

The Abolition and Persistence of the Han Dynasty's Collective Liability System

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Abstract: *The reflection and debate surrounding the retention or abolition of the collective punishment system during the Han dynasty constitute a significant historical event. While Xiao He's measure to "abolish the crime of collective punishment involving family extermination" may be subject to discussion, the preservation of the collective punishment system actually initiated the Han court's deliberations on its fate. During the reigns of Emperor Wen and Emperor Zhao, the government held two major discussions regarding the system's abolition, primarily due to deteriorating social conditions. Although the collective punishment system was never formally abolished, these governmental debates laid the foundation for the prosperous governance under Emperors Wen and Jing, as well as the revival under Emperors Zhao and Xuan.*

Keywords: Collective punishment system, Huang-Lao Daoism, Confucianism, Legalism.

1. Introduction

"The phrase 'If you do not keep your oath, I will punish you with the death of your family, without any mercy' [1] reveals the embryonic form of the Shang dynasty's collective punishment system. 'Those who lead others into great crimes are subject to collective punishment' [2] may be seen as Zhou dynasty's inheritance of the Shang practice. The Qin dynasty formalized the collective punishment law, mainly out of necessity to maintain political control. The phenomenon described as 'prisons filled like markets' [3] prompted early Han rulers to reconsider the system, leading to Xiao He's legal reform that "abolished the crime of collective punishment involving family extermination" [4]. However, the "Laws of the Second Year" indicate that the system experienced cycles of abolition followed by reinstatement. Subsequently, the collective punishment system repeatedly attracted attention from Han rulers, sparking intense debates over whether it should be abolished.

Current academic research on the collective punishment system in the Qin and Han periods has largely focused on the Qin dynasty. Although some scholars have mentioned the Han dynasty's implementation of such a system, few have paid close attention to the Han court's reflections and debates about its retention or abolition. This paper attempts to explore the Han dynasty's reflections and discussions on the collective punishment system. Any shortcomings in this effort are welcome for expert correction.

2. "Execution in the Marketplace" and "Confiscation of their Wives and Children": Manifestations of the Collective Punishment System in Early Han Dynasty

In the early Han period, "the decree for exterminating three generations still existed" [3]. Historical records state: "Zhao's chancellor Guan Gao and others plotted to assassinate Emperor Gaozu; upon suspecting this, Emperor Gaozu immediately dismissed them." In the ninth year, "the plot by Zhao's chancellor Guan Gao and others was exposed, resulting in the extermination of three generations." [5] "In summer, Prince Peng Yue of Liang rebelled; he was deposed

and exiled to Shu, but later attempted rebellion again, leading to the extermination of his three generations." [5] "Empress Lü executed Xiang Yu and exterminated his three generations." [5]

Regarding the practice of collective punishment, bamboo slips and historical texts are consistent. The "Law on Bandits" states: "Those who rebel against cities or fortresses, surrender to feudal lords, or fail to defend a city or fortress when attacked by enemies from among the feudal states—whether they abandon it as if surrendering or actually do so—and those who betray or rebel after surrendering—all shall be decapitated. Their parents, wives, children, and siblings, regardless of age, shall all be executed publicly." This reflects the principle that "severe penalties are applied to those who disrupt the state" [3], as recorded in the "Law on Bandits." The purpose of applying harsh punishments to "rebellious states" [3] was primarily to deter other feudal lords. The clause about "enemies from among the feudal states coming to steal" seems to reflect this phenomenon. However, the collective punishment imposed on "parents, wives, children, and siblings" for acts such as "abandoning a fortress as if surrendering" or "betrayal after surrender" is an important aspect not explicitly mentioned in the "Book of Han: Treatise on Criminal Law." Moreover, the scope of collective punishment—including "parents, wives, children, and siblings"—differs from Zheng Xuan's understanding of the "three generations."

The collective punishment system reflected in the "Laws of the Second Year" includes several additional scenarios.

First, a son's disrespectful behavior toward his parents could result in collective punishment extending to his wife and children. The "Law on Bandits" states: "Anyone who kills or injures parents, plots to kill parents, beats or insults parents, or whose parents report their son for filial impiety—his wife and children who assist in the crime shall be imprisoned, and no longer allowed to use rank, exemption, or redemption to avoid punishment." [6] The Han dynasty governed the empire through filial piety, and any violation of this virtue would incur punishment [7]. Although there is no direct record in Han sources of collective punishment being applied due to a son's attempt to harm or abuse his parents, there are indirect

indications of punishment for filial impiety. For example, the “Biography of Liu Ci, Prince of Hengshan” in the “Book of Han” records: “During the fourth year of Yuanshu, someone injured a foster mother; the prince suspected the crown prince had sent someone to do it, and thus whipped the crown prince.” Whether the crown prince actually ordered the attack cannot be confirmed, but the existence of punishment for filial impiety during the Han dynasty is evident.

Second, individuals could be punished collectively due to shared responsibility. The “Law on Bandits” states: “If a fire spreads beyond its origin, the offender shall pay four taels of gold, and the responsible party shall bear the cost. The village chief, official (sefu), and the official in charge shall each be fined two taels of gold if they fail to prevent it.” Similar cases of shared liability include: “If a boatman causes drowning while ferrying people, he shall be sentenced to ‘nai’ (a form of corporal punishment); the boat’s sefu and the supervising official may redeem this penalty. If the incident involves killing cattle or horses or injuring people, the boatman must redeem the nai penalty; the sefu and official must redeem with exile.” [6] Punishing colleagues or subordinates for accidents causing casualties or property damage likely represents a continuation of Qin legal practices.

The “Law on Confiscation” states: “For criminals sentenced to labor such as chengdan-chong (city-wall construction) or gui-xin (serving as sacrificial fuel), or those convicted of corruption within government offices, their wives, children, property, and land shall all be confiscated.” [10] “Chengdan-chong” and “gui-xin” were common forms of forced labor in Qin and Han times. Conviction for corruption within government offices was more severe than the previous two punishments, and the scope of collective punishment expanded from “wives and children” to include “property, land, and homes.” As noted in the “Commentary on the Records of the Grand Historian”: “Their wives and children are seized and sold into official slavery.” [5] “Slaves” were defined as those “enslaved by collective punishment and taken into county service,” though “this practice had not yet been completely abolished by the Han dynasty” [8], reflecting the widespread practice in early Han of reducing free persons to slavery.

Furthermore, anyone involved in “counterfeiting currency or assisting in counterfeiting” who fails to report the act—either because they live together and remain silent, or because the head of household, field overseer, or neighbors do not report it — [6] will also face collective punishment, with penalties varying according to circumstances. There were even laws prohibiting families of “bonded servants, chengdan-chong, gui-xin, and bai-can” from residing in ordinary neighborhoods. [6] In fact, the “Regulations on Passes and Customs” contain numerous examples of such liability based on failure to report, which need not be elaborated further.

However, the collective punishment system did not apply under certain circumstances.

First, reporting crimes exempted one from collective punishment. The “Diao Lu” states: “Anyone who robs others or plots to rob for money, even if the robbery is not completed or no property is obtained, shall be punished by

dismemberment; their wives and children shall be sentenced to labor as chengdan-chong. If the wife or child of the offender is captured or reported to officials, and subsequently apprehended, the punishment for the offender’s family members shall be waived.” In Qin, reporting such crimes could exempt individuals from collective punishment, and in some cases, they were even rewarded “as if they had severed an enemy’s head,” suggesting a relatively lenient approach compared to Han dynasty practices.

Second, timely reporting could exempt one from collective liability. The “Ju Lu” stipulates: “When a case requires adjudication, if the magistrate, chief official, or deputy is absent due to being on official duty elsewhere, ill, or outside the county or district boundaries—similarly, if other local officials are away on official business or ill but within the jurisdiction—the acting deputy or substitute official may make independent decisions. However, if the decision is deemed inappropriate, the actual magistrate, chief, or deputy (if present) shall share the same penalty as if they had made the ruling themselves. This applies only when the matter involves a subordinate official under a two-thousand-stone rank; otherwise, no collective punishment shall apply.” [6] Negligence or injustice in administrative affairs became a key target during early Han rule. Remarkably, adherence to bottom-up administrative procedures was considered sufficient grounds for exemption from collective punishment.

Third, specific conditions could also exempt individuals from collective liability. According to the aforementioned “Shou Lu,” sons who have married, have a husband, hold household status, possess a rank, are aged seventeen or older, or are widowed or divorced women may be exempted from penalties such as “full chengdan-chong, gui-xin, or charges related to adultery and corruption.” [6]

In summary, the “Er Nian Lü Ling” reflects a diverse range of circumstances regarding collective punishment. Nevertheless, early Han rulers maintained a humanistic spirit, establishing legal provisions that exempted certain groups or particular actions from such penalties. Notably, social changes between the Qin and Han periods compelled rulers to reconsider the retention or abolition of collective punishment laws, thus driving reforms in the legal system.

3. “When laws are just, the people benefit” or “burdening their hearts”: The First Debate over the Abolition of the Lianzuo System

During Emperor Wen’s reign, a central discussion took place regarding whether to abolish or retain the Lianzuo system. In the second year of Emperor Wen’s reign, he summoned the Chancellor, the Grand Marshal, and the Censor-General to deliberate on the law that allowed punishment to extend to parents, spouses, children, and siblings of the offender — “punishing innocent family members along with the guilty.” Zhou Bo and Chen Ping argued that “punishing parents, wives, children, and blood relatives serves only to burden their hearts and deter them from committing crimes; this method of punishment has long been practiced.” They further stated: “In our humble opinion, if it is convenient, then so be it” [3] —indicating that even at the beginning of the Han dynasty, some high-ranking officials still opposed abolishing the

“three-family punishment” and the broader Lianzuo system.

Zhou Bo and Chen Ping’s opposition to abolishing the Lianzuo system may have stemmed from prevailing social conditions. First, the early Han period witnessed numerous rebellions by non-Han royal lords. For example, in the eleventh year of Emperor Gaozu’s reign, Prince Ying Bu of Huainan rebelled and expanded eastward into Jing territory [5]. Later, Prince Lu Wan of Yan also rose in rebellion, prompting Emperor Wu to send Fan Kuai as Chancellor to suppress him [5]. Additionally, other powerful lords such as Peng Yue and Han Xin plotted against the central government. Except for Lu Wan, who fled far into Xiongnu territory, most of these rebellious princes were executed along with their three families. Although the Han court had eliminated the non-kin nobles, the power of the Han-related vassal states remained strong, posing a serious threat to the central authority’s control over counties and commanderies. Second, the rise of local strongmen gradually intensified during the early Han era. While the policy of “following the people’s desires without interference” led to economic growth and fewer legal cases [3], it also fostered the emergence of powerful local elites. Though incidents like Liu Chang, Prince Li of Huainan, seizing state power, confiscating private land, and arbitrarily arresting people occurred mainly during the middle to late reign of Emperor Wen, they reflect the growing influence of regional strongmen since the time of Emperor Hui, Empress Dowager Lü, and the early years of Emperor Wen.

Emperor Wen held a different view on the issue of retaining or abolishing the Lianzuo system. He responded: “I have heard that when laws are fair, the people benefit; when punishments are appropriate, the people follow them. Indeed, officials guide the people toward virtue; but if they fail to do so, yet punish them with unjust laws, then the law harms the people and becomes an instrument of oppression. I do not see its benefits; we should carefully consider this matter” [3]. His remarks suggest reflection on the Han dynasty’s inheritance of Qin’s harsh and overly detailed legal code, which had harmed the people. Legal documents unearthed from the Shuihudi Qin tomb inscriptions clearly reveal the complexity and rigidity of Qin law. The “Laws of the Second Year” appear to carry on this tradition. Such excessive legalism was precisely what Emperor Wen, known for his preference for Huang-Lao Daoist principles, wished to avoid.

This debate ended with Emperor Wen’s victory. Zhou Bo, Chen Ping, and others praised Emperor Wen’s stance—“the law is the foundation of governance”—by stating that he brought great benevolence to the empire, ensuring that the guilty would be punished while the innocent would not suffer collective liability. The official abolition of the “laws on seizure” and “mutual liability” [3] 1105 marked the end of the debate in favor of Emperor Wen. Nevertheless, the Lianzuo system resurfaced later in Emperor Wen’s reign.

4. “One person’s crime leads ten families to flee” or “this neighborhood shall keep watch over each household”: The Second Debate over the Abolition of the Lianzuo System

Between the fifteenth and seventeenth years of Emperor Wen’s reign, Xin Yuanping of Zhao repeatedly deceived Emperor Wen and was ultimately executed along with his entire family. Later, during Emperor Jing’s reign, Chao Cuo, and during Emperor Wu’s reign, Li Ling—among many other officials—also saw their families devastated by collective punishment. The Lianzuo system reemerged, consolidating imperial rule and preventing resurgence of unrest. Yet from the very beginning, the dual nature of the Lianzuo system—its beneficial and oppressive aspects—was fraught with contradictions [9].

Under Emperor Wu, the use of the Lianzuo system became a major cause of division among government officials. “By the time Emperor Wu ascended the throne, the state focused outwardly on military campaigns against the barbarians and inwardly indulged in luxury and sensory pleasures. Frequent conscription and taxation impoverished the people, leading commoners to break the law and corrupt officials to enforce harsh judgments, resulting in widespread criminality” [3]. Although Zhang Tang and Zhao Yu were appointed to codify laws, their efforts led to “leniency toward old offenders and encouragement of lenient sentencing” [3]. In response, Emperor Wu broadened the scope of collective punishment through the charge of “illicit food distribution” [10]. Moreover, the promulgation of the “Chenming Law” placed officials responsible for suppressing peasant uprisings under constant fear for their lives [11]. Notably, one of the reasons government officials split into the reformist “Shixin” faction supporting the continuation of Emperor Wu’s collective punishment system and the opposing “Gaizao” faction was precisely this issue [12]. This marked the beginning of renewed debate during Emperor Zhao’s reign over whether to abolish or retain the collective punishment system.

The question of abolishing or preserving the collective punishment law once again sparked discussion among Han rulers. At the Salt and Iron Conference, government officials primarily composed of “xianliang” (virtuous scholars) argued that since the establishment of laws allowing self-reporting and mutual accusation, familial bonds had been weakened and criminal penalties increased. They stated, “When parents hear their children have committed crimes, even if they conceal them, would they not wish to confess? We have heard of sons concealing their fathers’ faults and fathers concealing their sons’, but never of fathers and sons being punished together,” strongly opposing the collective punishment system which caused “one person’s crime to shock entire communities and ten families to flee.” [13] In contrast, the censors maintained, “Within a single household, between father and son or elder brother and younger brother, relationships are so close that when one part moves, the whole body feels it. Therefore, for those holding ranks below Marquis of Guan Nei, we organize them into neighborhood units where households monitor each other and oversee each other’s comings and goings. If a father fails to discipline his son or an elder brother fails to correct his younger sibling, who else could be held responsible?” [13]

Although the debate on abolishing the collective punishment system led to reforms in legal institutions, it did not significantly impact the practice of collective punishment itself. A review of the Book of Later Han reveals frequent instances of “execution of three generations” or punishments

extending to wives, children, and relatives throughout the entire history of the Han dynasty. The micro-level discussions and reflections on collective punishment evolved into broader macro-level intellectual transformations within Han thought, highlighting a significant phenomenon: the ongoing struggle between Huang-Lao philosophy, Confucianism, and Legalist utilitarianism, culminating in a brief resurgence of Legalist ideas.

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