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## A Study of the Fragment ИHB.No.7887-1 as a Supplement to *Tiansheng lüling*

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*Abstract:* The plate of the fragment ИHB.No.7887 was published in the *Heishuicheng Manuscripts Collected in Russia Volume 9* and again in *Volume 14*. This led to a misunderstanding. The current academic study of ИHB. No.7887 was, in fact, limited to ИHB.No.7887–2. Translation and study of the fragment ИHB.No.7887–1 made it clear that its content was about the provisions on how to deal with children born by women who committed adultery, on inactivity of women who pay a reward with labor, on widows not to be supervised by 福姦姦姦 (大小侄母) and on women who are forced to divorce by parents-in-law and so on. Comparison with the relevant provisions of *Tiansheng lüling* 天盛律令 showed that the contents of ИHB.No.7887–1 are supplements and revisions to *Tiansheng lüling*. Based on this preliminary analysis, the contents of ИHB.No.7887–1 are thought to be temporary legal provisions formulated in the late Xixia 西夏 period to solve some new litigation cases in the society. Such legal documents, supplementary to the basic code of Xixia, are expected to attract attention of the academic community.

*Key words:* *Heishuicheng Manuscripts Collected in Russia*, legal document, *Tiansheng lüling*

### Introduction

In *Heishuicheng Manuscripts Collected in Russia Volume 9*, the fragment ИHB.No.7887 was given the title *Hainian xinfa* 亥年新法<sup>1</sup>, and it has been studied.<sup>2</sup> However, it was published again in *Heishuicheng Manuscripts Collected in Russia Volume 14*, numbered ИHB.No.7887–2, and its title was

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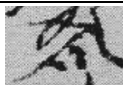

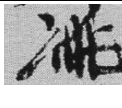

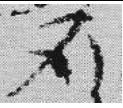

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<sup>1</sup> *E cang Heishuicheng wenxian 9* 1999: 337.

<sup>2</sup> SONG 2021: 32–36; LIANG 2013: 149.

no longer *Hainian xinfa*, but *Guangding shennian gaodie* 光定申年告牒.<sup>3</sup> Due to this inconsistency in the publication of ИHB.No.7887 in *Heishuicheng Manuscripts Collected in Russia*, earlier researchers wrongly assumed that ИHB.No.7887 was only one page, and the current academic study of ИHB.No.7887 was actually limited to ИHB.No.7887-2. In fact, before the plate of ИHB.No.7887-2, there was another fragment named *lütiao* 律條, numbered ИHB.No.7887-1.<sup>4</sup> Although the editor gave ИHB.No.7887-1 and ИHB.No. 7887-2 different titles, they should belong to the same document, judging from the characteristics of these two fragments.

First, handwriting shows that the two pieces of fragments were written by the same person. As shown in the table below, writing characteristics of the same Tangut characters in the two fragments are identical. Second, in terms of content, the same time information (𗵑𗵒𗵓𗵔𗵕𗵖𗵗𗵘𗵙) appears on both fragments. Third, in terms of page features, the two fragments differ in height by only 4 mm,<sup>5</sup> so the actual page height of the two fragments should be roughly the same. Based on the above three types of evidence, it can be proved that these two fragments should belong to the same document.

	𗵑	𗵒	𗵓	𗵔	𗵕
ИHB.No. 7887-1					
	Line 16, Word 2	Line 2, Word 7	Line 10, Word 6	Line 7, Word 10	Line 18, Word 10
ИHB.No. 7887-2					
	Line 3, Word 11	Line 4, Word 10	Line 3, Word 7	Line 2, Word 4	Line 4, Word 6

<sup>3</sup> *E cang Heishuicheng wenxian* 14 2011: 201.

<sup>4</sup> *E cang Heishuicheng wenxian* 14 2011: 200.

<sup>5</sup> The ИHB.No.7887-1 is 19 cm and ИHB. No.7887-2 is 18.6 cm in height according to the annotation in *E cang Heishuicheng wenxian* 14 2011: 76.

### Interpretation of ИHB.No.7887-1

ИHB.No.7887-1, *lütiao*, transcript, scroll binding, hemp paper, height 19, width 41.5, total 19 lines, Tangut language, cursive script.<sup>6</sup> The following is the transcription of the original document in regular script.

- (1) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (2) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (3) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (4) 𐰇𐰏
- (5) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (6) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (7) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (8) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (9) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (10) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (11) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (12) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (13) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (14) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (15) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (16) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (17) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (18) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯
- (19) 𐰇𐰏𐰢𐰣𐰤𐰥𐰦𐰧𐰨𐰩𐰪𐰫𐰬𐰭𐰮𐰯

### Translation

(1)–(4) ...should be written in the household register. Those who are not registered in the household register are judged to be Zazi 雜子, and the procedure for registering a household should be carried out in accordance with existing laws. Children born to a woman who commits adultery with another person are treated according to the corresponding provisions.

<sup>6</sup> *E cang Heishuicheng wenxian 14* 2011: 76.

<sup>7</sup> 𐰇 is added in small characters.

<sup>8</sup> 𐰇 and 𐰇 are phonetic loan characters.

<sup>9</sup> In the original document, there is a vertical mark between 𐰇 and 𐰇 indicating the order in which these two words are inverted. Normal word order here is 𐰇𐰇.

<sup>10</sup> 𐰇 is added in small characters.

(5)–(6) The fugitives have been arrested, and the reward due to those who report the fugitives is given in the form of hard labor. If those who do hard labor are slack, the person receiving the reward for reporting is not allowed to sue or urge them.

(7)–(8) Refer to the judgment before November 18, 1212.

(9)–(14) The 冢穉婦 was not allowed to supervise the widow, and such behavior was not allowed in *Tiansheng lüling*, regardless of whether the widow had parents-in-law or not, and regardless of whether the widow's period of mourning for her husband had arrived or not, widows are never allowed to be supervised by 冢穉婦.

(15)–(19) The woman's parents-in-law forced her husband not to respond to the woman and the woman was forced to divorce. Later, the woman is forced to divorce on the basis of the woman's guilt, then the woman and her parents-in-law sue each other, and this situation is judged by referring to the cases that are already available now.

### Comparative analysis of ИВ.№.7887–1 and the relevant provisions of *Tiansheng lüling*

Judging from the translation of ИВ.№.7887–1, it is not unreasonable for the editors of *Heishuicheng Manuscripts Collected in Russia* to name it *lütiao*. Indeed, although the first provision is missing, by reading its limited content, we can still roughly understand that this is a provision on how to deal with the children born by women fornicating with others. In *Tiansheng lüling*, there are two situations of such women. One is that women who have no husband fornicate with others, such as those who are unmarried or divorced, and the other is that women who have a husband fornicate with others. In the first case, a child born by women fornicating with others is not allowed to be registered as 冢穉 (使軍), but can only be registered as 冢穉 (輔主).<sup>11</sup> In the second case, a child born by women fornicating with others is not allowed to inherit his legal father's official position or military rank.<sup>12</sup> A comparison of this article with *Tiansheng lüling* shows that the provisions of this incomplete article are inherited from the existing laws and have not been amended.

<sup>11</sup> SHI 2000: 303.

<sup>12</sup> SHI 2000: 354.

The second provision is very brief and basically says that when a laborer paying a reward with labor is inactive, the person who is paid for reporting fugitives cannot sue or urge that laborer. Paying a whistle-blower with labor was one of the forms of rewards in the laws of Xixia. When the offender is unable to pay the reward, the cohabiting family members make up for it by way of labor.<sup>13</sup> In *Tiansheng lüling*, it is also clearly stipulated that there are different daily wage standards for different groups, such as strong men, weak men and women.<sup>14</sup> In addition, *Tiansheng lüling* also states that if a thief is unable to repay the stolen goods or cannot pay a reward to the informant, then the wife and unmarried daughter of the thief's cohabiting family members have to do hard labor to repay.<sup>15</sup> And if the debtor does not have a wife, daughter or daughter-in-law, the debtor will be punished by flogging.<sup>16</sup> Therefore, we can reasonably speculate from the provisions of *Tiansheng lüling* that the main group of people who paid the reward with labor in the second provision were women. Moreover, the circumstances in the second provision are not covered by *Tiansheng lüling*, so it can be said that the second provision is a supplement to *Tiansheng lüling*.

In terms of writing format and content, the remaining three articles are written as a “paragraph-subparagraph” structure. The word “梟鬪” is written at the top of the page and the word “刃鬪” is written 3–4 spaces lower, indicating that the subsequent “刃鬪” is subordinate to “梟鬪”. In terms of content, the provisions under the “梟鬪” apply to the next two articles, to the effect that the latter two cases can be judged by reference to the judgement made before November 18, 1212.

It is clear from the fourth provision that its central meaning is that widows are not allowed to be supervised by 嗣姪姊妹. It also mentions that this is also not allowed in *Tiansheng lüling*. It is true that this provision is recorded in volume 8 of *Tiansheng lüling*,<sup>17</sup> however, unlike the fourth provision here, it is 嗣姪姊妹 (大小侄父) who is not allowed to supervise widows, and 嗣姪姊妹 is not mentioned. Therefore, the fourth provision is an amendment to *Tiansheng lüling*.

The fifth provision is about women being forced to divorce by parents-in-law. There are detailed provisions about women being divorced in

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<sup>13</sup> DAI 2014: 186.

<sup>14</sup> SHI 2000: 174.

<sup>15</sup> SHI 2000: 173.

<sup>16</sup> SHI 2000: 273.

<sup>17</sup> SHI 2000: 307.

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Volume 8 of *Tiansheng lüling*.<sup>18</sup> Firstly, like other feudal dynasties, Xixia had a divorce system based on the will of the husband.<sup>19</sup> The circumstances in which women may be divorced are divided into different types from light to serious. If a woman has committed adultery, the husband and the parents-in-law can dissolve the marriage without discussion. If a woman has committed six sins, the husband will need to consult with the parents-in-law before the marriage is dissolved. If a woman is in three specific circumstances or has committed no sins, but the husband would like to dissolve the marriage, the marriage may be dissolved if the woman's parents are willing to redeem their own daughter. The above-mentioned provision in *Tiansheng lüling* does not cover the situation when a woman is forced to divorce by her parents-in-law. Therefore, the circumstances in the fifth provision are another supplement to *Tiansheng lüling*.

### Determining the nature of ИHB.No.7887-1

With regard to identifying the dating of the contents of ИHB.No.7887-1, the key chronological clue is provided in the third provision of ИHB.No.7887-1 “媵媵雛雛稱報設刃獄轟與諭穢穢駭駭誦莖”. This clue indicates that November 18, 1212 is the earliest date to which the content of ИHB.No.7887-1 can be referred, which means that the contents of ИHB.No.7887-1 should be dated later than November 18, 1212.

From the results of the comparative analysis of ИHB.No.7887-1 and the relevant provisions of *Tiansheng lüling*, it is clear that the contents of ИHB.No.7887-1 are supplements and revisions to *Tiansheng lüling*. For example, the cases in which a woman delays her payment of the reward with her labor, the cases in which the 媵媵雛雛 are not allowed to supervise a widow, and the cases in which women are forced to divorce by their parents-in-law, which are not covered by *Tiansheng lüling*, were added. In addition, provisions specifying people who are not allowed to supervise widows have been amended.

Current research findings on the *Hainian xinfā* generally suggest that *Hainian xinfā* was an important legal document promulgated again in the late Xixia period after *Tiansheng lüling*. It is a supplement and revision to

<sup>18</sup> SHI 2000: 308.

<sup>19</sup> SHAO 1998: 88.

*Tiansheng lüling*.<sup>20</sup> Although the content of ИHB.No.7887-1 exhibits features similar to *Hainian xinfā*, we still cannot ignore the fact that it differs from *Hainian xinfā*. Firstly, the ИHB.No.7887-1 and *Hainian xinfā* are written in different formats. In particular, the first word of each major article of the extant volumes of *Hainian xinfā* is “敕”, usually written in the top frame. If there are several affiliated articles under a major article, they begin with the word “移報” and are written in a lower position than the first line of the major article. However, the ИHB.No.7887-1 begins with the words “刻翻” and “檄翻”, which are clearly different from the format of *Hainian xinfā*. Secondly, in terms of content, the ИHB.No.7887-1 is also not identical to the text of the currently extant volumes of *Hainian xinfā*, and therefore such legal instruments cannot be hastily identified as the contents of *Hainian xinfā*.

It is well known that *Tiansheng lüling* was the basic code of Xixia, and existing studies of Xixia legal system have focused on *Tiansheng lüling*. However, no code can be permanent, and as social circumstances change and new practical problems arise in society that can no longer be solved by the existing code, it is inevitable that the code will have to be supplemented and amended accordingly. There is a provision in Volume 20 of *Tiansheng lüling*, which clearly states that when institutions encounter problems that cannot be solved according to the current laws, they should submit them to Zhongshu 中書 for ruling, and the results after the ruling should be compiled into a volume.<sup>21</sup> Thus, we can speculate that the ИHB.No.7887-1 is possibly a product with this kind of background.

It can be seen from the contents recorded in the ИHB.No.7887-1 that in the late Xixia period, some new litigation cases appeared in the society, such as urging or suing women to pay the reward with labor, widows being supervised and interfered by 詗窺緜緜, and women being forced to divorce by parents-in-law. However, officials who handled these litigation cases could not find any similar cases in the current code at that time, so they had to refer to some previous cases that were similar, or report to Zhongshu, and ask Zhongshu to re-formulate some temporary laws to solve the

<sup>20</sup> WANG 2020: 14. Also holding this view are Zhou Feng, Jia Changye and others. In his doctoral thesis, Zhou Feng explained one by one the supplements and amendments made by the volume 3 of *Hainian xinfā* to the volume 3 of *Tiansheng lüling*. By interpreting and analyzing the contents of the volume 1 of *Hainian xinfā*, Jia Changye concludes that the volume 1 of *Hainian xinfā* is a supplement to the volume 1 of *Tiansheng lüling*. See: ZHOU 2013: 49; JIA 2009: 90.

<sup>21</sup> SHI 2000: 609.

above-mentioned litigation cases. It can be said that provisions in such legal documents that supplement the basic code of Xixia are more similar to some temporary provisions formulated in the late Xixia period to adapt to new social changes. However, academic research on the legal documents of Xixia mostly focuses on the discussion of four legal documents, namely *Zhenguan Yujingtong* 貞觀玉鏡統, *Tiansheng lüling*, *Hainian xinfā* and *Faze* 法則, and pays little attention to such legal documents. The ИHB.No.7887-1 can provide us with a deeper understanding of legal documents of Xixia, and can also provide material for examining transmission and evolution of the laws of Xixia.

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