

From Pre-Qin Documents to Novel of Manners in Ming-Qing: A Brief Study on the Evolution of Legalism in Ancient China Society from a Literary Perspective

Zongyi Hu

*School of Literature and Journalism, Sichuan University, Chengdu, China
gloriahu0417ynwa@163.com*

Abstract. Ancient texts like the Book of Rites, Rites of Zhou, and The Book of Lord Shang provide crucial references for modern scholars studying traditional legal thought led by the political ideologies of Confucianism and Legalism. Meanwhile, the Ming-Qing period novel *Awakening of the World's Marriages* exposes the absurdities of judicial practices during that era, offering profound insights and serving as a cautionary tale for future generations to avoid repeating historical mistakes.

Keywords: The Book of Rites, The Book of Lord Shang, *Awakening of the World's Marriages*, Cautious punishment, Severe penalty

1. Introduction

As an important document recording the ritual system of pre-Qin society, the Book of Rites provides crucial references for modern scholars to study the institutions of pre-Qin society, the ruling philosophy under Confucian political propositions, as well as the daily life, customs, and folkways of the people. Among them, the records in "Wang Zhi" (Royal Regulations) of the Book of Rites and the Rites of Zhou outline the ideal framework of social legal system under Confucian ethical concepts in the pre-Qin period.

On the other hand, The Book of Lord Shang presents an institutional conception of governing society through laws under the Legalist thought of severe punishments and strict laws. Compared with the humanistic color of cautious punishment in the Book of Rites and Rites of Zhou, it reveals a harsh and cold side. The implementation of relevant laws in the State of Qin also aroused widespread public resentment.

Novels of manners represented by *Awakening of the World's Marriages* sharply reflect various drawbacks in judicial practice during the Ming and Qing dynasties, prompting profound reflection: in an era with a more improved legal system, why did it still repeat the mistakes of history?

2. Caution and severity: a comparison of penalty thoughts in the Book of Rites and The Book of Lord Shang

As the two most influential ideological schools in the pre-Qin period, Confucianism and Legalism formed distinct contrasts in their considerations and attitudes when formulating penalties. The former advocated "benevolent governance" and "kingly way", which was reflected in the humanistic thought of cautious punishment in criminal law; while the latter advocated "rule by law" and "hegemonic way", creating extremely harsh legal provisions such as "unified punishment" and "joint liability" in criminal proceedings.

2.1. Confucian cautious punishment and humanism

According to the records in "Wang Zhi" of the Book of Rites, the Minister of Justice was the highest official in charge of criminal law in the state, specializing in rectifying criminal codes, clarifying crimes and laws, and hearing various lawsuits, which is called "rectify criminal laws and clarify penalties to hear lawsuits [1]". In the Rites of Zhou, there is a more detailed description of the position of Minister of Justice. Specifically, the duties of the Grand Minister of Justice mainly include the following two parts:

First, establish and promulgate the "Three Codes" to govern the state.

The Rites of Zhou·Autumn Official·Grand Minister of Justice records: "The duty of the Grand Minister of Justice is to establish the three codes of the state to assist the king in punishing the state and interrogating the four quarters." That is, on the basis of considering whether the state has violated the law for the first time, different degrees of severe penalties are adopted according to the severity of the offense, which are the laws targeting the state. It can be seen from "use severe punishments to govern chaotic states" that the most severe laws were applied to vassal states that rebelled against the superior. We can infer that the purpose of promulgating the "Three Codes" was to maintain the stability of the suzerain political order and safeguard the supreme authority and leadership position of the Son of Heaven.

Second, correct the common people with the "Five Punishments":

First is Ye Xing (Field Punishment): promote meritorious service and correct laziness; second is Jun Xing (Military Punishment): emphasize obedience to orders and correct dereliction of duty in defense; third is Xiang Xing (Village Punishment): uphold virtue and correct unfilial piety; fourth is Guan Xing (Official Punishment): value ability and correct neglect of duties; fifth is Guo Xing (State Punishment): encourage sincerity and correct violence [2].

This judicial system for governing the people was implemented on the basis of distinguishing the social identities of the people, that is, dividing people into five categories according to social division of labor. Through the "Five Punishments", it was ensured that all people performed their duties, abided by rituals and laws, and contributed to the normal operation of national and social life. It can be seen from these five criminal laws governing the people that in the social legal concept under the Confucian ideological system, the function of laws was not only to prohibit rebellion and maintain social stability, but also to promote moral rituals. Law became an important tool to promote the construction of ritual and musical civilization.

If maintaining the stability of the ritual and musical society was the purpose of implementing this penalty system, then cautious punishment was the essence of this penalty thought. According to the records in "Wang Zhi" of the Book of Rites, the thought of cautious punishment in judicial practice was realized and guaranteed through complex case trial procedures and refined case handling principles. After the judgment was drafted, the case review stage had to go through layers of review

and supervision by the Minister of Justice, Grand Minister of Justice, Three Dukes, and the Son of Heaven. Even if one was guilty, the Son of Heaven had to judge whether the "Three Mitigations" (three types of mitigation) were applicable.

The "Three Mitigations", recorded in Rites of Zhou·Autumn Official·Minister of the People, refer to three types of crimes that can be given lenient sentencing: first, those who commit crimes out of ignorance of the law; second, those who commit crimes due to negligence; third, those who commit crimes because they forget the law. This record also mentions the "Three Pardons", that is, criminals in the following three situations can be pardoned by the monarch: minors, the elderly, and the mentally challenged.

These restrictive conditions and influencing factors on the final sentencing reflect the "cautious punishment" thought in the Confucian concept of rule by law, which originated from the people-oriented and humanistic thought advocated by Confucianism. It can be seen that in the ideal social legal system of Confucianism, legal principles must take into account human feelings. Cases should be judged not only from the perspective of objective facts such as legal provisions, but also with reference to human factors such as social ethics and individual circumstances when sentencing.

This people-oriented judicial concept is expressed as "ethics is the basis for acquittal" in the judicial practice of modern society. The statement in "Wang Zhi" of the Book of Rites that "for doubtful cases, widely consult the public; if the public is in doubt, pardon the accused" can be regarded as the embryonic form of the modern legal principle of "presumption of innocence". It is obvious that the thought of cautious punishment directly affects the handling principles and attitudes adopted by social legislators, law enforcers, and judicial officers when facing the objective fact of "doubtful crimes".

The concise language in "Wang Zhi" of the Book of Rites is sufficient for modern people to understand the general outline of the judicial procedures and principles at that time, and also retains the distinctive feature of "cautious punishment" in the social legal concept under Confucian ethics. From a small perspective, the legal conception at that time has provided many useful experiences for future generations. On the other hand, these laws have reflected distinct hierarchical colors. The so-called "Punishments do not apply to nobles; rituals do not extend to commoners" means that promoting rituals and music and each performing their duties are essentially to safeguard the interests of the upper nobles who formulated the laws. The division of social status under the patriarchal clan system has further solidified the class differences in feudal society.

2.2. Shang Yang and legalist "unified punishment" and "joint liability"

If the penalty system in pre-Qin Confucian classics represented by the Book of Rites and Rites of Zhou still retained a trace of humanistic care for ordinary people through the thought of cautious punishment and the "Three Mitigations" despite its essence of safeguarding the interests of nobles, then the Legalist penalty thought reflected in The Book of Lord Shang is the best interpretation of "law knows no mercy".

Regarding how to establish the penalty system, Shang Yang put forward the principle of "unified punishment":

The so-called unified punishment means that there is no hierarchy in punishment. From ministers, generals down to officials and commoners, anyone who disobeys the king's order, violates national prohibitions, or disrupts the superior's system shall be sentenced to death without pardon. Those who have made meritorious achievements in the past but committed mistakes later shall not have their punishment reduced. Those who have done good deeds in the past but committed offenses later shall not have the law mitigated. Even loyal ministers and filial sons who have made mistakes must

be punished according to the severity of their offenses. Officials who abide by the law and perform their duties but fail to enforce the king's law shall be sentenced to death without pardon, and the punishment shall extend to their three clans. If an official of the Zhou court knows of an offense and reports it to the superior, he shall be exempted from punishment. Regardless of his status, he shall inherit the official position, title, land, and salary of his superior.

Therefore, it is said: severe punishments and joint liability for crimes will make the people dare not attempt to violate the law. If the people dare not attempt to violate the law, then there will be no need for punishment.

The prohibitions of the ancient kings—assassination, cutting off people's feet, and branding people's faces—were not intended to harm the people, but to prohibit evil and prevent mistakes. Therefore, there is no better way to prohibit evil and prevent mistakes than severe punishments. If punishments are severe and offenders are sure to be caught, the people will not dare to attempt to violate the law, so there will be no criminals in the state. Since there are no criminals in the state, it is said: clear criminal laws will not require execution [3].

In summary, Shang Yang's thought of "unified punishment" mainly includes the following key points: first, no hierarchy in punishment, that is, all people below the monarch, regardless of their kinship or status, shall be punished according to the same standard if they violate the criminal law; second, severe punishments and joint liability to deter the people from daring to violate the law easily. According to Shang Yang's vision, the people would not dare to break the law for fear of severe punishments, and if no one breaks the law, there is no need to use punishments. Therefore, "unified punishment" would eventually lead to "no punishment". It does not sound very cruel—for ordinary people who abide by the law, no matter how harsh the punishment is, it will not affect their lives.

However, in order to promote governing the country through rewards and punishments and internalize the laws into the people's internal code of conduct, Shang Yang proposed an incentive policy: "If an official of the Zhou court knows of an offense and reports it to the superior, he shall be exempted from punishment. Regardless of his status, he shall inherit the official position, title, land, and salary of his superior." If an informed person reports and exposes acts of rebellion against the superior, he will not only be exempted from punishment himself, but also inherit the title, salary, and land of his superior as a reward. Title symbolizes the improvement of social status, salary means a stable source of income, and land is a valuable means of production. When the ruler tries to consolidate the hierarchical system to maintain social stability while putting such a shortcut in front of the people, allowing them to see the hope of changing their destiny, it is difficult for human nature of pursuing interests to resist such a temptation. This is undoubtedly Pandora's box—once opened, it can no longer be controlled by the issuer of the law. The social atmosphere is bound to decline step by step under the temptation and drive of interests. Neighbors, colleagues, and friends will all regard each other as pledges of allegiance that can be offered up at any time for their own futures. This is the real collapse of rituals and music, and the state will no longer be a state.

It can be seen that the conception of punishment in *The Book of Lord Shang* is quite reckless and unrealistic. However, it should be affirmed that although the thought of "no hierarchy in punishment" means that officials below the monarch are punished equally with commoners for breaking the law, and such equality under inequality can hardly be called true equality, it still has the shadow of the spirit of equality in modern legal thought and was quite advanced in the society at that time.

By the Ming Dynasty, compared with the pre-Qin period, the written laws were already very complete, and efforts were made to strike a balance between cautious punishment and severe laws.

However, when implemented in folk judicial practice, it was quite different from the orderly vision envisaged by the legal provisions.

3. The collapse of the thought of cautious punishment: chaos reflected in novels of manners

Chapter 51 of the long novel of manners *Awakening of the World's Marriages* in the late Ming and early Qing dynasties, "Criminal Cheng Escapes Like a Fish from a Cauldron; Convict Woman Falls into a Trap Like a Cunning Rabbit", has such a plot: a cook named Liu Gong had a bad character and caused trouble all day long. Every time after cooking, he insisted on sitting with the guests at the banquet, much to the embarrassment of Juren Cai, who was hosting the banquet. Juren Cai sent him to the prison of Wucheng County, where he was flogged twenty times with a wooden staff and put in a cangue for twenty days. "Only then was his old habit of sitting at the banquet broken [4]".

Before discussing the legality of the county magistrate's disposal, it is necessary to clarify the nature of the punishments of "twenty floggings with a wooden staff" and "cangue for twenty days" and the specific circumstances of their implementation.

"Twenty floggings with a wooden staff" should be the popular term for staff punishment among the people, referring to a corporal punishment (physical punishment) that beats the back, buttocks, or legs of the offender with implements such as thorny vines or wooden planks, and is mostly "executed with clothes removed" to inflict physical pain on the offender. Since the Sui Law, staff punishment has been included in the ancient "Five Punishments" system—"bamboo beating, staff punishment, penal servitude, exile, death [5]"—as a punishment slightly heavier than the lightest punishment, bamboo beating. The cangue punishment, also known as cangue with public exposure, was created by Emperor Zhu Yuanzhang of the Ming Dynasty. It is a punishment that uses a wooden square frame to trap the neck (and sometimes the hands) as a punishment. With its obvious humiliating nature, it has become a typical example of humiliating punishment in ancient China.

As the name suggests, the main purpose of humiliating punishment is not to inflict physical harm on the offender, but to torture him mentally and destroy his self-esteem and personality. The humiliating nature of cangue punishment mainly comes from its execution method—"wearing the cangue in public". The offender's movement is restricted, and he is intuitively distinguished from ordinary people in appearance, making his criminal identity public; "public exposure" further imposes mental humiliation on the offender. The Cross Street where Liu Gong was exposed was a first-class street in ancient towns, with a constant flow of people, serving as the main traffic artery and the lifeblood of town life. Ordering the offender to wear the cangue in the most crowded street to expose him to the public undoubtedly maximized the humiliating nature of this punishment and also served as a warning to others to the greatest extent. Even a person as arrogant as Liu Gong did not dare to repeat his old tricks at banquets after wearing the cangue in Cross Street for twenty days. It can be seen from this the mental torture he endured during the twenty days and the deterrent power of the cangue punishment.

Cook Liu Gong suffered such a severe punishment just because of improper behavior at the banquet. The severity of his behavior was obviously extremely disproportionate to the harshness of the punishment he received. The emergence and execution of this absurd sentencing undoubtedly sacrificed judicial justice. This also reflects various absurd chaos in judicial practice guided by traditional experience.

4. Perverting justice for personal gain: reflection on traditional experience

Undoubtedly, legal concepts such as the thought of "cautious punishment" and "presumption of innocence" in "Wang Zhi" have set a people-oriented legal model for legislators and judicial officers of later generations. On the other hand, affected by the limitations of the times such as the pre-Qin suzerain politics and the division of social strata based on the enfeoffment system and patriarchal clan system, the legal concepts reflected in "Wang Zhi" inevitably collapsed in the later judicial practice. The example of Liu Gong in *Awakening of the World's Marriages*, which is based on the real society of the late Ming Dynasty, is typical.

4.1. The crime does not merit such punishment: the evil of arbitrary sentencing in Ming judicial practice

The Ming Dynasty established a complete set of judicial procedures, including three major links: litigation, trial, and execution, which can be further divided into many small links such as acceptance, detention, court hearing, and judgment. The Ming Law stipulated that officials must list the specific legal provisions referenced in the judgment on the review form to demonstrate the legitimacy and rationality of the judgment "based on law". However, after reviewing the entire Great Ming Code, no legal basis for severely punishing Cook Liu was found. If we insist on legally convicting Cook Liu for his behavior, the only provision that can be reluctantly applied by analogy is Article "Village Drinking Ritual" in Volume 12 of Great Ming Code: "Ritual Laws · Etiquette and Systems": "For all village elders ranking by age and village drinking rituals, there are fixed forms; violators shall be given fifty bamboo beatings [6]." From the discussion in the first part, we already know the nature of bamboo beating—the lightest corporal punishment among the Five Punishments. Even if Liu Gong's behavior at the banquet did violate the fixed form of the village drinking ritual and violated the ritual law, the punishment he should receive was only "fifty bamboo beatings". Therefore, the more severe staff punishment and cangue punishment he actually suffered were unjustifiable hardships.

In this case, the legal provisions were nothing but a dead letter, reflecting the common phenomenon of arbitrary sentencing in the grass-roots judicial practice of the Ming Dynasty. The so-called arbitrary sentencing refers to the act of officials not following the law when judging cases, and imposing lighter penalties for serious crimes (such as simplifying criminal cases into civil disputes) or heavier penalties for minor crimes due to accepting bribes from parties concerned or personal likes and dislikes. During arbitrary sentencing, the personal will of the presiding judge overrides objective legal principles, harming the interests of the parties concerned (which can be either the plaintiff or the defendant) and judicial justice.

4.2. The petty bourgeoisie: victims of the game of local political forces

The arbitrary sentencing by the presiding judge was not limited to the case of Liu Gong in the book. The reason why Liu Gong encountered such an illegal judgment was closely related to the personal selfishness of the county magistrate.

The official handling Juren Cai's case was the county magistrate of Wucheng County, with the official rank of a seventh-rank magistrate. He was the only regular official in Wucheng County holding the appointment document issued by the Ministry of Personnel, and had legal authority. However, the political forces in Wucheng County were not limited to the institutional forces led by the magistrate. The group of gentry and scholars represented by Juren Cai Fengchun was also a

powerful force that could not be ignored. The government represented by the magistrate and the local gentry not only had consistent interests, but also inevitably had conflicts. In order to achieve the balance of various forces and maximize common interests, many local officials would avoid conflicts with the gentry.

The county magistrate of Wucheng County severely punished Cook Liu not only to calm Cai Fengchun's anger, but also as a gesture of goodwill to this newly promoted Juren and the group of gentry and scholars in Wucheng County to which he belonged. This had formed a broad consensus in the grass-roots judicial governance at that time, and was an unspoken rule between local governments and gentry. "The ideal Confucian world is one where 'the upper class' and 'the lower class' each keep their proper places, and 'the lower class' such as cooks, as the most humble servants, cannot be compared with farmers, merchants, and craftsmen [7]". As a beneficiary of the feudal hierarchical system, it was inevitable for Juren Cai to consciously defend the existing social hierarchical order. Both the county magistrate, the Juren, and the gentry belonged to the landlord class, but they were divided into different strata. In local affairs, the county magistrate had to show some respect to the gentry, so they naturally had the same interest demands in the matter of Cook Liu.

In the book, there was a natural oppositional relationship between the landlord class such as bureaucrats and gentry and the common people such as the petty bourgeoisie and humble servants, which was determined by the land ownership system. The interest conflicts between them were prominent manifestations of interest contradictions in class society. Under the strict hierarchical system of feudal society, the cook, who was inferior in status, had no right to defend himself (he didn't even have the awareness to defend himself). Public power had become a tool for local officials to engage in irregularities and curry favor with the gentry.

5. Conclusion

From the experiences of Liu Gong and other characters in the book, we can see how abused power, human favors, and class differences have a negative impact on the judicial operation of a feudal society with a strict hierarchy, harm the legitimate rights and interests of vulnerable groups, and trample on judicial justice.

As a cook, Liu Gong's status as a humble servant destined him to be in a naturally disadvantaged and controlled position in front of Juren Cai and the county government, which represented the highest legal authority in the local area, with no ability to defend himself. In pursuit of maximizing common interests, there had long been a tacit understanding between the county magistrate and the local gentry and scholar-officials. In this way, the status advantage was extended to judicial governance, making the court a place for human favors and interest exchanges, and public power a tool and fig leaf for personal gain.

As the grass-roots administrative and judicial organs of the Ming Dynasty, prefectural and county yamen dealt mostly with the largest groups of commoners and humble people. If local officials engaged in corruption and perverted the law, they would really bring harm to the local people and arouse widespread public resentment. Combined with other plots in the book, such as the victims Ji Du and his son suing Chao Yuan but being falsely accused instead, the yamen runner Wu Xiaochuan skillfully extorting money from both plaintiffs and defendants, Xue Zaidong accompanying his sister Su Jie to file a lawsuit but being flogged twenty times and put in a cangue for a month by the county magistrate on the charge of abetting... Countless muddle-headed officials judging muddle-headed cases fully reflect the chaos and corruption of local official administration in the mid-to-late Ming Dynasty.

Although the main purpose of Xi Zhou Sheng (the author) in designing this plot was to highlight the "evil" of Liu Gong's overstepping the distinction between nobles and commoners, thereby enhancing the practical rationality of his final tragic end, any reader who understands the injustice he suffered in the trial of Wucheng County Yamen can hardly help but feel sympathy for this "hateful" evil cook who also had pitiful aspects. This once again shows that *Awakening of the World's Marriages* has successfully shaped vivid group portraits of small figures from the middle and lower classes of society in the mid-to-late Ming Dynasty, confirming what Xu Zhimo said: "*Awakening of the World's Marriages* is a social sketch of an era [8]".

Law is an important symbol of modern civilization. Formulating good laws for the world will bring governance to the world; formulating good laws for a country will bring governance to the country. From the traditional legal thoughts of Confucianism and Legalism, we can still draw on the ancient wisdom that is useful for us. In the mirror of the judicial experiences and lessons of ancient society, we can continuously reflect on ourselves and be alert to not repeating the mistakes of history.

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