

ORIGINAL ARTICLE

Absence of Talion and Tort Law in Early Imperial China (221 BCE–9 CE): How Body Politic Cancelled Corrective Justice

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Abstract

From a comparative perspective, this paper argues that early Chinese empires lacked the concept of talion or tort law when malicious violence or intent became factors. Instead, wrongdoers were required to pay fines to the government or received punishment as hard labor for the state. Victims not only could not receive compensation but were sometimes punished along with the offender if their loss was perceived as a loss to the empire. I argue that the absence of corrective justice in criminal cases can be traced back to the philosophical underpinnings of the body politic, a prominent discourse in early China that viewed the emperor and the people as a single, organic entity. When people were conceived of as constituting a unified, singular entity, criminal actions against an individual were interpreted as damage to the empire. Therefore, punishments for offenders were designed to compensate the empire, not the individual. Furthermore, in the context of the body politic, the suffering of both victims and offenders was regarded as metaphysically equal, which justified frequently pardoning culprits on a large scale to secure harmony within the empire. Originally, the body politic was employed to admonish and criticize the throne, urging the emperor to align his interests with the well-being of his people, but in practice, it compromised the practice of justice.

Over the course of the last four decades, a substantial multitude of legal statutes, judicial cases, and administrative records of the Qin-Han dynasties have been unearthed from tombs or repository pits, which have significantly reshaped the landscapes of the legal and political history of the fountainhead of Chinese civilization.¹ Scrutinizing those legal items, modern readers find

¹ For examples, see Anthony François Paulus Hulswé, *Remnants of Ch'in Law: An Annotated Translation of the Ch'in Legal and Administrative Rules of the 3rd Century B.C. Discovered in Yün-Meng Prefecture, Hu-Pei*

themselves amazed by their sophisticated categorization and rigorous legal protocols, yet also perplexed. A legal statute from Zhangjiashan collection prescribed a heavy fine for a pregnant woman who was beaten by others, suffered physical injury, and lost her baby.² It was not an isolated incident, but rather a prevailing practice within the early Chinese empires, where victims of violence not only found compensation elusive but also faced the risk of punitive measures. Whereas victims might find themselves compelled to remunerate the government through fines, the perpetrators could escape with impunity, evading both retribution and responsibility.³

Those intriguing legal practices call for explanations. From a comparative perspective, this paper argues that, while in the context of economic disputes and inheritance, legal regulations and practices safeguarded property rights, early Chinese empires—Qin and Western Han dynasties—lacked the concept of talion or tort law when malicious violence or intent became factors.⁴ Instead, wrongdoers were required to pay fines to the government or received punishment as hard labor for the state. I argue that the absence of corrective justice⁵ in criminal cases can be traced back to the philosophical underpinnings of the body politic, a prominent discourse in early China that viewed the emperor and the people as a singular, organic entity.⁶

During economic disputes, individuals operated as independent agents with their property rights protected by the law. However, acts of violence or malicious intent directed against individuals and their property were considered actions against the empire itself. Punitive punishments were devised to serve the utmost interests of the entire community. Offenders, in the form of hard labor or paying fines, compensated the state, which represented the collective. On the one hand, the punishment offenders received simultaneously cancelled their liability to the individual victims. On the other hand, given that people were conceived as constituting a unified, singular entity, the suffering of both victims and offenders was regarded as metaphysically equal. It was

Province, In 1975, 1st ed., vol. 17 (Leiden: BRILL, 1985); Michael Loewe, *Records of Han Administration*. 2 vols. (Cambridge: Cambridge University Press, 1967); Anthony J. Barbieri-Low and Robin D. S. Yates, *Law, State, and Society in Early Imperial China: A Study with Critical Edition and Translation of the Legal Texts from Zhangjiashan Tomb No. 247* (Leiden; Boston: Brill, 2015); Thies Staack and Ulrich Lau, *Legal Practice in the Formative Stages of the Chinese Empire: an Annotated Translation of the Exemplary Qin Criminal Cases from the Yuelu Academy Collection* (Leiden; Boston: Brill, 2016).

² Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 402–3 (slip no. 31).

³ For example, Hulswé, *Remnants of Ch'in Law*, 131, D29. Shuihudi Qin mu zhujian 睡虎地秦墓竹簡, ed. Shuihudi Qin mu zhujian zhengli xiaozu (Beijing: Wenwu chubanshe, 1990), 102.

⁴ Arthur Ripstein, "Theories of the Common Law of Torts," *The Stanford Encyclopedia of Philosophy* (Summer 2022 Edition), ed. Edward N. Zalta, URL = <https://plato.stanford.edu/archives/sum2022/entries/tort-theories/>.

⁵ Ernest J. Weinrib, "Corrective Justice," *The Idea of Private Law* (Oxford: Oxford Academic, 2012; online ed.), January 24, 2023.

⁶ Loewe argues that the law of the Qin-Han dynasties was "based on practical considerations rather than on intellectual concepts." I disagree with this view because any practical considerations were still founded on certain intellectual concepts, especially those concerning the relationship between the state and its people. See Michael Loewe, "The Laws of 186 BCE," in *China's Early Empires: A Reappraisal*, eds. Michael Nylan and Michael Loewe (Cambridge: Cambridge University, 2010), 253.

expected that the emperor, as the bestower of bounty upon all, would restore a state of normalcy to everyone including offenders, even if only temporarily. Thus, universal amnesties found a solid footing and were frequently issued to free criminals as commoners. Scholars in early Chinese empires employed the discourse of body politic to demand the throne to align his interests with his people. However, unexpectedly, the body politic withheld recognition of individual independence, which, in turn, gave rise to a dearth of restorative justice in early China's criminal cases.

An Intriguing Phenomenon: Compensation for Parties in Economic Disputes, Not for Victims of Crimes

In Qin-Han dynasties, acts of transgressing against individuals' bodies or property were meticulously delineated and met with severe sanctions. However, convicts either remitted fines to the government or became hard laborers working for the government. Without principles of retribution or compensation, victims of crimes burdened not only with their own losses but at times were subjected to punishment alongside the offenders, particularly if their losses were perceived as detrimental to the empire. Scholars argue that the conceptual framework of rights, particularly property rights, was conspicuously lacking in early Chinese society.⁷ Turner summarizes: "...the political system that emerged in Qin and Han times as the source of harsh penal laws designed to guard the resources of the state rather than the rights of subjects."⁸ Barbieri and Yates hold that "...even the 'Statutes on Robbery' (sec. 3.2) directs officials to punish the theft or destruction of property and requires the criminal to compensate the owner in some cases, there are no 'property rights' that are violated by such crimes."⁹

Those scholars' claims are valid when we focus on the legal statutes regarding crimes. However, the picture becomes more complex when we discover that early Chinese law and legal practices also mentioned people's property rights and prescribed obligations for compensation in economic disputes. For example, the dog's owner was expected to make reparation if his dog killed or injured another person's livestock.¹⁰ If someone's livestock, such as horses and sheep, ate the crops of others, the owner would be subject to fines and required to provide compensation to the crop owner.¹¹

Archaeologists have unearthed numerous cases of economic disputes over debts that incurred through lending or borrowing money or objects, buying and selling, renting, employing, or unintentional property damage. In cases

⁷ Liang Zhiping, "Explicating 'Law': A Comparative Perspective of Chinese and Western Legal Culture," *Journal of Chinese Law* 3 (1989): 55–91. Shen Yuanyuan, "Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China," in *The Limits of the Rule of Law in China*, eds. Karen Turner-Gottschang, James V. Feinerman, and R. Kent Guy (Seattle: University of Washington Press, 2000), 20–44.

⁸ Karen Turner, "Law and Punishment in the Formation of Empire," in *Rome and China: Comparative Perspectives on Ancient World Empires*, ed. Walter Scheidel (Oxford: Oxford University Press, 2009), 52–82, esp. 52.

⁹ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 1: 36–37.

¹⁰ *Ibid.*, 2: 407–8 (slip no. 50).

¹¹ *Ibid.*, 2: 700–1 (slip nos. 253–54).

where the debtor failed to repay the debt or relocated to another county, the government would actively pursue the owed amount on behalf of the creditor.¹² Debtors' rights were also protected, as the early Chinese empires did not permit the forcing of debtors to pawn their property.¹³ Creditors were not allowed to impose an interest rate higher than what the legal statutes prescribed.¹⁴ There were also legal regulations that scrupulously prescribed individuals' rights to inherit property and rank based on their gender and relationship to the property or rank holders.¹⁵

Shockingly, property rights were overlooked in legal regulations designed to address crimes. Scholars have noted that in excavated legal statutes and cases, when criminals faced severe punitive punishments, they were often exempted from compensating the victims. In other words, they were held liable for punishment but not liable for compensation.¹⁶ The following legal statute well illustrates the practice:

For maliciously setting fire to walled towns and government storehouses, as well as the accumulated stores of the government: cast [the criminal] away in the marketplace. For maliciously setting fire to government housing, or the houses, outbuildings, field huts, and accumulated stores of ordinary people: tattoo [the criminal] and make [him or her] a wall-builder or grain-pounder. For letting fire loose, so that it spreads and burns them: fine four liǎng (approx. 62 g) of gold. Charge [the criminals] for [compensation] what they have burned.¹⁷

The intent of the individuals charged with spreading fire played a crucial role in determining their punishments. Someone who unintentionally spread fire would be subject to a fine and required to compensate for the losses caused by the fire. However, someone who intentionally spread the fire faced either the death penalty or forced labor. In the latter case, there was no mention of or possibility to implement compensation for the fire-related losses, because either the offender was dead or he/she has become a wall-builder/grain pounder whose property was expected to be confiscated by the government.¹⁸

This sharp contrast raises an intriguing question: If early Chinese law and legal practice defined and protected the property rights of individuals in civil cases, why was corrective justice often absent in numerous legal regulations concerning

¹² Hulswé, *Remnants of Ch'in Law*, 48, A38. *Shuihudi Qin mu zhujian*, 38. *Hanshu*, 16:561.

¹³ Hulswé, *Remnants of Ch'in Law*, 162, D126. Zhang Yanrui 張燕蕊, "Jiandu suojian QinHan shiqi zhaiwu changhuai wenti Chuyi" 簡牘所見秦漢時期債務償還問題芻議, *Shixue yuekan* 史學月刊 6 (2018): 128–32.

¹⁴ *Hanshu*, 15:447; 15:503. Wang Yanhui 王彥輝, "Handai Haomin sizhai kaoping" 漢代豪民私債考評, *Zhongguo shiyanjie* 中國史研 2 (1994): 69–77.

¹⁵ Zhaoyang Zhang, *A History of Civil Law in Early China: Cases, Statutes, Concepts, and Beyond* (Leiden; Boston: Brill, 2022), 87–134.

¹⁶ Xu Shihong 徐世虹, "Zhangjiashan Ernian lüling jianzhong de sunhai peichang zhi guiding" 張家山二年律令簡中的損害賠償之規定, *Huaxue* 華學 6 (2003): 135–46, esp. 135; 139.

¹⁷ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 390–91 (slip nos. 4–5);

¹⁸ *Ibid.*, 2: 600–1 (slip nos. 174–75).

crimes? How can we explain the phenomenon whereby criminals were punished by working for the government or paying fines to the government, while the victims of violence suffered bodily harm or property loss without proper restitution?

I argue that there was a conspicuous absence of talion and tort law in early imperial China, where punishments for criminal actions were designed to benefit the empire rather than to restore the victim to their original state. The individuals of the Qin and Han dynasties enjoyed rights bestowed by a ruler, retained at the emperor's pleasure, as opposed to inalienable rights endowed by natural law, divine power, or guaranteed by a constitution.¹⁹ I demonstrate that the philosophical discourse of the body politic, as expounded by contemporary scholars and embraced by emperors, elucidated and justified both the absence of inalienable rights and the lack of restorative justice in early China.

Body Politic and Sovereignty in Chinese Contexts

The discourse body politic, which defines the political entity as a living organism—often likened to a human body—is well-known to Western audiences. Scholars have extensively scrutinized these discourses, ranging from the philosophies of Plato to Herbert Spencer. However, few relevant articles delve into the body politic in Chinese contexts.²⁰

Early Chinese political discourse claimed that individuals were integral components of an organic and indivisible whole personified by the emperor.²¹ This discourse held sway within the early imperial political and intellectual sphere, furnishing us with a philosophical vantage point through which to understand the legal regulations of early China. While envisioning the empire as an indivisible and unified entity underscored the alignment of the monarch's interests with those of his subjects, compelling him to safeguard their well-being, it simultaneously curtailed the autonomy and entitlements of the populace. Individuals became an anonymous part of a singular unity, within which their own interests and existence bore no weight, being subordinate to the welfare of the empire. Interpersonal wrongdoings were transmuted into the harm inflicted upon the empire itself; thus liability was forged not between individuals but between an individual and the state. Therefore, the punishment for offenders aimed not to compensate the individuals but rather to protect the interests of the state. Furthermore, as individuals comprised of tangible flesh and blood were transformed into conglomerates of anonymous constituents within a unified whole, the anguish experienced by victims and the suffering of the punitive measures received by wrongdoers held a metaphysical parity; both constituted an affliction upon the entirety. Whereas the emperor

¹⁹ Paul R. Goldin, "Han Law and the Regulation of Interpersonal Relations: 'The Confucianization of the Law' Revisited," *Asia Major* 25, no. 1 (2012): 1–31, esp. 9–10.

²⁰ Daniel Philpott, "Sovereignty," *The Stanford Encyclopedia of Philosophy* (Fall 2020 Edition), ed. Edward N. Zalta, URL = <https://plato.stanford.edu/archives/fall2020/entries/sovereignty/>. Kieran Laird, "The Body Politic," in *Political Concepts: A Reader and Guide*, ed. Iain MacKenzie (Edinburgh: Edinburgh University Press, 2005), 617–37.

²¹ For discussion on "body politic" in the military treaties, see Mark E. Lewis, *Sanctioned Violence in Early China* (State University of New York Press, 1990), 115–20.

punished offenders with the primary aim of the harmony of the collective, he also retained the prerogative, on behalf of the parts—his subjects—to extend clemency toward transgressors, should it serve the well-being of his realm.²²

In 122 BCE, Emperor Wu issued an imperial amnesty, expressing his inability to endure seeing his people suffer punishment. Consequently, he extended a blanket amnesty to all under Heaven, proclaiming, “[T]he ruler is akin to the heart, and the people are akin to the limbs. If the limbs suffer injury, the heart experiences sorrow and distress... I hereby decree an imperial amnesty, cleansing [all within] the realm and offering them a fresh start” 蓋君者心也，民猶支體，支體傷則心慚怛... 已赦天下，滌除與之更始。²³ Emperor Wu employed a popular metaphor that crafted a language of sovereignty in the Western Han. He compared himself to the heart of the whole body, an organ that in early Chinese context not only felt pain and happiness but also exercised willpower to direct the actions of the whole. Although the emperor asserted that he experienced anguish when his people faced punishment—as they were his body parts, the discourse can also be interpreted as depersonalizing the people. Individuals were abstracted into constituent parts of a whole, devoid of consciousness or sentiment. Indivisible and imperceptible, they had to be represented by the emperor.

The Outer Commentary on the Han Edition of “The Songs” 韓詩外傳 echoed the idea, delineating the entire empire as a single organism, wherein the emperor represented the whole body, while the ministers and the vast populace embodied the heart, belly, and limbs:

“As for the important ministers and the multitude of people, they are the heart, belly and limbs of the master of men 人主. If the heart, belly, and limbs remain unafflicted, then the master of men remains unafflicted as well.”²⁴

The concept of the body politic can be traced back to the *Book of Songs*, which designates warriors as the core and heart of the rulers and dukes.²⁵ With certain variations, this metaphor consistently views distinct social segments as integrated components of a unified entirety. Each constituent attains significance solely when contributing to the collective, yet does not hold autonomous existential significance. While the above three sources depict the organic rapport between the ruler and their subjects as an indisputable truth, the *Three Strategies* 三略 prescribes this organic unity as an ideal relationship that the ruler should strive to attain.

²² While the notion of society as an organism can be traced back to the time of Plato, scholars have highlighted its potential as a theoretical underpinning for advocating paternalistic and authoritarian governance. See Donald N. Levine, “The Organism Metaphor in Sociology,” *Social Research* 62, no. 2 (1995): 239–65. Walter M. Simon, “Herbert Spencer and the ‘Social Organism,’” *Journal of the History of Ideas* 21, no. 2 (1960): 294–99.

²³ Ban Gu 班固, *Hanshu* 漢書 (Beijing: Zhonghu shuju, 1962), 6:174.

²⁴ *Hanshi waizhuan zhuzi suoying* 韓詩外傳逐字索引 eds. Dim Cheuk Lau and Fong Ching Chen (Taipei: Taiwan shang wu yin shu guan, 1992), 3.9/18/6. *The Outer Commentary on the Han Edition of The Songs* (韓詩外傳) dates to the Western Han dynasty.

²⁵ *Shijing yizhu* 詩經譯注, translated and annotated by Zhou Zhenfu 周振甫 (Beijing: Zhonghua shuju, 2002), 10–11.

“As a general principle, the establishment of a state entails acquiring worthy individuals and the populace. Entrust the worthy as the heart and core, and engage the people as the four limbs. In doing so, no thorny whips need to be used. Wherever the ruler leads, the populace will follow akin to limbs and body accompanying a person, and akin to bones and joints collaborating in harmony. The way of Heaven functions naturally, its techniques are flawless.”²⁶

This passage directly addresses the lord of a state. It entreats the ruler to recognize his worthy subjects and the masses as integral parts of his own being, presuming that once the ruler prioritizes the well-being of his people, they would inherently align and form a cohesive and unified entity. In this perspective, individual willpower was subdued, and potential conflicts amongst the people were disregarded. Some Confucian texts reinforce this view, asserting that the organic connection between the ruler and his subjects is not a natural reality but should come into being when the lord adopts proper behavior. Mencius argued that “if the lord regards the ministers as his arms and legs, then the minister regards the lord as his belly and heart.”²⁷ While Mencius granted ministers the autonomy to choose what kind of ruler they would pledge loyalty to, he also assured the ruler that, once he embraced the ministers’ interests as an integral aspect of himself, ministers would instinctively relinquish their independence and submit to him wholeheartedly. This assurance of unwavering submission by the people was consistently emphasized, serving as an enticing outcome to persuade rulers to forge a unified and indivisible bond with their subjects, culminating in a singular and harmonious body.

The Elder Dai’s Version of the Records of Rites 大戴禮記 says

“If the superior loves inferiors as his belly and heart, then the inferiors will love their superior as babies sees their compassionate mother.”²⁸

Similarly, *the Family Saying of Kong Family* 孔子家語 says,

“If the superior loves his inferiors as his hands and feet love his belly and heart, the inferiors will love their superior as babies loves their compassionate mother.”²⁹

²⁶ Liu Tao *San lüe yi zhu* 六韜三略譯注, annotated and translated by Tang Shuwen 唐書文 (Shanghai: Shanghai guji chubanshe, 1999), 148. The bibliography recorded by Ban Gu in the History of Western Han did not mention *San lüe* but it became a popular text in the Eastern Han dynasty; for a discussion of its date, see Liu Tao *San lüe yi zhu*, 141–44.

²⁷ Mengzi Zhengyi 孟子正義, annotated by Jiao Xun 焦循 (Beijing: Zhonghua shuju, 1987), 546.

²⁸ *Da dai liji jiegou* 大戴禮記解詁, annotated by Wang Pinzhen 王聘珍 (Beijing: Zhonghua shuju, 1983), 5.

²⁹ *Kongzi jia yu zhuzi suoying* 孔子家語逐字索引 eds. Dim Cheuk Lau and Fong Ching Chen (Taipei: Taiwan shang wu yin shu guan, 1992), 3/4/3. There might be a mistake in the statement, which says that “the superior loves his inferior as his hands and feet love his belly and heart.” Considering the different importance of body parts, it makes more sense to compare the superior

Those two statements combined the body politic with the metaphor of parental relationships. Early Chinese thinkers recognized the unconditional attachment babies have to their mothers. They consistently drew upon this dynamic as a metaphor to portray an idealized connection between parents and their grown children, as well as between the ruler and the ruled.³⁰ The mother and her baby child can be deemed a harmonious entity, a notion extolled across a vast spectrum of literature and art. A mother, in general, prioritizes the best interests of her baby and often regards her baby as an intrinsic part of herself. However, within the mother–baby relationship, the infant has not yet developed autonomy, relying entirely on and strongly attached to the mother.

The parental metaphor echoes the body politic. The body politic signifies that all members of society constitute a singular entity with the ruler as its embodiment. Each member was vital to the proper functioning of the body and should organically cooperate.³¹ Yet, if individuals are perceived as constituents of an organic whole embodied by the ruler, the ruler wields the authority to act on behalf of these constituents to punish and pardon. Individuals are thus reduced to fractional components of the whole, devoid of independent agency or the right to seek justice. Their injuries were losses borne by the whole, for which the ruler would punish the wrongdoers. However, this punitive purpose was not directed at seeking revenge or compensation, but rather at upholding the order of the whole. Consequently, if pardoning the criminals could serve the overall well-being, the ruler has the power to do so.³²

The Absence of Retribution and Tort Laws in the Qin-Han Empires

Body politic were used by early scholars to define the responsibility of sovereignty, it also aids readers in comprehending the legal practice of the early Chinese empires. The law was not a body of norms authorized by a community to regulate interactions among individuals. Instead, it was a system designed and developed by the ruler to uphold order within the realm. When compared to early legal codes in other civilizations, the legal statutes of the Qin-Han period exhibit a distinct characteristic: the absence of both the principle of retribution and the principle of tort in the hundreds of detailed legal statutes unearthed thus far.

First and foremost, violence was primarily monopolized by the government, and theoretically any infliction of pain upon offenders could be carried out

with belly and heart and the inferior with hands and feet, namely, “the superior loves his inferior as his belly and heart love his hands and feet.”

³⁰ Liang Cai, “How Strong is Your Love for Your Parents? Childlike Mindset and Confucian Filial Piety,” *the Bulletin of the Jao Tsung-I Academy of Sinology*, 7 (2020): 225–54.

³¹ Except for the Three Strategies (三略), the texts that preserved discussions on the body politic could all be labeled as part of the Confucian corpus.

³² Cosmological thinking could also provide a perspective for interpreting amnesties. Nonetheless, moral cosmology presents a certain logical challenge in justifying the freeing of heinous culprits through all-encompassing amnesties. See Karen Turner, “War, Punishment, and The Law of Nature in Early Chinese Concepts of The State,” *Harvard Journal of Asiatic Studies* 53, no. 2 (1993): 285–324. See McLeod and Yates, “Forms of Ch’in Law: An Annotated Translation of The Feng-Chen Shih,” 125–26.

only by the political authority.³³ In the pre-imperial era, seeking vengeance for one's kin or master was a practiced and celebrated custom.³⁴ Confucian classics elucidated the duty of a son to avenge the unrighteous killing of his father or brother.³⁵ However, the *Gongyang Tradition of Spring and Autumn Annals* emphasizes that filial vengeance is justifiable only in circumstances where the central authority has crumbled: "When there is no Son of Heaven above and no regional lord below, one may, on the grounds of affection and hatred, resort to violence."³⁶ When the central power is functioning, it falls upon the governing body to administer punishment to wrongdoers. During the Han dynasty, officials turned to Confucian doctrine for guidance on filial vengeance. Nevertheless, none of those cases went unresolved without legal prosecution or punitive measures.³⁷ Tales emerged of renowned professional assassins of early imperial China who carried out acts of private violence on behalf of clients.³⁸ However, the historian Sima Qian unambiguously asserted that the conduct of professional assassins did not align with principles of uprightness and righteousness³⁹ and criticized them for resorting to "nefarious deeds that transgress public law."⁴⁰ Ban Gu perceived the emergence of individual avengers and professional assassins as a direct reaction to the disorder and decentralization of the Zhou dynasty. He commented, "[They] resort to nefarious deeds that transgress public law, as mere petty commoners, they usurp the authority to take life; their offenses exceed the severity of the death penalty."⁴¹

Ban Gu's comments precisely reflect the reality of the unified empire, which sought to centralize the use of violence to control both the offenders and avengers. In the Shuihudi Qin law, fathers were granted substantial discretionary power. A distinction existed between charges under official jurisdiction 公室告 and family-related offenses 家罪. A father or slave-owner could avoid

³³ In reality, revenge was very common in Han society. See Masubuchi Tatsuo 増淵龍夫, *Chūgoku kodai no shakai to kokka: Shin Kan teikoku seiritsu katei no shakaishiteki kenkyū* 中國古代的社會と國家: 秦漢帝國成立過程の社會史的研究 (Tōkyō: Shōwa, 1996), 91–118.

³⁴ Lewis, *Sanctioned Violence*, 39–43. 82–96. Anne Cheng, "Filial Piety with a Vengeance: The Tension between Rites and Law in the Han," in *Filial Piety in Chinese Thought and History*, eds. Alan Kam-leung Chan and Sor-hoon Tan (London: Routledge Curzon, 2004), 29–43.

³⁵ Michael Dalby, "Revenge and the Law in Traditional China," *The American Journal of Legal History* 25, no. 4 (1981), 267–307, especially 270–77. Soon-ja Yang, "The Reconciliation of Filial Piety and Political Authority in Early China," *Dao: A Journal of Comparative Philosophy* 16, no. 2 (2017): 187–203.

³⁶ *Chunqiu Sanzhuān* 春秋三傳, annotated by Du Yu 杜預 etc. (Shanghai: Shanghai guji chubanshe, 1987), 100.

³⁷ *Hanshu*, 83:3395. See also Yang Hua, "Hatred and Revenge in Ancient China During the Qin and Han (221 B.C.–220 A.D.): The Expression of Emotions and the Conflict between Ritual and Law." *Emotions across Cultures: Ancient China and Greece*, ed. David Konstan (Berlin/Boston: De Gruyter, 2022), 169–92.

³⁸ Sima Qian 司馬遷, *Shiji* 史記 (The Grand Scribe's Records), (Beijing: Zhonghua shuju, 1959), 124: 3181.

³⁹ *Shiji*, 124:3181. Sima Qian at the same time thought highly of both revengers and knight-errants—men who regularly ignored the laws and exercised violence either to bring justice to their families or to repay patronage.

⁴⁰ *Shiji*, 124:3188.

⁴¹ *Hanshu*, 92:3699.

prosecution if he exercised violence and caused the death of his son or slaves.⁴² However, in the Zhangjiashan Han legal statutes, slave owners were restricted from personally executing or maiming their own insubordinate slaves; instead, the government would punish those slaves if their masters sued them.⁴³ Parents could accuse their offspring of being unfilial, resulting in a death sentence, yet the execution would be carried out by the government in a public marketplace setting.⁴⁴ In cases where parents inadvertently beat their children to death or slave owners were responsible for the demise of their slaves, they would be subjected to punishment and receive the highest fine, categorized as “redemption of the death penalty”.⁴⁵ The government did not tolerate severe domestic violence within marital relationships. According to the Shuihudi Qin legal statutes, if a wife struck her husband, she would face government-imposed punishment, becoming a convict laborer. Conversely, if a husband physically harmed his wife, resulting in significant harm, the government would administer a punitive measure of shaving his head. However, this law underwent modification during the Han period, whereby violence enacted by a husband upon his wife was generally permitted without state intervention, unless the husband employed a bladed weapon.⁴⁶ The prohibition of severe domestic violence was probably due to the fact that female body was counted valuable human source of an empire.⁴⁷

If individuals were regarded as integral components of an organic body, constituting the sources of an empire, then it is understandable why the principle of talion—an eye for an eye and a tooth for a tooth—was absent in the Qin-Han legal system. This distinction becomes particularly evident when we observe that talion stood as a prominent tenet in early legal codes, from early Babylonian to Biblical and early Roman law. This principle stipulated that the perpetrator should receive as punishment the exact injuries or damages they had inflicted upon their victims.⁴⁸

Furthermore, whereas talion—law of retribution in kind—is missing in early imperial China, compensation for victims is scarcely mentioned.⁴⁹ Pecuniary sanctions for wrongs such as personal injuries were common in early laws, extending back over 2,000 years in Germany, spanning from

⁴² *Shuihudi Qinmu zhujian*, 117–19; Hulsewé, *Remnants of Ch'in Law*, 148–49, D87, D88, D89, D90, D91. Ulrich Lau, “The Scope of Private Jurisdiction in Early Imperial China: The Evidence of Newly Excavated Legal Documents,” *Asiatische Studien/Études Asiatiques* 59, no. 1 (2005): 333–52.

⁴³ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2:446; 2: 404–6 (slip nos. 38, 39). *Zhangjiashan Han mu zhujian*, 14.

⁴⁴ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 402–3 (slip nos. 35–37).

⁴⁵ *Ibid.*, 2: 404–5 (slip no. 39).

⁴⁶ *Ibid.*, 1: 231. 2: 402–3 (slip no. 32) Shuihudi (1990), 112 “Falü dawen,” slip nos. 79; Hulsewé, *Remnants of Ch'in Law*, 141, D64. *Shuihudi Qin mu zhujian*, 112. Wang Zijin 王子今, “Zhangjiashan Han jian ‘Zei lü’ suojian ‘qihan’ ‘qi ou fu’ dengshi lunshuo” 張家山漢簡賊律所見“妻悍”“妻毆夫”等事論說, *Nandu xuetan* 南都學壇 2002.4:5–8.

⁴⁷ Shiji, 118.3086, Shang Yang, *The Book of Lord Shang: Apogetics of State Power in Early China*, translated by Yuri Pines (New York: Columbia University Press, 2019), 142.

⁴⁸ A. S. Diamond, “An Eye for an Eye,” *Iraq* 19, no. 2 (1957): 151–55.

⁴⁹ Geoffrey MacCormack, “Revenge and Compensation in Early Law,” *The American Journal of Comparative Law* 21, no. 1 (1973): 69–85.

the beginning the Anglo-Saxon occupation till the 11th century in England. In these legal frameworks, the laws were designed to regulate relationships among individuals and the community was satisfied if the wrongdoer had made his peace with the aggrieved individual or group, often through the offering of gifts.⁵⁰ However, in the Qin and Western Han dynasties, the focus shifted. Wrongs were not primarily framed as violations of individual rights, but rather as transgressions against the imperial order defended by the emperor.

Body Injuries and Punishing the Victims

The purpose of punishing criminals was not to do justice to injured individuals, but to maintain the interests of the imperial order. This overarching principle is evident in the legal statutes pertaining to acts of aggression and conflict. “The Statutes of Assaults” from Zhangjiashan has approximately 25 provisions that address acts of violence against individuals including plotting, committing murder, assault and injury during a fight, family violence as well as destruction of property and livestock. The statutes carefully differentiated crimes between fighting with weapons and without, and prudently prescribed penalties according to the social ranks and interpersonal relations. However, amidst those rich sources, scant attention is paid to compensating the victims. In some instances, remarkably, the victim themselves may face punitive measures. This notion is exemplified by the case mentioned at the outset of this paper, wherein a pregnant woman who suffered a miscarriage due to a physical assault would also face punishment.

“Fighting with or striking a [female] person so that she miscarries: shave [the criminal] and make [him or her] a bondservant or bondwoman. For a woman who is carrying a child and dares to quarrel or fight with someone else, although the other person may strike her so that she miscarries, fine [the woman] who miscarried because of the other person four liǎng (ca. 62gram) of gold.”⁵¹

This statute likely finds its precedent in the Qin dynasty. The Shuihudi legal documents record an incident where a woman experienced a miscarriage during a dispute with her neighbor. She subsequently went to the government to report both herself and her assailant.

Now A, having wrapped and carried the child, has brought it along to denounce herself and to denounce C.⁵²

⁵⁰ Henry Sumner Maine, *Ancient Law Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (H. Holt: C. Scribner, 1877), IXV–IXVI. Diamond, “An Eye for an Eye,” 144–45.

⁵¹ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 402–3 (slip no. 31).

⁵² Katrina C. D. McLeod, and Robin D. S. Yates, “Forms of Ch’in Law: An Annotated Translation of The Feng-Chen Shih,” *Harvard Journal of Asiatic Studies* 41, no. 1 (1981): 159–60.

The pregnant woman who miscarried suffered twice. First, she was beaten and endured the pain of being beaten, and pain of losing her child; physically and emotionally she was in agony. Second, she was to be fined and suffered financially because of losing the baby. The law explicitly stipulated that even if the loss of the baby resulted from the violent actions of others, the woman who miscarried must still face punishment, with her fines—ca. 62 gram gold—directed to the government.

The regulation can only be understood when regarding both the women and the embryo as the integral parts of a unitary empire. If the embryo—the future baby—were considered a part of the empire’s greater body rather than merely an extension of the pregnant woman, then the pregnant women held a responsibility to safeguard it. When she was beaten and miscarried, she was both the victim and an offender, an offender who had failed to fulfill her duty to take good care of to-be-child. The treatment of interpersonal conflicts involving miscarriage presented a striking contrast when compared with legal regulations in other early civilizations. The Code of Hammurabi reads

“If a man strikes a free-born woman so that she loses her unborn child, he shall pay ten shekels for her loss. If a woman of the free class loses her child by a blow, he shall pay five shekels in money... . If he strikes the maid-servant of a man, and she loses her child, he shall pay two shekels in money.”⁵³

The Code of Hammurabi took the pregnant woman merely as a victim, in that it regarded the loss of her baby as her loss, who miscarried because of violence inflicted upon her. Therefore, the law prescribed compensation for her from the perpetrator.⁵⁴ The notion that embryos or babies were not the private possessions of parents but rather integral components of the empire was further corroborated by Qin’s prohibition of infanticide. If individuals unlawfully killed their infants, not due to the children’s disabilities but due to challenges in raising multiple children, they faced punishment as hard laborer with tattoo working for the state.⁵⁵ Similarly, if slaves illicitly killed their own child, they would be sentenced as wall-builders with tattoo, [working for the government] and subsequently returned to their owner.⁵⁶

⁵³ Johns, Claude Hermann Walter, trans., *The Oldest Code of Laws in the World, the Code of Laws Promulgated by Hammurabi, King of Babylon, B.C. 2285–2242* (Edinburgh: T. & T. Clark, 1903), 45.

⁵⁴ Since the Tang Dynasty, not only pregnant women who experienced miscarriages would not receive penalties, but the concept of retribution and compensation was also introduced. See *The Great Ming Code: Da Ming Lü* translated by Jiang, Yonglin (Seattle: University of Washington Press, 2005), 178–79. Tang lü shuyi 唐律疏議. Annotated by Changsun Wuji et al. 長孫無忌 (Taipei: Hongwenguan chubanshe, 1986), 385–86. Da Ming lü li 大明律例, authorized by the Emperor Taizhu (明) 太祖敕撰 (printed by The thirty-third year of Jiajing of Qing 明嘉靖三十三年 (1554), reprinted by Jiangxi buzheng shi si 江西布政使司重刊本). 18: dou’ou 鬪毆 1–2. *Da Qing lü li hui tong xin zuan* 大清律例會通新纂, ed. Yao Yuxiang 姚雨籟; Hu Yangshan 纂 胡仰山 (printed by the twelfth year of Tongshi reign of Qing dynasty 清同治十二年 (1873) 刻本), 26: Dou’ou 鬪毆 2–1.

⁵⁵ Hulsewé, *Remnants of Ch’in Law*, 143, D 74.

⁵⁶ *Ibid.*, 139–40, D56, D59.

While pregnant women, even if they were the victims, would still face punishment if they lost the child during a fight, those who were beaten might also be liable for punishment if their attacker was injured. The Shuihudi Qin legal collection related:

“In a fight someone is beaten by another person; there are no welts or bruises, but the attacker on the contrary broke his teeth. How are they to be sentenced? Each one is to be sentenced according to the statute concerned.”⁵⁷

A person aggressively attacked another person, resulting in his/her own teeth were broken. The victim who endured the physical assault was held accountable and subjected to punishment due to the body injury suffered by the attacker. Understanding the rationale behind this victim’s liability proves challenging unless we view the attacker as an integral component of an organic entity. In this perspective, the bodily harm experienced by the attacker was perceived as a loss suffered by the entire unity. As a result, the state attempted to address this by punishing the victim who unintentionally and indirectly became involved in the attacker’s loss.

Moreover, both the Qin-Han legal statutes and the Code of Hammurabi regulated punishments for assaulting individuals based on their social status. However, the former mandated fines to be paid to the government, while the latter stipulated compensation to be provided to individuals who suffered from violence. The legal statutes of the Han dynasty found at Zhangjiashan reads:

“Should there be no injury, but [it is a case of] a [person of] lower rank striking a [person of] higher rank: fine four liǎng of gold. For striking [a person of] the same rank or lower: fine two liǎng of gold. Should there be welts and bruises as well as other skin blemishes, fine four liǎng of gold.”⁵⁸

The Code of Hammurabi says,

“If a free-born man strikes the body of another free-born man or equal rank, he shall pay one gold mina. If a freed man strikes the body of another freed man, he shall pay ten shekels in money. If the slave of a freed man strikes the body of a freed man, his ear shall be cut off.”⁵⁹

If readers solely concentrate on the individual legal statutes, the Code of Hammurabi and the Zhangjiashan legal statutes may appear similar. In both instances, offenders faced punishment based on their status in relation to

⁵⁷ Ibid., 143, D 74.

⁵⁸ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 400–1 (slip nos. 27–28). Zhangjiashan Han mu zhujian, 12.

⁵⁹ Johns, *The Oldest Code of Laws in the World, the Code of Laws Promulgated by Hammurabi*, 44.

the victim's status. However, when placing these legal statutes within their respective contexts, scholars unanimously assert that the fines in early China were directed towards the government, whereas the fines prescribed by the Code of Hammurabi were intended to be paid to the victims.⁶⁰

Property Loss and Absence of Compensation to the Victims

The emperor perceived crimes as a menace to the wellbeing and stability of his regime. Offenders faced punishment in the form of hard labor or fines for the government, not for the victims who suffered losses due to these crimes. The "Statutes of Robbery," a collection of 18 legal provisions that was discovered in Zhangjiashan, encompass a wide array of deliberate and malicious offenses, ranging from ordinary theft to gang-based robberies targeting both personal and government-owned property, as well as tomb raiding.

The penalties were meticulously delineated based on the nature of the robbery—whether it was a collective gang robbery or an individual robber crossing borders. Furthermore, the monetary value of the illicit profit from the crime was systematically categorized. The statutes also describe methods of assessing the illicit profit; sometimes the median value in a month-long survey of prices in the commandery capital would be used as the benchmark. With such prudent legislations, compensation for victims was conspicuously absent. Severe perpetrators were punished as hard laborers with mutilation; perpetrators with smaller illicit gains were fined.

Comparing the Qin-Han legal statutes with those of other early civilizations illustrates this unique characteristic of early Chinese legal practice. I will focus on the legal statutes on stealing/robbing property. While English terminology distinguishes between theft and robbery based on whether force or intimidation is used when acquiring another person's belongings,⁶¹ Qin-Han legal statutes employed the word *dào* 盜 to refer to a broad range of crimes, covering regular theft or robbery of both personal or government property.⁶²

In the context of stealing from an orchard or garden, the Shuihudi Qin statute mandated that the perpetrator be subjected to hard labor, with no regard for compensating the victim. The statute states,

Someone picked another people's mulberry leaves; this illicit property is not [equivalent to] fully one cash. How is he to be sentenced? He is to be fined three ten-days hard labor [for the government].⁶³

⁶⁰ From the Tang dynasty onwards, the principles of retribution and compensation were introduced. Tang lü shuyi 唐律疏議, 383–84. The *Da Ming lü li* 大明律例, 20: Dou'ou 鬪毆 2-1. *The Great Ming Code*, 178–79; 186–87. *Da Qing lü li hui tong xin zuan* 大清律例會通新纂, 26: Dou'ou 鬪毆 2-1.

⁶¹ Bryan A. Garner, and Henry Campbell Black, *Black's Law Dictionary*, 9th ed. (St. Paul, MN: West, 2009), 1492, 1583.

⁶² Anthony François Paulus Hulsewé, "The Wide Scope of Tao 盜 'Theft' in Ch'in-Han Law," *Early China* 13 (1988): 166–200.

⁶³ Hulsewé, *Remnants of Ch'in Law*, 122–23, D7. *Shuihudi Qin mu zhujian*, 95.

In stark contrast, a fragment from the Code of Lipit-Ishtar provides,

“If a man entered the orchard of another man and was seized there for stealing, he shall pay ten shekels of silver. If a man cut down a tree in the garden of another man, he shall pay one-half mina of silver.”⁶⁴

Interestingly, scholars unanimously agree that the fines in the Code of Lipit-Ishtar were paid to the owner of the property, as J. Renger states, “Analysis of those sections in the laws of Eshnunna and in the Code of Hammurabi which stipulate sanctions for bodily injuries or offenses committed against property shows that damages, when stipulated, are always awarded to the injured party, never to the king or the state.”⁶⁵ The practice of delict operated under the assumption that laws were intended to safeguard the property rights of individuals, and the offender held the responsibility of compensating the victim who incurred losses due to their intentional actions.

Similarly, early statutes on stealing/theft in the west focus on the compensation for the victim, making the thief serve the person whose property was stolen as his bondsman, whereas the legal statutes of the Qin-Han empires dealt with thieves through punishment in the form of hard labor for the government. The Twelve Tablets of ancient Rome reads,

In the case of all other ... thieves caught in the act freemen shall be scourged and shall be adjudged as bondsmen to the person against whom the theft has been committed provided that they have done this by daylight and have not defended themselves with a weapon; slaves caught in the act of theft ..., shall be whipped with scourges and shall be thrown from the rock; but children below the age of puberty shall be scourged at the praetor’s decision and the damage done by them shall be repaired.⁶⁶

By contrast, thieves were punished under the Shuihudi Qin law by hard labor for the government.

A robber-guard steals 110 cash, but before being discovered, he voluntarily denounces himself. How is he to be sentenced? He is warranted to have his beard shaved off and to be made a bond-servant. Another opinion is : he is to be fined two suits of armour.⁶⁷

⁶⁴ Francis Rue Steele, “The Code of Lipit-Ishtar,” *American Journal of Archaeology* 52, no. 3 (1948): 425–50, esp. 437. John Pearn, “Hammurabi’s Code: A Primary Datum in the Conjoined Professions of Medicine and Law,” *Medico-Legal Journal* 84, no. 3 (2016): 125–31.

⁶⁵ Johannes Renger, “Wrongdoing and Its Sanctions: On ‘Criminal’ and ‘Civil’ Law in the Old Babylonian Period,” *Journal of the Economic and Social History of the Orient* 20, no. 1 (1977): 65–77, esp. 72.

⁶⁶ Allan Chester Johnson, *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary* (Austin: University of Texas Press, 1961), 11.

⁶⁷ Hulswé, *Remnants of Ch’in Law*, 122–23, D7. Shuihudi Qin mu zhujian, 95.

The Zhangjiashan legal statutes of the Han dynasty meticulously prescribe varying punishments for robbery based on the illicit gains acquired, subjecting these criminals to either hard labor or fines.

The illicit profit from a robbery valued in excess of 660 cash: tattoo [the criminal] and make [him or her] a wall-builder or grain-pounder; from 660 to 220 cash: leave [the criminal] intact and make [him or her] a wall-builder or grain-pounder; not a full 220 to 110 cash: shave [the criminal] and make [him or her] a bond servant or bondwoman; not a full 110 to 22 cash: fine four liǎng (approx. 62 g) of gold; not a full 22 to 1 cash: fine one liǎng (approx. 15.5 g) of gold.⁶⁸

There are 14 provisions specifically addressing stealing and robbery in the “Statutes of Robbery” from Zhangjiashan and over 35 cases concerning stealing and robbery in the “Questions and Answers regarding Qin Statutes” 法律問答 from Shuihudi. It seems unlikely that these instances all coincidentally omit any mention of compensating those who suffered from theft and robberies. Instead, a legal precedent stipulated that only the recovery of the stolen property, whether in its original form or as items obtained in exchange for it, would be returned to the victims.

“A robber robs another person. In every case, give whatever presently survives of the illicit profit, [including items purchased or exchanged for it], back to the [original] owner.”⁶⁹

Victims faced even more challenges beyond compensation—they might not have been able to reclaim their own property if the criminal had already sold or exchanged the stolen goods before being apprehended. This circumstance is explicitly addressed in “Questions and Answers regarding Qin Statutes” in the Shuihudi, which states,

“Now a robber steals A’s clothes; he sells these and thereby buys cloth, and he is caught. Is it warranted to take the clothes as well as the cloth and give these back to A or is this not warranted? it is warranted to take the cloth as well as other things which he has bought and give these back to A, the clothes are not warranted to be returned.”⁷⁰

A’s clothes were stolen, yet he found himself unable to recover it and instead had to content himself with the cloth that the thief had exchanged for his clothes. Moreover, a legal precedent explicitly declares that the criminal held no legal obligation to the victims if an imperial amnesty was declared after the crime.

⁶⁸ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2:462–63 (slip nos. 55–56). *Zhangjiashan Han mu zhujian*, 16.

⁶⁹ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 462–63 (slip no. 5).

⁷⁰ Hulswé, *Remnants of Ch’in Law*, 126, D20. *Shuihudi Qin mu zhujian*, 99.

“Somebody steals 1000 cash prior to proclamation of an amnesty. After the amnesty is proclaimed, when he has spent it completely, he is caught. How is he to be sentenced? Do not sentence him.”⁷¹

Stealing cash or property exceeding 660 cash was a grave offense, meriting the harsh penalty of tattooing and being assigned to work as a wall-builder or grain-pounder. As outlined in the “Statutes on Impoundment”, all property belonging to criminals sentenced to this level of punishment would be confiscated by the government.

As for the criminal [guilty of a crime that matches] being left intact and made a wall-builder ...in every case, impound his wife, offspring, material wealth, agricultural fields, and [plots for] homesteads.⁷²

If criminals were apprehended and subsequently sentenced, their property would be seized by the government. The government gained financially, through condemning the criminal as government hard laborer and impounding the criminal’s assets and his family members.⁷³ In the event of an imperial amnesty, criminals who had stolen and utilized their illicit gains were granted forgiveness. Such individuals managed to enrich themselves at the expense of others. In either scenario, the concept of compensating victims and restoring them to their original state prior to experiencing the crimes did not appear to be a primary legal concern. This pattern seems to have been prevalent during the Qin-Han era.⁷⁴ Wang Fu (ca. 90–165 CE), who lived roughly a century after the Western Han period, offered his perspective. He remarked that during instances of imperial amnesties, “habitual thieves would hide the stolen items and casually stroll by the residences of their victims... for those who spot their pilfered belongings but are unable to reclaim them, few things are more agonizing.”⁷⁵

People of the early Chinese empire were not different from others: when they suffered property loss but could not attain justice they felt hurt and resentful.⁷⁶ Could their pain compel them to demand the government to prosecute the criminals who imposed the damage on them? The answer is no.

⁷¹ Hulsewé, *Remnants of Ch'in Law*, 131, D29. *Shuihudi Qin mu zhujian*, 102.

⁷² Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 2: 600–1 (slip nos. 174–75).

⁷³ In the Qing Code, the dual goals of legal implementation were to physically punish the perpetrator and compensate the victim of robbery. See *Da Qing lü li hui tong xin zuan* 大清律例會通新纂, 22: Qiangdao 強盜 12-2.

⁷⁴ Since the Tang Code, the legal statutes began to systematically limit the application of imperial amnesty for certain crimes. See *Tang lü yishu*, 1: shie 十惡 8; 2: Mingli 名例 48. *The Great Ming Code: Da Ming Lü*, 1: Chang she suo bu yuan 常赦所不原 27-2. *The Great Ming Code: Da Ming Lu*, 27. *Da Qing lü li hui tong xin zuan* 大清律例會通新纂, 2: Chang she suo bu yuan 常赦所不原 律例 22-1.

⁷⁵ Wang Fu 王符, *Qian fu lun jian* 潛夫論箋, annotated by Wang Jipei 汪繼培 and Peng Duo 彭鐸 (Beijing: Zhonghua shu ju, 1979), 179.

⁷⁶ For the discussion on the relationship between justice and resentment and between justice and gratitude, see Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Chicago: University of Chicago Press, 1962).

Because after the imperial amnesty was announced, legal transgressions were generally pardoned.⁷⁷ These wrongdoings could not be prosecuted, and anyone attempting to pursue such cases would face condemnation, becoming criminals themselves. This message was reiterated in various imperial decrees:

“Let an amnesty be granted to all under Heaven, providing an opportunity for people to have a new beginning. As for those who are charged with having absconded, owing debts, together with those who have lawsuits dating from since the final three years of emperor Jing, none shall be admitted to proceed with a legal hearing.”⁷⁸

Dubs translated the *dai* 貸 as the debts to the government instead of debts in general, probably assuming that the government did not have the right to nullify debts between individuals. Nevertheless, even though this decree was not specifically aimed at addressing debts between individuals, it could still absolve debtors of their obligation to repay their creditors. Consider a scenario where debtor B was unable or unwilling to fulfill their loan repayment to creditor C, resulting in a lawsuit brought forth by creditor C against debtor B. However, due to the imperial amnesty, such a lawsuit would have to be dismissed in accordance with the emperor’s mandate to halt all legal proceedings and ongoing prosecutions. In available sources, more than 55 significant lawsuits or prosecutions involving capital crimes were dismissed upon the declaration of an imperial amnesty. Individuals who were on the brink of becoming criminals or were facing a death sentence were granted the status of commoners.⁷⁹ In 83BCE, when Emperor Zhao issued an imperial amnesty, asking that no accusations in the past two years be heard,

“An imperial amnesty shall extend throughout the realm, and all accusations and legal cases dating back to the final two years of Emperor Wu’s reign shall be promptly dismissed.”⁸⁰

After the imperial amnesty was issued, not only would the court decline to hear any lawsuits, but officials were also prohibited from investigating or bringing charges against any prior crimes or improprieties. In 7 BCE, Emperor Ai issued the following decree:

⁷⁷ Some imperial amnesties specify that capital punishment 殊死 could not be pardoned, see *Hanshu*, 1:67; 6:198; 8:267. Nonetheless, the act of pardoning individuals on death row was a common practice, see *Hanshu*, 46:2198. 56:2524; 89:3629.

⁷⁸ *Hanshu*, 6:169.

⁷⁹ *The History of Western Han* recorded at least twenty legal cases that were dismissed because they “happened to encounter the time when an amnesty was issued” (huishe 會赦). For example, *Hanshu*, 67:2914; 74:3134, 7:230; 15:447, 450; 16:537, 565.

⁸⁰ *Hanshu*, 7:221. Here the reading of hou 後二年前, is read as the last two years of Emperor Wu as to follow the format of the previous decree which reads, the last three years of Emperor Jing 孝景後三年以前.

“Officials shall not raise matters that transpired before the issuance of the imperial amnesty.”⁸¹

Six years later, Emperor Ping reaffirmed this policy and issued a stern warning, declaring severe consequences for those who attempted to prosecute crimes that had occurred before an amnesty.

“Officials are strictly forbidden from bringing matters before the emperor that transpired prior to the issuance of the imperial amnesty. Any individual disregarding this decree shall be subject to prosecution under charges of undermining the emperor’s benevolence, facing a sentence of ‘great sedition.’ This decree is to be established as a binding ordinance, promulgated throughout the realm (All under Heaven) to ensure that all clearly understand it.”⁸²

These phenomena pose a puzzle for modern readers, with our general assumption that individuals are autonomous agents with inherent rights over their property. These rights typically empower them to seek compensation from wrongdoers, aiming to revert their situation to its state before the offense. The question then arises: How could the state intervene to nullify these rights on behalf of the individuals? The prevailing discourse of the body politic in early Chinese empires provides an answer.

When individuals are perceived as integral components of an organic whole, they must be represented by the emperor. Consequently, the individuals themselves did not possess the authority to demand restoration or seek compensations. However, this does not imply that people during the Qin-Han dynasties lacked rights or property rights. They did possess specific property rights based on their social standing, and they held the right to inherit property and social ranks from parents or relatives. In contrast to the concept of inherent and inalienable rights, the rights of individuals in the Qin-Han empires were bestowed by the emperor. Moreover, in the framework of body politic, any harm inflicted upon an individual’s property could be viewed as a harm to the state itself. Therefore, compensation to the individual for their losses were substituted by a system where offenders worked for the state.⁸³

Simultaneously, the state’s imposition of penalties upon wrongdoers aimed to uphold social and political order, ultimately benefiting the collective whole. Barbieri-Low and Yates state, “Robbery as a crime is a violation of the social order and of the prerogatives of the Emperor, who guarantees the well-ordered world.”⁸⁴

⁸¹ *Hanshu*, 11:336.

⁸² *Ibid.*, 12:348.

⁸³ Although there was no direct discussion of the political economy of convicts in early China, the use of offenders as government laborers effectively served state interests. In Qin and Han empires, convict laborers were a crucial force in maintaining the efficient operation of the state apparatus. See Liang Cai, *Convict Politics: From Utopia to Serfdom in Early China (221 BCE–23 CE)* (Cambridge: Cambridge University Press, forthcoming).

⁸⁴ Barbieri-Low and Yates, *Law, State, and Society in Early Imperial China*, 1:37.

Conclusion

Modern legal theory argues that crimes that cause harm or loss of personal body or private property consists of both private wrong and public wrong. The ground for private wrong assumes the person's right over his body and property. Therefore, when an individual's rights have been intentionally or recklessly infringed by others, corrective justice allows either revenge by the victims or compensation to the victims.⁸⁵ The offender who wrongfully injures another individual's body or his/her property has duty to repair the damage, or replace the property or enabled the injured party to restore to normal life they live before. This is well known in the Western tradition as the law of tort or delict.

Crimes against personal body or property simultaneously constitute a public wrong. The government of any society has a public interest to defend, which entails preventing offences against its members, maintaining order of the society. Besides the duty to compensate the victims, the offenders also assume a duty to receive the punishment implemented by the government. In the medieval England, the offender and his family were obligated to make payments to the victim and his family; at the same time, the offender might also be required to make a payment to the king or lord.⁸⁶ Those punishments aim to prevent further crimes and restore the disrupted order.

Corresponding to public wrong and private wrong, criminals in the modern day assume two different forms of legal liability—criminal liability and civil liability. While the idea of criminals' duty to compensate the state for the public interest was generally absent in the Code of Hammurabi and the Twelve Tablets, the idea of compensating victims or the law of tort in criminal cases was missing in the legal statutes of early Chinese empires. In fact, during the establishment of the Han dynasty, its founder Liu Bang is reported to have pledged to his people the abolition of the captious and brutal laws of the previous regime. He vowed to adhere to the principles of simple retribution and restitution, who articulated, "I shall enter into a covenant with the local elders, enshrining three fundamental principles in our laws henceforth: those who kill people shall meet their death, those who inflict harm upon others or steal their property shall recompense for their transgressions. The remaining facets of the Qin Laws shall be entirely dismantled" 殺人者死，傷人及盜抵罪。餘悉除去秦法。⁸⁷ Liu Bang's three fundamental principles resurfaced two centuries later when a wave of rebellions swept across the empire. A leader of one such rebellion, Fan Chong 樊崇, established the same principles of retribution and compensation among his followers. "Therefore, he entered into a covenant with his followers: those who took a life would meet their end, and those who caused harm would make amends for their actions."⁸⁸

⁸⁵ Neil MacCormick, "The Obligation of Reparation," in *Legal Right and Social Democracy* (Oxford: Oxford Academic, 1982), 226. Andrew Ashworth, "Punishment and Compensation: Victims, Offenders and the State," *Oxford Journal of Legal Studies* 6, no. 1 (1986): 86–122.

⁸⁶ See Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*. Vol. 2 (England: University Press, 1895), 449–62.

⁸⁷ *Hanshu*, 1:23.

⁸⁸ Fan Ye 范曄, *Houhan shu 後漢書* (Beijing: Zhonghua shuju, 1965), 11:478.

Nonetheless, this notion only echoed through the voices of leaders who sought to secure the allegiance of their followers and establish a new social order. Once the Han dynasty had solidified its military dominance, it systematically inherited the Qin legal system. Instead of emphasizing the compensation for victims, the declaration “those who take lives shall face death, those who cause harm shall receive punitive sanctions” 殺人者死，傷人者刑 resounded more vigorously in historical sources—a proclamation underscoring the state’s utilization of punitive measures to control crime, rather than aiding victims in their pursuit of their interest.⁸⁹ Chinese distinctive legal practices can be comprehended in light of their understanding of the relationship between the emperor and the people.

Early Chinese empires was regarded as an organic and singular body, where people constituted the various parts and the emperor represent the entity. Depriving the independence of the individuals conveniently reduced the relationship between individuals to the relationship between the individual and the state. Individuals were bound not by obligations to each other, but to the collective entity. Wrongdoings between individuals were construed as actions that undermined the unity.⁹⁰

Moreover, the order of the entire entity takes precedence over the concerns of its individual components. The pursuit of vengeance by victims, often involving the infliction of greater harm in response to the harm suffered, would pose a threat to the established order and exacerbate the overall well-being of the collective. Following this perspective, the punitive principle of retribution—“an eye for an eye and a tooth for a tooth,”—was entirely absent from early Chinese imperial legal doctrines.

Ideally, the interests of the individual parts and the interests of the whole should align—where the well-being of each component contributes to the well-being of the entire entity. However, in practice, the situation proves to be more intricate. First, the organic unity symbolized by the emperor may seek maximum gains at the cost of sacrificing certain parts, namely the individuals. For instance, when criminals were subjected to harsh labor for the benefit of the government, the victims endured losses while the government reaped the benefits of free labor. Similarly, when the emperor granted clemency to numerous criminals, absolving them of their crimes, individual victims suffered injustice, yet the organic unity achieved temporary harmony.

Could the loss of certain individuals or parts have detrimental effects on the overall condition of the whole? The answer is multifaceted. To begin with, if a significant and substantial part is lost, it could indeed inflict damage or even imperil the entirety. Thus, *The Outer Commentary on the Han Edition of “The*

⁸⁹ *Xunzi jijie* 2:328; *Hanshu*, 23:1111; 83: 3395.

⁹⁰ Thanks for the anonymous reviewer who brought to my attention the Equalization of Fields (*juntian* 均田) system in medieval China, which embodies a similar ideology. In this system, all land was owned by the emperor, who had the authority to confiscate and redistribute it at his discretion. The fairness of this practice toward individual landowners was irrelevant; the land ultimately belonged to the emperor to give or take away. The primary concern of the imperial system was the welfare of society as a whole, rather than the interests of individual subjects. See also Victor Cunrui Xiong, “The Land-Tenure System of Tang China: A Study of the Equal-Field System and the Turfan Documents,” *T’oung Pao* 85, nos. 4/5 (1999): 328–90.

Songs” asserts that when key ministers and the broader population are in good health, the ruler remains unaffected as well.⁹¹

However, the suffering of a single individual was insignificant in comparison with the empire, which had around 59 million population in the Western Han. The suffering of one person could readily be disregarded, or compromised for the greater good of the entity. As a constituent part, the individual who possessed no inalienable rights and consequently could never petition for compensation concerning their loss. Instead, the emperor, embodying the entirety, represented the individual, being the sole agent empowered to exercise punitive authority.

Second, while the victims constituted integral components of the organic whole, the offenders held an analogous status within this framework. If the emperor punished the offenders in the interest of the collective entity, he could likewise extend clemency by absolving their crimes and rescinding punishments, all for the greater good. Emperor Wu articulated that he proclaimed an imperial amnesty precisely because the offenders were an integral part of the whole, and he could not bear witness to their suffering.⁹² Would the victims harbor resentment if the offenders were granted pardon? In this context, if individuals are regarded as the body and limbs, their individual consciousness and sense of justice would be ignored.

The doctrine of body politic was often celebrated as a benevolent teaching required rulers to exhibit compassion and assume responsibility toward their subjects. Scholars in early China indeed employed them to admonish and criticize the throne, beseeching him to align his private interests with those of the populace and prioritize the welfare of the commoners.

However, body politic, initially conceived to imbue the emperor with a sense of responsibility, inadvertently granted him unparalleled power and depersonalized the population. These doctrines logically justified a legal framework in which the monarch translated any malicious actions against individuals and their property as actions against his empire.⁹³ Consequently, offenders faced punishment not to reinstate victims to normative positions preceding the crimes but rather for the disruption they caused to the empire’s order. Furthermore, within the discourse of the body politic of sovereignty, the emperors would display sympathy toward victims who had endured body injuries or suffered property loss, but also toward offenders who had undergone physical or monetary penalties. Whereas offenders were punished for disrupting the order of the empire, they could also be pardoned for the harmony of

⁹¹ *Hanshi waizhuan zhuzi suoying*, 3.9/18/6.

⁹² *Hanshu*, 6:174. Many complicated social and political conditions contributed to this phenomenon, and the body politic offers a philosophical perspective to understand this practice. For a discussion of imperial amnesty in Chinese history, see Brian E. McKnight’s book, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (University of Hawai’i Press, 1981). To explore other reasons underlying the frequency of issuing imperial amnesty in the Western Han dynasty, see Liang Cai’s upcoming work, *Convict Politics: From Utopia to Serfdom in Early China (221 BCE–23 CE)* (Cambridge, UK: Cambridge University Press, forthcoming).

⁹³ For discussion of god-like emperor in early China, see Michael J. Puett, *To Become a God: Cosmology, Sacrifice, and Self-Divinization in Early China* (Cambridge, MA: Harvard University Asia Center for the Harvard-Yenching Institute, 2002).

unity. This discourse laid the philosophical grounds for ignoring the compensation for victims and justifying frequently pardoning culprits on a large scale. Such practice, in turn, directly comprised the practice of justice in early China.

Throughout the centuries-long history of the Han dynasty, voices of criticism pointed out that the interests of victims were ignored, and imperial amnesties unjustly freed vicious criminals. Nevertheless, this criticism never triggered any reforms. By contrast, in medieval and late imperial China—namely in the Tang Code, the Ming Code, and the Qing Code—both retribution and compensation were introduced into the legal system. Offenders against individuals' bodies or property would receive strokes with a heavy stick, along with penal servitude for the government. Simultaneously, they were required to provide medical treatment and compensation to the victims. Those culpable of serious crimes were not to be released under imperial amnesties.⁹⁴ Determining when and under what circumstances the principles of retribution and compensation systematically entered Chinese traditional law calls for further study.

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Dr. Liang Cai received her Ph.D. from Cornell University and currently serves as an associate professor of history at the University of Notre Dame. She specializes in Chinese political and intellectual history, with a focus on the Qin-Han dynasties (221 BCE–23 CE). Dr. Cai's publications cover topics such as Confucianism, bureaucracy, law, social networks, and archaeologically excavated manuscripts. She has also collaborated with computer scientists on a digital humanities project aimed at creating structured biographical data and conducting social network analysis of early Chinese empires, particularly those in the Qin-Han period, which is considered the fountainhead of Chinese civilization. Dr. Cai's first book *Witchcraft and the Rise of the First Confucian Empire* contests long-standing claims that Confucianism came to prominence with the promotion of Emperor Wu in the Han dynasty. She argues that it was a witchcraft scandal in 91–87 BCE that created a political vacuum and permitted Confucians to rise to power, ultimately transforming China into a Confucian regime. Her book won the 2014 Academic Award for Excellence presented by Chinese Historians in the United States and was a finalist for the 2015 Best First Book in the History of Religions presented by the American Academy of Religion. Her other selected publications appear in *The Journal of the Royal Asiatic Society*, *the Journal of the American Oriental Society*, *the Journal of Asian Studies*. Dr. Cai is completing her second book, *Convict Politics: From Utopia to Serfdom in Early China (221 BCE–23 CE)* (Cambridge University Press, forthcoming). Utilizing newly mined data from unearthed manuscripts and traditional sources, this work delves into convict politics in the early Chinese empires, challenging readers to reconsider the perilous implications of utopian thinking when applied to real-world politics <lcai@nd.edu>.

⁹⁴ See footnotes 58, 64, 74, 78.

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