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# A New Perspective on the Han Legal System: Research into the Han Wooden Slips Excavated from the Yiyang Tuzishan Site

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## Abstract

Since the early Han dynasty, the Chinese legal system already contained an internal division between prison statutes and peripheral statutes. Statutes with penal provisions were generally regarded as prison statutes, while those lacking such provisions were regarded as peripheral statutes. Peripheral statutes could include laws of an administrative or institutional nature—including military law—as well as statutes of a ritual nature. By the early Han at the latest, all the individual chapters that would later constitute the “Statutes in Nine Chapters” were already in existence, some classified under prison statutes and others under peripheral statutes. The prominence of these nine chapters relates both to the openness of the Han legal system and to a reassessment of the value of individual statute chapters. This development was likely a product of the evolution of legal scholarship. Han statutes were applied uniformly throughout the commanderies and kingdoms. Although kingdoms in the early Han enjoyed considerable autonomy, they did not possess the power to create statutes and ordinances of their own, which is to say, independent kingdom law did not exist. Re-examining the records reveals that although accounts of primary statutes and peripheral chapters

appeared relatively late, they have a documentary basis and cannot be dismissed as fabrications. From this perspective, the credibility of official historical records should not be denied. This conclusion also provides insight into reassessing the “doubting antiquity movement” and research on historical writing.

### Keywords

Han legal system – statute-name wooden slips – prison statutes and peripheral statutes

The term “Han legal system” (*Han lü tixi* 漢律體系), narrowly defined, refers to the system formed by legal codes during the Han dynasty (202 BCE–220 CE). Broadly defined, it encompasses all legal forms of the Han period. That is, Han law comprised statutes (*lü* 律), ordinances (*ling* 令), procedural rules (*ke* 科), precedents (*bi* 比), and other legal instruments. Generally, scholars believe that the Han legal system in the broad sense consisted of primary statutes (*zheng lü* 正律) and peripheral chapters (*pang zhang* 旁章). Primary statutes refer to the “Statutes in Nine Chapters” (*Jiuzhang lü* 九章律), whose individual chapters can be clearly enumerated. Beyond these nine chapters were the peripheral chapters, whose content was miscellaneous and included different legal forms such as statutes, ordinances, procedural rules, and precedents. With the excavation of the Shuihudi 睡虎地 Qin Slips (1975) and the Zhangjiashan 張家山 Han Slips (1983), voices questioning traditional accounts have grown markedly stronger, although significant divergences of opinion persist among scholars.

In 2013, a large number of archeological finds were discovered at Tuzishan 兔子山, in the city of Yiyang 益陽, Hunan Province. While organizing the Han slips excavated from Well 7 (J7) at the Yiyang Tuzishan site, we discovered two statute-name wooden slips (*lüming mudu* 律名木牘) that can be joined together. These slips are extremely valuable for deepening our understanding of the Han legal system. The current paper is our attempt at analyzing these slips and commenting on their significance.

## 1 The History of Research on the Han Legal System

Concerning the Han legal system and its developmental trajectory, the *Shiji* 史記 and *Hanshu* 漢書 provide only brief accounts, with the latter being slightly more detailed. Wang Chong 王充 (27–97), a contemporary of the *Hanshu*'s author Ban Gu 班固 (32–92), also discussed these matters in his work *Lunheng* 論衡. The *Weishu* 魏書, *Jinshu* 晉書, *Tang lü shuyi* 唐律疏議, and *Tang liudian*

唐六典, although later works, provide more detailed and systematic accounts of the Han legal system. In addition, the *Qiguo kao* 七國考, a historical work from the Ming dynasty (1368–1644), preserves fragments of the Qin dynasty's (221–207 BCE) *Fajing* 法經. These fragments constitute the basic materials of the Han legal system found in transmitted texts and are quite familiar to scholars. The *Jinshu* contains the following passage:

In all, thirteen chapters were added, which together with the five existing chapters made eighteen chapters. Compared to the nine chapters of the primary statutes, this represented an increase; compared to the peripheral chapters and procedural rules, it represented a reduction.<sup>1</sup>

This statement comes from the preface to a section on the Wei (220–265) “New Statutes” (*xin lü* 新律). It indicates that by the Cao-Wei period at the latest, the Han legal system was understood to consist of two parts: nine chapters of primary statutes and the peripheral chapters including procedural rules. The nine chapters of Han statutes were thought to have developed from the six chapters of the Qin *Fajing*. Within the primary statutes, regulations distinguished between criminal statutes and administrative statutes. A distinction also existed between the primary statutes and the peripheral chapters and procedural rules outside them, though the basis for this distinction remained unclear.

Despite these various uncertainties, since the early twentieth century both general histories of the Chinese legal system and compilations of Han statutes by Shen Jiaben 沈家本 (1840–1913) and Cheng Shude 程樹德 (1877–1944) have relied on these materials to reconstruct accounts of the legal systems in the Qin and Han dynasties.

Such reconstructions have faced questions and challenges, especially since the flourishing of the “Doubting Antiquity Movement” in the 1920s. Based on the fact that Han and pre-Han sources contain no references to the *Fajing* while accounts in the Wei-Jin Period (220–420) are more systematic, scholars outside China first raised questions from the perspective of source criticism. They argued that the account in the *Jinshu* was a product of cumulative stratification.<sup>2</sup> Regarding the *Fajing*, earlier scholars generally dismissed it as a

1 *Jinshu* 晉書 (Beijing: Zhonghua shuju, 1974), 30.925.

2 Niida Noboru 仁井田陞, “*Tang ling shiyi xushuo*” 《唐令拾遺》序說, trans. Zhou Dongping 周東平, in *Lidai ling kao* 歷代令考, ed. Yang Yifan 楊一凡 and Zhu Teng 朱騰 (Beijing: Shehui kexue wenxian chubanshe, 2017), 372; Kaizuka Shigeki 貝塚茂樹, “*Ri Kai Hōkei kō*” 李悝法經考, in *Kaizuka Shigeki chosaku shū* 貝塚茂樹著作集 (Tokyo: Chūō kōron sha, 1977), 3: 311–45; A. F. P. Hulsewé, *Remnants of Han Law: Introductory Studies and an Annotated Translation of Chapters 22 and 23 of the History of the Former Han Dynasty* (Leiden: E. J.

specious document, while recent scholarship has suggested it may very likely have originated from legal texts.<sup>3</sup> As for the “Statutes in Nine Chapters,” some argue that the Western Han (206 BCE–8 CE) court never created a legal code by this name and that a text bearing this name only emerged in the early Eastern Han (25–220). They point out that state legislation at the time was carried out in the form of individual statute chapters.<sup>4</sup> By comparison, historians within China have generally questioned transmitted textual accounts while legal scholars and legal historians have tended to accept them. With the publication of the Shuihudi Qin Slips and Zhangjiashan Han Slips, some scholars have completely rejected the “Statutes in Nine Chapters.” However, most have offered different interpretations of its meaning while accepting its existence. These include theories that “nine” is a general term.<sup>5</sup> The “primary statutes and peripheral chapters” have been interpreted by some as a value judgment by Wei-Jin scholars rather than a factual document.<sup>6</sup> Modern scholar Xu Shihong 徐世虹 has contended that “the so-called primary statutes and peripheral chapters represent formulations made under a consciousness that places criminal law at the core,” and that they “originated from people’s understanding of the legal source status of criminal regulations, and do not necessarily mean that a distinction between primary and peripheral existed from the beginning in legislative compilation or formal legal sources.”<sup>7</sup>

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Brill, 1955), 26–30; Hirose Kunio 廣瀨薰雄, *Shin Kan ritsuryō kenkyū* 秦漢律令研究 (Tokyo: Kyūko shoin, 2010), 41–75.

- 3 Timoteus Pokora, “The Canon of Laws by Li K’uei – A Double Falsification?,” *Archiv Orientalní* 27 (1959): 96–121; Ikeda Yūichi 池田雄一, *Chūgoku kodai no ritsuryō to shakai* 中国古代の律令と社会 (Tokyo: Kyūko shoin, 2008), 76–138.
- 4 Sueyasu Ando 陶安 あんど [Arnd Helmut Hafner], “Hōten hensanshi saikō: Kanpen: futatabi bunken shiryō o chūshin ni suete” 法典編纂史再考—漢篇：再び文獻史料を中心に据えて, *Tōyō bunka kenkyūjo kiyō* 東洋文化研究所紀要 140 (2000): 1–57; Shiga Shūzō 滋賀秀三, *Chūgoku hōseishi ronshū: Hōten to keibatsu* 中国法制史論集：法典と刑罰 (Tokyo: Sōbunsha, 2003), 39. For Shiga’s main views, see also Miyake Kiyoshi 宮宅潔, “Jin wushi nian Riben de Qin-Han shidai fazhishi yanjiu” 近 50 年日本的秦漢時代法制史研究, trans. Tian Xudong 田旭東, in *Zhou Qin Han Tang wenhua yanjiu* 周秦漢唐文化研究, ed. Huang Liuzhu 黃留珠 and Wei Quanrui 魏全瑞 (Xi’an: San Qin chubanshe, 2004), 3: 270.
- 5 For a review of these theories, see Zhang Zhongwei 張忠煒, *Qin Han lǐlǐng fǎxì yánjiū chūbian* 秦漢律令法系研究初編 (Beijing: Shehui kexue wenxian chubanshe, 2012), 86–91.
- 6 Xu Shihong 徐世虹, “Shuo ‘zhenglü’ yu ‘pangzhang’” 說“正律”與“旁章”, in *Chutu wenxian yanjiu* 出土文獻研究, ed. Zhongguo wenwu yanjiusuo 中國文物研究所 (Shanghai: Shanghai guji chubanshe, 2007), 8: 74–85.
- 7 Xu Shihong 徐世虹, “Wenxian jiedu yu Qin Han lǐ benti renshi” 文獻解讀與秦漢律本體認識, *Zhongyang yanjiuyuan* “Lishi yuyan yanjiusuo jikan” 中央研究院 歷史語言研究所集刊 82, no. 2 (2015): 240–41.

A simple review of over a century of research reveals the magnitude of these disagreements. These various controversies have arisen because the documentary record is insufficient. Without new materials coming to light, these disputes cannot be resolved. The Han statute-name wooden slips excavated from Well 7 (J7) at the Yiyang Tuzishan site are undoubtedly key historical materials for resolving these controversies.

## 2 The Han Statute-Name Wooden Slips Excavated from Well 7 (J7) at the Yiyang Tuzishan Site

From May to November 2013, an archaeological team composed of the Hunan Provincial Institute of Cultural Relics and Archaeology and the Yiyang Municipal Cultural Relics Management Office conducted salvage excavations at the Yiyang Tuzishan site. Of the sixteen ancient wells excavated, eleven yielded bamboo and wooden slips (*jiandu* 簡牘).<sup>8</sup> Well 7 (J7), located in the northwestern part of the Tuzishan site, produced over 2,000 slips (some fragments, some whole). According to a preliminary analysis, the majority of these materials date from the early Han Kingdom of Changsha (Changsha guo 長沙國, 202–157 BCE).<sup>9</sup>

The statute-name wooden slips were found separated into two pieces, catalogued as J7⑦1 and J7⑦2. After the organizing group joined the pieces together, the complete slip measures 23.5 centimeters in length (equivalent to a one-*chi* slip), 5.4 centimeters in width, and 0.4 centimeters in thickness. Both sides of this slip are divided into columns. The obverse shows clear carved column dividers made with a sharp tool, while the reverse has no carved column marks. Preserving the original slip-face symbols, we transcribe the text in standard characters as follows:<sup>10</sup>

8 Hunan sheng wenwu kaogu yanjiusuo 湖南省文物考古研究所 and Yiyang shi wenwu guanlichu 益陽市文物管理處, “Hunan Yiyang Tuzishan yizhi jiu hao jing fajue baogao” 湖南益陽兔子山遺址九號井發掘報告, in *Hunan kaogu jikan* 湖南考古輯刊, ed. Hunan sheng wenwu kaogu yanjiusuo 湖南省文物考古研究所 (Beijing: Kexue chubanshe, 2016), 12: 129; Hunan sheng wenwu kaogu yanjiusuo 湖南省文物考古研究所 and Yiyang shi wenwuchu 益陽市文物處, “Hunan Yiyang Tuzishan yizhi jiu hao jing fajue jianbao” 湖南益陽兔子山遺址九號井發掘簡報, *Wenwu* 文物, no. 5 (2016): 32.

9 Zhang Chunlong 張春龍 and Zhang Zhongwei 張忠煒, “Hunan Yiyang Tuzishan yizhi qi hao jing chutu jiandu shulue” 湖南益陽兔子山遺址七號井出土簡牘述略, *Wenwu* 文物, no. 6 (2021): 70–71; Zhang Sangtian 張桑田, “Yiyang Tuzishan yizhi qi hao jing jiandu shiliao jiazhi juyi” 益陽兔子山遺址七號井簡牘史料價值舉隅, *Zhongguo shi yanjiu dongtai* 中國史研究動態, no. 1 (2024): 73–76.

10 Translator’s note: Some statute names appear in abbreviated form without the character 律.

**Obverse (J7⑦<sub>1</sub>+J7⑦<sub>2</sub>):**

Column 1: Statutes on Denunciations of Robbery [collation mark]; Statutes on Assault; Statutes on Prisoners; Statutes on Abscondence [collation mark]; Statutes on Arrest [collation mark]

Column 2: Statutes on Miscellaneous Matters [collation mark]; Statutes on the Composition of Judgments; Statutes on Impoundment [collation mark]; Statutes on Levies [collation mark]; Statutes on Checking [collation mark]; Statutes on Passes and Markets

Column 3: Statutes on Stables; Statutes on Exemption from Taxes; Statutes on Cash; Statutes on Relocation; Statutes on Court Audiences; Prison Statutes in Seventeen Chapters

Column 4: Statutes on Agriculture; Statutes on Households; Statutes on Granaries, Finance, Markets and Merchants; Director of Works; Statutes on Corvée Labor

Column 5: Statutes on Scribes; Statutes on Year-End Sacrifices; Statutes on Sacrifices; Water Control; Equalizing Transportation; Food Rations at Conveyance Stations; Work Assignments

Column 6: Statutes on Provisions; External Music; Statutes on Salaries; Establishment of Officials; Establishment of Heirs; Statutes on Ranks [collation mark]; Statutes on Ranks of Feudal Lords

告律 盜律 已賊律 囚律 亡律 已捕律 已（第一欄）  
 雜律 已具律 收律 已興律 已效律 已關市律（第二欄）  
 廩律 復律 錢律 遷律 朝律 獄律 十七章（第三欄）  
 田律 戶律 倉律 金布 市販 司空 繇律（第四欄）  
 史律 臘律 祠律 治水 均輸 傳食 工作課（第五欄）  
 齎律 外樂 秩律 置吏 置後 爵律 已諸侯秩律（第六欄）

**Reverse (J7⑦<sub>1</sub>+J7⑦<sub>2</sub>):**

Column 1: Statutes on Enrollment [collation mark]; Statutes on Guard Soldiers; Statutes on Emergency Troops; Statutes on the Forwarding of Documents; Statutes on Burials; Statutes on Bestowals

Column 2: Peripheral Statutes in Twenty-seven Chapters · In All, Forty-four Chapters

傳律 已尉卒律 奔命律 行書律 葬律 賜律（第一欄）  
 旁律 廿七章·凡卅四章（第二欄）

Several statute names are followed by the character *yi* 已. A similar phenomenon appears in the Liye 里耶 Qin Slips (7–14).<sup>11</sup> This character is equivalent to the collation marks (*goujiao fu* 鈎校符) seen in northwestern Han slips and generally served a proofreading function.<sup>12</sup> On this slip, the character *yi* appears to indicate that certain statute chapters had already been collated.

This statute-name wooden slip presented here constitutes one of the most detailed and comprehensive catalogs of Han statute titles discovered to date.<sup>13</sup> More importantly, it records the structural division within the Han legal system—information previously unknown to scholars.<sup>14</sup> The phrase “in all, forty-four chapters” (*fan xisi zhang* 凡卅四章) represents the sum of the seventeen chapters of prison statutes (*yu li* 獄律) and the twenty-seven chapters of peripheral statutes (*pang li* 旁律), which can be understood today as forty-four types of statute chapters.

### 3 Prison Statutes and Peripheral Statutes

Is the division of the Han legal system by the categories of prison statutes and peripheral statutes supported by evidence? When did this distinction emerge? What was the basis for this division? Did it originate from state authority or from private sources?

The distinction between prison statutes and peripheral statutes appears not only on the statute-name wooden slips. Han statute slips from Shuihudi tomb M77 and Hujia Caochang 胡家草場 tomb M12 also display a structural division similar to that found on the statute-name wooden slips. According to the research on dated slips from Well 7 (J7) cited above, the division between

11 Liye Qin jian bowuguan 里耶秦簡博物館 and Chutu wenxian yu Zhongguo gudai wenming yanjiu xietong chuangxin zhongxin 出土文獻與中國古代文明研究協同創新中心, eds., *Liye Qin jian bowuguan cang Qin jian* 里耶秦簡博物館藏秦簡 (Shanghai: Zhongxi shuju, 2016), plates 3, 77. The Liye slip numbers cited in this article are excavation registration numbers; the same applies hereafter.

12 Li Junming 李均明 and Liu Jun 劉軍, *Jiandu wenshuxue* 簡牘文書學 (Nanning: Guangxi jiaoyu chubanshe, 1999), 78–88.

13 Li Zhifang 李志芳 and Jiang Lujing 蔣魯敬, “Hubei Jingzhou shi Hujia Caochang mudi M12 fajue jianbao” 湖北荊州市胡家草場墓地 M12 發掘簡報, and “Hubei Jingzhou shi Hujia Caochang Xihan mu M12 chutu jiandu gaishu” 湖北荊州市胡家草場西漢墓 M12 出土簡牘概述, *Kaogu* 考古, no. 2 (2020): 3–33; Jiang Lujing 蔣魯敬 and Li Zhifang 李志芳, “Jingzhou Hujia Caochang Xihan mu M12 chutu de jiandu” 荊州胡家草場西漢墓 M12 出土的簡牘, in *Chutu wenxian yanjiu* 出土文獻研究, ed. Zhongguo wenhua yichan yanjiuyuan 中國文化遺產研究院 (Shanghai: Zhongxi shuju, 2019), 18: 168–82.

14 See Appendix.

prison and peripheral statutes existed by the reign of Liu Ying 劉盈, Emperor Hui of Han 漢惠帝 (r. 195–188 BCE) at the latest. Given the story of “Xiao’s regulations, Cao follows” (*Xiao gui Cao sui* 蕭規曹隨), we may reasonably speculate that the internal division of the Han legal system into prison and peripheral statutes was very likely established during the reign of Liu Bang 劉邦, Emperor Gaozu of Han 漢高帝 (r. 202–195 BCE).<sup>15</sup>

Transmitted texts contain references to prison statutes. Sima Qian 司馬遷 (ca. 145–ca. 86 BCE) writes in the “Qin Shi Huang benji” 秦始皇本紀 chapter of the *Shiji*: “Zhao Gao 趙高 had previously taught Huhai 胡亥 writing, prison statutes, ordinances, and legal procedures, so Huhai privately favored him.”<sup>16</sup> The content Zhao Gao (d. 207 BCE) taught Huhai (Emperor Er Shi of Qin 秦二世, r. 210–207) can be divided into four categories: writing skills, prison statutes, ordinances, and legal procedures (*fa shi* 法事). From the perspective of pedagogical progression, instruction began with the fundamentals of writing (*shu* 書), gradually advanced to studying legal texts (prison statutes and ordinances), and then proceeded to participation in judicial practice (legal procedures). This gives us a glimpse of how Qin and Han people learned about law.

The term “prison statutes” refers to statute chapters related to illegal or criminal conduct, roughly equivalent to what is called criminal legal regulations in the modern era. The term “peripheral statutes,” defined in juxtaposition to prison statutes, refers to statute chapters outside the prison statutes—that is, regulations beyond criminal law, or non-penal legal regulations.<sup>17</sup> These

15 Based on currently available materials, we can establish the approximate chronological order of early Han statute and ordinance slips: Tuzishan statute-name wooden slips → Zhangjiashan M247 → Zhangjiashan M336 → Hujia Caochang M12. The dates of Shuihudi M77 and Yintai 印臺 M69 remain unclear, but from currently disclosed information, they appear roughly contemporaneous with Zhangjiashan M336, dating to around the time before Emperor Wen of Han’s 漢文帝 (r. 180–157 BCE) penal reforms in the thirteenth year of his reign (167 BCE), all predating the Han statute and ordinance slips from Hujia Caochang M12. Regarding the dating of Zhangjiashan M336 and Hujia Caochang M12 statute and ordinance slips, see Wang Hualong 汪華龍, “Zhangjiashan M336 Han lüling niandai wenti chutan” 張家山 M336 漢律今年代問題初探, *Zhongguo renmin daxue xuebao* 中國人民大學學報, no. 1 (2024): 50–60; Wang Hualong 汪華龍, “Hujia Caochang M12 Han lüling jieti” 胡家草場 M12 漢律令解題, in *Zhongguo gu wenshuxue yanjiu* 中國古文書學研究, ed. Qiu Yuanyuan 邱源媛 (Guilin: Guangxi shifan daxue chubanshe, 2023), 1: 23–99.

16 *Shiji* 史記 (Beijing: Zhonghua shuju, 1959), 6.264.

17 Xu Shihong 徐世虹, “Handai shehui zhong de fei xingfa falü jizhi” 漢代社會中的非刑罰法律機制, in *Chuantong Zhongguo falü de linian yu shijian* 傳統中國法律的理念與實踐, ed. Liu Liyan 柳立言 (Taipei: “Zhongyang yanjiuyuan” lishi yuyan yanjiusuo, 2008), 284.

peripheral statutes cannot be encompassed by the concept of litigation (*song* 訟)—such as disputes over property—much less by what modern scholars call “civil law.” Administrative regulations, institutional regulations, and even ritual regulations can all be placed within this category.

The Shuihudi Qin Slips contain the phrase “annually collate the penal statutes with the censor” 歲讎辟律於御史 (Slip 198). The organizing group considers penal statutes (*pi lü* 辟律) to be equivalent to criminal statutes (*xing lü* 刑律).<sup>18</sup> Viewing penal statutes as equivalent to criminal statutes may also provide supporting evidence for the ancient understanding of “the legal source status of criminal regulations.”<sup>19</sup> Perhaps the Qin legal system already contained a distinction between penal statutes and non-penal statutes, which may have been the origin of the Han legal system’s division between prison and peripheral statutes.<sup>20</sup>

Did this division originate from public authority or from private sources? Examining the statute-name wooden slips reveals that, with the exception of the Statutes on Court Audiences (*chao lü* 朝律), the classification of identical statute names under prison statutes and peripheral statutes remains completely consistent across all three sources. Such consistency across the three sources is unlikely to be coincidental, leading us to conclude that the internal division of the Han legal system most probably originated from public authority—specifically, the central government. Whether in central or local government offices, the Han statutes used in daily practice should have been relatively complete. However, as legal texts circulated in society, users exercised a degree of autonomy and selectivity in what they copied. In other words, divisions originating from governmental authority and selective copying are not necessarily contradictory. This explains why the three sources discussed in this article all display structural divisions while some excavated Han statutes show no such division.

What accounts for the existence of statute-name wooden slips, and what purpose did they serve? Based on currently available materials, two possibilities emerge. First, statute-name wooden slips may have served as attachments to their associated slip books. After copying and binding was completed, a wooden slip recorded the statute names contained in the slip book for future

18 Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, ed., *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu chubanshe, 1990), 65.

19 Xu Shihong, “Wenxian jiedu yu Qin Han lü benti renshi,” 241.

20 If the Qin legal system had a distinction between penal statutes and non-penal statutes, then penal statutes very likely corresponded to the prison statutes of early Han, and non-penal statutes probably constituted what were called peripheral statutes. This remains speculation without supporting evidence.

reference. The title wooden slip for the *Sunzi bingfa* 孫子兵法 found in the Yinqueshan 銀雀山 Han Slips still preserves traces of binding cord, showing that title wooden slips and slip books could be bound together rather than threaded together.<sup>21</sup> Statute-name wooden slips and their associated Han statute slip books may have existed in this combined form.

Second, they may have existed independently as master catalog slips, not bound together with related slip books. Neither the title wooden slips for individual Han statute texts seen at Zhangjiajie Gurendi 張家界古人堤 nor the title wooden slip for *Shuoyuan zashi* 說苑雜事 seen at Fuyang Shuanggudui 阜陽雙古堆 show traces of binding or threading cord, suggesting they existed independently as catalog slips.<sup>22</sup> The statute-name wooden slips likewise show no traces of binding cord, so independent existence cannot be ruled out. Moreover, copying over forty types of Han statutes would have required a substantial number of slips, making independent existence of the statute-name wooden slips more plausible.<sup>23</sup>

#### 4 The Path to the “Statutes in Nine Chapters”

The division between prison statutes and peripheral statutes provides a new framework for understanding how the “Statutes in Nine Chapters” emerged.

The nine chapters that comprise the “Statutes in Nine Chapters” all existed by the early Han. These include the Statutes on Robbery (*dao lü* 盜律), Statutes on Assault (*zei lü* 賊律), Statutes on Prisoners (*qiu lü* 囚律), Statutes on Arrest (*bu lü* 捕律), Statutes on Miscellaneous Matters (*za lü* 雜律), Statutes on the Composition of Judgments (*ju lü* 具律), Statutes on Levies (*xing lü* 興律), Statutes on Households (*hu lü* 戶律), and Statutes on Stables (*jiu lü* 廄律). These statute chapters were largely inherited from Qin statutes.<sup>24</sup> However,

21 Yinqueshan Han mu zhujian zhengli xiaozu 銀雀山漢墓竹簡整理小組, ed., *Yinqueshan Han mu zhujian* 銀雀山漢墓竹簡 (Beijing: Wenwu chubanshe, 1985), 1: 122.

22 Zhang Chunlong 張春龍 and Yang Xianyun 楊先雲, “Hunan Zhangjiajie Gurendi Han jian shiwen buzhen xu (shang)” 湖南張家界古人堤漢簡釋文補證續 (上), in *Jianduxue yanjiu* 簡牘學研究, ed. Xibei shifan daxue lishi wenhua xueyuan 西北師範大學歷史文化學院 et al. (Lanzhou: Gansu renmin chubanshe, 2018), 7: 148–52.

23 Hu Pingsheng 胡平生, “Fuyang Shuanggudui Han jian *Shuo lei zashi yanjiu*” 阜陽雙古堆漢簡《說類雜事》研究, in *Chutu cailiao yu xin shiye* 出土材料與新視野, ed. Li Zongkun 李宗焜 (Taipei: “Zhongyang yanjiuyuan,” 2013), 658–62; *Zhongguo jiandu jicheng bianji weiyuanhui* 中國簡牘集成編輯委員會, ed., *Zhongguo jiandu jicheng* 中國簡牘集成 (Lanzhou: Dunhuang wenyi chubanshe, 2005), 19: 1816–29.

24 Gao Min 高敏, “Han chu falü xi quanbu jicheng Qin lü shuo: du Zhangjiashan Han jian *Zouyan shu zhaji*” 漢初法律條全部繼承秦律說—讀張家山漢簡《奏讞書》札記,

they were not yet designated as the “Statutes in Nine Chapters.” The formation of the “Statutes in Nine Chapters” may be regarded as the outcome of two or more rounds of deliberate selection.

Three steps were necessary. First, eight chapters were selected from the prison statutes—Statutes on Robbery, Statutes on Assault, Statutes on Prisoners, Statutes on Arrest, Statutes on Miscellaneous Matters, Statutes on the Composition of Judgments, Statutes on Levies, and Statutes on Stables—to highlight their importance within the prison statutes. Second, one chapter was selected from the peripheral statutes—the Statutes on Households—to emphasize its importance and elevate it to equal standing with the eight prison statute chapters. Third, statute chapters whose sequence had previously remained unfixed were arranged in a standardized order: Statutes on Robbery, Statutes on Assault, Statutes on Prisoners, Statutes on Arrest, Statutes on Miscellaneous Matters, Statutes on the Composition of Judgments, Statutes on Levies, Statutes on Households, and Statutes on Stables. Through this transformation, the “Statutes in Nine Chapters” as described by later generations came into being.

This process clarified the trajectory of ancient legal evolution. The phrase “Xiao He arranged the statutes and ordinances” 蕭何次律令 gradually evolved into “Xiao He created statutes in nine chapters” 蕭何作律九章. From this emerged the account of Li Kui 李愷 (ca. 455–391 BCE) and his *Fajing* 法經 in six chapters. By adding “three chapters on [legal] matters” (*yi shi liu san pian* 益事律三篇) to these six chapters, Xiao He supposedly created the “nine chapters.” This reverse mode of observation resembles “playing a film backward.”<sup>25</sup> Such retrospective reconstruction is not exclusively modern—the ancients likely described the past in similar fashion.

The selection and stabilization of nine chapters from numerous statute chapters resulted from two factors: the openness of the Han legal system and a reassessment of individual statute chapters’ value. Within the existing framework dividing prison statutes and peripheral statutes, the statute chapters assigned to each category underwent periodic additions and deletions. The Statutes on Court Audiences, which contained regulations of a ritual nature, were classified under prison statutes—a category characterized by penal provisions. Assuming the classification on the statute-name wooden slips is

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in *Qin Han Wei Jin Nanbeichao shi lunkao* 秦漢魏晉南北朝史論考 (Beijing: Zhongguo shehui kexue chubanshe, 2004), 76–84.

25 Luo Zhitian 羅志田, “Minguo shi yanjiu de ‘daofang dianying’ qingxiang” 民國史研究的“倒放電影”傾向, *Shehui kexue yanjiu* 社會科學研究, no. 4 (1999): 104–6.

correct, this placement likely represents an artificial elevation emphasizing the statute's importance.

In the early Han, Emperor Gaozu of Han intentionally abolished cumbersome rituals in favor of simplicity. The result proved chaotic: assembled ministers drank wine and competed for credit; when drunk, some shouted wildly and drew their swords to strike the pillars. Shusun Tong 叔孫通 (fl. 205) therefore worked with his disciples to establish court ritual. In the seventh year of Emperor Gaozu's reign, the feudal lords and assembled ministers followed the court ritual Shusun Tong had established to perform the annual court ceremony:

The censors enforced the regulations, immediately removing anyone who did not follow proper ritual. Throughout the court audience and into the banquet, no one dared create disturbance or breach propriety. Emperor Gaozu then said: "Only today do I truly know the dignity of being emperor."<sup>26</sup>

Emperor Gaozu's affirmation of court ritual's importance likely prompted creation of the Statutes on Court Audiences, which recorded norms of court ritual, and its classification under prison statutes. The selection of eight chapters from prison statutes—Statutes on Robbery, Statutes on Assault, Statutes on Prisoners, Statutes on Arrest, Statutes on Miscellaneous Matters, Statutes on the Composition of Judgments, Statutes on Levies, and Statutes on Stables—and one chapter from peripheral statutes—the Statutes on Households—to form the "nine chapters" similarly resulted from value reassessment.

Statute chapters with widespread application in daily life naturally gained prominence because they possessed enduring significance for maintaining social order, despite changing over time. The Statutes on Households exemplify this pattern. Wang Yuquan 王毓銓 (1910–1992) observed that during the Han dynasty, "counties and townships were established not according to territorial extent but according to the number of households; official titles and rank designations also varied according to the number of households." Ancient feudal states and their documentary records "all emphasized households. The degree of emphasis sometimes exceeded that placed on land." Wang explained this by citing Xu Gan 徐幹 (170–217), who noted that population figures (*min shu* 民數) constituted "the fundamental basis for feudal states to organize territory and people, collect taxes and tribute, manufacture goods, establish salaries

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<sup>26</sup> *Shiji*, 99.2722–23.

and rations, mobilize corvée labor, and organize military forces – the foundation for establishing institutions and regulations.”<sup>27</sup> This context explains why the Statutes on Households gained elevated status despite containing few penal provisions.

After the statute chapters comprising the “Statutes in Nine Chapters” were selected, their sequence required standardization. The Wei “New Statutes” preface illustrates this concern. It placed the chapter on penal nomenclature (*xingming* 刑名) at the beginning to remedy a defect in Han statutes, where “the provisions on crimes were neither at the beginning nor at the end, contrary to the proper organization of chapters.”<sup>28</sup> Although the Han legal system comprised individual statute chapters with an internal division between prison statutes and peripheral statutes, the sequence of statute chapters had not been fixed. From this perspective, both the *Fajing* and the “Statutes in Nine Chapters” represent later standardization rather than original organization, though some variation existed even in this subsequent ordering.

The “Statutes in Nine Chapters” emerged through multiple rounds of selection, and this selection process was closely connected to legal scholarship (*liling xue* 律令學). Legal scholarship in the Han dynasty, when “legal studies flourished as never before,”<sup>29</sup> required a statute text (*lü ben* 律本) just as Confucian study required the canonical texts of the Five Classics. The “Tianxia” 天下 chapter of the *Zhuangzi* 莊子 records that followers of Mohism “all recited the Mohist canon” (*jing* 經).<sup>30</sup> Similarly, the “Canon on Horse Physiognomy” (*Xiangma jing* 相馬經) chapter in the Mawangdui silk manuscripts exhibits a relationship between canon (*jing*) and traditional commentary (*guxun* 故訓).<sup>31</sup> From this perspective, scholars such as Arnd Helmut Hafner and Shiga Shuzo 滋賀秀三 offered an insightful interpretation of the “Xieduan” 謝短 chapter of the *Lunheng* 論衡, proposing that the “nine chapters” served as the canonical text for legal studies, analogous to the canonical texts used in Confucian teaching.<sup>32</sup> This interpretation gains support from Wen Ying 文穎 (dates unknown) of the late Han and Wei periods, who observed: “What Xiao He

27 Wang Yuquan 王毓銓, “Min shu’yu Handai fengjian zhengquan” “民數” 與漢代封建政權, in *Laiwu ji* 萊蕪集 (Beijing: Zhonghua shuju, 1983), 33, 45.

28 *Jinshu* 晉書 (Beijing: Zhonghua shuju, 1974), 30.924.

29 Shen Jiaben 沈家本, *Jiyi wencun* 寄篹文存, in vol. 3 of *Lidai xingfa kao* 歷代刑法考 (Beijing: Zhonghua shuju, 1985), 2142.

30 Guo Qingfan 郭慶藩, *Zhuangzi jishi* 莊子集釋, annot. Wang Xiaoyu 王孝魚 (Beijing: Zhonghua shuju, 2012), 10.1079.

31 Qiu Xigui 裘錫圭, ed., *Changsha Mawangdui Han mu jianbo jicheng* 長沙馬王堆漢墓簡帛集成 (Beijing: Zhonghua shuju, 2014), 5: 169.

32 Sueyasu Ando, “Hōten hensanshi saikō,” 1–57; Shiga Shūzō, *Chūgoku hōseishi ronshū*, 39.

created based on Qin law to serve as statutes and ordinances are the statute canons [*lü jing* 律經].”<sup>33</sup>

Shiga argued that the “Statutes in Nine Chapters” contained no element of public authority in their origins.<sup>34</sup> This argument holds if understood to mean that the early Han had no legal code specifically called the “Statutes in Nine Chapters”—or that no single “code” bore this name. However, the argument requires qualification. All statute chapters belonging to the “Statutes in Nine Chapters” were products of public authority. Public authority’s regulation and influence generated the distinction between primary statutes and peripheral chapters/peripheral statutes. The division between the “Statutes in Nine Chapters” as primary statutes and materials outside them as peripheral chapters/peripheral statutes likely originated from the division between prison statutes and peripheral statutes that had existed since early Han.

## 5 Statutes on Salaries and Statutes on Ranks of Feudal Lords

Examining the statute names “Statutes on Salaries” (*zhi lü* 秩律) and “Statutes on Ranks of Feudal Lords” (*zhuhou zhi lü* 諸侯秩律) reveals an underlying issue: the relationship between Han statutes and kingdom law.<sup>35</sup>

Chen Suzhen 陳蘇鎮 inferred the existence of “Kingdom Statutes on Salaries” from the *Ernian lüling* 二年律令, and the statute-name wooden slips confirm this inference.<sup>36</sup> However, a problem emerges. While the Statutes on Salaries indeed do not record kingdom officials below the 2,000-*dan* rank, asserting on this basis that each kingdom possessed its own Statutes on Salaries—recording officials below the 2,000-*dan* rank within that particular kingdom—appears arbitrary.

We contend that there existed only a single chapter entitled the Statutes on Ranks of Feudal Lords, which was used uniformly throughout all kingdoms.

33 *Hanshu* 漢書 (Beijing: Zhonghua shuju, 1962), 8.253, Wen Ying 文穎 commentary.

34 Shiga Shūzō, *Chūgoku hōseishi ronshū*, 402–3, 408.

35 Zhang Zhongwei 張忠偉 and Zhang Sangtian 張桑田, “Hanchu wangguo xingyong Hanfa kaolun: jiyu Zhangjiashan M336 lüling jian de yanjiu” 漢初王國行用漢法考論—基於張家山 M336 律令簡的研究, *Zhongguo renmin daxue xuebao* 中國人民大學學報, no. 1 (2024): 38–49.

36 Chen Suzhen 陳蘇鎮, “Hanchu wangguo zhidu kaoshu” 漢初王國制度考述, *Zhongguo shi yanjiu* 中國史研究, no. 3 (2004): 35; Chen Suzhen 陳蘇鎮, *Chunqiu yu “Handao”*: *Liang Han zhengzhi yu zhengzhi wenhua yanjiu* 《春秋》與“漢道”: 兩漢政治與政治文化研究 (Beijing: Zhonghua shuju, 2011), 83–94.

The Statutes on Salaries were formulated and promulgated by the Han court. The Statutes on Ranks of Feudal Lords were no exception: they too were formulated and promulgated by the court rather than by individual kingdoms, despite regulating affairs within kingdom territories.

The political circumstances of the early Han clarify this issue. The Zhangjiashan Han Slips reveal that kingdoms and the court maintained a hostile relationship—a point on which scholarly consensus exists. When the court granted feudal lords autonomous power to govern their kingdoms, it simultaneously adopted multiple measures to prevent rebellion. First, when enfeoffing princes and younger brothers, “the territories were arranged to check each other like dog’s teeth—this is what is called making the imperial clan firm as bedrock, so that all under Heaven submit to its strength.”<sup>37</sup> The court demarcated kingdom boundaries so that kingdoms would mutually constrain one another.<sup>38</sup> Second, “the kings of the great kingdoms are young and immature, and the tutor-chancellors [*fluxiang* 傅相] appointed by the Han court control their affairs.”<sup>39</sup> The court controlled key personnel appointments to dominate kingdom government. Third, kingdoms could not mobilize troops without an imperial edict or Han tiger tally.<sup>40</sup> Since the court already guarded against feudal kingdoms in multiple respects, how could it have granted kingdoms the privilege of not implementing Han law? Although same-surname kings could “independently make laws” (*zi wei faling* 自為法令) or “arbitrarily make laws” (*shan wei faling* 擅為法令), these very terms—“independently” and “arbitrarily”—reveal that kingdoms lacked legitimate authority to create statutes and ordinances.

The arguments above rely on indirect evidence due to the absence of direct historical materials and inevitably contain an element of speculation. However, the bamboo and wooden slip materials from the Kingdom of Changsha excavated from Well 7 (J7) at the Yiyang Tuzishan site provide direct supporting evidence. These materials represent the most immediate documentation available for understanding the relationship between the court and kingdoms in the early Han.

37 *Shiji*, 10.413–14.

38 Zhou Zhenhe 周振鶴, *Zhongguo difang xingzheng zhidu shi* 中國地方行政制度史 (Shanghai: Shanghai renmin chubanshe, 2005), 236–39.

39 *Hanshu*, 48.2233.

40 *Shiji*, 52.2000; Ōba Osamu 大庭脩, *Qin Han fazhi shi yanjiu* 秦漢法制史研究, trans. Xu Shihong 徐世虹 et al. (Shanghai: Zhongxi shuju, 2017), 183–85.

The slips demonstrate consistency across multiple dimensions. First, regarding legal consistency: the slip texts include fragments of the Statutes on Denunciations (*gao li* 告律) and fragments of the edict issued upon Emperor Hui's accession, both identical to those recorded in the *Ernian lüling* or the "Huidi ji" 惠帝紀. Second, regarding administrative consistency: judicial and administrative documents reveal that litigation procedures and operational processes conform to those seen in the Zhangjiashan Han Slips' *Book of Submitted Doubtful Cases* (*zouyan shu* 奏讞書) and the Liye Qin Slips. Third, regarding official appointments: although some scholars have asserted based on the title "pillar of the state" (*zhuguo* 柱國) that "Han institutions were mixed with institutions from the Six States,"<sup>41</sup> documentary slips concerning "Chancellor-in-chief Cang" (*chengxiang Cang* 丞相蒼) (J7⑦320+J7⑦391) demonstrate that the old institutions of the Kingdom of Changsha quickly changed to follow Han institutions. Locally, the commandery-county system was implemented, with counties subdivided into townships (*xiang* 鄉) and sometimes neighborhoods (*ting* 亭). County and township official titles likewise conformed to Han institutions. Fourth, regarding calendrical consistency: explicitly dated slips show that the Kingdom of Changsha used the court's era names for dating and followed the legitimate calendar (*zhengshuo* 正朔), maintaining no independent era names or calendar system.

This evidence cannot be explained merely by the phrase "King [Wu Rui] of Changsha was loyal."<sup>42</sup> Rather, it demonstrates that the kingdom implemented Han institutions comprehensively.

## 6 Conclusion

Taking the statute-name wooden slips excavated from Well 7 (J7) at the Yiyang Tuzishan site as our focal point, we have re-examined the basic historical materials concerning the Han legal system and related scholarly controversies. Several conclusions emerge from this investigation.

First, the Han legal system, composed of individual statute chapters, contained an internal division between prison statutes and peripheral statutes. Using the Chinese character "penal" as the criterion, statutes with penal

41 Wu Rongzeng 吴荣曾, "Xi Han wangguo guanzhi kaoshi" 西漢王國官制考實, in *Xian Qin Liang Han shi yanjiu* 先秦兩漢史研究 (Beijing: Zhonghua shuju, 1995), 307.

42 *Hanshu*, 34.1894.

provisions were generally classified as prison statutes, while those lacking or substantially lacking such provisions were classified as peripheral statutes. Peripheral statutes could include statute chapters of an administrative or institutional nature (including military law) as well as statute chapters of a ritual nature.

Second, the individual statute chapters that came to constitute the “Statutes in Nine Chapters” most likely already existed during the Qin period, some classified under prison statutes and others under peripheral statutes. Their prominence among numerous statute chapters relates both to the openness of the statute and ordinance system and to a reassessment of the value of individual statute chapters. This development was very likely a product of the evolution of legal scholarship. Although the account in the *Jinshu* may not be entirely accurate, it possesses an evidential basis and cannot be dismissed wholesale as fabrication.

Third, Han statutes were applied throughout the commanderies and kingdoms in early Han period. Although early Han kingdoms enjoyed considerable autonomy, they did not possess the power to create statutes and ordinances, nor did independent kingdom law exist. Differences between commanderies and kingdoms did exist; hence the Statutes on Ranks of Feudal Lords established salary ranks for kingdom officials. Other materials from Well 7 (J7) at the Yiyang Tuzishan site and slightly later materials reveal that the early Han Kingdom of Changsha implemented Han institutions—a pattern that may not have been exceptional.

Fourth, methodologically speaking, the absence of relevant records in transmitted texts does not mean that a particular historical fact or concept did not exist. Absence of record and nonexistence share no necessary causal relationship. Primary statutes and peripheral chapters were not fabricated from nothing; the systemic division that existed from the early Han period onward constituted their likely origin. From this perspective, the credibility of official historical records should not be easily denied. This conclusion aids reconsideration of the Doubting Antiquity Movement and may offer instruction for research on historical writing: whether texts record or fail to record something, whether they provide detail or remain brief, does not necessarily contain “subtle words and great meaning” (*weiyán dàyì* 微言大義).

Appendix

表 1 出土簡牘所見漢律律名表

	張家山247號漢墓	兔子山遺址7號井	睡虎地77號漢墓	胡家草場12號漢墓
1	賊律×		盜律	賊律
2	盜律×		告律	亡律
3	具律×		具律	告律
4	囚律×		賊律	獄律
5	告律×		捕律	獄律
6	捕律×	獄律	亡律	·
7	亡律×	·	·	凡
8	收律×	·	十五種	十四律
9	雜律×	·		
10	二年	·		
11	律	·		
12	令	·		
13	·	·		
14	律	·		
15	令	·		
16	二	·		
17	十	·		
18	九	·		
19	種	·		
20		旁律	旁律	旁律
21		·	·	甲
22		·	·	·
23		廿	二十四種	凡
24		七		十八律
25		章		
26				
27				
28				
29				
30				
31				
32				
33				

(cont.)

	張家山247號漢墓	兔子山遺址7號井	睡虎地77號漢墓	胡家草場12號漢墓		
34		秩律	旁	工作課	祠律	
35		置吏	律	臘律	司空律	
36		置後	·	祠律	旁	治水律
37	旁	爵律	二	齋律	律	工作課律
38	律	諸侯秩律	十	行書	乙	傅食律
39	·	傅律	四	葬律	·	外樂律
	廿		种		凡	
40	七	尉卒律			十	葬律
41	章	奔命律			三	蠻夷復除律
42		行書律			律	蠻夷土律
43		葬律				蠻夷律
44		賜律				蠻夷雜律
45						上郡蠻夷間律

說明：1. 《二年律令》中無“囚律”，此處據李均明的研究析出。2. 《二年律令》中有“津關令”，是令非律，為保持其結構，故亦列出；“律令二十九種”句，“種”字存疑，疑為“章”。3. 《二年律令》中律名後的“×”，是指它們屬於律名木牘中的“獄律”；“○”，是指它們屬於律名木牘中的“旁律”。4. 律名木牘“獄律”後的“√”，是指它們均見於張家山 M336 號墓的“漢律十六章”，後者不見“收律”對確定律篇年代尤為有益。5. 律名木牘中篇題下添加下劃線的，是指這些篇題不見於睡虎地漢簡；律名木牘中的“收律”“遷律”“秩律”“諸侯秩律”四種，不見於胡家草場漢簡。6. 睡虎地漢簡中的律篇排序及數量單位“種”，暫從整理小組的說法；具體為何，有待資料的正式發表。7. 睡虎地漢簡中律名加下劃線的，是指此律名不見於胡家草場漢簡。8. 胡家草場漢律簡分三卷，第一卷新近公佈篇題，亦為“獄律”，“凡十四律”；第二卷自題“旁律甲”，“凡十八律”；第三卷自題“旁律乙”，“凡十三律”。不過，“旁律甲”小結作“凡十八律”，目錄所見律名僅17種。是目錄統計有誤，還是漏寫某律名，尚不可知。若屬遺漏，可能遺漏了“史律”或“齋律”，故表中兩者並存。9. 胡家草場漢簡中律名加下劃線的，是指這些篇題不見於睡虎地漢律；蠻夷諸律五篇，亦不見於律名木牘。

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*Translated by Jenny Lu*