Arguing about Law: 
Interrogation Procedure under the Qin 
and Former Han Dynasties 

Maxim Korolkov

Abstract

This article offers an analysis of interrogation procedure as reflected in the legal 
documents drafted on bamboo and wooden strips and excavated during the past 
decades from Qin (221–207 B.C.) and early Former Han (206 B.C.–A.D. 9) 
sites. First, it is demonstrated that a considerable degree of what modern legal 
sociologists call “process control” was conferred upon those under interrogation, 
and that the application of judicial torture by the investigators was subject to 
strict limitations, violation of which, if detected, could result in prosecution of the 
officials involved. These features of judicial interrogation under the Qin and Han 
call for an interpretation that the present paper attempts to provide by considering 
the development of interrogation procedure in the context of empire-building, as 
one of the strategies designed to generate among the subjects of the expanding 
territorial state the justice-related ideas and perceptions directly associated 
with the law and political authority of the emerging empire rather than with the 
alterative agents of social justice, such as the kinship and community structures 
and “old” polities swallowed up in course of Qin and Han conquests. Those 
under interrogation were permitted to present their argumentation uninterruptedly 
as long as this argumentation was engaged and was built upon the discussion 
of the legal norms defined by the imperial government. By introducing a new 
framework of judicial argumentation, the architects of the emergent imperial state 
sought to shape the legal discourse and to direct the justice-related sentiments of 
their subjects.

1 Maxim Korolkov is a research associate in the China Department at the Institute of 
Oriental Studies, Russian Academy of Sciences. The author would like to thank an anonym-
ous reviewer who made numerous corrections and suggestions for the draft of this paper.

Études chinoises, vol. XXX (2011)
本文對近幾十年來考古發現的秦及西漢簡牘文書所反映的秦漢刑事訴訟中的審訊程序進行探討。研究指出，受訊人包括嫌疑人和作證人享有現代法律社會學學者所謂的“程序控制”。法律對司法官吏使用刑訊具有嚴格的限制，因而任意使用刑訊的司法官可能會遭到處罰。為了對這些秦漢審訊程序的特徵提供解釋，本文分析討論秦漢司法程序與中華帝國形成的聯繫，並且將審訊程序視爲重要的政治策略，其目標在於建構統一的社會倫理辯論範圍，在於使原先具有不同的倫理和價值觀之人群接受被中央集權政府所確定的解決社會矛盾的統一方式。在秦漢審訊程序框架內，受訊者被要求用國家法律條文和概念證明自己有理，用國家統治者所確定的標準評價自己的和別人的行爲的公正性。秦漢統治者用建立新的審訊程序，企圖使國家法律成爲社會公義之討論憑據以及情法之指南，以加強中央集權政府在社會上的權威。
Arguing about Law

Introduction

This paper offers an analysis of interrogation procedure as reflected in the legal documents drafted on bamboo and wooden strips recently excavated from Qin (221-207 B.C.) and early Former Han (206 B.C.-A.D. 9) sites. While revealing a fundamental continuity between judicial practices of the Qin and Han empires, these documents bring to light several rather unexpected features of criminal process that are in striking contradiction to traditional accounts of the ruthless and oppressive legal system introduced by the Qin reformers of the Warring States era (453-221 B.C.) and eventually inherited by the early empires. In particular, a considerable degree of what modern legal sociologists call “process control” was conferred upon those under interrogation, and the application of judicial torture by the investigators was subject to strict limitations. These features of judicial interrogation call for an interpretation that the present paper attempts to provide by considering the development of interrogation procedure in the context of empire-building. I argue that this procedure was effectively designed to generate among the subjects of the expanding territorial state the justice-related ideas and perceptions directly associated with the law and political authority of the emerging empire rather than with the alternative agents of social justice, such as the kinship and community structures and “old” polities swallowed up in course of Qin and Han conquests.

For the reconstruction of interrogation procedure, the paper builds upon archaeologically retrieved manuscripts, first of all, the texts from the Qin burial no. 11 at Shuihudi 睡虎地 (modern Yunmeng 雲夢 Prefecture, Hubei), dated from soon after 217 B.C., and the early Former Han tomb no. 247 at Zhangjiashan 張家山 (Jingzhou 荊州 Municipality, Hubei) sealed sometime after 186 B.C. These are so far the richest collections of legal lore from the early empires and provide a vivid snapshot of the operation of their judicial apparatus.

The article consists of four sections, the first of which supplies an introduction to the legal and, in particular, judicial texts from the Qin and early Former Han periods that bear evidence upon the operation of the judicial system of the Qin. The second section briefly describes the recent development of the theory of procedural justice and looks into the Qin regulations on the conduct of interrogation in light of this theory. In the
third section, individual interrogation records from the Zhangjiashan collection of dubious cases submitted for revision are analyzed. Finally, the fourth section summarizes the findings of the present study and offers an interpretation of the interrogation procedure in early Chinese empires.

**Qin Legal and Judicial Manuscripts: A General Introduction**

Starting from the second half of the 1970s, several archaeological sites, mainly burials, dating from the Qin and the beginning of Former Han period yielded a number of impressive collections of statutes, ordinances and judicial records inscribed on bamboo strips and wooden tablets. The discoveries at Shuihudi, Zhangjiashan, Longgang 龍崗, Liye 里耶, and other sites provided a comprehensive source base that allowed a new understanding of the structure and functioning of the legal system of the late pre-imperial and imperial Qin.²

In 1975, the excavation of the tomb no. 11 at Shuihudi yielded 1,155 inscribed bamboo strips along with 80 fragments. This was the first find of Qin manuscripts ever made. More than a half of the strips bore records of a legal nature. These included collections of statutes (lü 律), explanations for the application of particular legal rules and notions, and model cases.³

The Shuihudi burial is rather atypical in allowing a clear identification of

---

² Among the smaller finds, which are not discussed below, the one that most deserves mention is the wooden tablet bearing the text of the ordinance on land surveying that was discovered during the excavations of the Qin cemetery in Qingchuan 青川 Prefecture, Sichuan Province, in 1979-80. This text is dated to 309 B.C., which makes it the earliest authentic legal text from the kingdom of Qin known so far. For the archaeological report, see Sichuan sheng bowuguan 四川省博物館, Qingchuan xian wenhuaguan 青川縣文化館, “Qingchuan xian chutu Qin gengxiu tian lü mudu—Sichuan Qingchuan xian Zhangguo mu fajue jianbao” 青川縣出土秦更修田律木牘—四川青川縣戰國墓發掘簡報, *Wenwu* 文物 (1) 1982, pp. 1-21.

³ There are several editions of the Shuihudi texts, of which the latest one, published in 1990, is the most comprehensive and contains the photographs of the strips. See Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu, 1990). The legal texts from Shuihudi burial no. 11 have been translated into English by A.F.P. Hulsewé in his *Remnants of Ch‘in Law: An Annotated Translation of the Ch‘in Legal and Administrative Rules of the 3rd Century B.C., Discovered in Yün-Meng Prefecture, Hu-Pei Province, in 1975* (Leiden: E.J. Brill, 1985).
Arguing about Law

its owner due to the entombment of the chronological record which contained some details of the life and career of a petty official named Xi 喜 who was born in 261 B.C. and died after 217 B.C. Among other appointments, he served as a judicial clerk, a fact that probably accounts for the placement of voluminous legal manuals in his tomb.  

Next in chronological order are the manuscripts of Zhangjiashan tomb no. 247, excavated between the end of 1983 and the beginning of 1984. Some 1,236 bamboo strips and a number of fragments have been unearthed there. The team of scholars in charge of organizing the scattered strips into texts identified eight distinct writings that included medical and arithmetical manuals, a calendar, a burial inventory, and a treatise on military art and statecraft. Also discovered here were two legal collections: The first was the Ernian lüling 二年律令 ("Statutes and ordinances of the second year," the title appearing on the back side of the first strip), comprised of an extensive collection of twenty-seven statutes (lü) and a group of ordinances (ling 令), which account for almost half of the total number of excavated bamboo strips. The second was the Zouyanshu 奏讞书中 ("Collection of [case reports] submitted for revision," the title being inscribed on the back side of the last strip), itself a collection of criminal cases mainly dating from the reigns of the Qin founding emperor, Qin Shihuang 秦始皇 (r. 246-210 B.C.), and the founder of the Former Han, Liu Bang 劉邦 (Gaodi 高帝, r. 206-195 B.C.). Although written down at the beginning of the Han period, the Zhangjiashan legal texts are generally considered as a valid and valuable source for the study of Qin law, insofar

4 Xi “tried criminal cases” (zhiyu 治獄) in the twelfth year of the reign of Ying Zheng, the would-be founder of the Qin empire (235 B.C.). See Shuihudi Qin mu zhujian, 7, strip 19, second register.

5 For the archaeological report, see Jingzhou diqu bowuguan 荊州地區博物館, “Jiangling Zhangjiashan sanzuo Han mu chutu dapi zhujian” 江陵張家山三座漢墓出土大批竹簡, Wenwu (1) 1985, pp. 1-8; for an English account on the Zhangjiashan legal corpus, see Li Xueqin and Xing Wen, “New Light on the Early-Han Code: A Reappraisal of the Zhangjiashan Bamboo-slip Legal Texts,” Asia Major (third series) 14.1 (2001), pp. 125-46. Although some manuscripts from the Zhangjiashan burials were published in the journal Wenwu in 1990s, the first complete edition of these texts supplied with commentaries, photographs of the strips, and the scheme of their original location in the burial was published only in 2001. In the present paper, I am using the revised edition of the Zhangjiashan legal corpus. See Peng Hao 彭浩, Chen Wei 陳偉, and Kudō Motoo 工藤元男, eds., Ernian lüling yu Zouyanshu: Zhangjiashan ersiqihao Han mu chutu falü wenxian shidu 二年律令與奏讞書: 張家山二四七號漢墓出土文獻釋讀 (Shanghai: Shanghai guji, 2007).
as those numerous parts of the statutes that are parallel to the Shuihudi manuscripts and other known fragments of the Qin legislation reveal fundamental continuity between the Qin and the early Han legal norms and procedures.\(^6\)

Another major discovery of the Qin legal documents occurred at the end of 1989, when 293 fragments of bamboo strips inscribed with excerpts from miscellaneous statutes were unearthed from the burial no. 6 at Longgang, Yunmeng Prefecture, Hubei. Despite the poor preservation condition of the strips, many of which bear no more than two or three characters, most of the better preserved fragments appear to deal with different aspects of the administration of imperial parks and hunting preserves, which is believed to have been one occupation of the tomb owner.\(^7\) Besides the bamboo strips, one wooden tablet has been found, inscribed on both recto and verso surfaces with the terse record of the revision of the case of a certain Pisi 閬死, who had been unjustly sentenced to a term of forced labor, but later was found innocent.\(^8\) Researchers argue that this inscription does not reflect the actual judicial proceeding but should rather be regarded as a “report to the subterranean officials” (gaodice 告地策), a specific genre of funeral texts designed to secure the social status of the deceased in the netherworld. In the Longgang case, the tomb occupant or his relatives probably wished to improve his conditions after death by demonstrating that his sentence was cancelled and he had recovered the

---

6 This picture matches well with the traditional narration of the early development of Han legislation that emerged as the result of revision of the Qin statutes by Xiao He 蕭何, the prominent statesman during the reign of the Han founder Liu Bang, who occupied the highest position in the imperial bureaucratic hierarchy, that of a Chancellor (chengxiang 丞相, renamed xiangguo 相國 in 198 B.C.) in 206-193 B.C. See Ban Gu 班固 (A.D. 32-92), Hanshu 漢書 (Beijing: Zhonghua shuju, 2006), 23.1096. For the conclusion about the continuity between Qin and Han legislation based on the comparative study of excavated manuscripts, see Gao Min 高敏, “Han chu falüxi quanbu jicheng Qin lü shuo: du Zhangjiashan Han jian “Zouyanshu” zhaji” 漢初法律係全部繼承秦律說：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), pp. 76-84.


8 Longgang Qin jian, p. 144.
status of a commoner, which might not have been the case in actuality. Even so, this “report” would have been modeled on the analogous earthly documents.

Finally, the excavations of the Qin remains at Liye, Longshan 龍山 Prefecture, Hunan, conducted in 2002-2005, have yielded the most extensive collection of Qin manuscripts ever discovered (over 37,000 bamboo strips and wooden tablets), the value of which is further augmented by the fact that it has been recovered from an administrative and residential site, not a burial, and therefore directly reflects the activities of the local government. Only a small portion of the Liye documents has been published so far, but they have already provided new evidence on the judicial operation of the local government. The remainder is reported to contain, among other materials, litigation records, some of which are presently on display at the Liye museum. The publication of these texts is expected

9 Huang Shengzhang 黃盛璋, “Yünmeng Longgang liuhao Qin mu mudu yu gaodice” 云夢龍崗六號秦墓木牘與告地策, in Longgang Qin jian, pp. 152-155.

10 The site has been identified as a seat of the Qiangling 遷陵 Prefecture, which was part of the Dongting 洞庭 commandery, an administrative unit unknown from the traditional sources and probably founded soon after the Qin conquest of the Warring States kingdom of Chu 楚 in 223 B.C. The location of this commandery is tentatively defined as the northwestern part of the modern province of Hunan, the utmost south-east of the Chongqing Municipality and a southern section of the Hubei Province. See Hou Xiaorong 吳曉榮, Qindai zhengqu dili 秦代政區地理 (Beijing: Shehui kexue wenxian, 2009), pp. 425-429, and the map between pp. 440 and 441.

11 See the discussion in Momiyama Akira 篠山明, “Zushi fuyu shitan—yi Liye Qin jian J1-8-134 wei xiansuo” 卒史覆獄試談—以里耶秦簡J1-8-134為線索, in Zhongguo shehui kexueyuan kaogu yanjiusuo 中國社會科學院考古研究所, Zhongguo shehui kexueyuan lishi yanjiusuo 中國社會科學院歷史研究所, and Hunan sheng wenwu kaogu yanjiusuo 湖南省文物考古研究所, eds., Liye gucheng, Qin jian yu Qin wenhua yanju: Zhongguo Liye gucheng, Qin jian yu Qin wenhua guoji xueshu yantaohui lunwenji 里耶古城 秦簡與秦文化研究:中國里耶古城 秦簡與秦文化國際學術研討會論文集 (Beijing: Kexue, 2009), pp. 122-126. See also He Shuangquan 何雙全, Chen Songmei 陳松梅, “Qin lü zhi zixing yu shuxing qianlun—du Liye Qin mu wenwen” 秦律之貲刑與贖刑淺論—讀里耶秦簡文書, in Liye gucheng, pp. 127-140.

12 For the voluminous archaeological report on Liye and adjacent sites, see Hunan sheng wenwu kaogu yanjiusuo 湖南省文物考古研究所, ed., Liye fazue baogao 里耶發掘報告 (Changsha: Yuelu shuyuan, 2006). Samples of the excavated documents are provided on pp. 179-217. The documents published in the archaeological report have been further edited and republished, along with photographs of the tablets, in Wang Huanlin 王煥林, Liye Qin jian jiaogu 里耶秦簡校詁 (Beijing: Zhongguo wenlian, 2007).
within the next few years and will doubtlessly supply abundant source material for further investigation into the work of early imperial legal institutions.

*Judicial documents*

Along with the record of legal norms, mainly in form of statutes (liü) and ordinances (ling 令) that constitute the majority of the retrieved legal manuscripts, several caches yielded texts related to the judicial practices. Already published materials can be subdivided into several sub-categories, including actual litigation materials, model cases and collections of dubious or otherwise difficult cases, all of which are discussed briefly below.

Actual litigation materials include copies of documents submitted in the course of judicial proceedings and official accounts about the cases that have been tried. For the Qin period, known samples of original litigation records are limited to several documents from Liye that remain unpublished. The earliest litigation record from the Han period is dated from 15-14 B.C.; the latest one, excavated from the remains of the Later Han administrative seat at Dongpailou 東牌樓, was drafted in A.D. 183.

Recently, an administrative archive dated to the reign of the Former Han emperor Wudi 武帝 (r. 140-87 B.C.) has been recovered from an abandoned well at Zoumalou 走馬槽, Changsha 長沙, Hunan, at what is believed to be the site of the local government compound. Among other documents, records of judicial cases inscribed on bamboo strips have been reported; neither the total number of strips and fragments, nor the preservation conditions are specified, and no samples of texts are provided.13

Model cases are represented by the collection of twenty-five “models” (shi 式) inscribed on ninety-eight bamboo strips and excavated from the tomb no. 11 at Shuihudi. The title of the collection, the Fengzhenshi 封診式, appears on the back side of the last strip and has been rendered

---

13 For the brief account of this find, see Changsha jiandu bowuguan 長沙簡牘博物館, Changsha shi wenwu kaogu yanjiusuo lianhe fajuezu 長沙市文物考古研究所發掘組, “2003 nian Changsha Zoumalou Xi Han jiandu zhongda kaogu faxian” 2003年長沙走馬樓西漢簡牘重大考古發現, in Zhongguo wenwu yanjiusuo 中國文物研究所, ed., *Chutu wenxian yanjiu* 出土文獻研究 (7) (Shanghai: Shanghai guji, 2005), pp. 57-64.
Arguing about Law

in English by A.F.P. Hulsewé as “Models for sealing and investigating.”

The Fengzhenshi includes models for different phases of the judicial process such as complaints, hearing of convicts, sealing and guarding of confiscated property, forensic investigation, etc. It also provides patterns for the full or partial recording of specific criminal cases such as gang robbery, murder, suicide or fornication. Being model cases, the documents do not mention names or locations which are substituted by impersonal pronouns like mou 某 or the ganzhi 干支 (stems and branches) signs. In actual case records, these would be replaced with the details of a person or location.

Collections of dubious or otherwise difficult cases were submitted by local officials to the central authorities for final adjudication or review. Two such compilations of criminal cases from the Qin and early Former Han are known at present. First is the above-mentioned Zouyanshu, which consists of 228 bamboo strips. Another similar collection, of over 150 strips, is part of the corpus of Qin documents which was acquired by the Yuelu Academy (Yuelu shuyuan 嶽麓書院) on the Hong Kong antiquities market in 2007. This manuscript still awaits publication.

In the extensive literature devoted to the Zhangjiashan Zouyanshu, different opinions have been voiced as to the nature of the collection in general and individual cases that constitute it in particular. While some scholars describe it as a collection of legal precedents, others argue that no evidence exists for the use of the Zouyanshu cases as binding precedents in legal decision-making and that the collection was designed to set forth models for submitting ambiguous cases.

---

14 Shuihudi Qin mu zhujian, pp. 145-164; Hulsewé, Remnants of Ch‘in Law, pp. 183-207.
15 For the study of Qin and Han formulaic models used to teach clerks the correct way of composing administrative and judicial records, see Xing Yitian 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 Yan Gengwang xiansheng jinianji bianji weiyuanhui 嚴耕望先生紀念集編輯委員會, ed., Yan Gengwang xiansheng jinian lunwenji 嚴耕望先生紀念論文集 (Taipei: Daoxiang, 1998), pp. 387-404, which has been recently reprinted in Xing Yitian, Zhiguo anbang: fazhi, xingzheng yu junshi 治國安邦：法治、行政與軍事 (Beijing: Zhonghua shuju, 2011), pp. 450-472.
16 For the preliminary report on this and other texts from the Yuelu collection, see Chen Songchang 陳松長, “Yuelu shuyuan suocang Qin jian zongshu” 嶽麓書院所藏秦簡綜述, Wenwu (3) 2009: pp. 75-88.
17 For the first view, see Cai Wanjin 蔡萬進, Zhangjiashan Han jian “Zouyanshu” yanjiu
In spite of the controversies, several things seem to be generally agreed upon. First, the *Zouyanshu* essentially differs from the *Fengzhen-shi* in that it builds upon actual case records and provides specific details such as the names of criminals, victims, witnesses and investigating officials as well as the locations and precise dates of the proceedings.

Second, the *Zouyanshu* cases differ from the actual case records discussed above in that they were edited and often abridged before being included in the collection. This work was probably carried out in the office of the central imperial government (possibly, that of the Commandant of Justice, *tingwei* 廷尉), since the cases submitted originated from different commanderies, and the resultant text was disseminated to the provincial officials, one of whom ultimately had a copy of the manual buried in his grave. Distribution of such a manual made sense only if the central authorities hoped it would serve as some sort of guidance for their subordinates.

張家山漢簡《奏讞書》研究, (Guilin: Guangxi shifan daxue, 2006), pp. 66-72, and Mark Csikszentmihalyi, ed. and trans., *Readings in Han Chinese Thought* (Indianapolis: Hackett Publishing Company, 2006), pp. 29-30. For the later view, see Miranda Brown and Charles Sanft, “Categories and Legal Reasoning in Early Imperial China: The Meaning of Fa in Recovered Texts,” forthcoming in *Oriens Extremus*. The *Hanshu* reports that in the course of legal reforms in the beginning of the Former Han, local officials were ordered to submit dubious cases for review and adjudication by their seniors at the commandery level. In case these later failed to arrive at a decision, the case was to be further re-submitted to the central government office of the Commandant of Justice (*tingwei* 廷尉) that could, in turn, appeal for the case to be reviewed and sentence pronounced by the emperor himself. See *Hanshu*, 23.1106. Recently recovered manuscripts demonstrate that the mechanism for submitting dubious cases for review was already in place under the Qin dynasty.

18 This is particularly obvious, for example, in cases 8, 9, and 12, which each occupy no more than one bamboo strip inscribed in single line of characters; other individual case records include only one-and-a-half to two strips of text; see *Ernian lüling and Zouyanshu*, pp. 345-350, strips 49-62. Some researchers suggest that these legal cases were collected, edited and issued as an official manual as a part of a general systematization of the legal system initiated by Chancellor Xiao He in the reign of the Han founder Liu Bang; see Cai Wanjin, *Zhangjiashan Han jian “Zouyanshu” yanjiu*, pp. 67-68.
Interrogation Rules in Light of the Theory of Procedural Justice

The theory of procedural justice elaborated in the works of Tom R. Tyler and his colleagues has offered new prospects for understanding the role of legal procedure in molding political legitimacy and maintaining social order.¹⁹ The study emphasizes the influence of procedural justice on popular satisfaction with the functioning of the legal system and the authorities enforcing it, which, in turn, determines the views on legitimacy of the existing socio-political order.

One particularly important component of procedural justice highlighted by statistical research is process control, which is described as an opportunity to state one’s case before the decision is made, to present one’s argument, be listened to and have one’s views considered by the authorities. When the legal procedure allows for these, the person involved feels that he or she has a hand in the decision, which would typically make him or her more likely to accept the outcome, irrespective of what the outcome is.²⁰ Moreover, concern for procedural justice and process control does not decrease even in cases when the outcome is seemingly most important. Among the people who faced severe penalties, too, “satisfaction with the disposition of cases was influenced by issues of fair procedure.”²¹ The feeling that one has been involved in a fair procedure generally leads to positive feelings and support for law-enforcement and judicial authorities whether or not the actions of the authorities are influenced by the views expressed.²²

Tyler’s study suggests that the authorities are able to make use of the effects of sentiments related to procedural justice in order to maintain legitimacy and attain public compliance with the regime.²³ This may be achieved by means of designing and implementing a legal procedure that

²⁰ Tyler, Why People Obey the Law, p. 163.
²¹ Ibid., p. 105.
²² Ibid., p. 133.
²³ Ibid., p. 172.
supplies people with the aforementioned opportunities. Tyler further points out that the focus on procedural justice as opposed to the fairness of the outcome is especially justified in pluralistic societies in which “there is no single, commonly accepted set of moral values against which to judge the fairness of outcomes or policies.” Researchers noticed that in such societies, people often find it easier to agree on determining the fairness of the procedure for decision-making, resulting in the evaluation of authorities, institutions and policies focusing on “the procedures by which they function, rather than on evaluations of their decisions or policies.” In other words, the ideas about what constitutes procedural justice are relatively similar in different cultures, an observation that is bolstered by the instructions for the judges composed under the Sixth Dynasty (ca. 2300-2150 B.C.) in ancient Egypt which emphasized the positive effects of careful listening to a plea, even in cases when nothing in fact could be done to satisfy it. This sounds comparable to the prescriptions of the Qin judicial manual, the Fengzhenshi.

For the purpose of further analysis, I divide the Fengzhenshi entry on the interrogation into two passages, the first of which lays down general regulations concerning the procedure, while the second is especially concerned with the use of judicial torture:

Interrogating in a lawsuit.—In all cases of interrogating in a lawsuit one should first listen fully to his (or their) words and note these down, (letting) each (of the persons questioned) set out his statement. Although (the investigator) knows that he is lying, there is no need to insist every time. When his statement has been completely noted down, and it cannot be understood, then insist on the points (which need) insisting. When, having insisted, one has again fully listened and noted down the explanatory statements, one looks again at other unexplained points and insists again on these.


Arguing about Law

When one has insisted to the limit, but he has repeatedly lied, changing his words and not submitting, then for those persons whom the Statutes warrant bastinado, bastinado them. When bastinadoing him, be sure to note down: “Report.—Because X repeatedly changed his words and made no explanatory statement, X has been interrogated with the bastinado.”

In the first passage, it is emphasized three times that the interrogated person is to be fully listened to, and his or her words recorded without interruption by the interrogator. The “statements” (ci 詞) by the interrogated comprise the center of the procedure, leaving to the officials the task of reacting or arguing on the basis of what has been said. This exchange, at least in theory, would not finish until the interrogated individual failed to answer the questions asked by investigators, or violated the procedure in a way that opened a possibility for the application of judicial torture.

Procedural abuses by the person under interrogation that warranted the application of judicial torture included, first, repeatedly lying (shutuo 數訑) and, second, changing one’s story and not submitting (gengyan bufu 更言不服). Measures against these violations logically derived from the “model” procedure, as the interrogated person who had exhausted his argument was expected to recognize his inability to continue the discussion without adhering to false statements or self-contradiction. However, the Qin lawgivers knew well that the torture was not a reliable method for extracting the evidence, and the exchange of “statements” and officials’ inquiries which were carefully listened to and recorded was considered the main pattern of interrogation.

Key traits of “procedural justice” as defined in contemporary scholarship are highlighted in these interrogation rules. Formal regulations concerning the conduct of the procedure are laid down which officials are required to follow. The person interrogated is allowed to present his argument, and the interrogators are to take it into account as the basis for

26 Shuihudi Qin mu zhujian, p. 148, strips 2-5. Translation is given according to Hulsewé, Remnants of Ch’in Law, 184:E2. The italicization is mine.

27 As explicated in another Fengzhenshi entry against the use of torture; see Shuihudi Qin mu zhujian, p. 147, strip 1; translated in Hulsewé, Remnants of Ch’in Law, 183:E1. For the issue of beating and for reasons why it was considered undesirable by Qin lawgivers, see Charles Sanft, “Notes on Penal Ritual and Subjective Truth under the Qin,” in Asia Major, Third Series, Vol. XXI, Part 2 (2008), pp. 35-57.
further discussion. Therefore, apart from the occurrences of procedural abuse that warranted judicial torture, the process was to a considerable degree guided and controlled by the interrogated, insofar as his statements determined the course of the dispute. This was, however, subject to further conditions that concerned the content of argumentation and that are addressed in the following section.

**Interrogation Records from the Zouyanshu**

Of the twenty-two cases in the *Zouyanshu*, eleven contain interrogation records: cases 1-5, 14-18 and 22. Of these, cases 14 and 15 include but a brief confession, while case 16 records a confession of greater length. The rest of the cases with an interrogation record, however, convey a more complicated exchange between the suspects and investigating officials.

It should be borne in mind that none of the interrogation records accurately reflects the actual speech. The text that we are dealing with is the result of a twofold “distillation” that transformed the actual verbal exchange between the interrogators, suspects and witnesses into highly formalized summaries. At first step, the speech was recorded by the scribe who squeezed it into the procrustean bed of the bureaucratic formulas. At the second stage, the collected case records were further reviewed by the compilers of the *Zouyanshu*. The resultant text, though essentially based on the actual utterances, is revealing in terms of what part of argumentation was considered relevant and worth recording, and what modes of interrogation were promoted by the senior judicial authorities of the empire. It is from this viewpoint that I am now going to examine several of the *Zouyanshu* cases.

---

28 Case numbers are given according to *Ernian lüling yu Zouyanshu*, pp. 332-382.
Arguing about Law

Analysis of individual interrogation records in the Zouyanshu

Case no. 1 is recorded on strips 1-7. In the sixth month of the eleventh year of the reign of the Han founder Liu Bang, on the day wuzi 戊子 (17 July, 195 B.C.), a certain “barbarian” (manyi 蠻夷), named Wu You 毋憂, was brought to trial at the court of the Yidao 夷道 March (in the Nanjun 南郡 commandery, which roughly coincided with the territory of the modern Hubei) by an officer Jiu 九, who accused him of absconding from military service. It turned out that Wu You had been ordered to join one of the garrisons, or military colonies (tun屯) and deserted after having received the command. The record of the ensuing interrogation follows:

Wu You said: “[I am an] adult male of the manyi [tribe]. On a yearly basis, [we] pay fifty-six coins as a [redemption] fee for the corvée service. [I am] not obliged to [perform] the garrison [service]. Commander Yao has ordered me to join the garrison. [I have not arrived] at the place of service] and absconded. As for the rest, it is in accordance with [what] Jiu said.”

Yao said: “The [military] commander of Nanjun has issued an order to levy the garrison [servicemen]. The ‘Statute on the manyi barbarians’ does not stipulate that [they] should not be ordered to [join] garrisons. Therefore, [I have dispatched him] to the garrison and do not see any reason for him absconding. As for the rest, it is in accordance with [what] Wu You said.”

[Investigating officials] inquired of Wu You: “The Statute [stipulates]: ‘The males of the man [tribes] pay on an annual basis a [tax called] cong to redeem themselves from the corvée.’ It does not say that [the man tribesmen] should not be ordered to [serve

---

31 Ibid., pp. 332-333.
32 The term “march” was offered by A.F.P. Hulsewé to render the Chinese word dao 道; see Remnants of Ch’in Law, pp. 91-92:A110. Under the Han dynasty, dao were administrative units equivalent to prefectures (xian 縣) with prevailing non-huaxia (or “barbarian”) populations (Hanshu, 19A.742).
33 Wei 尉 in this phrase probably stands for the military commander at the prefectural level.
34 The mid-Later Han dictionary Shuowen jiezi 說文解字 explains the character cong 賨 as “the tax paid by the southern [barbarian tribes] man” (nanman fu ye 南蠻賦也); see Xu Shen 許慎 (ca. A.D. 58-147), Shuowen jiezi 說文解字 (Beijing: Zhonghua shuju, 2002), 6B.131.
in] the garrison. Even in the case it was not warranted [to order you to join] the garrison, after Yao had already dispatched [you], you became a garrison soldier, and then you have absconded. What explanations [do you have]?”

Wu You said: “[We] have the chiefs and lords [of our own]. Annually, [we] pay the [tax called] cong that redeems us from the corvée, so that [we are] exempted [from any obligations]. [The decision] rests with [you], officials. [I have] no [further] explanation.”

The interrogation procedure generally conforms to the Fengzhen-shi prescriptions: It starts with the “statement” by the interrogated person in which he explains his actions. In this particular case, it is followed by another “statement” by the official who recruited Wu You. Were Wu You able to successfully argue in support of his case, this official, Yao窯, would probably have been held guilty for illegally forcing the defendant to perform a service that he was exempted from.

Investigators then refute the points made in Wu You’s “statement” and present counter-argumentation of their own, insisting on the culpability of the accused and demanding further explanation. In his second “statement,” the accused insists on his innocence, although he proves unable to put forward any new relevant argumentation. Ultimately, he recognizes the lack of further explanations (which is recorded with the formulaic phrase wujie毋解) and expresses willingness to submit to the official adjudication.

Shifting to the content of the argumentation, we can easily see that it essentially revolves around the interpretation of the legal norm referred to by the speakers as the “Statute on the manyi [barbarians]” (manyi lü蠻夷律). This statute stipulates an immunity of the manyi from the obligation to perform statute labor (yao繇, in modern script written as徭), conditioned upon them paying an annual tax, the cong賨, or congqian賨錢. Wu You and his opponent Yao offer alternative interpretations of this provision. While the absconder believes that the garrison service falls within the corvée obligations he is exempted from, the recruiting officer

35 The meaning of the two characters cunli 存吏 is not altogether clear. The editors of the Ernian lüling yu Zouyanshu suspect that cun存 stands for zai在, and read the whole phrase as a clause that expresses the readiness on the part of the interrogated person to comply with the official verdict; see Ernian lüling yu Zouyanshu, 335, n. 14. My translation follows this interpretation.
Arguing about Law

considers it as a separate category of service in its own right that the manyi tribesmen are expected to perform along with other subjects of the empire.

The investigators themselves are inclined to back Yao’s reasoning, albeit they seem somewhat hesitant to voice their support without reservation. Thus, when rebutting Wu You’s argument, they take trouble to demonstrate that even in case Wu has been actually exempted from the garrison service duty, his absconding after receiving an official command would still be impermissible.

Considering the entire case dubious, the interrogators submitted it to their seniors for the final adjudication. However, even at that higher level contradictions endured: some of the discussants advocated the death penalty through cutting in two at the waist (yaozhan 腰斬), while others suggested that the accused had not committed any offence and should not be sentenced at all (bu dang lun 不當論). Unluckily for Wu You, it was the former opinion that ultimately prevailed.

To make sense of the dispute and to take account of the doubts that haunted investigating officials, let us look in more detail at the legal norms involved. Excavated texts shed light on the complexity of military service obligations of the general populace under the Qin and Former Han empires. Newly published documents reveal more and more previously unattested types of military service which are often mentioned only by their names, without any further explanation of their nature.

36 Conflicting opinions exist as to the identity of the higher authority who reviewed the case. While the team of scholars in charge of organizing the bamboo strips of the Zouyanshu initially suggested that this was the office of the Commandant of Justice (tingwei) in the central government, other scholars have pointed out that the term ting 廷 that appear in the text could indicate a number of judicial authorities senior to the prefectural officials (the commandery court, Commandant of Justice, or the emperor himself), to whom legal cases could be submitted for revision in accordance with the zouyan system described in the Hanshu. See Miyake Kiyoshi 宮宅潔, “Qin Han shiqi de shenpan zhidu—Zhangjiashan Han jian ‘Zouyanshu’ suojian” 秦漢時期的審判制度—張家山漢簡《奏讞書》所見, in Yang Yifan 楊一凡 et al., eds., Zhongguo fazhishi kaozheng 中國法制史考證, Third issue, Vol. 1: Riben xuezhe kaozheng Zhongguo fazhishi zhongyao chengguo xuanyi 日本學者考證中國法制史重要成果選譯 (Beijing: Zhongguo shehui kexue, 2003), pp. 287-332.

37 Ernian liuling yu Zouyanshu, pp. 333, strip 7.

38 An attempt at systematization has recently been offered in Yang Zhenhong 楊振紅, “Yao, shu wei Qin Han zhengzu jiben yiwu—gengzu zhi yi bushi ‘yao’” 織、戍為秦漢正卒基本義務—更卒之役不是“徭”, Zhonghua wenshi luncong 中華文史論叢 97 (Jan.
Nevertheless, it seems safe to surmise that at least some types of military service were closely associated with and probably fell within the category of statute labor. It has been noticed that the term shu 戍, a military duty known from the traditional sources to have included a one-year term of service as the guard at the frontier,\textsuperscript{39} often appears in excavated texts as a part of the compound yaoshu 稟戍, the first character of which means “statute labor.” For example, the Zhangjiashan “Statute on forwarding of documents” (xingshulü 行書律) confers an exemption from yaoshu on the staff of the relay system through which the official communication was maintained.\textsuperscript{40} The article on another bamboo strip from Zhangjiashan that has been ascribed to the “Statute on the corvée” (yaolü 稟律) postulates that a person who failed to perform his yaoshu obligations due to falling ill for a period of more than one year, or being taken into custody, should not be arrested for absconding from labor.\textsuperscript{41} Some scholars have argued that the shu should be considered as a kind of labor rather than military service and that the shu servicemen (shuzu 戍卒) at the northwestern frontier of the Han empire, whose activities are amply attested by the documents excavated in the Juyan 居延 and Dunhuang 敦煌 areas, mainly performed labor functions such as collecting wood and fodder and did not participate in military encounters.\textsuperscript{42}

Absconding from the shu merited different degrees of punishment graded according to the length of term spent in absconderence, ranging from redeeming the punishment of shaving off the beard (shunai 贖耐) for one to seven days of absconderence, up to being made an intact chengdan 城旦, a labor punishment linked to the permanent degradation of social status, confiscation of property and enslavement of family members, for those who have spent over three months in absconderence.\textsuperscript{43} However, even this harsh punishment was a far cry from the death sentence which befell Wu You. Moreover, as far as the Zouyanshu account allows us to judge, in

\textsuperscript{39} Hanshu, 24A.1137.
\textsuperscript{40} Ernian lüling yu Zouyanshu, p. 201, strip 268.
\textsuperscript{41} Ernian lüling yu Zouyanshu, p. 246, strip 407.
\textsuperscript{42} Sun Yancheng 孫言誠, “Qin Han de yaoyi he bingyi” 秦漢的徭役和兵役, Zhongguo shi yanjiu 中國史研究 3 (1987), pp. 77-85.
\textsuperscript{43} Ernian lüling yu Zouyanshu, p. 243, strip 398.
Wu’s case, the length of the term of abscondence was not an issue at all. Wu You’s sentence is more consistent with the principles of the military law (junfa 軍法), which stipulated capital punishment for absconding and failure to arrive at the gathering point as scheduled. Although no original fragments of Qin and Han military law have been found so far, this norm is reported in numerous accounts in the transmitted sources. The “Biography of Zhao Guanghan” 趙廣漢傳 in the Hanshu shows that the garrison (tun 屯) servicemen were subject to military law and were punished with death for the failure to arrive at the place of service, precisely the crime that Wu You had been accused of.

Based on this, the following reconstruction of the pretexts of case no. 1 may be proposed. In the absence of a clear-cut segregation between the military and the labor services, with the later often associated with or even including certain military and paramilitary obligations, Wu You came to believe that his exemption from the corvée extended to all categories of labor and military service. Accordingly, he considered the official order to join the garrison unlawful and consequently absconded. In fact, the service that Wu You was conscripted to perform differed from the corvée in that it was a purely military service regulated by military rather than general “civil” law. Apparently, not only the accused, but also some of the investigators were not quite clear about the legal norms involved, which is reflected by the discussion at the prefectural court, as well as at the higher court which reviewed the case and pronounced the final verdict.

Severity of punishment for absconding prescribed by military law is exemplified by the story of Liu Zhang 劉章, the grandson of the Han founder Liu Bang, who slew one of Empress Lü’s 呂后 clansmen who attempted to leave the imperial banquet without permission. Liu Zhang declared that he acted in accordance with the military law (junfa) that stipulated the death penalty for the crime of absconding (wang 死); see Hanshu, 38.1991-92. For examples of capital punishment prescribed by military law for the belated arrival at the gathering point, see Sima Qian 司馬遷 (145/135-87 B.C.), Shiji 史記 (Beijing: Zhonghua shuju, 1959), 109.2973; 111.2930-31, 2944.

Hanshu, 76.3204. Zhao Guanghan’s 趙廣漢 subordinate officer, named Yu 禹, falsely accused Zhao’s opponent, Su Xian 蘇賢, of failing to proceed to the garrison (tun) in which he had been ordered to serve as a cavalryman. When the accusation proved to be slanderous, Yu himself was sentenced to death through cutting in two at the waist in accordance to the rule of fanzuo 反坐 that stipulated the liability of a person who brought a false accusation to the penalty that would have been inflicted on the supposed criminal. It may be deduced from this story that the absconding garrison servicemen were subject to the death penalty.
The second case included in the *Zouyanshu* occurred in the same year as the previous one (195 B.C.). A former slave woman Mei 媚 absconded during the chaotic period that followed the collapse of the Qin dynasty. Sometime after the proclamation of the Han empire in 202 B.C., she was caught and re-enslaved by her former owner, Dian 點, and subsequently sold to a certain *dafu* Yuan 禧. One month later, she absconded again. When ultimately apprehended, Mei claimed that Dian wasn’t entitled to re-enslave her and explained her reasons during the ensuing interrogation:

Mei said: “I have once been Dian’s slave. In Chu times I absconded and surrendered to Han. I have not registered my name and age, and when Dian caught me, he has again registered me as his slave and sold me at Yuan’s residence. I believed that I couldn’t legitimately be re-enslaved, therefore I ran away. The rest is in accordance with [what] Yuan said.”

Dian said: “Mei has previously been my slave. She absconded in Chu times. On the sixth year [of present reign], in the middle of the second month, [I] have caught Mei. She did not have her name and age [registered], so I registered [her] and sold her at Yuan’s residence. The rest is in accordance with [what] Yuan and Mei said.”

[The investigating officials] inquired of Mei: “You have originally been Dian’s slave. Despite [the fact that] you have absconded in Chu times and surrendered to Han, you did not register your name and age, and when Dian caught you and registered you as [his] slave, you became a slave again. It was legitimate to sell you. [However, you] have absconded. What explanations [do you have]?”

Mei said: “I absconded in Chu times. Dian believed that [now] under the Han he could re-enslave [me] and sold me. I believed that I couldn’t legitimately be re-enslaved, therefore I ran away. I have no other explanations.”

As in case no. 1, the interrogation consists of two consecutive “statements” by the parties involved. Investigating officials express their solidarity with the slave-owner Dian against Mei, who is unable to put forward new arguments supporting her point and, as far as the terse judi-

46 *Ernian lüling yu Zouyanshu*, pp. 337-338, strips 8-16.
Arguing about Law

cial record reflects her words, stubbornly reiterates her initial “statement” verbatim.

Although no particular statute is mentioned here, the discussion is obviously related to the legal norm that concerned slaves who absconded from the territory of the kingdom of Chu, which was the major rival of the Han during the wars of Qin succession in the end of the third century B.C. Such slaves could claim their freedom under the condition that they surrendered to the Han and registered themselves with the Han officials for the purposes of taxation, labor service and military conscription. This norm is fully quoted in the Zouyanshu case no. 5 by another slave arguing against an attempt of re-enslavement: “I have once been … a slave; in Chu times I absconded and surrendered to the Han registering my name and age, and became a commoner. It is not warranted to make me … a slave [again].” The interrogating officials admitted this reasoning as legally valid.47

The encouragement of Chu runaways to surrender to and register themselves with Han officials matches well with what is known about social and economic policies during the early years of the Han dynasty. The Hanshu conveys an edict by the Han founder Liu Bang issued soon after the proclamation of the empire in 202 B.C., in which the unregistered populace that abandoned their places of residence to avoid calamities of the interregnum was urged to return to their homes and promised restitution of their land possessions.48 Although the transmitted account mentions no punitive measures against those who failed to answer the emperor’s call, excavated texts show that such measures were in place no later than three years after the publication of the edict: “All those who did not [register] their names and age should be ordered to report themselves in person [to the officials]. When [this] ordinance reaches counties and marches and thirty days pass, then those who have not reported themselves in person will have their hair shaved and will be made bond-servants and bond-women and put into shackles. [They] will not be allowed to redeem [this punishment] by returning their ranks.”49 Those who harbor [absconders]

47 Ibid., p. 343, strips 37-44.
48 Hanshu, 1B.54.
49 Under Qin and Han laws, some crimes could be redeemed by the culprit “returning” to the state his social rank (jue 爵) thus reverting to his former, lower status. See Zhu Shao-hou 朱紹侯, Jungong jue zhi yanjiu 軍功爵制研究 (Shanghai: Shanghai renmin, 1990),
Maxim Korolkov

will receive the same punishment.”

Some scholars speculate that the legal norm that looms so large in Mei’s case constituted a part of the 202 B.C. edict, although it seems more plausible to conjecture that it was issued sometime before the end of the Chu-Han war, when stimulation of social dissent in the rival kingdom, in particular, by encouraging slaves to abscond from their Chu owners was a matter of survival for the Han ruler. In any event, the issue of registering runaway slaves, in all possibility, was related to the regulations concerned with the renewal of household registration and re-populating of lands devastated by war. As in Wu You’s case, the accused woman Mei had some notion concerning the content of the legal norm and employed it to argue for her cause. However, she failed to grasp an important clause of the regulation which had been pointed out by the interrogating officials who demanded further explanations. As the accused failed to provide these, she was effectively compelled to recognize the lack of further argumentation.

Other case records convey essentially the same model of interrogation procedure centered on the interpretation of legal regulations. In view of the limited space here, I am going to consider but two more examples in a summarized fashion.

Sometime in 196 B.C., officials of the Hu Prefecture (in modern Henan) arrested a couple who attempted to cross the border post separating the Han imperial domain from the territory of vassal kingdoms of the emperor’s clansmen (zhuhouguo). In the early decades of the Han, these kingdoms were regarded as, and in fact were, autonomous political entities, and an attempt to defect to them constituted a serious crime. The misdemeanor was further aggravated by the fact that Nan, the woman whom the male offender, the judicial clerk (yushi) Lan from the kingdom of Qi, attempted to smuggle through the post, belonged to the royal Tian clan of the Warring States kingdom of Qi that was resettled to the imperial capital Chang’an as a part of the policy of uprooting the

p. 46.
51 Cai Wanjin, Zhangjiashan Han jian “Zouyanshu” yanjiu, pp. 98-99.
52 For the vassal kingdoms in the beginning of the Han period, see Chen Suzhen 陳蘇鎮, “Hanchu wangguo zhidu kaoshu” 漢初王國制度考述, Zhongguo shi yanjiu 中國史研究 (3) 2004, pp. 27-40.
powerful aristocratic families.\footnote{The resettlement of the Tian clan and other politically influential families of the former kingdoms of Qi, Chu, Zhao, Han, Wei, and Yan to the imperial capital region of Guanzhong 關中 is mentioned as an important event in the \textit{Shiji}, 99.2720, and the \textit{Hanshu}, 1B.66. In the \textit{Hanshu}, this move is dated from the eleventh month of the ninth year of Liu Bang’s reign (198 B.C.).}

After the arrest and official accusation, the interrogation of Lan followed.\footnote{\textit{Ernian lüling yu Zouyanshu}, pp. 338-339, strips 18-22.} As in two previous cases, the interrogation revolved around the application and interpretation of legal categories and particular statutes. Consider two assertions made in the initial statement by Lan: that he has taken Nan as his wife (\textit{qu wei qi} 取為妻), and that they were captured before crossing the border post. The first of these underscores the legal nature of their marriage as opposed, in Qin and Han law, to illicit sexual relations (\textit{jian} 奸).\footnote{In Qin and Han law, \textit{jian} constituted a serious crime, and the culprits were made bond-servants or bond women; see \textit{Ernian lüling yu Zouyanshu}, p. 166, strip 192.} The second assertion emphasizes the fact that the absconders had not actually crossed the border pass. Although no directly relevant regulation is preserved in the extant fragments of Han law, one article from the Zhangjiashan collection of statutes and ordinances postulates that “All those who are captured when (one character is missing here, probably “passing”) a ford or a [border] post, even if they have not yet passed [it], shall be convicted according to [the value of] the loot.”\footnote{\textit{Ibid.}, p. 182, strip 226.}

This article apparently deals with smugglers. What is important for us, however, is that the fact that one has been arrested before, not after, crossing the border post probably constituted a mitigating circumstance, and a special provision was necessary for the cases in which this was considered irrelevant.

While Lan’s initial statement contains implicit references to law, such references, unsurprisingly, become more clear-cut in the first counter-statement by the interrogating officials. They start by denying the legitimacy of Lan’s marriage and denouncing it as an illicit sexual relation (\textit{jian}) and accuse him of two crimes: “arriving from the vassal kings to seduce and fornicate” and “harboring an absconder.” Both of these offences are treated in the excavated fragments of the early Han law.\footnote{\textit{Ibid.}, p. 90, strip 3, and 157, strip 168, respectively.}
In his second “statement,” Lan defies the first accusation as irrelevant, since, as he argues, he arrived in the Han domain not for the purpose of “seducing and fornicating.” Indeed, in Qin and Han legislation, criminal intent was an important factor determining the final judgment about the culpability of an accused person and about the severity of punishment.\(^{58}\) Having, however, at this point realized that it would be hard to avoid any punishment altogether, Lan unwillingly complies with the second accusation of “harboring an absconder.” This was obviously the choice of a lesser evil: the “harboring” was punished with tattooing and a term of convict labor, while those “arriving from the vassal kings to seduce” warranted the death sentence.

The officials, however, were unsatisfied with this partial surrender and pressed their argument one step further by denouncing the alleged lack of criminal intent on the part of Lan as irrelevant in this particular case, since the law considers only the actual fact of “seducing” and does not make reservations for original intent. Even after this, Lan was still left with an opportunity to continue the dispute, but he preferred to concede his defeat and recognize the crime (which is recorded with the formal phrase zui wu jie 罪毋解, “[I recognize] the crime. No explanation”).

This case presents a more complicated structure of argument than the previous two. Two different legal norms are referred to, and the accused was able to modify his argument in the course of interrogation rather than simply reiterate the initial “statement.” In this conjunction, it may be noticed that the complexity of the argument corresponds well with the social status of the defendant: a judicial clerk, as one would expect, displays a better knowledge of law and a better ability to pursue the legal dispute than a runaway slave or a non-huaxia tribesman.

Case no. 18 records one of the longest and most complex interrogations of the Zouyanshu.\(^{59}\) In the course of the investigation, several persons are interrogated at length. I am going to focus on the record of the interrogation of the alleged offender, an official named Tui 廏. In 220 B.C., a rebellion broke out in the Li 利 District of the Cangwu 蒼梧 Com-

---

\(^{58}\) See, for example, Sanft, “Notes on Penal Ritual,” pp. 46-47.

mandery, situated on the recently acquired lands of the annihilated kingdom of Chu. To suppress the rebels, three contingents of newly enlisted troops were dispatched, two of which were defeated and deserted from the battlefield. The rebellion was finally quelled, but now the commandery officials had to deal with the new problem of punishing numerous deserters who concealed themselves in the hills. It was at this point that the senior officials of the commandery dispatched their subordinate Tui to find and arrest the deserters. This proved to be a difficult task, since the name lists of conscripts that participated in the campaign had been lost by the time Tui arrived, and there was no easy way to tell the deserters from the loyal troops. To make things even more complicated, Tui believed that his superiors instructed him to pacify the region by all possible means, which he misunderstood to be encouragement to act on his own discretion rather than strictly abide by the letter of law. As a result, instead of hunting them down, Tui submitted a memorandum begging for amnesty for the deserters. Contrary to Tui’s expectations, not only were the hapless soldiers not pardoned, but he found himself accused of criminal leniency and tried by the investigating officials from the neighboring commandery.

Several legal regulations are referred to by both sides in the course of interrogation. Their dispute concerns the particular statute or article that was applicable for sentencing the deserters. Tui believed that the appropriate punishment would have been the demotion in rank and a term of service at the frontier (shu). This is a relatively clear reference to the legal norm included in the “Statute on arresting [criminals]” of the Zhangjiashan legal collection which, in turn, derived from the Qin law: “When [government troops] encounter bandits and turn their back [towards the enemy], and when their force is sufficient to pursue, capture and arrest them, but the government (five graphs are missing here) but they fall back in fear and do not dare to approach [the enemy], their ranks should be demoted, they should be stripped of their offices. Those who do not have ranks should perform the shu at the frontier for the term of two years.”

The investigating officials, however, quoted other legal norms that, in their opinion, had more bearing to the case: “The statute [stipulates]:

60 Ernian lüling yu Zouyanshu, p. 149, strips 142-143.
Those who fail to engage in battle out of fear [should be] executed.” This law was extended to the recently conquered lands of the kingdom of Chu, probably as a part of military administration aimed at suppressing opposition among the new subjects: “The ordinance [states]: Bandits abound on the newly acquired lands of Jing (Chu). [When] those whom officials enlist to fight bandits turn their back [towards the enemy], they should be sentenced according to the ‘Statute on those who fail to engage in battle out of fear.’” The severity of the punishment as well as the lack of consideration for the social standing of the culprits highlight the possibility that the statute quoted belonged to military law, as discussed above. Tui was probably unaware of, or preferred to ignore, the fact that the area under his jurisdiction functioned under a special, militarized legal regime. Divergent, too, were the interpretations of the meaning of the regulation on “absolving the criminals [of punishment],” the crime Tui had been accused of, which is also treated by the Zhangjiashan statutes. While Tui believed that his submission of a memorandum did not constitute a criminal act, perhaps insofar as he did not pronounce the verdict, the interrogating officials were convinced that the very failure to implement the law immediately was equal to criminal leniency on the part of the official. To support their adjudication, the investigators meticulously listed in the verdict part of the forensic record all the legal norms that had been alluded to in course of interrogation.

To summarize, Interrogation procedure as reflected in the Zouyanshu cases was built upon the application and interpretation of legal regulations. It may be described as a “legal dispute” between the accused and the interrogating officials in which the former were allowed to defend their cause and were to be persuaded into recognition of their fault through competitive discussion. On several occasions, at least some of the investigators found the argumentation by the accused more acceptable than that of the official accusation and opted for an acquittal, hence admitting the defeat of their colleagues. It was the citation of, or

61 Ibid., p. 365, strip 158.
62 Ibid., p. 365, strips 157-158.
63 Ibid., p. 135, strip 107.
64 As mentioned above, case no. 1 involved a clash of contradicting opinions among the officials who reviewed the case. Case no. 2, at least to the extent that it is recorded in the Zouyanshu, ended inconclusively, with some of the reviewing officials voicing calling for
Arguing about Law

reference to, the law that was considered as argument most appropriate for court presentations, and it was the legal provisions rather than any other norms, values, or experiences that were employed to bolster the position of the “disputants.”

Application of judicial torture

Two cases recorded in the Zouyanshu bear evidence on the procedural aspects of judicial torture. They suggest that, before applying torture, the investigating officials were required to prove the need for this extreme measure by demonstrating that the person under interrogation systematically resorted to lying and self-contradicting statements which, as we remember, warranted the application of torture in order to extract truthful evidence.

Strips 197-228 of the Zouyanshu provide a good example of the correct use of judicial torture. This was an intricate case that involved a robbery, a murder attempt and deliberate expedients aimed at confusing the investigators. The malefactor had almost succeeded, as the investigating clerk found himself in a quandary and could not find clues to the case. Fortunately, a talented scribe named Julü 舉闢 was brought into action, who managed to identify the culprit, a certain Kong 孔, who attracted the attention of vendors by idly wandering around at the market. The denunciation cited, in particular, that Kong had a buckle on his belt for attaching a knife sheath although no sheath was attached. This was an important circumstance, since the victim was stabbed with a knife. The record of the ensuing interrogation describes in detail the procedurally correct conditions for the application of judicial torture:

punishment for the absconding woman Mei, and others insisting that she was not guilty and should not be re-enslaved. See Ernian lüling yu Zouyanshu, p. 337, strips 15-16.
Kong said: “I am a tushi. I have not attached a sheath with a knife [to my belt] and am not guilty of robbing and inflicting a wound.” Julü suspected that Kong [was guilty of] robbing and wounding Bi (that is, the victim), so he addressed the black-headed [people]: “If there is [anyone among you who] received clothes, money or [other] belongings from Kong, and you don’t report to the officials [now], [you will be guilty of] a crime.” Pu, the groom, brought a white leather sheath with a silk cord and said: “Gongshi Kong has given me this sheath. As I did not know [anything ], I accepted it without worries.” Kong said: “I did not give the sheath to Pu, and I do not know why [he] says this.” Julü put the knife with which Bi [was wounded] into the sheath brought by Pu—the knife fitted the sheath. [Then] he examined the knife with which Bi [was wounded]: On the rim (of the handle?) [there was] a projection that was broken off; on the sheath there was a greenish trace on the place that should have been rubbing against this projection, as if this sheath formerly belonged to the knife. [Then] Kong was interrogated [in the face of] Pu. [Kong] changed his story and said: “[When I] got this sheath, I gave it to Pu. [Because] I had previously forgotten [about this], I said that I did not give it [to him].” Kong’s wife, Nü, said: “Kong always attached a knife [on his belt], now it is not attached, and I do not know where it is gone.” Julü interrogated Kong [in the face of] Nü, and Kong said: “I don’t remember from whom I bought the knife and the sheath. I attached the knife [to my belt] and went to the market. Someone stole the knife from the sheath, and I gave the sheath to Pu. Previously I said that when I got the sheath I did not attach it [on my belt]—this was a false [statement].” Julü inquired of Kong: “Why, having given the empty sheath to Pu, have you falsely stated that you did not? And why did you say that you never attached the sheath [to your belt] while you have

65 In transmitted sources, the term tushi 徒士 appears to denote the conscripts who performed statute labor for the government; see, for example, Hanshu, 1A.7, comm. 1. The institution of tushi existed in the kingdom of Qin, as attested to by excavated clay seals. Examples of the Han seal of the “tushi of the [vassal kingdom of] Qi” (Qi tushi yin 齊徒士印) have been excavated as well. See Sun Weizu 孫慰祖, ed., Gu fengni jicheng 古封泥集成 (Shanghai: Shanghai shudian, 1994), pp. 48-49.
often done so?” Kong [could] not explain this.
At this point, [Julü] initiated an urgent interrogation: They stretched Kong on the ground and threaten him with caning. He changed his statement [again], saying: “I was in extreme poverty and had no job. I was wandering around the [market] banner and have seen many times the contracts used by the vendors. Since I was planning a robbery, I decided to manufacture a fake contract and carried it [with me], so that when an opportunity for robbery would occur, I could leave the contract [at the place of crime] and make the investigators seek for a vendor and not suspect me. [One day] I saw a woman with an umbrella who carried some cash. At that time, officials ordered the black-headed [people] to fight locust in the fields, and there were very few people [left] in the town. I believed this was a good opportunity for stabbing this woman and taking her money. I followed her, and when we reached a lane where there was no one around, I stabbed her with the knife, took the money and ran away. I was previously concealing this and did not speak out, [but now I recognize] the crime.”

In this account, the investigating official demonstrated systematically how, by bringing in new material evidence and extracting testimony from the witnesses, he pressed the suspect into changing his statement over and over again and ultimately made him recognize that he had previously told lies. According to the Qin procedural regulations, this supplied the justification for the application of torture.

Two observations may be drawn from this case: First, officials were required to track the course of an investigation in detail in order to support their decision to use torture; second, those under interrogation should display some awareness of the procedural rules concerning the application of torture. In the face of new evidence, Kong did his best to adapt his story to what he had said before, and the interrogator was obliged to make some effort to force him to admit that he had been lying. However, even after this he was granted one further chance to clear himself by providing an explanation for previous false statements. When this last opportunity was exhausted, the officials could finally proceed with applying torture without fear of being accused of violating the procedure.
Case no. 17 (strips 99-123), on the other hand, highlights the consequences of a procedurally unjustified use of judicial torture. The case occurred in 246-245 B.C., in the very beginning of the reign of Ying Zheng 應政, the king of Qin and would-be founder of the Qin empire. The bulk of the text is constituted by the record of the consecutive stages of the deliberation process that concerned the theft of a cow by two commoners, Mao 毛 and Jiang 講. Initial investigation resulted in both of them being found guilty and sentenced to tattooing and a term of convict labor.

Several months later, Jiang appealed for a second investigation. Jiang insisted that he was innocent of the crime; the second investigation revealed that he had fallen victim to the procedural abuse by the interrogating officials, in particular, the unwarranted application of judicial torture.

The record of the first investigation contains no mention of torture being applied to the suspects. Mao, who was arrested red-handed when he tried to sell the stolen cow, did not even try to deny his guilt. However, for reasons unclear, he indicated wrongly the owner of the cow. When the lie was discovered, Mao changed his story by naming the true owner and implicating another commoner, Jiang. Although Jiang at first explained that he was in the capital Xianyang 咸陽 at the time of the theft and therefore could not be Mao’s accomplice, he later confessed to his crime, after Mao changed his evidence once more by saying that Jiang did not participate in the act of theft but had conspired with Mao to have the cow stolen. The record ends with the list of four officials who sentenced Mao and Jiang.

Jiang’s appeal revealed, however, that the initial investigation developed differently from how the official account had depicted it. Most importantly, Jiang’s confession was obtained as the result of repeated and unwarranted application of torture that remained unrecorded in the case.

66 Ernian lüling yu Zouyanshu, pp. 359-363. The English translation of this case is provided in Csikszentmihalyi, Readings in Han Chinese Thought, pp. 29-35.

67 In Qin and Han law, punishment for theft depended on the value of the stolen goods. The most serious punishment—tattooing and a term of hard convict labor (chengdanchong 城旦舂, which can be translated as “building walls from early dawn and grinding grain,” with the former referring to men and the later to women)—befell those who stole goods valued at more than 660 coins. See Ernian lüling yu Zouyanshu, p. 112, strips 55-56.

68 Under the provisions of Qin and Han law, appeal put the condemned at risk of being sentenced to a punishment heavier than the original one if re-investigation still found him or her guilty. See Ernian lüling yu Zouyanshu, p. 139, strips 114-117.

69 Ibid., p. 359, strips 99-106.
Arguing about Law

proceedings. Contrary to procedural requirements, the investigating official resorted to judicial torture without securing the necessary conditions. Instead of scrupulously collecting new evidence and eventually pressing the suspect into changing his story, as an experienced investigator such as the scribe Julü would have done, the scribe Yao 钍 opted for a shortcut. He took the veracity of the testimony provided by Mao for granted and aimed to force Jiang to comply with it. Yao and his colleagues were probably aware that by applying torture they violated the correct procedure, which accounts for their failure to mention the flogging of Jiang in the investigation record, in clear contradiction of the Qin prescription that demanded the reporting of every occasion of judicial torture and the explanation of the reasons for its application. This procedural abuse provided the grounds for Jiang’s appeal.

Further inquiry showed that Jiang was not alone and Mao also suffered unwarranted judicial torture during the initial investigation. It seems that the clerks were convinced from the beginning that more than one person was needed to organize the stealing of a cow, and when Mao failed to denounce his accomplice at the early stage of interrogation, they were ready to implement flogging to coerce evidence. As a result of the reinvestigation, Jiang was able to prove his innocence, while the investigators who sentenced him on the basis of evidence extracted through torture were found guilty of procedural violations and probably punished.

While judicial torture always remained a tool available for inter-

70 See Shuihudi Qin mu zhujian, p. 148, strips 2-5; and Hulsewé, Remnants of Ch’in law, p. 184, E2. The conjecture that the interrogating clerks concealed the torture is further corroborated by the fact that it took a special medical examination of Jiang’s back to certify that he, indeed, had been flogged in the course of the first investigation. See Ernian lüling yu Zouyanshu, p. 359, strips 109-110.

71 As the result of the second investigation, the four officials responsible for pronouncing the verdict according to which Jiang was sentenced to punishment by mutilation and a term of convict labor were found guilty of “sentencing wrongly” (lun shi zhi 論失之); see Ernian lüling yu Zouyanshu, p. 360, strip 120. A crime with a very similar name (lun er shi zhi 論而失之) is listed, along with other violations and abuses committed by the officials, in one of the statutes from the Zhangjiashan collection. Although this legal provision is fraught with problems of interpretation, and the sequence of individual strips that constitute the text is disputed, it seems that officials guilty of “sentencing wrongly” were subject to the same punishment that would have been inflicted on the supposed criminal on whom the unjust sentence had been pronounced. See Ernian lüling yu Zouyanshu, p. 135, strips 107-109.
rogating officials, Qin and Han lawgivers clearly understood that arbitrary and uncontrolled application of torture potentially misguided court decisions. As early as the middle of the third century B.C., detailed procedural prescriptions for the conduct of judicial torture existed; although these were sometimes subject to abuse, those under interrogation were not altogether defenseless in the face of willful procedural violations by unscrupulous clerks. They could exert a certain degree of process control by intervening in the unlawful use of judicial torture, as convict Jiang successfully did. Officials were intentionally made aware of the possibility of such development through dissemination of the Zouyanshu and similar collections of exemplary judicial cases and encouraged to adhere to the correct procedure.

**Procedural Justice, Legal Knowledge and Imperial Ideology**

Newly excavated legal manuscripts demonstrate that the Qin and early Former Han legal system conferred upon those under interrogation in criminal cases a high degree of what modern scholars call “process control.” The recommended mode of interrogation may be described as a “dispute” between the investigating officials and the person interrogated in the course of which the later was permitted to present his statements without being interrupted (our present sources primarily convey records of interrogations of the accused rather than witnesses). Only after the interrogated recognized the lack of further argumentation as required by the procedure. Only after the interrogated recognized the lack of further argument on his or her side, or the inability to answer officials’ demand for explanations, could the procedure be concluded.

Of course, Qin legislators and their Han followers were not idealistic enough to believe that this procedural pattern would not be subject to willful violations on the part of both officials and those under interrogation. Judicial torture could be implemented against exceedingly stubborn individuals who resorted to changing their evidence or lying instead of recognizing the lack of further argumentation as required by the procedure. Even in such cases, however, investigators were asked to support their decision to apply torture by accurately tracking in written form the course of interrogation that ultimately led to the use of torture.
Arguing about Law

For failure to do so, the officials could themselves be prosecuted, since the convicts were allowed to appeal for the reinvestigation of their cases if they believed that procedural violation had occurred.

Another important observation concerns the content of arguments presented by the official accusation, the defendants and witnesses in criminal cases. This argumentation was focused on legal norms, most of which fortunately are known from excavated fragments of Qin and Han legislation and from the transmitted accounts. Both prosecution and defense built upon the interpretation of the statutes and ordinances relevant to the case. Although no formal prescriptions are known for the types of argumentation accepted before the court of law, and although we should take into consideration the distorting prism of our sources, which are not an accurate account of what was actually said in the course of every particular trial, the extant case records still convey a strong impression that those involved in legal process were expected to employ knowledge of the law to augment their arguments. Investigating officials, too, were encouraged to build the accusation strictly on the articles of law, which were often listed in the verdict part of the case record. On one occasion, prefectural officials who submitted a case as dubious were criticized by their superiors for the failure to make use of the relevant legal provision.72

Inquiries into the social, political and cultural context of legal procedure reveal that the patterns of court speeches and the court’s attitude towards the relevance of different types of argumentation play a vital role in bolstering social values, modeling and maintaining political institutions and identities, and discouraging trends of development considered undesirable by ruling elites or society in general. Students of the ancient Greek judicial procedure, for example, speak of a highly individualized and contextualized mode of decision-making at the Athenian popular courts that accepted and often found preferable non-legal argumentation that emphasized the particular circumstances of the case and individual features of the litigants.73 This approach resulted from, and further bolstered, participation in legal decision-making by the masses of citizens who constituted the jury in popular courts and who were often less than

72 Ibid., p. 341, strips 34-35.
familiar with the details of legislation and thus more receptive to speeches that took the form of narrations rather than legal argumentation.\textsuperscript{74} As far as no elaborate legal argumentation was required on the part of the litigants, the professionalization of the judicial system that was perceived as a threat to the democratic institutions of the Athenian polity was effectively hampered.\textsuperscript{75}

In the Qin and Han criminal process, on the contrary, the relevance of argumentation was greatly determined by the ability of the speaker to apply legal regulations and interpret legal categories and notions. Non-legal argumentation that was, in all possibility, present in the original speeches, was not considered worth writing down in the court record. Provided that the defendant was able to carry out the ‘‘legal dispute’’ with the investigating officials, he or she was granted a high degree of control over the process. The possibility to exert this control, however, depended on a willingness to accept the law of the state as a mold for shaping the discourse on justice: It was the legal rules and not any other norms or values against which criminality, innocence and reasonableness of actions were determined and argued for. By encouraging people to make use of the benefits of process control, the interrogation procedure as designed by Qin legislators fostered not only legal and procedural knowledge, but also the recognition of official legislation and the authorities who enacted it. This referred not only to the commoners who got themselves implicated in criminal cases but also to the investigating officials who were required to master legal knowledge and employ legal norms as the single criteria for decision-making.

The second half of the third century and the beginning of the second century B.C., the period when the interrogation procedure analyzed in this article is attested to in the excavated manuscripts,\textsuperscript{76} saw the emergence

\textsuperscript{74} See Lanni, ‘‘Relevance in Athenian Courts,’’ pp. 115-118; and S.C. Todd, ‘‘Law and Oratory at Athens,’’ in \textit{The Cambridge Companion to Ancient Greek Law}, pp. 110-111.

\textsuperscript{75} Michael Gagarin, ‘‘The Unity of Greek Law,’’ in \textit{The Cambridge Companion to Ancient Greek Law}, pp. 38-39. Strict limitations on the use of non-legal argumentation, however, existed in the courts that dealt with some specific types of offences, such as homicide courts and maritime courts. See Adriaan Lanni, \textit{Law and Justice in the Courts of Classical Athens} (New York: Cambridge University Press, 2006), pp. 75-114 and pp. 149-174.

\textsuperscript{76} We may presume that the procedure was elaborated some time earlier, possibly in course of extensive legal reforms in the state of Qin in the mid-fourth century B.C.
Arguing about Law

of the Chinese empire as the result of territorial expansion and the incorporation of numerous polities, communities and tribal groups. Building up the recognition of the imperial regime and its rulers by the diverse populace of the realm presented a formidable problem, and the changes in the legal system could have been instrumental in solving it. First, the loyalties of the subjects of the empire were redirected towards a legal system that allowed people an opportunity to defend themselves in court, to be listened to, and not to be sentenced before they recognized their own culpability, i.e., until they displayed the aspects of procedural justice that have been demonstrated to be instrumental in generating popular compliance and satisfaction with the authorities. Second, the universal framework for forensic argumentation was introduced, with all parties required to formulate their statements and judgments in terms of law.

We can hardly tell how many people had had an encounter with judicial officials; one can presume that their number was not very high. However, even based on the very limited evidence we possess today, it seems plausible to conclude that commoners were aware at least of some of the laws that concerned them and were able to implement this knowledge when necessary. In this way, the designers of the judicial procedure, voluntarily or not, worked to form an empire-wide “super-community” centered on the authoritative text—the law—which, ideally, was to be regarded as an ultimate source of judgments concerning justice. Loose and ephemeral as it may seem, this “community” was considered crucial for the existence of the state. Qin administrators hoped that the law would potentially be capable of substituting for local customs and emerge as a solid ideological base for the universal empire. Later in the Han dynasty, the disruption of links between the common populace and the law was considered as a foretoken of the imminent twilight of the imperial order.

77 The law of the state is explicitly juxtaposed to the local customs in the circular dispatched by the governor of the Nanjun Commandery to his subordinates in 227 B.C.; see *Shuimudi Qin mu zhujian*, pp. 13-16, strips 1-15.

78 The most thorough discussion of the legal system of the Former Han empire is the “Treatise on penal laws” (*Xing fa zhi* 刑法志) of the *Hanshu*. On several occasions, this text stresses the growing incomprehensibility of laws as a marker of the degradation of the legal system and imperial order in general; see *Hanshu*, 23.1079-1115.