

“Xing” as Discipline or Punishment? A Study of Chinese Legal Philosophy through the Lens of the Shang to Han Dynasties

Xiaoyan Ren*

Keystone Academy, Beijing 100000, China

*Corresponding author: Xiaoyan Ren, xiaoyanren0112@gmail.com

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Abstract: This study traces the evolution of penal systems from the Shang to the Han dynasties—spanning nearly two millennia (21st century BCE to 10th century CE)—to explore the transformation of “Xing” (punishment) from a theocratic instrument of violence to a secular system of discipline. Employing a long-term and interdisciplinary perspective, the research reveals that during the Shang and Zhou periods, “Xing” was primarily a form of corporal punishment functioning as a tangible symbol of divine retribution. In the Qin and Han empires, the implementation of household registration and collective liability laws transformed individual lives into quantifiable units of governance, forming an early prototype of what Michel Foucault termed the “political economy of the body.” The study argues that each transformation in penal form was fundamentally driven by the interplay between human needs (e.g., labor reproduction, the awakening of ethical subjectivity) and conceptions of justice (from “divine punishment for the guilty” to “penal moderation as ideal”). At its core, the process reflects a shift in technologies of power, from overt violence to subtle mechanisms of control. Departing from traditional dynastic-period frameworks, this research constructs a systematic long-term narrative of penal transformation from Shang to Han and proposes an analytical model of “bodily punishment to disciplining the soul.” It offers a new lens for understanding traditional Chinese legal philosophy and provides historical insight into the modern tension between punitive power and the protection of individual rights.

Keywords: “Xing”; Discipline; Human need; Conception of justice; Michel Foucault

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1. Introduction

“Xing” was, historically speaking, the use of state violence to preserve the order of society in China. Punishment essentially meant a combination of rituals and laws that embodied ritually authorized and law-enforced sacrificial violence (e.g., the use of force in ritual activities, the authority to wage war) in conjunction with secularized coercion (e.g., rites and rituals, written legal codes) on the daily behavior of social actors. Above all, “Xing” served as an instrument for the political elite to maintain political legitimacy and the social hierarchy. Yet owing to the historical changes over different eras, the notion, objective, and forms of “Xing”, as well as its corresponding concept of law, kept being continually adjusted to the ideological quarrel and institutional reform^[1]. Thus, the historical data from the Shang through the Han

dynasties in this paper is taken as the case to focus on, and based on Marshall Foucault's disciplinary and punishment model, this paper will discuss how changes in human need and transformative justice thinking played roles in "Xing"'s modality and its legal philosophy shift.

2. Shang Dynasty

2.1. Forms of "Xing" in the Shang Dynasty

Regarding corporal punishments ("Rou Xing"), first, the tattooing punishment ("Mo Xing") entails carving characters on the face and applying ink, belonging to a lifelong shame punishment. Its oracle bone script form, through the combination of a knife and a face, depicts the trajectory of the knife carving on the face; second, the nose-amputation punishment ("Yi Xing") entails cutting off the nose. Its oracle bone script form is derived from the combination of the character for nose "Zi" and "Dao" for knife, showing the scene of cutting the nose with a knife in an ideographic manner; third, the foot-amputation punishment ("Yue Xing") entails severing the foot or sawing off the leg. Its oracle bone script form, with the structure of a saw and a human foot, highlights the dynamic of the tool severing the leg; fourth, the castration punishment ("Gong Xing") entails destroying the genitals. Its oracle bone script form is not yet fully determined, and scholars speculate that it is a composite pictograph of a knife and male genitalia, seen in records of handling captives in sacrificial oracle inscriptions ^[2].

As for death penalties ("Si Xing"), first, the beheading punishment ("Fa Xing") entails decapitation and public display. Its oracle bone script form symbolizes an axe cutting off a human neck, often used in conjunction with the character "Qiang" referring to captives; second, the mincing punishment ("Hai Xing") entails chopping a person into meat paste. Its oracle bone script form, through the combination of a vessel and meat pieces, depicts the scene of a corpse being crushed in a vessel ^[3]; third, the burning punishment ("Fen Xing") entails execution by fire. Its oracle bone script form adopts a structure of fire above a person, picturing flames engulfing the human body ^[4]. The above details further interpret and clarify the manifestations of "Xing" in the Shang dynasty. Although the limited space prevents an exhaustive list, their cruelty and the treatment of the punished are sufficiently clear.

2.2. Why is the Shang Dynasty's "Xing" in this form?

2.2.1. Concept of justice in the Shang Dynasty

As the only channel between gods and mortals, the Shang ruler was called the "Lower Emperor." All important matters of the state, including how to punish and how to punish, required divination to the "Supreme Emperor," natural deities, and ancestors. Oracle bone inscriptions record this type of occasion, such as, "Vesting the king in his capture of somebody is not disastrous?" "Vesting this person?" ^[5]. This suggests punishment and killing were not willful and arbitrary doings of the king and people, but a "righteous" act carried out in accordance with that of heaven and the ancestors' will to rid "impurity," the spirits' desire, for good weather and longevity of the dynasty. Thus, the bloodbath of ritual human sacrifices had legitimate religious authority in their cognition, for it was a kind of way to maintain the cosmic law. The use of male slaves and woman slaves to sacrifice to ancestors in the oracle bones was very widespread; this is a violent, extreme form of the notion of divine justice.

2.2.2. Human needs in the Shang Dynasty

The Shang dynasty, as a regime established and maintained by violence, constantly faced internal and external challenges. Internally, there was the potential resistance of the vast oppressed classes; externally, there were continuous wars with surrounding states ^[6]. Therefore, a penal system with strong deterrence was indispensable ^[7]. Corporal punishments that publicly display bodily mutilation, such as nose amputation ("Yi Xing") and foot amputation ("Yue Xing"), had the core function of threat. A person with a cut-off nose or chopped-off feet struggling to survive in the marketplace was itself a moving, living advertisement of terror, constantly reminding people of the consequences of defying rule. Moreover, oracle

bone inscriptions contain numerous records of the Shang king divining about pursuing escaped slaves (referred to in the inscriptions as “Chen,” “Qie,” “Chu Ren,” etc.). For example, “Divine: Does the king order Duo Yin to pursue?” which means “Divination: Does the king order Duo Yin to pursue the escapees?” This indicates that preventing slave escapes was also one of the Shang king’s considerations in punishment (Zhou). Therefore, the punishments of the Shang dynasty satisfied the most fundamental political needs of the ruling group, serving as a violent tool to maintain rule and deter resistance, and a key means to control and sustain the slave labor force.

3. Zhou Dynasty

3.1. Forms of “Xing” in the Zhou Dynasty

“Xing” of Zhou was a hierarchized system of public and corporeal punishments. Its core were the “Five Punishments” (“Wu Xing”) (namely, cruel corporal punishments and death penalty), ie., tattoo-punishment (“Mo Xing”), nose-off-punishment (“Yi Xing”), foot-off-punishment (“Yue Xing” or “Fei Xing”), castration-punishment (“Gong Xing”), and death penalty (“Da Pi”). The “Shang Shu • Lü Xing” reports: “when both parties are available, the judge listens to five pleading. Five pleading, if it is just and honest, then penalize it using Five Punishments,” suggesting the Five Punishments were to be the last verdicts of judicial trials, intended to deter by the irreversible physical mutilation and public humiliation of the body. Besides the Five Punishments toward individuals, the notion of “punishment” (an assemblage of things that the Zhou people regarded as belonging to the punishment domain) was also extended to state actions such as warfare. The text “Guo Yu • Lu Yu” illustrates this exact hierarchy: “the great crime which uses weapon (war); the second which employs axe and yue (symbols of killing, or power in killing); middle punishments which use knife and saw (all implying killing or corporal punishment); second which use drill and chisel (all implying tattooing or maiming or other corporal punishment); light punishment which employs whip and rods, all by intimidation of the population.” In this place the “armor and weapons” (warfare) was considered to be the most stringent penalty. At the same time executions of punishment highlighted openness” the greater ones they set out in the plain, the lesser ones on the piazzas and courts; (they) sought to give an example to the people (“to inspire fear among the people”) and show the justice that has no hiding, to point to the fearful consequences. So, the Zhou dynasty “punishments” were not only physical punishment to humans but also social control, deterrent rituals.

3.2. Why is the Zhou Dynasty’s “Xing” in this form?

3.2.1. Concept of justice in the Zhou Dynasty

The morphology of the Zhou penal system had been strongly influenced by the specific idea of justice, whose nucleus was the same principle of “establishing virtue and cautious punishments” (“Ming De Shen Fa”). The principle originated in the consideration of the first Zhou monarchs of the fall of Shang, so that the penal power had to be bound to the realm of moral government. The “Shang Shu • Kang Gao” clearly noted: “It was your illustrious father, King Wen, who was able to illustrate virtue and be cautious in punishments,” urging that rulers must illustrate virtue and employ punishments cautiously, thus making “punishments” serve “moral instruction” rather than arbitrary violence. Under this principle of justice, the Zhou pursued proportionality between crime and punishment and procedural fairness in action. For instance, in the “Zuo Zhuan,” it is stated, the principle “punishment of a crime must have a limit; if the offender complies, release him,” which shows punishment’s properness, the purpose of which is to reincorporate the wrongdoer into order, not killing. When the case is not certain, the “Shang Shu • Lü Xing” suggests, “If with uncertainty for tattooing punishment, release and the fine shall be hundred huan.” This has been read as meaning that when in doubt, a fine can stand in place of corporal punishment, reflecting the inception of a benevolent mood towards “doubting a crime, commute to a fine.”

3.2.2. Human needs in the Zhou Dynasty

The shape of Zhou punishments, to a large extent, concretely embodied the concrete demands of various social strata. As

far as the agricultural people—the basic establishment of the social structure was concerned, the role of punishment was of course aimed at keeping basic social order in production, living, property security, as illustrated in the text of “Ying Yi” bronze in western Zhou dynasty, which recorded “Mu Niu case,” the text recorded that an official with surname Mu Niu who was sued by the superior due to herdsman dispute. The magistrate Bo Yangfu, after interrogations and oath-taking, finally executed a flogging order, a tattoo punishment order, and a fine for Mu Niu (Wei). From this very process of prosecution, it has been shown that the official power of the state was involved in the mediation in civil litigation and property defined by specific penalties, to satisfy the need of the members of the society for property definition and protection. But we should recognize as well that the redemption system produced a form of inequality by economic privilege, because while nobles and the rich might be able to evade corporal punishment by paying a fine in copper, for commoners and slaves, there was no escape from a mutilating flogging. In practice, then, the “punishment” proved a major instrument in sustaining privilege and in reproducing social rankings. At the same time, the redemption system (the account appears in the “Shang Shu • Lü Xing” saying “If in question for tattooing punishment, pardon, and fine up to one hundred delays” also offered the aristocrats a relatively elastic way to raise fiscal income while preserving the law.

On the other hand, the penal system strongly served the core need to consolidate the patriarchal hierarchical order. The rulers internally (toward the Zhou people) emphasized education through “virtue” and “ritual,” while externally (toward barbarians), they focused on applying harsh punishments, thereby reinforcing the “distinction between Hua and Yi” and internal identity. For example, the inscription on the “Xi Jia Pan” states: “If they dare not obey the command, then immediately punish and attack... They dare not enter to trade illicitly with the Man; if they do, they will also be punished.” In this inscription, the Zhou dynasty rulers punished were not the Huaxia people, but the “Huaizi” tribes. This differential treatment strengthened the concept of the “distinction between Hua and Yi,” satisfying the ruling group’s need to maintain their own cultural and bloodline superiority and consolidate the core ruling circle.

4. Qin Dynasty

4.1. Forms of “Xing” in the Qin Dynasty

Qin laws, as a penal system, had the notable features of severity, codification and symbolic shame. Their overall function was to scare and regulate people’s lives and social order by the ultimate physical punishment and shame of society. These provisions included several types: the harshest form of capital punishment – besides killing someone – would stress public execution and defacement of the corpse to show maximum terror, subdivided into the sub-category of punishments referred to as “Shu Si” in which the disfiguration and mutilation of the physical body is part of the process, including, among others, “Yao Zhan” (cutting in two) Charioteering or Dismemberment “Che Lie” or “Zhe” and “Xiao Shou,” (decapitation and exposure of the severed head on a high pole) ^[8]; and the “Non-Shu Si” category of the “kill and public exposure corpse” punishments, such as “Qi Shi” (beheading and public exposure in the market) and “Ding Sha” applied to particular categories of offender. Recorded in slip 113 of the Legal Questions and Answers: “Ding Sha” means drowning someone alive in water. Secondly, corporal punishments “Rou Xing” inflicted irreversible physical harm or permanent marking for humiliation, such as the Foot-amputation punishment “Yue Xing,” as well as shame punishments like head-shaving “Kun,” beard-shaving “Nai,” and complete shaving “Wan,” which destroyed one’s appearance.

Thirdly, forced labor punishments “Tu Xing” converted criminals into state-controlled labor, an important source for large-scale projects, such as “Cheng Dan Chong” (men building walls, women pounding rice), “Gui Xin Bai Can” (providing fuel and rice for sacrifices) and “Li Chen Qie” (penal enslavement to the government), also involving the family, as seen in slip 125 of the Legal Questions and Answers: “If someone steals, his wife and children become slaves to the officials” ^[9]. Furthermore, property punishments (such as “Zi,” fines and “Shu,” redemption) and collective liability laws (“Lian Zuo”) further extended the punitive network to the economic sphere and social relations. Records from the Shuihudi Qin bamboo slips, such as the regulations in the Statutes on the Director of Works regarding the assessment of the labor of wall-builders: “Calculate the labor of a complete-term wall-builder or rice-pounder for one year, and record it.

If [the laborer's height? does not reach six "chi," calculate it accordingly"]^[9], demonstrate how Qin law, through detailed classification and management, made punishment a precise tool the functions of punishment, deterrence, and economic extraction.

4.2. Why is the Qin Dynasty's "Xing" in this form?

4.2.1. Concept of justice in the Qin Dynasty

This punitive nature of Qin punishment can be explained by the Legalist theory of instrumental rationality as justice "using punishment to eliminate punishment." This kind of justice, which was qualitatively different from the Confucian concept of benevolent rule ("Ren Zhi"), considered that human nature is evil in nature, and people should not only have the threat of great laws and cruel punishments in order to not violate the laws to achieve the perfect realm, "to use the punishment to abandon the punishment." Its slogan was "severe penalty for trifling evil," that is, trifling crimes were punished heavily as to bring the efficiency of punishment to the maximum level. The justness of punishment rested neither in retributive or educative proportionality, but solely in its practical efficiency as a weapon of administration. Although the legal documents of the Shuihudi Qin slips do not explicitly refer to Legalist aphorisms, they all carry this spirit.

The extensive application of collective liability laws, as indicated in slip 197 of the Legal Questions and Answers: "Five households form one jia; they must monitor each other for theft and banditry, otherwise they are collectively liable"^[3], aimed not at achieving justice in individual cases but at achieving social control at minimal cost through binding responsibility, a typical design of instrumental rationality. The law also imposed strict constraints on officials, as seen in slip 65 of the Legal Questions and Answers: "A accuses B of theft; B denies it. The official fails to investigate thoroughly. B instead accuses A of false accusation. A's argument is exhausted; B is not guilty of theft. How should A, B, and the official each be sentenced? The official should be fined two sets of armor"^[10]. This shows that from the Legalist perspective, officials were also merely tool components needing precise control to ensure the efficient operation of the state's legal machinery. Therefore, the cruel forms of Qin punishment were the direct product of this concept of justice that viewed punishment purely as a tool of governance, emphasizing its deterrent "utility."

4.2.2. Human needs in the Qin Dynasty

The forms of Qin punishment directly responded to the two most pressing practical needs of the ruling group, centered around Qin Shi Huang, after unification: political control and economic extraction.

From a political perspective, the emerging empire that feared rebellions by the territories of six states had to quickly acquire absolute power to manage such extensive areas of the new empire and a myriad of diverse people. Severe law and violent punishment were the fundamental instruments: to replace the six states of old laws through standard Qin law and put up cruel punishment display(Abandonment in the Market, Head-displaying) to demonstrate their power, to tell all people that state power can't be infringed; collective liability law wove a network of families and neighbors into supervision, so that the social relations is complementary with each other. and the crackdown on political dissidents to drive such threats off completely. From an economic perspective, Qin Shi Huang's grand construction (e.g., the Great Wall, his mausoleum) required tremendous labor and state wealth. His penal system's design skillfully exploited this by making use of forced labor punishments (e.g., Wall-building and Rice-pounding, Fuel-gathering and Rice-husking, as the de-facto state-produced labor force of convicts, "essentially without any cost"). Their meticulous scheduling and control of work hours, meals, and implements, as recorded in the slips, revealed that is what constituted the substantive "nature" of human exploitation, so the mode of punishment in the Qin era's regulations revealed very well the practical demand of autocracy, that is, the state and the ruling groups in need of unreservedly using law and punishment to ensure resource extraction by centralizing power through autocracy^[11].

5. Han Dynasty

5.1. Forms of “Xing” in the Han Dynasty

In the thirteenth year of Emperor Wen of Han (167 BCE), after the edict was issued to abolish corporal punishments (“Rou Xing”), the penal system of the Han dynasty shifted to a new system centered on flogging punishment (“Chi Xing”), forced labor punishment (“Tu Xing”), and the death penalty (“Si Xing”). Specifically, in form, the flogging punishment replaced the tattooing punishment (“Qing Xing,” also known as “Mo Xing”) and the nose-amputation punishment (“Yi Xing”) from the old corporal punishments. The “Han Shu • Xing Fa Zhi” records: “Those who should be tattooed are instead shaved bald, fettered with an iron collar, and made to serve as wall-builders (“Cheng Dan”) or rice-pounders (“Chong”) ^[12]. This means shaving the head, wearing an iron collar around the neck, and performing labor such as building city walls or pounding rice. The nose-amputation punishment (cutting off the nose) was also changed to the flogging punishment, but initially, the high number of lashes led to frequent deaths; during Emperor Jing’s time, it was successively reduced to three hundred and then two hundred lashes to alleviate this flaw. The “Han Shu • Xing Fa Zhi” records: “Flogging is meant to teach them, but when flogged up to five hundred, many die” ^[13]. The penal system became more standardized, forming a hierarchical sequence: the “Han Shu • Xing Fa Zhi” records: “Those sentenced to ‘complete punishment’ (“Wan Xing”) to serve as wall-builders or rice-pounders, after serving a full three years, are reduced to the lighter labor of ‘ghost fuel-gatherers’ (“Gui Xin”) or ‘white rice-huskers’ (“Bai Can”). After serving one year as ghost fuel-gatherers or white rice-huskers, they are further reduced to ‘male slaves’ (“Li Chen”) or ‘female slaves’ (“Li Qie”). After serving one year as male or female slaves, they are finally pardoned and become commoners” ^[12]. That is, convicts sentenced to “complete punishment” to perform hard labor like “wall-building” or “rice-pounding” would, after serving their sentence for three years, be demoted to lighter labor such as “ghost fuel-gathering” or “white rice-husking”; after serving one more year, they would be further demoted to the status of “male slave” or “female slave”; and after another year of service, they would ultimately be pardoned as ordinary commoners.

5.2. Why is the Han Dynasty’s “Xing” in this form?

5.2.1. Concept of Justice in the Han Dynasty

In fact, the scheme of Han punishments was the integration of the Confucian theory of justice called “De Zhu Xing Fu” and the Legalist theory of “Xing Sheng Min Jing” with a feature of punishing with both education and deterrence. The concept of ruler by virtue, which favored education rather than punishment, is directly embodied in Emperor Wen of Han’s Edict on the Abolition of Corporal Punishments (“Chu Rou Xing Zhao”): “The law has three corporal punishments, and that crime is not stopped... Abolish the corporal punishments” ^[14]. It proposed to replace cruel punishment with benevolent governance and reach moral enlightenment via the function “teaching” of punishment flogging and the reformative function of punishment of forced labor. The Legalist instrumentalism stressed the stable-maintaining function of punishment and inherited Han Feizi’s concept that severe punishment can pacify the people. The Han law also kept up the Qin system’s heavy penalty for gang crimes, as we can see in “Zhangjiashan Han Bamboo Slips • Ernian Lüling” provision: “The provision on the gang robbery says: If five people steal, and the illegitimate things cost one coin or more, sever their left feet, and tattoo them to be the ones who build the walls” ^[15], which strongly punished gang crimes to keep social order. These two principles of equity are in apparent contradiction yet under one mold: Confucianism dominated public policies (such as the symbolic benevolence of abrogating mutilating punishments), and Legalism dominated technical matters (such as the differentiated inflictions of floggings and deterrent configuration of banishment and penal labor), being a dual construction of “external virtue and hidden punishment” (“Yang De Yin Xing”). Even though Emperor Wen’s abolition of the various punishments of the body was advanced as rule by virtue, practices like dying by death from flogging and converting the castration from cutting the right foot down to death also revealed the residual leg of punitive severe punishment which embodied the Han dynasty’s tenuous situation of replacing punishment with virtue but meanwhile still dealing with the conflict between utopian edification and real punishment.

5.2.2. Human needs in the Han Dynasty

The penal system in the Han dynasty was designed in direct response to the demands of various class groups; it is a class nature and functional coexistence; the demands of the ruling class lie in maintaining and legitimacy for ruling: nobility and officials were given legal privileges. “Ernian Lüling • Ju Lü” states that: “Those of rank, whose crime is equal to that of commoner, shall alone have a reduction of rank by one degree; officials of six hundred piculs and over, whose crime is deserving of punishment by the means of nai and over, shall have them requested imperial decision”^[16], i.e. crime of nobles from the top to be mitigated, high officials need to be reviewed by the emperor to prevent damage to strength; on the other hand, the necessity of reinforcing imperial power necessitated that the punishment of crime against the sovereign is executed abandonment in the market (“Qi Shi”), the deterrent method to ensure strength. Survival and redemption of commoners’ wants for punishments system of compulsory labor: male and female slaves (“Li Chen Qie”), and ghost fuel gatherers (“Gui Xin”), and so on, have served as functions of economic punishments. The food standard of food is fixed by the “Ernian Lüling”: “If male and female slaves to serve in the public works, men were given two dou per day, women one and a half dou”^[1], though less than three dou per normal person per day, was enough for basic life survival; redemption punishment (“Shu Xing”) and the self-surrender system were even able to use money for fines and commutations of punishment. utilization which is appropriate to the economic strength of the commoners and resolving the social conflicts. Vulnerable individuals’ needs were fulfilled by moral care to preserve order and stability: the moral punishment system safeguarded the elderly, children, and pregnant women. The “Ernian Lüling” has the following records: “Above seventy and below fifteen years of age, and pregnant women, who should be arrested, are all arrested without the use of shackles”^[17], which reflects Confucian benevolent governance’s humanistic concern for the last tier of people. Above designs reflect that the penal system of Han, on one hand, provided a satisfaction of elites’ privilege and, on the other hand, through partial absorption of commoners and disadvantaged people, maintained social control and social order stability.

6. Conclusion

Thus, to a large extent, the penal evolution of the Shang Dynasty to the Han Dynasty is the history between human needs and justice. In the beginning, corporal punishment relied on the body (physical) and sought through corporal punishment to imbue the body with divine and the king’s power. It was the means for primitive conquest and to demonstrate the king’s monopoly. From the Shang and Zhou dynasties onward, the discourse of “punishing in the name of heaven” had been intertwined with the vertical hierarchy of the patriarchal order. The body-based punishments served not just the purposes of deterrence but also that of signaling the status differences, fully verifying Foucault’s idea, “the body is the immediate object of power.” By the Spring and Autumn and Warring States era, the Legalists put the weapon onto the punishment to make the means of “punishment eliminates punishment.” In the collective-liability systems, persons were distributed into atoms, while punishment became a module of the war machine that exposed a bare instrumental rationality set to merely constrain. A discipline-logic began to gain ground in the Han Dynasty. When Emperor Wen abolished corporal punishments, his action, seemingly in response to brutal punishments, is ultimately a deeper reflection of the two awakenings of the individual as labor unit and moral agent. The systematization of penalties by flogging and forced labor was a turning point from punishment of the body to punishment of the soul. To this extent, the new regimen of fixed-term sentences gave way to the reintegration of the convict in society; hard labor and the imparting of skills were engineered for the rehabilitation of the criminal’s social potential; redemption and sentence reduction practices pointed to a very practical recognition of the aptitude of human beings to change. Hierarchical exile system, based on matching sentence and community management of the exile destination, brought the punishment “death of the sinner” to the punishment “form docile subject,” showing how the power implements the “government of the souls” using the instrumentality of time regulation and space isolation. At the same time, the idea of justice that “heaven punishes the guilty” in the previous Shang dynasty of “theistic rationality” transformed into “institutional rationality”. The punishment that the king monopolized and the logic of interpretation behind it were sanctioned; justice became synonymous with punishment. The idea of “illustration

of virtue and caution in punishments” of the Western Zhou era attempted to merge the supernatural with the benevolent and upright rule, while capital punishment was a brutal promotion of ritual and hierarchy. After the Qin dynasty promoted the so-called “punishment without rank” theory of the Legalism school, the privileges of the nobility were discarded, but the punishment was abused by the tyrannical autocracy, which revealed in a microcosm that the instrumental rationality broke human dignity. Only under the guidance of Confucianism in the Han dynasty’s principle of “emphasizing virtue rather than punishment”, can the Confucian ethics was truly deeply rooted in law enforcement, punishment, in addition, was no longer an objective tool for mere retribution but a way to restore relations and cultivate moral individuals who conform to “loyalty, filial piety, benevolence, and righteousness,” later, punishment was no longer reduced to a part of justice itself, but became a way to approach justice.

In summary, the concept of justice shifted from theocratic retribution to institutional rationality and moral cultivation, while human needs evolved from basic deterrence and labor control to demands for social harmony and individual redemption, collectively driving the transformation from overt bodily punishment to subtle disciplinary mechanisms that mold the soul. The philosophical evolution of punishment from corporal forms to discipline reflects not only the enduring tension between power and human nature but also a dynamic debate on the essence of justice.

7. Evaluation

The contribution of this study is that we have finally constructed a long-term analytical outline from the Shang to the Han dynasty, and we are able to catch the change over a long distance and analyze the causes. We put forward a rather new understanding model for the evolution of “punishment” (“Xing”) from “punish the body to discipline the soul”. Through a combination of Foucault’s theory of disciplinary power and the indigenous Chinese “rites-punishment” (“Li-Fa”) concept, the current paper supplies a ground for dialogue between Chinese and Western philosophies regarding the philosophic background of ancient penal concepts. The theoretical fusion still leaves room for discussion in its rigor. For example, Foucault’s “discipline”, founded on the modernity of the West, as well as the moral education machine latent in the idea of “virtue prevailing over punishment” (“De Zhu Xing Fu”) in the Han dynasty, there are some differences that need to be demarcated with greater caution. Additionally, although the thesis referred to the primary sources like the oracle bone writing and bamboo writing, the universality of the thesis on some concrete crime form may be just restricted by the incompleteness of historical materials. In brief, the thesis has its degree of inspiration and achieves the argumentation with rather solid evidence but still has its deficiencies and could be taken to refinement.

Disclosure statement

The author declares no conflict of interest.

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