

Retribution of sins v. Punishment of crimes

The aforementioned discrepancy between punishments of this world and those of the Netherworld results from their aiming at two different targets. Legal codes are intended to punish crimes, while the deeds punished in hells are sins. Crimes and sins overlap to some extent, all the more in China where the same term of 罪 can have these two meanings. Using a same term did not entail confusion between these two notions, however. Many actions considered as sins, some of which have just been mentioned above, were not punished as crimes. That deeds can be morally condemnable without being legally punishable is constitutive of the very notion of Law. This was true in imperial China, despite one sinological cliché has been to assert that traditional Chinese law was not distinct from morals, or that law was used mainly to restore the “cosmic order” (*i.e.* the moral order).¹ More accurately, the area where sins and crimes overlapped or interacted was the object of a particular attention, and of careful doctrinal elaboration, in jurisprudence as well as in religious literature. This area was aptly circumscribed by the enumeration of “Ten evils,” which we find as the article 2 of the penal codes of various dynasties from the Tang to the Ming and Qing; and we find the same term in the ninth of the ten courts of the Buddhist hell. Admittedly, the definition of these evils is not exactly the same in the legal code and in the religious treatise,² but the general inspiration is the same. These are unpardonable deeds, probably modeled after the Ten Parajika 波羅夷, the Ten unpardonable sins that entail immediate expulsion from the monks’ community.³ Committing one of the “Ten evils” ineluctably condemns the evildoer to one of the “three lower paths of rebirth” 三塗 :one will be reborn as a an animal, a hungry ghost, or a hell being.⁴

¹ See, among many authors, Jean Escarra, *Le droit chinois* ; Marcel Granet, *La pensée chinoise*, D. Bodde and C. Morris, *Law in Imperial China*. The “Chinese-law-as-restoration-of-the-cosmic-order” misinterpretation has been wittily refuted by Hsu Tau-lin 1970.

² The “ten evils” in the Buddhist “Scripture of the Ten Kings” are: 1. Killing, 2. Stealing, 3. Adultery, 4. Lying, 5. Uttering harsh words, 6. Causing enmity between others, 7. Engaging in idle talk, 8. Greed, 9. Anger, 10. Perverted views. This list must be completed with the “Five abominations” 五逆 : 1. Killing one’s mother, 2. Killing one’s father, 3. Killing an *arhat*, 4. Maliciously shedding the blood of a Buddha, 5. Disrupting the Samgha 僧伽制度. Correspondences can easily be found with the “ten evils” as defined in the penal codes, see below and note 31.

³ These rules are enumerated in the first section of the Vinaya pitaka, or regulation for monastic discipline originated in Sakyamuni ad hoc rulings. The Buddha uttered only four Parajika, the Hinayana tradition had eight Parajika, and the Mahayana practiced in China had ten. See Soothill & Hodous 1937 , “Parajika 波羅夷”.

⁴ Teiser 1994, p. 216 and p. 103 n. 4.

In the Ming and Qing code (明清律), the “ten evils” are defined as “crimes of a particular heinousness, which imperial laws cannot be lax upon. For those of these crimes that incur death penalty, they cannot benefit from an amnesty; for those that are not capital crimes, they nonetheless offend the rules of propriety, hence their labeling at the very beginning of the penal code, for warning people to keep from them” 此十惡，皆罪大惡極，王法所不容。其罪至死者，固恩赦所不原，即罪不至死者，亦俱有乖倫理，故特揭其名目於律首，使人知所警也。⁵ There, the penal code 律 circumscribes in legal terms the field where crime and sins interact.⁶ This is a vast area, encompassing many kinds of deeds common point of which is to be “extremely weak” or “heinous” (惡極), that is to say infected to the core by sin, so much so that their definition sounds as a moral condemnation as much as a penal characterization. Revealingly, such labeling does not automatically imply a particular penalty. A legal punishment was involved only if the sinful mind found its outlet in a crime punished by law. The various kinds of rebellions evoked in the three first items were for sure among the gravest capital crimes, but labels as “unkindness” 不睦 or “unrighteousness” 不義 covered deeds that, even when legally punishable, were hard to prosecute, such like non wearing mourning garments or remarry during mourning periods.

The specific punishment for the most heinous crimes pertaining to the “ten evils” was death by dismemberment 凌遲處死， while ordinary capital crimes were punished by decapitation 斬性 or strangulation 絞刑. Chinese jurisprudence went very far in discriminating how deeply a crime should be considered sinful enough to be categorized as one of the “ten evils.” For instance, the killing of three persons in a same family was labeled *budao* 不道, because it involved an attempt to exterminate this family. Interestingly enough, dismembering the corpse 支解 of one person was as serious a crime as killing three persons, since both crimes were punished by *lingchi* 凌遲處死. However, if among the three persons killed, some were themselves guilty of a capital crime, and their killing thus comparable to a revenge, then the deed was not ranged under the “impiety” *budao* category, and the punishment was decapitation 斬, not *lingchi*—which meant that this kind of revenge was a

⁵ Official commentary 總註 of the art. n° 2 in *Da Qing lili*, cf. *Duli cunyi* vol. 2, p. 16.

⁶ The “Ten evils” as defined in the Chinese penal codes since the Tang dynasty are: 1. Plotting for revolt 謀反, 2. Great rebellion 大逆, 3. Plotting high treason 謀叛, 4. Vicious rebellion 惡逆 (striking or killing one’s parents), 5. Impiety 不道; 6. Great irreverence 大不敬; 7. Unfiliality 不孝, 8. Unkindness 不睦, 9. Unrighteousness 不義, 10. Inner disorder 內亂 (incest).

capital crime, certainly, but not infected enough by sin to fall under one of the “ten evils”. Similarly, Chinese judges went very far in determining whether the aforementioned crime of “dismembering” 支解 had been committed with a sinful intent of desecrating a human body, for instance by harassing sexual parties; or if the cutting in pieces was motivated by an attempt to escape the law by concealing the corpse, or impeding its identification, which revealed no “evil intent” 惡意. In the first case, the same act of dismembering a corpse was *budao*, punished by *lingchi*, in the second case, it was just a capital crime of a common kind, punished by decapitation.⁷ However strange and questionable such decisions may be, they show a consistent intent to discriminate crime from sin with the greatest precision. Thus, the interaction between divine and human justice was by no means a complete confusion.

The striking similarities between, on the one hand, the conception of the afterlife and the salvation process at stake therein, and, on the other hand, the legal codification of crimes and punishments, was certainly not accidental. We intuitively perceive strong structural forces at work in the legal and religious realms, but in the current state of our knowledge, their interrelation is hard to qualify. To start with, if influences seem hard to deny, which direction was the main stream? Should we speak of religious influences on the framing of the penal code or, at the opposite, of a submission of the Netherworld to the law and jurisprudence of this world? Both can be true, alternatively, as shows the example of the “ten evils”, which soaked the penal code with notions of impurity and sin of Buddhist origin, but which, reciprocally, evince a strong influence of the penal codification on the karmic process of salvation. Meanwhile, the historical process that set these subtle interconnections between legal and supernatural punishments remains a matter for further studies, and fruitful exchange, hopefully, between historians of law and religions.

⁷ *Xing'an huilan*, one case included under the heading *sha yijia feisizui san ren ji zhijie* 殺一家非死罪三人及支解人 (Killing three persons immune of capital crime belonging to a same family or dismembering one person) .