

Criminal Procedure in T'ang China

Some years ago, Denis Twitchett published an article on the administrative procedure used during the T'ang dynasty (619–906 AD) for handling official documents at the county (*hsien* 縣) level.¹ The main sources for that article were contemporary manuscripts now in the Otani Collection in Kyoto that deal with the problem of vagrant households. Now both of us are making a first attempt to describe the procedures for criminal cases. Unfortunately, no manuscripts similar to those used in the article on administrative procedure have survived that describe the actual conduct of a criminal case. Lacking primary material for the law in operation, this paper is based largely on the normative regulations governing criminal procedures contained in *The T'ang Code* (*Ku T'ang-lü shu-i* 故唐律疏議), hereafter referred to as *Code*, and the *Statutes* (*Ling* 令).² It might be thought that *The T'ang Institutes* (*Ta T'ang liu-tien* 大唐六典) of 739 AD would be of help. But des Rotours has recently shown that, at least to some extent, the original plan of the Institutes imitated the *Rites of Chou* (*Chou-li* 周禮), and its compilation, which took sixteen years, introduced wholesale changes. The completed work thus does not have the reliability or the integrity of the *Code* and the *Statutes*.³ Therefore

¹ Denis Twitchett, "The Implementation of Law in Early T'ang China," *Civiltà Veneziana: Studi* 34 (1978), pp. 57–84. The translated documents deal with vagrant households; they were originally brought together by Naitō Kenkichi 内藤乾吉, *Chūgoku hōseishi kōshō* 中國法制史考證 (Tokyo: Yūhikaku, 1963), pp. 223–345.

² Both of these works were compiled before the 757 uprising; the *Code* originally in 653 (the surviving version is that of 737), and the *Statutes* in 624. The *Statutes*, however, have not been preserved in their original form. The majority of the surviving articles collected by Niida Noboru 仁井田陸 in his *Tōryō shūi* 唐令拾遺 (Tokyo: Tōkyō daigaku shuppankai, 1964; hereafter, *Statutes*) are from the 737 revision. Thus both the *Code* and the *Statutes* were in force during the first part of the dynasty. A useful table comparing the *Code* and the *Statutes* of the T'ang period with those of earlier dynasties is given in Étienne Balazs, *Le Traité juridique du "Souei chou"* (Leiden: E. J. Brill, 1954) pp. 207–11.

³ See Robert des Rotours, "Le T'ang liu tien décrit-il exactement les institutions en usage sous le dynastie des T'ang," *JA* 263 (1975), pp. 183–201. See *Ta T'ang liu-tien* (rpt. Taipei: World Book Co., 1960; hereafter *TLT*). See also Naitō, *Chūgoku hōseishi*, pp. 64–89, and Denis Twitchett, *The Writing of Official History under the T'ang* (Cambridge: Cambridge U.P., 1992), pp. 101–3.

it has only been cited when it can reinforce a point made in the other two more reliable sources.

Obviously these sources can give us only a partial view of criminal proceedings.⁴ Nevertheless, at least the general outlines of the picture can be drawn, which perhaps can be filled in later if more material is discovered through archeological finds. Here, none of the enormous amount of fictionalized "detective" novels centering on T'ang period figures is cited. This material is not contemporary, and its main purpose is to demonstrate the brilliance of a particular famous magistrate rather than to show how a criminal trial was conducted. Trying to understand the realities of court procedure during the T'ang dynasty from these stories would be even less fruitful than trying to gain knowledge of twentieth-century legal practice from reading Perry Mason novels or watching "Rumpole of the Bailey" on television.

In order to show how criminal procedure operated during T'ang times, we begin with a discussion of how a case might have been initiated and follow through the various steps of a trial to its conclusion. Thereafter, we conclude with some remarks of a general nature about T'ang society and the administration of law. Two appendices are attached: appendix A presents charts illustrating the organization of the judicial and penal systems; and appendix B contains translations of important articles of the *Code* and the *Statutes* dealing with criminal procedure. Appendix B is arranged under the topics of preliminary hearing, trial, and punishment. It would help to understand the criminal process if these translations were read together with the corresponding sections of the narrative below.⁵

⁴ The late Robert van Gulik suggested that more information might be discovered by going through the biographies of famous judges. But this does not prove to be so, and he himself states that very little can be found out from the biographies of Ti Jen-chieh, his famous Judge Dee; see also David McMullen, "The Real Judge Dee: Ti Jen-chieh and the T'ang Restoration of 705," *AMJ* 3d ser. 6.1 (1993).

⁵ Citations of the statutes are to the page numbers of Niida Noboru's *Tōryō shūi*. Citations of the articles of the *Code* are to *T'ang-lü shu-i* (Peking: Chung-hua Book Co., 1983), which uses continuous pagination and in which the articles are consecutively numbered. When a statute or article is translated in appendix B, the citation will be preceded by "app." For statutes, "app." is followed by "*Statutes*," then the chapter number, and the number of the statute within the chapter. For articles, "app." will be followed by "*Code*," and then the number of the article. In appendix B, the page number for the edition cited will be at the left margin in both cases.

In the material presented below, the *Code* several times prescribes punishment for officials. Because of the legal privileges afforded ranked officials, they were not likely to have been punished.⁶ However, lesser officials "outside the current," who were the majority of those employed at the county level (see appendix A), enjoyed no such privilege.

THE CRIMINAL ACT

Any person who was a witness to a crime of beating, robbery, or rape had to seize the criminal if possible and bring him to the magistrate's office.⁷ For lesser offenses, it was only necessary to inform the local officials. Indeed, unwarranted arrest by a witness could be punished by 30 blows with the light stick. Members of mutual security groups (*pao* 保 or *lin* 鄰) were also obligated to help each other.⁸ If they ignored a call for help while a crime such as robbery by force or killing were taking place, they would be beaten with 100 blows of the heavy stick.⁹ Moreover, a magistrate who did not send aid when requested would be punished by one year of penal servitude.¹⁰

Once a criminal act had already taken place, an accusation (*kao* 告 or *su* 訴) was probably the most common way that a case would be brought before the court.¹¹ Such an accusation had to be

⁶ See Wallace Johnson, *The T'ang Code: General Principles, Vol. I* (Princeton: Princeton U.P., 1979), articles 7-11, pp. 83-100. But while punishment could be avoided, the use of these means became a part of an official's record.

⁷ *Code*, 454, p. 529, "Arrest of Criminals by Passers-by." An exception was made for crimes committed in the market that allowed the market officials themselves to administer beatings with the light or heavy stick.

⁸ These mutual security groups go back at least to the *Chou li*. See the discussion of their history in Hsiao Kung-chuan, *Rural China: Imperial Control in the Nineteenth Century* (Seattle: U. of Washington P., 1960), pp. 25-27. Hsiao believes that the Sui emperor Wen-ti (r. 589-604) was the first to associate these groups with a police function in 589. It is interesting that while in the *Code* they are held responsible for other members of the security group, yet they have no special responsibility for crimes committed in their area.

⁹ *Code* 456, p. 520, "Robbery by Force within a Neighborhood."

¹⁰ *Ibid.* If the crime were robbery by stealth, the penalties would be reduced two degrees for both the members of the mutual security group and the magistrate.

¹¹ Shiga Shuzō 滋賀秀三 states that the difference between *kao* and *su* is that

made at the county level, at least initially.¹² Only if it were rejected there, could the person making the accusation use other means to bring the case forward.¹³

Whether an act was criminal or not depended in many cases on who committed it and who was the victim. In a few cases, the victim would be punished for reporting a criminal act. But anyone, no matter what their position, had an obligation to report a plot to rebel (*mou-fan* 謀反) or an act of great sedition (*ta-ni* 大逆), the first two of the ten abominations (*shih o* 十惡).¹⁴ In fact, failure to do so was punished by strangulation.¹⁵

The relevant statute goes into great detail as to how such offenses should be reported, giving alternate methods where a person's local officials might be involved in the plot themselves.¹⁶ Even criminals who had committed a capital offense and were not normally allowed to make accusations of crimes involving others were permitted to report plots of rebellion and acts of great sedition.¹⁷ Moreover, the official who received such reports had to make an arrest immediately. If he delayed even half a day he would receive the same punishment as those who had failed to report the crime, that is, strangulation.¹⁸ The only allowable excuse for not acting promptly was the need first to assemble men and weapons so as to make the arrest.

Certain lesser offenses also had to be reported. Members of a

the first refers to stating another's guilt and the second to complain of one's own suffering. See his "Criminal Procedure in the Ch'ing Dynasty," *MTB* 32 (1974), p. 3, n. 4. The term *sung* 訟, which is here translated as accusation, seems to have been generally used in the *Code* for any type of criminal case.

¹² See app. *Statutes* 21.40. *TLT*, p. 145, reads slightly differently.

¹³ These included sending up memorials to the emperor, making personal appeals if the imperial entourage passed through an area, and beating or standing by the petitioner's drum in the capital. See app. *Code* 358, and app. *Statutes* 21.40 together with the general discussion in Twitchett, "Implementation of Law," pp. 66-68.

¹⁴ The relevant articles are translated in Johnson, *T'ang Code*, pp. 61-83. There is a general discussion on pp. 17-23.

¹⁵ *Code* 340, p. 427. "Secret Accusations to the Court of Plots of Rebellion or Great Sedition." There were lesser penalties for failure to report certain others of these offenses.

¹⁶ See app. *Statutes* 30.24.

¹⁷ *Ibid.*

¹⁸ See app. *Code* 340.

family in which violence, robbery, or a killing had taken place also had to make an accusation to the official in charge. This general title might refer to the ward headman, the hamlet headman, the village headman, or a higher official depending on where the crime took place. The same obligation also lay with the other members of the mutual security groups. Were it impossible for either of these to make an accusation, the responsibility devolved on the neighboring mutual security group. Failure by any of these to carry out their responsibility within one day would be punished by 90 blows with the heavy stick.¹⁹ The official in charge, whoever he might be, then had the duty to bring the crime to the attention of the magistrate. If he delayed in doing so, his punishment would be 80 blows with the heavy stick for the first day, increased to 100 blows after three days.²⁰

Once the magistrate had been informed, he had to begin the investigation and try to make an arrest. His neglect to do so for even one day would be punished by one year of penal servitude. A similar obligation lay with supervisory officials and officials in charge to begin an investigation whenever they had knowledge of offenses within their areas of jurisdiction.²¹ If they did not do so, their own punishment would be only three degrees lower than that of the actual criminal.²²

Not all criminal acts, however, had to be reported. Intrafamilial offenses and those involving a master and his slaves or personal retainers were regarded differently from those in which the aggressor and victim were not related.²³ For example, the *Code* punishes a wife who strikes her husband by one year of penal servitude, and if she actually wounded him her punishment would be three degrees above

¹⁹ *Code* 360, p. 449, "Robbery by Force and Killing Persons."

²⁰ *Code* 361, p. 449, "Supervisory Officials Who Know that a Crime Has Been Committed."

²¹ *Ibid.* Another part of this article requires members of security groups also to investigate any crime that they know of in their area. Various penalties are assessed for failure to do so depending upon the seriousness of the crime.

²² *Ibid.* Censorial officials would be punished even more heavily, receiving a sentence only two degrees less than the actual criminal.

²³ T'ang law took into account group relationships such as the familial and the religious in judging offenses. Thus not only the class status of the aggressor and the victim but also their group relationship were important in deciding a criminal case.

that for the same offense when committed by and against persons of no relationship.²⁴ But only the husband could lodge a valid accusation of this offense against a wife.²⁵ And he was not required by law to do so. Similarly, no third person could report a wife for cursing her husband's parents or paternal grandparents. And since conviction for this offense required divorce, no doubt the aggrieved parties would hesitate before making such an accusation. The son or grandson in the male line who did not support his parents or paternal grandparents would be punished by two years of penal servitude, but only these senior relatives themselves could make accusation of the crime.²⁶

There were also situations where the *Code* permitted summary punishment without a court hearing. Parents could immediately beat children who did not obey them and would not be punished even if the children were accidentally killed.²⁷ Similarly a master could punish his slaves or personal retainers for offenses committed by these latter without making any application to the court. If the offense were capital and the master killed the slave in administering punishment, he incurred no penalty himself.²⁸ Even for other crimes he would be punished with at most 100 blows with the heavy stick.

Senior family members and masters were also protected from accusations made against them to the court by family juniors or their slaves and personal retainers. Anyone who reported the criminal acts of their parents, or paternal grandparents extending to four generations, would be punished by strangulation even if the offense were against him or herself.²⁹ Furthermore, these senior relatives would

²⁴ *Code* 326, p. 410, "Wives Who Beat or Curse Their Husbands." Concubines were punished still heavier, reflecting the importance of family status in punishing an intrafamilial offense.

²⁵ *Ibid.*

²⁶ *Code* 348, p. 437, "Violations of Commands by Sons and Grandsons in the Male Line." The same held for refusal to obey these elders.

²⁷ *Code* 329, p. 414, "Beating or Cursing One's Paternal Grandparents or Parents."

²⁸ *Code* 322, p. 406, "Punishment for Beating a Personal Retainer to Death."

²⁹ *Code* 345, p. 432, "Accusing Paternal Grandparents or Parents to the Court is Punished by Strangulation." Both the exception made for families not having to report their members' offenses (except those involving rebellion and sedition) and the punishment of juniors who accuse seniors are bound up in the concept of mutual concealment 相容隱. See Johnson, *T'ang Code*, article 37, p. 201, and the discussion on pp. 33-35.

not be punished but treated as if they had made a confession.³⁰

As the relationship between accuser and accused became less, so did the amount of punishment given to a junior family member who lodged an accusation against a senior. Thus for accusations against elders of the second degree of mourning relationship, the punishment was rather two degrees of penal servitude, or one degree less than that provided by the offense of which they had been accused. But again they would be treated as if the family elder had made a confession. An exception was made if the second-degree elder had actually beaten the junior who made the accusation. In such cases the accusation would be accepted by the court.³¹

The same protection was afforded to the masters of slaves or personal retainers. If these latter reported their masters to the court for any offense other than that of plotting rebellion, sedition, or treason, they would be strangled and the case, again, treated as if their master had made a confession.³² Even their owners' first-degree relatives were protected to the extent that accusations against them were punished by life exile to a distance of 3,000 *li*. Other relatives received progressively less protection as their degree of mourning relationship diminished.

PRELIMINARY HEARINGS

The *Code* required that when an accusation was made, the year and month during which the crime had taken place had to be

³⁰ Confession could serve to gain exemption from punishment for a crime, or, depending upon the circumstances, obtain some decrease of punishment. The *Code* even permits those who confess plots of rebellion or sedition to escape punishment under certain conditions. Interestingly enough, though, the practice of astrology without permission could not get remission of punishment by confessing. See the translation of articles 37 and 38 of the *Code* in Johnson, *T'ang Code*, pp. 201-14, and the article by W. Allyn Rickett, "Voluntary Surrender and Confession in Chinese Law: The Problem of Continuity," *JAS* 30.4 (1971), pp. 797-814.

³¹ *Code* 346, p. 435, "Accusing Relatives of the Second Degree of Mourning of a Higher Generation or of the Same Generation but Older than Oneself to the Court."

³² *Code* 349, p. 438, "Personal Retainers and Slaves Who Accuse Their Masters to the Court."

clearly indicated and the true circumstances of the offense set forth.³³ Failure to do so was punished by fifty blows with the light stick. Furthermore the accuser would also lay himself open to reciprocal punishment for false accusation 誣告反坐.³⁴ But the punishment was still heavier for an official who accepted such accusations at one degree less than that provided for the stated crime.³⁵ Miyazaki Ichisada 宮崎市定 states that in Sung times there were scrivener shops where one could have such a written statement (*tz'u* 辭 or *tz'u-tieh* 辭牒) drawn up before presenting it to the yamen.³⁶ Support for some such system having existed already in the T'ang dynasty is provided by article 356 of the *Code* entitled "Adding to the Circumstances in Making a Written Statement for a Person."³⁷ The least amount of punishment given in such cases was fifty blows with the light stick and the punishment could rise as high as life exile to a distance of 3,000 *li*.

Once an accusation was made, the magistrate subjected the accuser to hearings (*shen* 審) on three separate days, taking a written statement from the accuser the first time and oral confirmations on the second and third occasions.³⁸ On each occasion he issued a warning about reciprocal punishment for false accusation.³⁹ The stat-

³³ See app. *Code* 355. The penalty was even greater for anyone who made anonymous accusations; life exile at a distance of 3,000 *li* as provided by *Code* 351, p. 439. "Anonymous Accusation of Criminals to the Court." Anyone receiving such a document was supposed to burn it. If he forwarded it to the yamen, the punishment was one year of penal servitude and if the official accepted it, he would receive two years of panel servitude. If one improperly memorialized the emperor in this way, the penalty was three years of penal servitude. Even were the accusation true, the accused would not be punished.

³⁴ See app. *Code* 342 and app. *Statutes*, 30.23.

³⁵ *Code* 355, p. 444.

³⁶ Ichisada Miyazaki, "The Administration of Justice During the Sung Dynasty," in Jerome A. Cohen, Randle Edwards, and Fu-mei Chen, eds., *Essays on China's Legal Tradition* (Princeton: Princeton U.P., 1981), pp. 59-60.

³⁷ *Code*, p. 444.

³⁸ An exception is listed in app. *Statutes* 30.23 for envoys traveling on official business. For such people the three hearings could all be on one day. Certainly this was so as not to delay them on their duties but also because presumably they would not require the amount of reflection that an ordinary person would need before making an accusation.

³⁹ *Statutes*, p. 776. Essentially the same text is found in *TLT*, p. 146. Accusations involving the first three of the ten abominations were not dealt with in this way.

ute provides that a clerk will make a record of testimony for those who are illiterate. In the case of crimes such as killing, violence, robbery, and rape, however, the *Statutes* provide that no such delay was needed. Such crimes were classified as completely reprehensible 切害 and needed to be expedited.⁴⁰ The same was true when the accusation involved plotting treason or committing great sedition, when the magistrate had to act immediately. And for cases classified as completely reprehensible, the accused was not liable for reciprocal punishment for false accusation.

The next step was to arrest the person named in the accusation so as to ensure his appearance in the coming trial. A limit of thirty days was allowed for this purpose in more serious cases such as robbery or killing. If within this period, the accused were not arrested, various penalties, from fifty blows with the light stick for the village headman to a possible two years of penal servitude for the magistrate, were assessed.⁴¹

If the agents of the court responsible for the arrest let out information about the crime that resulted in the accused's escaping, they received punishment of only one degree less than that specified for the crime.⁴² They had the authority to call on any passers-by to assist them in making the arrest; any able-bodied person who refused to give such aid would be beaten eighty blows with the heavy stick.⁴³ The use of force was allowed in case of resistance by the accused or if he attempted to run away. If the accused tried to resist arrest by use of a club and was killed, those responsible for the arrest would not be punished.⁴⁴ On the other hand, they would be heavily punished for any unnecessary beating or wounding of the prisoner once the

Rather those accused were arrested immediately and a memorial sent to the emperor. See app. *Statutes* 30.24.

⁴⁰ These crimes are among those classed as completely reprehensible. Thus they are more serious than the other major offenses, but are not at the level of the ten abominations. We have not been able to find any complete listing of crimes classified as completely reprehensible.

⁴¹ *Code* 301, p. 379, "Concealment of Robbery within an Area."

⁴² *Code* 455, p. 455, "Divulging His Crime to a Criminal Who is Going to Be Arrested."

⁴³ *Code* 454, p. 529, "Arrest of Criminals by Passers By."

⁴⁴ *Code* 452, p. 527, "Criminals Who Use Weapons to Resist Arrest."

arrest had been made.

The statute provides that both the accuser and the accused were to be held in prison to await trial.⁴⁵ But the wording was such that the accuser was usually allowed to furnish a guarantor 保 of his appearance rather than be imprisoned. The conditions of imprisonment while awaiting trial varied considerably with the crime of which the prisoner was accused, the sex of the accused, or the physical condition, and especially whether or not he was a member of the privileged classes or not.⁴⁶ Men whose crime would be punished by death wore both the cangue and manacles while in prison. But women who were accused of a capital offense, as well as males whose punishment would be life exile or penal servitude, did not have to wear manacles.

Where the punishment would be no more than beating with the light or heavy stick, no fetters at all were used. This was also the case for those eighty or older, ten years or younger, those whose physical condition classified them as disabled,⁴⁷ and pregnant women even if these latter were accused of a capital crime.

Members of the bureaucracy were treated much differently, however. Within the capital, active duty officials of the fifth rank and higher could not, except for a capital offense, be imprisoned without a memorial having first been sent up to the emperor.⁴⁸ The same privilege was given to titular officials of the second and first ranks. Even in the provinces, a memorial had to be sent up after such officials were arrested informing the emperor of the case.

Indeed, no person who possessed any of the rights of deliberation (*i* 議), petition (*ch'ing* 請), or reduction of punishment (*chien* 減) would be imprisoned at all unless the offense were punished by life exile or more.⁴⁹ If an official were imprisoned for an offense

which would require disenrollment or resignation from office, he would only wear shackles on his feet. Even eighth- and ninth-rank officials as well as those who had the right of redemption of punishment by payment of copper (*shu* 贖) would be imprisoned only for offenses punished by at least penal servitude and then they wore only the cangue. In all other cases they were allowed to furnish a guarantor.

There were, as well, separate prisons for such people. All those who were imprisoned were given a mat to sleep upon, allowed one bath a month, and during the summer given rice water to drink. If their families lived at a distance, they were allowed to make payment for food and clothing given the prisoner when they came to the magistracy.⁵⁰ If a prisoner became ill and requested a doctor or medicine, refusal to grant the request would result in sixty blows with the heavy stick for the chief jailer.⁵¹ When the illness was serious, fetters had to be removed, and if a family member was needed to take care of the sick prisoner, this also had to be permitted.

Where a prisoner died as a result of such treatment having been deliberately refused, the punishment was two years of penal servitude. If insufficient food was given to the prisoners, this was punished by fifty blows with the light stick and if a prisoner deliberately starved to death, the chief jailer was punished by strangulation.⁵² Furthermore, prefects were instructed to give careful attention to the condition of the prisoners, and, from time to time, special envoys were sent out for the same purpose.⁵³

As mentioned above, magistrates did not have jurisdiction over crimes against the state.⁵⁴ Neither did they try any of those persons

⁵⁰ *Statutes*, p. 791. However, prisoners were not permitted to have brushes, paper, wine, or money.

⁵¹ *Code* 473, p. 549, "Allowing Prisoners Clothing, Food, Medical Care and Medicines."

⁵² *Ibid.*

⁵³ *Statutes*, p. 760. The text in *TLT* does not contain the characters (*fu-ch'iu* 覆囚) "examine prisoners" before the word envoy. Niida has added these two characters from the Japanese *Yōrō Statutes* (717-724 AD).

⁵⁴ In any case, political offenses are not a very good source for understanding the workings of the law. It is rather the ordinary cases of theft, etc. which best illustrate how a country's criminal law is administered.

⁴⁵ *Statutes*, pp. 776-77.

⁴⁶ All of these factors could affect also the degree of punishment sentenced for the same offense. It is interesting, however, that members of the inferior classes seem to have been treated the same as commoners in so far as trial proceedings were concerned.

⁴⁷ *Statutes*, p. 781.

⁴⁸ *Statutes*, p. 784.

⁴⁹ *Statutes*, p. 783.

who had the rights of deliberation or petition.⁵⁵ Furthermore, outside of the capital area no official in a county or prefecture could accept jurisdiction over a case that involved the chief official there. The same held for any imperial envoy at the place to which he had been sent.⁵⁶

It was also essential that the official who did the interrogating and the accused not be related. If they were relatives within the five degrees of mourning, or if one of them was married to a relative of the other within the third degree, the interrogation had to be done by another person.⁵⁷ The same requirement held if the accused and the official previously had a student-teacher relationship.

The problem of jurisdiction also arose when criminals committed crimes in one area and were caught in another. If the two places were separated by not more than 100 li, the following rules applied:⁵⁸

1. Jurisdiction was awarded to the place where the punishment would be heavier.
2. Were the punishments equal, the jurisdiction in which the most crimes had been committed would be the case.

Where both conditions were equal, jurisdiction would be awarded to the place where the crimes were first committed.

It should also be noted that not all the persons involved in a criminal act had to be arrested before a trial could begin. Those caught first would be tried and sentenced and any necessary adjustments in punishment, dependant on who was the principal and who the accessories, could wait until the others were tried.⁵⁹

⁵⁵ *Statutes*, p. 782.

⁵⁶ *Code* 481, p. 556, "Moving Prisoners to One Location and Sentencing Them Together."

⁵⁷ *Statutes*, p. 786.

⁵⁸ *Code* 481, p. 556, "Moving Prisoners to One Location and Sentencing Them Together."

⁵⁹ *Statutes*, p. 775. In many instances, the accessories had their punishment reduced below that of the principal, hence the importance of establishing the role of each particular offender. See the translation of article 42, "Where Crimes Are Committed Collectively the Person Who Formulates the Plan is the Principal," in

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The only extant information about courtrooms in T'ang times is given in the pictures showing the examination of dead souls by the *King of Hell in the Canon of the Ten Kings of the Buddhist Hells* (*Fo-shuo shih-wang ching* 佛說十王經).⁶⁰ Miyazaki has stated that in the Sung dynasty trials were not open to the general public.⁶¹ On the other hand, two incidents recorded in the well-known early-thirteenth-century case book *Parallel Cases from under the Pear Tree* (*T'ang-yin pi-shih* 棠陰比事) support the view that in T'ang times such trials were open.⁶² In both of these cases, the criminal accosts persons coming out of the courtroom for information. It would seem that if the trials had not been open, these people would not have been at the hearing. We know that almost all punishments were administered in full view of the general population. Undoubtedly this was for the purpose of having the people see justice done as well as to impress them with fear of the law in case they themselves committed a crime.

But while the physical surroundings of the court are not well described in the sources available to us, the procedure is fairly well set out. The examining magistrate first employed the "five hearings" (*wu-t'ing* 五聽).⁶³ Famous throughout Chinese history as a technique for eliciting the facts of a case, this method is first mentioned in the *Rites of Chou*.⁶⁴ While questioning a person before him, the magistrate would look closely for five kinds of behavior: the person's statements, expression, breathing, reaction to the words of the judge, and eyes.

Johnson, *T'ang Code*, pp. 225-26. An example of this problem is given in article 44, p. 229.

⁶⁰ Sir Aurel M. Stein, *Serindia* (Oxford: At the Clarendon Press, 1921) 4, plate 93. See also the discussion in Robert van Gulik, *Dee Goong An: Three Murder Cases Solved by Judge Dee* (rpt. New York: Dover Press, 1949), p. xx, and the analytic article by Niida Noboru, *Chūgoku hōseishi kenkyū keihō* 中國法制史研究刑法 (Tokyo: Tōkyō daigaku shuppankai, 1959), pp. 597-614.

⁶¹ Miyazaki, "Justice During the Sung Dynasty," p. 61.

⁶² Robert van Gulik, *Parallel Cases from under the Pear Tree* (Leiden: E. J. Brill, 1956), pp. 96, 125. Both of these cases are probably derived from accounts in *Hsin T'ang shu* 新唐書.

⁶³ *Statutes*, p. 779. See also the discussion in van Gulik, *Parallel Cases*, pp. 49-50.

⁶⁴ *Chou li*, "Hsiao ssu-k'ou 小司寇," p. 524; Édouard Biot, *Le Tchou-li ou rites des Tchou* (Paris: L'Imprimerie nationale, 1851) 2, p. 320.

Through careful observation, it was thought that the experienced magistrate could arrive at a knowledge of whether the person was, in fact, telling the truth.⁶⁵

This practice seems to be based, at least in part, on the widely believed theory that when a person is deliberately lying he will show certain uncontrollable and discernible changes in behavior. Indeed, as late as the Ch'ing dynasty, Wang Hui-tsu wrote in his famous magistrate's guide that examination especially of a person's appearance was a great aid in the hearing of criminal cases.⁶⁶

In addition to the accuser and the accused, witnesses were also examined and their testimony taken. Indeed, certain classes of persons could not be convicted without the testimony of at least three witnesses.⁶⁷ These included those who had any of the rights of deliberation, petition, or reduction of punishment, those who were seventy or older, fifteen or younger, or disabled.

Those who testified were required to tell the truth. If their testimony resulted in the accused's receiving either a heavier or lighter punishment than should have been sentenced, they would be punished.⁶⁸ A further, technical problem that could interfere with the understanding of testimony by the magistrate concerned the dialects and non-Chinese languages spoken in parts of T'ang China. Translators were used so that the testimony of these people could be taken, and the *Code* is concerned that translators be completely accurate, providing punishment for mistranslation that resulted in a wrong sentence.⁶⁹

⁶⁵ Herbert Giles who observed many trials during his service in China in the nineteenth century says that he witnessed examples of this. He also believed that judicial torture was, in fact, used very rarely. See his "The Penal Code," in *Historic China and Other Sketches* (London: George Trubner, 1882), p. 126.

⁶⁶ Wang Hui-tsu 汪輝祖, *Hsüeh-chih i-shuo* 學治臆說 (*Precepts for Local Officials*), quoted in van Gulik, *Parallel Cases*, pp. 58-59. One wonders if this is linked to the belief in physiognomy, which has a long history in China. And not only in China, for the nineteenth-century Italian sociologist Cesare Lombroso developed a theory of criminal identification which was based on certain facial characteristics as indicating criminal behavior.

⁶⁷ *Code* 474, p. 550, "Those Who Have the Rights of the Eight Deliberations, Petition, or Reduction of Punishment or Are Aged or Juvenile."

⁶⁸ *Code* 387, p. 475, "False Testimony."

⁶⁹ *Ibid.* The article makes reference to *i-jen* 夷人 "barbarians," but of course

With the accuser, the accused, and all relevant witnesses having been heard, the first part of the trial ended. By this time, a confession may have been elicited from the accused, or perhaps the accuser may have been brought to admit that the accusation had been false. There is no doubt that such a confession was the most desired way of bringing a trial to an end. But it was not absolutely necessary.⁷⁰

Article 476 states that where the illicit goods and the circumstances of the case have been exposed and investigated and no reasonable doubt exists 贓狀露驗理不可疑, a sentence may be passed down.⁷¹ And, of course, in the case of those whose guilt was decided solely on the basis of sufficient testimony of witnesses, sentence could be given and the trial brought to a close.

However, many cases certainly could not have been ended in either of these two ways. Therefore, if the magistrate having repeatedly examined both the circumstances and the testimony dealing with the crime was unable to reach a decision, he then sought the agreement of his senior officials and included the decision in the case file 立案同判 in order to proceed with the use of judicial torture of the persons involved.⁷²

Of course, at the district level there was no higher official than the magistrate himself. Evidence indicates that he needed the assent of his colleagues who had official posts and that at a higher level, in fact, all officials would have to agree before torture could be administered.⁷³ But what is clear is that some form of agreement was needed and that torture could not be used before the other methods described above for deciding the case had been exhausted without

magistrates would be unlikely to understand even the dialects in many of the places they were stationed during the course of their career and hence the need to rely on those local assistants who were permanently attached to the yamen.

⁷⁰ See app. *Code* 476.

⁷¹ *Statutes*, p. 775, adds that where the illicit goods and the circumstances of the case have been exposed and investigated, it is not necessary to have all the criminals in custody. Those already seized may be tried and sentenced first.

⁷² See *Code* 476, p. 552.

⁷³ During the Sung dynasty (960-1270), the T'ai-tsung emperor (r. 976-997) issued a decree stating that not all officials at the prefectural level had to participate in this decision. See Hsü Tao-lin 徐道鄰, "Sung-lü chung ti shen-p'an chih-tu" 宋律中的審判制度 ("The Sung Trial System as Prescribed in the *Fundamental Statutes of the Sung*"), *Tung-fang ts'a chih fu-k'an* 東方雜誌附刊 44 (1970), p. 21.

the magistrate himself being punished.⁷⁴

Specific rules governed the application of judicial torture. The only instrument permitted was the so-called interrogation stick 訊囚杖, which was approximately 40 inches long and .35 and .22 inches wide at the large and small ends respectively.⁷⁵ The magistrate himself would be punished if other means were used to try to force a confession.⁷⁶

The accused could be beaten no more than 200 blows in all or the punishment prescribed for his offense, whichever was less.⁷⁷ Moreover, the interrogations had to be at least twenty days apart and there could be no more than three of them.⁷⁸ When someone was beaten, the blows had to be equally divided between the person's back, buttocks, and upper legs. However, despite these limitations it seems probable that many persons died under interrogation. But unless the victim had been deliberately beaten to death, the *Code* does not provide for any punishment. In such cases, a report was sent up to the senior official and an investigation was made. Since any investigation would reflect poorly on the an official, this probably restrained the application of torture except where the accused was a hardened criminal whose death would be accepted by the people in the area.

The scope of the examination of the accused was limited to the crime set forth in the accusation.⁷⁹ If a "shotgun" approach was used in questioning the accused, the magistrate would himself be punished under the law on deliberately increasing punishment. But while following the basic facts of the accusation, the interrogator could be allowed to uncover offenses other than those specified.

Even if the defendant did not confess, it was not always necessary to use the full amount of torture permitted. The statute specifies that in cases where the crimes were not major offenses, and where

the doubtful points were few, three interrogations might not be needed.⁸⁰ This would seem to refer to two circumstances. First, although the accused may have confessed after receiving less than the maximum number of blows permitted, and still there remained unanswered questions, the magistrate was enabled to decide the case. Second, after the accused had been interrogated once or even twice, other information may have come to light that would enable the magistrate either to sentence the defendant or release him.

But where the accused was able to withstand the full amount of judicial torture allowed under the crime for which he had been accused without making a confession, the next step was to use the same procedure on the accuser.⁸¹ But not in all cases. For cases classified as completely reprehensible, that is, where someone had been killed, or where damage had been done by water or fire, or an accusation had been laid against a kinsman for theft of family goods, the original accuser could not be tortured.

But if the accuser, no matter whether through questioning or judicial torture, could be brought to admit that the accusation was false, he would then be subject to reciprocal punishment for false accusation. Since in many cases the accuser had to be cautioned about this law before the trial could actually begin, it would seem that its intent in part at least was to prevent persons from making accusations for frivolous reasons or personal spite without having at least the minimum amount of evidence sufficient to convince the magistrate that an arrest should be made.

Basically, this principle of the *Code* brought upon the false accuser the same punishment that would have been inflicted upon the accused had this latter been convicted.⁸² Thus if the offense were punished by two and one-half years of penal servitude, the same sentence would be given to the false accuser. In the case of officials who might have to resign from office or be punished in other ways

⁷⁴ See *Code* 476, p. 552.

⁷⁵ *Statutes*, p. 793.

⁷⁶ *Code* 477, p. 552, "A Prisoner May Not Be Judicially Tortured More than Three Times."

⁷⁷ *Ibid.*

⁷⁸ *Statutes*, p. 779.

⁷⁹ See app. *Code* 480.

⁸⁰ *Statutes*, p. 779. *Code* 353, p. 441, "Offenses Must Be Confessed to the Local Government Office," states that serious offenses are those punished by penal servitude or more. Thus the case would have to be reviewed by higher authority.

⁸¹ *Code* 478, p. 554, "Completion of Judicial Torture without a Prisoner Confessing."

⁸² See Johnson, *T'ang Code*, article 53, p. 261, and the discussion on p. 15. See also *Code* 341-44, pp. 428-31, particularly app. *Code* 341.

that were not applicable to commoners, equivalents were made in terms of blows with the heavy stick.⁸⁵

Where an accusation had been made of several crimes, if the most severe offense proved to be true and the others false, the accuser would not be punished. But where the accusation of the crime punished most heavily proved to be false and the offenses punished more lightly to be true, the accuser would receive the difference between them as his own punishment. Further, if there was a maximum punishment for a particular crime, only this amount could be inflicted on the accuser.⁸⁴

If the accusation were against two or more persons, the accuser would receive punishment for any of those persons against whom the accusation had been false, even if it were true for the majority.⁸⁵ In the case of such a false accusation made in a memorial to the throne the relevant article even provides for a minimum punishment — two years of penal servitude — if the false accusation had been for a crime carrying less punishment.⁸⁶ Where the accusation had actually been laid by person "B" on orders of person "A," both of them would be punished if such an accusation proved to be false.⁸⁷ The heavier punishment would fall on B, but A would receive only one degree less. Where A had some relationship with the accused, that is, being a junior or senior relative, or that person's personal retainer or slave, the use of the intermediary B would not affect the liability of A, which remained the same as described above. However, the situation would be reversed for person B, whose sentence would be one degree less than A received.

Usually two limitations governed reciprocal punishment for false accusation. Even if the crime were punished by decapitation the false accuser would be no more than strangled.⁸⁸ And where the accused had been sentenced to death, if the sentence had not yet

been carried out, the false accuser would receive a sentence reduced one degree to life exile at a distance of 3,000 *li*.

But this limitation was not applicable to false accusations of plotting rebellion or great sedition. Such persons were themselves decapitated and the accessories, if any, to the accusation were strangled.⁸⁹ Even if the accusation had been made from the best of motives — the subcommentary to the *Code* mentions seeing repairs made to an imperial mausoleum or army maneuvers and mistaking these for great sedition or rebellion — the person could only send up a petition to the emperor, who would then supposedly take these circumstances into account in deciding the sentence.

On the other hand, these punishments sometimes were changed by whatever benefits or different punishments that the original accused would have received.⁹⁰ Without going into detail regarding the various rights possessed by different social classes as well as persons with particular legal statuses, certainly the most common such benefit was redemption of punishment by payment of copper.⁹¹ In some cases, the copper was given to the victims of the false accusation.⁹² But in some cases a person might be beaten instead of being sent into penal servitude, and this changed punishment would also be inflicted on the false accuser.

Three decisions were possible for any given criminal hearing: the accused could be pronounced guilty either by weight of the evidence or because of a confession; he could be released; or the case could be declared doubtful (*i* 疑).

If the result of the trial were to establish the guilt of the accused, the magistrate had to write a decision (*p'an* 判) on the case.⁹³ The rules regarding what punishment was assigned were very rigid. The *Code* states unequivocally that some article of the *Code*, the

⁸⁵ See Johnson, *T'ang Code*, article 23, p. 144.

⁸⁴ See *ibid.*, article 53, p. 261.

⁸⁵ See *Code* 341, p. 428.

⁸⁶ *Code* 357, p. 445, "Ordering a Person to Make an Accusation to the Court that is without Basis."

⁸⁷ See Johnson, *T'ang Code*, article 53, p. 261.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, pp. 23-31.

⁹¹ *Ibid.*, article 11, p. 93.

⁹² *Statutes*, p. 792.

⁹³ The writing of theoretical decisions was also a part of the examination procedure and a great number of these have survived. But, to our knowledge, we have none from actual criminal cases.

Statutes, the *Regulations* (*ko* 格), or the *Ordinances* (*shih* 式),⁹⁴ had to be cited in passing sentence.⁹⁵ It was further required that where more than one article of the *Code* was applicable, the one providing for the heaviest punishment had to be sentenced. This could become quite a complex problem were the guilty person one of those who had certain rights that allowed the payment of a fine or surrender of office to replace punishment. In order to force compliance by the magistrate, the *Code* had at least three articles that punished any official who made a mistake in assigning punishment.

But, as has been mentioned many times by others, the *Code* is so specific about the offenses covered that not all criminal acts could possibly be covered. For this reason article 50 permits analogy to be used to broaden the scope of offenses.⁹⁶ But when this provision was used, all decisions had to be reviewed by higher officials. A second article that broadened the powers of the local magistrate to some extent was article 450, "Doing What Ought Not to be Done."⁹⁷ This permitted the magistrate to sentence the accused to either 40 blows with the light stick or 80 blows with the heavy stick.

Where there was not sufficient evidence to convict and the accused was able to withstand judicial torture, he had to be released upon providing a guarantor.⁹⁸ Presumably most persons were able to do so, since the *Code* does not provide for a circumstance under which a guarantor cannot be found. But it does punish both the release of a person who had not secured a guarantor as well as the refusal to release someone once a guarantor had been found.

Last, the case could be declared doubtful. This meant that

⁹⁴ On these last, see Denis Twitchett, "A Note on the Tunhuang Fragments of the T'ang Regulations (*ko*)," *BSOAS* 30.2 (1967), pp. 369-81, and idem, "The Fragment of the T'ang Ordinances of the Department of Waterways Discovered at Tun-huang," *AMNS* 6.1 (1957), pp. 23-79. The *Regulations* allowed supplements to be added to the *Code* and the *Statutes*. *Ordinances* dealt with limited areas of administrative law.

⁹⁵ *Code*, article 484, p. 561, "Citation of the *Code*, the *Statutes*, the *Regulations*, and the *Ordinances* in Sentencing." *Statutes*, p. 776, allows the criminal to benefit from any changes which would lighten his punishment for a particular crime but prevents his receiving a heavier sentence if the punishment were increased after his crime was committed.

⁹⁶ See Johnson, *T'ang Code*, article 50, p. 254, and the discussion on pp. 37-38.

⁹⁷ *Code* 450, p. 522.

⁹⁸ See *Code* 477, p. 552.

there was equal evidence both for and against conviction,⁹⁹ when through examination of the circumstances the magistrate was unable to arrive at a clear decision. In such cases the accused, without regard to status, was allowed to make redemption by payment of copper to the amount specified in the *Code* for the offense and then released.

PUNISHMENT

The *Code* provides five kinds of punishment: beating with the light stick, beating with the heavy stick, penal servitude, life exile, and death. If the punishment was only a beating with the light stick, the blows had to be distributed equally on the criminal's thighs and buttocks. When the heavy stick was used, the criminal's back, thighs, and buttocks each received one-third of the blows.¹⁰⁰

Crimes were classified under three categories. These are: crimes involving the ten abominations; crimes punished by penal servitude or more, which were classified as major offenses (*chung-hai* 重害); and crimes punished by beating, either with the light or heavy stick. Once the case had been decided, the magistrate could administer beating on his own authority. But all other cases had to be sent up for review at higher levels and final determination (see appendix A, chart 2). Any magistrate who did not forward such cases or who improperly administered such punishments himself incurred a heavy penalty.¹⁰¹ At any of these levels the punishment could be changed. As well, it might be decided that the magistrate had mishandled the case whereupon he himself would become the accused.

We know little about the review of cases at the levels immediately above the magistrate. What is certain is that there were legal specialists on the staffs of these offices part of whose duties was to examine the case records both as to the correct procedures and convincing ev-

⁹⁹ *Code* 502, p. 575, "Doubtful Offenses."

¹⁰⁰ *Code* 482, p. 557, "Administering Punishment Not in Accordance with the Law."

¹⁰¹ *Code* 485, p. 561, "Not Making Required Reports to Superiors." The punishment of the magistrate differed with the crime. The procedure to be followed in these cases is given in *Statutes*, p. 757.

idence. But where the case was capital, the emperor had to approve the sentence before it could be carried out: five times if in the capital jurisdiction, three times if elsewhere.¹⁰² And this approval had to be given on two separate days. An exception was made for the first four of the ten abominations, which concerned crimes against the state or parents and paternal grandparents, as well as for slaves who had killed their masters. For such heinous offenses, the punishment needed to be approved only once.

One last step still remained before a sentence could be carried out. This consisted in explaining to the convicted criminal and his relatives the sentence and seeking the criminal's agreement to submit to the punishment.¹⁰³ If such agreement was not forthcoming, the criminal's reasons for withholding it had to be heard and a further examination of the case made. Neglect on the part of the official either to explain the sentence, seek the criminal's submission to it, or reexamine the case if needed would result in 50 blows with the light stick for the official himself. For capital crimes, the punishment was increased to 100 blows with the heavy stick.

But even where the sentence was capital, some hope still remained for the criminal. Between the Beginning of Spring¹⁰⁴ and the fall equinox, there could be no executions, although exceptions were made in the case of rebels. And even during months when executions were allowed, there were many individual days when they were not permitted.¹⁰⁵ These periods of time allowed the condemned to hope that there would be an amnesty before punishment was administered. There were some 174 great amnesties during the T'ang period, as well as other lesser acts of grace.¹⁰⁶ In this way the whole of the

¹⁰² *Statutes*, p. 761.

¹⁰³ See app. *Statutes* 30.06, and app. *Code* 490, "Getting the Prisoner to Accept His Sentence after Conviction."

¹⁰⁴ This was one of the twenty-four divisions of the year and occurred about February 4 in the western calendar.

¹⁰⁵ See app. *Code* 496, and app. *Statutes* 30.09. In general, executions were supposed to occur during the yin period of the year, that is, fall and winter. Other factors, including Buddhism, played a role as well in limiting the number of days when executions could take place. A detailed treatment is in A. F. P. Hulswé, *Periodieke executieën slachtverboden* (Leiden: E. J. Brill, 1948).

¹⁰⁶ See the discussion in Johnson, T'ang *Code*, pp. 15-17, and the general historical

punishment might be canceled or at least reduced from the death penalty to life exile.

CONCLUSIONS

The above survey of the criminal procedure shows a very rational system of justice. The available material indicates that both the accuser and the officials involved had to be careful lest they themselves face punishment. There is no evidence that ordeal ever played a part in Chinese law. The Chinese did not use a *khadi*, or wise man, system as found in Islam or a rhetoric system, as in ancient Greece.¹⁰⁷ Instead, they relied on what might be called the dossier system. That is, all evidence was recorded, whether given orally or not, and assigned to a particular person. The dossier had to be kept for a certain period of time and, if review was required, sent on to higher authorities. By this means, testimony and witnesses could be checked and rechecked, if necessary, to ensure accuracy and establish clearly the issues in any particular case.

The *Code* served as a protection for the people against the arbitrariness of officials, as indeed had been argued by the Legalists a thousand years before the T'ang period. Every punishment had to be justified by citation of the text. Anonymous accusations were not allowed, rather a detailed written statement was required. Indeed, such an accuser would be punished if his identity were discovered. So would any magistrate who accepted an anonymous accusation. Further, the accuser was subjected to three hearings about the accusation during which his testimony was taken down and he was assured that if his accusation was baseless that he himself would be punished.

The trial itself was divided into two distinct parts. Initially, the magistrate tried to reach a decision on the basis of witnesses' testimony and other evidence. Only if he could not do so and if the accused

treatment by Brian McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu: U.P. of Hawaii, 1981).

¹⁰⁷ From the little that we know, Confucius seems to have favored the *khadi* system of no law codes and summary justice.

would not confess might torture be used. But this decision had to be agreed to by the other officials in the yamen.¹⁰⁸ Furthermore, once torture had been used, if the accused were able to withstand it, he had to be released. Also, certainly the use of torture must have often elicited false as well as true confessions, as has often been stated. For this reason then, a conscientious magistrate must have tried to use it as little as possible. There was, furthermore, also the chance that death might result from beating with the heavy stick, and this would reflect poorly on the official who had ordered it.

The criminal process was much affected by the personal status of the parties involved. Officials of the fifth rank and above could not even be tried in the ordinary courts. The same was true for certain others who had the privileges accorded persons who possessed the rights of any one of the eight deliberations. Even when the trial was held at the county level, officials down to the seventh rank could be convicted only by the testimony of witnesses and evidence; they could not be tortured. This same exemption from judicial torture was also extended to the aged and the juvenile without any status qualification. Furthermore, those who were physically or mentally impaired were also protected against the use of torture to force a confession.¹⁰⁹ Family groups also had special treatment. They were free, in general, from the obligation to report offenses committed within their group or by members of their group against outsiders. Indeed, in most cases, junior members who reported the offenses of their seniors would themselves be punished. And in certain cases no person who was not a family member could make a valid accusation of intra-family offenses.

Also noteworthy was the concept of the doubtful case, which was in some ways analogous to the "not proven" of present-day Scots law. Here the evidence was equal on both sides, for innocence as well as for guilt. Therefore, no matter what the accused's status, he was allowed to make redemption for the punishment of the crime of which he had been accused by payment of copper. Of course, the

¹⁰⁸ See the discussion by two high officials in fifth-century China as to the value of torture, translated and discussed in Balazs, *Traité juridique*, pp. 195-206.

¹⁰⁹ See Karl Büniger, "The Punishment of Lunatics and Negligents According to Classical Chinese Law," *Studia Serica* 6 (1950), pp. 1-16.

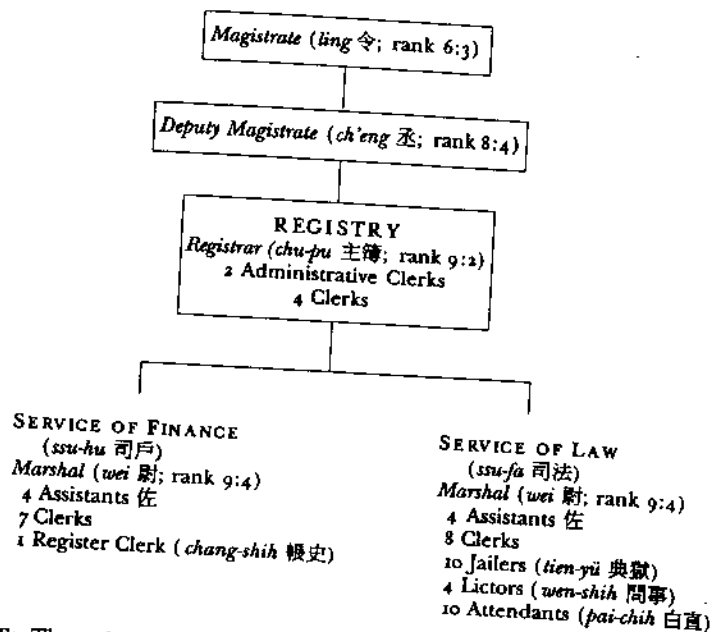
burden of such a fine fell much more heavily on the poorer members of society, particularly since there were time limits for making such payments.

Last, to Westerners perhaps the most striking feature of the criminal procedure is that it was essentially an inquisitorial process. We are accustomed to an adversarial system with attorneys representing both parties. The Chinese traditionally despised the role of advocate and saw such people as parasites who attempted to profit from the difficulties of others. The magistrate saw himself as someone seeking the truth, not a partisan for either side. Indeed, the fewer cases that occurred during his tenure in a particular place the better, since this was an indication that he was able to promote harmony and morality.

LIST OF ABBREVIATIONS

app.	Appendix B
Code	<i>T'ang-lü shu-i</i> 唐律疏議
Statutes	Niida, <i>Tōryō shūi</i> 唐令拾遺
TLT	<i>T'ang liu-tien</i> 唐六典

Figure 1. Administrative Structure of a Superior County



NOTE: The physical layout, above, suggests the administrative hierarchy. Italicized posts indicate ranking officials. In addition, there was an Educational Service with two designated teachers and 48 students and a Market Office comprising 7 officers. Exclusive of these, the establishment of a county administration comprised 5 officials and 33 miscellaneous employees (*tsa-jen* 雜任), of whom only 29 had clerical duties; see *TLT* 30, pp. 30b-3rb. (Based on table 2 in Denis Twitchett, "The Implementation of Law in Early T'ang China," *Civiltà Veneziana: Studi* 34 [1978], 57-84.)

Figure 2. Penalties According to Administrative Level

PENALTY	ADMINISTRATIVE LEVEL OF FINAL DECISION
light stick (<i>ch'ih</i> 笞)	County
heavy stick (<i>chang</i> 杖)	County
penal servitude (<i>i'u</i>)	County Prefecture
life exile (<i>liu</i> 流)	County Prefecture Capital
death (<i>chiao</i> 絞, <i>chan</i> 斬)	County Prefecture Capital Emperor

APPENDIX B: Selected Translations of Statutes and Code

PRELIMINARY HEARINGS

(444) Code 355 "An Accusation to the Court of a Person's Offense Must Clearly Indicate the Year and Month"

Article 355.1a. An accusation to the court of a person's offense must clearly indicate the year and the month. The true facts must be set forth without reference to what is doubtful. Violations will be punished by 50 blows with the light stick.

Article 355.1b. Officials who accept such accusations and act on them will receive one degree less punishment than that for the offense.

Article 355.2. In cases of killing, robbery, or damage or loss by fire and water, reference will not be permitted to what is doubtful. However, should such an accusation prove to be false, there is no reciprocal punishment.

Article 355.3a. Military officials may not improperly accept written statements of accusations.

Article 355.3b. Where the accusation concerns plotting treason or more, or robbery, the article above will be followed.

(427) Code 340 "Secret Reports of Plots to Rebel or to Commit Great Sedition"

Article 340.1a. All cases of knowledge of a plot to rebel or of great sedition being committed must be secretly reported to the nearest official. Those who do not do so are punished by strangulation.

Article 340.1b. Those who know of a plot to commit great sedition or of a plot of treason and do not report them are punished by life exile at a distance of 2,000 *li*.

Article 340.1c. Those who know of criticism of the emperor or of making magical incantations and do not report them have their punishment reduced five degrees below that for the basic crime in each case.

Article 340.2a. If an official receives such a report and does not immediately seize and arrest the criminals, should a half-day pass, his punishment is the same as those who do not report the offense in each case.

Article 340.2b. If the matter requires that a plan be devised and so the time limit is violated, it will not be punished.

(778) Statutes 30.24

Whenever anybody makes an accusation of treason, this must be done through the senior official of the place concerned. If the senior official is implicated in the accusation, it must be done through his deputy. If both the senior official and his deputy are implicated in the crime the accusation should be lodged through the neighboring jurisdiction.

If the offender ought to be apprehended, the other prefectures should be informed, so that the local authorities can take and arrest the offender in accordance with the law.

If the case is one of plotting treason or any more serious offence, it should be reported in a memorial to the throne, and despatched by express courier.

If there is anybody who claims that he wishes to lay an accusation of plotting treason or any more serious crime, but is unwilling to speak of the matter [to the local officials], he shall be permitted to use the postal relay service and be sent to the capital under escort.

Prisoners who have committed capital crimes, and defense soldiers in garrisons in the prefectures along the frontiers if they have committed crimes punishable by life exile, do not come within the limits of eligibility for dispatch to the capital in such circumstances.

(600) *Statutes 21.40*

All accusations should always begin in the lowest competent court. They should begin from the office concerned [in the case of an official] or from the place in which the accuser is registered. If this is far distant, or the way there is obstructed, then the case should be decided by the nearest office. If the accused will not accept his decision, he should ask to be granted a statement of non-acceptance [of the judgment]. When this reaches the Department of State Affairs, the assistants of the left and right [of its Central Bureau] should carefully scrutinize it. If the accused again refuses to accept their judgment, they should again issue a statement of non-acceptance, and the accusation should be laid before the "Three Judicial Offices."¹¹⁰ If the accused still will not accept their decision, he may then present a memorial to the throne. If the officer receiving the memorial is not persuaded to forward it, the accused is permitted to strike the petitioner's drum. If because the accused is alone and friendless, or very old or young, and unable to plead his case in person then the accused may stand at the foot of the Lung Stone.¹¹¹ If the accused is in confinement and bound, someone else who is personally acquainted with the facts may stand by the Lung Stone in his place. If a petitioner stands by the Lung Stone, the gate supervising guard of the left shall report it to the throne; if he strikes the drum, the gate supervising guard of the right should report it.

¹¹⁰ The *san-ssu* 三司 here refer to the standing judicial panel consisting of a chief secretary of the Secretariat, a chief secretary of the Chancellery, and the president of the Censorate. The same term was used for an *ad hoc* judicial committee consisting of the vice-presidents of the Supreme Court of Justice, the Board of Justice, and the Censorate, which was concerned to investigate serious criminal cases. The standing judicial panel normally reviewed all capital cases.

¹¹¹ See van Gulik, *Parallel Cases*, p. 42. He thinks that this indicates an earlier trial by ordeal but gives no evidence to support his view other than that trial by ordeal existed in Europe.

(447) Article 358. "Intercepting the Emperor and Beating the Drum to Make an Accusation"

Article 358.1a. All cases of intercepting the emperor, beating the petitioner's drum, or sending up a memorial in order to make a personal appeal are punished by 80 blows with the heavy stick if they prove false.

Commentary: Where circumstances are deliberately added or deleted, or the appeal conceals something or is fraudulent, the punishment is for sending up a memorial which is deceitful or untrue.

Article 358.2a. If the person does any harm, the punishment is 100 blows with the heavy stick.

Article 358.2b. Even where the petition proves to be true, if the person does any harm, the punishment is 50 blows with the light stick.

Article 358.3. Where relatives accuse each other, it is treated as if the person had made the accusation himself.

(447) Code 359 "Bypassing the Court in Making a Petition"

Article 359.1. All cases of bypassing the court in making a petition and of accepting such petition are punished by 40 blows with the light stick in each case.

Article 359.2a. Where a petition should be accepted and an investigation made, but the petition is rather suppressed and not accepted, the punishment is 50 blows with the light stick. After three such instances the punishment is increased one degree. For ten such instances the punishment is 90 blows with the heavy stick.

Article 359.2b. Where a person intercepts the emperor, beats the petitioner's drum, or sends up a memorial making a petition, if the official in charge does not immediately accept it, his punishment is increased one degree beyond that for the offense which is the object of the petition.

Article 359.3. If a person intercepts the emperor to make a petition and enters the formation, the punishment is 60 blows with the heavy stick.

Commentary: Formation means those leading the imperial procession carrying the regalia.

(428) Code 342 "Reciprocal Punishment for False Accusation"

Article 342.1a. All cases of false accusation against other persons are sentenced to reciprocal punishment.

Article 342.1b. If a censorate official commits extortion for his private benefit, or if the accusation is not true, it is treated the same way.

Commentary: 342.1c(i). Reciprocal punishment is determined by the punishment of the victim.

342.1c(ii). If the punishment reaches the death penalty and has not yet been administered, the punishment for the person who made the false accusation is reduced one degree.

342.1C-(iii). For those who basically are punished by added blows with the heavy stick or who may redeem punishment by payment of copper, the punishment for the false accusation can only follow the laws on beating with the heavy stick and redemption by payment of copper.

342.1C-(iv). Where the false accusation is against an official or a person who has protection, the ordinary law is followed.

Article 342.2a. If the accusation to the court is of two or more offenses and the more serious proves to be true; or where the offenses are equally serious but one of the accusations is true, the punishment is canceled.

Article 342.2b. If the accusation to the court of the more serious offense proves to be untrue, then there is reciprocal punishment for the other accusations.

Article 342.2c. Where the maximum punishment has been reached, even if the false accusation is for more, there can be no further reciprocal punishment.

Article 342.3. Where the accusation to the court involves two or more persons, even if the accusation proves true for the majority, there is still reciprocal punishment for those where the accusation proves to be untrue.

Commentary: This means that where the accusation to the court involves two or more persons and it proves to be untrue for one of them, even though the punishment is less serious it is still reciprocal.

Article 342.4. If a memorial is sent up accusing someone which has already been decided and the offense proves to be untrue, where the reciprocal punishment is lighter, the punishment is for submitting documents to the emperor which are fraudulent or untrue.

T R I A L

(776) *Statutes 30.23*

Article 23.1. Whenever somebody lays an accusation that another person has committed a crime, he shall be subjected to three hearings (*shen* 審), except in cases of plotting treason (*mou-p'an* 謀叛) or more serious offenses. The examining officials should take a written statement (*shou-tz'u* 受辭) from the accuser and report this to the authority [with jurisdiction] (*tieh kuan-ssu* 牒官司). On each occasion they should clearly point out in detail to the accuser that an unfounded accusation would involve the accuser in reciprocal punishment. Each hearing should take place on a different day.

Commentary: 23.2. If the accuser is an envoy traveling on official business he may not be detained so as to take his statement on different days; in such cases it is permitted to hold all three hearings on the same day.

Article 23.3. The official receiving the accusation should make a record of his decision after the hearings are completed, and only after this has been done may the case be submitted to the authority [with jurisdiction].

Article 23.4. If, however, the case is one classified as completely reprehensible this rule shall not be applicable.

Commentary: 23.5. "Completely reprehensible" refers to homicide, robbery with violence, jail breaking, violent rape of free persons, or other offenses involving a great deal of urgency.

Article 23.6. If the accuser is illiterate, the clerical officer should write down the accusation on his behalf.

Article 23.7. If the accused ought to be imprisoned, his accuser should also be imprisoned, and released after the disposition of the case.

Article 23.8. Where a member of the same neighborhood group lays an accusation against a fellow member, if the crime is one meriting the death sentence the accuser should be kept in loose confinement (*san-chin* 散禁). If the crime is one punishable with life exile or less, he shall be allowed free on the cognisance of sureties to respond to investigation (*ts'e-pao ts'an-tui* 質保參對).

(779) *Statutes 30.25*

Article 25.1. All investigating officials trying a case should first carry out the five types of scrutiny.

Commentary: 25.2. These are: first, scrutiny of the offender's statements; second, scrutiny of his expression; third, scrutiny of his breathing; fourth, scrutiny of his reactions to the words of the judge; and fifth, scrutiny of his eyes.

Article 25.3. and investigate thoroughly all the testimony. If there is anything doubtful in the statement of the facts of the case, and the accused will still not make his confession of guilt, only then may judicial torture be applied (*k'ao-tsieh* 拷掠).

Article 25.4. Each questioning under torture shall be separated from the preceding one by 20 days. If before the questionings are finished he is transferred to another jurisdiction, but still ought to be questioned under torture

Commentary: If a prisoner is transferred to another jurisdiction, a complete copy of the original dossier should be transferred with him. Then this should be reckoned together with the previous questionings to make up a total of three occasions.

Article 25.5. If the crime is not a major offense and the doubtful points are minor, it is not necessary in every case that the accused be questioned three times under torture.

Article 25.6. If the prisoner dies under torture, a statement of the facts should always be written and sent to the senior official of the place concerned, and [the person responsible] investigated in the presence of the disciplinary officials.

(781) *Statutes 30.27*

Whenever a prisoner is being questioned the executive officer in charge of the case shall personally interrogate him. When the interrogation is concluded (*ts'u-ting* 辭定) he should order the accused himself to write out his confession. If he does not understand writing, the clerical officer should write it from dictation. When it

is completed it should be read aloud in the presence of the executive officer.

(775) *Statutes 30.21*

Whenever a crime has been committed and the act has come to light, where the illicit gains and the account of the circumstances have been plainly exposed and proven, even though not all the perpetrators have been arrested, those that have been apprehended may be tried first, in accordance with the account of the circumstances. After this the other accomplices should be pursued and brought to trial.

(552) *Code 476* "Examination of the Written Statement in Interrogating a Prisoner"

Article 476.1. In all cases where a prisoner is interrogated the circumstances must first be considered. Then the written statement and the reasoning must be examined. This must be done repeatedly. If a decision still has not yet been reached, then the prisoner is interrogated under torture. A file must be created and agreement secured. Only then may interrogation under torture be used. Violations are punished by 60 blows with the heavy stick.

Article 476.2. Where the illicit goods and the circumstances are evident and verified, and the reasoning is not in doubt, even if the accused will not admit the crime, it can be sentenced based on the circumstances.

Article 476.3. If even though the crime has already been amnestied it must be fully investigated, judicial torture is not allowed.

Commentary: This refers to such actions as removal from the community after an amnesty, or disenrollment or resignation from office.

(666) *Code 480* "Interrogation According to the Circumstances of the Accusation"

Article: In all cases, the prison official's interrogation must follow the circumstances alleged in the accusation to the court. If he goes outside of these relevant circumstances and particularly seeks information about other crimes, he will be punished for intentionally decreasing or increasing a person's punishment.

(787) *Statutes 30.35*

Whenever there is a doubtful trial which cannot be settled, it should be decided (*yen* 讞) by the Supreme Court of Justice. If the Supreme Court of Justice is still doubtful, they should inform the Department of State Affairs (i.e., Board of Justice).

(575) *Code 502* "Doubtful Offenses"

Article 502.1. All cases of doubtful offenses (*i-tsui* 疑罪) allow redemption by payment of copper in each case.

Commentary: Doubtful refers to such things as the testimony as to the truth or falsity of the accusation is equal and the reasoning for and against the

accused's having committed the crime is balanced. Where the facts seem to fit the case against the accused, there are no witnesses. Or where there are witnesses, the facts do not seem very certain.

Article 502.2. Where there is a doubtful trial and the legal officers' views as to handling the case differ, there can be further deliberation given. However, there cannot be more than three deliberations.

PUNISHMENT

(571) *Code 496* "The Death Penalty Is Not To Be Administered after the Beginning of Spring"

Article 496.1. All cases of administering the death penalty between the Beginning of Spring and the autumn equinox are punished by one year of penal servitude.

Article 496.2a. Even punishment for crimes that need not wait for the correct season to be administered may not be carried out during a month where the slaughter of animals is prohibited, or on days when killing is forbidden. The punishment is 60 blows with the heavy stick in each case.

Article 496.2b. Even if the official waits for the correct season, but there are violations, the punishment is increased two degrees.

(765) *Statutes 30.09*

From the Beginning of Spring to the autumn equinox one may not memorialize the throne requesting permission to carry out the death penalty. One also may not memorialize the throne requesting permission to carry out the death penalty on the days of Major Sacrifices, on Days of Abstinence, on the first or fifteenth day of each lunar month, on the first and last quarters of each lunar month, on the twenty-four annual Solar Nodes, when the rains have not yet cleared, when the night has not yet ended in dawn, during the months and days when the butchering of animals is prohibited, and on rest days.

(555) *Code 490* "Obtaining the Prisoner's Acceptance of His Sentence after Conviction"

Article: In all cases of a conviction which punishes the criminal by penal servitude or more, the criminal and his relatives are summoned and told the punishment in order to obtain the prisoner's acceptance of his punishment. If he does not accept it, his reasoning must be heard and the case reexamined. Violations are punished by 50 blows with the light stick. In the case of the death penalty, violations are punished by 100 blows with the heavy stick.

(757) *Statutes 30.02*

Article 2.1. Whenever an offense is committed, punishments of beating and below may be summarily carried out by the county. In cases punishable by penal

servitude and above the county should decide the case and refer it to the prefecture. When the prefecture has completed a review of the case, punishment of penal servitude replaced by beating, cases of those who having been found guilty of a crime punishable by life exile are punished instead by a summary beating, and cases where the offender has the right to redeem his punishment by a payment in copper, then these substitute punishments by beating, or the payment of redemption may be summarily enforced.

Article 2.2. When the Supreme Court of Justice and the Metropolitan administrations of Ch'ang-an and Lo-yang have decided cases meriting the punishment of penal servitude, or crimes committed by officials, in all cases where later there is a pardon or reduction in punishment this should be reported to the Ministry (i.e., the Department of State Affairs), and the office of the Ministry (i.e., the Board of Justice) should scrutinize it in detail. If there is no error, then it should be reviewed and passed down to the office concerned. If there is anything incorrect in the judgment, then it should be rectified.

Article 2.3. When the Supreme Court of Justice and the various prefectures decide a case punishable by life exile or above, if it involves the disenrollment, resignation, or replacement of punishment by loss of office by the offender, then all the facts should be compiled together into a dossier and sent to the Ministry. If when the dossier has been reviewed it is completely in order then the judgment will be reported to the throne. Should there be anything in the judgment which is incomplete, if the case arises in the provinces an envoy should be sent to review it, if it arises in the capital it should be called back to the Board of Justice for review and final decision.

(761) *Statutes 30.06*

Article 6.1. In all cases of carrying out executions of the death penalty, if it is in the capital the office responsible for conducting the execution must memorialize the case five times. If the case is in the provinces the Board of Justice must memorialize the case three times.

Commentary: In the capital the case must be memorialized twice on the day before the execution, and three times on the day of the execution. In the provinces once on the first day, and twice on the following day. Even if there should be a provisional edict not permitting the memorializing of cases for review, the case must still be memorialized for review in accordance with this rule.

Article 6.2. In cases of contumacy or more serious crimes or in cases of personal retainers or slaves who have killed their master, the case should be memorialized for review only once.

Article 6.3. In the capital city, or in the temporary residence of the emperor on progress, on the day of an execution the Service of Foodstuffs shall serve only vegetarian food, and both the Court of Sacrifices and the Palace Conservatory shall suspend all musical performances.