

The Ordinances on Fords and Passes

Excavated from Han Tomb Number 247, Zhangjiashan

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In 1984, from [the Han] tomb number 247 at Zhangjiashan 張家山, in Jiangling 江陵 county, Hubei province, more than 500 bamboo slips recording Han statutes (*lü* 律) were unearthed. In November of 2001 a formal report was published by Wenwu chubanshe.¹ Earlier, in 1988, I had paid a call to Li Xueqin 李學勤, a member of the team for organizing and deciphering the bamboo slips from Zhangjiashan tomb 247. From him I heard that the texts of the laws recorded on these slips were even more important than those of the Qin statutes excavated at Shuihudi 睡虎地, Yunmeng 雲夢, Hubei,² but as the bamboo slips were warped, taking photographs of them was exceptionally difficult. After that, fifteen years passed before the volume came out, and ten since Li Xueqin's 1992 lecture "On the Han Statutes on Bamboo Slips from Tomb No. 247 at Zhangjiashan (Jiangling)" was presented at the 1992 International Symposium on Research on Han Slips organized by the Tōzai Gakujutsu Kenkyūjo (Institute of Oriental and Occidental Studies, Kansai University).³ My reaction to finally holding a copy of the report in my hand was, "Well, I managed to see it while still alive. With publication going on at this pace in China, I wonder how many more volumes I will be able to see in my lifetime." Thinking about the reports

¹ Zhangjiashan ershiqi hao Han mu zhujian zhengli xiaozu 張家山二十七號漢墓竹簡整理小組, ed., *Zhangjiashan Han mu zhujian (ershiqi hao mu)* 張家山二十七號漢墓竹簡 (二十七號墓) (Beijing: Wenwu chubanshe, 2001; hereafter ZJS). Most parenthetical expressions in the main body of this article were supplied by the translators.

² The most recent edition of these texts is Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, ed., *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu chubanshe, 2001) (trans.). Hereafter, all footnotes marked as "(trans.*)" have been written and added by the translators of Professor Ōba's article.

³ Ōba Osamu 大庭脩, ed., "Kankan kenkyū no kenjō to tenbō" 漢簡研究の現状と展望, *Kankan kenkyū kokusai Shinpojyumu '92 hōkokusho* 漢簡研究國際シンポジウム'92 報告書 (Osaka: Kansai daigaku shuppanbu, December, 1993). Li Xueqin's text is at pp. 113–23.

that should have come out long before now, I thought to myself with regret that it will be those who come later who do the work.

OVERVIEW OF THE ZHANGJIASHAN TEXTS

According to *Zhangjiashan Han mu zhujian (ersiqi hao mu)*, there were “1,236 excavated slips [not including the fragments], of which 18 represent a calendar, 526 represent statutes and ordinances (*lüling* 律令) ‘of the second year,’ 228 represent court records concerning criminal cases presented to the throne for further evaluation and some of the responses (*zouyan shu* 奏讞書), 66 represent *Writings on the Pulse* (*Maishu* 脈書), 190 represent *Writings on Calculation* (*Suanshu shu* 算數書), 55 represent the *He Lü* 蓋廬,⁴ 112 represent *Writings on Pulling [the Qi]* (*Yinshu* 引書), and 41 represent the tomb inventory (*qiance* 遣策).”⁵

The name for the section “Statutes and Ordinances of the Second Year” was derived from the heading on the obverse of slip 1. The term “second year” was thought to refer to the second year of the reign of Empress Dowager Lü 呂后 (186 BC), because one article on slip 85 mentions giving favorable treatment to King Xuan of the Lü clan 呂宣王 and his relatives.⁶ The calendar is a record of the years between the fifth year of the reign of Gaozu 高祖 (202 BC) and the second year of Empress Dowager Lü’s reign.

If we list the titles of statutes seen on the bamboo slips from Zhangjiashan, we would have the following:⁷

1. Statutes on Agriculture (Fields) 田律 (睡: *Hulsewé* 1985 A1-6⁸ 文: *Hulsewé* 1955: 37;⁹ *ZJS*, pp. 165-68)

⁴ A *yin-yang* military text named after the King of Wu 吳王 He Lü (also written 闔廬) (trans.).

⁵ Of these, the *Writings on the Pulse* were published by Gao Dalun 高大倫 as *Zhangjiashan Han jian Maishu jiaoshi* 張家山漢簡脈書校釋 (Chengdu: Chengdu chuban she, 1995); and *Writings on Pulling [the Qi]*, as *Zhangjiashan Han jian Yinshu yanjiu* 張家山漢簡引書研究 (Chengdu: Bashu shushe, 1995). The *Writings on Calculation* were published by Peng Hao 彭浩 as *Zhangjiashan Han jian Suanshu shu zhushi* 張家山漢簡算數書注釋 (Beijing: Kexue chubanshe, 2001). For *Zouyan shu*, see Ikeda Yūichi 池田雄一, ed., *Sogensho: Chūgoku kodai no saiban kiroku* 奏讞書中国古代の裁判記録 (Tokyo: Tōsui Shobō, 2002) (trans.).

⁶ *ZJS*, p. 146 (trans.).

⁷ In grouping them, I have marked an item as “*Shui*” 睡 when it is the name of a statute from the Qin slips at Shuihudi, Yunmeng, and as “*wen*” 文 when it appears in transmitted literary sources. Statutes having no mark were unknown prior to the Zhangjiashan excavation. (Omissions in Professor Ōba’s list have been rectified by the translators.)

⁸ A. F. P. Hulsewé, *Remnants of Ch’in Law: An Annotated Translation of the Ch’in Legal and Administrative Rules of the 3rd Century B.C. Discovered in Yün-meng Prefecture, Hu-pei Province, in 1975*, Sinica Leidensia 17 (Leiden: E.J. Brill, 1985; hereafter, *Hulsewé* 1985) (trans.).

⁹ A. F. P. Hulsewé, *Remnants of Han Law*, Sinica Leidensia 9 (Leiden: E. J. Brill, 1955; hereafter, *Hulsewé* 1955), vol. 1 (trans.).

2. Statutes on Currency 金布律 (睡: *Hulsewé 1985* A36-50 文: *Hulsewé 1955*: 38; *ZJS*, pp. 159-61)
3. Statutes on (Passes and) Markets 市律 (睡: *Hulsewé 1985* A51; *ZJS*, pp. 168-69)¹⁰
4. Statutes on Statute Labor 徭律 (睡: *Hulsewé 1985* A64; *ZJS*, pp. 187-89)
5. Statutes on Ranks 爵律 (睡: *Hulsewé 1985* A90-91 Statutes concerning Aristocratic Rank bestowed for Military Action; *ZJS*, p. 185)
6. Statutes on the Establishment of Officials 置吏律 (睡: *Hulsewé 1985* A79-81; *ZJS*, pp. 161-63)
7. Statutes on Checking 效律 (睡: *Hulsewé 1985* A82-89, B1-29; *ZJS*, pp. 180-81)
8. Statutes Concerning Food Rations for Holders of Passports 傳食律 (睡: *Hulsewé 1985* A92-94; *ZJS*, pp. 164-65)
9. Statutes Concerning the Forwarding of Documents 行書律 (睡: *Hulsewé 1985* A95-96; *ZJS*, pp. 169-71)¹¹
10. Statutes on Banditry 賊律 (文: *Hulsewé 1955*: 33; *ZJS*, pp. 133-41)
11. Statutes on Robbery 盜律 (文: *Hulsewé 1955*: 32-33; *ZJS*, pp. 141-45)
12. Statutes on the Composition of Judgments 具律 (文: *Hulsewé 1955*: 34; *ZJS*, pp. 145-51)
13. Statutes on Denunciation 告律 (*ZJS*, pp. 151-52)
14. Statutes on Arrest 捕律 (文: *Hulsewé 1955*: 34; *ZJS*, pp. 152-54)
15. Statutes on Abscondence 亡律 (*ZJS*, pp. 154-54)
16. Statutes on Impoundment 收律 (文: *Hulsewé 1955*: 33-34 Statutes on (Incarcerated) Convicts 囚; *ZJS*, pp. 156-57)¹²
17. Miscellaneous statutes 雜律 (文: *Hulsewé 1955*: 34; *ZJS*, pp. 157-59)
18. Statutes on Coinage 錢律 (文: *Hulsewé 1955*: 38; *ZJS*, pp. 159-61)
19. Statutes on Equalizing Transportation 均輸律 (*ZJS*, pp. 163-64)
20. Statutes on Exemptions (from Taxes) 復律 (*ZJS*, p. 171)
21. Statutes on Bestowals 賜律 (*ZJS*, pp. 172-74)

¹⁰ *Guan* were checkpoints through which all voyagers were required to pass. Travelers were obliged to show to the officials stationed there their credentials that gave them permission to pass through. Charles O. Hucker, *A Dictionary of Official Titles in Imperial China* (Stanford: Stanford U.P., 1985) translates the term as “customs-house” or “barrier.” It should be noted that not every *guan* was situated at a mountain pass and that ordinances on passes and fords continued to be legal enactments throughout later imperial history. For a discussion of the Five Passes mentioned in the slips not discussed by Professor Ōba, see Wang Zijin 王子今 and Liu Huazhu 劉華祝, “Shuo Zhangjiashan Han jian ‘Ernian lüling’ ‘Jinguan ling’ suo-jian Wuguan” 說張家山漢簡二年律令津關令所見五關, *Zhongguo lishi wenwu* 中國歷史文物 1 (2003), pp. 44-52 (trans.).

¹¹ See Peng Hao, “Du Zhangjiashan Han jian Xingshu lü” 讀張家山漢簡行書律, *WW* 9 (2002), pp. 54-59 (trans.).

¹² For the legal meaning of *shou*, see Robin D. S. Yates, “Slavery in Early China: A Socio-cultural Perspective,” *Journal of East Asian Archaeology* 3.1-2 (2002), pp. 283-331 (trans.).

22. Statutes on Households 戶律 (文: *Hulsewé 1955*: 36; *ZJS*, pp. 175-79)
23. Statutes on Establishing Heirs 置後律 (*ZJS*, pp. 182-85)
24. Statutes on Salaries 秩律 (*ZJS*, pp. 192-203)
25. Statutes on Scribes 史律 (*ZJS*, pp. 203-5)
26. Statutes on Levies 興律 (文: *Hulsewé 1955*: 34-35; *ZJS*, pp. 186-87)
27. Statutes concerning Enrollment 傅律 (睡: *Hulsewé 1985 C20*; *ZJS*, pp. 181-82)

If we look at these statutes 律, there are many points of interest to be considered, but in the present discussion I will focus on the texts of the ordinances 令 of which there are only the Ordinances on Fords and Passes 津關令. The slips containing the texts of the ordinances are the 39 slips numbered 488-526.¹³ Of these, those absolutely necessary for this discussion are the following.¹⁴

TRANSLATIONS OF ORDINANCES

A THROUGH J ON FORDS AND PASSES

A. No. 1. The Censor-in-chief (*yushi* [*dafu*] 御史[大夫])¹⁵ says: “As to those who go beyond the frontier and through the passes illegally, a final decision (*lun* 論) has not been [rendered].¹⁶ [The Censor-in-chief] requests that whoever enters and exits the fords and passes at the frontiers illegally be tattooed and made to build walls [for men] and pound grain [for women] 黥為城旦舂,¹⁷ that whoever

¹³ *ZJS*, pp. 205-10 (trans.).

¹⁴ Professor Ōba did not translate the following selection of ordinances, and he accepted the numbering of the *ZJS* editors. This makes it difficult in several cases to determine precisely how he understood the texts to be interpreted. The translators have benefitted from recent Chinese scholarship that was unavailable to Professor Ōba when he wrote his essay. This scholarship will be cited in the notes. However, the translators did not have access to Yang Jian’s 楊建 doctoral dissertation, *Xi Han chuqi jinguan zhidu yanjiu* 西漢初期津關制度研究 (Wuhan: Wuhan daxue, 2002), cited by Chen Wei 陳偉, “Zhangjiashan Han jian ‘Jinguan ling’ shema zhuling yanjiu” 張家山漢簡津關令涉馬諸令研究, *Kaogu xuebao* (2003.1), p. 42, n. 4, though they have been able to consult Yang’s article “Zhangjiashan Han jian ‘Ernian lüling: Jinguan ling’ jianshi” 張家山漢簡二年律令津關令簡釋, in Ding Sixin 丁四新, ed., *Chu di chutu jianbo wenxian sixiang yanjiu (yi)* 楚地出土簡帛文獻思想研究 1 (Wuhan: Hubei jiaoyu chubanshe, 2002), pp. 316-41. The translators have corrected without comment obvious typographical errors in Professor Ōba’s original manuscript (trans.).

¹⁵ The *ZJS* editors suggest that *yushi* is an abbreviation for *yushi dafu* 御史大夫. There is as yet no widely accepted standard for translations of Chinese official titles. However, many renderings used here derive from and are explained in Hucker, *Dictionary of Official Titles*, and in Hans Bielenstein, *The Bureaucracy of Han Times* (Cambridge: Cambridge U.P., 1980) (trans.).

¹⁶ One graph missing (trans.).

¹⁷ These are the longest hard-labor sentences, probably five or six years in duration. See

passes the frontiers illegally [be sentenced to] amputation of the left foot and made to build walls; and that those officers and men in charge, if they do not catch them, [be sentenced to] redeemable shaving off of the beard.

“For the Prefect (*ling* 令), (488) Assistant (*cheng* 丞) and the County Clerks (*lingshi* 令史) the fine shall be 4 ounces (*liang* 兩) of gold. Those who in full knowledge of the facts yet enter or exit [the frontiers and passes], and who lend or give another person a tally or passport so as to permit him with this to enter or exit illegally, should share the same crime. If it is not the case that what they □ made/was □, but have on their own responsibility made passports to enter and exit the fords and passes, (*lacuna*) (489) sentence them according to the Ordinance on Passports (*Zhuan ling* 傳令) and the Ordinance on Illegal Trespassing (*Lan ling* 闌令) and where the passports were made and the counties and towns (*xianyi* 縣邑) that (transmit) the passports to the frontiers¹⁸ as well as the Commandants in Charge of Preparations for the Frontier (*Beisai duwei* 備塞都尉),¹⁹ the Officials at the Passes (*guanli* 關吏), the subordinates in those Offices (*guanshu ren* 官屬人), the army officers and men guarding the frontiers ... (13 graphs, most indecipherable)... (490)

... let those who are forwarding documents to post stations on the frontiers [and] to the gates and guard-posts (*menting* 門亭) be able to enter and exit using tallies.”

- The (imperial) decision (*zhi* 制) stated: “Approved.” (491)²⁰

B. No. □. An [imperial] decision instructs (*zhizhao* 制詔) the Censor-in-chief: “Let orders be given to all the passes to the effect

Xing Yitian (Hsing I-tien) 邢義田, “Cong Zhangjiashan Han jian ‘ernian lüling’ lun Qin Han de xingqi wenti” 從張家山漢簡二年律令論秦漢的刑期問題, *Taida lishi xuebao* 臺大歷史學報 31 (2003), pp. 311–22 (trans.).

¹⁸ ZJS and Yang Jian end the sentence after *ji suowei zhuanzhe* 及所為傳者, which might be interpreted as “and this should extend to where the passports were made,” but they do not recognize the lacuna at the end of the slip noticed by Ōba and visible in the photograph. The lacuna could include one or two graphs of the title of the Ordinance on Passports: in other words, the title might have been “Ordinance on ... /and Passports. Ōba disregards the sentence break. An alternative rendition might be, “As regards the passports that were made, (if) the counties and towns transmit (them) to the frontier and (if) those among the Commandants ..., the officials ..., the subordinates ..., the army officers and men who guard the frontiers ...” (trans.).

¹⁹ According to slip 440, p. 192, this high official had a salary rank of 2,000 bushels or piculs. For a discussion of this term and other measurements of capacity and weight in the Han, see Michael Loewe, “The Measurement of Grain during the Han Period,” *TP* 49 (1961), pp. 64–95 (trans.).

²⁰ The black dot, •, is a punctuation on the original slips that identifies sections of the offi-

that it is forbidden to leave a pass with □□ private metal.²¹ If there are those who enter with metal tools, the pass [officials] are to carefully make a record of them in a register. When they leave [the pass, the tools] are again to be checked against this [register] before they are allowed to leave. As regards tools [to be] registered, ornaments and things worn [on the body] are not subject to this ordinance.” (493)

C. No. □. An [imperial] decision instructs the Chancellor of State and the Censor-in-chief: “As to all those with families outside the passes unfortunate enough to die [on duty], the pass [officials] [usually] open and inspect their [coffins]. This is improper. Let it be ordered that there should be no inspection. Prepare [this] to make [it into] an ordinance.”²² “The Chancellor of State and the Censor-in-chief petitioned that in cases where persons from outside the passes are serving as officers or are employed as part of their corvée service and have business inside the passes, and (500) [are unfortunate enough to die (on duty)],²³ the officials of those localities in the counties and circuits (*dao* 道) to which they (respectively) belong should carefully oversee the encoffining of the corpse. There should be no prohibited objects. They should use the seal of the prefect (*ling* 令) or the assistant (*cheng* 丞) to seal the coffin and report the writing on the seal to the pass. The pass should let [the coffin] leave with the seals intact and not inspect it. If there are prohibited objects inside the coffin, [those who] oversee the encoffining and sealing ...” (501)²⁴

D. No. □. The Chancellor of State forwarded to the throne a letter from the Grand Masters of the Palace (*zhongdafu* 中大夫) request-

cial document. The black rectangular mark, ■, was made by the copyist at the top of the slip to indicate that what follows is the title (of the ordinances). Other signs are used by Professor Ōba to show when characters on the slips, as we have them today, are missing. The empty box, □, indicates that a number is missing, as is discussed by Professor Ōba, below, under “Analysis of the Ordinances” (trans.).

²¹ Two graphs missing, of which the second has the “metal” 金 radical on the left-hand side (trans.).

²² In Professor Ōba’s earlier researches on the Han ordinances in *Shin Kan hōseishi no kenkyū* 秦漢法制史の研究 (Tokyo: Sōbunsha, 1982), pp. 224–28, translated into Chinese by Lin Jianming 林劍鳴 et al., *Qin Han fazhi shi yanjiu* 秦漢法制史研究 (Shanghai: Shanghai renmin chubanshe, 1991), pp. 185–88, dealt extensively with *zhuju wei ling* 著具爲令 and similar phrases (trans.).

²³ The three graphs *buxing si* 不幸死, missing at the top of the slip, are supplied by the ZJS editors (trans.).

²⁴ Both the editors of ZJS and Ōba think that the sentence is incomplete. Yang, *Xi Han chuqi jinguan zhidu yanjiu*, pp. 329–30, correctly places slip no. 499 below: “... are to share the same crime as those taking out (the coffin).” • The (imperial) decision stated: “Approved.” (trans.).

ing that the Grand Masters of the Palace, the Receptionists (*yezhe* 謁者), the Gentlemen of the Interior (*langzhong* 郎中), the Bearers of Shields (*zhidun* 執盾) and the Halberdiers (*zhiji* 執戟) whose families are beyond the passes be allowed to purchase privately horses Within the Passes.²⁵ If there is a visa²⁶ from the county officials that has been forwarded to the Grand Masters of the Palace and to the Gentlemen of the Interior, the Grand Masters of

²⁵ The punctuation in *ZJS* makes the Receptionists subordinates of the Grand Masters of the Palace. The editors of *ZJS* (208, note 1 for slip 504) consider these functionaries, as well as the Gentlemen of the Interior, the Bearers of Shields and Halberdiers to be the subordinates of the Chamberlain for Attendants (*langzhong ling* 郎中令).

Actually, due to our insufficient understanding of the early institutions of the Han, the relationship between the officials listed in this ordinance must remain conjecture. Roughly, the problems are the following: *Han shu* 漢書 (Beijing: Zhonghua shuju, 1962) 19A, p. 727, states that up to several dozens of *zhongdafu* 中大夫 (with a nominal monthly salary of perhaps 1,000 bushels or less), 70 *yezhe* 謁者 (Equivalent to 600 bushels), and up to 1,000 *langzhong* 郎中 (Equivalent to 300 bushels) were among the subordinates of the *langzhongling* 郎中令 (Fully 2,000 bushels). Nothing is known of the *zhidun* 執盾 and the *zhiji* 執戟. Besides them having different salaries, there is no indication that the *yezhe* were directly subordinate to the *zhongdafu*. The reason for the *ZJS* editors' subordinating them anyway clearly is that this ordinance subsequently singles out the *zhongdafu* and the *langzhong* as those officials who had to be approached for sending a letter to the passes in connection with the transit of privately held horses. This would only make sense, however, if the *zhidun* and the *zhiji* were also subordinated to the *langzhong*.

Another, much more attractive solution, suggested by Chen, "Zhangjiashan Han jian 'Jin-guan ling' shema zhuling yanjiu," p. 31, is to consider the *zhongdafu* and the *langzhong* in this ordinance to be abbreviations for *zhongdafuling* 中大夫令 and *langzhongling* 郎中令 respectively, much like in ordinance A above *yushi* is used as an abbreviation for *yushi dafu*. Like the *langzhongling* the *zhongdafuling* was one of the highest-ranking bureaucrats, also with a nominal salary of Fully 2,000 bushels. This hypothesis is attractive for two reasons: 1) The sender of the letter forwarded to the throne would become one person (*viz.* the *zhongdafuling*) and not a group (*viz.* the *zhongdafu*) which seems less likely an agent. 2) To have Fully 2,000 bushel officials a) ask the Chancellor of State to forward a letter to the throne and b) write letters to the passes asking them to allow the transit of horses would much better fit the strictly hierarchical, echelon-by-echelon communication that the ancient sources betray. The *zhongdafu* (with perhaps up to 1,000 bushels) and especially the *langzhong* (with Equivalent to 300 bushels) were much too low-ranking for such tasks. Unfortunately, there is at least one major obstacle to this hypothesis, namely that as early as these bamboo documents are dated (the usage of the term *xiangguo* 相國 is an unmistakable indication of early date in this ordinance in particular), there was no *zhongdafuling*. *Han shu* 19A, p. 728, clearly states that this post was established only briefly between 156 and 143 BC. Before and afterwards the respective official was called *weiwei* 衛尉 (Chamberlain for the Palace Garrison). Also, it is not known that the *zhongdafuling*, or the *weiwei* for that matter, had *yezhe* as his subordinates.

It is interesting to note that Oba, too, seems to have sensed the problems. In his own transcription he does not follow the punctuation of the *ZJS* editors but leaves the string of offices unpunctuated. Other than that, he did not leave any clue as to his understanding of the text. It therefore seems best to translate the list of offices at face value, fully aware that this fails to provide the reader with a picture of what these different offices and their interaction actually meant (trans.).

²⁶ Scholars agree that *zhi* 致 as it is used here must have been a type of document that in certain cases was somehow necessary for transit through a checkpoint. Since it regularly occurs in connection with the delivery of goods (including foodstuffs and animals) or people (especially slaves or recruits), it might have been a kind of export permit or an explicit request for delivery from the receiving party or its county of residence. Oba's own hypothesis, however,

the Palace and the Gentlemen of the Interior should send a letter reporting [the matter] to the fords and passes. If they come, [they are provided with] a re-entry passport (*fuzhuan* 復傳), (504)²⁷ and the fords and passes should carefully examine them and let them enter and exit. If a horse should re-enter, but does not, sentence [the owner] according to the Ordinance.

- The Chancellor of State and the Censor-in-chief submitted it [to the throne] and
- The [imperial] decision stated: “Approved.” (505)

E. No. 12. The Chancellor of State put forward the [following] opinion in a court deliberation (*yi* 議):²⁸ in cases where the commanderies outside the passes purchase horses that the account clerks are to present (to the central government when they submit the annual commandery statistics), each Governor (in the commandery that buys the horses) (*shou* 守)²⁹ is to report the number of horses to the Chamberlain for the Capital (*neishi* 內史)³⁰ or the Commandery Governor (*junshou* 郡守) where they are [to be] bought (買所) (that is, in the area Within the Passes). The Chamberlain for the Capital or the Commandery Governor (respectively) are to carefully register the markings (*zhi* 識) and colors (*wu* 物),³¹ the age, and

was that *zhi* was a document that allowed transit only once through one specific checkpoint, as against *zhuan* 傳, “passport,” which could be used multiple times. See his article “Handai de fu he zhi” 漢代的符和致, published first in Chinese in *Zhongguo shi yanjiu* 中國史研究 3 (1989), then republished in Japanese in his book *Kankan kenkyū* 漢簡研究 (Kyoto: Dōhōsha, 1992), pp. 159–77, especially 173–77. See also Li Junming 李均明, *Jiandu wenshu xue* 簡牘文書學 (Nanning: Guangxi jiaoyu, 1999), pp. 276–77, who argues that a *zhi* visa could be used for both entering and exiting (trans.).

²⁷ For *fuzhuan* 復傳, see *Han shu*, 64B, pp. 2819–20, and the commentary by Yan Shigu 彦師古. Chen Wei, 31, has recently put forward the convincing argument that slips 504 and 508 should be exchanged. This would result in the reading *lai*, *fuchuan chu* 來, 復傳出, “If they come, they exit with a re-entry passport.” But since Ōba follows the ZJS editors’ arrangement of the slips, the present translation is acceptable, too (trans.).

²⁸ See Nagata Hidemasa 永田英正, “Kandai no shūgi ni tsuite” 漢代の集議について, *THGH* (Kyoto) 43 (1972), pp. 97–136 (trans.).

²⁹ The term *shou* appears in the military chapters of *Mozi* 墨子 and in other late Warring States texts as the official put in charge of towns and cities under attack. Here it probably refer to the Governors of the commanderies (trans.).

³⁰ A.F.P. Hulsewé, “The Ch’in Documents Discovered in Hupei in 1975,” *TP* 64.4–5 (1978), pp. 194–95, argues that the *neishi* should be understood as the “Ministry of Finance”. The import here, however, seems to be that commanderies outside the passes could buy their horses only inside the passes, either in the capital area or in neighboring commanderies. It would seem most logical to suppose that if in commanderies the Governors were the ones to be approached by the buyers of horses, it should have be the same in the capital. Here the *neishi*, whatever the etymological origin of the term, fulfilled the role of a Governor. This is well brought out by Hucker’s translation of the term, but not by Hulsewé’s (trans.).

³¹ See Chen Wei’s elaborate explanation of these terms, Chen, “Zhangjiashan Han jian ‘Jinguan ling’ shema zhuling yanjiu,” pp. 33–34 (trans.).

the height of the horses. They are to transmit this information to the Governor (that is, the buyer) and, further, are to make a visa (*zhi* 致) and report it to the fords and passes. The fords and passes are to verify and check [the horses]. (509)³² The fords and passes shall carefully verify (the number and characteristics of the transiting horses) according to the passports before letting them exit or enter. All those who falsely report the exiting of horses or, when the horses should re-enter and they do not, are to be sentenced according to the Ordinances concerning the False Price of Horses Exceeding the Fair Market [Price]. Rewards are to be given those who arrest and denounce such criminals,³³ [but if] officers and men of the fords and passes and the officers and men in charge of the frontiers know but do not denounce or accuse such criminals, (510) they are to share the same crime.

All those who do not know are to be [sentenced to] redeemable shaving.

- The Censor-in-chief submitted it [to the throne] and the [imperial] decision stated: “Approved.” (511)

F. No. 13 The Chancellor of State forwarded a letter from the Chamberlain for the Capital [which read]: “All those who travel using passports to go in and out of the fords and passes, who □ infants □ less than a full year old and are accompanied by their mothers, let the ford and pass [officials] carefully verify the truth, write it down in a register³⁴ and let them exit or enter.”

- The Censor-in-chief submitted it [to the throne] and the [imperial] decision stated: “Approved.” (512)

G. No. 22 The Counselor-in-chief (*chengxiang* 丞相) forwarded a letter [to the throne] from the Censor of Lu (Lu *yushi* 鲁御史) requesting that the Marquis of Lu, who was residing in Chang’an, be allowed to buy horses in the area Within the Passes.

- The Counselor-in-chief and the Censor-in-chief submitted it [to the throne] and the [imperial] decision stated: “Approved.” (520)

³² The last sentence is more or less repeated on slip 510 following immediately below, though with the curious addition of a *zhuān* 傳, “passport.” It is therefore possible that the reconstructed order of the slips is not correct. Chen Wei, *ibid.*, p. 30, closes this paragraph with the fragmented slip 503 and has slips 510 and 511 follow slip 498. But Ōba’s transcription follows that of 之 38 (trans.).

³³ The 之 38 editors end the sentence here. Professor Ōba joins the last clause with the following sentence (trans.).

³⁴ Or, “carefully write it down according to the truth” (trans.).

H. No. 23. The Counselor-in-chief forwarded [to the throne] a letter from the Commandant in Charge of Preparations for the Frontier (*Beisai duwei*) requesting that there be established at Jiaqi 夾谿 on the Yellow River a pass;³⁵ for all transport up and down the river let passports be issued and order that Hebei 河北 county build guard-posts (*ting* 亭)³⁶ on a par with the pass at Jiaqi. • Let all those who enter and exit or who jump over (=avoid) it (that is, the guard-post in Hebei)³⁷ as well as the officials (523) and men in charge [be sentenced] like those who violate the Ordinance on Jumping over the Frontiers and Illegally [Trespassing] the Passes.”

• The Counselor-in-chief and the Censor-in-chief submitted it [to the throne] and the [imperial] decision stated: “Approved.” (524)

I. ■ Ordinances on Fords and Passes (525)

J. ■ ³⁸ Statutes and Ordinances: twenty- □ kinds (526)

ANALYSIS OF THE ORDINANCES

The Literary Form of the Ordinances

I once conducted an analysis of the forms for imperial decisions and instructions (edicts) (*zhizhao* 制詔) of the Han dynasty, paying attention to the question of how they changed when these written edicts (*zhaoshu* 詔書) were preserved and included in the canon of ordinances (*lingdian* 令典) during the process of establishing Han-dynasty law. At that time, I classified them into three types:³⁹

Type 1. commands (*mingling* 命令) decreed in a one-way manner by the emperor on account of his own spontaneous intention (*zhishu* 制書, “decision”);

Type 2. instructions (*zhaoshu* 詔書) conceived and submitted to the throne by officials in the course of carrying out their own duties, which ultimately received imperial approval and were promulgated as imperial commands, at the end of which the phrase “The decision stated: ‘Approved’ 制曰可” was appended; and

³⁵ According to the *ZJS* editors, Jiaqi pass is in the modern Shaan 陝 county, located on the southern bank of the Yellow River. The Former Han Hebei county was located on the northern bank (trans.).

³⁶ *Ting* and *guan* were sub-county units (trans.).

³⁷ Or, “them (i.e., the guard-post and the Jiaqi Pass)” (trans.).

³⁸ This diacritic inserted by Ōba is an improvement on the *ZJS* transcription; cf. the photograph (trans.).

³⁹ Ōba Osamu, “Kandai seishō no keitai 漢代制詔の形態” (1963), in idem, *Shin Kan hōseishi no kenkyū*, pp. 201–34.

Type 3. those imperial edicts that were promulgated only after the emperor had first laid out a rough outline of the policy or his own intentions, but asked the officials to work out the details of the respective legislation and finally accepted their proposals. (In this case,) the expression of the imperial intention to set up a law counted as a decision or decree (*zhishu*), while the proposal of the officials that took the form of a petition (*zouqing* 奏請) became an instruction or written edict (*zhaoshu*) after it had been formally approved by the emperor, so the third type partakes of both types 1 and 2.

In the slips that I quoted above, item B clearly transcribes an imperial decision (edict) beginning with the phrase 制詔御史 (“An [imperial] decision instructs the Censor-in-chief”) and then the text is cut off. Item B exemplifies type 1. Next, item C begins with the phrase 制詔相国御史 (“An [imperial] decision instructs the Chancellor of State and the Censor-in-chief”) and ends with the phrase “prepare (this) to make (it into) an ordinance” 具爲令. Then comes a petition by the Chancellor of State (*xiangguo* 相国) and the Censor-in-chief. The (sentence) at the end of slip 501 is not complete (because the following strip is missing, see above), so we cannot (actually) see it, but there is no room for doubting that this petition⁴⁰ was concluded by the same phrase, “The decision stated: ‘Approved’ 制曰可,” and that it received imperial approval. This is an example of type 3.

Next, item D is the original draft (*yuan'an* 原案) by the Grand Masters of the Palace. Item E is an original draft by the Chancellor of State. Item F is a draft from the Chamberlain for the Capital. Item G is a draft by the Censor of Lu and item H is a draft composed by the Commandant in Charge of the Preparations for the Frontier. They were then submitted to the throne by the Counselor-in-chief and the Censor-in-chief or the Censor-in chief (alone). This exemplifies legislation of type 2.

It is clear that the ways of legislating that I have illustrated above occurred in the Ordinances on Fords and Passes as well, so we can say conclusively these three types were in existence.

Concerning the Dating of These Laws

The obverse of slip 1 of the statutes is labeled “Statutes and Ordinances of the Second Year” and slip 85 of the Statutes on the Composition of Judgments (具律) says:

⁴⁰ *Shinsei* 奏請 is a typographical error for either *sōsei* 奏請 or *shinsei* 申請 (trans.).

If the grandchildren in both the paternal and maternal lines, paternal great-grandchildren, and great-great grandchildren of King Xuan of the Lü clan, and the children and paternal grandchildren and great-grandchildren of feudal kings (*zhuhouwang* 諸侯王), and the children and paternal grandchildren of *chehou* (徹侯)⁴¹ commit a crime, [they are to be treated] as *shangzao* 上造 or as the wives of *shangzao* on up.⁴²

King Xuan was the father of Empress Dowager Lü, also called Sir Lü 呂公. He was given the honorific appellation Lü Xuanwang in the first year of Empress Dowager Lü's reign. On account of this, it has been in fact concluded [by the *Zhangjiashan Han mu zhujian* editors] that the phrase "second year" [on slip 1] must refer to this second year of Empress Lü (that is, 186 BC). However, in items C, D, E, and F of the Ordinances on Fords and Passes there appears the official title Chancellor of State (*xiangguo* 相國), and in items G and H the official title is given as Counselor-in-chief (*chengxiang* 丞相). Six other slips have the title *xiangguo* (494, 497, 503, 514, 516, and 518). Three slips use the title *chengxiang* (519, 521, and 522).

As it happens, according to the Table Recording the Dukes and Chamberlains of (in other words, within) the Officialdom 百官公卿表 of the *Han shu*, Gaozu was on the throne for ten years with a *chengxiang*. In the eleventh year of his reign the title was changed to *xiangguo*. In Huidi's 惠帝 time, the title was changed back again to *chengxiang*, and henceforth conferred upon two people, the Counselors-in-chief of the Left and of the Right. According to the Table, in the tenth month of the sixth year of Huidi's reign (189 BC), Wang Ling 王陵 was made Counselor-in-chief of the Right and Chen Ping 陳平 was made Counselor-in-chief of the Left. In the eighth month of the previous year (190 BC) the Chancellor of State Cao Can 曹參 died, and at this point the title of the post probably reverted to its old form. If so, we may conclude that the slips that mention a *xiangguo* can be dated from the eleventh year of Gaozu's reign to the fifth year of Huidi (196–190 BC), and the ones that mention a *chengxiang* can be dated from the sixth year of Huidi's reign on (189 BC).⁴³

⁴¹ *Chehou* was the twentieth and highest rank in the Han meritocratic ranking system (trans.).

⁴² *Shangzao* was the second rank in the Han ranking system (trans.).

⁴³ In other words, Ōba does not believe that all the ordinances (and, perhaps, statutes) found at Zhangjiashan date from 186 BC (trans.).

Concerning the Numbering of the Ordinances 令

Each of the Ordinances on Fords and Passes begins with a number. In the examples I quoted, A is number 1, E is number 12, F is number 13, G is number 22, H is number 23. In the slips I have not quoted, slip 492 is number 2; slips 502 and 503 constitute number 9; slips 513-515 constitute number 15; slips 516 and 517 constitute number 16; slip 519 is number 21; slip 520 is number 22.⁴⁴

Slips 493-501 can be divided into five articles:

- Article 1 consists of slip 493;
- Article 2 consists of 494-95;
- Article 3 consists of 496-97;
- Article 4 consists of 498-99; and
- Article 5 consists of 500-01.

The five slips 493, 494, 496, 498, and 500 begin with a single character that is unclear. As the item labeled D (504) in this essay shows, other slips also exhibit this feature. Among the first slips in the ordinances, only slip 506 is missing the top portion, so it has no such mark. Therefore, if it is correct to arrange these slips according to numbers, between slip 492 (Ordinances on Fords and Passes, number 2) and slip 502 (Ordinances on Fords and Passes, number 9) there must have been articles number 3 through 8. Of these, five groups of slips are extant, only one has presumably been lost. However, it is not clear which one has been lost, so we can only assign hypothetical numbers. Moreover, the whereabouts of number 14 are absolutely unclear, and as regards numbers 17 through 20, only one slip, 518, remains. Again, on this slip one or two characters are missing from the top, so we have no means to estimate its original number. Yet, the fact that there are numbered slips at all must have been an important clue for the arrangement of the slips. This is somewhat different from the case of the statutes, the problems of which shall be mentioned later.

Now, in the case of the Ordinances on Fords and Passes, if we can date the imperial edicts purely on the basis of the official title (that is, whether it is *xiangguo* or *chengxiang*), even though no. 16 mentions *xiangguo*, from no. 21 on we only have references to the *chengxiang*, so we may assume the slips are ordered chronologically. So, if we accept the foregoing analysis, slips 488-91 should represent Article 1 of the Or-

⁴⁴ No. 22 is already mentioned under G above. Either Ōba made a mistake here, or, more likely, what he wanted to say is that slips 521 and 522 belong together with the above-mentioned slip 520 to number 22, which agrees with Yang Jian's conclusion in Yang, *Xi Han chuqi jinguan zhidu yanjiu*, pp. 339-40 (trans.).

dinances on Fords and Passes. Common sense would suggest as much. However, in slips 494-95 there is the following text:

Item K

K. □ The Chancellor of State and the Censor-in-chief petition the throne: If in counties and circuits (*dao* 道) along the passes and border fortifications, gang robbers (*qundao* 群盜),⁴⁵ robbers, bandits, and absconders (*wangren* 亡人) jump over the passes, the walls and fences (*li* 離=*li* 篱, *ge* 格=*luo* 落), the ditches (*jian* 塹), the border-marking tree-posts (*fengkan* 封刊), and enter or exit the frontier area, the officers and men in pursuit should be able to follow their tracks and exhaustively pursue and arrest them. Let (494) the commanding officer (*jiangli* 將吏) make a register of the names of the officers and men who are going in or out, and let the five-man squad [leader] (*wuren* 伍人)⁴⁶ check its (that is, the list's) completeness. Send a copy of the register up to the seat of the county government [of their home county]. When the affair is over, they may take the road whereby they had exited or entered. If the men who have gone out for a full five days have not returned, and the five-man squad leader does not report it to the commanding officer, and the commanding officer does not bring a charge (*he* 劾) against them, they are all to be sentenced according to the Ordinance on Jumping over the Frontiers (*Yuesai ling* 越塞令). (495)

About this, the annotation (in *Zhangjiashan Han mu zhujian*) says that the Ordinances on Jumping over the Frontiers 越塞令 at the very end of the foregoing text refers to Article 1, item A, of the Ordinances on Fords and Passes. Furthermore, it says that towards the end of group no. 23, item H, the five-character phrase 越塞關關令 is a shorthand designation for that same Article 1. That this sort of shorthand designation was probably applied to each article individually can be observed from the following long slip – reconstructed from fragments 5.3, 10.1, 13.8, and 126.12 – found among the old Juyan 居延 slips:

Counties that establish Elders (*sanlao* 三老): no. 2

Travel by water, when boats set out together: no. 12

⁴⁵ Gang robbers were those who robbed in a group of five or more men in Qin law. See *Hulsewé 1985*, D1, note 6, 121 and E12, 190-91, and the definition under the Statutes on Robbery in *ZJS* (trans.).

⁴⁶ *Wuren* is a technical legal term inherited from the Qin, defined in the Shuihudi laws (*Hulsewé 1985*, D82, 146, and D80, 145, *inter alia*) for the five-man mutual responsibility group. Here, however, it may refer to the leader of a five-man squad in a military unit, rather than the other members of the squad or a group of civilians (trans.).

- Establishing the filial, the brotherly, and the industrious farmers: no. 22
 Summoning officials of the 2,000 bushel rank by means of tallies: no. 32
 Commanderies raising troops for the ranked members of the aristocracy who are visiting court: no. 42
 Those aged eighty, pregnant women, and dwarfs are not to be fettered: no. 52⁴⁷

Here, we see numbered ordinances one after another referred to in a shorthand manner. One can imagine that ordinances when compiled into a canon (*lingdian* 令典) were numbered sequentially. Together with the Juyan slip cited above, seventeen fragments of ordinances proper were found written by the same brush. Among them, are the following three examples:

- ... Starting from the first: [tallies for the] Governors; from the fifth: tallies for the Envoys. Matching (them) ... (332.12)
 ... and⁴⁸ those who lose a tally or break ... (349.16)
 ... □ Tallies Ordinance. The decree stated ‘Approved.’ Sent down on the *gengchen* day, seventh month, third⁴⁹ year of the Filial Emperor Wen 孝文皇帝; altogether 66 graphs (332.9, 179.5)⁵⁰

These three slips were probably part of the ordinance that, presumably, had to do with the bamboo tallies for officials 竹使符 and was referred to by the abbreviated title “Summoning officials of the 2,000 bushel rank by means of tallies, no. 32” 徵吏二千石以符卅二, and they

⁴⁷ This slip has been discussed extensively in Ōba, *Shin Kan hōseishi no kenkyū*, pp. 275–83; idem, *Kankan kenkyū*, pp. 178–86; as well as by Chen Mengjia 陳夢家 in his *Han jian zhuishu* 漢簡綴述 (Beijing: Zhonghua, 1980), pp. 275–84. Both authors disagree as to how to date the ordinances. Only the last entry is almost indisputably a shorthand designation for an edict that was promulgated by Emperor Jing in 141 BC; see *Han shu* 23, p. 1106. Some of the other ordinances may date as early as 205 BC. Not all entries are well understood. Especially the rendering of the second entry should be considered tentative. What is more, recently published improved transcriptions and infrared pictures of the slip have shown Ōba’s (and Chen’s) transcription to be faulty; in particular *jun xing ye liehou bing* 郡興謁列侯兵 in the fifth entry should read *junguo diao* ... 郡國調, “Commanderies and princedoms moving the troops of (or, to) Adjunct Marquises”; see Jiandu zhengli xiaozu 簡牘整理小組, ed., *Juyan Han jian bubian* 居延漢簡補編 (Taipei: Academia Sinica, 1998), plate 2, transcription 161 (trans.).

⁴⁸ Ōba, *Shin Kan hōseishi no kenkyū* (1982), p. 273, and idem, *Kankan kenkyū* (1992), p. 181, expressly states that he thinks that *shi* 市 should read *er* 而 (trans.).

⁴⁹ Ōba writes second without comment here and in his previous publication (1982), but the photograph in Lao Gan 勞幹, ed., *Juyan Han jian: Tuban zhi bu* 居延漢簡圖版之部 (Taipei: Zhongyang yanjiu yuan lishi yuyan yanjiu suo, 1957), plate 119, clearly shows that “third” is correct (trans.).

⁵⁰ Xie Guihua 謝桂華, Li Junming 李均明, and Zhu Guozhao 朱國昭, *Juyan Han jian shiwen hejiao* 居延漢簡釋文合校 (Beijing: Wenwu chubanshe, 1987), vol. 2, transcribe these slips somewhat differently from Professor Ōba. The differences do not affect his argument, however (trans.).

were probably incorporated into the canon of ordinances as well under the name Tallies Ordinance 符令, or the ...Tallies Ordinance □符令.⁵¹ If this is the case, we can assume that at the beginning of the first slip of this ordinance the number “32” would have been written down similar to what is seen in the Ordinance on Fords and Passes quoted above.

In my previous article,⁵² I assumed that the list of ordinances in the old Juyan slips might be a list of Class A Ordinances 甲令.⁵³ Tomiya Itaru 冨谷至 judged these to be Essential Ordinances for Governors 太守掾令.⁵⁴ I had also tentatively thought of the possibility that this is a list of what could be called Essential Ordinances for Governors, but, at the time I was writing that article, I decided to think of it as Class A Ordinances, because I considered the fact that in the edict of Emperor Jing that corresponds to no. 52 (in the list of ordinances quoted above) the phrase “write it into an ordinance” appears. However, with the additional sources concerning the Han ordinances provided by forty years of excavations, it is necessary to re-examine my previous interpretation.

In item C of the Ordinances on Fords and Passes there is the text of an imperial decision (decree) and it gives the phrase: “Prepare [this] to make [it] into an ordinance.” This is a legislative utterance (*chorei bungen* 著令文言). That being the case, it may be admitted that it is not possible (in this connection) to speak of (already canonized) Class A Ordinances.⁵⁵ However, just because this ordinance belongs to the Ordinances on Fords and Passes, we also cannot deny (the possibility) that article C was included separately into a canon of Class A Ordinances. Still, judging from the Ordinances on Fords and Passes, we can see that standard opening formulae, like “Chancellor of State so-and-so and Censor-in-chief so-and-so speak at the risk of their lives,” and standard concluding formulae, such as “Your servants at risk of their lives submit it [to the throne] 臣昧死以聞,” are omitted. We have here an important case that resolves doubts about the degree to which imperial edicts, once promulgated, could be abbreviated when recorded as ordinances.

⁵¹ Ōba Osamu, “Kyoen shutsudo no shōsho dankan” 居延出土の詔書斷簡 (1961); reproduced in idem, *Shin Kan hōseishi no kenkyū*, pp. 259–84.

⁵² Ibid., p. 280, and translated in Lin, *Qin Han fa zhi*, p. 230.

⁵³ Or, “the ordinance canon, section A”; i.e., very important ordinances from the very beginning of the dynasty (trans.).

⁵⁴ Tomiya Itaru, “Shin Taishi ritsuryō e no michi dai-ichibu: Shin Kan no ritsu to ryō” 晉泰始律令への道第一部秦漢の律と令, *THGH* (Kyoto) 72 (March 2000), pp. 79–131 (especially, 120–21, trans.).

⁵⁵ This is because the text at hand is obviously just a prototype of the yet to be canonized ordinance (trans.).

On the other hand, we see in the old Juyan slips a series of broken slips of the text of an edict recording the overall number of characters and the date, as in the example quoted above, which came from the end of the Ordinance on Tallies:

sent down on the *gengchen* day, seventh month, third year of the Filial Emperor Wen; altogether 66 characters. 孝文皇帝三年七月庚辰下凡十六字

The ends of two similar sample documents say:

sent down on the *xinsi* day, twelfth month of the previous third year; altogether 91 graphs (126.29) 前三年十二月辛巳下九十一字

and

Filial Emperor Wen, fifth year, (118.1) 孝文皇帝五年...

... eleventh month, *renyin* day, sent down; altogether 38 characters. 十一月壬寅下卅八字 (117.43, 255.25)

This is a point worth paying attention to. In the *Hou Han shu* 後漢書 “Treatise on Pitch-pipes and Calendars” 律曆志 for the fourteenth year of Yongyuan 永元 (102 AD), a passage says:⁵⁶

In the fourteenth year of Yongyuan, ... the Grand Astrologers (*taishi ling* 太史令) Shu 舒, Cheng 承, Fan 梵, and others, replied:⁵⁷ “We [herewith] verify that the officially promulgated clepsydra model is the Class A Ordinance, number 6 ‘Ever Regular Clepsydra Standard’ 常符漏品 that was sent down on the *yichou* day, twelfth month, third year of the Filial Emperor Xuan 孝宣皇帝.”

Here I consider the passage from “令甲第六” to “十二月乙酉下” to represent the shortened name for the Class A Ordinance number 6 令甲第六 and the date when it was promulgated, so it seems reasonable to assume that in the text of Class A Ordinances the date was included.

KINGS AND MARQUISES IN THE ORDINANCES

Slip 520, which I quoted as G, records a letter 書 from the Censor of Lu forwarded to the throne by the Counselor-in-chief. Because the Marquis 侯 of Lu was residing in the capital of Chang’an, he requested that he be allowed to purchase horses, not in his own kingdom (*guo* 國), but

⁵⁶ Sima Biao 司馬彪, comp., “Treatise on Pitch-pipes and Calendars,” *Hou Han shu* (Beijing: Zhonghua shuju, 1965) 2, p. 3032 (trans.).

⁵⁷ The wording is strange, because there should have been only one Grand Astrologer. On the other hand, it is impossible that two individuals would be named without their office (or rank) being given. Could *cheng* 承 be a misprint for *cheng* 丞 “assistant”? The Zhonghua shuju editors do not indicate this possibility (trans.).

in Chang'an, that is, in the area "Within the Passes" (*guanzhong* 關中). The request submitted by the Counselor-in-chief and the Censor-in-chief was approved, as a special exception, and included in the Ordinances on Fords and Passes. After this, slip 521 follows, which allows the Grand Masters of the Palace and Receptionists of Lu to buy private horses in the market in Chang'an. Slip 522 approves a petition made by the Lu court Censor asking that the Gentlemen of the Interior of Lu purchase horses Within the Passes. Here we have something exceptional: three slips included in the Ordinances on Fords and Passes that sanction the purchase of horses "Within the Passes" and outside their fiefdom by people connected with Lu.

As for the Marquis of Lu, according to the annotations in *Zhangjia-shan Han mu zhujian*, which were based on the Chronological Tables of the Nobility since the Beginning of the Han 漢興以來諸侯王年表 in the *Shi ji* 史記, the kingdom of Lu was first established in the seventh year of Huidi's reign (188 BC), and the first year of the reign of Empress Dowager Lü (187 BC) corresponds to the first year of the reign of Zhang Yan 張偃, King of Lu. Zhang Yan was the son of Zhang Ao 張敖, King of Zhao 趙王, who was the maternal grandson of Empress Dowager Lü. Hence the measures giving preferential treatment to Lu. If we confirm that such preferential treatment was written into the ordinances, we can assume also that the appointment of kings and marquises had to be recorded in the ordinances.

One thing we must note, then, is the legislative utterance in the *Han shu* biography of Wu Rui 吳芮, which says: "An imperial edict decreed to the Censor-in-chief: 'As for the matter of King of Changsha's 長沙王 loyalty, let it be firmly fixed in an ordinance.'"⁵⁸ That is the same text that is mentioned in the final Appraisal to the same *Han shu* biography of Wu Rui, where it is recorded as being written into Ordinance A.⁵⁹ At the beginning of the *Shi ji* Chronological Tables for the Nobility under Huidi and Jingdi 惠景間侯者年表, it says:

When the Grand Astrologer was reading about the various enfeoffments, he came to the Marquis of Bian 便侯. It was deserved indeed that the King of Changsha was written into a Class A Ordinance, to praise his loyalty thereby!⁶⁰

Well then, what (exactly) is it that was being written in this ordinance? There have been debates about this ever since the time of the ancient commentaries on the *Shi ji* and *Han shu*. I have written

⁵⁸ *Han shu* 34, p. 1894 (trans.).

⁵⁹ *Han shu* 34, p. 1895 (trans.).

⁶⁰ *Shi ji* 史記 (Beijing: Zhonghua shuju, 1959 and 1985) 19, p. 977 (trans.).

elsewhere that I believe it to be an imperial edict regarding the investiture (*fengjian* 封建) of the King of Changsha, from the fifth year, second month, of the reign of Gaozu (202 BC).⁶¹ I believe not only that this edict constituted the original text of the Class A Ordinance 令甲, but also that the abbreviated name for that particular item was “長沙王忠.” Therefore, in the list of contents for that Class A Ordinance, it was probably recorded as “Class A Ordinance, section X, regarding the King of Changsha’s loyalty, sent down on the *ganzhi* day, second month, fifth year of Gaozu.”

COMMENTS ON THE “STEMS AND BRANCHES” ORDINANCES

In pondering over (what constituted) Class A, B, C and other so-called “Stems and Branches” Ordinances (*ganzhi ling* 干支令) the question of (how) the loyalty of the King of Changsha 長沙王忠 (was recorded) is (only) one hurdle. Another difficult problem concerns what happened at the moment when imperial edicts were first promulgated and written down into the ordinances. Needless to say, it was not a question at this point of abridging the titles, but rather of how much to abridge them. This difficulty can be seen in an edict recorded in a passage in the Basic Annals of Xuandi 宣帝本紀, the ninth month of the fourth year of Dijie 地節 (66 BC).

In the Class A Ordinances [it is stated]: “The dead cannot become alive [again] and a mutilating punishment cannot be undone.” This is what the preceding emperors have been greatly concerned about, yet the officials have not conformed to [the imperial intentions. But] now, those who are held sometimes die in prison because they have been flogged for their crimes or because of hunger, cold, or illness. Why should the intentions [of prison officials be so] contrary to human nature? We are very much saddened by it.

Let it be ordered that the commanderies and kingdoms shall yearly report the offence, name, county, rank, and village of those who have been held as prisoners and have died because of beatings or illness; when the Counselor-in-chief and the Censor-in-chief examine the relative merits [of the officials], they shall thereupon report [such cases to Us].⁶²

⁶¹ Ōba Osamu, “Seishō gyoshi Chōshaō chū ki teicho rei ni tsuite” 制詔御史長沙王忠其定著令について (1965), reproduced in idem, *Shin Kan hōseishi no kenkyū*, pp. 311–31.

⁶² *Han shu* 8, pp. 252–53; trans. Homer H. Dubs, *The History of the Former Han Dynasty* (Baltimore: Waverly Press for the American Council of Learned Societies, 1944) 2, pp. 227–28, slightly emended (trans.).

The opening phrase of the edict no doubt derives from the following passage from the “Treatise on Punishments and Laws” 刑法志 in the *Han shu*: “Those who are dead cannot again come to life, and [...] those who have been mutilated cannot again attach [the lost member].” This passage tells the story of Tiying 緹縈, daughter of Sir Chunyu 淳于公, which represented the direct motivation at the time for Wendi’s suspension of mutilating punishments, in the thirteenth year of his reign.⁶³ In his edict of the fourth year of Dijie, Xuandi must have intended a reference to Wendi. That being the case, the imperial decree commanding the legislation for mutilating punishments, containing the phrase “prepare this and write it into an ordinance,” was promulgated as a written edict after Wendi approved the memorials to the throne by the Counselor-in-chief Zhang Cang 張蒼 and the Censor-in-chief Feng Jing 馮敬. At some later time they were added to the (body of) Class A Ordinances. Assuming all this to be true, what happened to the letter submitted to the throne by Tiying? Was its text (merely) adjusted at the time when the ordinance was promulgated? Or was the Class A Ordinance mentioned in Xuandi’s Basic Annals, aside from the edict concerning the abolition of mutilating punishments in the Treatise on Punishments and Laws, based on an imperial edict that included this text, a reference to the story of Tiying – a text that is not recorded in *Shi ji* and *Han shu*? I have suspected that this might be the case ever since March 1963, when I published an article entitled “Kandai shōsho no keitai ni tsuite” 漢代詔書の形態について (“On the Form of Han Dynasty Instructions/Edicts”), yet I still have not resolved the issue after forty years. Taking advantage of the opportunity offered here in this Festschrift to write about my research on Han ordinances, I would like to describe this longstanding issue so as to ask everyone’s opinion of it.

CONCLUSION

Finally, something on a more general note. The Chinese texts on bamboo and wooden slips or tablets are (usually) excavated, ordered, and published, and only then do many people – certainly foreigners, but also many Chinese – have their first acquaintance with these materials. Needless to say, I commend the labor of the researchers who undertook the ordering of the excavated materials. Still, with regard to the interpretation and ordering of the slips, while it is necessary to re-

⁶³ 夫死者不可復生、刑者不可復屬。The translation follows that in *Hulsewé 1955*, p. 334. *Hulsewé* renders the names as Shun-yü (Kung) and T’i-jung, however. The readings adopted in the translation are from Michael Loewe, *A Biographical Dictionary of the Qin, Former Han and Xin periods, 221 BC-AD 24* (Leiden and Boston: E. J. Brill, 2000), pp. 50-51 (trans.).

mind ourselves that we have no choice but to trust the results of those who presented them, it is also necessary that we conduct our research while still awaiting the full publication of the excavation report with its photographs. For instance, in the middle section of slip 504 under item D, I transcribed the text as “to purchase private horses Within the Passes 私買馬關中,” yet on page 207 of *Zhangjiashan Han mu zhujian*, the transcribed text is “to place privately horses Within the Passes 私置馬關中.” Looking at a photograph, it seems to be the character *mai* 買. Is this a proofreading error, perhaps?

There are an increasing number of examples of excavated texts from Han tombs, including works that were transmitted in the received record and newly excavated texts heretofore unknown. However, with texts that have been restored and published, we must, for the time being, take a reserved stance towards them and ask whether they correspond, in their present form, to the original pre-Qin texts. Even while commending the labor of restoration and the scholarship of the transcribers, it is best to hold on to our doubts. If we take, for example, the organization of slips in sequential order in Wu Jiulong’s 吳九龍 *Yinqueshan Han jian shiwen* 銀雀山漢簡釋文,⁶⁴ devoted to the military texts on bamboo slips from Yinqueshan 銀雀山, I must say that I admire the competence with which the *Sun Bin bingfa* 孫臏兵法 was restored, yet I am led to question the reliability of the text that was published in Japan as *Sun Bin bingfa*. This point applies to *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 as well. With respect to those studies that put complete trust in the initial results of the transcription, interpretation, and arrangement of the slips, we cannot suppress a bit of anxiety concerning their methodology.

In this respect, the book *Zhangjiashan Han mu zhujian* gave me a slightly strange impression. In note 4 on slips 396–97, at the beginning of the Statutes on Levies,⁶⁵ there is the editorial comment, “This individual article of the statutes perhaps should be included in the Statutes on the Composition of Judgments.” In the table comparing the numbering order of the slips with the excavation numbering,⁶⁶ we find slip 396 (F 159) and slip 397 (F 166). On the Statutes on the Composition of Judgments 具律, *Zhangjiashan Han mu zhujian* has slips 82–125,⁶⁷ and those slips more or less correspond to the C 19–C 312 in the Comparative Table 對照表. Yet the two slips 103 (F 101) and 117 (F 149) were designated as part of F. It follows that it could be possible

⁶⁴ Beijing: Wenwu chubanshe, 1985 (trans.).

⁶⁵ *ZJS*, p. 186 (trans.).

⁶⁶ *ZJS*, appendix 1, pp. 309–20 (trans.).

⁶⁷ *ZJS*, pp. 145–51 (trans.).

to include F 159 and F 166 among the Statutes on the Composition of Judgments. However, in appendix 2, on the Chart of the Location of the Bamboo Slips on Excavation 竹簡出土位置示意圖, groups F and C are demonstrably separate from one another, so it is not that several slips were moved from F to C mechanically, rather this judgment was made only after reading the contents of the slips. In other words, the *Zhangjiashan Han mu zhujian* is a work that reflects the opinions of the team that put the slips in order. It is by no means a simple excavation report. My concern is linked to a methodological issue that arose when I researched the Qin statutes: whether to use *Shuihudi Qin mu zhujian* only,⁶⁸ or to supplement it with *Yunmeng Shuihudi Qin mu* 雲夢睡虎地秦墓⁶⁹ – in particular, the latter’s appendix 1 entitled “Comparative Table on the Section Names, the Edited Sequence, and the Excavation Registration Numbers of the Bamboo Slips” 竹簡篇名、編排順序與出土登記號對照表.

In the case of *Zhangjiashan Han mu zhujian*, one must understand the meaning of putting together photographs, transcriptions, comparative numbering tables for the excavated items, and the chart giving the relative positions of the excavated texts. Nevertheless, there is no doubt that concerning the excavated slips – and especially among these, the Statutes and Ordinances of the Second Year – the members of the team responsible for ordering the slips hold reasonable and publishable views. That they did not add these individual viewpoints to this (official folio publication) but exercised self-restraint deserves highest praise. At any rate, the excavation of the Han slips at Zhangjiashan proves that the Han ordinances existed from the time of the Han founder, Gaozu.⁷⁰

⁶⁸ Beijing: Wenwu chubanshe, November 1978 (trans.).

⁶⁹ Beijing: Wenwu chubanshe, September 1981 (trans.).

⁷⁰ It should be noted that the phrase “according to the statutes and ordinances” *ru lüling* 如律令 appears in some of the Qin dynasty documents found at Liye 里耶, Longshan county 龍山縣, Hunan, in 2002: see, for example, Hunan sheng wenwu kaogu yanjiu suo 湖南省文物考古研究所, Xiangxi Tujiazu Miaozu zizhi zhou wenwu chu 湘西土家族苗族自治州文物處, and Longshan xian wenwu guanli suo 龍山縣文物管理所, “Hunan Longshan Liye Zhanguo: Qin dai gucheng yihao jing fajue jianbao” 湖南龍山里耶戰國秦代古城一號井發掘簡報, *WW* (2003.1), p. 20, slip J1 @3 obverse. Also, some of the Liye letters quote passages from unspecified ordinances: see, for example, Hunan sheng wenwu kaogu yanjiu suo, “Hunan Longshan xian Liye Zhanguo Qin Han chengzhi ji Qin dai jiandu” 湖南龍山縣里耶戰國秦漢城址及秦代簡牘, *KG* (2003.7), p. 19 (595), slip level 8.154. This evidence confirms that the Qin also had ordinances, but a discussion of their nature and contents will have to wait until the Liye slips are more fully published (trans.).

This essay is humbly offered for the Festschrift written to felicitate Dr. Michael Loewe.⁷¹

LIST OF ABBREVIATIONS

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|---------------------|--|
| <i>Hulsewé 1955</i> | A. F. P. Hulsewé, <i>Remnants of Han Law, vol. 1</i> |
| <i>Hulsewé 1985</i> | A. F. P. Hulsewé, <i>Remnants of Ch'in Law</i> |
| ZJS | <i>Zhangjiashan Han mu zhujian (ersiqi hao mu)</i> 張家山二十七號漢墓竹簡 (二十七號墓) |

⁷¹ The translators concur with Professor Ōba in felicitating Dr. Loewe on his eightieth birthday (trans.).