Transnational Asia
an online interdisciplinary journal

Zhangjiashan Tomb 336: An Introduction and Preliminary Comments

Robin D.S. Yates

Introduction

The last fifty years or so have witnessed the discovery, excavation, and/or recovery of, numerous pre-Qin, Qin, and Han texts and documents. The subsequent publication of this material has resulted not only in the challenging of historical assumptions that had been accepted since antiquity but also in the necessity to rewrite and reconceive the history of the development of Chinese society and the creation of the imperial state under the Qin and Han dynasties. This short essay examines one lesser-known discovery that was made in the 1980s in what was initially designated Tomb No. 136 Zhangjiashan, and later renumbered as Tomb No. 336. The essay was written in honor of the late Professor Nanxiu Qian, whose remarkable scholarship challenged many long-held assumptions and beliefs in Chinese cultural, literary, and philosophical studies from the Six Dynasties to the late Qing and early Republican periods.[1]

The entire Zhangjiashan cemetery is located close to the ancient Qin city of Nan that replaced the Chu capital Ying when Qin conquered it in 278 BCE. Ying and Nan lie just north of present-day Jingzhou, Hubei Province, and west of the old walled town. The journal *Wenwu* 文物 published a preliminary excavation report on three Han tombs in 1985 and a further report on two tombs from the Zhangjiashan cemetery, probably both belonging to scribes who served in local and regional administrative offices, in 1992.

Of the two tombs, considerably greater attention has been paid to Tomb No. 247 (initially numbered No. 127) and its contents. For instance, Professor Anthony J. Barbieri-Low and I collaborated in translating and analyzing the important legal

[1] This paper does not engage with another aspect of Professor Qian's interests—gender. For my most recent bibliography, which includes her publications, see Robin D.S. Yates and Danni Cai, "Bibliography of Studies on Women and Gender in China 2018-2022," *Nan Nü: Men, Women and Gender in China* 25.2 (2023): 213-344.

texts contained therein.[2] However, as of the date of writing (early 2024), a complete report on the clearing and excavation of the entire Zhangjiashan cemetery, an endeavor that started in the 1950s, has yet to be published.

Zhangjiashan Tomb No. 336

Despite having been almost entirely neglected for nearly four decades, the texts contained in Tomb No. 336 are of exceptional historical, philosophical, and literary interest, and it is therefore worthwhile, I believe, to bring these materials to the attention of Western scholars. Consisting of two volumes and prepared under the chief editorship of Peng Hao 彭浩, the transcriptions of the contents of the slips were released in 2023, even though the official date of copyright was November 2022.[3] The book is comprised of the following texts:

- *Gong ling* 功令 (Ordinances on Merit) (transcription pp. 95-125) 184 slips;
- *Chegu shiqi* 徹穀食氣 (Abstaining from Grains and Ingesting Qi) (transcription pp. 129-40) 93 slips;
- *Dao Zhi* 盜 跖(跖) (Robber Zhi) (transcription pp. 143-54) 44 slips;
- *Ci Mamei* 祠馬禖 (Sacrifices to the Horse God) (transcription pp. 157-58) 10 slips;
- *Han lü shiliu zhong* 漢律十六種 (Sixteen Varieties of Han Statutes) (transcription pp. 161-216) 375 slips;
- *Qinian zhiri* 七年質日 (Event Calendar of the Seventh Year) (transcription pp. 219-22) 60 slips;
- *Qian ce* 遣策 (Inventory Slips) (transcription pp. 225-28) 50 slips.

Below is a brief summary of the contents; Peng Hao has written a more detailed Chinese-language introduction.[4]

Ordinances on Merit

Barbieri-Low and Yates have written:

> …an ordinance could be created in at least two different ways, each ultimately relying on the verbal approval of the Emperor. In the first method, the Emperor could instruct the Chief Minister and/or the Chief Prosecutor to

[2] Anthony J. Barbieri-Low and Robin D.S. Yates, *Law, State, and Society in Early Imperial China: A Study with Critical Edition and Translation of the Legal Texts from Zhangjiashan Tomb no. 247*, 2 vols. Sinica Leidensia vol. 126 (Leiden: Brill Academic Publishers, 2015).
[3] *Zhangjiashan Han mu zhujian [sansanliu hao mu]* 張家山漢墓竹簡三三六號墓, ed. Jingzhou bowuguan 荊州博物館, chief ed. Peng Hao 彭浩, 2 volumes, Beijing: Wenwu chubanshe, 2022.
[4] Jingzhou bowuguan 荊州博物館 (writer Peng Hao), "Hubei Jiangling Zhangjiashan M336 chutu Xi-Han zhujian gaishu" 湖北江陵张家山 M336 出土西汉竹简概述, *Wenwu* 2022.9: 68-75.

> draft legislation to address a specific problem. After drafting the detailed provisions of the ordinance, these high officials presented it to the Emperor as a petition that he approved with the word *kě* 可 (It can be done). Alternately, these same high-level officials could petition the Emperor directly with a proposed ordinance that they had drafted, sometimes following court deliberations, or that they had received from a high-level member of the bureaucracy, such as a Commandery Governor or a Chief Minister of a Regional Lordship. At some point after adoption, the ordinance was given a number and was compiled into a titled collection, based on topic.[5]

In the case of the documents in Tomb No. 336, there were at least 102 items in the original Ordinances on Merit, since a series of numbers appears at the beginning of the texts of the slips.[6] These presumably give the numbers of individual articles in the collection. But of these, twenty-three articles--Numbers 19, 22, 24, 27, 28, 29, 32, 34, 41, 51, 52, 54, 55, 58, 65-70, 72, 74, and 81--are missing from the set deposited in the tomb. Approximately twenty-two items do not have numbers at the beginning that would normally identify the respective ordinances to which they belong. Some of the slips placed at the beginning of the Ordinances on Merit do not seem to belong there: Slips 5 through 11, for example, are probably some sort of 'form' for recording (and ultimately submitting to higher authority) information such as merit and length of service and do not form a part of the ordinances (see below).

In other cases, slips that have been placed together under one rubric by the editors do not seem to belong together. In short, there seem to be problems in the assignment of the order of the slips. Various solutions have been proposed to deal with this issue, e.g., by Huang Haobo.[7]

The term (*zhi li* 置吏), lit. "the establishment of officials," appears at the end of the second slip of the entire set and at the end of Ordinance No. 26 (Slip No. 84), followed by the numerative term for "branch," *zi* 子).[8] What do these words mean or refer to? Possibly, the Ordinances on Merit and Length of Service were originally intended as a supplement to the Statutes on the Establishment of Officials, 置吏律,

[5] Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, p. 1113,

[6] Many of the articles consist of writing on a single slip. The editors have attached second, third, or more slips to an article, based on content and perhaps on other criteria.

[7] Huang Haobo 黃浩波, "Zhangjiashan 336-hao Han mu zhujian *Gong ling* bianlian chuyi" 張家山三三六號漢墓竹簡《功令》編連芻議, wangzhan@bsm.org.cn, posted on 2023-03-20. Cf. Gao Tingting 高婷婷, "Zhangjiashan 336-hao Han mu zhujian bianlian ji xiangguan wenti chuyi" 張家山 336 號漢墓竹簡編聯及相關問題芻議, *Jianbo* 簡帛 27 (2023): 109-18.

[8] The *ganzhi* (stem and branch) system was used for marking time and indicating sequential categories.

seen in the Qin Shuihudi 睡虎地 Tomb No. 11 and Yuelu documents (Vol. 4),[9] and in the early Han Zhangjiashan Tomb No. 247 documents.[10]

But the "Ordinances on Merit" (*Gong ling*) seem to have existed in the Qin, as the term appears in Slip 208 (1245) of the Yuelu documents, in a Statute on the Establishment of Officials that reads as follows:

> 縣及都官嗇夫其免徙而欲解其所任者, 許之。新嗇夫弗能任, 免之, 縣以攻 (功) 令任除有秩吏。
>
> Should a Bailiff[11] of a County as well as of a Metropolitan Office[12] be dismissed or transferred, and he wishes to be released from the person whom he recommended and guaranteed, permit it/him. When the new bailiff is not able to recommend and guarantee him, dismiss him, and the county is to recommend, guarantee and appoint a salaried official according to the Ordinances on Merit.

The Yuelu documents also suggest that the system of merit and length of service existed in the Qin. Yuelu Vol. 7 contains two relevant slips. The first one reads as follows:

> 155 (1075-1) 中官令史弗為入數, 節(即) 覘 (詐)不自占, 以勞次為令史, 弗主紀數之, 其官私
>
> As for a scribe director of a central office who does not enter numbers for it (?), or when he fraudulently does not self-report,[13] or uses the order of length of service as a scribe director, or enumerates it when he is not in charge of the records, should the office be private…

While the interpretation and meaning of this rule is somewhat unclear because the rest of the rule is missing and the context is unknown, the Qin clause *yi lao ci* closely parallels the clause *yi gonglao ci* 以功勞次 (found four times in the early Han

[9] These Qin documents were illegally looted from one or more tombs in the Yangzi River Valley region and sold on the Hong Kong antiques market. They were eventually returned to China and are now held by the Yuelu Academy of Hunan University. Seven volumes have been published under the chief editorship of Chen Songchang (except vol. 1, which was jointly edited by Zhu Fenghan and Chen Songchang).

[10] Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 3.4 pp. 644-66.

[11] Translation of the titles of officials in the Qin and early Han follow those proposed in Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 1.6, pp. xxiii-l.

[12] The nature of 'metropolitan offices' is somewhat unclear. In *Law, State, and Society in Early Imperial China*, Barbieri-Low and Yates define such an office as that of a central government ministry; see Note 86, pp. 530-531.

[13] All individuals were expected to report their personal details and their possessions to the Qin state.

Ordinances on Merit) and the clause *yi gong ci* 以功次 (found twice), and the "central office" probably refers to an office belonging to the emperor, the empress, or the heir apparent. The second section of text reads as follows:

> 215 (1634) 郡, 貲守丞、卒史主者各二甲, 奪各一攻(功) ㄴ,[14] 泰守貲二甲。
>
> ...commandery, fine the Governor's Assistant and the Accessory Scribes in charge each two sets of armour[15] and remove one merit from each. As for the Grand Governor,[16] fine two sets of armour.

Ordinance No. 1

The editors assigned thirty-eight slips to Ordinance No. 1, which seems much longer than all of the other items. I doubt that the original Ordinance No. 1 was so long, and it is more likely that the editors included slips that were not originally part of it.

For a start, I believe that Slip Nos. 5 through 11 are a type of 'form' (*shi* 式) that was intended to accompany the ordinances as a whole. This form is divided into four columns. First, here are the transcriptions provided in the book by the editors:

> 5a ● 左方上功勞式 5b ● 左方功將(狀)式
> 5a ● To the left is the form for submitting merit and length of service 5b ● To the left is the form for the written statement of merit
> 6a 某官某吏某爵某功勞　　6c 某官某吏某爵某將(狀) 6d 大凡功若干
> 6a X Office; X official; Of X rank; Merit and length of service

[14] This is a punctuation mark in the original text, but the exact meaning is unclear. It seems to represent a kind of pause, perhaps to aid in the construction of the sentence or in preparation for its being read out loud; what follows is an additional clause. The original text of the ordinances contains two other punctuation marks; a smaller and a larger dot. These would appear to mark the beginning of a passage or a significant break in the text. A reduplicated graph is represented by a small double line, somewhat equivalent to the 'equal' sign in English orthography, written slightly to the right, below the graph. For a case study on scribal punctuation marks in two early Chinese manuscripts, see Rens Krijgsman, "Punctuation and Text Division in Two Early Manuscripts: The Tsinghua University **Jin Wen Gong ru yu Jin* 晉文公入於晉 and *Zi Fan Zi Yu* 子 犯子餘 Manuscripts," *Journal of the American Oriental Society* 143.3 (2023): 109-24.

[15] The Qin and early Han issued various types of penalties for infractions of the law. The Qin categorized monetary punishments (fines) primarily in quantities of shields and sets of armour. One set of armour was the equivalent of 1344 cash. The Qin 'cash' was a round bronze coin with a square hole. It was called *banliang* 半兩 ('half a *liang*') from the inscription engraved on it. See Yōhei Kakinuma, "Money, Markets, and Merchants," in Debin Ma and Richard von Glahn, eds., *The Cambridge Economic History of China* vol. 1 (Cambridge: Cambridge University Press, 2022), pp. 132-35. For a detailed discussion of the legal punishments in Qin and early Han, see Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2.7, pp. 187-209.

[16] 'Grand Governor' was the Qin title for the governor of a commandery, the equivalent of a modern province.

6c Written statement of X official of X rank of X Office; 6d Grand total: Merit
7a 為某吏若干歲月其若干治獄 7b 今為某官若干歲 7c 軍功勞若干 7d 某縣某里
7a Served as X official for x years and months, managing cases for x years and months 7b As of now, has served in X Office for x years 7c Military merit and length of service 7d X County X Village/Ward
8a 從軍為某吏若干歲月 8b 能某物 8c 中功勞若干 8d 姓某氏
Has followed the army acting as X official for x years and months 8b [Possesses] capability in relation to x matters
8c Has achieved x merit and length of service 8d X Clan and surname (?)
9a ● 凡為吏若干歲月其若干從軍 9b 年若干 9c ●凡功若干 9d 秩若干石
9a ● In total, has acted as an official for x years and months, following the army for x (years and months) 9b Age: X 9c ● Total merit 9d Salary (grade): X bushels
10a ● 凡軍功勞若干 10b 某縣某里 10c 今為某官若干歲
10a ● Total military merit and length of service 10b X County; X Village/Ward
10c As of now, has worked in X office for x years
11a ● 凡中功勞若干 11b 姓某氏 11c 能某物
11a ● Total merit and length of service achieved 11b X Clan and surname
11c [Possesses] capability in relation to x matters

The following is my reconstruction of this form:

First Column

5a ● 左方上功勞式
5a ● To the left is the form for submitting merit and length of service
6a 某官某吏某爵某功勞
6a X Office; X official; of X rank; X merit and length of service
7a 為某吏若干歲月其若干治獄
7a Served as X official for x years and months, managing cases for x (years and months)
8a 從軍為某吏若干歲月
Has followed the army acting as X official for x years and months
9a ● 凡為吏若干歲月其若干從軍
9a ● Has acted as an official for x years and months; following the army for x (years and months)
10a ● 凡軍功勞若干
10a ● Total military merit and length of service
11a ● 凡中功勞若干
11a ● Total merit and length of service achieved

Second Column

5b ● 左方功將(狀)式
5b ● To the left is the form for the written statement of merit
6b
7b 今為某官若干歲
7b As of now, has served in X Office for x years
8b 能某物
8b [Possesses] capability in relation to x matters
9b 年若干
9b Age
10b 某縣某里
10b X County; X Village/Ward
11b 姓某氏
11b X Clan and surname

Third Column

5c
6c 某官某吏某爵某將(狀)
6c Written statement X official of X rank of X Office;
7c 軍功勞若干
7c Military merit and length of service
8c 中功勞若干
8c Has achieved x merit and length of service
9c ●凡功若干
9c ● Total merit
10c 今為某官若干歲
10c As of now, has served in X Office for x years
11c 能某物
11c [Possesses] capability in relation to x matters

Fourth Column

5d
6d 大凡功若干
6d Grand total: X merit
7d 某縣某里
7d X County X Village/Ward
8d 姓某氏
8d X Clan and surname
9d 秩若干石
9d Salary (grade): X bushels

10d
11d

In addition to the form, Slip No. 38 seems anomalous and unrelated to any other element in Ordinance No. 1. It reads as follows:

> 38 ● 故司馬洛都、望都公大夫中意將屯, 後罷, 復如等。
> ● Zhongyi, former Major of Luodu and Wangdu, (with the rank of) Grandee of the Realm, was a *jiangtun* (leader of a platoon or company), and was later relieved (of his duties); he is to be reinstated to his (previous) rank.[17]

It is quite possible that some of the other slips placed by the editors under Ordinance No. 1 should be considered as separate ordinances whose numbers are missing from the top of the slips.

Dating

It is clear that the ordinances were composed and promulgated at different times. Some of the ordinances specify when they were "sent down" (*xia* 下), in other words, distributed to commanderies, counties, and marches.[18] These are the ordinances in question:

> a) Slip No. 121 二年十一月戊子下 (178 BCE, according to the note to the text)
> b) Slip No. 152: 高皇后時八年八月丙申下 (the fifteenth day of the eighth month, 180 BCE, according to the note to the text)
> c) Slip No. 160: 元年六月戊辰下 (the twenty-second day of the sixth month, 179 BCE, according to the note to the text)
> d) Slip No. 161: 二年十月戊申下 (the fourth day of the tenth month, 178 BCE, according to the note to the text)

In addition, a number of slips mention the title of the leading official of the realm as the *xiangguo* 相國 (Chancellor of State). This title was used in the state of Qin, which appointed two such individuals, Left and Right. It was also used by Liu Bang 劉邦, the first emperor of the Han dynasty, who mandated it from 196 BCE. The title was changed back to *chengxiang* 丞相 (Chief Minister), the title used in the Qin Empire, in 189 BCE during the reign of Emperor Hui. It is therefore likely that the ordinances referring to a Chancellor of State, rather than to a Chief Minister, were

[17] According to the editors, Luodu was subordinate to Shang Commandery and Wangdu subordinate to Zhongshan Commandery. Zhongyi (whoever he was; no surname is provided in the text) was evidently a soldier assigned to some kind of garrison or guard duty in those locations.
[18] The Qin state organized its regional administration into commanderies (the equivalent of later administrative units such as provinces), counties, and marches. Marches (*dao* 道), which were at the same administrative level as counties, were supposedly areas where large numbers of indigenous peoples lived.

drafted between 196 and 189 BCE. They are Slip Nos. 64, 65, 66, 75, 83, and 113--in other words, Ordinances 13, 14, 18, 26, and 53.

It is to be noted that several of these ordinances concern military matters, such as Slip No. 38, which includes content relating to the soldier named Zhongyi mentioned above, whereas Ordinance No. 18 starts with a report from the Chancellor of the Marquis of Linguang 臨光侯相, Linguang also being written as 林光. The editors note that Lü Xu 呂須 was appointed to this position in the fourth year of Empress Lü's reign (184 BCE), and that he and his son Lü Kang 呂伉 were killed in a putsch against the Lü clan in the eighth year. This petition and the ordinance must have been issued while the marquisate was in existence. Further, Ordinance No. 25 must have been promulgated before the kingdom was abolished in the sixth year of Han Wendi (174 BCE), according to the editors' note to this ordinance on p. 110.

There are other indications of the dating of the ordinances, but the examples noted above are sufficient to show that the Ordinances on Merit were compiled over a relatively long period at the beginning of the Han dynasty prior to their being copied and placed in Tomb No. 336 Zhangjiashan.

Three further points are worth mentioning. Only one ordinance seems to record the words of Han Wendi himself. The following excerpts are taken from Ordinance No. 9:

> Slip No. 51 九吏廉絜、端平者, 吾甚欲得而異遷及有 (又)以賞祿之。前日詔吏謹察諸吏廉絜、端平者用之。今二千石官、郡
> Slip No. 52 守未嘗有言良吏者, 甚不稱吾欲癘(厲) 吏之意。其令二千石官、郡守各謹察諸吏廉絜、端平、毋害者, 具署官秩、
> Slip No. 53 所以異之狀, 徑上, 會十月朔日, 且以智(知) 二千石官、郡守能獨察其吏者, 它如前詔, 亟下。
>
> (51) 9 As for officials who are incorrupt and pure and upright and fair, We very much desire to get to single (them) out and promote (them), as well as to further bestow rewards on them. Previously, We instructed the officials to carefully examine all the officials and, as for those who were incorrupt and pure and upright and fair, to use them. Now 2000-bushel (officials)[19] and governors of commanderies (52) have not yet spoken of 'virtuous officials,' and they are very far from speaking about my intention of desiring to encourage officials. You should order each 2000-bushel (official) and commandery governor to carefully examine all the officials and, as for those

[19] 2000-bushel was a salary grade held by high officials, although they were paid partly in cash and partly in kind. See Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, pp. 951-952.

> who were incorrupt and pure, upright and fair, and highly competent, to write down completely their office and salary, (53) and a statement of how they are singular.[20] These are to be submitted directly, with a deadline of the first day of the tenth month. Furthermore, in order to know whether the 2000-bushel (officials) and governors of commanderies are alone capable of examining the officials, the rest is similar to the previous Instruction. Immediately send (it down).

The second point is that at the end of a number of slips in this collection, a copyist has written stem (*gan* 干) or branch (*zhi* 支). The first stem *jia* 甲 does not appear, while there is only one record of one branch, *zi* 子, the first in the sequence.[21] Might those slips with the stems and branches have been written by different copyists? The calligraphy on all the slips probably needs careful checking.

The last point concerns the appearance of the official salary rank of 'fully 2000-bushels.' This is the earliest mention of this rank (Slip No. 15).

Abstaining from Grains and Ingesting Qi

This work is divided into three parts or sections, *Master Qi* (綦氏), *Master Zai* (載氏), and *Choosing qi* (*Ze qi* 擇氣). The two-graph phrases of the titles of each part are written above the first graphs on the first slip of each section. The editors summarize the respective contents of the three parts as follows: *Master Qi* records the steps and method of abstaining from grains; *Master Zai* records the method of ingesting *qi*; and *Choosing qi* records the types of *qi* that should or should not be ingested at what times. Only the latter text has some similarities with a known text--in this case, the excavated Mawangdui *Eliminating Grain and Eating Vapor* (*Quegu shiqi* 却穀食氣), translated and studied by Donald Harper.[22] These texts are not only important for studying the development of pre-modern Chinese medicine, but also its connections to (religious and philosophical) Daoism.

Robber Zhi

The burial of a text known as "Robber Zhi" in the Zhangjiashan tomb is highly significant. In the first place, it corresponds closely to a story recounting a fictitious encounter between Confucius and a robber found in Chapter 29 of the famous Daoist philosophical work *Zhuangzi* 莊子. We can thus be certain that the essay circulated separately from the rest of the book. This has implications for the way in which *Zhuangzi* evolved, and for the philosophical orientation of the essay itself,

[20] Literally, "how they are different." Exactly what is meant by the word *yi* 異 in this context is not clear.
[21] For this system, see above note 8.
[22] Donald J. Harper, *Early Chinese Medical Literature: The Mawangdui Medical Manuscripts* (London: Kegan Paul International, 1998).

both of which have been the subject of much scholarly argument.[23] And, of course, the inclusion of the "Robber Zhi" essay sheds light on the philosophical interests of the tomb owner himself. There are, however, numerous marked differences between the two texts, including a variation in name of Zhi himself, and the fact that the Zhangjiashan version lacks the second part of the chapter as it appears in the transmitted text today. The editors suggest, reasonably enough, that this part was added later to the text of the Daoist classic.

Sacrifices to the Horse God

The much shorter "Sacrifices to the Horse God" can be divided into two parts, the first part consisting of three slips and the second consisting of seven. The first part provides instructions on how to perform the ritual, including the offering of pig meat and alcohol, the positioning of the four seats (altars), with the seat of the spirit in the center, and so on, and ends with the prohibition: "Do not give the bones to women or dogs." The bones had to be properly disposed of by being buried in the ground. The second part of the essay provides the text of the prayers chanted on the occasion of the sacrifice. Overall, this early Han sacrifice ritual differs from that recorded in the earlier Qin Shuihudi Tomb No. 11 "Daybooks A" studied by Roel Sterckx many years ago.[24] Worship of the horse deity by military officials continued until at least the eighth century (the middle of the Tang dynasty), as Li Quan 李筌 includes a prayer to the same deity in his military encyclopedia, *Shenji zhidi Taibo yinjing* 神機制敵太白陰經.

Sixteen Varieties of Han Statutes

In comparison with the statutes in Tomb No. 247, there are many similarities, but also some notable differences. The main differences are as follows:

Statutes on Incarcerated Persons (*Qiu lü* 囚律); 15 articles (Slip Nos. 149-184).

[23] The *Zhuangzi* has been the subject of intense scholarly interest for decades. It is now accepted that the work is a composite one and not the work of a single individual by the name of Zhuang Zhou or Master Zhuang (Zhuangzi), after whom the entire work is named. Many scholars accept that there are three sections or layers to the text, although each one varies in deciding which parts each section/layer belongs to and the philosophical orientation of each one. Generally speaking, the first seven chapters (the 'Inner Chapters') are considered to be the work of Zhuang Zhou himself, the other two sections being labelled 'Outer' and 'Miscellaneous.' The "Robber Zhi" chapter is considered to be part of the 'Miscellaneous' layer and perhaps reflects either 'Anarchist' thinking or belongs to the tradition of an 'egoist' philosopher by the name of Yang Zhu, whose works are now lost. See A.C. Graham, "How Much of the *Chuang-tzu* did Chuang-tzu Write?" in *Studies in Classical Chinese Thought*, ed. Henry Rosemont, Jr., and Benjamin I. Schwartz (*Journal of the American Academy of Religion* 47.3, reprinted in *Studies in Chinese Philosophy and Philosophical Literature* [Singapore: National Institute of East Asian Philosophies 1986, Reprinted Albany: State University of New York Press, 1990) and Liu Xiaogan, *Classifying the* Zhuangzi *Chapters* (Ann Arbor: University of Michigan Press, 1995).

[24] Roel Sterckx, "An Ancient Chinese Horse Ritual," *Early China* 26 (1996): 47-79.

Volume 6, Issue 1
https://doi.org/10.25615/ta.v6i1.103

In the Tomb No. 247 collection, Peng Hao argued for the removal of some articles from the Statutes on the Composition of Judgments (*Ju lü* 具律) and their placement in a (reconstructed) *Qiu lü*, because the latter lacks a title slip in the Tomb No. 247 collection, because the exact number of types of statutes in that collection is not clear due to a missing graph in the title, and because these statutes definitely appear in the Tomb No. 336 corpus, where there is such a title (written on Slip No. 149). As a consequence, the team that re-photographed and added new comments on the legal materials in Tomb No. 247, of which Peng Hao was a member, reordered the texts and inserted a rubric for Statutes on Incarcerated Persons.[25] Other scholars, such as Barbieri-Low and Yates, rejected this restructuring of the Zhangjiashan Tomb No. 247 slips and maintained the original order.[26]

Although there may have been no Statutes on Incarcerated Persons in the early Han (prior to c. 186 BCE), they were instituted early in Han Wendi's reign. In other words, there was a revision or expansion of the legal statutes late in Empress Lü's reign, or early in Han Wendi's reign, that was not recorded in transmitted dynastic histories such as the *Shi ji* 史記 and the *Han shu* 漢書. The No. 336 Statutes on Incarcerated Persons contain many new rules, including ones that specify the sizes of hand and feet manacles and the size of tattoos. Below, I quote two examples that arguably indicate philosophical, hemerological and cosmological influences on the legal practices of the time. The first may show some adjustment of or improvement in the treatment of women, even though in other respects, women were treated more harshly under the Han than they had been under the Qin. The second shows a Han concern with auspiciousness: it was important to avoid compounding the ill fortune of criminal activity by the state engaging in legal activities during inauspicious times.

Slip No. 180 囚懷子而當報者, 須其乳乃報之。

When an incarcerated person (i.e., a woman) is pregnant and matches (having her sentence) reported (for judgment),[27] wait until she is suckling (her baby) and then report it.

[25] Peng Hao 彭浩, Chen Wei 陳偉, Kudō Motoo 工藤元男, Waseda daigaku Chōkōryūiki bunka kenkyūjo 早稲田大学長江流域文化研究, Jingzhou bowuguan荊州博物館, and Wuhan daxue jianbo yanjiu zhongxin 武漢大學簡帛研究中心,eds., Ernian luling *yu* Zouyan 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
(Shanghai: Shanghai guji chubanshe, 2007).
[26] Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, pp. 492-97.
[27] For the concept and meaning of the term 'match' in a legal context, see Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, pp. 35-36.

Slip No. 181 [illegible]。春戌、、夏丑、秋辰、冬未, 及壬、乙、戊辰、戊戌、戊午, 月省(眚)及宿貞心、虛、張, 皆毋以報

Slip No. 182 囚。朔日、望、入朔八日、二旬三日勿以治獄、報囚。晦日不可以報囚, 以望後利日。

(181) Always report (the judgment) to the incarcerated person in the market when the moon is dark. As for *xu* days in spring, *chou* days in summer, *chen* days in autumn, and *wei* days in winter as well as *ren* days, *yi* days and *wuchen* and *wuwu* days, and when the moon is eclipsed as well as during the (lunar) lodges *zhenxin*, *xu*, and *zhang*,[28] in all cases do not report (the judgment) (182) to the incarcerated person. As for the first day of the month, on the *wang* day, the eighth day after the first day, and the third day of the second ten-day week, do not use them to manage cases or report (judgments) to incarcerated persons. On the last day of the month, you may not report (a judgment) to an incarcerated person; (do it) on a beneficial day after the *wang* day.[29]

Statutes on Stables *Jiu lü* 廄律; 2 articles (Slip Nos. 279-282).

No previously excavated or recovered collections contain any articles under this rubric. However, it is more than likely that the Han continued the Qin practice and that the latter had statutes governing the management of stables.

Statutes on Illicit Sexual Relations *Fu lü* 復律; 2 articles (Slip Nos. 314-316); not the same as the "*Fu lü*" of the Zhangjiashan 247 collection.

As Peng Hao points out, these two items were placed by the editors of Zhangjiashan Tomb No. 247 in "*Za lü*" (Miscellaneous Statutes). As a member of the No. 247 Team, Peng forcefully argued that *fu* should be understood as inappropriate sexual relations, not exemption from taxes as had originally been claimed by the editors of the Zhangjiashan 247 slips, and that they were wrong, or that, by Wendi's time, these two articles had been removed from "*Za lü*" and placed in their own category. There were Statutes on the Exemption from Taxes (perhaps) in the Zhangjiashan 247 hoard, but the title and the context of the statutes remain problematic. The two items read:

[28] The Chinese divided the heavens into twenty-eight segments, each with a name, according to the location of the moon. See Xiaochun Sun and Jacob Kistemaker, *The Chinese Sky during the Han Dynasty: Constellating Stars and Society* (Leiden; New York: Brill, 1997).

[29] For a thorough discussion of hemerology, see Marc Kalinowski, "Hemerology and Prediction in the Daybooks: Ideas and Practices," in *Books of Fate and Popular Culture in Early China*, ed. Donald J. Harper and Marc Kalinowski (Leiden: Brill, 2017), pp. 138-206, and for taboos, see Liu Tseng-Kuei, "Taboos: An Aspect of Belief in the Qin and Han," in *Early Chinese Religion Part One: Shang through the Han*, ed. John Lagerwey and Marc Kalinowski, vol. 1 (Leiden: Brill: 2009), pp. 937-1004.

Slip No. 315 復兄弟、季父、柏(伯)父子之妻、御婢, 皆黥為城旦舂。
For engaging in illicit sexual relations with the wife or riding slave of one's elder or younger brothers, or father's younger brothers, or father's elder brothers, in all cases tattoo and make (the individual) a wall-builder or rice-pounder.

Slip No. 316 復男弟兄子、季父、柏(伯)父[子]之妻、御婢, 皆完為城旦舂。
For engaging in illicit sexual relations with the wife or riding slave of the sons of one's younger or elder brothers, or the sons of one's father's younger or elder brothers, in all cases leave (the individual) intact and make (him or her) a wall-builder or rice-pounder.

Here, the Han scribes are still using the same terms as the Qin for the most severe of the hard labor punishments and "intact" refers to a situation in which the authorities do not mutilate the criminal by shaving his face or head. There are many examples of tattooing in the Zhangjiashan 336 statutes, but no examples of the punishment of cutting off the nose, although one article implies that the punishment still existed.

Statutes on Banishment Qian lü 睘 (遷) 律; 3 articles (Slip Nos. 317-325).

The first two of these articles specify to which commanderies those of other commanderies who committed a crime punished by banishment were to be sent. The third article is most interesting, as it refers to a disease mentioned in the Qin Shuihudi texts that has been identified as 'leprosy.' It reads as follows:

Slip No. 324 諸不幸病癘者, 鄉部官令人將詣獄, 獄謹診、審癘, 睘 (遷)句章(障)X+阝 (涅)鄉, 其夫、妻、子欲與偕
Slip No. 325 者, 許之。

(324) As for all those who unfortunately fall ill with 'leprosy,' the officials of the district are to order men to take and present (the individuals) for trial; at the trial they are to carefully conduct a physical examination; and when it is verified that it is 'leprosy,' they are to banish the individuals to Nie (?) District, Ju/Gouzhang (County). Should their husbands, wives and children wish to accompany (them), (325) permit it.

Note here that falling ill with leprosy does not seem to have constituted a crime in and of itself, as it had been under the Qin rulers, who apparently punished it harshly. The Han authorities call the infected individual "unfortunate." When this alteration in the official view of the disease changed is not currently known.

Statute on Court Etiquette *Chao lü* 朝律.

This statute is not divided into articles as the other statutes are. It does, however, provide precise detail regarding the order of precedence in which participants in the court ritual are to perform their obeisance to the ruler, how they are to stand, and what the various imperial officials in charge of the ceremony are to say. This ritual could certainly be analyzed from the perspective of anthropology as well as history, and it has already been the subject of several studies by Chinese scholars.[30]

In short, some articles or items in other statutes do not appear in the Zhangjiashan Tomb No. 247 collection, which may mean that they had not yet been enacted, or, if they had, that they were omitted for some reason by the copyist(s) of that material. Other articles have changes in wording, missing technical terms, or additions, for example. Among the most interesting features of these texts is the absence of the term *shou* 收 "impound" in the Zhangjiashan Tomb No. 336 collection. Wherever the word appears in the Zhangjiashan 247 collection, the copyists in the Zhangjiashan Tomb no. 336 collection have left a blank. This seems to confirm that the hated Qin punishment of impounding relatives for violating the law of mutual responsibility (i.e., enslavement by the government) had been abolished, confirming the historical tradition.[31]

Event Calendar of the Seventh Year

Frequently buried with scribes, event calendars list the days (indicated by their respective *ganzhi* symbols) and the months of one or more years in the scribe's life, with the occasional addition of an important personal event under one of the days. These documents are very helpful in identifying the owner of the tomb and the likely dating of the burial. In this calendar, the tenth, twelfth, second, fourth, sixth, and eighth months, each of which contains twenty-nine days, are indicated as being "small"; the remaining (odd-numbered) months, each of which contains thirty days, are indicated as "large," giving a total of 354 days There is seemingly only one personal event mentioned, that of the arrival of an individual named "Xi" 喜, probably someone closely related to the tomb occupant. It is unlikely that the personal name of the deceased was Xi, as was the case for the individual scribe buried in Tomb No. 11, Shuihudi, Hubei. Consequently, there is no indication of the personal name of the owner of Tomb No. 336, Zhangjiashan, and he thus remains anonymous. However, the editors have concluded that the year in question is 173 BCE, the seventh year of Han Wendi's reign, which gives a good indication of

[30] For example, Wang Yong 王勇, "Zhangjiashan 336-hao mu *Chao lü* xiaoyi" 張家山 336 號墓《朝律》小議, wangzhan@bsm.org.cn, posted on 2023-04-07 and the introduction to the text in *Zhangjiashan Han mu zhujian [sansanliu hao mu]*, vol. 1, p. 211.
[31] Charles Sanft, "Six of One, Two Dozen of the Other: The Abatement of Mutilating Punishments under Han Emperor Wen," *Asia Major* 3rd series 18.1 (2006): 79-100.

the dating of the burial. It must have taken place after—perhaps shortly after—that year, and the contents can therefore be dated to the period before that.

Inventory Slips

The inventory slips list the contents of Tomb No. 336 and provide important details on the identity of the objects accompanying the deceased in his grave. Somewhat surprisingly, many of the slips refer to figurines of male and female slaves buried with the tomb owner. There are eleven male slaves and five female slaves listed by name. This appears to be one of the earliest examples, if not the earliest example, in the Han of a relatively low-status individual (the tomb owner was probably a scribe) taking a large number of slaves with him into the afterlife. Whether he did indeed own in his life above ground the number of slaves attributed to him in death, and whether their names were the same as those recorded on the inventory slips, are open questions. This much seems evident: The slaves were expected to serve him in the afterlife and possibly were also intended to enhance his status there. Slaves were not physically buried with him, however, as there is no archaeological evidence to support such a claim, whereas figurines are certainly recorded and illustrated in the archaeological report.

Concluding Remarks

Although inventory slips were separated from the other slips in Tomb No. 336, there is no indication of how the slips were distributed therein: whether, for example, the slips were found in a single bundle or in multiple bundles. Nor is there any information as to where they were located in the tomb—the drawing of the tomb contents presented in the 1992 *Wenwu* report is not clear enough to determine how the individual slips might have been placed. Thus, the order of the original slips is not obvious, and exactly why the editors have chosen to order the slips in the way they have is not clearly articulated. The editors did not note the location of blank slips except to say in their brief preface to the Event Calendar that eleven slips were blank.

Furthermore, the editors gave assigned no archaeological numbers to the slips. This suggests that the excavation of the slips (and of the tomb itself) did not proceed with great scientific rigor and care. The reason for this may have been that the excavators and early analysts did not see much difference between the statutes of Tomb No. 247 and Tomb No. 336. The former seemed more important. However, given that Tomb No. 336 was sealed approximately twenty years after Tomb No. 247, we have the opportunity to determine how the statutes changed over the period from the reign of Empress Lü to the early years of Han Wendi. In fact, now that large caches of legal documents have been excavated from Shuihudi Tomb No. 77 and from a tomb at Hujiacaochang 胡家草場 dating from later in Wendi's reign, there is an

excellent opportunity to analyze the changes in the law in the early Han dynasty, especially the changes in laws that were initiated under Han Wendi. These documents have not yet been published in their entirety, however.

Overall, then, the texts contained in the Zhangjiashan Tomb No. 336 are of great academic interest and it is hoped that more studies of them will be forthcoming in future years.

Robin D.S. Yates, Fellow of the Royal Society of Canada and James McGill Professor Emeritus, McGill University, specializes in the history of Chinese law, the social and cultural history of pre-modern China including slavery, military affairs, science and technology, and the history of Chinese women. He is currently researching and publishing on the newly discovered and recovered legal and administrative documents dating from the Qin and Han periods, especially those from the site of the Qin Qianling County, modern Liye, Hunan Province, and those found in the Yangzi River Valley.