

THE PROMULGATION OF LAW IN QIN AND WESTERN HAN CHINA

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Abstract

This article studies the promulgation of law in Qin and Western Han China (221 B.C.E.–9 C.E.) based primarily on excavated legal and administrative texts. It shows that a new law was handed down from the emperor to the relevant offices on the day of enactment. The article argues that, to an extent, the subject matter and function of a law determined for whom it was passed and promulgated. Depending upon the location, rank, and official duties of the offices, the laws known and used could be quite different. Although it was required that documents of imperial decisions be forwarded swiftly and safely by courier at the prescribed speed, delays in forwarding such documents to distant local offices were probably common in Qin and Western Han China. Evidence indicates that district- and prefecture-level officials publicized laws that needed to be made known by the common people, by reading them aloud in local gatherings, for example, or posting them in conspicuous places. The article further argues that a law came into effect in offices on the day it arrived at local courts or on the day it was enacted in the central court, depending on the existence of related extant laws. It concludes that a new law in Qin and Western Han China was *ex post facto*, as it reached backwards to a past action and retroactively attached liabilities to the action at the point when it was performed.

Introduction

Recently discovered legal and administrative manuscripts demonstrate that the Qin (221–206 B.C.E.) and Western Han (206 B.C.E.–9 C.E.) empires utilized unified laws to manage government affairs and govern their inhabitants. Legal texts reveal the rules that the emperor expected to be imposed on officials and the people, while administrative texts disclose how centralized control was exerted through the enforcement of

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the legal rules.¹ According to these texts, Qin and Western Han officials conducted government affairs according to the law and rarely exercised discretion when fulfilling their responsibilities.² The common people were also guided and controlled by the law and were encouraged to actively participate in administrative governance and in different stages of legal procedures.³ As Hulsewé argues, Qin and Han law, which was designed to cover almost all aspects of social behavior and government activity, contributed to the solid foundations of these empires.⁴

Since it was impossible for officials and the common people to constrain their behavior and conduct themselves in accordance with law if they did not know it beforehand, the Qin and Han empires first attempted to promulgate law for enforcement purposes, as recorded in received literature and as attested by excavated texts.⁵ Assisted by technical communicative methods, a modern law can take effect for

1. See Ernest Caldwell, *Writing Chinese Laws: The Form and the Function of Legal Statutes Found in the Qin Shuihudi Corpus* (Abingdon: Routledge, 2018), 71–85.

2. For research on local administration in the Qin and Han periods, see Takamura Takeyuki 高村武幸, “Shin. Kan jidai chihō gyōsei ni o ke ru ishi kettei katei” 秦・漢時代地方行政における意思決定過程, *Tōhō gakuō* 東洋學報 97 (2015), 1–21; Wu Fangji 吳方基, “Qindai zhongyang yu difang guanxi de chongxin shenshi—yi chutu zhengwu wenshu wei zhongxin” 秦代中央與地方關係的重新審視—以出土政務文書為中心, *Shi lin* 1 (2016), 25–27; Liu Taixiang 劉太詳, “Jiandu suojian Qin Han lüling xingzheng” 簡牘所見秦漢律令行政, *Nandu xuekan (renwen shehui kexue ban)* 4 (2013), 2–13.

3. For relevant research, see Maxim Korolkov, “Calculating Crime and Punishment: Unofficial Law Enforcement, Quantification, and Legitimacy in Early Imperial China,” *Critical Analysis of Law* 3.1 (2016), 73–83; Charles Sanft, *Communication and Cooperation in Early Imperial China: Publicizing the Qin Dynasty* (Albany: State University of New York Press, 2014), 138–43; Maxim Korolkov, “Arguing about Law: Interrogation Procedure under the Qin and Former Han Dynasties,” *Études chinoises* 30 (2011), 50–61; and Charles Sanft, “Law and Communication in Qin and Western Han China,” *Journal of the Economic and Social History of the Orient* 53.5 (2010), 690–97.

4. See Anthony Hulsewé, “Law as One of the Foundations of State Power in Early Imperial China,” in *Foundations and Limits of State Power in China*, ed. S. R. Schram (London: SOAS—Chinese University Press, 1987), 11–32.

5. We find instances of officials “publicizing edicts and ordinances” 布詔令 in the *Grand Scribe’s Records* 史記 and the *Book of Han* 漢書, see *Shi ji* 史記 (Beijing: Zhonghua, 1959), 96.2688 and *Han shu* 漢書 (Beijing: Zhonghua, 1962), 51.2336, 89.3629 and 89.3631. Legal manuscripts also show that the Qin and Han empires promulgated laws to their subjects. The phrase “prudently publicizing ordinances, and ordering black-headed people, officials, official conscripts and slaves, and private slaves all to clearly know them” 謹布令, 令黔首, 吏, 官徒隸, 奴婢明智 (知) 之 and similar statements appear in the legal manuscripts collected by the Yuelu Academy 嶽麓書院 and in those excavated from Shuihudi Qin tomb no.11 睡虎地十一號秦墓; for example, see Yuelu slip 1112/028, in Chen Songchang 陳松長, ed., *Yuelu shuyuan cang Qinjian (wu)* 嶽麓書院藏秦簡(伍) (Shanghai: Shanghai cishu, 2017), 48; *Yushu slips* 4–5, in Shuihudi Qinmu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, ed., *Shuihudi Qinmu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu, 1990), 13.

the entire country from the moment it is enacted; however, as it was impossible to publicize laws to offices and people in different locations immediately upon their enactment in the Qin and Western Han periods, there were temporal lags between the three stages involved in the “promulgation of law”: the official proclamation of laws to make them authoritative, the dissemination of laws to make them known, and the implementation of laws to make them effective.⁶ This raises the following questions: after a political decision was invested with imperial authority and became a law, how and when was it disseminated to officials and the common people? When did the law go into effect in local areas? As the empires emphasized applying unified laws across the whole territory, was putting the law into effect delayed until a specified number of days after its enactment or publication? A study of these questions can enable us to obtain a more comprehensive understanding of the operation of legal and administrative systems in Qin and Western Han China and to acquire significant knowledge on the transmission and implementation of laws in local offices after their enactment.

This article offers an analysis of the three steps for the promulgation of law in Qin and Western Han China, following the order in which they were executed: the enactment of laws, the dissemination of laws, and the enforcement of laws. The article demonstrates that a new law was handed down from the emperor to the relevant offices on the day of enactment. A law was disseminated first in the inner circle and then to local offices at different levels, step by step. Officials of districts and prefectures publicized the laws that the common people needed to know by methods such as reading them aloud in local gatherings or displaying them in conspicuous locations. The article argues that a law went into effect in offices on the day it arrived or on the day it was enacted in the central court, depending on whether relevant old laws existed. It concludes that a law in Qin and Western Han China was *ex post facto*, as it looked backwards, retroactively determining the legal liabilities related to an action taken before the law came into effect.

It is well known that received historical books written by Han historians mainly focused on political affairs within the central government and rarely recorded events in provinces and prefectures. Thus, while received Han literature offers records on the process of submitting a petition for the creation of a law, its movement upwards and the corresponding imperial decision, it provides limited information

6. The definition of “promulgation” given in the ninth edition of *Black’s Law Dictionary* states, “The official publication of a new law or regulation, by which it is put into effect”; see Bryan A. Garner, ed., *Black’s Law Dictionary*, ninth edition (St. Paul: Thomson Reuters, 2009), 1334.

about the downward promulgation of laws. However, the legal texts excavated from Shuihudi Qin tomb no. 11 睡虎地十一號秦墓 and Zhangjiashan Han tomb no. 247 張家山 247 號漢墓 and those purchased in the Hong Kong antiques market by Yuelu Academy 嶽麓書院,⁷ as well as the administrative texts found at archaeological sites in Juyan 居延 and Liye 里耶, offer scholars a rare opportunity to study the promulgation of laws in Qin and Western Han China from a novel perspective.⁸ The research on the topic is mainly based on these texts.

The Enactment of Laws

In the Qin and Western Han empires, only the emperor could approve laws. Laws allowed the emperor to regulate the entire area he governed. There were two types of laws: statutes and ordinances. To discuss the promulgation of laws, we will first examine how the two types of laws were enacted by the emperor and how they were sent down to local offices.

Ordinances originated directly from imperial edicts and were separately made and enacted by the emperor. Gradually, as a large number of imperial edicts accumulated, they were ordered and classified

7. It should be noted that the Yuelu manuscripts did not derive from a scientific archaeological excavation but were looted from one or more tombs by grave robbers; thus, their provenance is unclear; see Chen Songchang 陳松長, "Yuelu shuyuan suo cang Qinjian zongshu" 嶽麓書院所藏秦簡綜述, *Wenwu* 3 (2009), 75–76.

8. For the legal texts from the Shuihudi materials, this article follows Shuihudi Qin mu zhujian zhengli xiaozu, *Shuihudi Qin mu zhujian*; for the English translation with commentary, see A. F. P. Hulstewé, *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: E.J. Brill, 1985). For the texts from the *Ernian liling* materials, this article follows Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組, *Zhangjiashan Hanmu zhujian [ersiqihao mu] (shiwen xiudingben)* 張家山漢墓竹簡〔二四七號墓〕(釋文修訂本) (Beijing: Wenwu, 2006); for the English translation with commentary, see Anthony J. Barbieri-Low and Robin D. S. Yates, *Law, State, and Society in Early Imperial China: A Study with Critical Edition and Translation of the Legal Texts from Zhangjiashan Tomb no. 247*, 2 vols. (Leiden: Brill, 2015). For the legal rules in the Yuelu materials, see Chen Songchang 陳松長, ed., *Yuelu shuyuan cang Qinjian (si)* 嶽麓書院藏秦簡(肆) (Shanghai: Shanghai cishu, 2015), Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, and Chen Songchang 陳松長, ed., *Yuelu shuyuan cang Qinjian (liu)* 嶽麓書院藏秦簡(陸) (Shanghai: Shanghai cishu, 2020). For the texts from the Juyan materials, see Xie Guihua 謝桂華, Li Junming 李均明 and Zhu Guozhao 朱國焯, *Juyan Hanjian shiwen hejiao* 居延漢簡釋文合校 (Beijing: Wenwu, 1987). For the texts from the Liye materials, see Chen Wei 陳偉, ed., *Liye Qin jian du jiaoshi (diyijuan)* 里耶秦簡牘校釋(第一卷) (Wuhan: Wuhan daxue, 2012) and Chen Wei 陳偉, ed., *Liye Qin jian du jiaoshi (dierjuan)* 里耶秦簡牘校釋(第二卷) (Wuhan: Wuhan daxue, 2018).

into different sections of ordinances by government offices.⁹ In contrast, a considerable part of the existing statutes were inherited or slightly modified from the statutes of former eras, according to the conclusions of academic research.¹⁰ These statutes were classified according to their subject matter and then compiled into a collection of laws enacted by the central government.¹¹ Scholars suggest that statutes constituted basic laws in the Qin and Han periods, while ordinances were formulated as supplementary laws to address occasional problems.¹² Studies also indicate that certain statutes originated from ordinances that set out legal rules that could be continuously and generally applied.¹³

9. On the classification and arrangement of ordinances, see Tomiya Itaru 富谷至, "Jin Taishi ritsuryō e no michi—daichi bu: Shin Kan no ritsu to ryō" 晉泰始律令への道—第一部: 秦漢の律と令, *Tōhō gakuho* 東方學報 72 (2000), 92–102; and Nan Yuquan 南玉泉, "Qinling de xingzhi jiqi yu lü de guanxi" 秦令的性質及其與律的關係, in *Qinlü yanjiu* 秦律研究, ed. Chen Wei 陳偉 (Wuhan: Wuhan daxue, 2017), 84–92. Fan Guodong suggests that government offices of different levels could arrange ordinances according to their official responsibilities; see Fan Guodong 凡國棟, "Qin Han chutu falü wenxian suojian 'ling' de bianxu wenti—you Songbai yihao mu ling bing dijiu mudu yinfa de sikao" 秦漢出土法律文獻所見“令”的編序問題—由松柏1號墓《令》丙第九木牘引發的思考, *Chutu wenxian yanjiu* 10 (2011), 160–68.

10. Barbieri-Low and Yates compare the statutes in the *Ernian lüling* manuscript and those in the Shuihudi and Longgang manuscripts and conclude that Han China inherited almost all the legal rules of the Qin dynasty, with only minor modifications and innovations; see Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, vol. 1, 220–25; see also Li Xueqin and Xing Wen, "New Light on the Early-Han Code: A Reappraisal of the Zhangjiashan Bamboo-Slip Legal Texts," *Asia Major* (3rd. ser.) 14.1 (2001), 139–43; and Gao Min 高敏, "Hanchu falü xi quanbu jicheng Qinlü shuo—du zhangjiashan Hanjian Zouyanshu zhaji" 漢初法律系全部繼承秦律說——讀張家山漢簡《奏讞書》札記, in *Qin Han Wei Jin Nanbeichao shi lunkao* 秦漢魏晉南北朝史論考 (Beijing: Zhongguo shehui kexue, 2004), 76–84.

11. Geoffrey MacCormack, "The Transmission of Penal Law (*lü*) from the Han to the T'ang: A Contribution to the Study of the Early History of Codification in China," *Revue internationale des droits de l'antiquité* 51 (2004), 52–54.

12. See Zhang Jianguo 張建國, "Zhongguo lülingfa tixi gailun" 中國律令法體系概論, *Beijing daxue xuebao (zhexue shehui kexueban)* 5 (1998), 95–96; Ōba Osamu 大庭脩, "Lülingfa tixi de bianqian yu Qin Han fadian" 律令法體系的變遷與秦漢法典, in *Qin Han fazhishi yanjiu* 秦漢法制史研究, trans. Xu Shihong 徐世虹 et al. (Shanghai: Zhongxi, 2017), 6–7; and Meng Yanhong 孟彥弘, "Qin Han fadian tixi de yanbian" 秦漢法典體系的演變, *Lishi yanjiu* 3 (2005), 32.

13. See Tomiya Itaru, "Jin Taishi ritsuryō e no michi—daichi bu: Shin Kan no ritsu to ryō," 92–102; Meng Yanhong, "Qin Han fadian tixi de yanbian," 28–33; Nan Yuquan 南玉泉, "Qinling de xingzhi jiqi yu lü de guanxi," in *Qinlü yanjiu*, ed. Chen Wei, 99–100; Zhang Zhongwei 張忠偉, "Qin Han lüling guanxi shitan" 秦漢律令關係試探, *Wen shi zhe* 4 (2011), 91–95; and Yang Zhenhong 楊振紅, "Cong Ernian lüling de xingzhi kan Handai fadian de bianzuan xiuding yu lüling guanxi" 從《二年律令》的性質看漢代法典的編纂修訂與律令關係, *Lishi yanjiu* 4 (2005), 41–48.

To adapt to changes in legal circumstances, such as an ordinance, a single statute could also be created and added to the existing ones through an imperial decision. The abolition of mutilation punishments under the reign of Emperor Wen of Han 漢文帝 (r. 180–157 B.C.E.) recorded in the *Treatise on Law and Punishments* (*Xing fa zhi* 刑法志) of the *Book of Han* (*Han shu* 漢書) provides an example. According to the sources, after receiving Tiying's 緹縈 letter, Emperor Wen issued an imperial decision to abolish mutilation punishments. Then, Chancellor Zhang Cang 張蒼 and Imperial Prosecutor Feng Jing 馮敬 requested Emperor Wen to formulate a statute (*qing ding li* 請定律) directing the use of alternative punishments to replace mutilation punishments. Their proposal was approved by an imperial decision, based on which a new statute was passed. The *Treatise on Punishment and Law* also records that a statute was formulated based on an imperial edict issued in the first year of the reign of Emperor Jing 漢景帝 (r. 157–141 B.C.E.):

加笞與重罪无異，幸而不死，不可為人。其定律：笞五百曰三百，笞三百曰二百。¹⁴

Imposing caning is not different from the heaviest punishment; if, by good fortune, those [punished by caning] do not die, they cannot behave as normal people. Therefore, make a statute as follows: a caning of five hundred strokes will be [reduced to] three hundred strokes, and a caning of three hundred strokes will be [reduced to] two hundred strokes.

As Hirose Kunio argues, in addition to the records in the received literature indicating that a single statute could be created from an imperial edict, the statute on slips 219–220 of the manuscript *Statutes and Ordinances of the Second Year* (*Ernian lilüing* 二年律令) also clearly confirms that the offices of prefectures and marches could forward petitions for the creation of a single statute or ordinance.¹⁵ Therefore, it can be concluded that the development of a single statute was not different from that of an ordinance. As the existing received and excavated texts provide little information on how the collection of statutes was inherited from former eras and then revised, arranged,

14. *Han shu*, 23.1100.

15. Hirose Kunio 廣瀨薰雄, "Qin Han shidai lüling bian" 秦漢時代律令辯, *Zhongguo gudai falü wenxian yanjiu* 7 (2013), 116–20. Hirose Kunio also suggests that all the statutes of the Qin and Han dynasties were made separately and originated from imperial decisions; however, as previously discussed, a large part of the statutes were inherited from former times, and only a small part of the statutes were created individually from imperial decisions or originated from ordinances.

and promulgated by the central court, the article will focus primarily on discussing the promulgation of a single statute or ordinance.

According to imperial decisions preserved in the received literature and included in legal manuscripts, especially in the *Ordinances on Fords and Passes* (*Jin guan ling* 津關令) of the *Ernian liling* manuscript, which retain the original legislative procedure, we can define two types of legislation in Qin and Western Han China according to whether the process of submission of a petition involved: first, imperial decisions were made directly by the Emperor, with the formula “the imperial decision instructing the chancellor or/and the imperial prosecutor” (*zhi zhao chengxiang/ yushi* 制詔丞相/御史) appearing at the beginning; second, petitions for the creation of a law initiated by officials were submitted to the emperor and were then approved through imperial decisions, with the formula “Approved” (*zhi yue ke* 制曰可) appearing at the end.¹⁶

For the two types of legislation, the decision became law (a statute or ordinance) as soon as it was approved by the emperor. However, as it was impossible for the central court to promulgate the law to the various localities in such a large territory immediately upon its enactment, and local offices could only apply a law after it was disseminated to them, to enforce a new law in local areas it needed to be promptly sent down from the central court to local offices after its enactment. A Yuelu ordinance sheds light on this process:

令曰：諸所上而為令，詔曰可，皆以書下日定其奏日下之；其當以時下，各以下時定之。卒令乙廿七。^{1907/107}¹⁷

The ordinance states: In case that [a petition] is submitted to be made into an ordinance and for which the imperial edicts states “approved,”

16. Ōba Osamu defines three types of Han legislation. In addition to the two types discussed in the article, there is a third type in which the emperor called for a problem to be deliberated by certain court officials and then approved their petition with an imperial decision. As he argues, the third type of legislation has attributes of both the first and second types; see Ōba Osamu, “The Ordinances on Fords and Passes Excavated from Han Tomb Number 247, Zhangjiashan,” trans. and ed. David Spafford et al., *Asia Major* (3rd. ser.) 14.2 (2001), 128–29.

17. The editorial team of the Yuelu Academy manuscripts transcribes the ordinance as follows: “*Ling yue: zhu suo shang er wei ling, zhao yue ke, jie yi shu xia ri ding, qi zou ri xia zhi, qi dang yi shi xia, ge yi xia shi ding zhi*” 令曰：諸所上而為令，詔曰可，皆以書下日定，其奏日下之，其當以時下，各以下時定之， see Chen Songchang: *Yuelu shuyuan cang Qinjian* (*wu*), 103. The article follows the transcription of the ordinance suggested by Chen Wei; see Chen Wei 陳偉: “*Yuelu shuyuan cang Qinjian (wu) jiaodu (xu)*” 嶽麓書院藏秦簡(伍)校讀(續) (www.bsm.org.cn/show_article.php?id=3006 [published on Mar 10, 2018] [accessed on Sept 6, 2020]). We would like to thank Ulrich Lau and Thies Staack for their valuable advice on the translation and interpretation of the ordinance.

fix the date of submission according to the date on which the document [with the imperial approval] was sent down, and [on the day] send down [the new ordinance] to [those concerned]. In case that [the new ordinance] should be sent down at the moment [when the document with the imperial approval was sent down], respectively fix the time of submission according to the time at which [the document with the imperial approval] was sent down. The Twenty-seventh of the B Ordinances on Infantries.¹⁸

According to the ordinance, the day on which a document with imperial approval was sent down determines the day of submission and the day for sending down the ordinance to the relevant offices. However, the prescription of the ordinance initially appears inexplicable, as in the real decision-making process in the Qin and Western Han dynasties, the day for submitting a petition on the creation of a law would normally be earlier than the day of its imperial approval. Giele thoroughly analyzes the “petitions” appearing in the received texts and concludes that they were primarily submitted by high-ranking officials from the capital with direct access to the palace; thus petitions were usually made when the officials were present in the central court.¹⁹ Nevertheless, the emperor would rarely immediately respond to a petition, and as a result, the submission of a petition by a high-ranking official at the court and the enactment of an imperial decision by the emperor typically occurred on different dates; in cases in which a petition was submitted by local officials from provinces or prefectures, it would have taken a long time for the emperor to receive the petition and then to approve it.²⁰ Therefore, the Yuelu ordinance cited above legally synchronized the date of submission, the date of enactment of the ordinance and the date of dissemination of the ordinance in different circumstances and required the ordinance to be sent down on the day of its creation so that the new law could be promptly promulgated for enforcement. Based on this ordinance, it can be inferred that when an imperial decision was made by the emperor of his own accord, which did not involve the process of submission, the ordinance was also handed down to the offices on the day of enactment.

18. For other possible interpretations of *zu* 卒 as part of the name of ordinances, see Chen Songchang 陳松長, “Yuelu Qinjian zhong de jige lingming xiaoshi” 嶽麓秦簡中的幾個令名小識, *Wenwu* 12 (2016), 63–64.

19. Enno Giele, *Imperial Decision-Making and Communication in Early China: A Study of Cai Yong's Duduan* (Wiesbaden: Harrassowitz, 2006), 115–22.

20. For a detailed study of the submission of petitions (*zou* 奏) by officials to the emperor, see Wang Guihai 汪桂海, *Handai guanwenshu zhidu* 漢代官文書制度 (Guilin: Guangxi shifan daxue, 1999), 161–83.

The Yuelu ordinance offers further insight into the formula “sent down on X day of X month of X year” (*mou nian mou yue mou ri xia* 某年某月某日下) found in the imperial edicts preserved in excavated texts. This formula provides important information on the promulgation of these imperial edicts. For example, the ordinance written on the wooden board excavated from Songbai Han Tomb no. 1 松柏一號漢墓 in Jingzhou 荊州 states:

令丙第九 丞相言請令：西成、成固、南鄭獻枇杷各十，至不足，令相備不足，盡所得。先告過所縣用人數，以郵、亭次傳。人少者財助獻。起所為檄，及界，郵吏皆各署起過日時，日夜走，詣行在所司馬門。司馬門更詣大(太)官，大(太)官上檄御史。御史課縣留穉(遲)者。御史奏請許。制曰：可。孝文皇帝十年六月甲申下。²¹

The Ninth of the C Ordinances The chancellor reported on [the following] request to enact an ordinance: Let Xicheng, Chenggu, and Nanzheng each contribute ten loquats; if a shortage still exists, order [the three prefectures] to solve the shortage and exhaust what they can obtain. First inform the prefectures through which [the courier clerks] will pass about the number of staff to be used and send the loquats according to the orders of the courier stations and post stations. The prefectures lacking staff shall assist with property. The offices from which the loquats are sent shall make a dispatch record. When reaching the boundaries [of prefectures], the courier clerks should each record the time and date of their departure and crossing. They should deliver the loquats day and night and report on their journey to the major of the gate of the places where they are located. The major of the gate shall then report to the grand office, and the grand office shall submit the dispatch record to the imperial prosecutor. The imperial prosecutor shall monitor which prefectures and clerks delayed the delivery of the loquats. The imperial prosecutor submitted [the preceding draft ordinance] and requested approval. The imperial decision states “Approved.” Sent down on the *jiashen* day of the sixth month of the tenth year of Emperor Xiaowen.

Scholars have discussed the meaning of the phrase “sent down on the *jiashen* day of the sixth month of the tenth year of Emperor Xiaowen.” Peng Hao notes that the phrase refers to the time of the enactment of

21. For a photo of the bamboo board, see Jingzhou bowuguan, ed., *Jingzhou zhongyao kaogu faxian* 荊州重要考古發現 (Beijing: Wenwu, 2009), 210–11. For a transcription of the text, see Hu Pingsheng 胡平生, “Jingzhou xinchu jiandu shijie” 荊州新出簡牘釋解, in *Hu Pingsheng jiandu wenwu lungao* 胡平生簡牘文物論稿 (Shanghai: Zhongxi, 2012), 268.

the law,²² while Wang Guihai argues that the phrase was not included in the original document of the edict but was added later by the official who managed it.²³ According to the discussion on the Yuelu Ordinance above, the phrase at the end of this ordinance indicates that it was approved and enacted by the emperor on the *jiashen* day of the sixth month of the tenth year of Emperor Xiaowen, which was also the day the ordinance was sent down to the local offices.²⁴

It is noteworthy that the phrase “sent down on X day of X month of X year” is common in the fragmentary Juyan and Dunhuang 敦煌 administrative texts pertaining to imperial edicts.²⁵ As the formula discloses important information on the enactment and dissemination of law, it was probably necessary to write it in these documents of imperial edicts when sending them down from the central court.

The Dissemination of Laws

The previous discussion established that once a new law was enacted by the emperor, it was immediately sent down from the emperor to the local offices. Accordingly, the enactment of a law by the emperor also

22. Peng Hao 彭浩, “Du Songbai chutu de XiHan mudu (yi)” 讀松柏出土的西漢木牘 (一) (www.bsm.org.cn/show_article.php?id=1009 [published on Mar. 31, 2009] [accessed on Sept. 6, 2020]).

23. Wang Guihai, *Handai guanwenshu zhidu*, 209–10.

24. It should be noted that Emperor Xiaowen 孝文皇帝 is the posthumous name of Emperor Liu Heng 劉恆 (r. 180–157 B.C.E.). It is therefore likely that this phrase is the result of a modification made after the death of Liu Heng and that it is most likely not identical with the note that may have been attached to the ordinance just after its approval and promulgation in the tenth year of Emperor Wen (171 B.C.E.).

25. For example, the text on slip 332 9 from the Juyan site states “... the ordinance on tallies. The imperial decision states ‘Approved.’ Sent down [the ordinance] on the *gengchen* day of the seventh month of the third year of Emperor Xiaowen. [The ordinance] contains 66 characters in total.” 符令。制曰可。孝文皇帝三年七月庚辰下。六十六字；see Xie Guihua, Li Junming and Zhu Guozhao, *Juyan Hanjian shiwen hejiao*, 521. The text on slip 1162B from the Dunhuang site states “sent down on the *wujia* day of the ninth month of the second year of Wufeng” 五鳳二年九月戊申下；see Gansusheng wenwu kaogu yanjiusuo, ed., *Dunhuang Hanjian (xia)* 敦煌漢簡 (下) (Beijing: Zhonghua, 1991), 264. We also find examples of such a note in the Yuelu Qin materials and Wuwei Han materials. The text on fragmentary Yuelu slip 1601/162 states “... sent down on the *wuyin* day of the eighth month of the ... year. The Twenty-second of the A Ordinances on Infantries of the Court” [...] 年八月戊寅下。廷卒甲廿二；see Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, 122. The text on slip 4 of the Document of the Edit of the Dove-headed Staff (*wangzhang zhaoshu* 王杖詔書) states “sent down on the ninth month of the second year of Jianshi” 建始二年九月甲辰下；see Gansusheng bowuguan and Zhongguo shehui kexueyuan kaogu yanjiusuo, *Wuwei Hanjian* 武威漢簡 (Beijing: Wenwu, 1964), 140.

marked the start of its dissemination to the offices. The dissemination of a new law was vital in the process of promulgation, as it determined when the offices and the common people would receive the law and become aware of it and thus when it could be applied in local areas. Two aspects were significant in the dissemination of a new law: first, to whom a law was disseminated; second, how a law was handed down.

The formula “when receiving the document, administer its affairs and send it down to those who should use it, according to the document of the edict” (*cheng shu cong shi, xia dang yong zhe ru zhao shu* 承書從事，下當用者如詔書) is frequently found in the imperial edicts preserved in excavated texts. According to Ōba Osamu, it was necessary for each office to write this formula when receiving a document of an edict, as it required the offices to carry out their duties in accordance with the new law.²⁶ However, other common formulas used in excavated texts, such as “according to statutes and ordinances” (*ru lü ling* 如律令) and “administering affairs according to statutes and ordinances” (*yi lü ling cong shi* 以律令從事), also conveyed the same meaning.²⁷ The formula “*cheng shu cong shi, xia dang yong zhe ru zhao shu*” additionally demanded that when receiving a document of an edict, offices should send it down to the offices that should apply it. This requirement fits the legal and administrative circumstances of the Qin and Western Han empires. First, as recorded in received Han literature, the volume of Qin and Han law became so immense that even officials were not aware of all the laws.²⁸ Additionally, for a law to exert its force, it was sufficient to promulgate the law to those for whom the law was passed and used. Furthermore, considering the enormous resources required to transmit a legal document throughout the whole empire, it was economical and improved communicative efficiency if a law was disseminated to specific addressees.

Thus we will consider to whom a law was disseminated. To an extent, the subject matter and purpose of a law determined for whom it was formulated and promulgated. An important percentage of Qin and Western Han laws defined criminal behaviors and prescribed corresponding punishments, which we could call “criminal laws.”²⁹ As these laws functioned as “conduct rules” to constrain the behavior of

26. Ōba Osamu, *Qin Han fazhishi yanjiu*, 171–79.

27. The two formulas are frequently found in the Liye administrative texts, for example, Liye slips 5-1, 8-21, 8-63, 8-143 and 8-155; see Chen Wei, ed., *Liye Qin jiandu jiaoshi (diyijuan)*, 1, 34, 48, 83 and 94.

28. Wang Liqi 王利器, *Yantie lun jiaozhu* 鹽鐵論校注 (Beijing: Zhonghua, 1992), 565–66.

29. For the classification and function of laws in early imperial China, see Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, vol. 1, 210–19.

the common people and served as “decision rules” to guide officials in imposing punishments,³⁰ they needed to be disseminated to both officials and the common people and be known by them.

The Qin and Western Han laws did not deal merely with criminal matters; many laws also focused on administrative matters. These laws established the rules that defined the duties of officials and regulated the administration of government affairs, which we would call “administrative laws.” In the administrative systems of the Qin and Western Han empires, although the heads of provinces and prefectures had comprehensive responsibilities, various offices (*guan* 官) and bureaus (*cao* 曹) established in the prefectures carried out specific tasks assigned by law.³¹ Xu Shihong proposes that the classification and arrangement of different types of administrative laws in Qin and Han China to a certain extent corresponded with the responsibilities of the relevant offices, and she takes the *Statutes on Finance* (*Jin bu li* 金布律) as an example, demonstrating that most of its statutes pertained to government affairs carried out by local finance bureaus (*jin bu cao* 金布曹).³² This is also supported by the research of Barbieri-Low and Yates, who provide examples to demonstrate that certain statutes in the *Ernian lüling* manuscript were clearly directed at specific officials.³³ Furthermore, some laws, especially certain ordinances, were designed to address affairs of the moment in a certain area. For example, in number 16 of the *Ordinances on Passes and Fords* of the *Ernian lüling* manuscript,³⁴ as the ordinance allowed the purchase of horses in Changsha state (*Changsha guo* 長沙國), it would have been unnecessary to disseminate

30. The terms “decision rules” and “conduct rules” are used by legal scholars to discuss the nature and functions of criminal laws; see Meir Dan-Cohen, “Decision Rules and Conduct Rules: On Acoustic Separation in Criminal Law,” *Harvard Law Review* 97.3 (1984), 631–34.

31. See the discussion in Sun Wenbo 孫聞博, “Bureaus and Offices in Qin County-Level Administration: In Light of an Excerpt from the Lost *Hongfan wuxing zhuan* (Great Plan Five Phases Commentary),” trans. Christopher Foster, *Bamboo and Silk* 1 (2018), 90–99; Li Mingzhao 黎明釗 and Tang Junfeng 唐俊峰, “Liye Qinjian suojian Qindai xianguan, cao zuzhi de zhineng fenye yu xingzheng hudong—yi ji, ke wei zhongxin” 里耶秦簡所見秦代縣官、曹組織的職能分野與行政互動—以計、課為中心, *Jianbo* 13 (2016), 130–40; Guo Hongbo 郭洪伯, “Baiguan yu zhucuo—Qin Han jiceng jigou de bumeng shezhi” 稗官與諸曹—秦漢基層機構的部門設置, *Jianbo yanjiu* 2013 (2014), 101–27; Nakayama Shigeru 仲山茂, “Shin Kan jidai no ‘kan’ to ‘sō’—ken no bukyoku soshiki” 秦漢時代の“官”と“曹”——県の部局組織, *Tōyō gakuhō* 82.4 (2001), 35–65.

32. Xu Shihong 徐世虹, “Wenxian jiedu yu Qin Han lü benti renshi” 文獻解讀與秦漢律本體認識, in *Shiliao yu fashixue* 史料與法史學, ed. Liu Liyan 柳立言 (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 2016), 25–27.

33. Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, vol. 1, 65.

34. Slip 516–517, in Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu, *Zhangjiashan Hanmu zhujian [ersiqihao mu]* (*Shiwen xiudingben*), 87.

it throughout the whole empire to offices in areas where it would have been irrelevant. Thus, depending upon the location, rank, and official duties of the offices, the laws promulgated and used by them must have been quite different. This is consistent with the prescription of the statute in the manuscript *The Eighteen Statutes of Qin* (*Qin liu shi ba Zhong* 秦律十八種) excavated from Shuihudi Qin tomb no. 11:

縣各告都官在其縣者，寫其官之用律。¹⁸⁶³⁵

Prefectures each inform metropolitan offices residing in their prefectures to copy the statutes used by them.

Additionally, since administrative laws regulated government affairs, it was unnecessary and impractical for the populace at large to know about numerous irrelevant and complicated administrative laws besides those that required their participation, such as those on declaring taxes, registering households, and fulfilling labor services. These administrative laws were highly relevant to the social life of ordinary people, and it was therefore necessary to transmit them to them. For example, the following two Yuelu ordinances pertaining to administrative procedures for marriage and debt among the common people emphasized their promulgation to this group.

十三年三月辛丑以來，取（娶）婦嫁女必叁辨券，不券而訟，乃勿聽，如廷律。前此令不券訟者，治之如內史^{1099/188}律。謹布令，令黔首明智（知）。廷卒口^{1087/189}³⁶

From the *xinchou* day of the third month of the thirteenth year, for marrying women and daughters, tripartite tallies are required. Those people who initiate lawsuits without tallies shall not be heard according to the statutes of the court. [Cases in which] no tallies were made and a lawsuit was initiated before the promulgation of this ordinance shall be tried according to the statutes on the clerk of the capital. Prudently publicize the ordinances and let black-headed people clearly know it. Soldiers of Courts ...

十三年六月辛丑以來，明告黔首：相貸資繻者，必券書吏，其不券書而訟，乃勿聽，如廷律。前此^{0630/301}令不券書訟者，為治其繻，毋治其息，如內史律。^{0609/302}³⁷

35. Shuihudi Qin mu zhujian zhengli xiaozu, *Shuihudi Qin mu zhujian*, 61.

36. Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, 130–31.

37. Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (si)*, 194–95.

From the *xinchou* day of the sixth month of the thirteenth year, clearly inform the black-headed people: those who borrow and lend money should write down tallies in the presence of officials. If they initiate lawsuits without tallies, they are not to be heard according to the statutes of the court. [In cases in which] no tallies were written down and a lawsuit was initiated before the promulgation of this ordinance, the debt shall be tried but the interest shall not be tried according to the statutes on the clerk of the capital.

We will further consider how a new law was disseminated to local officials and the common people. First, the necessary transportation conditions were created for effective communication in Qin and Western Han China; for example, as public roads and facilities were built and improved, the central government developed into the hub of an enormous network of highways linking the entire empire.³⁸ In addition, the standardized documents utilized by officialdom enabled more efficient administrative transmission and communication.³⁹ Under these conditions, the Qin and Han empires established effective communicative methods to efficiently deliver official documents of different types throughout the vast territory. Statutes on forwarding documents (*xing shu lü* 行書律) included in the *Ernian lüling* manuscript and in the *Yuelu* manuscripts specifically stipulated that the most efficient courier system be used for the transmission of documents of imperial decisions and urgent official documents.⁴⁰ As prescribed in these statutes, courier stations, depending on the population density and the terrain, were established every ten, twenty or thirty *li*⁴¹ in local

38. See Charles Sanft, *Communication and Cooperation in Early Imperial China: Publicizing the Qin Dynasty*, 102–118; and Edgar Kiser and Yong Cai, “War and Bureaucratization in Qin China: Exploring an Anomalous Case,” *American Sociological Review* 68.4 (2003), 529.

39. On the administrative forms of the Qin and Han, see Anthony Barbiri-Low, “Model Legal and Administrative Forms from the Qin, Han, and Tang and Their Role in the Facilitation of Bureaucracy and Literacy,” *Oriens Extremus* 50 (2011), 126–35, see also Xing Yitian (Hsing I-tien) 邢義田, “Cong jiandu kan Handai de xingzheng wenshu fanben—‘shi’ ” 從簡牘看漢代的行政文書範本—“式,” in *Zhiguo anbang: fazhi, xingzheng yu junshi* 治國安邦：法制、行政與軍事 (Beijing: Zhonghua, 2011), 450–70.

40. See *Ernian lüling* slips 265–266 and 273, in Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu, *Zhangjiashan Hanmu zhujian [ersiqihao mu] (shiwen xiudingben)*, 45–46; and *Yuelu* slips 1250/192 and 1368/193, in Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (si)*, 131–32.

41. The Qin and Han *li* is 300 paces (*bu* 步), and one pace consists of six *chi* 尺. Qin and Han bamboo slips show that the Qin and Han *chi* is approximately 23.1 centimeters, therefore, the Qin and Han *li* is close to 415.8 meters. For Qin and Han measures, see A. F. P. Hulswé, *Remnants of Ch'in Law: An Annotated Translation of the Ch'in Legal*

footnote continued on next page

areas throughout the empire.⁴² The couriers that staffed these stations were expected to deliver documents 200 *li* in a day and a night, and if they delayed forwarding documents, corresponding punishments would be imposed on them.⁴³ Women and children were not allowed to send documents of imperial decisions.⁴⁴ Additionally, when couriers were charged with delivering imperial edicts, they were not allowed to carry out other affairs.⁴⁵ The arrangements and requirements for forwarding the documents of imperial decisions mandated by law indicate that it was regarded as extremely important to send them down from the central court to local offices swiftly and safely.⁴⁶

In addition, according to the following Yuelu ordinance, the law demanded that when receiving a document of an imperial decision, local offices make and submit a register in which detailed information regarding the arrival of the imperial decision as well as relevant questions and deliberations about it should be noted down. Such registers could be used to inspect the delivery of an imperial decision at every stop. Additionally, during the process of promulgating a law downwards, the collection and submission of relevant questions and deliberations on it from local offices upwards may have helped the central court to learn about the legal problems that arose in the process of its promulgation in local areas, allowing the central court to interpret

and Administrative Rules of the 3rd Century B.C. Discovered in Yün-meng Prefecture, Hu-pei Province, in 1975, 19.

42. See *Ernian lüling* slips 264 and 266, in Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu, *Zhangjiashan Hanmu zhujian [ersiqihao mu] (shìwen xiudingben)*, 45.

43. See *Ernian lüling* slip 273, in Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu, *Zhangjiashan Hanmu zhujian [ersiqihao mu] (shìwen xiudingben)*, 46. It should be noted that one text from the Juyan site states that “Documents should be forwarded 160 *li* in a day and a night” 書一日一夜當行百六十里; slip E.P.S4.T2:8A, in Gansusheng wenwu kaogu yanjiusuo, Gansusheng bowuguan, Wenhua bu guwenxian yanjiushi, and Zhongguo shehui kexueyuan lishi yanjiusuo, eds. *Juyan Xinjian* 居延新簡 (Beijing: Wenwu, 1990), 554. According to Enno Gire, as the Han *li* referred to in the Juyan texts may have been longer than the early Han *li* mentioned in the *Ernian lüling* texts, the two distances given in the *Ernian lüling* statute (slip 273) and in the Juyan text (slip E.P.S4.T2:8A 8A) might have been identical; see Enno Gire ギーレ, エノ (Enno Giele), “‘Yü’ seikō: Shin Kan jidai o chūshin ni” 「郵」制攷——秦漢時代を中心に, trans. Tomiya Itaru. *Tōyōshi kenkyū* 東洋史研究 63.2 (2004), 15–16.

44. See Yuelu slip 1384/194, in Chen Songchang, ed., *Yuelu shuyuan cang Qinjian* (si), 132.

45. See *Ernian lüling* slips 265–266, in Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu, *Zhangjiashan Hanmu zhujian [ersiqihao mu] (shìwen xiudingben)*, 45.

46. For research on statutes on forwarding documents, see Peng Hao 彭浩, “Du Zhangjiashan Hanjian *Xingshulü*” 讀張家山漢簡《行書律》, *Wenwu* 9 (2002), 54–59; Chen Songchang 陳松長, “Yuelu shuyuan cang Qinjian zhong de Xingshu lüling chulun” 嶽麓書院藏秦簡中的行書律令初論, *Zhongguoshi yanjiu* 3 (2009), 31–38.

the meaning of a law that had been established by legislative procedures or to find proper legal solutions for its enforcement by local offices.

令曰：制書下及受制有問議者，皆爲簿（簿），署初到初受所及上年日月、官別留日數、傳留狀，與對皆（偕）上。不_{1679+1673/100}從令，費一甲。卒令乙五_{1667/101}⁴⁷

The ordinance states: when a document of an imperial decision is sent down and received, those [offices] that have questions and comments on it shall all make a register in which they note down the office at which the document first arrived, the office by which the document is first received, the year, date and month when [the register] is submitted, the days the document was delayed in each office, and the circumstances of the transfer and delay of the document, and submit this together with the reply. Those who do not follow the ordinance shall be fined one suit of armor. The Fifth of the B Ordinances on Infantries

We will examine how a document of an imperial edict was delivered by courier as reflected in excavated administrative texts of the Qin and Western Han empires. Drawing on the Liye materials, Fujita Katsuhisa suggests that a Qin province functioned not only as an administrative and military center but also as a center for accumulating and delivering government documents. When delivering an official document, a province could either send it by courier or deliver it through a relay network according to the order of prefectures (*yi ci chuan* 以次傳).⁴⁸ The documents forwarded by courier were directly and separately sent down from a province to subordinate offices, as the text “Forwarded by courier to Qianling, from Dongting” (*Qianling yi you xing Dongting* 遷陵以郵行·洞庭) shows, so that they could be delivered more efficiently and swiftly. Therefore, only important and urgent government documents, including documents of imperial edicts, were forwarded by couriers in Dongting Province.⁴⁹ In addition, to improve the efficiency of courier delivery, courier staff typically consisted of native people who were more familiar with the natural environment, public transportation, and communicative conditions of the local area.⁵⁰ Additionally, administrative texts excavated along the northwest border indicate that more durable types of wood were used for writing

47. Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, 101.

48. Fujita Katsuhisa 藤田勝久, “Liye Qinjian suojian Qindai junxian de wenshu chuandi” 里耶秦簡所見秦代郡縣的文書傳遞, *Jianbo* 8 (2013), 185–89.

49. Li Xueqin 李學勤, “Chudu Liye Qinjian” 初讀里耶秦簡, *Wenwu* 1 (2003), 75.

50. Lu Jialiang 魯家亮, “Liye Qinjian suojian Qin Qianlingxian liyuan de goucheng yu lai yuan” 里耶秦簡所見秦遷陵縣吏員的構成與來源, *Chutu wenxian* 13 (2018), 210–15.

and delivering important government documents such as imperial edicts.⁵¹ “Evaluations of courier documents” (*You shu ke* 郵書課) are found frequently in the Liye and Juyan texts and refer to assessments of whether the delivery of government documents by courier met the legal requirements.⁵² The administrative texts demonstrate that the Qin and Han governments attempted to strictly manage and control the dissemination of imperial edicts by courier in accordance with the law.

Further discussion of an administrative record of the promulgation of a law would be beneficial for our research. “The Document of the Edict of the Fifth Year of Yuankang” (*Yuankang wunian zhaoshu ce* 元康五年詔書冊) excavated at Juyan provides a good example. The first half of the manuscript records the legislative process and the content of an imperial edict pertaining to the laying down of arms and relevant ritual prescriptions for the summer solstice of the fifth year of Yuankang (61 B.C.E.), while the second half is a record of the promulgation of the imperial edict from the central court to local offices in northwestern China.⁵³

As the imperial decision concerned the laying down of arms and relevant ritual prescriptions for the summer solstice, it was disseminated to military offices in Juyan, distantly located on the northwestern border of Western Han China. The document shows how an imperial edict was disseminated from the top down. Initially, an imperial edict was transmitted within the inner circle: it was first sent down from the emperor to the imperial prosecutor, who acted as the secretary of the emperor and was responsible for handling the correspondence from and to him. The imperial prosecutor in turn handed it down to the chancellor. Although the official rank of the chancellor was higher, the formula “send down” (*xia* 下) was used for the promulgation of an imperial edict.⁵⁴ Then an imperial edict was transmitted from the chancellor to provincial offices, from these to prefectural offices, and finally to the

51. Gansusheng wenwu kaogu yanjiusuo, “Gansu Dunhuang Handai xuanquanzhi yizhi fajue jianbao” 甘肅敦煌漢代懸泉置遺址發掘簡報, *Wenwu* 5 (2000), 11.

52. Zhang Wenhan 張文瀚, “Handai jiaqu houguan de richang guanli” 漢代甲渠候官的日常管理, *Shixue yue kan* 7 (2015), 19–21.

53. On the reconstruction of the bamboo slips and the restoration of the document of the edict, see Ōba Osamu, “Yuankang wunian zhaoshu ce de fuyuan” 元康五年詔書冊的復原, in *Qin Han fazhishi yanjiu*, 163–71. For a transcription of the bamboo slips, see Xie Guihua, Li Junming, and Zhu Guozhao, *Juyan Hanjian shiwen hejiao*, 16–17. For the English translation of the edict, see Enno Giele, “Signatures of ‘Scribes’ in Early Imperial China,” *Asiatische Studien / Études Asiatiques* 59 (2005), 369–70.

54. Ōba Osamu, “Lun jianshui jinguan chutu de Yongshi sannian zhaoshu jiance” 論肩水金關出土的《永始三年詔書》簡冊, trans. Jiang Zhenqing 姜鎮慶, *Dunhuangxue jikan* 2 (1984), 176–77.

offices at the lowest levels. When a local office received a document of an imperial edict, the names of the officials who had handed it down were listed at the end, preceded by their official titles.⁵⁵ The original records of the promulgation were probably written down and appended to a document of an imperial edict by them.

Based on the “Document of Mileage” (*Licheng shu* 里程書) found at Xuanquan 懸泉, which records the distances between major postal stations in the northwest, Ma Yi calculates that the distance between Zhangye 張掖 and Chang’an 長安 was approximately 2,805 *li*.⁵⁶ Accordingly, it took thirty-nine days to deliver “The Document of the Edict of the Fifth Year of Yuankang” from Chang’an to Zhangye at a speed of approximately 72 *li* in one day and one night. This was much slower than the required speed discussed above, but it eventually arrived in the offices before the summer solstice, when it needed to be applied by military officials. Based on the existing materials, we cannot know whether the delivery of the imperial decision was delayed for certain reasons or whether the responsible couriers were punished. It is possible that although the government offices of the Qin and Western Han empires attempted to execute the swift transmission of imperial edicts in accordance with the law, a late delivery was still common. For example, it took as long as sixty-one days to send the “Document of the Edict of the Third Year of Yongshi” (*Yongshi sannian zhaoshu ce* 永始三年詔書冊) from the central court to Zhangye Province for the second time.⁵⁷ Scholars also argue that the transmission of administrative documents in Qin China was not as efficient as prescribed by the law.⁵⁸

55. On the signatures of the scribes, see Enno Giele, “Signatures of ‘Scribes’ in Early Imperial China,” 365–84.

56. Ma Yi analyzes the delivery of the “Document of the Edict of the Second Year of Shijianguo” (*Shijianguo ernian zhaoshu ce* 始建國二年詔書冊) under the reign of Wang Mang 王莽. As the edict contained directions on urgent military affairs, it was delivered from Chang’an to Zhangye by relay horses and then from Zhangye to Jiagouhou 甲溝候 by courier. Thus it took only twenty-two days to deliver the edict; see Ma Yi 馬怡, “Shijianguo ernian zhaoshu’ ce suojian zhaoshu zhi xianxing” “始建國二年詔書”冊所見詔書之下行, *Lishi yanjiu* 4 (2015), 168.

57. For a transcription of the text, see Gansu jiandu bowuguan, Gansusheng wenwu kaogu yanjiusuo, Gansusheng bowuguan, Zhongguo wenhua yichan yanjiuyuan guwenxian yanjiushi and Zhongguo shehui kexue yanjiuyuan jianbo yanjiu zhongxin, eds., *Jianshui Jinguan Hanjian (si)* 肩水金關漢簡(肆) (Shanghai: Zhongxi, 2015), 140–41.

58. See Tang Junfeng 唐俊峰, “Qindai Qianlingxian xingzheng xinxi chuandi xiaolü chutan” 秦代遷陵縣行政信息傳遞效率初探, *Jianbo* 16 (2018), 229; and Liu Ziwen 劉自穩, “Liye Qinjian zhong de zhuishu xianxiang—cong Shuihudi Qinjian yize Xingshulü shuqi” 里耶秦簡中的追書現象—從睡虎地秦簡一則行書律說起, *Chutu wenxian yanjiu* 16 (2017), 161.

We will briefly discuss how a new law was disseminated and made known to the common people, an issue that has been studied by scholars from different perspectives.⁵⁹ In Qin and Western Han, government documents that circulated in officialdom, including documents of imperial edicts, were not transmitted to the common people.⁶⁰ As the common people were under the supervision and governance of prefecture- and district-level offices, necessary information was conveyed to them by local officials. Considering the limitations among the Qin and Han commoners with respect to literacy, and the varying levels of literacy they may have had, the method of having local officials proclaim new laws to the people was commonly used in the empires.⁶¹ The *Book of Han* records incidents of officials publicizing laws to the populace. For example, under the reign of Emperor Wen, when officials in Shandong 山東 announced laws, the people, including those who were elderly, frail, and humpbacked, went to the public meetings to listen.⁶² The method of publicizing laws in public meetings is also attested by a Yuelu ordinance. According to this ordinance, neighborhood heads and local officials, including overseers of districts and scribe directors, were responsible for reading the laws aloud in local gatherings.

▪ 各鄉耆夫、令史、里即為讀令。布令不謹，吏主者，貲二甲，令、丞一甲。^{1085/201}⁶³

The overseers of districts, scribe directors and village heads are to immediately read the ordinances. In the case of not prudently

59. For relevant research, see Xu Yanbin 徐燕斌, *Zhongguo gudai falü chuanbo shigao* 中國古代法律傳播史稿 (Beijing: Zhongguo shehui kexue, 2019), 30–38; Xu Yanbin 徐燕斌, “Zhou Qin LiangHan falü ‘bu zhi yu min’ kaolun” 周秦兩漢法律“佈之於民”考論, *Faxue yanjiu* 6 (2017), 197–202; Zhu Teng 朱騰, “Qin Han shidai lüling de chuanbo” 秦漢時代律令的傳播, *Faxue pinglun* 4 (2017), 190–91; Zhou Haifeng 周海鋒, “Qin lüling zhi liubu yiji suizang lüling xingzhi wenti” 秦律令之流布以及隨葬律令性質問題, *Huadong zhengfa daxue xuebao* 4 (2016), 45–49; and Huang Chunping 黃春平, “Cong chutu jiandu kan Han diguo zhongyang de xinxi fabu—jianping Zhang Tao xiansheng de ‘fubao’ shuo” 從出土簡牘看漢帝國中央的信息發布—兼評張濤先生的“府報”說, *Xinwen yu chuanbo yanjiu* 4 (2006), 2–11.

60. Tomiya Itaru, *Bunsho gyōsei no Kan teikoku: mokkan, chikukan no jidai* 文書行政の漢帝國：木簡、竹簡の時代 (Nagoya: Nagoya daigaku, 2010), 127–31.

61. Yates suggests that Qin and Han commoners may have had basic literacy skills; see Robin D. S. Yates, “Soldiers, Scribes, and Women: Literacy among the Lower Orders in Early China,” in *Writing and Literacy in Early China: Studies from the Columbia Early China Seminar*, eds. Li Feng and David Prager Branner (Seattle: University of Washington Press, 2011), 367–69.

62. *Han shu*, 51.2336.

63. Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, 135.

publicizing the ordinances, the responsible officials shall be fined two suits of armor, and the prefect and the vice-prefect shall be fined one suit of armor.

Additionally, laws were publicized in special written forms in public places to draw the attention of the common people. Scholars have surveyed examples found in excavated texts to show that, following the method used in the Warring States period (475–221 B.C.E.), the Qin and Han empires also cast laws on stones and bronzes and placed them in populous locations to promulgate them to commoners.⁶⁴ Laws that the general public needed to know were also written and published in the form of “posted documents” (*bian shu* 扁書) by local offices in Western Han China. Ma Yi suggests that “*bian* 扁” is derived from “*bian* 徧,” which means “spread all over.” Accordingly, “posted documents” probably means that the documents should be widely disseminated and brought to the attention of the common people.⁶⁵ Posted documents excavated from sites at Juyan and Dunhuang indicate that they were normally written on large wooden boards or on mud walls and were displayed in populous and conspicuous local places such as marketplaces, village gates, and police stations.⁶⁶ The open display of laws in a special form could have had a visual impact on the common people, as to a certain extent it insinuated the authority of the government and the potential deterrent of punishment for crimes.⁶⁷ Since the language of laws was so complicated and specialized that legally untrained people could not understand them even after seeing them put on display and hearing them read, officials were probably obligated to explain the contents of the laws to commoners.⁶⁸ Therefore, the method of displaying laws in public places relied on a combination of writing and speech.

64. See Li Xuemei 李雪梅, “Gudai Zhongguo ‘mingjin jifa’ chuantong chutan” 古代中國‘銘金紀法’傳統初探, *Tianjin shifan daxue xuebao* (*shehui kexue ban*) 1 (2010), 29–32; and Xu Yanbin, “Zhou Qin liang Han falü ‘bu zhi yu min’ kaolun,” 197–202.

65. Ma Yi 馬怡, “Bianshu shitan” 扁書試探, in *Ejina Hanjian shiwen jiaoben* 額濟納漢簡釋文校本, ed. Sun Jiazhou 孫家洲 (Beijing: Wenwu, 2007), 179–80.

66. For research on the form, content and functions of posted documents, see Charles Sanft, *Communication and Cooperation in Early Imperial China: Publicizing the Qin Dynasty*, 144–46; Xu Yanbin 徐燕斌, “Hanjian bianshu jikao—jianlun Handai falü chuanbo de lujing” 漢簡扁書輯考—兼論漢代法律傳播的路徑, *Huadong zhengfa daxue xuebao* 2 (2013), 50–62; Hu Pingsheng 胡平生, “‘Bianshu’, ‘dabianshu’ kao” “扁書”、“大扁書”考, in *Dunhuang Xuanquan yueling zhaoling* 敦煌懸泉月令詔令, eds. Zhongguo wenwu yanjiusuo and Gansusheng wenwu kaogu yanjiusuo (Beijing: Zhonghua, 2001), 48–54.

67. Tomiya Itaru, *Bunsho gyōsei no Kan teikoku: mokkan, chikukan no jidai*, 126–27.

68. For research on the legal training of Qin and Han officials, see Xing Yitian (Hsing I-tien) 邢義田, “Qin Han de lüling xue” 秦漢的律令學, in *Zhiguo anbang: fazhi*,

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Based on Han administrative texts excavated at Juyan and Dunhuang that required the promulgation of a law to the common people through posted documents, we learn that when a document of an imperial edict arrived at an office, in addition to the formula “*cheng shu cong shi, xia dang yong zhe*” used to emphasize sending down the law to the offices that should apply it, a formula such as “clearly write [the law] on large posted documents ... let the common people entirely understand it” (*ming bai da bianshu ... ling baixing jin zhi zhi* 明白大扁書 ... 令百姓盡知之) was also written and appended to the document of an imperial edict.⁶⁹ “The Document of the Edict of the Third Year of Yongshi” excavated at Juyan provides an example:

十月己亥，張掖太守譚、守部司馬宗行長史 ... 書從事下當用者。明扁鄉亭顯處，令吏民皆知之，如詔書。^{73 FJF1.13}⁷⁰

On the *jihai* day of the tenth month, governor Zhangye Tan and major of the defense department Zong acting for the senior scribe ... [when receiving the] document, administer its affairs and send it down to those who should use it. Clearly post it in conspicuous places in districts and post stations and let the officials and the common people all clearly know about it, according to the document of the edict.

Despite the available sources, we cannot precisely know how well laws that needed to be known by the common people were disseminated to them in Qin and Western Han China; however, we have reason to assume, based on research from different perspectives, that the general populace had some legal knowledge. Sanft provides examples to show that the people of Qin and Western Han China actively participated in different stages of criminal procedures, which indicates that common legal knowledge was possessed by them.⁷¹ Korolkov describes Qin and Han interrogation procedures as “legal disputes” between accused ordinary people and interrogating officials in which the former actively applied legal knowledge to argue for themselves in legal cases.⁷² Jiang

xingzheng yu junshi, 19–22; and Zhang Jinguang 張金光, “Xueli zhidu—jian yu Han bijiao 學吏制度—兼與漢比較,” in *Qin zhi yanjiu* 秦制研究 (Shanghai: Shanghai guji, 2004), 727–34.

69. For example, slip II 0115②: 16, in Hu Pingsheng 胡平生 and Zhang Defang 張德芳, eds., *Dunhuang Xuanquan Hanjian shicui* 敦煌懸泉漢簡釋粹 (Shanghai: Shanghai guji, 2001), 115; and slip 2000 ES7S: 4A, in Sun Jiazhou, ed., *Ejina Hanjian shiwen jiaoben*, 60–61.

70. Gansu jiandu bowuguan et al., *Jianshui Jinguan Hanjian (si)*, 141.

71. Charles Sanft, “Law and Communication in Qin and Western Han China,” 690–97.

72. Maxim Korolkov, “Arguing about Law: Interrogation Procedure under the Qin and Former Han Dynasties,” 50–61; see also Yates, “Soldiers, Scribes, and Women,” 368–69.

Tao compares three different versions of “The Document of the Edict of the Dove-headed Staff” (*Wangzhang zhaoshu* 王杖詔書) and concludes that the manuscripts were probably copied by the common people from the edict, which was circulated among them after its promulgation.⁷³

The Enforcement of Laws

In this section, we examine when and how a new law took effect in local areas during the process of promulgation. As the previously discussed formula “*cheng shu cong shi ru zhao shu*” required offices to carry out affairs according to the law upon receipt of it, we can conclude that a new law must have been effective by that time. Nevertheless, we should consider an important question: when did a new law come into effect at local offices? The Yuelu ordinance numbered 32 of the *B Ordinances on Infantries* (*zu ling yi* 卒令乙) is important to this discussion:

新律令下，皆以至其縣、都官廷日決。故有禁，律令後爲臯名及減益臯者，以奏日決。卒令乙卅二^{1888/107}⁷⁴

In the case that a new statute or an ordinance is sent down, use it to decide [cases] on the day when it arrives in the courts of prefectures and metropolitan offices. If old prohibitions existed, and [a statute or an ordinance] later defines a punishment as well as increases or decreases the punishment [for violating the prohibitions], use it to decide [cases] on the day of submission. The Thirty-second of the *B Ordinances on Infantries*

The ordinance differentiates two circumstances for the execution of a new statute or an ordinance. In the first circumstance, if no related statutes or ordinances existed, the new statute or ordinance came into effect on the day it arrived at the local courts.⁷⁵ Even though the Qin and Han empires emphasized applying unified laws across the whole territory, as government offices situated in different places could not simultaneously receive a new law, during the process of promulgation of the law, some offices would apply the new law to decide a case after

73. Jiang Tao 姜濤, “Hanjian ‘Wangzhang zhaoshu’ bikan yanjiu” 漢簡“王杖詔書”比勘研究, *Zhongguo gudai falü wenxian yanjiu* 10 (2016), 164–68.

74. Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, 103. The ordinance is also written on Yuelu slip 1900/221; see Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (liu)*, 169.

75. It should be noted that the text of one Yuelu ordinance noting down the date of its arrival at the local office “arrived in Huyang on *jiaxu* day of the fourth month of the twenty-ninth year” 廿九年四月甲戌到胡陽; slip 1859/255, Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (liu)*, 180.

having received it, while other offices still had no knowledge of it and no chance to use it. This would result in an action being handled differently in different offices during the time period.

In the second circumstance, old prohibitions existed; however, the corresponding new statute or ordinance newly defined the punishment or increased or decreased the punishment for violating the prohibitions. According to this ordinance, the new law came into effect on the day of submission (*zou ri*). To understand precisely what “*zou ri*” refers to, we should look back to the Yuelu ordinance numbered 27, also belonging to the *B Ordinances on Infantry*s discussed above, as it clearly states that the day a law is approved and sent down from the emperor (*shu xia ri*) determines the day of its submission (*zou ri*). Correspondingly, the new statute or ordinance came into effect in local areas on the day of enactment in the central court. We must, then, find reasons to explain this. Compared to the first circumstance in which no related laws existed, in the second circumstance, the point when a new law came into effect probably automatically determined the abrogation of corresponding extant laws. It is possible that to promptly abolish the old laws and determine the criminality and penalty of an action with the new law, it came into force across the whole empire on the day of its enactment. Admittedly, this is a highly speculative explanation based on the available evidence. Before a new law had been transmitted and made known to local courts, in real situations, officials could only have applied existing laws to decide cases; thus, when receiving the new law, officials would have to reverse the former judicial decision and rehear the case based on the new law. As we do not have records of such legal cases preserved in excavated and received texts, we cannot know how officials handled these cases during the process of the promulgation of a newly revised law.

In summary, a new law came into force in local areas on the day of its arrival at the local courts or on the day of its enactment in the central court depending on whether related laws existed. Accordingly, the legal status of an action was determined by local offices with the law valid at the point of judgment, not with the law effective at the point of commission. Then, the common people would have been punished by a law that was not yet passed and promulgated when their actions were undertaken. Therefore, a new law in Qin and Western Han China was *ex post facto*, as it reached backwards to a past action and retroactively determined liabilities and punishments for actions performed before the law came into effect.⁷⁶ Although the Qin and Western Han governments

⁷⁶ The definition of a “retroactive law” given in the ninth edition of *Black’s Law Dictionary* states, “A legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect.” Garner, ed., *Black’s*

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promulgated laws to the general population for guidance and control, to an extent, commoners could not avoid the legal consequences of a retroactive new law that may have changed the legal status of their previous action from the time when they performed it.

However, under the Qin and Han dynasties, if a new law required active participation from the common people, a certain amount of time would be allowed for them to learn about it and to conform their behavior to the law. The following ordinance cited in case no. 14 of the *Zou yan shu* 奏讞書 collection provides an example.⁷⁷ The ordinance permits commoners without a household registration to register themselves at government offices within thirty days of the ordinance's transmission to prefecture and march offices; otherwise, they would be punished by law.

令曰：“諸無名數者，皆令₆₅自占書名數。令到縣道官，盈卅日不自占書名數，皆耐為隸臣妾，錮，勿令以爵、賞免。舍匿者與同罪。”⁶⁶⁷⁸

The ordinance states, “Those who lack a registration are ordered to make a self-report and register themselves. [As soon as] the ordinance has arrived at the offices of prefectures and marches for full thirty days,⁷⁹ [people who] do not register themselves are to be shaved and made bond servants or bondwomen; they are to be restricted from [enjoying privileges]. It is ordered not to commute their punishment by using their meritorious ranks and rewards. Those who lodge or conceal them are to be punished the same.”

Law Dictionary, ninth edition, 1432. For the concept and explanation of retroactive law, see also Neil Duxbury, “Ex Post Facto Law,” *The American Journal of Jurisprudence* 58.2 (2013), 145–50.

77. For other examples, see the texts on Yuelu slips 1278/106, 1024/005 and 1357/005 in Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (si)*, 103, Chen Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (wu)*, 40, and Chen Songchang, ed., *Yuelu shuyuan cang Qinjian (liu)*, 48.

78. Zhangjiashan ersiqihao Hanmu zhujian zhengli xiaozu, *Zhangjiashan Hanmu zhujian [ersiqihao mu] (shiwen xiudingben)*, 97.

79. Barbieri-Low and Yates translate the text “*ling dao xian dao guan, ying san shi ri*” 令到縣道官，盈三十日 as “Order [them] to go to the office of their county or march within a full thirty days,” see Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, vol. 2, 1277, while Lau and Lüdke translate it as “die nach Ablauf von 30 Tagen, nachdem die Verordnung die Ämter der Präfekturen und Marken erreicht hat,” 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), 2012), 188–89. The translation of Lau and Lüdke fits the content of the ordinance, as it emphasizes that people should register themselves within thirty days after the arrival of the new ordinance.

Conclusions

This article investigated the promulgation of laws in Qin and Western Han China based primarily on excavated legal and administrative texts. The process of promulgating laws consists of three steps: enactment, dissemination, and enforcement.

Although an imperial decision became law from the point when it was approved by the emperor, the law could not be immediately applied by local offices. To inform the offices about the new law as swiftly as possible, it was handed down (*xia*) from the emperor to the offices on the day of enactment. Excavated administrative documents pertaining to imperial edicts commonly record the formula “sent down on X day of X month of X year” (*mou nian mou yue mou ri xia*). This formula was probably included in the documents of imperial edicts when they were handed down from the central court, as it provided important information about the enactment of the law.

The enactment of a law determined the beginning of its dissemination to the offices. As the formula “when receiving the document, administer its affairs and send it down to those who should use it, according to the document of the edict” (*cheng shu cong shi, xia dang yong zhe ru zhao shu*) specifies, when local offices of the Qin and Western Han empires received an imperial edict, they were expected to conduct affairs accordingly and determine to which subordinate offices the edict was to be further handed down. The article argues that, to an extent, the subject matter and function of a law determined to whom it was passed and promulgated. Depending upon the location, rank, and official duties of the offices, the laws promulgated to them and used by them must have been quite different.

The records on the promulgation of laws in excavated administrative texts disclose that a new law was transmitted first within the inner circle and then to local offices at different levels, step by step. Although it was required that a document of an imperial decision be forwarded swiftly and safely by courier at the speed prescribed by law, delays in forwarding documents to distant local offices were probably common in Qin and Western Han China. As government documents, including those of imperial edicts circulated in officialdom, were not directly transmitted to the common people, after officials in districts and prefectures received laws that should be made known to the people, they were bound to publicize them through different methods, such as by reading the laws aloud in the hearing of the people or posting the laws in conspicuous places.

A new statute or ordinance came into force at local offices on the day of its arrival at the local courts or on the day of its enactment at

the central court, depending on the existence of related extant laws. Consequently, judicial officials determined the legal status of an action with the law that was in effect on the day of the judgment. Therefore, a new law in Qin and Western Han China was *ex post facto*, as it reached backwards to a past action and altered the legal status of the action from that at the point it was performed.

Recently excavated documents demonstrate that centralized state control over officials and the common people in Qin and Western Han China was exerted through the enforcement of the law. Obedience to and application of the law was necessarily reliant upon its promulgation to them. The discussion in this article provides a more comprehensive understanding of the management and realization of the dissemination and enforcement of a law after its enactment in the officialdom and in the general population of the vast territory of early imperial China.

秦和西漢時期法律的頒發

李婧嶸, 陳松長

提要

本文以出土法律和行政文獻為主要材料，研究秦與西漢時期法律的發佈。秦漢法律自頒布之日起即一路由皇帝下傳至地方各相關官署。在一定程度上，法律的內容和目的決定其通知、傳播的對象。因所在地、級別和職責的不同，各官署知曉與使用的法律也隨之不同。雖然法律要求制書以郵行方式按照規定速度送往各官署，但是制書延遲送達偏遠地方官署的現象時有發生。證據顯示，縣、鄉級官吏將應該眾所周知的法律公佈給百姓，如通過鄉里聚會時宣講法律或者懸掛在明顯之處。取決於是否已有相關法律的存在，新法律或自到達地方官署之日起生效，或自中央朝廷頒布法律之日起生效。本文結論為秦漢法律具有溯及力，可以回溯至法律生效之前發生的犯罪行為並決定其責任。

Keywords: Qin, Western Han, law, promulgation

秦, 西漢, 法律, 頒發