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The System of Criminal Law
of the Ancient Chinese State of Qin
Ph.D. dissertation

THESES

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I. Aims of the work

The dissertation analyses an area not very well researched, that is, the system of criminal law of the ancient Chinese state of Qin 秦 in the decades preceding the unification of the empire in 221 B.C. My aim is to develop a *model* of the legal system of Qin, a model which is as close to the actual situation of the times as it is possible. Of course, one cannot forget that no perfect model can be developed on the area of ancient studies. In my work I try to find the answers to the following questions: If in the state of Qin a person committed a crime, then 1) What were the laws according to which he was punished? 2) How were these laws produced? 3) What factors determined the actual contents of the laws? 4) What were the main elements of the criminal procedure? 5) Who took part in the criminal procedure? 6) What deeds were seen as crimes, and what weight was attributed to the different crimes? 7) What factors were taken into consideration when a judgement was passed on a criminal? 8) What kinds of punishments existed in Qin?

II. Methodology

In my work, when it was possible, I applied the principle of using only primary sources from Qin when reconstructing the situation in Qin. These primary sources are mainly the manuscripts found in a tomb at Shuihudi 睡虎地, and some lengthy articles of the Early Han collection of legal documents titled *Zouyanshu* 奏讞書, found at Zhangjiashan 張家山. I also used some parts of the *Shiji* 史記, the *Hanshu* 漢書 and other materials from the Han dynasty, together with their commentaries, as complementary sources. However, priority was given to the tomb texts, and I clearly separated the information found in Qin primary sources from those appearing in later books. I started my work with translating the main materials related to the topic of my dissertation, such as the Shuihudi texts dealing with criminal law, the cases of the *Zouyanshu* dated to the Qin era, the chapters of the *Shiji* narrating the history of Qin, and the *Xingfazhi* 刑法志 (*Treatise on laws and punishments*) chapter of the *Hanshu*. I also made a translation of the most important law-related text of the pre-Qin era, such as some parts of the *Shujing* 書經 and the *Zuozhuan* 左傳. In the process of the translation and analysis of the texts, I used the contributions and results of international sinology, and tried to base my work on a thorough knowledge of the available Western and Chinese secondary literature. However, it has to be noted that—as far as I know—at present no systematic analysis of the subject

exists on any language. Most of the works dealing with the subject focus on minor philological problems.

After finishing the translation, I started the analysis of the material. I collected the data on the different subjects scattered around in the sources, and tried to organize them into a logical structure. There are many subtopics on which I cannot give a complete description, as we do not have enough information on them. Many questions are raised but left without answers; I hope that with the emergence of new sources, a number of these problems will be solved. There is a great possibility for that, as recently a large number of Qin texts were excavated by archaeologist, and hopefully these will be published in the near future.

III. Main results of the dissertation

1. While earlier it was not possible to construct a model of the criminal law of any ancient Chinese state, the manuscripts found recently in the tombs of officials have made it possible in the case of Qin. It is a great advantage of the tomb texts that they reflect the situation of the time of their writing, and have not been affected by the additions, interpolations, and interpretations of later generations. In the same time, however, it also makes their understanding difficult that we do not have commentaries and explanations of them written by people closer to them in time. The Shuihudi texts that form the most important basis of the dissertation were produced in the state of Qin in the 3rd century B.C. The manuscripts were found in 1975 in a tomb dated to the year 217 B.C. About half of the bamboo slips found there contain regulations, model documents and case descriptions dealing with administrative and penal law. The systematic reorganization and analysis of the scattered paragraphs make it possible to reconstruct the legal system of pre-unification Qin, as well as the ideological background of this system. The other group of texts, the manuscripts of Zhangjiashan was excavated in 1983 from a tomb dated to 186 B.C. Though most of the texts are from the Early Han dynasty, there are a number of legal texts dated to the Qin times. These complement very conveniently the information offered by the Shuihudi texts. These two groups of texts form the basis of my analysis.

2. It was also necessary for the writing of the dissertation to consult the transmitted texts. First, these put the primary sources in a historical context; second, they supply some information missing from the tomb texts; and third, they give great help to the understanding of the primary sources by clearing the meaning of many legal terms and phrases. The main source of

the historical background is Sima Qian's 司馬遷 *Shiji*, which is almost the only source of the history of Qin in the 3rd century B.C. Though the *Shiji* was written a century after the fall of Qin, analysis of the text shows that some parts of it give a credible account. For example, the chronology of events given in the *Qin benji* 秦本紀 and the *Qin Shihuang benji* 秦始皇本紀 chapters of the *Shiji* corresponds almost exactly with the data given by the annals titled *Da shi ji* 大事記 found at Shuihudi. In the same time, however, the author showed deep bias toward the state of Qin and its rulers. The other important transmitted texts consulted when writing the dissertation is the *Hanshu*, especially its chapter titled *Xingfazhi*. This gives a rather detailed picture of the judicial activities of the first decades of the Early Han dynasty, and with the tool of analogy an attempt can be made to fill the gaps of information regarding the legal system of Qin. Moreover, many legal terms in the *Xingfazhi* are explained by either the author or the commentaries; these terms play a central role in the Shuihudi and the Zhangjiashan texts, and could not be interpreted without the *Xingfazhi*.

3. According to traditional view, dominant since the Han dynasty, the state of Qin, and especially its great ruler, Qin Shi Huangdi 秦始皇帝 took Legalism as the foundation of Qin's policy, ideology and administrative structure. According to this view, the unification of the empire was an attempt at putting the principles of Legalist philosophers into practice. However, if we investigate only those sources that were produced in the state of Qin and during the Qin dynasty, we get a much more complicated picture of the state ideology. Though Legalist methods were dominant in actual administration, the ideology promoted by the state was a complex, heterogeneous system of thought. The main sources of Qin state ideology are the stone inscriptions of Qin Shi Huangdi, the texts of which are preserved in the *Qin Shihuang benji* chapter of the *Shiji*. According to philological and archaeological research, these texts are authentic. In addition, other parts of the *Qin Shihuang benji* also give some information on the subject. Another important source is the Shuihudi text titled *Nanjunshou Teng wenshu* 南郡守騰文書 (*Letter of Governor Teng of the Nanjun commandery*), dated to 227 B.C. In this, a major official of Qin exhorts his subordinates to behave in a proper way. All these texts clearly prove that the traditional view of a purely Legalist state is wrong. Qin recognized the virtues traditionally considered as Confucian ones, moreover, Confucian scholars were present at the court of Qin Shi Huangdi as advisors. The virtue of filial piety (*xiao* 孝) and the traditional family bonds were protected by strict laws. Beside Confucianism, elements of Daoism and Yin-Yang teachings also appear in official sources. The state

ideology of Qin was not dominated by one school; it was a complex and inconsistent system that took its components from many earlier teachings. This system might have changed from time to time, and the emphasis was laid on different elements in different eras and areas of life.

4. There was no unified and consequent terminology for the different types of legal regulations in Qin. Clear terminology for laws, rules, decrees and casual decisions was only developed much later, during the Tang 唐 dynasty. In Qin, the same word was used for different types of rules, and different terms might have referred to the same rule. *Fa* 法 was used for the concept of law as an abstract system of state-sanctioned norms. Actual rules and decrees were called *lü* 律 or *ling* 令. The sources indicate that in Qin there were no unified law codes to regulate the different life spheres; instead, the rules on a given subject were issued casually, from time to time. We have only limited information on the exact process of law-making. All available data, however, show that the main authority of law-making belonged to the ruler of Qin—the Duke (*gong* 公) before 325 B.C, the King (*wang* 王) between 325–221 B.C., and the Emperor (*huangdi* 皇帝) between 221–207 B.C. We do not know any case when a law was issued by someone else. Relevant chapters of the *Shiji*, however, also make it clear that officials and advisors took part in the law-making process by advising the promulgation or modification of a given rule to the ruler. As for the practical application of laws, the *Shuihudi* texts prove that contradicting the written law was an accepted practice, called the “practice of the court” (*ting xingshi* 廷行事). Analogy was also used when judging a case not described in the laws; in these cases a law referring to a similar crime was used.

5. It was a well-organized network of offices and officials that was responsible for adjudicating cases. Legal and administrative powers were not separated from each other; both were in the hands of the same organs and personnel. All elements of the criminal procedure were regulated by strict laws, from the beginning of the procedure to the investigation, trial, and the execution of the decision made. Great emphasis was laid upon finding out the truth in criminal cases. Material evidence, statements of the witnesses and the culprit were all used for that purpose. Torture could be applied to the accused person to make him confess, though in principle torture was not the most proper method. If someone was condemned for a crime unjustly, then he could lodge an appeal.

6. Crimes against a person's life or bodily integrity were classed into two categories: "killing somebody" (*sharen* 殺人) and "injuring somebody" (*shangren* 傷人). Both crimes could be committed "with malicious intent" (*zei* 賊) or "in a fight" (*dou* 鬥). Homicide was, by default, punished by the death penalty, but exceptions existed. For example, lighter sentence was passed on the official personnel who killed a culprit when trying to arrest him. It is not clear whether the *pater familias* could kill his subordinates in the family without being punished. A number of articles say that he should not be punished, while other articles order to sentence him to hard labour and mutilation. It is probable that these two sets of regulations were issued at different times. When adjudicating cases of "injuring somebody", a number of factors were taken into account. The seriousness of the wound was examined, and it was also important whether the culprit had used weapons or other implements. In the case of causing injuries inside a family, we find the same inconsistency as in the case of homicide: some articles prescribe a punishment, others do not. The heaviest punishment for "injuring somebody" was the highest level of hard labour, together with mutilation; but in many cases, lighter sentence was passed. An important factor in dealing with cases of killing or injuring was the content of the culprit's mind, that is, whether he committed the crime "with malicious intent" or "in a fight". This indicates that legal thinking in Qin reached a rather developed level: not only objective responsibility was taken into account (that is, the fact of somebody's death or injury), but subjective responsibility as well (that is, the original intent of the accused). Crimes committed "with malicious intent" were punished more heavily than those committed "in a fight".

7. The crime occurring most frequently in the primary sources is *dao* 盜, which can mean "theft", "robbery", or "burglary". The retribution for *dao* depended on a number of factors. The value of the stolen goods was taken into account, and the sentence depended on whether this value reached a certain limit. Limits were the following: 1, 110, 220 and 660 coins (*qian* 錢). If the booty reached 660 coins, then the criminal was sentenced to the highest level of hard labour (wall-building) and the usual accompanying mutilation (tattooing). If the value of the booty fell in one of the lesser categories, then the sentence was lighter. If somebody was aware of the fact of the theft, or was involved in its planning, then in most cases he received the same punishment as the actual wrongdoer. In cases of stealing within the family, special rules were used. If the *pater familias* stole from his subordinates, it did not count as a crime; in other cases holding responsible depended on whether the father denounced the culprit.

Robbery committed by official personnel was seen as an especially serious crime, as in these cases the wrongdoers were people whose responsibility would have been to maintain order. Robbery committed in groups was also regarded as a very serious case, probably because the activity of robber bands was a severe threat to public order. Group robbery was punished with the heaviest punishment applicable in cases of *dao*, that is, the highest level of hard labour (wall-building) and mutilation heavier than tattooing.

8. Those who knew of a crime were obliged to make a denunciation to the authorities. Failing to do so was punished severely. Compulsory denunciation, however, might cause serious problems, as the high number of wrong or false accusations could hinder or slow down the work of the judicial system. This problem was solved by the introduction of two categories of crimes: “false accusation” (*wu* 誣) and “careless denunciation” (*gao bushen* 告不審). The high number of articles dealing with these categories indicates that these were very common crimes. In both cases somebody accuses another person with committing a crime, which did not actually take place, was committed by someone else, or took place differently than said in the accusation. The difference between the two is that in the case of false accusation the accuser knows that his accusation is false, while the careless denouncer does not know this. Authorities punished both crimes heavily, usually sentencing the culprit to hard labour and mutilation. The distinction between false accusation and careless denunciation was sometimes rather vague, and neither the relevant regulations, nor the practice of the court were consistent and unified.

9. Apart from the above-mentioned crimes, a large number of other criminal activities were also known and categorized in Qin. Absconding (*wang* 亡) was one of the more frequent crimes, due to the fact that there were many groups of people in Qin who were bound in one or another way, lacking the freedom of movement. Commoners, convicts, slaves and wives could all commit the crime of absconding. The punishment for this depended on the severity of the case and the status of people involved. We do not know the exact meaning of another very serious crime, “passing on money” (*tong qian* 通錢). It might mean putting fake coins into circulation. Fornication (*jian* 奸) is referred to in many articles. Incest was punishable by death, but other cases were treated less severely. The lack of filial piety (*bu xiao* 不孝) was a separate crime category, which is very interesting as it contradicts the traditional view on Qin’s rejection of Confucian values. Impiety was punished if the *pater familias* denounced his

son; he could apply for his son's banishment or even execution. It was also a crime if somebody became a leper (*li* 癘); the sources indicate that he was to be banished to a special place for lepers.

10. An extremely complicated system of punishments existed in Qin, and authorities took great care in deciding what punishment matched exactly a given crime. The most severe retribution occurring in the sources is capital punishment. Four variations of the death penalty are found in the primary sources, while transmitted narrative sources mention ten more forms, including the extermination of the relatives to three generations. The most frequently applied punishment was hard labour, accompanied by some form of mutilation. The forms of mutilation were the following: shaving off the beard (*nai* 耐); shaving off the hair and whiskers (*kun* 髡); tattooing (*qing* 黥); cutting off the nose (*yi* 劓); cutting off the left foot (*zhan zuo zhi* 斬左止); cutting off the right foot (*zhan you zhi* 斬右止); castration (*fu* 腐 or *gong* 宮). Levels of hard labour were the following: wall-building (*chengdan* 城旦) or grain pounding (*chong* 舂); collecting of firewood (*guixin* 鬼薪) or husking of grain (*baican* 白粲); serving as male or female bondservant (*lichenqie* 隸臣妾); as robber-guard (*sikou* 司寇); and as watchman (*hou* 候). Most probably the longest hard labour sentence (wall-building) lasted for five years. Living circumstances, dressing, food ration, etc. were regulated in great detail. Different hard labour convicts received different levels of mutilating punishments, though in some cases it occurred that they were left intact (*wan* 完). Apart from the above, other punishments were the following: beating (*chi* 笞); enslaving; banishment (*qian* 遷); mortification (*lu* 戮, the details of which are unknown); paying a fine (*zi* 貲); discharge (*fei* 廢); dismissal (*mian* 免); and reprehension (*sui* 誅). The later three were only applicable to officials. In some cases punishments could be redeemed, but the exact regulations for that are unknown.

11. The punishment for a given crime could be altered significantly if the culprit was the holder of a noble rank (*jue* 爵). Qin had 18 noble ranks before 221 B.C, and 20 after the unification. These were conferred upon individuals for military or other merits. If the culprit held a rank, then he could expect lighter punishment. The level of the rank was also relevant. In certain cases holders of noble rank were not sentenced to mutilation and hard labour, but

instead to redeeming these punishments. By returning one's noble rank, one could free a relative convicted to hard labour.

12. The population of Qin was organized into groups of mutual responsibility. This meant that when someone committed a crime, then all members of his group were held responsible. If someone from the group denounced the culprit, then he could usually avoid punishment, but not in all cases. There were two kinds of responsibility groups: natural ones (that is, the family), and artificial ones, organized by the state. The latter were the groups of five families (*wu* 伍), established by the authorities, as well as the groups of officials working in the same department or area. The aim of the establishment of the groups of five was to have the people keep an eye on each other, and denounce each other's crimes in the fear of punishment. In most cases, those who were responsible for the culprit received the same punishment as the culprit himself. Responsibility of the family extended to the member of the small family—wife, children, slaves. Responsibility was not symmetric; the master was not responsible for the crimes of his slave, and the same was true for husband and wife.

IV. Possibilities of utilization of the results

The novelty of the dissertation lays in the fact that it uses the methodology and categories of modern Western legal science in analysing the legal system of the ancient Chinese state of Qin, which makes it possible to find and research new correlations and consequences. On the field of traditional sinology the work may lay the foundation for new researches in the history of Chinese law, such as the institution-centred analysis of legal development, and a more thorough study of the social, economic and political situation of Qin. Besides, the fields of general and comparative law history can also profit from the work. Thanks to the use of western analytical methods, the dissertation makes it possible to compare ancient Chinese law with the law of other cultures, to find common and different elements, and to make Chinese law a well-researched subfield of studies in comparative law.

V. Publications and lectures on the subject of the dissertation

Publications

- „Büntetőjog a régi Kínában. I-II.” [„Criminal law in traditional China. Parts I-II.”] *Selyemút - Ázsiai Kultúrák Folyóirata* (Budapest) 1997/2. 31-34. p.; 1997/3. 17-21. p.
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- „Az első kínai »jogtörténet« – Ban Gu értekezése a büntetésekről.” [“The first Chinese »Legal History«. Ban Gu’s treatise on punishments.”] In *Kínai filozófia és vallás a középkor hajnalán*. Ed. by Imre Hamar – Gergely Salát. Balassi, Budapest, 2005, 13–75. p.
- „A zhangjiashani leletek és a *Zouyanshu*.” [The Zhangjiashan texts and the *Zouyanshu*.] In *Essays in Honor of György Kara on His 70th Birthday*. Ed. by Ágnes Birtalan. ELTE BTK Belső-ázsiai Tanszék, Budapest, 2006 [Forthcoming.]

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„Egy szökött rabszolga pere a korai Han-korban.” [“The trial of an absconded slave in the Early Han.”] *Memoria Antiqua* (Budapest), 2006 [Forthcoming.]

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