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2023

### To Regulate, To Educate: Sanctions in Ming Dynasty China

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## CHAPTER SIX

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# To Regulate, To Educate: Sanctions in Ming Dynasty China

YONGLIN JIANG AND YANHONG WU

Sanctions constituted an essential part of the dynastic legal culture in Ming China (1368–1644). They served as an important instrument for social reforms and moral education as well as criminal punishment. The Ming imperial government stipulated sanctions in a variety of legal documents, treated different offenders according to a series of principles, and enforced the sanctions with various agencies. Meanwhile, non-governmental and non-Han communities, particularly those in the borderlands, designed and implemented their own sanctions, some relying on rules that had been passed down orally rather than written law. This chapter demonstrates sophisticated and diverse sanction systems in Ming times and argues for their transformative and regulative nature.

### PURPOSES OF SANCTIONS

The Ming dynasty was well known for its harsh legal policy, a reputation which has contributed to the present-day denomination as “Ming despotism” (Mote 1961). The imperial court did more than codify severe legal penalties and establish enforcement agencies: it would also intermittently and indiscriminately mete out extra-legal sanctions (Ding 2000; Yang 1984). This severe enforcement, however, was less a manifestation of the rulers’ “sheer

paranoid character” than it was a multi-purpose regulatory mechanism. Zhu Yuanzhang (1328–98), founder of the Ming dynasty and chief architect of its legal institutions, justified his sanctions using the following four metaphors:

- (1) “Water and Fire”: deterrence (warning the populace against wrongdoing)

Water and fire were life necessities, but they presented danger as well. Zhu warned his subjects that water and fire could drown and burn people, respectively. Law was just like water and fire: people should approach it carefully with awe and stay away from it to avoid the danger of being “drowned” or “burned.” In this respect, Zhu Yuanzhang firmly upheld the aged principle: “Punishment is created in the hope that there will be no punishment.” By “making people dread the law and not dare to violate it,” Zhu hoped that “violence will cease; parents, wives and children will each be able to preserve their lives, and their property can be protected” (JJFL, 9; ZSTX, 1457).

- (2) “Hoe” and “Fishing Net”: incapacitation (eliminating the ability of the convicted criminals to further commit crimes)

For the Ming ruling elite, law functioned to “eliminate the bullies and help the down-trodden” (TZSL, 349). Namely, it punished specific criminals and protected the victims. The imperial preface to the *Great Ming Code* (1397; hereinafter, the *Code*) declared, “manifesting rituals is to guide the people; establishing the *Code* is to restrain villains” (JJFL, 9). Villains caused disorder in the cosmos; so, like weeds in the fields, they had to be eliminated by the hoe (law) so that the seedlings (the good people) could grow (TZSL, 347). Law was also a “fishing net” used to catch the big and strong fish (TZSL, 389). People could not live in peace until bullies were eliminated and evils removed (TZSL, 349). Zhu Yuanzhang believed that people entrusted their lives to the ruler because they relied on his protection, and the imperial government functioned to save the masses from villains with its legal apparatus (ZSTX, 1457–8).

- (3) “Nether World”: retribution (revenging the victims on the criminal)

Sanctions also served the purpose of retribution. A violation of cosmic principle, crime would eventually be punished by Heaven, no matter how long it would took. When discussing with his court advisors why there were unusual consequences for people’s good and evil deeds—the good had not been rewarded and evil not punished, Zhu Yuanzhang said:

Sometimes those who do evil may escape disasters; but principle permits no evil. Perhaps those who do good may not receive blessings; but principle does

not prohibit doing good. What people can do is only to cultivate themselves; disasters and blessings will all depend on the appointment of Heaven. That doing good does not receive blessings and doing evil does suffer disasters is only because time has not arrived yet.

(TZSL, 2741)

Even if someone escaped punishment for the time being, therefore, “the law in the nether world is slow and sure; the statutes in this world are quick but evadable. Such persons [the wrongdoers] cannot avoid recompense, if not for themselves, then for their sons” (ZSTX, 1459).

- (4) “Medicine and Cleanser”: rehabilitation (reforming the criminals to become honorable persons)

The Ming law makers saw the “polluted” minds and hearts of humans as the primary cause for criminality. Sanctions, then, should also be used to rectify their “waywardness,” purify their spiritual world, and encourage them to cooperate with Heaven and Earth in their minds and hearts as well as in their behavior. As the son of Heaven and “teacher” of the realm, the ruler must promote education and transformation in guiding the people. In this aspect, sanctions were like a “medicine” to cure human “diseases” and a “cleanser” to wash off their “stains.” They intended to correct people’s wrongs and reform them in line with the cosmic order (TZSL, 63). The fundamental values to be indoctrinated were the five basic relationships between ruler and minister, father and son, husband and wife, elder and younger brother, and friends. The imperial government’s mission was to “establish five punishments to assist five teachings” (TZSL, 3653; Farmer 1990: 114).

In short, jurisprudential justifications of sanctions constituted an essential part of penology in the Ming dynasty. Legal remedies served as an all-important mechanism to avenge crimes, warn against wrongdoing, prevent recidivism, and reform the guilty into moral and lawful subjects while educating the innocent about right and wrong. These purposes would not, of course, function separately: they were to work together to maintain stable social order, nourish people’s livelihood, and propagate the law makers’ worldview (Jiang 2011; Farmer 1995).

## FORMS OF SANCTIONS

The Ming dynasty employed a variety of sanctions. For the sake of simplicity, one could categorize them as basic, supplemental, temporary, and “extra-legal.”

*Basic Sanctions: The “Five Punishments”*

As the basis of the Ming sanction system, the Five Punishments included the following penalties:

- (1) Beating with the light stick, five degrees: 10, 20, 30, 40, 50 strokes.
- (2) Beating with the heavy stick, five degrees: 60, 70, 80, 90, 100 strokes.
- (3) Penal servitude, five degrees: one year, plus 60 strokes of beating with the heavy stick; one and a half years, plus 70 strokes of beating with the heavy stick; two years, plus 80 strokes of beating with the heavy stick; two and a half years, plus 90 strokes of beating with the heavy stick; three years, plus 100 strokes of beating with the heavy stick.
- (4) Life exile, three degrees: 2,000 *li* (1/3 mile), plus 100 strokes of beating with the heavy stick; 2,500 *li*, plus 100 strokes of beating with the heavy stick; 3,000 *li*, plus 100 strokes of beating with the heavy stick.
- (5) Death, two degrees: strangulation, decapitation.

The *Code* in fact stipulates other forms of sanctions (see below), but it lists these five penalties as the foundation of the penal system in the very first article. While it may appear a legal discrepancy, the system indicated Ming inheritance of an old tradition in Chinese legal culture: in antiquity, “the sages created five punishments to observe the [cosmological principle of] five phases” (He 2002: 27). The Ming seemed to have intended to maintain cosmological legitimacy for their basic forms of sanctions (Jiang 2005: lxix–lxx; Langlois, Jr. 1998: 180–2).

*Supplemental Sanctions*

While the Ming stuck to the cultural tradition of the “Five Punishments,” they invented new remedies to adapt to new social circumstances. The *Code* and other legal establishments set up several “supplemental sanctions.” The heaviest penalty was “death by slicing,” which punished the gravest crimes such as the plotting of rebellion or great sedition; the killing of one’s parents, husband, or household head (by a slave or hired laborer); and the heinous murder of ordinary persons using extreme methods like dismemberment. Another severe penalty was “military exile,” which sentenced convicts to serve as military personnel in garrisons. This punishment divided the distance of exile into six grades: extreme frontier, malarial region, distant frontier, frontier garrison, coastal region, and nearby garrison. It further categorized convicts into “lifetime” (where the penalty ended when the criminal died) and “permanent” (where the penalty would be inflicted on the criminals’ descendants even

after the criminals themselves died). By the mid-Ming period, military exile gradually replaced life exile to serve as the penalty between penal servitude and the death penalty (Wu 2000). To supplement life exile, the *Code* also stipulated banishment. As a minor type of exile, banishment would send criminals 1,000 *li* away to resettle. In the second half of the Ming, the cangue grew more common in adjudications.

There were some minor sanctions that dealt with criminals' status and property considerations. Officials, for example, could receive fines on their salary and have their transgressions recorded, or if a more permanent sanction was necessary, they could be demoted, deprived of their official certificates, disenrolled from the official registrar, and dismissed from office. Other status changes included loss of marital or Buddhist/Daoist certificates, dissolution of marital or adoptive relationships, and separation of households. A more severe status change was the enslavement of criminals' relatives either to the government or to meritorious officials' households for such heinous crimes as plotting rebellion or treason. If the crimes entailed property damaged, the criminals could be ordered to return illicit goods to private owners or government offices, or have their property confiscated by the government. For certain types of robbery, the offenders would receive the corporal punishment of tattooing. To support victims of violent crimes, the law also required that offenders pay "burial expenses."

### *Temporary Sanctions*

The *Grand Pronouncements* present a special case for examining the Ming sanctions. Unlike the *Code* and other legal establishments, this law was uncodified and simply compiled legal cases to demonstrate the imperial will. It recommended many harsh penalties to punish crimes, especially those committed by corrupt officials. The special sanctions included the extermination of clans, decapitation and posting of the head upon a pole, display of an executed body at the market, tattooing of the face, pricking of tendons and removal of fingers or kneecaps, amputation of hands or feet, and castration. These harsh penalties were special in that they were legal, but used only in extraordinary circumstances by the imperial court. By the mid-Ming, the *Grand Pronouncements* had faded away in Ming legal systems (Yang 1988).

Yet this special case law, despite its short staying power, exerted an important impact on Ming sanctions. When the founder promulgated it in the 1380s, he made it known throughout the realm that whoever held a copy of this law would automatically have their criminal charges reduced by one degree. This decree had remained effective throughout the dynasty, altering sanctions against individual offenders and, eventually, contributing to the replacement of ordinary life exile with military exile in the penal system (Wu 2000). In this

sense, the institutions of the sanctions in the *Grand Pronouncements* illustrate the Ming founder's harsh-law policy, while their later disappearance displayed imperial efforts to approach greater penal rationality and adjust to social reality.

### *Extra-Legal Sanctions*

Outside the law, the Ming court and other agencies often inflicted cruel sanctions. "Skinning" was used throughout the dynasty. "Beating officials at the court" had early roots and grew more frequent after the mid-period, when over 100 officials received such corporal punishment, ten losing their lives in the process. During the Ming, the agencies "East Depot," "West Depot," and "Internal Depot," all headed by eunuchs, used extremely harsh methods to deal with their political enemies. The most notorious examples included skinning, cutting into two at the waist, tearing asunder with five horses/carts, "implementing all five sufferings" (i.e., the severing of a person's head, feet, hands, ears, and eyes from the body), slicing slowly, boiling, castrating, needling, burying alive, poisoning, sawing, breaking of the spine, and dousing in hot lead. It is commonly believed that such "extra-legal" sanctions became one of the factors that eventually led to the fall of the Ming dynasty (Ding 2000).

### *Redemption*

Redemption was an adjusted form of sanction. Throughout the Ming dynasty, redemption served as an important mechanism to regulate legal behavior. The institution of penalty redemption provided offenders with opportunities to perform labor or pay a sum of money in lieu of physical punishment. Earlier on, the *Code* prescribed the basic redemption system, but after 1500, the new codified *Regulations for Trying Penal Cases* had established a more comprehensive redemption system. The Ming dynasty, therefore, had two sets of redemption rules: redemptions by the *Code* and by the *Regulations*. The *Code* prescribed the basic redemption fines which match the system of five punishments. The required redemption ranged from 600 *wen* of copper cash (for ten strokes of beating with the light stick) to 42 *guan* of copper cash (for a capital crime). The *Code* also specified certain redeemable crimes, including some "public crimes," "private crimes," crimes by women, young and old persons, astronomy students, and crimes of negligent killing or injury (Langlois, Jr. 1993: 105–06).

"Redemption by *Regulations*" involved two further subcategories in that those offenders who were financially capable could redeem their misdeeds with goods (such as grains) or money, while those who did not have the means could perform services like growing crops; transporting grains, charcoal, bricks, and water; working at post stations; serving as patrols or look-outs; making salt at salt farms; and smelting iron. Because the "redemption by the *Code*" only

applied to certain groups, and further, because the Ming founder's junction could not be modified or revised, it was the "redemption by the *Regulations*" that gained more popularity in legal practice.

## PRINCIPLES OF IMPLEMENTING SANCTIONS

### *Ten Abominations*

To punish heinous offenses more effectively, Ming law prescribed a special group of crimes known as the "ten abominations," which included: contumacy; depravity; great irreverence; lack of filial piety; discord; unrighteousness; incest; and the plotting of rebellion, great sedition, and treason. Importantly, the logic behind this grouping manifests one major objective of the Ming law to eradicate crimes that posed a threat to the fundamental hierarchical order. Nine of the "ten abominations" involve behavior against superiors in distinguished hierarchical relationships: Heaven, Earth, Gods of Soil and Grain, and imperial ancestors in the world of spirits; the ruler in the dynasty; high officials in each administrative jurisdiction; parents, husband, elder brothers and sisters in the family; and teachers. The *Code* severely punished these acts, such that nine of the thirteen crimes punishable by the most severe "sentencing to death by slicing" were among the "ten abominations."

Committing one of the ten abominations also deprived offenders of all legal privileges. Procedural defenses like the "eight deliberations" and "petitions" (see below) were denied in these cases, and those who received capital punishment would also lose their otherwise available right to live at home and serve their parents or paternal grandparents who required assistance on account of age or disability. Nor did the normal provisions of general amnesties extend to these crimes, such that even in special circumstances when a crime of "rebellion," "great sedition," or "treason" received a pardon, government-confiscated property was not returned to the offender. Even if in special circumstances they are pardoned, for crimes of "rebellion," "great sedition," and "treason," the properties which had been confiscated by the government were not returned. Furthermore, whereas close relatives were often entitled to conceal the crimes of their kin, this right did not apply when one of the "ten abominations" was involved.

Ming law also set up especially harsh treatments for the crimes of "plotting rebellion," "great sedition," "treason," "making or keeping insect poisons," "mutilating living persons," and "killing three persons in a family," all of which were included in the ten abominations. When those convicted of these offenses died in exile, any family members that had accompanied them were not permitted to return home. No proclamation of amnesty would result in a pardon, and regardless of whether offenders were older than 70 years of age, younger than 15, or disabled, they could not in any way redeem these crimes.



### *Eight Deliberations and Petitions*

The “eight deliberations” and “petitions” were judicial principles that granted procedural privileges to the ruling elite. Except in the aforementioned cases involving one of the “ten abominations,” the “eight deliberations” demanded that facts of a crime be reported to the throne in sealed memorials when the offender fell into one of eight designated classes: imperial relatives, old imperial retainers, meritorious officials, worthies, talents, diligent subjects, high officials, and descendants of preceding dynasties. Regular judicial officials did not otherwise have authority to interrogate the alleged perpetrator. Then, even after the emperor did decide that interrogation was appropriate, high officials were made to memorialize the proceedings yet again and petition for other officials’ input. The results of this deliberation were finally summarized and put to the throne for a final decision on the case.

“Petition” required the crimes of certain officials—all those in the capital, and in the provinces, those of the fifth rank or higher—be recorded and subject to an imperial decision as to whether to carry out the investigation. Regular judicial officials could interrogate civilian officials, but the final decision nonetheless needed approval from the throne. If officials of prefectures, subprefectures, or districts committed crimes, their superiors only needed to petition for permission to conduct the interrogation. Afterwards, the court could deliberate the case and memorialize again, sending responsible officials to investigate and verify facts. Only then could judgment be made.

### *Mental States*

Mental states were key factors in determining sanctions, and the *Code* proscribed four: deliberation, negligence, mistake, and non-knowledge.

Deliberation constituted a state of mind where one acted or failed to act knowingly and purposely. All crimes described in the *Code* required a deliberate mental state unless otherwise stipulated, and as a result, deliberation became an essential component of criminal conviction. For example, in cases of mortgaging or renting out wives, concubines, or daughters, buyers who knew the circumstances before purchasing and marrying these women committed the same crime as the original offenders. If they were unaware of the circumstances and did not in the sense of the *Code* act *deliberately*, they could not be found guilty. Although the law would dissolve the marriage, unwitting buyers would get their betrothal gifts returned.

Negligence was an alternatively unconscious mental state. The *Code* broadly defines it in the following “legal note”: “Negligence refers to the circumstances where ears or eyes cannot perceive the result, or where thought or planning cannot contemplate the consequence.” Under “negligent circumstances,” the offenders initially did not intend to harm others but “accidentally” caused

harms. According to present-day criminal justice theory, this provision includes two types of situations. One is “negligence” in the sense that the wrongdoers create social damages when they *should* know the risks but remain unaware. The other involves an “accident” or “irresistible force” which *cannot* be foreseen or controlled by humans.

A criminal “mistake” could occur when the criminal intended to harm one person but unexpectedly harmed another. The *Code* appears to have often blurred the distinction between negligence and mistake. For example, criminal liability did not require an original intention to do wrong if someone mistakenly did not follow the correct prescription when preparing imperial medicine (Arts. 2, 182). In this sense, both negligence and mistake addressed actors who did not consciously commit crimes but caused damage to prescribed social relations.

A mental state of not knowing the actual circumstances, or “non-knowledge,” was often an element in deciding whether a person should be held responsible for criminal liability. The general rule for those who broke the law without any knowledge of the circumstance was that they would either be punished according to lighter penalties or exempted from punishment. Article 37 of the *Code* stipulated that if the law prescribed heavier penalties for the crimes, but offenders did not know the circumstances when they committed them, they should be punished as ordinary persons. If the law prescribed lighter penalties, however, criminals who did not know the special circumstances should be treated by those provisions which doled out lighter penalties. For example, if a nephew struck and injured his uncle, but neither party was aware of their familial relation, the nephew was to be punished according to the provision on affrays between ordinary persons (Art. 325), not that on striking superior relatives (Art. 341). Nonetheless, if a father struck his son without knowledge of their relationship, he was to be punished according to the law on striking one’s son (Art. 342), not that of physical aggression between ordinary persons (Art. 325).

There were three major exceptions to the general rule on crimes of “non-knowledge.” The first, “collective prosecution,” incriminated a criminal’s family members regardless of their knowledge about the criminal’s act. The second pertained to “public crimes,” or acts performed for public matters and without private motives. (For brief explanations of both collective prosecution and public crimes, see below.) Finally, the third exception concerned itself with “conspiratorial acts,” such that when two persons conspired to commit a crime and one of them committed an unplanned offense in the process, the other would be considered guilty regardless of whether he or she was unaware of the unforeseen consequence. Examples of this scenario often occurred when lower-level family members helped lead outsiders to steal the property of their relatives (Art. 295): if the family members committed murder in the process, outsiders previously engaging in “theft” would be punished for “forcible robbery” (cf. Art. 289) regardless of their knowledge about the killing; likewise,

if the outsiders committed the killings, the inferior relatives would be punished according to the law on killing superior relatives (e.g. Art. 342). The same could be true for adulterous wives, who were to be strangled even if they did not know their lovers killed their husbands (Art. 308).

Otherwise, legal consequences depended upon the mental state of the actor, with deliberate crimes receiving more severe punishment than negligent and mistaken ones. Under a general amnesty, public crimes by officials and negligent or mistaken crimes were to be pardoned, whereas deliberate ones were not (Art. 16). Penalties for negligent crimes were also reduced from those for deliberate ones (Art. 11). Public crimes by officials and ordinary negligent killing could be redeemed with cash, but private crimes could not (Arts. 7, 8, 13, 315).

#### *Age and Capacity for Criminal Liability*

Age and capacity were also factors in determining whether a person should receive legal sanctions. The *Code* substantially limited criminal liability for the young, aged, and disabled. With respect to age, the younger or older the convicted criminals were, the less liable they would be. In particular, the *Code* divided them into four groups. (a) For those between 70 and 79 or 11 and 15 years of age, it was possible to redeem themselves for crimes whose punishments were as severe as life exile. (b) For those between 80 and 89 and 8 and 10 years of age, it was possible to petition the throne for convictions punishable by the death penalty. They could also redeem the punishments for crimes of robbery or the injuring another, while other less severe acts were not even to be prosecuted. (c) Those 90 years of age and older could avoid prosecution even for crimes punishable by the death penalty (with the exception of committing rebellion or great sedition). And finally, (d) children seven years of age or younger were exempted from criminal liability altogether (Art. 21).

With respect to the disabled, the *Code* mentions two types of people: the maimed and the incapacitated. Those falling within the “maimed” category might be blind in one eye, or have broken or lost a limb. When they committed crimes, they were treated the same as those between 70 and 80 years of age. On the other hand, those who were “incapacitated” might be entirely blind or paraplegic, and accordingly the law treated them more generously as people between 80 and 90 years of age (Art. 21). The *Code* never specifies situations regarding insanity, so it may have given discretionary power to district magistrates and other judicial officials to punish the mentally ill as either “maimed,” “incapacitated,” or neither.

#### *Joint Crimes*

In dealing with “joint crimes,” the *Code* stipulates a general rule that those formulating the plans were to be considered principals, while those merely

participating in the act were to be considered accessories. Accessories generally received punishment reduced by one degree, but this rule had several exceptions. Joint crimes by family members, for example, would result only in the punishment of the most senior member (usually an adult male). However, if this family member was either incapacitated or older than 80, the sanction would pass on to the next in seniority. Another exception pertained to all articles that specified “all” (*jie*) as offenders, thereby collapsing the distinction between principals and accessories. The same result would also follow special types of joint crimes, such as fornication, or trespassing on an imperial palace. Offenders in these cases were all to be treated as principals before the law (Art. 29).

### *Public and Private Crimes*

Public and private crimes differentiated offenses by government officials and functionaries. The distinction between the two lay in the wrong-doers’ motives, or whether they were acting for public or private interests. According to the *Code*, “public crimes” refer to cases where officials and functionaries commit offenses in public matters without private motives (Arts. 27, 28). “Private crimes,” on the contrary, denoted those offenses committed in the pursuit of self-interest. In terms of mental states, public crimes were generally offenses for negligent or reckless conduct, while private crimes were for deliberate, premeditated actions.

The sanctions for public crimes were unsurprisingly more lenient than private crimes. With respect to the former, crimes merited a beating with the light stick, with an opportunity for officials to pay a fine and functionaries to have their penalties meted out every season. Whenever the public crimes at issue were punishable by heavier punishments, both officials and functionaries had their misdeeds recorded in government files, to be reviewed every nine years when determining whether one deserved either a promotion or demotion (Art. 7). For private crimes, on the other hand, the offenders not only received the regular codified penalties, but also would be liable for immediate transferal, demotion, or dismissal from office (Art. 8).

For “public crimes,” especially, the *Code* prescribes standards by which to handle cases corresponding to the administrative hierarchy. It divides official personnel in each office into four categories: functionaries, staff supervisors, associate officials, and senior officials. If any single official or functionary committed “public crimes,” such as an error in preparing government documents, they were *all* punished according to the level of responsibility they held within the hierarchy. Similarly, in cases where a single official committed a “private crime” like deliberately exonerating or implicating another for his own benefit, the rest of the officials were punished as having negligently participated in the crime, even if they had no knowledge of the circumstances (Art. 27).

Concern for official responsibilities also arises in provisions specifically regarding local officials. District magistrates, for example, received punishment whenever households went unregistered (Art. 81) or land in the communities went uncultivated (Art. 103).

### *Collective Prosecution*

Collective prosecution—that is, when persons with certain relationships to criminals were liable for punishment—concerned two groups of people. The first group included close relatives, who could be executed, exiled, or enslaved along with whichever of their kin the law found guilty of a high-level crime (plotting rebellion, great sedition, or treason; making or keeping insect poisons; mutilating living persons; or killing three persons of one family). Exile meant not being able to return to one's hometown for a proscribed period of time, if no amnesty was issued, while any lifetime banishment also forced criminals to bring their wives, concubines, and families with them to their next destination (Arts. 15, 277, 278, 310, 311, 312). Other crimes that entailed collective prosecution of family members included forming treacherous cliques, associating with court attendant officials, and memorializing the virtues and achievements of high officials (Arts. 60, 61, 62).

Collective prosecution also applied to officials and functionaries, who either worked in the same office or belonged to the same chain of command. With regard to “public crimes,” for example, officials and functionaries in the same office who made mistakes signing documents would receive penalties decreasing in severity according to their hierarchical stature. Functionaries who carried out the actual transactions were punished as principals, while staff supervisors, associate officials, and head officials, respectively, bore penalties reduced by one, two, and three degrees (Art. 27). Similarly, if officials in superior offices failed to prevent crimes by their subordinates in lower offices, they would also be punished for dereliction of their duties (e.g. Arts. 127, 433).

### *Mourning Degrees*

Mourning degree between relatives was one of the most important principles in deciding the severity of a punishment. The *Code* stipulates mourning relationships of up to five degrees and eight grades:

- (1) *Zhancui* (garment of unhemmed sackcloth), three years (e.g., for parents and husband).
- (2) *Zicui* (garment of hemmed sackcloth), one year with staff (e.g., for sons and wife); one year without staff (e.g., for paternal grandparents); five months (e.g., for paternal great grandparents); and 3 months (e.g., for paternal great great grandparents).

- (3) *Dagong* (garment of greater coarseness), nine months (e.g., for married daughter).
- (4) *Xiaogong* (garment of less coarseness), five months (e.g., for brother's sons' son).
- (5) *Sima* (garment of coarse hemp), three months (e.g., for daughter's son).

This system defines not only the duration and dress required in mourning the death of relatives in the kinship network, but also governs the severity of sanctions for crimes between relatives according to the closeness of their mourning degrees. Generally, for crimes of homicide, injury or assault, the closer the relationship, the heavier the penalty. For crimes of theft, on the contrary, the closer the relationship, the lighter the penalty (Art. 295).

Based on mourning relationships, the *Code* also allowed criminals to stay home to support their old or disabled parents. Committing crimes punishable by the death, exile, or servitude normally deprived culprits of the possibility of staying home, but when their paternal grandparents or parents were at least 80 years of age, or otherwise maimed or incapacitated, they required someone to provide them with assistance. The *Code* allows that in these cases capital crimes should be memorialized petitioning imperial decisions, as long as the crimes were not among those which were not to be pardoned in spite of a general amnesty. For crimes punishable by penal servitude or life exile, the offenders were to be punished only by 100 strokes with the heavy stick and fined for any penalties that remained. This course allowed offenders to stay home and support their elderly or disabled relatives (Art. 18).

A close mourning relationship also recognized certain family members' rights to conceal crimes among themselves, so long as the crime did not constitute treason or sedition. The *Code* distinguishes relatives into two categories and treats them differently with regard to the concealment crimes. The first group were not to be punished at all for such acts: if close relatives helped hide one another's crimes, or if the slaves or hired laborers did the same for their superior, even to warn them when authorities were coming to arrest them, they faced no criminal liability. The relatives in this category included all those who lived together (*tongju*), any kin of the third degree of mourning or closer, maternal grandparents, grandsons along the female line (*waisun*), wife's parents, sons-in-law, wives of maternal grandparents, husband's brothers, or brothers' wives. The second group were to have their penalties reduced, so any crime-concealing relatives of the fourth degree or farther received a punishment three degrees below what would normally follow their conduct, and those not included in the mourning relationship had their punishments reduced by one degree (Art. 31).

### *Voluntary Confession*

The *Code* prescribes lenient sanctions for those who voluntarily confess crimes. As long as the confessions proved truthful and complete, and were made before government authorities discovered the matter, the law provided criminals possible exemptions. The *Code* not only encouraged criminals to give themselves up in person, but also allowed them to send others to make the confession for them. Moreover, analogous to the leniency with which the law regarded close relatives' concealment of crime (Art. 31), it considered one's act of informing the authorities on behalf of a relative as it would a voluntary confession in person. The *Code* further permitted criminals to make retribution to the victims, which was also to have the same effect as voluntary confession. For instance, if someone took another's property by forcible robbery, theft, or fraud and made voluntary confession to the owners of the property, or if he accepted illicit goods from others and repented his transgression by returning the goods to the owner, the law judged him the same as another who had made voluntary confession to the authorities and could thus be exempted from punishment. In crimes of forcible robbery or theft, criminals who captured their companions and sent them to the authorities could also have their penalties waived (Art. 24).

## AGENCIES AND PROCEDURES

To implement sanctions, the Ming instituted a complicated system of agencies and procedures. Some agencies handled judicial matters within the confinement of a legal framework, but others often abused their power and worked outside the law.

By legal design, a hierarchical network of government offices administered judicial matters. The emperor occupied highest level of this adjudicatory structure, fulfilling dual roles as top legislator and supreme judge of the empire. Assisting the throne in its duties were the "three judicial offices" of the central government: the Ministry of Justice, the Censorate, and the Court of Judicial Review. The Ministry of Justice was charged with conducting trial and reviewing major cases; the Censorate, a variety of duties that included investigating cases, impeaching officials, and supervising local areas in their judicial affairs (Hucker 1966). Finally, the Court of Judicial Review held the responsibility of reviewing judicial proceedings. Especially serious or difficult cases could find all three of these agencies conducting a joint deliberation and trial, although importantly, military judges enjoyed exclusive jurisdiction in any instance involving military personnel.

Principal administrative officials were also responsible for supervising and dealing with judicial matters at the provincial level. Here, the administrative

commission was primarily charged with civil affairs, but also had authority over judicial matters. It concerned itself with trying and reviewing legal cases while also supervising the judicial activities of subordinate magistrates.

Below the provincial administrative level were prefectures, subprefectures, and districts. Prefects, who took charge of general prefectural affairs, had the assistance of more specialized prefectural judges in handling cases of law. Subprefects and district magistrates, on the other hand, conducted trials and made sentencing decisions or suggestions personally within their jurisdictions. Further below the district level, the commoners organized themselves into “communities and tithings,” whose heads handled responsibilities such as maintaining order, settling disputes, collecting taxes, and promoting morality. Local populations also chose “senior and worthy” elders to adjudicate minor law cases involving marriage, land, and brawls.

According to law, litigation had to be initiated at the subprefecture or district level, such that any accusation that bypassed appropriate jurisdiction constituted a criminal act. If local government offices failed to hear grievances, litigants were technically permitted to beat the petitioner’s drum outside the imperial palace or to even intercept the imperial carriage on the road. In reality, however, many litigants brought lawsuits directly to prefectural or even higher levels. Although most of these cases were sent down for initial trial, the accusers who failed to observe jurisdictional boundaries rarely received punishment. In litigation, both the plaintiff and defendant could accuse or respond in written complaints. This gave litigators considerable chances to influence judicial affairs.

When problems arose with respect to the legal system itself, “extra-legal” judicial agencies played a significant role in handling whatever cases were corrupting the legal system. The Imperial Bodyguard, established in 1382 to serve as personal security to the emperor, maintained its own prison and had the authority to try cases. In 1420, the agency of palace eunuchs called the Eastern Depot was created to cooperate with the Imperial Bodyguard to investigate and try cases without any official restraints. Between the 1470s and 1510s, another secret service of palace eunuchs known as the Western Depot actually came to violently persecute innocent people. Occasionally, Ming emperors also used the infamous torture known as the “court beating” on unwilling officials. In 1524, for example, during the imperial ritual controversy, the Jiajing emperor (r. 1522–66) had 134 officials beaten at the court, sixteen dying of their wounds. In this sense the growth of these “extra-legal” institutions illustrate how much imperial authority expanded during the Ming era.

The Ming also institutionalized certain special judicial procedures that aimed at ensuring fair judgment. Beginning in 1404, to alleviate prisoners’ suffering in the sweltering heat, “summer assizes” were conducted to review judgments. If the cases were disputed or their circumstances excusable, the prisoners would be



released. In 1459, the system of “court assizes” was established to review death penalties in and around the capital. Each year after the fall frost, i.e., before the execution of death penalties, the emperor would gather major officials from the “Three Judicial Offices” and other agencies to deliberate the cases one last time. While they would punish “true” capital crimes according to their original judgments, they would also correct any where injustice was found. Then, to ensure fairness and apply leniency throughout the realm, the Ming initiated the “grand assizes.” Every five years, the court would mobilize its judicial forces in both the capital and provinces to review cases and their judgments. The court also frequently sent investigators to review cases according to no fixed schedule (Wu and Jiang 2017).

### “ETHNIC SANCTIONS”: THOSE TOWARD AND AMONG ETHNIC MINORITIES

The Ming dynasty was a diverse, multi-ethnic empire. Both the Han-dominated imperial court and various non-Han ethnic groups contributed to the development of legal sanctions against minority peoples. It is therefore necessary to analyze the legal establishments of both the Ming government and other ethnic groups, taking the Tai and Miao as examples for the purposes of this chapter.

#### *Imperial Sanctions Toward Non-Han Peoples*

The *Code* stipulates several sanctions tailored to non-Han peoples. The first addressed crimes committed by the so-called “persons beyond the pale of the civilization” (*huawai ren*). “*Huawai ren*” refers either to domestic or foreign “barbarians” who had “surrendered” to the Ming authorities. Although according to the *Code* their crimes were to be handled as it would those of other Ming subjects under the imperial law, it leaves a crucial issue untouched: “what” crimes should be judged by “whom”? Or, did the acts of all non-Han peoples fall under the jurisdiction of the empire? While no official commentary offers any clarification, some jurists believed that the *Code* would only provide sanctions in cases involving disputes between different ethno-social groups. According to this perspective, imperial law would not interfere in any purely internal affairs posing no political threat the empire.

However, the *Code* did contain an exception that applied to groups such as the Mongols, the *semu* people (from Central and West Asia), and the Huihui Muslims:

Mongols and Semu people shall marry with Chinese persons. (It is essential that both parties be willing.) They shall not marry within their own race.

Any violations shall be punished by 80 strokes of beating with the heavy stick, and both the men and women shall be enslaved by the government. If Chinese persons do not wish to marry Qinchu Muslims, the latter may marry with each other among their own race; the above prohibition shall not be applied.

(Art. 122)

According to the explications of various Ming jurists, the special sanction against these groups' marrying with those of the same ethno-social identity aimed to fulfill two objectives. The first was to eliminate any political threats these non-Han might later impose on the Han-dominated ruling order. By compelling inter-racial marriage, the imperial court intended to prevent the possibility of their "racial multiplications." Yet with regard to ethnic marital relations, the *Code* regulates only these three groups, leaving all the other non-Han groups unregulated, a discrepancy motivated at least in part by the political dominance of these groups in pre-Ming history. The second consideration behind these marriage laws was the dissemination of Han values. The Ming hoped that inter-racial marriage would facilitate the transformation of "barbarian customs," which would maintain the "purity" of Han values and practices. Such a sanction, however, might not have proven so effective. As seen in the article's parenthetical, the *Code* did establish one condition: "It is essential that both parties be willing." The law thus created a dilemma for itself with respect to enforcing the measure on non-compliant parties. The internal contradiction reveals the tension and perplexity that accompanied ethnic relations in the Ming realm.

To eliminate the so-called "barbarian pollution," the *Code* also stipulates sanctions against non-Han marital customs. One particularly striking example was its prohibition of "levirate," the practice of marrying deceased husband's uncles, brothers, sons (who were not the woman's biological children), and nephews. Denouncing the act as "incest," the *Code* names it "taking-in" (*shou*) rather than "marrying" (*qu*) and imposes the death penalty either by decapitation or strangulation) as a countermeasure, so as to "rectify societal customs." In reality, of course, these legal sanctions would not so quickly eradicate a social practice that had lasted over one century in China.

In a later codification of the imperial regulations, *Itemized Regulations for Trying Penal Matters*, the imperial court enriched the sanctions on ethnic groups. First, it explicitly employs the ethnic category of "Han" and in four articles and specifies punishments on those people for "leaving home to learn from Tibetan teachings," "fleeing to barbarian isles to evade corvée services," "colluding with barbarians," and "sneaking into barbarian places to make troubles." The *Itemized Regulations* also targeted "aborigines" and "barbarians," including the "Miao", "Yao," and "Zhuang." It imposed sanctions on Han who infringed upon others

groups' rights as well as any non-Han attacks on Han areas. The significance of these stipulations resided in the explicit differentiation of legal sanctions toward Han and non-Han peoples. In the early Ming, although the ethno-concept of "Han" received emphasis, it had not yet been incorporated into the *Code*. Before, it had used the phrase "*Zhongguo ren*" (referring to "Han Chinese") to differentiate those people from the Mongols, *semuren*, and Huihui Muslims. In the *Itemized Regulations*, however, the ethno-concepts of "Han," "Miao," "Yao," and "Zhuang" (in addition to the generic concepts of "aborigines" and "barbarians") explicitly and officially became legal concepts which had enough sway to result in different legal sanctions for different groups, even if it failed to attach clear legal definitions to these relatively vague ethnonyms.

Sanctions against "aboriginal officials" formed another important aspect of imperial law's treatment of non-Han peoples. These officials served as heads of "aboriginal offices" in the non-Han areas, especially in the southwest of the empire (Herman 2007: 103–88). They exercised governance over their communities alongside the authorities they nominally "received" from the Ming imperial court, and sanctions against them thus became a crucial part of imperial legal norms. For example, the law not only required that these aboriginal officials pay tributes to the imperial court, it also prohibited them from crossing their community borders to "make troubles" or "conclude marriages." The special penalties attached to these transgressions included denial of the of descendants' right to succeed their predecessor chieftains in title, as well as the denial of any chance to present tributes. The Ming adopted more practical remedies for aboriginal officials, such as converting their punishments of military exile or compelled servitude into mandatory service within their respective locales.

Application of "proper law" (*lex causae*) in handling disputes in non-Han societies provided a special principle for imposing legal sanctions on non-Han peoples. It was expressed that, except for rebellions and other "serious matters," all cases regarding household, marriage, and land should be tried by local authorities, and any violations along these lines sanctioned in accordance with the "regulations of aboriginal customs" (Huang 1979: 864). The word "regulations" referred not to any specific law, but to the legal rules of all non-Han peoples broadly. The imperial law in this sense acknowledged the effect and authority of non-Han norms.

In sum, during the course of the Ming legal construction, the sense of "ethnic sanctions" grew stronger, and different treatments of Han and non-Han peoples were more firmly established. While most imperial sanctions dealt with the Han, the imperial court paid more attention to non-Han peoples. For the latter, "judging cases in accordance with the imperial law codes" and "exercising governance by following aboriginal customs" proved complementary principles of the imperial law.

### *Tai Legal Sanctions*

In addition to the Ming empire's own legal culture, a large number of non-Han ethno-social groups developed their own regulatory systems. Due to the limit of space, this essay will review the laws of just two groups—the Tai and Miao—to demonstrate the diversity of legal sanctions in the realm.

The present-day ethnonym of “Tai” refers to diverse ethno-social groups with various autonomous communities living primarily in East, South, and Southeast Asia. In Ming China, there were two major Tai groups in the southwest province of Yunnan: the western “Taina” in Luchuan (present-day Dehong) and the southern “Taile” in Cheli and Menglian (present-day Xishuanbanna). The empire established a number of Tai “aboriginal offices” to exercise socio-political and legal authority in their respective areas (Yang and Mo 1996; Jiang 1983).

In Luchuan, the Tai followed an oral tradition and never enacted a legal code. However, they did enforce their own “system of crimes and punishments” basically without imperial interference (Zhang 1992). According to certain Han records, the Tai in west Yunnan conducted simple sanctions: for minor crimes, they inflicted “fines” on property, while for major crimes, they would resort to the “death penalty.” The death penalty took different forms, from drowning and strangling convicts, to trampling them with elephants, to throwing them high enough in the air to kill them. The society was particularly strict with respect to robbery and fornication; any violations would lead to shaving the offenders' heads and tattooing their legs before putting them to death. Some documents even state that robbery entailed the killing of one's family, and banditry would end in the execution of an entire hamlet. “Collective prosecution” generally seems to have been an emphasis.

We know much more about Tai legal sanctions in south Yunnan due to their enactment of written law codes. The writing system in this region (known as “Taile script”) originated in the kingdom of Lan Na (1292–1558), a regime between the Chinese and Siamese empires based mostly in present-day northern Thailand (especially Chiang Saen, Chiang Rai, and Chiang Mai). A number of Tai law codes in Thailand and China document a variety of rules, cases, precepts, rituals, and other social and religious norms (Yang and Tian 2002: 229–629). While it is likely that most of the extant legal texts were completed in much later time periods, parts of the *Code of Man Ray* (a.k.a. “Judgements of Man Ray,” or “Manrayavinicchaya,” “Mangraisat”) could prove representative of the Tai sanctions during Ming times. The *Code of Man Ray* was promulgated by Man Ray, the founding king of Lan Na (Griswold and Prasert 1977; Wyatt 1984). Although Lan Na was independent from the Ming, their population and Tai Lue in south Yunnan both belonged to Tai, sharing a spoken language, a writing system, and blood ties, all while enjoying close political relationship. By law, the *Code of Man Ray* also applied to Tai within Ming territories.

The *Code of Man Ray* is rich in legal sanctions. As identified in the text, their purpose was to continue the tradition created by ancient kings and make succeeding rulers and subjects know the behavioral norms and develop a sense of right and wrong. It stipulates specific remedies for various wrongdoings, including the death penalty, corporal punishments, exile, enslavement, corvée labor service, forfeiture of property, and humiliation. It further provides judicial procedures in enforcing these rules, such as the entry of evidence, means of appealing judgments, and a twenty-year limit on litigation. It specifically requires that all the officials observe the law so as to make the kingdom flourish. The *Code of Man Ray* also suggests a wide influence on members of its ethnic group that extended across political realms.

### *Miao Legal Sanctions*

In Chinese history, the “Miao” people received that name from others. Like the Tai, they had various autonyms, including Gho Xiong (west Hunan and east Guizhou), Hmub (southeast Guizhou), Hmong (west Guizhou, south Sichuan, and east Yunan), and A-Hmao (west Guizhou and northeast Yunan) in China (and various Hmong outside China). The Ming government simply used the single broad umbrella “Miao” to address a variety of ethnic groups, and by and large left them free to practice their own legal norms and sanctions.

The Miao lacked a writing system. Their legal culture was handed down through oral tradition. Nevertheless, they still created and enforced effective sanction systems. Their rules combined age-old traditions and customs with contemporary legislation. Their community leaders, including hamlet heads and priests, organized the creation and enforcement of various rules regarding life, health, property, the environment, production, family and ethical relations, and community security. The sanctioning measures against transgressions would entail warnings, compulsory apologies, fines, beatings, deportation, and death.

Compared to the Ming imperial law, three features of the Miao enforcement of legal sanctions stand out. The first concerned itself with self-enforcement. To settle disputes, the Miao would not necessarily resort to community authorities, but might also ambush and kidnap “offenders” to conduct their revenge. Family and even hamlet feuds, therefore, became a common arena for settling disputes.

Meanwhile, anybody with “high prestige and respectable character” could lend assistance to or even preside over the judgement and enforcement of sanctions. These community leaders would often follow a principle of preserving harmony and facilitating conciliation over “punishment” between competing parties. Even for cases of homicide, the sanction would rest with “financial compensation” instead of corporal or death penalties. Thus the sanction system aimed at to preserve a peace within the community by balancing the interests of the opposing parties, not deciding who was the winner and loser. In this sense

the sanctions would seem from an outsider's perspectives more like a mediation than a judgement.

A third feature of the Miao sanction procedure was its frequent dependence on divine judgement (ordeal). The Miao feared and revered a pantheon of deities, be they human and natural, all of whom possessed superhuman powers of influence. When settling disputes, especially in cases where the facts were so unclear that communal mediation or decision would prove unconvincing, the opposing parties would resort to the power of spirits. Often helped by local leaders, the parties would choose a sacred site such as the front of a shrine or under a sacred tree, drink blood wine, and swear: "If you wrong me, I will be prosperous; if I wrong you, I will die nine times and be completely annihilated." In order to move the spirits and test their innocence and sincerity, the parties often resorted to extreme methods, including picking an axe out of boiling oil, treading a red-hot plough blade, and climbing sharp knife ladder with bear feet. They believed that the spirits would distinguish right from wrong and therefore promote the good and punish the evil. The lack of a written code thus did not preclude the Miao from effectively employing their special sanctions to settle communal disputes (Tian; Yan 1969).

## CONCLUSIONS

The Ming dynasty witnessed the establishment of diverse and sophisticated sanction systems. Drawing on proceeding historical periods—especially the Tang and Yuan dynasties—the Ming imperial law provided comprehensive remedies to wrongdoing. In the earlier decades, the sanctions centered on the basic "five punishments," as well as other supplemental measures stipulated in the *Great Ming Code* and *Great Warnings*. After 1500, sanctions came from various redemptions codified in the *Itemized Regulations for Trying Penal Matters*, while the Ming created sound legal principles, extensive agencies, and intricate procedures for implementing and enforcing regulations. It would not be a mistake to say that, in this movement of codification, the Ming constituted one of the most important eras in the history of Chinese legal culture.

The Ming sanctions were based on deep cosmological ideas. More than mere instruments of state power, these notions served educational functions as well. Their purpose was to promote the values of "cardinal principles and constant virtues" and thus transform the subjects' minds and hearts. Political control and moral/spiritual guidance were integrated into the ideology of "Mandate of Heaven," and the Son of Heaven functioned to assume both roles of ruler and teacher. In this sense, Ming sanctions also represented an integral part of the Ming legal philosophy.

In enforcement, the Ming sanction institutions and philosophical principles were often misused and abused for individual and factional purposes. This trend was particularly clear in the handlings of legal and political cases by emperors and their special agencies. Under those circumstances, legal and illegal sanctions turned into tools for the consolidation of political power and the pursuit of selfish interests. How justice was constructed and maintained thus became a “perennial problem” throughout the Ming dynasty.

Taking the imperial, Tai, and Miao legal cultures as examples, we see diverse sanction systems designed specifically with a mind toward the ethnic diversity of Ming empire. The Ming court on one hand tried to impose Han law in non-Han areas, while on the other acknowledged the autonomous authority of these minorities in making and implementing their own legal sanctions. The written and oral sanction systems of non-Han groups such as the Tai and Miao served their communities effectively, although they differed enormously from the imperial legal culture. The Tai and Miao sanctions were implemented beyond Ming administrative divisions, within and outside the empire. The Miao with the autonym of “Ghe Xiong,” for example, practiced their norms in the Wulingshan Mountains, bordering Huguang, Guizhou, and Sichuan provinces. And the Tai in Cheli and Menglian shared the sanction values and institutions with their fellow Tai in foreign lands. Together, this diverse network of sanction systems manifested the pluralistic legal culture of the Ming era.