expect the punishment that shall be meted out to the offenders for their crimes. If *dao* 盜 would have been used in the sense of “the various crimes in the scope of *dao* 盜 or offenders committing them,” it would be impossible for officials to sentence the offenders, because crimes in this scope are punished differently. It seems that the *dao* 盜 in the formula refers to “thieves or theft.” Second, “*zuo zang* 坐贓” means “on account of *zang* 贓,” so the offenders who are to be dealt in the way of *zuo zang wei dao* are punished on account of obtaining *zang*. Only the *zang* meaning “spoils obtained from a theft” is related to a punishment, as a result, *zang* in the formula must

have been “spoils.” It again proves that the corresponding *dao* in the formula refers to either theft or thieves. Thus the formula *A zuo zang wei dao* means that “offender A, on account of obtaining spoils, is a thief; or criminal act A, on account of spoils, is a theft.”

The Occurrences of the Formula *zuo zang wei dao* 坐贓為盜

All the occurrences of this formula in the ENLL manuscript will be discussed, in order to examine under which circumstances the offenders shall be dealt with in the way of *zuo zang wei dao* and the legal reasoning behind such regulations. We will first take a look at the following occurrence of the formula from the FLDW manuscript, because the explanations made in the text shed further light on its meaning:

把其假以亡，得及自出，當為盜不當？自出，以亡論。其得，坐贓為盜；盜罪輕於亡，以亡論。¹³¹

When (persons) abscond carrying (the tools or arms) that had been let (to them), and they are caught, as well when they give themselves up, (is the crime) warranted to be considered robbery, or is it not warranted? If they give themselves up, they are to be sentenced for absconding. If they are caught, they are to be adjudicated for the illegal profit; it is a case of robbery. In case the punishment for robbery would be lighter than that for absconding, they are to be sentenced for absconding.⁴⁰⁸

The above text says that the absconders who are caught by the officials are to be dealt with in the way of *zuo zang wei dao* 坐贓為盜. However, it goes on to say that the punishment for theft (*dao zui* 盜罪) has further to be compared with the punishment of absconding (*wang zui* 亡罪)⁴⁰⁹ and the offenders are finally to be punished by the more severe one. It is clear from the context that the punishment for theft in the following text refers to the punishment that results from *zuo zang wei dao* 坐贓為盜.

⁴⁰⁸ Hulsewé 1985, D109.

⁴⁰⁹ It is regulated in article §3.12 in the ENLL manuscript that if someone commits a criminal act and can be convicted of two crimes, he shall receive the more severe one of the two possible punishments.

The legal text in the FLDW manuscript can be compared to article §2.5 belonging to *Statutes on Theft*. According to it, the offenders who accept bribes and pervert law, as well as offenders who give bribes are both to be punished according to *zuo zang wei dao*. Like the text of the FLDW manuscript, the second part of this statute says the offenders can be punished for two crimes: theft and perverting law,⁴¹⁰ and they are to be punished by the more severe one.

The following legal text from the Juyan manuscripts is similar to the beginning part of article §2.5:

行言者若許多受賄以枉法，皆坐贓為盜，沒入官。

Those who show in words or agree to accept bribes and pervert law, are all to be convicted of [obtaining] spoils as thieves, and are to be enslaved by the government.

The formula can also be found in article §1.10 in *Statutes on Banditry*. According to it, if the offenders forge documents in order to avoid being charged with debt or obtain a reward of money or property (*yi bi fu chang, ruo shou shang ci cai wu* 以避負債，若受賞賜財物), they are to be convicted of obtaining spoils as thieves, and punished according to the value of the debt that they avoid to be charged with or the reward they obtain illegally.

The formula occurs in the article §5.10 in *Statutes on Arresting* (*Bu lü* 捕律). It says that in case that the offenders obtain a reward that has been illegally transferred to them, or obtain a reward by fraud (*yi de gou shang er yi yu ta ren ji zha wei* 以得購賞而移予它人及詐偽), they are guilty of obtaining spoils and shall be punished according to the value of the spoils, that is, the illicit reward that they have obtained.

Then the formula is used in the following article in *Statutes on Coins*.

⁴¹⁰ The punishment of perverting law can be found in article §3.11.

故毀銷行錢以為銅、它物者，坐贓為盜。¹⁹⁹

Those who destroy coins in circulation with intent to make bronze or other objects, are to be convicted of [obtaining] spoils as thieves.

It regulates that the offenders who destroy coins intentionally to make bronze or other objects, are to be treated as thieves and punished according to the value of the coins that were destroyed to make bronze or other objects.

The last two occurrences of the formula in the ENLL manuscript can be presented as “A *zuo X zang wei dao* A 坐 X 贓為盜,” since the formula explicitly names the kind of spoils X obtained by the offenders. The first occurrence can be found in the following article that belongs to *Statutes on Issuing Food to the Post Stations* (*Zhuan shi li* 傳食律).

非當發傳所也，毋敢發傳食焉。為傳過員，及私使人而敢為食傳者，皆坐食贓為盜。²³⁰

It is not allowed to issue food belonging to post stations when the food [by law] shall not be sent to the post stations. Those who make a certificate to declare more persons [to get food fraudulently], and those who send someone privately to do something [for them] and issue the food to him, are to be convicted of [obtaining] the spoils of the food as thieves.

It is punishable for someone to declare that there are more persons in order to obtain food of the post stations, or for someone to issue food to the person who works privately for him. In case that a person violates this, and gets food from the post stations illegally, he is to be regarded as a thief and punished according to the value of the spoils that is clearly designated in the formula, the value of the extra food rations that have been illegally issued (*zuo shi zang* 坐食贓).⁴¹¹

⁴¹¹ This text can be compared to FLDW 154 = RCL D132 in the FLDW manuscript: *Li you gu dang zhi shi, fu zhi, jin bing chu zhi, lun he yi? Dang zuo suo ying chu wei dao* 吏有故當止食，弗止，盡稟出之，論何毆？當坐所贏出為盜, “When for officials there exist reasons why their food (rations) should be stopped, but these are not stopped, and the full rations are issued – how is this to be sentenced? (The official) is warranted to be adjudicated for what was issued in excess, as being a case of theft.”

The second occurrence of *A zuo X zang wei dao* A 坐 X 贓為盜 can be found in the following article written on ENLL 260 of *Statutes on . . . and Markets*:

市販匿不自占租，坐所匿租贓為盜，沒入其所販賣及賈錢縣官，奪之列。同列長、伍人弗告，罰金各一斤。²⁶⁰

Trading in the market and evading taxes without declaring it, on account of the spoils of the evaded tax is a theft; the objects and the money for trading [in the market] are to be confiscated to the government; and their market stands are to be taken away. The head of the market stands, or those of the same rank and file [with the offenders] do not accuse them, are to be fined 1 ounce of gold respectively.

The article states that tax evasion is to be treated as stealing and its punishment shall be determined by the value of the spoils, namely, the spoils of the taxes evaded by the offenders (*zuo suo ni zu zang* 坐所匿租贓).

3.2.5 The Legal Logic and Reasoning Behind the Formula

As we have seen, in all the occurrences of the formula *zuo zang wei dao*, the offenders obtained spoils by committing their crimes. The lawmakers in Qin and Han regarded the offenders as thieves, and punished them according to the value of the spoils.

Though such crimes are regarded as theft, except for one occurrence in article §2.5, they are all placed in other statutes of the ENLL manuscript instead of in *Statutes on Theft*. The reason for this is that such criminal acts share some similarities with the other crimes in the statutes where they are found. For example, the crime regulated in the article of ENLL 199, “destroying coins in circulation with intent to make bronzes

The legal text says that it is forbidden to continue issuing food rations if they should be stopped on account of certain reasons. When Hulsewé translated this legal text, he was not sure whether the man who issued the extra rations, or the official who accepted them and benefits them is to be punished. Compared to the article written on ENLL 230, it is most probable that the official receiving the extra rations of the food is to be punished according to the spoils, namely, the value of the food that is issued in excess, and that he has committed the crime of stealing.

or other objects,” was classified into *Statutes on Coins*. And the crime specified in the article of ENLL 230 “declaring more persons [to get more food fraudently] than the certificate allows, or sending someone privately to do something [for them] and issuing the food to him,” belongs to *Statutes on Issuing Food to the Post Station*.

This way of classifying the crimes would have been practical for legal officials. If the lawmakers had classified all such crimes into *Statutes on Theft*, it would have been inconvenient for officials to find the articles needed for certain criminal cases. For example, once the crime of “destroying coins in circulation with intent to make bronzes or other objects” occurs, the officials normally would have first tried to look up the relevant article in *Statutes on Coins* in order to judge the criminal case; however, they would not find relevant articles in this statute. Then they had to attempt to find relevant articles in the whole legal text, until finally found the article in *Statutes on Theft*. With the arrangement of the articles in which the formula *zuo zang wei dao* 坐贓為盜 is used in the ENLL manuscript, it is much easier for officials to find the articles they need.

3.2.6 The Occurrences in the Received Literature

The formula *zuo zang wei dao* 坐贓為盜 is used twice in HS. Its first occurrence can be found in a quotation of an imperial edict in the first year of Emperor Jing 漢景帝 (156 BCE):

吏及諸有秩受其官屬所監、所治、所行、所將，其與飲食計償費，勿論。它物，若買故賤，賣故貴，皆坐贓為盜，沒入贓縣官。⁴¹²

If an official or anyone who has [official] rank has received anything from his official subordinate, whether from those superintended by him, or those under his rule, or those of whom he is [temporarily] in charge, or those whom he commands [as a military leader], let those who have received food or drink and who calculate [its value] and repay this expense not be tried [for crime; those who receive] other things, [not food or drink, and officials who] have purposely bought things cheap

⁴¹² HS 5, 137.

and purposely sold them dear must all be sentenced for having received bribes, and treated as robbers; their bribes shall be confiscated and paid to the government.⁴¹³

In the above edict, if an official receives gifts, except for food and drink, from his subordinate officials; or buys things at a low price and sells them at a high price, he is to be punished in the way of *zuo zang wei dao* 坐贓為盜. It is obvious that the officials take some spoils from the crimes, namely, the gifts received from subordinate officials or the profit by selling things at a higher price.

The second use of this formula in HS can be found in the quotation of an imperial edict in the third year of Emperor Jing (154 BCE):

農，天下之本也。黃金珠玉，飢不可食，寒不可衣，以為幣用，不識其終始。間歲或不登，意為末者眾，農民寡也。其令郡國務勸農桑，益種樹，可得衣食物。吏發民若取庸采黃金珠玉者，坐贓為盜。二千石聽者，與同罪。⁴¹⁴

Agriculture is the foundation of the world. As to real gold, pearls, or jade, when one is hungry, they cannot be eaten; when one is cold, they cannot be worn. They are considered and used as objects of value, [but] one does not understand how their final or original [value came to be]. Recently for some years there have not been good harvests. In [Our] opinions this is because those who do non-essential things [mechanizing and craftsmanship] are many, [whereas] the common people who make agriculture [their profession] are few. Let it be ordered that the commanderies and kingdoms shall stress the encouragement of agriculture and sericulture, and increase the sowing and planting, [in order that] there may [thus] be obtained articles for clothing and food. If officials, in mobilizing the common people or in taking from them substitute-[money, employ them] to collect real gold, pearls, or jade, [such officials] shall be condemned [as having taken] booty and treated as robbers. [Officials ranking at] two thousand piculs who permit [such actions, shall be punished] with the same punishment [as other officials].⁴¹⁵

In order to encourage agriculture and sericulture, it is forbidden for officials to mobilize commoners to collect gold, pearls, or jade; otherwise, they are to be punished according to *zuo zang wei dao* 坐贓為盜. The officials got some profit by

⁴¹³ Dubs 1938 I, 311.

⁴¹⁴ HS 5, 152.

⁴¹⁵ Dubs 1938 I, 331-332.

committing the crime; therefore, they are to be punished according to the value of the spoils that they have obtained by committing the crime and are regarded as thieves.

It seems that the use of the formula *zuo zang wei dao* 坐贓為盜 in these two occurrences in the received literature corresponds to that in the legal manuscripts.

3.3 The Formula *yu dao tong fa* 與盜同法

The formula *yu dao tong fa* 與盜同法 occurs altogether eight times in the ENLL manuscript, of these, four occurrences are found in *Statutes on Theft*. The meaning of this formula is highly controversial

Lin Wenqing compares the two formulas *yu dao tong fa* 與盜同法 and *zuo zang wei dao* 坐贓為盜, and concludes that the crimes for which these two formulas are used belong to *dao* 盜. Though in both cases, the offenders are to be punished based on the value of their spoils; the first is used to punish someone on account of linked liabilities; while the second is applied in cases where the offenders use other methods instead of stealing to indirectly get illicit profit or infringe on others' property rights.⁴¹⁶

Chen Guang thinks that in Qin and Han there existed various criminal acts that were not well categorized and regulated. According to him, the lawmakers of Qin and Han used the formula *yu dao tong fa* 與盜同法 to deal with uncategorized criminal acts so that the offenders were to be punished according to the same principle as for theft. Owing to the immature and imperfect legal system of Qin and Han, this formula was frequently used.⁴¹⁷

Brown and Sanft explain *dao* 盜 in the formula *yu dao tong fa* 與盜同法 as the

⁴¹⁶ Lin Wenqing 2008, 94-106.

⁴¹⁷ Chen Guang 2010, 16-38.

category *dao* 盜, under this category, theft is “the prototype — the paradigmatic case — of the category *dao* 盜.” So they define “*X yu dao tong fa* 與盜同法” as “X belongs to the category *dao*.” In their opinion, the lawmakers used this formula to classify various crimes leading to the illegal deprivation of property into the category *dao* 盜.⁴¹⁸ The explanation of *yu dao tong fa* 與盜同法 given by Brown and Sanft seems to have some problems. As different crimes under the category of *dao* 盜 were punished differently, if the formula would have been used to mean “X belongs to the category *dao*,” it would be unclear as to what punishment offenders should receive, when the formula is used. As a result, the official could not have used it to judge a criminal case and impose a sentence on offenders.

Both Hulsewé⁴¹⁹ and Lau⁴²⁰ argue that the word “*fa* 法” in this formula means “the legal rules as for theft,” so the formula *A yu dao tong fa* A 與盜同法 means “for the criminal act A the same legal rules as for theft are to be applied.” According to their explanations, the word *dao* 盜 refers to theft, and the criminal act A is to be punished according to the legal rules regulating theft.

In Qin and Han legal manuscripts, the word for a statute is “*lü* 律.” It would be rather peculiar for the lawmakers to have suddenly used “*fa* 法” to mean “statutes or legal rules” in this formula, instead of “*lü* 律.”⁴²¹ Besides, various legal texts in the ENLL and Shuihudi manuscripts show us that when a crime is to be punished according to another statute or legal rule, the formula “*yi X lü lun* 以 X 律論” is used. For example,

⁴¹⁸ Brown and Sanft 2010, 292-302.

⁴¹⁹ Hulsewé 1985, D18.

⁴²⁰ After a presentation that I had held about the three formulas, Dr. Lau has kindly shown me his unpublished materials concerning this topic. I wish to thank him for allowing me to read his materials before publication. There are some similarities between our explanations of the formulas.

⁴²¹ It seems that the word *lü* 律 was rarely used in the sense of “statutes or legal code” in texts before Qin and Han. Instead, the word *fa* 法 had this meaning. For example, in the ZYS manuscript, *fa* 法 is used in the legal stories of the Warring States period “*yi shi wei fa* 異時衛法” and “*yi shi lu fa* 異時魯法,” while *lü* 律 is used in the legal story of Qin “*gu lü yue* 故律曰.”

article §6.14 says that the criminal behavior of hiring absconders as workers and not being aware of it (*qu wang zui ren wei yong, bu zhi qi wang* 取亡罪人為庸，不知其亡) is to be judged according to the statute on sheltering absconders (*yi she wang ren lü lun zhi* 以舍亡人律論之), which refers to article §6.12.

The formula “A *yi X lü lun* A 以 X 律論” is also used in the Shuihudi legal texts. The following statute from the QLSBZ manuscript is an example:

日食城旦，盡月而以其餘益為後九月稟所。城旦為安事而益其食，以犯令律論吏主者。春城旦₅₇月不盈之稟。⁵⁸

When feeding *chengdan* by the day, at the end of the month one takes the surplus to serve as rations for the later ninth month. For increasing their food when the *chengdan* perform easy tasks, the official(s) in charge will be judged according to the Statutes on infringing the Ordinances. The issues not fulfilled monthly for the grain-pounders and *chengdan* will be reduced.⁴²²

In Qin and Han, legal formulas were used in a consistent way. When the lawmakers wanted to prescribe “for a criminal act, the statute concerning another crime is to be applied,” they would most probably have stuck to using the same formula “*yi X lü lun* 以 X 律論,” where X is a “shorthand designation”⁴²³ for this statute. When officials judged a case by using a statute in which such a formula is used, they could look up the statute referred by the shorthand designation X and punish the offenders according to that statute. Logically, in the case that “for the criminal act A the same legal rules as for theft are to be applied,” the lawmakers would have given the statutes on theft a shorthand designation X, and then the formula “A *yi X lü lun* A 以 X 律論” would have been used. Hence, it would have been inconsistent for the lawmakers in Qin and Han used another formula A *yu dao tong fa* A 與盜同法 instead.

⁴²² Hulsewé 1985, A16.

⁴²³ According to Ōba, the shorthand designation is also used for ordinances of Han; see Ōba 2011, 132.

The Word “*fa* 法”

Scholarly opinions differ as to the translation and interpretation of the technical term *fa* 法 in Qin and Han legal texts.⁴²⁴ It is even controversial whether this term has the same meaning in all the context; or whether one must differentiate between different meanings according to the context.

Since it is difficult to ascertain the precise meaning of the word *fa*, I cannot determine the meaning of the formula *yu dao tong fa* 與盜同法 through the kind of analysis I have done for the formulas *yu tong zui* 與同罪 and *zuo zang wei dao* 坐贓為盜. I will not try to solve the problem of clarifying this word in various texts in this chapter. I intend to explain the formula *yu dao tong fa* 與盜同法 by considering its occurrences in the ENLL manuscript as well as in the Shuihudi legal texts, in order to understand the legal decisions that were to be made according to the formula. This may in turn help define the meaning of the word *fa* in this formula.

3.3.1 Two Occurrences of *zuo zang, yu dao tong fa* 坐贓，與盜同法

Of all the occurrences of the formula *yu dao tong fa* 與盜同法, it is used two times after *zuo zang* 坐贓. The first occurrence of *zuo zang* 坐贓, *yu dao tong fa* 與盜同法 is found in article §1.15 in *Statutes on Banditry*. According to this article, when rotten meat causes someone to become sick or die, the law demands that it must be burned up. Commoners are responsible for burning up the privately owned rotten meat; while the rotten meat of the government is to be burned up by the responsible officials, who are the keepers of government property. Otherwise the commoners and the responsible officials are to be punished on account of obtaining the spoils of rotten meat (*zuo fu rou zang* 坐脯肉贓) and dealt with in the way of *yu dao tong fa* 與盜同法.

⁴²⁴ For a study review on this word; see Brown and Sanft 2010, 283-292.

However, it seems that the phrase *zuo fu rou zang* 坐脯肉贓 (on account of the spoils of the rotten meat) is peculiar in this article. As we already discussed, *zang* 贓 refers to the spoils obtained from theft, or illicit profit received by committing other crimes. In this case, the offenders do not get anything belonging to others, still, the word *zang* 贓 is used. It is likely that this word *zang* 贓 is modified and used here

The second occurrence of *zuo zang, yu dao tong fa* 坐贓，與盜同法 is found in the following article in *Statutes on . . . and Market*:

諸詐給人以有取，及有販賣買而詐給人，皆坐贓與盜同法，罪耐以下²⁶¹又遷之。²⁶²

Those who defraud someone in order to obtain something, and those who buy and sell but defraud someone, are all to be punished on account of [obtaining] spoils, and share *fa* with thieves. In case that they are to be punished by shaving off the beard or lighter, they are also to be banished.

When offenders defraud someone to obtain something, or defraud someone when they make a deal with him, in both cases, they infringe on other people's property rights so that they get illicit profit. On account of obtaining spoils (*zuo zang* 坐贓), namely, the illicit profit that the offenders get through the deception, they are to be dealt with in the way of *yu dao tong fa* 與盜同法.

We can conclude from these two articles that the lawmakers of Qin and Han used the formula *A zuo zang, yu dao tong fa* A 坐贓，與盜同法 to assign a characteristic (*fa* 法) of theft to the crime A. They also “borrowed” and modified the word “*zang* 贓” (spoils) in these two occurrences so that it refers to the rotten meat and the illicit profit obtained by fraud. As seen before, in the formula *zuo zang wei dao* 坐贓為盜, *zuo zang* 坐贓 indicates that on account of taking spoils the offenders are punished as thieves, based on the value of the spoils. Accordingly, the lawmakers borrowed the “*zang* 贓” here in order to stipulate the same method of punishment as for theft, based on the property involved in the crime. Hence, the word “*fa* 法” is likely to refer

to the method and principle of punishment for theft that is specified in article § 2.1.⁴²⁵

Thus, the formula *A zuo zang, yu dao tong fa* 坐贓，與盜同法 says that “offender A, on account of obtaining spoils, shares the same method and principle of punishment as thieves; or criminal act A, on account of obtaining spoils, shares the same method and principle of punishment as theft.”

3.3.2 Other Occurrences of *yu dao tong fa* 與盜同法

In all the other occurrences of *yu dao tong fa* 與盜同法, the phrase “*zuo zang* 坐贓” is not used before this formula. It is most likely that this phrase is implied, and even without it, the meaning of the formula is still self-evident.

The formula occurs in the article §2.2; according to it, the persons who plot and send someone to steal, the persons who instruct others to steal, and the persons who are aware of it and share spoils with thieves (*mou qian ren dao, ruo jiao ren he dao suo, ji zhi ren dao yu fen* 謀遣人盜，若教人何盜所，及知人盜與分), are to be punished according to *yu dao tong fa*. This seems to contradict the conclusions made after the discussion of the formula *yu tong zui* 與同罪. According to that conclusion, the persons who are aware of the crime committed by the offenders or assist them in committing it are to receive the same punishment as the prototype offenders (*yu tong zui* 與同罪).

Let us consider why the formula *yu dao tong fa* instead of *yu tong zui* is used in article §2.2 to punish the offenders. Both *yu tong zui* and *yu dao tong fa* occur in the following legal text:

律曰 “與盜同法”，又曰 “與同罪”，此二物。其同居、典、伍當坐之云 “與

⁴²⁵ According to Bodde, the root meaning of *fa* 法 is “that of a model, pattern, or standard; hence of a method or procedure to be followed;” see Bodde 1963, 379.

同罪”。云“反其罪”者，弗當坐。

The statutes say “the same rule as for theft”; they also say “the same punishment as”. These are two (different) things. When his (i.e. the culprit’s) household members, the (village) chief and (the members of his) group of five are warranted to be adjudicated for his (crime), this is called “the same punishment as”. When (the Statutes) say: “reverse the punishment,” they are not warranted to be adjudicated.⁴²⁶

The exact meaning of the text is highly controversial, and there are different explanations and translations.⁴²⁷ Nevertheless, what is definite is that the first sentence of this text indicates that *yu tong zui* and *yu dao tong fa* are different.

In order to understand the exact difference between *yu tong zui* and *yu dao tong fa*, the nature of the punishment that is defined for theft, *dao* 盜 has to be considered. The punishments of theft can be different from case to case, depending on the value of the spoils. If an offender is convicted of theft, the punishment he is to receive first needs to be calculated according to the value of the spoils obtained from theft, then his punishment can be finally determined. This appears to be the reason why the lawmakers chose to use *yu dao tong fa* instead of *yu tong zui* in the article above. The *fa* 法 in the former formula does not refer to a definite punishment like *zui* 罪, but rather to the method of determining a punishment as described in article § 2.1. This could be the reason why *yu dao tong fa* is used to define the punishment of the offenders in article § 2.2

The same phenomenon can also be observed in its occurrence of §2.15. According to its statute, if the officials are aware of the crime of smuggling property or objects out of the frontiers and let the smugglers pass (*dao chu cai wu yu bian guan, jiao, ji li bu zhu zhi er chu zhe* 盜出財物于邊關、徼，及吏部主知而出者), the same method and principle of punishing theft shall be used to punish them (*yu dao tong fa* 與盜同法).

⁴²⁶ Hulsewé 1985, D18.

⁴²⁷ Lin Wenqing 2008, 102; Brown and Sanft 2010, 287. Doctor Lau has kindly shown me his four different translations and explanations of this text, which are not yet published.

Here, the officials who are aware of the crime committed by the smugglers, would normally also have received the same punishment as smugglers, that is, *yu tong zui* 與同罪 should have been used. However, the lawmakers used *yu dao tong fa* 與盜同法 here again to clearly state to punish the officials by using the method and principle for punishing theft .

Article §2.15 can be compared with article §2.16. It says that officials, infantrymen, and the officials in charge of the department of laborers who are aware of the crime of smuggling gold out of the frontiers and let the smugglers pass without searching them (*dao chu huang jin bian guan, jiao, li, zu, tu bu zhu zhe zhi er chu ji fu suo* 盜出黃金邊關、徼，吏、卒、徒部主者知而出及弗索, are to be punished the same as smugglers (*yu tong zui* 與同罪). It further regulates that the officials who are not aware that gold is being smuggled out of the frontiers are to perform military service at the frontiers for two years. Compared to that, §2.15 specifies that the officials who are not aware of that property or objects is being smuggled out of the frontiers are to be fined four ounces of gold. The punishment for performing military servicing at the frontier for two years is much heavier than that of a fine of four ounces of gold. It can be inferred that the crime of smuggling gold is much more severe than smuggling property or objects. Accordingly, the punishment for being aware of smuggling gold resulted from *yu tong zui* 與同罪 is heavier than that for being aware of smuggling property or objects resulted from *yu dao tong fa* 與盜同法.

Smuggling property or objects out of the frontiers shall be punished according to the value of property or objects that were smuggled. However, no statute in the ENLL manuscript specifies the punishment of smuggling gold. By comparison of these two articles, it is clear that the formulas “*yu tong zui* 與同罪” and “*yu dao tong fa* 與盜同法” used in *Statutes on Theft* are different, so that the way of punishing crimes according to them are also different. This corresponds to the FLDW legal text mentioned above.

The formula is also used in article §2.17. The first two characters of this article are illegible, through a comparison with the following text from the FLDW manuscript, it is highly likely that article §2.17 regulates the crime of borrowing and lending property or objects that belongs to the government:

府中公金錢私賁用之，與盜同法。何謂府中？唯縣少內為府中，其它不為。
“To stealthily borrow government money in a storehouse and to use it is (subject to the) same rules as theft. What is the meaning of “in a storehouse”? Only the prefectural Treasury is “in a storehouse”; the others are not.⁴³⁰

According to §2.17, in case that someone borrows cash, gold, silk, cotton, grain, rice, horses or oxen belonging to the government without authority, the punishment of both the lender and the borrower is to be calculated in the same way as that for theft, that is, according to the value of cash, gold, silk, cotton, grain, rice, horses or oxen that were illegally borrowed. In this case, the borrowers get some illicit profit from government property. While the lenders, normally officials, as keepers of the government property, infringe on the government's property rights.

Besides these two texts, we have another similar legal text in the QLSBZ manuscript:

倉嗇夫及佐、史，其有免去者，新倉嗇夫、新佐、史主廩者，必以廩籍度之。其有所疑，謁縣嗇夫，縣嗇夫令人復度及與雜出之。禾贏，入之；而以律論不備者。禾、芻積廩，有贏不備，而匿弗謁，及諸移贏以償不備，群它物當負償而偽出之以彼償，皆與盜同法。

When Granary Overseers as well as assistants or clerks are dismissed or they leave, the new Granaries Overseer, the new assistant or clerk in charge of grain stores must measure it (viz. stock) without fail by means of the grain store register. In case of doubt they report to the Prefectural Overseer. The Prefectural Overseer orders others to measure it again, as well as to issue it together with If there is a surplus of grain, it is to be entered, whereas those (responsible for) a shortage are to be condemned according to the Statutes. When grain, hay or straw is stacked in a grainstore, and there is a surplus or a shortage, to hide this and not to report it, as well as all cases of transferring a surplus to repay a shortage, or for the multitude of other objects for which repayment has to be assumed, fraudulently to write these

⁴³⁰ Hulsewé 1985, D26.

off in order to use them for repayment ---- all these cases will be dealt with in the same manner as theft.⁴³¹

According to the article, if officials fail to report a surplus or a shortage of hay or straw stacked in a grain store, or transfer the surplus to compensate a shortage somewhere else, or to write off other objects, they are to be punished by applying the same principle and method of punishing thieves, namely, based on the value of the surplus or the shortage of the hay and straw. In this case, the responsible officials, like the officials in the two articles above, do not fulfill their duty of taking good care of government property, and commit a crime by infringing on the property rights of the government.

The formula also occurs in article §2.18 that follows §2.17. Article §2.18 regulates that the crimes of not returning government objects on time and not reporting broken government objects on time are to be punished according to the statutes on borrowing objects without authority (*yi si zi jia lü lun* 以私自假律論), which refers to article §2.17. As a result, indirectly, the crimes are to be dealt with according to the formula *yu dao tong fa* 與盜同法. Again, the offenders commit a crime because they infringe on the government's property rights.

The formula *yu dao tong fa* 與盜同法 is used in article §1.40 belonging to *Statutes on Banditry*. In case that the offenders kill or injure other's livestock (*zei sha, shang ren xu chan* 賊殺傷人畜產), the article says that the same method and principle of punishing theft is to be applied for this crime. This crime results in an infringement on someone else's private property.

The formula is also used in article §7.8. The article regulates that if the offender conceals someone who is to be enslaved by the government or the things that are to be confiscated (*ni shou* 匿收), he shares same method and principle of punishment with

⁴³¹ Hulseyé 1985, A86-87.

thieves. There existed two categories of *shou* 收: first, the family members of the offenders that are to be enslaved by the government on account of the linked liabilities; second, the property, rice fields and residence house of the offenders that are to be confiscated. Both of them are regarded as property owned by the government. By committing the crime regulated by §7.6, the offender infringes on the property rights of the government.

The last occurrence of this formula is found in the following article of *Statutes on Rice Fields (Tian li 田律)*:

諸馬牛到所，皆毋敢穿阱及置它機，穿阱及及置它機能害人、馬牛者，雖未有殺傷也，耐為隸臣妾。殺傷馬牛，與盜同法。殺人，²⁵¹棄市。傷人，完為城旦舂。²⁵²

In the places where horses or oxen roam, it is forbidden to set a trap or place other instruments. Those who set a trap or place other instruments to injure persons, horses or oxen, even if people, horses or oxen are not killed or injured, are to have the beard shaved off and be made male bondservants or female bondservants. In case that the horses or oxen are killed or injured, the offenders share the same method and principle of punishment with thieves. In case that someone is killed, the offenders are to be executed in the marketplace. In case that someone is injured, the offenders are to be made earth pounders or grain pounders without mutilation.

In case that the offenders kill or injure someone else's oxen or horses by setting a trap or placing other dangerous instruments, what they actually harm is the property that belongs to some else. Accordingly, the punishment shall be determined by the value of the oxen and the horses, which were killed or injured.

3.3.3 The Legal Logic and Reasoning Behind the Formula

Considering all the above occurrences of the formula *A yu dao tong fa*, there existed the following circumstances under which the same method and principle of punishment as for theft is to be applied: first, the offenders obtain some illicit profit by committing criminal act A, and their punishment is to be meted out according to the value of the illicit profit. Second, though the offenders do not obtain any illicit

profit by committing criminal act A, they infringe on other's property rights. In such cases the offenders are to be punished according to the value of the property involved in the crime. Third, though the offenders themselves do not commit theft or crimes that are to be dealt with according to *yu dao tong fa*, i.e., they are either aware of such crimes or assist in committing them, so that their punishment is also to be determined in the way of *yu dao tong fa*.

All the crimes that are to be dealt with according to *yu dao tong fa* 與盜同法 share some similarities with theft; this is why their punishment can be determined in the same way as that for theft. Theft is "to take something belonging to others:" the thieves obtain some spoils and their punishment is to be meted out according to the value of the spoils; in contrast, the victim loses the property that has been taken away by the "thieves," his property rights have been damaged. In the first set of circumstances described above, the offenders obtain some illicit profit by committing crimes instead of theft; for instance, defrauding someone while trading with him, smuggling property out of the frontiers, or borrowing something from the government without authority. In the second set of circumstances, the offenders do not take anything from others and obtain property profits; for example, by killing or injuring other's livestock, by lending government cash, gold, silk, cotton, grain, rice, horses and oxen to someone without authority. However, they do infringe on the government's or private persons' property rights, just as thieves do. Finally, in the third set of circumstances, the offenders are aware of or assist in committing theft or the crimes punished in the way of *yu dao tong fa*. Normally, the lawmakers used *yu tong zui* 與同罪 to give a punishment for being aware of a crime or assisting in committing a crime, but as discussed before, due to the variable nature of the punishments of theft, the formula *yu dao tong fa* is used.

As we see, property or illicit profit is always involved in such crimes. This allowed the lawmakers of Qin and Han have "borrowed" the "spoils" from theft and modified it, referring to the property or illicit profit involved in them. Through the use of the

formula *yu dao tong fa* 與盜同法, the lawmakers practically prescribe a method for calculating the punishment for property crimes committed in different circumstances.

Nevertheless, it seems strange that there existed overlap between the usages of the formulas *yu dao tong fa* 與盜同法 and *zuo zang wei dao* 坐贓為盜. In some cases, when the offenders get illicit profits from crimes, they will be dealt with according to *yu dao tong fa* 與盜同法 and they are not thieves, while in some other cases, they will be treated in the way of *zuo zang wei dao* 坐贓為盜 as thieves. Based on all the occurrences in the manuscripts, it cannot be determined whether there existed some subtle differences, or whether the lawmakers of Qin and Han did not really distinguish these two formulas in such circumstances.

3.3.4 Property Crimes

As we have seen above, all the crimes that are to be dealt with according to the formulas *yu dao tong fa* and *zuo zang wei dao* are property crimes. The value of the spoils or the property involved in such crimes determines the severity of the punishment that the offenders shall receive, just like the way of punishing theft. This reflects that the lawmakers of Qin and Han already had the legal conception that the punishment should match the severity of the crime and they used this legal principle to punish various property crimes. By using these two formulas, the lawmakers avoided a long and superfluous repetition of specifying different punishments based on the value of the spoils or property involved in such crimes as regulated by article §2.1. This keeps the legal articles more concise, terse and consistent.

As we have seen, the lawmakers of Qin and Han not only attempted to protect government property but private property as well, by using the formulas *yu dao tong fa* and *zuo zang wei dao*. The lawmakers included articles that use these formulas to punish the infringement on private property in the penal and administrative statutes. This is due to the fact that China's early statutes mainly consisted of penal and

administrative statutes, and there existed no separate civil statutes that concerned themselves with private affairs.

It is known that in modern law, a general principle regarding property damages is that the injured party is entitled to recover compensation from the violators. However, as seen in the statutes where the two formulas are used, the lawmakers of Qin and Han mainly concerned themselves about how to punish the offenders and maintain the social order instead of compensating the victims for their property damages.⁴³² We do not have any statute in the ENLL manuscript that demands the offenders to compensate the victims of the crimes that are to be dealt with according to the formulas *yu dao tong fa* and *zuo zang wei dao* for their loss.⁴³³

It seems that it was not the motivation to protect “private rights” that propelled the lawmakers of Qin and Han to regulate property crimes. Instead, they thought the offenders disturbed the social order by committing such crimes so that the offenders shall receive a punishment according to the formulas *yu dao tong fa* and *zuo zang wei dao*.

⁴³² Xu Shihong discusses the crimes resulting in property damages, their corresponding punishments and compensations for the property loss; see Xu Shihong 2007, 301-315.

⁴³³ As the statutes in the ENLL manuscript are only selected ones, there may have existed a few statutes in Han that regulated compensation for the property damages of the victims.

Conclusion

The ENLL manuscript was found in the Zhangjiashan Han tomb M247, which is located in the Zhangjiashan area of the Jiangling District of Hubei Province 湖北省江陵縣張家山地區. This area lies near to the capital city of the pre-imperial Kingdom of Chu 楚. This tomb was excavated between December 1983 and January 1984.

After the publication of the photographs of all the bamboo strips of the ENLL manuscript as well as its annotated transcription in ZJS 2001, the ENLL manuscript has become one of the most important source for the study of early Chinese law. In the first chapter, I examined the archeological context of this manuscript, and then its nature and function. In the second chapter, I translated all the penal statutes in this manuscript into English with a commentary. Last, I explained the three legal formulas *yu dao tong fa* 與盜同法, *yu tong zui* 與同罪, and *zuo zang wei dao* 坐贓為盜 that are frequently used in the manuscript. I am now going to state the major findings of the previous chapters, and then present possibilities for further research.

Findings

As we have seen in the first chapter, the bamboo strips of the ENLL manuscript are in a considerably bad state of preservation. The manuscript possesses a unified layout. Each bamboo strip carries a single column of writing. Each article starts on a new strip, therefore, if the text of an article finishes, the rest of the strip was just left blank, with a new article starting on the next strip. According to the drawing, the whole manuscript had been rolled up in left-to-right direction together as a roll with the last bamboo strip in the middle and the first one at the external edge. So the title “Statutes and Ordinances of the Second Year” (*Ernian lü ling* 二年律令) written on the back side of the first bamboo strip is located at the outermost edge of the roll. The other title “Twenty-? Statutes and Ordinances” (*Lü ling er shi ? zhong* 律令二十?種) on the front side of the last bamboo strip is situated at the innermost part of the roll.

The binding strings of the ENLL manuscript had decayed at the time of excavation. Their remaining traces suggest that these bamboo strips had been bound together by three sets of strings. In several cases, the binding strings cover the writing (ENLL 19, 36, 90, 172, 174, 195, 204, 319, 325, 362). This shows us that the bamboo strips had been first written, and then they were bound together with binding strings orderly. Before the process of writing, the locations of the binding strings that would be inserted in the bamboo strips must have been marked. This is the reason why in most cases the writings avoid the binding strings and they were orderly horizontally written on the bamboo strips. Therefore, the ENLL manuscript was produced in the following sequence: first, the positions of the binding strings were marked; second, the text was written onto the strips; third, the strips were bound.

Various marks are used throughout the ENLL manuscript: The mark “=” that is written below the right side of character(s) serves to indicate that the character(s) above this mark is repeated once. The black rectangular mark “■” is used before titles. The hook mark “乚” separates words, phrases, and clauses within an article. The black dot “●” is used as a segmentation mark: It serves to divide the different sections in the text of *Ordinances on Ports and Control stations* (*Jin guan ling* 津關令); while it divides words or sentences within an article on ENLL 444, 445 and 459 belonging to *Statutes on Official Salaries* (*Zhi lü* 秩律). The black dot “●” on ENLL 142, 176 and 407 indicates that the topic of the text following it differs from the one preceding it.

The text of the ENLL manuscript was written in the form of clerical script (*li shu* 隸書). An examination of the handwriting suggests that three different scribes wrote the manuscript, which I call scribe A, B, and C. Among them, scribe A was the main scribe, because he wrote more than half of the text. During the writing process, two scribes, scribe A and B, or scribe A and C, frequently took turns in writing the text belonging to one statute. In some cases the text on the top and on the bottom sections of a single bamboo strip was written by scribe A and B. This suggests that multiple

scribes must have written this manuscript simultaneously at the same place. This should have allowed them to finish writing the manuscript more quickly and flexibly.

Then, I went on to consider the status of the owner of the tomb. A calendar of the owner found in the tomb records the years between the fourth year of Emperor Gao (203 BCE) and the second year of Empress Lü (186 BCE). According to the two entries in the calendar and the funeral objects found in the tomb, it seems that the tomb owner worked as a Han lower official and practiced law from the fourth year of Emperor Gao (203 BCE) to the first year of Emperor Hui (194 BCE). Since the owner received a dove crutch, he must have been at least seventy years old before his death.

Then, after a discussion of the text of the ENLL manuscript, I conclude that this manuscript contains only a selection of the statutes and ordinances in early Han. Through an examination of the title “*Ernian lü ling* 二年律令,” I explored the dating of the manuscript. The second year referred to by the title is the second year of Empress Lü (186 BCE). It is highly likely that the manuscript was written in this year. This is eight years after the tomb owner had been removed from office because of illness (194 BCE) and also the last year recorded in the calendar of the owner. Thus, we can infer that the owner could not have used the manuscript for legal practice when he was a Han official and that the manuscript was produced near to the end of his life.

The text of the ENLL manuscript contains various mistakes. According to the statutes concerning documents in the ENLL manuscript, officially made documents had to meet high requirements. It was punishable if someone introduced mistakes in official documents. Hence, it is very unlikely that a manuscript with a large number of mistakes could have been an officially made document. Instead, the manuscript must have been produced privately. Besides, the mistakes also suggest that no one ever checked and revised the manuscript after it had been written. This indicates that the multiple scribes who had taken part in writing it did not concern themselves with

writing it correctly. Furthermore, the manuscript is a large manuscript that is made up of at least 528 bamboo strips and has a length of at least 3.696 meters. It would have been very cumbersome to look up certain articles in such a long manuscript without any index or catalogue for daily legal practice. Moreover, the selection of the statutes and ordinances does not meet the need for the administration of law in Han. Hence, the ENLL manuscript could not have been produced for official legal practice.

If we take all the above evidence into consideration, it seems that the ENLL manuscript, which was of no practical use to the tomb owner and was written near to his death, was produced for his funeral. Current research suggests that the people in Han thought that the underworld mirrored the living world. According to this belief, the owner may use the ENLL manuscript to prove his legal proficiency and practice law as an official in the underworld. This may be the reason why the ENLL manuscript, a manuscript related to the owner of the tomb's official duties, was produced for his funeral and put into the tomb.

In the second chapter of my thesis, I translated all of the ENLL penal statutes into English. Besides, I have explained the technical legal terms that are used in the ENLL manuscript, especially some legal terms whose meaning is still controversial; for example, the crucial legal term “*shu* 贖.” Additionally, I also analyze some words that acquire special meanings in the legal language of Qin and Han; for instance, the word “*qi* 其.”

In the third chapter of my thesis, I discussed three legal formulas that are very frequently used in the ENLL manuscript and other legal manuscripts of Qin and Han: *yu dao tong fa* 與盜同法, *yu tong zui* 與同罪, and *zuo zang wei dao* 坐贓為盜. I explained their meaning and analyzed their occurrences, in order to explore the legal reasoning and logic behind the formulas.

The formula “*yu tong zui* 與同罪” can be expressed as “A *yu* [B] *tong zui* A 與【B】同罪.” The coverb “*yu* 與”, which means “and,” is used as a coordinating conjunction between the two noun phrases A and B, which together form the compound subject. It either designate two persons or two criminal acts: If there are two persons, one (B) is the prototype offender who commits the crime, while the other person (A) is to be punished in the same way as B. If there are two acts, then one act is the prototype crime (B) and the other act (A) is to be punished the same as crime B. According to all the occurrences of this formula in the manuscripts, there are three different groups of persons who each share a special relation to prototype offenders, which causes them to be punished the same as the prototype offenders. The groups are:

- (1) Persons being aware of the prototype crime committed by the prototype offenders;
- (2) Persons assisting the prototype offenders in committing crimes;
- (3) Officials or local chiefs, who are responsible for investigating, and preventing various crimes, but fail to do so. Among these, some might be aware of the crime, while others might not even notice that the crime was committed on account of their negligence in carrying out their official duties.

The lawmakers of Qin and Han used this formula to punish persons of these three groups the same as the prototype offenders, in order to encourage people to actively report crimes to the authority, avoid assisting offenders in committing a crime, and let the officials carry out their duties with more diligence.

For the other formula “*zuo zang wei dao* 坐贓為盜,” I first discussed the various usages of the legal term “*dao* 盜.” As a noun, this term can refer to two things in the legal manuscripts of Qin and Han: first, theft; second, the scope of *dao* 盜, that is, various crimes that are collected under the *Statutes on Theft* (*Dao li* 盜律); and offenders of both. In this formula the word *dao* 盜 refers to “thieves or theft.” Accordingly, “*zang* 贓” refers to “spoils obtained through theft.” The word “*zuo* 坐”

means “on account of.” Hence, the formula “*A zuo zang wei dao* A 坐贓為盜” means “offender A, on account of obtaining spoils, is a thief; or criminal act A, on account of obtaining spoils, is a case of theft.” Thus, the offenders shall be punished according to the value of the spoils they got from crimes. In all the occurrences where the formula *zuo zang wei dao* 坐贓為盜 is used, the offenders obtained spoils by committing their crimes and they are thieves in the view of the lawmakers in Qin and Han.

The formula “*yu dao tong fa* 與盜同法” can be presented in the way of “*A yu dao tong fa* A 與盜同法.” The word *dao* 盜 in this formula refers to “thieves or theft.” The word “*fa* 法” is likely to refer to the method and principle of punishing theft, as specified in article §2.1. This says that “offender A, shares the same method and principle of punishment as thieves; or criminal act A, shares the same method and principle of punishment as theft.” There existed certain circumstances under which the same method and principle of punishment as for theft is to be applied to criminal act A or offender A:

- (1). Offender A obtains some illicit profit by committing criminal act A, and his punishment is to be meted out according to the value of the illicit profit.
- (2). Offender A does not obtain any illicit profit by committing criminal act A; however, he infringes on other’s property rights. As a result, he is to be punished according to the value of the property involved (usually damaged or destroyed) in the crime.
- (3). Offender A himself does not commit theft or other crimes that are to be dealt with in the way of *yu dao tong fa* 與盜同法, but he is either aware of such crimes or assist in committing them, so he is to be punished according to the formula *yu dao tong fa* 與盜同法.

In this section, I am going to present some unresolved problems and topics for further research.

In the first chapter of the thesis, I have argued that the ENLL manuscript is a privately

made manuscript that is produced for the funeral of the owner, and it did not have any legal practical use for him. However, many questions concerning this manuscript remain. The ENLL manuscript contains only part of all the legal statutes and ordinances in early Han. In these twenty-eight statutes and ordinance, some statutes, for example, *Statutes on Banditry* and *Statutes on Theft* contain a large number of articles, while others include only few articles. Only one ordinance, *Ordinances on Ports and Control Stations* is included in the manuscript. A further examination on the selection is needed: does it reflect a preference of the owner or someone else, or were the articles more or less randomly selected?

According to the cross-section drawing of the bamboo strips in the tomb, the ENLL manuscript had been placed together with the calendar and the ZYS manuscript. The ZYS manuscript records twenty-two legal cases and stories. Most of the legal cases took place in the Southern Commandery, where the owner of the tomb must have worked and was buried. Additionally, the time period when the legal cases of the Southern Commandery occurred more or less corresponds to the official life of the owner, which was recorded in his calendar. Is this a coincidence or were the cases somehow related to the legal practice of the owner? To answer this question, we have to further analyze and categorize the legal cases and legal stories in the ZYS manuscript according to different criteria: the places where the legal cases took place, the year when the cases were judged, and which crimes were involved in the cases. By doing so, we may find some clues as to why such legal cases and stories were selected in the ZYS manuscript and how the ZYS manuscript is related to the owner.

I translated the penal statutes of the ENLL manuscript in the second chapter of my thesis. However, the meanings of some legal terms, formulas, and articles are still obscure. To further explain these, we may wait for the publication of other Qin and Han legal manuscripts; for instance, the legal statutes collected by Yuelu Academy. After more materials of Qin and Han law are available, we may gain a better understanding of the Qin and Han legal texts.

In the third chapter of my thesis, I explained three legal formulas *yu dao tong fa* 與盜同法, *yu tong zui* 與同罪, and *zuo zang wei dao* 坐贓為盜. As I have shown in this part, it appears strange that there existed overlap between the usage of the formula *yu dao tong fa* 與盜同法 and *zuo zang wei dao* 坐贓為盜, when offenders get illicit profit by committing crimes: in some cases, they are to be punished in the way of *yu dao tong fa* 與盜同法; while in some other cases, they are to be punished according to *zuo zang wei dao* 坐贓為盜. Though I have analyzed all the occurrences of these two formulas in the manuscripts, I am not certain whether there existed some subtle differences in the circumstances of these crimes so that the lawmakers used a different formula, or whether the lawmakers of Qin and Han did not really distinguish these two formulas in such cases. The legal statutes collected by Yuelu Academy may provide us with more materials concerning the two formulas *yu dao tong fa* 與盜同法 and *zuo zang wei dao* 坐贓為盜. With the help of such materials, we may further examine the circumstances under which these two formulas are used, and then resolve the problem.

As we have seen in the second and third part of my thesis, the lawmakers of Qin and Han used special technical language that differs from the normal literary language of the time in the statutes and ordinances. The legal language is difficult, concise and formal. The legal terms and formulas used in the statutes are consistently. Besides, the sentences used in the legal statutes and ordinances seem to have their own special fixed grammar construction; for example, the conjunctions “*ji* 及,” “*ruo* 若,” “*huo* 或” and “*qi* 其” are very frequently used in the legal manuscripts to connect words, phrases and sentences. A further discussion on the legal language would benefit our understanding of the legal text as well as the legal thoughts behind it.

APPENDIX

DIPLOMATIC TRANSCRIPTION OF THE PENAL STATUTES

The diplomatic transcription of the penal statutes in the ENLL manuscript is based on the photographs of the bamboo strips of the ENLL manuscript in ZJS 2001 and ZJS 2007. It keeps the original characters and marks on the bamboo strips.

In case that part of the bamboo strips have broken away or the ink of characters has largely faded, leaving the characters missing or illegible: if the number of the missing or illegible characters can still be estimated, the mark “□” will be used, with one “□” representing one character; if the number of the illegible or missing characters cannot be estimated, the mark “◻” will be used to represent an unknown number of characters. In case that there are characters that are illegible for me, but the editors of ZJS 2001 or ZJS 2007 still identified and transcribed them, I put the characters into black square brackets “【 】.”

二年律令_{1 verso, F14}


以城邑亭鄣反降諸侯及守乘城亭鄣諸侯人來攻盜不堅守而棄去之若降之及謀反者皆_{1, F14} 要斬其父母妻子同產無少長皆棄市其【坐】謀反者能偏捕若先告吏皆除坐者罪_{2, C1}

◻【來誘及】為間者【磔亡之】◻_{3, C fragmentary}

賊燔城官府及縣官積取棄市賊燔寺舍₁民室屋廬舍【積取黥】為城旦舂₁其失火延燔之罰金四兩責_{4, F17}所燔₁鄉部官嗇夫吏主者弗得罰金各二兩_{5, F16}

船人渡人而流殺人耐之船嗇夫吏主者贖耐其殺馬牛及傷人船人贖耐船嗇夫吏贖遷其敗亡_{6, F4}粟米它物出其半以半負船人舳艫【負二徒負一】其可紐轂而亡之盡負之舳艫亦負二徒負一罰船嗇_{7, C2A+C15B}夫吏金各四兩流殺傷人殺馬牛有亡粟米它物者不負_{8, C3}


偽寫皇帝信璽皇帝行璽要斬以勻_{9, F1A}

偽寫徹侯印棄市一小官印完為城旦【舂】_{10, C15A}

矯制害者棄市不害罰金四兩_{11, C4}

諸上書及有言也而謾完為城旦舂其誤不審罰金四兩_{12, C5}

為偽書者黥為城旦舂_{13, C6}

【諸】詐增減券書及為書故詐弗副其以避負債若受賞賜財物皆坐臧為盜其以避論及所不當_{14, C7}【得為】以所避罪=之所避毋罪=名=不盈四兩及毋避也皆罰金四兩_{15, C8}

毀封以它完封印=之耐為隸臣妾_{16, C9}

□□□而誤多少其實及誤脫字罰金一兩誤其事可行者勿論_{17, C10}

有挾毒矢若謹毒一糴及和為謹毒者皆棄市或命糴謂糴毒詔所令縣官為挾之不用此律_{18, C11}

軍吏緣邊縣道得和為毒=矢謹臧節追外蠻夷盜以假之事已輒收臧匿及弗歸盈五日以律論_{19, C12}

諸食脯=肉=毒殺傷病人者亟盡孰燔其餘一其縣官脯肉也亦燔之當燔弗燔及吏主者皆坐脯肉臧與盜同灋_{20, C13}

【賊】殺人鬪而殺人棄市一其過失及戲而殺人贖死傷人除_{21, C14}

謀賊殺傷人未殺黥為城旦舂_{22, C300}

賊殺人及與謀者皆棄市【未殺】黥為城旦舂_{23, C301}

鬪傷人而以傷辜二旬中死為殺人_{24, C308}

賊傷人及自賊傷以避事者皆黥為城旦舂_{25, C325}

謀賊殺傷人與賊同灋_{26, C324}

鬪而以刃及金鐵銳錘棒傷人皆完為城旦舂一其非用此物而眚人折枳齒指肤體一

斷缺鼻耳者_{27, C323}耐其毋傷也下爵毆上爵罰金四兩毆同死以下罰金二兩其有痼

痼及口罰金四兩_{28, C322}

鬼薪白粲毆庶人以上黥以為城=旦=舂=也黥之_{29, C321}

奴婢毆庶人以上黥額畀主_{30, C320}

鬪毆變人耐為隸臣妾一子子而敢與人爭鬪人雖毆變之罰為人變者金四兩_{31, C319}

妻悍而夫毆笞之非以兵刃也雖傷之毋罪^{32, C318}

妻毆夫耐為隸妾^{33, C317}

子賊殺傷父母一奴婢賊殺傷主=父母妻子皆梟其首市^{34, C316}

子牧殺父母毆詈泰父=母=段大母主母後母及父母告子不孝皆棄市其子有罪當城旦舂鬼薪白粲以上^{35, C315}【及】為人奴婢者父母告不孝【勿聽年七十以上】告子不孝必三=環=之=各不同日而尚告乃聽之教人不孝^{36, F168}黥為城旦舂^{37, F174}

賊殺傷父母一牧殺父母毆詈父=母=告子不孝其妻子為收者皆錮令毋得以爵償免除及贖^{38, F137}

父母毆笞子=及=奴=婢=以毆笞辜死令贖死^{39, F162}

婦賊傷毆詈夫之泰父=母=主母後母皆棄市^{40, F171}

毆兄 媼 及親父母之同產耐為隸臣妾其妻詢詈之贖黥^{41, F172}

毆父偏妻父母男子同產之妻泰父母之同產及夫父母同產夫之同產若毆妻之父母皆贖耐其妻詢詈之罰金^{42, F182}四兩^{43, F83}

☐母妻子者棄市一其悍主而謁殺之亦棄市謁斬【止若刑】為斬刑之其妻詢詈主=父母妻^{44, F186B+F1B}

☐☐☐者以賊論之^{45, C270}

以縣官事毆若詈吏耐所【毆詈有秩以上及吏以】縣官事毆詈五夫=以上皆黥為城旦舂長吏以縣官事詈少吏^{46, F11}

☐【者】亦得毋用此律^{47, F15B,C}

諸吏以縣官事笞城旦舂鬼薪白粲以辜死令贖死^{48, F12}

賊殺傷人畜產與盜同灋畜產【為人牧而殺傷】☐^{49, F13}

【犬】殺傷人畜產【犬主賞之它】☐^{50, F188B}

亡印罰金四兩而布告縣官毋聽【亡印】^{51, F36}

亡書符券入門衛木久塞門城門之齧罰金各二兩^{52, F34}

盜書棄書官印以上【耐】^{53, F161}

【■】賊律^{54, C18}

盜臧直過六百六十錢黥為城旦舂六百六十到二百廿錢完為城旦舂不盈二百廿到

百一十錢耐為隸臣妾—不^{55, F164} 盈百一十錢到廿二錢罰金四兩—不盈廿二錢到一錢罰金一兩^{56, F180}

謀遣人盜若教人可盜所人即以其言□□□□□及智人盜與分皆與盜同灋^{57, F177A,B}

【謀】偕盜而各有【取】也并直其臧以論之^{58, F184}

【盜=人臧見】存者皆以畀其主^{59, F181}

受賂以枉灋及行賂者皆坐其臧為盜罪重於盜者以重者論之^{60, F178}

徼外人來入為盜者要斬—吏所興能捕若斬一人擗爵一級不欲擗爵及非吏所興購如律^{61, F175}

盜五人以上相與功盜為群盜^{62, F176}

智人為群盜而通飲食餽遺之與同罪弗智黥為城旦舂其能自捕若斬之除其罪有賞如捕斬^{63, F173}

群盜灋弗能捕斬而告吏除其罪勿賞^{64, F165}

群盜及亡從群盜毆折人桡【肤】體及令彼蹇若縛守將人而強盜之及投書縣人書恐獨人以求^{65, C311} 錢財—盜殺傷人盜發冢—略賣人若已略未賣—橋相以為吏自以為吏以盜皆磔^{66, C310}

智人略賣人而與賈與同罪不當賣而和為人賣=者皆黥為城旦舂買者智其請與同罪^{67, C309}

劫人謀劫人求錢財雖未得若未劫皆磔之完其妻子以為城旦舂其妻子當坐者偏捕若告吏=^{68, C286} 捕得之皆除坐者罪^{69, C307}

諸當坐劫人以論者其前有罪隸臣妾以上及奴婢毋坐為=民=者亦勿坐^{70, C306}

相與謀劫=人=而能頗捕其與若告吏=捕頗得之除告者罪有購錢人五萬所捕告得者多以人數購之^{71, C305} 而勿責其劫人所得臧所告毋得者若不盡告其與皆不得除罪—諸予劫人者錢財及為人劫者同居^{72, C304} 智弗告吏皆與劫人者同罪劫人者去

未盈一日能自頗捕若偏告吏皆除^{73, F160}

盜出財物于邊關徼及吏部主智而出者皆與盜同灋弗智罰金四兩使者所以出必有符致毋符致^{74, C274} 吏智而出之亦與盜同灋^{75, C273}

盜出黃金邊關徼吏卒徒部主者智而出及弗索與同罪弗智索弗得戍邊二歲^{76, C272}

□□【以財物私】自假=貳=人罰金二兩其錢金布帛粟米馬牛毆與盜同灋 77, F20

諸有段於縣道官【事已段當歸弗歸盈廿】日以私自段律論其【段別在它所】有物故毋道歸段者自言在 78, C30 所縣=道=官=以書告段在所縣道官收之其不自言盈廿日亦以私自假律論其段已前入它官及在縣道官非 79, C66

【諸盜□皆以罪所平】賈直論之 80, F27

■ 盜律 鄭~~次~~書 81, F21

上=造=妻以上及內公孫外公孫內公耳玄孫有罪其當刑及當為城旦舂者耐以為鬼薪白粲 82, C19

【公=士=妻及□□行年七十以上若年】不盈十七歲有罪當刑者皆完之 83, C21

☐殺傷其夫不得以夫爵論 84, C23

呂宣王內孫外孫內耳孫玄孫諸侯王子—內孫—耳孫徹侯子內孫有罪如上=造=妻以上 85, C22

吏民有罪當笞謁罰金一兩以當笞者許之有罪年不盈十歲除其殺人完為城旦 86, C20

☐所與同鬼薪白粲也完以為城旦舂 87, C21

有罪當黥故黥者劓之—故劓者斬=左=止=者斬=右=止=者府之女子當磔若要斬者棄市當斬為城旦者黥為舂當贖斬者贖黥 88, C24 當耐者贖耐 89, C25

有罪當耐其灋不名耐者庶人以上耐為司=寇=耐為隸=臣=妾=及收人有耐罪毆城旦舂六歲毆日未備而復有耐罪完 90, C26 【為】城=旦=舂=有罪耐以上黥之其有贖

罪以下及老小不當刑=盡者皆笞百—城旦刑盡而盜臧百一十錢以上若賊傷人及殺人而先 91, C28 自告也皆棄市 92, C295

鞠獄故縱不直及診報辟故弗窮審者死罪斬左止為城旦它各以其罪論之其當毆城旦舂—作官府—償日者 93, C34 罰歲金八兩—不盈歲者罰金四兩 94, C35 □□□□兩—購沒入負償各以其直數負之其受賕者駕其罪二等所予減罪重以重者論之亦駕二等—其非故也而失不 95, C36 【審者以】其贖論之爵戍四歲及毆城旦舂六歲以上罪

罰金四兩贖死贖城旦舂鬼薪白粲贖斬宮贖劓黥戍不盈 96, C58 四歲毆不盈六歲及罰

金一斤以上罪罰金二兩⁹⁷一⁹⁸般不盈三歲贖耐贖⁹⁹及不盈一斤以下罪購沒入負償=日作縣^{97, C37}官罪罰金一兩^{98, C39}

一人有數【☒罪】毆以其重罪=之^{99, C38A, B}

□□□□□以其罪論之一完城旦舂罪黥之鬼薪白粲罪黥以為城旦舂其自出者死罪黥為城旦舂它罪完為城旦舂^{100, C59}

諸欲告罪人及有罪先自告而遠其縣廷者皆【得告所在鄉=官謹聽書其告上】縣道官一廷士吏亦得聽告^{101, C33}

縣道官守丞毋得【斷獄及獻相國御史及】二千石官所置守段吏若丞缺令一尉為守丞皆得斷獄獻獄^{102, C40}事當治論者其令長丞或行鄉官視它事不存及病而非出縣道界也及諸都官令長丞行離官有它事^{104, C41}而皆其官之事也及病非出官在所縣道界也其守丞及令長若真丞存者所獨斷治論有不當者令真令長^{105, C42}丞不存及病者皆共坐之如身斷治論及存者之罪唯謁屬所二千石官者乃勿令坐^{106, C297}

皆令監臨庫官而勿令坐官^{103, F101}

城旦舂鬼薪白粲有罪耐以上而當刑復城旦舂及曰黥之若刑為城旦舂及奴婢當刑畀主其證不言情，誣^{121, C303}告=之不審鞠之不直故縱弗刑若論而失之及守將奴婢而亡之篡遂從之及諸律令中曰與同灋同罪其所^{107, C294}與同當刑復城旦舂及曰黥之若鬼薪白粲當刑為城旦舂及刑畀主之罪也皆如耐罪然其縱之而令亡城旦^{108, C293}舂鬼薪白粲也縱者黥為城旦舂^{109, C290}

證不言請以出入罪人者死罪黥為城旦舂它各以其所出入罪反罪之獄未鞠而更言請者除一吏謹先以辨告證^{110, C289}

譯訊人為詐偽以出入罪人死罪黥為城旦舂它各以其所出入罪反罪之^{111, C288}

劾人不審為失其【輕】罪也而故以重罪劾之為不直^{112, C287}

【治獄者】各以其【告劾】治之敢放訊杜雅求其它罪及人毋告劾而擅覆治之皆以鞠獄故不直論^{113, C285}

罪人獄已決自以罪不當欲乞鞠者許之乞鞠不審駕罪一等其欲復乞鞠當刑者刑乃聽之一死罪不得自乞^{114, C284}鞠其父母兄弟¹¹⁵弟妻子欲為乞鞠許之其不審黥為城

旦春一年未盈十歲為气鞠勿聽獄已決盈一歲不^{115, C283}得气=鞠=者各辭在所縣=

道=官令長丞謹聽書其气鞠上獄屬所二=千=石=官=令都吏覆之都吏所覆治廷^{116,}

C282 及郡各移旁近郡御史丞相所覆治移廷^{117, F149}

毋敢以投書者言毆治人不從律者以鞠獄故不直論^{118, C275}

贖死金二斤八兩贖城旦春鬼薪白粲金一斤八兩一贖斬府金一斤四兩贖劓黥金一

斤贖耐金十二兩一贖罽金八兩有罪當府者移內=官=府之^{119, C292}

鬼薪白粲有耐罪到完城旦春罪【黥以為城旦春其】有贖罪以下答百^{121, C296}

人奴婢有刑城旦春以下至罽耐罪黥顏頰畀主其有贖罪以下及老小不當刑=盡者皆

答百一刑盡而賊傷人及殺人先自告也棄市一有罪^{122, C302}當完城旦春鬼薪白粲以

上而亡以其罪命之一耐隸臣妾罪以下論令出會之其以亡為罪當完城旦春鬼薪白

粲以上不得者亦以其罪^{123, C314}【論命之】庶人以上司寇隸臣妾無城旦春鬼薪白

粲罪以上而吏故為不直及失刑之皆以為隱官女子庶人毋筭事其身令自尚^{124, C313}

■具律^{125, C312}

誣告人以死罪黥為城旦春它各反其罪^{126, C17}

告不審及有罪先自告各減其罪一等【死罪黥=為=城=旦=春=罪】完=為=城=旦=

春=【罪】☐^{127, F18A+F fragmentary 8} ☐鬼薪白粲及府罪耐為隸=臣=妾=罪^{128, F fragmentary 6+F}

fragmentary 8 耐為司=寇=罽及黥顏頰罪贖=耐=罪罰金四兩贖【死罪贖=城=旦=春=罪

贖=斬=罪贖=黥=罪贖耐=罪】^{129, F19+ fragmentary 5} ☐金四兩罪罰=金=二=兩=罪罰金一

兩令丞令史或偏先自^{130, F32}得之相除^{131, F28}

殺傷大父=母=及奴婢殺傷主=父母妻子自告者皆不得減告人不審所告有它罪與

告也罪等以上告者不為不審^{132, F5}

子告父母一婦告威公一奴婢告主=父母妻子勿聽而棄告者市^{133, C32}

年未盈十歲及毆者城旦春鬼薪白粲告人皆勿聽^{134, C29}

奴婢自訟不審斬奴左止黥婢顏頰畀其主^{135, F157}

■告律^{136, F155}

☐亡人【略】妻略賣人強奸偽寫印者棄市罪一人購金十兩刑城旦春罪購金四兩完

城^{137, F35} 二兩^{138, F fragmentary}

訶告罪人吏捕得之半購訶者^{139, F8}

群盜殺傷人賊殺傷人強盜【即】發【縣=】道=亟為發吏徒足以追捕之尉分將令兼將亟詣盜賊發及之所以窮追捕之【毋敢】□^{140, F15+F9} 界而環一吏將徒追求盜賊必伍之盜賊以短兵殺傷其將及伍人而弗能捕得皆戍邊二歲一卅日中能得其半以上盡【除其罪】^{141, C16} 得不能半一得者獨除 ● 死事者置後如律大痍臂臑股肱或誅斬除與盜賊遇而去北及力足以追逮捕之【而官】□□□□□【逗】^{142, C67} 留畏栗弗敢就奪其將爵一綖免之毋爵者戍邊二歲【而罰其所將吏徒以卒戍邊各一歲與吏徒追】盜賊已受令而逋以畏栗論之^{143, C61A, B}

盜賊發士吏求盜部者及令丞尉弗覺智士吏求盜皆以卒戍邊二歲令丞尉罰金各四兩令丞尉能先覺智求捕其盜賊及自劾論^{144, C51} 吏部主者除令丞尉罰一歲中盜賊發而令丞尉【所】不覺智三發以上皆為不勝任免之^{145, C50}

群盜=賊發告吏=匿弗言其縣廷言之而留盈一日以其故不得皆以鞠獄故縱論之^{146, C75}

□□□□發及鬪殺人而不得官嗇夫士吏=部主者罰金各二兩尉=史各一兩而斬捕【得不得所殺】傷及臧物數屬所二=千=石=^{147, C74} 官=上丞相御史能產捕【群盜一人若斬】二人【擗爵一級其】斬一人若爵過夫=及不當擗爵者皆購之如律所捕斬雖【後會赦不】^{148, C48} 論行其購賞【斬】群盜必有以【信之】乃行其賞^{149, C47} 捕從諸侯來為間者一人擗爵一級有購二萬錢不當擗爵者級賜萬錢有行其購數人共捕罪人而當購賞欲^{150, C45} 【相移】者許之^{151, C299}

捕盜賊罪人及以告劾逮捕人所捕格鬪而殺傷之及窮之而自殺也殺傷者除其當購賞者半購賞之一殺傷^{152, C280}

群盜一命者及有罪當命未命能捕群盜一命者若斬之一人免以為庶人所捕過此數者贖如律^{153, C46}

【數人】共捕罪人而獨自書者勿購賞吏主若備盜賊亡人而捕罪人及索捕罪人若有告劾非亡也或捕之而^{154, C269} 非群盜也皆勿購賞捕罪人弗當以得購賞而移予它人

及詐偽皆以取購賞者坐臧為盜 155, C268

■捕律 156, C264

吏民亡盈卒歲耐不盈卒歲毆城旦舂—公=士=妻以上作官府皆償亡日其自出毆笞五十給逋事皆籍亡日耐數盈卒歲而得亦耐之 157, F6

女子已坐亡贖耐後復亡當贖耐者耐以為隸妾—司寇隱官【坐】亡罪隸臣以上輸作所官 158, C43

☐【類畀主其自出】毆若自歸主=親所智皆笞百 159, F18B

奴婢亡自歸主=親所智及主=父母子若同居求自得之其當論畀主或欲勿詣吏論者皆許之 160, F2

☐主入購縣官其主不欲取者入奴婢縣官購之 161, F7

奴婢為善而主欲免者許之奴命曰私屬—婢為庶人皆復使及筭事之如奴婢主死若有罪 162, C271 以私屬為庶人刑者以為隱官所免不善身免者得復入奴婢之其亡有它罪以奴婢律論之 163, F158

城旦舂亡黥復城旦舂鬼薪白粲也皆笞百 164, F3A+F4

隸臣妾收人亡盈卒歲毆城旦舂六歲不盈卒歲毆三歲自出毆【笞百其去毆三歲亡毆六歲去毆】六歲亡完為城旦舂 165, C31

諸亡自出減之母名者皆減其罪一等 166, C49

匿罪人死罪黥為城旦舂它各與同罪其所匿未去而告之除—諸舍匿罪=人=自出若先自告罪減亦減舍匿者罪所舍 167, C65

取人妻及亡人以為妻及為亡人妻取及所取為謀者智其請皆黥以為城旦舂其真罪重以匿罪人律論弗智 168, C54 者不☐ 169, fragmentary

諸舍亡人及罪人亡者不智其亡盈五日以上【所舍罪當黥】☐【贖耐】【完城旦舂以下到耐罪】及亡收隸臣妾【奴婢】及亡盈十二月以上 170, C62A,C,D,B

贖耐 171, C298

取亡罪人為庸不智其亡以舍亡人律論之—所舍取未去若已去後智其請而捕告及

詔告吏捕得之皆除其罪勿購賞 172, C60

■亡律 173, C57

罪人完城旦鬼薪以上及坐奸府者皆收其妻子財田宅其子有妻夫若為戶有爵及年十七以上若為人妻而棄寡者 174, C263 皆勿收坐奸略妻及傷其妻以收毋收其妻 175, C262

夫有罪妻告之除于收及論一妻有罪夫告之亦除其夫罪 ● 毋夫及為人偏妻為戶

若別居不同數者有罪完舂白 176, C261 粲以上收之毋收其子內孫毋為夫收 177, C260

有罪當收獄未決而以賞除罪者收之 178, F146

當收者令獄史與官嗇夫吏襍封之上其物數縣廷以臨計 179, F147

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GLOSSARY
LEGAL TERMS IN THE PENAL STATUTES

bai jue 拜爵 to bestow a meritorious rank on someone

bai can 白粲 sorters of white rice

bao 報 to report [the results of the investigation of criminal cases]

bi 婢 a [private] female slave

bi 辟 to condemn someone

bi 剕 to cut off the nose

bian 變 to miscarry

bi zhu 畀主 to give back [a female or male slave] to his or her owner

bu 捕 to arrest someone

bu dang 不當 being unjust

bu shen 不審 (aux) not being confirmed [according to the facts of a criminal case]

bu shen 不審 (adv) without careful scrutiny

bu xiao 不孝 to be unfilial

bu zhi 不直 not being straight

chang 償 to expiate

chengdan 城旦 earth pounders

chi 笞 to cane someone

chong 舂 grain pounders

chu 出 to write off (something)

chu 除 to exempt (someone) from punishment

chu ru zui ren 出入罪人 to punish someone more severely or more lightly

ci 辭 statements [before an authority]

dai 逮/逕 to arrest someone

dang 當 (sv) to be just

dang 當 (aux) (by law) shall be

dao 盜 (v) to steal; to rob

dao 盜 (n) a thief; robbers; theft

dao 盜 (adv) for the purpose of theft

dao 盜 (adv) stealthily

de 得(人) to catch (someone)

dou 鬥 (v) to fight

dou 鬥(殺/傷) (adv) (to kill/injure someone) during a fight

duan yu 斷獄 to decide a criminal case

duo jue 奪爵 to deprive someone of a meritorious rank

fa 罰(金) (v) to fine (a person) gold

fa 罰(金) (n) a fine

fan 反 to rebel

fu 覆(獄) to review (a criminal case)

fu 腐 to castrate (someone)

fu 復 to have incest with (someone)

fu 負 to compensate something

gai 改(辭) to change (a statement)

gao 告 to accuse (someone of a crime) [to the authority]

gou 詢 to scold (someone)

gu 故 with intent

gu 辜死 because of (a injury) die

gu 錮(罪人) to deprive (a criminal offender) of his privileges

gui xin 鬼薪 firewood gatherers for spirits

guo shi 過失 with negligence

gu zong 故縱 to release (an incarcerated person) with intent

han 悍 to be impertinent

he 劾(人) (v) to charge (someone with a crime) [to the authority]

he 劾 (n) a charge

he 和 in mutual consent

ji 跡 traces

jia 加(罪) to increase the punishment

jian 奸/姦 (v) to fornicate with someone

jian 奸/姦 (n) a fornication

jian 減(罪) to reduce the punishment; to mitigate a sentence

jiao zhi 矯制 to claim an imperial edict fraudulently

jie 詰(人) to confront (an accused) with other evidence [during interrogation]

jie ren 劫人 to kidnap someone

jie ren zhe 劫人者 kidnappers

jin 謹 carefully

ju 鞠 to summarize the facts (of a criminal case)

ju yu gu bu zhi 鞠獄故不直 to summarize facts of a criminal case not straightly with intent

jue 爵 a meritorious rank

kong xie 恐猲 to threaten someone

li 詈(人) to insult (higher-ranking relatives or officials)

lichen 隸臣 male bondservants

ling 令 (v) to order

ling 令 (n) an edict

ling zi shang 令自尚 to order (someone) to be responsible for oneself

liqie 隸妾 female bondservants

liu sha 流殺 to drown

lǜ 律 a statute

lüe mai 略賣(人) to kidnap and sell (someone)

lun 論 (v) to judge (someone/ a criminal case)

lun 論 (n) a judgment

lun shi 論失 to commit a judicial error in passing a judgment

man 謾 to deceive

mian 免(人) to relieve (a person) from [punishment; penal labor; an obligation; an office; slavery]

min 民 commoners; common people

mou 謀 to devise a scheme (to commit a criminal offence)

nai 耐 to shave off the beard

ni 匿(人) to conceal (an offender)

nu 奴 a (private) male slave

ou 毆 to beat someone

qi ju 乞鞠 to request for a retrial

qi shi 棄市 to execute (a criminal offender) in the marketplace

qian 遷 (v) to banish (someone)

qian 遷 (n) a banishment

qiang dao 強盜 to steal by force

qiang jian 強姦 to rap someone

qing 情 the truth

qing 黥 to tattoo (a criminal offender) on the forehead

qing yan kui 黥顏頰 to tattoo (a criminal offender) on the forehead and the cheekbone

qing zui 輕罪 a misdemeanor

qiu 囚 an incarcerated prisoner

qiu 求(人) to search for (someone)

qiu dao 求盜 thief catchers

qun dao 群盜 a gang of thieves

san huan zhi 三環之 to refuse [an accusation] three times

sha 殺(人) to kill (someone); to commit a homicide

shan 擅 without authority

shang 傷(人) to injure (someone)

shang 賞 to reward (someone)

she 舍(罪人) to shelter (an offender)

she ni 舍匿(罪人) to shelter and conceal (an offender)

shi 失(論/罪) to commit a judicial error (when passing judgment)

shi 失 (adv) by accident; accidentally

shi 實 the facts/ the truth

shi wu 士五 persons of rank and file

shou 守 to keep guard

shou 收(人) (v) to enslave (an offender's wife and children)

shou 收(物) (v) to confiscate (something)

shouren 收人 the persons who are enslaved by the government [because of linked liabilities among family members]

shu 贖 (v) to pay a redemption fee

shu 贖(罪) (v) to redeem (someone) from punishment

shu bian 戍邊 to perform military service at the frontiers

shu ren 庶人 free persons

si kou 司寇 a robber guard

si shi 死事 to die in the service

si zi 私自 to do something without authority

suo 索 to search (someone/ something)

ting 廷 a court [as seat of the judicial authorities]

tong zui 同罪 to punish (an offender X) the same as (on offender Y)

tong ju 同居 persons living within the same household

tou shu 投書 to throw anonymous letters [into the government]

tong chan 同產 siblings

tu 徒 (statutory or convict) laborers

wan 完 to leave someone without mutilation

wang 亡 (v) to abscond

wang 亡 (v) to lose something

wang fa 枉法 to pervert the law

wang ren 亡人 absconders

wei jian 為間 to be a spy

wei wei shu 為偽書 to make forged documents

wu gao 誣告 to accuse (someone) falsely

xi 繫 to hold (someone) in detention

xi 戲 to frolic

xi chengdanchong 繫城旦舂 to hold (someone) in detention and make (someone) do labor as earth pounders or grain pounders

xian ren shu 懸人書 to hang anonymous letters [in public]

xiang 降 to surrender

xiao shou 梟首 to behead someone

xie 隳 to insult someone

xing 刑 (n) a mutilation punishment

xing 刑 (v) to mutilate someone

xing jin 刑盡 to receive all kinds of mutilation punishments

xing shou hui 行受賕 to give or accept bribes

xun 訊(人) to interrogate (a suspect or a witness)

yan 讞(獄) to submit (a criminal case) [to the higher authority] for decision

yao zhan 要斬 to cut (someone) in two at the waist

yi 詣 to present (someone) before the authority

yin guan 隱官 hidden officials

yu 獄 a criminal case

yu mou 與謀 to conspire with (someone) [to commit a crime]

zang 贓 spoils

zei 賊 (adv) with malice aforethought

zei 賊 (n) malefactor, criminal, bandit

zei fan 賊燔 to burn up something with malice aforethought

zha 詐 (n) a fraud

zha 詐 (adv) fraudulently

zhan 斬 to execute (someone)

zhan you zhi 斬右趾 to cut off the right foot

zhan zuo zhi 斬左趾 to cut off the left foot

zhe 磔(人) to quarter (a criminal offender)

zhen 診 to examine forensically (a person's body or things)

zheng 爭 to quarrel with someone

zhi 知 to be aware of something

zhi 治(人/獄) to try (a person or a criminal case)

zhong zui 重罪 a felony

zhui 追 to pursue (a suspect)

zi chu 自出 to give oneself up to the authority

zi gao 自告 to accuses oneself to the authority

zi song 自訟 to defend oneself [during interrogation]

zong qiu 縱囚 to release (an incarcerated prisoner)

zuan sui 篡遂 to release (an incarcerated someone) by force

zui 罪 (n) a punishment

zui 罪 (n) a crime

zui 罪 (v) to punish someone

zui ren 罪人 offenders

zuo 坐 (罪) to convicted someone of (a crime)

zuo guanfu 作官府 to work in the government workshops

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