

## A Basic History of T'ang Legislative Forms

This essay attempts to describe the general features of the legal system during the T'ang (618-907) dynasty. To treat the subject properly it is necessary to discuss the historical background of Chinese law. This allows us to distinguish traditional features from those of the T'ang. Traditional law and codification span the age of the Warring States (403-221 BC) right up to the end of the Ch'ing dynasty in 1911. In such a large time frame, naturally there is a considerable amount of complexity. Yet, on a broad level, it seems undeniable that fundamental features were preserved throughout the whole history. They may be discussed from two points of view: structure and contents.

First, law (*fa* 法) presupposed a political structure consisting of three elements: an absolute ruler, or, since the first emperor of Ch'in (r. 221-210 BC), an ennobled emperor (*huang-ti* 皇帝); officials who could be appointed and dismissed at the ruler's discretion; and passive common people who were governed by the bureaucratic hierarchy with the ruler at its apex. Law was a means of control equipped with sanctions consisting of rewards and punishments—the latter being far more important—whereby the ruler could have his will prevail among society. In the first place the ruler controlled the bureaucracy, which in turn controlled the masses. Therefore, law appeared mainly as criminal law and administrative regulations, not as a body of rules demarcating individual rights. The ultimate source of the efficacy of law lay in the legislative will of the ruler. According to an ancient passage, the ruler should create law; officials should abide by the law; and common people should be controlled by law.<sup>1</sup> It was the Legalists (*fa-chia* 法家) of the Warring States era who enthusiastically advocated such a concept. On the other hand, however, the Confucianists, who often opposed the Legalists, had no fundamentally different concept of law. The point at issue between the two views in connection with law concerned the value to be placed on law. The Confucianists did not much trouble themselves to clarify the concept of law because they did not believe that great value should be placed on it.

Second, from the Han period onward, the amalgamation of the system

<sup>1</sup> See ch. 15 of the pre-Han classic *Kuan tzu* 管子.

of ethics taught by the Confucianists, on the one hand, and the system of positive law developed from the Legalist view, on the other, made steady progress. While the structure of law as the emanation of the ruler's will remained unchanged, the contents of the law gradually became permeated by moral obligations and ideals. Several scholars have discussed this phenomenon as the "moralization" or "confucianization" of law.<sup>2</sup> Viewed from another angle, it means that Confucianism, which became henceforth the orthodox ideology destined to support the regime, recognized laws and punishments as a legitimate means of supplementing social education. Confucianism allocated to the law the function of suppressing deviations from the basic standard of morality that it preached.<sup>3</sup> An explanation that found general acceptance held that promotion of proprieties (*li* 禮) and legal sanction (*fa* and *hsing* 刑) constituted the right and obverse sides of the same thing.<sup>4</sup>

To sum up, viewed from their structure, laws owed their existence wholly to the supreme ruler's will. Viewed from their contents, however, laws represented established moral standards that were higher than the temporal ruler's. These features of ancient Chinese legal thought were of course shared by T'ang-dynasty law. Furthermore, it may be safely said that T'ang law represented a high point in the moralization of law.

### THREE LEVELS OF CHINESE LAW

Beyond the characterizations just stated, I would like to suggest another, somewhat more technical, point of view. It concerns the forms used in legislation and codification. We can identify a recurring pattern in the complex of codification from dynasty to dynasty.

First of all, as a general rule, every dynasty had its fundamental codes,

<sup>2</sup> Karl Büniger, "Religiöse Bindungen im chinesischen Recht," in Karl Büniger and Herman Trimborn, eds., *Religiöse Bindungen in frühen und in orientalischen Rechten* (Wiesbaden: Otto Harrassowitz, 1952), p. 64; Tung-tsu Ch'ü, *Law and Society in Traditional China* (Paris & La Haye: Mouton, 1961), pp. 267 ff.

<sup>3</sup> John C. H. Wu says, "If we can imagine a Church with police forces to enforce its precepts and to punish infractions, we can approximate the actual system under which the Chinese people lived for almost two thousand years," in his, "Chinese Legal and Political Philosophy," Charles A. Moore, ed., *The Chinese Mind* (Honolulu: U. of Hawaii P., 1967), p. 224.

<sup>4</sup> Ch'en Ch'ung 陳寵, an outstanding law expert during Eastern Han, said, "Legal sanctions take up matters which the educative force of proprieties cannot treat. Those who are shut out of the latter's domain enter that of the former. They correspond with each other as the right and obverse sides"; *Hou Han shu* 後漢書 (Peking: Chung-hua shu-chü, 1973) 46, p. 1554.

which formed the general basis, or nucleus, of the legal structure of that time. Under this category we find the Six-chapters Code (*fa-ching liu-p'ien* 法經六篇)—if its existence is to be accepted—of the Ch'in, the Nine-chapters *lü* (*chiu-chang lü* 九章律) of the Han, the *lü* (penal code 律) and *ling* (administrative code 令) of the T'ang, and the *lü* of the Ming and Ch'ing. The Yüan dynasty, which had no *lü* actually in force, was the only exception.

On the other hand, there was always an incessant flow of imperial directives, or edicts. The terms designating them in general changed with the ages; roughly speaking, they included *ling* in the Warring States, *chih* 制 and *chao* 詔 in the Han (202 BC-220 AD), *chih* and *ch'ih* 敕 in the T'ang and the Sung (960-1279), *sheng-chih* 聖旨 in the Yüan (1264-1368), *yü* 諭 and *chih* 旨 in the Ming (1368-1644) and the Ch'ing (1644-1911). With regard to their contents, some were legislative, that is they established regulations applicable to future events; others were either administrative or judicial dispositions of current individual cases. The latter sort of imperial edict, too, had varying significance for the future as precedents to be cited. Regardless of the variety in their contents, they were essentially equal in formal character and in effect and force.

Lastly, through the ages there repeatedly appeared various types of official undertaking in which from among the ever enlarging accumulation of imperial edicts were extracted the essential parts necessary to be maintained as future-oriented law. These were then compiled into a workable body of law with modifications in expression in order to condense the meanings. Such compilational efforts were a device for rescuing useful and reliable precedents from the oblivion that would have been their fate if left among the vast number of imperial edicts. "Secondary codes" might be suggested as an appropriate designation of this category of compilation. Typical examples are the *ko* 格 and *shih* 式 of the T'ang and *t'iao-li* 條例 of the Ch'ing.

Thus we may safely introduce the idea of three levels of law from the standpoint of form: 1) fundamental codes, 2) secondary codes, and 3) sporadic law-making by imperial edicts. This order of enumeration represents the relative degree of stability. The first was of the most enduring nature, setting general standards; then came the second; the least stable was the last category, whose function was in coping with the changes in the conditions of the world and the variety of actual circumstances. From the viewpoint of relative effect and force, however, the priority should be reversed. That is to say, a given provision in the secondary code took priority over a general provision in the fundamental code that covered the same matter; when conflict occurred, the former prevailed. By the same token, the emperor could

by fiat make new law overruling every article in the fundamental and secondary codes. Because the ultimate source of law — whatever form it might take — existed in the emperor's will alone, it is natural that his will declared in general should yield to his will declared in particular.

The above discussion, I admit, is quite loose and much needs to be done to substantiate the main points. Nevertheless, I hope that it will be of some use as background for the study of the legal system in each particular age of premodern China.

### THE T'ANG LŪ-LING SYSTEM

With regard to T'ang law, there should be no objection to considering the *lŭ* and *ling* as fundamental codes. *Lŭ* was a penal code; *ling* was a systematically arranged body of provisions that set general standards in the working of officialdom concerning every field of importance. *Ling* did not include articles of punishment. But quite a few articles in the *lŭ*, corresponding to certain provisions of the *ling*, provided for a particular degree of punishment against violations of the latter. Furthermore, article 449 in the T'ang *lŭ* stipulated that those who committed a transgression of the provisions of the *ling* should be punished by fifty blows of the light stick, thus catching all transgressions which were not specifically punishable. In this way the two codes were interconnected. They by no means conflicted with each other in their underlying principles as is the case in some legal systems, for example conflicts between penal code vis-à-vis civil code. The dual code system was rather a technical scheme.

The terms *lŭ* and *ling* were both used to designate separate articles and chapters of the codes as well as to indicate the whole body of the codes themselves. There was, however, no other legislation called *lŭ* or *ling*. There was never more than one *lŭ* code and one *ling* code in existence at a given time. They might be called "the *lŭ*" and "the *ling*." Amendments of *lŭ* and *ling* could be made only through a process of total revision, wherein a special ad hoc committee appointed by an imperial edict would perform the task. Approved drafts were promulgated as completely new codes substituting for the old ones. Even if they might have undergone in fact only very trifling amendments, they were nevertheless entirely new codes from the formalistic point of view. It is because of this traditional idea of codification that history records several compilations of *lŭ* and *ling* capped by the year-title of their promulgation, for example, the K'ai-huang 開皇 *lŭ*, the K'ai-huang *ling*, and the Chen-kuan 貞觀 *lŭ*.

This system of pairing *lŭ* and *ling* as fundamental codes (which for the sake of simplicity, shall hereafter be referred to as the *lŭ-ling* system), which was a feature of T'ang law, was by no means long-lasting enough to cover the whole history of Chinese law. It had its beginning, a process of formation, and a transformation leading to extinction.

### LŪ AND LING IN ANCIENT AND HAN CHINA

The Ch'in legal documents recently excavated at Shui-hu-ti 睡虎地 in Yün-meng county, Hupei province, show us with a fair degree of certainty in what manner the term *lŭ* was used in the Warring States era.<sup>5</sup> Many *lŭ* appeared as headings attached to respective bundles of legal provisions, the contents of which are mostly regulations — often very detailed — concerning administrative routine, sometimes accompanied with punishments for deviations therefrom. Those names of *lŭ* could hardly be taken as representing individual chapters of a certain code that, after deliberate drafting, had been promulgated at once as a whole. It is very interesting, furthermore, that two edicts of the ruler of the state of Wei with precise dates (indicating the day and month) in the year 252 BC appear under the heading of *Wei hu lŭ* 魏戶律 ("lŭ of Wei concerning households") and *Wei pen ming lŭ* 奔命律 ("lŭ of Wei concerning the military"), respectively.<sup>6</sup> It may be safely inferred that *lŭ* in the Warring States era fell under the category of secondary codes, at least if we use the word in a relatively broad sense.

The Ch'in documents from Shui-hu-ti also include a series of queries and answers on criminal law. This part has been reasonably taken by the group of scholars who prepared the text for publication to be a commentary on the Six-chapters Code, the existence of which has been controversial. It is still to be ascertained, however, whether the Six-chapters Code itself was called *lŭ* and whether the alleged authorship of Li K'uei 李悝 is authentic.

The new findings regarding Ch'in law shed light on the tenability of our knowledge of the Han legal system, which has been acquired from textual passages in ancient books. Apart from the famous Nine-chapters Code, which was allegedly established by Hsiao Ho 蕭何 through revising and adding three chapters to the Six-chapters Code of Li K'uei, it has been known that in Han times there were several other statutes called *lŭ*.<sup>7</sup> They

<sup>5</sup> Shui-hu-ti Ch'in-mu chu-chien cheng-li hsiao-tsu 睡虎地秦墓竹簡整理小組, eds. *Shui-hu-ti Ch'in-mu chu-chien* (Peking: Wen-wu ch'u-pan she, 1978).

<sup>6</sup> *Ibid.*, pp. 292-94.

<sup>7</sup> A. F. P. Hulswé, *Remnants of Han Law* (Leiden: E. J. Brill, 1955), pp. 26 ff.

may now be explained as surviving Ch'in law perhaps having undergone some rearrangement. Some of the Ch'in *lü* were so rearranged as to form the three chapters added to the Six-chapters Code and were thus incorporated into the fundamental code. However, the authenticity of the name Hsiao Ho as the key figure in this connection must be taken as questionable. At the very least, we have no clue for determining the date of "promulgation" of the Nine-chapters *lü*. I cannot help but suppose that there was no such date; to put it in another way, the code was a product of rearrangement which took place bit by bit over time. In this respect the Nine-chapters Code of the Han was of a different nature from the T'ang *lü*, although each is to be taken as a fundamental code.

As a new trend in the Han, the term *ling* came to be used as a designation of various compilations of extracts from imperial edicts. There were two styles of compilation and nomenclature; some *ling* were merely numbered consecutively as *ling-chia* 令甲 ("ling, part one"), *ling-i* 乙 ("ling, part two"), and so on. Others were capped with a word representing the contents, as for instance *kung-ling* 功令 ("ling concerning [the service record of] officials") and *chin-pu ling* 金布 ("ling concerning the fisc"). The text of two articles of the Han *ling* extant on the wooden strips excavated at Mo-chü-tzu 磨咀子在 Wu-wei 武威 county in 1959 clearly shows that they were edited extracts of edicts accompanied by the dates of issue.<sup>8</sup> *Ling* originally meant directives in general, including those of the supreme rulers. After the first emperor of the Ch'in created the unique terms *chih* and *chao* for imperial edicts, *ling*, which could no longer be used to designate specific edicts, took on a new meaning as compilations of edicts. It is clear that such *ling* of the Han fall under the category of secondary code. To sum up, the *lü-ling* system defined above had not yet come into existence in Han times.

#### THE POST-HAN FORMATIVE AGE OF THE LÜ-LING SYSTEM

The Wei (220-266 AD) and the Western Chin (266-317) dynasties, which followed the Han, can be characterized as an age of codification. Scholars of that period inherited from the Han a huge amount of legal materials: the

<sup>8</sup> Michael Loewe, "The Wooden and Bamboo Strips Found at Mo-chü-tzu (Kansu)," *JRAS* 4 (1965). In Japan there has been a controversy in deciphering the document. Shiga Shūzō 滋賀 秀三, "Bui shutsudo ojo jukkan no kaishaku to Kanrei no keitai Ōba Osamu shi no ronkō o yomite" 武威出土王杖十簡の解釈と漢令の形態大庭脩氏の論考を読み、*Kokka gakka zasshi* 国家学会雑誌 90.3 (1977); Ōba Osamu 大庭脩, *Shinkan hōseishi no kenkyū* 秦漢法制史の研究 (Tokyo: Sōbunsha, 1982), pp. 332-54.

Nine-chapters *lü* with lengthy commentaries written by more than ten scholars, other *lü* and *ling*, and recorded cases as judicial precedents.<sup>9</sup> Besides the need of adapting law to the changed conditions of the world, experts took up the task of reducing the chaotic accumulation of materials to a systematically arranged body of rules. The *lü-ling* system in this age was the fruit of over four hundred years of Han legal scholarship.

The *lü* as a concept is clearly perceptible for the first time in Chinese history in the New Code of Eighteen Chapters (*hsin lü shih-pa p'ien* 新律十八篇), promulgated under the reign of emperor Ming 明帝 of the Wei (r. 226-237). And the *T'ai-shih lü-ling* 泰始律令 promulgated in 267 AD under the Chin marks the formal beginning of the *lü-ling* system, wherein the *lü* consisted of 620 articles arranged in 20 chapters; and the *ling*, 2,306 articles in 40 chapters. Tu Yü 杜預 (222-284), an outstanding scholar-official and an active member of the codification committee, gave the following definition: "The *lü* is that which standardizes crimes and punishments; the *ling* is that which establishes a measure for affairs."<sup>10</sup>

The *T'ai-shih lü-ling* served as the starting point for future development of law in the succeeding era of the Southern and Northern Dynasties (316-589). The Northern Dynasties were especially active in legislation. The *lü-ling* was revised seven times during the Northern Wei (386-534) and once each under the Northern Ch'i (550-577) and Northern Chou (557-581). Although we know very little of the details, the codes underwent supposedly considerable amendment with an aim of refinement in both form and substance. The Sui dynasty (581-618), which reunified the empire, promulgated the *K'ai-huang lü-ling* 開皇律令, which was compiled purportedly on the basis of the code of the Northern Ch'i, not that of the Northern Chou.

#### THE CLASSIC LÜ-LING SYSTEM: KO AND SHIH

After the formative age of the *lü-ling* system came its classical age, the period from the Sui until the middle years of the T'ang. In this period, *lü* and *ling* became rather static, presumably as a result of having reached a peak of refinement after repeated renovations during the formative age. With regard to *lü*, its formal configuration consisting of 500 articles arranged in twelve chapters was never again changed after the *K'ai-huang lü* of the Sui, wherein the 949 articles of the *lü* of the Northern Ch'i had been reduced to that number. In substance, *lü* underwent only one more instance

<sup>9</sup> *Chin shu* 晉書 30 ("Treatise on Punishments").

<sup>10</sup> *Ryō no shūge* 令集解 1 (introductory sect.).

of amendment, aimed chiefly at mitigating certain punishments, under the reign of emperor T'ai-tsung 太宗 (r. 626-649) of the T'ang. The revised text was promulgated in 637 as the *Chen-kuan lü* 貞觀律. Another notable event was the compilation of the *lü-shu* 律疏, an official commentary on the *lü*, which was drafted by a committee of eighteen scholars appointed by the throne and headed by Chang-sun Wu-chi 長孫無忌. This was promulgated in 653 (Yung-hui 永徽 reign-era, year 4). It seems to be an undeniable fact that the *lü* and *lü-shu* were revised, together with the *ling*, *ko*, and *shih*, in 737 (K'ai-yüan 開元 25), and that this revised text is now extant as the *T'ang-lü shu-i* 唐律疏議.<sup>11</sup> In all probability, however, the extent of real amendments then made was very limited, affecting almost nothing except trivial matters. By contrast, the *ling* was subject to a little more change. For instance, the number of articles included in the *Chen-kuan ling* (637) and that of the *K'ai-yüan ling* (719) differed from each other—1,590 against 1,546. Broadly speaking, however, the rewriting of the text of the *ling* at each stage of revision also remained rather minor.

Alongside the *lü* and *ling*, the existence of secondary codes known as *ko* 格 (regulations) and *shih* 式 (ordinances) characterizes this period. About them reference should be made to the readable and exhaustive descriptions by Denis Twitchett, and a brief summary will suffice for the present purpose.<sup>12</sup>

*Ko* and *shih* appeared as the components of the four-code system together with *lü* and *ling* for the first time in history at the time of the K'ai-huang codification in 581. After that they were recompiled about ten times up to the K'ai-yüan codification in 737. In my opinion, both *ko* and *shih* took their materials from the accumulation of edicts. At each recompilation, the texts of the preceding *ko* and *shih*, on the one hand, and the numerous edicts issued during the preceding interval, on the other, were both investigated as source materials for the new compilations. Among the elements extracted from edicts to be maintained as future-oriented law, two sorts were distinguished: those that implied conflict with *lü* and *ling*, and those that did not. The former became the components of *ko* while the latter were absorbed

<sup>11</sup> That is the main theme of the article by Niida Noboru 仁井田 隆 and Makino Tatsumi 牧野 巽, "Ko Tōritsu sogi seisaku nendaikō" [2 parts] 故唐律疏議製作年代考, *TG* 1 & 2 (Tokyo, 1931); rpt. in Ritsuryō kenkyū kai 律令研究会, eds., *Yakuchū Nihon risuryō* 訳注日本律令 (Tokyo: Tōkyōdō shuppan, 1978), vol. 1.

<sup>12</sup> Denis Twitchett, "A Note on the Tunhuang Fragments of the T'ang Regulations (*ko*)," *BSOAS* 30.2 (1967); and idem, "The Fragment of the T'ang Ordinances of the Department of Waterways Discovered at Tun-huang," *AM* ns 6.1 (1957). For T'ang law in general, see Karl Būnger, *Quellen zur Rechtsgeschichte der T'ang-Zeit*, Monumenta Serica Monograph 9 (Peiping, 1946).

into *shih*. Because any provision concerning punishment other than that given in the *lü* must inevitably mean conflict with the latter, *shih* could include no penal matter. As a result, *shih* took on the character of a compilation of provisions governing administrative routine to be carried out within the general framework set by the *ling* code.

The function of *ko*, which was endowed with priority over the *lü* and *ling* in effect and force, is noteworthy. It functioned so to speak as the embodiment of actual law. At the K'ai-huang codification under the Sui, it is said that the four codes (*lü*, *ling*, *ko*, *shih*) were compiled at the same time. This meant that the *lü* and *ling* of that time, at the very moment of their promulgation, were not intended to be actual law in every letter of their texts. The legislators' intention supposedly was that the *lü* and *ling* should set immutable and ideal standards for the world, while the *ko*, disengaged from such a solemnity, could be the workable means of taking effective temporary measures for dealing with the changing conditions of the world. This scheme seems to have worked well up to 737. In fact, of the four, the *ko* was recompiled most frequently, and at each time of recompilation changed its formal appearance significantly. We may infer that changes in contents were introduced in parallel. Toward the end of this period, however, the number of *chüan* 卷 of *ko*, which hitherto would have changed on each occasion, was fixed at ten *chüan* in each of the four successive recompilations in 712, 715, 719, and 737. This may be symptomatic of the fact that the *ko* was also losing its original inherent mobility. It is owing to this situation that the age of transformation of the *lü-ling* system began.

#### TRANSFORMATION OF THE LÜ-LING SYSTEM AFTER MID-T'ANG

The *lü* (12 *chüan*), *lü-shu* (30 *chüan*), *ling* (30 *chüan*), *K'ai-yüan hsin-ko* 開元新格 (10 *chüan*), and *shih* (20 *chüan*) were the products of the total revision of codes performed in 737. They set the starting point for, and remained as the background of, the coming process of transformation. After the *K'ai-yüan hsin-ko*, the *ko* was never again recompiled. Instead, it came to be supplemented with another series of compilations bearing a still more informal and more mobile character. Those compilations might be called subsecondary codes. They played the role of amending the law without touching the texts of the *ko*, just as the *ko* originally did in connection with the *lü* and *ling*. To sum up, the history of law from the later years of the

T'ang up to the end of the Sung is the process of gradual growth of sub-secondary codes.

In the later years of the T'ang, history records four instances of compilation of *ko-hou ch'ih* 格後敕: that of the Chen-yüan 貞元 era of 785, of Yüan-ho 元和 in 818, of T'ai-ho 太和 in 833, and of Ta-chung 大中 in 851. The term *ko-hou ch'ih* came to be used as an abbreviation of *ko-hou ch'ang-hsing* 長行敕 ("selected edicts issued after the promulgation of the last *ko* and having long-lasting effect as prospective law"). In 839, that is, between the *ko-hou ch'ih* of the T'ai-ho and Ta-chung reigns, a code named *ko* was compiled once more: the *K'ai-ch'eng ko* 開成格 in 10 *chüan*. The preceding *ko-hou ch'ih* were then reduced to that form, that is to say, the *K'ai-ch'eng ko* stood on the same level as the *ko-hou ch'ih* and therefore was not a replacement of but an addendum to the *K'ai-yüan hsin ko*. The two terms *ko-hou ch'ih* and *ko* probably corresponded to the different levels of reduction in editing; the latter was more compact and condensed.

The work *Ta-chung hsing-lü* [fa] *t'ung-lei* 大中刑律 [法] 統類 (*Criminal Laws and Statutes Classed by Category and Compiled in the Ta-chung Reign*) was another compilation of law that appeared in the same period.<sup>13</sup> It was a private work by Chang K'uei 張戣—not a code prepared for promulgation but a sort of manual of the existing laws. Reportedly, it included all the 500 articles of the *lü* dividing them into 121 sections, and in each section appended to the articles of *lü* were various articles of *ling*, *ko*, and *shih*. The total came to 1,250 articles, including the 500 of *lü*.

During the post-T'ang Five Dynasties period (907–960), *pien-ch'ih* 編敕 ("compiled edicts") took the place of the T'ang *ko-hou ch'ih*. But this signified merely a change in nomenclature. The compilations *Ch'ing-t'ai pien ch'ih* 清泰編敕 (935) under the Later T'ang dynasty (923–936), *T'ien-fu pien ch'ih* (939) under the Chin (936–947), and, as its addenda, *Ta Chou hsiü* 大周續 *pien ch'ih* (951) under the Chou (951–960) are of this nature. Attention should be paid to the fact that the fall of the T'ang dynasty by no means automatically meant the abolition of its laws. It was a traditional principle accepted since the Ch'in and the Han, and broken only by the Mongol rulers of the Yüan dynasty, that a new dynasty had initially to continue the legal system of the preceding dynasty for the time being, although sooner or later new legislation would revise and replace the previous system.

Among the T'ang laws—the four codes *lü*, *ling*, *ko*, and *shih* of the K'ai-yüan reign and the *ko* of the K'ai-ch'eng—handed down to the succeeding

<sup>13</sup> *Ta-chung hsing-lü t'ung-lei* is also recorded in sources as *Ta-chung hsing-fa t'ung-lei*. It is difficult to decide which title is authentic.

dynasties as one set, the K'ai-yüan *ko* was explicitly abolished in 926 under the Later T'ang by an edict to that effect.<sup>14</sup> The K'ai-ch'eng *ko* was also formally abolished at the time of the promulgation of the *Ta-Chou hsing-t'ung* 刑統 code in 957 under the Chou. This latter was a compilation on the model of *Ta-chung hsing-lü t'ung-lei*; the somewhat peculiar sounding term *hsing-t'ung* itself was an abbreviation of *hsing-lü t'ung-lei*. Unlike its informal model, however, *Ta-Chou hsing-t'ung* was an act of codification in the proper sense of the word. From among the *ko* of K'ai-ch'eng and the previous *pien-ch'ih*, those elements to be maintained as future-oriented law were incorporated into this *hsing-t'ung*, and the remainder were explicitly abolished.<sup>15</sup>

At the very beginning of the Sung dynasty the *Sung hsing-t'ung* code was established by revising the *Chou hsing-t'ung* of the preceding dynasty. *Sung hsing-t'ung* consisted of the entire text of *lü* and *lü-shui*, which had not been included in *Ta-chung hsing-lü t'ung-lei* and only partially included in *Chou hsing-t'ung*. It was divided into sections, plus some articles of the *ling*, *ko*, and *shih* of the K'ai-yüan period, a number of edicts issued after them, and new legislation initiated by the compilers of *Sung hsing-t'ung*. The work remained as actual law—by nature a fundamental code—suffering no revision throughout the Sung period, until the very end of the Southern Sung (1127–1279).

On the other hand, the development of law was promoted, under the Sung too, by repeated compilations of edicts as *pien-ch'ih*.<sup>16</sup> It should be recalled that aside from *Sung hsing-t'ung*, the *lü*, *ling*, and *shih* of T'ang origin were still in effect and force as fundamental codes in a relative sense of the word. In combination with them, *pien-ch'ih* functioned as secondary codes. In the early years of the Northern Sung, history records the compilation of *pien-ch'ih* in the following reigns: Chien-lung (compiled 963), T'ai-p'ing *hsing-kuo* (978), Ch'un-hua (994), Hsien-p'ing (998), Ta-chung hsiang-fu (1016), T'ien-sheng (1029), Ch'ing-li (1048), Chia-yü (1062), and Hsi-ning (1074). The *pien-ch'ih* of the Hsien-p'ing reign was notable for the thoroughness and condensation of its editing. Contemporaneous reports state that 18,555 edicts were reduced to 286 articles arranged in twelve chapters on the model of the *lü*. Added to them, a small number of articles were arranged as *i-chih ch'ih* 儀制敕, which were meant to be addenda to the *i-chih ling* (the chapter in the *ling* code concerning the forms of ceremony). This twelve-chapter system was followed by subsequent *pien-ch'ih*. The *pien-ch'ih* of the

<sup>14</sup> *Wu-tai hui-yao* 五代會要 9. <sup>15</sup> Niida and Makino, *Ko Tonisu*, part 1, p. 129.

<sup>16</sup> The main sources for what follows are *Sung shih* 宋史 152; *Sung hui-yao chi-hao* 宋會要 綱稿 164.

T'ien-sheng reign is known to have consisted of two parts: about 1,200 articles arranged in twelve chapters (13 *chüan*) and about 500 other articles called *fu-ling* 附令 *ch'ih* (18 *chüan*). The form *fu-ling ch'ih* ("edicts compiled as addenda to the *ling* code") was very probably a development of the *i-chih ch'ih* of the Hsien-p'ing reign mentioned above and now extended to cover all the chapters of *ling* code. In this way, compilation of edicts, *pien-ch'ih*, which had originated as the most informal *ko-hou ch'ih*, were gradually developing into a systematized body of law on the model of *lü* and *ling*.

This development found its completion in the new form and title of the code designated *ch'ih-ling ko-shih* 敕令格式. When the *pien-ch'ih* was recompiled in 1084, in the Yüan-feng 元豐 reign, it adopted the new form. It is known by two names: *Yüan-feng ch'ih-ling ko-shih* and *Hsiang-ling ch'ung-hsiu* 詳定重修 *pien-ch'ih*, reflecting these changes in form. This style of code gathered together the provisions for punishments under the rubric of *ch'ih*, which in turn was divided into twelve chapters bearing the same titles as those of the *lü*; and provisions for administrative affairs, excluding matters of punishment, were compiled as *ling*. The *ch'ih* and *ling* correspond roughly in style to the *lü* and *ling* in the T'ang system. In contents, of course, they were largely different. The source-materials for the *ch'ih* and *ling* came from the preceding *pien-ch'ih* and numerous more recent edicts. Furthermore, at the time of the Yüan-feng codification, *ling* and *shih* of T'ang origin, which were theoretically still in effect and force, were thoroughly reviewed as source-materials. Useful elements in them were taken over into the new type of *ling* (in 50 *chüan*) and the remainder were abolished.<sup>17</sup> *Ko* in the new codification was a collection of various tables or tariffs mostly concerning rewards and quantities; *shih* was a collection of various forms of official documents. Both had nothing to do with the *ko* and *shih* of T'ang times.

After the Yüan-feng reign, the *ch'ih-ling ko-shih* was recompiled at fairly regular intervals throughout the Sung, each time taking into consideration edicts issued in the interval. We know of various *ch'ih-ling ko-shih* of the Yüan-yu 元祐 (1086), Yüan-fu 元符 (1098), and Cheng-ho 政和 (1112) reigns in the Northern Sung, and of the Shao-hsing 紹興 (1131), Ch'ien-tao 乾道 (1170), Ch'un-hsi 淳熙 (1177), Ch'ing-yüan 慶元 (1198), and Ch'un-yu 淳祐 (1242) reigns in the Southern Sung. A considerable part of the text of the Ch'ing-yüan compilation is extant in *Ch'ing-yüan t'iao-fa shih-lei* 條法事類. The T'ang *lü* was never abolished throughout the Sung although it was practically superfluous because of the existence of the Sung *hsing-t'ung*.

Needless to say, the two penal codes *lü* (or *hsing-t'ung*) and *ch'ih* functioned side by side as fundamental and secondary codes, as defined earlier.

With regard to the situation under the Jurchen Chin dynasty, the codification in the T'ai-ho reign (1201), which resulted in *lü* (with official commentary, *shu* 疏, added, in 30 *chüan*), *ling* (in 20 *chüan*), *hsin-ling ch'ih-t'iao* 新定敕條 ("newly compiled edicts" in 3 *chüan*) and *ko-shih* (in 30 *chüan*), should be mentioned. On this occasion, the *lü* of T'ang origin was amended to a minor extent.<sup>18</sup>

#### EXTINCTION OF THE LÜ-LING SYSTEM SINCE THE MONGOL-YÜAN PERIOD

The *lü-ling* system, having endured such transformations, ended with the Chin and Sung dynasties. Mongol rulers of the Yüan, after abolishing the T'ai-ho *lü-ling* code of their predecessors the Chin, could not succeed in establishing fundamental codes throughout their reign although several times they attempted to codify their own *lü*. Sporadic enactments—the *Chih-yüan hsün ko* 至元新格 (1291) was but the most significant of them—and precedents, both administrative and judicial, were all that functioned as sources of law.<sup>19</sup> They came to be collected in the work titled *Ta-Yüan t'ung-chih* 大元通制 (edited in 1323), an official compilation that can be classified as a sort of secondary code in style and contents, as well as in *Ta Yüan sheng cheng kuo-ch'ao tien-chang* 聖政國朝典章 (abbreviated as *Yüan tien chang*) (1322), a private edition published commercially.<sup>20</sup> On the other hand, the *lü* and *lü-shu* of T'ang origin were still useful as reference material for legal training; they were printed in combination under the title *Ku T'ang lü shu-i* 故唐律疏議, several editions of which found a ready market.

After the downfall of the Yüan, the founder of the succeeding Ming dynasty, Ming T'ai-tsu 太祖 (r. 1368–1398), promulgated *lü* (285 articles) and *ling* (145 articles) in his first year. Of them the *lü* portion is now lost, and the *ling* is extant. The style and contents of the latter remind us of the *chih-yüan hsün ko* of the Yüan rather than the *ling* of the T'ang. They seem to

<sup>18</sup> *Chin shih* 金史 45.

<sup>19</sup> *Chih-yüan hsün-ko* is reconstructed and translated by Paul Heng-chao Ch'en, *Chinese Legal Tradition under the Mongols: The Code of 1291 as Reconstructed* (Princeton: Princeton U.P., 1979). It is also reconstructed by Uematsu Tadashi 榎松正, "Ishü shigen shinkaku narabini kaisetsu" 兼輯至元新格並びに解説, *TYK* 30.4 (1972).

<sup>20</sup> Miyazaki Ichisada 宮崎市定, "Sō Gen jidai no hōsei to saiban kikō" 宋元時代の法制と裁判機構, rpt. in *Ajashi kenkyū* アジア史研究 (Kyoto: Dōhōsha, 1975) 4, pp. 272–74.

<sup>17</sup> Niida and Makino, *Ko Toritsu*, part I, p. 151.

have been intended to fill the needs for the time being. In 1374 the *lü* code was newly compiled with the intention of its being permanent. It made use of the T'ang *lü* as groundwork and absorbed the tentative *lü*—and also a few articles of the *ling*—of 1368 as additional source material. After one more revision in 1389, the systematized penal code was produced, which thenceforth took the place of the T'ang *lü* and is known to us as the *Ming lü*. The succeeding Ch'ing preserved it almost integrally, with very slight modifications. The *ling*, however, was left as it was throughout Ming times while most of its provisions were presumably going out of date. The *ling* was finally abolished with the downfall of the dynasty, except a few of its articles that were preserved by the Ch'ing among the substututes (*t'iao-li*) in the *Ch'ing Code*, or *Ta Ch'ing lü-li* 大清律例. Therefore, the existence of a compilation called *ling* notwithstanding, the *lü-ling* system as defined above cannot be recognized as having been revived in Ming times. The idea of *ling* as a sort of fundamental code which by itself would cover every field of state administration was abandoned, presumably because the ever increasing complexity of administrative affairs made such a code impracticable. Instead, Ming and Ch'ing officials compiled—and recompiled at fairly regular intervals—the *hui-tien* 會典, which systematically described the actual workings of every significant governmental institution. The *hui-tien* had its model in the *Liu tien* 六典 of the T'ang; and the latter in turn had been compiled on the model of the Confucian classic *Chou li* 周禮. None of these was a true code to be “promulgated.”

In Ming and Ch'ing times, therefore, only the *lü* could be called fundamental code. In 1500, about the middle of the Ming, *Wen-hsing t'iao-li* 問刑條例 (“substututes concerning punishment”) was compiled, which was, added to the *lü*, destined to function as secondary code according to the definition given above. *Wen-hsing t'iao-li* was revised a few times under the Ming. Under the Ch'ing, its name became *T'iao-li* and was incessantly enlarged through repeated revisions. It is beyond the purpose of this essay to enter into those details.<sup>21</sup>

<sup>21</sup> See Derk Bodde and Clarence Morris, *Law in Imperial China* (Cambridge, Mass.: Harvard U. P., 1967), pp. 63 ff.