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Dong Zhongshu as a Consultant

Few scholars who have engaged in a study of Han times have failed to mention Dong Zhongshu 董仲舒 (traditional dates ca. 179 to ca. 104 BC) as a figure who both affected the development of ideas and took part in dynastic decisions. In doing so they have perforce paid attention to the authenticity of writings that are ascribed to him, in particular the thorny problems that attend the *Chunqiu fanlu* 春秋繁露. Other texts, such as the responses that he gave to imperial rescripts, the memorials or statements of opinion that he submitted, his interpretations of abnormal events and his legal judgements likewise deserve full study. The following pages are concerned with a few fragments that are ascribed to Dong Zhongshu when acting as a consultant after retirement from public life. As will be seen below, they are not without their own problems and they are to be seen only as individual items rather than as parts of a corporate collection.

Denis Twitchett, with whom I had the pleasure of working on and off since 1943, combined an insistence on scholarly accuracy with a demand to place the results of detailed investigation in their appropriate context. In offering the following pages as a tribute to his contributions to Chinese Studies, I am well aware that he would quite correctly have regarded them as a footnote to what should one day be a major assessment, or reassessment, of Dong Zhongshu's influence on public life.

The fragments under study here, see items 1–9, below, purport to record Dong Zhongshu's pronouncements on legal matters, tempered by moral considerations and supported by citations from writings that were held in high esteem. That they survive only from later times and are not seen in documents that are contemporary with Dong need not necessarily detract from their authenticity, and they require study in the context both of what is known of Dong Zhongshu's other writings and of legal documentation of the early empires. This context is provided by evidence of three types; the statements in the histories regarding Dong's activities and compositions as a consultant or lawyer; the entries in bibliographical lists of such works that are ascribed to him; and such records of Han laws that survive, including those of the recently found manuscripts.

The biography of Dong Zhongshu in the *Han shu* gives the following account of his writings:¹

[Dong] Zhongshu's writings, all designed to clarify the intention of the classical works and technical works, and extending to the memorials that he submitted, amounted in total to 123 *pian*. His discussions of the successes and failures in the incidents of the *Chunqiu*, his writings such as *Wenju* 聞學, *Yubei* 玉杯, *Fanlu* 蕃露, *Qingming* 清明, *Zhulin* 竹林² add a further ten *pian*; there are over 100,000 words, all being transmitted to later generations.

In submitting his work entitled *Han yi* 漢儀, in 190 AD, Ying Shao 應劭 (ca. 140 to before 204) pointed to the need for clarity in deciding matters that lay in doubt in public affairs.³

It was for that reason that when, owing to old age and ill health, Dong Zhongshu, chancellor (*xiang* 相) of Jiao[xi]⁴ kingdom had retired, whenever the court had such matters under discussion, they frequently sent Zhang Tang 張湯, superintendent of trials (*tingwei* 廷尉 126–120 BC), to visit him personally in his humble home to enquire where success or failure would lie. Whereupon Dong composed (*zuo* 作) the *Chunqiu jueyu* 春秋決獄 in 232 items, with his answers based on classical writings, and expressed in detail.

Ying Shao then refers to the destruction and loss of documents that took place thanks to the activities of Dong Zhuo 董卓 (190 AD) and to his own literary work to repair the damage. This amounted to 250 *pian*, including items that are named *Jueshi bili* 決事比例 and *Chunqiu duanyu* 春秋斷獄.

These statements leave several questions open. First, whether Zhang Tang was sent to consult Dong on major matters of policy, as is implied, or simply on technical difficulties and doubts in administering the Statutes (*lü* 律) and Ordinances (*ling* 令). Secondly, it may be asked

¹ Ban Gu 班固 (32–92 AD) and others, *Han shu* 漢書 (Beijing: Zhonghua shuju, 1962; hereafter cited as *HS*) 56, pp. 2525–26; Wang Xianqian 王先謙, *Han shu bu zhu* 漢書補注 (Changsha, pref. 1900; rpt. Taipei: Yiwen chubanshe, 1955; Beijing: Zhonghua shuju, 1983; hereafter, *HSBZ*) 56, p. 21a.

² For the relationship of these named chapters and the received *Chunqiu fanlu*, see the notes by Qi Shaonan 齊召南 (1703–68), Cui Bao 崔豹, and Shen Qinhan 沈欽韓 (1775–1832); *HSBZ* 56, p. 21a.

³ Fan Ye 范曄 (398–446), *Hou Han shu* 後漢書, and Liu Zhao 劉昭 (ca. 510), *Xu Han zhi* 續漢志 (Beijing: Zhonghua shuju, 1965; hereafter, *HHS*) 48, p. 1612.

⁴ Corrected from “Jiaodong” by Qian Daxin 錢大昕 (1728–1804); Wang Xianqian 王先謙, *Hou Han shu ji jie* 後漢書集解 (Changsha, pref. 1924; rpt. Taipei: Yiwen chubanshe, 1955; Beijing: Zhonghua shuju, 1983) 48, p. 11b.

how far the 232 items were likewise restricted to legal matters. Thirdly, the interpretation of the titles *Chunqiu jueyu* and *Chunqiu duanyu* is by no means clear; they could mean a straight record of decisions of cases dated in the Chunqiu period; or of cases as stated in the *Chunqiu*; or, as seems to be applicable for some items here, decisions of certain cases on the basis of the *Chunqiu*.⁵ It may also be asked how far Zhang Tang, known for his familiarity with the Statutes and Ordinances and their punishments, and for his rigorous attention to their application, would have been open to influence by a man who upheld the value of traditional writings and invoked the *Chunqiu* to judge criminal charges.

DONG ZHONGSHU'S JUDICIAL DECISIONS: REFERENCES AND COMMENTS

In addition to their entries for the *Chunqiu fanlu*, the bibliographical lists in the Standard Histories include the following titles:

1. *Han shu* 30 ("Yiwen zhi"), p. 1714: 公羊董仲舒治獄十六篇 (under *Chunqiu*)
2. *Sui shu* 32 ("Jingji 1"), p. 930: 春秋決事集一卷董仲舒撰 (under *Chunqiu*)
3. *Ibid.*: 春秋疑論一卷 (under *Chunqiu*)
4. *Ibid.* 35 ("Jingji 4"), p. 1056: 漢膠西相董仲舒集一卷 (commentary: 梁二卷)
5. *Jiu Tang shu* 47 ("Jingji xia"), p. 2031: 春秋決獄十卷 (under *Fa jia*)
6. *Ibid.*, p. 2053: 董仲舒集二卷
7. *Tang shu* 57 ("Yiwen 3"), p. 1531: 董仲舒春秋決獄十卷 黃氏正 (under *Fa jia*)
8. *Ibid.* 60 ("Yiwen 4"), p. 1576: 董仲舒集二卷 (under collected works)

Reports of legal decisions or comparable documents are not included in *Sui shu* 34, p. 1003, along with the *Guanzi*, *Shangjun shu*, *Shenzi* and *Han zi*, which might be termed *Fajia*. Nor, as far as may be determined from the titles of works that are no longer extant, and which seem to consist of treatises rather than reports, are such reports to be seen in that category in the *Jiu Tang shu* (treatise 27: "Jingji" *xia*, p. 2031); or in *Tang shu* (59, "Yiwen" 3, pp. 1531-32), other than the one item of Dong Zhongshu.

Other types of entries are seen as follows:

⁵ See also the title *Gongyang Dong Zhongshu zhi yu* 公羊董仲舒治獄 as seen below.

- *Qi lu* 七錄 by Ruan Xiaoxu 阮孝緒 (479–536)

Now lost but known from notes added to the *Sui shu*; see under the entry given above for *Sui shu* 35, p. 1056.

- *Nihon koku genzai sho mokuroku* 日本國見在書目錄 by Fujiwara no Sukeyo 藤原佐世 (889–98)

This includes the following entry under *Chunqiu*: 春秋斷獄事十卷. It may be asked whether this may be identified as the *Chunqiu jueyu* of ten *juan* that is listed in the *Jiu Tang shu*; neither of these entries associate the work with Dong Zhongshu, but as will be seen immediately above, Ying Shao is reported as doing so. In his category of *Fa jia*, Fujiwara does not include writings of a type that can be identified as deriving from legal proceedings.

- *Chongwen zongmu* 崇文總目(1041)

It includes the entry 春秋決事比十卷.⁶ It is described as being the work of Dong Zhongshu, i.e. his record of 232 items, which was set straight (*ping* 平) by Ding Ji 丁季 and corrected (*zheng* 正) by Huang Fu 黃復, both of the Wu kingdom, but not traced. No more than 78 items survived.

- *Yeke congshu* 野客叢書⁷

Under the title *Dong Zhongshu jueyu shi* 事, this repeats the statement of the *Hou Han shu*, adding that commissioners, as well as Zhang Tang, were sent to consult Dong. The text then includes the statement made in the *Han shu* about his compositions, and adds that the 232 items of *jueduan* were scarcely known. There follows the text of the two items that are seen below as nos. 1 and 2 (Concealment of a criminal; and A son who beat his father); both of these are seen in the *Tong dian* 通典.

- *Kunxue jiwen* 困學紀聞, by Wang Yinglin 王應麟 (1223–96)⁸

Here is mentioned the survival of two of the 233 [*sic*] items in the *Taiping yulan* 太平御覽 and one in the *Tong dian* (item no. 1, below). Wang then cited instances from the *Han shu* in which the influence of the *Chunqiu* could be seen to have affected decisions on criminal matters as determined by the highest officials of the empire and involving severe sentences. As some of these cases postdated Dong Zhongshu, Wang Yinglin cannot have intended

⁶ 1 (5 “Chunqiu lei”), p. 23 (CSJC edn.)

⁷ Collected by Wang Mao 王楙 between 1195 and 1202; included in *Biji xiaoshuo daguan xu bian* 筆記小說大觀續編; see 1, p. 5b.

⁸ Preface dated 1322, after Wang Yinglin’s death. See 6, pp. 5339–42 (Beijing: Shangwu yinshuguan 1959; published originally 1935).

to attribute them to him but he may have intended to suggest that they followed his example. Long notes by commentators are devoted to showing that three other items existed in Song times, with the question of why Wang Yinglin had ignored them.⁹

- *Wenxian tongkao* 文獻通考,¹⁰ by Ma Duanlin 馬端臨 (1254–1325)

This work identifies the *Chunqiu jueshi ji* as entered in the *Sui shu* with the work that Ying Shao submitted under the title of *Zhongshu Chunqiu duan yu* and which was lost during Dong Zhuo's destruction of Luoyang (190 AD). He writes of Dong Zhongshu's reliance on *de* rather than punishments, as based on the principles of the *Chunqiu*.

Wang Mo's 王謨 collection of fragments from Han to Wei times includes six items that he accepted as judgements deriving from Dong Zhongshu.¹¹ In his preface he prints Ma Duanlin's statement in full. From the *Kunxue jiwen* he cites Ying Shao's statement that Dongshu compiled 132 [*sic*] items of decisions according to the *Chunqiu*. Wang Mo also appears to identify the book with the items named *Gongyang zhiyu* (in *Han shu* 30), *Chunqiu duanyu* (in *Qi lu*), *Chunqiu jueyu* (in both Tang histories), *Chunqiu jueshi* (in *Chongwen zongmu*). The six items that he accepts are those of:

- A son's inadvertent injury of his father; in *Taiping yulan* (no. 7, below)
- A widow's remarriage; in *Taiping yulan* (no. 8, below)
- Theft of a bowstring; in *Bai Kong Liu tie* (no. 6, below)
- Concealment of a criminal; in *Tong dian* (no. 1, below)
- A son who beat his father; in *Tong dian* (no. 2, below)
- Capture and release of a fawn; in *Bai Kong Liu tie* (no. 5, below)

In introducing the eight fragments of the works in question that he had found, Ma Guohan 馬國翰 (1794–1857) wrote that Dong Zhongshu was citing cases as decided in the classics (*jing* 經) and that applied to his own time and chose them to be a model.¹² He wrote that he himself was entering them under the category of *Chunqiu*, in accordance with the treatises of the *Han shu* and *Sui shu*. He commented that Dong

⁹ See the notes of Yan Ruoju 閻若璩 (1636–1704), He Zhuo 何焯 (1661–1722), Quan Zu-wang 全祖望 (1705–55), and Weng Yuanqi 翁元圻 (1750–1825).

¹⁰ See 182 (“Jingji kao” 9), p. 1567.

¹¹ Wang Mo 王謨, *Han Wei yishu chao* 漢魏遺書鈔 (1798; preface by Zhang Dunren 張敦仁, 1800; hereafter, *WM*), “Chunqiu jue shi” 春秋決事.

¹² *Chunqiu jue shi* 春秋決事, in Ma Guohan 馬國翰 (1794–1857), *Yu han shan fang ji yi shu* 玉函山房輯佚書 (1853 edn.; hereafter, *MGH*).

Zhongshu's arguments are carefully balanced and on the whole fair. However, in respect of item no. 4, below, he writes: "Comparison of the wife's murder of her husband with Wu Wang's punishment by death of Zhou – even Kang Wang and Cheng Wang [of Zhou] would have judged this to be excessive."

Shen Jiaben 沈家本 believed that the correct title of the book, which had been lost by 1127, was *Chunqiu jueyu*.¹³ He was satisfied that nos. 1, 2, 5, 6, 7, and 8 as given below, which are found in the *Tong dian*, *Bai Kong Liu tie* 白孔六帖, and *Taiping yulan*, genuinely derive from Dong Zhongshu.

In his introduction to chapter six of his *Han lü kao* 漢律考 (1919), which is entitled *Chunqiu jueyu kao*, Cheng Shude 程樹德 names the following as sources of information (references to these are contained in the discussion above):

<i>Han shu yiwen zhi</i>	<i>Gongyang Dong Zhongshu zhi yu</i>	16 <i>pian</i>
<i>Qi lu</i>	<i>Chunqiu duan yu</i>	
<i>Sui shu jingji zhi</i>	<i>Chunqiu jue shi</i> ; by Dong Zhongshu	10 <i>juan</i>
<i>Jiu</i> or <i>Xin Tang shu</i>	<i>Chunqiu jue yu</i>	
<i>Chongwen zongmu</i>	<i>Chunqiu jue shi bi bing</i>	10 <i>juan</i> ¹⁴

He notes that "that" work was still extant at the start of the Song dynasty and that it could not be known when it disappeared. He then quotes Ying Shao's account (given above) of how the Han court often sent Zhang Tang to see Dong Zhongshu, and the latter, presumably, composed *Chunqiu jue yu* including 232 items. He adds that Wang Yinglin wrote that Dong Zhongshu's *Chunqiu jue yu* was no longer extant, and Wang concluded that there are only three remaining fragments of the 232 items, two being carried in the *Taiping yulan* and one in the *Tong dian*. Cheng Shude adds that Zhu Yizun 朱彝尊 (1629–1709) noticed one more in the *Yiwen leiju*.

Furthermore, Cheng Shude comments that the few items collected by Wang Mo and Ma Guohan are corrupt and insufficient to satisfy a reader. Cases of this sort are seen by the ten in the *Han shu* and other sources, but these are in no way necessarily to be ascribed to Dong Zhongshu's judgement. Altogether he lists seventy-three items, beginning with the citation from the *Tong dian* and concluding with one seen in the biography of Wei Feng 魏諷.¹⁵

¹³ *Han lü zhi yi* 漢律摭遺 (preface dated 1912; included in *Shen Qiyi xiansheng yishu* 沈寄移先生遺書) 22, pp. 3b-6b.

¹⁴ In referring to *Chongwen zongmu*, Cheng Shude writes the title as *bi bing* 比并.

¹⁵ *San Guo zhi* 三國志 (Beijing: Zhonghua, 1959) 21, p. 616 (died 219).

The account of Dong Zhongshu's compilation of the list of 232 items of legal decisions is repeated in the *Hou Han shu* and the *Jin shu*,¹⁶ with no further suggestion that he was personally involved in framing those decisions, and without naming any particular cases where he did so. More recently Qian Mu has suggested that the forceful views expressed by Liu Duan 劉端 (1) regarding the punishment due to Liu An 劉安 (2) derived from Dong Zhongshu, chancellor of Liu Duan's kingdom of Jiaoxi.¹⁷ This can hardly be taken as firm evidence of Dong Zhongshu's views and the effect that he exercised in public life.

EVIDENCE FROM RECENTLY FOUND LEGAL TEXTS

It remains to place the six fragments that are generally accepted as deriving from Dong Zhongshu within the context of other legal documentation of the early empires and here we can call on information of two sorts; first the documents from Shuihudi 睡虎地 and Zhangjiashan 張家山, dating respectively from 217 and 186 BC; and secondly the account of the Statutes and Ordinances that is given in the *Jin shu*, compiled by Fang Xuanling 房玄齡 (578–648).

Altogether 303 strips from Shuihudi carry the texts of some of the Statutes (*lü* 律) of the Qin empire, on subjects that range from agricultural practice to the establishment of officials, from the working conditions of artisans to the entitlement to official rations.¹⁸ As many as 526 strips from Zhangjiashan carry the texts of a number of statutes and of one ordinance (*ling* 令). They concern much the same subjects as those seen in the finds from Shuihudi as well as some other topics. Duplication between the selections found at the two sites demonstrates the continuity that survived the collapse of Qin and the readiness of the new Han government to take over the prescriptions of its predecessor, severe as some of these may have been said to be. The form of these statutes is generally that of stating the correct procedure, e.g., for stacking grain (statutes on granaries),¹⁹ or the establishment of postal

¹⁶ *HHS* 48, p. 1612; *Jin shu* 晉書 (Beijing: Zhonghua shuju, 1974) 30 (Treatise 20) reads 折獄.

¹⁷ Qian Mu 錢穆, *Qin Han shi* 秦漢史 (Hong Kong: Xinhua Press, 1957), p. 71; for Liu Duan's opinion, see Sima Qian 司馬遷 (?145–?86 BC) and others, *Shiji* 史記 (Beijing: Zhonghua shuju, 1959) 118, p. 3094, *HS* 44, p. 2152. Figures in parentheses identify one of several individuals who bore the same name, as in Loewe, *A Biographical Dictionary of the Qin, Former Han and Xin Periods* (Leiden: Brill, 2000).

¹⁸ See Hulswé, *Remnants of Ch'in Law* (Leiden: E.J. Brill, 1985) and Loewe, *The Laws of 186 BCE* (in *China's Early Empires* [Cambridge: Cambridge U.P.], forthcoming).

¹⁹ *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu chubanshe, 1990; rpt. 2001), Statutes strips nos. 21–7; Hulswé, *Remnants of Ch'in Law*, pp. 34–35.

services (statute for conveyance of documents);²⁰ or naming a crime and the penalties to be exacted for failure to comply with such procedure. Many lay down the punishments for perpetration of specified crimes such as acts of violence, theft, injury to livestock, or murder of human beings. Such criminal activities and their prescribed punishments were handled under the Statutes for violence, robbery or arrest.

A further set of 98 strips from Shuihudi now entitled *Feng zhen shi* 封診式 set out some of the rules for judicial procedures for criminal cases and record accounts of some criminal cases and the steps taken by way of investigation and judgement. In addition, a whole series of 210 strips records questions that arose, or might have arisen, in the interpretation of the existing statutes and the answers to the problems that a perplexed official may have encountered by way of applying them. In parallel to these strips, the finds from Zhangjiashan included 228 strips known under the title of *Zou yan shu* 奏讞書. These recounted twenty-two cases of crimes which were under investigation and awaited determination of the correct sentence. They were in fact cases whose complexities had raised doubts in the minds of the provincial officials under whose jurisdiction they came; to solve such difficulties, and to avoid incrimination themselves for incorrect action, such officials were forwarding the cases for attention and decision by a higher authority.

These documents were concerned solely with legal or administrative aspects. By contrast with the fragments attributed to Dong Zhongshu, there are no attempts to invoke respected literature such as the *Shi jing* or *Lunyü* or to call for moral consideration with which to determine how the statutes or ordinances should be applied. Dong Zhongshu's approach would seem to be unusual or even abnormal and there is nothing to show that he set an example or created precedents that altered the attitude to or conduct of cases at law. As will be seen below, items nos. 1 and 2 derive from a dossier of a legal case of 330 AD, parts of which include an allusion to the *Shi jing*; but this was not cited by reason of that text's moral authority but simply for rhetorical purposes. For the other items, as compared with *Zou yan shu* and the case of 330, we have no more than fragments extracted for a particular purpose that is not revealed to us.

The finds from Zhangjiashan themselves show that the claim that in its early days the Han government had simplified the laws of its predecessor cannot be sustained. A more complex picture is seen in the *jin*

²⁰ *Zhangjiashan Han mu zhujian er si qi hao mu* 張家山漢墓竹簡二四七號墓 (Beijing: Wenwu chubanshe, 2001), Statute of conveyance of documents ("Statutes" strips nos. 264-77).

shu, which describes the voluminous extent of legal writings that had come into being by the third and fourth centuries AD.²¹ To an original six fascicules (*pian* 篇) inherited from Qin, Xiao He 蕭何 (chancellor of state, or *xiangguo* 相國 198–193 BC) added three; Shusun Tong 叔孫通 (superintendent of ceremonial, or *fengchang* 奉常 200–198 and from 195) added a further eighteen, which may have included prescriptions for *li* as well as law; Zhang Tang (superintendent of trials, or *tingwei* 廷尉 126–120) added twenty-seven; Zhao Yu 趙禹 (superintendent of trials from 120) a further six, thus totaling sixty. Two centuries later Ying Shao added a compilation of no less than 250 *pian*. There were also voluminous works of *zhangju* 章句, i.e., word-for-word and sentence-by-sentence comments to legal documents, consisting as we are told of 26,272 items and amounting to over seven million characters.

This account of legal documentation which was compiled in the seventh century does not include a reference to any writings left by or attributed to Dong Zhongshu.

With doubts arising over so many questions, it may be asked whether we are justified in accepting that all the nine items shown below did in fact derive from Dong Zhongshu's own expressed judgement. On balance it would seem right to follow the conclusions reached by the Chinese scholars who are cited here in accepting that six of those nine items – those that are preserved in the *Tong dian*, *Bai kong liu tie*, and *Taiping yulan* – do so derive; but whether or not they were drawn from any of the books whose titles appear in the traditional bibliographies awaits proof. Pending further information, the items are in no way to be judged as parts of a single coordinated book; they can be seen only as individual items.

THE NINE ITEMS OF DONG ZHONGSHU'S LEGAL OPINIONS

Exceptionally, for two of the following nine items, numbers 1 and 2, we are given the fourth-century AD context in which the judgements that are attributed to Dong Zhongshu were presented. They do not appear in a record of Dong Zhongshu's own time, and we are indebted to Du You 杜佑 (735–812) for their preservation. He includes in the *Tong dian* 通典 an account of a case at law that is dated in 330 AD and which must surely be one of the most fully documented cases recorded for the early empires.²² The dossier begins: "Submission by Yu 于, wife of

²¹ *Jin shu* 30 ("Xing fa zhi"), pp. 922–23.

²² Du You 杜佑 (735–812), *Tong dian* 通典, preface 801 AD (Beijing: Zhonghua shuju, 1988; hereafter, *TD*) 69 ("Li" 29), pp. 1907–13.

He Qiao 賀喬, *San ji shi lang* 散騎侍郎,²³ in the fifth year of Xianhe 咸和 of Eastern Jin [330].” The submission is given directly from Yu apparently as her own composition. Early on she makes the point that as a woman she had herself made no progress in acquainting herself with the institutions of the empire and could talk only on the basis of hearsay; such professed ignorance however did not prevent her from alluding to an abstruse passage of the *Book of Songs* or evoking the authority of the *Li* whenever this would aid her cause. The plaintiff’s submission may be summarised as follows.

The Submission of Yu, Wife of He Qiao, 330 AD

I was formally married as the wife of He Qiao, but failing to produce a son I was sent home to my own family. However He Qiao’s elder brother He Qun 賀羣 and his wife, of the Tao 陶 family, showed their pity for me by presenting me with Hui 輝, a third son of theirs, for adoption. Overjoyed I, Yu, accepted the baby; and although from time to time the Tao family took the boy and fondled it, He Qun rounded on them, insisting that the child was to be mine. Unhappily Hui died within a hundred days; I was prostrated with grief, to the point that He Qun made over another son, Shuai 率,²⁴ for me to adopt and rear. For some time he had no idea that he was not my own son.

Next, a concubine of He Qiao named Zhang 張 bore a son named Zuan 纂. Qun had no cause to raise any doubts; and the intention with which Qun made Shuai over to me was not only to continue He Qiao’s line but also for my own personal sake; and the reason why I was able to take part in the festivals with the He family was because Qun’s spoken promise was being kept.

When Shuai was aged six and Zuan five years, He Qun died and in the talk that leaked out Shuai began to suspect that he was not my own born son. Further talk emerged when he had grown up, in which some took the view that Shuai was not entitled to remain as my son; and if he did not leave me he would become the heir of another person.

Last year Shuai proceeded to go back to the Tao family. He Qiao fell ill and made the point that the matter should be put straight; and he then died. Shuai was still young without a full understanding of these matters; and as a mere woman I had simply heard

²³ Gentleman in Attendance attached to the office responsible for decrees and memorials.

²⁴ It cannot be known whether this should be read as Shuai or Lü.

from others that I was rearing Shuai to be my own son and that he was in no way to be regarded as “the heir of another person.” With no means of support, how can I not feel overcome with grief? I therefore submit six items that have not been explained (*bu jie* 不解) and ten matters that give rise to doubt (*yi* 疑).

Comments to Yu's Submission

Some technical matters arise from the way in which this defence or supplication was expressed.

Allusion to the Songs

The plaintiff wrote: *zeng wu guoluo shigu zhi bao* 曾無螺贏式穀之報, drawing on the text of the *Shi jing* “Xiao yuan” (Mao no. 196):²⁵ *Ming-ling you zi guoluo fu zhi jiao hui er zi shigu si zhi* 螟蛉有子螺贏負之教誨爾子式穀似之, translated by Karlgren as “the mulberry insect has young ones, the solitary wasp carries them on its back; teach and instruct your sons, then in goodness they will be like (you).”²⁶ The rendering “mulberry insect” and “solitary wasp” follows the comments of Zheng Xuan 鄭玄 (127–200) and Kong Yingda 孔穎達 (574–648).

The allusion to the *Songs* would appear to be intended to illustrate the plaintiff's own state of helplessness as contrasted with that provided by foster parents; and it carries the further point that it was in fact she herself who has been acting the part of the solitary wasp. References to the *guoluo* elsewhere are rare. In his comment to the statement of the *Zhong yong*,²⁷ which reads *fu zheng ye zhe pulu ye* 夫政也者蒲盧也, Zheng Xuan identified *pulu* as *guoluo*, citing the above mentioned passage from the *Songs*, and explaining that the *pulu* take and rear the young of the mulberry, transforming them and making them their own children.²⁸ In the Standard Histories that run from the *Shiji* to the two for Tang there is only one allusion to this passage of the *Shi jing*; it occurs in the text of the “Jiude song” 酒德頌 of Liu Ling 劉伶 (between 221 and 300), one of the Seven Sages of the Bamboo Grove, as given in the *Jin shu*.²⁹

²⁵ *Shi jing* (SSJZS edn.) 12(3), p. 2a; Bernhard Karlgren, *The Book of Odes: Chinese Text, Transcription, and Translation* (Stockholm: Museum of Far Eastern Antiquities, 1950), p. 144.

²⁶ The appearance of *ming* 螟 at unexpected times of the year was sufficiently abnormal to draw explanations by Dong Zhongshu, Liu Xiang and Liu Xin, or a citation from *Jing Fang Yi zhuan* 京房易傳; see HS 27A, pp. 1445–46, for incidents in Yin Gong 5, Yin Gong 8, and Zhuang gong 6 (718, 715, and 688 BC).

²⁷ *Li ji* 禮記 52, p. 18a.

²⁸ For Zhu Xi's interpretation of *pulu* as ‘an easily growing rush’ and adopted by Legge, see James Legge, *The Chinese Classics with a Translation, Critical and Exegetical Notes, Prolegomena, and Copious Indexes*, 2d rev. edn. (Oxford: Clarendon Press, 1893–94), p. 405; see also *Erya* 爾雅 15, p. 18a.

²⁹ *Jin shu* 49, p. 1376.

There are two further references or allusions to this verse of the *Songs* in other parts of the dossier of the case: a) the first of the ten matters that raise doubt rests on the assertion that the work and service of rearing a child are of no less value than that of giving birth to a child; the text writes “The body of the mulberry insect is transformed by the solitary wasp”; and b) in the sixth matter that raises doubt Dong Zhongshu cites the passage. Here the solitary wasp’s protection of the young mulberry insect is cited to support the view that a father is entitled to protect his adopted son.

“*Shih gu*”

The term *shi gu* which is seen twice elsewhere in the *Songs* eludes full and satisfactory interpretation.³⁰

Judicial terms

The terms at the end of Yu’s submission, namely, *bu jie* 不解 and *yi ni* 疑, perhaps evoke terminology used in judicial proceedings as seen some centuries before this case was brought up. Legal practice as shown in Qin documents of 217 and Han documents of 186 BC provided that persons who were brought up on a criminal charge were examined with a view to explaining (*jie*) their conduct; and the fourth stage of trying an alleged criminal involved enquiries as to whether or how the existing statutes and ordinances applied to the case that was under consideration and subject to doubt.³¹

In addition to the above, the “six items that have not been explained” that were mentioned by Yu concern the distinction between adoption and nomination as an heir, which she alleges was being ignored. They call mainly on principle and theory rather than actual practice. In several of the “ten matters that give rise to doubt,” the plaintiff drew on historical instances of adoption and its effect on inheritance, ranging from Huan Gong 桓公 of Lu (711–694 BC) to Zhuge Liang 諸葛亮 (181–234). In the two where Dong Zhongshu’s judgement is given (items 1 and 2, below), the cases are recorded without specification of the names of those who were concerned.

It is perhaps significant that whoever framed this submission found it necessary to provide a short introductory statement about Dong

³⁰ *Shi jing* 13(1), p. 25a “Xiao ming,” cited in *Li ji* 54 (“Biao ji” 32), p. 20b, translated Legge, *Chinese Classics*, p. 366: “So shall the spirits hearken to you, and give you good”; Karlgren, *Book of Odes*, p. 160: “... in a good way they [i.e., the spirits] will (use you =) treat you.” *Shi jing* 18(2), p. 10a: “Sang rou”; Legge, *Chinese Classics*, p. 525: “here is a good man whose doings will be good”; Karlgren, *Book of Odes*, p. 223: “now this good man, his doings are good”.

³¹ See *Zhangjiashan*, (“Zou yan shu”) strips nos. 6, 15, 23 where the case at issue derives from doubt (*yi*); and the whole series of strips from Shuihudi now entitled “Fa lu dawen.”

Zhongshu, to show his authority. The choice of facts that that writer chose to include in this connection and those which he omitted is of interest. The passage reads:

Dong Zhongshu was a scholar of integrity, well known in his generation. Whenever the Han court was engaged in deliberating a matter of doubt, they invariably sent commissioners to ask his advice, and speaking as he did without hesitation he cut right through to the crux of the problem.

TRANSLATION OF THE NINE ITEMS

The following nine items of Dong Zhongshu's legal opinions have been preserved in a variety of sources, from Tang times onward. Numbers 1 and 2, as just explained, were cited by Yu, the wife of He Qjiao. (For abbreviations used in the following, see List of Abbreviations.)

Item no. 1: *Tong dian* 69, p. 1911 *WM*, p. 4a; *MGH*, p. 1a

Introduced: *Zhongshu duan yue* 仲舒斷曰; dated 330.

Jia who had no child picked up an abandoned³² boy Yi on the roadside, reared him and treated him as his own son.³³ When Yi grew up he committed a crime to the point of murder and gave Jia his account of the case. Jia concealed Yi in hiding; on what charge should Jia be tried? Zhongshu³⁴ gave judgement as follows: Having no child, Jia rescued and reared Yi; even though he had not been begotten by Jia, to whom could Jia have given Yi?³⁵ The *Book of Songs* writes: "The mulberry insect has young ones, the solitary wasp carries them on its back."³⁶ According to the principles of the *Chunqiu*, a father acts as protector for his son.³⁷ As it was right for Jia to hide Yi, he does not face standing a charge.³⁸

Item no. 2: *Tong dian* 69, p. 1911 *WM*, p. 4a; *MGH*, p. 1a

Introduced: *you yi shi yue* 又一事曰; dated 330.

Jia had a son Yi whom he made over to Bing.³⁹ Growing up, Yi had been reared by Bing.⁴⁰ Being under the influence of strong drink, Jia said to Yi "You are my child." In anger, Yi beat Jia with twenty blows. Seeing that Yi was really his own son, Jia was unable to con-

³² *TD*, *MGH* 棄; *WM* omits.

³³ *TD*, *MGH* 養之以爲子; *WM* 養爲己子.

³⁴ *WM* omits Zhongshu.

³⁵ *TD*, *MGH* 雖非所生誰與易之 (notes to Wang Yinglin omit 易); *WM* 雖非己出.

³⁶ *Yeke congshu* and *WM* omit the citation from the *Songs*.

³⁷ *Yeke congshu* and *WM* add 子爲父隱. See *Lunyu* 13 ("Zilu"), p. 7a; and *Gongyang zhuan* 14, p. 14a, note.

³⁸ *TD*, *WM* 詔; *MGH* 而.

³⁹ *TD*, *MGH* 以乞丙; *WM* omits 以.

⁴⁰ *TD*, *MGH* 而丙所成育; *WM* 而彼所成育.

trol his fury and entered a personal report with the authorities.⁴¹ In judgement Zhongshu said “Jia begat Yi,⁴² but being unable to rear him made him over to Bing; in terms of moral principles (*yi* 義), relations were already severed. Although Yi flogged Jia he is not due to answer to a charge.”

Item no. 3: *Yi wen lei ju*, compiled by Ouyang Xun (557–641) (Shanghai: Guji chubanshe, 1965) 85, p. 1455⁴³; *MGH*, p. 3a
There is no introductory statement regarding the origin of this passage.

When Wudi was engaged in external activities with the Yi and Di peoples, the Han population neglected their basic occupation of agriculture. In addressing the throne Dong Zhongshu said: The *Chunqiu* does not record matters about other crops but notes a failure of the wheat and grain harvest.⁴⁴ From this we may see that for the man of sagely wisdom millet and wheat⁴⁵ are the most important of the five.

Item no. 4: Comment by Kong Yingda (574–648) to *Liji* (“Tan gong,” *xia*) 10, p. 23b; *MGH*, p. 1b

There is no introductory statement regarding the origin of this passage. Ma Guohan comments that its terms are those of a matter requiring a decision.

Yi, partner of the woman Jia, was beating her mother. Jia seeing Yi beat her mother killed Yi. The *Gongyang* states “Jia’s killing of her husband on account of [injury done to] his mother-in-law [her mother] is comparable with Wu Wang’s killing Zhou on behalf of Heaven.”

Unlike the other passages that are cited, in this one there is no statement of charging any person for crime, of a judgement regarding such a charge, or of a counter judgement voiced by Dong Zhongshu. There is in fact no direct association with Dong Zhongshu nor is it possible to trace the statement that is cited in the received version of

⁴¹ *TD, MGH* 甲以乙; *WM* 以乙; *TD, MGH* 自告縣官; *WM* 告於縣官. For *xianguan*, see Loewe, “The Organs of Han Imperial Government: *zhongdu guan*, *duguan*, *xianguan* and *xiandao guan*,” *BSOAS* 71.3 (2008), pp. 509–28.

⁴² *WM* omits 仲舒; some versions of the *Tong dian* read 甲能.

⁴³ Ma Guohan notes that the *Yiwen lei ju* is citing from *HS* 24A, p. 1137. He adds that in a note to the *Kunxueji wenjian* of Wang Yinglin (1223–96), Yan Ruojun remarks that this item corresponds with a lost fragment of the *jueyu*; Yan Ruojun’s note is untraced.

⁴⁴ E.g., see *Chunqiu* 8, p. 14a (Zhuang Gong 7; 687 BC); *Gongyang zhuan* 6, p. 20b; *Chunqiu* 10, p. 12b (Zhuang Gong 28; 666 BC); *Gongyang zhuan* 9, p. 2a. Nancy Lee Swann, *Food and Money in Ancient China* (Princeton: Princeton U.P., 1950), p. 178, renders as “[winter] wheat and/or [spring] grain” and refers to her note on grains (pp. 54–56). For explanations by Dong Zhongshu and Liu Xiang, see *HS* 27A, pp. 1343, 1339.

⁴⁵ *MGH su mai* 粟麥; *HS mai yu he* 麥與禾.

the *Gongyang zhuan*. This case is not included in Wang Mo's collection. Shen Jiaben (*Han lü zhi yi*, p. 5.1b) cites this item in a note to item no. 7. His conclusion that the Han statutes included provisions regarding injuries inflicted on a parent is verified by Zhangjiashan (Statutes) strips nos. 34, 38; strips nos. 33, 40 prescribe punishments for a wife who injures her husband's parents and other relatives.

Item no. 5: *Bai Kong liu tie* (compiled Bai Juyi 白居易 772–846 and Kong Chuan 孔傳⁴⁶) 26, p. 30b (note), *WM* 4b *MGH* 1b; Ma Guohan has the most complete version of this item

Introduced: *Dong Zhongshu chunqiu jue yu* 董仲舒春秋決獄.

While hunting, a ruler caught a deer's fawn and ordered his counsellor to take it back. On the way the counsellor saw that the animal's mother was following, bleating; moved by pity he let it go free. In some anger the ruler considered the nature of his crime, but reached no decision. Falling ill the ruler feared death; wishing to entrust his son, soon to be orphaned, to somebody, he then recalled the counsellor's action and realised⁴⁷ that it had surely been due to *ren*. "He treated the fawn out of charity;⁴⁸ how much more would he be likely to treat a human being in such a manner"? So he released the counsellor⁴⁹ and appointed him his son's teacher. How should this case be considered?

Zhongshu said: The man of quality does not take fawns or fledglings;⁵⁰ the counsellor did not remonstrate; sending him to take the animal home was not an act of righteousness.⁵¹ In these circumstances, on the way he was moved by the animal's mother and acted in charity. Even though he disobeyed his ruler's command, it was right for him to let the animal go.⁵²

⁴⁶ For this work, see Teng and Biggerstaff, *An Annotated Bibliography of Selected Chinese Reference Works*, 3d edn. (Cambridge, Mass.: Harvard U.P., 1971), pp. 87–88. While no date is given for Kong Chuan, the work as received is said to have been arranged before the end of the Song dynasty.

⁴⁷ Notes to Wang Yinglin read 乃覺之曰大夫; *WM*, *MGH*, *Liutie* omit 曰.

⁴⁸ *Liutie*, *WM*, *MGH* 恩; notes to Wang Yinglin 仁.

⁴⁹ 釋 as in *Liu tie*, notes to Wang Yinglin and *MGH*. The term implies that hitherto he had been kept in custody pending judgement; *WM* reads 擇 "select."

⁵⁰ *Bu mi bu luan* 不羈不卵. The ban on cutting timber and taking young animals is seen in almost identical terms in Qin and Han statutes (for the second month of spring, *Shuihudu* Statutes strip no. 4; for spring and summer, *Zhangjiashan* Statutes 249); and in various versions of the "Ordinances for the Months"; i.e., for the first month of spring in *Li ji* 14, p. 23b, and *Lü shi chunqiu* (Chen Qiyou 陳奇猷, *Lü shi chunqiu jiaoshi* 呂氏春秋校釋 [Shanghai: Xuelin, 1984]) 1 "Meng chun ji," p. 2 (reading variously *wu* 毋 and *wu* 無 in place of *bu* 不; *ibid.*, p. 18, note 43); and the manuscript version dated 5 AD (reading 毋, *Wenwu* 2000.5, p. 34). See also *Li ji* 4 ("Qu li" B), p. 15a; *Zhou li* 16, p. 14b; *HSBZ* 91, p. 1b.

⁵¹ Notes to Wang Yinglin 非; *MGH* 非義.

⁵² Notes to Wang Yinglin 縱, *MGH* 徙; *zong* is preferable to *xi*, as the latter usually indicates demotion rather than promotion.

Shen Jiaben (22, p. 4b) points out a parallel version of this incident in *Huainanzi* (18, p. 6b) and believes that the text had been subject to error in transmission.

Item no. 6: *Bai Kong liu tie* 91, p. 18a, note; *WM*, p. 3b, *MGH*, p. 2a
Introduced: *Chunqiu jueyu yue* 春秋決獄曰。

This case turns on the manner adopted for storing military equipment, with the assumption that component parts of certain items such as weapons were kept in separate places, presumably for purposes of security, and to await assembly when they were needed. Excavation of two of the seven buildings of the arsenal at Chang'an suggests that items may have been stored in categories but it cannot confirm that component parts were separated.⁵³ In the inventory of an arsenal found at Yinwan, which is dated 13 BC, the component parts of bows, together with arrows, are listed in one and the same category.⁵⁴

No questions are raised in this case other than those that are legal. There are no moral considerations or citations from the *Chunqiu*. Jia, being a conscript serviceman at the arsenal, stole the bowstring of a heavy crossbow. At the time this was in a different place from that of the bows. What crime does he face?

It was argued: The place where weapons are kept is comparable with the gate of the imperial palace;⁵⁵ those entering without authority⁵⁶ are punished by cutting off the hair. This shows the importance of military preparations and requires that weapons are to be of high quality. The crossbow's stock, trigger, housing, string and axle are kept in different places.⁵⁷ The man who was robbing did not get as far as stealing weapons of the arsenal. The argument as set forth says: "[I do not know how a man without truthfulness is to get on]. How can a large

⁵³ For the seven sites within the arsenal of Chang'an and the distribution of equipment there, see "Han Chang'an cheng wuku yizhi fajue de chubu shouhuo" 漢長安城武庫遺址發掘的初步収獲 (*KG* 1978.4, pp. 261-9); for evidence for storage of weapons in racks, see Yang Hong 楊泓, "Wuku he lanqi" 武庫和蘭錡 (*WW* 1982.2, pp. 78-81).

⁵⁴ See *Yinwan Han mu jian du* 尹灣漢墓簡牘 (Beijing: Zhonghua shuju, 1997), transcriptions, p. 103; Loewe, *The Men Who Governed Han China: Companion to A Biographical Dictionary of the Qin, Former Han and Xin Periods* (Leiden: Brill, 2004), pp. 76-78.

⁵⁵ *Sima*; for the use of *sima* with this meaning and the ban on unauthorised entry, see Jia Yi 賈誼, *Xin shu* 新書 1 (8 "Deng qi") 1, p. 12b (SBBY edn.), where unlawful entry is punishable by five years of hard labour.

⁵⁶ For the use of *lan* 闌 in this sense in documents from Juyan, see strip no. 18.8 (Loewe, *Records of Han Administration* [Cambridge: Cambridge U.P., 1967] 2, p. 143); see also *HSBZ* 18, p. 8a, where Wang Xianqian comments that 闌 is incorrect for 闌.

⁵⁷ *Nie, ji, guo, xian, zhu* 藥機郭弦軸. For interpretation of these terms see Joseph Needham and Robin D. S. Yates, *Science and Civilisation in China*, Volume 5, Part 6: *Military Technology: Missiles and Sieges* (Cambridge: Cambridge U.P., 1994), pp. 128, 132-33, 137-38, which handles a passage in the *Wu Yue chunqiu* 3, p. 45a (SBCK edn.; reprint of Kuang Fan's edition; for the dating and authenticity of this text, see John Lagerwey, in Michael Loewe, ed., *Early*

carriage be made to go without the cross-bar for yoking the oxen to, or a small carriage without the arrangement for yoking the horses?"⁵⁸ If Jia had stolen a weapon of the arsenal, would he not face a charge liable to execution in public?

[Dong Zhongshu] said: even though the bowstring was stored in a different place from the bow and even if it had not been found, it should not be termed a bow. Shooting an arrow without hitting the target is identical with having no arrows; not entering the arsenal is identical with having no bolts. The Statute⁵⁹ writes: this is stored as being a low grade weapon;⁶⁰ for those objects valued at 100 cash, [a thief] faces a charge punishable by execution in public.

Shen Jiaben, *Han lü zhi yi* 2, pp. 4b–5a (“Tao lü”), attaches a citation from *Yantie lun* 10 (55 “Xing de”), p. 567 (Wang Liqi revised edn.) “Is it right that injury to somebody followed by flight with his weapons should be termed theft of weapons held in the arsenal?”, presumably as a supporting argument. He takes the final sentence “for those objects ... in public” to be a separate item and believes that the text is corrupt or defective, and should read “Theft of an item valued at 100 cash from the place where low grade weapons are stored is punishable by execution in public.” Shen Jiaben also notes the severity of the Han laws as compared with those of Tang.

Item no. 7: *Taiping yulan* (983 AD) 640, p. 8a Wang Mo, p. 3a;
Ma Guohan, p. 2a

Introduced: *Dong Zhongshu jueyu yue* 董仲舒決獄曰。

Jia’s father Yi⁶¹ was engaged in an argument with Bing and the two men started fighting. Using the knife that he carried at his waist, Bing stabbed Yi. Jia immediately hit Bing⁶² with his stick and inadvertently wounded Yi [his father]. On what charge should Jia face a trial? An unnamed person said: “On that of striking a father; he faces execution with exposure of the head in public.”⁶³ [Dong Zhongshu] counselled

Chinese Texts: a Bibliographic Guide [Berkeley: The Society for the Study of Early China and the Institute of East Asian Studies, University of California, Berkeley, 1994], pp. 474–75). In that passage and elsewhere *bi* 臂 is seen rather than *nie*.

⁵⁸ *Chen lun yue* 陳論曰 would seem to introduce the immediately following citation from the *Lunyu* (*Lunyu* 2, “Wei zheng,” p. 7b; Legge, *Chinese Classics*, vol. 1, p. 153). The expression is seen with the meaning of “setting forth an argument,” in *Jin shu* 80, p. 2097; *Song shu* 60, p. 2460; *Jiu Tang shu* 12, p. 348, and 71, p. 2549; *Tang shu* 97, p. 3871; *Jiu Tang shu* 171, p. 4437, and elsewhere but it does not appear in the earlier histories.

⁵⁹ Untraced.

⁶⁰ *Liu tie*, *WM* 邊鄙兵; *MGH* omits 兵.

⁶¹ *WM* omits 父.

⁶² *MGH* reduplicates 丙.

⁶³ *Xiao shou* 梟首; for this expression see Zhangjiashan (Statutes), strip no.34.

as follows⁶⁴: “In my humble opinion the relationship between father and son is of the closest. No son, hearing that his father was engaged in a fight, would not be filled with feelings of fear.⁶⁵ Rescuing him by grabbing a stick⁶⁶ would not⁶⁷ be a means of cursing his father.

“According to the principles of the *Chunqiu*, Zhi 止 of Xu 許 offered his father medicaments when he lay ill and his father died. A man of quality would find out what Zhi’s original feelings were,⁶⁸ and having forgiven him would not have punished him. Jia is not a person who is identified in the Statutes as one who strikes his father;⁶⁹ he does not face standing a charge.”

Citation of the *Chunqiu* to support the case for not facing Jia with a charge raises difficulties. The received text of *Chunqiu* (48, p. 21a; Zhao Gong 19, i.e., 523 BC; Legge, p. 674) duly reproduced in the *Gongyang zhuan* reads: “On the day Wuchen of the fifth month Zhi, Heir Apparent of Xu, assassinated (*shi* 弑) his lord Mai 買.” The final entry for the year in question reads “Dao Gong 悼公 of Xu was buried.” The use of the term *shi* can hardly be interpreted as showing that Zhi was not guilty of crime and was thus not due for a charge. Nevertheless the commentators try hard to show that, as described, this was not a case of deliberate murder.

The *Gongyang zhuan* (23, p. 11a) reads: “Winter: Dao Gong of Xu was buried. The criminal was not punished. Why does the text of the *Chunqiu* not complete its statement by mentioning assassination? For what reason does it not complete its statement by mentioning assassination? If it was because while it was Zhi who proffered the medicaments, it was the medicaments that murdered Dao Gong, why does the text use the term *shi* assassinate? Because it is criticising Zhi for incomplete fulfilment of his duties as a son. How come such a criticism? On the basis of Yue Zheng Zichun’s 樂正子君 attitude to illness.”

Yue Zheng Zichun appears in two passages of the *Li ji*. In 6 (“Tan gong” A.3), p. 18a, he is preventing a servant from providing the sick Zengzi 曾子 with a light; in 48 (“Ji yi”), p. 7b, he lies ill with an injured foot and expatiates on the duty of a child not to harm the body that his parents gave him. It is difficult to see how either of these two passages supports the view that Zhi of Xu was innocent.

Nor can the comment of the *Zuo zhuan* (48, p. 22a), which reads as follows, do so:

⁶⁴ WM, MGH 論; TPYL 議.

⁶⁶ TPYL 扶伏; MGH 扶杖; WM 扶拄.

⁶⁸ TPYL, MGH 原心; WM 固心.

⁶⁵ TPYL 愴悵; WM 愴悵; MGH 愴悵.

⁶⁷ TPYL, MGH 非; WM 罪.

⁶⁹ TPYL adds 也.

Summer; Dao Gong of Xu fell ill with fever; on Wuchen, fifth month, he drank medicaments provided by his heir Zhi and died. His heir fled to Jin. The text of the *Chunqiu* reads “assassinated his lord” (*shi qi jun* 弑其君). A man of quality would comment, “In exertion of one’s full heart and strength to serve one’s lord, rejection of medicaments is permissible.”

This is taken to be a criticism of Zhi for providing his own medicaments without checking that they might have included poison, and as an explanation of why the text of the *Chunqiu* uses the term *shi*.

Try as it can, with the help of commentators, the *Guliang zhuan* is no better able to show that the text of the *Chunqiu* took Zhi to be innocent of crime. In these circumstances it may be asked whether citation of Zhi of Hu was intended to be by way of contrast with Jia, who was being absolved from all blame.⁷⁰

Item no. 8: *Taiping yulan* (983) 640, p. 8a *WM*, p. 3a; *MGH*, p. 2b
Introduced: *you yue* 又曰.

Yi the husband of Jia boarded a ship which succumbed to a heavy storm at sea.⁷¹ The ship foundered; he was drowned, lost and there was no chance of burying him. After four months,⁷² Bing, the mother of Jia, forthwith had Jia married. On what charge should they both face a trial?⁷³ An unnamed person said: “Jia’s husband died without burial. The models of conduct do not include permission for marriage; becoming another person’s wife/consort⁷⁴ to satisfy personal motives deserves execution in public.”

[Dong Zhongshu] counselled as follows:

In my humble opinion, the reference of the *Chunqiu*, when it writes *furen gui yu Qi* 夫人歸於齊,⁷⁵ is to the acknowledged principles of remarriage when a husband dies and there are no males.⁷⁶ When

⁷⁰ For the question of intentional or inadvertent crime, see Hulswé, *Remnants of Han Law* (Leiden: E. J. Brill, 1955), pp. 251–71.

⁷¹ *WM*, *TPYL* 盛; *MGH* 風盛.

⁷² It is not clear whether this was seen as correct after a duly prescribed period or criticised as being too hasty.

⁷³ *WM*, *MGH* *yu jie* 欲皆; *TPYL* *yu dang* 欲當. Rendering doubtful, following my suggested reading 皆當.

⁷⁴ *Qi* 妻 as opposed to *furen* 婦人, which is seen later.

⁷⁵ *WM* 于; *TPYL*, *MGH* 於; both characters are seen in other passages of the *Chunqiu* and associated texts that read *gui yu Qi*.

⁷⁶ Of all occurrences of the expression *gui yu Qi* in the *Chunqiu*, that in *Chunqiu* 20, p. 10b, and *Zuo zhuan* 20, p. 12b, “夫人姜氏歸于齊” seems to be the most likely one to be in question, although it is not entirely clear how it is relevant to the case at issue. Jiang Shi’s return to Qi is recorded for the tenth month of Wen Gong’s 18th year (609 BC), following his death

an established wife has not acted in an arbitrary⁷⁷ or unauthorised way, and is compliant and obedient; having her married is a matter of “return” [*gui*]. In addition it was to a respected person that Jia was married and there was no licentiousness;⁷⁸ this was not a case of becoming another person’s wife/consort to satisfy personal motives. To those who are well versed in deciding these matters, there is no reason to name either person guilty of a crime. They do not face standing a charge.

There are several questions at issue here: a) that of remarriage of a widow on her own initiative, see Zhangjiashan (*Zou yan shu*) strips nos. 191–2; b) that of remarriage without certain knowledge that the husband had died; c) that of the propriety of remarriage without allowing three years to elapse after his presumed death. See Shen Jiaben, *Han lü zhi yi* 8, p. 10b.

Item no. 9: To the foregoing items there may be added a passage in the *Bei tang shu chao* of Yu Shinan 虞世南 (558–638), which reads: 意句不惡釋而無罪. The note of Kong Guangtao 孔廣陶 ascribes this to Dong Zhongshu.⁷⁹

LIST OF ABBREVIATIONS

<i>HHS</i>	Fan Ye 范曄 (398–446), <i>Hou Han shu</i> 後漢書, and Liu Zhao 劉昭 (ca. 510), <i>Xu Han zhi</i> 續漢志
<i>HS</i>	Ban Gu 班固 <i>et al.</i> , <i>Han shu</i> 漢書
<i>HSBZ</i>	Wang Xianqian 王先謙, <i>Han shu bu zhu</i> 漢書補注
<i>MGH</i>	Ma Guohan 馬國翰, <i>Yu han shan fang ji yi shu</i> 玉函山房輯佚書
<i>TD</i>	Du You 杜佑 (735–812), <i>Tong dian</i> 通典
<i>TPYL</i>	<i>Taiping yulan</i> 太平御覽
<i>WM</i>	Wang Mo 王謨, <i>Han Wei yishu chao</i> 漢魏遺書鈔 (1798)

in the second month. There is no record of Jiang Shi’s remarriage. The *Zuo zhuan* explains the action as Da gui 大歸, rendered by Legge, *Chinese Classics*, p. 282, as “a return for good,” and records her complaint that the son of a commoner had been set up after the murder of the rightful heir. See *Gongyang zhuan* 14, p. 17b; *Guliang zhuan* 11, p. 13a.

⁷⁷ *WM*, *MGH zhuan zhi* 專制; *TPYL zhuan ci* 專刺.

⁷⁸ *WM* 淫; *MGH*, *TPYL yin yan* 淫衍.

⁷⁹ 44, p. 1b (1888 print).