

Conflicts and Compromise between Legal Authority and Ethical Ideas: From the Perspectives of Revenge in Han Times*

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It was in the Ch'in dynasty (221-207 B.C.) that the written laws, instead of feudal rituals, were carried out all over China. After succeeding Ch'in, Han rulers (206 B.C. -220 A.D.) adopted Ch'in laws on the one hand and tried to restore ancient morality on the other, thus causing conflicts between laws which represented the legal authority of the government, and ethical ideas which represented ancient moral standards of the people. One of these conflicts was the custom of revenge.

There are two major points presented in this paper. First, instead of getting all lineage members involved, from the 3rd century B.C. on, Chinese people had ideologically started to confine the object of revenge to the slayer himself; and the obligation of revenge to limited family members.

Second, from the beginning of the empire, the Chinese government endeavored to suppress the revenge custom, which did not stop at least till the 3rd century A.D. The major interpretation to this should have been lay in the two self-contradictory policies that the Han government promoted: the legal authority, and the ethical ideas. With the promotion of filial piety and fraternal love, on the one hand, and the growing Confucian influence on governmental benevolence, both on modifying the punishment and on official

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mentality, on the other, avengers kept being pardoned and revenge cases kept happening. Till the 3rd century A.D. the government finally issued compromises to certain revenge cases which had been sanctioned in the ancient Classics, ie. avenging family members such as one's parents and brothers.

- I . Introduction
- II . Revenge as a Part of Ancient Rites
 1. Fragmentary Records of Lineage Blood Feud
 2. Revenge Theories in Classics of Rites
- III . Law and Society in Han Times: A Glimpse at the Historical Background
 1. Han Legal Authority
 - (1) Confucian Influence in Modifying the Law
 - (2) Han Legal Process
 2. Han Social Values
 - (1) Imperial Promotion of Confucian Values
 - (2) The Development of Ethical Ideas
- IV . Types of Revenge Cases in Han Period
- V . Endeavour and Compromise of the Government
 1. The Attitude toward Revenge Cases in Law
 2. The Outcomes of Revenge Cases and Their Significances
 3. Compromise of the Government
- VI . Conclusion

I . Introduction

Ch'in, the first bureaucratic empire, emerged in 221 B.C., thus bringing China into a new era. It was then that the written laws, instead of feudal rituals, were carried out all over the country. However, Ch'in was short-lived; 15 years later, Han took its place. Han rulers adopted Ch'in laws on the one hand and tried to restore ancient morality on the other, thus causing some conflicts between laws which represented the legal authority of the government, and ethical ideas which represented ancient moral standards of the people. One of these conflicts was the fashionable behaviour of revenge.

The idea and practice of revenge in fact existed in ancient societies all over the world. Greeks, Hebrews, Arabs, and Indians all shared the custom of revenge. Both English people, till the 10th century, and Italians, till the 17th century, preserved the habit.¹ Even today, in tribal societies such as Montengrins in East Europe (Boehm, 1984), Bedouin Arabs in the Middle East (Peter, 1975: 9-27), and the Nuer in Southern Sudan (Evans-Pritchard, 1940), one can still find the phenomena of revenge.

In practice, many societies shared the belief that not only the original slayer should be sought out, but also his family member. In some lineage societies, all lineage members of the slain felt the responsibility of revenge, and they had the right to kill anyone of the slayer's lineage (Ch'ü, 1982: 85). In some other societies, only the close relatives of the slain had the obligation of revenge, and they could kill not only the slayer, but also his close relatives for revenge. Take the Nuer for example. The kinsmen of the slain might try to kill the slayer, but they had a right to kill any of his close agnates. They must not kill sons of the mother's brother, the father's sister, and the mother's sister because they did not belong to the slayer's lineage. It was true, in a patrilineal society like this, that only the close agnatic kin of both sides were immediately and directly involved, but feuds between persons belonging to

different tribal sections would sooner or later influence the interrelations of the whole communities to which they belonged and lead to further fighting between the communities concerned and to a multiplication of feuds between them (Evans-Pritchard, 1975: 158-159). There were, however, some societies that the object of revenge was not the slayer himself; rather, it was his relative whose blood relation with him was the same with that between the avenger and the avenged. That is to say, if someone had killed your father, you should have killed his father instead of him to get revenge (Ch'ü, 1982: 85-86). We can usually find remnant records of each type of lineage feud mentioned above in Chinese history, however, from at least the 3rd century B.C. on, Chinese people had ideologically started to confine first, the object of revenge to the slayer himself; second, the obligation of revenge to limited people.

However, during the process of establishing an empire, the state in China, as well as in other civilizations, endeavored to suppress the revenge custom which would otherwise render the society out of control. In some societies, such as Scotland in the 16th and 17th century, the state did achieve major success in uprooting the revenge custom, with the help of ideology and legislation (Brown, 1986). While in the case of China, as we are going to see in this paper, the Chinese ended up with compromises to a certain extent.

Scotland had been a feuding society before James VI (1573-1625) came to the throne. However, during his reign, the state tried at least in three ways to uproot the custom. First, in personnel, the king played as a mediator, a role shared with many medieval kings, to dissolve the feuds between nobles. Second, in legislation, decrees and acts were issued by the kings and the privy council to control the pistol markets (Brown, 1986:247-248), to restrict the size of noble retinues (Brown, 1986: 251), and to encourage pleading of lawyers before judges of the crown (Brown, 1986: 258). In enforcing the law, the privy council sometimes had to warn the offended party not to seek pri-

vate revenge and to bind one or both parties to keep peace (Brown, 1986: 243). Here, we see the building power of a state. However, without the third element, the ideology provided by the church, it would be hard to succeed. In ideology, the Calvinistic reformed church fiercely criticized the practice of private violence and revenge custom as usurping God's authority of vengeance on one hand, and heavily emphasized the individual's guilt and conscience instead of lineage or collective responsibility on the other. Thus "the world of the bloodfeud was turned upside down as corporate society of kinsmen, friends, dependents, and ancestors was replaced with the awful isolation of the individual sinner standing before the judgement of God. In this new world men inherited nothing from their parents, not even their feuds." (Brown 1986: 185, 206-208).

In the process of empire-building, the Chinese government also had, or at least sought, its ideological support. However, the different substance provided by Confucianism in China's case somehow weakened the state in enforcing the legal authority. The revenge custom in the Han period indicated the conflicts and compromises between the legislation and the ideology.

Before discussing the revenge custom and its significance, one point on terminology has to be made here. During the process of writing, the author has been shifting back and forth in the application of the term "revenge" and "avenge". Both mean deliberate infliction of injury upon the person(s) from whom injury has been received. However, "avenge" might have a moral connotation in addition. Since the cases under discussion here, such as avenging one's family members as ethical behaviours, are basically moral issues, "avenge" seems to be a proper alternative. However, there is no nominal form of "avenge". In order to avoid confusion, the author, for the sake of convenience, will use "revenge" as a noun and "avenge" as a verb in discussion.

II . Revenge as a Part of Ancient Rites

1. *Fragmentary Records of Lineage Blood Feuds*

Fragmentary records indicated that lineage blood feuds must have been in practice during the Ch'un Ch'iu period. In the *Kung-Yang Commentary of Ch'un Ch'iu*, scholars suggested that some lineage feuds demanded revenge even after nine generations (*Kung Yang Chuan*, ch. 6, p.11). Confucius once said that "people forget their parents' safety simply because of a gust of anger, isn't that stupid?" (*Lun Yü Cheng I*, p.277) Mencius also said that people who liked to fight with each other to show their bravery would cause danger to their parents (*Meng Tzu*, 8b, p.8). He also said that one's father would eventually be killed if one had killed the father of somebody else, and one's brother would eventually be killed if one had killed the brother of somebody else (*Meng Tzu*, 14a, p.5). It seems that revenge cases were so popular in the pre-Ch'in period that both Confucius and Mencius simply could not ignore this phenomena and they felt obliged to warn people against killing others lest their family should die because of revenge (Ch'ü, 1982 : 88). In addition to that, their statements also suggested that the object of revenge might not have been confined to the slayer himself. Instead, people might have avenged by killing the slayer's family members. From the "Monograph of Geography" in *Han Shu*, we can tell that in some areas people avenged "too much that exceeded the righteousness", which meant that they sometimes killed both the slayer and his family members (*Hun Shu*=[*HS*], p.1656). Cases of this kind indicated the remnants of lineage blood feuds from the preimperial period. However, the idea of "righteous revenge", which constituted the revenge contexts in ancient Classics of Rites, determined the revenge obligation among relatives, limited the members involved and also, in one way or another, sanctioned the compromise of the legal attitude in later period.

2. *Revenge Theories in Classics of Rites*

In accordance with ancient Classics of Rites, namely *Li Chi* and *Chou Li*, one was supposed to avenge one's feudal lord, father, brothers, teachers, or friends if they had been killed or insulted by somebody else. How big the duty of revenge depended on how close these two people were. From the late Ch'un Ch'iu period (770-403 B.C.) on, the scope of the lineage was basically confined within members who paid the five grades of mourning. There were generally five mourning periods: three months, five months, nine months, one year and three years; the closer the alive and the deceased were, the longer the mourning period would be. For example, one had to pay three years mourning to one's parents, one year to one's brothers, nine months to the son of one's father's brother. In a patrilineal society like this, relatives of the mother's side would not be counted as one's lineage members.² With regard to the scope of a family, it was basically confined to members who paid no shorter than nine months mourning. Correspondingly, the obligation of revenge, according to the ancient Classics of Rites was also limited to family members, such as parents, brothers, father's brothers and their sons.³ However, there was only one case in which one should avenge someone no matter where one's enemy was. That was to avenge one's father (in some Classics, also one's mother). It was said that if somebody had killed your father, you should not live under the same sky as he did, which meant that you should kill him by all means. Also, you should not serve in the government. Because if you had other obligations, you would not be able to devote yourself to avenge your parents. The assumption was that a loyal subject, who was often considered to be a filial son would not spend time on an obligation other than dedicating himself to his ruler (Lü Ssu-mien, 1983: 380-381).

In other situations, there were certain conditions. Like "same sky", there were "t'ung kuo", same state, "t'ung ch'ao", same court, "chü

hsian", same village, or "chü ling", same neighbourhood. For example, if somebody had killed your brother, you should not live in the "same state" as he did, which meant that you should avenge your brother as long as your enemy lived in the same state as you did. There were different theories in various kinds of Classics of Rites. The differences might have been because of the different times these Classics were written. One interpretation was that the later a classic came into being, the farther the book would suggest the slayer to move. This was based on the assumption that the improvement of transportation would make the act of vengeance more possible. So that if one wanted to avoid being killed by revenge, one would have to move to a farther place than before (Lü Ssu-mien, 1983: 380-382). But still the point is that revenge duties were based on the degree of relationship of the avenger and the avenged.

In a lineage society ruled by an aristocracy, people with nobility might show their filial piety and loyalty to the same object which was the ruling house. If the ruler was killed or his family was eliminated, people might avenge because they were subjects and family members of the ruling house at the same time. For commoners, avenging one's family was a way of self-help in political chaos. However, once the bureaucratic empire was established, people would hardly show their filial piety and their loyalty to the same object. Besides, it was impossible for the rulers to give away their final authority over people's lives. We can see the transition of ideas during the pre-imperial period. There is one passage discussing the possibility of revenge in *Kuo-yü*, saying that revenge could only be possible between two equal standing counterparts. If they were not equal standing counterparts, there would not be such an idea as revenge. It was said that a subject's hurting of the ruler was a crime, and the ruler's hurting of the subject was punishment. How could there be any hatred (that should be avenged) if it was a ruler punishing a subject? If everyone wanted to carry out revenge against his ruler, how

could the distinction of the ruler and the subject be preserved (*Kuo-yü*, p.9)? It was in this sense during the process of the development of a legal system, that the position of "ti'ao-jen", the official escort, came into being (Sun Yi-jang, p.2494). One might argue that such a position in the *Chou Li* is not adequate to be cited as administrative reality. We might be able to discuss it in two ways. One is that even though the *Chou Li* might not have been compiled until the first century B.C., the ideas and official positions in it could have existed in the Chou dynasty. The other is that even though there was not exactly such an official position before the compilation of the *Chou Li*, the idea that there should have been such an official to solve revenge cases represented a compromise between the effort of controlling people's lives, on the one hand, and the revenge custom that could hardly be suppressed, on the other, during the early establishment of the empire. There were four different interpretations about the obligation of the official escort given by earlier scholars. First, the official escort was supposed to move people who had killed others to a certain place after being sentenced lest they be objects of revenge by their enemies (Sun Yi-jang, p.2494). Second, the people an escort would move were those who had been pardoned from the death sentence.⁴ The third and the fourth were attempts to combine the obligation of the official escort and the "ch'ao-shih", the judge, which was a position in the *Chou Li* dealing with litigation and giving out the verdict (Sun Yi-jang, p.2812). The third one suggested that in the beginning, the lineage idea of revenge was so strong that the official escort had no way to "mediate" between the two families. Hence he could only move the one who had killed others to another place to prevent revenge action, and to protect the state's legal authority. But if the person who had killed others was not willing to be moved, then the official escort had no choice but to give the case to the judge. The avenger then went to the judge for registration so that he could avenge his wronged family member (P'an Kuang-tan, 1951: 266). How-

ever, there was a fourth interpretation suggested that cases discussed in conjunction with the official escort were different from those involving the judge. Those discussed in the judge's part were those who had killed others intentionally so that the avengers could kill them after a certain registration. But perpetrators in the official escort's case were those who had committed homicide unintentionally. Only if they were unwilling to be moved by the official escort could the avengers arrest them for the government.⁵ No matter who the official escort was supposed to move, the point was still that how far the place would be depended on how close the avengers and the avenged were.

The spirit of the official escort might have been preserved by the Han dynasty. It was said in the "Monograph of Geography" in Han Shu that part of the population in the west borderland of the empire were moved there due to their excessive revenge behaviours (*HS*, ch. 28b, pp.1644-1645). Cheng Chung, one Eastern Han scholar, wrote an annotation, saying that the function of an official escort was similar to one duty of a Han commandant, whose salary was 2000 bushels of rice. If the family of the plaintiff and the defendant still fought each other after the verdict, the official should then arrest them and move them to the borderland for punishment (Sun Yi-jang, pp.2512-2513). In the beginning of the Eastern Han, one official, Huang T'an, also suggested that the government set forth the law once again to suppress revenge cases (*Hou Han Shu* [*HHS*], ch. 28a, p.958).

Therefore, we have understood at least two things now. First, during the period of the developing legal system, which was also the period when the Classics of Rites came into existence, there had already been several limiting conditions for revenge cases. Second, there were doubtlessly laws against private revenge, as compared to public revenge practiced by legal authority, in Han times. However, historical records showed little consistency between the real situation of revenge cases and the two principles above. To explain

this, we will first have to look at the law and society in Han times as a background for discussion.

III. Law and Society in Han Times: A Glimpse at the Historical Background

In order to understand the significance of revenge cases in Han times, we must have a general knowledge of Han legal authority and Han social values. It is impossible to draw a whole picture of the Han legal system or the social structure here. What I want to present in this chapter are several issues that might be relevant to revenge cases. With regard to legal authority, I will discuss topics such as growing influence of Confucianism in modifying the punishment and the legal process of certain cases. Regarding social values, I will talk about the promotion of Confucian values by the emperors and the developing influence of ethical ideas in Han society.

1. Han Legal Authority

(1) Confucian Influence in Modifying the Law

We can see Confucian influences in Han law since the latter part of the Western Han period. The influences were at least two: first, the tendency toward benevolence in punishment; second, the emphasis on the motives of crimes.

In the beginning, historical documents told us that Han succeeded Ch'in in many respects, including laws and institutions. Though Emperor Wen (179-157 B.C.) and Emperor Ching (156-141 B.C.) did try to modify the law toward benevolence, such as abolishing corporeal punishment, cutting down the number of the bamboo beatings, (*HS*, ch. 23, pp.1099-1100) but they did it only to give the people some relief after the civil war period, not on the basis of any Confucian theory. However, it was changed after Emperor Yüan's reign (48-33 B.C.). Emperor Yüan was famous for his appreciation

of Confucian values. He once suggested benevolent legal ideas according to Confucian classics to Emperor Hsüan when he was an heir apparent (*HS*, ch. 9, p.277). He issued 10 amnesties during his 16 years' reign. (*HS*, ch. 9, p.277). He deducted more than 70 penal laws to reduce the burden of his people (*ibid.*,). He also pardoned more than 40 criminals who were sentenced to death (*HHS*, ch. 34, p.1103). After Emperor Ch'en ascended the throne (32-7 B.C.), as his predecessor, he issued decrees to deduct the penal laws. But most importantly, he cited teachings in Confucian Classics as his basis (*HS*, ch. 23, p.1103). There were at least 84 amnesties in the 214 years reign of the Western Han (*HS*, ch. 1-12). It was one of the characteristics in Han times to issue and operate the law in accordance with the "way of the ancient sage kings".

Another aspect of Confucian influences in Han law was the emphasis on the motives of crimes. From Emperor Wu's reign (140-87 B.C.) on, the verdict was usually based on the ideas of *Ch'un Ch'iu*, the *Spring and Autumn Annals*, which meant that the punishment would be different according to the motives of the criminal. There was a case that a son who hurt his father was not sentenced to death as he should have been because he did it unintentionally when he was trying to help his father fight another person (*T'ai P'ing Yü Lan*, ch.640, p.8a). Cases like this and those revenge ones that we are going to discuss all concerned motives. To murder was to be sentenced to death. But how about to murder someone who had killed your father?

There was a benevolent attitude toward criminals from the beginning of the Eastern Han, too. Some people who had committed seditious acts were commuted from death penalty to castration (*HHS*, ch. 2, p.111; ch. 2, p.778). Also there were two occasions when officials suggested that the government enact severe laws, such as corporeal punishment again; the suggestions were rejected by the emperor and other officials (*HHS*, ch. 39, p.999; ch. 27, p. 934). Emperor Ho (89-105 A.D.) accepted Ch'en Ch'ung's sugges-

tions to abolish the tedious codes and to lighten the bamboo beating punishment (*HHS*, ch. 40, p.1543). Emperor An (107-125 A.D.) also accepted the suggestions of Ch'en Chung, who was the son of Ch'en Ch'ung, to abolish both castration punishment and the code of prohibiting sons and grandsons of corrupt officials from governmental services (*HHS*, ch. 40, p.1543). There were at least 75 amnesties and 30 decrees that either commuted the death sentences of criminals or allowed criminals to substitute their punishment by giving certain amount of cloth to the government during the 195 years reign of the Eastern Han dynasty.⁶

Generally speaking, there was a benevolent attitude in Han law since the latter part of the Western Han dynasty. One might think, from the criminal's perspective, it was not a bad idea concerning some innocent people who were falsely arrested and sentenced. However, too many amnesties might also create problem; and this was exactly how scholars in the latter part of the Eastern Han dynasty thought (Amnesty frequency: see Table 1).

Wang Fu (c. 90-165 A.D.), who lived in the latter part of the Eastern Han dynasty when there was an increasing rate of amnesty, wrote an essay complaining about the disadvantages of frequent amnesty. He pointed out that frequent amnesty hurt the innocent commoners most. It would "make the wretched meet and drink to celebrate; enable a professional robber to hide his loot; make a filial son unable to avenge and a victim of robbery unable to take his property back".⁷ Another scholar Ts'uei Shih, who lived under the reign of Emperor Huan (147-167 A.D.) when there were 0.62 amnesties every year, compared the rate of amnesty under different emperors and accordingly explained the high criminal rate in his time. He said, Emperor Wen issued his first amnesty 23 years after he ascended the throne. Emperor Ming (58-75 A.D.) and Chang (76-88 A.D.) only issued one amnesty every six or seven years, so that he who fled after committing a crime would have to hide himself among weeds and fields as if he was already dead. But now in

his time, there was an amnesty almost every year. People committed crimes more easily, especially right before the new year, when there usually would be an amnesty (Ts'uei Shih, *Cheng Lun*).

"Frequent amnesty made a filial son unable to avenge". Did it suggest that people would take the revenge responsibility in their own hands more often when the legal authority could not avenge for them? Would it also encourage a filial son to avenge when he could expect an amnesty before he was executed? We will discuss it later.

(2) Han Legal Process

Owing to the lack of materials, we could hardly give details of the Han legal process. However, scholars have tried every possibility to find clues. In the biography of Chang T'ang, a legal official of the Western Han, we discovered a faint picture of the Han legal process.⁸ It was said in the *Shih Chi* (*Shih Chi* = [SC], ch. 1, p.313):

When Chang T'ang was still a child, one day his father, who was an official in Ch'an-an, went out and asked T'ang to take care of the house. During his absence, a mouse stole some meat, after he came back, he beat T'ang for the loss of the meat. T'ang dug the mouse hole, got the mouse and the meat. He then charged the mouse (he -shu), flogged it (lüeh-ch'ih), cited the defense documents (ch'uan -yüan-shu), questioned the mouse in detail and announced the verdict (hsün-chü-lun-pao). After going through all this process, T'ang then killed the mouse (che). T'ang's statements were so much like that of an experienced legal official that his father was astonished and decided to let T'ang become a judge as his profession.

From this story we might be able to get a glimpse of the Han legal process. There were at least five steps in this case. First, to accuse or to charge a possible criminal; then to beat him, presumably to exact his confession; the

criminal could object the charge by some written defense, on which the judge would base and question him. After the process of interrogation, the judge would announce the verdict and carry out the punishment.

There should have been an appeal system in the Han legal process. Though we don't know the details, we do know that some cases had to be done through the emperor's final review. From the beginning of the Han, there were decrees saying that if the criminal who would be sentenced to death was either younger or older than a certain age, the case had to be brought to the emperor (*HS*, ch. 23). In 66 B.C. Emperor Hsüan issued a decree allowing concealment among family members. It was said that whoever concealed his parents or grandparents would not be punished, so would a wife concealing the husband; that whoever concealed his sons, grandsons or wife would be tried in front of the emperor if it concerned death penalty (*HS*, ch. 8, p.251).

Historical documents also told us that Emperor Yüan and Ai (6-1 B.C.) personally reduced the number of criminals were to get the death penalty in 123 cases (*HHS*, ch. 34, p. 116). Emperor Chang, as we will see later in the "precedent of insult", pardoned a man who avenged his father. Ch'iao Hsüan, a prime minister of Ch'i in the Eastern Han, was thinking to report to the emperor the case where a filial son avenged his father and to ask the emperor to reduce the punishment from death penalty. But the prefect who was directly in charge of the case executed the son before Hsüan acted. Hsüan felt that he owed the filial son a lot, so he arrested the prefect and executed him to recompense the filial son (*Hsien Ch'en, Hou Han Shu* = [*HCHHS*], ch. 2, p.20).

In summary, under certain circumstances, such as the age of the criminals, the nature of the crime and so on, cases that concerned the death penalty would have to undergo the emperor's final review. However, if an official could not decide the verdict or he felt the necessity of reducing the pen-

alty, he might also report the case to the emperor to make the final decision.

2. *Han Social Values*

(1) Imperial Promotion of Confucian Values

In the beginning of the Han dynasty, not the whole society was committed to Confucian values. However, after Emperor Wu's establishment of the Erudites and their disciples, people who wanted to enter governmental services were lured to study Confucian classics. As stated before, Emperor Yüan was famous for his appreciation of Confucian ideas and he ruled his empire accordingly. Confucianism oriented intellectuals; and their family members were in fact the founders and supporters of the Eastern Han dynasty (Yü Ying-Shih, pp. 180-184). History told us that Emperor Kuan-wu (25-57 A.D.) never stopped reading Confucian Classics during his military campaign (*HHS*, ch. 1). Emperor Ming, though hardly brought Confucian ideas to the governmental issues, personally showed his filial piety. Ten years after his mother's death, when he saw her make-up box, he still burst into tears in front of his subjects (*HHS*, ch. 10, P.407). We were also told that Emperor Chang once went out for an inspection to the eastern part of the empire. He summoned the commandant of East Commandary Chang Fu, who was his teacher when he was an heir apparent. When Chang Fu came, the emperor underwent a ritual as a disciple first, and let Chang Fu pay his respect as a subject after Chang lectured on one chapter of Shang Shu (*HHS*, ch. 45, p.1530). It was during Emperor An's reign that the decree that high officials should have paid three years mourning to their parents was first issued (*HHS*, ch. 8). There was also a noble who was deprived of his title because he failed to live with his mother during that time (*HHS*, ch. 8).

There might be various indicators to examine whether the Han was a Confucian society. With regard to marriage and divorce, it seemed that Han people never seriously converted to Confucian values (Dull, 1978: 23-74).

However, regarding filial piety and fraternal love, there seemed to be a tendency toward Confucian ethics, especially when the governmental recruitment system was based on that.⁹

Wei Piao never left the mourning hut when he underwent the three years mourning for his parents. After he came out three years later, history said that he was thin, bony, and had to receive medical treatment for several years to recover. But later on, he was recommended to officialdom as "filial and incorrupt." During his service under Emperor Chang, there were complaints about the incapability of some recommended officials. They were charged of being lack of administrative merit and neglecting their obligation from time to time, so that there were lots of loopholes in administration. Receiving such complaints, Emperor Chang asked for suggestions from his court officials. Wei Piao, according to Confucian teachings, said that the emperor must search for loyal officials among filial sons. He also suggested that the requirement of recommendation should have been changed from administrative experiences and knowledge to virtues such as loyalty and righteousness, even though sometimes people with the latter qualifications might not be smart enough. We were told that Emperor Chang accepted his ideas (*HS*, pp.917-918).

(2) The Development of Ethical Ideas

Since virtues like filial piety and fraternal love were so important in the Han society, it was conceivable that some people would like to show them publicly when necessary. Encouraged by the fame and wealth accompanied with official positions, the practice of filial piety and fraternal love was so affected that some scholars in the latter part of the Eastern Han dynasty simply could not stand but to criticize such cases. Yin Shao, in his book *F'eng Su Tung I, On Custom*, cited several stories and criticized them.

Ch'en Tsu-wei, as Yin Shao told us, had never seen his mother since birth. One day he met an old lady when he was on his way to the capital.

After he realized that the lady had lived alone and was going to seek support of some relatives, Ch'en knelt down and asked her to be his mother. Presumably she agreed with that suggestion so Ch'en took her home and supported her as his own mother. Yin Shao criticized this event according to ancient rites. He said, it didn't matter that it was one's "chi-mu", step-mother, or "ts'u-mu", the concubine of one's father who raised him as if he were her own child. They could both have the loving relationship with the child, so the child could treat either one of them as his own mother. But how could one treat a stranger on the road as one's mother? This was simply too much. Yin thus put this story under the title of "Ch'ien-li", False Propriety (Yin Shao, *F'ang Su T'ung I* [*FSTI*], ch. 3, p.138).

Hsü Wu, who was concerned about his younger brothers' incapability to get official positions, grabbed the property of his brothers "publicly" so that his younger brothers could be recommended as loving brothers because they gave away their wealth. After both his brothers got official positions, Hsü Wu summoned a meeting with his clan members, explaining his previous behaviours and returning the properties to his brothers. A modern reader might be surprised that Hsü Wu was not blamed for his dishonest methods, given that his brothers might not be capable enough. We were told, interestingly enough, that he was highly praised by the people in that commandary, presumably because of his consideration and love for his brothers (*HHS*, ch. 76, p.2471).

Yin Shao criticized all cases like this. He said that if brothers could live together, it would be best; if they could use one another's money when it was necessary, it would be good too; as to yielding wealth among brothers, this was the wrost way to show fraternal love (*FSTI*, ch. 4, pp.138-139). However, it was precisely this worst idea that prevailed in the society and affected the practice of moral behaviour such as revenge.

IV . Types of Revenge Cases in Han Period

The best way to understand the conflicts and the compromises between legal authority and ethical ideas from the perspective of the revenge custom, I assume, just like understanding any other historical event, is to go into the stories themselves. However, before doing that, I would like to present 6 tables which include 31 of the most complete revenge stories that I have found in order to provide an overall picture for the details we will discuss later.¹⁰

Table 2 shows the kinds of relationships people would want to avenge and the methods they would apply when avenging. It is clear that most people could not stand their parents' being killed or insulted. And most of them avenged simply by killing the person who had killed their parents. The second major category was to avenge one's brother which was also consistent with classical teachings. However there were also extreme cases according to the ancient ideas of rites. For example, there was no theory in the Classics of Rites of a mother avenging her son (*TKHC*, p.212), of a person avenging his mother's brother (*HCHHS*, p.32, *HHS*, ch. 46, p.1602), of a person avenging his friend's father (*HHS*, ch. 296, p.1627). The most incredible case was when an official killed a lower level colleague to avenge a filial son, which was Ch'iao Hsüan's case that we have discussed earlier. However, if we have noticed an annotation about the righteousness of revenge written by Cheng Hsüan, an Eastern Han scholar, we won't be too surprised by this case. Cheng said that if one killed the person who had insulted one's parents, brothers, teachers and elders, one was doing a righteous thing, so one's enemies could not avenge again for that (*CLCI*, p.2511). It is also noteworthy in this table that cases where avengers killed the slayer and/or his family members were extremely few. That supports the earlier discussion of limiting the members involved.

Table 3 is to show the outcomes of these 31 cases. There are at least two

points that can be made. First, among the 13 cases in which children avenged their parents, 8 of the criminals were arrested, only 2 of whom were sentenced to death. The other 6 were either pardoned totally or pardoned at least from the death penalty. Second, there were 10 cases in which the avengers neither fled nor were arrested. They simply kept on with their daily lives. Among these 10 cases classified as “nothing happened”, 3 of them attained their personal ends of revenge in the name of official duties so that they would not get into trouble immediately. This is surely relevant to their backgrounds which we will discuss in table 4. The point is that people who avenged would hardly get the punishments that they deserved according to Han law. Why was it the case?

Table 4 is to show the relationship between the avengers backgrounds and their outcomes. With regard to the definition of these backgrounds, what I mean here by “high officials” were both people who served in central government and those who had either a blood or marriage relationship with the emperors. What I mean here by “sub-bureaucratic officials” were either people who held sub-bureaucratic positions in local government or people who were modestly educated with ancient teachings. There are two points that we can tell from this table. First, high officials rarely got into trouble when they carried out revenge. They either did it in the name of official duties, as I mentioned above, or sent their “guests” (k’e) to do the revenge for them. Second, it is obvious that the sub-bureaucratic officials and the commoners would be caught more often when they committed homicide. But if they did it for the sake of avenging their family members, especially for their parents, they would usually be pardoned.

In table 5 I try to find out whether there were different types of revenge cases during different periods of time. There are three points here. First, revenge cases for one’s parents and brothers were quite equally distributed in all periods of time. It seems that the idea of avenging one’s parents and

brothers was persistent regardless of other influences. Second, cases of avenging those people who were neither family members, such as a friend or a teacher, nor close relatives according to Classics of Rites, such as one's mother's brothers happened mostly in the latter part of the Eastern Han dynasty after the ancient classical teachings had become the predominant belief. Third, it was quite obvious that revenge cases happened much more in the Eastern Han than in the Western Han dynasty.

Table 6 shows the outcomes of revenge cases during different periods of time. There are two points here. First, those cases with outcomes classified as "nothing happened"/ "fled and became free by amnesty", which meant that the avengers were eventually free without going through any legal procedure, happened mostly in 6-24 A.D. and 89-189 A.D. 6-24 A.D. included the civil war period; while 89-189 A.D. was both a golden time of ancient classical teachings according to traditional interpretations and the period of highest amnesty frequency. Second, the periods in which revenge cases happened the least were correspondent with the periods of the lowest amnesty frequency.

Table 7 is mainly to show the geographical distribution of revenge cases on a provincial basis. It is clear that there were more revenge cases that happened in the capital where high officials carried out vengeance either in the name of official duties or by sending others to do it for them, as mentioned in table 4. Except that, other cases seemed to be quite equally distributed among various areas, it is hard to tell from this table whether there were geographical characteristics for revenge cases or not. (Map 1 is appended for a better picture.)

V . Endeavour and Compromise of the Government

With the 6 tables above, it seemed that people who avenged would rarely be punished. The outcome that only 2 of the 31 criminals were sentenced to

death seemed to indicate the continuous compromise of the government. However, if we go further into the process of either modifying a statute or discussing a certain case, we will see that the conflicts did exist.

There are two ways to understand the attitude of the legal authority toward revenge cases. One is from the context of statutes, the other is from the practices of these statutes when they encountered revenge cases.

1. *The Attitude toward Revenge Cases in Law*

With regard to the Han laws, there were doubtlessly statutes against private revenge no later than the latter part of the Western Han. But we can hardly tell if there was such a law in the early part of the Western Han. King of Huai-nan in Emperor Wen's reign (179-157 B.C.) killed another noble for his indirect responsibility in the death of Huai-nan's mother. He was pardoned by Emperor Wen. From the process of "pardon", we can at least know that revenge of this kind was unacceptable in the statute at that time.¹¹

Another case in Emperor Ai's reign (6-1 B.C.) told us that it was illegal to hurt someone else, even though the criminal was eventually pardoned from death penalty for his avenging motive. Hsüeh K'uang's father, Hsüeh Hsüan, had been bitterly criticized by a certain official Shen Hsien because he was unable to carry out a three-year-long mourning for his mother's death. After hearing the criticism several times, K'uang decided to ruin Hsien's face so that he would not be able to hold his official position anymore. K'uang was arrested after he hurt Hsien, and his case precipitated arguments among judicials. Some said that K'uang, as an official who hurt his colleague right outside the palace gate, should have been sentenced to death. Others said that according to the Han law, he who committed homicide would be sentenced to death, while he who committed injury would only be punished by other than the death penalty. Besides, K'uang was outraged by the insult to his father. It was not that serious to hurt someone who had insulted your father after all.

Finally, K'uang was pardoned from death penalty (*HS*, ch. 83, pp.3394-3396). The points here are, first, that people who committed homicide and injury had to be punished in spite of their avenging motives. Second, the punishments might vary depending on the motive.

Historical documents showed so many revenge cases from the end of the Western Han on that some misunderstood that the law was not against revenge in Han time (*T'ai P'ing Yü Lan*, ch. 598, p.4-5). In fact, in the beginning of the Eastern Han, Huang T'an once submitted a memorial to Emperor Kuang-wu (25-57 A.D.), suggesting that the government set forth the old statutes once again to suppress revenge cases. He suggested that those who avenged after the government had settled the cases should have been punished two grades more severely than usual and the punishments could not be substituted. If the avenger ran away, their family members should have been moved to the borderland as a punishment (*HHS*, ch. 28, p.9). However, T'an's memorial was not accepted wholeheartedly by the emperor. So we can only tell from his statements about the old statutes that there were laws against revenge during the Western Han period and there were also regulations of substituting punishments appended to these laws. We don't know how the emperor would respond toward revenge cases in this specific document.

In accordance with the Han law, he who committed injury would be sentenced to various punishments according to the degree of injury. However, if a person committed homicide, there would be at least two different situations. He who committed murder would be sentenced to death, while he who committed manslaughter would not be punished to the death penalty. (*CLCI*, ch. 68, p.683, Cheng Chung's annotation cited from Han law) Now, we can see at least two points here. First, he who avenged was surely killing others on purpose but not by accident, so he should have been sentenced to death according to the Han law. However, second, since there were

different punishments between wilful and unintentional homicide, once the government had to compromise with revenge, it would try to limit itself within the cases of murder. That is to say, the government would only allow revenge if one's family members had been killed on purpose. We will discuss this later in the section of legal compromise with revenge.

2. The Outcomes of Revenge Cases and Their Significances

Avengers in the 18 of the 31 cases that I have presented were not arrested for various reasons. It might indicate the inefficiency of police power. However, it could barely show the legal attitude toward revenge. The significance would still lie in the 13 cases in which the avengers were arrested. Even more significant was that after judicial discussions, most of them were pardoned. Now we are going to take the major cases of people who avenged their parents as examples for discussion.

We can divide the 7 cases in which people were arrested after avenging their parents into 3 types. First, there were 3 cases in which the avengers were finally pardoned after further discussions and considerations in the judicial process. Second, there were 2 cases in which the judges who were in charge of the cases fled or tried to flee with the avengers. Third, there were 2 cases in which the avengers were sentenced to death. In fact, most of the other 5 revenge cases in which the avengers were arrested can be classified into the first two types mentioned above.

(1) The First Type: Avengers Were Pardoned after Judicial Process

Fortunately, these 3 cases were equally spread out into three different periods and could then represent the development of the legal attitude toward revenge. The first one happened in Emperor Kunag-wu's reign. Fang Kuang's mother died when he was arrested for avenging his father. The prefect Chung-li Yi took pity on Kuang when he found that Kuang only cried and didn't eat in the jail. Yi then decided to let Kuang go home to bury his

mother. When his subordinates argued with him, Yi promised that he himself would take responsibility if it turned out that Kuang did not come back to the jail. However, Kuang did go back after the burial, and Yi reported the whole story to a higher authority, presumably the emperor, who made the final decision, and Kuang was pardoned from death (*HHS*, ch. 41, p.1407).

There are at least two points worthy of mention here. First, there was no direct explanation of Kuang's final sentence. It might have been his faithfulness for going back to the jail which was also an important moral value at that time. But most likely it was his filial piety that influenced the final decision. Second, even though the pardon was because of his filial piety, we still don't know whether avenging his father or the intimate concern for his mother was more important to the final sentence. It means that we can see the governmental appreciation of filial piety, but not really the legal attitudes toward revenge because of that piety.

The second case happened within the first 8 years of Emperor Chang's reign (76-83 A.D.). A man killed a person who had insulted his father earlier. Emperor Chang pardoned him from the death penalty. It was said in the *Hou Han Shu* that this case became a "pi", precedent, of "ch'ing-wu", insult cases, from then on (*HHS*, ch. 44, pp.1502-1503).

We can tell that the imperial promotion of filial piety had come to a degree that even revenge of this kind could be pardoned during the reign of Emperor Chang, whose promotion of ethical ideas has been discussed in another part of this paper. However, this "precedent" did arouse disagreement later on. In the reign of Emperor Ho (89-105 A.D.), prime minister Chang Min argued against the "precedent" because it encouraged homicide. He admitted that to avenge one's parents was righteous according to ancient classics, however, it must not be allowed by laws, since Heaven treated human lives most preciously. In fact, Chang submitted his memorial twice to the throne. He did not get any response in the first time, but finally

Emperor Ho accepted his suggestion (*HHS*, ch. 44, pp.1502-1503).

The establishment and abolition of this "precedent" indicated significantly the conflicts and shifts between ethical ideas and legal authority. The government had been promoting ethical ideas for a long time. Now it had to confront their challenges. Chang Min, who was very much like Huang T'an, endeavoured to uphold the legal authority. Min made his way by emphasizing the preciousness of human lives, which was also an important ideological theory at that time (*Po Hu Tung Te Lun*, ch. 4, p.5). However, the practices of statutes were still held in the hands of various local officials. How a case turned out depended heavily on the mentality of the judge rather than the statute itself. The third case which happened during either the reign of Emperor An (107-125 A.D.) or Emperor Hsüan (126-144 A.D.) clearly showed the situation.

Hou Yü killed one of her husband's relatives to avenge her father. She was at first sentenced to death. But a 15 year-old boy, Shen-t'u P'ang, who apparently was a student of the "Chün-kuo Hsüeh", the Commandary School, protested for her by saying that her righteousness could move those shameless descendants and stimulate those insulted offsprings. He added that Yü should have been praised and extolled even in an unjust time, how could the prefect punish her without benevolence. The prefect appreciated his arguments and finally decided to reduce her punishment from death penalty, and the outcome was highly praised by people in that area (*HHS*, ch. 53, p.1750).

There are two points here. First, what P'ang had said were indeed prevalent ideas during the Eastern Han period. Second, avenging one's parents would definitely be accepted in the moral sense, and punishment would be reduced mostly during the judicial process, in spite of the endeavour to uphold the legal authority by people such as Huang T'an and Chang Min.

(2) The Second Type: Judges Tried to Flee with the Avengers

There were 2 cases in this group, one happened in the beginning of the Eastern Han under the reign the Emperor Kuang-wu, and the other happened in the end of the Eastern Han under the reign of Emperor Lin (179 A.D.).¹² In both cases, the avengers went to judicial offices after they had killed their enemies; and officials who were in charge of the cases showed evidence of self-conflicts between ethical ideas and legal authority.

In the first case, Chang Hsin, the judge, after releasing the avenger, gave up his officialdom and fled. Later on, he was free by amnesty and praised highly by his countrymen (*TKHC*, ch. 11, p.90). In the second case, Chao E waited for more than 10 years to avenge her father. After she killed her enemy, she went to the judicial office by herself. Yin Chia, the prefect wanted to give up his officialdom and fled with her, while E was unwilling to do so. She told Chia to execute her in order to fulfill his obligation as an official just as her avenging her father to fulfill the obligation as a daughter. She was eventually free by amnesty and also praised highly by her countrymen (*HHS*, ch. 84, pp.2796-2797; *WC*, ch. 18, p.548).

In addition to the two points made in discussing Hou Yü's case, there is one other point here: the conflicts between ethical ideas and legal authority existed in these local officials' mentality. They fully understood the value and importance of legal authority. They were reluctant to violate the law. However, their appreciation for filial offspring hindered them from punishing the criminals. Their consideration of giving up officialdom and running away with the avengers clearly showed the conflicts.

(3) The Third Type: Avengers Were Executed

As I mentioned earlier, only 2 avengers among the 31 cases were sentenced to death after they were arrested. The only two cases in which the criminal were executed for avenging their parents seemed to stand out as exceptions of legal authority. However, if we go further into the details, we can also find a more sophisticated mentality of the officials who were in charge of

these cases. One of the two was Ch'iao Hsüan's case which we mentioned earlier. We know that even though the son who avenged his father was executed, Ch'iao also killed the official-in-charge to show his disagreement of executing a filial son. Here is the other case:

A drunken man insulted Wu-ch'iu Chang's mother. Chang killed the man and fled. But later on he surrendered himself to the justice after the prime minister of that particular kingdom Wu Yiu had summoned him. Yiu admitted that people would surely feel ashamed if their mothers had been insulted, however, a real filial son would consider his parents more than his own anger before he killed. Historical records did not tell us why Chang was persuaded by Yiu. We were told that he went to the judicial office by himself and told Yiu, interesting enough, that since he had committed the crime, even Yiu had no way to show his benevolence. After Yiu found out that Chang had only a wife and no children, Yiu then summoned Chang's wife to the jail to live with Chang so that she could get pregnant and Chang would have offspring after he died. Chang was so moved by Yiu's benevolence that he named his unborn son after Wu's surname before he was executed (*HHS*, ch. 64, p.2101).

Two points are of interest here. First, this case happened in the latter part of the Eastern Han, that is to say, after Emperor Ho's abolition of the "precedent of insult cases". We don't know whether Chang would be executed or not if his mother was killed. Compared with the other avengers we have discussed above, he might not be. But since she was only insulted but not killed, it seemed that Chang had gone too far to kill the person. That might be why Chang said that even Yiu had no way to show his benevolence. Second, Yiu did have a method to show his benevolence, which was to give Chang offspring. Since according to ancient classics, it was the most unfilial thing for a person to die without a son, the whole issue here was still on filial piety. Though Yiu showed no conflict as those officials mentioned in the

other two types, we can still tell his reluctance to execute a filial son according to the law without any help.

We don't want to describe the details of the other 5 cases in which people were arrested and had their penalties reduced. The fact is that most of their outcomes followed the patterns of the first two types suggested here. There was even a more dramatic case in which an official intended to kill himself to show his determination to release a person who had avenged his friend's father, when the person said that he did not want to get the official into trouble (*HHS*, ch. 29, p.1027). The point here is, even the outcomes usually showed the triumph of ethical ideas, but since the law was against revenge, there were still conflicts within the judicial process. Nevertheless, after the conflicts had been settled, Huang T'an, Chang Min and other scholars' petitions for upholding the legal authority were just like feeble voices under the waves of ethical values in society.

3. *Compromise of the Government*

In 205 A.D. during his military struggle to achieve the north part of China, Ts'ao Ts'ao issued an order to prohibit people within his territory from private revenge. He issued this with another prohibition which was forbidding lavish burial (*WC*, ch. 1, p.27). One could tell from these issues and other proclaims by Ts'ao Ts'ao during his campaign that what he really wanted was to protest and correct the late Han fashion of ritual affectation. But it seemed that he was not very successful, at least on the issue of revenge. 20 years later (223 A.D.), his son Ts'ao P'i, who accepted Emperor Hsien's abdication and ascended the throne as Emperor Wen of the Wei dynasty, had to issue a decree to prohibit private revenge again. The decree said that "during the civil war period, people slaughtered one another. Since now the empire has been established again, whoever dares commit private revenge will be sentenced to family execution" (*WC*, ch. 2, p.82).

Now one can ask oneself a question. If this specific law had been carried out successfully, which meant it did deter people from revenge, then what would happen? One possibility might be that there would not be any further revision of this law since it had been effective enough. The other possibility might be to soften the law a little bit, though still insist its disapproval of revenge, since people would not commit revenge so easily as before. However, what actually happened was different. When Emperor Ming of Wei came to the throne (227-240 A.D.), he issued a decree to amend the penal law. After research and discussion, scholars finally established the law of the Wei dynasty (Wei Fa). "Monograph of Penalty" in *Chin Shu* cited the introduction of the Wei law. With regard to revenge, it was said that according to ancient propriety one could chase and kill the person who had murdered one's family, so long as the criminal had not been officially arrested. But if the criminal had been pardoned or what he committed was manslaughter instead of murder, then the family members of the victim could not avenge (Fang Hsüan-ling, *Chin Shu*, ch. 30, pp.923-924).

What was the significance of this new law? First, after two decrees of harsh prohibition by previous emperors, the Wei government finally decided to compromise, which indicated the ineradicable custom of revenge. Second, the compromise was limited to a certain extent. Since there were different punishments between wilful and unintentional homicide from Han on, even though the government had to compromise on the issue of revenge, it would limit itself to murder cases.

VI. Conclusion

The revenge custom existed in many societies. From the introduction of the custom prior to Han, we can see the remnants of lineage blood feud in early Chinese history as in many societies. However, at least from the 3rd century B.C. on, there was a tendency to limit the lineage members in a

revenge case. Ancient classics confined the responsibility of revenge to certain relationships instead of letting the obligation spread equally to each lineage member. They also reduced the victim of revenge to the slayer himself, rather than to all lineage members of the slayer. With the establishment of the empire, there was also a tendency to avoid revenge cases enforced by the government. The position or should-have-been position of the official escort and laws which forbade the revenge custom issued by the government all showed the endeavor of the state to eliminate private revenge. However, the revenge custom did not stop at least until the 3rd century A.D. The major interpretation about this, according to the discussion presented above, should have been in the two self-contradictory policies that the Han government promoted. One of them was the legal authority, and the other were the ethical ideas.

The state always tried to take over the ultimate right of justice in establishing itself. We have a case in another society in which the state was quite successful in uprooting the revenge custom. Recent study on modern-state-founding in Scotland showed that the Calvinistic doctrine, as an ideological background, and the state law, as a legal authority, helped to uproot the revenge custom. However, in China's case, the revenge custom had had its root in the context of filial piety which the Han government promoted when it tried to enforce the legal authority at the same time. With the promotion of filial piety and fraternal love, on one hand, and the growing Confucian influence on governmental benevolence, both on modifying the punishment and on official mentality, on the other, avengers kept being pardoned and revenge cases kept happening. Until the 3rd century A.D., the government finally issued compromises under certain conditions. And the compromises were only limited to certain revenge cases which had already been sanctioned in the ancient Classics, ie. avenging one's parents and brothers.

Table 1

Time	Time of Reign	Occurence / Reign	Amnesty / Year	Occurence... / Period	Amnesty / Year
206-49 BC	206-195 BC	9/12	0.75	57/158	0.36
	194-188 BC	1/7	0.14		
	187-180 BC	3/8	0.38		
	179-157 BC	4/23	0.17		
	156-141 BC	5/16	0.31		
	140-87 BC	18/55	0.33		
	86-75 BC	7/13	0.54		
	73-49 BC	10/25	0.40		
48-5 BC-AD	48-33 BC	10/16	0.62	27/53	0.51
	32-7 BC	9/26	0.35		
	6-1 BC	4/6	0.67		
	1-5 AD	4/5	0.80		
6-24 AD	6-24 AD	8/19	0.42	8/19	0.42
25-57 AD	25-57 AD	9/33	0.27	9/33	0.27
58-88 AD	58-75 AD	3/18	0.17	5/31	0.16
	76-88 AD	2/13	0.15		
89-144 AD	89-105 AD	3/17	0.18	19/56	0.37
	106 AD	1/1	1.00		
	107-125 AD	8/19	0.42		
	126-144 AD	7/19	0.37		
147-189 AD	147-167 AD	13/21	0.62	32/44	0.73
	168-189 AD	19/22	0.86		
190-220 AD	190-220 AD	8/31	0.26	8/31	0.26

Conflicts and Compromise between Legal Authority and Ethical Ideas

Table 2

Methods the Avenged	Injru the Slayer	Kill the Slayer	Kill the Slayer and/ or His Family	Others	Total
Father (Mother)	1	9	3		13
Son		1			1
Brother		6			6
Father's Brother		2			2
Mother's Brother		1		1	2
Son of Father's Brother		2			2
Friend			1		1
Friend's Father		1			1
Official for Filial Son		1			1
Former Superior Official		1			1
Teacher		1			1
Total	1	25	4	1	31

Table 3

Outcomes the Avenged	No- thing Hap- pened	Fled and Became Free by Amnesty	Arrest- ed and Par- doned	Arrested and Pardoned from Death Sentence	Arrested and Sentenced to Death	Others	Total
Father (Mother)	3	2	2	4	2		13
Son	1						1
Brother	1	4	1				6
Father's Brother		1	1				2
Mother's Brother		1	1				2
Son of Father's Brother	2						2
Friend	1						1
Friend's Father		1					1
Official for Filial Son	1						1
Former Superior Official				1			1
Teacher	1						1
Total	10	8	6	5	2	0	31

Conflicts and Compromise between Legal Authority and Ethical Ideas

Table 4

Outcomes Back ground	No- thing Hap- pened	Fled and Became Free by Amnesty	Arrest- ed and Par- doned	Arrested and Pardoned from Death Sentence	Arrested and Sentenced to Death	Others	Total
High Official	4	1		1			6
Local Powerful Family	2	2					4
Knight- errant		1					1
Local Official	1		1				2
Sub- bureau Official	2	3	2	1			8
Com- moner		1	3	3	2		9
Herbent	1						1
Total	10	8	6	5	2	0	31

Table 5

Time the Avenged	before 49 B. C.	49 B.C. - 5 A.D.	6-24 A.D.	25-57 A.D.	58-88 A.D.	89-144 A.D.	144-189 A.D.	190-220 A.D.	Unknown	Total
Father (Mother)		1	1	2	2	2	3	1	1	13
Son			1							1
Brother			2	2		1	1			6
Father's Brother		1							1	2
Mother's Brother						1	1			2
Son of Father's Brother			1			1				2
Friend							1			1
Friend's Father				1						1
Official for Filial Son									1	1
Former Superior Official				1						1
Teacher							1			1
Total		2	5	6	2	5	7	1	3	31

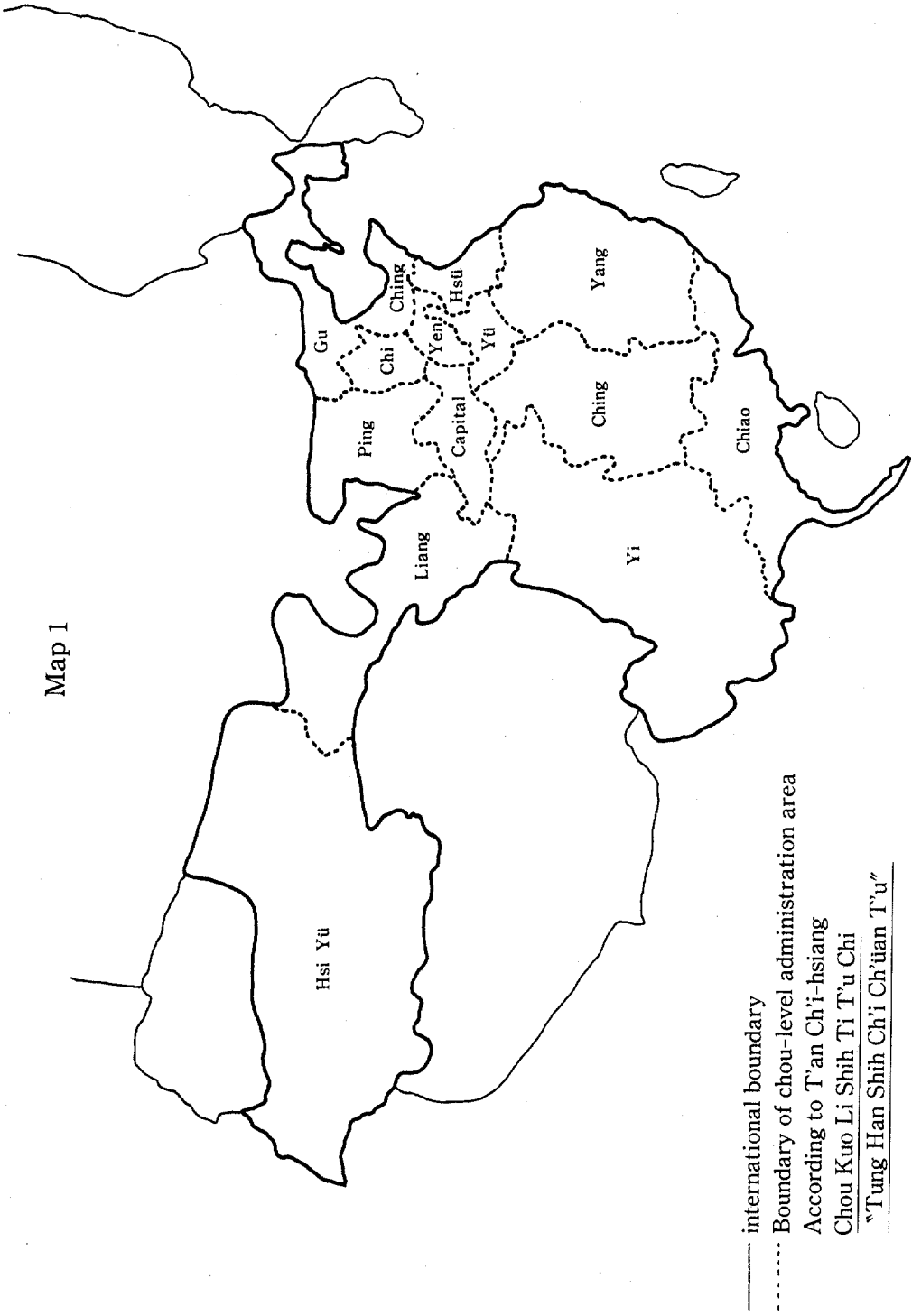
Conflicts and Compromise between Legal Authority and Ethical Ideas

Table 6

Outcomes Time	No-thing Hap- pened	Fled and Became Free by Amnesty	Arrest- ed and Par doned	Arrested and Pardoned from Death Sentence	Arrested and Sentenced to Death	Others	Total
before 49 B.C.							0
49 B.C. - 5 A.D.		1		1			2
6-24 A.D.	2	3					5
25-57 A.D.	1		3	2			6
58-88 A.D.	1			1			2
89-144 A.D.	1	2		1	1		5
144-189 A.D.	3	2	2				7
190-220 A.D.	1						1
Unknown	1		1		1		3
Total	10	8	6	5	2	0	31

Table 7

Name of Provinces	Number of Revenge Cases
Ssu-li Chiao-wei Pu (Capital)	7
Yü Chou Tsi-shih Pu	4
Yen Chou	1
Hsü Chou	2
Ch'ing Chou	3
Chi Chou	0
Ching Chou	3
Yang Chou	1
Yi Chou	1
Liang Chou	1
Ping Chou	1
Iu Chou	2
Chiao Chou	2
Hsi Yü	0
Unknown	3
Total	31



Map 1

— international boundary
 - - - - - Boundary of chow-level administration area
 According to T'an Ch'i-hsiang
 Chou Kuo Li Shih Ti T'u Chi
 "Tung Han Shih Ch'i Ch'üan T'u"

Notes

1. There was an anthropological discussion and a book list on blood revenge in Ch'ü T'ung-tsu, *Chung-Kuo Fa-lü yü Chung-Kuo She-hui*, Taipei: Li-jen Bookstore Press, 1982. pp. 100-101; Boehm, Christopher, *Blood Revenge* (University Press of Kansas, 1984).
2. *Yi Li* (Taipei: Yi-wen Bookstore Press). ch. 29-31. Tu Cheng Sheng, "Ch'uan-t'ung Chia-tzu Shih-lun" *Ta-lu Tsa-chih* 65: 2, 3. 1982; Lee Jen-Der, "Hsi Han Lü-lin chung te Chia-t'ing Lun-li Kuan", *Chung-kuo Li-shih Hsueh-hui Shih-hsueh Chi-k'an*. 19, 1987.
3. *Chou Li*. If you have killed somebody's father, you should move to the the land of the babarians. If you have killed somebody's brother, you should move a thousand miles away. You should not live within the same state as the person who has killed the son of your father's brother. Revenge duty for your king is the same as that for your father. Revenge duty for your teachers is the same as that for your brother. Revenge duty for your friends is the same as that for the son of your father's brother.
Li Chi. "T'an-kung" : If you want to avenge your parents, you should ... not serve in the government, nor should you live under the same sky as your enemy... If you want to avenge your brother, you should not serve in the same state as your enemy does. If your host is going to avenge the son of your father's brother, you should help him.
Li Chi. "Ch'ü-li" : You should not live under the same sky as the person who has killed your father. You should avenge your brother as long as you meet the person who has killed him, and you are not supposed to go back home to take weapons first. You should not live within the same state as the person who has killed your friend.
Ta Tai Li Chi: You should not live where the person who has killed your father does. You should not live within the same state where the person

who has killed your brother does. You should not live within the same village where the person who has killed your friend does. You should not live within the same neighbourhood where the person who has killed your lineage members does.

4. Sun Yi-jang, Chou Li Cheng I, p. 2502. This was suggested by Chia Kung-yen.
5. Sun, *Ibid.*, p. 2509. pp. 6812-6813. This interpretation also suggested by Chiang Yüing.
6. *HHS*, ch. 1-9. There were various ways for a criminal to be pardoned in Han times. Amnesty could be issued because of an emperor ascending the throne, an heir apparent being designated, an eclipse, an earthquake or any other significant events. There were also conditional pardons according to geographical and political differences, which meant only criminals in some areas or of certain crimes would be released. Those presented in table 1 were only amnesties (ta-she-t'ien-hsia), which would benefit criminals all over the empire. With regard to amnesty and pardon, see Shen Chia-pen, *She Kao, Shen Chi I Hsien Sheng I Shu Chia Pien* (Taipei: Wen-hai Publishing Co.) pp. 230-357.
7. Wang Fu, *Ch'ien Fu Lun* (Taipei: Chung-hua Bookstore Press). ch. 4, p. 9. With regard to the age of Wang Fu, see Chin Fa-ken, "The Approximate Age of Wang Fu and the Possible Date of His Work, the Chien-fu-lun" *Bulletin of The Institute of History and Philology, Academia Sinica, Taipei, Vol. 40. 1969. pp. 781-799.*
8. Oba Osamu, *Sin Kan Ho Sei Si No Ken Kyu* (Tokyo: So-bun Sia, 1982). p. 626. The interpretations of these legal terms varied among scholars. Some of the legal terms in Chang T'ang's story here were translated into English according to Oba's interpretations.
9. From Emperor Wu's reign (140-87 B.C.) on, it was systematized for governors to recommend "filial and incorrupt" people to be officials.

See *HS*, ch. 6, p. 160. There were also cases during the reign of Emperor Wen (179-157 B.C.) and Emperor Yüan (48-33 B.C.) in which officials were promoted because of their filial piety. See *HS*, ch. 50, pp. 2312-2313; *HS*, ch. 71, p. 3046. A recommendation became so important a role in the recruitment system that people would not refrain from showing their virtues as long as possible.

10. The 31 cases were collected from sources below:

- (1) *HS*, ch. 83, pp. 3394-3396.
- (2) *HS*, ch. 92, p. 3715.
- (3) *HHS*, ch. 26, p. 912.
- (4) *HHS*, ch. 14, p. 564.
- (5) *HHS*, ch. 14, p. 564.
- (6) *HHS*, ch. 15, p. 578.
- (7) *T'ing Kuan Han Chi* (Taipei: Ting-wen Bookstore Press, hereafter cited as *TKHC*). ch. 23, p. 212.
- (8) *HHS*, ch. 298, p. 1027.
- (9) *HHS*, ch. 41, p. 1407.
- (10) *HHS*, ch. 17, p. 643.
- (11) *HHS*, ch. 24, pp. 842-844.
- (12) *HHS*, ch. 31, p. 1097.
- (13) *HHS*, ch. 44, p. 1497.
- (14) *HHS*, ch. 11, p. 486.
- (15) *HHS*, ch. 23, p. 813.
- (16) *HHS*, ch. 43, p. 1503.
- (17) *HHS*, ch. 52, p. 1750.
- (18) *HHS*, ch. 64, p. 2120.
- (19) *HHS*, ch. 23, p. 820.
- (20) *HHS*, ch. 48, p. 1602.
- (21) *HHS*, ch. 52, p. 1722.

- (22) *HHS*, ch. 31, pp. 1107-1109.
 - (23) *HHS*, ch. 65, p. 1109.
 - (24) *HHS*, ch. 67, pp. 2200-2201.
 - (25) *HHS*, ch. 77, p. 2498.
 - (26) *HHS*, ch. 84, p. 2796.
 - (27) *HCHHS*, p. 32.
 - (28) Ch'en Shou, *Wei Chih* (Taipei: Ting-wen Bookstore Press, hereafter cited as *WC*). ch. 9, p. 267.
 - (29) *WC*, ch. 24, p. 667.
 - (30) *HCHHS*, cited from *T'ai P'ing Yü Lan*, ch. 481.
 - (31) *FSTI*, p. 590.
11. *HS*, ch. 44, p. 2136. There were laws against private fights in Ch'in state since the Chan Kuo period (403-211 B.C.). People were encouraged to fight only against other states, not among themselves. See *SC*, ch. 68, p. 2230.
- However, there was no record explicitly showing that the Han law was against private revenge until the latter part of the Western Han dynasty.
12. The year was not mentioned neither in *HHS* nor in *WC*, however, there was specific year and month in Huang-p'u Mi, *Lieh Nü Chuan*. It was cited in *WC*, ch. 18, p. 549.

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Glossary

Chan Kuo (403-221 B.C.) 戰國

Ch'ang-an 長安

Chang Fu 張酺

Chang Min 張敏

Chang Hsin 張歆

Chang T'ang 張湯

Chao E 趙娥

ch'ao-shih 朝士

che 磔

Ch'en Chung 陳忠

Ch'en Ch'ung 陳寵

Cheng Chung 鄭衆

Cheng Hsüan 鄭玄

chi-mu 繼母

Ch'i 齊

Conflicts and Compromise between Legal Authority and Ethical Ideas

Ch'iao Hsüan 橋玄
Ch'ien-li 愆禮
Chin Shu 晉書
Ch'in (221-207 B.C.) 秦
ch'ing-wu 輕侮
Chou 周
Chou Li 周禮
Ch'un Ch'iu (770-403 B.C.) 春秋
Ch'en Tsu-wei 陳子威
Ch'uan-yuan-shu 傳爰書
Chün-kuo Hstieh 郡國學
Chung-li Yi 鍾離意
Emperor Ai 哀帝
Emperor An 安帝
Emperor Chang 章帝
Emperor Ch'en 成帝
Emperor Ching 景帝
Emperor Ho 和帝
Emperor Hsüan 宣帝
Emperor Huan 桓帝
Emperor Kuan-wu 光武帝
Emperor Lin 靈帝
Emperor Ming 明帝
Emperor Wen 文帝
Emperor Wu 武帝
Emperor Yüan 元帝
F'eng Su T'ung I 風俗通義
Han (206 B.C.-220 A.D.) 漢
Han Shu 漢書

Journal of Social Sciences and Philosophy

he shu 劬鼠

Hou Han Shu 後漢書

Hou Yü 緱玉

Huang T'an 桓譚

Hsüeh Hsüan 薛宣

Hsüsh K'uang 薛況

hsün-chü-lun-pao 訊鞠論報

k'e 客

Kung Yang Chuan 公羊傳

Kuo Yü 國語

Li Chi 禮記

Lüeh-ch'ih 掠治

pi 比

Shang Shu 尚書

Shen Hsien 申咸

Sheng-t'u P'ang 申屠蟠

Shih Chi 史記

ta-she t'ien-hsia 大赦天下

t'iao-jen 調人

Ts'ao P'i 曹丕

Ts'ao Ts'ao 曹操

ts'u-mu 慈母

Ts'uei Shih 崔寔

Wang Fu 王符

Wei Fa 魏法

Wei Pao 韋彪

Wu-ch'iu Chang 毋丘長

Wu Yiu 吳祐

Yin Chia 尹嘉

Conflicts and Compromise between Legal Authority and Ethical Ideas

Yin Shao 應劭

法律權威與倫理觀念的衝突與妥協 — 從漢代的復仇風氣談起

李貞德

摘 要

自秦統一天下，一反周代禮樂教化，而以法律施政。然而秦祚短暫，漢代秦而興，在承續秦制之餘，又思恢復古典道德，因此造成法律權威與倫理觀念之間的衝突，其中最有趣的便是復仇的風尚。

復仇的觀念，在古代社會中相當普遍，然而各個社會中對於復仇的責任和對象，却有不同規定。中國自先秦時代起，士人學者在論及血屬復仇時，大多將復仇的責任限制在大功以內的親屬（例如從父昆弟）身上，並不濫施於全族人；而復仇的對象，則是仇人本身，不像某些社會容許對仇人親屬報仇。

復仇的習俗，雖然自古就有，但在法律機構發達之後，國家為掌握人民的生命權，不得不壓制這種風氣。有些社會，靠著法律權威和學說思想的幫助，得以有效地抑制私相報復的現象；但在中國，至少到漢末都未能將復仇之俗連根拔起。究其原因，當由於漢代政府在施行法律的同時，又提倡孝父悌弟的倫理。倫理觀念既滲入律令之中，也影響執法者的心態。復仇既有倫理基礎，便難以法律來扼止。到曹魏時，法令律例對於為父兄復仇的案子，也不得不採取某種程度的妥協了。