Legal institutions of Shang and Zhou

Reading:
Liu, Yongping, *Origins of Chinese law*, ch. 1, ch. 4
Book review (see pp. 650-653 of this file)
Select texts from *Shu Jing*
Historical background
Shu Jing, Kang Gao
Regarding the feudal state of Wei □ (which was placed under the rulership of Kang Shu), see this.

1. Human sacrifice

Yin dynasty	Wu Ding(1254-1197), about 60 years	Zu Geng – Wen Wu Ding (1206-1110), about 90 years	Di Yi – Di Xin (1121 – 1041), about 60 years
Human sacrifice	5418	1950	75
Highest number of humans killed per ceremony	1000	300	30
Number of tortoise shells where human acrifice is mentioned.	379 pieces	277 pieces	32 pieces

Huang Zhanyue, *A General Treatise on Ancient Human Sacrifice* (□□□□□□□□)

2. Pre-Zhou punishments (wu xing □□, etc.)

- Emperor Xun showed proper punishments. He used

banishment to mitigate five punishments, used whips as official punishments, used sticks for educational punishments, used fine for redemption punishments. If the offence was not deliberate and resulted from a mishap, pardon was granted. If the offence was deliberate, the offender was executed. (Shang Shu, Xun Dian 6) 象以典刑，流宥五刑，鞭作官刑，扑作教刑，金作贖刑。眚災肆赦，怙終賊刑 (尚書, 舜典 6) Emperor Xun said, “Listen Gao Yao. Barbarian tribes are harrassing us and there are robbers, murderers, insurgents and traitors. As the judicial officer, you should apply five punishments to ensure their submission.” (Shang Shu, Xun Dian 12) 帝曰 皋陶，蠻夷猾夏，寇賊姦宄。汝作士，五刑有服 (尚書, 舜典 12)
According to the law of Yin, anyone who throws ashes on a public road shall have his hands cut. (Han Fei Zi, Nei
Zhe Shuo I, 33) 殷之法，棄灰于公道者斷其手 (韓非子, 內儲說上 33)
People of Yin used the five punishments to deal with traitorous crimes. By inflicting mutilation, they admonished evil deeds. (Han Shu, Dong Zhong Shu Zhuan
19) 殷人執五刑以督姦，傷肌膚以懲惡 (漢書, 董仲舒傳 19)

3. Textual evidence of Shang punishments

If you do not obey the words which I have spoken, I will
put you and your children to death; and you will find no forgiveness. (Shang Shu, Tang Shi [admonitions of king
Tang of Shang addressed to the members of Shang zu]) 爾不從
誓言，予則孥戮汝，罔有攸赦 (尚書, 湯誓 2)

Without regard to whether you are close to me or not, those who commit crime shall be executed and those who demonstrate good deeds shall be praised. If the country prospers, it is thanks to you all. If the country does not prosper, it is all due to my fault in administering the punishments (Shang Shu, Pan Geng [the speech of king Pan Geng of Shang to his people]) 無有遠邇，用罪伐厥死，用德彰厥善。邦之臧，惟

□□□□□□□□□□□□□□□□ (□□, □□□ 7)

4. Shang society

- zu (□): gens? cf. Marcus Tullius Cicero, Gaius Julius Caesar, Marcus Licinius Crassus (nomen gentilicium)
- zu yi (□□)
- zu yin (□□)
- zu customary law, clan law

5. Shang and its neighbours

- Shang: a loose federation of numerous zu (clans) with blood ties
- Fang: neighbouring “states”, with no blood tie with clans making up Shang

6. Zhou punishments (wu xing, continued)

- If there are doubts, five punishments should be commuted to five fines. If there are doubts, five fines should also be commuted. (Shang Shu, Lu Xing 7) □□□□□□□□□□□□□□ (□□, □□ 7)
- When Tatooing should be commuted, fine of 100 Huan must be applied. When cutting off the nose is commuted, the fine should be doubled. When cutting off the foot is

commuted, the fine should be more than double depending on the seriousness of the offence. When castration is commuted, fine of 600 Huan must be applied. When capital punishment is commuted, fine of 1000 Huan should be applied. (Shang Shu, Lu Xing 7)
In total, 3000 offences are subject to five punishments.
五刑之屬三千 (Shang Shu, Lu Xing 7)

7. Punishments (刑) and virtue (德)

Officers controlled the people with appropriate punishments and taught them to uphold virtues with respect (Shang Shu, Lu Xing 3) 士制百姓于刑之中，以教祗德
He occupies the high throne with dignity, shining brightly to the four corners of the kingdom. He does not
fail to abide by the virtues and thus ensures the appropriate application of punishments. He thus leads the people so that they can all be upright (Shang Shu, Lu Xing 3) 穆穆在上，明明在下，灼于四方，罔不惟德之勤，故乃明于刑之中，率乂于民棐彝
Those who harm others would be placed in remote prison
with hard labour. With clear punishments, let them have
a sense of shame. 凡害人者，置之圜土而施職事焉，以明刑恥之(周禮, 秋官司寇 57)
A noble man uses punishments in clear and prudent manner
君子以明慎用刑 (易經, ䷷旅, 象傳)

8. Tian Ming Mi Chang 天命靡常 (靡 =無)

尙書, 湯誓 (Tang Shi) King Tang of Yin’s speech (on the occasion of attacking Jie 桀 of Xia 夏)

王曰：「格爾眾庶，悉聽朕言，非台小子，敢行稱亂！有夏多罪，天命殛之。

King said, “Come, ye multitudes of the people, listen
all to my words. It is not I, the little child, who dare
to undertake a rebellious enterprise; but for the many

crimes of the sovereign of Xia, Heaven has given the charge to destroy him.

- □□□□□□□□□□□□□□□□(the sovereign of Xia is guilty, and as I fear the emperor in Heaven, I dare not but punish him.)

- □□, □□ (King Wu □□ of Zhōu□'s speech on the occasion of attacking King Zhòu □□ of Yin □)

- □□□□□□□□□□□□□□□□□□□□The iniquity of Shang is full. Heaven gives command to destroy it. If I did not obey Heaven, my iniquity would be as great.)

- □□□□□□□□□'Just as Heaven showers benefits to people, the sovereign should reverently carry out Heaven's commands.)

- □□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□The ancients have said, "He who soothes us is our sovereign; he who oppresses us is our enemy." This solitary fellow Shou, having exercised great tyranny, is your perpetual enemy.) King Zhou (□□) = Shòu (□) or Shòudé (□□)

- □□, □□

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  Profound was king Wen; Oh! continuous and bright was his feeling of reverence.

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  Great is the appointment of Heaven! There were the descendants of [the sovereigns] of Shang; —

  □□□□□□□□□□

The descendants of the sovereigns of Shang, Were in number more than hundreds of thousands;

□□□□□□□□□

But when the ruler in Heaven gave the command, They became subject to Zhou.

□□□□□□□□□

They became subject to Zhou. The appointment of Heaven is not constant.

…

□□□□□□□□□□

The doings of high Heaven, Have neither sound nor smell.

□□□□□□□□□□

Take your pattern from king Wen, And the myriad regions will repose confidence in you.(□=□)