

# Legal institutions of Shang and Zhou

Reading:

Liu, Yongping, *Origins of Chinese law*, [ch. 1 \(file size: 2.1 Mb\)](#), [ch. 4 \(file size: 2.0 Mb\)](#)

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 魏 (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* (商周人祭通考)

## 2. Pre-Zhou punishments (wu xing 五刑, 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) 官罰，用條以教，用金以贖，不故，而誤，赦之。故，而殺之。 (尚書， 12)

- 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) 帝辛曰：「聽皋陶。蠻貊之民，靡不反側，殺人，放火，賊害，強盜。汝作司寇，惟用五刑，以服三木。」 (尚書， 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) 刑者，罰之威也。 (韓非子， 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) 殷人用五刑以治天下。 (漢書， 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]) 惟爾有罪，無赦。 (尚書， 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]) 惟爾有罪，無赦。 (尚書， 7)

## 4. Shang society

- zu (子): gens? cf. Marcus Tullius Cicero, Gaius Julius Caesar, Marcus Licinius Crassus (nomen gentilicium)
- zu yi (子夷)
- zu yin (子音)
- 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) 五刑之屬三木 (五刑, 五刑 7)
- When Tattooing 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. 三千之屬 (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) 商書呂刑第三

- 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) 商書呂刑第三
- Those who harm others would be placed in remote prison with hard labour. With clear punishments, let them have a sense of shame. 商書呂刑第三(刑, 罰 57)
- A noble man uses punishments in clear and prudent manner 商書呂刑 (刑, 罰, 罰)

## 8. *Tian Ming Mi Chang* 天命靡常 (天 = 天)

- 商書, 周書 (Tang Shi) King Tang of Yin's speech (on the occasion of attacking [Jie of Xia](#))
- 商書周書天命靡常The iniquity of Shang is full. Heaven gives command to destroy it. If I did not obey Heaven, my iniquity would be as great.)
- 商書, 周書 (King Wu of Zhōu's speech on the occasion of attacking [King Zhòu of Yin](#))
- 商書周書天命靡常The iniquity of Shang is full. Heaven gives command to destroy it. If I did not obey Heaven, my iniquity would be as great.)
- 商書周書'Just as Heaven showers benefits to people, the sovereign should reverently carry out Heaven's commands. )

- 古語有之曰：『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 (紂) = Shòu (紂) or Shòudé (紂德)
- 周, 文  
 周文王  
 Profound was king Wen; Oh! continuous and bright was his feeling of reverence.  
 周文王  
 Great is the appointment of Heaven! There were the descendants of [the sovereigns] of Shang; –  
 周文王  
 The descendants of the sovereigns of Shang, Were in number more than hundreds of thousands;  
 周文王  
 But when the ruler in Heaven gave the command, They became subject to Zhou.  
 周文王  
 They became subject to Zhou. The appointment of Heaven is not constant.  
 ...  
 周文王  
 The doings of high Heaven, Have neither sound nor smell.  
 周文王  
 Take your pattern from king Wen, And the myriad regions will repose confidence in you.(周=文)