SECTION 2.7

Punishments

A complete listing of all the punishments mentioned in the Statutes and Ordinances of the Second Year and the Book of Submitted Doubtful Cases texts, generally arranged from the most to the least severe, along with the specific crimes associated with each of them, is provided in section 1.8. The reader familiar with later Chinese law will be struck by three facts. First, the famous ‘ten abominations’ (shíè 十惡)—the crimes that the imperial state from the Sui dynasty on through the end of the Qing dynasty most abhorred and punished with the harshest of penalties, those that challenged the authority of the state and the Emperor, and that involved killing, sexual crimes, and violations of the principles of filial piety—are not present, at least as a separate coherent body of crimes.1 Nevertheless, in the “Statutes on Assault” (sec. 3.1) and in other sections of the Statutes and Ordinances of the Second Year text, we do find laws that punish offenses that would later be classified as the ten abominations. Second, the two concepts prominent later in the Han, ‘great sedition’ (dànì 大逆) and impiety (bùdào 不道), are not found in the legal texts from Zhangjiashan either.2 Third, the early Han had developed the principle that if a person had committed multiple crimes, he was to be punished only for the most serious.3 Overall, early Han punishments were developments and modifications of previous Qin punishments and can be roughly divided into the categories of death penalties, banishment, hard-labor sentences with or without mutilating punishments, fines, redemption fees, and various other forms of restitution and damages.

1 The scope and nature of the ten abominations changed over time. Though many of the crimes included in the grouping were present in the Han laws and those of the Jin, and all ten were named in the codes issued by the Northern Qi, they were brought together under the heading ‘ten abominations’ only in the Kaihuang code of the Sui. See MacCormack 1990, 178–209; Johnson 1979–97, 1:17–18, 61–62; Brook, Bourgon, and Blue 2008; Balazs 1954, 142–45. In the Tang, they were (1) plotting rebellion, (2) plotting great sedition, (3) plotting treason, (4) contumacy, (5) depravity, (6) great irreverence, (7) lack of filial piety, (8) discord, (9) unrighteousness, (10) incest.


3 See “Statutes on the Composition of Judgments” (sec. 3.3) no. 10 (slip no. 99).
Types of Death Penalties

Some capital punishments seen earlier in Qin legal practice are not found in the Zhangjiashan laws. Among these is the punishment of ‘being torn apart by chariots with exposure of the corpse’ (lièchē yǐ xùn, 裂車以徇), which is recorded as the punishment for the great reformer of the Qin legal system Lord Shang, after he rebelled in 338 BCE when his patron, Duke Xiao of Qin (r. 361–338 BCE), passed away. He was declared a violent bandit, and his family was exterminated. It was also applied to the rebel Lao Ai early in the First Emperor’s reign. On the one hand, this horrific penalty may have always been an extralegal punishment, not written in statutory form but employed upon Imperial order for extraordinarily serious offenses. On the other hand, the punishment of ‘having one’s three sets of relatives exterminated’ (yí sānzú, 夷三族, also written as mièzú, 滅族, or sānzú, 三族) was known to have been used under Emperor Gaozu of the Han and was said to have been eliminated by Empress Lü in the first year of her reign (187 BCE). Hulsewé has shown that the punishment of the extermination of relatives was not really eliminated at this time and was applied many times throughout the Han dynasty. The punishment is not named specifically in the Statutes and Ordinances of the Second Year text, but the execution of the parents, children, and siblings of the criminal through linked responsibility (see “Statutes on Assault” [sec. 3.1] no. 1 [slip no. 1(recto)–2]) basically amounts to the same punishment.

The most serious forms of the death penalty found in the Statutes and Ordinances of the Second Year text are ‘to be carved into pieces with exposure of the corpse’ (zhé, 磬), ‘to have one’s [severed] head suspended in the marketplace’ (xiāo qí shǒu shì, 梟其首市), and ‘to be cut in two at the waist’ (yāozhǎn, 腰斬). The punishment of being carved into pieces was meted out to those who threatened the security of the Han throne or who committed various forms of aggravated assault and robbery, grave robbery, intimidation, human trafficking, anonymous denunciation, impersonation of an official, or

---

4 For the biography of Lord Shang, see Shi ji, 68.2237; Nienhauser 1994, 7:95.
5 See Shi ji, 6.227; Nienhauser 1994, 1:130.
8 See Mizuma Daisuke 2006b, 5–6, and the detailed notes to “Statutes on Assault” (sec. 3.1) no. 1 (slip nos. 1[recto]–2).