

Chapter 5

RITUAL AND PUNISHMENT

Souverän ist, wer über den Ausnahmezustand entscheidet.

-Carl Schmitt, *Politische Theologie*

The “Qu li” 曲禮 chapter of the *Li ji* contains a line that numbers among the best-known and most maligned ritual prescriptions that come to us from ancient China: “Ritual does not [extend] down to the common people; punishment does not [extend] up to grandees” 禮不下庶人，刑不上大夫.¹ Many readers take this as a more or less straightforward extension of class-based oppression in ancient China.²

However, an examination of other sources shows that these twin exclusions are contradicted. Some readers might look upon this situation as a natural result of anachronistic reading, taking a later text (like the *Li ji*) as descriptive of earlier practice. But this is not the most common approach. Already in Han times, exegetes had noticed this, and proposed various strategies for redress. In most cases, they interpreted the rituals and punishments as limited to a subset of these, or they reinterpreted the proscription to something less thoroughgoing than might be expected. Many recent scholars take similar interpretative tacks.

In the *Xin shu*, Jia Yi quotes these lines as part of a larger argument. In his exposition, Jia Yi focuses on how the ruler is affected by his treatment of subordinates. In this presentation, the lines are not a simple testament to inequity, but indicate the uniquely elevated position of the ruler. They form part of a discussion of the abstract

structure of ideas and practices that is to preserve the ruler's majesty, part of an explication of the relationship between ritual and hierarchy.

I will preface my discussion of Jia Yi's ideas with some representative explanations from Han-time and modern scholars. It is not my intention to here disprove other interpretations of this line, but rather to outline a variety of exegetical approaches, and to analyze that of Jia Yi. As I will show, the line has been variously interpreted; to accept an interpretation in one context is not necessarily to reject another. A brief consideration of the line in the *Li ji* context offers an entry point for the discussion.

The *Li ji* in its current form dates to the late Han times; the constituent sections may well be older, but a specific dating for them is difficult.³ Like the *Li ji* itself, the “*Qu li*” contains a wide variety of materials and lacks apparent overall structure.⁴ In this miscellany comes the following passage,

The lord of the state leans on the [chariot-] rail; a grandee descends it. The grandee leans on the [chariot-] rail; the gentleman descends it. Ritual does not [extend] down to the common people; punishment does not [extend] up to grandees. People that have been punished are not at the lord's side. 國君撫式，大夫下之。大夫撫式，士下之。禮不下庶人，刑不上大夫。刑人不在君側。⁵

The relationship between the lines within this passage is not clear, and I have found no explanation that is able to explain the relationship between all of the rules mentioned here. Like the rest of the *Li ji*, this probably represents an amalgamation from disparate sources, and thus the early commentators likely have the right idea in not explaining the limitation of ritual and exemption from punishment by means of this context.

Ideas similar to, “Ritual does not [extend] down to the common people; punishment does not [extend] up to grandees” can be found in other early texts, although the phrasing of the *Li ji* passage is by far the best known. For example, in the 29th year of Duke Xiang 襄公, Wuzi Yuji 吳子餘祭, lord of Wu, is assassinated by a gate guard (*hun* 閭), a convict.⁶ The *Chunqiu Guliang zhuan* 春秋穀梁傳 blames Wuzi, saying in part,

According to the rites, the lord should not employ someone without a sense of shame, nor be close to a punished person, nor be close to an opponent, nor draw near to enmity. An abject person is not [properly] esteemed; an esteemed person is not punished; a punished person is not someone to be close to.... Wuzi was close to a punished person. 禮君不使無恥, 不近刑人. 不狎敵, 不邇怨. 賤人非所貴也. 貴人非所刑也. 刑人非所近也.... 吳子近刑人也.⁷

The “grandee” exempted from punishment in the *Li ji* is here “esteemed person,” but the basic idea is similar. The *Guliang zhuan* does not comment directly on the exemption of esteemed people from punishment, but focuses on the related idea that, “People that have been punished are not at the lord’s side.” Its narrative reflects the normative nature of the exclusions listed: Wuzi should not have been close to a punished person, but he was—and thus died. These are neither hard-and-fast rules, nor description of universal practice: they are ideals, which can be disregarded, albeit at one’s peril.⁸

Another similar line, with phrasing closer to that of Jia Yi than the “Qu li,” is found among the Guodian 郭店 strips, in the piece called “Zun de yi” 尊德義. There it says, “Punishments do not reach to the lordling; ritual does not reach to the petty person” 刑不逮於君子, 禮不逮於小人.⁹ Since the strips date to the Warring States period, this effectively dates the ideas to no later than the late 4th century BC. But the context in “Zun de yi” does not provide any information about the punishments or rituals referred to.¹⁰

However phrased, there is an obvious problem if a reader takes the proscriptions at face value: they do not tally with other available information. There is plenty of evidence that neither prescription operated as any sort of blanket rule in ancient China. Only a few examples are necessary here; additional can be found in the following discussion and in the related literature.¹¹

The canons contain numerous examples of rituals explicitly for ordinary people. To give just one example, the *Li ji* lays out guidelines for the period of time between death, encoffining, and burial for three groups: the Son of Heaven; feudal lords; and grandees, gentlemen, and commoners.¹² Early texts also contain examples of punishments, including execution, for “grandees” and higher.¹³ One example is found in the *Chunqiu Zuo zhuan* 春秋左傳 for the 14th year of Duke Zhao 昭公 (258 BC), which records the executions of the marklord of Xing 邢侯, Yongzi 雍子, and

Shuyu 叔魚, and the subsequent exposure of the corpses of the latter two.¹⁴ These are surely grandees, and they were punished.

Relevant evidence can also be found in the inscription on the late Western Zhou bronze vessel called the Sheng yi 匱.¹⁵ This inscription records a legal sentence of punishment and a renewed oath of obedience for someone identified only by his title, “Oxherd” (*muniu* 牧牛), accused of daring to bring a suit against his superior.¹⁶ The judge sentences the Oxherd to whipping, and before he does so, he states that the Oxherd could have been subjected to other punishments, including a heavier beating and tattooing. The inscription offers supporting evidence for the *Shang shu* 尚書 assertion that, “Whipping is the punishment for those in office” 鞭作官刑.¹⁷ And despite the unassuming sound of his title, it is probable that the Oxherd in fact is of high rank.¹⁸ This suggests that he could be considered a “grandee,” and that grandees were thus subject to corporal punishments in Western Zhou times.¹⁹

Thus, there is at best a contradiction between expectation and practice: the *Li ji* line, understood in a straightforward way, simply does not match the other evidence. This incongruity has not gone unnoticed through time. A brief examination of the canonical and other exegeses of the *Li ji* line makes clear that nearly all commentators recognize this apparent discrepancy, tacitly or explicitly.²⁰ To examine the reactions of the commentators and their attempts at reconciling is my next step, beginning with the standard commentaries on the *Li ji*.²¹

Han Exegesis

Zhang Yi

The first line of interpretation that I will treat here is that of Zhang Yi 張逸 (ca. 3rd c.).²² No written work of his survives intact, but scraps of Zhang Yi’s writings come down to us piecemeal, particularly in the commentaries and sub-commentaries of the Thirteen Classics. Some of his arguments are included in the *Zheng zhi* 鄭志, a reconstructed work which records exchanges between influential scholiast Zheng Xuan 鄭玄 (127-200) and his followers, including Zhang.²³ Dynastic histories also make mention of Zheng Xuan’s rejoinders to Zhang Yi.²⁴

Zhang Yi argues for a narrow interpretation of the passage. He interprets it as reference to specific observances, not as a blanket exclusion or exemption. He explains, “Ritual does not extend down to the ordinary people” as follows:

It is not that [common people] do not practice ritual at all. It is only that they are busy with their tasks and unable to assemble [the required gifts],²⁵ and therefore [their rites] are written neither in the three hundred classic [ritual] texts nor in the three thousand majestic ceremonials. If they have matters [requiring ritual], they borrow the rituals for the clerisy and follow them. 非是都不行禮也。但以其遽務不能備之，故不著於經文三百，威儀三千耳。其有事則假士禮行之。²⁶

Zhang Yi suggests that the line does not actually exclude the common people from ritual, but rather excuses them from certain ritual obligations on the basis of hardship. It is not that the commonality never employed ritual, only that specific rituals for them are not recorded among the ritual canons. If the common people should require rites, they are to use those of the clerisy, commoners as well in Zhang's time.²⁷ Zhang Yi uses a similar line of argument in explicating the subsequent phrase, "Punishments do not extend up to grandees":

It means that as [punishments] for crimes committed [by grandees] are not found in the three thousand Xia or two thousand five hundred Zhou ordinances, so as to not cause the worthy to offend against the law. It is not to say that one does not punish these persons at all. If they should be guilty of something, one uses the Eight Discussions (Ba yi 八議) to discuss (i.e., decide) the mildness or severity [of the punishment]. 謂所犯之罪不在夏三千，周二千五百之科，不使賢者犯法也。非謂都不刑其身也。其有罪則以八議議其輕重耳。²⁸

As in the preceding case, Zhang proposes that the phrase refers only to an exclusion from a defined set of laws, not from punishment generally. When a grandee commits a crime, the punishment is decided according to the Eight Discussions instead of penal law. Eight Discussions is the Han dynasty term for what were earlier called the Eight Rules (*ba bi* 八辟), recorded in the "Xiao sikou" 小司寇 chapter of the *Zhou li*. These rules were used to assign punishment with consideration of eight factors: kinship (*qin* 親), precedent (*gu* 故), worthiness (*xian* 賢), ability (*neng* 能), merit (*gong* 功), esteem (*gui* 貴), effort (*qin* 勤), and guest status (*bin* 賓).²⁹

Zheng Xuan

In his commentary on the *Li ji*, the earliest extant *in toto*, Zheng Xuan gives similar reasons for the two injunctions.³⁰ Regarding the exclusion of the common

people from ritual, Zheng says, “It is for them being busy with their tasks, and at the same time, unable to assemble [the necessary] things” 爲其遽於事, 且不能備物.³¹

Regarding the apparent exemption of grandees from punishments, Zheng explains, “One does not permit the worthy to violate the law; if they violate the law, then it lies in the Eight Discussions if [the punishment] is to be mild or severe, not in the penal documents” 不與賢者犯法, 其犯法則在八議輕重, 不在刑書.³²

Zheng’s interpretation of the restrictions bears a clear similarity to that of Zhang Yi. Both suggest that grandees are exempted from the punishments laid out in the laws and are to be judged by an alternate code, the Eight Discussions, and that commoners are too busy to fulfill the ritual obligations.

Bohu tong

The interpretations of this passage that are now canonical were not the only that existed in early China. In 79 AD, Emperor Zhang 章 of the Han (reg. 76-89) commanded a scholarly confabulation to address the exegeses of the Wu jing 五經 (Five canons), which had become various and contradictory. These talks were held at the Bohuguan 白虎觀, and Ban Gu 班固 (32-92) compiled the results into what is now called the *Bohu tong* 白虎通.³³ In the “Wu xing” 五刑 chapter of this work, it says,

Why do “Punishments not go up to grandees?” It reverences the grandees. “Rituals do not go down to the ordinary people,” desires to exhort the people and cause them to achieve [membership] in the clerisy. Accordingly, ritual is ordered for those that have knowledge and punishments are established for those without knowledge. Even though an ordinary person should have a thousand gold in cash, he cannot but submit to punishment.³⁴ “Punishments do not go up to grandees” is based on the fact that the ritual [texts] do not contain punishments for grandees. Some say that [it refers specifically to] the punishments of beating and caning, and that “Rituals do not go down to the ordinary people” [refers to] the rituals of exchanging toasts. 刑不上大夫何? 尊大夫. 禮不下庶人, 欲勉民使至於士. 故禮爲有知制, 刑爲無知設也. 庶人有千金之幣, 不得服. 刑不上大夫者, 據禮無大夫刑. 或曰: 撻答之刑也. 禮不下庶人者, 酬酢之禮也.³⁵

Here, two interpretations are recorded, preferred and secondary. The main interpretation creates two mutually exclusive groups in society governed by corresponding conventions: commoners, who lack knowledge and are regulated by

punishment; and grantees, who possess knowledge and are regulated by ritual. The expressed desire is to give impetus to the people's learning, who should by this be encouraged to pursue study and membership in the clerisy so as to enjoy the punishment-free status of that group.

This interpretation differs from that found in the canonical commentaries of Zheng Xuan and Zhang Yi in that it explicitly integrates the exclusions from punishment and from ritual into a single schema to regulate society as a whole. Although the alternate interpretation, limiting the exclusions to specific instances of punishment and ritual, is closer to what would become canonical, the short shrift it receives in the *Bohu tong* suggests secondary importance in contemporary discourse.

Xu Shen

In his *Wu jing yi yi* 五經異義, lexicographer Xu Shen explains rituals not extending to the common people:

The Zhou rituals say: the Five Jade [Objects] are the ceremonial gifts [for the lord and high ministers]; below the lord and high ministers, they use birds, as the revered and the lowly should have distinctions. [These] rituals do not extend down to the common people, and craftsmen and merchants have no court ceremonies. The Five Classics do not say that the ordinary people or craftsmen and merchants have ceremonial gifts [that they give]. 周禮說, 五玉贄自孤卿以下執禽, 尊卑有差也. 禮不下庶人, 工商又無朝儀. 五經無說庶人工商有贄.³⁶

This explanation is somewhat confusing, for the simple fact the ritual texts that prescribe ritual gifts for the various ranks also list gifts to be given by ordinary people, including craftsmen and merchants.³⁷ Xu Shen rebuts the supposed proscription against punishments for grantees:

[Lesser] Dai 戴 explains that "Punishments do not go up to grantees." But the old-text *Zhou li* explains that when one of the clerisy [was executed], his corpse was displayed in the market; a grandee's corpse was displayed in the court. This means the grantees had punishments. The *Yi* 易 says, "The cauldron's broken leg: / Overturns the duke's stew; / his punishment is execution-in-chamber; / inauspicious."³⁸ There is not the matter of punishments not going up to grantees. 戴說刑不上大夫. 古周禮說, 士尸肆諸朝. 是大夫有刑. 易曰, 鼎折足, 覆公餗, 其刑渥, 凶. 無刑不上大夫之事.³⁹

Here, Xu Shen cites the *Zhou li* and the *Yi* as an example of punishments for those of high rank. Although the usual understanding of this *Yi* line is quite different, Edward L. Shaughnessy's translation makes Xu Shen's point clear.⁴⁰ Based on these examples, Xu flat-out denies that grantees are spared punishment. This is the earliest recorded explicit observation of the apparent conflict between the exemption from and the numerous attested cases of punishment served upon grantees.

Zheng Xuan, again

In his *Bo Wu jing yi yi* 駁五經異義, Zheng Xuan in turn refutes Xu Shen with a new argument, saying,

[The *Zhou li* says:] “All those of noble rank are of the same clan as the king. Those [ranked] grandee and above [...] go to the master of the hinterland (*dianshi* 甸師)⁴¹ [to await punishment]” so that other people did not see it. For this reason, it says, “Punishments do not go up to grantees. “凡有爵者與王同族, 大夫以上[...]適甸師氏 [待刑殺]” 令人不見. 是以云刑不上大夫.”⁴²

Here, Zheng Xuan gives an abridged quotation from the “Zhang qiu” 掌囚 sub-chapter of the *Zhou li* to support his assertion. The passage as a whole describes some of the procedures to be carried out in cases of punishment, including those of noble rank. Zheng argues the “punishments do not reach grantees” refers to the fact that execution of those of noble rank occurred out of the public eye.⁴³

Further evidence for this practice can be found in other ritual sources. For example, in the “Tan gong” 檀弓 chapter of the *Li ji* it says, “If the vassals of the lord do not avoid crimes, they will be [executed and the corpse] exposed in market or court, and their wives and concubines will be arrested” 君之臣不免於罪則將肆諸市朝而妻妾執.⁴⁴ As Kong Yingda argues in his sub-commentary on this line, “[Those holding the rank of] grandee or higher are [exposed] in the court; the clerisy and lower are [exposed] in the market” 大夫以上於朝, 士以下於市. Again, it is not that the grantees are not executed, but rather that the punishment is kept from the public by exposing away from public view the corpses of those executed. But this can hardly be called not punishing.

He Xiu

He Xiu 何休 (129-182) offers an additional interpretation of the phrase “Punishments do not extend up to grantees” in his commentary on the *Chunqiu Gongyang zhuan* 春秋公羊傳 for the first year of Duke Xuan 宣公. The *Gongyang* passage in question discusses exile, a sentence passed upon Xu Jiafu 胥甲父.⁴⁵ He Xiu elucidates it as an example of the exemption of grantees from punishment in relation to ancient principles of governance:

In antiquity, “Punishments did not extend up to grantees,” probably because they thought, “If you pluck the nest and destroy the eggs, then the phoenix will not arise; if you scoop out fetuses and roast the young, then the unicorn will not arrive.” When they punished someone, they were afraid of mistakenly punishing a worthy. The dead cannot be made to live again, and the punished cannot be re-connected.⁴⁶ Therefore, if someone was guilty of something, they exiled him and that is all. This was a means by which to reverence the worthy type. 古者, 刑不上大夫, 蓋以爲摘巢毀卵 則鳳凰不翔, 剖胎焚夭則麒麟不至. 刑之則恐誤刑賢者, 死者不可復生, 刑者不可復屬. 故有罪, 放之而已 所以尊賢者之類也.⁴⁷

When He Xiu writes, “If you pluck the nest and destroy the eggs, then the phoenix will not arise; if you scoop out fetuses and roast the young, then the unicorn will not arrive,” he refers to a story about Kongzi.⁴⁸ In this narrative, the nefarious Zhao Jianzi 趙簡子 summons Kongzi, either to employment to be followed by death or for direct execution (depending on the version of the story). When Kongzi apprehends the real situation, he does not obey Jianzi’s summons, and says in response to a follower’s query,

Thus, I have heard that if you scoop out fetuses and roast the young, then the unicorn will not arrive; if you drain swamps to fish, the *jiao*-dragon (*jiaolong* 蛟龍) will not swim [there]; if you overturn nests and destroy the eggs, then the phoenix will not arise. I have heard that the lordling finds it difficult to harm his kind. 故丘聞之, 剖胎焚夭則麒麟不至, 乾澤而漁, 蛟龍不遊, 覆巢毀卵則鳳凰不翔. 丘聞之, 君子重傷其類者也.⁴⁹

He Xiu’s implication in citing this story is likely the combined force of the impropriety of harming the innocent and the sentiment expressed at the end of the utterance attributed to Kongzi: “The lordling finds it difficult to harm his own

kind.” Thus, a good ruler will hesitate to harm his high vassals both from fear of error and a hesitation at harming those that share high station, albeit in lower degree.

Considering these early interpretations as a group, one thing is striking: while there is some disagreement about the rites and the people, only the *Bohu tong* argues that the passage actually constitutes an exemption for the grandees from punishment. Pi Xirui 皮錫瑞 (1850-1908), inter alia, would account for the discrepancy between various interpretations of the phrase and its relationship to historical context by assigning them to “New Text” (*jin wen* 今文) or “Old Text” (*gu wen* 古文) traditions.⁵⁰ However, since my concern here is inconsistency within the interpretive tradition, the question of this classification is not significant for the discussion here.

Modern scholars

The foregoing discussion has focused primarily on Han-era commentarial explanations, with some reference to ritual texts. But the apparent contradictions between the proscriptions and fact have not escaped the attention of modern readers, either. A number of studies have been published in recent years addressing these same questions, and arriving at answers that are similar in approach if not in precise content. Regarding ritual, most readers agree with the general drift of the commentarial tradition, interpreting the exclusion of commoners to apply to certain rituals. The situation concerning punishments is similar, and most scholars who have examined the matter critically agree that the proscription against punishments refers only to one or another type of punishment, and cannot be a blanket exemption.

An exception is Xie Weiyang 謝維揚, who suggests that the traditional understandings of this line are incorrect. He argues that the grammar of the verbs *shang* 上 and *xia* 下 has been misunderstood to mean, “reach up to” and “reach down to.” Instead, he argues it should be, “to be above” or “to be below.” Thus, the line would read, “Ritual does not [include those] below the ordinary people; punishments do not [include those] above grandees.”⁵¹ The version found in “Zun de yi” from Guodian, not available when Xie wrote, argues strongly against this understanding. In particular, the word choice *dai* 逮, “to reach,” and the inclusion of the grammatical particle *yu* 於, here “to,” show that “above” and “below” prevent any possibility of ambiguity about the original meaning of the notion. Since the Guodian strips are of Warring States provenance, they probably pre-date the “Qu li,” and represent an

earlier version of the same ideas, and thus effectively refute Xie. Another exception is Yuri Pines, who simply dismisses the statement as “rhetorical exaggeration.”⁵² Although such an argument is difficult to disprove, it is not the only plausible explanation.

Following the example of the ancient commentators, some suggest that the rituals from which commoners were excluded were only a subset: e.g., those practiced when meeting others while riding in chariots.⁵³ This takes the first half of the phrase under examination as relating to the foregoing lines in the “Qu li,” as well as the subsequent section, which also treats chariot ritual. There is a weakness in this explanation in that it necessarily implies that the line concerning punishment is not connected to the foregoing or subsequent sections, though early sources (including “Zun de yi”) group the exemptions together. In this understanding, the lines would read, “[When they meet while in chariots], the lord of the state leans on the rail, and the grandee descends [the chariot]; [when they meet,] the grandee leans on the rail, and the gentleman descends it. [These] rituals do not reach down to common people.”⁵⁴

Another explanation says that the “rituals” referred to for the pre-Qin context are the set of official rituals created for the benefit of the noble class, and unsuited to the ordinary folk. Thus, the rituals referred to for the ordinary people are a small and unimportant sub-set, and accordingly not mentioned.⁵⁵

Punishments can be interpreted similarly. The exclusion of grandees and higher is often explained as an exclusion from a particular punishment or group thereof. One such explanation is that grandees were exempted from corporal punishments only, but were still subject to capital punishment.⁵⁶ This is in keeping with Jia Yi’s use of this idea, as will be shown below.⁵⁷

Another reading suggests that during Zhou and Chunqiu times, the exemption from punishment referred originally to one punishment in particular: castration.⁵⁸ Lü Simian 呂思勉 says,

The only difference of the noble clans from the ordinary people [regarding punishments] was that in execution, [nobles’] bodies were not broken, and there was no punishment by castration [for them]. The rest were all the same as the ordinary people. 公族之異於平民者，死罪不殊其體，刑罪無宮而已，餘皆與庶民同矣。⁵⁹

The “Wen wang shizi” 文王世子 chapter of the *Li ji* supports this interpretation:

If there is to be capital punishment for [one of] the lord’s clan, then he is hanged by the master of the hinterland.⁶⁰ If it is to be mutilating punishment, then it is [only] stabbing or cutting, and [the case] for its part is tried by the master of the hinterland. The lord’s clan does not have castration. 公族其有死罪 則磬于甸人. 其刑罪 則織劓, 亦告于甸人. 公族無宮刑.⁶¹

This idea is expanded in the same chapter: “[The line of the king’s] close relatives should not be cut off. The lord’s clan is without the punishment of castration, so as to not cut off their type” 骨肉之親無絕也. 公族無宮刑. 不翦其類也.⁶² According to the *Li ji*, the members of the lord’s clan are subject to other types of corporal punishments, but are exempted from castration to prevent cutting off the noble line.

Jia Yi

In my further discussion here, I will put the phrase into the context of a longer prose piece. This analysis concerns only Jia Yi’s use of the proscriptions, though its conclusions could tentatively be applied more broadly. It is probably best to not seek a single explanation for all instances of the ideas that rituals are not extended to commoners or punishments to grantees. Jia Yi, in particular, perhaps uses the phrase in an idiosyncratic fashion. My analysis will show that Jia Yi employs the phrase in a normative manner: he states how things should be, not how they actually are. Thus, the historical situation does not invalidate his understanding of the phrases; on the other hand, an understanding of the events around the time Jia Yi writes offers some insight into what he has in mind.

Jia Yi quotes this line in the “Jie ji” 階級 chapter of the *Xin shu*.⁶³ This chapter is an extended discussion of the role of hierarchy and ritual in securing the place of the monarch. The phraseology of the line is slightly different in Jia Yi’s enunciation than elsewhere, though similar to that found in “Zun de yi.” Nevertheless, there can be little doubt that it conveys the same notions. Jia Yi says, “In antiquity, ritual did not extend to ordinary people, and corporal punishments did not reach to the lordling. This was a means by which to encourage favored ministers’ moderation” 古者禮不及庶人, 刑不至君子, 所以厲寵臣之節也.⁶⁴

A number of scholars refer to the Jia Yi passage in discussion of “Ritual does not extend down to the ordinary people; punishments do not extend up to grantees.”

However, since they refer in only a limited fashion to this single line of Jia Yi's out of context, they do not fully address his interpretation. In particular, they do not take into account that Jia Yi's explication is unique in centering it—or at least the argument for it—on the ruler. This challenges the idea that there exists a continuity in the exclusion of ordinary people from ritual that existed into latter days just as it did in the early.⁶⁵

An examination of “Jie ji” is necessary for understanding Jia Yi's interpretation of the principles behind these exclusions.⁶⁶ I will summarize the main ideas found in “Jie ji,” then demonstrate how *li bu xia* and *xing bu shang* relate to these.

Jia Yi begins “Jie ji” by proposing the stairs beneath a hall as analogy to the dignity of the lord. Just as a hall is raised up above the ground by its stairs, so should the lord (the hall) be lifted above the common people (the ground) by his ministers (the stairs). It is only through this elevation that the status and position of the ruler can be made secure. Jia Yi states explicitly that the elevation and protection of the lord's position is the function of the hierarchy of vassals and commoners:

The lofty are hard to climb and the lowly are easy to surpass: the pattern-lines and circumstances make it so. Thus, in ancient times, the sage kings set up hierarchical grades.⁶⁷ Within [the court], they had dukes, high officers, grandees, and gentlemen;⁶⁸ outside [the court], they had dukes, marquises, earls, viscounts, and barons, and afterward had officers and minor officials.⁶⁹ [The system] extended to reach the ordinary people,⁷⁰ with grades and ranks divided clearly. The Son of Heaven was above them, and therefore his reverence was beyond reach. 高者難攀, 卑者易陵, 理勢然也。故古者聖王制爲列等, 內有公卿大夫士, 外有公侯伯子男, 然後有官師小吏, 施及庶人, 等級分明, 而天子加焉, 故其尊不可及也。⁷¹

The essential role of the ministers is supporting the position of the ruler, whose dignity is insulated by the honor he grants his vassals. The preservation of this buffer layer is a principle that Jia Yi summarizes with a “vulgar saying” (*bi yan* 鄙諺) well known even today: “You want to throw something at the rat, but worry about the vessel” 欲投鼠而忌器. It is in his explication of this statement that Jia Yi gives the first indication of his interpretation of the prohibition against punishments for grandees, which turns out to be more limited than one might expect (or hope, if one is a grandee):

The vulgar proverb says, “You want to throw something at the rat, but you worry about the vessel.” This is a good metaphor. When a rat is near to a vessel, you shy away and do not throw anything at it, because you fear damaging the vessel.⁷² How much the more for the esteemed great ministers that are close to the lord and emperor!⁷³ 鄙諺曰，欲投鼠而忌器。此善喻也。鼠近於器，尚憚而弗投，恐傷器也。況乎貴大臣之近於主帝乎。

Incorruptibility and a sense of shame,⁷⁴ ritual and moderation are the means to regulate the lordling. Thus should there be the granting of death [by suicide]⁷⁵ but not the humiliation of punishment.⁷⁶ For this reason, the punishments of fettering, binding, beating, caning, shaving, amputation, tattooing, and cutting off the nose should not reach to the grandees, because their separation from the lord is not far. 廉恥禮節，以治君子，故有賜死而無僇辱，是以係縛榜笞髡剔黥劓之罪，不及大夫，以其離主上不遠也。⁷⁷

The notion that the lord should rule his subjects through honor and dishonor instead of law is not new with Jia Yi.⁷⁸ But Jia Yi's conception is different: he focuses on the ruler, and the ministers feature only secondarily. More important for the discussion here is Jia Yi's assertion that grandees should be exempted from corporal punishments that degrade them in front of their social inferiors. This is certainly not a general exemption from punishment: a grandee should still die if guilty of a crime. But he must not be humiliated. Like the rat near a vessel, the grandees are close enough to the ruler that any damage to their dignity impugns that of the lord as well. Indeed, Jia Yi invokes the respect shown for the non-human accoutrements of the lord—his horses, armrest, cane, chariot and gate—as part of the same conceptual apparatus:

According to the rituals: Do not dare to check the teeth of the lord's horses; one that treads their grass [the feed for the horses] commits a crime. If you see the lord's armrest or his cane, then you rise; if you encounter the lord's chariot, then you dismount; if you enter the main gate, then you hurry. 禮，不敢齒君之路馬，蹴其蒭者有罪。見君之几杖則起，遭君之乘輿則下，入正門則趨。⁷⁹

The compulsory respect shown all of these things—including the courtiers—is “reverencing the circumstances of the lord” 尊君之勢也。⁸⁰

Jia Yi expands his argument by citing another proverb: “Even though your shoes are new, you don't use them for a pillow; and even though your hat is worn, you don't use it to sole your shoes” 履雖鮮，弗以加枕；冠雖弊，弗以苴履。⁸¹ One who has been punished is like shoes, and not to be taken close to the lord. This recalls

connection between the exclusions from ritual and punishment with the avoidance of convicts already suggested above by the *Guliang zhuan* and the original *Li ji* context, but with a different focus.

Jia Yi argues that someone singled out by the emperor for preference and advancement is permanently elevated thereby and should not bear punishment. There is no hint of sanctity or grace in this; instead, there is a connection created between the emperor and this vassal. Specifically: the elevated person shares in the respect afforded the sovereign. Those elevated by the emperor are like his ceremonial hat: not to be trod upon. This is not to defend their status, but rather to that of the lord.

The favored ministers of the lord⁸²—even if one commits a transgression—should have neither punishment nor execution applied to their persons. That is reverencing the circumstances of the lord. This is the means by which to preemptively distance⁸³ disrespect from the lord, and the means by which to treat the ministers⁸⁴ with ritual form⁸⁵ and to encourage their moderation. 君之寵臣，雖或有過，刑戮不加其身，尊君之勢也，此則所以爲主上豫遠不敬也，所以體貌群臣而厲其節也。⁸⁶

Furthermore, Jia Yi thinks that for the common people to get in the habit of thinking that they could someday apply punishment to their superiors is, putting it mildly, “not a [proper] influence toward revering the revered and esteeming the esteemed” 非尊尊貴貴之化也。⁸⁷ “For any that the Son of Heaven has once favored, and that the populace has once respected:⁸⁸ if they are to die, then they should die, and nothing more” 夫天子之所嘗寵，眾庶之所嘗敬，死而死爾，賤人安宜得⁸⁹此而頓辱之哉。⁹⁰ This is a means to discourage the population from engendering ideas of violence upon the representatives of the imperial government, as well as the emperor himself.

By elevating his revered vassals, the ruler creates a stair to lift himself above the earth that is the common folk. At the same time, Jia Yi theorizes that the ruler will earn the gratitude and allegiance of the high-ranking vassals that benefit from the exclusion: they will recognize and be grateful for the special treatment they receive. Although Jia Yi does not use the word here, the latter proposition is recognizable as a theoretical means for obtaining *de*, “virtus,” Nivison’s “gratitude credit,” the ability of a superior to evoke a perceived obligation for requital in a subordinate.⁹¹

Jia Yi employs this understanding of virtue, predicting requital comprised of both obedience and defense of the lord. Thus, Jia Yi connects ritual observances to

virtus as a practical means for the ruler to secure his position. Nor is the connection of *li* to virtue foreign to Jia Yi's writings. The "Dao de shuo" 道德說 chapter of the *Xin shu* says, "The *Rituals* embody the pattern-lines of virtue, moderate and pattern them, completing the affairs of people. Therefore, I said, 'The *Rituals* are the embodiment of this [virtue]' 禮者, 體德理而爲之節文成人, 故曰, 禮者, 此之體者也."⁹² Although *li* is used here as a title, the embodiment of virtue lies not only in the physical texts but also the rituals, the records of which comprise the canon by that name.⁹³

It is this ritually generated gratitude credit that will gain the sovereign the obedient and faithful service from his vassals that form his protection.

Therefore, when it is said that the sage person (i.e., ruler) has a wall like metal, this is a metaphor for the united wills [of the vassals].⁹⁴ The other would die for "me," and so "I" must live together with him; the other would perish for "me," and so "I" must be preserved with him; that one would be imperiled for "me," so "I" must have stability with him. 故曰聖人有金城者, 此物比志也. 彼且爲我死, 故吾得與之俱生. 彼且爲我亡, 故吾得與之俱存. 夫⁹⁵將爲我危, 故吾得與之皆安.⁹⁶

Jia Yi views the loyalty of vassal to sovereign as a form of repayment: by treating his high vassals with special consideration, the ruler gains their gratitude. It is true that the service expected from the subordinate outweighs what he receives from his lord, but the exchange is not meant to be an equal one. As Jia Yi writes in the "Li" 禮 chapter of the *Xin shu*,

The ode says, "You give me a quince and I requite it with a fine jade pendant—/ This is not [really] a requital, but for eternal fondness."⁹⁷ If the superior gives them a little, then the subordinates repay it with their [whole] selves—not daring to call it requital, but wanting long-lasting fondness. 詩曰, 投我以木瓜, 報之以瓊琚, 匪報也, 永以爲好也. 上少投之, 則下以軀償矣, 弗敢謂報, 願長以爲好.⁹⁸

The notion of requital functions in two interrelated ways. First, the ritual preferences given to the vassals of the lord and denied to the common populace are a gift, albeit an abstract one, that will encourage the honor of the vassals in return. Second, the exclusion from punishments is also a kind of a gift or reward, which will earn the lord

the trust and gratitude of all grantees and higher—even though its benefits are only actually enjoyed by those guilty of a crime.

The support and assistance of subordinates is necessary for the ruler to retain his position. This is common sense and Jia Yi treats it as an *a priori* assumption. The vassals not only outnumber the lord, but, as administrators and deputies, also have direct control over “material goods, and positions and tasks” 財器職業.⁹⁹ If they wish to, they can wreck havoc on the lord and his rule. Treating one’s subordinates like dogs means that they will behave like dogs—to the eventual chagrin of the lord. But, if treated with respect, Jia Yi predicts that they will behave with self-respect. To demonstrate this, Jia Yi cites the well-known example of Yu Rang 豫讓, who abandoned the memory of one lord to serve the enemy that had killed him, then turned around to demonstrate supreme loyalty to the latter.¹⁰⁰ As Jia Yi says, by his treatment of the vassal, “The man’s lord made it thus” 人主使然也.¹⁰¹

Ultimately, self-respect should obviate the need to visit corporal punishments upon the grantees’ persons. If that should fail, the merest hint of suspicion will be enough to bring the suspected vassal to receive his sentence and commit suicide, without ever being subjected to the dishonor of fetters, beatings, etc.¹⁰²

If treated with this sort of respect, the grantees will be so trustworthy that they will act properly, protecting the lord like a “wall of metal.”¹⁰³ When this system is in place, the vassals will be reliable even in the absence of a strong ruler:

When someone attends to his actions and forgets [selfish] benefit, maintains moderation and submits to righteousness, then he can be entrusted with ungoverned power,¹⁰⁴ and be entrusted with an orphan five *chi* tall (i.e., the young monarch).¹⁰⁵ This is what is brought about by encouraging incorruptibility and a sense of shame, and practicing ritual and righteousness. 顧行而忘利, 守節而服義, 故可以託不御之權, 可以託五尺之孤, 此厲廉恥, 行禮義之所致也.¹⁰⁶

Jia Yi’s conclusion indicates unequivocally that this is how things should be and not how they are when he writes: “But we do not do this, and instead turn to *those* actions.”¹⁰⁷ Therefore do I say that this is something to be long-sighed over” 此之不爲, 而顧彼之行, 故曰可爲長大息者也.¹⁰⁸

Thus, Jia Yi advocates a complementary hierarchical deployment of ritual and punitive systems in order to create a buffer between the ruler and the ruled, by which

means the reverence and security of the lord will be secured. It will also earn him the gratitude and thus the loyalty of his underlings, generating virtue for the lord. This can also be interpreted as the creation of a conjectural space centered on the ruler in which the laws do not apply, and thus a demonstration of the ruler's supremacy both over the law and his subordinates.¹⁰⁹ It is, in any case, a theoretical construction, the non-deployment of which provokes Jia Yi to sighs. He is not describing how things were, but how he conceived they should be.

The ideas of ritual exclusion for commoners and exemption from punishment for grandees relate to each of the three major ideas found in "Jie ji": the palace analogy, the rat and the cap and shoes analogies, and Jia Yi's conception of requital and virtue. The essence of the palace analogy is that the three-tier hierarchy of commoner, noble vassal, and lord serves primarily to raise the lord above the commoner and to secure his position there. The ceremonial preferences and exclusion from certain punishments are a vital part of this hierarchy. The rat and the cap and shoes analogies address the reasons for excluding the middle layer of the hierarchy—the lord's vassals as distinct from the common people—from punishments. It preserves them and their position from any weakening in the eyes of the common populace, in turn strengthening the position of the lord. It also reinforces their subordinate position in regard to the lord. Simultaneously, the exclusion of grandees from degradation will evoke their gratitude, thus binding them to their ruler and increasing the virtue of the latter.

Historical Contexts

The historical contexts of the Qin and the Han inform Jia Yi's analysis and conclusions. The Qin example is named in the piece, and harshness of Qin rule is famous, if perhaps overstated. The Han ruler at whose court Jia Yi served, Emperor Wen 文帝 (Liu Heng 劉恆, reg. 179-157 BC), is the presumptive recipient of Jia Yi's rhetoric. Emperor Wen showed a definite willingness to permit corporal punishments of grandees—precisely in the manner Jia Yi decries.

Jia Yi employs the Qin as negative example in "Jie ji," as he does throughout his extant oeuvre. There are at least two references to the Qin in "Jie ji." The first is explicit and fairly straightforward: "In the affair of the Wangyi [Palace], Ershi 二世 (Ying Huhai 嬴胡亥, reg. 209-207 BC) was convicted by the heaviest of laws because

of the practice of ‘Throwing things at rats and not worrying about the vessel’” 夫望夷之事，二世見當以重法者，投鼠而不忌器之習也。¹¹⁰

According to extant historical records, the Second Emperor of Qin (Ershi) was forced to commit suicide in the Wangyi Palace in 207 BC.¹¹¹ His fate was decreed by his erstwhile teacher, the eunuch Zhao Gao 趙高 (ob. 207 BC), who had earlier encouraged and assisted Ershi in his excesses of sensual indulgence and brutal punishment. These punishments fell noticeably upon the courtiers surrounding Huhai.

The fate of Li Si, architect of the Qin unification, is an example of this harshness: once a favored courtier, he was convicted on a pretext, beaten repeatedly, and tortured before being executed by being cut in two at the waist in Xianyang 咸陽 (west of mod. Xi'an; the Qin capital) market. Because of these precedents, when Ershi discovered Zhao Gao's perfidy, the latter feared for his life and sent Yan Le 閻樂 (fl. ca. late 3rd c. BC) to kill Ershi before he should be killed himself.¹¹² Ershi had been killing the “rats” that were his courtiers without regard to the “vessel” of his own dignity; the result was his death. The lesson is that of the sovereign's instability, particularly when the sovereign fails to secure himself through judicious reinforcement of his dignity.

There is also implicit reference to the Qin in another section of “Jie ji,” for when Jia Yi describes vassals that “can be entrusted with an orphan five *chi* tall,” he is surely thinking again of Zhao Gao. On the one hand, Jia Yi believed that with proper teaching Huhai could have been ruler good enough to rectify his predecessor's mistakes and preserve the Qin dynasty.¹¹³ But what Ershi learned from his tutor Zhao Gao was exactly the opposite of proper: punishment instead of influence, torture instead of cultivation. And when Zhao Gao finally came to power under Huhai, he inveigled and manipulated and finally ordered the death of the young ruler, betraying the trust given a tutor. It is against Zhao Gao and his ilk that Jia Yi warns. Jia Yi discusses the importance of the crown prince's teachers at length in the *Xin shu*, particularly in the “Bao fu” 保傅 chapter of the *Xin shu*:

When [Qin Shihuang] had Zhao Gao tutor Huhai, he taught prosecution; what [Huhai] practiced, if not beheading and cutting off noses, was execution to three degrees of [criminals'] families.... He viewed killing people like [cutting] mugwort and grass.¹¹⁴ How could it have been that Huhai's innate nature was evil? It was because that by which [Zhao Gao] accustomed and led

was not in accord with pattern-lines. 使趙高傳胡亥而教之獄，所習者非斬劓人，則夷人之三族也.... 其視殺人若艾草菅然，豈胡亥之性惡哉。其所集[=習]¹¹⁵道之者，非理故也。¹¹⁶

Jia Yi makes no mention in “Jie ji” of a particular contemporary incident against which he argues. However, there can be little doubt that Jia Yi is addressing the case of Zhou Bo 周勃 (ob. 169 BC).¹¹⁷ Zhou Bo had been a member of Liu Bang’s 劉邦 (imp. reg. 202-195 BC) inner circle even before the latter won emperorship in 202 BC. He also had numerous military victories in the wars leading up to the establishment of the Han and in the battles against insurgency during the early years of the dynasty. Along with Chen Ping 陳平 (ob. 178 BC), Zhou was also responsible for expelling the Lü 呂 consort clan from their arrogated position of power and installing Emperor Wen in 179 BC, restoring imperial rule to the Liu clan. Zhou had been rewarded with high rank many times in his career, and in the time of Jia Yi held the position of chancellor. In the fourth year of Wen’s reign (176 BC), Zhou was accused of plotting rebellion. Despite his many services to the Liu clan and Emperor Wen personally, Zhou was brought to the capital in fetters, humiliated by the legal officials. Eventually, he was exonerated, but in Jia Yi’s mind, the potential for harm to the emperor from such incidents was likely clear.¹¹⁸ Thus, Li Biao 李彪 (444-501) says,

Formerly, in the time of Han [Emperor] Wen, someone indicted Chancellor Zhou Bo for plotting rebellion. He was brought bound to Chang’an for trial, and they bent his head [to the ground] and humiliated him like a slave. Jia Yi thereupon sent up a memorial, completely laying out the duty of lord and vassal, [showing that] it is not properly thus. 昔漢文時，人有告丞相周勃謀反者，逮繫長安獄，頓辱之與皂隸同。賈誼乃上書，極陳君臣之義，不宜如是。¹¹⁹

Jia Yi asks rhetorically: when the ruler debases his vassals by submitting them to physical punishment, then, “Aren’t there then no steps beneath the hall?”¹²⁰ Aren’t those who are executed and humiliated too close [to the emperor]?”¹²¹ 然則堂下不亡陛下乎？被戮辱者不太迫乎。¹²² Of course the answer is affirmative.

The *Han shu* tells us that Emperor Wen took Jia Yi’s suasion to heart, and began to encourage proper action among his vassals. As a result, “After this, if one of

the great vassals committed a crime, they in all cases committed suicide and did not accept [corporal] punishment” 是後大臣有罪，皆自殺，不受刑。¹²³ “Jie ji” might also be connected to the famous abatement of punishments in the 13th year of Emperor Wen’s reign (167 BC), though the true extent to which punishments were effectively decreased is uncertain.¹²⁴

Yu Chuanbo’s 于傳波 has suggested that Jia Yi is in fact the inventor of the notions that, “Ritual does not [extend] down to the ordinary people; punishment does not [extend] up to grandees.”¹²⁵ The inclusion of a similar line in the Guodian strips makes it certain that Jia Yi borrowed ideas and phraseology that already existed and turned them to his rhetorical needs. But there might still be an element of accuracy in Yu’s idea. Jia Yi didn’t invent these ideas, but his effective use of them in persuasion of his emperor perhaps marks the point in time when they were first translated from theory into praxis, albeit in a limited way.¹²⁶

¹ *Li ji zhu shu* 禮記注疏, 3.6a-8a [55-56].

² E.g., Yang Hegao 楊鶴皋, *Zhongguo falü sixiang shi* 中國法律思想史 (Beijing: Beijing daxue chubanshe, 1988), 14:

What is meant by, “Ritual does not go down to the ordinary people” is to say that ritual was primarily used to regulate the internal relations of the slave-owner class. All sorts of special privilege, which were according to ritual rule enjoyed by every grade of nobility, were uniformly not to be enjoyed by the common people. What is meant by, “Punishments do not go up to grandees” is to say that the cutting edge of punishment was pointed at the laboring people, and was not pointed at the slave-holders and nobility. 所謂“禮不下庶人,” 就是說, 禮主要是用來調整奴隸主階級內部關係的; 各級貴族按禮規定所享的各種特權, 奴隸和平民一律不得享受. 所謂“刑不上大夫,” 就是說, 刑罰的鋒芒是指向勞動人民, 而不是指向奴隸主貴族.

³ Jeffrey K. Riegel, “*Li chi*,” in Michael Loewe, ed., *Early Chinese Texts: A Bibliographical Guide* (Berkeley: Society for the Study of Early China, 1993), 293-97; Xia Chuancai 夏傳才, *Shisanjing gailun* 十三經概論 (Tianjin: Tianjin renmin chubanshe, 1998), 226-27.

⁴ Zheng Xuan suggests that there are five types of ritual content in the “*Qu li*”: “fortunate” (*ji* 吉), including sacrifices and prayers; “unfortunate” (*xiong* 凶), including funerary observances; “guest” (*bin* 賓); “military” (*jun* 軍); and “fine” or perhaps “ennobling” (*jia* 嘉), including serving superiors and respecting elders; *Li ji zhu shu*, 1.4a [11]. I.e., all sorts of ritual are found therein.

⁵ *Li ji zhu shu*, 3.6a [55].

⁶ The *Chunqiu Zuo zhuan* says that the *hun* was a prisoner who had been captured in an attack on Chu 楚. This prisoner was detailed to guard a boat; while Wuzi was looking at the boat, the guard killed him with a knife. *Chunqiu Zuo zhuan zheng yi*, 39.5b [666].

According to the *Zhou li*, people who had been subjected to corporal punishments were assigned to particular tasks according to the punishment received:

Those punished by tattooing were sent to guard doors; those who had their noses amputated were sent to guard passes; castrati were sent to guard the inner palace; those who had their lower legs amputated were sent to guard park-reserves; and those who had received punitive shaving were sent to guard grain stores. 墨者使守門, 劓者使守關, 宮者使守內, 剕者使守囿, 髡者使守積.

See *Zhou li zhu shu*, 36.14a-b [545]. Laura Skosey, “The Legal System and Legal Tradition of the Western Zhou, ca. 1045-771 B.C.E.” (PhD dissertation, University of Chicago, 1996), 144, remarks that, “Three of the *yuexing* vessels depict the amputees as gate guards,” suggesting that at some level, this caste system seems to have been carried out. A photo of an interesting example that depicts this practice can found in Wang Wenchang 王文昶, “Cong Xizhou tongli shang yuexing shoumen nuli kan ‘Ke ji fu li’ de fadong benzhi” 從西周銅鬲上刖刑守門奴隸看“克己復禮”的反動本質, *Wenwu* 4 (1974): 29.

⁷ *Chunqiu Guliang zhuan zhu shu*, 16.11a-b [161].

⁸ The *Chunqiu Gongyang zhuan* says that, “If [a lordling] is close to a punished person, it is the way of treating death lightly” 近刑人則輕死之道也; *Chunqiu Gongyang zhuan zhu shu*, 21.9a-b [266].

Since the dating of the *Guliang zhuan* is somewhat problematic, it is worthwhile to note that a similar idea is found in the “Ba jing” 八經 chapter of the *Han Feizi*: “When people that have been punished and/or humiliated are close and familiar [to the lord], it is called *xiazei* 狎賊 (intimacy with disaster)” 僇辱之人近習曰狎賊.⁸ Han Fei says that this will lead to suspicion and the potential for the expression of fury, as in the case of Wuzi. This demonstrates the antiquity of the ideas in the *Guliang zhuan*. See Wang Xianshen, *Han Feizi jijie*, 18.435; also Shao Zenghua 邵增樺, *Han Feizi jin zhu jin yi* 韓非子今注今譯 (Taipei: Taiwan Shangwu yinshuguan, 1990), 2.151-54

⁹ This phrase is found in the 31st and 32nd strips of “Zun de yi.” Photographs of the strips with parallel transcription into modern graphs can be found in Zhang Guangyu 張光裕, ed., *Guodian Chu jian yanjiu: Di yi juan wenzi bian* 郭店楚簡研究: 第一卷文字編 (Taipei: Yiwen yinshuguan, 1999), 578-9; also transcribed in Tu Zongliu 涂宗流 and Liu Zuxin 劉祖信, *Guodian Chu jian Xianqin Rujia yi shu jiao shi* 郭店楚簡先秦儒家佚書校釋 (Taipei: Wanjuanlou, 2001), 132. This parallel is pointed out by Yuri Pines, “Disputers of the Li: Breakthroughs in the Concept of Ritual in Preimperial China,” *Asia Major*, third series 13 (2000): 30.

¹⁰ The lines in “Zun de yi” immediately preceding those under examination here treat the importance of regulating the people’s feelings. Those after deal with the importance of humaneness, virtue, and other qualities/techniques in governing the people. See Tu Zongliu and Liu Zuxin, *Guodian Chu jian Xianqin Rujia yi shu jiao*

shi, 134-38. Aside from a general thematic consistency, there is not a clear connection between these three sections, or within the chapter generally.

¹¹ Numerous other examples, as well as many of those cited here, are mentioned in Li Qiqian 李啓謙, “‘Li bu xia shuren, xing bu shang dafu’ ma?: Tan Xianqin shi yanjiu zhong de yige wenti” “禮不下庶人, 刑不上大夫”嗎?: 談先秦史研究中的一個問題, *Qi Lu xue kan* 齊魯學刊 2 (1980): 20-25; Li Qiqian, “Zai yi ‘li bu xia shuren, xing bu shang dafu,’” *Zhongguo gudaishi lun cong* 中國古代史論叢 3 (1981): 126-36; Xie Weiyang 謝維揚, “‘Li bu xia shuren, xing bu shang dafu’ bian” “禮不下庶人, 刑不上大夫”辯, *Xueshu yuekan* 學術月刊 8 (1980): 74-77; Ma Xiaohong 馬小紅, “Shi ‘Li bu xia shuren, xing bu shang dafu’” 釋“禮不下庶人, 刑不上大夫,” *Faxue yanjiu* 法學研究 49 (1987): 83-5, 71; Yang Zhigang 楊志剛, “‘Li bu xia shu min’ de lishi kaocha” “禮下庶人”的歷史考察, *Shehui kexue zhan xian* 社會科學戰線 300 (1994): 118-25.

¹² *Li ji zhu shu*, 12.10b [239]:

A Son of Heaven is encoffined after seven days and entombed after seven months. A feudal lord is encoffined after five days and entombed after five months. A grandee, gentleman, or ordinary person is encoffined after three days and entombed after three months. 天子七日而殯, 七月而葬. 諸侯五日而殯, 五月而葬. 大夫士庶人三日而殯, 三月而葬.

¹³ This was so much the case that Du Yu included in his *Chunqiu shi li* 春秋釋例 a section listing such executions, of which only the preface is extant. A version of the *Chunqiu shi li* is included in the *Siku quanshu* 四庫全書; the preface to “Sha shizi dafu li” 殺世子大夫例 is found on pages 4.21a-23b [76-77]. Mentioned in Xie: 75.

¹⁴ *Chunqiu Zuo zhuan zheng yi*, 17.5a-b [821], mentioned in Xie: 75.

¹⁵ This vessel is named for it the man that commissioned it, whose name is variously transcribed into “modern” graphs. Zhou Fagao 周法高, *Jin wen gu lin* 金文詁林 (Hong Kong: Xianggang Zhongwen daxue chubanshe, 1974-75), “Fuce suoyin” 附冊索引, 18, says that 𠄎 is equivalent to *sheng* 𠄎, giving my transcription. Alternative forms include 𠄎 (“Zhen”), 𠄎, and 𠄎. Skosey, 13, *et passim*, calls it the “Ying yi” and her footnote gives an additional pronunciation of “Xun yi.” It should be noted that in the inscription itself refers to the vessel as a *he* 盃, but all sources agree that in form it is actually an *yi*.

The *Sheng yi* was recovered in 1975 at Dongjiacun 董家村, Qishanxian 岐山縣, Shaanxi. It was first described in Cheng Wu 程武, “Yipian zhongyao de falü shi wenxian” 一篇重要的法律史文獻, *Wenwu* 240 (1976): 50-54 and Tang Lan 唐蘭, “Shaanxisheng Qishanxian Dongjiacun xinchu Xizhou zhongyao tongqi mingci de yiwen he zhushi” 陝西省岐山縣董家村新出西周重要銅器銘辭的譯文和注釋, *Wenwu* 240 (1976): 55-59; it is also discussed in Sheng Zhang 盛張 (Huang Shengzhang 黃盛璋), “Qishan xinchu Sheng yi ruogan wenti tansuo” 岐山新出 匜若干問題探索, *Wenwu* 241 (1976): 40-44. Photographs of the vessel can be found in *Zhongguo shehui kexueyuan kaogu yanjiusuo* 中國社會科學院考古研究所, *Yin Zhou jinwen jicheng* 殷周金文集成 (Beijing: Zhonghua shuju, 1984), 16: 235-36 [nos. 10285-1 and -2]; see also the explanatory appendix, 59. Transcription, notes,

and translation are found in, *inter alia*, Qin Yonglong 秦永龍, *Xizhou jinwen xuan zhu* 西周金文選注 (Beijing: Beijing shifan daxue chubanshe, 1992), 125-35; and Hong Jiayi 洪家義, *Jinwen xuan zhu yi* 金文選注釋 (Nanjing: Jiangsu jiaoyu chubanshe, 1988), 507-17; it is also discussed and translated in Skosey, 13-16, 380-86.

¹⁶ Zhang Yachu 張亞初 and Liu Yu 劉雨, *Xizhou jinwen guanzhi yanjiu* 西周金文官制研究 (Beijing: Zhonghua shuju, 1986), 10-11, suggest that the “Oxherd” in this inscription is similar to the “Sou ren” 廋人 (Horse trainer) described in the *Zhou li*; *Zhou li zhu shu*, 33.7b [497].

¹⁷ Hong, 515; *Shang shu zheng yi* 尚書正義, 3.14a [40].

¹⁸ “This inscription is but one of several that reflects [*sic*] the internecine struggles among the ruling class”; Skosey, 16; see also Sheng Zhang: 43.

¹⁹ This interpretation is suggested by Li Qixian, “Zai yi”: 126-27.

²⁰ Xie: 75.

²¹ The standard commentaries are all found in the *Li ji zhu shu*.

²² I have been unable to locate further biographical information about Zhang Yi of the Han dynasty.

²³ Fan Ye, *Hou Han shu*, 35.1212:

[Zheng Xuan’s] followers together wrote down Xuan’s answers to his disciples’ questions about the Five Classics; relying on the *Lunyu* 論語 [as example], they created the *Zheng zhi* in eight sections” 門人相與撰玄荅諸弟子問五經，依論語作鄭志八篇。

See also Pi Xirui 皮錫瑞 (1850-1908), *Zheng zhi shu zheng* 鄭志疏證 (Taipei: Shijie shuju, 1982), 2.1b, et passim.

²⁴ Yao Silian 姚思廉 (557-637), *Liang shu* 梁書 (Beijing: Zhonghua shuju, 1973), 50.715; also in Li Yanshou 李延壽 (7th c.), *Nan shi* 南史 (Beijing: Zhonghua shuju, 1975), 49.1222.

²⁵ I understand “the required gifts” as the elided object here, based on the interpretations of Zheng Xuan, et al., discussed later.

²⁶ *Li ji zhu shu*, 3.7a [56]; *Zheng zhi shu zheng*, 11a-b.

²⁷ Ch’ü T’ung-tsu, *Han Social Structure*, 101 writes, “Commoners were traditionally classified in the following order: scholars, farmers, artisans, and merchants”; see also Ch’ü, 101-22.

²⁸ *Zheng zhi shu zheng*, “Zheng ji kao zheng” 鄭記考證, 11a-b; the reconstruction draws from *Li ji zhu shu*, 3.7a [56];

²⁹ *Zhou li zhu shu*, 35.3b-5a [524]; Sun Yirang 孫詒讓 (1848-1908), *Zhou li zheng yi* 周禮正義 (Beijing: Zhonghua shuju, 1987), 66.2771-75. The Eight Discussions are described in the *Han shu* 漢書 “Xing fa zhi” 刑法志; see Ban Gu, *Han shu*, 23.1105-6. A.F.P. Hulsewé, *Remnants of Han Law*, volume 1: Introductory Studies and an Annotated Translation of Chapters 22 and 23 of the History of the Former Han Dynasty (Leiden: E.J. Brill, 1955), 342-43 calls them the “Eight Deliberations,” and translates their descriptions from the “Xing fa zhi.”

³⁰ Fragments of other *Li ji* commentaries, including some that would pre-date Zheng Xuan’s, are collected in Ma Guohan 馬國翰 (1794-1857), ed., *Yuhanshanfang ji yishu* 玉函山房輯佚書 (1889; rpt., Taipei: Wenhai chubanshe, 1967), 879-1146.

³¹ *Li ji zhu shu*, 3.6a [55].

³² *Li ji zhu shu*, 3.6a [55]. I follow Kong Yingda's sub-commentary to understand *yu* 與 as *xu* 許, "to permit"; *Li ji zhu shu*, 3.7a [56].

³³ Michael Loewe, "Bai hu t'ung," in *Early Chinese Texts*, ed. Loewe, 347-56.

³⁴ The translation follows the emendation suggested by Chen Li 陳立 (1809-1869), taking the phrase, "cannot submit" 不得服 as "cannot but submit to punishment" 不得弗服刑也.

³⁵ Chen Li, *Bohu tong shu zheng* 白虎通疏證 (Beijing: Zhonghua shuju, 1994), 9.441-43.

³⁶ The *Wu jing yi yi* is now only encountered as part of its refutation, Zheng Xuan's *Bo Wu jing yi yi* 駁五經異義, itself a reconstructed work. See Pi Xirui, *Bo Wu jing yi yi shu zheng* 駁五經異義疏證, in Ma Xiaomei 馬小梅, ed., *Guoxue ji yao chubian shi zhong* 國學集要初編十種 (Taipei: Wenhai chubanshe, 1968), 10.25b [466], discussed 10.25b-27b [466-70]. The reconstruction of this passage is based on a citation in Li Fang 李昉 (925-996), et al., *Taiping yulan* 太平御覽 (Song woodblock; rpt. Taipei: Taiwan Shangwu yinshuguan, 1968), 539.8a [2575]. Zheng Xuan's refutation of this argument is not extant.

³⁷ For example, in the "Da zong bo" 大宗伯 chapter of the *Zhou li*, it records,

The ruler bears [as ceremonial gifts] skins and rolled silks; the high minister bears the lamb; the grandee bears the goose; the clerisy bears the pheasant; the ordinary people bear the duck, and craftsmen and merchants bear the fowl" 孤執皮帛, 卿執羔, 大夫執鴈, 士執雉, 庶人執鵲, 工商執雞.

Zhou li zhu shu, 18.23a [281]. For other examples, see *Zhou li zhu shu*, 30.16b [461]; *Li ji zhu shu*, 5.25a [101], etc.

³⁸ *Zhouyi zheng yi*, 5.22b [113]; transl. Edward L. Shaughnessy, *I Ching: The Classic of Changes* (New York: Ballantine Books, 1996), 149.

³⁹ *Bo Wu jing yi yi zhu shu*, 4.19b-20a [144-45], discussed 4.19b-21b [144-48]. The reconstructed text draws on quotations found in the *Li ji zhu shu*, 3.7b [56].

⁴⁰ Cf. Gao Heng, *Zhouyi dazhuan jin zhu* 周易大傳今注 (Ji'nan: Qi Lu shushe, 1998), 315.

⁴¹ I take *shi* 氏 here as indication of a title; cf. *Ci yuan*, s.v., "*shi*."

⁴² *Bo Wu jing yi yi shu zheng*, 4.20a [145].

⁴³ The *Zhou li* passage lays out lighter fetters for holders of noble rank as well as a separate execution ground, but does not suggest that they be spared punishment:

The jailor is responsible for defending against robbers and thieves, and for all the incarcerated. [Those accused of] high crimes are cuffed (*gu* 梏), manacled (*gong* 拏), and shackled (*zhi* 桎); for middle crimes, they are cuffed and shackled; for low crimes, they are shackled. Those of the same clan as the king [receive only] cuffs and those of rank [only] shackles, in which they await the judgment of their crimes. When it comes to punishment by death, [the jailor] reports the punishment to the king. When [the criminal] is sent up and arrives at court, for the clerisy, he applies explanatory cuffs [with the crime written on them], and takes [the criminal wearing these] to the market and executes him. All with rank are of the same clan as the king and are sent up and go to the master of the hinterland to await punishment by execution.

掌 囚掌守盜賊凡囚者。上罪梏而桎，中罪桎梏，下罪梏，王之同族桎，有爵者桎，以待弊罪。及刑殺，告刑于王，奉而適朝，士加明梏，以適市而刑殺之，凡有爵者，與王之同族，奉而適甸師氏以待刑殺。

See *Zhou li zhu shu*, 36.12b [544]; *Zhou li zheng yi*, 69.2872-75.

⁴⁴ *Li ji zhu shu*, 10.12a-b [191].

⁴⁵ The *Gongyang zhuan* text reads,

[The state of] Jin 晉 exiled the grandee Xu Jiafu 胥甲父 in Wei 衛. What does it mean to exile? It is like saying: Do not leave this [place]. Why, then, is it said [in the text]? It was nearly proper. How was this nearly proper? In antiquity, after a grandee left [his position], he awaited exile for three years. It was wrong for the lord to exile him, but it was proper for the grandee to await exile. 晉放其大夫胥甲父于衛。放之者何。猶曰無去是云爾。然則何言爾。近正也。此其爲近正奈何。古者大夫已去三年待放。君放之非也，大夫待放正也。

Chunqiu Gongyang zhuan, 15.2b-3b [187-88]; translation after Li Zongtong 李宗侗, *Chunqiu Gongyang zhuan jin zhu jin yi* 春秋公羊傳今注今譯, rev. ed. (Taipei: Shangwu yinshuguan, 1994), 312-13.

⁴⁶ Reading *fuzhu* 復屬 as “to re-connect,” following Yan Shigu’s 顏師古 (581-645) commentaries on this binome, found in *Han shu*, 23.1098 and 51.2370, where he glosses *zhu* in this usage as *lian* 聯 and *lian* 連, respectively, both of which mean, “to link; to connect.”

The advisability of hesitating to inflict irrevocable punishment, which could inadvertently fall upon the person of a worthy, is obliquely reflected the famous story of Mr. He’s jade. There, the protagonist—Mr. He—suffers amputation of his feet at the hands of two kings, who falsely believe him to be presenting a mere rock to the throne as a jade. Only when Mr. He cries himself out of tears and begins to weep blood—not for the punishment, but for the injustice of it—does the king have the stone thoroughly inspected, revealing true jade. His feet, however, are just a memory. See Wang Xianshen, *Han Feizi jijie*, 4.95. In a time when punishment often meant permanent harm to the body, an improper punishment was a serious matter, particularly when the victim was a worthy. On the one hand, the king would deprive himself the service of this worthy. On the other, to build up a number of talented and bitter enemies within the state could hardly have contributed positively to the stability of the state.

⁴⁷ See *Chunqiu Gongyang zhuan*, 15.2b-3b [187-88]; the quotation is on 15.3b [188].

⁴⁸ This story is recorded with variation in *Shi ji*, 47.1926; Liu Xiang 劉向 (ca. 77 – ca. 6 BC), *Shuo yuan* 說苑, *Sbby*, 13.1b-2a; Zhao Shanyi 趙善詒, *Shuo yuan shu zheng* 說苑疏證 (Taipei: Wen shi zhe chubanshe, 1986), 13.346-8; Kongzi jiayu 孔子家語, *Sbby*, 5.9b-10a; Sun Zhizu 孫志祖 (1737-1801), *Jia yu shu zheng* 家語疏證 (woodblock; rpt. Taipei: Guangwen shuju, 1975), 3.9b [102] and *Kongcongzi* 孔叢子, *Sbby*, 2.3b. In his commentary on the *Sanguo zhi* 三國志, Pei Songzhi 裴松之 (372-451) quotes a version from Liu Xiang’s *Xin xu* 新序, which is not found in the extant

version of this work; see Chen Shou 陳壽 (233-297), *Sanguo zhi* (Beijing: Zhonghua shuju, 1959), 613-14.

⁴⁹ This text is from the *Shuo yuan* version, *Sbby*, 13.2a.

⁵⁰ *Bo Wu jing yi yi shu zheng*, 4.20b-21b [146-48]; see also, e.g., Chen Li, *Bohu tong shu zheng*, 9.442; Qi Yuzhang, *Jiazi Xin shu jiao shi*, 2.246-47. The issues and difficulties of dealing with the New Text / Old Text dichotomy have been explored, *inter alia*, by Michael Nylan, “The *chin wen* / *ku wen* Controversy in Han Times,” *T’oung Pao* 80 (1994): 83-145.

⁵¹ Xie: 74-77, especially 76. Xie cites Jia Yi as an example of this misinterpretation.

⁵² Pines, “Disputers”: 30, “These definitions, just like the categorical statement that ‘ritual does not descend to the commoners,’ are certainly rhetorical exaggerations, but they indicate the unique position of *li* as predominantly a feature of the elite.”

⁵³ This is proposed by Li Qiqian, “Zai yi”: 133.

⁵⁴ *Li ji zhu shu*, 3.6a-8a [55-6].

⁵⁵ Yang Zhigang “‘Li xia shu min’ de lishi kaocha”: 119.

⁵⁶ Li Hengmei 李衡梅 and Lü Shaogang 呂紹綱, “‘Xing bu shang dafu’ de zhendi hezai?” “刑不上大夫”的真諦何在? *Shixue jikan* 1 (1982): 20-23; Li Hengmei 李衡梅, “‘Xing bu shang dafu’ zhi ‘xing’ wei ‘rouxing’ shuo bu zheng” “刑不上大夫”之“刑”爲“肉刑”補證 in *Xianqin shi lunji (xu)* 先秦史論集(續) (Ji’nan: Lu Qi shushe, 2003), 250-52.

⁵⁷ Li Hengmei, “Bu zheng,” 251 cites Jia Yi’s interpretation in support of his argument.

⁵⁸ Li Qiqian, “Zai yi”: 126-136. In support of taking *xing* 刑 as referring specifically to castration, Li Qiqian, “Zai yi”: 135 cites a line from the “Shuo shan xun” 說山訓 chapter of the *Huainanzi*, “Those held in prisons are without illness; those whose punishment is death are fat and glossy; and many of the castrated (*xing*) are long-lived; because their hearts are without accumulation” 執獄牢者無病, 罪當死者肥澤, 刑者多壽, 心無累也. Gao You 高誘 (ca. 168-212) says that “Those castrated are the palace men” 刑者, 宮人也, i.e., eunuchs. See He Ning 何寧, *Huainanzi ji shi* 淮南子集釋 (Beijing: Zhonghua shuju, 1998), 16.1115. Though Li does not mention it, *xing* 刑 was already in Tang times interpreted as someone who had been castrated. In his commentary on the *Guliang zhuan* passage mentioned above, Yang Shixun 楊士勛 (Tang) says that the gate guard (*hun*)—the punished person to whom Wuzi was close—had been, “Subjected to punishment and had his posterity cut off, and was without the meeting of *yin* and *yang*” 虧刑絕嗣無陰陽之會—i.e., he had been castrated; *Chunqiu Guliang zhuan zhu shu*, 16.11b [161].

⁵⁹ Lü Simian, *Lü Simian du shi zha ji*, 341.

⁶⁰ The *Li ji* writes *dianren* 甸人 here, which is another term for the office that the *Zhou li* calls *dianshi* 甸師, master of the hinterland. See *Ci yuan* 辭源, s.v., “*dianren*.”

⁶¹ *Li ji zhu shu*, 20.22a-23b [401-2]. Zheng Xuan says, “To hang and kill someone is called *qing* 磬 縣縊殺之曰磬. He also says that *xian/jian/qian* 纖 is read here as *jian* 纖, “to stab.” *Tuan* 剗 means “to cut off” (*ge* 割), and *gao* 告 is understood as *ju* 鞠, as in the sense of “to try a case” (*ju yu* 鞠獄).

⁶² *Li ji zhu shu*, 20.26a [403].

⁶³ *Jiazi Xin shu jiao shi*, 2.241-282; *Xin shu jiao zhu*, 2.79-90.

⁶⁴ *Jiazi Xin shu jiao shi*, 2.267; *Xin shu jiao zhu*, 2.81. The same line is found in the *Han shu*, 48.2257, but substituting “grandeess” (*dafu* 大夫) for “lordlings” (*junzi* 君子).

⁶⁵ Cf. Yang Zhigang: 121-23.

⁶⁶ The following discussion draws from Wang Xingguo, *Jia Yi ping zhuan*, 93-99.

⁶⁷ “Hierarchical grades” is *lie deng* 列等. *Lie* is defined in the “Guang gu” 廣詁 section of the *Xiao Er ya* 小爾雅 as “ranking” (列次也); see Hu Chenggong 胡承珙 (1776-1832), *Xiao Er ya yi zheng* 小爾雅義證, *Sbby*, 1.11b. In the “Zhou yu zhong” 周語中 chapter of the *Guo yu*, there is the line, “The Di are without ranking in the kingly chamber” 夫狄無列於王室; Wei Zhao says, “*Lie* means positional ranking” 列位次也; see *Guo yu*, *Sbby*, 2.3a. The Tan, Li, and Hu editions reverse *lie deng* to give *deng lie*; this is also found in the parallel line from Jia Yi’s biography in the *Han shu*, 48.2254. As Qi Yuzhang points out, the two variants have the same meaning.

⁶⁸ Cf. “Guo Qin lun xia”:

The first kings knew the harm to the state that comes from being blocked off [from information]. Therefore, they established dukes, high officials, grandeess, and the clerisy, in order to enact the law and set up punishments, and the realm was ordered. 先王知 壅蔽之傷國也, 故置公卿大夫士, 以飾法設刑, 而天下治.

Jiazi Xin shu jiao shi, 1.70; *Xin shu jiao zhu*, 1.16; *Shi ji*, 6.278.

⁶⁹ Cf. “Wen wang shi zi” 文王世子, *Li ji zhu shu*, 30.27b-30b [404-05]: “

The king then commanded [the creation of] dukes, marquises, earls, viscounts, barons, and the many officers, saying, “Go back and nurture the old and young as in the Eastern Lycee, and finish them with humaneness.” 王乃命公侯伯子男及羣吏, 曰, 反養老幼于東序, 終之以仁也.

“*Guanshi*” 官師, “officers,” are the leaders of each type of official. See the “Ji fa” 祭法 chapter of the *Li ji*: “For the *guanshi*, one temple” 官師一廟; Kong Yingda comments, “*Guanshi* means the leader of one [type of] official” 官師者言爲一官之長也; *Li ji zhu shu*, 46.8b-10a [799-800].

⁷⁰ The *Han shu*, 48.2254 has a slight variant for the line, “...extended to reach the ordinary people” 施及庶人, writing *yan* 延 for *shi* 施. The two words would then be taken to have the same meaning. This reading can also be found in the “Yue ji” 樂記 chapter of the *Li ji*, where Zheng Xuan comments on a citation of the line from the *Shi* 詩 poem “Huang yi” 皇矣 (Mao #241), “Extended to descendents” 施於孫子, saying, “*Shi* means *yan*” 施...延也; see *Li ji zhu shu*, 39.2a-b [691]; *Maoshi zheng yi*, 6-4.8a [570].

⁷¹ *Jiazi Xin shu jiao shi*, 2.241; *Xin shu jiao zhu*, 2.80.

⁷² The *Han shu*, 48.2254 version of the text has *qi qi* 其器 where the *Xin shu* text has *qi ye* 器也.

⁷³ The Lu edition emends *zhu di* 主帝, “lord and emperor,” to *zhu shang* 主上, “lord and sovereign,” arguing that the original text is in error. The parallel text in the *Han shu*, 48.2254 has only *zhu* and elides the locative particle *yu* 於. I follow Qi Yuzhang and the Jian, Tan, Li, Zihui, Hu, and Cheng editions to retain *zhu di*. The same expression is found also in the “Nie chan zi” 孽產子 chapter of the *Xin shu*, which suggests that it is not foreign to Jia Yi’s writings; see *Jiazi Xin shu jiao shi*, 3.335; *Xin shu jiao zhu*, 3.107.

⁷⁴ The received text has *lianchi* 廉恥 here, while Lu Wenchao has *lianchou* 廉醜. The words *chi* and *chou* presumably were similar in pronunciation in Han times, and at any rate both could be used in the meaning of “shame; sense of shame.” For example, in the “Qin ce” 秦策 section of Liu Xiang’s *Zhanguoce*, *Sbby*, 7.8b, there is the line, “Each of these four knights bore opprobrium and shame” 此四士者皆有詬醜. In his commentary on this line, Gao You uses *chi* to gloss *chou*, “shame.” Their interchangeability is further reflected in a parallel line from the *Zhanguoce* and the *Xin xu*, also attributed to Liu Xiang. Both contain the line, “...In order to wash away the shame of the previous king,” written 以雪先王之, ending with 恥 and 醜, respectively; see *Zhanguoce*, *Sbby*, 29.7b and Shi Guangying 石光瑛, *Xin xu jiao shi* 新序校釋 (Beijing: Zhonghua shuju, 2001), 3.334.

⁷⁵ *Cisi* 賜死 is a formulaic expression that literally means “granting death”; it has been used since pre-Han times to refer to suicide at the command of the sovereign; cf. *Hanyu da cidian*, s.v., “*cisi*,” and see, e.g., the passage of the *Yanzi chunqiu* 晏子春秋 entitled “Jinggong yinjiu qi ri bu na Xian Zhang zhi yan, Yanzi jian di si” 景公飲酒七日不納弦章之言晏子諫第四, in Wu Zeyu 吳則虞, *Yanzi chunqiu jishi* 晏子春秋集釋 (Beijing: Zhonghua shuju, 1962), 1.11-12:

Duke Jing 景 drank beer for seven days and seven nights without cease. Xian Zhang 弦章 remonstrated, saying, ‘Milord wishes to drink beer for seven days and seven nights. I want milord to forsake beer. Otherwise, I will [request that I be] granted death [by suicide]’ 景公飲酒，七日七夜不止。弦章諫曰，“君欲飲酒七日七夜，章願君廢酒也！不然，章賜死。”

⁷⁶ The binome *luru* 褻辱 is “humiliation of punishment,” also found in the “Ba jing” chapter of the *Han Feizi*, cited above. *Luru* can sometimes refer to corporal punishments exclusively, but its juxtaposition with “granting of death” here suggests that Jia Yi would include execution by torture.

The *Xin shu* text has *lu* written 褻, though *luru* is often written 戮辱. These two homophonous graphs are interchangeable; see Gao Heng, *Guzi tongjia huidian*, 749.

⁷⁷ *Jiazi Xin shu jiao shi*, 2.244; *Xin shu jiao zhu*, 2.80.

⁷⁸ The most famous enunciation of such ideas is probably *Lunyu* 2/3, which reports Kongzi to have said,

If you lead them by means of government (i.e., law) and organize them by means of punishment, the people will avoid [these] but lack a sense of shame. If you lead them by means of virtue and organize them by means of ritual, they

will both have a sense of shame and be submissive. 道之以政, 齊之以刑, 民免而無恥. 道之以德, 齊之以禮, 有恥且格.

Lunyu zhushu, 2.1b [16]; translation after Yang Bojun, *Lunyu yi zhu*, 12. E. Bruce Brooks and A. Taeko Brooks, *The Original Analects*, 110 date this passage to 317 BC, more than a century before Jia Yi was born.

⁷⁹ From “Jie ji,” *Jiazi Xin shu jiao shi*, 2.244; *Xin shu jiao zhu*, 2.80.

⁸⁰ From “Jie ji,” *Jiazi Xin shu jiao shi*, 2.244; *Xin shu jiao zhu*, 2.80.

⁸¹ *Jiazi Xin shu jiao shi*, 2.253; *Xin shu jiao zhu*, 2.80.

⁸² “Favored ministers” (*chongchen* 寵臣) probably refers only to the ministers whom the lord values. Wang Xianqian, *Han shu bu zhu* 漢書補注 (Shanghai: Tongwen tushuguan, 1916), 48.15b, quotes Zhou Shouchang 周壽昌 (1814-44):

Chongchen refers not to the likes of mighty vassals or favorites. *Shuo wen* [*Shuo wen jie zi zhu*, 7A.340]: “*Chong* means in a revered position.” Another says, “[*Chong*] means cherished, treated with kindness.” The *Yi* 易 [*Zhouyi zheng yi*, 2.9b [36]]: “Bearing heaven’s favor.” *Shu* 書 [*Shangshu zheng yi*, 18.8a [272]]: “When dwelling in favor, think of peril.” *Zuo zhuan* [4th year of Duke Yin 隱公; *Chunqiu Zuo zhuan zheng yi*, 3.17a [57]]: “Duke Huan of Chen presently has the favor of the king.” Each of these is this meaning. It probably means a minister who is esteemed and cherished by the lord. 寵臣非偉臣嬖臣之比. 說文, 寵, 尊居也. 一曰: 愛也, 恩也. 易, 承天寵也. 書, 居寵思危. 左傳, 陳桓公方有寵於王. 皆是. 蓋為君所貴愛之臣也.

⁸³ *Yuan* 遠, read in the fourth tone, as suggested by Yan Shigu’s definition of the word as “to depart from” 離也; see *Han shu*, 48.2255.

⁸⁴ Liu Shippei, *Jiazi Xin shu jiao bu*, 1.6a, would emend the text *qunchen* 群臣, literally “flock of ministers,” to match the *Han shu* text, which has *dachen* 大臣, “great ministers.” Liu argues that this text matches better the subsequent references to kings, feudal lords and the Three Excellencies. As Qi points out, *qunchen* matches this meaning just as well and there is no need for an emendation.

⁸⁵ The graph usually pronounced *ti* 體, “body; form,” is here written for *li* 禮, “ritual; the rites.” Qi notes that these two graphs were interchangeable in ancient times. For example, in the *Shi* ode “Gu feng” 谷風 (Mao #35), there is the line, “Without regard to the lower part” 無以下體; see *Mao shi zheng yi* 2B.10b [89], transl. Bernhard Karlgren, *The Book of Odes: Chinese Text, Transcription and Translation* (Stockholm: Museum of Far Eastern Antiquities, 1950), no. 35 [20]. This same line of poetry is written with the graph *li* in the *Han Shi wai zhuan* 韓詩外傳, *Sbck*, 9.80. Cf. Gao Heng, *Guzi tongjia huidian*, 543.

⁸⁶ *Jiazi Xin shu jiao shi*, 2.253; *Xin shu jiao zhu*, 2.80.

⁸⁷ *Jiazi Xin shu jiao shi*, 2.253; *Xin shu jiao zhu*, 2.81.

⁸⁸ I have followed Qi’s proposed emendation here; the received text reverses the graphs *chong* 寵, “to favor,” and *jing* 敬, “to reverence.” While it does seem possible that the emperor’s attitude toward his favored ministers could be described as one of “reverence,” the people seem unlikely to be in a position to “favor” them.

⁸⁹ The Tan, Li, Hu, and Cheng editions, like the *Han shu*, 48.2256, insert the graph *ru* 如, “like, resembling,” here.

⁹⁰ *Jiazi Xin shu jiao shi*, 2.253; *Xin shu jiao zhu*, 2.81.

⁹¹ In the first chapter, I mention this same idea in a slightly different context; see Nivison, “The Paradox of ‘Virtue,’” in *The Ways of Confucianism*, 31-43 and my references in chapter one.

⁹² *Jiazi Xin shu jiao shi*, 8.975; *Xin shu jiao zhu*, 8.327.

⁹³ Qi Yuzhang, *Jiazi Xin shu jiao shi*, 8.976, note 3, suggests this interpretation by drawing a parallel to a line in the “Xin shu shang” 心術上 chapter of the *Guanzi*, *Sbby*, 13.4a:

Ritual is that which relies on the intrinsic situation of people, follows the pattern-lines of duty, and makes moderation and patterning for them. Accordingly, ritual is said to have pattern-lines” 禮者，因人之情，緣義之理，而爲之節文者也。故禮者謂有理也。

⁹⁴ The phrase *ci wu bi zhi* 此物比志 has given rise to a variety of interpretations, all fairly similar. The textual variants are few and consist only of variance in sequence rather than differing graphs: the Zihui and Cheng editions have *bi wu bi zhi* 比物比志; the Lu edition has *bi wu ci zhi* 比物此志; the *Han shu* has *bi wu ci zhi* 比物此志.

My interpretation, reflected in the translation, is a departure from the opinions of Yan Shigu and Qi Yuzhang. The opinions of these important exegetes are not to be dismissed lightly, and are discussed at length below. The interpretation I have follows the opinion offered by Zhong Xia, who says, “I suspect this means to compare this thing (i.e., the wall like metal) to the will [of the vassals]. *Bi* means ‘compare.’ *Zhi* means ‘intention’” 疑謂以此物（即金城）比志也。比，謂比方。志，謂意；see Yan and Xia, 90, note 74. This more or less matches the opinion of Ru Chun 如淳 (ca. 3rd c.), cited in the *Han shu*, 48.2259: “*Bi* 比 means ‘compare’; if [the ruler] causes to have the intention to die for the [temples to the] tutelary spirits, they compare to (*bi*) a metal wall” 比謂比方也。使忠臣以死社稷之志，比於金城也。 The advantage of this reading is its evident simplicity. Word for word, it would be, “This thing (i.e., the metal wall) compares to [their] will”; in other words, “the wall is a metaphor for the will of the vassals.”

Yan Shigu, *Han shu*, 48.2259 explicitly refutes Ru Chun, and says instead,

This says that if the sage person (i.e., the ruler) encourages these, moderation and [proper] praxis, and directs his group of subordinates with them, then the others will all join their strength and unite their hearts. And the state and [ruling] household will be stable, firm, and undestroyable. The situation will be as if [it were surrounded by] a metal wall. 此言聖人厲此節行，以御群下，則人皆懷德，勦力同心，國家安固不可毀，狀若金城也。

Wang Xianqian, *Han shu bu zhu*, 48.17a, expands and revises Yan’s explanation. He defines *wu* as “type, resemble” (*lei* 類). This definition is found in many places, e.g., Du Yu’s gloss at *Zuo zhuan zheng yi*, 6.25b [114]. Wang Xianqian glosses *zhi* as “idea, intention” (*yi* 意); he cites, *inter alia*, the *Guang ya*, which glosses *yi* as *zhi* in

two places; see Wang Niansun, *Guang ya shu zheng*, 3A.1b [73] and 5A.11a [139]. As Wang Xianqian says,

This means that each of the vassals will go all the way to death for duty, and they will then be an unshakeable base for the state. The saying, ‘The sage has a wall like metal’ matches this intention exactly.” 言臣各效死取義則爲國家不拔之基。聖人有金城之語正比類此意也。

Qi thinks that Yan Shigu is the only commentator to catch the true purport of this phrase. However, since the *Xin shu* text is different from that of the *Han shu* version, Qi offers a detailed explanation that is somewhat different from that of Yan Shigu. He always offers an expanded explanation for the *Han shu* version, saying that both can be understood.

Regarding the *Xin shu* version, Qi, 2.281, says that “*wu* is like type” 物猶類也。He glosses *bi* 比 as “united and together” 比齊同也。In support of this construal, he cites a line from the *Shi* poem “Liu yue” 六月 (Mao #177), “Match the four chargers” 比物四驪, in reference to which Lu Deming gives precisely this gloss; *Maoshi zheng yi*, 12.4a [358]; see also Cheng Junying and Jiang Jianyuan, *Shijing zhu xi*, 500. Thus, Qi derives his reading for the line as it appears in the *Xin shu*: “‘*Shengren you jin chen*’ means that the sage king’s possession of a firmness like that of a metal wall lies in his subordinate ministers’ having this type of united will” 聖人有金城者言聖王之有金城之固者，乃在臣下有此類齊同之志也。Finally, Qi formulates a separate explanation for the different word order in the *Han shu* version (比物此志), taking the phrase *bi wu* 比物 to mean, “to match type(s)” 比類。

⁹⁵ All *Xin shu* editions have the particle 夫 *fu* here, though parallelism suggests this position should be occupied by *bi* 彼, “that, the other.” Yan Shigu, *Han shu*, 48.2259, note 26 says, “*Fu* is *furen* 夫人, for its part like *biren* 彼人 (the other person)” 夫, 夫人也。夫人也, 亦猶彼人耳。Qi agrees that *fu* can have the same meaning as *bi*, and cites as example a line from the “Jin yu yi” 晉語一 chapter of the *Guo yu*, Sbby, 7.9b: “Now those take you as a Zhou” 今夫以君爲紂, in which *fu* means “those, the other.” Nevertheless, Qi argues on the basis of parallelism that *fu* here is a graphic error.

⁹⁶ *Jiazi Xin shu jiao shi*, 2.277; *Xin shu jiao zhu*, 2.82.

⁹⁷ This is from the poem “Mu gua” 木瓜 (Mao #64), *Maoshi zheng yi*, 3-3.15b-16b [141].

⁹⁸ *Jiazi Xin shu jiao shi*, 6.685; *Xin shu jiao zhu*, 6.215.

⁹⁹ From “Jie ji,” *Jiazi Xin shu jiao shi*, 2.262; *Xin shu jiao zhu*, 2.81: “Those who are entrusted with material goods, and positions and tasks are gathered in the subordinate group” 所托財器職業者, 率[=萃]於群下也。

¹⁰⁰ *Jiazi Xin shu jiao shi*, 2.258. The story of Yu Rang is also found in the *Zhanguoce*, Sbby, 18.4b-17b, and in *Shi ji*, 86.2519-21. It story is also mentioned in the *Lü shi chunqiu*; see Chen Qiyu, *Lü shi chunqiu xin jiao shi*, 12.647, 12.655, 20.1331-32; as well as in *Shuo yuan*, see *Shuo yuan shu zheng*, 6.148-151.

¹⁰¹ *Jiazi Xin shu jiao shi*, 2.258.

¹⁰² “Jie ji,” *Jiazi Xin shu jiao shi*, 2.269-70; *Xin shu jiao zhu*, 2.81-82:

Thus, for one in the situation of great blame or great interrogation: Upon hearing of the blame or interrogation, he put on a white hat with hair straps, took a pan of water and a sword and went to the Qing Chamber to request his punishment. The sovereign did not cause him to walk bound in fetters and led by a rope. 故其在大譴大何之域者，聞譴何則白冠釐纓，盤水加劒，造請室而請其罪爾。上弗使執縛係引而行也。

Although Jia Yi is describing the past here, he is also implicitly promising the same result if that system should be “re-”instituted.

¹⁰³ “Jie ji,” *Jiazi Xin shu jiao shi*, 2.270; *Xin shu jiao zhu*, 2.82:

If, when the sovereign has established incorruptibility, a sense of shame, the rites, and righteousness, and treated his vassals with these [as described], the vassals do not repay the sovereign with moderation and [proper] praxis, they are not of humankind. 上設廉恥禮義，以遇其臣，而群臣不以節行而報其上者，即非人類也。

¹⁰⁴ In *Han shu*, 38.2259, note 27 Ying Shao says,

[Jia Yi] speaks of one that thinks of the lord and forgets himself, who concerns himself with the state and forgets his household. [Someone] like this can be entrusted with the ‘handles’ of power, and does not need to be further regulated” 言念主忘身，憂國忘家，如此可託權柄，不須復制御。

¹⁰⁵ Five *chi* is about three feet nine inches. Cf. *Lunyu* 8/6:

Zengzi said, “He can be trusted with the orphan of six *chi*; he can be entrusted with the command of a hundred *li*; and when he faces an important juncture, it will not be snatched. Is he a lordling man? He is a lordling man.” 曾子曰，可以託六尺之孤，可以寄百里之命，臨大節而不可奪也。君子人與。君子人也。

See *Lunyu zhushu*, 8.3b [71]; transl. after Yang Bojun, *Lunyu yi zhu*, 80.

There are some textual variants for this line, though none of great semantic significance. The Zihui edition and *Han shu* version write *ji* 寄 for *tuo* 託; both can mean “entrust.” The Cheng edition and *Han shu* write *liu chi* 六尺, “six *chi*” (about four and a half feet) where the *Xin shu* text has *wu chi* 五尺, “five *chi*”; this emendation is presumably to follow the *Lun yu* text.

¹⁰⁶ *Jiazi Xin shu jiao shi*, 2.277; *Xin shu jiao zhu*, 2.82.

¹⁰⁷ The *Han shu* 48.2258 version of this line inserts the graph *jiu* 久, “(for a) long time,” which would give the line, “But we do not do this, and instead have long turned to *those* actions.”

Yan Shigu comments, *Han shu*, 48.2260:

Gu 顧 means ‘on the contrary’; *jiu* means to have done something for a long time. This means: How can we not make laws that ‘worry about the vessels when throwing things at rats,’ and instead long carry out matters without

levels and grades” 顧，反也。久謂久行之也。言何不爲投鼠忌器之法，而反久行無陸級之事。

Wang Xianqian, *Han shu bu zhu*, 48.17b, quotes Hu Sanxing 胡三省 (1230-1302), who says, “‘This’ (*ci* 此) refers to treating the vassals with ritual, duty, incorruptibility, and a sense of shame; ‘that’ (*bi* 彼) refers to executing and humiliating esteemed vassals” 此謂以禮義廉恥遇其臣，彼謂戮辱貴臣；Hu’s commentary is from Sima Guang, *Zizhi tongjian*, 14.479.

¹⁰⁸ *Jiazi Xin shu jiao shi*, 2.277; *Xin shu jiao zhu*, 2.82.

¹⁰⁹ In this interpretation, I am influenced by Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin: Duncker & Humblot, 1922), particularly his idea of the “exception” (*Ausnahmezustand*) that proves supremacy.

¹¹⁰ *Jiazi Xin shu jiao shi*, 2.249.

¹¹¹ Wangyi Palace was located in present-day Shaanxi, overlooking the River Jing 涇水. Depictions of Ershi’s death vary, though the eunuch Zhao Gao is always blamed. The *Shi ji*, for example, describes how Ershi was forced to commit suicide by Yan Le and his troops, acting on the order of Zhao Gao; this is the “incident” mentioned here. On the other hand, the *Shi ji* also quotes Ershi’s successor Ziying 子嬰 (reg. 207), who says, “Chancellor Gao killed Ershi at Wangyi Palace” 丞相高殺二世望夷宮; see *Shi ji*, 6.273-76. Ru Chun explains,

To decide a crime is called *dang* 當 (‘to convict’). Yan Le killed Ershi at the Wangyi Palace, at root, because the Qin system did not have the custom of [reverent] avoidance of superiors. 決罪曰當。閻樂殺二世於望夷宮，本由秦制無忌上之風也。

Han shu, 48.2256, note 11.

¹¹² *Zizhi tongjian*, 1.25-53, 8.278-80, 8.293-94; *Shi ji*, 6.274-75. See also above.

¹¹³ “Guo Qin lun zhong,” *Jiazi Xin shu jiao shi*, 1.45; *Xin shu jiao zhu*, 1.14: “Suppose that Ershi had had the praxis of [even] a mediocre lord...” 嚮使二世有庸主之行。

¹¹⁴ Yan Shigu says, “Read *ai* 艾 as *yi* 刈 (to cut)” 艾讀曰刈; see *Han shu*, 48.2251; this phonetic substitution is seen elsewhere as well, see Gao Heng, *Guzi tongjia huidian*, 613-14. *Cao* 草 is *Heteropogon contortus*, grass; see Frederick Porter Smith, *Chinese Materia Medica: Vegetable Kingdom*, revised by G.A. Stuart, second revised edition by Ph. Daven Wei (1911; rpt. Taipei: Ku T’ing Book House, 1969), 205. *Jian* 菅 is *Themeda gigantea*, another kind of grass; see Bernard E. Read, *Chinese Medicinal Plants from the Pen Ts’ao Kang Mu A.D. 1596* (1936; rpt. Taipei: Southern Materials Center, 1982), no. 762 [253]. If *ai* is not read as a loan graph, it means *Artemesia vulgaris*, mugwort; see Smith, Stuart, and Wei, 52.

¹¹⁵ The received text of the *Xin shu* has *ji dao* 集道 here; Qi suggests following the Zihui, Cheng, and Lu editions take it as *xi dao* 習道, “accustomed and led.”

¹¹⁶ *Jiazi Xin shu jiao shi*, 5.621; *Xin shu jiao zhu*, 5.185.

¹¹⁷ Wang Xingguo, 93. *Han shu*, 48.2260 mentions that Jia Yi wrote against the dishonorable treatment afforded Zhou Bo, but does not mention the name of the piece. In terms of content, however, “Jie ji” fits the description perfectly.

¹¹⁸ The incidents of Zhou Bo’s life are summarized from his biography in *Shi ji*, 57.2065-2073.

¹¹⁹ Wei Shou 魏收 (506-572), *Wei shu* 魏書 (Beijing: Zhonghua shuju, 1974), 62.1387; found also in Li Yanshou 李延壽 (7th c.), *Bei shi* 北史 (Beijing: Zhonghua shuju, 1974), 40.1456.

¹²⁰ The received text for this line is as here, and Liu Shipai, 1.6a-b, supports keeping this version. The *Han shu* and the Tan, Li, and Hu editions elide the *xia* 下, “beneath, below,” and Qi Yuzhang would emend to follow them.

¹²¹ “Close” is *po* 迫, which word often means “to force, press, compel.” This usage is also found in the “Wang zheng” 亡徵 chapter of the *Han Fei zi*, which contains the phrase, “those that ... humiliate those states close to them” 侮所迫之國者; see *Han Feizi jijie*, 15.110.

¹²² Cf. also from “Jie ji,” *Jiazi Xin shu jiao shi*, 2.253; *Xin shu jiao zhu*, 2.81:

For any that the Son of Heaven has once favored, and that the populace has once respected: How could it be proper for a lowly person to get to treat them thus, making them kowtow and humiliating them? 夫天子之所嘗寵，眾庶之所嘗敬，死而死爾，賤人安宜得此而頓辱之哉。

¹²³ *Han shu*, 48.2260.

¹²⁴ According to the standard histories, the direct instigation for Emperor Wen’s decision to abolish mutilating punishments was the letter written by Chunyu Tiying 淳于緹縈, daughter of Chunyu Yi 淳于意. Chunyu Yi had been sentenced to punishment, and Tiying sent a letter pleading a reprieve. The letter is said to have moved the emperor to pity, and led to doing away with certain mutilating punishments. See *Shi ji*, 10.427-28; *Han shu*, 23.1097-98. Tiying’s letter makes arguments about punishments similar to some of those I have detailed above; this is the text of her letter as preserved in *Shi ji*, 10.427:

My father is an official. All in Qi praise his incorruptibility and fairness. Now he is convicted under the law and ought to receive [mutilating] punishment. I am pained that none who is killed can be restored to life, and that none who is punished can be re-connected. Even if they again desire to correct their errors and begin anew, there is no way for it. I am willing to enter servitude as an government slavegirl, and to thus ransom my father from punishment for his crime and to enable him to start anew. 妾父爲吏，齊中皆稱其廉平，今坐法當刑。妾傷夫死者不可復生，刑者不可復屬，雖復欲改過自新，其道無由也。妾願沒入爲官婢，贖父刑罪，使得自新。

Nevertheless, since “Jie ji” definitely precedes this, and is acknowledged to have persuaded the emperor away from punishing his close vassals, it is reasonable to think that Jia Yi’s persuasion was at least partially responsible. At any rate, the commonplace idea that Emperor Wen lessened punishments is called into question already in the *Han shu*, “Xing fa zhi,” 23.1099.

It should be noted that the dating of the letter and proclamation is not consistent in all sources; the 13th year of Wen's reign (167 BC) seems the most common and best possibility, and is found in the "Wen di ben ji" 文帝本紀 chapter of the *Shi ji*, 10.427-28; in the "Han xing yilai jiang xiang mingchen nianbiao" 漢興以來將相名臣年表, *Shi ji*, 22.1127; in the *Han shu*, "Xing fa zhi," 23.1097-98; and in the *Zizhi tongjian*, 15.495-96. The "Bian Que, Canggong liezhuan" 扁鵲倉公列傳 dates the change to the 4th year of Wen's reign (176 BC); in his commentary, Xu Guang says, "According to the 'Nian biao,' The Filial Wen abolished [mutilating] corporal punishments in the 12th year [of his reign]" 案年表孝文十二年除肉刑; see *Shi ji*, 105.2795. The only extant "Nianbiao" referring to the abatement of corporal punishments is the "Han xing yilai jiang xiang mingchen nianbiao," cited above, which in its extant form dates this to the 13th year of Wen's reign; presumably, either Xu Guang had a bad copy or made a mistake, or the table has been emended to match the information given in other sources. At any rate, the commonplace idea that Emperor Wen lessened punishments is called into question already in the *Han shu*, "Xing fa zhi," 23.1099. It notes that the beatings that replaced the mutilations were so heavy that they were de facto executions, thus actually worse than the original corporal punishments.

¹²⁵ Yu Chuanbo, "Shi lun Jia Yi de sixiang tixi" 試論賈誼的思想體系, *Zhongguo zhexue yanjiu* 中國哲學研究 28 (1987): 47; Wang Xingguo, 98-99 echoes this.

¹²⁶ The *Han shu*, 48.2260 notes that the relaxation of punishments instituted by Emperor Wen lasted only until the time of Emperor Wu 武帝 (reg. 140-87 BC).