

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

Jen-Der Lee **

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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** Ph.D. Candidate in History, University of Washington, Seattle.

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。