


RESEARCH ARTICLE

Husbands and Wives in Qin and Han-Dynasty Bamboo Legal Texts

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Abstract

In Qin and Han times, the establishment of a complex legal system that applied to every member of the empire brought about an unprecedented transformation of the husband–wife relationship, changing it from a bond largely determined by custom, ritual, and family concerns to one regulated by law. Laws recorded in the Zhangjiashan bamboo legal texts reveal that women’s legal status in Qin and Han times was far higher and allowed for greater autonomy than previously imagined. Their increased legal standing may be traced to reduced household size, a policy set to counteract the mounting death toll and social chaos that followed Qin expansion and the transition from Qin to Han rule. I analyze exemplary cases to demonstrate how the small family system in conjunction with a legal order that empowered women as household heads created a new space for widows and wives to exercise their autonomy.

Keywords: Early imperial China; marriage and the law; court cases

In Qin and Han times, the establishment of a complex legal system that applied to every member of the empire brought about an unprecedented transformation of the husband–wife relationship, changing it from a bond largely determined by customs, rituals, and family elders to one regulated by law.¹ Records of recently discovered legal cases

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¹See, for example, Zhang Jinguang 張金光, “Shang Yang bianfa hou Qin jiating zhidu” 商鞅變法後秦家庭制度, *Lishi yanjiu* 歷史研究 1988.6: 74–90. On pre-Qin legal measures governing marriage, see Zhu Honglin 朱紅林, “Zhanguo shiqi youguan hunyin guanzi falü de yanjiu—zhujian Qin Han lü yu Zhouli bijiao yanjiu” 戰國時期有關婚姻關係法律的研究--竹簡秦漢律與《周禮》比較研究, *Jilin shifan daxue xuebao* 吉林師範大學學報 no.2 (2011), 46–50. In this article, Zhu mines the *Zhouli* for evidence of state-imposed regulations on marriage. Jin Chunfeng 金春峯, *Zhouguan zhi chengshu ji qi fanyang de wenhua yu shidai xinkao* 周官之成書及其反映的文化與時代新考 (Taibei: Dongda tushu gongsi, 1993), 151–68 explores the apparently close connection between the *Zhouguan* and the institutions of the Qin state. Also see David Schaberg, “The *Zhouli* as Constitutional Text,” in *Statecraft and Classical Learning: The Rituals of Zhou in East Asian History*, edited by Benjamin Elman and Martin Kern (Leiden: Brill 2010), 33–63. Yang Zhenhong 楊振紅 argues that the hierarchy and familism of laws created by Shang Yang represent a

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from pre- and early imperial China provide a welcome supplement to the limited and well-studied records of married life found in traditionally transmitted texts.² The legal cases, which may represent actual transcriptions or edited and embellished statements of husbands and wives embroiled in criminal cases, were preserved in two separate caches of documents. One collection was found in a Western Han tomb at Zhangjiashan 張家山 in Jiangling County, Hubei Province. The other cache, a collection of unprovenanced texts, was purchased by the *Yuelu Academy* 嶽麓書院 when it came up for sale on the Hong Kong antiques market in 2007. The *Book of Submitted Doubtful Cases* (*Zouyan shu* 奏讞書) from Zhangjiashan includes six cases that were most likely compiled during the Qin imperial period and sixteen more from the opening years of the Han, with the final date of the compilation ranging between ca. 196 and 186 BCE.³ The other collection of cases, *Four Types of Documents for Trying Criminal Cases and Other [Procedures]* (*Wei yu deng si zhuang zhong* 為獄等狀四種), dates to the pre-imperial period of Qin, ranging between 246 and 222 BCE.⁴

The *Book of Submitted Doubtful Cases* (hereafter *Doubtful Cases*) and the *Four Types of Documents for Trying Criminal Cases and Other [Procedures]* (hereafter *Trying Criminal Cases*) set forth legal cases that confounded local officials and were therefore sent to higher officials for judgment or approval. Still, the specific function of these two works remains unclear. Some scholars conjecture that *Doubtful Cases* represents actual law suits that were compiled for didactic purposes.⁵ Anthony Barbieri-Low and Robin Yates argue that in addition to its use as a manual that draws upon actual cases, the text may also be “a curious hybrid,” which, in the process of circulation, recopying, and literary embroidering, represents the earliest known examples of China’s “courtroom fiction.”⁶ In contrast, all but three of the case records in the *Trying Criminal Cases* collection, according to Ulrich Lau and Thies Staack, “provided precedents or procedural model records for the advanced legal training of candidates who would be given jurisdiction at lower administrative levels,” and were thus “possibly compiled as a kind of private manual,” or “case collections issued by governmental agencies.”⁷

new ritual system. See Yang Zhenhong, “Cong chutu Qin Han lü kan Zhongguo gudai de ‘li’ ‘fa’ guannian jiqi falü tixia—Zhongguo gudai falü zhi Rujiahua shuo shangdui” 从出土秦汉律看中国古代的“礼”“法”观念及其法律体现--中国古代法律之儒家化说商兑, *Zhongguo shi yanjiu* 2010.4: 75–106.

²For the limits on traditionally transmitted sources, see Jack Dull, “Marriage and Divorce in Han China: A Glimpse at ‘Pre-Confucian’ Society,” in *Chinese Family Law and Social Change*, edited by David C. Buxbaum (Seattle: University of Washington Press, 1978), 23–74. Other English-language studies of this topic include Ch’ü T’ung-tsu, *Law and Society in Traditional China* (Paris: Mouton & Company, 1961) and Melvin Thatcher, “Marriages of the Ruling Elite in the Spring and Autumn Period” in *Marriage and Inequality in Chinese Society*, edited by Rubie S. Watson and Patricia Buckley Ebrey (Berkeley: University of California Press, 1991), 25–57.

³Anthony 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. (Leiden: Brill, 2015), 1:97.

⁴Ulrich Lau and Thies Staack, *Legal Practice in the Formative Stages of the Chinese Empire: An Annotated Translation of the Exemplary Qin Criminal Cases from the Yuelu Academy Collection* (Leiden: Brill, 2016), 15; on the authenticity of these texts, see pp. 12–13.

⁵Various views summarized in Barbieri-Low and Yates, *Law, State, and Society*, 1:98–99. Also see Li Xueqin 李學勤, “*Zouyan shu* 奏讞書 *Wenwu* 文物 (part 1), 1993.8: 26–31; (part 2), 1995.3: 37–42.

⁶Barbieri-Low and Yates, *Law, State, and Society*, 1:99.

⁷Lau and Staack, *Legal Practice*, 75–77.

While it is currently impossible to determine the original purpose of *Doubtful Cases* or *Trying Criminal Cases*, both provide new perspectives on the legal perils associated with the husband–wife relationship in the early imperial period. Moreover, like the *Models for Sealing and Investigating* (*Fengzhen shi* 封診式), a document found among the legal texts discovered in a Qin tomb at Shuihudi 睡虎地 in Hubei 湖北 province in 1975, these cases include the statements of accused individuals and thus go beyond straightforward records of laws and statutes to show in vivid detail the personal accounts of husbands and wives whose marital status became the crux of a legal case.⁸ The cases also provide an invaluable supplement to the small number of traditionally transmitted accounts of ordinary married couples in Qin and Han times.

Both casebooks also provide an almost unprecedented glimpse of a public space that grants a wife’s account the same consideration as her husband’s. This consideration was due, in part, to the political organization of the Qin state, which forged a direct relationship between the ruler and each individual in its population, male and female, through a massive system that dispensed rewards and punishments, organized large- and small-scale public work projects, and monitored the property and vital statistics of each individual household. The state’s interest in marriage was, to a certain extent, due to the legal necessity of establishing how marital status determined a person’s labor, tax, and military obligations as well as his or her criminal culpability and level of punishment.⁹ Nevertheless, under this system, the husband (or other household head) still exerted control over the other members of the household. As Ulrich Lau has noted, the “legal documents show the efforts made by the legislator to protect existing family hierarchy ... [and] only intervened if requested by the head of the family.”¹⁰

However, while a husband was entitled by law to beat his wife (though he could not mutilate or kill her), the excavated manuscripts also show that women were accorded a wide array of rights in Qin times. A woman was able to own land, head a household, share her husband’s rank (or as a daughter, to inherit her father’s status), and in most circumstances, to control her dowry.¹¹ Moreover, the significant (though not

⁸Shuihudi Qinmu zhujian zhengli xiaozu 睡虎地 秦墓 竹簡整理小組, *Shuihudi Qinmu zhujian* 睡虎地 秦墓 竹簡 (Beijing: Wenwu, 1990), 147–64; Katrina C. D. McLeod and Robin D. S. Yates, “Forms of Ch’in Law: An Annotated Translation of The Feng-chen shih,” *Harvard Journal of Asiatic Studies*, 41.1 (1981), 111–63; A.F.P. Hulswé, *Remnants of Ch’in Law: An Annotated Translation of the Ch’in Legal and Administrative Rules of the 3rd Century B.C. Discovered in Yun-meng Prefecture, Hu-pei Province, in 1975* (Leiden: Brill, 1985), 183–207. For the most part, names are not used in the cases found in the *Fengzhen shi* but are replaced with Chinese “stem” ordinals (天干 *tiāngān*). None of these cases focuses on husbands and wives.

⁹Li Guofeng also suggests that the various rights accorded to women, such as the ability to head a household, was an important means to encourage household registration and stabilize the government in this transitional period. See Li Guofeng 李国鋒, “Shilun Handai dui jiating guanxi de falü tiaozheng” 試論漢初對家庭關係的法律調整, *Henan shifan daxue xuebao* (*zhexue shehuikexueban*) 河南師範大學學報 (哲學社會科學版) 31.4 (2004), 129–31.

¹⁰Ulrich Lau, “The Scope of Private Jurisdiction in Early Imperial China: The Evidence of Newly Excavated Legal Documents,” *Asiatische Studien/Études Asiatiques*, 59.1 (2005):333–352.

¹¹For women as household head, see Barbieri-Low and Yates, *Law, State, and Society*, 2:801–803, 861 (slips no. 338–339, 345, 384); female ownership of property (limited to widows and unmarried women): (slips no. 379–380, 384, 387), 2:859, 861, 863; wife/daughter sharing husband’s rank: 855–856 (slips no. 369, 372); beating: 2:403 (slip no. 32); dowry: Hulswé, *Remnants of Ch’in Law*, 168–169 (D 149–150), strip nos. 170–171. Also see discussion of women as household heads in, Li Guofeng, “Shilun Handai dui jiating guanxi de falü tiaozheng,” 129–31. On the system of early Han ranks mentioned in the Zhangjiashan legal texts, see Barbieri-Low and Yates, *Law, State, and Society*, 2:xxii. Also see discussion

complete) continuity of Qin and early Han law suggests that these legal provisions were recognized in both periods.¹²

A Question of Marital Status

In case 1.7 of *Trying Criminal Cases*, dated to 229 BCE, a widow who knowingly misrepresented her financial status to avoid taxation finds herself in legal difficulties. What is of particular interest is the uproar caused by her benevolent but administratively challenged husband, who failed to register his marriage with the authorities, and the bold manner of the wife in coping with serious criminal charges. The relatively merciful nature of the prevailing opinion on the case is also striking. The wife, a woman named Wan 婉, was a widowed mother of three surviving children. When her case confounded local officials, it was submitted to a higher administrative level for a decision. The document begins with a report on the initiation of the criminal case:

It was the 18th year, the 8th month, the day *bingxu*, when the adult woman Wan reported herself [for having committed an offence], saying: “In the 7th month [of this year] I declared the family property for my son Yi, minor holder of the third rank. Yi was by law entitled to [claim debts from] Jian, holder of the fifth rank, the *gong zu* Chang and the rank-and-file men Tui, Xi and Yi [amounting to overall] 68,300 cash. There were tallies for this. I concealed and did not declare [this amount of money] to the officials as property. I possessed one stall for selling cloth and one house for accommodating guests [from outside]. Shi, holder of the first rank, blackmailed me saying: “Assign me the stall and the house. If you do not assign [these buildings] to me, I shall report you [to the authorities] for concealing property.” I was afraid and so assigned the stall and the house to Shi. In favour of Jian and his partners I broke and discarded the bond tallies and did not claim [the debts from them]. Prior to the discovery of the offence I [hereby] report myself [to the authorities for concealing property] and report Shi for blackmailing me.”¹³

Wan’s case, as will be demonstrated below, hinges almost entirely on her marital status. When she is faced with being blackmailed by Shi (讖), a menial who had once lived in her household, she panics. She gives in to Shi’s demand for the market stall and the guest house to prevent him from reporting her for tax fraud. She then forgives her debtors in an effort to forestall criminal charges for dodging taxation on money lent to former colleagues of her husband, or perhaps, in the hope that the legal officials will “forgive her debts, as she forgives her debtors.”

But soon she realizes the folly of capitulating to Shi. In a move that suggests her familiarity with a legal loophole that will mitigate the severity of any punishment meted out to her, she reports herself to the authorities. The “Statutes on Denunciation” (*gao li* 告律) found among the bamboo legal texts from Zhangjiashan state the following: “[M]aking a preemptive self-denunciation: in each

of earlier systems in Michael Loewe, “The Orders of Aristocratic Rank in Han China,” *T’oung Pao* 48.1–3 (1960), 97–174; and Robin Yates, “Social Status in the Ch’in: Evidence from the Yün-meng Legal Documents. Part One: Commoners,” *Harvard Journal of Asiatic Studies* 47.1 (1987), 197–237.

¹²On continuity between Qin and early Han law, see Barbieri-Low and Yates, *Law, State, and Society*, 1:219–33.

¹³Lau and Staack, *Legal Practice in the Formative Stages*, 192–95.

case, reduce the crime by one degree.”¹⁴ Punishments were ordered in a system of the lightest (i.e., fines) to the heaviest (death), and leniency was given to the holders of certain ranks.¹⁵ Wan’s husband, Pei, held the fifth rank, specifically, “grandee” (*dafu* 大夫), and as Pei’s wife, Wan shared her husband’s rank.¹⁶ It is more than likely that these mitigations figured in Wan’s decision to report herself. That serious punishments could be mitigated for holders of her rank must have been common knowledge. She may also have derived a general awareness of her legal standing through officially disseminated announcements. Wooden and bamboo texts from China’s early imperial period show that the illiterate were made aware of laws and governmental communications through public readings.¹⁷

After the initial presentation of the case, the interrogation begins with the following statement made by Wan. While it is impossible to determine the extent to which her account has been edited, it is striking in its concision, apparent honesty, and legal savvy.

I am living together with Yi in the same household. Formerly I was a female slave of Pei, holder of the fifth rank. Pei had sexual relations with me, and I gave birth to Yi and the girl Qie. Wei, the wife of Pei, died ten years ago. [Since then] Pei has not taken [another] wife. After approximately two years Pei manumitted me, made me a released person, and made me his wife. I gave birth again to the boy Bi and the girl Ruo. After two years, Pei informed the members of his ancestral lineage and quarter, Kuai and Chen, holders of the fifth rank, Quan, holder of the third rank, and Jia and Xie, holders of the second rank, saying: “I, Pei, have four children with Wan. As I did not marry anymore, I wish that you let Wan gain entry to our ancestral lineage, pay the contribution to the funeral expenses for the destitute in our quarter, and drink and eat together with the inhabitants of our quarter [when there is a funeral meal].” Kuai and the others said: “Agreed.”

So I, Wan, gained entry to their ancestral lineage. [Whenever] an inhabitant of this quarter unfortunately died, I paid the contribution to the funeral expenses for the destitute, just like another man’s wife [would have done it]. After six years, Pei died. [My son] Yi took his place, became heir of the household and the rank and took possession of the stall and the residence.¹⁸

Although the above statement is presented as the direct speech of Wan, it seems unlikely that a woman who was almost certainly unfamiliar with the ins and outs of legal testimony would be able to present such a succinct account on her own behalf.¹⁹ In fact, the procedure for recording testimony did involve some mediation of the accused’s account. First of all, according to the legal texts found at Shuihudi, when legal officials interrogated persons for testimony in criminal cases, the interrogating

¹⁴ Barbieri-Low and Yates, *Law, State, and Society*, 2:547.

¹⁵ Lau and Staack, *Legal Practice in the Formative Stages*, 27–28; Barbieri-Low and Yates, *Law, State, and Society*, 2:547 (slips no. 127–128).

¹⁶ Barbieri-Low and Yates, *Law, State, and Society*, 2:857 (slip no. 372); also see, 2:499 (slips no. 82–83).

¹⁷ Charles Sanft, *Literate Community in Early Imperial China* (Albany: State University of New York Press, 2019), 47–50; and Zhongguo wenwu yanjiusuo Hubei sheng wenwu kaogu yanjiusuo, eds., *Longgang Qin jian* 龍崗秦簡 (Beijing: Zhonghua shuju, 2001), 122 (slip 150). Michael Lüdke also supplies examples of how ordinary people had a general sense of laws and legal culture. See Michael Lüdke, “Professional Practice: Law in Qin and Han China” (PhD dissertation, University of Heidelberg, 2003), 178.

¹⁸ Lau and Staack, *Legal Practice in the Formative Stages*, 195–200.

¹⁹ The phrase used to indicate direct speech here is 媿曰 *Wan yue* “Wan stated.”

official was enjoined to “listen fully to their words, note them down letting each person set out his or her statement.” Michael Lüdke understands the process as follows:

During the recording, testimony often was reformulated, using formal legal language; this probably led in some cases to a more explicit or more complex wording compared to the original oral statements. But there is no indication that any information is introduced to the record by the legal officials that was not part of the interrogated person’s statement “[T]he decision of any criminal case in early China was, as far as we can tell from the available sources, based on the written record alone, i.e. there was no open court trial. The accused and witnesses had no opportunity to directly address the judges, other than through their recorded testimony.”²⁰

Lüdke has also noted that the accused had little control over the written version of their cases and that their accounts might be misrepresented. On the other hand, he speculates that “the mediation of testimony ... empowers the testifiers: it gives their statements the same kind of legal confidence that their interrogators possess.”²¹ The standardization of the format and language of these reports may have thus helped to place the high- and low-ranked on more equal footing. In early China, as far as we know, there were no attorneys to help defendants present a case in the most professional and favorable manner possible. Ideally, even the statements made by an uneducated widow, when mediated by legal officials, would bear the same professional and standardized language as any other person’s account. Maxim Korolkov has discussed this method of interrogation in the context of “empire building” and the state’s effort to encourage the loyalty of the people by providing those accused of crimes with the means to present their own version of events, to defend themselves, and to lodge an appeal if there were procedural violations.²²

Wan identifies herself as a former female slave (*qie* 妾) of Pei.²³ Without using polite circumlocutions, such as “Pei is the father of my child,” Wan simply states that Pei had “sexual relations” (*yu* 御) with her, which led to the birth of her son.²⁴ The term *yu*, which means “to ride,” is also used in medical literature as a term for copulation. In Han times, *yu* also formed part of a standard term designating a slave reserved for the exclusive sexual use of the slave owner: *yubi* (御婢) “riding/sexual relations female slave.” According to Zhang Xiaofeng 張小鋒, the term *yubi* designates a status that is higher than an ordinary slave but which also shares some of the same functions as a wife.²⁵ Moreover, the term was not simply a general description but at least in one

²⁰Lüdke, “Professional Practice: Law in Qin and Han China,” 170.

²¹Lüdke, “Professional Practice: Law in Qin and Han China,” 178.

²²See Maxim Korolkov, “Arguing about Law: Interrogation Procedure under the Qin and Former Han Dynasties,” *Études chinoises* 30 (2011), 37–71.

²³As Lau and Staack state, here the term *qie* refers to a female slave in contrast to male slaves (*nu*). The Han Dynasty, replaced the term *qie* with *bi* 婢. See Lau and Staack, *Legal Practice in the Formative Stages*, 196 n. 941.

²⁴See Donald J. Harper, *Early Chinese Medical Literature: The Mawangdui Medical Manuscripts* (London: Kegan Paul International, 1998), 415; and Martin, C. Wilbur, *Slavery in China During the Former Han Dynasty* (New York: Russell and Russell, 1943), 182. Also see Barbieri-Low and Yates, *Law, State, and Society*, 2:619 [slip no. 194].

²⁵See Zhang Xiaofeng 張小鋒, “Shi Zhangjiashan Hanjianzhong de ‘Yubi’” 釋張家山漢簡中的“御婢,” *Chutu wenxian yanjiu* 出土文獻研究 6 (2004), 125–29, who argues that the status of the *yubi* lay somewhere between a domestic slave (奴婢 *nubi*) and a concubine, but who also shared some of the same functions and privileges as the wife.

case also seems to have indicated a specific legal status.²⁶ The Zhangjiashan “Statutes on Establishment of Heir” (Zhihou lü 置後律) for example, state the privileges associated with Wan’s social rank: “Should a female slave [sexually] serve her master and have a child, when the master dies, manumit the female slave and make her a freedman.”²⁷

But as Wan’s testimony demonstrates, she did not have to wait for Pei to die to be freed. She explains that two years after Pei’s wife passed away, Pei manumitted Wan and made her his wife (*qi* 妻). That Wan had already borne the previously childless Pei a son and a daughter likely contributed to his decision to make her his wife. The status of wife also allowed her to perform ritual duties in the service of her deceased husband that could not be performed by a concubine.²⁸

Next Wan explains that two years after she had given birth to another boy and another girl, Pei requested that the members of his ancestral lineage (宗人 *zongren*) and residential quarter (里人 *liren*) admit Wan to their organization. The lineage members agreed. Wan was thenceforth admitted and required to contribute funding for burial of the poor and to participate in sacrificial and celebratory meals with inhabitants of the same quarter. These duties she discharged like the wives of lineage members.

Wan’s upward social mobility and privileges in the eyes of the law was a direct product of the Qin system of ranks. As Yates and Barbieri-Low point out, “Earlier ranking systems in China had been based on lineage and ritual propriety, so this was an effort by the state to supersede and reorganize these family-based systems of status, claiming for itself the sole right to determine who was important.”²⁹ Yet in this legal case we still see the validating function of the lineage, which unquestioningly accepted the former slave as Pei’s new wife.

The case continues with Wan’s testimony concerning the menial, Shi, and his effort to blackmail Wan into ceding property to him.

Shi formerly was a menial of Pei and lived together with him in the same household. Three years ago, Pei arranged a marriage for Shi; one year later, he bought a house for Shi at a price of 5,000 cash, allotted him a horse and a rice field of 20 *mu* and separated him [from his household]. Shi was serving in the army when Pei died. When he returned home, he [said to] me: “Before Pei died, he promised me that he would assign me the stall and the house for accommodating guests. I wish to obtain them.” I said to him: “When he died Pei [in his last will] did not order us to assign [the buildings] to you and [therefore] you are not entitled to obtain them.” Shi said: “You concealed property. If you do not assign me [the buildings], I will report you.” Because of the concealed property I then assigned the stall and the house to Shi. Before he died, Pei did not wish to assign Shi the stall and the house for accommodating guests; [at least] he did not inform me of this. I do not know the reason why I was not entered into the household registers as Pei’s wife, but [just] as a manumitted female slave.³⁰

²⁶“Engaging in illicit sexual relations with either the wife or riding slave of one’s elder or younger brothers, father’s younger brothers, or father’s elder brothers: in every case, tattoo [the criminal] and make [him or her] a wallbuilder or grain-pounder”; translated by Barbieri-Low and Yates, *Law, State, and Society*, 2:619 (slip no. 195).

²⁷Barbieri-Low and Yates, *Law, State, and Society*, 2:861 (slip no. 385).

²⁸Robin D.S. Yates, “Slavery in Early China: A Socio-Cultural Approach,” *Journal of East Asian Archaeology* 3.1–2 (2002), 283–331.

²⁹Barbieri-Low and Yates, *Law, State, and Society*, 2:215.

³⁰Lau and Staack, *Legal Practice in the Formative Stages*, 195–200.

Shi's threat to report Wan for evading property tax was no small matter. According to Lau and Staack, Wan's crime was considered to be a form of theft (盜 *dao*) valued in excess of 660 cash.³¹ The Zhangjiashan manuscripts state that the punishment for this crime was tattooing and being made a grain pounder convict.³² But knowledge of the mitigation of punishments based on rank likely figured in Wan's decision to report herself.³³ As Pei's wife, Wan shared her husband's rank and was thus probably entitled to a one-degree reduction in punishment, specifically, from tattooing and being made a grain pounder convict (*qing wei chong* 黥為舂) to being shaved and made a rice sifter convict (*nai yi wei bai can* 耐以為白粲).³⁴ Additionally, as Lau and Staack point out, Wan could also have been eligible for a further reduction in her sentence by virtue of the fact that she had reported herself.³⁵ This reduction would result in her being sentenced to shaving and being made a bond servant convict, a punishment that women could likely redeem by either paying or working off a fine, since they did not have facial hair that could be shaved.³⁶ As Yates and Barbieri-Low state, it is unclear if shaving "was intended to grant mercy to female criminals or was simply acknowledging that they did not have whiskers to shave."³⁷ Whatever the justification, Wan was also likely to have had the financial resources to resolve her legal troubles by simply paying a fine.³⁸ But a rude awakening was in store for Wan. According to the head of Wan's district,

Pei manumitted Wan and made her a released person [*shuren* 庶人].³⁹ So we wrote [an entry in] the household registers, which reads: 'manumitted female slave.' When Pei later took Wan as his wife, he did not inform us of this. In the present registers, Wan is [recorded as] a manumitted female slave.⁴⁰

In this case, with the status of "released person" rather than that of "holder of the fifth rank" (the rank she would share as Pei's wife), even with the mitigation of her

³¹Lau and Staack, *Legal Practice in the Formative Stages*, 207 n. 989; Barbieri-Low and Yates, *Law, State, and Society*, 2:723 (slip no. 260).

³²Barbieri-Low and Yates, *Law, State, and Society*, 2:463 (slip no. 55).

³³As Maxim Korolkov has noted, "Although it remains unclear to what degree an ordinary commoner was able to navigate the intricacies of the early imperial legal system, numerically calibrated schedules of rewards and punishments encouraged them to do so, to negotiate exemptions from criminal culpability, reward, and social status." See Maxim Korolkov, "Calculating Crime and Punishment: Unofficial Law Enforcement, Quantification, and Legitimacy in Early Imperial China," *Critical Analysis of Law* 3.1 (2016), 79, also n. 42.

³⁴On the punishment of being shaved and made a rice sifter convict; see Barbieri-Low and Yates, *Law, State, and Society*, 2:499 (slip no. 82).

³⁵Lau and Staack, *Legal Practice in the Formative Stages*, 208–9 n. 999. Women who committed an offence punishable with penal labor of the category of "nai" 耐 would be punished with redemption instead. See Barbieri-Low and Yates, *Law, State, and Society*, 2:501 (slips no. 88–89).

³⁶Barbieri-Low and Yates, *Law, State, and Society*, 2:547 (slip no. 127) and 501 (slip no. 89).

³⁷Barbieri-Low and Yates, *Law, State, and Society*, 2:519, n. 34 in reference to slip no. 89.

³⁸Barbieri-Low and Yates, *Law, State, and Society*, 2:511 (slip no. 119). "As one liang of gold equaled 576 cash (*qian* 錢, see p. 203 n. 57), the redemption fee to be paid by Wan would have amounted to 6,912 cash—roughly one tenth of the debts that were to be paid back to her, and which she failed to declare as "property" of her underage son (overall 68,300 cash)." Thies Staack, personal communication May 2021.

³⁹On the status of the "released person," see Lau and Staack, *Legal Practice in the Formative Stages*, 134 n. 671.

⁴⁰Lau and Staack, *Legal Practice in the Formative Stages*, 204.

punishment for self-incrimination, Wan could claim no second mitigation and would thus be sentenced to hard labor as a grain-pounder convict.⁴¹ Wan's shock and confusion is registered in the following statement: "I do not know the reason why I was not entered into the household registers as Pei's wife, but [just] as a manumitted female slave."⁴²

While we will never know why Pei failed to register Wan as his wife, it is clear that he seemed more intent on establishing her new status with his ancestral lineage than with the state. When legal officials approached the five lineage members whom Pei had contacted to grant Wan admission to the lineage, all five men confirmed Wan's version of events.

In the two differing legal opinions attached to the case, the first, in which the officials considered Wan to be the wife of a holder of the fifth rank, is generally understood as the prevailing opinion.⁴³ According to this view, Wan ought to be allowed to claim the two reductions in punishments and simply pay a fine.⁴⁴ The dissenting opinion, however, judged that she should be punished as a manumitted slave and thus made to perform convict labor service.⁴⁵ The manuscript does not include a final decision for this case.

The prevailing opinion is somewhat surprising. By arguing that Wan should be allowed to claim the status of wife, the officials decided to overlook a legal technicality, namely, Pei's failure to register Wan as his wife with state authorities and reporting his marriage to his lineage organization instead. The decision reflects a willingness to honor a verbal agreement registered with the ancestral lineage rather than the Qin state.

In contrast to the flexibility of the officials who made the prevailing judgment on Wan's case, in another case included in the *Zhangjiashan Book of Submitted Doubtful Cases* at least one official insisted that, in spite of any extenuating circumstances, violations must be punished according to the letter of the law. The case involved a man named Jie who had unwittingly married an absconder. When Jie testified that the woman he married had concealed her past and that he had no knowledge of her true status, the magistrate hearing the case cited a statute that said, "Taking an absconder as a wife: tattoo [the criminal] and make [him] a wall-builder; not knowing of it (viz., the facts of the situation), it is not the case that there will be any reduction."⁴⁶ Nevertheless, given that Jie was truly unaware of his wife's status, the officials at the local level were uncomfortable about holding Jie to the letter of the law and forwarded the case to the commandery. The commandery officials were also divided about whether it was appropriate to show Jie mercy or to punish him to the full extent of the law and thus forwarded the case once more to the Commandant of the Court. The

⁴¹As for the menial Shi, the prevailing opinion was in favor of fining him two suits of armor, while the dissenting opinion called for making him an earth pounder convict and deporting him to Shu. See Lau and Staack, *Legal Practice in the Formative Stages*, 209.

⁴²Lau and Staack, *Legal Practice in the Formative Stages*, 201.

⁴³See Lau and Staack, *Legal Practice in the Formative Stages*, 111 n. 572.

⁴⁴If, in fact, mitigation of punishments functioned as described in the Zhangjiashan legal manuscripts.

⁴⁵See Lau and Staack, *Legal Practice in the Formative Stages*, 209.

⁴⁶Barbieri-Low and Yates, *Law, State, and Society*, 2:1211. This quotation closely matches the Zhangjiashan statute slip no. 168 and D 146 from the Qin legal text found at Shuihudi. See Hulswé, *Remnants of Ch'in Law*, 168. Also see Ulrich Lau and Michael Lüdke, *Exemplarische Rechtsfälle vom Beginn der Han-Dynastie: eine kommentierte Übersetzung des Zouyanshu aus Zhangjiashan/Provinz Hubei* (Tokyo: Research Institute for Languages and Cultures of Asia and Africa (ILCAA), Tokyo University of Foreign Studies, 2012), 132.

commandant angrily responded: “Sentence him under ‘marrying an absconder as a legal wife.’ The statutes are clear. It should not have been referred for decision by higher authority.”⁴⁷ Sadly, since Jie had already been tattooed and had his nose severed for a previous crime, he was punished by having his left foot cut off and sentenced to work as a wall-builder. Again, failure to register one’s marriage in the “household registration system” (戶籍 *huji*), a key governmental agency that collected the raw data necessary for enforcing taxation, labor, and military service, placed one or both spouses in peril.

It is unclear why Pei was far more focused on gaining social (or ritual) rather than legal recognition of Wan’s new status as his wife. However, it was only when Wan broke the law that her official marital status assumed such critical importance. But perhaps it had simply never crossed Pei’s mind that Wan might involve herself in criminal activity or legal wrangling where her status would make a crucial difference. If Shi had not tried to blackmail Wan, it is possible that the authorities might have never discovered her crime.

It is worth speculating on how Wan’s failure to report loans may reflect the special features of Qin social organization, specifically the policy to reduce household size. Early on, the Qin sought to dismantle large and powerful lineages that competed with and threatened state control of human and natural resources. The *Shiji* 史記 biography of Lord Shang (商君) (d. 338 BCE) records measures to reduce household size (ca. 359 BCE) and cites laws that prohibited fathers and adult sons or elder and younger brothers from living under one roof: “Commoners with two or more adult males in their families who did not divide their household would have their military tax doubled ... After three years (350 BC) ... Ordinances prohibited fathers and sons or elder and younger brothers from living under one roof.”⁴⁸

However, whether, how, and to what extent the Qin state implemented these rules remains open to question, since there is no archaeologically recovered text that fully corroborates the *Shiji* account. In a random sampling of various excavated household registers, Peng Nian 彭年 has demonstrated the large number of small families composed of husband, wife, and children.⁴⁹ Records of Qin household registries unearthed at Liye 里耶, Hunan, nevertheless reveal households that included more than one adult male. But these texts do not provide conclusive evidence that Qin households were not generally subject to reduction. For example, these families may have simply decided to pay the fine imposed on dwellings with more than one adult male. It may also be that such laws were less strictly applied in outlying places such as Liye, which was located in western Hunan and bordered on present-day Chongqing County.⁵⁰

⁴⁷ Barbieri-Low and Yates, *Law, State, and Society*, 2:1213 (slips no. 34–35).

⁴⁸ See Sima Qian 司馬遷, *Shiji* (Beijing: Zhonghua shuju, 1982), 68.2230–2232; translation based on William, H. Nienhauser, ed, *The Grand Scribe’s Records*, 7.89–90.

⁴⁹ Peng Nian 彭年, “Qin Han ‘tongju’ kaobian” 秦漢“同居”考辨. *Shehui kexue yanjiu* 社會科學研究 (June 1990), 104–10. But Peng also demonstrates that elderly parents often lived with the family of one of their adult male offspring.

⁵⁰ See, for example, Hunan Sheng Wenwu kaogu yanjiusuo 湖南省文物考古研究所, eds., *Liye fajue baogao* 里耶發掘報告 (Changsha: Yuelu, 2006), pp. 203–8 (slips K43, K2/23, K5). Two additional sources are relevant. The Qin *Day Book A* 日書甲種 found at Shuihudi 睡虎地, mentions days that are auspicious for dividing households (fenyi 分異), but lack of context renders its meaning ambiguous. See Shuihudi Qinmu zhujian zhengli xiaozu, *Shuihudi Qinmu zhujian*, 190 (strip 52). The legal documents discovered in the Han-dynasty Zhangjiashan tomb no. 247, which show many consistencies with Qin legal texts, also suggest that households were in fact divided. See Barbieri-Low and Yates, *Law, State, and Society*, 2:803 (slip 343).

Pei's household, as far as can be determined, included Pei, his first wife (later deceased), Wan, Pei's three surviving children by Wan, and Shi, a menial servant (*li* 隸) who was also included on Pei's household register.⁵¹ Pei's household thus conforms to the reduced family units associated with Shang Yang's policies. Strictly speaking, Shi was not a family member but Pei nevertheless found Shi a wife and provided him with all of life's necessities, including a house, horse, and rice fields. Given Pei's great generosity, he seems to have looked upon Shi as a son-surrogate, even though Wan had already produced a son for Pei. It is not clear how common such an act of generosity was at the time or to what extent the small-family system encouraged a master-servant relationship that seemed more like that of parent-child, or, in the case of Wan, like husband and wife. Rather than bringing in a new wife or concubine from outside to join the household, Pei simply manumitted and married his slave.

Another feature of Wan's case that may have been influenced by small household size is its relative insularity. A residence that included only one adult might be prone to missteps that a larger family with the oversight of multiple adults might avoid. In fact, another Qin bamboo text, the *Jiaonü* 教女 (*Instructions for Daughters*), a cache of unprovenanced Qin and Han bamboo texts acquired by Peking University in 2010, mentions tax evasion as a failing typical of the "bad woman": "As for the family's payment of household taxes, in the past, she has cheated in the amount paid."⁵² This passage suggests that dodging taxes was, to a certain extent, a common phenomenon among women and perhaps one that frequently escaped the detection of officials. The description of "bad women" in the Qin bamboo text *Jiaonü* also hints at an environment that subjected women to less scrutiny by other family members. Gao Yizhi suggests that these conditions may indeed reflect the Qin state's measures to reduce household size.⁵³ At the time of the criminal investigation, Wan's son Yi was still a minor and most likely would have had no role in making tax payments.⁵⁴ Thus, as virtual head of a household that included no other adults, the task fell to Wan.⁵⁵ Her fateful decision to conceal taxable resources might have been partially due to the absence of other adults to reason with her or to explain the perils of breaking the law. But her savvy actions immediately following Shi's threat also suggest a certain level of competence in dealing with the authorities.

Ultimately, the case shows, first of all, the disastrous legal consequences brought about by something as simple as Pei's failure to officially report Wan's new status as wife and his negligence in filing a copy of his will with the authorities. But more

⁵¹See Lau and Staack, *Legal Practice in the Formative Stages*, 200 n. 963.

⁵²See Anne Kinney, "An Introduction and Preliminary Translation of the *Jiaonü*, (Instructions for Daughters), a Qin Bamboo Text," in *Festschrift in Honor of Sarah Allan*, ed. Christopher Foster, Constance Cook, and Susan Blader (Albany: State University of New York, forthcoming); and Zhu Fenghan 朱鳳瀚, "Beida Cang Qin Jian *Jiaonü* chushi" 北大藏秦簡教女初識, *Journal of Peking University (Philosophy and Social Sciences)* 北京大學學報 (哲學社會科學版) 52.2 (2015), 11 (section 25).

⁵³See Gao Yizhi 高一致, "Chu du Beida cang Qin jian *Jiaonü*," 初讀北大藏秦簡《教女》 August 13, 2015, www.bsm.org.cn/show_article.php?id=2285; and Zhu Fenghan 朱鳳瀚, "Beida Cang Qin Jian *Jiaonü* chushi" 北大藏秦簡教女初識, 5-15; Institute for Excavated Text Research of Peking University 北京大學出土文獻研究所, "Beijing Daxue cang Qin jian gaishu," 北京大學藏秦簡概述, *Wenwu* 文物, 2012.6: 65-74.

⁵⁴See Lau and Staack, *Legal Practice in the Formative Stages*, 203 n. 973.

⁵⁵According to the case records, Wan's son, Yi, "took his father's place and became heir of the household and rank" (義代爲戶、爵後), but his mother was clearly still in charge of paying the taxes. See Lau and Staack, *Legal Practice in the Formative Stages*, 199-200.

importantly, it reveals how a woman, in particular, a widow, can be thrust into the position of household head, and as such, into the role of manager of her family's legal obligations to the state with all of its attendant responsibilities and liabilities. The case is a grim object lesson in what was at stake when state-imposed marriage-related regulations were neglected in favor of traditional customs and family-based decisions. The case also hints at how the insularity of small family system, in this case, Wan's taking on the status of virtual head of the household without the assistance of other adult family members, may have placed people in positions of responsibility who were unequal to the task.⁵⁶ At the same time, the small family system held the potential to empower women as decision-makers and to forge family-like relationships among unrelated people, such as Pei's arranging and paying for Shi's marriage and his elevation of Wan from slave to mistress of the household.

The next case, which is drawn from the Zhangjiashan *Book of Submitted Doubtful Cases* (*Zouyanshu*), bears some similarity to the legal difficulties of the unfortunate Jie, who unwittingly married an absconder. However, unlike Jie, the couple discussed below brazenly forged ahead with their plans to marry in spite of being fully aware of the dire consequences they might face.

A Question of Residency

The *Zouyanshu* includes a case dated to 197 BCE that describes how an official and his charge marry in spite of prohibitions against unions between people who lived in the autonomous areas controlled by the Han government and those areas controlled by the regional lords.

In the opening years of the Han empire, China was divided between the central and western portions of the former Qin empire, which were controlled by the Han government, and the nearly autonomous states controlled by "regional lords" (諸侯王 *zhuhouwang*) of the eastern and southern provinces. As Yates and Barbieri-Low suggest, the present case "seems to show a situation at the outset of the Han dynasty when a multistate system of bounded territorial states was acknowledged, much like that which existed during the final centuries of the Warring States period."⁵⁷ In this political environment, the central government not only maintained stringent control over population moving between the central states and regional lordships but over marriages between people of the two often hostile political entities as well. The Han government was also intent on relocating certain individuals related to the former ruling houses of the regional states to the imperial capital in Chang'an for purposes of surveillance but also to repopulate the area, which, after the fall of the Qin dynasty and the ensuing civil war, had suffered significant population loss. As the *Hanshu* relates, "In the eleventh month [the Emperor] removed to Guanzhong five great clans of Qi and Chu ... and gave them the advantage of its fields and dwellings."⁵⁸ Thus, in the *Zouyanshu* case, a Judiciary Scribe named Lan, who hailed from Linzi 臨淄, the capital of Qi 齊, had

⁵⁶The *Jiaonü* also details a variety of ways in which women get into trouble at home when their husbands are at work (e.g., drinking, flirting with tradesmen, etc.). See Kinney, "An Introduction and Preliminary Translation of the *Jiaonü*."

⁵⁷See Barbieri-Low and Yates, *Law, State, and Society*, 2:1196.

⁵⁸Ban Gu, *Hanshu* (Beijing: Zhonghua shuju, 1962), 1B.66; translated by Homer Dubs, *History of the Former Han Dynasty*, 2 vols. (Baltimore: Waverly Press, 1944), 1:122. Gaozu was acting on the advice of Lou Jing 婁敬, who later oversaw the immigration; see *Hanshu* 43.2123.

been tasked with escorting a woman of Qi named Nan (南) to be relocated in Chang'an. But the two apparently fell in love and married in spite of a law that prohibited inter-marriage between residents of the regional lordships and those hailing from the central states. Thus Nan, originally a resident of Qi, after her forced relocation, was now considered a resident of the centrally controlled Han commanderies.⁵⁹ The case, translated below, was tried in 197 BCE.

The official accusation states:

“Judiciary Scribe Lan, from Linzi, commanded the woman, Nan, to wear a [man’s] cap of undyed silk, feign illness, and lie inside [an official] carriage, appropriated the passport of the person Yu, holder of Grandee [rank], and with it was exiting the [Hangu] Pass without authorization.”

Now, Lan stated: “Nan is a member of the Tians of the Qi polity’s [noble] lineages. She had been relocated to reside in Chang’an. I had been sent to accompany her on her journey, married her as a legal wife, and together with her was returning to Linzi. [We] had not yet exited the pass when [we] were apprehended.” Everything else is [as stated] in the official accusation.

Nan’s statement was similar to the official accusation, as well as to Lan’s [statement]. Lan was cross-examined: “Even though you did not match being allowed to marry Nan as your legal wife, yet you married her as your legal wife, and together [with her] were returning to Linzi. This is a case of you ‘coming to lure’ as well as ‘engaging in illicit intercourse’ and Nan ‘absconding and going to [the territories of] the Regional Lords,’ and you ‘hiding’ her. How do you explain [this]?”

Lan stated: “I came [to the capital] in order to send Nan [there, as a relocated person], but then married her as my legal wife. It is not the case that I ‘came to lure.’ The officials consider this to be ‘engaging in illicit intercourse’ as well as ‘hiding Nan [as an absconder].’ I am guilty; I have no explanation to give.”

Lan was cross-examined: “[One of] the reasons the statutes prohibit people ‘coming from [the territories of] the Regional Lords to lure’ is to make persons from some states unable to marry persons from other states. Although you did not intentionally come [to lure], yet, in reality, you lured a person of the Han to go to the Qi Regional Lordship; this, in fact, is ‘coming from [the territories of] the Regional Lords to lure.’ How do you explain [this]?”

Lan stated: “I am guilty. I have no explanation to give”

There being doubt as to what crimes Lan [is guilty of], he has been detained, and having suspended the sentencing of other [persons connected to this case], we dare to submit this [case] to higher authorities for decision.⁶⁰

Qin and Han archaeologically retrieved legal texts not infrequently cite various rules related to marriage, such as that cited above. But given the random nature of discovered texts, these legal rulings are piecemeal; no one large body of rules solely devoted to marriage has been discovered.⁶¹ Instead, they are subsumed under other categories such as

⁵⁹See Barbieri-Low and Yates, *Law, State, and Society*, 2:1199 (slip no. 18).

⁶⁰Barbieri-Low and Yates, trans., *Law, State, and Society*, 2:1199–1201 (slips no. 17–23).

⁶¹For a study of what may be pre-Qin marriage laws, see Zhu Honglin 朱紅林, “Zhanguo shiqi youguan hunyin guanxi falü de yanjiu” 戰國時期有關婚姻關係法律的研究, *Jilin shifan daxue xuebao (renwen shehuike xueban)* 吉林師範大學學報 (人文社會科學版) 2 (2011), 46–50.

the “Statutes on Households” or the “Statutes on Establishing of Heirs.”⁶² Thus, it is through the *Book of Submitted Doubtful Cases* that we learn that Lan “did not match being allowed to marry Nan as his legal wife,” meaning that it was “not legally sanctioned.”⁶³ This violation was associated with the crime “engaging in illicit intercourse” (奸 *jian*), which was punished by being made a wall-builder, a hard-labor punishment that might also include mutilation.

Considering the serious punishments violators would face if caught, it is shocking that Judiciary Scribe Lan—who must have known better—engaged in such a reckless caper. Local officials could not decide whether to charge Lan with “coming from [the territories of] the Regional Lords to Lure” [來誘 *laixiu*], meaning that Lan was responsible for urging persons from the central states to relocate to those held by the Regional Lords; or with the combined crimes of “engaging in illicit intercourse” and “hiding” a criminal. Ultimately, the case was decided by none other than Emperor Gaozu (高祖) (r. 202–195 BCE). Lan was to be punished with tattooing and being made a wall-builder for the less serious crimes of “illicit intercourse” and “hiding.” The case does not record how Nan was sentenced, but there is little question that she would face punishment for her willing involvement in criminal activities.

Nan’s reckless flaunting of the law could have been due to an aristocratic sense of privilege, a generic foolhardiness, or a surrender to pressure exerted by Lan. Yet in a peculiar way, the story of Lan and Nan holds a certain charm in its (apparent) sweeping romantic commitment to pursue love no matter the cost. There is no indication of Nan’s age, nor is there any mention of the involvement of elder (or any other) family members in her rash decision. But the lovers’ resolve to brave the odds of being caught also forms an interesting contrast to the star-crossed lovers described in the late Han (ca. 196–220 CE) poem “Southeast the Peacock Flies” (孔雀東南飛 *kongque dongnan fei*) who commit suicide when their parents force them to part.⁶⁴ From this perspective, the case might also bear a kind of timestamp. Nan’s willingness to enter an unsanctioned marriage, to assume a disguise to fool the authorities, and to violate the terms of her forced immigration might reflect the relative boldness and autonomy of women during this period of Chinese history, with Empress Lü, perhaps, representing the most extreme example in traditionally transmitted sources.⁶⁵ There is no question that examples are limited, though their relative paucity may reflect the general neglect of women (especially those who were not part of court culture) in the received tradition.⁶⁶ Nevertheless, legal sources from this period clearly document the wide array of rights accorded women in Qin and early Han times, such as the ability to own land, head a household, share husband’s rank, (or as a daughter, to inherit rank from her father), and in most circumstances, to control one’s dowry.

⁶²See Barbieri-Low and Yates, *Law, State, and Society*, 2:1378–79; and Peng Wei 彭衛, *Handai hunyin xingtai* 漢代婚姻形態 (Beijing: Renmin daxue, 2010), 187–90.

⁶³See Barbieri-Low and Yates, *Law, State, and Society*, 2:1195–96. They argue that “This case clearly shows that subjects of the Qi Regional Lordship were not even considered subjects of the Han.”

⁶⁴Translated in Burton Watson, *The Columbia Book of Chinese Poetry: From Early Times to the Thirteenth Century* (New York: Columbia University Press, 1984), 82–92.

⁶⁵See Kinney, “Empress Lü: China’s First Female Ruler,” in *Geschlecht Macht Herrschaft—Interdisziplinäre Studien Zu Vormoderner Macht und Herrschaft: Gender Power Sovereignty—Interdisciplinary Studies on Premodern Power*, ed. Andrea Stieldorf, Irina Dumitrescu, Linda Dohmen, and Ludwig D. Morenz (Bonn: V & R Unipress, forthcoming).

⁶⁶For other sources on the authority of women in early imperial times, see Michael Nylan, and Michael Loewe, *China’s Early Empires: A Re-appraisal* (Cambridge: Cambridge University Press, 2010), 280–83.

Early on, the architect of the Qin state, Shang Yang 商鞅 (d. 338 BCE) marked the female population as a social group of political interest. He argued that a strategist intent on utilizing every possible source of political strength does not ignore the female populace: "A strong country knows thirteen figures [among them] the number of ... able-bodied women."⁶⁷ After the violent transitional period between the fall of the Qin and in the opening years of the Han, the female population became increasingly essential to the well-being and equilibration of the new order. According to Li Guofeng 李国鋒, the number of registered households were low, and conferring on women the right to head a household was an important means to increase household registration.⁶⁸ Gao Kai 高凱 notes that as the Qin dynasty began to crumble, the tremendous number of lives lost in the uprisings also left large numbers of widows who, by necessity, were recognized as household heads. In fact, even for women with living husbands, civilian and military conscription often took men away from their homes leaving women to cope.⁶⁹ When the Han dynasty came to power, it continued to support female householders because, as Gao argues, dissolving households with no male head also meant forfeiting tax revenue. Maintaining those households by establishing female heads helped strengthen the fragile foundation of the state and the economy. Furthermore, by pleasing the populace with this policy, early Han rulers were able to bolster support for their new regime.⁷⁰

It is not much of a leap to suggest that single or widowed women who headed households must have gained some measure of confidence in their ability to cope independently. For married women as well, living under a legal system with serious consequences for offenders must have also forced women to focus on and take responsibility for their individual actions. These two social factors, specifically, acting in the role of household head and understanding the consequences of violating the law, may well have prompted a greater awareness among women concerning their dual roles as individuals with obligations to the state and as individuals with their own aims and aspirations. Unfortunately, Nan, the woman whose illegal elopement was discussed above, either did not fully understand the legal consequences of her actions, or like her lover, Lan, simply threw caution to the wind. Clearly, women were also in a position to make the wrong choices.

The Zhangjiashan legal texts do not tell us whether Nan was young or old, widowed or single, or if any family members were involved in her decision to marry Lan. But since no family members are mentioned, it seems likely that Nan acted on her own. In traditionally transmitted texts depicting the process whereby a woman finds a

⁶⁷Shangzi 商子 in Wang Yunwu 王雲五. ed. *Sibu congkan zhengbian* 四部叢刊正編 (Taipei: Taiwan shangwu yinshuguan, 1979), vol. 18, 1.14A. Also see Anne Kinney, *Representations of Childhood and Youth in Early China*, (Stanford: Stanford University Press, 1994), 135–37. According to one Zhangjiashan legal document, women were exempt from civilian labor service. See Barbieri-Low and Yates, *Law, State, and Society*, 2:903 (slip 412). But the Zhangjiashan texts preserve little information concerning conscription. References to the conscription of women appear in the received tradition, such as one notice suggesting that the state may have drafted women on an irregular basis for their sewing skills, as the First Emperor of Qin did when he dispatched 15,000 women to Yue to sew army uniforms. See *Shiji* 118.3086.

⁶⁸See Li Guofeng, "Shilun Handai dui Jiating guanxi de Falü tiaozheng," 129–31. According to the Zhangjiashan "Statutes on Households," married women were not allowed to set up a household. See Barbieri-Low and Yates, *Law, State, and Society*, 2:803 (slip 345).

⁶⁹On conscription, see Barbieri-Low and Yates, *Law, State, and Society*, 2:sections 3.23–3.24.

⁷⁰Gao Kai 高凱, "Cong Juyan Han jian kan Han dai de 'nühu' wenti" 從居延漢簡看漢代的“女戶”問題, *Shixue yuekan* 史學月刊 (September 2008), 82–92.

mate in Qin and early Han times, parents or other *in loco parentis* generally arrange matches for women, while men seem to have more independence in choosing a spouse.⁷¹ In contrast, the *Shiji* also records two cases of women, one an unnamed divorcée who married Zhang Er 張耳 (d. 202 BCE), and the other, the well-known widow, Zhuo Wenjun 卓文君 (fl. 142 BCE), who both pursued second marriages with men of their own choosing.⁷² While it is difficult to draw conclusions from such a small sampling, these examples suggest that widows and divorcées seemed better-positioned to pick their own partners. In the case of Lan and Nan, the propriety of a young, unmarried woman escorted by a male official seems suspect, but whether or not she was not-yet-married, widowed, or headed her own household cannot be determined. Whatever the case, Nan seems to have been acting on her own.

In contrast to this case and that of Wan, the following demonstrates how a married woman's autonomy is threatened by a false accusation lodged against her husband.

Co-Residence and Mutual Liability

In 246 BCE, a musician named Jiang (講) lodged an appeal for a new trial after he had been falsely convicted for stealing cattle and punished with tattooing and being made a wall builder, while his wife and children had been impounded by the state and sold into slavery.⁷³ The Zhangjiashan bamboo texts record the Commandant of the Court's final decision on the case:

Jiang, the wall-builder of Yong [County], made an appeal for [a new] trial that stated: "I was formerly a [state] musician, resident in Yazhong [Village] of Qian [County]. I did not rob any cattle. The [court] at Yong considered me to be a robber and sentenced me to undergo tattooing and be made a wall-builder."

This was not [the correct] matching. The case was reinvestigated. Jiang did not rob any cattle. Jiang is under detention in your county. Release Jiang from his crime and make him [a person of] hidden-office [status]. Order that he be on his own recognizance. Give back his impounded [persons and things]. As for his impounded wife and children, who may have already been sold off, the government is to redeem them for [Jiang]. Those other things that were impounded and already sold off, give them back to him according to their value, and remove the fines from those who were held liable. If the fines have already been taken in, return them. Posthaste, write to Yong [County]."⁷⁴

Of particular interest here is the treatment of Jiang's family after his original guilty verdict: "As for his impounded wife and children, who may have already been sold off, the government is to redeem them for [Jiang]." It is well-known that around 350 BCE,

⁷¹See, for example, *Shiji* 8.344–345 (Emperor Gaozu and Empress Lü); 89.2571 (Zhang Er), translated in Nienhauser, *The Grand Scribe's Records*, 10.1, 1–3; and 56.2051–2052 (Chen Ping 陳平) translated in Watson, *Records of the Grand Historian of China*, 2 vols. (New York: Columbia University Press), 1:152–53. The text suggests that Zhang Er's wife was able to initiate her own divorce, but a variant reading suggests that in fact the woman's husband had died. Also see Song Rentao 宋仁桃, "Lüwen suojian Qin Han funü de quanli" 律文所見秦漢婦女的權利, *Qin wenhua luncong* 秦文化論叢 (2005) 12:549–58.

⁷²*Shiji* 117.2571 (unnamed woman); 117.3000–3001 (Zhuo Wenjun 卓文君 and Sima Xiangru 司馬相如); translated in Nienhauser, *The Grand Scribe's Records*, vol. 10, part 3, 85–87.

⁷³Yates and Barbieri-Low question the dating of this case in *Law, State, and Society*, 2:1320 n. 1.

⁷⁴Translated by Barbieri-Low and Yates, *Law, State, and Society*, 2:1319 (slips no. 119–123).

Shang Yang introduced the concept of mutual liability (連坐 *lianzuo*), a law ordering that “the common people be put in groups of five and ten households with each member of the group guiding and watching the others and each responsible for the others’ crimes.”⁷⁵ Reference to mutual liability is also found in the Shuihudi legal texts: “‘People of the house’ means ‘the whole house,’ all those who are warranted to be co-adjudicated with a criminal.”⁷⁶ Thus, in the case of this marriage-based legal vulnerability, the innocent wife and children of Jiang were sold into slavery. What is truly astounding, however, is the effort on the part of the government officials to rectify its mistake by locating and redeeming Jiang’s family. Still, Jiang, who had been mutilated/tattooed as a result of his conviction, lost his status as a commoner and was forced to take the status of “hidden-office” (隱官 *yinguan*), a rank positioned just below freedman. Those who held the rank of hidden-office were required to remain separate from the rest of society because they had undergone mutilation.⁷⁷ Yet the “Statutes on the Composition of Judgments” (具律 *julü*) suggest that those who were unfairly punished were compensated by receiving an exemption from paying poll taxes or performing government service for the remainder of their lives.⁷⁸

While widows and adult women who maintained their own households were more or less the masters of their own legal fates, Jiang’s case demonstrates the vulnerability of married women who, innocent as they might be, were subjected to punishment for their husbands’ crimes. The policy of mutual liability thus affected married men and women equally, since a husband was also liable for the crimes of his wife. But according to the Zhangjiashan “Statutes on Assault” (Zei lü 賊律), in the domestic hierarchy, wives were powerless to object to or fight back against physical abuse meted out by husbands: “The wife acts like a scold, and the husband strikes her or canes her, but it is not with the blade of a weapon; although he may injure her, he is not guilty of a crime. A wife striking the husband: shave [the wife] and make [her] a bond-woman.”⁷⁹ Thus, the marital state held potential legal peril for both spouses, but a wife carried the additional burden of powerlessness in the face of her husband’s violence.

Shuffling Off the Marital Coil

The final case for examination, which likely dates to Qin times, involves a widow charged with engaging in illicit sex. The final ruling on her case centers on defining the legal marital status of the widow and her obligation to observe the proper mourning protocols for her deceased husband.⁸⁰

D, the Knight of the Realm[-ranked] husband of woman A, became ill and died.
The coffin was placed for mourning atop the [elevated foundation] of the hall [of

⁷⁵See *Shiji* 68, 2230; translated in Nienhauser, *The Grand Scribe’s Records*, 7:89–90. Nevertheless, the state-imposed limitations on the ability of children and slaves to denounce family members; see Lau, “The Scope of Private Jurisdiction in Early Imperial China,” 343–45.

⁷⁶Hulsewé, *Remnants of Ch’in Law*, 179 (slip D 181), also see (D 18–19); for Zhangjiashan, see Barbieri-Low and Yates, *Law, State, and Society*, 2:1330 n. 73; also see 469 (slip no. 70).

⁷⁷Barbieri-Low and Yates, *Law, State, and Society*, 2:539–40, note 150.

⁷⁸Barbieri-Low and Yates, *Law, State, and Society*, 2:513 (slip no. 124).

⁷⁹Barbieri-Low and Yates, *Law, State, and Society*, 2:403 (slips no. 32–33).

⁸⁰The amount of time officials devoted to mourning seems to have been between fifteen and thirty days. See Barbieri-Low and Yates, *Law, State, and Society*, 2:859 (slip no. 377) and 1381 (slip no. 180).

the house]. The burial ritual had not yet been completed, and she [woman A], together with D's mother, Su, mourned into the night, circumambulating the coffin and crying. [Woman] A, together with the man, C, went to a bedroom behind [the room] where the coffin lay and engaged in consensual illicit intercourse. The next morning, Su denounced A to the officials. We, the officials [of Du County], arrested and apprehended A, but are in doubt as to what crime A is guilty of.⁸¹

At this point, the county officials were unable to determine precisely what crime the widow had committed and thus passed the case to the capital for the Commandant of the Court and his advisers to decide.

Commandant of the Court Gou, Administrator of Law Enforcement Shi, Inspector of Law Enforcement Hong, and Scribe of the Commandant of the Court Wu, and others, comprising thirty persons, deliberated how to match her

"We matched her [with her crimes]: The wife is to honor the husband and matches being secondary in precedence to the father and mother[-in-law]. Now, since the husband of A died, and she was not sad and grieving, and she engaged in consensual illicit intercourse with a male beside the corpse, apply the two sections in the statutes concerning the secondary penalty for lacking filial piety and that for acting scornfully or like a scold. Even though the arresters did not investigate them in the act, [woman] A matches being left intact and made a grain-pounder. [We] inform Du [County] to sentence [woman] A."⁸²

But just as a decision is made, a junior scribe attached to the Commandant's office appears on the scene and registers his disagreement with the decision: "Now Scribe of the Commandant of the Court Shen was being employed for government service and came back later. He rejected the matching of the Commandant of the Court."⁸³ Shen then proceeds to pose a number of hypothetical cases for the Commandant of the Court and the other assembled legal officials to consider, for example, if disobeying a dead father's instructions, marrying oneself off when one's husband is dead, or showing contempt for a dead husband are indeed crimes. Commandant of the Court Gou is then forced to admit that in all of these cases no crime has been committed.⁸⁴ Next, in response to the mother-in-law's waiting until the next morning to report her daughter-in-law to the authorities, Shen presses Gou to acknowledge that to charge a person for engaging in illicit intercourse, the arresting officials need to catch the wrongdoers in the act.⁸⁵

[Shen] stated: "Commandant and Scribes, in your deliberations [just now], you all considered that the crime of contempt for a dead husband was lighter than

⁸¹ Barbieri-Low and Yates, *Law, State, and Society*, 2:1381–83.

⁸² Barbieri-Low and Yates, *Law, State, and Society*, 2:1383. The statute on consensual fornication, 617 (slip no. 192) also states: "For all those who engage in consensual illicit intercourse with other men's wives and for those with whom [they have fornicated]: in every case, leave [the criminal] intact and make [him or her] a wall-builder or grain-pounder

⁸³ Barbieri-Low and Yates, *Law, State, and Society*, 2:1381–83.

⁸⁴ Barbieri-Low and Yates, *Law, State, and Society*, 2:1381–85.

⁸⁵ Barbieri-Low and Yates, *Law, State, and Society*, 2:1385.

transgression against and contempt for a living husband, and the crime of transgression against a living husband was heavier than transgression against and contempt for a dead husband. Now, [woman] A's husband died, she [did not] mourn but showed contempt for her husband and engaged in illicit intercourse with a male next to the corpse, and the arresters did not investigate them in the act. Is not being left intact and made a grain-pounder also too serious?" Gou and the others said: "In truth, we made a mistake [in sentencing] it."⁸⁶

The case ends here with no indication as to the ultimate fate of "Woman A." Yet, as Yates and Barbieri-Low caution, "If this text is a literary story partially based on a real case, we must be careful in drawing conclusions about the actual ethical and moral relationships that existed during the late Qin and Han periods and how they were enforced by the application of legal statutes."⁸⁷

Fictional or not, the story reveals two opposing views of widow chastity, concluding with the legal opinion that "the crime of contempt for a dead husband is lighter than transgression against and contempt for a living husband, and the crime of transgression against a living husband is heavier than transgression against and contempt for a dead husband." Moreover, given Gou's acknowledgement that both "marrying oneself off when one's husband is dead" and "showing contempt for a dead husband" are not crimes, and his admission that the arresting officials needed to catch the couple in the act to make the charge stick, there seems to have been no wrong-doing on the part of the widow. As many commentators have pointed out, Shen's view of the case stands in stark contrast to the legal status of widow chastity in later periods of Chinese history.⁸⁸

A final consideration in this case is the issue of residency. Michael Nylan, in an argument too complex to reproduce here, plausibly argues that Shen's judgment of the case may also have been based on the possibility that the widow and her mother-in-law lived in separate households:

Essentially, the revised judgment suggests that women, immediately upon the death of their husbands, have no legal obligations to their late husbands or to their husband's patriline, so long as they have not entered into a social relation of dependency with their parents-in-law due to their co-residency in the same household. Widows may "marry themselves off" (*zijia* 自嫁) freely regardless of the preferences expressed or held by members of the elder generation to whom they are related by marriage.⁸⁹

While it is impossible to determine conclusively whether or not the widow shared a residence with her mother-in-law, the case demonstrates the central importance of the living members of the household rather than the enduring power of the ancestral lineage as a determining factor in the prosecution of crimes. It also shows, in a rather

⁸⁶Barbieri-Low and Yates, *Law, State, and Society*, 2:1385.

⁸⁷Barbieri-Low and Yates, *Law, State, and Society*, 2:1378.

⁸⁸See, for example, Matthew H. Sommer, *Sex, Law and Society in Late Imperial China* (Stanford: Stanford University Press), 168–77.

⁸⁹Michael Nylan, "Notes on a Case of Illicit Sex from Zhangjiashan: A Translation and Commentary," *Early China* 30 (2005–2006), 42.

spectacular manner, the widow's independence in deciding how and with whom she chose to spend her time. Furthermore, even if this case represents a highly fictionalized account of the widow's behavior, the selection of cases in the *Wei yu deng si zhuang zhong* and the *Zouyan shu* both hint at a fascination, and perhaps even a subtle admiration for bold and independent women like Wan, Nan, and Woman A.⁹⁰

Conclusion

In Qin and Han times, the establishment of a complex legal system that applied to every member of the empire brought about an unprecedented transformation of the husband–wife relationship, changing it from a bond largely determined by customs, rituals, and family concerns to one regulated by law. Marriage partners in Qin and early Han times, for example, were subject to the rule of collective responsibility, which applied the culpability for one person's crime to all members of a household, guilty or not. But marriage also conferred some privileges, such as a wife's ability to share her husband's rank.

Laws recorded in the archeologically recovered Zhangjiashan bamboo legal texts also reveal that women's legal status in Qin and Han times was far higher and allowed for greater autonomy and independence than previously imagined. For example, the legal texts provide an almost unprecedented glimpse of a public space that grants a wife's account the same consideration as her husband's. First of all, the increased legal standing and relative autonomy of women in general, and particularly of widows, seems linked to efforts on the part of the Qin state to reduce household size. Second, as the Qin dynasty began to crumble, the tremendous number of lives lost left large numbers of widows, who by necessity, were recognized as household heads. The Han state continued to support female householders, whose tax contributions and agricultural output helped strengthen the foundation of the state and the economy.

As single or widowed women became household heads, the experience of coping (or seeing others coping) without male kin must have conferred (in smaller or greater measure) some sense of confidence in their ability to manage on their own and a new cognizance of their roles as individuals with their own obligations, aims and aspirations. For married women as well, living under strict laws with harsh punishments for offenders must have forced women to focus on and take responsibility for their individual actions.

The legal cases examined in this study suggest that women with living husbands were at increased danger of running afoul of the law by virtue of their mutual liability for their husbands' crimes, just as they were without recourse against an abusive husband. Widows seem to fare better, especially those who did not share a residence with in-laws. The cases also show how those such as Wan and Nan were punished

⁹⁰It is especially the first case concerning the former slave Wan, which conforms to at least one schematization of classic story structure that shows the main character (1) confronted with a difficulty, followed by (2) a sympathetic view of the character's world, which is then shattered by (3) miscreants who threaten the main character's status quo, provoking (4) a sense that all is lost, from which emerges (5) a new idea that will solve the problem, and concluding with (6) the finale. These schemata are loosely based on Blake Snyder's, *Save the Cat* (n.p.: Michael Wiese, 2005). It is also worth noting that court cases are inherently dramatic. Also see discussion of the historical value of "fictionalized" legal accounts in Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987).

for flaunting the law in pursuit of their own objectives, as well as those such as Woman A, who danced at the very edges of what was deemed legal but may have still evaded punishment. In the period examined, perhaps the ultimate expression of a bold widow intent on testing the social and legal boundaries of the husband–wife relationship is embodied in enthronement of Empress Lü as supreme head of state.