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Wallace Johnson

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# STATUS AND LIABILITY FOR PUNISHMENT IN THE T'ANG CODE

WALLACE JOHNSON\*

## INTRODUCTION

*The T'ang Code* of A.D. 653 (hereinafter *Code*) is the most important legal work in East Asian History.<sup>1</sup> Not only is it the basis for all subsequent Chinese criminal law,<sup>2</sup> but some elements of it still play a role today. These elements are seen in such areas as the procedure for trials, the emphasis on confession, and the lesser reliance on lawyers as compared with Western law.<sup>3</sup> The *Code* was also influential in the legal development of Japan, Korea, and Vietnam.<sup>4</sup>

The *Code*, however, was regarded as the last resort in the area of social control. A wide range of methods were used to promote socially desirable behavior in traditional China, beginning with moral instruction in the home, which was the responsibility of the family.<sup>5</sup> The difference lies in that these other methods were informal while

\* Professor of East Asian Languages and Cultures, The University of Kansas.

1. I have made a complete annotated translation of *The T'ang Code*. The first volume on general principles was published by the Princeton University Press in 1979. It includes a lengthy introduction intended for the general reader. The second volume on the specific articles is in press. All references to the articles of the *Code* are by consecutive numbers. The same system of citation is used in Yung-hsing Yang, *T'ang-lü shu-yi* (The T'ang Code). Peking: Chung-hua Book Co., 1983. Those who have a further interest in T'ang law should read Karl Bünker, *Quellen zur Rechtsgeschichte der T'ang-Zeit*. Peking: Catholic University, 1946.

2. Hsüeh Yün-sheng, quoted in Bodde and Morris. *Law in Imperial China*. Cambridge: Harvard University Press, 1967, 63, states that some thirty to forty percent of the code of the Ch'ing dynasty (A.D. 1644-1911) was taken from *The T'ang Code* unchanged, and many other articles had undergone only small changes in wording.

3. Some interesting material on contemporary criminal procedure was included in the National Geographic video entitled "Beyond the Clouds," which was shown on PBS in 1994.

4. See the general article by Niida Noboru, "Chinese Legal Institutions of the Sui and T'ang Periods and Their Influence on Surrounding East Asian Countries," in Comité internationale des sciences historiques: Congrès internationale des sciences historiques Vienne, 24 Aout-5 Septembre 1965. *Rapports, II Histoire des Continents*. Horn/Vienna: Verlag Ferdinand Berger & Söhne, 1966, 113-131.

5. This began with teaching *The Filial Piety Classic* to children. It is a shame that there is no adequate modern translation. Scholars have tended to ignore this work on the grounds that it was meant for children. This is a mistake. The reason that it was the first text taught was precisely because of its importance. There will be a partial translation and discussion in Wm. Theodore deBary, ed., *Sources of the Chinese Tradition*, 2nd ed. New York: Columbia University Press, forthcoming. This text is the philosophical basis for the great emphasis on the family in Chinese law. On the role of the clan, see Hui-chen Wang-liu, *The Traditional Chinese Clan Rules*. Locust Valley, New York: J.J. Augustin Incorporated Publishers, 1959.

the administration of the *Code* was by the central government, represented in the first instance by the county magistrate.<sup>6</sup>

The *Code* itself was the product of some thousand years of legal development. There are reports of written law already in the sixth century B.C.<sup>7</sup> In the fourth century, the first code, called *The Legal Classic*, was supposedly written by one Li K'uei.<sup>8</sup> Recently, legal material has appeared among the great amount of archeological material<sup>9</sup> found in China, and the *Ch'in Code* has been translated by A.F.P. Hulsewé.<sup>10</sup> Earlier, he had published the first volume of legal materials relating to the Han dynasty.<sup>11</sup>

In the following sections, the philosophy behind status and liability for punishment will be discussed, as well as factors such as social, political, familial, and individual statuses, which determined such liability.

## I. EARLY ARGUMENTS ABOUT STATUS AND PUNISHMENT

Chinese thought has always been in favor of a hierarchical society. The question was what was to be the basis of the hierarchy and whether status should be reflected in the law. Before the time of Confucius (551-479 B.C.), China was a feudal society, and status was based on birth.<sup>12</sup> By the sixth century B.C., however, this society had begun to collapse due to increased population, more warfare, and other pressures.

Confucius was an innovator in believing that, at least for some persons, status should be due to achievement rather than birth. He,

6. It must be emphasized, however, that it would be a great mistake to confuse the role played by the county magistrate in criminal cases with the Western concept of the judge. In fact, there was no separate legal profession in traditional China. The magistrate had many other duties besides hearing legal cases, such as collecting taxes, maintaining a census, insuring that roads and bridges were kept in repair, and so on. See Denis Twitchett, "The Implementation of Law in Early T'ang China," *Civiltà Veneziana: Studi*, 34 (1978), 57-84.

7. James Legge, *The Chinese Classics*, 5 vols. Hong Kong: Hong Kong University Press, 1960, V, 609.

8. See Timoteus Pokora, "The Canon of Laws by Li K'uei, a Double Falsification," *Archiv Orientalni*, 27 (1959), 96.

9. See the two articles on these finds as related to law by A.F.P. Hulsewé in *T'oung Pao*, beginning in 1978.

10. A.F.P. Hulsewé, *Remnants of Ch'in Law: An annotated translation of the Ch'in legal and administrative rules of the 3rd century B.C.*, discovered in Yun-meng Prefecture, Hu-pei Province, in 1975. Leiden: E.J. Brill, 1985.

11. A.F.P. Hulsewé, *Remnants of Han Law*, Vol. I. Leiden: E.J. Brill, 1955. The portions that are still extant, together with other relevant materials, were translated and discussed at length. Unfortunately, Professor Hulsewé died before he could publish the second volume.

12. For a good discussion of this topic, see T'ung-tsu Ch'ü, "Chinese Class Structure and Its Ideology," in John K. Fairbank, ed. *Chinese Thought and Institutions*. Chicago: The University of Chicago Press, 1957, 235-250.

however, was against written law,<sup>13</sup> and he argued rather for a social polity governed by morality.<sup>14</sup> Some, belonging to what became known as the Confucian school, argued that punishments should not be applicable at all to members of the privileged class and that the rules of propriety (*li*) that governed that class, were not applicable to the common people. When these latter made mistakes, they should be punished.<sup>15</sup>

On the other side were the Legalists. They held that human nature was selfish and that written law, carefully spelling out forbidden acts and their punishment was the only way to avoid social disruption. The law should be known and equally applicable to everybody.<sup>16</sup> On these points then, there was conflict between the Confucian school and the Legalist school.

With the unification of China in 221 B.C., the two views were synthesized in the codes of the Ch'in (221-21 B.C.) and Han (206 B.C.-A.D. 220). The criminal law was written down and applicable to all.<sup>17</sup> Hulsewé, however, believes that during the course of the Han dynasty the upper classes gradually began to receive increased benefits under the law.<sup>18</sup> The *Rites of Chou*,<sup>19</sup> a text dating probably from the third century B.C., gives a list of eight categories of people who are to receive special treatment under the law.<sup>20</sup> The *Rites of Chou* was also an important influence on the *Code* in linking youth, old age, and physical and mental condition with the general concepts of intention and negligence that had already existed in Han law. The result was decreased punishment for persons in these categories.

13. See Legge, *Classics*, V, 732.

14. See Legge, *Classics*, I, 146.

15. This view is summed up in the famous phrase, "The rules of propriety are not applicable to the common people, the punishments are not applicable to the upper classes." Couvreur, *Li ki*, 2 vols. Hsien: Imprimerie de la Mission Catholique, 1916, I, 53.

16. A summary of the arguments of the two sides is given in T'ung-tsu Ch'ü, *Law and Society in Traditional China*. Paris, La Haye: Mouton & Co., 1961, 226-279.

17. It should be noted that only criminal law was written and made into a code. It seems that custom served as the basis for decisions in commerce, inheritance, and so on.

18. Hulsewé, *Remnants of Han Law*, 285-286.

19. Despite the name, the book is a constitutional document that is of great importance for the development of later Chinese ideas not only on law, but also on governmental institutions generally. There is a French translation by Édouard Biot, *Le Tcheou-li ou Rites des Tcheou*, 2 vols. plus index. Paris: L'Imprimerie Nationale, 1851. For a discussion of the work, see Sven Broman, "Studies on the Chou Li," *The Museum of Far Eastern Antiquities*, 33 (1961), 1-89.

20. For those who come under the eight deliberations, see below. These, however, do not seem to have been included in codes before the Wei dynasty (A.D. 220-265).

## II. PURPOSE OF CODIFICATION

One of the purposes of codification was to make criminal cases known to the common people. While the Legalist school did succeed in bringing about written criminal codes and causing the state, rather than local powerful persons, to administer them, there is no evidence that these first codes were made known to the people. In fact, because of the low level of literacy and the difficult language in which the codes were written, only a few people would have been able to understand them anyhow. Further, we do not know if trials of criminals, which would have been another way of learning the contents of the codes, were open to the public in these early times.

Certainly the primary purpose of the *Code* was to defend the two supports of Chinese traditional culture: the state and the family.<sup>21</sup> But insofar as status and liability for punishment is concerned, the *Code* determined exactly to what extent status could affect liability and did not allow persons with favorable status to receive further benefits than allowed by it. Nor could those with less or unfavorable status be punished more heavily. A requirement of the *Code* was that some law be cited to justify any punishment, and failure to do so or citation of the wrong law was punished.<sup>22</sup> The magistrate then had no leeway in sentencing. His task was to determine what crime had been committed and to sentence the required punishment. If he did anything else, he himself would be punished, often severely.

## III. PUNISHMENTS IN *THE T'ANG CODE*

Before going any further, here is a list of the punishments provided in the *Code*. They were:

1. beating with the light stick (10-50 blows),
  - a. redemption by 1.5-7.5 pounds of copper;<sup>23</sup>
2. beating with the heavy stick (60-100 blows),
  - a. redemption by 9-15 pounds of copper;
3. penal servitude (5 periods of time),
  - a. redemption by 30-90 pounds of copper;
4. life exile (3 distances),<sup>24</sup>
  - a. redemption by 120-130 pounds of copper;

21. It is interesting to note that many more articles of the *Code* deal with the family than with the state.

22. See Article 484. (Hereinafter, all references to articles are to those in the *Code*.)

23. Payment of copper was not an alternative, but a privilege, except in a few cases such as accidental death.

24. All three distances of life exile also required a year of labor, but life exile with added labor required three years of labor.

5. death (strangulation and decapitation),
  - a. redemption by 180 pounds of copper.

Most of the crimes in the *Code* were dealt with by sentencing the criminal to one of these punishments. But, in the case of robbery, double repayment of the value of any goods obtained was required.<sup>25</sup>

There were two determinations with regard to punishment that were limited to officials: resignation from office and disenrollment from the list of officials.<sup>26</sup> In many cases, officials and nobles could resign from office as a substitute for punishment.<sup>27</sup> Here then we have a benefit of official status. In other cases, resignation from office or disenrollment would be in addition to other punishment. In such a case, the person is receiving additional punishment because of status.

#### IV. TYPES OF STATUS THAT LESSEN LIABILITY IN *THE T'ANG CODE*<sup>28</sup>

Status in the *Code* is of three kinds: social status, family status, and status due to such general factors as age, sex, and physical and mental condition. Insofar as we know, the latter factors could also lessen the liability for punishment of the inferior classes. Social status can again be divided into three kinds: official or noble status, commoner status, and inferior class status. Family status deals with the relationship of members of a family, whether by blood or by marriage. The members of inferior classes are also affected when offenses by or against them involve members of the family that owns them.

##### A. Social Status

Status is mentioned first in the *Code* because being a member of a group entitled him/her to one of the eight deliberations.<sup>29</sup> These are as follows:

1. Relatives of the emperor through the sixth degree of mourning and relatives of his mother and paternal grandmother through the fifth degree of mourning;<sup>30</sup>

25. See Article 33.

26. This meant that the person's name was removed from the roll of officials and that he was reduced to the status of a commoner, but he still retained certain benefits, such as exemption from *corvée*, labor.

27. There were several kinds of office in addition to noble titles. Depending upon the seriousness of the offense, one or more of these could replace punishment.

28. The first attempt in a Western language to deal with this question was the book of Ou Koei-hing. *La Peine d'après le Code des T'ang*. Shanghai: Université L'Aurore, 1935.

29. See Article 7. The benefits described below the eight deliberations are in Articles 8-11.

30. A list of mourning relatives can be found in Ou, *La Peine*, 105-111.

2. Old retainers of the emperor, by which is meant those who have been in his service for a long period;
3. The morally worthy;<sup>31</sup>
4. Those having ability, meaning the ability to lead armies, manage the affairs of government, correct the course of the emperor, and serve as a model for human relationships;
5. Those having achievement, which means the ability to kill enemy generals and carry off their flags, to lead armies thousands of miles, or subdue barbarians, to bring peace to the age and to straighten out all difficulties;
6. Those who have high position, referring to active duty officials of the third rank and above, titular officials of the second rank and above, and persons with noble titles of the first rank;<sup>32</sup>
7. Those who have diligence, meaning military and civil officials who are particularly diligent in their work or who serve in distant areas of the empire where they experience dangers and difficulties;
8. Those who are guests of the state, ranking male descendants of the ruling houses of the two previous dynasties.

Persons who qualified under any of these eight categories could not be tried in the regular way for capital crimes.<sup>33</sup> Rather the emperor had first to agree to their being brought to trial and then, if they were determined to be guilty, fix their punishment himself. Where they were brought to trial under the usual procedure, that is, for offenses punished by life exile or less, any sentence would be reduced one degree and the maximum sentence could not be more than three years of penal servitude. Those persons of this status who had office could use such office to replace years of penal servitude.<sup>34</sup> For beating, the offender could instead pay a fine according to the schedule given above. It should be noted, however, that none of these benefits were available to persons who had violated one of the ten abominations.<sup>35</sup>

31. The subcommentary to this entry says that this phrase means worthy men and superior men whose speech and conduct may be taken as a model for the country. Since this particular type of status must have been conferred and known in advance, there must have been some ceremony by which it was awarded as well as a list of the persons who possessed it. I, however, have never seen reference to a person as possessing it. The same problem of definition exists with deliberations four and seven.

32. There were several kinds of official titles in T'ang China, and a person might have more than one at the same time.

33. On trials, see the article by Denis Twitchett and myself, "Criminal Procedure in T'ang China," *Asia Major*, forthcoming.

34. If offices currently held were not sufficient to replace the punishment, offices previously occupied by the offender could be used. See Articles 17 and 21 on this surrender of office.

35. The ten abominations, described in Article 6, were the most serious offenses in the *Code*. Several of them, headed by the crimes of rebellion, sedition, and treason, punished the families of the criminals as well, even though they had no knowledge of the crime. This concept

Below those entitled to the right of deliberation came persons who had the right of petition. This likewise was effective in cases of capital crimes. But, here, instead of agreeing to one being brought to trial and fixing the punishment as for those with the right of deliberation, the emperor had only to agree to the sentence, whether strangulation or decapitation,<sup>36</sup> that was memorialized to him by the Board of Punishments. Those who had the right of petition were:

1. Relatives of the wife of the crown prince to the third degree of mourning,
2. Relatives within the second degree of mourning and grandsons in the male line of those entitled to deliberation, and
3. Officials and nobles of the fifth rank or above.<sup>37</sup>

These persons, as well, could benefit from reduction of punishment by one degree with a maximum of three years of penal servitude, replacement of penal servitude by office, and a fine instead of being beaten. The right of petition, however, was not available to those who committed one of the ten abominations or who were involved in collective prosecution for rebellion, sedition, or killing, or to officials who within their areas of jurisdiction committed illicit sexual intercourse, robbery, or kidnapping, or who took bribes and subverted the law.<sup>38</sup>

Next is the right of reduction of punishment by one degree that was permitted to officials of the seventh rank and above and to the paternal grandparents, parents, brothers, sister, wives, sons, and grandsons in the male line of those allowed the right of petition.<sup>39</sup> It is important to note, however, that capital sentences could not be reduced, but sentences of life exile or less would be reduced so that, in such cases, the maximum punishment would be three years of penal servitude. Such punishment could be redeemed by the fine.<sup>40</sup> Even officials of the eighth and ninth ranks could redeem punishments of life exile or less by payment of copper. But the list of crimes for which this was not allowed was still longer than those mentioned above.

Commoners are the baseline for punishments in the *Code*. They, however, did receive less punishment for crimes against their inferiors:

of collective punishment is the negative side of the concern generally expressed in the *Code* to protect the family.

36. Interestingly enough, strangulation, which was much more painful than decapitation, was regarded as the more merciful punishment. This is because filial piety stressed that the body must be kept whole. Also, folk belief had it that a body that had been separated could never find peace.

37. See Article 8.

38. See Article 9.

39. Article 10.

40. Article 11.

members of the personal retainer and slave class. Originally, personal retainers had not been an inferior class, but by T'ang times their status had sunk below that of the common people. They, however, were still ranked above slaves. Thus, the usual penalty for crimes committed against them by a commoner was one degree less than had the victim been another commoner. The penalty would be reduced two degrees were the victim a slave. Similarly, a personal retainer's offense against a slave would be reduced one degree.

The opposite was true for offenses where the offender was a member of an inferior class and the victim had higher status. Commoner status, however, was the limit. A victim's official or noble rank did not increase the punishment for a personal retainer or slave.

### *B. Family Status*

The family in T'ang China had various definitions depending upon the circumstances. But for intrafamily offenses, the five degrees of mourning were the limit insofar as family status was applicable. Thus the relationship between the offender and the victim could vary. But the most important status was that of the father, even where paternal relatives of an older generation were living in the same home. In general, male status was higher than that of females. Difference in generation reflected in the mourning relationship was the primary factor determining punishment, and where the offender and the victim were of the same generation, even differences in age were taken into account.

Fathers could beat their sons without committing a crime. But killing them was punished, though less than the same crime were the victim a nonkin person.<sup>41</sup> Women were in a poor position in the family with regard to male relatives in that husbands who struck their wives or concubines were not punished, though a wife who hit her husband was sentenced to one year of penal servitude and a concubine received one and one-half years of penal servitude for the same offense.<sup>42</sup>

The master-slave relationship was similar in that masters were punished less for beating or even killing their personal retainers or slaves. If a master killed one of these persons who had committed

41. See Article 327. In preimperial times, anecdotal evidence seems to indicate that fathers had the power of life and death over their children. Further, there was considerable hair splitting over whether ordering a child to commit suicide should be considered killing that child or not.

42. See Article 326.

some offense without asking permission of the government, his punishment was only one hundred blows with the heavy stick. And even if the killing were for no reason, the master's punishment was only one year of penal servitude.<sup>43</sup> This sharply contrasts with the usual punishment for killing a person of nonkin status, which was strangulation—decapitation if the crime was done intentionally.<sup>44</sup>

Another advantage of status within the family was that junior members could conceal their seniors' crimes and not report them to the court save where the crime was treason, sedition, or rebellion.<sup>45</sup> Masters benefitted from a similar rule with regard to their personal retainers or slaves. If the junior, personal retainer, or slave made such an accusation, he/she was punished and the case was treated as if the senior member had made a confession, i.e., the senior member was not punished.<sup>46</sup>

### C. Group Status

The *Code* saw individuals as members of a group whenever possible and treated these groups like family hierarchies. Even Buddhist and Taoist priests and nuns in monasteries were considered in this way. The relationship between students and their teachers was that of nephews and nieces to their paternal aunts and uncles. And crimes involving them were punished the same.<sup>47</sup>

The bureaucracy was also treated as a group. An official of the ninth rank who beat an official of the third rank was punished by one year of penal servitude; were the victim of the fifth rank, his punishment would be sixty blows with the heavy stick.<sup>48</sup> On the other hand, officials who beat their subordinates were punished the same as commoners who hit each other.

### D. Factors of Age, Sex, and Physical and Mental Condition

The factors of age, sex, and physical and mental condition were generally applicable and had nothing to do with membership in a group. Persons seven years of age or less could not be punished for any crime which they themselves committed. The same was true of

43. See Article 321.

44. See Article 306.

45. See Article 46. This advantage of status extended to junior family members the right to warn senior relatives that the authorities were searching for him or her and even to conceal such persons.

46. Article 46.

47. See Article 57.

48. Article 316. Contrast this with the forty blows for hitting an equal.

those ninety years of age or more.<sup>49</sup> The only time that such persons could be punished was because of involvement in the crimes of treason, sedition, or rebellion where, because of collective punishment, they would be sent into slavery.

Those ten years of age or less or eighty years of age or more were liable for a larger group of offenses. But unless punished by death, they were allowed to redeem the punishment. In the unlikely case that such persons actually killed someone or committed rebellion or sedition, they could have sent a petition to the emperor asking for mercy. Lastly, those fifteen years of age or less or seventy years of age or more could redeem punishments of life exile or less by payment of copper.<sup>50</sup>

Women also benefitted to some extent. Even if they were the leader in a crime, they could not be punished at all if any men were involved. The eldest male in generation or age was punished as the ringleader, and the others were punished for their lesser parts in the crime.<sup>51</sup> Even grown women could not be sent into life exile but were beaten instead. Those fifteen years of age or younger could redeem such punishment. Where they were involved in cases of collective prosecution, women were exempted from liability at age sixty, in contrast to men where the age was eighty. And in such cases where the family goods and property were confiscated by the state, their share was exempted so as to provide for their support. Women who were pregnant could not be judicially tortured. Further, if pregnant, they could not be executed until a hundred days after the child was born.<sup>52</sup>

Two types of physical and mental disability are defined in the *Code* as bases for lessened liability for punishment.<sup>53</sup> The first is those who are disabled. This includes persons who were missing a limb, were dumb, or had deformed backs. The second is that of the incapacitated, those who were blind or missing two limbs. These two categories also include persons with mental disorders, but the descriptions are given in terms of *yin* and *yang*, and there is no discussion that might enable us to differentiate between the two.

49. On the factor of age, see Article 30. A further benefit is provided by Article 31, which specifies that the age or infirmity of the offender at the time the crime is discovered shall be the basis for punishment, not his or her age when the crime was committed.

50. Article 30.

51. See Article 42.

52. See Article 494. If a magistrate did execute a pregnant woman, he was punished by two years of penal servitude. This was reduced to one year if the hundred days had not passed after she had given birth.

53. These definitions are given in Noboru Niida, *Tōryō shūi* (The T'ang Statutes Re-collected). Tokyo: Tōkyō daigaku shuppankai, 1964 reprint, 228.

These types of physical and mental disability would, however, greatly lessen liability for punishment. Those who were classified as disabled were treated the same as those who were seventy years of age or more, while the incapacitated were included with those eighty years of age or more.<sup>54</sup>

#### V. *PAO*: STATUS THAT INCREASES LIABILITY FOR PUNISHMENT

Basic to the Chinese view of life, both in ancient and modern times, is the concept of *pao*, "reciprocity."<sup>55</sup> The idea is found not only in such ordinary activities as returning an invitation to dinner, but also in the expectation of reward for worshipping a god or owing a favor to the examiner who passed one as a candidate. In the *Code*, reciprocity is the balance to favorable status. That is, those who have increased authority shall also have increased responsibility.

The most common application of reciprocity in the *Code* is found in connection with officials who have the right to redeem punishment by payment of copper.<sup>56</sup> Where the redemption concerned a private offense, each one and one-half pounds of copper paid constituted a first degree penalty. For a public offense, each three pounds of copper was a first degree penalty.<sup>57</sup> Ten such first degree penalties made a second degree penalty. These became a part of an official's record and so influenced his possibilities of promotion or even of getting another position when his tenure ended.<sup>58</sup>

Reciprocity also brought punishment of persons in authority who were deemed somehow responsible for the crimes of their family members, their social inferiors, or, in the increased liability of officials, for crimes committed within their areas of jurisdiction. Any supervisory or custodial official<sup>59</sup> who was involved in a crime together with commoners was automatically deemed the principal. The others would receive one degree less punishment than he. Such an official

54. Article 30.

55. See the article by Lien-sheng Yang, "The Concept of 'Pao' as a Basis for Social Relations in China," in John K. Fairbank, ed. *Chinese Thought and Institutions*. Chicago: The University of Chicago Press, 1957, 291-309. As Yang points out, this idea exists generally, but its long history, wide application, and great influence are perhaps more marked in China than in other societies.

56. This is mentioned in Article 92. The full implications, however, are found in Robert des Rotours, tr. *Traité des Fonctionnaires et Traité de L'armée*, 2 vols. Leyde: E.J. Brill, 1947, 1, 407. See in particular the references given there.

57. On the distinction between private and public offenses, see Article 17.

58. Articles 94-95.

59. See Article 54. This refers to persons in charge of an area such as a prefecture, a county, or a particular place, such as a granary or a jail.

was also responsible to some extent for crimes committed by his family members. Where one of them committed extortion, borrowing, use of labor, or buying or selling with excess profit, the official was punished even though he knew nothing of it.<sup>60</sup>

Officials also were punished more heavily for certain crimes than were commoners under the concept of reciprocity. For instance, an official who took a bribe received five degrees more punishment than the person who gave it.<sup>61</sup> Another example concerns illicit sexual intercourse, which was regarded as a very serious crime—some seven articles of the *Code* deal with it. If the offense was committed by a supervisory or custodial official within his area of jurisdiction, he was punished one degree more than a commoner who committed the same offense. If he was in mourning for his parents, the punishment was two degrees more.<sup>62</sup>

Similar to the collective punishment of family members, where one of them had committed rebellion, sedition, or treason, was the collective responsibility of officials in an office for the offenses of any one of them.<sup>63</sup> Four levels of officials were punished, even though they had no knowledge of the offense, much less having participated in it.

Older members of families also had increased responsibility because of their status and reciprocity. If they committed a crime together with other members of the family, only the person highest in generation of age was punished. The younger members of the family escaped completely.<sup>64</sup> The same was true for other groups such as those living in monasteries or for teachers and their disciples.<sup>65</sup> Where members of the same family committed a crime by the decision of the head of the household, only he was punished even though he took no part in the crime.<sup>66</sup>

60. See Article 146. If the official did know of the crime, he received the same punishment as the criminal. If not, his punishment was five degrees less. The punishment of officials who were not in a supervisory or custodial capacity was reduced one degree further.

61. See Article 140.

62. See Article 146.

63. See Karl Büniger, "Über die Verantwortlichkeit der Beamten nach klassischem chinesischem Recht," *Studia Serica*, 6 (1947), 159-161.

64. See Article 42.

65. See Article 57.

66. See Article 83, for example, with regard to passports.

## VI. CONCLUSION

By the time of the T'ang dynasty, the dispute as to whether birth or achievement should determine favorable status under the law had been largely decided. True, certain small numbers of people gained lesser liability because of birth—chiefly relatives of the emperor and the top level of the nobility. But, the largest number to benefit would be members of the bureaucracy—even these were a very small percentage of the population. Their family members also benefitted, but only because of their relationship with an official.

Family status was by far the most important factor in determining liability for punishment, but at the same time was limited to the family group. Mourning relationship and generation differences determined punishment for intrafamily offenses and where the offender and victim were of the same generation, age became the determinant. Males had higher status than females as seen in the differing punishments for crimes involving husbands and wives.

But, both for the bureaucracy and the family, the concept of reciprocity was in effect, thus balancing to some extent the benefits allowed. The point is that higher standards of behavior were expected of officials than of common people and that fathers should serve as models of moral behavior for their families.

In some cases, lessened liability was due to general factors such as age, sex, and mental or physical disability. As the *Code* states: "At present, those aged ten and under are considered to be young and weak, those eighty years of age or more are considered to be aged and senile, and those who are incapacitated are considered the same as those who are feebleminded."<sup>67</sup> That lesser punishments for women are mentioned in the same article, indicates, I think, that they also were seen as having lesser capacity than men. As a result, all of these persons enjoy a reduced liability for punishment as contrasted with ordinary persons. Thus, we see in *The T'ang Code* the development of the major factors that determined status and its relationship to punishment during the imperial period in China.

67. Wallace Johnson, tr. *The T'ang Code: Vol. I, General Principles*. Princeton: Princeton University Press, 1979, 171-172.