

# Social Change and Written Law in Early Chinese Legal Thought

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What societal factors prompt the shift from legal practices based upon oral or customary law to the development of new legal institutions predicated upon bodies of written law?<sup>1</sup> Certainly the presence within a given society of a functional writing system, whether indigenously developed or cross-

1. Throughout this article I will refrain from using the term “codification” when referring to the collections of written law in ancient China prior to the third century B.C.E. Even modern attempts to produce a universal definition typically fail in the face of the diversity of theoretical and interpretative traditions informing codified legal systems throughout the world. The problem is multiplied when attempting to apply such a term anachronistically to the legal traditions of the ancient world. For attempts to construct a multitiered conceptual paradigm for studying “codification” in chronologically and geographically diverse legal traditions, see Mark D. Rosen, “What Has Happened to the Common Law? Recent American Codifications, and Their Impact on Judicial Practice and the Law’s Subsequent Development,” *Wisconsin Law Review* 5 (1994): 1119–286; and Geoffrey MacCormack, “The Transmission of Penal Law (lǚ) from the Han to the Tang: A Contribution to the Study of the Early History of Codification in China,” *Revue Internationale Des Droits De L’antiquité* 51 (2004): 47–83. For more critical assessments of the utility of such a term applied to ancient civilizations, see Martha T. Roth, “The Law Collection of King Hammurabi: Toward an Understanding of Codification and Text,” in *Codification Des Lois Dans L’Antiquite*, ed. Edmond Levy (Paris: De Boccard, 2000), 9–31; Raymond Westbrook, “Codification and Canonization,” in *Codification Des Lois Dans L’Antiquite*, 33–47; John K. Davies, “Deconstructing Gortyn: When Is a Code a Code?” in *Greek*

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culturally borrowed, is a prerequisite for the creation of *written* law. Several scholars, however, notably anthropologists and sociologists, have argued that the mere presence of writing does not necessarily result in the immediate, or inevitable, development of certain sociopolitical institutions dependent upon the technological capacities that writing offers.<sup>2</sup> These same scholars warn that assigning such a monocausal role to writing reduces the multifaceted complexity of a social phenomenon, such as the development of written law, to a teleological inevitability. Instead, many believe that writing provides what Jack Goody has called “potentialities” for types of developments and alternative configurations of social organization.<sup>3</sup> That is to say, the technological capacities of writing provide the potential for specific institutional developments, such as the use of written law; however, for such potential to be actualized, there must first exist within the society an acknowledgement of a social need, with a concomitant consciousness that that need can best be satisfied through the implementation of a form of writing.

Ascertaining what societal changes led to the development of written law is a quest that has guided the research of many historians of Western civilization attempting to understand the appearance of written law within a given society, or to explain institutional differences between chronologically and geographically contiguous legal traditions.<sup>4</sup> Scholars of ancient Greek and Roman law, for example, continue to debate the

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*Law in Its Political Setting: Justification Not Justice*, ed. Lin Foxhall and Andrew Lewis (Oxford: Oxford University Press, 1996), 33–56.

2. Classic examples of these debates can be found in Jack Goody, *The Power of the Written Tradition* (Washington D.C.: Smithsonian Institution, 2000); Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge: Cambridge University Press, 1986); Erik Havelock, *The Muse Learns to Write: Reflections on Orality and Literacy from Antiquity to the Present* (New Haven: Yale University Press, 1986); and Walter Ong, *Orality and Literacy*, 2nd ed. (London and New York: Routledge, 2002). Such scholars also show that although writing as a technology provides new possibilities for the transmission of knowledge, the power and presence of the oral is retained well after writing takes the stage.

3. Some of Jack Goody’s earlier work received much criticism for implicitly ascribing to writing a “monocausal” role in the development of particular sociopolitical institutions. For an overview of these critiques and Goody’s response, see Goody, *The Power of the Written Tradition*, 2–9.

4. Ancient Mesopotamian civilizations, for example, made use of a complex writing system as early as the Jemdet Nasr period (c. 3200–3000 BCE); however, the earliest collections of written laws, such as the Laws of Ur-Namma (c. 2100 BCE), Laws of Eshnunna (c. 1770 BCE), and the Laws of Hammurabi (c. 1750 BCE), were promulgated over a millennium after the introduction of writing. See Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Society of Biblical Literature and Scholars Press, 1997).

underlying causes of the transition to written law. For some, the institution of written law was an act of conciliation by the ruling aristocratic lineages, intended to pacify the growing dissatisfaction of the general populace. Others argue that the transition to written law actually cleverly served to preserve aristocratic legal authority vis-à-vis the populace, while simultaneously mitigating factional aristocratic conflicts.<sup>5</sup>

Similar questions pertaining to the underlying causes and sociopolitical implications of the transition to written law have concerned scholars of traditional Chinese law.<sup>6</sup> Likewise, the debates appear polarized, with most theories methodologically locked in a struggle to understand the rationale behind this legal transition from the perspective of one of two major schools of thought in early China: Confucianism or Legalism.<sup>7</sup> Confucian interpretations often lament the written law transition, seeing it as detrimental to the moral (and legal) authority of the aristocracy to govern, and warn that as a consequence of writing down laws, the populace is afforded greater legal empowerment vis-à-vis the aristocracy.<sup>8</sup> Alternatively, Legalist interpretations focus on written law as a political tool devised by the central government for the purpose of controlling bureaucrats and the populace. Such Legalist interpretations, when applied retrospectively to early Chinese sources, focus too narrowly on the effects of written law along a vertical sociopolitical axis. That is, scholars of traditional Chinese law, like some scholars of ancient Greece and Rome, are

5. For an excellent analysis of both sides of these arguments for the case of Roman law, see Walter Eder, "The Political Significance of the Codification of Law in Archaic Societies: An Unconventional Hypothesis," in *Social Struggles in Archaic Rome: New Perspectives on the Conflict of the Orders*, ed. Kurt A. Raaflaub (Malden: Blackwell Publishing Ltd, 2005), 239–67. I will return to these debates later in this article.

6. See for example, T'ung-tsu Chü, *Law and Society in Traditional China* (Paris: Mouton, 1961); MacCormack, "The Transmission of Penal Law (lü) from the Han to the T'ang:," and John W. Head and Yanping Wang, *Law Codes in Dynastic China: A Synopsis of Chinese Legal History in the Thirty Centuries from Zhou to Qing* (Durham, N.C.: Carolina Academic Press, 2005).

7. Following Scott Cook and others, I acknowledge that terms such as "Confucian" and "Legalist" are anachronistic, categorical labels applied to various Warring States Period philosophers by later scholars. For this article, I merely use the term "Confucian" to describe those early Chinese philosophers who either cited or openly advocated those theories of statecraft predicated upon virtuous rule and ascribed to the historical figure of Confucius. Likewise, the term "Legalist" refers to the theories of statecraft predicated upon bureaucratic centralization, strict laws, and harsh punishments and ascribed to thinkers such as Shang Yang or Han Feizi. In neither case do I imply a direct lineage or self-identifying "school" of thought. See for example, Scott Cook, "The Use and Abuse of History in Early China from Xunzi to Lüshi Chunqiu," *Asia Major* 18 (2006): 48–78.

8. This interpretation is based upon a particular passage in the *Zuo zhuan* which is dealt with in section II.

concerned only with the consequences of employing written law on the political and legal relationship between the governed (the populace) and the those who govern (the aristocracy). As a result, they look only to potential factors impacting this specific relationship. Such perspectives often fail to consider broader societal factors, such as the influence of theories of writing on theories of law and administration, as well as the changing external and internal dynamics of power among individual kingdoms brought about by the blurring of aristocratic kinship relations.

In this article, I ask which dynamic societal factors produced a conscious need for legal change in early China, and why the introduction of written law was considered to be an integral part of that legal change. In answering these questions, I bring to light three new facets of early Chinese views on the value and role of written law. First, that the early Chinese use of written laws arose in direct response to a growing need for an alternative method of social control, precipitated by the deteriorating sociopolitical conditions of the late “Spring and Autumn” and “Warring States” Periods.<sup>9</sup> Second, unlike previous scholarship, I argue that the reliance on written law was not envisioned as merely having vertical legal effect on the sociolegal relations between the traditional aristocracy and the general populace, but was also thought to be capable of mediating the escalating inter-clan conflict among the aristocracy, which threatened the internal stability of individual kingdoms. Third, I demonstrate a growing consciousness within several early Chinese kingdoms of the ability of written media to increase the efficacy of law.

To do this, I first examine the changing sociopolitical conditions of this era as described in the classic historical text, *Zuo zhuan*. Against the backdrop of this societal flux, I analyze five passages within the text that demonstrate a growing consciousness of the value of written law as a tool capable of producing social and political order. I then place the early Chinese development of written law into a global context by comparing it with the development of written law within other premodern legal traditions. From a comparative perspective, a close examination of the relationship between theories of writing and the development of a legal ideology predicated upon written law in the early Chinese case provides new insights for ongoing debates concerning the development of written law in other societies around the world. Likewise, scholars of Chinese

9. The chronology of early China can be daunting for those not familiar with its intricacies. The Zhou royal family ostensibly governed the central plains region of China from roughly 1046 BCE to 256 BCE. Their reign is divided into two large periods, the Western Zhou (1046–771 BCE) and the Eastern Zhou (771–221 BCE). The latter is further subdivided into two additional eras, the Spring and Autumn Period (c. 771–476 BCE) and the Warring States Period (c. 476–221 BCE).

legal history can gain a new perspective on Chinese legal developments by considering the developmental trajectories of law in other societies.

### I. The *Zuo zhuan* and Social Change

If the purpose of one's inquiry is to test how early Chinese reactions to social change manifested in an increased reliance on written law, then the historical contents of the *Zuo zhuan* 左傳 offer several remarkable examples of a society in transition. The *Zuo zhuan*, or *Zuoshi zhuan* 左氏傳, is one of three extant commentaries on the classic text *Chun qiu* 春秋, or *Spring and Autumn Annals*.<sup>10</sup> The latter text is a terse, annalistic chronicle that records the external and internal events affecting the kingdom of Lu from 722 to 481 BCE.<sup>11</sup> The compilation and editing of the text is ascribed to Confucius and was believed to contain his subtle, embedded moral judgments on the recorded events. As a result, its status was later elevated to that of one of the Confucian classics. The *Zuo zhuan*, on the other hand, is a rather lengthy text covering the years 722–463 BCE. Its compilation is ascribed to Zuo Qiuming, purportedly a disciple of Confucius, and is understood to be an extended commentary meant to elucidate many of the terse and sometimes cryptic entries of the *Chun qiu*. A three or four character entry in the *Chun qiu* might correspond to an entry in the *Zuo zhuan* covering several pages, replete with narrative-style historical anecdotes, soliloquies, and dialogues.<sup>12</sup> The authenticity of these soliloquies and dialogues, however, has been questioned for centuries, and dates for these contents range from the fifth century BCE to the first century CE.<sup>13</sup> Many scholars would now agree that the

10. There are arguments over the relationship between the three commentaries. Many believe that the *Gongyang zhuan* 公羊傳 and *Guliang zhuan* 穀梁傳 are commentaries for the "New Text" version of the *Chun qiu*, and that the *Zuo zhuan* is a commentary on the "Old Text" version of the *Chun qiu* that survived in the Han imperial archive and was written in old style Chinese characters (*guwen* 古文). For a brief synopsis of these arguments see Anne Cheng, "Ch'un ch'iu, Kung yang, Ku liang and Tso chuan," in *Early Chinese Texts: A Bibliographical Guide*, ed. Michael Loewe (Berkeley: SSEC and Institute of East Asian Studies, 1993), 67–76.

11. The kingdom of Lu was a relatively small polity occupying parts of modern day Shandong Province.

12. Originally these two texts circulated as two independent documents; however, the Jin dynasty commentator on the *Zuo zhuan*, Du Yu (222–284 CE) purportedly combined the two texts into its current, single document format. See *Saden kaisen*, 6–7. All citations to the *Zuo zhuan* will be based on Takezoe Kōkō, *Saden kaisen* (Taipei: Tiangong shuju, 1998). Unless otherwise stated, all translations are those of the author.

13. Cheng, "Ch'un ch'iu, Kung yang, Ku liang and Tso chuan," 70.

*Zuo zhuan* is probably a collection of historical anecdotes of the Spring and Autumn Period, which were compiled and edited by mid- or late-Warring States Period historiographers.<sup>14</sup> As such, when analyzing the passages from this text, I am not necessarily asserting a genuine chronology to the recorded events, nor am I arguing for the authenticity of the words ascribed to various individuals. I do, however, view these records as representative of a growing and evolving intellectual discourse surrounding the development of written law and nascent theories of codification, which was believed to have begun during the Spring and Autumn Period and was further developed and theorized during the subsequent Warring States Period.<sup>15</sup>

As mentioned, the *Zuo zhuan* documents the early Eastern Zhou Period, when the sources of authority and legitimacy, traditional power bases, and social hierarchies were in flux. One source of this instability can be traced back to early land enfeoffment policies of the preceding era, known as the Western Zhou Period.

The Western Zhou Period is portrayed in traditional historical texts as the “golden age” of early Chinese civilization. Two rulers of the Zhou people, Wen, and upon his death, his son Wu, led a “virtuous” series of campaigns to overthrow the debauched Shang dynasty (c. 1600–1045 BCE). Once completed, Wu established the Zhou dynasty and claimed the title of King of Zhou. Subsequent Zhou kings led a series of military campaigns to the east, bringing much of the central plains under Zhou royal authority.<sup>16</sup> As a method of control, the Zhou rulers frequently

14. Many scholars today argue that much of the dialogic contents of the *Zuo zhuan* should be dated to the Warring States Period. They also claim that the text as a whole represents an attempt to come to terms with the developmental trajectory of early Chinese society and, as such, represents a developing style of Chinese historiography. See, for example, Wai-ye Li, *The Readability of the Past in Early Chinese Historiography* (Cambridge, MA: Harvard University Asia Center, 2007); and David Schaberg, *A Patterned Past: Form and thought in early Chinese historiography* (Cambridge, MA: Harvard University Press, 2001). For arguments that much of the *Zuo zhuan* contents should be accepted as contemporary to the late Spring and Autumn and early Warring States periods, see Yuri Pines, “Intellectual Change in the Chunqiu Period: The Reliability of the Speeches in the *Zuo zhuan* as Sources of Chunqiu Intellectual History,” *Early China* 22 (1997): 76–132.

15. This argument is similar to a recent statement by Scott Cook that “[how] accurate these may reflect statements actually made at the purposed times is, certainly, open to question. They do, however, present an intellectual picture of the times that is historically quite plausible and, for all we know, may well have been based on reliable historical record.” See Cook, “The Use and Abuse of History,” 47, fn. 3.

16. For an overview of the establishment and later expansion of the Western Zhou, see Edward L. Shaughnessy, “Western Zhou History,” in *The Cambridge History of Ancient China: From the origins of civilization to 221 B.C.*, ed. Michael Loewe and Edward L. Shaughnessy (Cambridge: Cambridge University Press, 1999), 292–351.

divided the newly incorporated, distant lands into individual principalities and, in exchange for loyalty and military support, installed Zhou family members to serve as royal custodians charged with maintaining social and political order within their jurisdictions. Thus, the extension of central Zhou royal authority over peripheral kingdoms relied heavily upon lineage affiliation and kinship hierarchies. Similar bloodline hierarchies served as the sociopolitical foundation within individual kingdoms. The gradual dilution of these extended lineage relations—through processes of time and exogamic marriage practices—slowly increased the autonomy of the various kingdoms vis-à-vis the center, whereas within these kingdoms, a similar devolution occurred as powerful ministerial families gained increased authority to challenge their rulers.<sup>17</sup> Soon, military incursions by non-Zhou peoples forced the weakened Zhou ruler to flee to the east (beginning the Eastern Zhou Period), where he and his successors became ceremonial puppets in the political machinations of powerful individual kingdoms.

An outgrowth of this decentralization of Zhou royal authority was increased regionalism and a collapse of traditional social and political order, evidenced externally by a dramatic increase in warfare between kingdoms vying for political and territorial supremacy, and internally by various, often deadly, political intrigues. This societal flux gave rise to new institutional forms. An example of a new institution designed to re-establish interkingdom cohesion was the *ba*, or hegemon system. Whereas previous political unity was maintained through a kinship-based acknowledgment that the Zhou king possessed sole authority to perform certain ritual sacrifices, convene multikingdom assemblies, or muster multikingdom military forces to attack another “disobedient” kingdom, under the *ba* system the authority (and responsibility) to perform these functions was ceremonially bestowed by a weakened Zhou king upon the ruler of the most politically and militarily powerful kingdom. Writing played a crucial role in the conferral of this authority, especially during the religio-legal ceremony of the covenant, *meng*. At the covenant, the rulers of various kingdoms would congregate, acknowledge the Zhou king’s chosen recipient, and often agree to quasicontractual statements of allegiance. Afterwards, the written versions of these pledges, as well as sacrificial animals, would be buried together so as to sanctify the conferral.<sup>18</sup> The actual

17. The role of weakening kinship affiliation in the decline of Western Zhou central authority has been thoroughly treated in Feng Li, *Landscape and Power in Early China: The Crisis and Fall of the Western Zhou, 1045–771 BC* (Cambridge: Cambridge University Press, 2006).

18. The religio-legal significance of writing within the context of early Chinese covenants has been well documented by W.A.C.H. Dobson, “Some Legal Instruments of Ancient



royal institution of Zhou rulers was not directly supplanted, but changing political circumstances (the Zhou now occupied a fraction of their former lands, had lost much of the bloodline-based authority, and could not field a proper army) necessitated the development of an alternative, authoritative institution capable of sustaining interkingdom cohesion.<sup>19</sup>

As a consequence of increased political autonomy of the individual kingdoms, there developed more visible regional peculiarities with respect to intrakingdom institutions. These societal transformations included the development of increasingly regionalized forms of written scripts, administrative practices, arts, and religious practices.<sup>20</sup> The societal sphere of law was also affected. Many of the law-related responses were designed to negotiate changing social conditions, brought about by increased social mobility and weakening internal blood ties within individual kingdoms, either by re-establishing former lines of authority through the manipulation of former institutions, or by establishing new sources of authority through new institutions. Within individual kingdoms, many powerful ministerial families appropriated the religio-legal institution of the covenant to establish quasicontractual (i.e., non-kinship-based) agreements of allegiance within their own lineage, as well as with other families. Written contracts between individual persons, composed upon stone slabs and buried in sacrificial pits, produced a form of internal cohesion that did not rely exclusively on kinship ties.<sup>21</sup> Like the *ba* system, written forms served an important function in the development of a legal institution designed to respond to changing social conditions. The remainder of this article examines how this environment of societal change, as depicted within the pages of the *Zuo zhuan*, elicited another intrakingdom response in which writing, in

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China: The *Ming* and the *Meng*,” in *Wen-lin: Studies in the Chinese Humanities*, ed. Tse-tsung Chow (Milwaukee: University of Wisconsin Press, 1968); and Mark Edward Lewis, *Writing and Authority in Early China* (New York: SUNY, 1999), 18–21.

19. For a detailed analysis of the *ba* system and its implications for Eastern Zhou geopolitics, see Boji Liu, *Chun qiu huimeng zhengzhi*, 2nd ed. (Taipei: Wen jing shu ju, 1977).

20. Lothar von Falkenhausen, *Chinese Society in the Age of Confucius (1000–250 BC): The Archaeological Evidence* (Los Angeles: Cotsen Institute of Archaeology, University of California, Los Angeles, 2006), esp. ch. 7 and 8.

21. Recent archaeological excavations at Houma and Wenxian, both in Shanxi province, yielded thousands of these covenant “contracts” from the kingdom of Jin that date to the fifth century BCE. Among these texts are several thousand “loyalty” and “pledge” texts, each specifically naming an individual who pledges loyalty to an unnamed covenant lord, *zhu*. See Susan Roosevelt Weld, “The Covenant Texts from Houma and Wenxian,” in *New Sources of Early Chinese History: An Introduction to the Reading of Inscriptions and Manuscripts*, ed. Michael Loewe and Edward Shaughnessy (Berkeley: SSEC and The Institute of East Asian Studies, University of California, Berkeley, 1997), esp. 140–48.



the form of the increased use of written law collections, played an increasingly more important role.

## II. Social Change, Legal Response, and Written Law in the *Zuo zhuan*

There are five primary references to written law contained within the *Zuo zhuan*. Subsequently, I analyze these passages from the perspective of social and legal change. In terms of presentation, I opt not to discuss the passages thematically. Instead, I have elected to present and analyze each passage separately and in chronological order as recorded in the *Zuo zhuan*. I do this for two reasons, one logistical and one methodological. As will be seen, some of the passages are quite lengthy and touch upon multiple themes related to written law. If a thematic arrangement were utilized, segments of translation would be broken up, requiring a great deal of confusing cross-referencing and cross-translating. Methodologically, this practice would destroy the indigenous architectonics of Chinese legal historiography represented in the structural totality of individual passages and by their original arrangement. Although the main purpose of this article is to examine the development of written law in early China, tangentially I also will illustrate for non-Sinologists the ways in which the Chinese both understood their own history and contextualized law within that history.

### *The Organizational Efficacy of Written Laws: Zhao Dun's Reforms in Jin*

The passage quoted subsequently is often overlooked in studies on early Chinese written law, because it does not appear to contain a direct reference to written law.<sup>22</sup> However, when read against the historical backdrop of societal transformation, one can see elements of an underlying theory of written law that can best be viewed as a reaction against increased internal disorder.

In spring of the sixth reign year of Duke Wen of Lu (r. 626–609 BCE), it is recorded in the *Zuo zhuan* that the kingdom of Jin held grand military reviews at Yi and Dong. As a result of these reviews, the Jin military

22. The majority of scholarly books and articles overlook the importance of this passage and instead refer to the casting of the bronze penal texts in the kingdom of Zheng (see next section below) as the first textual reference to written law in China. The only source I have located that makes direct reference to this passage when discussing written law is Herrlee Glessner Creel, "Legal Institutions and Procedures During the Chou Dynasty," in *Essays on China's Legal Tradition*, ed. Jerome Alan Cohen, R. Randle Edwards, and Chen Chang Fu-mei (Princeton: Princeton University Press, 1980), 34–37.

underwent a serious reorganization, including the reassignment of several commanders to new posts and the disbandment of two full armies out of Jin's total of five. During the review at Dong, an assistant commander by the name of Zhao Dun was singled out as deserving a higher rank by Yang Chufu, a former subordinate to Zhao Dun's father and a loyalist to the Zhao clan. Yang believed Zhao Dun possessed great ability and argued that, "To employ [those with] ability is beneficial to the kingdom." Therefore, Zhao Dun (known afterwards as Xuanzi) was promoted and charged with managing the government of Jin.

It quickly became apparent that the Jin government was plagued by a variety of administrative maladies, because Zhao Dun immediately initiated a systematic reform of several government institutions. The *Zuo zhuan* records that:

Thereupon, Xuanzi began to administer the kingdom. He systematized various posts; rectified laws and offences; compiled personal suits and punishments; investigated the issue of abscondence; instituted the use of "contracts"; managed outdated and defunct policies; restored the distinctions of rank according to propriety; renewed common offices; brought out men whose path had been stopped, and who were in obscurity. Once completed, [he] presented [the reforms] to Grand Tutor Yangzi and Grand Marshal Jia Tuo, so as to be implemented throughout the kingdom of Jin as constant laws.<sup>23</sup>

Zhao Dun's actions, subsequent to his appointment, provide a crucial window through which we may glimpse early Chinese conceptions of the efficacious use of both law and writing to conceptualize and generate particular social and political transformations.

A very prominent feature of the passage concerns the purposive exploitation of laws and written forms as devices for combating disorder. The kingdom of Jin has long been used as an example of the societal transformations and institutional responses occurring during the early Spring and Autumn Period. Well before Zhao Dun, the often violent ducal succession disputes motivated an institutional change, whereby those sons not appointed to the position of heir-apparent would be sent to other kingdoms.<sup>24</sup> The shifting avenues of power among the ministerial families also led to increased quarreling that often ended in bloodshed or banishment. By the time of Zhao Dun's appointment to administer the government, Jin was experiencing a decline in both its domestic and interkingdom power. In 632 BCE, under the sagacious rule of Duke

23. *Zuo zhuan*, Wen gong 6: *Saiden kaisen*, 596–597.

24. Cho-yun Hsu, *Ancient China in Transition: An Analysis of Social Mobility, 722–222 B.C.* (Stanford: Stanford University Press, 1965), 82.

Wen (r. 636–628 BCE), the kingdom of Jin rose politically to claim the title of *ba*, or hegemon over the other kingdoms.<sup>25</sup> Yet, this prominence greatly diminished under the reign of his successor, Duke Xiang (r. 627–621 BCE). Military defeats weakened Jin’s external image and necessitated the troop musters at Yi and Dong, as well as the disbandment of two of its armies. Internally, rival court factions, centering on a few powerful ministerial families, vied for control over the Jin ducal family. Their political intrigues and machinations contributed to an increased instability within the government. It was a desire to stabilize the kingdom internally and project a strong image externally that prompted Zhao Dun’s reform movement.

From a legal perspective, four of his reform targets, as well as the terminology used to describe the specific actions of reform, demonstrate a belief that the problem of disorder within political and social institutions could be counteracted through a transformation and systematization of those very institutions. Zhao Dun’s first action was to “systematize” (*zhi* 制) the offices of the government. Such action likely required a transformation of the existing administrative institutions in order to produce a comprehensive network of several interdependent offices and functions.

Zhao Dun then went on to “rectify the laws and offenses” of Jin. That the laws and offenses were targeted for reform indicates first that the laws of Jin were unsettled, and second, that the unsettled nature of the laws of Jin was perceived as contributing in part to a state of disorder. Such a conclusion is supported by the very terminology used to describe Zhao Dun’s actions. The word “rectify” (*zheng* 正) is commonly used as a verb within early Chinese philosophical discourses to indicate a practice of organizing things according to a preconceived standard of correctness.<sup>26</sup> The use of the term to describe Zhao Dun’s actions then implies that the targets for rectification, the antonymic binary “the laws and offences,” were understood to have a proper organization; however, at the same time, they were perceived by Zhao Dun to be in disarray or incorrectly categorized. The Chinese graph for the word “law” (*fa* 法) is a polysemantic graph that was frequently employed in early China to represent a range

25. Cho-yun Hsu, “The Spring and Autumn Period,” in *The Cambridge History of Ancient China: From the Origins of Civilization to 221 B.C.*, ed. Michael Loewe and Edward Shaughnessy (Cambridge: Cambridge University Press, 1999), 558–60.

26. Perhaps the most famous use of the term in early China is found in Confucius’ theory of the “rectification of names (*zhengming* 正名). Confucius argued that disorder arose when standardized/proper hierarchies within society and politics (i.e., names) were not acknowledged or practiced. Sociopolitical order could only be restored if these hierarchies were rectified according to a prescribed standard. Relatedly, the word *zheng* 正 is also used adjectivally in early China to mean “precise,” “standardized,” “correct,” or “upright,”

of semantically related words, such as, “model,” “method,” and “practice,” all of which possess an implicit indication of the existence of *proper* or *correct* forms, methods, or behaviors.<sup>27</sup> In the present context, this proper behavior signified by the word “laws” is juxtaposed to its antonym “offenses” (*zui* 罪), or that which contravenes the laws. It is clear that Zhao Dun considered the categories of “laws and offenses” to be muddled and confused, and that only through a proper categorization and differentiation of acceptable and unacceptable behavior could a disorderly society be transformed into an orderly one.

The third important reform concerns the “compilation” (*bi* 辟) of personal and criminal law matters. The use of the term *bi* in this context seems to imply a standardization or compilation of laws related to these two legal spheres. Such a meaning is confirmed by the term’s use in later passages of the *Zuo zhuan*, where it refers to written collections of penal law promulgated by the ancient rulers Yu, Tang, and Zhou, as well as occurrences of the term in other early Chinese texts.<sup>28</sup> What specific aspects of personal or criminal law were affected is unclear; however, as the previous reforms involved processes of systematizing and categorizing, it is possible that these reforms touched on both substantive and procedural areas of law. The distinctive use of the terms *yu* (獄), “to litigate” or “a suit,” and *xing* (刑), “to punish” or “punishment” indicates that the act of compilation (*bi*) would likely entail a degree of differentiation of specific actions as either personal or criminal, and of procedures for dealing with such actions. The final reform concerns the “management” (*zhi* 治) of old and defunct policies. Zhao Dun examines the policies of Jin, categorizes and values them, and then nulls those policies deemed no longer efficacious.

The contribution of writing to Zhao Dun’s reform efforts is easily found in the final line of the passage. Once he completed his reforms they were “presented to Grand Tutor Yangzi and Grand Marshal Jia Tuo, so as to be implemented throughout the kingdom of Jin as constant laws.” The use of the graph *shou* (授), meaning “to present,” indicates that the reforms were first conceptualized, then composed in written form and physically

27. Indeed the meanings ascribed to the graph *fa* 法 in early China are much debated. For an overview of the different meanings, see Perry Ernest Caldwell IV, “Hunting the Xiezhai: Mythology, Methodology, and an Alternative Explication of [灋]” (MA Thesis, University of Kansas, 2006); and Chad Hansen, “Fa (Standards: Laws) and Meaning Changes in Chinese Philosophy,” *Philosophy East and West* 44 (1994): 435–88.

28. The similar use of the term *bi* 辟 as “compilation” referring to collections of written law can be found in *Shi jing* 詩經 (Siku quanshu ed.), 19.44a–b and *Guanzi* 管子 (Siku quanshu ed.), 4.3b and 4.5b.

presented to Yangzi and Jia Tuo. Support for this usage can be found on bronze vessel inscriptions dating as early as the Western Zhou Period.<sup>29</sup> The so-called investiture inscriptions of the period typically describe royal audiences in which the Zhou ruler made a royal proclamation bestowing new duties upon the recipient, awarding gifts for valiant service, or reaffirming the recipient's prior obligations to the ruler.<sup>30</sup> Often a written version of the royal command was presented (the verbal form of *shou*) to the recipient of the mandate.<sup>31</sup> This document was stored by the recipient as a tangible personal referent to his charge, as well as evidential documentation providing proof of the charge or awards. Similarly, Zhao Dun wished for his reforms to become "constant laws," and, therefore, presented written versions to two people with the intent that they be referred to in future situations.

The breadth of Zhao Dun's reforms provides further support for the necessity of writing. Zhao Dun conceptualized the form and content of reforms designed to transform a wide range of administrative fields. His reliance on Yangzi and Jia Tuo to aid in the implementation of these reforms generated the need to convey complex policies with a level of clarity and specificity capable of achieving the desired transformation. The use of writing to satisfy these new administrative requirements evinces an early Chinese awareness that writing provided the technological capacities necessary for composing large, complex systematizing texts capable of transmitting the intent of the author to other individuals in different locations, at different times, and without the presence of the

29. In early China, aristocratic lineages produced elaborate collections of bronze vessels that were typically stored in ancestral temples and filled with sacrificial food and wine offerings during lineage ceremonies. Some of these vessels are quite small, whereas others weigh more than 100 kg. Furthermore, these bronze vessels often contain inscriptions, ranging from a single graph to several hundred graphs, which record various activities, meetings, battles, and even legal suits. For an overview of the various styles of bronze vessels used during the Western Zhou, see Jessica Rawson, *Ancient Chinese Bronzes from the Arthur M. Sackler Collections*, 2 vols. (Washington, D.C. and Cambridge: Arthur M. Sackler Foundation; Arthur M. Sackler Museum, Harvard University, 1990). For the significance of bronze vessel inscriptions to Chinese historiography (especially legal historiography), see Laura Skosey, "The Legal System and Legal Tradition of the Western Zhou (ca. 1045–771 B.C.E.)," (PhD diss., University of Chicago, 1996).

30. An excellent overview of Western Zhou investiture inscriptions can be found in Virginia C. Kane, "Aspects of Western Chou Appointment Inscriptions: The Charge, the Gifts, and the Response," *Early China*, 8 (1982–1983).

31. For more on the role of written documents within Western Zhou investiture ceremonies, particularly the conferral of royal commands, see Edward L. Shaughnessy, "The Writing of a Late Western Zhou Bronze Inscription," *Asiatische Studien/Etudes Asiatiques* 61 (2007): 865–68.

author.<sup>32</sup> This consciousness of writing as an efficacious tool for conceptualizing, composing, and transmitting government directives and laws is present in other early Chinese texts as well. The *Analects of Confucius* (*Lun yu* 論語) contains the passage: “When preparing orders, Pi Shen drafted them. Shi Shu debated and discussed them. The minister of foreign relations, Zi Yu, polished and elaborated them. Zi Chan of Dongli touched up and embellished them.”<sup>33</sup> In this passage from the *Analects*, like the present one concerning Zhao Dun, the use of writing to transmit government policy/law is not condemned as something unwarranted or dangerous; Confucius is offering praise for the procedure used by Pi Shen and others. Nor is there any indication of apprehension associated with the use of the written form and its potential negative effects on aristocratic authority. Such concerns are clearly voiced, however, in subsequent passages analyzed later in this article.

One final feature of written law in this context concerns the person to whom these reforms are ascribed. Zhao Dun was the aristocratic son of the head of the powerful Zhao ministerial family. He had a military career and was singled out because of his military service as one with “ability.” It is also noteworthy that institutional and legal reforms are not attributed to the ruler, but to a person who is invested with the authority to act on the ruler’s behalf. The importance of these personal characteristics will be revisited later in this article, especially when debates over the inevitability of written law to destroy the aristocracy’s power are examined.

*Written Law as both a Product of and Catalyst for Social Change: Shu Xiang’s Critique of Zichan*

It is exceedingly difficult to find a study of early Chinese law that does not ascribe the very origin of publically promulgated written law to Zichan, minister of the kingdom of Zheng.<sup>34</sup> The *Zuo zhuan* records that in 536

32. The potential contributions of writing to various administrative spheres, particularly law and archiving, have been studied by Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge: Cambridge University Press, 1986), 87–171.

33. *Lun yu* (*Siku quanshu* ed.), 14.5b.

34. See for example, Henri Maspero, “Le Régime féodal et la propriété foncière dans la Chine antique” in *Mélanges posthumes sur les religions et l’histoire de la Chine*, ed. Henri Maspero (Paris: Civilisations du Sud, S.A.E.P., 1950); Geoffrey MacCormack, *The Spirit of Traditional Chinese Law* (Athens: University of Georgia Press, 1995); Head and Wang, *Law Codes in Dynastic China*; and T’ung-tsu Chü, *Law and Society in Traditional China* (Paris: Mouton, 1961).

BCE he ordered the casting of a bronze penal text, the *xing shu* 刑書.<sup>35</sup> It states:

In the third month, the people of Zheng cast a penal text. Shu Xiang dispatched to Zichan a text. It stated, “Formerly, I had hope for you, but have now given it up. In the past, former kings consulted on affairs to decide them but did not make penal compilations, for they feared that the people would grow litigious. Still unable to control them, they restrained them with rightness, bound them with [good] governance, and raised them with humanness. They institutionalized emoluments and ranks to encourage their obedience and determined strict punishments so as to overawe their perversity. Fearing that that was not enough, they taught them of loyalty, rewarded good conduct, instructed them in their duties, deployed them with harmony, supervised them respectfully, supervised them with might, and adjudged them with firmness. Still they sought sagacious and erudite superiors, intelligent and astute officials, loyal and trustworthy elders, and kind and beneficent masters. It was only under such conditions that the people could be employed without disaster or disorder resulting. When the people are aware of a legal compilation, they will have no wariness of their superiors. All become contentious, appealing to the texts, and achieve their goals through lucky conniving. They cannot be governed. When the Xia had a disorderly government, they composed the *Punishments of Yu*. When the Shang had disorderly administration, they composed the *Punishments of Tang*. When the Zhou had disorderly administration, they composed the *Nine Punishments*. All three of these penal compilations arose in terminal ages. Now as advisor to the kingdom of Zheng you have rectified fields and ditches, established a reviled administration, instituted the tripartite compilation, and cast the penal text [in bronze], in order to calm the populace. Is this not difficult? The *Poetry* states: ‘Make King Wen’s virtue a guide, a model, a pattern; Each day pacify the four quarters.’ Again it states: ‘Make King Wen a guide and pattern: The ten thousand communities will respond.’ Given this, how can one have penal codes? When the people know the points of contention, they cast away propriety and focus instead upon the texts. Even at chisel’s tip and knife’s edge they will contend. Frenzied litigiousness will flourish, and bribes will circulate everywhere. Will Zheng perhaps perish at the end of your generation? I have heard that ‘when a state is about to fall, it has numerous regulations.’ Surely it refers to this sort of situation.”

Zichan wrote in reply: “It is as you have said. I am untalented and unable to reach for posterity. I have done it to save this generation. Though I am unable to accept your mandate, how should I dare to forget your great kindness?”<sup>36</sup>

35. The term *xing shu* literally translates as penal (*xing*) text (*shu*).

36. *Zuo zhuan*, Zhao gong 6: *Saden kaisen*, 1440–44.



This passage contains a wealth of information related to the concept of written law and the dual nature of its relationship to societal change. On the one hand, the institution of written laws is portrayed as a reaction to changing sociopolitical conditions; on the other hand, it is an active agent producing societal change. This transformative duality will be discussed later in the article.

Shu Xiang's rather vehement reaction is commonly taken to reflect the traditional tension between rule-by-man and rule-by-law notions of political legitimacy.<sup>37</sup> The extant historical record contains many narratives indicating a custom of judicial verdicts being given by rulers on the basis of their own judgment.<sup>38</sup> This fact is emphasized by Shu Xiang's polemic of the ruler serving as the model of conduct for the people and the supreme adjudicator of normative behavior. He argues that in the past, sagacious rulers considered all the circumstances and made their decisions on a case-by-case basis. By introducing written law, this high degree of judicial flexibility would be curtailed and the people would grow more wary of the interpretative legal authority of the aristocracy. Many scholars argue that Shu Xiang's statements reflect a fear that the introduction of written law carries with it the potential to constrain the aristocratic echelons of society, who for centuries had maintained a monopoly over legal authority.<sup>39</sup> For Shu Xiang, written law upset the traditional hierarchy and increased social disorder by legally empowering the populace to engage in rampant litigation.

Interestingly, Shu Xiang's remonstrance exposes a belief, or an apprehension, that the literal act of writing down laws and allowing them to be made publically known can effect transformations of the institutions of law and society. From a bottom-up perspective, the introduction of written law alters the populace's conception of the sources of law, reconfigures

37. See Head and Wang, *Law Codes in Dynastic China*, ch. 2. For an examination of these debates as they resurfaced in late imperial and early republican China, see Leigh Jenco, "Rule by Man and Rule by Law in Early Republican China: Contributions to a Theoretical Debate," *The Journal of Asian Studies* 2010, 69: 181–203.

38. Western Zhou bronze inscriptions provide the earliest evidence of "trials" in early China, and these typically depict litigants taking their dispute before an official seeking judgment. See Laura Skosey, "The Legal System and Legal Tradition of the Western Zhou, 103–6, 111–15, 118–21. In addition, there are several references within the *Zuo zhuan*, as well as Warring States texts, depicting personal disagreements being articulated in front of a ruler or high ranking minister. References to law and legal proceedings found in the *Zuo zhuan* and other commentaries to the *Chun qiu* are collected in Yuhao Zhang, "《Chun qiu》 san zhuan falü ziliao jizhu," in *Fa lü wen xian zheng li yu yan jiu*, ed. Boyuan Zhang (Beijing: Beijing daxue chuban she, 2005), 254–308.

39. See for example, the discussion of Confucian ideals of law in, MacCormack, *Spirit of Traditional Chinese Law*, 2–8.

their legal relationship to their superiors, and redefines their method of legal engagement and legal argumentation. From a top-down perspective, this transition further transforms the actual legal process by requiring legal judgments of aristocratic “judges” to conform to a written, public standard and forcing them to defend the validity of their judgments to those capable of reading the written laws. In short, Shu Xiang ascribes to the very act of writing laws a transformative capacity to alter the concept of law itself.

Change, however, is not restrictively conceptualized as social transformations unilaterally induced by legal change. In many ways, Shu Xiang’s remonstrance implicitly resonates with Zhao Dun’s view that written law can be utilized to combat social disorder. Although framed negatively, Shu Xiang’s criticism still illustrates the reciprocal nature of a change wherein legal transformation reacts to societal change. Drawing on past practices as authoritative evidence, he states that written law collections arose in times of great social disorder in dynastic rule. When rulers were unable to control the people through example and virtue, they turned to written laws as a “stop-gap” capable of temporarily restoring some measure of social control. From the perspective of traditional Chinese historiography, both Schaberg and Li Wai-ye argue that this passage reflects attempts by early Chinese historiographers to reconcile conflicting views of writing contained within historical records. Those historiographers promote a virtuous rule-by-man ideology through the construction of historical precedents that negatively associate the rise of written law collections with evidence of dynastic decline.<sup>40</sup> However, regardless of the historiographers’ intent, the discourse between Shu Xiang and Zichan does display a consciousness that the law changes to accommodate changing social conditions. Zichan made this clear when he replied to Shu Xiang. Although he admitted the futility of long term reliance on written law, Zichan maintained that the promulgation of written law was necessary to cope with the changing social conditions in Zheng; changes that had caused increased disorder within the kingdom.

This passage contains useful information concerning three major themes associated with the development of written law in early China. First, like the problems necessitating reform in the kingdom of Jin by Zhao Dun, the use of written law in the kingdom of Zheng arose during a time of social and political crisis. The former systems of social control were no longer deemed efficacious; therefore, the possibility of written law as a means of combating sociopolitical disorder came to the forefront. Zichan viewed the institution of written law as an expedient means of regaining

40. Schaberg, *A Patterned Past*, 293–95; and Li, *The Readability of the Past in Early Chinese Historiography*, 363–65.

some measure of stability. Second, Shu Xiang's remonstrance illustrates the belief that the institution of written collections of laws would produce a new, visible standard of behavior capable of influencing the actions of not only the general populace, but also the aristocratic lineages traditionally charged with monitoring and judging behavior. Third, this increased efficacy of law to control both the populace and aristocracy was possible because writing was visible and accessible to the general populace. It enabled the actions of those above to be assessed based on a known, public standard. The transformative importance of this shift from oral to written and from private to public forms of law becomes more evident in the following passages.

*The Transition from Private to Public Writing and the Efficacy of the Law: The Iron Cauldrons of Jin*

The kingdom of Zheng was by no means the only polity to inscribe portions of their law onto bronze-cast vessels. Nor was Zichan the sole recipient of harsh criticism for condoning such a practice. In 513 BCE, the kingdom of Jin, noted for providing one of the earliest references to the process of compiling and distributing collections of written law, also utilized the permanence and prominence of cast vessels in the production of public penal laws, and just as Shu Xiang saw the inscribed bronze vessels as portents of the coming demise of the kingdom of Zheng, the casting of Jin's penal vessels received biting criticism from Confucius as well as the scribe Cai Mo. Despite the harsh commentaries (which voiced an opinion quite similar to that of Shu Xiang), this passage contains very interesting perspectives on the relationship among social change, writing, and law in early China.

The *Zuo zhuan* records that in the winter of the twenty-ninth year of Duke Zhao of Lu (r. 541–510), “Zhao Yang and Xun Yin of Jin led troops to fortify Rubin. Thereafter, they presented one *gu* of iron to the kingdom of Jin, so as to cast penal cauldrons upon which would be inscribed Fan Xuanzi's so-called *Book of Punishments*.”<sup>41</sup>

This extremely brief passage contains some valuable clues concerning the increased use of written law in early China. Foremost, it provides one of the earliest references to the actual source material for written law. From the previous passages, we are unable to ascertain the source of the laws that were transferred to written form by people such as Zhao Dun or Zichan. Zhao Dun is merely recorded as having “rectified laws and offenses” and “compiled personal suits and punishments,” but the textual (or customary) sources informing these disorderly institutions that he

41. *Zuo zhuan*, Zhao 29: *Saden Kaisen*, 1745–46.

engages and corrects are not mentioned. With Zichan, we are likewise in the dark over both the content and provenance of the “penal text” he commissioned.

In the present passage, however, Zhao Yang and Xun Yin, of the Zhao and Zhonghang ministerial clans respectively, contributed a portion of iron with the intent that it be used for the casting of a penal tripod vessel. The legal text to be cast into this vessel was not created *ex nihilo* by either contributor, nor did it come from the Jin ruler. Instead, we are also told explicitly that the content of the cast vessel will be the *Book of Punishments* of Fan Xuanzi.<sup>42</sup> That is, the public writings were based on another written document previously composed by a single author and on a particular subject. In this case, it was likely penal in nature, because of the use of the term *xing* 刑, “punishment”; however, this does not necessarily imply a total or comprehensive treatment of Jin penology.

Furthermore, this illustrates a consciousness that the capacities of the written form to effect desired changes are in part dependent upon the inscribed medium. A penal text, such as the one composed by Fan Xuanzi, prescribes and proscribes specific behaviors for a particular group of people. However, the ability of such a text to produce the intended behavioral conformity depends upon the effective transmission of its contents to those persons for whom such prescriptions or proscriptions were initially created. It is likely that Fan Xuanzi’s text originally existed in written form on bamboo slips, which would have potentially limited direct transmission to the smaller communities of learned scholars/aristocrats. It is unclear exactly how the *Book of Punishments* was originally used in Jin; however, the actions taken by Zhao Yang and Xun Yin seem to indicate that its contents, if made public, were believed to be capable of influencing the behavior of a broader, more general audience. To enhance the transformative effects of the text, however, an alternative medium was apparently required and selected. Therefore, the process of casting the document into a vessel was indicative of a conscious desire by Zhao Yang and Xun Yin to obtain this enhanced efficacy by supplying a medium capable of broadening its transmission.

This assumption about the public dimension of writing is supported by the appended commentaries offering pessimistic views of both the transition to written law and its results. The objections to written law ascribed

42. One problematic aspect of this passage concerns the person to whom the *xingshu* is ascribed. The *Zuo zhuan* does contain several passages referencing Fan Xuanzi, of the Fan ministerial clan; however, little evidence exists for his ever having composed a legal text. Further complicating matters, the appended criticism of Confucius cites the textual content of the *xingshu* as originating from Zhao Dun. He states: “The punishments of Xuanzi are those from the muster at Yi”. It is possible that the Xuanzi to whom Confucius refers is none other than the aforementioned Zhao Dun. See Schaberg, *A Patterned Past*, 430, n. 150.

to Confucius are remarkably similar to those of Shu Xiang. Prior to Zhao Yang and Xun Yin's actions, the kingdom of Jin was the stage for nearly a century of intense conflicts between powerful ministerial families, which resulted in the banishment and/or execution of several family lines.<sup>43</sup> One can then argue that the actions of Zhao Yang and Xun Yin were designed to bring about some form of stability in the kingdom among the aristocracy as well as the populace. However, against all the previous arguments stating that written laws can effectively combat societal disorder, Confucius in his critique claims that the transition to publically promulgated written forms of law will in fact lead to further disorder (even the destruction of the kingdom) by obfuscating social hierarchies. He argues that the authority for legal interpretation should be entrusted solely to the aristocracy, and assumes that written law will become the sole source of the people's law, thereby undermining the socially distinguishing legal authority of the aristocracy. Confucius is quoted as saying, "Now they have discarded these standards,<sup>44</sup> and cast penal cauldrons. The populace will dwell only on the cauldrons. How will they revere the noble? How will the nobles preserve their patrimony? Without distinction between the noble and the base, how can there be a kingdom?"<sup>45</sup>

Although the authenticity of the commentary is debated, it has traditionally been read as the archetypical expression of the Confucian view on law, wherein the efficacy of written law is deemed inferior to a preferred rule-by-man legal institution.<sup>46</sup> Regardless of its philosophical pedigree, the commentary along with the historical anecdote to which it is appended both illustrate, at the very least, an anxiety over the potential capacity of the public dimension of written legal forms to generate alternative social structures, as well as alternative configurations of legal institutions. Additionally, like the casting of penal texts in the kingdom of Zheng, there is an implicit cognizance of a direct relationship between the medium upon which laws are placed and the very efficacy of those laws.

### *The Durability of Written Law: Deng Xi's Bamboo Book of Punishments*

Further evidence linking law to writing on bamboo slips is found in a later reference to events occurring in the kingdom of Zheng. In the ninth year of Duke Ding of Lu (r. 509–495 BCE), the *Zuo zhuan* states:

43. Hsu, *Ancient China in Transition*, 82–83.

44. The standards to which Confucius is referring are distinct models of behavior predicated upon a social hierarchy and entrusted by the former Zhou kings to the founder of the kingdom of Jin, Tang Shu.

45. *Zuo zhuan*, Zhao 29: *Saden kaisen*, 1745.

46. See, for example, Head and Wang, *Law Codes in Dynastic China* 48–58.

Si Chuan of Zheng killed Deng Xi, yet still employed his *Bamboo Book of Punishments*. The superior man says that in so doing Ziran was disloyal. If there is a person who possesses that which could be used to benefit the kingdom, then it is permissible to dismiss his vices. In the third stanza of “Graceful Girl,” what one takes is the red tube. In “What shall I report to him?” in “Flagstaffs,” what one takes is loyalty.<sup>47</sup> Therefore, when utilizing [a person’s] ways, do not discard the person. The *Poetry* states,

Young and tender is this sweet pear tree!  
Do not lop it off or harm it;  
For the Lord of Shao rested under it.<sup>48</sup>

The writer, thinking of the man, loved even his tree; how could we use [a person’s] ways, but show no compassion for the person? Ziran did nothing to encourage ability.<sup>49</sup>

From the passage, we can initially infer, based primarily on the superior man’s comment about dismissing his vices, that Deng Xi obviously had committed some offense, and because of this, was put to death by Si Chuan. Unfortunately, the *Zuo zhuan* does not reveal what offense would warrant an execution.

Like the penal text of Xuanzi (Zhao Dun?), the document implemented by Si Chuan is ascribed to a single author. Therefore, we may assume that the contents of the *Bamboo Book of Punishments* represent a mental product of one individual. And despite his vices, the author of the text, Deng Xi, is also characterized as a person of talent and ability. This characterization of ability is determined by his capacity to produce a written legal text considered beneficial to the kingdom. Therefore, unlike the earlier rebukes of Shu Xiang or Confucius, the superior man’s criticism of Si Chuan’s action was directed not at the implementation of a written penal text, but at his decision to put to death a person capable of benefiting the kingdom. Just like Zhao Dun, in the first passage analyzed previously, we find here no condemnation, or even problematization, of the use of

47. The translation of these two poetic references, both found in the *Classic of Poetry*, follows that of David Schaberg. He argues that the purpose of these references is to show that the person giving a gift is equally valuable as the gift. For example, in the “Graceful Girl,” the author is given a red pipe, yet he values the “gift not for itself but for the beauty of the giver.” To Schaberg, this implies condemnation of the killing Deng Xi (the giver of laws), while retaining and valuing his gift (*Bamboo Book of Punishments*). Schaberg, *A Patterned Past*, 299–300.

48. This quote is from the *Shi jing* poem “Gantang” (Mao #16). The translation follows Arthur Waley, *The Book of Songs: The Ancient Chinese Classic of Poetry* (New York: Grove Press, 1996).

49. *Zuo zhuan*, Ding 9: *Saden kaisen*, 1835–36.

written law. Instead, its production and utilization are praised as something positively contributing to the kingdom.

Furthermore, Si Chuan's implementation of Deng Xi's text illustrates the inherent ability of a written legal text to transcend the life of its author. Like Zhao Dun, Deng Xi was able to compose a text on a specific legal subject in such a way that other people would be able to read, understand, interpret, and implement its contents without recourse to the author. This again demonstrates an early Chinese consciousness of the capacity of written forms to enhance the communicative function of laws intended to alter the behaviors of those meant to be affected by the textual contents.

Finally, later commentators for this passage ascribe the motivating element behind the implementation of Deng Xi's penal text to the poor status of Zheng's government and society, which is described as blighted and confused.<sup>50</sup> Thus, as with nearly all the previous passages analyzed thus far, we once again can see social change/disorder inspiring legal change. And that legal change was predicated upon a consciousness of the transformative capacity of written law, wherein a particular written form is perceived to be effective in counteracting disorder. At no place in the present passage is there any condemnation of the use of written law for its potential negative influence on aristocratic legal authority.

#### *Public Display of the Law: The Xiangwei of Lu*

One of the last references to written law contained in the *Zuo zhuan* has clear thematic links to the abovementioned passages, in that it emphasizes an early Chinese recognition that introducing a public dimension to a law will increase its efficacy in promoting a desired social transformation. It comes from the third year of Duke Ai of Lu (r. 494–477 BCE). During the summer of that year, a great fire broke out near the duke's palace, threatening the ducal repository and treasury, as well as several temples. Various servants and officials were ordered to remove valued documents and keep watch over the treasury contents, while others attempted to put out the flames with tents and curtains soaked in water. Apparently little could be done to extinguish the conflagration, and it eventually consumed the ancestral temples of Huan and Xi. When Ji Huanzi, a minister to Duke Ai, arrived on the scene, he took charge of the duke's chariot and escorted him away from the raging fire to the compound's outer gates. Once there he "ordered those fighting the fire to desist once injured, and leave things to

50. In his work *Saiden kaisen*, Takezoe Kōkō collects the commentaries of scholars from ~200 C.E. to the 1800s. For this particular passage, Takezoe merely states that the government was at the time blighted and confused (鄭此時秕政紛紛), see *Saiden kaisen*, 1835.



chance. He ordered the *xiangwei* to be stored, stating ‘Old statutes cannot be lost.’<sup>51</sup>

Ji Huanzi’s concern over preserving the *xiangwei* (象魏) provides important evidence necessary to formulate a more comprehensive understanding of how the early Chinese envisioned the efficacious function of written law.

It has already been shown that at least as early as the sixth century BCE, officials, such as Zhao Dun and Zichan, were conscious of the potential use of law as a device capable of transforming sociopolitical institutions and behavior. Further, within the passages discussed earlier, these same officials demonstrated an understanding of the potential contribution of the visual dimension of writing to the intended function of law, and, therefore, exploited the form of bamboo texts or bronze/iron inscriptions for the dual purposes of creating a standardized referent for the laws and making such laws “visibly” transmittable. However, if a law is brought into existence with the intention that it will elicit a conditioned behavioral response from those people under its jurisdiction, then actual public knowledge of that law becomes essential.

Before Ji Huanzi’s command to rescue the *xiangwei* from the fire, previous references to written law revealed very little about the public availability or distribution of those laws directed toward the general populace. As mentioned, those legal texts composed by Zhao Dun and Deng Xi, and those utilized by Si Chuan and Zhao Yang, were most likely written on bamboo slips. The text of Deng Xi is referred to as the *Bamboo Book of Punishments*, indicating the medium on which it was composed. For these texts, we can construct vague trajectories of transmission, but they are limited to the elite sphere of the official-aristocrat. As critiques of the practice demonstrate, however, it is only when laws are cast in bronze or iron vessels that they gain the capacity to publically and directly influence lower levels of society. Other than that, we lack references to the dynamics of top-down dissemination of legal knowledge through written forms. Even those records of the much criticized production of inscribed laws on bronze or iron vessels suggest remarkably little information about where such vessels would be situated spatially so as to provide public viewing by the populace. The role of the *xiangwei* might shed some light on this issue.

There are varied explanations regarding the physical form of the *xiangwei*. Some scholars interpret it as a post, some an actual raised platform, and still others view it as the framework of a gateway.<sup>52</sup> Regardless of

51. *Zuo zhuan*, Ai 3: *Saden kaisen*, 1897–98.

52. See *Saiden kaisen*, 1898.

its actual form, we can discern from this *Zuo zhuan* passage some basic features of the *xiangwei*. It was some type of man-made structure, semimobile (i.e., capable of being moved away from danger, such as a fire), located near the gates of a palace or town, and used for the public display of official documents. These latter were typically legal documents, in the form of statutes or edicts, either written directly upon the *xiangwei* or on placards hung from it. In the present passage, Ji Huanzi alludes to the legal significance of the *xiangwei* of Lu by stating that “Old statutes cannot be lost.” The word “statutes” is represented by the graph *zhang* (章), a term that generally refers to specific passages of writing, but which is used in other early Chinese texts to indicate specific written laws and government policies.<sup>53</sup> Thus, the *xiangwei* represents one medium whereby the rulers of Lu utilized written forms to publically inform the populace of certain laws, old and new, meant to govern their behavior.

This use of the *xiangwei* to inform the public of changes to the law resurfaces in the *Zhou li* 周禮, a late Warring States Period text constructing an idealized conception of the former Zhou government.<sup>54</sup> In the section detailing the role of an official called the *tai zai*, there is a direct reference to the *xiangwei*. One of the official duties of this position was to promulgate new policies throughout the kingdom on the first day of the first month. To ensure that these proclamations were viewed by the populace, they were ordered to be hung from the *xiangwei*.<sup>55</sup>

The *Mozi* 墨子, also a textual product of the Warring States Period, further demonstrates the intentional use of public forms of writing to convey government information to the general populace which, in turn, reflects an implicit expectation by government officials that such written forms would be communicable to a more general audience. One section records: “When making regulations related to defense preparations, set them up stating: ‘Regulation X’. Position them in offices, streets, crossroads, stairways, and gateways. Order those passing by to look upon them and follow them.”<sup>56</sup>

53. By the end of the Warring States period the term *zhang* was not used to represent a specific legal document. Its legal meaning was replaced by *lü* (律), the term still used today as the word for a legal statute. For other early Chinese texts that ascribe legal significance to the term *jiu zhang* 舊章, see *Shang shu zhushu* 尚書注疏 (Siku quanshu ed.), 16.4b and *Shi jing zhushu* 詩經注疏 (Siku quanshu ed.), 24.62b.

54. For more information on the authenticity of the *Zhou li* and arguments over its dates, see William Boltz, “Chou li,” in *Early Chinese Texts: A Bibliographical Guide*, ed. Michael Loewe (Berkeley: SSEC and Institute of East Asian Studies, 1993), 24–32.

55. *Zhou li jinzhū jinyi* (Taipei: Taiwan Shangwu, 1972), 14–15.

56. *Mozi xiangū* (Beijing: Zhonghua shuju, 1986), 552.

Interestingly, recently discovered archaeological materials provide additional evidence pointing to the continued practice of publically posting laws well after the Warring States Period. References to *bianshu* (扁書) found in recently excavated administrative documents, dated to the Western Han dynasty (206 BCE–25 CE), indicate that the conscious use of the legal-didactic function of the *xiangwei*, or *xiangwei*-like forms, as a means to notify officials and the populace of legal changes (i.e., the promulgation of new laws) was eventually institutionalized as a mandated administrative practice. These documents commonly instructed those officials charged with implementing a newly delivered edict or law to: “Prominently display [the edict/law] on a large *bianshu* in conspicuous locations at townships, stations, markets, outer gates, and hostels causing the hundred names to fully comprehend it.”<sup>57</sup> “Prominently display [the edict/law] on *bianshu* at stations and outposts in conspicuous locations, causing officials and troops to fully comprehend it.”<sup>58</sup>

Like the *xiangwei* mentioned in the preceding *Zuo zhuan* passage, these *bianshu* represent public manifestations of new laws and edicts transmitted from the capital to peripheral administrative offices in written form via an extensive official postal service. Once they arrived, orders accompanying these edicts or laws required local officials to display the texts in conspicuous, high-traffic areas so as to make their contents known to other officials and the general populace. Thus, rulers relied upon the public display of written laws as a method of inculcating new responsibilities into the populace. And, like the cast vessels of Jin and Zheng, the *xiangwei*, and later *bianshu*, became a public referent for legal knowledge.

In saying all of this, I do not mean to imply that such public written forms were the only means used, nor am I claiming the existence of such a high level of literacy that anyone passing the gates would fully comprehend their meaning. At the very least, the existence and use of the *xiangwei*, as a repository of public official and legal information, evinces an underlying ideology that at least some law was not conceived of as an esoteric knowledge jealously guarded by the aristocracy, and that some rulers considered public written law to be efficacious for the purpose of social change.

### III. The Development of Chinese Written Law in Global Context

A comparative perspective offers analogues to the rationale behind the early Chinese legal transition to written law. Earlier scholars of ancient

57. 2000ES7S: 4A. This alphanumeric citation and the following one are based on Wei Jian ed., *Ejina Hanjian* (Guangxi: Guangxi shifan daxue chuban she, 2005).

58. 2000ES9SF4: 3

Greece certainly made arguments similar to those of Shu Xiang and Confucius, that the move to written law in the *poleis* had a “democratizing” effect by legally empowering the populace at the expense of the aristocratic authority;<sup>59</sup> however, archaeological evidence reveals clearly that most of the *poleis* that first instituted written law were aristocratically governed, and remained so well after the institution of written law.<sup>60</sup> With specific reference to ancient Crete, Zinon Papakonstantinou further argues that the formulation and promulgation of written laws should be understood not as an attempt to limit the powers of aristocratic officials over the general populace, but as attempts by specific aristocratic factions to increase political stability by limiting the political influence of opposing aristocratic political factions.<sup>61</sup> Therefore, written law was viewed as an expedient tool capable of combating internal political disorder created by aristocratic interlineage competition. Likewise, many have argued that the creation of the *Twelve Tables* in ancient Rome represented a concession by the patricians to the plebeians that severely undermined the former patrician legal authority. The nature of this “concession,” however, has been called into question. Walter Eder believes that this transition to written law was actually “a measure to ensure aristocratic predominance” in a period of social unrest.<sup>62</sup> Written laws and their subsequent promulgation were viewed as a tool that could homogenize behavior of *both* classes, stabilize social unrest both vertically (competing aristocratic lineages) and horizontally (patrician/plebeian conflicts), and yet still maintain aristocratic predominance.<sup>63</sup> Here, the use of written law was perceived to be an expedient means to consolidate aristocratic power and extinguish social disorder.

59. Many early Greek legal references do imply a desire for laws to be spread throughout all social strata; however, the level of “empowerment” afforded by such action is difficult to assess. See Rosalind Thomas, “Written in Stone? Liberty, Equality, Orality, and the Codification of Law,” in *Greek Law in its Political Setting: Justification not Justice*, ed. Lin Foxhall and Andrew Lewis (Oxford: Oxford University Press, 1996), 9–32.

60. Michael Gagarin, *Writing Greek Law* (Cambridge: Cambridge University Press, 2008), 72–76.

61. Zinon Papakonstantinou, “Written Law, Literacy, and Social Conflict in Archaic and Classical Crete,” *The Ancient History Bulletin* 16 (2002): 149–50.

62. Eder, “Political Significance of the Codification of Law,” 239.

63. Much like Confucius and Shu Xiang, Eder notes that codification could be viewed as potentially eliminating absolute authority over the law, where the loss of arbitrary jurisdiction (in terms of adjudication) would limit scope of aristocratic capriciousness. However, he argues that the content of the law was still determined by the aristocracy, in that legislation descended from the aristocracy. “‘Fixed’ law need not necessarily mean ‘just law.’” This is strengthened by the fact that very few of the plebeians demanded concessions are represented in codified laws. Eder, “Political Significance of the Codification of Law,” 252–53.

With that in mind, contrary to the arguments made by Confucius and Shu Xiang, the aristocratic origin of early Chinese written law does not necessarily seem antithetical to the desired perpetuation of aristocratic authority vis-à-vis the general populace. In fact, the comparative exercise contributes to our understanding of yet another dimension of the early Chinese ideology of written law, the fear that intralineage conflict would destroy the kingdom.<sup>64</sup> Although there were objections, many aristocratic ministers placed their faith in the power of written law to combat this disorder. References to Zhao Dun highlight the extent of the internal disorder and the use of written forms (including law) to transform society and bring about stability. Although he was a member of one of several competing ministerial families, his reforms were designed to maintain the unity of the kingdom by systematizing and regulating not only aristocratic offices and behaviors (theoretically limiting interaristocratic lineage conflicts), but also the interactions of the general populace. In so doing, there is no indication that the position of the aristocracy was necessarily weakened in relation to the commoners. We can assume, however, that the reforms to the aristocratic offices were meant to curb interlineage conflict and provide horizontal stability at the elite level. Likewise, the use of written penal laws in Zheng was (rather weakly) defended by Zichan as an expedient means for bringing about some manner of control. The use of Fan Xuanzi's penal text by Zhao Yang and Xun Yin also comes on the heels of intense lineage conflict that threatened to destroy the kingdom of Jin. Therefore, this increased reliance on written law can be viewed as both a reaction to increased societal disorder, and the manifestation of a consciousness that written law could be employed to effect specific, desired sociopolitical transformations aimed at combating that disorder without detrimentally affecting traditional aristocratic legal authority.

Laws in other ancient civilizations were also designed to promote a specified social change. They were, therefore, intended to have a communicative function: they conveyed specific images of authority, as well as the desires of the government for the performance of specific behaviors by officials and the general populace. Furthermore, if law was to be utilized for the purpose of altering behaviors, one must effectively, efficiently, and accurately convey the law to those for whom it was conceived. In ancient Babylonia, for example, Hammurabi utilized publically displayed collections of written law to consolidate his claim over newly annexed

64. The danger was indeed real. There are several recorded instances of dukes of various kingdoms being killed by ministerial families. Furthermore, the kingdom of Jin, known for having high levels of lineage conflict, was eventually partitioned off into three distinct kingdoms, Han 韓, Wei 魏, and Zhao 趙, each ruled by a former Jin ministerial family.

and conquered lands and did not consider such an action a threat to his, or his family's, legal authority.<sup>65</sup> Law was viewed as a stabilizing tool for consolidation of power and the use of writing and public display was considered a means to increase the efficacy of laws. For ancient Greece, Michael Gagarin argues that the Greeks conceived of law as being most efficacious if it was understandable and available to the majority of the population. As such, they utilized the public dimension of writing to increase the intended efficacy of law to condition behavior by providing a visible means for communicating official information to large audiences.<sup>66</sup>

The exploitation of the *visual* dimension of written law within these early societies suggests an early Chinese consciousness of the ability of written forms to effectively convey legal information in a manner that would be understood and internalized by its intended audience. This resonates clearly with Zhao Dun, who conceptualized society-altering changes to the laws, which were then transmitted to Yangzi and Jia Tuo. The latter were then able to understand the conveyed written legal knowledge, and institute the desired transformations. Likewise, Si Chuan was able to read Deng Xi's penal text and institute its contents without recourse to the author. The cast vessels, the *xiangwei*, and the *bianshu* all served to publically inform the government officials, soldiers, and commoners of the area of their legal responsibilities. Therefore, like ancient Babylonians, Greeks, and Romans, the early Chinese understood that specific written forms were capable of enhancing the communicative, and, by extension, transformative function of law.

#### IV. Conclusion

Contemporary scholarship on traditional Chinese law tends to view the development of written law through the lens either of modern notions of universalized "legal codes," or traditional interpretative paradigms that dichotomize Confucianism and Legalism. However, as I have tried to show in this article, these lenses unduly constrain our understanding of the sociopolitical role ascribed to written law by the early Chinese, and obfuscate the societal transformations underlying its increased use. If we turn our attention away from form/content debates and focus instead upon the context in which written law arises and the ideology informing

65. Russ VerSteeg, *Early Mesopotamian Law* (Durham: Carolina Academic Press, 2000), 30–33.

66. Gagarin, *Writing Greek Law*, 1.

its deployment, we can begin to reconstruct certain elements of an indigenous value system. Within this value system, the production of written law was perceived as part of a transformative process capable of producing increased sociopolitical stability, as well as control over both the aristocracy and the general populace.

The era in which the production of written law became prominent was a time of great societal transformation, and its increased use was a response to a growing sense of disorder resulting from such changes. The continued decline of Zhou royal authority increasingly compromised the proverbial threads maintaining the stability of the region's geopolitical fabric. The increased production of collections of written positive law, however, was not necessarily a direct response to interkingdom contentions for power, but more an intrakingdom phenomenon meant to combat growing domestic disorder within individual kingdoms. In fact, the same dilution of lineage ties that diminished the traditional Zhou royal authority also affected intrakingdom sociopolitical hierarchies, resulting in both increased potential for social mobility and increased conflict between powerful ministerial families vying for more power. Nearly all of the abovementioned examples drawn from the *Zuo zhuan* that depict the production of written law are foreshadowed by strong evidence of internal disorder.

The source of this disorder, frequently described as poor governance or hierarchical confusion, can be traced to conflicts between lineages or their various political machinations. Within the same *Zuo zhuan* passages, written law is always conceptualized as the product of a top-down enterprise initiated by a member of the aristocracy. It is used as a social-ordering tool responding to intrakingdom conflict and the disorder that results. However, does the socially stabilizing efficacy of this new legal institution predicated upon written law necessarily come at the expense of the aristocracy's traditional legal power base vis-à-vis the general populace? I would argue that the frequent link between aristocratic, elite authorship and written law calls into question the strength of the objections offered by Shu Xiang and Confucius, as well as the shared ubiquity of their opinion. Both argue that the inevitable consequence of the transition to written law is the further destabilization of some desired social hierarchy, by shifting the source of law away from the aristocratic individual and toward the written text. This, by extension, usurps aristocratic authority to interpret the standards of normative behavior in that the people will no longer be swayed by elite legal rhetoric and command, but instead will insist that aristocrats justify their behavior in reference to law. However, despite these two critiques (and their dubious provenance), the majority of references contained within the *Zuo zhuan* evince an open willingness on the



part of the elite to institute written legal forms, as well as their lack of fear over any potential authority-reducing repercussions.

Finally, each of the passages analyzed provides either explicit or implicit evidence that the early Chinese capitalized on the value of the public dimensions of written law. Zichan's use of bronze vessels, the transition of the Fan Xuanzi's penal text from a bamboo book edition to iron vessels, and the use of the *xiangwei* indicate an early conceptualization of writing, especially public writing, as a technological device capable of increasing law's efficacy to produce and maintain a prescribed sociopolitical order. The early Chinese, therefore, seem to espouse a positive belief that by writing down laws and making them publically known, they can provide a visible, written standard of conduct for all levels of society.