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New Insights into Emperor Wen of Han's 167 BCE Legal Reform: the Changes in the Grading System for Illicit Profit from Robberies

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漢文帝十三年刑制改革新探：從盜賊等級的變動說起

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Abstract

Recognized as a pivotal moment in early Chinese legal history, Emperor Wen of Han's 167 BCE legal reform raises significant unresolved questions due to limited available evidence. This paper aims to investigate the reform's impact on the grading system for illicit profit resulting from robberies. By analyzing recently published legal manuscripts discovered in Tomb No. 12 at Hujia caochang, Hubei, this study reveals that the reform introduced a more structured and coherent grading system for illicit profit, aligning it with the newly-established hierarchy of fixed-term hard labor punishments. By placing this reform in the context of the early Han dynasty, this research offers an alternative perspective that challenges the prevailing assumption that "Han continued the institutions of the Qin."

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Keywords

illicit profit – Emperor Wen of Han – legal reform – Han continued the institutions of the Qin

摘要

漢文帝前元十三年(167)的刑制改革，一向被視為中國古代刑制史上的重要時刻。受史料局限，過去諸多關於此次改革的問題均未能得到圓滿解決。本文以新公布的胡家草場12號漢墓出土的法律文書為主要材料，研究此次改革對盜賊等級帶來的影響。作為此次改革之一環，新制度下的盜賊等級顯得更為系統和規整，其對應刑罰與新建立的有期徒刑等級變得一致。把此次刑制改革重置於漢初的歷史脈絡，有助我們重新反思「漢承秦制」的假說。

關鍵詞

賊、漢文帝、刑制改革、漢承秦制

1 Introduction

“Robbery” (*dao* 盜) in the Qin 秦 and Han 漢 (221 BCE–220 CE) laws appears to be a category that encompasses a broad range of crimes. The early Han statutes excavated from Tomb No. 247 at Zhangjiashan 張家山 in Hubei indicate that this category could refer to crimes such as “bribery, embezzlement, extortion, abducting persons for sale, lending out government property without authorization, robbing graves, and taking gold or other valuables out through a ford or pass.”¹ This is a broader definition than the modern meaning of robbery. As the late sinologist A.F.P. Hulswé correctly pointed out, “any action that could be construed as ‘taking things’ – in the widest sense – ‘that were not one’s own’ was described as *dao*.”² However, the practical problem was how to match (*dang* 當) a crime falling within such a broad category with an appropriate

1 Anthony J. Barbieri-Low and Robin D.S. Yates, *Law, State, and Society in Early Imperial China: A Study with Critical Edition and Translation of the Legal Texts from Zhangjiashan Tomb no. 247* (Leiden: Brill, 2015), 457.

2 A.F.P. Hulswé, “The Wide Scope of Tao 盜 ‘Theft’ in Ch’in-Han Law,” *Early China* 13 (1988), 183, with Romanization changed to pinyin. See also Zhu Teng 朱騰, “Tang yiqian daozei zhi bianqian yanjiu” 唐以前盜罪之變遷研究, *Faxue yanjiu* 法學研究 44.1 (2022), 135–152.

punishment.³ In most cases, the Qin and Han lawmakers resolved this problem by assessing the cash value of the “illicit profit” (*zang* 贓) gained from the crime. According to a legal regulation from Zhangjiashan Tomb No. 247, the cash value of the illicit profit was divided into five grades, each of which was matched to a specific punishment. In doing so, in principle, judicial officials could match a robbery crime to an appropriate punishment that reflected the seriousness of the crime and its harmfulness to the state.⁴

Examining the records of illicit profit in Qin-Han transmitted and excavated texts, we see that the grading system for illicit profit and its matching punishment underwent various modifications or substantial alterations during the Qin-Han period. What caused these modifications or changes, and how should we understand these modifications or changes? Analyzing the legal texts excavated from Tomb No. 12 at Hujia caochang 胡家草場 in Hubei, which date from shortly after Emperor Wen 文 of Han's legal reform in 167 BCE, this paper demonstrates that the grades of illicit profit and their matching punishments were modified as part of this reform. The reform introduced a more organized and coherent grading system for illicit profit, aligning it with the newly-established hierarchy of fixed-term hard labor punishments. Contextualizing this reform within the early history of the Han dynasty offers us an alternative perspective to reconsider the assumption that “Han continued the institutions of the Qin” (*Han cheng Qin zhi* 漢承秦制).

2 Emperor Wen of Han's 167 BCE Legal Reform

Emperor Wen's legal reform in 167 BCE is widely recognized as a pivotal moment in early Chinese legal history. The reform was prompted by a well-known story

3 For *dang* as a legal process, see Barbieri-Low and Yates, *Law, State, and Society*, 164.

4 Maxim Korolkov has argued that the establishment of such a number-based hierarchy of crime, punishment and reward made the society “legible,” not only for the state but also for the commoners. See Maxim Korolkov, “Calculating Crime and Punishment: Unofficial Law Enforcement, Quantification, and Legitimacy in Early Imperial China,” *Critical Analysis of Law* 3.1 (2016): 70–86. However, in early imperial China, there were also crimes that could not be objectively quantified, and their corresponding punishments could be decided on a case-by-case basis. One of those was “impiety” (*budao* 不道). When criminals' illicit profit reached “ten gold” (*shijin* 十金) or even higher, posing a potential threat to the stability of the state, or it involved the robberies of imperial family's property, their crimes would be considered too serious to be classified as *dao*. In such cases, only impiety could define the crime they had committed. See Zhi Qiang 支強, “Qin lü yongyu yu lüyi neihan” 秦律用語與律義內涵, in Xu Shihong 徐世虹 ed., *Qin lü yanjiu* 秦律研究 (Wuhan: Wuhan daxue chubanshe, 2017), 196–7. This subject requires further research and will not be addressed in this paper.

involving Emperor Wen and a filial daughter named Chunyu Tiyang 淳于緹縈. According to the tale, Tiyang's father, Chunyu Yi 淳于意, a respected physician in the Qi 齊 Kingdom, was accused of serious crimes and sent to the capital Chang'an 長安 to face mutilating punishment (*rouxing* 肉刑). Tiyang, displaying her filial piety, followed her father to Chang'an and submitted a petition to Emperor Wen, requesting to be confiscated as a governmental slave in order to redeem her father's crime. Emperor Wen was deeply moved by Tiyang's petition and issued an ordinance to abolish mutilating punishments while establishing fixed terms for different grades of hard laborers. This story had a revolutionary impact on the penal system. Firstly, it removed mutilating punishments, which were a major form of ancient Chinese punishments, from the system. Secondly, instead of life sentences, criminals sentenced to hard labor began serving for a designated period of time.

To understand the reform within a broader context, Tomiya Itaru 富谷至 argues that the primary goal of the reform was to break away from the Qin system and form a new penal system that centered on a hierarchy of fixed-term hard labor punishments.⁵ Building upon Shiga Shūzō's 滋賀秀三 argument regarding the primitive view of punishment in ancient China, Momiyama Akira 籾山明 further suggests that the abolishment of mutilating punishments not only marked a transition from the Qin to Han system but also represented a liberation from the primitive perception of punishment. This primitive view considered the permanent damage inflicted by mutilating punishments as a means of permanently isolating convicts from society.⁶ However, our knowledge about the details of Emperor Wen's 167 BCE reform remains limited, with only a few records preserved in Han dynastic histories.⁷ Despite extensive scholarly efforts to study this reform, many issues have yet to be resolved.⁸ For

5 Tomiya Itaru 富谷至, *Shin kan keibatsu seido no kenkyū* 秦漢刑罰制度の研究 (Kyōto: Dōhōsha, 1998), 164.

6 Shiga Shūzō 滋賀秀三, *Chūgoku hōseishi ronshū: hōten to keibatsu* 中國法制史論集—法典と刑罰 (Tokyo: Sōbunsha, 2003), ch. 11; Momiyama Akira 籾山明, *Chūgoku kodai soshō seido no kenkyū* 中國古代訴訟制度の研究 (Kyōto: Kyōto Daigaku Gakujutsu Shuppankai, 2006), 265–67.

7 The major sources for this reform are preserved in the “Annals of Emperor Wen” (Xiaowen benji 孝文本紀) of the *Records of the Grand Scribe* (Shiji 史記), and especially the “Treatise on Punishments and Legal Principles” 刑法志 in the *History of Han* (Hanshu 漢書). See *Shiji* 史記 (Beijing: Zhonghua shuju, 1959), 10.427–28; *Hanshu* 漢書 (Beijing: Zhonghua shuju, 1962), 23.1097–99. For a full translation of the later source, see A.F.P. Hulswé, *Remnants of Han Law. Vol. 1: Introductory Studies and an Annotated Translation of Chapters 22 and 23 of the History of the Former Han Dynasty* (Leiden: Brill, 1955), 309–422.

8 For a critical review on modern scholarship of this reform, see Momiyama, *Chūgoku kodai soshō seido no kenkyū*, ch. 5. While there exists a wealth of scholarship on this topic in East

instance, scholars have noted potential corruption in the text of the ministers' proposal on the 167 BCE legal reform, as preserved in Ban Gu's 班固 account, during the transmission of the *History of Han*. While Shiga Shūzō attempts to reconstruct the changes to the penal system described in the proposal by inferring missing passages, Zhang Jianguo 張建國 argues that a section of the proposal was misplaced in later annotations to Ban Gu's account.⁹ Moreover, it is peculiar that the *Records of the Grand Scribe*, which is typically the primary source for early Han history upon which Ban Gu relied, does not contain any record of the ministers' proposal. The dating of Tiyang's petition and the legal reform also shows inconsistency in the *Records of the Grand Scribe*. While the "Annals of Emperor Wen" put it under the thirteenth year of Emperor Wen (167 BCE), Chunyu Yi's biography records it in the middle of the fourth year of Emperor Wen (176 BCE).¹⁰ Furthermore, newly-excavated legal materials that predate the reform provide no insight into the matter.¹¹

The situation finally turned around when the legal manuscripts of three Han tombs, dating back to Emperor Wen's reign (r. 180–157 BCE), were discovered.¹² Among them, 4,636 bamboo or wooden slips and six wooden boards were recovered from Hujia caochang Tomb No. 12, including more than 3,000 bamboo

Asian languages, in contrast, there has been relatively little attention given to it in English scholarship. One of the exceptions is Charles Sanft, "Six of One, Two Dozen of the Other: The Abatement of Mutilating Punishments under Han Emperor Wen," *Asia Major* (Third series) 18.1 (2005), 79–100.

9 Shiga, *Chūgoku hōseishi ronshū*, ch. 12; Zhang Jianguo 張建國, *Diguo shidai de Zhongguo fa* 帝國時代的中國法 (Beijing: falü chubanshe, 1999), 191–241. For a review on the textual problems of the ministers' proposal, see Li Li 李力, "Qin Han fazhi shi yanjiu de liangzhuang gong'an: Guanyu Han Jiuyi, Hanshu Xingfa zhi suozai xingzhi wenben jiedu de xueshushi kaocha" 秦漢法制史研究的兩樁公案——關於《漢舊儀》、《漢書·刑法志》所載刑制文本解讀的學術史考察, *Zhongguo gudai falü wenxian yanjiu* 中國古代法律文獻研究 10 (2016), 170–98.

10 See *Shiji* 10.427–28; 105.2795.

11 Arnd Helmut Hafner has recently given an extensive review on these newly-excavated legal manuscripts and the related scholarship. See Arnd Helmut Hafner, "The State of Research in Early Chinese Legal History: A Review of Two Important Recent Annotated translations in English," *Bamboo and Silk* 6.1 (2023), 103–157.

12 These three Han tombs are Tomb No. 336 at Zhangjiashan excavated in 1985, No. 77 at Shuihudi in 2006, and No. 12 at Hujia caochang in 2018, all in Hubei. For the brief reports of these findings, see Jingzhou bowuguan 荊州博物館, "Hubei Jiangling Zhangjiashan M336 chutu Xi Han zhujian gaishu" 湖北江陵張家山 M336 出土西漢竹簡概述, *Wenwu* 文物 2022.9, 68–75; Xiong Beisheng 熊北生, Chen Wei 陳偉, and Cai Dan 蔡丹, "Hubei Yunmeng Shuihudi 77 hao Xi Han mu chutu jian du gaishu" 湖北雲夢睡虎地 77 號西漢墓出土簡牘概述, *Wenwu* 2018.3, 43–53; Li Zhifang 李志芳 and Jiang Lujing 蔣魯敬, "Hubei Jingzhou shi Hujia caochang Xi Han mu M12 chutu jian du gaishu" 湖北荊州市胡家草場西漢墓 M12 出土簡牘概述, *Kaogu* 考古 2020.2, 21–33.

slips believed to be legal texts. This collection represents the largest discovery of legal texts to date. Archaeologists estimate that the tomb was buried after 163 BCE, just a few years after Emperor Wen's 167 BCE reform.¹³ While the full publication of these materials is still pending, a small collection of 192 bamboo or wooden slips and boards discovered from Tomb No. 12 at Hujia caochang has recently been published.¹⁴ Notably, this collection includes a legal regulation related to the grading of illicit profit, demonstrating several changes in the grading system for illicit profit as part of Emperor Wen's legal reform. This regulation bears similarities to an entry found in the "Statutes on Robbery" (*daolü* 盜律) of the *Statutes and Ordinances of the Second Year (Ernian lüling* 二年律令) text from Zhangjiashan Tomb No. 247, which is believed to have been compiled in 186 BCE, approximately two decades prior to the reform.¹⁵ In the following analysis, I will closely examine this specific legal statute and place my findings within the broader historical context of the early Han period.

3 Impact on the Grading System for Illicit Profit from Robberies

Let us first look at the statute recovered from Zhangjiashan Tomb No. 247:

盜賊（賊）直（值）過六百六十錢：黥為城旦舂；六百六十到二百廿錢：完為城旦舂；不盈二百廿到百一十錢：耐為隸臣妾；不盈百一十到廿二錢：罰金四兩；不盈廿二錢到一錢：罰金一兩。¹⁶

- 13 Jingzhou bowuguan, "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, *Kaogu* 考古 2020.2, 20. Chen Wei 陳偉, the leading scholar of the research group of the Hujia caochang materials, also supports this view. See Chen Wei 陳偉, "Hujia caochang Han jian lü dian yu Han Wendi xingzhi gaige" 胡家草場漢簡律典與漢文帝刑制改革, *Wuhan daxue xuebao* 武漢大學學報 2022.2, 86.
- 14 Jingzhou bowuguan 荊州博物館 and Wuhan daxue jianbo yanjiu zhongxin 武漢大學簡帛研究中心, *Jingzhou Hujia caochang Xi Han jiandu xuancui* 荊州胡家草場西漢簡牘選粹 (Beijing: Wenwu chubanshe, 2021). All the Hujia caochang Tomb No. 12 materials cited in this paper are from this volume, unless otherwise stated.
- 15 Barbieri-Low and Yates, *Law, State, and Society*, 64.
- 16 Peng Hao 彭浩, Chen Wei 陳偉, and Kudō Motoo 工藤元男 ed., *Ernian lüling yu Zouyanshu: Zhangjiashan er si qi hao Han mu chutu falü wenxian shidu* 二年律令與奏讞書：張家山二四七號漢墓出土法律文獻釋讀 (Shanghai: Shanghai guji chubanshe, 2007), 112. All the Zhangjiashan Tomb No. 247 materials cited in this paper are from this volume unless otherwise stated. Translation after Barbieri-Low and Yates, *Law, State, and Society*, 463.

The illicit profit from a robbery valued in excess of 660 cash: tattoo [the criminal] and make [him or her] a wall-builder or grain-pounder; from 660 to 220 cash: leave [the criminal] intact and make [him or her] a wall-builder or grain-pounder; not a full 220 to 110 cash: shave [the criminal] and make [him or her] a bond servant or bondwoman; not a full 110 to 22 cash: fine four *liang* (approx. 62 g) of gold; not a full 22 to 1 cash: fine one *liang* (approx. 15.5 g) of gold (slips 55–56).

The exact same statute is also found in the legal manuscripts recovered from Zhangjiashan Tomb No. 336, which are roughly dating between 180 and 173 BCE, but the slips are broken, and some pieces are missing.¹⁷ My discussion is therefore mostly based on the regulation recovered from Zhangjiashan Tomb No. 247. An excerpt of the same statute is also cited in a “doubtful case” dating to 200 BCE, preserved in the *Book of Submitted Doubtful Cases* (*Zouyan shu* 奏讞書) text (slip 72).¹⁸ We now shift our attention to the Hujia caochang statute:

盜賊（賊）直（值）六百錢以上：髡（髡）為城旦舂；不盈到五百：完為城旦舂；不盈到四百：耐為鬼薪白粲；不盈到三百：耐為隸臣妾；不盈到二百：耐為司寇；不盈到百：罰金八兩；不盈到一錢：罰金。

The illicit profit from a robbery valued 600 cash or above: shave [the criminal's] head bare, [collar him or her] and make [him or her] a wall-builder or grain-pounder; not a full [600] to 500 cash: leave [the criminal] intact and make [him or her] a wall-builder or grain-pounder; not a full [500] to 400 cash: shave [the criminal] and make [him or her] a gatherer of fuel for the spirits or white-rice sorter; not a full [400] to 300 cash: shave [the criminal] and make [him or her] a bond servant or bondwoman; not a full [300] to 200 cash: shave [the criminal] and make [him or her] a robber-guard; not a full [200] to 100 cash: fine eight *liang* (approx. 124 g) of gold; not a full [100] to 1 cash: fine ... of gold. (slips 1374–75)

When comparing the two regulations, three major changes are noticeable. First, the illicit profits in the Hujia caochang regulation were no longer calculated

17 Peng Hao 彭浩 ed., *Zhangjiashan Han mu zhujian (san san liu hao mu)* 張家山漢墓竹簡〔三三六號墓〕(Beijing: Wenwu chubanshe, 2022), 173, slips 68–69.

18 For an English translation of this case, see Barbieri-Low and Yates, *Law, State, and Society*, 1283.

based on multiples of eleven, which was a Qin practice and inherited by the Zhangjiashan regulation. An entry included in the Shuihudi Qin “Statutes on Finance” (*Jinbu lü* 金布律) states that, “Eleven cash are equivalent to one ‘cloth.’ When cash are disbursed or entered to serve as an equivalent of gold or cloth, this is done in accordance with the Statutes” 錢十一當一布。其出入錢以當金、布，以律。¹⁹ It appears that, just like gold, cloth could be converted to cash and was an acceptable payment method under the Qin. Upon examining the legal texts from the Qin state and empire, we see that the grading system of illicit profit based on decimal multiples of eleven seems to be highly consistent. It consists of six grades: “in excess of 660 cash,” “660 to 220 cash,” “not a full 220 to 110 cash,” “not a full 110 to 22 cash,” “not a full 22 to 1 cash” and “not a full 1 cash” (Table 1).

TABLE 1 The grading of illicit profit and the matching punishment in the Qin state and empire

Shuihudi Tomb No. 11 (late Warring States)	Yuelu Academy (around Qin unification)	Longgang Tomb No. 6 (late Qin Empire)
In excess of 660 cash 過六百六十錢	Tattoo [the criminal] and make [him or her] a wall-builder [or grain-pounder] 黥為城旦 (slips 35–36)	

19 Chen Wei 陳偉 chief ed., *Qin jian du he ji* 秦簡牘合集, vol. 1 (Wuhan: Wuhan daxue chubanshe, 2014), 91, slip 67. All the Shuihudi Tomb No. 11 materials cited in this paper are from this volume, unless otherwise stated. Translation after A.F.P. Hulswé, *Remnants of Ch'in Law: An Annotated Translation of the Ch'in Legal and Administrative Rules of the 3rd Century B.C., Discovered in Yün-meng Prefecture, Hu-pei Province, in 1975* (Leiden: Brill, 1985), 52.

TABLE 1 The grading of illicit profit (*cont.*)

Shuihudi Tomb No. 11 (late Warring States)	Yuelu Academy (around Qin unification)	Longgang Tomb No. 6 (late Qin Empire)
[Not a full 220 to] 110 cash 百一十錢	Shave [the criminal] and make [him or her] a bond servant [or bondwoman] 耐為隸臣 (slips 35–36)	[Not a full] 220 to 110 cash 二百廿錢 到百一十錢
	Not a full 110 [to 22 cash] 不盈百十 一錢	Shave [the criminal] and make [him or her] a robber-guard 耐以為司寇 (slip 047/ 1483) ^b
		[Not a full] 110 to 22 cash] 賞二甲 (slip 41)
		Not a full 22 to 1 cash 不盈廿二 錢到一錢
Not a full 1 cash 不盈 一錢	Fine 30 days of labor service 賞徭三旬 (slip 7)	Fine 1 set of shield 賞一盾 (slip 41)
		Not a full 1 cash 不盈 一錢
	 (slip 41)

a Chen Wei, *Qin jiandu heji*, vol. 2, 39–40.

b Chen Songchang 陳松長 ed., *Yuelu shuyuan cang Qin jian (liu)* 嶽麓書院藏秦簡(陸) (Shanghai: Shanghai cishu chubanshe, 2020), 62–63. The punishment here is more severe than those for the same illicit profit grade in the Longgang and Zhangjiashan regulations. One possible explanation is that this regulation was only applied to specific situation with “increased punishment” (*jiazui* 駕罪).

Although the exact dating of the materials listed in **Table 1** is uncertain, most scholars agree that the Shuihudi Tomb No. 11 legal texts are roughly dated to the late Warring States period (early and middle 3rd century BCE), while the Longgang 龍崗 Tomb No. 6 legal texts are dated to the late Qin period (late

3rd century BCE).²⁰ Additionally, the unprovenanced legal texts held by the Yuelu Academy 嶽麓書院 contain entries dated to the pre- and post-unification periods.²¹ It is noteworthy that, except for the grade of “not a full 1 cash,” the rest of the grades all appear in the Zhangjiashan early Han statute. The “660 to 220 cash” grade, which does not appear in any of the materials from Shuihudi, Yuelu, or Longgang as an illicit profit grade for the general public, is likely due to the incomplete nature of these three legal collections. In an entry (slips 1–2) included in the Shuihudi *Answers to Questions on Legal Principles and Statutes* (*Falü dawen* 法律答問) text, which was specifically designed for law enforcement officials with “increased punishment” (*jiazui* 加罪), the grade of “660 to 220 cash” is mentioned.²² It is quite likely that this grade already existed when the Shuihudi Qin legal manuscripts were compiled. Comparing the grades seen in the Zhangjiashan Tomb No. 247 regulation, it appears that the early Han continued to utilize the five Qin grades, at least until the reign of Empress Dowager Lü 呂 or the early years of Emperor Wen, if we consider the same regulation recovered from Zhangjiashan Tomb No. 336. The only exception seems to be the grade of “not a full 1 cash,” which may have been dropped.²³ Upon examining the Hujia caochang regulation, we discover that this practice, spanning over at least a hundred years, finally came to an end after Emperor Wen’s 167 BCE reform. In this sense, the reform does appear to have sought to free the Han system from Qin influence, as Tomiya Itaru suggested.

Second, according to the regulations from Zhangjiashan to Hujia caochang, the punishment for the highest grade of illicit profit from a robbery was changed from “tattooing the criminal and making him or her a wall-builder or grain-pounder” (*qing wei chengdanchong* 黥為城旦舂) to “shaving the criminal’s head bare, [collaring him or her], and making him or her a wall-builder or grain-pounder” (*kun wei chengdanchong* 髡為城旦舂). This change in punishment is consistent with Emperor Wen’s abatement of mutilating punishment as recorded in the *History of Han*, which reads, “[for one who is guilty of a crime] matching being tattooed: shave his or her head bare, collar him or her,

20 See Chen Wei, *Qin jian du he ji*, vol. 1, 42 and 192–93; vol. 2, 4–5.

21 See Robin D.S. Yates, “Dated Legislation in the Late-Qin State and Early Empire,” *Asia Major* (Third Series) 35.1 (2022), 121–63.

22 For an English translation of this entry, see Hulsewé, *Remnants of Ch’in Law*, 120.

23 Barbieri-Low and Yates, *Law, State, and Society*, 222, suggests that the dropping of this grade may be due to the inflation the Han government experienced between 221 BCE and 186 BCE. On the contrary, Zhu Teng argues that there was no such a grade in the Qin, as the Shuihudi Qin law does not clearly list it as one of the illicit profit grades. See Zhu Teng, “Tang yiqian dao zui zhi bianqian yanjiu,” 139–40. The Longgang Qin regulation does mention this grade, but unfortunately, the matching punishment is missing due to its fragmentary condition.

and make him or her a wall-builder or grain-pounder” 當黥者，髡鉗為城旦舂。²⁴ However, the Hujia caochang regulation does not mention the term *qian* 鉗 (collar). Chen Wei suspects that collaring had not yet been incorporated into the punishment until the early years of Emperor Wu 武 of Han.²⁵

The omission of the term *qian* is common in Han transmitted texts. For instance, in a case dating to the reign of Emperor Yuan 元 of Han (r. 48–33 BCE), more than a hundred years after the legal reform, the term *qian* is also omitted in the phrase of *kun wei chengdan* 髡為城旦。²⁶ Additionally, as Chen Wei mentioned, the combination of collaring with shaving one's head bare is seen on the terracotta figures excavated from a pit near Emperor Wen's mausoleum (*Baling* 霸陵).²⁷ Based on the image released by the excavators, it is apparent that the convict's head was shaved bare. Furthermore, an iron collar was locked around his neck, and his left foot was restrained with a fetter (*di zuozhi* 鈇左趾) (Figure 1).²⁸ I suggest that the punishment of *kunqian wei chengdanchong* 髡鉗為城旦舂 had already been fully implemented when the Hujia caochang regulation was compiled. The omission of the term *qian* was probably because Han people commonly used the term *kun* to refer to *kunqian*.²⁹

Third, the grading system for illicit profit became more uniform and organized (Table 2). In the Zhangjiashan regulation, the range for each grade varied significantly. For instance, the “660 to 220 cash” grade had a range of 440 cash, while the range for the “not a full 22 to 1 cash” grade had a difference of only 21

24 *Hanshu*, 23.1099.

25 Chen Wei, “Hujia caochang Han jian lü dian yu Han Wendi xingzhi gaige,” 78.

26 *Hanshu*, 93.3727.

27 Chen Wei, “Hujia caochang Han jian lü dian yu Han Wendi xingzhi gaige,” 78 n. 2.

28 Before the discovery of the terracotta convicts near Emperor Wen's mausoleum, Zhang Jianguo inferred that fettering (*di* 鈇) was only implemented since Emperor Wu's reign (141–87 BCE). See Zhang Jianguo, *Diguo shidai de Zhongguo fa*, 187–90. The new evidence appears to correspond to a Jin 晉 annotation to the *History of Han*, which states that Emperor Wen 167 BCE's reform replaced severing feet with fettering left or right foot (*yi di zuoyou zhi dai yue* 以鈇左右止代刖). However, this can only be confirmed after the Hujia caochang materials are fully published. See *Hanshu* 23.1099. For the new evidence regarding the penalty of fettering feet dated to the reign of Emperor Wu, see Ou Yang 歐揚, “Zoumalou Xi Han jian xingzhi shiliao chutan” 走馬樓西漢簡刑制史料初探, in Wu Wenling 鄔文玲 and Dai Weihong 戴衛紅 ed., *Jianbo yanjiu 2018 (Qiudong juan)* 簡帛研究二〇一八 (秋冬卷) (Guilin: Guangxi shifan daxue chubanshe, 2022), 215–29.

29 Li Tianhong 李天虹 and Mizuma Daisuke 水間大輔 share a similar view that the missing of the term *qian* could be an omission. See Li Tianhong, “Han Wendi xingqi gaige: *Hanshu Xingfazhi suo zai guiding xingqi wenben yu Hujia caochang Han lü dudu*” 漢文帝刑制改革——《漢書·刑法志》所載規定刑制文本與胡家草場漢律對讀, *Jiangnan kaogu* 江漢考古 2023.2: 68 n. 10; Mizuma Daisuke, “Kojikusōjō Kankan 'Ritsuryō' to Buntei keisei kaikaku” 胡家草場漢簡「律令」と文帝刑制改革, *Chūō gakuin daigaku hōgaku ronsō* 中央学院大学法学論叢 36.1 (2022), 16.

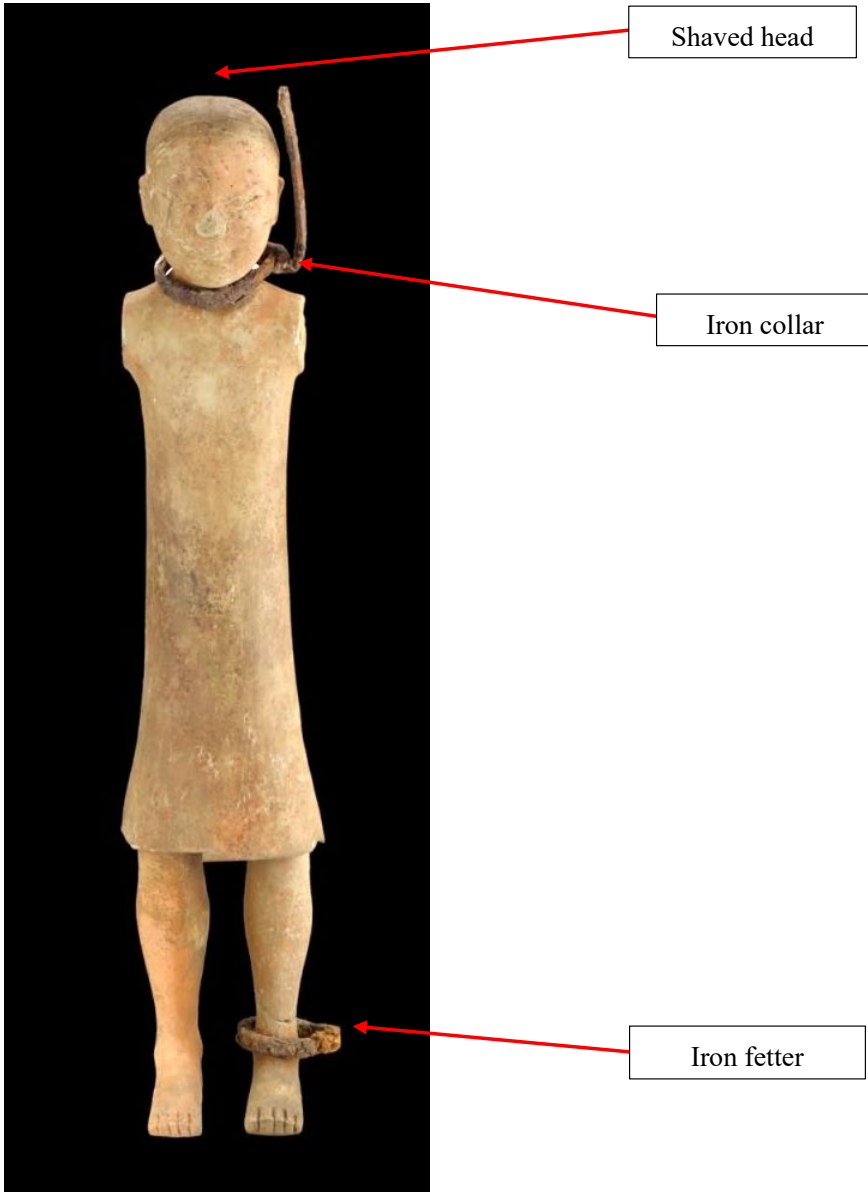


FIGURE 1 A terracotta convict excavated from a pit near Emperor Wen's mausoleum
 Note: Image modified from nn., "Queding Han Wendi baling zhunque weizhi Xi'an Jiangcun damu ruxuan quanguo shida kaogu xin faxian" 確定漢文帝霸陵準確位置西安江村大墓入選全國十大考古新發現, *Wenhui wang* 文匯網, Mar. 31, 2022, <https://www.wenweipo.com/a/202203/31/AP62457c57e4b036dce9a3ef57.html>

TABLE 2 The grades of illicit profit and the matching punishments in the early Western Han period

A statute cited in a Zhangjiashan “Doubtful Case” (200 BCE)	Zhangjiashan “Statutes on Robbery” (186 BCE)	Hujia caochang “Statutes on Robbery” (c.167–163 BCE)
In excess of 660 cash 過六百六十錢 Tattoo [the criminal] and make [him or her] a wall-builder or grain-pounder 鯨為城旦舂 (slip 72)	In excess of 660 cash 過六百六十錢 Tattoo [the criminal] and make [him or her] a wall-builder or grain-pounder 鯨為城旦舂 (slip 55)	600 cash or above 六百錢以上 Shave [the criminal’s] head bare, [collar him or her], and make [him or her] a wall-builder or grain-pounder 髡為城旦舂 (slip 1474)
	660 to 220 cash 六百六十到二百廿錢 Leave [the criminal] intact and make [him or her] a wall-builder or grain-pounder 完為城旦舂 (slip 55)	Not a full [600] to 500 cash 不盈到五百 Leave [the criminal] intact and make [him or her] a wall-builder or grain-pounder 完為城旦舂 (slip 1374)
		Not a full [500] to 400 cash 不盈到四百 Shave [the criminal] and make [him or her] a gatherer of fuel for the spirits or white-rice sorter 耐為鬼薪白粲 (slips 1374–75)
		Not a full [400] to 300 cash 不盈到三百 Shave [the criminal] and make [him or her] a bond servant or bondwoman 耐為隸臣妾 (slip 1375)

TABLE 2 The grades of illicit profit and the matching punishments (*cont.*)

A statute cited in a Zhangjiashan “Doubtful Case” (200 BCE)	Zhangjiashan “Statutes on Robbery” (186 BCE)	Hujia caochang “Statutes on Robbery” (c.167–163 BCE)
		Not a full [300] to 200 cash 不盈到二百 Shave [the criminal] and make [him or her] a robber-guard 耐為司寇 (slip 1375)
	Not a full 220 to 110 cash 不盈二百廿到百一十錢 Shave [the criminal] and make [him or her] a bond servant or bondswoman 耐為隸臣妾 (slip 55)	Not a full [200] to 100 cash 不盈到一百 Fine eight <i>liang</i> of gold 罰金八兩 (slip 1375)
	Not a full 110 to 22 cash 不盈百一十到廿二錢 Fine four <i>liang</i> of gold 罰金四兩 (slip 56)	Not a full [100] to 1 cash 不盈到一錢 Fine ... of gold 罰金…… (slip 1375)
	Not a full 22 to 1 cash 不盈廿二錢到一錢 Fine one <i>liang</i> of gold 罰金一兩 (slip 56)	

cash between the highest and lowest values. In contrast, the Hujia caochang regulation standardized the range for each grade to 100 cash, and, correspondingly, the matching punishment for each grade became more systematic. In the Zhangjiashan regulation, despite the “660 to 220 cash” grade having a difference of 440 cash between its highest and lowest values, any robbery crime within this range was punished by leaving the criminal intact and making him or her a wall-builder or grain-pounder (*wan wei chengdanchong* 完為城旦舂).

On the contrary, the Hujia caochang regulation introduced four different grades of punishment for those who commit a crime with illicit profit ranging from 600 to 200 cash. This new system ensured that each grade corresponded to a punishment that better reflected the severity of the crime and its harm to the state. Only those whose illicit profit ranged between 600 and 500 cash would be left intact and made wall-builders or grain-pounders; those whose illicit profit was lower than 500 cash received lighter punishment according to the grade within which their illicit profit fell.

More importantly, as part of Emperor Wen's 167 BCE reform, the punishments for illicit profit between 600 and 200 cash were aligned with the five grades of fixed-term hard labor punishment that were institutionalized during this reform. This demonstrates the cohesiveness of the new penal system. The exact terms for these five grades of hard labor punishment have been in dispute for decades due to corruption of the text preserved in the *History of Han*. As mentioned above, Zhang Jianguo has argued that a section of this text was misplaced under Tang 唐 scholar Yan Shigu's 顏師古 annotation to the *History of Han*.³⁰ Zhang's claim was finally proved correct when Li Tianhong 李天虹, a leading member of the research team, released the written content of four bamboo slips (1606, 1554, 1553 and 1557) in her recent article.³¹ The newly-released bamboo text can be broken down into five sections. **Table 3** compares the ministers' proposal preserved in the Hujia caochang bamboo text and the current version of the *History of Han*.³²

The comparison reveals that the ministers' proposal preserved in the *History of Han* likely underwent various modifications or editions. It is uncertain whether these changes occurred during the transmission of the *History of Han* or were made much earlier when Ban Gu included the proposal in his work, which took place approximately two hundred years after the promulgation of the ordinance. While the last section of the bamboo text indicates the situations under which the new ordinance was not applied, the first four sections clearly lay out the principle of gradually releasing (*mian* 免) each grade of hard laborers from their original status to freedmen (*shuren* 庶人) after certain

30 Zhang Jianguo, *Diquo shidai de Zhongguo fa*, 191–241.

31 Li Tianhong, "Han Wendi xingqi gaige," 62.

32 It should be noted that there are no images of these slips provided along with the transcription in Li's article. Furthermore, Li did not indicate if any other relevant slips were found in the same collection or specify the particular title of ordinances to which these four slips belong. The comparison of the ministers' proposal preserved in the Hujia caochang bamboo text and the current version of the *History of Han* in **Table 3**, along with my discussion below, is preliminary and requires further scrutiny once the entire collection is released.

TABLE 3 Comparison of the ministers' proposal preserved in the Hujia caochang bamboo text and the *History of Han*

Hujia caochang bamboo slips 1606, 1554, 1553 and 1557	<i>Hanshu</i> 23.1099–1100
<p>1) 罪人獄已決，髡城旦舂以上盈^a四歲，為鬼薪白粲；為鬼薪白粲一歲，為隸臣妾；為隸臣妾一歲，免為庶人。 When the case of criminals has been decided, [for those sentenced to be] shaved head bare [and collared, and made] wall-builders or grain-pounders or above, upon fulfilling four years of service, make them gatherers of fuel for the spirits or white-rice sorters. After serving as gatherers of fuel for the spirits or white-rice sorters for one year, make them bond servants or bondwomen. After serving as bond servants or bondwomen for one year, release them [from the status of hard laborers] and make them freedmen.</p>	<p>罪人獄已決， When the case of criminals has been decided,^b</p>
<p>2) 完城旦舂，及四月丁巳以前之刑城旦舂盈三歲，為鬼薪白粲；為鬼薪白粲一歲，為隸臣妾；為隸臣妾一歲，免為庶人。 [For those sentenced to be] left intact [and made] wall-builders or grain-pounders, as well as those who have undergone mutilating punishments and been made wall-builders or grain-pounders before the <i>dingsi</i> (20th) day</p>	<p>完為城旦舂，滿三歲為鬼薪白粲；鬼薪白粲一歲，為隸臣妾；隸臣妾一歲，免為庶人。 [For those sentenced to be] left intact and made wall-builders or grain-pounders, upon fulfilling three years of service, make them gatherers of fuel for the spirits or white-rice sorters. [After serving as] gatherers of fuel for the spirits or white-rice</p>

a The Hujia caochang materials use the graph *chang* 常 to replace *heng* 恒, which apparently serves the purpose of avoiding direct reference to Emperor Wen, Liu Heng 劉恒. However, it is unclear why the Hujia caochang materials do not replace Emperor Hui's 惠 given name, *ying* 盈, with another graph like *man* 滿 as in the *History of Han*? This seems to be connected to the shift in Emperor Hui's position within Han history, which undoubtedly warrants further research.

b The passage regarding *kunqian chengdanchong* 髡鉗城旦舂 in the Hujia caochang text is not seen in the current version of the *History of Han*.

TABLE 3 Comparison of the ministers' proposal preserved (*cont.*)

Hujia caochang bamboo slips 1606, 1554, 1553 and 1557	<i>Hanshu</i> 23.1099–1100
<p>of the fourth month (in the thirteenth year of Emperor Wen, 167 BCE),^c upon fulfilling three years of service, make them gatherers of fuel for the spirits or white-rice sorters. After serving as gatherers of fuel for the spirits or white-rice sorters for one year, make them bond servants or bondwomen. After serving as bond servants or bondwomen for one year, release them [from the status of hard laborers] and make them freedmen.</p>	<p>sorters for one year, make them bond servants or bondwomen. [After serving as] bond servants or bondwomen for one year, release them [from the status of hard laborers] and make them freedmen.</p>
<p>3) 鬼薪白粲盈三歲，為隸臣妾；為隸臣妾一歲，免為庶人。 [For those sentenced to be made] gatherers of fuel for the spirits or white-rice sorters, upon fulfilling three years of service, make them bond servants or bondwomen. After serving as bond servants or bondwomen for one year, release them [from the status of hard laborers] and make them freedmen.</p>	<p>鬼薪白粲滿三歲，為隸臣；隸臣一歲，免為庶人。 [For those sentenced to be made] gatherers of fuel for the spirits or white-rice sorters, upon fulfilling three years of service, make them bond servants [or bondwomen]. [After serving as] bond servants [or bondwomen] for one year, release them [from the status of hard laborers] and make them freedmen.^d</p>

c The bolded passage was modified and moved to 5 in the *History of Han*. According to Li Tianhong, the date mentioned in the underlined passage refers to the date when the ordinance regarding the 167 BCE reform was promulgated. Following Sima Qian's account, Ban Gu placed it in the fifth month of the same year, which might be a later modification. See Li Tianhong, "Han Wendi xingqi gaige," 66–67. Recent studies suggest that the day for submitting a memorial for creating the law could be earlier than the day of its imperial approval. A Qin ordinance from the Yuelu Academy collection specifically stipulates that the original date of submission of the memorial (*zouri* 奏日) should be later modified to the date when the memorial is passed down with an imperial approval (*xiari* 下日). See Li Jingrong and Chen Songchang, "The Promulgation of Law in Qin and Western Han China," *Early China* 44 (2021): 399–400. Is it possible that the bamboo text and Ban Gu refer to two different dates: the date on which the original ministers' proposal was submitted and the date on which the imperial approval was granted?

d This section was misplaced under Yan Shigu's annotation in the current version of the *History of Han*, as suggested by Zhang Jianguo.

TABLE 3 Comparison of the ministers' proposal preserved (*cont.*)

Hujia caochang bamboo slips 1606, 1554, 1553 and 1557	<i>Hanshu</i> 23.1099–1100
<p>4) 隸臣妾盈二歲，為司寇；為司寇一歲，及司寇二歲，皆免為庶人。 [For those sentenced to be made] bond servants or bondwomen, upon fulfilling two years of service, make them robber-guards. After serving as robber-guards for one year, and [for those who are sentenced to be made] robber-guards, upon two years of service, in every case, release them [from the status of hard laborers] and make them freedmen.</p>	<p>隸臣妾滿二歲，為司寇；司寇一歲，及作如司寇^e二歲，皆免為庶人。 [For those sentenced to be made] bond servants or bondwomen, upon fulfilling two years of service, make them robber-guards. [After serving as] robber-guards for one year, and [for those who are sentenced to] work like robber-guards, upon two years of service, in every case, release them [from the status of hard laborers] and make them freedmen.</p>
<p>5) 其日未備亡，及諸有罪命鬼薪白粲以上，不自出…… For those [hard laborers] who have not yet served their terms and absconded, as well as those who have committed crimes and have been certified the sentence of being made gatherers of fuel for the spirits or white-rice sorters or above, and do not turn themselves in ...</p>	<p>其亡逃及有罪耐以上，不用此令。前令之刑城旦舂歲而非禁錮者，如完為城旦舂歲數以免。 For those [hard laborers] who have absconded and committed crimes [matching] being shaved or above, do not apply this ordinance.^f For those who have undergone mutilating punishments and been sentenced to the term of years as</p>

e In other newly-excavated texts, a female robber-guard is referred to as “working like a robber-guard” (*zuoru sikou* 作如司寇), whereas the term *sikou* could be a generic term referring to both male and female robber-guards. Li Tianhong suspects that the *History of Han* might have omitted a mark composed of two horizontal lines, which indicates that the *sikou* in the *zuoru shikou* should be read twice, separately referring to female and male robber-guards. See Zhang Xinchao 張新超, “Shilun Qin Han xingfa zhong de sikou xing” 試論秦漢刑罰中的司寇刑, *Xinan daxue xuebao* 西南大學學報 2018.1, 173–83; Li Tianhong, “Han Wendi xingqi gaige,” 64.

f The current version of the *History of Han* appears to extend the scope to which the ordinance did not apply. Specifically, it includes crimes that matched being made bond servants or bondwomen and robber-guards, as both often involved the shaving of facial hair (*nai* 耐). However, it remains uncertain why and when this change was made.

TABLE 3 Comparison of the ministers' proposal preserved (*cont.*)

Hujia caochang bamboo slips 1606, 1554, 1553 and 1557	<i>Hanshu</i> 23.1099–1100
	wall-builders or grain-pounders before [the promulgation of] the ordinance, if they are not restricted [from becoming officials], ^g release them [from the status of hard laborers] as per the term of years for those being left intact and made wall-builders or grain-pounders.

g The mention of *jingu* 禁錮 (restricted [from becoming official]) is not seen in the newly-released Hujia caochang bamboo text but only in the current version of the *History of Han*. Ban Gu records elsewhere that Emperor Wen highly valued the quality of “incorruptness” (*lianjie* 廉潔). During his reign, officials held liable for illicit profit were restricted from holding any official positions. See *Hanshu* 72.3077. An ordinance related to this issue is preserved in the “Ordinances on Merit” (*Gongling* 功令) from Zhangjiashan Tomb No. 336. See *Zhangjiashan Han mu zhujian*, 112, slips 92–94.

years of service.³³ This aligns with the text recovered by Zhang Jianguo and is consistent with Emperor Wen's edict on the reform, which ordered criminals to be released from their hard labor status and become freedmen upon completion of their designated term of years (*younian ermian* 有年而免).³⁴ Although neither the texts preserved on the bamboo slips nor the *History of Han* mention the penalty of facial-hair shaving (*nai*) applied to the gatherers of fuel for the spirits or white-rice sorters, bond servants or bondwomen, and

33 Barbieri-Low has argued that *shuren* was “a legal status assigned to former slaves, convicts, bond servants, or mutilated females who had been released from these degraded statuses.” They were not yet ordinary commoners (*min* 民). Full freedom came only to their children. See Anthony J. Barbieri-Low, “Becoming Almost Somebody: Manumission and its Complications in the Early Han Empire,” in John Bodell and Walter Scheidel ed., *On Human Bondage: After Slavery and Social Death* (Malden, MA: Wiley-Blackwell, 2016), 122–35. However, the status of *shuren* might have changed in the Hujia caochang materials. Chen Wei argues that it might have been incorporated into the status of *shiwu* 士伍 (member of the rank and file). See Chen Wei, “Hujia caochang Han jian lü dian yu Han Wendi xingzhi gaige,” 81. This would require further study, and it can only be proven once more materials are released.

34 *Hanshu* 23.1098.

TABLE 4 The grading of hard labor punishment and illicit profit regulated by Emperor Wen's 167 BCE reform

Grades of illicit profit	Grades of hard laborer punishment	Terms
六百錢以上 600 cash or above	髡鉗為城旦舂 To have head shaved bare, be collared and made a wall-builder (male) or a grain-pounder (female)	4 + 1 + 1 = 6 years
不盈到五百 Not a full [600] to 500 cash	完為城旦舂 To be left intact and made a wall-builder (male) or a grain-pounder (female)	3 + 1 + 1 = 5 years
不盈到四百 Not a full [500] to 400 cash	耐為隸薪白粲 To undergo shaving and be made a gatherer of fuel for the spirits (male) or a white-rice sorter (female)	3 + 1 = 4 years
不盈到三百 Not a full [400] to 300 cash	耐為隸臣妾 To undergo shaving and be made a bond servant (male) or a bondswoman (female)	2+1 = 3 years
不盈到二百 Not a full [300] to 200 cash	耐為司寇 To undergo shaving and be made a robber-guard	2 years

robber-guards, it was regularly enforced along with those hard labor sentences below the grade of intact wall-builders or grain-pounders in both transmitted and excavated texts. Therefore, we can reconstruct the five grades of hard labor punishment with their terms, as shown in Table 4, which perfectly match the punishment for illicit profit between 600 and 200 cash.

4 Contextualizing the 167 BCE Legal Reform within the Qin-Han Transition

How should we understand the changes in the grading of illicit profit that occurred during Emperor Wen's 167 BCE reform? While it is noteworthy that the early Han legal system inherited much from the Qin dynasty, we must

also recognize that Emperor Wen's legal reform did not appear solely due to his compassionate reaction to Tiyang's case. The transition from the Qin to the Han systems had already commenced during the reign of Emperor Hui of Han. In 192 BCE, during the fourth year of his reign, Emperor Hui abolished the notorious Qin law that prohibited the circulation of impractical books (*xieshu lü* 挾書律).³⁵ Following his death, his mother, Empress Dowager Lü, continued the reformation process of Qin law. In 187 BCE, she abolished the "penalty of extinction of the three sets of relatives" (*sanzu zui* 三族罪) and the "Ordinances on Evil Talk" (*yaoyan ling* 妖言令).³⁶ This process gained further momentum during Emperor Wen's reign, which seems to be consistent with Sima Qian's 司馬遷 comments: "Emperor Xiaowen indeed favored the teachings of *xingming*" 孝文帝本好刑名之言.³⁷ In his first year in power (180 BCE), he repealed all the "statutes and ordinances regarding impoundment of children [and wives], and [family] mutual liability" (*shounu xiangzuo lüling* 收帑相坐律令).³⁸ In the following year (179 BCE), he abolished the "penalty of defamation and evil talk" (*feibang yaoyan zi zui* 誹謗妖言之罪),³⁹ and in the fifth year (176 BCE), he abolished the "Ordinances of Thievish Casting Coins" (*dao zhuqian ling* 盜鑄錢令).⁴⁰ In the twelfth year (168 BCE), he "abrogated all the passes and stopped using passports" (*chuguan wuyong zhuan* 除關無用傳).⁴¹ Although some changes had been resumed immediately due

35 See *Hanshu* 2.90.

36 See *Hanshu* 3.96 and 23.1104.

37 *Shiji* 121.3117. For *xingming* 刑/形名 as one of the essential "Legalist" concepts, see John Makeham, "The Legalist Concept of *Hsing-Ming*: An Example of the Contribution of Archaeological Evidence to the Re-Interpretation of Transmitted Texts," *Monumenta Serica* 39 (1990–1991), 87–114. The silk manuscripts discovered from Mawangdui 馬王堆 Tomb No. 3 reveal the close association between the so-called Legalist tradition and Huang-Lao Daoism. See Robin D.S. Yates, *Five Lost Classics: Tao, Huang-Lao, and Yin-Yang in Han China* (New York: Ballantine Books, 1997), 20–25.

38 While both the "Annals of Emperor Wen" in the *Records of the Grand Scribe* and *History of Han* states that the repealing of the impoundment law was enforced in first year of Emperor Wen (180 BCE), the "Treatise on Punishments and Legal Principles" in the *History of Han* claims that it was in the second year (179 BCE). See *Shiji* 10.418–19; *Hanshu* 4.109 and 23.1104–5. There are also slight differences in the wordings of the *Shiji* and *Hanshu* versions, see Hulsewé, *Remnants of Han Law*, 396–98 n. 239. Nevertheless, the new policy seems to have been once implemented, as evidenced by the absence of regulations on impoundment and the removal of the term "impounded person" (*shouren* 收人) in the legal manuscripts recovered from Zhangjiashan Tomb No. 336.

39 See *Shiji* 10.424; *Hanshu* 4.118.

40 See *Shiji* 30.1419; *Hanshu* 4.121.

41 See *Hanshu* 4.123.

to the urgent demand of stability, we see that the early Han rulers intended to distance themselves from Qin influence.⁴²

Considering the legal statutes from Zhangjiashan Tomb No. 336 and Hujia caochang Tomb No. 12, which include regulations on “court attendance” (*chao* 朝), suggests that this process may have started even earlier.⁴³ These statutes shed light on the incorporation of court rituals into the legal framework, which were purportedly established by Shusun Tong 叔孫通 during the reign of Emperor Gaozu 高祖 (r. 202–195 BCE). These rituals involved the regional lords (*zhuhou* 諸侯) and their officials observing specific protocols when having an audience with the emperor at the early Han court every tenth month. It is apparent that these rituals were not inherited from the Qin, as the First Emperor (*Shi Huang* 始皇, r. 247–210 BCE) adopted Li Si’s 李斯 proposal to discontinue the observance of the Zhou way of granting land to offspring during a court debate in 221 BCE.⁴⁴

Furthermore, the 167 BCE reform should be contextualized alongside other policies enforced during Emperor Wen’s reign, particularly the abolishment of the impoundment of children and wives in 180 BCE. Without this earlier abolishment, Tiyang would likely have been impounded due to her father’s sentence, and the story between the humane Emperor and filial daughter would never have unfolded, nor would the reform initiated by this story. As a result of this reform, the penal system transitioned from lifelong hard labor and mutilation

42 In 164 BCE, the penalty of extinction of the three sets of relatives was reinstated as a punishment for Xinyuan Ping’s 新垣平 fraudulence. The reinstatement is now evident in the Hujia caochang materials, which are dated a few years after the 167 BCE reform. Furthermore, in 154 BCE, the passes were restored, and the use of passports was resumed in response to the rebellion of seven regional kingdoms. Additionally, Yan Shigu, the Tang annotator to the *History of Han*, inferred that the penalty for evil talk might have been reinstated after 195 BCE, which is why Emperor Wen had to abolish the same rule again in 179 BCE. See *Shiji* 10.430, 11.442; *Hanshu* 4.128, 5.143, 4.118. Scholars also propose that the law of family mutual liability, which was abolished in 180 BCE, was the same law that called for the punishment of the three sets of relatives through extinction, which had already been repealed in 187 BCE. This implies that the very same law was repeatedly reinstated and repealed during the early Han period. See Mizuma Daisuke 水間大輔, “Han chu sanzuxing de bianqian” 漢初三族刑的變遷, *Xiamen daxue xuebao* 廈門大學學報 2012.6, 65–70; “Kojiaikusōjō Kankan ‘Ritsuryō’ to Buntei keisei kaikaku,” 3–10.

43 *Zhangjiashan Han mu zhujian*, 211–16. There are only a few numbers of statutes on “court attendance” from the Hujia caochang collection released so far. See Jingzhou bowuguan and Wuhan daxue jianbo yanjiu zhongxin, *Jingzhou Hujia caochang Xi Han jiandu xuan-cui*, 194; Xiong Jiahui 熊佳暉, “Hujia caochang Hanjian ‘chaoli’ suo jian Wendi shiqi de chaoyi yu zhiquan” 胡家草場漢簡《朝律》所見文帝時期的朝儀與職官, *Jiangnan kaogu* 江漢考古 2023.2, 70–78.

44 See *Shiji* 6.238–39.

to fixed-term hard labor penalties.⁴⁵ This change saved significant resources and expenses required to maintain hard laborers within the governmental system. It aligns with Emperor Wen's release of Emperor Hui's concubines from the palace in 168 BCE and his manumission of government slaves in 160 BCE.⁴⁶ These measures, as suggested by Miyake Kiyoshi 宮宅潔, aimed to reduce costs to support military operations against the Xiongnu.⁴⁷ Additionally, it is worth mentioning that the Hujia caochang regulation on illicit profit seems to place more emphasis on fines than the Zhangjiashan regulation. As seen in Table 2, for the grade of "not a full 220 to 110 cash," the matching punishment is being shaved and made bond servants or bondwomen. However, for the equivalent grade in the Hujia caochang regulation, "not a full 200 to 100 cash," the matching punishment is being fined eight *liang* of gold. Considering Miyake's above-mentioned suggestion, the changes in the punishment from Zhangjiashan to Hujia caochang regulations for the lower grades of illicit profit might have been prompted by the need to raise funds for the northern campaign against the Xiongnu.

In light of these considerations, I suggest that the legal reform enforced in 167 BCE, along with the changes in the grading of illicit profit, can be better understood within the broader context of the Qin-Han transition. This transition was a long process that began in the early Han period and was ultimately achieved during the reign of Emperor Wu (r. 141–87 BCE). This transition does not necessarily reflect the traditional narrative of Qin brutality versus Han humanity presented by Han propaganda,⁴⁸ but it does provide another

45 It is also worth mentioning that scholars have been debating whether or not the concept of fixed-term hard labor sentences (*xingqi* 刑期) had already been introduced to the Han system before 167 BCE. Considering the frequent promulgation of amnesty (*she* 赦), Tomiya Itaru estimates that most hard laborers would only have to serve for a maximum of five or six years before the 167 BCE reform. Even though there was not a coherent fixed-term hard labor punishment until then, Hsing I-tien 邢義田 argues that the application of terms of years in hard labor punishment might have appeared long before 167 BCE. See Tomiya, *Shin kan keibatsu seido no kenkyū*, ch. 3; Hsing I-tien 邢義田, "Cong Zhangjiashan Hanjian Ernian lüling chonglun Qin Han de xingqi wenti" 從張家山漢簡《二年律令》重論秦漢的刑期問題, in Hsing I-tien 邢義田 ed., *Zhiguo anbang: Fazhi, xingzheng yu junshi* 治國安邦：法制、行政與軍事 (Beijing: Zhonghua shuju, 2011), 101–24.

46 See *Hanshu* 4.123 and 4.130.

47 Miyake Kiyoshi 宮宅潔, *Chūgoku kodai keiseishi no kenkyū* 中国古代刑制史の研究 (Kyoto: Kyōto daigaku gakujutsu shupankai, 2011), 149–58.

48 Emperor Wen of Han is frequently portrayed as a humane and merciful ruler, in contrast to the brutal and oppressive Qin dynasty rulers. However, this portrayal was primarily a strategy of image building. Nonetheless, it helped legitimize the significant changes that Emperor Wen made to the old system, which was largely inherited from the Qin. For a

perspective for scholars to reconsider the assumption that “Han continued the institutions of the Qin.”

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reassessment of Emperor Wen's image as portrayed in transmitted texts, see Sato Tatsuro 佐藤達郎, “Zenkan no Buntei: Sono Kyo zō to Jitsuzō” 前漢の文帝—その虚像と実像—, *Kodai bunka* 古代文化 52.8 (2000), 12–18.

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