

# The nature and function of the *Ernian lüling* manuscript unearthed from Zhangjiashan Han tomb no. 247

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## Abstract

Legal manuscripts excavated from tombs serve as important materials for research on Qin and Han laws. These manuscripts differ from received legal texts or law documents found at archaeological sites in nature and function, as they were stored as funeral texts in tombs. This article studies the *Ernian lüling* manuscript in terms of its nature and function. It argues that the manuscript compiled in the second year of Empress Lü (186 BCE) nearing the death of the owner was not produced for official use but specifically for burial in the tomb. This article further proposes that the burial of the *Ernian lüling* manuscript may have taken place to illustrate the social status and official capabilities of the owner to the underworld. The investigation of the *Ernian lüling* manuscript in its archaeological context helps us achieve a stronger understanding of the dating, origins, completeness, and compilation of its text.

**Keywords:** *Ernian lüling* manuscript, Zhangjiashan, Han laws, Excavated manuscripts, Nature and function, Empress Lü

## Introduction

Although the statutes of China are assumed to begin in the late Spring and Autumn period (770–476 BCE) (Yang 1990: 1274, 1504), our knowledge of early Chinese law is rather limited due to a shortage of materials. As several Qin and Han legal manuscripts excavated from tombs in the 1970s serve as important research materials, scholars have studied them from different perspectives, significantly improving our knowledge of the law and society of early China.<sup>1</sup>

Unlike received law texts or officially produced law documents found in archaeological sites, law manuscripts excavated from tombs possess distinct features that merit discussion. These manuscripts, which cite Qin and Han laws made and enacted by the central government, show the official origins of their texts. On the other hand, law manuscripts can be regarded as the private possessions of tomb owners, as they were buried as funeral texts in the tombs. In studying Qin and Han legal history using law manuscripts found in tombs as materials, we must find reasonable explanations for their compilation,

1 For a summary of previous studies on the history of Qin and Han law from the excavation of law manuscripts in the 1970s, see Xu and Zhi 2012: 95–170.

original use and burial to achieve a deeper understanding of the dating, origins and completeness of these texts.

This paper presents a case study of the nature and function of the *Ernian lüling* manuscript (*Statutes and Ordinances of the Second Year* 二年律令) unearthed from Zhangjiashan Han tomb no. 247 in the Jiangling district 江陵 of Hubei 湖北 (previous Southern Commandery 南郡) at the end of 1983. Its text consists of 27 categories of statutes (*lü* 律) and one category of ordinances (*ling* 令) dating to the early Han. This text serves as an important and intriguing means of understanding the laws and society of the early Han period. At the time of excavation, the *Ernian lüling* manuscript was stored with six other manuscripts in a bamboo basket positioned next to the southern wall of the tomb chamber.<sup>2</sup> The seven manuscripts together constitute a funeral object, namely “a basket of writings (*shu yi si* 書一笥)” listed as one item in the inventory of funeral objects (*qian ce* 遣冊).

Although scholars have focused on the nature and function of the *Ernian lüling* manuscript, their statements vary significantly and a number of questions remain unanswered. Several scholars (Li and Xing 2001: 137–40; Yang 2005: 27–31) state that the text presents an early Han law code; Li Li (2009: 358–62) notes that an official law text entitled “*Ernian lüling* 二年律令” was promulgated by the central government in the second year of Emperor Gao’s reign (205 BCE) while the *Ernian lüling* manuscript is assumed to be a copy extracted from it; the majority of scholars, including Gao Min (2003: 36), Zhang Zhongwei (2008: 147–92), Wang Yanhui (2012: 53–5) and Miyake Kiyoshi (2016: 14–7) believe that the text is a compilation of early Han laws, but they express quite different views regarding the dates, origins and functions of laws presented. Previous studies on the nature and function of the *Ernian lüling* manuscript illustrate the importance of this topic, as conclusions on the legal history of the early Han period vary widely depending on whether the text was a Han law code or a compilation of laws. They also provide meaningful results for the study presented in this paper, and a further analysis of their statements is detailed in the following sections.

As the *Ernian lüling* manuscript was unearthed from a tomb dating from the early Han period, archaeological evidence can provide clues regarding its nature and function. Compared to previous studies, which have mainly focused on the *Ernian lüling* text, the paper will not only discuss the text in its historical context, but will also consider the *Ernian lüling* manuscript in its archaeological context to analyse its nature and fundamental purposes; as Giele (2010: 114) argues, the “archaeological context” of a manuscript may reveal “the authenticity and date (usually *terminus ad quem*, if the site is undisturbed), completeness, the history of textual transmission, and the original use of the writings”.

2 The other six manuscripts are: *Calendar* (*Li pu* 曆譜), *Writings on Submitted Doubtful Cases* (*Zou yan shu* 奏讞書), *Writings on Channels* (*Mai shu* 脈書), *Writings on Mathematics* (*Suan shu shu* 算數書), *He Lü* (*He Lü* 蓋廬), and *Writings on Therapeutic Gymnastics* (*Yin shu* 引書); see Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu 2006: 1.

## The origins and nature of the *Ernian lüling* text

Han laws could only be enacted by Emperors, and they were then transmitted and enforced by government offices of different levels across the whole empire.<sup>3</sup> Laws were used as a principal instrument to strengthen the power of the state and maintain social order. The *Ernian lüling* text buried in the Zhangjiashan no. 247 tomb is composed of 27 categories of statutes and one category of ordinances, which include both administrative and penal laws, thus demonstrating the official origins of the text.<sup>4</sup>

As the statutes and ordinances of the *Ernian lüling* manuscript were classified and arranged according to their subject matter, showing the use of a certain structure, scholars suggest that the text originates from a law code or an official law text entitled “*Ernian lüling*” promulgated by the central government (Li and Xing 2001: 139–40; Yang 2005: 27–31; Li 2009: 358–62). MacCormack (2004: 48) argues that the *Ernian lüling* text cannot be regarded as a law code in a technical sense, as its structure does not show a particular form of coherence, and the chapters of statutes and ordinances do not exhibit a prearranged relationship to one another. Law codes were formed until the start of the post-Han period.

We analyse the existence of a law text entitled “*Ernian lüling*” promulgated by the central government. According to excavated law manuscripts, Han laws took two forms – statutes (*lü* 律) and ordinances (*ling* 令) – presenting distinct differences.<sup>5</sup> Statutes were comparatively fixed legal rules that defined illegal behaviours and that determined corresponding punishments, while ordinances were individually enacted by Emperors to address current social circumstances and to update existing statutes.<sup>6</sup> Due to the differences, it is most likely that statutes and ordinances were separately compiled and arranged by the central government.<sup>7</sup> Therefore, a single unified law text promulgated by the central government and including both statutes and ordinances probably did not exist (MacCormack 2004: 50–7). Accordingly, the *Ernian lüling* text with a collection of statutes and ordinances did not originate from such a law text.

- 3 Tomiya Iratu and Zhu Teng argue that Han documents with law texts were only transmitted in the officialdom and that local officials then further disseminated and explained laws that should be known by commoners to them; see Tomiya 2013: 246–7 and Zhu 2017: 182–96.
- 4 Qin and Han laws were fundamentally penal or administrative: penal laws define crimes and determine punishments while administrative laws prescribe the official procedures and duties of officials.
- 5 In later dynasties, statutes (*lü*) served as penal legal rules that defined criminal behaviours and that prescribed corresponding punishments while ordinances (*ling*) were purely used as administrative legal rules.
- 6 The *Yu shu* manuscript found in Shuihudi Qin tomb no.11 states: “When laws and statutes are not sufficient, the commoners frequently use cunning. Therefore, (to address this) ordinances are issued from time to time”. This shows that ordinances could supplement existing statutes to address legal problems; see Shuihudi Qinmu zhujian zhengli xiaozu 1990: 13.
- 7 According to Xu Shihong, no unified legal code existed in the Han period, and all official law texts consisted of single independent chapters of statutes and ordinances; see Xu 2007: 74–86. Zhang Zhongwei agrees with this view; see Zhang 2012: 91–4.

We further discuss the promulgation and distribution of law texts to local government offices. First, after a new law was enacted by the Emperor, it could be transmitted from the top down as follows: from the central government to local governments of different levels and finally to the lowest offices as shown in the “Document of the Ordinance of the Fifth Year of Yuankang (*Yuankang wunian zhaoshu ce* 元康五年詔書冊)” from Juyan 居延 materials.<sup>8</sup> Advanced systems of administrative document communication used in the Han period facilitated the process of handing down new laws (Tomiya 2013: 341–54). Second, local Qin and Han offices could also copy laws pertaining to their work. A statute of the *Qin Eighteen Statutes* manuscript excavated from the Shuihudi Qin tomb no. 11 睡虎地十一號秦墓 states: “Prefectures each inform metropolitan offices residing in their prefectures to copy statutes used by them”.<sup>9</sup> This shows that Qin and Han government offices could independently copy and compile law texts pertaining to their contexts and then apply these laws. It can also be inferred that local government offices did not apply a unified law text issued by the central government and that their law texts included different statutes and ordinances. The *Ernian liling* text was presumably based on such a law text for local offices and possibly one subordinated to the Nan Commandery where the Zhangjiashan no. 247 tomb is located.

To understand the nature of the *Ernian liling* text, we must discuss its compilation. It seems that it was not completely copied from the law text of a local government office and that it may not have been compiled for practical application. First, the arrangement of laws does not denote coherent and systematic selection for official use. Although 27 categories of statutes were incorporated into the *Ernian liling* manuscript, their lengths vary significantly. “Statutes on Banditry” (*Zei lü* 賊律), “Statutes on Theft” (*Dao lü* 盜律) and “Statutes on Household Registration” (*Hu lü* 戶律) include numerous detailed articles of their respective categories, while “Statutes on the Transportation of Goods” (*Jun shu lü* 均輸律) and “Statutes on [Passes and] Markets” (*Guan shi lü* [關]市律) include only two articles each, and “Statutes on Orders of Rank” (*Jue lü* 爵律) includes three articles. Statutes with only two or three articles were presumably not sufficient to address the official tasks of a government office. Additionally, compared to similar laws found at archaeological sites, some laws listed in the *Ernian liling* text were not identical copies of originally enacted laws. Rather, some statutes were abbreviations of the originals (Barbieri-Low and Yates 2015: 28–32), and the arrangement and order of the contents of certain statutes varied (You 2013: 42–4). Furthermore, in addressing official tasks, officials were normally required to identify appropriate statutes and ordinances that could be applied. Catalogues of statutes and ordinances<sup>10</sup>

8 *Juyan shiwen hejiao* slips no. 10.27, 5. 10, 332.26, 10.33, 10.30, 10.32, 10.29, and 10.31.

9 *Qin lü shi ba zhong* slip no. 186.

10 According to Chen Mengjia, a bamboo slip of the Juyan materials likely includes part of the catalogue of *Ordinances of Class A*: “2. Prefectures establishing Three Elders; 12. Requisitioning of boats for traveling on water; 22. Establishing filial and brotherly piety, and strong farmers; 32. Conscripting officials with [a nominal salary] of two thousand bushels with tallies; 42. Commanderies and States transferring the soldiers of Marquis; 52. Commoners of eighty years of age, pregnant women, and babies freed

found in Han manuscripts excavated from archaeological sites must have been practically used to identify articles from the law texts of government offices. Comparatively, it would be inconvenient for officials to find specific articles in the long *Ernian lüling* manuscript, which includes a large number of statutes and ordinances without such a catalogue.

Based on the above discussion, it is likely that the *Ernian lüling* manuscript, in spite of it including a law text of official origin, was not compiled for use in government offices. As the law manuscript was finally buried with the other six manuscripts in the basket in Zhangjiashan Han tomb no. 247 as a funeral object, this raises questions central to further discussions presented in this paper. What were the fundamental purposes of compiling the *Ernian lüling* manuscript? How was the manuscript connected to the tomb owner? What were the motivations behind burying the law manuscript in his tomb? These questions lead us to investigate the status of the tomb owner.

## The Tomb owner

The *Calendar* (*Lipu* 歷譜), positioned between the *Ernian lüling* and *Zou yan shu* (*Writings on Submitted Doubtful Cases* 奏讞書) manuscripts, records the first day of the lunar months (*shuori* 朔日) from the fourth year of Emperor Gao's 漢高祖 (203 BCE) reign to the second year of Empress Lü's 呂后 (186 BCE) reign (Zhang 2008: 69–74; Li Jingrong 2014: 60–2). Only two records are included in the *Calendar* besides the above dates. These records document critical events occurring during the life of the tomb owner.

The first record was written on a fragmentary slip, which is denoted by the editor as slip no. 2. However, researchers (Zhang 2008: 69–74; Li Jingrong 2014: 60–2) show that it should be considered part of slip no. 1 of the *Calendar* manuscript based on historical recordings and physical features of the bamboo slip, and it notes the dates of the fourth year of Emperor Gao's reign (203 BCE). It states: “recently<sup>11</sup> surrendered and became a subject of Han”, which likely means that the tomb owner surrendered to Han and became a subject of Han in the year 203 BCE.<sup>12</sup> Therefore, the *Calendar* begins with the

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from chaining” (*Juyan Hanjian shiwen hejiao* slips no. 5.3, no. 10.1, no. 13.8, and no. 126.12); see Chen Mengjia (1980: 275–6). Besides this, a catalogue of “Statutes on Banditry” was found in manuscripts discovered at the Gurendi site in Zhangjiajie, Hunan 湖南張家界古人堤; see Hunansheng wenwu kaogu yanjiusuo and Zhongguo wenwu yanjiusuo (2003: 76–7).

- 11 Barbieri-Low and Yates suggest that “*xin* 新” is probably the name of the tomb owner, and so they translate the text as “Xin surrendered and became a Han subject” (see Barbieri-Low and Yates 2015: 105–6). The wording “*xin xiang* 新降” as “recently surrendering” was frequently employed in *Hou Han shu* 後漢書. For example, “... was aware that Chanyu and those who had recently surrendered had planned a plot” in *Hou Han shu* 89, 2954 (Fan and Sima 2000).
- 12 It can be inferred that the first record denotes that the owner himself surrendered and became a subject of Han rather than the area in which he resided. The wording “[someone] surrendering and becoming a subject of Han (*xiang wei Han* 降為漢)” is found three times in case no. 3 of the *Zou yan shu* manuscript. For instance, the text instance found on slips 9–10 reads: “Mei says: ‘I am the former slave of Dian. [I] left and

year in which the tomb owner became a Han subject. The second record was found on slip no. 10 with the dates of the first year of Emperor Hui's reign (194 BCE). It reads: "in the sixth month, retired from office due to illness". Accordingly, the tomb owner had worked as an official before retiring in the sixth month of 194 BCE. Since the time at which the tomb owner was awarded an official position in Han is not mentioned, it is possible to infer that he had already served as an official prior to surrendering to Han in the year 203 BCE and later continued his official career. Therefore, the two *Calendar* records respectively mark the beginning and the end of the owner's official career under the reign of Han.

The dimensions, structures and funeral objects of Zhangjiashan tomb no. 247 also provide information on the status of its owner. Comparison with similar early Han tombs excavated in the Jiangling district show that the owner of Zhangjiashan tomb no. 247 was most likely a low-ranking local official (Zhangjiashan ersiqi hao Hanmu zhujian zhengli xiaozu 2006: 1). The task of knowing statutes and ordinances well was considered a necessary skill of a qualified lower-level official in the Qin and Han periods.<sup>13</sup> Therefore, it is reasonable to assume that the tomb owner had knowledge of the law. This corresponds to the fact that two legal manuscripts, the *Ernian liling* and *Zou yan shu* manuscripts, were found in the tomb.

Among the funeral objects observed, a dove-headed staff was the only item found in the inner coffin.<sup>14</sup> Staffs of this kind granted their holders privileges and could symbolize their respectable status in the Han period (Loewe 1965: 13–26). This is probably why the dove-headed staff was regarded as most important to the tomb owner and why it was placed together with the corpse. One statute of the *Ernian liling* manuscript regulates prerequisites for receiving a dove-headed staff in the Han period:

大夫以上七十，不更七十一，簪袅七十二，上造七十三，公士七十四，公卒、士伍七十五，皆受杖。<sup>355</sup>

When Holders of the Fifth Rank or higher are seventy years of age, when Holders of the Fourth Rank are seventy-one years of age, when Holders of

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absconded under the reign of Chu, surrendered and became a subject of Han, but [I] did not register myself in the household register". Additionally, the subject of the second record "in the sixth month, retired from office due to illness (*liu yue, bing mian* 六月，病免)" was also omitted, and this most likely refers to the tomb owner.

- 13 The *Yu shu* manuscript states: "qualified officials clearly know the statutes and ordinances" (see Shuhuidi Qinmu zhujian zhengli xiaozu 1990: 13). According to the *Juyan* materials, criteria for evaluating whether the work of a Han official met requirements involved "being able to write, to compile accounting records, to govern his office and the common people, and to well know laws and statutes"; see *Juyan Hanjian shiwen hejiao* slips no. 57.6, no. 562.2, no. 13.7, and no. 89.24.
- 14 Archaeologists do not mention this dove-headed staff in the excavation report of the Zhangjiashan tombs (no. 247, no. 249 and no. 258); the staff can be found in the plane diagram of funeral objects excavated from Zhangjiashan tomb no. 247. According to the diagram, it was located alone along the western side of the inner coffin. As no further information is given, we know nothing of its appearance or of its state of preservation; see Jingzhou diqu bowuguan 1985: 1–8.

the Third Rank are seventy-two years of age, when Holders of the Second Rank are seventy-three years of age, when Holders of the First Rank are seventy-four years of age, and when commoners or members of the rank and file are seventy-five years old: they are all to receive a staff.<sup>15</sup>

According to the statute, staffs were specially bestowed upon the elderly. As noted above, the tomb owner probably did not enjoy high social status. Even if we assume that he had been awarded the fifth rank or higher, he would have died at over the age of 70, affording him a dove-headed staff (Li Jingrong 2014: 62–4; Barbieri-Low and Yates 2015: 105–6). This corresponds to the dates of the owner’s *Calendar*. As the *Calendar* ends with the second year of Empress Lü’s reign (186 BCE), the owner was probably buried during or shortly after this year when he was older than 70. He was unable to conduct official duties and retired from office due to illness in the first year of Emperor Hui’s reign (194 BCE) at the age of over 62 and died eight years later.

### The title “Statutes and Ordinances of the Second Year”

As stated above, the last year recorded in the *Calendar* is the second year of Empress Lü’s reign (186 BCE), nearing the death of the tomb owner. As it happens the *Ernian lüling* manuscript was entitled “Statutes and Ordinances of the Second Year” (*Ernian lüling* 二年律令). This would lead us to consider whether there was a connection between the title and the second year of Empress Lü’s reign (186 BCE) and why the manuscript was titled “the second year”, and what its true meaning could be.

Scholars have discussed the title “Statutes and Ordinances of the Second Year” of the *Ernian lüling* manuscript and have primarily focused on “which second year” is designated (Zhang 1999: 40–5; Li and Xing 2001: 134–40; Cao 2005: 1–3; Li Li 2009: 358–62; Xing 2011: 147–8; Wang 2012: 53–5). However, before discussing the designated second year, we must first understand what the title refers to and what information it provides. The title leaves us with three possibilities: were the statutes and ordinances made and enacted in “the second year”; were they applied in “the second year”; or were they compiled and written in the *Ernian lüling* manuscript in “the second year”?

First, we can easily exclude the first possibility that the statutes and ordinances were made and enacted in the second year. Through analyses of the historical context of certain statutes and ordinances included in the *Ernian lüling* manuscript, scholars clearly demonstrate that they were not enacted in one year: many statutes were inherited from the Qin period with minor modifications while other statutes and ordinances were enacted during the early Han period

15 Zhangjiashan ersiqi hao Hanmu zhujian zhengli xiaozu 2006: 57. Twenty orders of ranks (*jue wei* 爵位) were used during the Qin and Han periods, and their holders enjoyed certain legal privileges. This translation does not literally translate the titles of ranks, as it aims to show age thresholds prescribed in the statute applied for a rank holder to receive a staff. For the system of ranks used in the Qin and Han periods, see Loewe (1960: 97–174), and Lau and Lüdker (2012: 108, n. 626).

(Ōba Osamu 2001: 129–30; Gao 2003: 32–6; Cao 2005: 1–12; Zhang Zhongwei 2012: 31–7; Barbieri-Low and Yates 2015: 62–4).

We thus discuss the other two possibilities: whether the statutes and ordinances were applied, or written in the manuscript, in the second year. As the *Ernian liling* text originated from a law text of a local government office, it is beneficial to discuss the copy, collation and application of official law texts. To adapt to current social circumstances and to address new legal problems, certain existing statutes and ordinances were abolished or modified, and new ones were made and enacted from time to time.<sup>16</sup> Once new laws were brought in and when existing laws were changed, the central government must have taken effective measures to inform local offices of current binding laws, first through the top-down transmission of individual laws mentioned in the previous chapters and second through the accurate and strict collation of laws by government offices.

One statute of the *Eighteen Qin Statutes* manuscript (*Qin lü shi ba zhong* 秦律十八種) excavated from Shuihudi Qin tomb no. 11 likely reflects the collation of laws in the central government: “Annually, penal statutes are to be collated by the Chief Prosecutor”.<sup>17</sup> According to the statute, it can be inferred that during collation, newly made or modified statutes were probably added to law texts while obsolete ones were removed. Then, collated texts of the central government could possibly have been used for the further transmission of updated laws among local offices.

Additionally, law texts of local offices were strictly copied and collated. Two administrative Qin documents found at the Liye 里耶 site (previous Dongting Commandery 洞庭郡, present-day Hunan 湖南) pertain to the collation of statutes and ordinances at the prefecture level:

卅一年六月壬午朔庚戌，庫武敢言之：廷書曰令史操律令詣廷讎，署書到、吏起時。有追。今以庚戌遣佐處讎。敢言之。（正）七月壬子日中，佐處以來。端發。處手。（背）(8–173)<sup>18</sup>

On the *gengxu* day of the sixth month, of which the first day is the *renwu* day, in the thirty-first year, Wu of the storehouse dares to report the following: The document of the court states that Scribes of Prefectures are to present statutes and ordinances to the court for collation. The date on which the document arrives and the date on which the official sets out should be noted. Trace [the document if it does not arrive on time]. Assistant Chu has

- 16 One statute on slips nos 219–20 of the *Ernian liling* manuscript prescribes the procedure of submitting proposals for making laws from the bottom up: “When offices of prefectures and marches submit proposals that statutes and ordinances should be made, they respectively submit them to officials with two thousand bushels to whom they are subordinated, and officials with two thousand bushels forward them to the Chancellor of the State and to the Chief Persecutor. Then, the Chancellor of the State and the Chief Persecutor investigate them and record them in documents. When [proposals] should be submitted to the Emperor, they shall be submitted, and they cannot be submitted directly. [Proposals] submitted directly shall be fined with two ounces of gold”.
- 17 *Qin lü shi ba zhong* slip no. 199, see Shuihudi Qin mu zhujian zhengli xiaozu 1990: 61; for an annotated translation, see Hulsewé 1985: 90.
- 18 Hunan sheng wenwu kaogu yanjiusuo 2012: 21.



been sent to collate them by on the *gengxu* day. We dare to report on it. (recto)

On the *renzi* day of the seventh month, Assistant Chu arrived. Duan opened [the document], and Chu wrote this. (verso)

□年四月□朔己卯，遷陵守丞敦狐告船官□：令史懷讎律令沅陵，其假船二艘，勿留。(6–4)<sup>19</sup>

On the *jimao* day of the fourth month, of which the first day is [...] in the [...] year, the Probationary Vice-Prefect of Qianling, Dun Hu, informs the boat official [...]: As scribe of the Prefecture Kuang is to collate statutes and ordinances in Yuanling, lends him two boats [for this task] and does not delay [his journey].

The two documents cited above describe law collation methods used in local offices. The first shows that under the order of the prefecture, Assistant of Storehouse Chu 處 was immediately sent to the prefecture court to collate the laws of his department. It appears that the courts superintended the collation of laws in subordinate departments of prefectures. According to the second document, a prefecture could also send scribes to collate laws of its neighbouring prefectures.

Based on the above materials, Qin and Han laws were strictly collated in both central and local government offices so that updated binding laws could be clearly informed and correctly copied (Chen 2015: 210–7). After collation, abolished statutes and ordinances were likely removed from official law texts and could not be used. As obsolete laws were irrelevant in addressing current affairs, it would be unnecessary to store them, so they were gradually discarded and forgotten.<sup>20</sup> Therefore, it is most likely that official law texts compiled in a certain year only included binding laws applied in the given year, while laws newly enacted and modified, i.e. applied in a certain year, needed to be copied by offices in that year. Even if we cannot determine the exact meaning of the title of “*Ernian lüling*”, as its text is of official origin, it should contain statutes and ordinances applied in the designated second year and it was also probably compiled in the given year.

We also consider which “second year” is referred to in the title. To answer this question we investigate dates of the statutes and ordinances of the *Ernian lüling* text. Based on historical contexts, we can determine a *terminus post quem* of certain statutes and ordinances, specifically, the date after which they could be enacted and then applied. Among them, the statute on slip no. 85 and the ordinance with the number 22 are important in investigating the date of the *Ernian lüling* manuscript. The statute grants preferential treatment to “King Xuan of Lü” (*Lü xuan Wang* 呂宣王), and the ordinance gives privileges to the “Marquis of Lu” (*Lu Hou* 魯侯). According to historical records (*Han shu*

19 Hunansheng wenwu kaogu yanjiusuo 2012: 21.

20 This partly explains why no earlier law codes were handed down until the *Tang Law Code* of 700 CE was instituted. Although the laws of later dynasties were based on those of former dynasties, after new laws were made and enacted, their sources, namely former laws, were not well preserved.

6: 679, Bangu 1982), in the first year of Empress Lü's reign (187 BCE), she conferred the two titles to her father and maternal grandson respectively (Li and Xing 2001: 127–35). Therefore, the statute and ordinance could not have been enacted or applied earlier than 187 BCE. It is known that in the last year of Empress Lü's reign (180 BCE), family members of Empress Lü lost power, and they were executed after her death (*Han shu* 3: 100–3, Bangu 1982), and undoubtedly the laws giving them prerogatives were shortly abrogated, so the last possible year that the statute and ordinance could have been applied is 180 BCE. As the *Ernian liling* manuscript contains laws applied in the second year and as only Empress Lü's calendar was used between 187 and 180 BCE, the statute on slip 85 and ordinance 22 could only be applied in the second year of Empress Lü's reign (186 BCE). Therefore, “the second year” of the title refers to the second year of Empress Lü's reign (186 BCE), and the *Ernian liling* manuscript with laws applied in this second year was presumably compiled in that year.

### The function of the *Ernian liling* manuscript

Our previous study shows that the second year of Empress Lü's reign (186 BCE) is the last year recorded in the *Calendar*, which is around the time of the death of the tomb owner and is eight years after he retired from office, due to illness, in the first year of Emperor Hui's reign (194 BCE). As the *Ernian liling* manuscript shows laws enacted and applied after his retirement and as it was written at around the time of his death, it is apparent that the tomb owner could not have used it to conduct official work during his career. This coincides with the previous inference that the *Ernian liling* text was not compiled for official use. It also seems that after the manuscript had been created, the tomb owner probably did not use it during his short remaining lifetime. First, law texts had strong official characteristics, as laws were promulgated and employed for practical purposes. Such texts thus differed from literary or philosophical texts in that the latter could be read for entertainment purposes or simply to acquire knowledge. Accordingly, it is unlikely that the owner wished to read a text with a large number of statutes and ordinances nearing the end of his life and possibly while he suffered a serious illness. Second, as a local Han official, the tomb owner should have possessed considerable knowledge of the law, and if he had read the manuscript he would have easily noticed and revised mistakes left in the text (You 2013: 41–50). For example, to correct graphs, he could remove incorrect characters and replace them with the right ones. However, we find no evidence of such when investigating bamboo strips.

From the above discussion, we may infer the fundamental purpose of producing the *Ernian liling* manuscript. As the manuscript compiled around the time of his death was not employed for practical purposes, it was probably intended for burial in the tomb and was likely specifically made for use in the afterlife. Accordingly, we must investigate potential motivations behind storing the *Ernian liling* manuscript in the tomb as a funeral text.

For this investigation, it is first necessary to identify relevant beliefs concerning the afterlife in the Han period. This has been studied from different perspectives by numerous scholars. In examining the structures and contents of Han

tombs, Ericson (2010: 81) suggests that Han tombs can be regarded as “way stations” for the dead with elements from the living world, which shows that Han tombs with their contents were prepared as “an extension of the living”. Through a detailed discussion of informing-the-underground texts (*gao di shu* 告地書) of the Han period, Guo Jue (2011: 102–3) argues that there was a belief in the Qin and Han periods that the social structure and administrative system of the underground world mirrored that of the living world. According to the findings of Poo Mu-chou (2011: 20), the bureaucratic netherworld of the Former Han depicts “all signs of a unified empire” of the living world.

The above findings show that in the Han period the life of the underworld was probably considered a mirror image of the living world. If this was the case, what could be the motivations for burying law manuscripts in tombs? Several scholars have devoted attention to this topic. Tomiya (2010: 306) and Zhang (2015: 45–8) posit that law manuscripts buried in tombs were used to exorcise evil spirits and to protect graves, as statutes and ordinances could act as an effective deterrent in the living world. Their opinion sounds unconvincing, as they did not investigate law manuscripts in their “archaeological contexts” to draw this conclusion; besides, if it had been a popular belief to regard law texts buried in tombs as deterrents against evil spirits in the Qin and Han periods, then it would be difficult to explain why law manuscripts were only found in certain tombs. Zhou (2016: 49–54) argues that law manuscripts found in tombs were personal belongings of the deceased that had been used for administrative tasks and were then buried in tombs. The generalization that law manuscripts stored in tombs were used by their owners should be based on thorough case studies. For example, the case of the *Ernian lüling* manuscript shows that the owner could not have used it for official tasks. Additionally, although Zhou Haifeng observes a relationship between law manuscripts and their owners, he still does not identify any rationale for burying law manuscripts in tombs or their potential functions.

In addition to the *Ernian lüling* and *Zou yan shu* manuscripts excavated from Zhangjiashan Han tomb no. 247, collections of law manuscripts were also found in other tombs of the ancient Southern Commandery: Longgang Qin tomb no. 6 龍崗六號秦墓 and Shuihudi Qin tomb no. 11 睡虎地十一號秦墓.<sup>21</sup> A wooden board stored in Longgang tomb no. 6 records a retrial that resulted in an acquittal of a mutilated criminal suspect, who was the likely tomb owner. As the feet of the owner were not found, he may have received a mutilation punishment. Scholars (Li 2001: 149–51; Huang 2001: 152–5; Hu 2001: 156–60) posit that the owner may have become a “hidden official (*yinguan* 隱官)” and may have worked in an imperial garden after he had been proven innocent through the retrial. This coincides with the fact that statutes found in the tomb concern the administration of imperial parks. A collection of five different legal manuscripts was stored with the corpse of the owner in the inner coffin of Shuihudi tomb no. 11. According to the *Chronicle* (*Biannianji* 編年紀) buried

21 Although Shuihudi Qin tomb no. 77 and Zhangjiashan Han tomb no. 336, located in the ancient Southern Commandery, also include law manuscripts, they are still awaiting publication; see Jingzhou diqu bowuguan (1992: 1–11); and Hubeisheng wenwu kaogu yanjiusuo and Yumeng xian bowuguan (2008: 31–7).

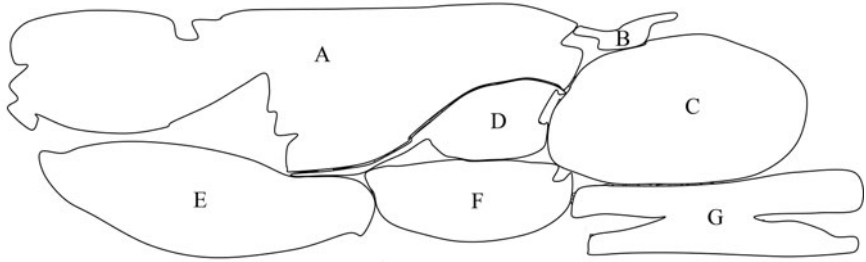


Figure 1. Drawing based on Zhangjiashan ersiqi hao Hanmu zhujian zhengli xiaozu (2001: 332, Appendix B).

beside the law manuscripts, tomb owner Xi 喜 had served as a Scribe of the Prefect (*lingshi* 令史) in two different Qin prefectures and was responsible for trying criminal cases. This may explain why various legal manuscripts were buried in his tomb.

According to the above discussion, law manuscripts found in the three tombs focus on the official duties of their owners. As Loewe (1997: 190–1) suggests, law manuscripts stored in tombs may note the deceased person's profession and achievements so that he may obtain corresponding privileges in the underworld. This may explain why law manuscripts connected to the careers of owners were placed in their tombs.

After discussing motivations for the burial of law manuscripts, we must still investigate the *Ernian liling* manuscript in its “archaeological context”. If we assume that “the basket of writings” of seven manuscripts in Zhangjiashan tomb no. 247 was purposefully composed, it is necessary to discuss systematically their functions to determine potential logics of selection and design. It seems that their specific locations in the basket are determined by the nature and functions of corresponding texts.

According to the diagram in Figure 1, showing the placement of manuscripts in the basket, the *Ernian liling* (see section A), *Calendar* (see section B) and *Zou yan shu* (see section C) manuscripts were located close to each other. The above discussion shows that the two records found in the *Calendar* document denote the start and end of the owner's official career in the Han period while the *Ernian liling* and *Zou yan shu* manuscripts are also related to his official duties. The third largest, *Writings on Mathematics* (*Suan shu shu* 算數書, see section E), was situated close to the *Ernian liling* manuscript in the left-hand corner. According to Cullen (2004: 11–3), this manuscript could serve as a practical handbook for officials in performing their daily tasks, as it presents solutions to mathematical problems and modes of calculation used for administrative tasks. The four manuscripts likely note the official capabilities and skills of the tomb owner to the underworld.

In addition to the four manuscripts, the medical manuscript *Writings on Channels* (*Mai shu* 脈書, see section D) was positioned between the *Ernian liling* and *Zou yan shu* manuscripts, probably because this manuscript is comparatively small and fits in this space well. The military manuscript *He Lü* (*He*

*Lü* 蓋廬, see section F) was located with a medical manuscript *Writing on Therapeutic Gymnastics* (*Yin shu* 引書, see section G) placed in the right-hand corner. It appears that the three manuscripts are not related to the official tasks of the owner, and they may exhibit his interest in and knowledge of military and medical texts. As a whole, it seems that “the basket of writings” of seven manuscripts illustrates the administrative and judicial capabilities, knowledge and interests of the owner, who had worked as a local official in the early Han period.

Finally, as Zhangjiashan Han tomb no. 247 had been designed and constructed in its entirety, all of the funeral objects that it contained were combined to realize the function of the tomb (Wu 2010: 85). Therefore, we may comprehensively consider the fundamental purposes of the funeral objects found, including “a basket of writings”, a dove-headed staff, and a number of lacquer and bronze wares (Jingzhou diqu bowuguan 1985: 2–8). These objects were likely buried in the tomb to prove the tomb owner’s social status to the underworld and to meet his needs in the underworld.

## Conclusion

Studies on laws of the Qin and Han periods are mainly based on law manuscripts excavated from tombs. As noted in the introduction, compared to received law texts and law manuscripts found in archaeological sites, those manuscripts were specialized in that, by nature, they served as “funeral texts” buried in tombs. As a result, it is necessary to investigate the nature and functions of law manuscripts to provide reasonable explanations for their production, original use and burial. Such research encourages case studies rather than generalizations, as law manuscripts stored in different tombs have their own “archaeological contexts”.

The paper analyses the nature and function of the *Ernian lüling* manuscript, and it shows that its text was probably based on the law text of a local government office rather than on one promulgated by the central government. The manuscript includes statutes and ordinances applied in the second year of Empress Lü’s reign (186 BCE), which were probably also written on the manuscript in that year. The tomb owner, who had worked as a local official in the Han period, did not use it for official purposes, as he retired in the first year of Emperor Hui’s reign (196 BCE) and died in approximately 186 BCE. It seems that the *Ernian lüling* manuscript compiled at the end of the owner’s lifetime was specifically produced for burial in the tomb. Finally, the paper investigates potential motivations for storing the *Ernian lüling* manuscript in the tomb. The law manuscript may have proved the social status and official capabilities of the tomb owner to the underworld.

The research presented in the paper suggests that in studying Qin and Han laws based on law manuscripts excavated from tombs, when we focus on the value of law texts in isolation, this can distract us from investigating them based on their original archaeological contexts and from recognizing their particularities owing to their role as funeral texts. Through such research we can achieve a better understanding of the origins, dates, accuracy levels and completeness of such texts in furthering our knowledge of the law history of China’s early empires.

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