

New Light on the Early-Han Code: A Reappraisal of the Zhangjiashan Bamboo-slip Legal Texts

The early-Han legal texts excavated from tomb number 247 at Zhangjiashan 張家山 in Jiangling 江陵, Hubei province, received immediate attention in western scholarship.¹ The discovery presents the most important archeological material for the study of Han law after Michael Loewe's interpretation and translation of the Han administrative regulations and rules written on wooden strips from the area of Jüyan 居延.² However, based upon the latest available Zhangjiashan legal texts and further research,³ a reconsideration of Li Xueqin's earlier work enables us to provide a more informed interpretation of some basic problems of the early-Han code in the Zhangjiashan material.⁴ A more realistic starting point for any research on excavated manuscripts is crucial. In an effort to establish such a point, we first briefly introduce

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¹ Denis Twitchett and Michael Loewe, eds., *The Cambridge History of China, Volume 1: The Ch'in and Han Empires, 221 B.C.-A.D. 220* (Cambridge: Cambridge U.P., 1986), p. 521, n. 3.

² Michael Loewe, *Records of Han Administration* (Cambridge: Cambridge U.P., 1967). See vol. 1 of A. F. P. Hulsewé, *Remnants of Han Law* (Leiden: Brill, 1955), for the collection and annotated translation of the transmitted literature of Han law, as well as prior scholarship in Han law; pp. 18-25.

³ Zhangjiashan ersiqi hao Han mu zhujian zhengli xiaozu 張家山二四七號漢墓竹簡整理小組, *Zhangjiashan Han mu zhujian (ersiqi hao mu)* (hereafter cited as *ZHMZ*) 張家山漢墓竹簡(二四七號墓) (Beijing: Wenwu chubanshe, 2001). The Zhangjiashan legal texts include bamboo-slip versions of the Han code excavated from Zhangjiashan tomb numbers 247 and 336. See Jingzhou diqu bowuguan 荊州地區博物館, "Jiangling Zhangjiashan san zuo Han mu chutu dapi zhujian" 江陵張家山三座漢墓出土大批竹簡, *WW* 1985.1, pp. 1-8; Jingzhou diqu bowuguan, "Jiangling Zhangjiashan liang zuo Han mu chutu dapi zhujian" 江陵張家山兩座漢墓出土大批竹簡, *WW* 1992.9, pp. 1-11. Since nothing of the Han code excavated from the Zhangjiashan tomb 336 has been published yet, we mean the legal texts from the Zhangjiashan tomb 247 wherever we mention Zhangjiashan Han legal documents in this article.

⁴ Zhangjiashan Han mu zhujian zhengli xiaozu, "Jiangling Zhangjiashan Han jian gaishu" 江陵張家山漢簡概述, *WW* 1985.1, pp. 9-15. See also Li Xueqin, *Jianbo yiji yu xueshu shi* 簡帛佚籍與學術史 (Nanchang: Jiangxi jiaoyu chubanshe, 2001), pp. 179-99. Early editions of this volume were published in Taiwan (1994) and Korea (1996). Li Xueqin is the chief of the editorial team transcribing and reconstructing the bamboo slips.

the recently published bamboo slips of the Zhangjiashan Han code. By examining the alternative dates of the first year of the state of Lu 魯, we can assess the current interpretations of the Zhangjiashan material concerning date, state identity and connection between the material and the empress Lü 呂. We will also explore the related issues of the origin and development of the early-Han code.

THE EARLY-HAN CODE FROM ZHANGJIASHAN TOMB 247

Zhangjiashan tomb 247 was excavated in December of 1983. This is a tomb of vertical-pit type, with one wooden burial chamber and one inner coffin.⁵ Not counting the broken tiny fragments, 1,236 bamboo slips were discovered in a storage area in the front of the wooden chamber.⁶ They include a calendar, *Ernian Lüling* 二年律令 (Statutes and Ordinances of the Year Two), *Zouyan shu* 奏讞書 (Reported Dispute Cases), *Mai shu* 脈書 (Writing on *Mai* Vessels), *Suanshu shu* 算數書 (Writing on Arithmetic), *He Lü* 蓋廬 (He Lü, king of Wu 吳 in the Spring and Autumn period), *Yin shu* 引書 (Writing on Therapeutic Pulling), and inventory slips. All these titles are original titles written on the back of bamboo slips. No almanac was identified.⁷ Scholars once suggested that the tomb owner was Zhang Cang 張蒼, the *chengxiang* 丞相 (chancellor) of the emperor Wen 文 (r. 180-157 BC).⁸ But the argument is unconvincing.⁹ According to the tomb size and the coffin system, as well as the calendar and the inventory slips excavated from the tomb, we believe that the tomb owner was an official who retired in 194 BC.¹⁰

Among the excavated bamboo manuscripts, *Ernian Lüling* and *Zouyan shu* are legal documents. The transcriptions of these manuscripts

⁵ Jingzhou, “Jiangling Zhangjiashan san zuo,” pp. 1-2.

⁶ ZHMZ, p. 1.

⁷ Ibid. Almanacs were mentioned in the previous reports. Zhangjiashan, “Jiangling Zhangjiashan san zuo,” p. 9. *Zouyan shu* was mistakenly written as *Yan shu* in A. F. P. Hulsewé, “Qin and Han Legal Manuscripts,” in Edward L. Shaughnessy, ed., *New Sources of Early Chinese History: An Introduction to the Reading of Inscriptions and Manuscripts* (Berkeley: The Society for the Study of Early China and The Institute of East Asian Studies, University of California, Berkeley, 1997), p. 208.

⁸ Shi Yunzi 石雲子, “Jiekai Zhangjiashan Han mu muzhu zhi mi” 揭開張家山漢墓墓主之謎, *Zhongguo wenwu bao* 中國文物報 (hereafter, ZGWVB), April 10, 1994, p. 3. For Zhang Cang, see Michael Loewe, *A Biographical Dictionary of the Qin, Former Han and Xin Periods (221 BC-AD 24)* (Leiden: Brill, 2000), pp. 675-76.

⁹ Huang Zhanyue 黃展岳, “Zhangjiashan Han mu buhui shi Zhang Cang mu” 張家山漢墓不會是張蒼墓, ZGWVB, May 1, 1994, p. 3.

¹⁰ Based on the tomb texts excavated, his expertise should include law, medicine, military arts and calculation. See Li, *Jianbo yiji*, pp. 190-91.

have been published.¹¹ This material is of profound importance for the study of the early-Han code. Later in the essay, we discuss the connection between this material and Qin code.¹²

Ernian Lüling is a collection of twenty-seven statutes and one ordinance written on 526 bamboo slips of 31 centimeters in length.¹³ The following is a list of the titles of the statutes and ordinances as reconstructed. We provide further explanation only if the titles are not self-explanatory. The *Ernian Lüling* text includes:

- Zei lü* 賊律, Statutes on Offenses: defines offenses from rebelling and setting fire to forging the emperor's seals and damaging private property, etc.;
- Dao lü* 盜律, Statutes on Theft and Robbery;
- Ju lü* 具律, Statutes concerning the Specifics:¹⁴ states different kinds of specifics of legal suits, judges, and punishments;
- Gao lü* 告律, Statutes on Lawsuits: relates to the *Ju lü*, but focuses more on punishment for different kinds of false accusations;
- Bu lü* 捕律, Statutes on Arrest: explains rewards for and punishments on different kinds of arrests made;¹⁵
- Wang lü* 亡律, Statutes on Escape;
- Shou lü* 收律, Statutes on Confiscation;
- Za lü* 雜律, Miscellaneous Statutes: focuses on rape and adultery, but also covers illegal loans, taxes, debts, and the like;
- Qian lü* 錢律, Monetary Statutes: focuses on illegal mintage;
- Zhili lü* 置吏律, Statutes on Appointing Officials;
- Junshu lü* 均輸律, Statutes on Balanced Transportation: only three bamboo slips are extant, concerning boat and carriage transportation; the meaning of *junshu* here seems different from the traditional understanding – to ease the transport of goods;¹⁶

¹¹ ZHMZ, pp. 5-72, 131-231.

¹² The Shuihudi Qin code material is available in both Chinese and English. See Shuihudi Qin mu zhujian zhengli xiaozu 睡虎地秦墓竹簡整理小組, *Shuihudi Qin mu zhujian* 睡虎地秦墓竹簡 (Beijing: Wenwu, 1990; hereafter cited as SQMZ), and Hulsewé, *Remnants of Ch'in Law*.

¹³ ZHMZ, p. 133.

¹⁴ We tentatively translate *ju* as "specifics." The *Hanshu* biography of Yu Dingguo 于定國 has *juyu* 具獄, where 具 was interpreted as *beiju* 備具 ("specifics are available and complete") by Yan Shigu 顏師古; *Hanshu* 71, p. 3042.

¹⁵ In the Shuihudi Qin code, we have *Bu dao lü* 捕盜律 in the *Miscellaneous Excerpts from Ch'in Statutes*. See Shuihudi, SQMZ, "Transcription," p. 89. (Page numbers in this volume are basically grouped into two series: that of the plates and that of the transcription. We will omit the word "Transcription" in the following notes in cases where the page numbering refers only to that section of the book.) See Hulsewé, *Remnants of Ch'in Law*, p. 118.

¹⁶ See Sang Hongyang 桑弘羊 in Loewe, *Biographical Dictionary*, pp. 462-63.

Zhuanshi lü 傳食律, Statutes on Boarding in Posts;
Tian lü 田律, Statutes on Agriculture;
[] *shi lü* 口市律, Statutes on [] and Markets;¹⁷
Xingshu lü 行書律, Statutes on the Mailing System;¹⁸
Fu lü 復律, Statutes on Waiving the Corvée;
Ci lü 賜律, Statutes on Bestowing Rewards;
Hu lü 戶律, Statutes on Households;¹⁹
Xiao lü 效律, Statutes on Checking and Auditing;²⁰
Fu lü 傅律, Statutes on Registration: explains differences of ranks of nobility and the corresponding bestowal of rice, staffs,²¹ etc.;
Zhihou lü 置後律, Statutes on the Establishment of Successors;
Jue lü 爵律, Statutes on Noble Rank;
Xing lü 興律, Statutes on Dereliction;
Yao lü 徭律, Statutes on Corvée;²²
Jinbu lü 金布律, Statutes on “Gold and Cloth”: not a statute on currency although “Gold and Cloth” usually stands for currency in early China; these are statutes concerning bestowing clothes and forage, as well as collecting fines, rents and deposits, etc.²³;
Zhi lü 秩律, Statutes on Rank and Salary;
Shi lü 史律, Statutes on Historiographers: explains training and appointment of historiographers, diviners and prayer;
Jin guan ling 津關令, Ordinances of Ports and Passes.

Unlike *Ernian Lüling*, *Zouyan shu* is not a statute or an ordinance, but a collection of dispute cases. It is written on 228 bamboo slips, the

¹⁷ Square brackets [] indicate that one character is missing. The corresponding statutes in the Shuihudi Qin code are titled *Guanshi lü* 關市律 (Statutes on Passes and Markets); see discussion in Hulsewé, *Remnants of Ch'in Law*, p. 57.

¹⁸ See also the Shuihudi Qin code. Hulsewé translated it as “Statutes concerning the Forwarding of Documents,” *Remnants of Ch'in Law*, p. 85.

¹⁹ See also Hulsewé, *Remnants of Ch'in Law*, p. 208, for Statute on Households of the state of Wei 魏.

²⁰ There is a complete version of the *Xiao lü* in the Shuihudi Qin code. See *SQMZ*, pp. 67–76; Hulsewé, *Remnants of Ch'in Law*, pp. 93–101, who translated the title as “Statutes concerning Checking.”

²¹ For an explanation of staffs, see Sarah Allan and Crispin Williams, eds., *The Guodian Laozi: Proceedings of the International Conference, Dartmouth College, May 1998* (Berkeley: The Society for the Study of Early China and The Institute of East Asian Studies, University of California, Berkeley, 2000), p. 124, n. 12.

²² Hulsewé translated it as “Statutes on Statute Labour”; *Remnants of Ch'in Law*, p. 64.

²³ Such statutes are also in the Shuihudi Qin code. Hulsewé translated it as “Statutes on Currency”; *Remnants of Ch'in Law*, pp. 46–56. He also noticed the difference between “gold and cloth” and “currency”; see *Remnants of Ch'in Law*, p. 53, A 44, n. 2.

lengths of which, if unbroken and complete, are between 28.6 and 31 centimeters.²⁴ We do not discuss this text here.²⁵

JIN GUAN LING 津關令 AND THE STATE OF LU 魯

According to the recent transcription titled *Zhangjiashan Han mu zhujian*, the state of Lu mentioned in the *jin guan ling* section of *Ernian Lüling* is Zhang Yan's 張偃 Lu, which was established in 188 BC, with the first year of Lu 187 BC.²⁶ This interpretation must be carefully rearticulated for the following three reasons. First, *Shiji* and *Hanshu* present at least three possibilities for the first year of Zhang Yan's Lu: 187 BC, 186 BC, and 182 BC.²⁷ Why consider only 187 BC valid? Second, the Zhangjiashan Han code has been dated to 186 BC.²⁸ In this case, the alternative of 182 BC particularly needs to be examined because it would be impossible for an ordinance of 186 BC to have had an article regarding events that happened four years later in 182 BC. Third, the editors of the Zhangjiashan material have interpreted the state of Lu in the *jin guan ling* as both Zhang Yan's Lu and Xi Juan's 奚涓 Lu.²⁹ Is this a convincing interpretation? These questions evidently define the starting point for further research on the Zhangjiashan Han code.

Article 22 of *jin guan ling* contains material regarding the above questions. This article reads,

22. The chancellor presented a memorial by the secretary to the Lu chancellor, stating that the noble of Lu who lived in Chang'an requested permission to buy horses in the Guanzhong area. • The chancellor³⁰ and the secretary to the chancellor reported this, and it was approved by imperial decree. (Slip 520) 廿二、丞相上魯御史書言，魯侯居長安，請得買馬關中。• 丞相、御史以聞，制曰：可。³¹

• The chancellor presented a memorial by the secretary to the Lu chancellor to request that counselors and messengers of Lu be

²⁴ *ZHMZ*, p. 213.

²⁵ For researches on the the *Zou yan shu*, see Li Xueqin, "Zou yan shu chulun" 奏讞書初論 and "Zou yan shu xulun" 奏讞書續論, in *Jianbo yiji*, pp. 200–21.

²⁶ *ZHMZ*, p. 210.

²⁷ *Shiji* 17, p. 816; *Hanshu* 19, p. 596; *Shiji* 89, p. 2586; *Hanshu* 32, pp. 1842–43.

²⁸ Chen Yaojun 陳耀鈞 and Yan Pin 閻頻, "Jiangling Zhangjiashan Han mu de niandai jiqi xiangguan wenti" 江陵張家山漢墓的年代及其相關問題, *KG* 1985.12, pp. 1124–29; Li, *Jianbo yiji*, p. 195; Zhangjiashan, *ZHMZ*, p. 133.

²⁹ Zhangjiashan, "Jiangling Zhangjiashan," *WW* 1985.1, p. 11.

³⁰ The dot preceding "chengxiang," like those also in the following texts, is an original ink mark written on the bamboo slip.

³¹ *ZHMZ*, p. 210. For titles of Han officials, we follow Michael Loewe's translations in *Biographical Dictionary*, pp. 756–68.

permitted to buy horses privately in the Guanzhong area, and that the secretary to the Lu chancellor prepare a document for ports and passes. The rest follows the (previous) ordinances.³² • The chancellor and the secretary to the chancellor reported this, and it was approved by imperial decree. (Slip 521) • 丞相上魯御史書, 請魯中大夫謁者得私買馬關中, 魯御史爲書告津關. 它如令. • 丞相、御史以聞, 制曰: 可.³³

• The chancellor presented a memorial by the secretary to the Lu chancellor to request that the gentlemen of Lu be permitted to buy horses in the Guanzhong area in order to supply horses by themselves, and that the secretary to the Lu chancellor prepare a document tablet. The rest follows the (previous) ordinances. The chancellor and the secretary to the chancellor reported this, and it was approved by imperial decree. (Slip 522) • 丞相上魯御史書, 請魯郎中自給馬騎, 得買馬關中, 魯御史爲傳. 它如令. 丞相、御史以聞, 制曰: 可.³⁴

As the editors of *Zhangjiashan Han mu zhujian* explain, the state of Lu was first set up in the seventh year of the emperor Hui 惠, 188 BC, and the king of Lu was Zhang Yan, who was the son of Zhang Ao 張敖, the king of Zhao 趙.³⁵ According to the editors, since Zhang Ao was married to empress Lü's daughter Lu Yuan *gongzhu* 魯元公主,³⁶ Zhang Yan, as the grandson of empress Lü, had the privilege of buying horses in the Guanzhong area.³⁷ They considered this evidence of empress Lü's nepotism and monopolization of power.³⁸

If correct, this argument must be based on the assumption that the first year of king of Lu is the first year of empress Lü, 187 BC, as recorded in *Shiji*'s "Han xing yilai zhuhou wang nianbiao" 漢興以來諸侯王年表.³⁹ The reason is simple: if this state of Lu was established and the title of the king was granted after 186 BC, how could legal articles

³² Yan Shigu's annotation in *Hanshu* "它如律令" reads, "The rest follows the previous statutes and ordinances 此外並如舊律令." *Hanshu* 88, p. 3596. See I-tien Hsing 邢義田, "Handai shuzuo, wenshu yongyu 'ta ru moumou' ji 'Jianwu san nian shier yue Hou Sujun suoze Kou En shi' jiance dang'an de goucheng" 漢代書佐文書用語它如某某及建武三年十二月候粟君所責寇恩事簡冊檔案的構成, *ZYYT* 70.3 (1999), pp. 565-72. We are indebted to the anonymous reader for *AM* for bringing this source to our attention.

³³ *ZHMZ*, p. 210.

³⁴ *Ibid.*

³⁵ *Ibid.* This is based on *Shiji* 17, pp. 815-16.

³⁶ For Zhang Ao and Lu Yuan *gongzhu*, see Loewe, *Biographical Dictionary*, pp. 674, 419. Lu Yuan *gongzhu*'s name was unrecorded. *Gongzhu* means princess. We also follow Loewe's convention, leaving *gongzhu* untranslated.

³⁷ Li, *Jianbo yiji*, p. 182, and *ZHMZ*, p. 210.

³⁸ Li, *Jianbo yiji*, p. 182.

³⁹ Li, *Jianbo yiji*, p. 182, and *ZHMZ*, p. 210. See *Shiji* 17, p. 816.

regarding the noble and officials of Lu have had been issued even before the state of Lu was established? However, the editors' interpretation is not unreasonable because the first year of the king of Lu in the Chronological Table in the *Shiji* is clearly stated as 187 BC.⁴⁰

As noted earlier, different records about the date do exist. In order to answer the preceding questions, we will be examining these different records in two systems: the system of the composition and arrangement of Biographies in *Shiji* and *Hanshu*, and that of the Tables in the two histories.

In the first year of empress Lü's reign, 187 BC, the "Basic Annals of Empress Lü" in the *Shiji* reads,

Lu Yuan *gongzhu* died and was granted the posthumous title empress Lu Yuan. Her son Yan was the king of Lu. The father of the king of Lu was Zhang Ao, the noble of Xuanping. 魯元公主薨，賜諡為魯元太后。子偃為魯王。魯王父，宣平侯張敖也。⁴¹

This is to say, Lu Yuan *gongzhu* died in 187 BC; her son was named the king of Lu and inherited his mother's fief. However, under the seventh year of empress Lü, 181 BC, the Basic Annals in the *Shiji* reads,

Zhang Ao, noble of Xuanping, died. Because his son Yan was the king of Lu, Ao was granted the posthumous title the king of Lu Yuan. 宣平侯張敖卒，以子偃為魯王，敖賜諡為魯元王。⁴²

The statement 以子偃為魯王 can be interpreted in two ways. One is "Because his son Yan was the king of Lu"; the other is "His son Yan was made the king of Lu." Different interpretations here indicate different dates. For the first interpretation, the date for Yan to be the king could be earlier than the seventh year of empress Lü (181 BC); for the second one, the date should be the seventh year itself.⁴³ Traditional *Shiji* scholarship has accepted the first interpretation.⁴⁴ If we follow this, there will be no problem with the interpretation of the previous record that Zhang Yan was granted the title of the king of Lu in 187

⁴⁰ *Shiji* 17, p. 816.

⁴¹ *Shiji* 9, p. 400. Lu Yuan *gongzhu* was empress Lü's daughter. In order to ingratiate himself with empress Lü, Liu Fei 劉肥, king of Qi, not only made over his prefecture of Chengyang 城陽 for the princess' support, but also honored her with the title of *Qj wang taihou*, empress of Qi, and treated her with the ceremonies with which he would treat his mother. See *Hanshu* 32, pp. 1842-43.

⁴² *Shiji* 9, p. 404.

⁴³ According to such previous scholars as Liang Yusheng 梁玉繩 (1744-1819), this date, Zhang Ao's death, should be the sixth year of empress Lü. See *Shiji* 89, p. 2586.

⁴⁴ Similar interpretation also existed in *Hanshu* scholarship. However, Yan Shigu rebutted it; *Hanshu* 2, pp. 88-89.

bc. However, one question remains. The “king of Lu Yuan” was documented as Zhang Yan’s father’s posthumous title. Three paragraphs down in the same Basic Annals, Zhang Yan was also identified as the “king of Lu Yuan” – empress Lü’s grandson Yan, king of Lu Yuan 外孫魯元王偃. Why was the father’s posthumous title the same as the son’s title? This indicates problems with the records of the king of Lu in the “Basic Annals of Empress Lü.” With these problems unresolved, the possibility of the second interpretation, “His son Yan was made the king of Lu,” cannot be discounted.

The *Shiji* biography of Zhang Yan’s grandfather, Zhang Er 張耳, has a different date. The related passages read,

Zhang Ao has been released. Out of deference to Lu Yuan *gongzhu*, he was reduced to the noble of Xuanping. 張敖已出，以尚魯元公主故，封爲宣平侯。⁴⁵

Zhang Ao died in Year Six of empress Lü. His son Yan was made the king of Lu Yuan. It is because his mother was empress Lü’s daughter that empress Lü enfeoffed him as the king of Lu Yuan. 張敖，高后六年薨。子偃爲魯元王。以母呂后女故，呂后封爲魯元王。⁴⁶

Here, the title king of Lu Yuan was granted to Zhang Yan, the son rather than the father, and the year was 182 bc. Sima Zhen 司馬貞 (early-eighth century) explained in *Shiji suoyin* 史記索隱 that “Lu Yuan” of the title king of Lu Yuan derived from the title of the king’s mother, Lu Yuan *gongzhu*.⁴⁷ This is reasonable because Zhang Yan was made a king basically for his mother’s sake. This point is clearly stated in the biography of Zhang Er in *Hanshu*, which reads,

In the first year of empress Lü, empress Lu Yuan died. Later in the sixth year, Ao, noble of Xuanping, also died. Empress Lü set up Ao’s son Yan as the king of Lu, since his mother was an empress. 高后元年，魯元太后薨。後六年，宣平侯敖復薨。呂太后立敖子偃爲魯王，以母太后故也。⁴⁸

It was in 182 bc that Zhang Yan’s father died and Zhang Yan was set up as the king. Evidently, the two biographies, those in *Shiji* and *Hanshu*, shared the same tradition.

In another system of recording, that is, the Tables, *Shiji* and *Hanshu* seem to have followed the tradition of the “Basic Annals of Empress Lü”

⁴⁵ *Shiji* 89, p. 2585. This is because his chancellors Guan Gao 貫高 and Zhao Wu 趙午 had plotted to murder emperor Gaozu 高祖. See Loewe, *Biographical Dictionary*, pp. 135, 712.

⁴⁶ *Shiji* 89, p. 2586.

⁴⁷ *Ibid.*

⁴⁸ *Hanshu* 32, pp. 1842–43.

given in *Shiji*. The *Shiji* section titled “Chronological Tables of Nobles and Kings since the Founding of Han” gives 188 BC as the year when the state of Lu was set up, and 187 BC as the first year of king Zhang Yan.⁴⁹ This accords with the record of the Basic Annals. However, in the *Hanshu* table “Gaohui Gaohou wen gong chen biao” 高惠高后文功臣表 the year when Zhang Yan was granted the title of king of Lu is stated as 186 BC.⁵⁰ Although there is only one year’s difference from that listed in *Shiji*, the records in the system of the Tables were not consistent. Why did the later table –*Hanshu*’s – not follow the previous table in *Shiji*? In the *Hanshu* annals of empress Lü nothing about the king of Lu was even mentioned.⁵¹ Why were the records of these related annals and tables in the *Shiji* and in the *Hanshu* so different? Does this reflect any disagreement in the sources used by *Hanshu* and *Shiji*? Textual reliability of course comes into question if the sources are in disagreement.

The above examination on the first year of the king of Lu may be summarized as follows:

<u>ANNALS</u>	<u>BIOGRAPHIES</u>	<u>TABLES</u>	Traditional <i>Shiji</i> scholarship believes
187 BC <i>Shiji</i>	182 BC <i>Shiji</i>	187 BC <i>Shiji</i>	that the first year
181 BC (?) <i>Shiji</i>	182 BC <i>Hanshu</i>	186 BC <i>Hanshu</i>	of the king of Lu,
– <i>Hanshu</i>			Zhang Yan, was 187
			BC, as recorded in
			the Basic Annals

and the Chronological Table of the *Shiji*. It is reasonable to assume that Zhang Yan inherited his mother’s fief after his mother died that year. But the biographies of Zhang Er in *Shiji* and *Hanshu* are histories of Zhang’s own family. Since the Biographies in both historical works are mutually consistent with the date, there is thus no need to assume anything as obscure as considering the “king of Lu Yuan” the father’s posthumous title rather than the son’s title in these traditions. Rather, it makes more sense to accept that these traditions are more close to the historical reality than those of the Basic Annals and Tables.

The Matter of Whose State of Lu

To return to the questions raised in the beginning of this section, based on the preceding discussion, we have no reason to consider 187 BC exclusively the first year of the king of Lu. The year 186 BC is another alternative in the same tradition of the *Shiji* and the *Hanshu*, and

⁴⁹ *Shiji* 17, pp. 815–16.

⁵⁰ *Hanshu* 19, p. 596.

⁵¹ *Hanshu* 3, pp. 95–104.

a more reasonable alternative is 182 BC in the tradition of the Biographies. If we follow this reasonable tradition, we will face a more serious question: either the date of the Zhangjiashan Han code is not 186 BC, or the state of Lu in the *Jin guan ling* is not Zhang Yan's Lu. Otherwise, the Zhangjiashan Han code would contain some articles regarding the state even before it was set up.

As part of the original title on the bamboo slip, *ernian* 二年 (“Year Two”) of the *Ernian Lüling* in the Zhangjiashan Han code has been identified as the second year of empress Lü's reign, 186 BC. We would need to reject this dating if we follow the tradition of the Biographies, and thus consider 182 BC rather than 187 BC as the first year of Lu. It has also been suggested that this *ernian* is the second year of Gaozu's reign.⁵² Therefore a reexamination of the dating of *ernian* is necessary.

The *Ju lü* section of *Ernian Lüling* reads,

If grandchildren and great-grandchildren of king Xuan of Lü, children and grandchildren of *zhuhou* nobles, as well as those of *chehou* nobles⁵³ committed crimes, consider them as those who have ranks above *shangzao* and *shangzao*'s wives.⁵⁴ (Slip 85) 呂宣王內孫、外孫、內耳孫玄孫，諸侯王子、內孫耳孫，徹侯子、內孫有罪，如上造、上造妻以上。⁵⁵

Grandchildren and great-grandchildren of king Xuan of Lü were distant relatives of empress Lü, but they were granted the privileges of at least the second lowest of the Han noble ranks. King Xuan of Lü is the posthumous title granted to empress Lü's father right after empress Lü took power.⁵⁶ This title thus establishes the uppermost limit for the date of *Ju lü*. According to *Hanshu*, empress Lü granted her father this posthumous title in the first year of her reign, 187 BC. Therefore the date of *Ju lü*, which carries an article regarding the title king Xuan of Lü, cannot be earlier than this year. This means that the earliest possibility of the “Year Two” of the *Ernian Lüling* can only be the second year of empress Lü, that is, 186 BC.

The article with king Xuan of Lü also determines the lowermost limit for the date. Empress Lü's monopolization of imperial power and

⁵² Without convincing evidence, Zhang Jianguo 張建國 proposed this in his “Shi xi Han chu ‘yue fa san zhang’ de falü xiaoli” 試析漢初約法三章的法律效力, *Faxue yanjiu* 法學研究, 1996.1.

⁵³ We add *zhuhou* and *chehou* before nobles to distinguish the two types; see Loewe, *Biographical Dictionary*, p. 758.

⁵⁴ During Han, *shangzao* was the second of the twenty ranks of nobility 二十級爵. See *Hanshu* 19A, pp. 739–40.

⁵⁵ ZHMZ, p. 146.

⁵⁶ *Hanshu* 97A, p. 3939.

elevation of members of the Lü family to high positions equivalent to those of the house of Liu led to the execution of the Lüs by the Liu ministers within months after empress Lü's death in 180 BC.⁵⁷ All statutes and ordinances granting the Lüs privileges were immediately abolished. Thus the latest possibility of the "Year Two" can only be 180 BC.⁵⁸

For imperial "Year Two"s between 187 and 180 BC there are only two alternatives: 186 BC, the second year of empress Lü and of her puppet infant emperor Shaodi 少帝 Gong 恭 as well;⁵⁹ and 182 BC, the second year of Shaodi Hong 弘.⁶⁰ However, empress Lü made things much easier for us: the second puppet emperor Shaodi Hong did not use his own calendar because empress Lü assumed his power. The *Shiji* reads,

In the fourth year (of empress Lü), ... Yi, the king of Changshan, was set up as the emperor. His given name was changed to Hong. The reason why he did not claim the first year of his reign is because empress Lü controlled all affairs under Heaven. 四年, ... 立常山王義爲帝, 更名曰弘。不稱元年者, 以太后制天下事也。⁶¹

No "Year Two" of Shaodi Hong ever existed in history. *Ernian*, contained in *Ernian Lüling*, can only be the second year of empress Lü, 186 BC.

With 186 BC reconfirmed as the date of *Ernian Lüling*, Zhang Yan must not be the owner of the state of Lu documented in *Jin guan ling* if we follow the biographical tradition in *Shiji* and *Hanshu*. Now the question reverts to Xi Juan. Xi Juan was the noble of Lu before 186 BC.⁶² The *Shiji* table "Gaozu gongchen hou zhe nianbiao" 高祖功臣侯者年表 reads,

(Xi Juan) joined (Gaozu's) insurrection in Pei as a *sheren*, and became the gentleman of the palace after arriving in Xianyang. When entering Han, he followed (emperor Gaozu) as the general to pacify the nobles. Nobility level: Four thousand and eight hundred households. His military achievement is parallel with the noble of Wuyang.⁶³ After he died in his service, his mother was made

⁵⁷ *Shiji* 9, pp. 406–10.

⁵⁸ The eighteen bamboo slips of calendar excavated from the same tomb only have dates from 202 BC to 186 BC; *ZHMZ*, pp. 129–30.

⁵⁹ Loewe, *Biographical Dictionary*, p. 468.

⁶⁰ *Ibid.*, p. 394.

⁶¹ *Shiji* 9, p. 403.

⁶² *Shiji* 18, pp. 917–18; *Hanshu* 16, p. 565.

⁶³ The noble of Wuyang is Fan Kuai 樊噲; see Loewe, *Biographical Dictionary*, pp. 91–92.

substitute nobility. 以舍人從起沛，至咸陽爲郎中，入漢，以將軍從定諸侯，侯，四千八百戶，功比舞陽侯。死事，母代侯。⁶⁴

In the fifth year of empress Lü, 183 BC, Xi Juan's mother died. The state of Lu was thus abolished because no successor was available to the nobility.⁶⁵

The Zhangjiashan version of *Jin guan ling* is an incomplete selection of ordinances concerning issues related to fords and passes. Buying horses is an important issue in the ordinances. Among the twenty-three ordinances in the Zhangjiashan legal document, at least eight of them relate to buying horses. Slip 506 clearly states that “People are prohibited from buying horses privately and traveling through the passes of... 禁民毋得私買馬以出... 關。”⁶⁶ However, the noble, counselors, messengers and gentlemen of Lu were granted privileges to buy horses as stated in Article 22. As a matter of fact, the king of Lu did not appear in Article 22 of the *Jin guan ling*. Only the noble of Lu did.

Xi Juan's title is Lu hou 魯侯, noble of Lu, rather than king of Lu. This is identical with what was written in the *Jin guan ling*.⁶⁷ Since Article 22 deals with the noble of Lu, this noble could not have been a king in 186 BC, because all the statutes and ordinances were titled with this year, *Ernian*, the second year of empress Lü. In other words, Lu hou in the *Jin guan ling* cannot possibly be Zhang Yan, the king of Lu Yuan, even if we follow the tradition of the Tables in the *Shiji*, because in this tradition, Zhang Yan had already become the king in 187 BC. Furthermore, Xi Juan's Lu was abolished in 183 BC. In the biographical tradition of the two histories, Zhang Yan was granted the title king of Lu in 182 BC. It is also chronologically more reasonable for the noble of Lu in *Jin guan ling* to be Xi Juan and for the first year of Zhang Yan's Lu to be 182 BC. Without the excavated material, we would not have challenged *Shiji* scholarship in this way. But any interpretation we provide to excavated texts should match what we have in the transmitted textual tradition as closely as possible. The passage in the Basic Annals of *Shiji*, 子偃爲魯王 (“Her son Yan was the king of Lu”), could simply be additional information relating to the mother's death and the posthumous title 魯元公主薨，賜諡爲魯元太后 (“Lu Yuan *gongzhu* died, and was granted the posthumous title empress Lu Yuan”). This is just like the following sentence 魯王父，宣平侯張敖也 (“the father of the king of Lu was Zhang Ao, noble of Xuanping”), which did not

⁶⁴ *Shiji* 18, pp. 917–18.

⁶⁵ *Ibid.*

⁶⁶ This slip is reconstructed as Article 11; *ZHMZ*, p. 208.

⁶⁷ *ZHMZ*, p. 210.

mean that Zhang Ao was named the noble of Xuanping in the same year, but is simply further information on the immediately preceding person Zhang Yan.⁶⁸

In sum, rather than 187 BC, the first year of Zhang Yan's Lu is 182 BC, according to the two received biographies. This interpretation does not change the dating of *ernian* as 186 BC. However, the noble of Lu documented in *Jin guan ling* must not be Zhang Yan, king of Lu. Rather than being considered as belonging to both Xi Juan and Zhang Yan, the state of Lu in *Jin guan ling* only can be Xi Juan's fief. Therefore, the interpretation that connects *Jin guan ling* to empress Lü needs to be reconsidered. With these questions rearticulated, a more informed assessment of the Zhangjiashan legal material as well as the early development of the Han code can proceed with greater accuracy.

THE EARLY DEVELOPMENT OF THE HAN CODE

Articles regarding the state of Lu in the *Jin guan ling* provide important evidence for dating the manuscript as a whole. So do articles with different titles of the Han chancellor in these ordinances. The *Jin guan ling* is a selection of ordinances with sequential numbers marked at the head of each article. In these ordered ordinances, the change of the use of the titles of the chancellor is evident. From article number 21 on, the Han chancellor was called *chengxiang* 丞相, while in articles before number 21 the position was instead called *xiangguo* 相國.⁶⁹ The *Hanshu* reads,

When Gaodi ascended the throne, he set up one *chengxiang* chancellor. In the eleventh year (of his reign, he) renamed it as *xiangguo* chancellor, with green ribbon (attached to the official seal). Emperor Hui and empress Lü set up *chengxiang* chancellors to the left and to the right. In the second year of Wendi's reign, one *chengxiang* chancellor (system) was resumed. 高帝即位, 置一丞相, 十一年更名相國, 綠綬。孝惠、高后置左右丞相, 文帝二年復置一丞相。⁷⁰

Therefore we may date the relevant material based on the usage of different titles of the chancellor accordingly.

⁶⁸ *Shiji* 9, p. 400.

⁶⁹ *ZHMZ*, pp. 205-10.

⁷⁰ *Hanshu* 19A, p. 724.

The first chancellor of Han is *chengxiang* Xiao He 蕭何, who was appointed again as *xiangguo* in 196 BC.⁷¹ Xiao He died in 193 BC. Cao Shen 曹參 succeeded, holding the position until his death three years later.⁷² In 189 BC, the title of *chengxiang* was resumed, with Wang Ling 王陵 appointed *you chengxiang* 右丞相 (chancellor to the right), and Chen Ping 陳平 *zuo chengxiang* 左丞相 (chancellor to the left).⁷³ This chancellor system continued in the reign of empress Lü.⁷⁴ Based on these facts, the last three articles with *chengxiang* must be ordinances dated later than 189 BC because in the Zhangjiashan material, from this year to the second year of empress Lü, the *chengxiang* title was used. It is only if these three articles belong to this period that articles referring to *xiangguo* could be arranged prior to them.

That is to say, these twenty ordinances in *Jin guan ling* must have been issued before 189 BC, since most of those that employ the title *xiangguo* rather than *chengxiang* were originally arranged in the first part of *Jin guan ling* ordinances. Clearly, the twenty ordinances could cover the period from as early as 196 BC, when Xiao He was appointed *xiangguo*, to 190 BC, before Wang Ling and Chen Ping were appointed *you* and *zuo chengxiang*. With the extension of this period from 189 BC to 186 BC by another three ordinances with *chengxiang*, *Jin guan ling* at least covers the second decade of the Han.

It is therefore clear that the Zhangjiashan code represents the early development of the Han code. Moreover, identification of remnants of the Qin code in the Zhangjiashan material enables us to further explore the origins of the early-Han code. Received tradition states that the Han code originated in the Qin code. The treatise “Xingfa zhi” 刑法志 in *Hanshu* reads,

... Chancellor Xiao He collected and sorted the Qin code, adopted that which was appropriate to the current time, and made a code in nine chapters. ... 相國蕭何摺摭秦法，取其宜於時者，作律九章。⁷⁵

⁷¹ Xiao He was appointed *chengxiang* in the first year of Han, 206 BC (*Shiji* 53, p. 2014) and *xiangguo* in the eleventh, 196 BC (*Shiji* 53, p. 2017); see also *Hanshu* 39, pp. 2006, 2010. However, “Baiguan gongqing biao” 百官公卿表 in *Hanshu* lists the year of the *xiangguo* appointment in the ninth year of Han, 198 BC; see *Hanshu* 19B, p. 748. Considering that the *xiangguo* appointment was actually a reward for Xiao He’s merit in crushing Han Xin’s 韓信 rebellion in 196 BC, we follow the dates in the biographies in *Shiji* and *Hanshu*. See also Han Xin’s biography in *Hanshu* 92, pp. 2628–29.

⁷² *Shiji* 54, pp. 2029–31; *Hanshu* 39, pp. 2018–21.

⁷³ *Shiji* 56, p. 2059; *Hanshu* 40, p. 2046. See also Loewe, *Biographical Dictionary*, pp. 535, 35–37.

⁷⁴ With Chen Ping, chancellor to the right, and Shen Yiji 審食其, chancellor to the left; see *Shiji* 9, p. 400.

⁷⁵ *Hanshu* 23, p. 1096.

This is also documented in the treatise “Yiwen Zhi” 藝文志.⁷⁶ According to transmitted texts, this Nine-Chapter Code includes *Dao lü* 盜律 (Statutes on Theft and Robbery), *Zei lü* 賊律 (Statutes on Offenses), *Qiu lü* 囚律 (Statutes on Imprisonment), *Bu lü* 捕律 (Statutes on Arrest), *Za lü* 雜律 (Miscellaneous Statutes), *Ju lü* 具律 (Statutes concerning the Specifics), *Hu lü* 戶律 (Statutes on Households), *Xing lü* 興律 (Statutes on Dereliction), and *Jiu lü* 廄律 (Statutes on Stables).⁷⁷ Most of these can be found in the Zhangjiashan material, as listed in the first section of this article. However, this received tradition has to be updated by recently excavated material. The Qin and Han statutes excavated from Shuihudi and Zhangjiashan bring new information to light.⁷⁸

In the Zhangjiashan Han code, many statutes share the same titles with those in the Shuihudi Qin code. There are far more shared titles than the nine titles of the Nine-Chapter Code. This means that the tradition of the Qin code did continue into the early Han, and that the Han code accepted more from Qin than what we were previously aware of. Such examples can be illustrated in the table, overleaf.

The titles of the statutes *Zei lü* and the *Dao lü* did not appear in the *Eighteen Kinds of Qin Statutes*. However, forty such articles were included in the *Exposition of Statutes*.⁷⁹ The statutes *Bu dao lü*, *Guanshi lü*, and *Jun jue lü* of the Shuihudi Qin code are not exactly the same as *Bu lü*, []*shi lü* and *Jue lü* of the Zhangjiashan Han code, but the similarities are readily apparent. According to the table, it is clear that many statutes of the Zhangjiashan code followed the Qin legal tradition. What the Zhangjiashan material has shown us is that the influence of the Qin code on the early development of the Han code was not limited to the Nine-Chapter Statutes.

Comparison of Passages from the Tian lü Statute

Some parts of the early-Han code directly adopted the textual tradition of the Qin code. A specific article in the Zhangjiashan Han code is almost identical with one in the Qin code. An article in the Zhangjiashan *Tian lü* reads,

⁷⁶ *Hanshu* 30, pp. 1720–21.

⁷⁷ See *Jinshu* 晉書 (Shanghai: Shanghai guji chubanshe, 1986) 30, p. 106. See also Li, *Jianbo yiji*, p. 181.

⁷⁸ Most of the Shuihudi bamboo slips have been dated as documents written during the reign of the first emperor of Qin (221–206 BC), while the earliest documents could have been written at the end of the Warring States period. The tomb was dated 217 BC; SQMZ, “Preface,” pp. 1–2; “Transcription,” p. 3.

⁷⁹ Hulsewé, *Remnants of Ch'in Law*, pp. 120–34.

TITLES OF THE SHUIHUDI-
HU DI QIN CODE

TITLES OF THE ZHANG-
JIASHAN HAN CODE

— ^A	<i>Zei lü</i> 賊律 Statutes on Offences
— ^B	<i>Dao lü</i> 盜律 Statutes on Theft and Robbery
<i>Bu dao lü</i> 捕盜律 Statutes on the Arrest of Robbers	<i>Bu lü</i> 捕律 Statutes on Arrest
<i>Zhili lü</i> 置吏律 Statutes on Appointing Officials	<i>Zhili lü</i> 置吏律 Statutes on Appointing Officials
<i>Tian lü</i> 田律 Statutes on Agriculture	<i>Tian lü</i> 田律 Statutes on Agriculture
<i>Guanshi lü</i> 關市律 Statutes on Passes and Markets	[] <i>shi lü</i> 口市律 Statutes on [] and Markets
<i>Xingshu lü</i> 行書律 Statutes on Mailing System	<i>Xingshu lü</i> 行書律 Statutes on Mailing System
<i>Xiao lü</i> 效律 Statutes on Checking and Auditing	<i>Xiao lü</i> 效律 Statutes on Checking and Auditing
<i>Junjue lü</i> 軍爵律 Statutes on Noble Ranks for Military Action	<i>Jue lü</i> 爵律 Statutes on Noble Ranks
<i>Yao lü</i> 徭律 Statutes on Corvée	<i>Yao lü</i> 徭律 Statutes on Corvée
<i>Jinbu lü</i> 金布律 Statutes on “Gold and Cloth”	<i>Jinbu lü</i> 金布律 Statutes on “Gold and Cloth”

^A In the Shuihudi Qin code, the title of this statute is not included in the *Qin lü shiba zhong* 秦律十八種 (Eighteen Kinds of the Qin Statutes), but articles of this statute are quoted in the *Lü shuo* 律說 (Exposition of Statutes), previously known as *Falü da wen* 法律答問 (Answers and Questions Concerning the Qin Statutes).

^B Ibid. Furthermore, an article concerning “gang robbery” in *Feng zhen shi* 封診式 (Models for Sealing and Investigating) is comparable with an article in this Han statute. See Robin D. S. Yates and Katrina C. D. McLeod, “Forms of Ch’in Law: An Annotated Translation of the *Feng-chen shih*,” *HJAS* 41 (1981), pp. 142–44; Hulsewé, *Remnants of Ch’in Law*, pp. 190–91. As for the connection between the Statutes on Theft and Robbery and the Shuihudi legal material, see A. F. P. Hulsewé, “The Wide Scope of *Tao* 盜, ‘Theft,’ in Ch’in-Han Law,” *EC* 13 (1988), pp. 166–200.

In spring and summer, no civilian, official or laborer should venture to cut timber in the forests, to block water courses, to burn weeds to make ashes, to collect young animals, eggs, or fledglings. One should not kill pregnant animals, or poison fish.⁸⁰ 禁諸民吏徒隸, 春夏毋敢伐材木山林, 及進(壅)隄水泉, 燔草爲灰, 取產鰓(鱉)卵殼(鰈); 毋殺其繩重者, 毋毒魚。⁸¹

In the Shuihudi Qin code, a similar article is also given under the statute *Tian lü*:

⁸⁰ This translation has been based on Hulsewé, *Remnants of Ch’in Law*, p. 22, in order to have a better base for further collation.

⁸¹ *ZHMZ*, p. 167.

In the second month of spring one should not venture to cut timber in the forests or block water courses. Except in the months of summer one should not venture to burn weeds to make ashes, to collect [indigo], young animals, eggs or fledglings. One should not ...poison fish or tortoises or arrange pitfalls and nets. By the seventh month (these prohibitions) are lifted.⁸² 春二月, 毋敢伐材木山林及雍(壅)隄水。不夏月, 毋敢夜草爲灰, 取生荔、鬻鱗(卵)鰈, 毋口口口口口毒魚鱉, 置罨罔(網), 到七月而縱之。⁸³

This statute derived from the widely known text of *Yueling* 月令, reflecting the notion of “responding to the times.”⁸⁴

A brief textual examination of the relevant Zhangjiashan and Shuihudi texts, below, illuminates that the main parts of the articles are identical. In order to conduct this comparison sentence by sentence with a more evident layout, we follow the punctuation of the Zhangjiashan version.

Comparison one

Zhangjiashan: 春夏毋敢伐材木山林,

Shuihudi: 毋敢伐材木山林

These two sentences are actually exactly the same. In the Shuihudi article, *chunxia* 春夏 (“spring and summer”) has been split into two sentences, that is, *chun er yue* 春二月 (“in the second month of spring”) and *bu xia yue* 不夏月 (“except in the months of summer”). As discussed below, *bu* 不 here belongs to the previous sentence.

Comparison two

Zhangjiashan: 及進(壅)隄水 泉,

Shuihudi: 及雍(壅)隄水。不夏月,

In the Zhangjiashan code, the word 進 in “及進隄水泉” was written as 進,⁸⁵ the phonetic element of which (隹) is the same as a part of the phonetic in 壅.⁸⁶ Collating with the corresponding character 雍

⁸² Hulswé, *Remnants of Ch'in Law*, p. 22.

⁸³ *SQMZ*, p. 20.

⁸⁴ Martin Kern, *The Stele Inscriptions of Ch'in Shih-huang: Text and Ritual in Early Chinese Imperial Representation* (New Haven: American Oriental Society, 2000), p. 29. *Yueling* “prescribes the correct behaviour for the ruler of man, the types of orders that should be given so as to correspond with the seasons, and the working tasks that are appropriate thereto”; Michael Loewe, *Divination, Mythology and Monarchy in Han China* (Cambridge: Cambridge U.P. 1994), p. 228. See also I-tien Hsing, “Yueling yu Xi Han zhengzhi” 月令與西漢政治, *Xin shixue* 新史學 9.1 (1998), pp. 1-15.

⁸⁵ *ZHMZ*, p. 27, slip 249 of *Ernian Lüling*.

⁸⁶ The graph 隹 is an abbreviated phonetic of *lin* 闕.

in the Shuihudi slip⁸⁷, we are able to decide that, to put it simply, 進 was a different way to write 壅. The sentence following 及雍隄水 in the Shuihudi Qin code is 不夏月, which makes no sense. The word 不 in “不夏月” should go with the prior phrase, thus “不夏月” should be punctuated as “不,夏月.” The graph 不 was inscribed as 丌,⁸⁸ which is very close to 泉, the graph of 泉.⁸⁹ This is a scribal error caused by graphical similarity.⁹⁰

As we just mentioned, 夏月 (“in the months of summer”) has been moved to the beginning part of the sentence in the Zhangjiashan manuscript. Without 夏月 here, these two versions of the sentences are also exactly the same:

Zhangjiashan: 及進(壅)隄水 泉,
Shuihudi: 及雍(壅)隄水不(泉,)

Comparison three

Zhangjiashan: 燔草爲灰, 取產 𪔵(𪔵) 卵殼(殼);
Shuihudi: 毋敢夜草爲灰, 取生荔、 𪔵鱗(卵) 殼,

The graph 夜 in the Shuihudi article seems to have been a mistaken character with the meaning the same as or similar to 燔, to burn.⁹¹ The graph 產 means 生.⁹² Interpretations of 荔 have been disputed in the scholarship.⁹³ Although it seems to be an addition caused by scribal error, a convincing interpretation for this needs further research. Since the first two characters 毋敢 (“should not venture to”) in the Shuihudi article had been stated in the beginning of the Zhangjiashan article after 春夏 (“in spring and summer”), the above two versions are almost identical if we ignore the two characters.

Comparison four

Zhangjiashan: 毋殺其繩重者, 毋毒魚.
Shuihudi: 毋□□□□□ □毒魚鱉, 置穿罔(網), 到七月而縱之.

⁸⁷ SQMZ, p. 15, slip 4 of *Eighteen Kinds of Qin Statutes*.

⁸⁸ SQMZ, “Plates,” 15, slip 4 of *Qin lu shiba zhong*.

⁸⁹ ZHMZ, p. 27, slip 249 of *Ernian Lüling*. See also Chen Songchang 陳松長, *Mawangdui jianbo wenzi bian* 馬王堆簡帛文字編 (Beijing: Wenwu, 2001), p. 461.

⁹⁰ Such textual variants are discussed in Martin Kern, “Methodological Reflections on the Analysis of Textual Variants and the Modes of Manuscript Production in Early China,” *Journal of East Asian Archaeology* 4.1-4 (2002), forthcoming.

⁹¹ Scholars also suggested that 夜 here was a loan character for 擇 or 燒; see SQMZ, p. 20; Hulswé, *Remnants of Ch'in Law*, p. 22, n. 3.

⁹² Xu Shen 許慎, *Shuowen jiezi* 說文解字 (Beijing: Zhonghua, 1963), p. 127, bottom.

⁹³ SQMZ, p. 20. Hulswé, *Remnants of Ch'in Law*, p. 22, n. 5.

The two sentences appear to be very different. But if we check the original bamboo slips, we will notice that the last graph of the Zhangjiashan sentence happens to be the last graph of the bamboo slip.⁹⁴ This indicates the possibility of a continuing bamboo slip which carries some ongoing words from the current slip. Considering that the extant graphs in both versions are identical and that the number of the missing graphs (transcribed as □) in the Shuihudi version exactly match that of the extant corresponding characters in the Zhangjiashan version, it is thus reasonable to speculate that these two sentences would be more or less identical if the continuing bamboo slip in the Zhangjiashan material could be found, or if the missing graphs in the Shuihudi material could be identified.

This is typical evidence attesting that the Han statutes simply adopted various original texts of the Qin code for its articles. From this example, the close connections between the Qin code and the early-Han code are self-evident.

The example of the *Tian lü* comparison leads us further. The Statutes on Agriculture (*Tian lü*) were not included in the Nine-Chapter Statutes made by Xiao He, who had collected and sorted the Qin code in the early Han. A question emerges: how many Han statutes with the Qin legal tradition were not included in the Nine-Chapter Statutes?

Turning back to the above table, among the eleven titles of the statutes, we realize that nine are not included in the Nine-Chapter Statutes. As we know, the *Eighteen Kinds of Qin Statutes* is a digest of the Qin code. If we had a complete version of the Qin code, it would be reasonable for us to believe that more of the Han code would be identified as directly or indirectly from the Qin code. Meanwhile, the Zhangjiashan *Ernian Lüling* is also a digest. If a digest version of the Han code collected by a local official who had been retired for eight years included nearly thirty statutes and ordinances, how many statutes and ordinances would had been included in a complete version of the Han code?⁹⁵ This leads to the question of the *Pangzhang shiba pian* 傍章十八篇 (Extended Eighteen Chapters), which was ascribed to Shusun Tong 叔孫通.⁹⁶ Does the Zhangjiashan material include any statutes from the *Extended Eighteen Chapters*?

⁹⁴ ZHMZ, p. 27, slip 249.

⁹⁵ According to slip 10 of the Zhangjiashan bamboo-slip calendar, the tomb owner retired in the first year of emperor Hui, 194 BC; ZHMZ, p. 129.

⁹⁶ Loewe, *Biographical Dictionary*, pp. 482–83. See also Kern, *Stele Inscriptions*, pp. 185–86, n. 112, for a list of later sources of Shusun Tong's extensive ritual writings.

The *Jinshu* treatise “Xingfa zhi” first recorded the *Extended Eighteen Chapters* by Shusun Tong.⁹⁷ This has been questioned by later scholars because such an account was not recorded in transmitted Han texts. After an extensive examination, Cheng Shude 程樹德 concluded that the *Extended Eighteen Chapters* has nothing to do with the Han code, but is only ritual chapters copied together with the Han code.⁹⁸ One important reason for scholars to doubt that Shusun Tong composed the *Extended Eighteen Chapters* is that the received literature indicates that Shusun Tong’s expertise was in establishing rituals, and the “extended chapters” would more likely be ritual chapters rather than legal documents. This argument is hardly convincing. We should be aware that there would be nothing strange in Shusun Tong’s being skilled in both ritual and law. In pre-Qin writings, rituals and ceremonies often involved rules of social conduct and standards of private actions.⁹⁹ The common ground of ritual and law is the social order, and an accord between it and the order of nature was considered “one of the most ancient guiding principles of the Chinese spirit.”¹⁰⁰ As an expert of the Qin rituals, Shusun Tong was also very familiar with the Legalist ideology. His flattering speech about how the ideal Legalist state operated saved him from being punished by the Qin emperor Ershi 二世.¹⁰¹ The possibility that Shusun Tong could have made “Extended Eighteen Chapters” as statutes cannot be ignored simply because he was an expert in rituals.

Earlier scholars did interpret the *Extended Eighteen Chapters* as a part of the Han code. After he identified the connection between the *Zhouli* 周禮 and the Han *Statutes on Agriculture*, Du Guixi 杜貴墀 interpreted the *Extended Eighteen Chapters* as part of the Han code with ritual origins.¹⁰² Supporting this interpretation, Shen Jiaben further explained the meaning of *pang* 傍 (in *pangzhang* 傍章):

⁹⁷ *Jinshu* 30, p. 106.

⁹⁸ He believed that the “extended chapters” were ritual chapters that were simply copied together with or attached to statutes and ordinances and thus titled 蓋與律令同錄，故謂之傍章; Cheng Shude, *Jiuchao lu kao* 九朝律考 (Beijing: Zhonghua, 1963), p. 16.

⁹⁹ Frederick Mote, *Intellectual Foundations of China* (New York: Alfred A. Knopf, 1971), p. 64. See also Derk Bodde’s discussion on the connection between ritual and law in his *Essays on Chinese Civilization* (Princeton: Princeton U.P. 1981), pp. 171–94.

¹⁰⁰ Jean Escarra, *Le droit chinois* (Peking: Henri Vetch, 1936), pp. 7–11. Cited from Herrlee G. Creel, “Legal Institutions and Procedures during the Chou Dynasty,” in Jerome A. Cohen, R. Randle Edwards, and Fu-mei Chang Chen, eds., *Essays on China’s Legal Tradition* (Princeton: Princeton U.P. 1980), p. 42.

¹⁰¹ *Shiji* 99, pp. 2720–21.

¹⁰² Du Guixi, *Hulu jizheng* 漢律輯證; see Shen Jiaben 沈家本, *Lidai xingfa kao* 歷代刑法考 (Beijing: Zhonghua, 1985), pp. 1376–77.

For that which is not covered by the statutes, extend and amplify. Pick up what was lost in the statutes; make up for what is missing with material from non-statutes. 律所不及者，廣之衍之，於律之中拾其遺，於律之外補其闕。¹⁰³

Li Xueqin first suggested that some articles in the *Zhili lü* 置吏律 statutes in the Zhangjiashan Han code might be connected with Shusun Tong's *Extended Eighteen Chapters*.¹⁰⁴ Subsequently, scholarly work has merely considered that every extant Zhangjiashan statute title that does not belong to the Nine-Chapter Statutes is part of *Extended Eighteen Chapters*.¹⁰⁵ Such a simplified approach is obviously unacceptable.

From the Zhangjiashan material, we may learn that there did exist many statutes and ordinances not included in the Nine-Chapter Statutes. The early date and variety of these statutes and ordinances make it possible that some of them were part of the *Extended Eighteen Chapters*.

Shusun Tong was appointed twice to the post of superintendent of ceremonial, once in 200 and once in 195 BC.¹⁰⁶ If he had compiled the *Extended Eighteen Chapters*, there would have been enough time for the statutes to be included in the *Ernian Lüling*. In the Zhangjiashan Han code, some articles are of a ceremonial nature. The *Zhili lü* reads,

Zhuhou nobles and kings may set up concubines at *bazi*, *ruren*, and *liangren* (levels). 諸侯王得置姬八子、孺人、良人。¹⁰⁷

Chehou nobles may set up concubines at *ruren* and *liangren* (levels). 徹侯得置孺子、良人。¹⁰⁸

Daughters of *zhuhou* nobles and kings cannot be titled princesses. 諸侯王女毋得稱公主。¹⁰⁹

Articles like these emphasized hierarchical differences and related to social behavior, privilege, and ceremony. As the superintendent of ceremonial, Shusun Tong was in charge of the regulations of imperial

¹⁰³ Shen, *Lidai xingfa*, p. 857.

¹⁰⁴ Li, *Jianbo yiji*, p. 183.

¹⁰⁵ This typical rationale argues, "The *Jinbu lü* belongs to the Han code, but it does not belong to any chapter of the official statutes of the Nine Chapters. Therefore, we ought to judge that since the *Jinbu lü* is the Han code, it must be one of the chapters included in the extended chapters." That is to say, the *Extended Eighteen Chapters* includes all Han statutes that do not belong to the Nine-Chapter Statutes; see Zhang Jianguo, "Shusun Tong ding Pangzhang zhiyi, jianxi Zhangjiashan Han jian suozei li pianming" 叔孫通定傍章質疑，兼析張家山漢簡所載律篇名, *Beijing daxue xuebao (zhexue shehui kexue ban)* 北京大學學報(哲學社會科學版) 1997.6, p. 52.

¹⁰⁶ *Hanshu* 19B, pp. 747-49.

¹⁰⁷ *ZHMZ*, p. 163.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

temple ceremonies. But his learning and knowledge of ceremony were never far away from daily life. For example, Shusun Tong once suggested that in preparation for emperor Hui's spring trip fresh cherries be taken to the ancestral temple to be used in the sacrificial ceremony. Afterward, ceremonies with fresh fruits became popular.¹¹⁰ Considering Shusun Tong's sensitivity to the relationships between everyday life and the formal order, as well as his expertise in social ceremony, we cannot deny the possible connection between the relevant statutes in the *Zhili li* and Shusun Tong's making of the *Extended Eighteen Chapters* as statutes. In the Han period, marriage and the taking of concubines were always ritual-related issues in everyday life.¹¹¹ Further explorations into the Zhangjiashan material may bring more clues towards a better understanding of the relationship between the *Extended Eighteen Chapters* and the early-Han code.

LIST OF ABBREVIATIONS

<i>SQMZ</i>	<i>Shuihudi Qin mu zhujian</i> 睡虎地秦墓竹簡
<i>ZGWWB</i>	<i>Zhongguo wenwu bao</i> 中國文物報
<i>ZHMZ</i>	<i>Zhangjiashan Han mu zhujian (ersiqi hao mu)</i> 張家山漢墓竹簡(二四七號墓)

¹¹⁰ *Shiji* 99, p. 2726.

¹¹¹ Jack L. Dull, "Marriage and Divorce in Han China: A Glimpse at 'Pre-Confucian' Society," in David C. Buxbaum, ed., *Chinese Family Law and Social Changes in Historical and Comparative Perspective* (Seattle: U. of Washington P., 1978), pp. 23-74.