Calculating Crime and Punishment: Unofficial Law Enforcement, Quantification, and Legitimacy in Early Imperial China

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Abstract

This article analyzes the rules and practices of unofficial law enforcement as reflected in recently excavated legal manuscripts from the Qin and Western Han periods (221 B.C.-9 C.E.). I argue that, apart from limiting the potential abuses of the system such as excessive use of violence and arbitrary accusations, these regulations pursued an important ideological goal. By establishing encompassing, number-based hierarchies of crime, punishment, reward, and responsibility, legislators sought to make the society “legible” not only for the state but also for its common members, which was essential for legitimation of the empire in the eyes of its subjects. Early empires’ effort to promulgate number-based matrices for various social situations, including judicial ones, was an effective solution to the problem of legitimizing imperial order by offering people an effective mechanism of improving their social standing and boosting wealth through participation in the legal institutions. Even when attempting to manipulate the system, individuals implicitly recognized the official legislation as a source of practical taxonomies to structure thinking about obligation, responsibility, and limits of legitimate self-interested behavior.

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Profound concern about local functionaries’ integrity pervades Chinese imperial legal codes. In officials’ manuals from the Qing Dynasty (1644-1911 C.E.), a corrupted clerk and a rapacious runner who allied with local bullies to intimidate ignorant farmers and extract bribes from litigants are listed among the major disturbers of administrative order.1 Similar anxieties haunted lawgivers in the early empires of Qin (221-207 B.C.) and Han (202 B.C.E.-220 C.E.). So they would not have to rely exclusively on their untrustworthy agents in the province, central authorities actively encouraged commoner subjects to participate in the operation of the legal system.

This essay analyzes the rules and practices of unofficial law enforcement as reflected in recently excavated legal manuscripts from the Qin and Western Han (202 B.C.-

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9 C.E.) periods. I argue that, apart from limiting the potential abuses of the system such as excessive use of violence and arbitrary accusations, these regulations pursued an important ideological goal. By establishing all-encompassing, number-based hierarchies of crime, punishment, reward, and responsibility, legislators sought to make the society “legible” not only for the state but also for its common members, which was essential for the legitimation of the imperial order.2

In his influential work Seeing Like a State, James C. Scott defines “legibility” as one of the chief concerns of statecraft. He argues that, contrary to the pre-modern state, which “knew precious little about its subjects, their wealth, their landholdings and yields, their location, their very identity,” twentieth-century regimes were able to utilize this knowledge to launch ambitious modernizing projects to overcome social messiness and to make societies manageable. State-sponsored simplification schemes relied on tools and methods of exact science, with its focus on accurate quantitative expression, to create abridged maps of social reality “that, when allied with state power, would enable much of the reality they depicted to be remade.” By translating its knowledge into a common standard, the state rendered its resources and its subjects legible, and hence manipulable from above and from the center.3

Norman Yoffee extended Scott’s argument to account for the development of early sedentary state formations across Eurasia. He suggested that a great deal of the evolution of early states could be conceptualized as “establishing simplicity,” and that “one of the main trends in the evolution of states is the evolution of simplicity.”4 Similar to their modern counterparts, early Mesopotamian states, in one example, sought to impose standardization upon their societies, reducing undesired, competing power agents such as local assemblies with their traditional legal power. This was achieved by various means including promulgation of unified law codes that were claimed to be of divine origin as an embodiment of a superior universal order.5

However, Yoffee’s study fails to answer a number of key questions about the practical effect of the rulers’ attempts to make their societies “legible.” To what extent could these be achieved in view of the limited logistical possibilities of early states? How did the mechanisms of “simplification” evolve over time? Most importantly, was the “simplification” a matter of pure political imagination, or did it exert a tangible impact on the societies? Qin and Han materials presented in this paper allow us to explore the meaning of “legibility” and “quantifiability” in pre-modern state making.

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3 Scott, supra note 2, at 2-3.

4 Yoffee, supra note 2, at 92.

I. Official Law Enforcement: Problematic Efficiency

Although the administrative system of the early Chinese empires included specialized law enforcement agencies, maintaining public order and security was essentially the task of all officials at the prefectural level. The magistrate, his assistant, and the prefecture’s military commander were all responsible for suppressing criminals within their jurisdiction. They were assisted by specialized servicemen, “thief-catchers,” stationed in posts along the roads in the countryside, at markets, and at other locations perceived to be particularly exposed to criminal activity.6

One of the most perplexing problems faced by the authorities was monitoring the state of public order, especially in the countryside. Serious challenges such as organized bandits could simply pass unnoticed until such gangs grew into a full-fledged rebellion. A lengthy article in the early Western Han collection of statutes excavated from a petty official’s tomb at Zhangjiashan (Hubei Province) holds senior prefectural officials and their subordinates responsible for ignorance of criminal activity within the territory under their supervision. Nevertheless, such situations appear to have been the rule rather than the exception, as the same legal article further stipulates that prefectural magistrates and their assistants should only be dismissed for the failure to timely detect criminals three or more times within one year.7

Even when a report was received in due time, foot-dragging could result in the failure to conduct arrest. Officials found guilty of such delinquency were punished with particular severity. Statutes treated them as having deliberately allowed criminals to avoid retribution, an offense punished with a term of convict labor accompanied by mutilation.8

The government forces’ failure to engage and capture bandits constituted yet another punishable offense. Early Western Han statutes emphasized that officers and servicemen were held responsible for “failing to attack the enemy out of fear” when their number was adequate for the task.9 A legal case from 219 B.C.E., two years after the proclamation of the Qin Empire, exemplifies the practical application of this legal norm toward a group of commoners mobilized to suppress local unrest. Even though the investigation revealed that the unit’s defeat was largely due to the wrong decisions made by its hapless officers, the argument for amnesty was dismissed, and the punishment was eventually executed.10

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6 For a recent study of the “police outposts” in the Qin and Han empires, see Su Weiguo, Qin Han xiangting zhidu yanju: yi xiangting geju de chongshi wei zhongxin [A Study of the Institutions of Districts and Guard Posts Under the Qin and Han Dynasties: Based on the Analysis of the Spatial Distribution of Districts and Guard Posts] (2010).

7 Ernian lüling yu Zouyanshu: Zhangjiashan ersiqi hao Han mu chutu falü wenxian shidu [Statutes and Ordinances of the Second Year and the Collection of Doubtful Legal Cases: Annotated Edition of Legal Documents Excavated from the Han Tomb No. 247 at Zhangjiashan] 150 (Peng Hao et al. eds., 2007), slips 144-145 [hereinafter Statutes and Ordinances].

8 Id. at 150, slip 146; 128, slip 93.

9 Id. at 149, slips 142-143.

10 Id. at 363-65, slips 124-159.
The sheer size of the empire ruled out the possibility of effective policing by the provincial authorities who lacked local knowledge and had to rely on popular cooperation to ensure the proper functioning of law enforcement. Encouraging such cooperation was therefore one of the core concerns of the legal codes and official manuals, which promoted various forms of what I term here “unofficial law enforcement.” In the following sections, I examine these forms under the rubrics of “arrest” and “denunciation.”

II. Unofficial Law Enforcement: Arrest

General rules. Institutionalized by the Qin and Han law, the system of unofficial law enforcement was essentially based on rewarding subjects for killing, arresting, or denouncing criminals. Rules for awarding are outlined in the “Statute on detention” (bulü) from the Zhangjiashan collection of legal manuscripts. The amount awarded depended on the gravity of crime committed by the culprit (see Appendix A).11 Denouncing a criminal, if it resulted in his or her arrest, was rewarded with half the amount due for detaining such a criminal.12

Awards for arresting particularly dangerous offenders could be considerably higher. One article of the Zhangjiashan code specifies an award for capturing a spy sneaking into the Han imperial domain from the vassal principalities that were treated as potentially hostile:13

For arresting a spy arriving from the vassal principalities, one should be granted one degree of rank and in addition awarded twenty thousand cash. If he is not entitled to the rank, he should be given ten thousand cash in addition to the award [of twenty thousand cash]. If several men jointly arrest a criminal and are to be awarded, and they want to shift the award (i.e., they want the award to be granted to one of them rather than equally shared—M.K.), this should be allowed.14

While we are lacking data on the gold to cash ratio in the beginning of the Western Han, the available ratios from later periods of the dynasty suggest that twenty thousand cash was a far larger amount than ten ounces of gold declared as a reward for arresting those guilty of a capital offense. In addition to a monetary award, such individuals were entitled to one degree of rank of merit that was associated with access to social, legal, and economic benefits.

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11 Id. at 147, slips 137-138. In Han times, one ounce (liang) equaled 15.5 g. The official price of gold varied across the empire and was regularly revised as a part of financial regulation policy (for the relevant legal regulations, see id. at 253-54, slips 247-248). Although no evidence for the gold prices in the Qin and early Former Han empires is presently available, excavations of the Han frontier fortifications in Gansu Province yielded a number of inscribed wooden tablets dated from the end of the Former Han and the Later Han periods that indicate the price of four ounces of gold as 2,500 cash. See, e.g., Juyan xinjian [New Documents on Wooden Slips from Juyan] 337 (Gansu sheng wenwu kaogu yanjiusuo et al. eds., 1990) (E.P.T.57:1.1). Applicability of this price for earlier settings remains to be verified.

12 Statutes and Ordinances, supra note 7, at 148, slip 139.

13 For a detailed discussion of vassal kingdoms in the early Former Han empire, see Chen Suzhen, Hanchu wangguo zhihuu kaoshu [A Study of the Institution of Vassal Kingdoms in the Beginning of Han], 3 Zhongguo shi yanjiu 27 (2004).

14 Statutes and Ordinances, supra note 7, at 151, slips 150-151.
privileges such as increased land allotment, immunity from certain punishments, exemption from statutory labor service, and larger food rations for government functionaries.\(^{15}\)

The above passage shows that the law encouraged cooperation between private individuals who decided to engage in the hazardous enterprise of capturing criminals for reward, by allowing various arrangements for the distribution of rewards. The main legal requirements in this regard were that the capturers reported jointly rather than individually, and that their stories were consistent.\(^{16}\) The following example derives from the collection of legal materials from a Qin official’s burial at Shuihudi (Hubei Province) and illustrates a procedurally correct report by two private individuals who cooperated in apprehending counterfeiters:

Report: the commoners A and B of X village bound and brought in the men C and D, as well as 110 new cash and two sets of cash-molds. They denounced them, saying: “C surreptitiously cast these cash; D helped in the casting. (We), A and B, arrested them, and, searching their house, we found these cash-molds. We have come to bring them in.”\(^{17}\)

Importantly, this record mentions two arresting commoners bringing in not only the culprits but also the evidence of their criminal activity: cash-molds and counterfeited money. Moreover, the accusation was supposed to explicitly state the degree of culpability of perpetrators involved: in this case, one was a chief culprit and another an accomplice. Later in this paper, I return to the correctness of accusation as one of the issues central in the Qin-Han system of unofficial law enforcement.

The state was especially concerned about organized gangs, a term that often applied to various rebel groups that proliferated during the chaotic period of the Qin-Han interregnum.\(^{18}\) The general reward for arresting one or slaying two bandits was one degree of rank that could be substituted with the corresponding amount in cash (ten thousand cash). Emphasis was made on the requirement to present proof that the arrested or slain individuals were in fact bandits.\(^{19}\) An excerpt from a Qin collection of model cases (Feng-zhenshi, “Models for sealing and investigating”) provides an explanation of what kind of proof was needed in such cases:

\(^{15}\) In Western scholarship, Michael Loewe, The Orders of Aristocratic Rank of Han Empire, 48 T’oung Pao 97 (1960), remains a classic treatment of the rank system in early empires. More up-to-date studies include Zhu Shaohou, Jungong juezhi kaolun [A Study of the Institution of the Ranks of Military Merit] (2008).

\(^{16}\) Statutes and Ordinances, supra note 7, at 152, slip 154.


\(^{18}\) For an analysis of the legal term qundao, and association between bandits and rebels, see Jiang Feifei, Ernian lüling daolü “qiao (jiao) xiang yi wei li, zi yi wei li yi dao” kaoshi [An Analysis of a Phrase “Wantonly Call Themselves Officials, Appoint Themselves Officials in Order to Conduct Robbery” from the “Statute on Robbery” of the “Statutes and Ordinances of the Second Year”], in Jianbo yanjiu 2007 [Studies in the Documents on Bamboo and Silk] 76 (Bu Xianqun & Yang Zhenhong eds., 2010).

\(^{19}\) Statutes and Ordinances, supra note 7, at 150, slips 148-149.
Gang robbery.—Report. A, the chief of post X, and the thief-catchers B and C in X village, bound and brought in the man D, one severed head, two complete cross-bows and twenty bolts. He reported, saying: “D and the man to whom the head belonged forcefully attacked and in a gang robbed people. Yesterday, when (I), A, leading B and others, on patrol came to Mount X, we saw D together with the man to whom this head belonged and arrested them. These crossbows and bolts are D’s as well as the man’s to whom this head belonged . . . The man to whom this head belonged used this crossbow and bolts . . . B; so, with a sword he felled him and collected his head. As the mountain was rugged, we were unable to take the body out of the mountain. [On interrogation] D in his statement said: “I am a commoner, living in X village. This head (belonged to) the commoner E of X village. Together with (me), D, and the commoners F, G and H of X village, we forcefully attacked and in a gang robbed the house of the gongshi X of X village, and having stolen 10,000 cash, we left and absconded . . . .”

Criminals were encouraged to turn in their accomplices to the government in order to earn pardon and reward. Qin documents from Shuihudi illustrate the practical application of such arrangements when a man guilty of stealing an ox captured and delivered to the court another criminal accused of a more serious offense. Although the passage provides no further details, it may be assumed that the man who conducted the arrest did so in the hope of having his own crime pardoned, and probably also to earn a reward.

Violation and manipulation of the reward system. Early empires were anxious about excessive violence during arrests, and their laws tried to counter it. It has already been noted that capturing a bandit alive warranted a higher reward than killing him. This rule was explicitly formulated in one of the Zhangjiashan statutes. Killing or wounding less dangerous criminals whose punishment warranted fines only was punishable with a term of convict labor.

Another concern was manipulation of the reward system by the law enforcement officials who used proxies for claiming undue rewards. A case from the Shuihudi collection exemplifies this type of offense:

A rank-holding official arrests (a) person(s) who had unauthorizedly absconded; he presents him (them) to B, ordering him to proceed (to a government office) and agreeing with him to divide the reward. Question: how are the official and B to be sentenced? They are warranted to be fined two suits of armor each; they are not to be rewarded.

This example shows that arrested criminals were treated as a kind of commodity, and unofficial law enforcement was subject to manipulation in order to extract profits to

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20 Gongshi was the lowest of the meritorious ranks.
21 Shuihudi Qin mu zhujian, supra note 17, at 152, slips 25-29 (translation follows Hulsewé, supra note 17, at 190-91, with minor changes).
22 Statutes and Ordinances, supra note 7, at 152, slip 153.
23 Shuihudi Qin mu zhujian, supra note 17, at 150, slips 17-18.
24 Statutes and Ordinances, supra note 7, at 151, slip 152.
25 Shuihudi Qin mu zhujian, supra note 17, at 122, slip 124.
26 Statutes and Ordinances, supra note 7, at 152, slips 154-155.
27 Shuihudi Qin mu zhujian, supra note 17, at 125, slip 139 (translation follows Hulsewé, supra note 17, at 159).
be divided among the participants of such enterprise. This attitude was conditioned on
the widespread awareness of an official “price list” that allowed people to estimate awards
for apprehending particular groups of criminals. In the following section, I consider the
system of rewards for denunciations that put even stronger emphasis on such evaluations.

III. Unofficial Law Enforcement: Denunciation

As a matter of principle, Qin and Han law offered awards for denouncing a criminal in the
amount half of that for arresting such a criminal (see Appendix B).\textsuperscript{28} However, lawgivers
were aware that insofar as denunciation involved no immediate risk, people were prone to
make false accusations to receive an award or to avenge personal grudges. To counter
possible abuses, a set of denunciation rules was devised that provided guidelines for evalu-
ating the veracity of denunciation.

Typology of false accusations. Qin and Han law recognized two types of false accu-
sations, “slander,” or deliberately false accusation, and “careless denunciation.” According
to the Zhangjiashan “Statute on denunciations,” a slanderous accusation warranted a pun-
ishment equal to one that would have been inflicted on a suspected criminal, with the
exception of false accusations of capital offenses, which warranted tattooing followed by a
term of convict labor.\textsuperscript{29} Punishment for a “careless denunciation” was reduced by one
degree compared to what would have been inflicted on a falsely accused person. The rele-
vant article of the “Statute on denunciations” provides a scale to facilitate calculation:

For those who accuse carelessly, as well as for those criminals who denounce themselves
before having been arrested, the punishment should be reduced by one degree. For [a]
capital offence, tattoo them and make them wall builders and grain pounders;\textsuperscript{30} for
crimes that warrant tattooing followed by a term of hard labor as wall builders and grain
pounders, make them intact (i.e., without tattooing—M.K.) wall builders and grain
pounders; for crimes that warrant being made intact wall builders and grain pounders . . .
(part of slip missing); (for crimes that warrant) a term of labor as gatherers of firewood
for the spirits and sifters of white grain,\textsuperscript{31} as well as castration, shave off their hair and
make them bondservants and bondwomen; for crimes that warrant shaving off hair and
being made a bondservant or a bondwoman, shave their hair and make them robber-
guards;\textsuperscript{32} for crimes that warrant being made a robber-guard, as well as being exiled or
having one’s forehead and cheeks tattooed, make them redeem for being shaved;\textsuperscript{33} for

\textsuperscript{28} Statutes and Ordinances, supra note 7, at 148, slip 139.

\textsuperscript{29} Id. at 144, slip 126.

\textsuperscript{30} Chengdanchong (lit. “[those who] construct walls [from] dawn, and grain pounders”) is a general term for a
hard-labor penalty, which originally involved work at construction projects for men and pounding grain for
women. This punishment was used for a wide range of offenses, such as conspiracy to commit murder or
assault, selling or buying a free person, malicious assault, conspiring to counterfeit coins, etc. Hard-labor
sentences during the early Western Han period are conveniently summarized in Anthony Barbieri-Low,
Artisans in Early Imperial China 228-29 (2007).

\textsuperscript{31} Less severe labor punishment compared to chengdanchong.

\textsuperscript{32} Bondservants, bondwomen (lichenqie), as well as robber-guards (sikou) were the categories of convict laborers.

\textsuperscript{33} Redemption a punishment (shuzui) was in effect a large-amount fine. For a discussion of monetary
penalties in Han law, see Tomiya Itaru, Qin Han xingfa zhidu yanjiu [A Study of the Penal Regime Under
the Qin and Han Dynasties] 32-43 (2006).
crimes that warrant redemption for being shaved, fine them four ounces of gold; for crimes that warrant a fine of four ounces of gold, fine them two ounces of gold; for crimes that warrant a fine of two ounces of gold, fine them one ounce of gold.\textsuperscript{34}

These punishments were applied to those who accused a completely innocent person of any offense. Inaccurate or intentionally false accusations of someone who was guilty of a certain crime entailed more complicated evaluations of responsibility that are discussed below. Before turning our attention to this subject, however, we should first consider yet another scale used to calculate the punishment for crimes against property such as theft or robbery, and accuser’s responsibility in relation to such crimes.

\textit{Evaluation of responsibility for property crimes.} The “Statute on robbery” in the Zhangjiashan collection contains a rule for determining the punishment for property crimes based on the value of illegitimately acquired goods:

For stealing [property] worth more than 660 cash, tattoo them and make them wall builders and grain pounders; [for stealing property worth] 220 to 660 cash, make them intact wall builders and grain pounders; [for stealing property worth] 110 to 220 cash, shave off their hair and make them bondservants and bondwomen; [for stealing property worth] 22 to 110 cash, fine them four ounces of gold; [for stealing property worth] 1 to 22 cash, fine them one ounce of gold.\textsuperscript{35}

Excavated legal documents from the Qin period confirm that the Qin applied an identical scale of punishment. To the extent that this scale provided a correlation between the value of acquired property and criminal responsibility, it also served as a basis for determining the accuracy of accusation.

\textit{Calculating the accuser’s reward and responsibility.} A manuscript consisting of 190 articles inscribed on 210 bamboo slips from the Qin tomb at Shuihudi contains multiple examples of case-based applications of legal norms. Two dozen articles are specially devoted to rewards due to accusers and responsibility involved in accusations.

While neither accurate nor completely false accusations, at least theoretically, presented a problem for decision making on rewards and punishments, a variety of cases fell between these two extremes. For example, what about an accusation of a crime less severe than the one actually committed?

A denounces B for having wounded a person with murderous intent; the interrogation (shows) that B killed a person with murderous intent; it was not so that he wounded him. A warrants a reward; how large should the reward be? He is warranted to be rewarded with two ounces.\textsuperscript{36}

Wounding someone with murderous intent warranted tattooing and a term of convict labor, while homicide was a capital offense. Appendix B indicates that two ounces was an award for denouncing a person guilty of a crime warranting mutilation and a term of hard labor, while denouncing a capital offender merited a five-ounce award. Were the accusa-

\textsuperscript{34} Statutes and Ordinances, supra note 7, at 144, slips 127-131.

\textsuperscript{35} Id. at 112, slips 55-56.

\textsuperscript{36} Shuihudi Qin mu zhujian, supra note 17, at 124, slip 134 (translation follows Hulsewé, supra note 17, at 158).
tion accurate in this case, the denouncer would enjoy a considerably higher award than he could otherwise claim.

For theft or robbery accusations, the law required the denouncer to report the value of stolen property, which determined the punishment to be imposed on the accused and, effectively, the responsibility for possible inaccuracies in an accusation. Consider the following example:

A person is denounced for having stolen 110 (cash); the interrogation (shows) that he stole 100 cash. How is the denouncer to be sentenced? He is warranted to be fined two suits of armor. The theft was 100 (cash). If this is purposely increased by adding 10 cash, the question is: how is the denouncer to be sentenced? He is warranted to be fined one shield; the fine of one shield corresponds to the Statutes. However, according to the practice of the court, he is sentenced for carelessness and fined two suits of armor.37

Leaving aside for present moment the intriguing issue of a contradiction between the letter of the law and the court practice, let us try to reconstruct the calculations behind the decision. Recently published Qin administrative texts excavated at Liye (Hunan Province) and a collection of manuscripts acquired by the Yuelu Academy (Changsha, Hunan Province) confirm that in the Qin Empire, fines traditionally evaluated in terms of military equipment were in fact collected in cash, with one suit of armor worth 1,344 cash.38 Two suits of armor, therefore, amounted to 2,688 cash. It may be noticed that this figure closely approximates the value of four ounces of gold (2,500 cash) calculated on the basis of the data available from the end of Western Han period.

According to the rule conveyed in the Zhangjiashan “Statute on robbery,” stealing property worth 110 to 220 cash warranted a term of convict labor as a bondservant or a bondwoman. The “Statute on denunciation,” quoted above, further indicates that falsely accusing someone of a crime leading to this sentence was punished by making the accuser a “robber-guard,” a less severe labor sentence. However, this rule applied to a “careless” accusation of an innocent person, while in the case under consideration the accused was actually guilty of stealing property, though not as valuable as claimed in the accusation. If we look further at the scale in the “Statute on denunciations,” we discover that the fine of four ounces of gold is a reduction of the “robber-guard” punishment by two degrees. It may be assumed that such a reduction was adopted as a rule by the Qin courts.

Inaccurate denunciations that did not affect the severity of punishment were not considered false accusations at all, as demonstrated by the following article:

A person is denounced for having stolen 1,000 cash. The interrogation shows that he stole 670 (cash). How is the denouncer to be sentenced? Do not sentence him.39

37 Id. at 102, slips 38-39 (translation follows Hulsewé, supra note 17, at 131).
38 See 1 Liye Qin jiandu jiaoshi [Qin Documents on Bamboo and Wood from Liye, Edited and Annotated] 43, tablet 8-60+8-656+8-665+8-748 (Chen Wei ed., 2012); Yu Zhenbo, Qin lü zhong de jiadun bijia ji xiangguan wenti [The Value of “Suits of Armor and Shield” Fines in the Qin Law and Related Questions], 5 Shixue jikan 36 (2010).
39 Shuihudi Qin mu zhujian, supra note 17, at 102-03, slip 40 (translation follows Hulsewé, supra note 17, at 131).
Since 660 cash was the upper threshold in the system of punishments for crimes against property, anyone stealing more than this was indiscriminately subject to the harshest sentence possible for this category of crime—tattooing and a term of hard convict labor. Although the quoted article does not explain whether or not the accuser was entitled to a reward (in this case, two ounces of gold—see Appendix B), it may be safely assumed that he was, and the omission is explained by the focus of this cluster of articles on establishing culpability for false accusations rather than on the reward for accusers.

Similar examples of legal decision-making can easily be multiplied. However, I would like to conclude this section with a seemingly straightforward case of self-denunciation from the Fengzhenshi collection that, at a closer look, involves many of the issues discussed above:

A robber voluntarily denounces himself.—Report: A, with the meritocratic rank of gongshi, of X village, voluntarily denounced himself saying: “On the last day of the fifth month, together with the commoner C of the same village, I robbed one thousand cash from the commoner D of X village. I have not been adjudicated for other (misdeeds). I have come to denounce myself voluntarily and to denounce C.” Immediately an order was given to the [Prefectural] Clerk to arrest C.

This brief statement combines a plethora of arguments for mitigating the crime otherwise punished by tattooing and a term of hard labor. Firstly, the culprit’s rank, in all probability, qualified him for an exemption from the mutilating punishment. Secondly, his voluntary self-denunciation reduced his punishment by one more degree, making him subject to a lighter labor sentence as a “gatherer of firewood for the spirits.” This was, however, contingent on his correctly stating his culpability, that is, on the truthfulness of his assertion of being not guilty of any other misdeed. Finally, denouncement of an accomplice, commoner C, would further reduce punishment, presumably by more than one degree (provided that C was captured by the officials), although it is not quite clear whether or not a complete exemption from punishment could be achieved this way.

Although it remains unclear to what degree an ordinary commoner was able to navigate the intricacies of the early imperial legal system, numerically calibrated schedules of rewards and punishments encouraged them to do so, to negotiate exemptions from criminal culpability, reward, and social status.

IV. Quantifiable Life: Politics of Precision in Imperial Administration

In his list of achievements at the service of the Qin dynasty, the First Emperor’s chief advisor, Li Si, emphasized his contribution to standardizing the measurement and writing systems of the empire:

40 See id. at 101-05, slips 33-50.
41 Id. at 150, slips 15-16 (translation follows Hulsewé, supra note 17, at 188, with minor changes).
42 That would be the case according to the Western Han law that is generally believed to follow the earlier Qin law. See Statutes and Ordinances, supra note 7, at 124, slip 83.
43 As it definitely could, for example, in the case of hostage-takers, see id. at 118-19, slips 71-72.
I...standardized the *dou* and *bu* measures of capacity and length and the written characters and established Qin’s fame by propagating [these standards] through the world.\(^{44}\)

The First Emperor and his ministers were no pioneers in the unification of weights and measures. In fact, they only extended to the entire empire the standardized units introduced by the great legalist reformer of Qin, Shang Yang (or Gongsun Yang, d. 338 B.C.), more than a century earlier.\(^{45}\) Samples of the Qin standards of volume, weight, and length—some bearing the text of the 221 B.C. unification edict—were archaeologically recovered in various regions of China, attesting to the efforts to promulgate the new systems across the realm.\(^{46}\)

While the unification of weights and measures is a well-known and celebrated event in Chinese history, recently excavated manuscripts revealed Qin lawgivers’ passion for calculation and quantification systems that pervaded state administration and various areas of social practice that the state aspired to regulate. The following discussion considers but a few examples.

On their travels, officials, servicemen, and peasant conscripts were required to abide by the fixed norms (*cheng*) of speed of movement. Zhangjiashan statutes convey some of such standards: 50 \(\text{li}\) (ca. 21 km) per day for a loaded cart or person carrying a load; 70 \(\text{li}\) (ca. 29 km) for an empty cart; and 80 \(\text{li}\) (ca. 33 km) for an unencumbered person.\(^{47}\) In a fashion we are already familiar with, different quantifiable ranges were correlated with the punishments for those who failed to comply with the standard:

When relay runners deliver documents, they should make 200 \(\text{li}\) (ca. 83 km) per day. If they fail to comply with this norm (*bu zhong cheng*) and are late by half a day, they should be punished with 50 strokes [of a stick]. For being late by more than half a day and up to one day, they should be punished with 100 strokes [of a stick]. For being late by more than one day, they should be fined two ounces of gold.\(^{48}\)

An excavated case record dating from 219 B.C. demonstrates that compliance with such norms was one of the criteria for evaluating the performance of government functionaries. Among other details of an investigation of a complicated legal case, this text records the duration of scribe Shuo’s investigation trip:

Investigation lasted for 469 days. Shuo was ill for 62 days and travelled for 60 days, both on horseback and by boat, having covered the distance of 5,146 \(\text{li}\). On the average, he made 85 \(\text{li}\) per day, 46 \(\text{li}\) being the remainder.\(^{49}\)


\(^{45}\) Sima Qian, supra note 44, at 2232.

\(^{46}\) For a recent discussion of the excavated measure units, see Charles Sanft, Communication and Cooperation in Early Imperial China: Publicizing the Qin Dynasty (2014).

\(^{47}\) Statutes and Ordinances, supra note 7, at 248, slip 412.

\(^{48}\) Id. at 203, slip 273.

\(^{49}\) Id. at 364, slips 127-128.
This summary relied on the accounts submitted by a travelling official and verified by controlling agencies such as the official’s direct superiors. Examples of such semi-official accounts have been excavated from a number of Qin and Western Han burials belonging to clerks and low-level functionaries in local governments.50

Other numerical data and calculating techniques were also involved to facilitate the evaluation of officials’ performance. Travelling officials were required to submit itineraries to receive food rations in the prefectures they were passing on the way. To compose such itineraries, their supervisors had to have a clear notion of the distance between the administrative units of the empire to estimate the time their subordinates would spend on the way. A number of lists indicating distances between various administrative units have been excavated from the Qin and Han sites. The earliest of them was inscribed on a wooden tablet from the Qin fortified prefectural seat at Liye in what is now western Hunan Province:51

[From the Prefecture of] Yan to [the Prefecture of] Xiao, 184 里 (c. 76 km)
[From the Prefecture of] Xiao to [the Prefecture of] Jiangling, 240 里 (c. 100 km)
[From the Prefecture of] Jiangling to [the Prefecture of] Chanling, 110 里 (c. 46 km)
[From the Prefecture of] Chanling to [the Prefecture of] Suo, 295 里 (c. 122 km)
[From the Prefecture of] Suo to [the Prefecture of] Linyuan, 60 里 (c. 25 km)
[From the Prefecture of] Linyuan to [the Prefecture of] Qianling, 910 里 (c. 378 km)
... 1,440 (? 里) 52

The prefectural governments in the Qin and Han empires probably used such lists for estimating the time necessary for transporting materials and documents and for the voyages of their officials. Cumbersome and inaccurate as such evaluations might have been, they testified to the state’s commitment to the quantification-based administration.

Similar sets of norms were used for budgeting construction projects that employed large numbers of conscripted peasants along with convicts and slaves. The Qin “Statute on conscript labor” from Shuihudi required estimating the labor force involved in a project before its commencement. Officials were held responsible for miscalcula-

50 Yu Hongtao, Qin jiandu “zhiri” kaoshi san ze [Three Case Studies of the “Calendrical Diaries” Among the Qin Bamboo Slips], Fudan daxue chutu wenxian yu guwen yanjiu zhongxin (http://www.gwz.fudan.edu.cn/SrcShow.asp?Src_ID=2061#_edn1).

51 See Ma Yi, Liye Qin jian xuanjiao (lianxai san) [Selected Qin Documents from Liye (Part 3)], 4 Zhongguo shehui kexueyuan lishi yanjiusuo xuekan 185 (2007).

52 It is impossible to determine whether the distance in the last line is one or more thousand, because several graphs are missing. One is inclined to assume that the final line provides the total distance between the counties of Yan and Qianling. However, this does not appear to be the case, since the sum of the distances in this list is 1,799 里. Alternatively, some lines in the beginning of the list could have been erased or rendered illegible due to poor preservation. It is difficult to make any judgment in this regard without seeing the original tablet.
tions.\textsuperscript{53} To make such an assessment, project planners were supposed not only to measure the amount of work to be done, but also to apply the productivity norms for their subordinates, some of which are preserved in the excavated fragments of Qin law.\textsuperscript{54} Along with the labor norms, calculations involved the norms for food rations that depended on the status of a laborer and the difficulty of the task he or she performed.\textsuperscript{55} In his study of artisans in early imperial China, Anthony Barbieri-Low reconstructs the budgeting for a hypothetical construction project of a large palace that should have involved most of the norms mentioned in the Qin and Han legal statutes.\textsuperscript{56}

One of the most complicated and perplexing quantification systems elaborated by the Qin administrators concerned agricultural taxation. It has been reconstructed from a number of excavated textual fragments, including legal rules and arithmetic manuals, and came as a surprise to modern scholars because it was completely unattested in transmitted historical records. Contrary to the later system of a fixed taxation quota for agricultural products, the Qin system used a floating rate that was subject to an annual revision based on the actual crop conditions in different regions. Such a system supposedly allowed a more thorough surplus extraction but was at the same time more open to machinations by unscrupulous officials than fixed-rate taxation, leading to higher monitoring expenses. This helps to explain the gradual abandoning of the Qin collection practices during the first century of the Western Han period, when the need for an intensive extraction abated with the general pacification of the realm.\textsuperscript{57}

The preceding discussion of the agricultural tax takes us back to the issue of popular encounters with the officially promoted numerical norms. One of the excavated Qin documents explicitly calls for announcing annual taxation norms to the tax-paying farmer. This was probably designed to counter possible abuses by tax-collecting officials.\textsuperscript{58}

The examples of various numerical sets and calculation systems introduced by the Qin government can easily be multiplied, but those already provided sufficiently outline the context within which the rules of unofficial law enforcement were applied. An obses-

\textsuperscript{53} Shuihudi Qin mu zhujian, supra note 17, at 47-48, slips 122-124.
\textsuperscript{54} Id. at 45, slips 108-109.
\textsuperscript{55} For the grain rations for convict laborers, see id. at 32-34, slips 49-60. Note that these rations depended on the kind of labor these convicts performed: hard labor was accompanied by higher rations. Clothes rations during the early Former Han period can be found in Statutes and Ordinances, supra note 7, at 250-51, slips 418-420.
\textsuperscript{56} Barbieri-Low, supra note 30, at 254-56.
\textsuperscript{57} Yang Zhenhong in a number of articles attempted reconstruction of the Qin-style land taxation system. See Yang Zhenhong, Cong xin chu jiandu kan Qin Han shiqi de tianzu zhengshou [Land Tax Collection in the Qin and Han Periods as Reflected in the Newly Excavated Documents], 3 Jianbo 331 (2008); Yang Zhenhong, Longgang Qin jian zhu tian, zu jian shiyi buzhen [A New Analysis of the Meaning of the Qin Slips from Longgang Mentioning “Fields” and “Tax”], in Yang Zhenhong, Chutu jiandu yu Qin Han shehui [Excavated Documents on Bamboo and Wood and the Qin-Han Society] 164 (2009).
\textsuperscript{58} Longgang Qin jian [Qin Documents on Bamboo Slips and Wooden Tablets from Longgang] 122, slip 150 (Zhongguo wenwu yanjiusuo & Hubei sheng wenwu kaogu yanjiusuo eds., 2001).
sion with number-based orders allowing location, quantification, and assessment of people, things, and actions was a fundamental feature of administrative thinking, and to some extent practice, of the architects of the Chinese empire.

V. Conclusion: Law and Legibility of Social Practice in Early States

The mid-fourth century B.C. reforms in the kingdom of Qin were arguably one of the most thorough and effective modernizing enterprises ever attempted by a pre-modern state, and they exerted an enormous impact on the subsequent course of Chinese history by precipitating the imperial unification of the continental East Asian oecumene in the late third century B.C.\(^59\) One of the core elements of the reforms was encouragement of active participation by the common population in state institutions through a system of awards and punishments. Unofficial law enforcement was designed as part of an all-encompassing social economy based on distribution and redistribution of wealth, legal privileges, and prestige according to individuals’ contribution to the state’s order and prosperity.

While aspiring to, and declaring its possession of, an exclusive control over society, the state’s infrastructural power (i.e., its capacity to penetrate the civil society\(^60\)) remained low, as demonstrated by a recent study of imperial administration in the countryside.\(^61\) The discrepancy between the aspiration to pervasive control, on the one hand, and the infrastructural weakness of state power, on the other, was expressed in the rulers’ permanent anxiety about the performance of their agents in provinces and offered a fertile ground for the ideology and practice of quantification that supplanted hardly attainable actual control with the discourse of a regimented, quantifiable society.

Promotion of a new discursive structure involved formidable costs and risks, as it was subject to unpredictable manipulations by those whom it was originally designed to bring under state control.\(^62\) A number of potentially subversive developments could be observed from the regulations on unofficial law enforcement discussed in this essay. One

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\(^59\) The literature on the Shang Yang reforms, especially in Chinese, is vast. For an English account of the reforms, see Mark Lewis, Sanctioned Violence in Early China 61-65 (1990). Transformation in Qin is one of the few historically attested social reforms of such a scale that find a direct and dramatic reflection in the archaeological record: in the mid-fourth century B.C.E. the Zhou-derived ritual paraphernalia assemblages associated with the aristocratic sumptuary regulations were suddenly replaced in funeral inventories with utilitarian vessels. This change might be interpreted as evidence of the demise of the traditional social hierarchy. See Lothar von Falkenhausen, Chinese Society in the Age of Confucius (1000-250 BC): The Archaeological Evidence 318-19 (2006).

\(^60\) For the concept of the state’s infrastructural power, see Michael Mann, The Autonomous Power of the State: Its Origins, Mechanisms and Results, in States in History 109 (John Hall ed., 1986).

\(^61\) See Su Weiguo, supra note 6.

\(^62\) Social theorists describe the mechanisms of structural change through the agency of knowledgeable actors capable of applying the existing rules in new contexts in order to reinterpret and mobilize the array of resources in a new and unpredictable way. This may be a useful framework for conceptualizing the following discussion. See, e.g., William Sewell Jr., Logics of History: Social Theory and Social Transformation 124-51 (2005).
was the obvious confusion among the local officials regarding the practical application of the quantification rules, which created demand for extensive comments and explanations that the central government had to disseminate. The “legal catechism” excavated from the tomb at Shuihudi was probably but a tip of an iceberg of a body of such instructions that circulated within the early imperial bureaucracy.

Manipulation of the system by both commoners and officials was another challenge clearly visible in the presented materials. As an example, deliberately inaccurate accusations inflating the value of stolen property in order to increase the reward for denunciation were a matter of particular concern for the Qin legal practitioners. One can assume that evaluation of property often was a redoubtable task, especially when the difference of a mere ten coins could result in a substantial increase in the degree of culpability and the accuser’s respective reward. Officials’ involvement in illegal schemes to participate in rewards, attested by the excavated legal excerpts, further problematized the operation of state-sponsored quantification orders.

Should, then, the “quantifiable life” project launched by the mid-fourth century B.C. Qin reformers be considered a “crude and self-defeating intervention,” to use Scott’s words? The Han rulers abandoned some of their predecessors’ most ambitious projects. Enchantment with numeracy endured, but precision was often relegated to a matter of pure symbolism. Administrative accounts excavated in a provincial context revealed that demographic and other data conveyed by the official histories relied on demonstrably misreported numbers.63

From a different perspective, however, the early empires’ effort to promulgate number-based matrices for various social situations, including judicial ones, was an effective solution to the problem of legitimizing imperial order by offering people an effective mechanism of improving their social standing and boosting wealth through participation in the legal institutions. Even when attempting to manipulate the system, individuals implicitly recognized the official legislation as a source of practical taxonomies to structure thinking about obligation, responsibility, and limits of “legitimate” self-interested behavior.64 Seemingly arbitrary numerical expressions of this state-sanctioned order may be alternatively (but not to mutual exclusion) interpreted as a part of a more general numero-logical natural-philosophic discourse that developed into an intellectual mainstream during the centuries preceding the imperial unification;65 as the best possible solution for monitoring the actions of private and particularly official actors within the system and co-

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63 Gao Dalun, Yinwan Han mu mu du jihua zhong hukou tongji ziliao yanjiu [A Study of the Household Statistics in the Collected Registers on a Wooden Tablet from the Han Burial at Yinwan], 5 Lishi yanjiu 110 (1998).

64 For the control over the principles of the construction of reality and practice-orchestrating taxonomies as a major dimension of political power, see Pierre Bourdieu, Outline of a Theory of Practice 163-65 (1977).

opting the pre-existing forms of self-help into the state-sanctioned legal order; or as an attempt to establish a new, truly universal “super-community” centered on authoritative text, the law, and disembedded from the local discourses of justice, and power relations therein involved.

Recently excavated texts from late Warring States and early imperial periods abound in examples of popular participation in the law-enforcement system, some of which have been discussed above. Private commercial practices developing around the rewards for arresting and denouncing criminals indicate that the official numerical taxonomies spilled over the edges of the distributive economy of rewards and punishments to produce autonomous markets that the government sought to regulate or suppress with varying degree of success. An account from a Qin collection of dubious legal cases acquired at the Hong Kong antique market by the Yuelu Academy records low-ranked law enforcement officers striking a deal with a group of conscripts who arrested some bandits and were entitled to a reward but agreed to hand the bandits over to the officers in return for a one time payment in cash. It appears that the officers were preparing to claim the reward for themselves in violation of the legal article that explicitly prohibited such behavior. The existence of this legal norm suggests that the situation was typical rather than exceptional.

The story presented in this essay is therefore one of a creative solution to the fundamental problems of state making: those of political legitimation and administrative logistics. Administration of justice was one among many areas where particularistic, often ad-hoc configurations of practices, techniques, and discourses contributed to the emergence of enduring socio-political order.

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66 For the techniques of control over state functionaries in the Qin Empire, see Robin Yates, State Control of Bureaucrats Under the Qin: Techniques and Procedures, 20 Early China 331 (1995).


68 For more examples see Shuihudi Qin mu zhujian, supra note 17, at 150-51, slips 17-20.

69 For the evidence of private commercial manipulations of the reward system, see a legal case from the recently published Yuelu Academy collection of Qin documents in 3 Yuelu shuyuan cang Qin jian [Qin Slips from the Yuelu Academy Collection] 16 (Zhu Hanmin & Chen Songchang eds., 2013). For an analysis, see Ulrich Lau, Qin Criminal Case Records of the Collection Wei Yu Deng Zhuang, 53 Orients extremus 139, 156-59 (2014).

70 Statutes and Ordinances, supra note 7, at 152, slips 154-155.
### VI. Appendices

#### A. Awards for Arresting Criminals

<table>
<thead>
<tr>
<th>Crime</th>
<th>Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital offense</td>
<td>Ten ounces of gold</td>
</tr>
<tr>
<td>Crime warranting hard labor penalty + corporal punishment</td>
<td>Four ounces of gold</td>
</tr>
<tr>
<td>Crime warranting hard labor penalty</td>
<td>Two ounces of gold</td>
</tr>
<tr>
<td>Banditry</td>
<td>One degree of rank (equivalent to ten thousand cash = 16 ounces of gold)</td>
</tr>
<tr>
<td>Spying for the zhuhou</td>
<td>One degree of rank + twenty thousand cash (equivalent to thirty thousand cash = 48 ounces of gold)</td>
</tr>
<tr>
<td>Counterfeiting</td>
<td>One degree of rank (convertible to the right to exempt from punishment)</td>
</tr>
<tr>
<td>Submitting anonymous denunciations</td>
<td>Two bondservants</td>
</tr>
<tr>
<td>Crime warranting shaving off hair + term of convict labor</td>
<td>Right to take cash carried by the arrested person</td>
</tr>
<tr>
<td>Smuggling of jade and other precious objects</td>
<td>Two ounces of gold (?)</td>
</tr>
<tr>
<td>Merchandising textiles that do not fit official standards</td>
<td>Confiscated textiles</td>
</tr>
</tbody>
</table>

#### B. Awards for Denouncing Criminals

<table>
<thead>
<tr>
<th>Crime</th>
<th>Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital offense</td>
<td>Five ounces of gold</td>
</tr>
<tr>
<td>Crime warranting hard labor penalty + corporal punishment</td>
<td>Two ounces of gold</td>
</tr>
<tr>
<td>Crime warranting hard labor penalty</td>
<td>One ounce of gold</td>
</tr>
<tr>
<td>Banditry</td>
<td>Five thousand cash ≈ eight ounces of gold (?)</td>
</tr>
</tbody>
</table>