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EVOLUTION OF CHINESE LAW SOURCES

Marilena-Oana NEDELEA¹

Abstract

The monumentality and consistency of Chinese law principles little known in the study of European law is fascinated by clarity, discipline, timeliness, and, last but not least, can be a reference in understanding the defining elements of the current legal system.

The age and stability of the first Chinese law rules urges the search for and research of documents of immeasurable value in the evolution of the universal history of law.

Understanding the place and the role of the Chinese law system can lead to the opening and drawing of interesting connections with contemporary law systems.

Keywords:

Chinese law, The Tang Code, The North Zhou Code, The Cao Wei Code, The West Jin Code.

JEL: F13, F19

“The one who rises to the top of his feet is not right.
The one who makes great steps does not manage to walk.
The one who is in the sight of others is without light.
The one who praises his talents is merciless.
The one who boasts of his successes is not made to last.”
(Laozi, 24) [1]

The first written documents are mentioned during the Shang Dynasty (after the new chronology 1523-1028). The Shang Kingdom (becoming a monarchy formed in northwest of China) built on a well-defined social system. Towards the end of the Shang era, the *Great Rule* was documented, paper structured on 9 articles that concerned rules of governance, rules of law [4: p. 315]. In 1050 BC, amid a popular uprising, the last King Shang leaves the political life.

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For eight centuries,² the Zhou era remains in history as the classical era of Chinese civilization. This stage is related to the names of the great Chinese philosophers: Kong-zi (Confucius), Lao-zi, Meng-zi (Mencius), Mo-zi.

The political system was based on well-defined structures on domains, but also with family cults, at the heart of the development of the royal domain and the cult of the Emperor. The King was called the Son of Heaven - *Tianzi*. At this stage, the state capital is in the Wei River Valley, in the city of Zhouzong. Regularization of the regions - *guo* - reproduces that of the royal house. Thus, around the principality leader - *gong* - there were barons - *daiju* and high officials - *qing* [5: p. 80]. The law governing the state in the Zhou era was based on three principles: kingdom, the principle of hereditary transmission of functions, but also of titles, and, last but not least, the religious system that had its centre the king and implicitly the divinity [1: p. 32].

The misunderstandings and power struggles will culminate with the era of the “Battle Kingdoms”, having in mind the reforms of the first Chinese king Qin (255-206 BC). At this stage, the statute was organized in governorates and districts, applying unitary legislation, civil servants were militarized, and the system of feuds given in usufruct to the nobles was forbidden [4: p. 317]. The most important functions in the state are now well defined, functions that were occupied on the hereditary line by representatives of the great noble families. In this context we mention:

- *Sicu* functions - the main position being coordination and organization of public administration;
- *Sima* functions – is constitute as precursor to the war ministry;
- *Sikong* functions - representative of the functioning of public works;
- *Siku* functions - function of a true chief of justice.

Coming from an inferior class to the one mentioned above, other officials are attested, such as: the great scribe, the scribe of the internal affairs, as well as the servants who were in the personal service of the prince: exemptions are attested in the documents of the time [5: p. 90].

A source of ideas for the legal development of the new state was formed by groups of counsellors, literati, encyclopaedists who formed within the princely courts. Thus, historian Sima Qian in the *Historical Memories* illustrates the towers of the following seniors: Mengchang of Qi, Pingyuan

² The period of King Zhou - 1027-247 BC, according to the new timeline; 1122-256 BC - after the old timeline.

of Zhao, Xinling of Wei, and Chunshu of Chu. The presence of these scholars will foster the development of stratagems, the art of discourse, but also the creation of schools and currents with concerns about the political, legal, social and moral realities of time. State reformers will remain in the annals of history under the name of “legions”, having the merit of creating the fundamental institutions that the great Chinese empire builds upon [5: p. 109]. The Senior of Shang named Gongsun Yang is considered the first artisan of Qin kingdom reforms. In 361, in this respect, it decided to set up paramilitary groups that included five or ten families and which would become the basis of the tax system. Another regulation dates back to the year 350 after the capital’s move to Xianyang and provided for the creation of administrative districts - *xian*, but also a new administrative-territorial reorganization of the state. In the era of combat states, the notion of law crystallizes and is shaped in a way that defines state building. Han Feizi (280-234) in his work *Hanfeizi* “speaks of testing the laws and attaches great importance to the need for the prince to be perfectly informed about the state of the kingdom” [5: p. 113].

As a result of the civil war of 210 BC, Liu Bang establishes a new dynasty (208 BC-220 AD) - known in history as the Han era. When he became king of the state of Han, he issued a series of instructions that became reference points for the way he led and organized his reign: “I came to reign over you. Together with you, I approve three laws.

For murder, the death sentence.

For injuring another seed, a punishment to measure.

For theft, a punishment to measure.

All other laws left by the Qin dynasty are abrogated.

Officials and ordinary people will carry out their duties as before” [7: p. 41].

The Han Dynasty is linked to the reunification of the territories of the current Chinese state, as well as administrative-territorial reorganization in 241 feudal states, 103 districts, and 1314 prefectures. In 130 BC there is a reform of criminal laws. During the four centuries of the Han dynasty, there is an evolution of the entire Chinese society on the distribution of political forces, the development of the economy, but also the law [5: p. 142]. Remain the regulations from the previous epochs accentuating the need to organize population censuses that set the tax to be paid by every resident of the empire, reaching the classification of the population in 24 degrees of dignity – *jue* [5: p. 141]. In the Han era, Zou Yan (305-240) is mentioned as the basis for the theory that the political regimes succeed in accordance with

the succession of the five elements: earth-wood-metal-fire-water, according to the principle of destruction of the old by the new [5: p. 204].

The traditional Manchuria was conquered during the Sui Dynasty (581-618 BC). It is a stage of the re-establishment of the rule of law drawn by the great philosophers Kong-zi (Confucius), Lao-zi, Meng-zi (Mencius), Mo-zi. For state support and development, recruitment exams are introduced, together with sustainable measures in the field of justice and finance.

The period of maximum development is considered the Tang era (618-907). In the view of researcher A. Walley, “Under the Tang Dynasty, China was undoubtedly the largest and most civilized country in the world”. Thus, are mentioned the first permanent diplomatic contacts with the Roman Empire, but also with Japan, India, and Persia. To understand the development of the Chinese state in cultural terms, we mention that the Imperial Library had 54,000 books. In central government domain, the structure of the government will be structured on six ministries [4: p. 319].

In the year 624, at the initiative of Emperor Gaozu, the *Tang Code* (Chinese: 唐律; pinyin: Táng lǜ) came into force. The following codes are the basis for developing the Tang Code:

- The *North Zhou Code* (Bei Zhou Lu, 557-581), mentioned in 564, which was based on the *Cao Wei Code* (220-265);
- The *West Jin Code* (Xi Jin Lu, 265-317) promulgated in 268 [3].

The *Tang Code* will be completed in 653 with a commentary left in the history of law under the name of *Tanglu Shuyi* 唐律 疏議. This Code was amended in 627 and 637, it was promulgated in 652 being structured in 12 sections and summing 502 articles. The Tang Code is considered one of the most important achievements of Chinese law in criminal matters, summarizing the codification of Confucianism [2].

The researchers Wallace Johnson and Denis C. Twitchett, considered the Tang Code a “very rational justice system” in which “both the accuser and the officials involved should be careful not to be punished” [6].

The structure of the *Tang Code*

- I. Definitions and general rules;
- II. Laws on transgressing forbidden places (Imperial palaces, gates, walls);
- III. Misconduct committed by officials in the exercise of their functions;
- IV. Laws on peasant families (land, taxes, marriage);
- V. Laws on State Deposits;

- VI. Laws on troop recruitment;
- VII. Misdemeanours against persons and property;
- VIII. Misdemeanours committed during misunderstandings;
- IX. Forgeries and counterfeiting;
- X. Various special laws;
- XI. Laws on Catching the Guilty;
- XII. Laws on the administration of justice.

Starting from the definition of the institutions of Chinese law, the state public property is regulated, together with elements that encodes the private property, as well as references to family law. The offenses and punishments committed by civil servants, as well as the good organization and administration of justice, are also regulated.

Elements of public administration in the Tang era

The headquarters of the public administration are in Chang'an in the form of a fortified enclosure of 4.5 km south from the imperial palace. Within the central administration, the following structures were functioning:

- *Shang-shusheng*: In modern terms the Government or the department of the State Affairs, bringing together the ministry of public functions, public finances, public works, rites, army, justice;
- *Menxiasheng*: It functioned as an imperial chancellery, with a role of control, but also the transmission of imperial decrees;
- *Zhongshusheng*: The great imperial secretariat with the main task of writing official documents;
- The *State Council*, including the heads of ministries, but also the emperor [5: p. 313].

In 907, through a rebellion, the Tang dynasty was dethroned, followed by the “Five Dynasties” period³. General Guo Wei establishes in 951 at Kaifeng the late Zhou dynasty - during which North China's unification takes place. Between 960-1279, the Song dynasty is “an era of peace, at least internal peace between rival states” [4: p. 320]. For twenty years, the representatives of the Song Dynasty will complete the conquest of the independent territories and reunite them under one authority, realizing a new administrative-territorial reorganization of the empire, according to the following structure:

- Chu Kingdom (Middle Yangzi) - 963;
- Shu Late Kingdom (Sichuan) - 965;

³ The “Five Dynasties” period includes 50 years of military anarchy

- South Han (Guangdong) - 971;
- Jiangnan (Anhui, Jiangxi, Hunan) – 975;
- Wu-Yue – (Jiangsu and Zhejiang) – 978;
- North Han (Shanxi) – 979.

The institutions of the new state are grounded and crystallized during the second emperor of Song-Taizong Dynasty, which develops a system of information and control to the outermost regions of the empire [5: p. 394]. In time, the Prime Minister will be getting more and more centralizing attributes - so we mention Yuanfeng (1078-1085). The executive power rests with a state council consisting of five to nine members and under the emperor's direction. During the Song Dynasty, the administrative system is simplified into three departments:

- *Sansi*: addressed economics and finance issues;
- *Shumiyuan*: the main task was to coordinate the work of the army;
- *Zhongshumenxia*: the secretary, who also deals with the judiciary administration, as well as the selection, recruitment, training of the public administration staff [5: p. 395].

At the local level, the imperial commissions had special missions for decision making within provinces, where districts - *xian* were organized in prefectures, having either military or economic character. In this sense, we understand the increase in the number of services aimed at the economic problems of the empire.

In this context, we mention Wang Anshi's reforms of 1069 and 1073, aimed the administration, army, taxation, so that in the field of public administration, a well-trained and trained administrative staff is to be created.

A turning point is considered the year 1215 when Gengis Khan conquers the entire Chinese territory, destroying Beijing capital. Kubilai proclaims himself the emperor of China and establishes Yuan Dynasty. Mongolian domination ends in the aftermath of Zhu Yuan-zhang-led rebellion that will lay the foundations of the Ming era. There is a new administrative-territorial reorganization, and in this context the empire will be structured in 13 regions, and at the central level there would be a government made up of career officials.

In 1633 the Manchurians organize themselves in a state structure and set up the Qing Dynasty. Since 1717, the *Great Atlas of China* dates, from 1716 appears *The Chinese dictionary* - an extensive repertoire of ideograms, and in 1725 the largest *encyclopaedia* will be printed, containing 10,000 volumes – fascicles [4: p. 322].

The Chinese law system was based on the ideas of the great philosophers who can be synthesized in the following quotation belonging to Mozi: “Kings - wise elders promoted the most capable, using competent people. They did not favouritism in regard to their parent and brothers, they had no preference for the nobles and the rich, no special inclination for physical obstinacy. They raised the most capable ones to the highest ranks, gave them riches and honours to make them responsible leaders” [1: p. 70].

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