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Who answered the law? Question-and-answer texts and the attribution of legal authority in Qin China and Rome

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Article

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Who answered the law? Question-and-answer texts and the attribution of legal authority in Qin China and Rome

Abstract

In the late third century BC, a minor Qin official who had spent his career in legal clerkships was buried with a manuscript that posed questions about the law and answered them. Within little more than a century, jurists in Republican Rome were beginning to circulate their answers to legal questions in written form. Each body of text can be read as making legal expertise available beyond face-to-face consultation, yet the two present their answers in opposite ways: the Qin answers carry no names, while the Roman answers are inseparable from the names of those who gave them. This article compares the Shuihudi manuscript known as *Falü dawen* ("Answers to Questions about the Law") with the surviving literary presentation of Roman juristic *responsa* as forms of legal writing, examining how each attributes its answers, frames its questions, cites authority, displays its reasoning, and records disagreement. The comparison establishes a consistent contrast: across the features examined, the Qin manuscript presents its answers with no answering person in view, framed in the language of the statutes and the practice of the courts, while the Roman genre presents its answers as the acts of authoritative persons. The article then argues, on the strength of the citation practices documented in each tradition, that these conventions of attribution were not a matter of indifference: each way of writing answers made a particular allocation of interpretive authority easier to sustain, centred on office in Qin, on the person of the jurist in Rome. The answering practices that later grew up within each tradition, the imperial rescript in Rome and the named statutory commentaries attributed to Han scholars in later sources, show that neither convention was a cultural essence: in both traditions, the form of legal answers varied with the institutional position of the answering voice.

Keywords: legal history; ancient China; Roman law; excavated manuscripts; comparative history; legal expertise

Introduction

Two legal cultures at the opposite ends of Eurasia, the Qin empire and the Roman Republic as it passed into the Principate, confronted the same problem within broadly adjacent centuries. By the late third century BC the Qin state governed a territory in which thousands of local officials had to apply written statutes to situations the statutes did not clearly cover. In Rome of the late Republic, praetors, judges, and private parties faced a body of civil law whose application likewise demanded expert guidance. In both places legal expertise came to be set down in writing in a form of the same outward shape: someone asked a question about the law, someone answered it, and the answer was recorded so that it could serve again. In both places, question-and-answer texts became a characteristic vehicle of legal expertise.

The resemblance ends at the surface. The Qin answers, preserved in a manuscript found in 1975 in tomb 11 at Shuihudi 睡虎地 (Yunmeng, Hubei) and known by the modern title *Falü dawen* 法律答問 ("Answers to Questions about the Law"), name no author, no answering official, and no institution. The Roman answers, the *responsa* of the jurists, are unimaginable without names. A *responsum* was valuable precisely because Quintus Mucius Scaevola or Labeo or Julian had given it; later jurists cited their predecessors by name, disagreed with them by name, and built reputations on the quality of their answers. One tradition detached legal answers from any answering person; the other made the answering person the point.

This article takes that contrast of form as its object. It asks what the manner in which legal answers were written, from the presence or absence of names to the way disagreement is recorded, can tell us about where legal authority was understood to reside in each tradition. The argument proceeds in two steps. The first is a finding: examined under the same seven questions, the Qin manuscript and the classical *responsum* genre diverge consistently and in the same direction, the one presenting its answers with no answering person in view, the other presenting them as the acts of authoritative persons. The second is an interpretation of that finding: conventions of attribution were not a matter of indifference. A form of writing that detaches answers from persons makes an allocation of interpretive authority centred on office easier to sustain, and harder to escape; a form that binds answers to names makes it easier for authority to gather in persons. On the Roman side the process is visible in the sources themselves, in the chains of named citation through which answers passed from generation to generation and later

authority was built by engaging named predecessors; on the Qin side, where a single manuscript survives, the claim is a hypothesis about what this way of writing was suited to. Two further bodies of evidence, the rescript practice that grew up within Rome and the named statutory commentaries that later emerged in Han China, show that each tradition could house either convention, and that the form of answers varied with the institutional position of the answering voice.

To my knowledge no sustained study directly compares the *Falü dawen* with Roman juristic literature as forms of legal writing. The materials for it, however, are well prepared, and this article draws on three bodies of work. Law entered the comparative study of the two early empires early: the volume edited by Scheidel (2009) already contained Turner's comparative study of law and punishment in the formation of the two empires (Turner 2009), and Wang (2024) has recently argued that the divergent characters of Qin-Han and Roman justice reflect their political power structures, with legal knowledge in China held by bureaucrats subordinate to the ruler and in Republican Rome by jurists at some distance from office-holding, a distance that narrowed under the empire. The present article accepts much of that picture but asks a different question: not how the structure of power shaped the administration of justice, but how the written form of legal answers relates to the distribution of authority that Wang treats as an outcome of social structure. The form of answers is not offered as a rival explanation; it is the medium through which a structural difference of the kind Wang describes was kept in being from one generation of experts to the next, and it is the one class of evidence the two traditions share. The second is the recent Cambridge Comparative History of Ancient Law (Humfress et al. 2024), whose chapters on law as text and on legal science compare the production and transmission of legal texts, and the place and self-understanding of legal experts, across five ancient traditions (Humfress et al. 2024, pp 20-72, 73-145); that synthesis treats attribution in passing, as one feature among many, and the present article isolates it and reads it closely in two particular kinds of text. The third lies within Roman legal history itself, where historians have begun to ask what work the *responsum* did as a form, "one of the oldest juristic technologies" in Bryen's phrase (Bryen 2020); this article carries that question into comparison, asking what such answers look like when they circulate without names.

The stakes reach beyond the two texts. A durable question in comparative legal history is why Rome produced a legal science, an autonomous discipline with its own literature and its own

modes of argument, while early imperial China, despite a legal order of comparable sophistication, did not; the contrast, if not the question in this form, runs through the comparative literature (MacCormack 2014; Wang 2024). Answers resting on social structure, class, patronage, and the position of the ruler are well developed. The comparison of answer-texts adds the testimony of the documents themselves: it shows, at the level of written practice, that one tradition's interpretive genre continually re-inscribed the individuality of legal experts while the other's continually effaced it, and it asks what each convention made possible.

Sources and method

The Qin text

The Shuihudi tomb 11 manuscripts were buried with a man named Xi 喜, a Qin local official who spent his career in clerkships and adjudication and whose tomb was sealed around 217 BC, the year at which the chronicle buried with him breaks off (Hulsewé 1985). Among the texts placed in his coffin was a manuscript of 210 bamboo slips, conventionally divided by its modern Chinese editors into 187 entries (Hulsewé's English translation resegments the material as items D1-D190), most of which pose a question about the application of Qin penal statutes and answer it. The manuscript carries no title; *Falü dawen* is the modern editors' name, and the sequence of slips, disordered at excavation, is likewise a modern reconstruction. Neither the "book" as a unit nor its internal order can be treated as an ancient author's arrangement.

The institutional standing of the text is disputed, and the dispute matters for what the text can prove. The original editorial team regarded the entries as authoritative legal interpretation issued or sanctioned by the state; later scholarship has read the manuscript instead as a practical collection of exercises for the training of legal clerks (Cao 2013) or as a working guide to the correct application of the statutes (Lüdke 2004), and its precise origin, a teacher's instruction, private notes, or accumulated office practice, remains open. The comparison does not require resolving the question, and builds on no answer to it. What can be studied with confidence is not the text's legal force, which is uncertain, but its form, which is not: an unattributed manuscript oriented toward official use, found in the burial assemblage of a low-ranking official engaged in judicial work, whose entries present statutory interpretation as question and answer. It is the

features that survive every hypothesis about the text's standing, the anonymity of its answers, the framing of its questions, its manner of citing authority, that ground the comparison.

Two adjacent bodies of Qin and Han legal writing give the comparison its points of reference. The *Zouyanshu* 奏讞書 ("Book of Submitted Doubtful Cases") from Zhangjiashan tomb 247, a Western Han collection of case records submitted for review, shows that Qin and early Han legal documents could and did name individual officials when the genre called for it (Barbieri-Low and Yates 2015; Lau and Lüdke 2012). References within the *Falü dawen* to "the practice of the courts" (*ting xingshi* 廷行事, in Hulsewé's rendering; whether ting here denotes a court or an office is itself debated) show the interpretive text pointing outward to a further, likewise impersonal, source of norms. Together these neighbouring texts establish that the anonymity of the *Falü dawen*'s answers was a feature of this interpretive compilation, not a general property of Qin documentary culture.

The Roman texts

The Roman side of the comparison is confined to the juristic *responsum*, and, more exactly, to its surviving literary presentation: the practice took its classical shape between the last century and a half of the Republic and the early Principate, but it is known through juristic writing that runs from Quintus Mucius Scaevola to the high classical jurists of the second and early third centuries AD, transmitted above all through Justinian's Digest (Frier 1985; Schiavone 2012). That presentation comes in layers which are not interchangeable and are not treated as such below. Cicero's De oratore is a rhetorical dialogue of the 50s BC and gives a contemporary literary portrait of the jurist's standing; Gaius' Institutes is a second-century teaching book and gives a jurist's own account of what *responsa* were; the Digest of the 530s AD preserves excerpts of classical juristic works, among them Pomponius' history of the jurists and the case reports of Alfenus Varus, chosen and cut for a sixth-century purpose. Each layer is read for what it is: a portrait, a self-description, a transmission. A *responsum* was an answer given by a recognised expert in the civil law to a question put by a private party, an advocate, or a magistrate. The giving of answers was not an office and carried no fee, however eminent the men who practised it, and many were eminent: the jurists belonged to a social elite, senatorial and later also equestrian, for whom answering brought prestige and the obligations of patronage. Cicero counts it among the three activities that define the jurist, *ad respondendum et ad agendum et ad*

cavendum: answering questions, acting in a party's cause, and drafting cautionary instruments (Cicero, De oratore 1.212; Frier 1985). The term "juristic elite" is used here in preference to "profession": there was no formal training, no credential, and no fee, and the group's coherence rested on recognition by peers and clients rather than on institutional definition.

The unevenness of the surviving evidence must be stated plainly. The *Falü dawen* is a single manuscript, buried at a known date, untouched by any later selection; the *responsa* survive almost entirely through centuries of selection, excerpting, and compilation, above all in Justinian's Digest of the 530s AD, which preserves fragments of classical juristic writing chosen for a sixth-century purpose. No inference drawn here therefore depends on the survival rate or representativeness of either body of texts. The comparison is confined to what is visible on the face of whatever does survive: whether answers carry names, how questions are framed, what authorities are cited, whether divergent views are recorded. In the same spirit, the comparison concerns the conventions by which each tradition presents the source of its answers, not the unrecoverable circumstances of composition. Whether a given Qin answer was in fact drafted by an identifiable official, and whether a given Digest fragment faithfully reports a jurist's words, are questions this method does not need to answer. That one tradition consistently displayed names and the other consistently did not is the observation on which the article rests, and it survives both uncertainties.

One further Roman practice completes the comparison. From the early Principate, and on a great scale from the second century AD, legal questions were also answered by imperial rescripts: written replies issued in the emperor's name, drafted by officials of the imperial chancery whose individual contributions were absorbed into the imperial persona (Johnston 1999; Bryen 2020). The rescript is, in the terms of this article, an office-centred answer produced inside the Roman tradition, and its existence guards the comparison against a fatal confusion: the contrast drawn here is not between a Chinese and a Roman way of answering legal questions, but between two possibilities, answers resting on office and answers resting on persons, that both traditions could realise. The rescript is not anonymous in the manner of the Qin manuscript. It does not so much suppress its drafters as reattribute their work: the answer is given to the emperor, an office spoken through a named person, and the experts who composed it vanish into that name. What it shares with the Qin form is the disappearance of the answering expert from the face of the text. The *Zouyanshu* and the rescripts differ from the principal texts in genre, institution, and period,

and they are used accordingly: not as instruments that could isolate any single cause, but as contrary instances that tell against explanations from national character or from subject matter.

The manner of comparison

The choice to compare forms of writing, rather than doctrines or institutions, follows from the sources themselves. Doctrinal comparison between these bodies of text is treacherous, because the Qin material is overwhelmingly penal and administrative while the surviving Roman juristic material overwhelmingly concerns private law; any doctrinal contrast risks measuring the accidents of preservation and genre rather than the traditions. The features compared here, by contrast, lie on the face of the texts regardless of subject matter, and it is on them that the argument runs.

Each body of text is examined under the same seven questions: does the answer carry a name; for whom does the text appear to be written; how does it present the origin of its questions; what authority, if any, does the answer invoke beyond itself; how much reasoning is displayed; how is disagreement recorded; and what in the text shows how it was meant to serve again. One caution governs the third question throughout: the actual origin of the questions, whether real cases, invented teaching problems, or edited records of consultation, is unrecoverable for the Qin text and only partially recoverable for Rome. What can be compared is how each text presents its questions, and no argument below depends on more.

Answers without names: the *Falü dawen*

The questions

The entries of the *Falü dawen* fall into two broad kinds. The first, and most common, poses a concrete scenario and asks how it is to be adjudicated. The parties are designated by cyclical signs used as substitute names, *jia* 甲 and *yi* 乙, the equivalents of "A" and "B": A steals an ox; A and B conspire; A denounces B falsely. The question then asks *he lun* 何論, "how is this to be sentenced?" The second kind is definitional: *he wei* 何謂, "what is meant by" a given statutory term, followed by a gloss. The scenario questions predominate, and they are not idle. As Lüdke (2004) has shown, most entries address genuinely difficult problems of application, above all whether a rule applies and which rule applies: incomplete acts, divergences between the letter of

a statute and the facts of a case, amounts that fall between thresholds. A famous example asks about a theft of mulberry leaves worth less than one cash, below the lowest statutory threshold for theft, and answers that the thief is nonetheless liable to thirty days of statute labour (Hulsewé 1985, pp 122-123). The question form here does the work of legal analysis: it isolates the gap in the statute and fills it.

The definitional entries do complementary work. Statutory terms of art are singled out and fixed: what counts as a *gongshi gao* 公室告, in the conventional rendering a "denunciation concerning public matters," which an official must accept, as against a *fei gongshi gao* 非公室告, covering accusations by children against parents or by slaves against masters, which he must refuse (Hulsewé 1985). The gloss does not merely explain a word; it draws a jurisdictional boundary, telling the official which disputes the state's justice will and will not receive. Caldwell (2018) has shown how the statutes of the Shuihudi corpus are shaped by their drafters' effort to make statutory language answer its own questions; the definitional entries of the *Falü dawen*, which lie outside his study, carry the same effort from drafting into interpretation. Other entries proceed by express assimilation, declaring that a case not covered by a statute is to be treated in the same way as one that is, so that the statute's reach grows by acknowledged analogy rather than silent judicial discretion. In scenario, definition, and assimilation alike, the question form is doing disciplined analytical work of a kind any Roman jurist would recognise.

The scenarios are presented as timeless and placeless. No entry names a county, a date, a real litigant, or an adjudicating official. Whether any given question began life in a real case is, as noted, beyond recovery; what the text offers is a repertoire of standardised problems, stripped of every particular that would tie an answer to an occasion. The effect of the substitute names deserves a moment's reflection: a question about *jia and yi* is already halfway to being a rule, because nothing in it belongs to any single dispute.

The anonymous answer

The answers are as impersonal as the questions. No entry says who answers, in what capacity, or on what occasion. The answering voice is grammatically bare: it states the sentence, supplies the gloss, or draws the distinction, without an "I" and without a source. There is no equivalent of the Roman jurist's *respondi*, "I answered." The authority of the answer is nowhere lodged in a

person; it lies, implicitly, in the manuscript's presence among an official's papers and in the match between its language and the language of the statutes it interprets.

Brevity is the answering voice's second mark. Many answers consist of a sentence or less. But brevity should not be mistaken for the absence of reasoning. A significant minority of entries let their logic show: they distinguish paired cases, extend a rule by analogy and say so, or explain a gloss by tracing the consequences of the rejected reading. One entry asks about a minor, defined by stature as not yet six *chi* 尺 tall, whose horse, startled by another while in his charge, eats a man's standing grain; the answer holds him neither liable to sentencing nor bound to compensate, and the exemption makes sense only as the application of a general principle, visible across the corpus, that liability to punishment followed measured bodily growth (Hulsewé 1985, item D138). The entry does not state the principle; it enacts it, and expects its reader to see the enactment. This is reasoning by disciplined construction of cases, the same intellectual work that historians of Roman law identify as the heart of juristic casuistry (Frier 1985). The reasoning that appears, however, is never argumentative in the Roman manner. It does not weigh named opinions, cite previous answers, or allow that a different expert might answer otherwise. It presents the law as something that, once correctly analysed, has one answer.

Divergent views without owners

The text does record disagreement, and the manner in which it does so is among the most revealing features of the genre. A number of entries append an alternative view introduced by the formula *huo yue* 或曰, "some say" or "another opinion holds." In the entry on convicted sufferers of *li* 癘 (a disease conventionally rendered as leprosy), the answer prescribes *dingsha* 定殺, conventionally understood as drowning though the term is disputed (Tang 2022), and the *huo yue* clause records an alternative, burial alive, while marking it as a departure from the standard (Hulsewé 1985, item D101). The divergent view is preserved, but its holder is not: *huo yue* attributes it to no one. Disagreement enters the text already collected and already ranked, a subordinate clause appended to a governing answer. Cao (2013) has pointed to these unresolved alternatives as evidence against the text's official standing, since an authoritative interpretation ought not to speak with two voices; for present purposes the point cuts differently. Whatever the text's standing, its form admits controversy only anonymously, briefly, and in a subordinate

place. The contrast with a tradition that organised itself around named controversy could not be sharper, and it is a contrast of form, not of the presence or absence of disagreement itself.

Office as the horizon of the text

Much in the *Falü dawen*'s form points toward office. Its implied reader is an official who must sentence correctly: the questions are the questions of an adjudicator, not of a litigant, and there is no trace of the client's perspective that pervades Roman juristic writing. Its external authority is institutional: where an answer invokes anything beyond the statute, it invokes *ting xingshi*, the practice of the courts, itself an impersonal standard (Hulsewé 1985). And its context of use, so far as it can be recovered, is administrative. The same tomb contained a text of guidance for officials, the *Wei li zhi dao* 為吏之道 ("The Way of Being an Official"), and the Qin state's declared policy, preserved in Li Si's memorial of 213 BC, a text four years later than the burial and known only through Sima Qian's history, directed that "those who wish to study laws and ordinances shall take the officials as their teachers" (*yi li wei shi* 以吏為師) (*Shiji* 6). The phrase should not be over-read as the description of a functioning school system, and this article makes no claim that the *Falü dawen* was a textbook. The point is narrower: under the Qin dispensation, authorised instruction in the law was located in officials rather than in private teachers, and the *Falü dawen* is what an answer-text looks like when office is the imagined channel. Knowledge of the law circulated, on the evidence of this manuscript, in a form that belonged to no one and presented itself in impersonal, office-compatible terms.

A final feature of the Shuihudi find gives the contrast with Rome an almost emblematic neatness. The one person the tomb does identify is the reader. Alongside the legal texts lay a year-by-year chronicle, the *Biannianji* 編年記, interleaving the events of the state with the life of the tomb's occupant: Xi's birth in 262 BC, his successive appointments as a legal clerk in the counties of Anlu 安陸 and Yan 鄢, his service in adjudication (Hulsewé 1985). We therefore know the name, career, and burial of the man with whom the *Falü dawen* was buried, while the text names no one who made it. The Roman evidence inverts the pattern: the *responsa* preserve their authors in abundance, Scaevola, Labeo, Sabinus, Julian, while the inquirers who consulted them survive, at best, as nameless questioners in an edited fragment. In Qin, answers were presented as the administration's, and it was the man buried with them who bore a name and a record; in Rome,

answers were personal acts and the inquirer was incidental. The tombs and the books, so to speak, kept different registers.

The promulgation of law in the Qin and Han states points the same way. As Li and Chen (2021) have reconstructed, new laws travelled through official document channels to the offices that needed them, and what an official received varied with his place, rank, and duties. A body of law that reached its readers in this manner had, as its natural address, an office rather than a person, and an interpretive genre without authors belongs naturally to such a world.

Answers with names: the Roman *responsa*

The weight carried by the name

A Roman *responsum* was an answer to a legal question given by a man whose name made the answer worth having. The practice was older than its literature: republican jurists commonly answered questions in person and in public, though written answers to judges are also attested (Frier 1985). Cicero's portraits of the great republican jurists show the practice embedded in aristocratic social life: the jurist at home, his hall open to callers, dispensing answers as a patron dispenses favours, so much so that Cicero could call the jurist's house "the oracle of the whole city" (Cicero, De oratore 1.200). Legal learning was one part of a public career that might also include the praetorship or the consulate; Quintus Mucius Scaevola, the most celebrated jurist of his generation, was consul in 95 BC. The answer given in such a setting was a social performance before it was a text, and the identity of the performer belonged to its essence. What turned practice into literature was the circulation of answers in writing under the jurist's name, in collections that later jurists excerpted, discussed, and contested; by the high classical period, "Responsa" had become a standard book title (Schiavone 2012).

By the early Principate the *responsum* was a genre, and the defining convention of the genre was the name. The Digest preserves the texture: fragment after fragment reports that a named jurist *respondit*, and the case reports of the late republican jurist Alfenus Varus, with their repeated *respondi*, preserve the form at its barest (Justinian, Digest 9.2.52). Chains of citation run through the literature, Julian reporting Sabinus, Ulpian weighing Labeo against Proculus. Because the Digest was itself compiled from works that circulated under jurists' names, this pattern is in part a product of transmission, and the point is made again below; but the convention it transmits is

not a sixth-century invention, for Cicero and Gaius, writing centuries earlier, already describe answering as the act of a named man. Where the Qin text effaces the answering person, the Roman text is built around him.

The name bore this weight because the answer's force was personal. The classical *responsum* could be, and often was, extremely brief; jurists were under no obligation to give reasons, and the sources preserve answers that state a conclusion and stop (Johnston 1999). A bare answer sufficed because what stood behind it was *auctoritas*, the accumulated standing of the jurist, itself built through a career of answers, pupils, and books. When Gaius, writing an elementary textbook in the second century AD, came to define the *responsa prudentium*, the answers of the learned, among the sources of Roman law, he defined them through their authors: *responsa prudentium sunt sententiae et opiniones eorum quibus permissum est iura condere*, "the opinions and views of those to whom it has been permitted to establish the law" (Gaius, Institutes 1.7). Gaius goes on to say that where the opinions of all agree, what they hold has the force of law, and that where they disagree the judge may follow whichever he chooses (Gaius, Institutes 1.7). Who had been so permitted, and how the permission related to the Augustan arrangement discussed below, are disputed questions; the definition is remarkable for what it takes for granted whatever the answer: that law could issue from identified persons, and that their disagreements were the disagreements of persons. The legal order's own self-description thus had a place for expert individuals as makers of law. Nothing remotely similar could be said within the Qin documentary order, where the sources of norms named by the texts themselves, statute, ordinance, and the practice of the courts, are institutional through and through. Reasoning, when displayed, was addressed at least as much to other jurists as to the inquirer: it was the medium of a standing competition among named experts, conducted in writing across generations. The *responsum*, in Bryen's phrase "one of the oldest juristic technologies," gave individual expertise a durable written form that could be carried and cited (Bryen 2020); and the name was not an ornament of that form but its living part.

Controversy as a way of legal life

Because answers carried names, disagreement between answers was visible and durable, and it proved productive. Roman juristic literature made a settled institution of controversy to a degree unmatched in any other ancient legal tradition: rival opinions were handed down side by side,

attributed to their holders, and eventually gathered into the semi-formal rivalry of the two "schools," the Sabinians and Proculians. A canonical example concerns the end of guardianship over males: the Sabinians held that a ward reached puberty, and with it release from tutela, guardianship, when his bodily development showed it; the Proculians fixed the age at fourteen; and Gaius reports both views with their sponsors (Gaius, Institutes 1.196). The schools bear on a further question: how each tradition renewed its experts. Neither empire had law schools in the later institutional sense during the period compared here. Rome renewed its jurists through apprenticeship and affiliation: a young man of suitable standing attached himself to an established jurist, heard his answers, and in time gave his own, and the Sabinian and Proculian successions are best understood as chains of such affiliations, remembered and handed down with the names of their heads, as Pomponius' account lists them name by name (Justinian, Digest 1.2.2.44-53; Schiavone 2012). Qin, so far as the *yi li wei shi* policy and the career recorded in the *Biannianji* allow one to see, renewed its legal clerks within the hierarchy itself. Both are apprenticeships; the difference is that the Roman chain was remembered by name at every link, so that affiliation itself became a kind of attribution, while the Qin chain ran through offices whose occupants the interpretive texts never record. The renewal of expertise, like its exercise, took a personal form in one empire and an institutional form in the other.

The comparison with the *huo yue* clauses of the *Falü dawen* is exact and instructive. Both genres preserve divergent views; only one gives them owners. In Rome the divergent view is a position in a continuing, attributable argument, capable of attracting adherents and of prevailing later; in the Qin text it is an anonymous remainder, recorded and subordinated in the same breath. Named controversy is what a tradition looks like when authority belongs to the answering person; anonymous controversy is what it looks like when authority belongs to the answer itself.

The limits of personal authority

The rule of the name was never as secure as its self-presentation suggests. Pomponius reports that Augustus established that jurists should answer on his authority, *ex auctoritate eius*, the arrangement later known as the *ius respondendi* (Justinian, Digest 1.2.2.49). The report rests almost entirely on this one passage of Pomponius, and the existence, workings, and reach of any such institution are debated; what is not in doubt is that the later tradition remembered imperial authority as having been brought to bear on the jurists' answers. The jurists concerned remained

named individuals, and the measure has often been read as an enhancement of their prestige; but Schiavone (2012) has argued forcefully that it is better understood as an insertion of imperial power into the jurists' domain: the weightiest personal answers now carried, in part, the authority of the princeps. And alongside the juristic *responsum*, without abolishing it, the empire developed a second answering practice on an altogether different model. From the second century AD, a standard way to obtain an authoritative legal answer was to petition the emperor and receive a written reply in his name, drafted by the jurists of his chancery, whose individual authorship disappeared under the emperor's name (Johnston 1999; Bryen 2020). The rescript was not a mutated *responsum*; the two institutions existed side by side for generations. What the rescript shows is that the Roman world could and did produce answers on the office-centred model, and that when it did, their appearance came strikingly close to the Qin manner: questions from below, brief authoritative answers from above, the answering experts nameless within an institution. The personal form of the classical *responsum* was the mark of a particular institution in a particular period, not a Roman essence.

The two traditions side by side

Seven questions, two answers

The seven questions posed at the outset can now be answered for both bodies of text, and the table below gathers the results. A word on how it should be read. Its rows are not seven independent proofs. The presence or absence of the name is the heart of the matter; the citation of authorities, the recording of divergent views, and the manner in which answers were meant to serve again are so many expressions of that same convention, since a tradition that names its answerers will tend also to name its authorities and its dissenters. The remaining rows, the implied reader, the presentation of the questions, the display of reasoning, rest on the close readings offered above rather than on any mechanical count. The table's use is to show at a glance how consistently the conventions of each tradition gather around one pole or the other, not to multiply confirmations of a single thesis.

	Falü dawen	**Classical *responsa***
Does the answer carry a name?	No; the answering voice is bare (so throughout items D1-D190)	Yes; the jurist's name is essential, and citation runs by name (e.g. Digest 9.2.52)
For whom is the text written?	The adjudicating official	The inquirer and, above all, other jurists

	Falü dawen	**Classical *responsa***
How are the questions presented?	Standardised scenarios with substitute names (jia, yi), without occasion	Consultations presented as arising from practice, in varying states of editing
What authority is invoked?	Statute and the practice of the courts, both impersonal	Named predecessors, the jurist's own reasoning, later imperial licence
How much reasoning is shown?	Brief and analytic; the law is presented as having one answer	Often a bare conclusion resting on standing; argument, when given, addressed to peers
How is disagreement recorded?	Anonymous *huo yue* clauses in a subordinate place (the *li* 癘 entry)	Named controversies handed down as continuing positions (Gaius, Institutes 1.196)
How was the text to serve again?	The generalised entry itself functions as a quasi-rule	The name travels with the answer; citation renews the attribution

What each form made possible

The table records a consistent correspondence: one kind of text is impersonal at every point, the other personal at every point. What that correspondence supports is not a causal history but a more modest claim about what each way of writing answers made easy and repeatable; and the two halves of that claim rest on evidence of different strength.

On the Roman side, the workings of the form are preserved in the literature itself. The chains of citation that run through the juristic corpus, Julian reporting Sabinus, Ulpian weighing Labeo against Proculus, Gaius handing down the schools' disputes with their sponsors attached, are not a modern reconstruction of how *responsa* might have circulated; they are the visible record of answers passing through generations with their attributions intact, and of later authority being built by engaging named predecessors. Within the preserved genre, at least, this way of writing demonstrably carried names forward, kept controversy attached to persons, and gave standing something to grow in. How faithfully the preserved genre represents Roman answering practice at large cannot be known from a canon that was itself compiled around named jurists, and no claim made here reaches beyond the genre; but what this way of writing answers made possible is on display in the sources themselves.

On the Qin side the evidence permits less, and the argument claims less. No copying chain or history of reception survives for the *Falü dawen*; a single manuscript cannot show its own influence. What can be said is conditional and formal: an answer built on substitute names, stripped of occasion, and phrased in the language of the statutes is portable by its very construction, since nothing in it ties its force to the circumstances or person of its making, and a body of interpretation handed on in such a form gives individual reputation nothing to fasten on.

Whether Qin interpretive practice at large worked in this way lies beyond the reach of one tomb's library. The claim defended here is the narrower one: that the manuscript's form is thoroughly suited to circulation through an administration, and thoroughly unsuited to the gathering of interpretive authority in persons, and that this suitability agrees with everything else recoverable about its setting, the office-bound promulgation of Qin law, the *yi li wei shi* policy, and the manuscript's own resting place among a legal clerk's papers.

The neighbouring texts support reading these as positions within traditions of documentary practice, not as national characters. The *Zouyanshu* names its officials, because a case record submitted for review must fix responsibility on persons; Qin documentary culture could attribute perfectly well when the genre demanded it, which marks the anonymity of the interpretive genre as a choice of form rather than a general incapacity (Barbieri-Low and Yates 2015). Conversely, the imperial rescript shows the Roman order producing impersonal answers once the answering institution changed: when the source of authority became an office, the emperor's, the writing followed, and the drafting experts vanished into it. In both traditions, at both poles, the form of answers varied with the institutional position of the answering voice, a pattern awkward for any simple contrast of "Chinese" and "Roman" legal culture. The same texts also blunt an obvious objection: that the contrast merely reflects subject matter, penal and administrative law in Qin against private law in Rome. The *Zouyanshu* is penal and names its persons; the rescripts often concern private law and name none. Attribution follows the position of the answering voice, not the branch of law being answered.

Two later histories

Two later developments, one in each tradition, complete the argument. Neither is offered as a continuation of the genres compared above: the rescript did not grow out of the *responsum*, and Han statutory commentary did not grow out of the *Falü dawen*, whose direct textual afterlife is unknown. Their value lies in their independence. Each shows a tradition producing, in a new institutional setting, a convention of attribution close to the one the other tradition's setting had produced, and that tells against treating either convention as a cultural essence.

The Roman development has been described: alongside and eventually overshadowing the juristic *responsum*, the empire raised up an answering practice, the rescript, in which legal questions were resolved by an office, in the office-holder's name, by experts who vanished into

it. Responsa did not "become" rescripts; the two institutions lived side by side for generations, and the connections between them are a matter for Roman legal historians. What matters here is form: when Rome's answering voice was an office, Rome's answers, like Qin's, showed no answering expert, though the rescript attributed to a named emperor what the Qin manuscript attributed to no one.

The Chinese development runs the other way. Under the Han, according to that later record, the statutes attracted written commentary by named scholars, the *zhangju* 章句 ("chapter and verse") commentaries, and by the end of the Han more than ten commentarial traditions on the statutes were in circulation, four of them named in the record, including those of Ma Rong and Zheng Xuan, the giants of Han classical learning. The treatise on penal law in the *Jinshu*, compiled in the early Tang and therefore a retrospective account rather than a Han document, records both the proliferation and its administrative resolution: under Emperor Ming of Wei, in the generation after the Han fell, an edict directed that only the commentary of the Zheng school might be used in adjudication (*Jinshu* 30; the classic modern collection of the evidence is Cheng 1963). These commentaries arose within classical scholarship, a world in which attribution was the rule and a commentator's name carried weight; they owed nothing, so far as is known, to the Qin interpretive genre, and no descent is claimed.

But that is what makes the episode telling. When statutory interpretation came to be practised in a world whose writing bound texts to names, China too exhibited what Roman juristic culture had exhibited: named and competing traditions of interpretation, each citable by those who followed. And the state's eventual answer, licensing one named commentary and shutting out the rest, shows an administrative order coming to terms with the personal interpretive authority that the new manner of writing had allowed to gather. Whether that response should be read as cause, effect, or simple incompatibility cannot be decided from the edict alone; what the episode establishes is that both conventions of attribution, and the tensions between them, lay within reach of each tradition. Where the answering voice sat, in office or in person, the form of its answers differed accordingly, in four settings across two traditions, and the most economical reading of that correspondence is that each form eased a particular allocation of authority.

Conclusion

Who answered the law? In the Qin manuscript, nobody: the answers display no answering person, their force is presented as lying in their fit with statute and the practice of the courts, and their form suits them to move through an administration without belonging to anyone. In the classical *responsum*, somebody, and by name: the answer's force lay in the standing of the man who gave it, and its form carried his name wherever the answer went. The question-and-answer texts of the two empires are not merely evidence about two legal orders; they worked within them, and in handing on legal knowledge they also handed on a particular account of where legal authority lay.

Three conclusions follow. First, for the comparative history of legal expertise, the ownership of legal knowledge needs to be taken apart before it can be compared. The making of answers, their keeping, their circulation, access to them, the standing to interpret, and the practice of citation are different things, and the two empires arranged them differently, rather than the one possessing and the other lacking "ownership": Qin law was promulgated and accessible through official channels while its interpretation remained unattributed, and Roman juristic knowledge was personally owned in point of standing and citation while circulating in collections that anyone might copy. The forms studied here are the very means by which such arrangements were kept in being.

Second, for the old question of why legal science arose in Rome and not in early China, the answer-texts offer a consideration drawn from the documents themselves, to be set beside the explanations from social structure. Within the surviving Roman genre, the persistence of names allowed personal interpretive authority to grow across careers and generations; the Qin interpretive form left such growth without a vessel, not by suppressing thought, for the analytical quality of the *Falü dawen*'s distinctions is high, but by parting thought from thinkers. Whether every kind of doctrinal growth requires attribution is a larger question; traditions without names have their own ways of accumulating. But the particular growth that legal science historically involved, doctrine gathered around named positions and their named critics, appears in the sources exactly where the naming convention appears, and it is suggestive that when Han commentarial culture at last supplied vessels of the needed kind, named interpretive authority did

gather, and the state stepped in to license it. How far this consideration can be pressed against the structural explanations, or joined to them, is work for another occasion.

Third, for the history of the ancient world at large, the comparison shows what a deliberately narrow study of written form can add to the comparison of empires in the large. Two kinds of text, examined under the same questions, have brought into view something that the familiar contrast of "state-dominated" and "jurist-mediated" legal orders presupposes but does not itself examine: the convention by which a tradition declares who answers. The question travels well: imperial rescripts and the unsigned circulars of modern bureaucracies can be asked it as readily as the books of the jurists. Wherever expertise is put into writing, who is presented as answering is never merely editorial. In two of the oldest surviving traditions of written legal answering, it marked, with remarkable consistency, where legal authority was understood to live.

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Data availability

No new datasets were generated or analysed. All materials discussed are published primary sources, editions, and scholarship cited in the text.

Author contributions

The author conceived the study, conducted the research and analysis, and wrote and revised the manuscript.

Competing interests

The author declares no competing interests.