

Whence to Redress Injustice? Types of Trial Involving a Petition for a New Finding of Fact in Qin and Early Han

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The petition for a new finding of fact (*qiju*, 乞鞠) in the Qin and early Han Dynasties was a system in which prisoners or their families refused to accept a sentence and filed for a re-examination of the case. Focusing on the three cases of filing a petition for a new finding of fact that appear in *Qin Bamboo Slips of Yuelu Academy Collection, Volume III* (hereinafter, *Yuelu III*) and *Book of Submitted Doubtful Cases (Zouyan Shu, 奏讞書)* of early Western Han excavated from Zhangjiashan Tomb No. 247, this study starts with an analysis of the structure of the documents and then further clarifies the authority and responsibilities of relevant units. In so doing, it provides a compromise among or an advance on previous arguments.

First of all, in regard to jurisdiction in the Qin and Han Dynasties, scholars have different arguments about the trials conducted in the original place where the case happened or in the county court where the accusation was accepted. After combing through the existing studies, this study points out that there were at least three different exceptional types of trial. Secondly, scholars also have different arguments about whether the re-examination of the petition for a new finding of fact should take place in the original or non-original trial institutions. However, since the three reference cases all proceeded in the places where the prisoners were detained, the re-examination had nothing to do with the original trial institutions; other cases are also provided to prove this point. Thirdly, some

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scholars believe that criminals would not file a petition for a new finding of fact to the original trial institution. Nevertheless, as indicated in this study, Case 11 in *Yuelu III* is exactly a case in which the prisoner filed such a petition with the original trial institution. Lastly, in earlier times, the common belief in academic circles was that the prisoners also had household registrations. But after the epitaphs of prisoners in the Eastern Han Dynasty were unearthed in Luoyang, scholars put forward a new interpretation, advocating that prisoners lost their household registrations and were made subordinate to the unit of the place where the judgment was made after being sentenced. Nonetheless, Case 12 in *Yuelu III* reveals that the identity of the criminal convicted in Xiayang County was actually marked as that of a bond-servant in Chongquan, which led some scholars to the opinion that Chongquan was the criminal's domicile. After a thorough exploration of the context, this study reconfirms the argument that common people lost their household registrations after being sentenced as prisoners.

The trial types in the Qin and Han dynasties had their own system norms. However, in the face of ever-changing situations and resource constraints, the practice could be flexible. This is also one of the difficulties faced in the reconstruction of the history of the legal system.

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