

## CHAPTER ONE

# WRITING THE STATE

The so-called bureaucratic polity in China emerged from a theocratic state organized around the ancestral cult, in which writing had served to communicate with the dead and political documents had provided the content for such communications. The political uses of writing that re-created the state during the Warring States period (ca. 481–221) entailed the adaptation of these earlier religious uses. The earliest stages of the transition involved the use of religiously potent forms of writing to lend authority to institutional innovations. Even in the developed bureaucracy the palpable religious origins of many practices, the overlap of the forms of cult and administration, and the incorporation of new state practices into the imagined realm of the dead blurred any separation between politics and religion. Instead the world of the spirits became the first imaginary double of the emerging state, a doubling marked by their shared use of written forms.

The most important modification in the shift to an administrative polity was the extension of writing to new elements of the population. The attributes of the Zhou nobility that had been inscribed on their commemorative bronzes were transferred to the common people in the administrative documents of the new state. This widening range of inscription into the state order altered the social meaning of being recorded from a sign of power to one of subjection. Thus in the sphere of writing the new state was created through the extension and reworking of the elements that had defined the old, and the redefinition of what had been noble as what was common and base.<sup>1</sup>

The extension of the state and its writings to new elements of the population also introduced new content in the politico-religious complex that defined authority. Most important was the use of elements of religious practice from outside the Zhou state sphere to sanction authority. In this period religion provided the most influential images and languages of power, and political innovations often relied on these to be understood and respected. Thus the radical differences between Warring States kings and their ministers, on the one hand, and the old dukes and their hereditary nobles, on the other, were often marked by the emergence in writing of ideas and practices that had passed unnoticed, because unrecorded, in the Zhou state.

This chapter will analyze the origins and forms of this doubling of the state and religious spheres, concentrating on the role of writing as the common medium

of both. It will examine the manner in which the written forms of authority in the new state derived first from the ritual practices that had created political authority in the Shang and Zhou states and then were supplemented by appeals to religious authority from outside the old state sphere. Starting with a brief sketch of the roles of writing in the archaic Shang and Zhou states, it will examine how these evolved into the characteristic texts employed in local government, at the court, and in the definition of the ruler himself. It will show at each stage how supposedly bureaucratic administration was based on an adaptation of religious ritual. In the final section it will examine how this pairing of administration and religion was written into the ideal model of a state in the *Zhou li*, one of the first texts that attempted to produce a model of the entire world.

### THE ARCHAIC BACKGROUND

Devoted to communication with spirits, signs carved on ox scapulae and tortoise shells or cast into bronze vessels generated power in the Shang and Zhou states for kings and nobles who derived their ascendancy from privileged access to gods and ghosts. Moreover, their use in divination and sacrificial communication with the spirits charged graphic forms with a numinous power that affected even their use in nonreligious practices. This emergence of writing in the archaic state at the nexus of religious practice and political authority influenced the forms it took and the roles it played in the formation of later, territorial states in the Warring States period.

While isolated marks appear on neolithic pots, the earliest use of linked graphs in a written language is the oracle inscriptions of the Shang dynasty.<sup>2</sup> Divination by cracking bones through the application of fire was widespread across north Asia, but the decisive Shang innovation was to carve inscriptions into the bone after the application of fire had produced cracks. These inscriptions invariably record the topic of the divination, more rarely “prognostications” that assigned a meaning, and very infrequently a “verification” stating that something actually happened. The purpose of making these inscriptions is not clear. Some scholars think that they were purely archival in nature, while others argue they were necessary to make the ritual efficacious.<sup>3</sup> While the latter position is more persuasive, there is in either case a clear genetic relationship between the sets of cracks that signaled the attitudes of the spirits, and the patterns of lines in which the Shang people recorded, and perhaps sought to magically bring about, the meaning read into those cracks. The Shang diviners apparently made an oral “charge,” the spirits indicated their responses through producing patterns of cracks, and these were then translated into the human world in the form of sets of lines inscribed beside the original cracks. This transformation of the lines that signaled the reaction of the spirits into lines that recorded and verified their significance for men produced the first systematic writings in China.

Not only was the making of cracks and assigning them meaning through inscription fundamental to the cultic practices of the Shang, but those practices were in turn the bases of political power. All modern scholars agree that the Shang state was a "Bronze Age theocracy," in which the state was inseparable from the king and the royal lineage, and these in turn drew their power from ancestral cult. The most detailed and persuasive study of the Shang state argues that it was a nested hierarchy of cults, in which the Shang had extended their power through the absorption into their own cultic complex of the local gods and ancestral deities of tribes or statelets. Moreover, the diviners whose names are preserved on many inscriptions may well have included chieftains from these statelets that had been absorbed by the Shang.<sup>4</sup> Thus in its earliest known forms writing in the civilizations of the Yellow River valley was, through its role in religious cult, fundamental to political power.

Some scholars speculate that these earliest script forms had been developed for use in daily activities, but that the evidence of this has vanished with the perishable materials to which such writings were committed. In fact, the early graph forms are clearly tied in form and significance to divination through the reading of lines, the brief formulae of the early inscriptions are a radically simplified form of a natural language, and the development of graphs can be directly traced to their role in religious cult.<sup>5</sup> Whatever other roles writing played in Shang times, it was in the inscription of the religious activities of the rulers that the graphs found their definitive import, and it was their dual function as link to the spirits and emblem of royal power that first placed them at the center of Chinese civilization.

Shang divinatory records provide evidence for the development of another key element in the written expression of political power, the calendar. The Shang counted time in a sixty-day cycle divided into six ten-day units, and inscriptions regularly indicate the day on which a divination took place. Months were noted as astronomical phenomena and increasingly used to locate inscriptions in time, but they did not correlate with the sixty-day cycles and hence they figure as events to be noted, rather than as recurring units in terms of which time was organized. In earlier periods the Shang regularly divined about which day sacrifices to ancestors were to be performed, but during the reign of Zu Jia they established a fixed, ritual calendar in which specified ancestors received sacrifice on fixed days, with the posthumous name of the ancestor indicating the day. This ritual cycle lengthened as the number of ancestors increased, and by the late Shang it came close to coinciding with a solar year. At this time, inscriptions also sometimes included the number of ritual cycles that had passed during the reign of a ruler, as a means of distinguishing different days with the same name in terms of the sixty-day cycle.<sup>6</sup> The crucial feature of this calendar was that it was based on liturgy. Cycles were fixed by cultic practices and linked to astronomical cycles only after the fact. The ritual character of the calendar and its ties to the political order continued to be a feature of Warring States and imperial societies.

The Zhou rulers ceased to inscribe shells or scapulae, and consequently preserved no divinatory records. However, as inscriptions cast in bronzes writing continued to link nobles to the spirit world and thereby generate political authority. The Shang had inscribed a few bronze vessels, and bronze inscriptions are as ancient a form of writing as oracle bones. Nevertheless, the number of such objects increased dramatically under the Zhou, and some inscriptions became quite long. These vessels were ritual implements placed in the lineage temples of the nobility and used to make offerings to ancestors. Consequently, it seems that the intended recipients of the inscribed messages were the ancestral spirits.<sup>7</sup> A minimal inscription proclaimed the casting and dedication of the vessel, while others added closing “auspicious words” that described the favorable response of the ancestors and the use of the vessel through the generations. These latter elements are identified in commentaries to the “Li yun” chapter of the *Li ji* as the message delivered from the spirits to their descendants, and would have been pronounced by an invocator in the ancestral temple.<sup>8</sup> Finally, some inscriptions narrated the achievement that had led to the casting of the vessel—usually some service done for the king—and the consequent ceremony of investiture involving the receiving of a title, land, attached population, regalia, and perhaps metal for the casting of the commemorative vessel. Thus a long inscription described the achievements of the donor and his ancestors; identified lands, titles, offices, and honors received; proclaimed the casting of the vessel; and finished with “auspicious words” that transformed it into a ritual message to and from the ancestors. Such vessels were charters for the powers and privileges of the Zhou nobility. They were sanctioned ultimately through communication to ancestral spirits who in turn were charged with preserving the prosperity of their noble descendants.

The form of polity depicted in such inscriptions, in which authority was based on the power of genealogically graded ancestral spirits, had at least two important consequences for later developments. First, since the authority of the spirits and their relations to the living were based on their place within the kin order, this world had a highly formal character in which the powers of spirits and the forms of cult they received were determined by their genealogical position or rank. Thus genealogy provided a flow chart of power in the spirit world. Moreover, since the relation of the dead to the living changed with each death and succession, over time individual spirits moved through a set of positions in Heaven, and the spirits’ capacities changed as they became more remote. In short, the structure of the ancestral cult established the precedent of a graded hierarchy in which position took priority over personal character and each named individual moved through a series of roles. Thus the Shang-Zhou ancestral cults, which determined the structure of both state and kin groupings, anticipated several of the basic principles attributed to bureaucracy in the later state.

Second, the predominance of political ancestors in religion and the close relation of the kinship system to the state meant that the archaic polity already

tended to transpose political structures directly into the world of the spirits. Shang and Zhou gods were organized according to the principles that defined the ruling social group, and the passage of time entailed a steady transfer from the world of men to the world beyond. As a result, the power of the spirits followed the same principles and had the same structures as political power in the human world, and the spirits were themselves transpositions of those who had been living rulers or ministers. Thus the principle observed by Jean Levi for imperial China, that gods were transformations of dead men, was both an organizing rule of the archaic state and the ultimate origin of what is often called the bureaucratization of the Chinese spirit world.<sup>9</sup>

The characters cast in bronze, however, were not the sole form of writing used by the Zhou. Sources mention record keepers (*zuo ce* 作冊) and scribes (*shi* 史) who wrote on perishable bamboo or wood, and, as Lothar von Falkenhausen has argued, the longer bronze inscriptions probably drew on these documents. Wood and bamboo documents were stored in archives for use by the living, while elements of them were reported to the ancestors through inscriptions inside sacrificial vessels.

Such administrative documents on perishable materials were another mode of written power, but they were still inextricably linked to cult. First, the power of rulers ultimately derived from that of ancestral spirits, and consequently those texts transmitted to and from the spirits remained the highest and definitive forms of writing. More important, as first demonstrated by Shirakawa Shizuka, the scribes had begun as religious specialists. The graph which identified this office probably depicted a ritual in which inscribed strips of wood were presented to the spirits in a basket-container. Such writings were used to make binding pledges to spirits in exchange for their support.<sup>10</sup> Thus even political and literary writings on perishable materials were drawn into the cultic complex.

In addition to administrative documents produced in the Zhou state, the few surviving literary works of the period also were tied to religious cults and political power. The earliest recorded songs were hymns sung collectively in the temple, and many of the later poems describe rituals in the temple or celebrate agricultural success as demonstrations of the ancestral blessings. The other main body of preserved Zhou literature records speeches attributed to kings and ministers. These were likewise inseparable from ancestral cult, for they were the words of the ancestors, and it is possible that they were recited in a cultic context. They will both be discussed in later chapters.

The Spring and Autumn and Warring States periods witnessed a proliferation in the political uses of writing, but these new practices did not constitute a radical break with those of the Zhou. The major institutional developments were derived from and dependent on the Zhou rituals, and the uses of writing in government were adapted from its earlier cultic roles. In the subsequent sections of this chapter I will first demonstrate the links of Warring States administrative documents to

Zhou ritual inscriptions, and then show how these continued links resulted in an administrative system that blurred into ritual practice, and a religious realm that operated through administrative documents.

For purposes of exposition I will organize the presentation around three administrative loci with their characteristic forms of writing: (1) the courts (*ting* 庭) of the local officials, (2) the court (*chao* 朝 or 庭) of the ruler, and (3) the person of the ruler. In each of these three theaters power was created and exercised through distinctive modes of writing and graphic emblems. The characteristic modes in the local courts were the written legal codes, population registers, and maps; those at the central court the patterned exchanges of inscribed seals or tallies and written reports; and those in the person of the ruler the standardization of correct language and writing through sagely actions.

### LAWS AND REGISTERS

The Warring States were created through the extension of tax and service obligations to lower elements in society and to rural hinterlands. Consequently, their key loci were the courts of local officials responsible for the direct administration of the peasantry. The functioning of such offices far away from the capital depended on writing. First, they required written laws and regulations stipulating obligations of individuals, penalties for crimes, procedures for keeping accounts, and so forth. Writing was also needed to transmit orders to subordinates and information to superiors. Again, the extraction of taxes and services required accurate population registers. In short, the administration of large territorial states depended on the capacity of writing to communicate accurately over great distances, organize and tabulate masses of data, and preserve information across time.

In standard treatments of the Warring States period, the new written legal codes were opposed to the old Zhou order. This idea, largely derived from the interschool polemics of the late Warring States, is presented in the guise of a debate between “law” (*fa* 法) and “ritual” (*li* 禮). The former distinguishes bureaucratic rule through codes and documents, as articulated in the texts of what are commonly called legalist writers. By contrast, accounts of ritual as a form of governance, based on an idealized Zhou model, figure largely in writings of the Confucians. This schema identifies “law” as a form of bureaucratic rationality representing a sharp break with earlier political systems. However, the discovery of actual materials employed in late Warring States and Qin administration, along with the rereading of received texts in the light of these discoveries, reveal a different picture of the emergence and the role of written, legal codes in the period. Far from being tools of rational administration or of brutal realpolitik, the Warring States administrative codes remained embedded within the religious and ritual practices of the society from which they emerged.

The most important of these discoveries are the finds of covenant (*meng* 盟) texts at Houma, Wenxian, and Qinyang. Stories in the *Zuo zhuan*, set in the seventh through the fifth centuries B.C., depict Zhou aristocrats ritually invoking powerful spirits with blood sacrifices and calling on them to enforce the terms of oaths. These covenants, sanctified through smearing the lips of the participants with the blood, were used to form alliances between states or lineages. They also dictated the rules to be observed by all who joined into such leagues. Later texts identified these covenants with oaths known as “bonds” (*yue* 約) that were the bases of legal codes in the state and regulations in the army.<sup>11</sup>

The covenant texts discovered in excavations augment these written accounts, for they have revealed a transitional stage between the interlineage covenants of the Spring and Autumn aristocracy and the law-based polities of the late Warring States. In this transition we can see how the use of writing in the religious rituals of the old Zhou elite played a fundamental role in the emergence of codified law.

These covenants, which date from the end of the Spring and Autumn period, were elements in the internecine wars of the period and formed the primary mode of state expansion. The sacrificial oath ceremonies were organized by the head of the Zhao lineage, one of the militarized local clans fighting for power in Jin. The participants were lesser members of the elite who dwelt in secondary (or tertiary) towns of the emerging Zhao realm. The participants pledged loyalty to the master of the covenant, that is, the Zhao chief, swore to defend his ancestral temple, and foreswore any contact with or attempts to restore clans that had been expelled from the state in the recent civil war. The covenant texts provided detailed lists of the names of those who were thus exiled and anathematized. In other texts individuals pledged (*zhi* 質) themselves to the lord. After the pledges, the texts invoked the gods who were to enforce the oath, and finally they stipulated the punishment that was to befall the participant and his kin should he violate the oath.<sup>12</sup> The texts were buried in the sacrificial pits at the end of the rite, presumably to communicate them to ancestral spirits who dwelt beneath the earth.

The texts furnish evidence on several points essential to our understanding of the role of writing in the emerging territorial states. First, the range of the oaths reveals the downward extension of state power through the application of an established religio-political ritual to new purposes and the widening of the circle of participants. As Gosei Tadako has shown, early landholdings of individual lineages were fragmented, and the creation of a unified polity required the incorporation of the territories of independent groups. The ritual of covenant performed the dual function of binding unrelated groups together in the emerging states, and expelling other elements from the new body politic.<sup>13</sup> Those who accepted the oaths imposed by the Zhao clan were bound by rules of conduct rendered potent through the invocation of spirits by blood sacrifice. Thus the creators of the territorial states adapted the primary political ritual of the Spring and Autumn aristocracy, a ritual based on written texts, to their own ends.

Second, while the major actors in the rites were still the lineages, named individuals swore the oaths and served as targets of the bans. As Guo Moruo noted, the covenants took the form of a large number of tablets where the name of the participant was altered in otherwise identical oath formulae, rather than a single text listing all the names.<sup>14</sup> Such oaths from and bans on individuals and their immediate kin reveal the origins of the direct control of the individual and the household that defined political power in the Warring States and early empires.<sup>15</sup> We will return to the creation of the “administrative individual” in the discussion of the uses of naming. These oaths also mark the beginnings of the collective family responsibility that became a basic principle of Warring States law.

Shiga Shūzō, one of the few scholars to examine the evolution of law in pre-Qin China, identifies the most important features of archaic law as oath, covenant, curse, and mutilating punishments. Oaths were oral performances to create solidarity among large groups of subordinates, usually warriors about to enter battle. Covenants invoked spirits in writing to establish ties between figures not linked by relationships of kinship or political subordination. Both rituals also served to denounce wrongdoers and expel them from the community of mutual obligation. Such exile was a form of death sentence in a world where security depended on the threat of vengeance by the victim’s kin. Mutilating punishments similarly expelled the criminal from the human community.<sup>16</sup> However, covenants were not merely a feature of primitive law based on inclusion in or expulsion from the group. Using writing to impose rules on those who remained within the community, they also formed one basis for the more elaborate written codes that developed in the Warring States.

The aforementioned inscriptions on bronze vessels were a second ritually potent form of writing that influenced the development of administrative law. Several late Western Zhou and Spring and Autumn period bronzes bear inscriptions commemorating decisions made in legal cases. These most commonly dealt with disputes over land, but some recorded corporal punishments, such as the condemnation of a cowherd to be whipped and tattooed recorded on an *yi* 匜 vessel discovered in the cache at Dongjia cun.<sup>17</sup> The *Zuo zhuan* records that in the sixth century B.C. bronze vessels were used for the consecration of law codes in the states of Zheng (B.C. 536) and Jin (B.C. 513).<sup>18</sup> Thus the inscriptions on the sacred vessels used to fix power and privilege under the Zhou were adopted to perform the same function for the written, codified powers of the emergent territorial states.

This sacralization of written law in the covenants and bronzes did not vanish with the development of more elaborate codes written on bamboo or wooden strips, for these continued to be tied to religious rites and assimilated to ritual structures. First, ceremonial oaths were employed in the Warring States to establish regulations in the army and in civil society. These oaths, sometimes still accompanied by blood sacrifice, were identified with legal codes in the philosophical texts of the period. Histories narrate several occasions in the Qin-Han interregnum and early Han when such ceremonies were used to consecrate laws. Moreover, the



usage of the period shifted emphasis to the *text* of the oath as the binding force, insisting on the fundamental power of sanctified *writing*. Finally, the law-creating oaths of the Warring States were linked in terminology and symbolism to certain rituals of popular magic used to create bonds, usually sexual, between two people or between people and spirits.<sup>19</sup>

However, the links of Warring States legal codes to the earlier covenants and bronzes entails more than the filling of old cultic vessels with new wine. In fact, the social and political role of the codes in the new state order also derived from the roles of the earlier sacralizing texts. Substantial samples of Warring States law have been discovered in tombs at Yunmeng and Baoshan precisely because such texts were buried in tombs, that is, they played a role in funerary ritual. It is unclear whether the documents were buried because they were powerful, sacred texts that would protect the deceased in the afterlife, or whether they were simply another element in the general program of equipping the tomb with all the materials needed to continue the deceased's mode of living in the world beyond. In either case, in the still overlapping realms of funerary cult and political authority they played a role homologous to that of the Zhou bronzes. They were texts that the deceased was entitled to hold through the gift of the ruler, and they served as signs and implements of the holder's power over his subordinates. Texts that both bound and empowered, they were carried into the afterlife to preserve the status of the deceased. The legal texts of Yunmeng and Baoshan thus inherited the role of the documents cast on Zhou funerary bronzes, except that, like the covenant texts, they shifted the emphasis from the lineage to the individual.

The legal texts were also successors of the Jin covenants. First, like the latter they were ultimately buried in the earth and thus transferred to the spirit realm. More important, they played a literally pivotal role in the creation of the state. They served to control those political actors who were tied directly to the ruler and who transmitted royal policies. The actors in the covenants had been the leading members of local clans, so those who participated in the sacrificial rites and left their names on the buried texts were the heads of locally powerful sublineages within the Zhao sphere. The ritual bound these lineage chiefs to the ruler of the emerging state, and through the chief it bound the lesser members of the lineage. Thus the ritual had extended the range of the state in two stages. First, it had incorporated the local worthies who actually came into the presence of the Zhao chief and swore loyalty to his person and lineage. Second, through the agency of those who swore the oaths, the power of the Zhao chief was indirectly transmitted to those under the sway of the local worthies.

In the same way, the legal texts at Yunmeng and Baoshan are devoted primarily to the control of local officials, and the common people appear in a secondary role. Like the earlier bronzes and covenants, the law codes of the Warring States were ritual texts bestowed on the agents of the state, who were bound to the ruler through the receipt of these inscribed objects. The physical bestowal of the written statutes and associated documents at or in the wake of the ceremony of appointment

was central to the law's function, and this ritualization of the code was carried forward in its role in burial. The emerging territorial state was thus both created and maintained through the physical transfer of writings to its agents, and the contents of these text then imposed the writ of the state on the populace.

The focus of the Yunmeng legal documents on controlling the officials is demonstrated by their contents.<sup>20</sup> The first and longest section in the groupings used by the modern editors, the "Eighteen Statutes," deals almost entirely with rules for official conduct, guidelines for keeping accounts, and procedures for the inspection of officials. The second section, the "Rules for Checking," is concerned entirely with the maintenance of official stores and the records thereof. The content of the third section, "Miscellaneous Statutes," is closely related to that of the first two. The fourth section, "Answers to Questions Concerning Qin Statutes," defines terms and stipulates procedures so that officials interpret and execute items of the code in the manner intended by the court. The fifth section, "The Models for Sealing and Investigating," instructs officials in the proper conduct of investigations and interrogations so as to secure accurate results and transmit them to the court. Thus as evidenced by the Qin documents of the late Warring States period, the legal codes focused on the rigorous control of local officials. It is also noteworthy that the procedures stipulated in the code entailed keeping detailed *written* records.

This emphasis on the control of officials reappears in the text "On the Way of Being an Official (*wei li zhi dao* 爲吏之道)" found in the same tomb.<sup>21</sup> The official is charged to obey his superiors, to limit his own wants and desires, and to build roads so that directives from the center can be transmitted rapidly and without modification. It praises loyalty, absence of bias, deference, and openness to the actual facts of cases as the highest of virtues. It attacks personal desires, acting on one's own initiative, resisting superiors, and concentrating on private business as the worst of faults. In short, it proclaims the new ideal of the official as a responsive conduit who transmits the facts of his locality to the court and the decisions of the court to the countryside without interposing his own will or ideas. Like the sacred writings of the Zhou and the Qin legal documents, it both stipulates and physically embodies the obedience owed by political agents to the ruler.

If the bases of Warring States law in Zhou religious ritual are clearest in the organization and uses of the texts, the contents also are permeated by the ritual practices of the period. This is shown best not in specific items, such as the statute that adopts the ritual program of the "Monthly Ordinances" as law, or the legal incorporation of family relations, but rather in underlying principles.<sup>22</sup> Two of these which can be traced back to Zhou rituals are the modeling of punishment as a form of *do ut des* reciprocity and the fundamental place granted to titles and names. I will discuss each of these in turn.

As Donald Harper has demonstrated in several unpublished papers, divination materials found with the legal texts in the Baoshan tomb reveal a system of curing/exorcism through sacrifice which follows the Shang pattern.<sup>23</sup> The doctor/

diviner divines to ascertain the identity of the spirit causing the disease, its relation to the patient, and the type and number of sacrifices necessary to assuage it. The ritual is a mechanical form of exchange with no moral dimension. A similar process of identification of the spirit culprit and mechanical ritual expulsion or appeasement informs the “Demonography” found in the Yunmeng tomb. This text’s title 詰 *jie* functions in the legal documents as a technical term meaning “interrogation” but also refers to the commanding of spirits through the use of written spells, for in Zhou documents this term meant “to obligate oneself to the spirits by means of a written document.”<sup>24</sup> Thus a term for the use of writing in relations with the spirits was applied to the Warring States legal practice of making written records of testimony by witnesses. Indeed there is a close connection between religious and legal language throughout the texts from Yunmeng.<sup>25</sup>

Texts on exorcism and demon control share with the legal documents not only their role as apotropaic or status-granting objects in burial and their common vocabulary, but also a mode of practice. In both spheres order is maintained through the identification of malefactors and the application of graded responses sufficient to counteract the threat imposed or damage inflicted. Indeed, the links between the Yunmeng legal documents and the mantic materials are even closer, for a guide to thief catching appears in the “Book of Days” (*ri shu* 日書), a manual indicating which days were favorable or unfavorable for certain activities. The guide provides descriptions of the physical appearance of the thief based on the day on which the crime occurred. Other strips deal with appropriate days to take up a post and indicate the consequences of holding audiences at various times of the day. Since these mantic texts were buried together with the legal materials, it is likely that the deceased official or his subordinates employed them in their administrative activities. As Robin Yates has noted, the administrative and mantic texts must be studied together in order to avoid serious misconceptions.<sup>26</sup>

The links of legal practices to the magical universe of the accompanying tomb texts are also revealed in the scales of punishments. The texts exhibit no sense of an absolute immorality in an act that merits a specific punishment, nor do they operate on the legalist principle of imposing severe punishments in order to intimidate potential criminals. Instead, the legal texts suggest a model in which a criminal act entails a form of obligation that must be redeemed through the performance of certain acts or the paying of certain objects. Actors of different statuses have different means for paying off the obligation created through violation of the codes. Consequently, the status of the actor along with the nature of the crime enters into the calculation of the appropriate punishment. Thus the assignment of legal punishments operates according to the same *do ut des* principle of exchange based on identity and status that underlies the Baoshan divinations for the treatment of demon-produced ailments.

In contrast to the standard presentations of the “law versus ritual” debate derived from the philosophical texts, in which law is imposed on all without consideration of rank, while in ritual “punishments do not reach up to the high officials,”

the Qin code and the Baoshan materials both include officials and tailor punishments to the status of the accused. The primary distinctions invoked in the code are those between officials and commoners, and those pertaining to the ranks of nobility gained through military service. However, underlying these distinctions is the broader principle that the form of punishment was determined by the relation of the culprit to the ruler. This relationship was marked by the receipt of certain items that entered into the reciprocal exchanges built into the penal codes. Consequently legal punishments functioned within a broader framework created by the ritual bestowals of the ruler that produced specified relations, statuses, and obligations.

The clearest example of this is the titles of rank. These ranks were received as gifts from the ruler in exchange for service, and they were the chief reward obtainable by the common people. Holders of titles could surrender them for a reduction of punishment.<sup>27</sup> Prior reward thus established a closer relation to the ruler. This in turn meant that an identical later crime would be punished less severely, or more precisely, that the title could be returned to the ruler in exchange for a reduction of the normal penalty. In short, the principle of reducing punishments in respect of status that was held to characterize ritual theory was worked out in a highly elaborated form in the Qin legal order.

A second example was the treatment of officials. The Qin code tends to punish violations by officials with fines, usually expressed as a certain number of suits of armor.<sup>28</sup> Thus individuals even closer to the ruler, who already received some protection as holders of higher ranks of nobility, enjoyed the added privilege of redeeming misconduct with forced contributions of material to the army. Most scholars assume that this was a financial penalty, since the suits would presumably have been purchased. Hence the Qin code hints that not only could those who received titles from the ruler use them to redeem their crimes, but also those who received cash in the form of salary could return it to him in order to escape servitude. However, this principle is not absolute, for individuals without office accused of cash-related crimes and lapses in the performance of military duties also pay fines of armor.<sup>29</sup> People with neither rank nor office could redeem their crimes only through providing labor for a fixed term or as state slaves.<sup>30</sup> Once again, the punishment imposed reflected the ties of the individual to the ruler, for labor service was the primary obligation of the peasant.

The one major element of the penal statutes not linked to this scheme of status-based reciprocity was the use of mutilating punishments. As noted above, these were features of archaic law. They dated back at least to the Shang and Zhou and represented traditional, or even archaic, elements in Warring States law. However, even these archaic punishments were partially incorporated into the system of status-based reciprocity, for graded degrees of mutilation were adapted to the position and privileges of the criminal. A whole range of mutilations, from the shaving of beards and hair, through tattooing and cutting off of the nose or foot, to

castration or death, was used in order to make minute distinctions in the scale of punishments and balance them against past rewards.<sup>31</sup>

The system of punishments in the Qin code shared underlying ideas and practices with the divinatory and exorcistic practices of the period, in which one had to first identify the hostile agent and then determine the appropriate response in terms of his identity and status. The homology was not absolute, for the spirit "culprit" might be a petty criminal to be punished or expelled, or a major power to be assuaged. In the latter case, it was the human who was cast in the role of malefactor seeking redemption vis-à-vis a spirit authority. Thus in the religious *jīe* the mortal could alternatively obligate himself or the god through the power of written words. The punishments also incorporated the minute, mathematical gradations that had characterized sacrificial responses to threatening behavior since the Shang. Finally, they were steeped in ritualistic notions of status as defined by differential relations to the ruler created through a hierarchy of gifts. Warring States law thus served to instantiate a ritually designated social hierarchy as well as to impose obedience through the force of sanctions.<sup>32</sup>

The hierarchy created through the system of ranks was itself an extension and modification of earlier ritual practices commemorated in inscriptions. The Zhou state had featured a variety of titles held by rulers of states and their leading ministers, and these titles had been theoretically received from the king. The distribution of titles by the king to the populace was a universalization of a ritual practice linked to writing that had defined the old nobility. Indeed, many of the titles in the Qin hierarchy had been titles of nobility in earlier centuries, or were created through modification of old titles.<sup>33</sup>

The practice of regulation through the awarding of titles points to another feature of Warring States documentary administration derived from earlier ritual practices: the granting of family names. Our current understanding of Shang and Zhou naming practices suggests that the patronym (*xing* 姓) first appeared under the Zhou as a function of the division of the single royal ancestral cult into a multitude of noble lineages and sublineages. The Zhou aristocracy was divided into a small number of patronyms distinguished by a taboo on intermarriage, and a larger number of "clan names" (*shi* 氏) usually derived from names of fiefs or official titles. The establishment of cults to the founders of the feudal states and the lineages of hereditary officials was followed by the royal granting of family names to all those tracing descent from a common ancestor. Both patronym and clan name were granted in the enfeoffment process and were hence a noble privilege, while commoners had no family names.<sup>34</sup>

There is no direct evidence of the extension of this privilege to the masses. However, as service obligations were extended, governments began to register peasants by name, perhaps as early as the eighth century B.C., and certainly by the sixth.<sup>35</sup> To register tens of thousands of households solely on the basis of personal names would have been impossible, so it is a reasonable hypothesis that the granting

or recognition of surnames took place in association with the process of registration. While no government registers have survived, other remains provide evidence of the appearance of family names among the common people during the Warring States period. Inscriptions on pottery found in excavations at the capital of the state of Qi often include the names of craftsmen. Inscriptions on pots produced in government shops include the personal name of the craftsman, his political unit, and the location of the shop. Those from the hands of private craftsmen recorded personal name, town, and quarter. Thus at first there is no evidence of family names, but place of residence was used instead. However, where craftsmen were organized on kin lines and produced certain vessel types over several generations, in some cases the name of the founding ancestor came to identify the workshop and was adopted as a clan name. In addition, pre-Qin seals contain thousands of examples of individuals with both personal and family names.<sup>36</sup> Thus it was in the early Warring States that the phrase “hundred surnames” (*bai xing* 百姓) ceased to refer to the nobility and came to mean “the common people.” Just as the incorporation of the common people into state administration entailed the granting of ritual titles, it also included the ritual gift and subsequent inscription of a family name based on the model of the old Zhou nobility. This practice was fundamental not only to registration but to the execution of law, for the “Models for Sealing and Investigations” from the Yunmeng legal documents states explicitly that any testimony begins with the name, status (i.e., rank), and legal residence of the witness, and the cases from Baoshan provide numerous examples of this practice.<sup>37</sup>

However, while the inscription of the common people into the territorial state involved granting them attributes that had previously defined the nobility, the meaning of these attributes changed within the new order. Just as the process of universalizing military service had transformed an insignia of nobility into a token of servitude, so the universalizing of naming, titling, and registration meant that these ceased to be attributes of authority. When the Zhou nobility had received titles and surnames from the king, they had inscribed these in reports to their ancestors who granted them claims to power and status not wholly dependent on the king. By contrast, the names and titles of the Warring State peasant, although signaling status as a legally free member of the political order, were inscribed on registers whose ultimate recipient was the ruler of the state. Thus to be inscribed marked subjection. The intermediate status once held by nobles, through being written into ancestral cult, instead belonged to officials, through their possession of the population registers in which the names and residences of the common people were recorded.

Consequently population registers, and the maps associated with them, came to be metonyms for authority and the hallmark of the ruler.<sup>38</sup> Indeed these written depictions of population and territory came to magically embody the objects that they represented. When Jing Ke attempted to assassinate the First Emperor, he used as a pretext a mission to surrender territory to Qin through the formal presentation of the relevant population registers and maps.<sup>39</sup>

While no registers have survived, references in Warring States texts suggest the nature of their contents. One passage in the *Zuo zhuan*, a fourth-century B.C. text, describes a census held in the state of Chu in 548 B.C. It listed quantities of armor and offensive weapons; details of arable land, mountains, and forests; designations of areas for special treatment or taxation at concessionary rates (such as hilly land or poor soil); amounts of land damaged by stagnant water; dues for wagons and carriages; and a register of horses. A passage in the *Guanzi*, tentatively datable to the late Warring States or early Han, speaks of registers that record numbers of households and the amount of arable land. A record of the compilation of a household register in Qin in 375 B.C. preserved in a Han source links this act to the establishment of units of joint responsibility for crimes. Finally, a recently discovered text entitled “Wei tian lü 爲田律,” or “Statute for forming arable plots,” dated to 309 B.C. decrees statutory measurements for plots of land, rules for setting field boundaries and channels, and instructions for the upkeep of bridges.<sup>40</sup>

While the registration of names was derived from earlier Zhou ritual, by the late Warring States period it had become an element of religious practice and depictions of the spirit world. The clearest evidence is a story found in a third-century B.C. Qin tomb at Fangmatan. In this story a man committed suicide to avoid the disgrace of an unjust execution. Documents addressed to the “Master of Life Spans *si ming* 司命” led to his body being dug up by a white dog at the command of a scribe (*shi* 史) of the god and gradually restored to life.<sup>41</sup> This shows that people in the late Warring States already believed in an underworld bureaucracy that kept registers, and that communication with the spirit world took the form of written documents patterned on those of terrestrial governments. It is also significant that the underworld administration is invoked to correct a death resulting from failings of earthly legal procedure. “Spirit registrars” controlling the human life span also figure in anecdotes preserved in the *Mozi* and the *Guo yu*, as well as accounts in the early Han *Huainanzi*. The Chu silk manuscript likewise contains evidence of a bureaucratic pantheon in the Warring States.<sup>42</sup>

A final element of Warring States local administration derived from religious practice involving the use of writing is the interrogation procedure described in the Yunmeng legal documents.<sup>43</sup> As noted above, the term for this procedure derived from older practices using writing to make pledges to spirits. The official is instructed to accurately record the words of each witness. Even if he knows that the witness is lying, he should wait until the statement is completed. Then the official should challenge any weak points and contradictions, and again record the explanations offered by the witness. Each time the official must repeat the process of notation and challenge. Finally, when the witness cannot provide further explanations, persists in changing his account, and refuses to confess, then the official should have him beaten. However, the use of the bastinado must be included in the final report.

In this procedure the official repeatedly allows the witness to state his case and try to prove that it corresponds to the material facts. He remains silent but

keeps an exact account of the witness's words and then matches the accounts for internal consistency and their relation to material evidence. This derives from the earlier process of invoking spirits as judges of the veracity of oaths and pledges, and it also corresponds to the procedures described in various texts, notably the *Han Feizi*, under the rubric of "forms and names (*xing ming* 形名)." This was a ritual that was used to impose the control of the monarch on his ministers. Here we find it, however, being applied at the lower levels of administration. The local official stands in the position of the ruler and the witness in the position of the official. The witness must name himself and give an account of his actions that will be transformed into writing, while the official sits silently and measures everything against his knowledge of the facts. Both the local official and the ruler stand in the position of the divinity in the religious oath or pledge. This model of administration through a hierarchical series of staged personal encounters was fundamental to Warring States government. It was also a version of the formalized confrontations of superior and inferior that formed the Confucian theory of ritualized order, a theory that itself developed from the staged encounter of man and spirit in the performance of divination and sacrifice.

### REPORTS, TALLIES, AND SEALS

The preceding section demonstrated how the uses of writing in local administration during the Warring States period—law codes, hierarchies of rank, registration of names—all derived from Zhou ritual procedures and evolved in association with religious practices of the Warring States period. The central court was in turn marked by the staged confrontations of the ruler with his courtiers, in which the exchange of writings played a fundamental role. This section will examine the ceremonial and religious elements underlying the use of writing in these "techniques (*shu* 術)" by which the ruler sought to control his ministers and compel them to serve his interests. Like the practices described earlier, these techniques had roots in Zhou ritual and religion.

In contrast to local administration, for which we possess working documents that stipulate conduct, evidence for the central courts comes primarily from narrative or philosophical sources. The single major exception is the legal materials discovered in a tomb, dated to 316 B.C., near Baoshan in what was then the state of Chu. These documents reveal the level of government above the local administrator. The man buried in the tomb had been chief legal officer to the king of Chu. Whereas the Yunmeng materials consist primarily of rules for official conduct, the Baoshan texts record large numbers of cases transmitted from local officials to the central court for adjudication. These include instances of failure to register population, denunciations by one official of the high handed behavior of another, and remarks by higher officials on a variety of criminal cases. The documents record the plaintiffs and defendants, the officials who first examined the case, and those



to whom reports were sent. In one case a note on the back of a strip commands dispatch to yet another official. A few strips reveal details of legal practice. The case on strips 131–39 shows that both parties could summon large numbers of witnesses (one side called two hundred and eleven) and that these were all obliged to swear blood oaths with appended curses (*meng zu* 盟詛) before giving testimony. The case is also of interest in that the king himself became involved.<sup>44</sup> Both parties also give testimony in a story in the *Zuo zhuan*, but in this account the accuser and the defendant were obliged to prepare their own written accounts and bring them to the court session.<sup>45</sup> Apart from detailed data on Chu titles, procedures, and the nature of social conflicts, these texts provide a sense of the abundance of documents employed in Warring States administration, and the great care that was taken to account for their movements.

The absence of other detailed accounts of procedures at the central court reflects the fact that the actions of the ruler were not susceptible to detailed prescription, and that the effectiveness of many of these procedures depended on their being kept secret. Nevertheless, from references in stories and philosophical accounts we can reconstruct elements of contemporary practice, and link these both to earlier Zhou rituals and analogous procedures from the religious realm.

Confrontations of rulers and ministers appear often in Warring States writings, but they are written from two perspectives. Since most philosophical works, and many of the anecdotes, were written by and for aspiring scholars, these accounts depict the ruler as a passive sounding-board for the arguments and rhetoric of some thinker. *Mencius*, *Xunzi*, and the *Book of Lord Shang* all contain scenes in which the eponymous philosopher addresses a ruler, and texts such as the *Zhanguo ce* and the *Yanzi chun qiu* consist almost entirely of meetings between diplomats or ministers and rulers. However, such texts reveal more of the ideas and self-images of Warring States scholars than of administrative practice. For such information one must turn to passages which deal with ruler-minister relations from the perspective of the ruler, that is, following the lines of authority within the court.

The first meeting between ruler and minister was the ceremony of appointment. The new official prostrated himself before the ruler and received a title and seal of office. Seals were inscribed with the name of the office and were used to validate official commands through the reproduction of characters in clay. Thus they were embodiments of the power of writing, for the impression of the characters on the sealing made the text an object of obedience. They were worn at the official's waist as an insignia of power, but it was a power that was visibly removable. The surrender of seals of office figures often in the biographies of the period.<sup>46</sup>

Parallel to the granting of seals to a civil official was the bestowal of half a tiger tally on a general. A general could mobilize his troops and set out on an expedition only if he received the ruler's half of the tally. These objects, cast in the form of tigers to invoke ferocity, were inscribed with texts that stipulated the conditions and limits of the general's power, such as his right to mobilize up to fifty men on his own authority. Tallies also permitted entry and exit at border passes

and in the inner chambers of the ruler. Like other elements in the new modes of written administrations, the use of tallies had its religious correlate, for the ancient sages were said to “match tallies” with the spirits as a sign of attaining world rule. In a related context, the tally was also the standard metaphor for the potency (*de* 德) of the perfected man.<sup>47</sup> In addition to bestowing the tally that empowered the commander to mobilize his troops, the despatching of an expedition also involved a ceremonial meeting of ruler and general in which the former bestowed the axes of command, symbolic of the powers of life and death.<sup>48</sup>

A more regular ritual involved the use of other tallies to control local officials. This entailed using contracts (*juan* 卷) in the annual statistical assessment of officials' performances. Patterned on, or offering the pattern for, contracts used in land purchase agreements and other transactions, such contracts consisted of budget projections written on a single sheet of silk, which was torn in half. One half was kept by the ruler and one by the local official. Each year the official was obliged to come to court, a variant of the Zhou system in which vassals had attended the court of the ruler, and to present a statistical report on stocks in public granaries, registered population, land opened to cultivation, tax and labor services collected, and the state of public security. In addition to the annual reports, a “great inspection” was held every third year. Through matching the figures reported by officials with their projections, the ruler could assess the performance of the individual official.<sup>49</sup> Such tallies or contracts were also used for recording and validating legal testimony.<sup>50</sup> These procedures fit closely with Han Fei's account of the practice of “form and name,” which will be discussed below.

In addition to seals and tallies, the ruler bestowed other forms of inscribed objects on his ministers in order to bind them to him. The most important was coinage. Early coins were usually reduced replicas of utilitarian objects, such as spades and knives, with a brief inscription. The choice of spades and knives was probably not arbitrary, for they symbolized the two bases of state power, agriculture and warfare. Inscriptions on Warring States coins included characters used as marks in the casting process, place names, and the value of the coin. While the coins were supposed to contain the amounts of metal inscribed on their surfaces, they relied on the power of writing to convert them from simple pieces of metal or replicas of tools into standardized measures of value.

Evidence of the state's interest in coins comes from the “Statutes on Currency” in the Yunmeng legal documents. These specify the rates at which coins are exchanged for one another or for bolts of cloth also employed as a medium of exchange. They also insist that officials and merchants must not make distinctions between fine and bad pieces of money.<sup>51</sup> This indicates that the states attempted to fix the value of money at its inscribed level as opposed to the physical properties of the object. Coinage thus ultimately depended on the authority of the ruler to guarantee the exchange of coins for goods at fixed rates. Like the law codes and registers, coins were a universalizing, inscribed authority intended to bring all values and human ties within a single sphere defined by the state. And just as the legal codes

and hierarchies of ranks allowed mathematical measurement of links between crime and punishment, coinage allowed similar precision in fixing commensurability of value between goods.<sup>52</sup> Salaries were measured in grain, and perhaps paid partially in that form, but there is evidence of gifts from the ruler of metal and coin, and it is likely that coin also figured in the payment of salaries.<sup>53</sup>

The shift from gifts of land to more fluid items such as cash in part reflects changes in the economy, but one should not exaggerate the role of currency in this period. As Anna Seidel has noted, coinage in the early periods was used primarily within the sphere of government. Coins and precious metal served above all as a means of paying capitation taxes and as a store of value. More important, coins also began to figure in grave offerings, where precious metals were buried in tombs to be carried into the next world, just as gold and silver inlay became a major feature of bronze vessels. Just as the inscription on the coin turned common metal into a defined value, sometimes the tomb contained common metals or clay that were simply labeled as gold.<sup>54</sup> Thus writing created or standardized value.

The use of coinage is also related to other religious practices of the period. During the Warring States it was increasingly common to fill tombs with objects of daily life or imitations, often in reduced size, of such objects. The most notable examples are the puppets (in the south) or miniature clay figures (in the north) that apparently acted as servants or companions in the tomb. This magical ability of reduced copies to act as the original characterized the use of money in the period. It is noteworthy that replicas of money were often buried along with actual currency, which was itself only replicas. In the Han this practice led to the placement of “money trees” in some graves.<sup>55</sup>

As noted above, the practice of submitting written reports was closely linked to a theory of administrative control, “*xing ming*,” “forms and names [or ‘words’].” The fundamental role of names and naming appeared in the discussion of Warring States local government, along with its roots in Zhou ceremonies of bestowing names. However, most accounts of “forms and names” situate it within the broader context of the idea of “rectification of names *zheng ming* 正名.”<sup>56</sup> The idea of names as a means of rule appears for the first time in the *Lun yu*. In reply to a question of what policy he would advocate for the state of Wei, Confucius stated that he would begin by rectifying names. He elaborated that if names were not correct then words would not correspond to the world, affairs would not be regulated, rites and music would not flourish, punishments would be incorrect, and the people would not know how to behave. This list appears to be sequential, so the correct use of names is the foundation of the system of rites which in turn makes possible the adequacy of punishments. Other passages linked to this doctrine are Confucius’ statement that the ruler must be made a ruler, the subject a subject, the father a father, and the son a son; his exclamation about a ritual vessel that does not match its name; a discussion of the different terms by which the ruler’s wife will be named depending on the speaker; and the argument over whether the term “upright (*zhi* 直)” should be applied to those who reported the crimes of kin, or to those who kept

them hidden.<sup>57</sup> Thus the earliest *theory* of authority through naming emerged in the context of rites—with the nomenclature applied to kin and ritual vessels held to be fundamental. However, even at this stage it was already concerned with the application of correct naming in the realm of law and punishments.

The concern with names developed in three forms within the Confucian tradition. First, the chapter on the rectification of names in the *Xunzi* articulated a more sophisticated form of the theory of ruling through naming, in response to the philosophical challenge of the later Mohists and philosophers of language. Second, as will be discussed in chapter 3, the *Gongyang zhuan* 公羊傳 read the *Spring and Autumn Annals* as a coded text in which such factors as the choice of titles or the mention of a name indicated judgments that were equated with the rewards and punishments bestowed by a ruler. In this hermeneutic theory the text was the blueprint for an imaginary kingdom of Lu, and Confucius ruled as “uncrowned king” through the application of names. Since condemnations were generally held to indicate that actions were “contrary to ritual (*fei li* 非禮),” this text still identified “rectification of names” with ritual correctness, and insisted that rites were the basis of the state. The third form in which “rectification of names” developed within Confucianism was the detailed discussion of terms of kinship in the ritual classics—most notably the “Sang fu (喪服)” chapter of *Yi li* and the “Tan gong (檀弓)” chapter of *Li ji* and their Han commentaries. These texts not only provided rubrics for the different forms of kin ties, but also specified types of obligation and taboo, for example, which forms of marriage constituted incest, and explained the social consequences of the failure to observe these strictures.

While Confucian writers developed theories of ritual nomenclature as the basis of social order, a parallel discourse applied such ideas to administration and law. The evidence regarding the earliest phases of this development is relatively late, but it still dates from the Warring States period. The first figure who links theories of nomenclature and law is Deng Xi (鄧析). In the *Lü shi chun qiu* 呂氏春秋 he is described as a clever sophist who taught people how to win legal cases through the manipulation of language. The *Zuo zhuan* 左傳 states that he drafted a legal code on bamboo strips and was executed in 501 B.C. A book attributed to Deng Xi is listed in the bibliographic chapter of the *Han shu* 漢書 as the first text of the “school of names.” Surviving fragments indicate that his followers combined elements of rhetoric and dialectic with a concern for legal administration. A second celebrated sophist, Hui Shi (惠施), was also reputed to have drafted a law code, and he figures prominently in the chapters on naming in the *Lü shi chun qiu*.<sup>58</sup> These stories suggest that systematic discussion of naming developed in association with the drafting of legal codes, and that the idea of rule through law was linked with a political version of the hitherto ritually defined “rectification of names.”

Probably the earliest reference to the term *xing ming* asserts that those who expound this doctrine “all say that a white horse is not a horse,” that is, were followers of sophists such as Hui Shi, Gongsun Long, and Deng Xi.<sup>59</sup> This supports the argument that *xing ming* in its origins was closely linked to arguments about

language as related to law and administration. It is possible that 形名 *xing ming* originally had the sense of the homophonous 刑名 “punishments and names,” and that it referred to drafting laws and imposing standardized legal terms.<sup>60</sup> Certainly correct use of terms was important in law. As noted earlier, a section of the Yunmeng legal documents gave standard definitions. However, the full-blown form of the theory in the writings attributed to Han Fei puts punishments in a secondary position, and deals instead with the technique of controlling ministers through written language.

Before examining accounts of *xing ming* in the *Han Feizi*, one should note two anecdotes in the text that link, in an unfavorable light, sophists and the development of law. Ni Yue defended the paradox that “a white horse is not a horse” at the Jixia academy in Qi. He defeated everyone in debate, but when he rode a white horse through a customs post (*guan* 關) he was compelled to pay the tax on horses. The law code and administrative regulations here appear as the ultimate arbiters of language, refuting the philosopher’s specious manipulation of words.<sup>61</sup>

The second anecdote deals with techniques for controlling ministers. When Zi Zhi was chief minister of Yan, he pretended to have seen a white horse dash past the gate. His subordinates all said that they had seen nothing, save for one who ran out through the gate after the supposed horse, and on his return claimed to have seen the animal. Through this stratagem Zi Zhi identified a flatterer among his entourage.<sup>62</sup> In this ironic tribute to the argument of Gongsun Long, Han Fei presents a white horse which is indeed not a horse, but merely an empty word set as a trap. As Jean Levi has pointed out, this story also anticipates the account in *Shi ji* of how Zhao Gao established his control of the Qin court by identifying a deer as a horse, and executing those who dared to contradict him.<sup>63</sup> However, these uses of names do not exemplify the central role attributed to them in the *Han Feizi*.

The text discusses *xing ming* in several passages. The ruler is advised to hold himself quiet and allow the ministers to name themselves, that is, to give an account of the administrative tasks that they will accomplish. As Makeham has persuasively shown, the word *ming* in this context does not mean simply “title,” as some scholars have suggested, but has the broader sense of “language, speech, declaration, or claim.”<sup>64</sup> These “names” were originally oral, but since they were to serve as a standard for judgment in the future, they must have been set in writing. Only thus could the ruler match claims against results obtained. This written aspect of the procedure is indicated by the use of the metaphor of the “tally” or “contract/bond” (*yao* 要 = *yue* 約) to describe the process.<sup>65</sup> If the two halves of the tally, the claim and performance, matched then the official was rewarded; if not, he was punished. In other passages the application of “forms and names” figures as one step in a process. The ruler must first listen to the views and reports of all his ministers, next obtain programs of performance, then match programs against results, and finally bestow rewards and punishments.<sup>66</sup> This theory corresponds to the use of contracts and annual verifications described in accounts of administrative practice.

Just as control through written law paralleled procedures for commanding spirits, so the theory of rule through correct naming had religious parallels. The ability to name unusual phenomena was in some texts an aspect of sagehood, and it was the first step to controlling or expelling dangerous spirits. The latter remained protean and threatening so long as they were not bound by a name. Thus Confucius, putative creator of the theory of government by the rectification of names, was also a master of naming in the realm of the spirits. The only hint of this in the *Lun yu*, where Confucius is said to avoid talk about spirits and prodigies, is the passage in which he counsels the study of the *Zhou Odes* as a means of learning the names of birds, beasts, grasses, and trees.<sup>67</sup> Since many animals and plants cited in texts of the period had religious or magical significance, this passage probably is not simply speaking of a knowledge of zoology or botany. However, the earliest portrayal of Confucius as a master of occult names appears in the *Guo yu*, where he identifies a strange creature found by a man digging a well, and then lists the names of the prodigies associated with wood, stone, water, and earth. In another passage he identifies by name the source of a giant bone uncovered by a landslide at Kuaiji.<sup>68</sup> In the *Zuo zhuan*, Zi Chan cures the illness of the Duke of Jin by identifying the strange creature that appeared to him in a dream.<sup>69</sup> Identifying and naming prodigies in order to properly respond to them or prevent them doing harm is likewise a central function of the aforementioned “Demonography” from Yunmeng.

The *Zuo zhuan* assigns a similar role to the ancient sage Yu. According to this text, Yu cast images of all harmful demons on bronze tripods so that people who entered the mountains or waters could identify these spirits and thereby avoid harm.<sup>70</sup> It does not refer to Yu naming the demons, but some of them are named, and the same names appear in Confucius’ list of prodigies, the list of demons expelled in the Han exorcism, the list of demons in Wang Mengshou’s nightmare poem, and in related sources. Moreover, the images cast on the tripod are called *xiang* 象, and as shall be discussed in chapter 6 this term was fundamental to Warring States theories of the origin and significance of written characters. It is also significant that the tripods that provided mastery over spirits were the Nine Tripods that embodied world sovereignty.

The tradition of Yu as the sage who ruled through his ability to name spirits is also developed in the *Shan hai jing*. This work lists magical creatures, both auspicious and malevolent, and identifies the effect they have if seen or eaten. It locates the creatures, describes their appearance, and names them. The conclusion of the earliest section of the book states that it was compiled by Yu as part of his task of recreating the world after the flood, once again linking the naming of spirits with world sovereignty.<sup>71</sup> If the *Shan hai jing* included illustrations, as the text itself sometimes suggests, then its links to the story of Yu’s tripods would be even closer.

These traditions of the sage as one who gains power over all creatures by naming them are not limited to accounts of controlling evil demons. The listing of the names of rare animals, plants, and minerals is a major feature of the Han

rhapsody. In the rhapsodies on imperial hunting parks and capitals this was certainly a literary ritual of power. As Donald Harper has argued, the idea of commanding men and spirits through the spellbinding power of naming was central to the rhapsody genre.<sup>72</sup> When Sima Xiangru presents the emperor with a hunting park transformed into an entire world through the magic of words, he enacts the idea of ruling through naming. The rhapsody as an example of attaining mastery through written language will be further discussed in chapter 7.

## WRITING AND THE KING

At the center of the above forms of writing was the monarch. People entered the political realm as servants of the ruler, status was defined in relation to him, and writings were authoritative through their connection to him. Laws, seals, tallies, and coins came from the ruler, while registers, maps, legal cases, reports, and claims returned to him. However, although the ruler was the font of *authority* in writings, he was not their *author*. Instead he was cast in the role of listener or reader. He held himself attentive at the center and responded to what was presented to him, whether in the writings of his officials or in the signs offered by the world. In the new forms of generating power through writing the ruler occupied the position of the spirits and ancestors in the archaic state, a receiver of written communications and bestower of blessings. This section reverses the process followed thus far, starting at the center and gradually working outward. First it examines the ruler's role in *xing ming* and the rectification of names, then his links to law codes, and finally the role of writing in the ruler's progresses through his realm.

The preceding section treated the *Han Feizi's* theory of *xing ming* and associated administrative techniques as practical procedures of government that developed in association with traditions of word magic. In fact, the theory of "forms and names" was based on religious beliefs and rituals reworked in the form of cosmological theories. In the *Han Feizi* the ruler's ability to control subordinates through bestowing names and assignments hinges upon his self-identification with the cosmic Way and consequent transformation into a near divinity. Thus the chapter "Zhu dao (主道)" states:

The Way is the beginning of all things and the guiding principle of judgments. So the wise ruler holds to the beginning in order to know the origin of all things, and regulates guiding principles in order to know the cause of failure and success. Empty and in repose he waits for the course of nature to enforce itself so that all names will be defined of themselves and all affairs settled by themselves. Empty, he knows the essence of fullness; reposed, he corrects all motion. Who utters a word creates himself a name; who undertakes an affair creates himself a form. Compare forms and names and see if they are identical. Then the ruler will find nothing to worry about as everything reverts to its reality.<sup>73</sup>

The chapter concludes that if the ruler holds himself still and responds to his ministers' initiatives, he will distinguish the maladroit from the skillful without making a conscious selection, and recognize good fortune or calamity without calculation. His rewards will appear spontaneously like a timely rain, and his punishments like a bolt of lightning.

The same interplay between "form and name," sagely intelligence, and cosmic origins/principles pervades the silk manuscript from Mawangdui identified as the *Huangdi si jing*. The very first section "The Model of the Way (*dao fa* 道法)" discusses the formation of things out of primeval blackness (*ming ming* 冥冥) and asserts that these things can be known only through "emptiness and nonpossession." As soon as the most minute beginnings take shape, then there must be form and name. When form and name are established, then black and white are distinguished.<sup>74</sup> The later chapter "Assessing Basic Points (*lun yue* 論約)" makes a similar argument:

In observing the world one who holds to the Way must closely examine the origin of things, and ascertain their forms and names. When the forms and names are settled, opposition and obedience will be assigned their positions; death and life will be divided; survival, perishing, rising, and falling will have their places. Then one checks it against [參, also a key technical term in *Han Feizi's* theory of 'form and name'] the constant way of Heaven and Earth, and one can settle wherein lie calamity or good fortune, life or death, rising or falling.<sup>75</sup>

Other passages discuss the links between name and reality (*shi* 實), and name and achievement (*gong* 功). They employ the same model of a sagely intellect that penetrates into the origins/principles of all things and so can unfaillingly guide the state.<sup>76</sup> The last of the four texts, the "Origin of the Way (*dao yuan* 道原)," describes the emergence of the universe from primal chaos. This account is closely linked to those in the chapters on the "Origin of the Way" in the *Wenzi* (文子) and the *Huainanzi* (淮南子). Unlike the other two texts, the Mawangdui account pairs "form and name." These do not exist in the primal chaos, but emerge with the formation of things. The common people do not recognize them, and they are perceived only by the sage who rules through the bestowing of names.<sup>77</sup>

While appeals to cosmic pattern and sagely percipience as the basis of administration through "forms and names" are not immediately based in religious ritual, there is evidence that they derive from reworkings of religious practices of the period. Specifically, they originate in meditation or trance procedures which are mentioned in proto-Daoist works and which provide the basis of the psycho-physiological theories which from at least the third century B.C. "embraced both self-cultivation and politics into one coherent system based upon a cosmology of the Tao."<sup>78</sup>

Studies of these theories have concentrated on the four chapters of the *Guanzi* describing meditative practices or "inner cultivation": "The Techniques of the



Heart/Mind (*xin shu* 心術)” (in two chapters), “The Purification of the Heart/Mind (*bai xin* 白心),” and “Inward Training (*nei ye* 內業).” “Inward Training” is the earliest, probably dating to the fourth century B.C., and consequently it is the most valuable for revealing the religious roots of the Daoist cosmopsychological synthesis. Accounts in the *Guo yu* state that people of the Warring States period employed “spirit intermediaries (*zou* 巫),” illuminated beings who could hear and see the spirits (*shen* 神) and into whom the latter would descend.<sup>79</sup> “Inward Training” is ultimately based on the experiences of such people, but it places them within the model of a world formed of quintessential energy (*jing* 精 or *jing qi* 精氣).

In all cases the essence of things  
Is that which forms life.  
Below it gives birth to the Five Grains,  
Above it forms the arrayed stars.  
Flowing between heaven and earth,  
We call it ghosts and spirits (*gui shen* 鬼神).  
Who stores it in the breast  
We call the sage.<sup>80</sup>

Here spirit possession is re-imagined as a process of guiding the quintessential cosmic energies into the heart/mind of the devotee. Indeed, at one point the text speaks explicitly of a spirit that enters and departs from the practitioner.

There is a spirit which naturally is found within one’s person.  
Now it goes, now it comes.  
None can conceive of it.  
Lose it, inevitably there is disorder.  
Obtain it, inevitably there is order.  
If reverently you clear its dwelling place,  
The quintessential will spontaneously come.<sup>81</sup>

The method of drawing in these spirits or energies depended on the control of passions and emotional disturbances through measured breathing and meditative procedures. “In the anxious or sad, pleased or angry, the Way has nowhere to settle.” Once the heart was fixed, then the senses all became acute and the limbs firm. The ingested energy vitalized the body and spirit, and it allowed true understanding. Having achieved such a state, one could govern the entire world.

If one grasps the One and does not lose it,  
One can be lord of the ten thousand things.  
The gentleman employs these things,  
Is not employed by them.  
If one obtains the pattern of the One,

The regulation of the heart/mind will be found within it.  
 Regulated words will issue from the mouth,  
 Regulated tasks will be imposed on the people,  
 Then the whole world will be regulated.

...

If you concentrate your energy and become like a spirit,  
 The ten thousand things will be completely at your disposal.<sup>82</sup>

The two chapters on the “Techniques of the Heart/Mind” are valuable because they are based on “Inward Training,” but whereas the latter is largely in verse and devoted to techniques of meditation and inner cultivation, the former adds substantial prose passages that emphasize and develop the applications of inner cultivation to government. In short, the shift from the earlier chapter to its later commentaries presents a clear-cut, textual example of the manner in which religious practices were adapted to the practice of government. This same pattern, as Roth notes, figures in the structure of the *Zhuangzi*, where the early chapters deal with “individual transformation through inner cultivation,” while the later ones develop these ideas in a cosmological and, above all, political direction.<sup>83</sup>

The close ties in these texts between meditative procedures, spirit possession, and the emergent theory of the sagely mind also figure in the roughly contemporary early chapters of the *Zhuangzi*. “Discourse on Evening Things Out,” tells how Ziqi of Nanguo put himself into a trance through controlled breathing and thus made his body “like withered wood” and his mind “like dead ashes.” As A. C. Graham has argued, there is a close connection between this account of trance or possession and the stories of cooks, carpenters, swimmers, boatmen, and insect catchers who perfect their arts through total concentration and spontaneity. These images provide the model for the Daoist sage who differs from them only in that he devotes his concentrated energies not to a single task, but rather to all events. “The utmost man uses the heart like a mirror; he does not escort things as they go nor welcome them as they come; he responds and does not store.”<sup>84</sup>

This image of the sage’s mind as a mirror or water (which figures elsewhere in the *Zhuangzi*) and the insistence on the ruler’s total detachment and spontaneous response also figure in the *Xunzi*. The chapter “Dispelling Obsession” focuses attention on the mind of the ruler, and it follows the ideas outlined above. It presents the metaphors of the mirror and water, emphasizes emptiness and stillness, and repeats strictures on neither welcoming nor clinging. It differs from the Daoist works in appeals to the classics and insistence on the early sage kings as the ultimate model, but the ideal of the mind and the techniques of its cultivation derive directly from the earlier texts, or from a common pool in the religious practices of the period.<sup>85</sup> The *Xunzi* likewise repeatedly refers to *shen ming* (神明明), the “spirit illumination” of the sages perception, which is another adaptation of religious beliefs into a theory of government.<sup>86</sup> Although not yet appealing to techniques of stillness or metaphors of spontaneous reflection, the ideal of the sage flexibly responding to the

needs of the moment already figures in the earlier Confucian works *Lun yu* and *Mencius*.<sup>87</sup> As in its discussion of the “rectification of names,” the *Xunzi* simply availed itself of contemporary developments in other schools to elaborate more sophisticated models of themes already present in the Confucian tradition.

The links between these texts and the accounts of the cosmic and psychological underpinnings of administration through “names and forms” in the *Han Feizi* and the *Jing fa* are clear. All speak of a sagely intellect which through stillness and concentration identifies itself with the origins or principles of all things and thereby controls them through appropriate response and correct naming. Since this model of the mind derives from practices of trance used by religious specialists of the period, it offers a clear example of the religious underpinnings of the re-invention of rulership during the Warring States period. Holding himself still and free from attachment, the ruler was able in the court to match proposals of ministers against their actions, and in the cosmos to spontaneously apply appropriate names to all things. The culmination of this model of rulership was thus the ability to read the world.

In the context of local administration the ruler was the giver of laws. In this capacity he again received a new attribute fashioned through the re-imagining of religious rites as internal powers based on the mastery of cosmic patterns. Specifically, the ruler was regarded as a great diviner who could read the changes in the world and adapt his government to cope with them.<sup>88</sup>

Divination, as noted above, had been a foundation of royal authority in the Shang state, and it preceded major state actions under the Zhou. The development of administrative forms of government during the Warring States did not eliminate the old model of ruler as diviner. Instead the ability to perceive the patterns underlying the flux of circumstance and to select appropriate actions to meet them was identified as the hallmark of leadership. This talent figures in all the roles defining the Warring States—general, diplomat-rhetorician, and reforming minister—but it was above all the mark of the ruler.

The idea of the ruler as master of change had two primary forms. Texts later identified as legalist insisted on the necessity of obeying existing laws while defending the innovations that created the Warring States. They did this through a model of history in which the evolution of society demanded periodic institutional innovations. The man who could perceive the need for such innovations and find their proper form was the sage-ruler. “Hence,” as the *Shang jun shu* argued, “the wise invent the standards by which the foolish are curbed; the worthy reform the rites by which the inadequate are constrained.” Likewise the *Han Feizi* states, “Those who praise the way of Yao, Shun, Tang, and Yu to the present age will certainly be laughed at by the new sages. The sage does not assign truth to high antiquity, nor take as law any constant proprieties. He assesses the affairs of the age and prepares himself in response to them.” Or as summarized in the *Lǐ shì chūn qiū*, “Those who do not dare discuss the laws are the masses. Those who defend the laws to the death are the officials. Those who change the laws in response to the times are the

rulers.<sup>89</sup> While the ruler was the author of the legal codes, they were not expressions of his arbitrary will. The sage wrote only in response to the conditions of the age. In this way, the actions of the ruler as legislator paralleled those in *xing ming* or in the cosmic “rectification of names.” He observed what presented itself and responded accordingly.

Parallel to the idea of the sage as the master of innovation in the sphere of law, Confucian scholars developed a model of history based on successive sagely innovations in the realm of rites. Beginning with statements in the *Lun yu*, such as the argument that rites were secondary expressions of underlying principles and hence should be changed to meet circumstances, a range of Confucian thinkers from the redactors of the *Zuo zhuan*, through Xun Kuang, on to Shusun Tong and Fu Sheng in the Qin academy progressively developed the idea that rites required regular change, and that making such changes was the role of the sage-ruler. The *Gongyang* tradition’s assertion that the institutions of Confucius’ imaginary kingdom of Lu were a prophecy of the Han state also derived from this idea.<sup>90</sup> The ruler again acted as legislator, but rather than adapting the laws he worked his reforms through the medium of the rites out of which law emerged.

As we have seen above in the discussion of the *Han Fei*’s theory of *xing ming*, the Daoist tradition also emphasized the sages’ ability to change and his refusal to cling to the established state of affairs. As Isabelle Robinet has demonstrated, no fewer than three chapters of the *Huainanzi*, the early Han *summa* of proto-Daoism, developed the idea that mastery of change defined the sage.<sup>91</sup>

The calendrical ritual texts that appeared at the end of the Warring States and in the early Han also defined the ruler through his ability and obligation to regularly modify laws, rituals, and policies. In these texts the ruler proceeded through the year reading the signs of imminent change in the actions of animals and plants, and adapted his own conduct accordingly. He modified his diet, changed his music, altered his physical appearance, and even transformed his moral character in response to the signs offered by nature. Practicing compassion in the spring, but killing without mercy in the autumn and winter, the sage ruler was the earthly embodiment of the seasonal changes that defined the way of Heaven in the world. Advocacy of altering policies in accord with natural signs and seasonal patterns also appears in chapters of the *Guanzi* and is an organizing principle of the *Huangdi si jing*.<sup>92</sup>

Even those who rejected the theory of ruler as master of change could not escape from it. In a series of stone inscriptions erected to proclaim his achievements, the First Emperor declared that his dynasty and its institutions were fixed for all time. However, the same inscriptions declare that his accomplishments and the empire he had founded were without historical precedent. Thus even while announcing his personal ambition to put an end to the process of history, he embraced the theory that the sage ruler was the figure who met the demands of a new age through the imposition of change.<sup>93</sup>