

The Code and *ad hoc* Legislation in Ming Law

The Mongolian rulers of China distinguished their dynasty, known as the Yüan 元 (1279-1368), from other major dynasties of China by never having adopted a universal law code.<sup>1</sup> Thus, upon establishing the institutions of the Ming dynasty (1368-1644), its founder devoted immediate attention to a universal code. He evidently felt that a long-lasting dynasty required a fundamental body of doctrine and that Yüan rule had been defective in that important area. But precisely because he was a founding emperor, a man of warrior and commander background, Chu Yüan-chang 朱元璋 (1328-1398; r. Ming T'ai-tsu 明太祖 1368-98) frequently acted arbitrarily. He behaved as an omnipotent ruler above the laws, thereby continuing a basic contradiction in dynastic government. In this way the supposedly permanent legal system enshrined in his code became subject to overrule by later emperors, despite his orders that the text of the code could not be changed. The problem to be examined here is this contradiction. Ming law was in principle based on a permanent code, and the founder's successors were in theory bound to uphold it. But they did not, and furthermore the social and economic circumstances of life in Ming China changed drastically, such that the provisions of the original code were often inappropriate. This basic weakness was recognized in mid- to late-Ming times and was addressed by various officials and emperors to varying degrees. But it was never resolved, for its resolution would have implied a drastic change in the nature of imperial rule.

Chu Yüan-chang, having struggled against both the Mongols and domestic rivals, seems to have been determined to eliminate perceived abuses in Mongolian rule.<sup>2</sup> Contrary to what one might

<sup>1</sup> On this topic, see John D. Langlois, Jr., "Law, Statecraft, and *The Spring and Autumn Annals* in Yüan Political Thought," in Hok-lam Chan and Wm. Theodore de Bary, eds., *Yüan Thought: Chinese Thought and Religion under the Mongols* (New York: Columbia U.P., 1982), pp. 89-152.

<sup>2</sup> See Ssu-yü Teng's biography in L. C. Goodrich and Chaoying Fang, eds., *Dictionary of Ming Biography* (New York: Columbia U.P., 1976; hereafter *DMB*), pp. 381-392.

expect, Mongolian rule was viewed by him as having been excessively lax.<sup>3</sup> For example, the Mongols had not rigorously employed capital punishment, a fact about which both Chu and some of his officials complained. Furthermore, officials frequently complained about the Mongols' failure to curb the rapaciousness and corruption of the bureaucracy. Bureaucratic discipline, according to Chu Yüan-chang, was nearly nonexistent in Yüan times, and he set out to end these defects. The remedy implied penal harshness, bureaucratic discipline, and the enactment of a code of laws that was suited to the times.

In 1368 the emperor promulgated the first Ming code, the *lü-ling* 律令 "penal statutes and commands."<sup>4</sup> It contained 145 "commands" (sometimes translated as "ordinances") and 285 statutes grouped into categories corresponding to the Six Ministries of government (Personnel, Revenue, Rites, War, Justice, and Public Works). The commands are extant, but the statutes have been lost. In any case, later the same year the emperor grew dissatisfied with these laws and ordered four scholars to meet with officials in the Ministry of Justice to review the articles of the ancient T'ang code (*T'ang lü shu* 唐律疏議) with an eye toward revising the Ming code. The T'ang code was then still regarded in China as a model of legal codification.<sup>5</sup> Thus each day some twenty articles from the T'ang code were to be selected for detailed analysis in the presence of the emperor. From these he selected ones that in his opinion were appropriate to serve as laws for the Ming dynasty, allowing for various adjustments in the severity of punishments.

So began a process of review and revision that continued

through almost the entire reign. It was spurred forward by a command from the emperor in 1373 to revise completely the Ming code, and by the end of the founder's reign the code had undergone at least five major revisions.<sup>6</sup> The 1374 version comprised an arrangement of articles completely different from that of 1368. The code now followed the T'ang grouping of laws into twelve categories: general provisions, imperial guard and prohibitions, administrative regulations, household and marriage, public stables and granaries, unauthorized levy, violence and robbery, assaults and accusations, arrest and flight, and judgment and prison. This code contained 606 articles, as against the 502 of the T'ang code. Of these, some 288 were carried over from the 1368 code, 128 were "continuous" (presumably meaning logical derivations), 36 were commands (*ling*) now reissued as statutes (*lü*), and 31 were completely new. The emperor purportedly studied each article and section intensively, and posted their texts on the walls of the palace walkways.<sup>7</sup>

After several more revisions, the 1389 version, involving another major textual reorganization, emerged as the final one for the remainder of the Ming. The previous fluctuation in the number of articles ended, and they were fixed at 460.<sup>8</sup> The arrangement entailed six main divisions as per the Six Ministries, plus a seventh division modeled on the T'ang code. The latter, called General Principles, became the first division of *Ta Ming lü* 大明律, or *The Great Ming Code*, as it was handed down until the end of the dynasty. This model ultimately was adopted by the Manchus for the Ch'ing dynasty in the seventeenth century.

Chu Yüan-chang promulgated the code again in 1397, a year before his death, with the important addition of his *Grand Pronouncements* (*Ta kao* 大誥).<sup>9</sup> As noted above, the founder considered himself

See also Wu Han 吳晗, *Chu Yüan-chang chuan* 朱元璋傳 (Peking: San-lien, 1979).

<sup>3</sup> Some modern scholars take the position that Mongolian rule was relatively beneficent. See Paul H. C. Ch'en, *Chinese Legal Tradition under the Mongols: The Code of 1291 as Reconstructed* (Princeton: Princeton U.P., 1979). For Ming T'ai-tsu's views, see *Ming-shih* 明史 (Peking: Chung-hua shu-chü, 1974; hereafter *MS*) 93, p. 2279.

<sup>4</sup> Early-Ming legal codification is summarized in Naitō Kenkichi 內藤乾吉, "Dai Min ryō kaisetsu" 大明令解説, in his *Chūgoku hōseishi kōshō* 中國法制史考証 (Tokyo: U. of Tokyo, 1964). For a more recent and thorough survey, see Yang I-fan 楊一凡, *Hung-wu fa-lü tien-chi k'ao-cheng* 洪武法律典籍考證 (Peking: Fa-lü ch'ü-pan-she, 1992).

<sup>5</sup> On the T'ang code, see Wallace Johnson, *The T'ang Code, Volume I: General Principles* (Princeton: Princeton U.P., 1979).

<sup>6</sup> Yang, *Hung-wu fa-lü*, pp. 2-3.

<sup>7</sup> *Ibid.*, pp. 4-6.

<sup>8</sup> See Yang I-fan 楊一凡, "Hung-wu san-shih nien Ta Ming lü k'ao" 洪武三十年大明律考, *Hsüeh-hsi yü ssu-k'ao* 學習與思考 5 (1981), pp. 50-54; and Yang, *Hung-wu fa-lü*, pp. 10-12.

<sup>9</sup> See Yang, "Hung-wu san-shih nien"; also Huang Chang-chien 黃彰健, "Ta Ming lü kao k'ao" 大明律誥考, in Huang's *Ming Ch'ing shih yen-chiu ts'ung-kao* 明清史研究叢稿 (Taipei: Shang-wu, 1977), pp. 155-207.

above the law. His continual effort to establish discipline among his officials and obedience among the people had been manifested in four Grand Pronouncement versions appearing in 1385, 1386, and 1387. In these, he publicized the steps he had taken personally to try and sentence, often to death, corrupt officials and clerks. In doing so, he often imposed punishments that were not authorized in any version of the Ming code. He was especially severe towards parties involved in bribes.<sup>10</sup> There were other aspects of the Pronouncements that will be discussed below. But in 1397 he incorporated portions of them in a compendium titled *Ta Ming lü kao* 大明律誥, *The Great Ming Code and Pronouncements*. Specifically, this promulgation included *The Great Ming Code*, the *lü-kao* (or "statutes and pronouncements") pertaining to redemption rules for capital crimes, and thirty-six items from various Pronouncements appended to articles of the Code to which they were related by content.<sup>11</sup>

*The Great Ming Code and Pronouncements* is not extant in a full, early form, but we do know that it contradicted or overruled various provisions found in the earlier Great Ming Code. Chu Yüan-chang justified such inherent legislative contradiction through his self-perception as a state-founder who, unlike succeeding rulers, was able to make expedient changes in the law as he saw fit. Thus, he employed what he called "extra-legal punishments" (*fa wai chia hsing* 法外加刑), by which he meant principally punishments that were not specified in the code.<sup>12</sup> Because his word was the sole source of law, his com-

mands were frequently promulgated in the form of "placards" (*pang-wen* 榜文), which were posted in local government offices, market places, and specially erected pavilions known as *shen-ming t'ing* 申明亭.<sup>13</sup> First set up in 1372, the pavilions also served as locations for *ad hoc* trials and as focal points for village justice. Persons who committed errors were to have their crimes exposed in the *shen-ming t'ing*.<sup>14</sup>

Many brutal punishments employed by the emperor are disclosed in the pronouncements. These included extermination of entire clans; execution by "slow slicing" (*ling-ch'ih* 凌遲); tattooing on the face and body; pulling out sinew and severing fingers; removing the kneecap; crushing a finger; castration; enslavement; amputation of the legs and then application of the wooden cangue; exile to Kuang-hsi to capture elephants as a reprieve from the death sentence; exile of an entire family; and confiscation of a household's property.<sup>15</sup>

The emperor's chief aim in the various promulgations of Great Pronouncements seems to have been the elimination of bureaucratic abuse. More than eighty percent of the items involve severe punishments imposed on officials and clerks.<sup>16</sup> As such, the pronouncements were the emperor's means of eliminating the defects of rule that had characterized the preceding Yüan.<sup>17</sup> In fact, these punishments were usually much severer than applicable ones from the code; and many were not in the code at all. Several crimes for which the statutory punishment would have been 100 blows of the heavy stick were pun-

Ku-chi ch'u-pan she, 1958), p. 516.

<sup>13</sup> On the emperor's use of placards, see Huang Chang-chien 黃彰健, "Ming Hung-wu Yung-lo ch'ao ti pang-wen chün-ling" 明洪武永樂朝的榜文峻令, in *idem*, *Ming Ch'ing shih yen-chiu*, p. 237.

<sup>14</sup> Huang, "Ming Hung-wu Yung-lo ch'ao ti pang-wen chün-ling," p. 256. Huang cites a placard of September 18, 1389, which would have been posted in the *shen-ming t'ing*, that prescribed death by slicing for persons who brought litigations under false pretenses. Their heads were to be mounted on poles in front of their homes, and their household members to be exiled beyond the frontiers; see *ibid.*, p. 245.

<sup>15</sup> These are listed in Teng, "Ming Ta-kao."

<sup>16</sup> Yang, "Ming Ta kao ch'u t'an," p. 57.

<sup>17</sup> The late-Ch'ing legal historian Shen Chia-pen commented: "The T'ang treated officials with consideration, and did so with great sincerity and concern. So its laws were lenient. Ming T'ai-tsu, who followed in the wake of Yüan negligence, used harsh laws to control his officials. So his laws were strict. Their policies were different, so their laws were too." See Shen, *Shen Chi-i*, vol. 2, p. 778.

<sup>10</sup> See Shen Chia-pen 沈家本, "Ming Ta kao chün fa ling" 明大誥峻法令, in *Shen Chi-i hsien-sheng i-shu chia pien* 沈寄穆先生遺書甲編 (Taipei: Wen-hai, 1964), vol. 2, pp. 822-41; Teng Ssu-yü 鄧嗣禹, "Ming Ta kao yü Ming ch'u chih cheng-chih she-hui" 明大誥與明初之政治社會, rpt. in *Ming-ch'ao k'ai-kuo wen-hsien* 明朝開國文獻 (Taipei: Hsüeh-sheng, 1966), vol. 1, pp. 1-26; Yang I-fan, "Ming Ta kao ch'u t'an" 明大誥初探, *Pei-ching cheng-fa hsüeh-yüan fa-hsüeh-yüan hsüeh-pao* 北京政法學院法學院學報 1 (1981), pp. 54-62; Yang, *Hung-wu fa-lü*, pp. 69-148; Yang I-fan, *Ming Ta kao yen-chiu* 明大誥研究 (Nanking: Chiang-su jen-min ch'u-pan she, 1988).

<sup>11</sup> Yang, "Hung-wu san-shih nien," p. 52.

<sup>12</sup> Ming T'ai-tsu 明太祖, *Huang Ming tsu hsün* 皇明祖訓 (rpt. in *Huang Ming chih shu* 皇明制書 [Tokyo: Koten kenkyukai, 1967]), p. 4a. The passage alluded to here is translated in F. W. Mote, "The Growth of Chinese Despotism: A Critique of Wittfogel's Theory of Oriental Despotism as Applied to China," *OE* 8 (1962), p. 39. The emperor observed elsewhere that he would "bend the law" 屈法 when he felt that were good reasons to do so. See T'an Ch'ien 談遷, *Kuo ch'üeh* 國權 (Peking:

ished instead by execution of the culprit's entire clan.<sup>18</sup> Thus in 1397, when the emperor directed that various provisions of the Great Pronouncements be promulgated together with *The Great Ming Code*, the contradictions between the emperor's personal law and the ostensibly just and eternal law of the dynasty were heightened. Such contradictions were not simply theoretical, for they made the determination of criminal punishments extremely difficult. All of this unnecessarily placed a burden on the emperor to act as supreme judge. Chu Yüan-chang was a particularly energetic emperor, but other, less active, emperors handled the burden poorly.

Even during Chu Yüan-chang's reign the contradictions did not go uncriticized, although the emperor was not inclined to accept criticism. The Veritable Records compiled for his reign attest to this. In his twenty-eighth year on the throne (1395), an official of the Ministry of Justice complained in a memorial that the emperor should correct the contradictions between the Ming code and the emperor's various *ad hoc* decisions. The emperor replied that this was not necessary:

The laws and comands are the implements for guarding the people and the methods for assisting governance. In these are the standard provisions (*ching* 經) and the *ad hoc* provisions (*ch'üan* 權). The statutory code (*lü*) is the permanent standard provision (*ch'ang ching* 常經), while the individual imperial decisions (*t'iao-li* 條例) are the momentary *ad hoc*, appropriate measures taken to meet special exigencies (*ch'üan-i* 權宜). We have ruled the empire for nearly thirty years and a long time has elapsed since the officials were commanded to compile a code. What use is there to revise it?<sup>19</sup>

Despite the contradictions between the code and the emperor's personal decisions, the emperor was not willing to undo the latter. Oddly, it seems, he further embedded the contradictions into the

<sup>18</sup> See the chart in Yang, "Ming Ta kao ch'u t'an," pp. 55-56, for comparisons of punishments in the *Ta kao* with those normally called for in the code.

<sup>19</sup> Quoted in Yang, "Hung-wu san-shih nien," p. 54; original in *Ming T'ai-tsu shih-lu* 明太祖實錄 236.

law in 1397 by promulgating the following edict:

From this time on the officials shall follow only the code and the Great Pronouncements in sentencing [criminals]. . . Succeeding rulers shall uphold these. Any official who should even talk about revising them shall immediately be sentenced for the crime of altering the ancestral instructions (that is, the founder's laws).<sup>20</sup>

In the emperor's defense, he certainly did not imply that succeeding emperors could not issue their own *ad hoc* laws. What he probably believed was that the laws he had issued should constitute the *ching* or "standard provisions" of the dynasty, and succeeding emperors' laws the *ad hoc* provisions to specific circumstances.<sup>21</sup> His only concern was that succeeding emperors should not be permitted to alter the fundamentals of the dynasty.

Chu Yüan-chang was succeeded on the throne by his grandson, Chu Yün-wen 朱允炆 (1377-1402), who by all evidence sought to undo much of the extreme brutality of the founder's justice. He apparently scrapped most of the *ad hoc* rules and thereby restored a measure of consistency to the law. But Chu Yün-wen's reign was short-lived. He

<sup>20</sup> Quoted in Yang, "Hung-wu san-shih nien," p. 54; original in *MS* 93, p. 2279.

<sup>21</sup> The importance of the code as the *ching* or "permanent basis" was noted in Yüan times. The Yüan scholar Liu Kuan 柳貫 (d. 1342), a teacher of one of Ming T'ai-tsu's most important advisers, wrote: "Alas, the codes of the Legalists are just like the canons of the Confucians." See John D. Langlois, Jr., "Political Thought in Chin-hua under Mongol Rule," in Langlois, ed., *China under Mongol Rule* (Princeton: Princeton U.P., 1981), p. 172. In Ming times these ideas remained current. *Wei cheng hui mo lun* 為政規模論, a Ming text on law and governance widely printed in Ming legal commentaries and handbooks, contains the statement:

[I]t is often said that the classics [*ching*, elsewhere rendered "permanent basis" and "canons"] convey the *tao-t'ung* 道統 [tradition of the Way] of the sages, and that the statutory code contains the essentials of governing the world and bringing peace to the people. This is because if one throws light on the classics by means of the code, then the ways in which students [of the classics] will be able to affirm [the sacred teachings] will be greatly expanded, and if one penetrates [the meaning of] the code by means of the classics, then the ways in which it will benefit those serving in government will be greatly deepened. (Quoted in Yang Hsüeh-feng 楊雪峰, *Ming-tai ti shen-p'an chih-tu* 明代的審判制度 [Taipei: Li-ming wen-hua shih-yeh kung-ssu, 1978], p. 28.)

was overthrown by his uncle Chu Ti 朱棣 (1360-1424), whose rule marked a kind of second founding of the dynasty.<sup>22</sup> Known in history as the Yung-lo 永樂 emperor, the third Ming ruler resembled his father in his military concerns and his forceful and arbitrary style of rule. To help legitimize his rule, he claimed that he was "restoring" the laws and institutions that had been established by the founder and undone by Chu Yün-wen. Nevertheless, he issued his own *ad hoc* laws that conflicted with the code, even as he frequently affirmed the importance of the code as the fundamental law of the land. The basic contradiction thus remained, although no emperor after the founder altered the basic code. They simply issued the code without its accompanying Great Pronouncement attachments. This fact explains why no copy of the code with attachments is extant and why *The Code and Pronouncements* remained an enigma to the compilers of *The Official History of the Ming* (*Ming shih* 明史) in the seventeenth century.

We have thus touched on a great irony of Ming history. While the founding emperor placed great importance on the permanent legal code, he vitiated its importance by his own "extra-legal punishments." He offered no standardized procedure by which succeeding emperors might introduce *ad hoc* measures in order to give the law the flexibility that was needed to cope with the great social and economic changes of the time.

Emperors traditionally could issue *ad hoc* commands and legal findings, and these, because they were binding laws, served as precedents in subsequent cases. Periodically these were pulled together under the rubric *t'iao-li*, a practice that had been carried out ever since the period of the Sung dynasty (960-1279).<sup>23</sup> The Sung, however,

<sup>22</sup> See biogs. of Chu Yün-wen and Chu Ti in *DMB*, and Huang, "Hung-wu Yung-lo ch'ao ti pang-wen chün-ling."

<sup>23</sup> *T'iao-li*, or "itemized *li*": the *li* were "examples" of imperial decisions. Hence it is not incorrect to term them precedents. For a discussion of the term, see Derk Bodde and Clarence Morris, *Law in Imperial China, Exemplified by 190 Ch'ing Dynasty Cases Translated from the Hsing-an hui-lan* (Cambridge, Mass.: Harvard U.P., 1967), pp. 63-68. Because the *li* in 1585 were promulgated along with *The Great Ming Code* in an integral text, a model which was followed in Ch'ing times, the *li* took on the quality of "substatutes." Bodde and Morris refer to the *li* by this term, as do many other scholars in discussions of Ch'ing law. In this paper I use the term "precedents"

had been fairly systematic about culling the *t'iao-li*, deleting those that had ceased to be useful or relevant to current conditions. The Ming, by contrast, was less systematic in this effort. Thus, as time went on, severe strains and tensions plagued the Ming legal system, perhaps more critically than in earlier times. In any case, it was only in the year 1500 that an emperor would promulgate a formal set of *t'iao-li* modifications that had been carefully reviewed in advance by legal scholars. This was done by Chu Yu-t'ang 朱祐樞, as Ming emperor Hsiao-tsung 孝宗 (r. 1488-1505), the compilation being titled *Wen hsing t'iao-li* 問刑條例 (*Ad hoc Provisions for Trying Penal Cases*). Hsiao-tsung has been described by some historians as "the most humane emperor" of Ming times.<sup>24</sup> The compilation was a culmination of many years' work and a consequence of many officials' unhappiness with the state of the legal system. Their criticism can be traced back to the reign of Chu Ti, who ordered that his judicial officials should disregard the founding emperor's "placards" precisely in order to restore consistency to the law.

The first emperor to address the question directly since Chu Ti had been Chu Ch'i-chen 朱祁鎮 (r. 1465-1487; posthumous title Hsien-tsung 憲宗). In his first year on the throne, Hsien-tsung proclaimed anew that *The Great Ming Code*, without the founder's "proclamations," would serve as the basis for all penal sentences. At the same time, he abolished the *ad hoc* precedents (*li* 例) that had been set by earlier emperors.<sup>25</sup> Fifteen years later, in 1479, the jurist-official Wang Shu 王恕 (1416-1508) complained to this same emperor about the existence of a compilation of 108 penal "statutes" entitled *Hui-ting hsien-hsing li* 會定見行律 (*Compilation of Currently Operative Statutes*). Wang was then the grand coordinator (*hsün-fu* 巡撫) of the Southern Metropolitan Region, and his complaint was prompted by the imperial edict to print the compilation. Wang urged that the blocks be burned:

to refer to the *li*, although they gradually acquired the prospective quality of statutes, culminating in *Wen hsing t'iao-li* (issued 1500), discussed below.

<sup>24</sup> See Chaoying Fang's biography of this emperor in *DMB*, p. 376.

<sup>25</sup> *MS* 93, p. 2286.

Who knows at what time these were "compiled"? Judges who are experienced in penal matters will surely not rely upon them. One only fears that they will spread far and wide; they will inevitably contain errors.<sup>26</sup>

His request was accepted by the emperor, who then commanded that any official who cited *Hui-ting hsien-hsing lü* in setting punishments would himself be punished. The work may well have been completely destroyed as a result of the emperor's command, for it is now non-existent. But whatever the provenance of the "statutes" it contained, they probably were actually "precedents" or *li* issued by earlier emperors that had somehow been compiled as a result of officials' efforts to reconcile *ad hoc* legislation and changing socio-economic circumstances.

Wang Shu's complaints were not alone. In 1474 a supervising secretary in the Office of Scrutiny for the Ministry of War (*ping-k'o chi-shih chung* 兵科給事中) submitted a memorial urging careful selection and promulgation of "currently applied precedents" (*hsien-hsing t'iao-li* 見行條例); his proposal was supported by the Ministry of War and by the Grand Court of Revision (*Ta-li ssu* 大理寺). The emperor reportedly agreed with these sentiments, although he apparently never acted upon their suggestion. Four years later still another supervising secretary made the same request, also to no avail.<sup>27</sup>

Chu Ch'i-ch'en's reign must be viewed as having included important efforts to restore balance and consistency to the legal system. Besides *Wen hsing t'iao-li*, work on *The Compendium of Institutes of the Great Ming* (*Ta Ming hui-tien* 大明會典) was begun around 1502. Work was continued during 1506 under the following emperor's rule, and the final product was printed in 1510. Finally, Chu Ch'i-ch'en ordered the compilation of *Classified Precedents of the August Ming* (*Huang*

*Ming t'iao-fa shih-lei tsuan* 皇明條法事類纂).<sup>28</sup> This emperor's deep interest in orderly law and government even provided for the printing of an imperial edition of Ch'iu Chün's 丘浚 *Ta hsüeh yen i pu* 大學衍義補 (*Supplement to "The Derivation of Meaning in The Great Learning"*), a major synthesis of Confucian statecraft. Ch'iu's work embodied views of law that addressed the basic weakness of Ming legislation discussed here.<sup>29</sup>

Ch'iu Chün accepted a Hsün-tzu type of Legalist view of human nature and of the causes of disputes between people. "People are born with desires and cannot but have disputes," he wrote. "With disputes there are bound to be litigations, and these must be adjusted fairly for otherwise the outcome will be assaults and killings. This leads to disorder."<sup>30</sup> Ch'iu went on to say that it was the responsibility of the state to provide equitable means of dispute resolution, implying that these must be consistent and reliable. He furthermore warned the throne to attend to the problem of inconsistencies in the *ad hoc* legislation of emperors. He strongly urged that the Hanlin Academy join with officials of the three judicial agencies in a thorough study of the *ad hoc* laws that had been issued between the founding of the dynasty and 1487, the year of Chu Ch'i-ch'en's accession. These officials should "choose those [statutes] that deserve forever to be upheld, simplify and clarify their language, summarize the essentials, and compile them in a classified book for promulgation that would circulate along with the code."<sup>31</sup>

Ch'iu was fully aware of the institutional obstacles to removing the fundamental deficiency of Ming legislation and recommended a way to get around them. His ideas sound radical when analyzed in modern terms, since they ultimately suggest circumventing the code when appropriate. In other words, Ch'iu would effectively reduce the code to a purely formal, or nominal, body of doctrine, not binding

<sup>26</sup> For the memorial, see Wang Ch'i 王圻, ed., *Hsü wen-hsien t'ung-k'ao* 續文獻通考 (1586 edn.) 168, pp. 7b-8a. For Wang Shu's biography, see Chaoying Fang's entry in *DMB*, pp. 1416-20.

<sup>27</sup> Huang Chang-chien, *Ming-tai lü-li hui-pien* 明代律例彙編 (Taipei: Academia Sinica, 1979; hereafter, *LLHP*), vol. 1, p. 6.

<sup>28</sup> This work was reprinted in Tokyo by Koten kenkyukai 古典研究會, 1966.

<sup>29</sup> See biog. by Chi-hua Wu and Ray Huang in *DMB*, pp. 249-52. *Ta hsüeh yen-i pu*, a "supplement" to a work by the Sung scholar Chen Te-hsiu 真德修, is reprinted in *Ch'iu Wen-chuang kung ts'ung-shu* 丘文莊公叢書 (Taipei: Ch'iu Wen-chuang kung ts'ung-shu chi-yin wei-yüan-hui, 1972), vol. 1, pp. 1-1542.

<sup>30</sup> Ch'iu, *Ta hsüeh yen-i pu* 106, pp. 2a-b.

<sup>31</sup> *Ibid.* 103, pp. 5a-b.

on any specific situation. His *Ta hsieh yen i pu* urged the emperor to order officials to determine which articles in *The Great Ming Code* did not match current legal practice and to append little notes to that effect in the code immediately following the articles in question. Furthermore, he hoped the emperor would forbid all judges from citing precedents under those articles and that he would require them to memorialize the throne directly to request court deliberation by high officials.<sup>32</sup> Since the code could not be abolished or formally amended, Ch'iu's method would effectively neutralize the articles around which a body of conflicting precedents had grown up.

Ch'iu's interest in legislative stability was far-reaching. He wanted the government to facilitate the documentation of land titles in order to reduce litigation, recognizing that the key elements in land disputes were evidential and that accurate titles would eliminate many disputes. He noted that people sued one another over right and wrong actions, where corresponding witnesses are necessary; and over land titles, where evidence of boundaries in map form is essential. Disputes over land titles, he said, predominated chiefly because of the growing population and the accompanying pressures on available land. Ch'iu noticed that disputes that dragged on for decades and generations might result in litigation costs exceeding the value of the land. To avoid this, careful government authentication of deeds and plots was again recommended. Ch'iu knew that such a system would be cumbersome to administer, yet believed that the benefits would justify the costs.<sup>33</sup>

Ho Ch'iao-hsin 何喬新 (1427-1503), a prominent contemporary of Ch'iu Chün, offered suggestions to the throne that dealt with the chaotic nature of the penal system.<sup>34</sup> In 1488, as minister of justice, Ho presented a memorial to the emperor Chu Chien-shen 朱見深 (1470-1505; r. 1488-1505) suggesting that the throne adopt a selective compilation of the precedents that had been issued by the previous emperors.<sup>35</sup> The memorial requested the retrospective abolition of

the unwanted precedents, but Ho was unable to go beyond this to propose a solution. Nevertheless, his memorial is worth considering in further detail:

The code and the precedents have been in force together for a long time. The code is the great law for a myriad ages, and the precedents are the interim expedients appropriate to the times, making up where the code does not reach. Since the first year of the Ch'eng-hua 成化 era (1465), all the precedents were the product of the enlightened proposals of the ministers below, yet in fact they were based on the judicial judgments of the preceding ruler Hsien-tsung. Among them are some that are of profound meaning. For example, concerning persons who manufacture sorcerers' books or words: the code specifies that the principal offender shall be sentenced to decapitation, whereas a previous imperial decision in such a case holds that [the offender's] entire household shall be sentenced to military service in a malarial region. This is probably because of the concern that such people may deceive the masses. For persons who kidnap and sell free human beings, the code specifies a sentence of penal servitude or life exile, whereas the precedent stipulates that together with their household they shall be sentenced to military service on a remote frontier. This is probably due to the dislike of causing people's families to split up. For persons who rob grain from [state] granaries, the code specifies merely a sentence of strangulation under the category of "miscellaneous offenses."<sup>36</sup> Yet in recent years a precedent was set whereby persons who rob 100 piculs or more from a granary shall be sentenced to military service. This is probably because of a concern that a shortage of military provisions might result from such robberies [and therefore the sentence was made more severe].

For those who violate the law by smuggling salt, the code merely specifies a sentence of penal servitude, while in recent years a precedent was set whereby military service is

<sup>32</sup> Ibid., p. 13a.

<sup>33</sup> Ibid. 106, pp. 7a-8b.

<sup>34</sup> See biog. by Lee Hwa-chou in *DMB*, pp. 505-7.

<sup>35</sup> For the text of the memorial, see *LLHP*, vol. 1, *hsü*, pp. 7-8.

<sup>36</sup> "Miscellaneous offenses" were usually redeemed by cash payment.

the punishment for selling smuggled salt weighing 2000 catties or more. This is probably because the illicit sales would deplete the state's fiscal levies. Examples of this kind cannot all be enumerated.

The way to correct the abuses of the times is a matter of doing what has to be done to assist good governance. If all [the precedents] were abolished, I fear the many abuses would be reborn, and in a different time the law would become incapable of chastising wrongdoers. Some who have addressed the question of the code would restore the old precedents, but these people have not escaped becoming vexatious to the emperor...

As for individual precedents, some were adopted on the recommendation of one person, and others were enacted to deal with an abuse in some [particular] matter; and so none of them hit the middle way. Among them are similar problems dealt with by different laws, light crimes dealt with by severe [penalties called for in the] precedents; there are also those with contradictions in front and back, and redundancies with no direction. All this leads to disunity in affairs. It is difficult for anyone to obey them, as has been stated by the censor Wu Yü 吳裕 in a memorial to this effect. In the capital, whenever a trial office decides [a case] not in accordance with the precedents, the Grand Court of Revision should overrule and correct it. Outside the capital, trial offices, not subject to review and reversal, are staffed with officers who do not comprehend the code and precedents, and these inevitably decide cases by whim.

Ho continues, recommending that the precedents set between 1465 and 1487, the entire reign of Chu Chien-shen, be reviewed and that all those calling for inappropriate punishments be abolished. Ho urged the abolition of those that conflicted with the purpose of the code, those clearly contradictory, and those that were redundant. He did not spell out clearly the standards by which these determinations should be made, but presumably hoped to be assigned to the

task himself. While the emperor expressed agreement with Ho's sentiments, he did not issue an edict of the type Ho had requested.

Ho Ch'iao-hsin persisted. In the second lunar month of 1490 he submitted another memorial on the subject:

The founder set down the code to serve as the law for all time. The precedents, however, were issued to assist the code; they placed a premium on hitting the proper middle way. But it was difficult for them to be consistent. This is because as the various emperors succeeded to the throne, they set down precedents that varied in severity and had no consistency, in order to respond to the irregular nature in the transformations of human circumstances. For serious [crimes] where the code specified light punishments, as when penal servitude and exile were specified, [the precedents] called for dispatch into military service; or for light [crimes] where the code specified heavy punishments, [the precedents] called for monetary redemption.<sup>37</sup>

Ho acknowledged that many of the precedents issued since the founder's time were excellent, and he urged their retention. What troubled him, however, were those areas of the law where the precedents contradicted one another. In particular, the legislative process had permitted constant changes in the severity of punishments. In this memorial Ho took a tack different from that of 1488. Instead of calling for a complete review of the precedents, he asked the emperor to order officials to review only those precedents that authorized trial officials to memorialize the throne for imperial decisions. Ho's point was that a systematization of this process, which lay at the heart of the procedure that engendered the precedents, would reduce the potential for disorder and inconsistency. Ho's effort was one aimed, in short, at establishing order in the legislative process.

By 1492, P'eng Shao 彭韶 (1430-1495) was minister of justice after a long career in government with ups and downs that ended in

<sup>37</sup> *LLHP*, vol. 1, *hsü*, p. 9.



imprisonment during the reign of Chu Ch'i-chen.<sup>38</sup> In 1492 he supported the suggestions made by the vice-minister of the Court of State Ceremonial (the Hung-lu ssu 鴻臚寺) to the effect that the throne order the compilation of the correct precedents to cite in criminal trials. This work would be entitled *Wen hsing t'iao-li* 問刑條例.<sup>39</sup> The emperor approved of P'eng's suggestion but evidently did not order any specific action on it until 1499. On March 5, 1500, minister of justice Pai Ang 白昂 (1435-1503) and several other high-ranking judicial officials presented to the throne the work by this title.<sup>40</sup>

*Wen hsing t'iao-li* included 279 articles,<sup>41</sup> designed to be promulgated together with *The Great Ming Code*.<sup>42</sup> The "Treatise on Law" section of *Ming shih* comments approvingly that the promulgation of *Wen hsing t'iao-li* along with the code helped to achieve "a modest tightening of the net of the laws."<sup>43</sup> It hints as well that one of the important accomplishments of the new work was the severity of "the six articles of prohibitions governing the princely establishments (*wang-fu* 王府), whereby princes who left their walled towns without good reason would be punished."<sup>44</sup> Thus, there apparently was an attempt to use the promulgation of this set of precedents as a body of proactive law that would enhance imperial control over the princes of the blood. Another important area covered by the new "precedents," which really took on the stature of statutes, was the law of redemption. This subject will be taken up below.

Fifty years after *Wen hsing t'iao-li* was promulgated, a "recompilation" was issued by the emperor Chu Hou-ts'ung 朱厚熜 (r. 1521-1567).

<sup>38</sup> See biog. by Liu Chia-chu in *DMB*, pp. 1118-19.

<sup>39</sup> *LLHP*, vol. 1, *hsü*, p. 10.

<sup>40</sup> For Pai Ang's memorial, see *LLHP*, vol. 1, *chüan-shou* 卷首, pp. 3-4. For the text of the 1500 edition of *Wen hsing t'iao-li*, see *Huang Ming chih shu*.

<sup>41</sup> *LLHP*, vol. 1, *hsü*, p. 11, claims that there are 281 articles and that the *Veritable Record* is wrong in saying 279. Bodde and Morris, *Law in Imperial China*, p. 65, claim there are 297 articles. I found 279 in the 1500 edn. reprinted in *Huang Ming chih shu*.

<sup>42</sup> As noted above, the "precedents" were not actually integrated with the text of the code until 1585, when they received a major revision. But they were meant to supplement the code, and to that extent they were adjuncts to it right from the beginning.

<sup>43</sup> *MS* 93, p. 2286.

<sup>44</sup> *Ibid.*

When it was done and presented to the throne in 1550, Ku Ying-hsiang 顧應祥, minister of justice, outlined the problems that had plagued earlier rulers and were still troubling the throne.<sup>45</sup> Ku noted that *Wen hsing t'iao-li* and the code had been promulgated to serve "forever" as the standard for judgments. Yet during the fifty years that had elapsed "the world and customs had changed, and naturally it was appropriate to respond to the changes for the benefit of the people." The difficulty in this was that a large number of *ad hoc* precedents had been issued, particularly by the reigning emperor. As a consequence, many officials had not mastered all the precedents or were confused. Some cited incorrect ones, while others clung rigidly to entire texts of precedents. People were sentenced heavily for light crimes, judgments unjustly made, and many people died innocently at the hands of the legal system. "This is not the way to place a premium on the lives of the people and to bring about harmony," Ku wrote.

The emperor was originally so moved by petitions calling his attention to these problems that he had ordered the revision. He acknowledged the chaos in the penal system that was a consequence of the legislative dilemma:

In recent years the judicial authorities have applied illegal punishments, incorrectly and recklessly cited precedents, and intentionally sentenced people to unduly severe punishments. The common people have resentments that they cannot express.<sup>46</sup>

Revisions of *Wen hsing t'iao-li* were made twice more, once under Chu Hou-ts'ung in 1555, a mere five years after the first revision, and again under Chu I-chün 朱翊鈞 (the Wan-li 萬曆 emperor; r. 1573-1620) in 1585. In each case, this was done in order to make the law fit the actual needs of the day. As minister of justice Shu Hua 舒化 wrote in the memorial accompanying the 1585 version, the goal was "to make the law on-high unified 上有畫一之法 so that the people

<sup>45</sup> Ku's memorial is reprinted in *LLHP*, vol. 1, *chüan shou* 卷首, pp. 7-10.

<sup>46</sup> Quoted in Ku's memorial, in *ibid.*, p. 8.

would know the paths to take and the paths to avoid."<sup>47</sup> A proper set of laws pertaining to trials would end the abuse of "arbitrarily and recklessly citing [precedents] so that the punishments were irregularly severe or light." Clearly, the fundamental defect of the legal order had not been corrected by the enactment of *Wen hsing t'iao-li*, because despite such wishful words, nothing could constrain an emperor from issuing contradictory decisions.

The redemption system in Ming law had been instituted by the founder on a scale broader than that in any earlier period of Chinese history. Interim legal promulgations like *Wen hsing t'iao-li* attempted to maintain order in this system, but such efforts cannot have worked because the redemption system involved money and labor in lieu of punishments, and the monetary system itself was subjected to severe dislocations by rapid changes in the availability and value of silver.<sup>48</sup> Thus the "cost" of crime kept changing. The officials who were supposed to implement the redemptions had no secure guidelines, and the general scheme of punishments was out of balance.

The Ming founder attempted to make paper currency the only medium of exchange and thus demonetized silver and gold. It is possible that his laws in this respect were enforced early in the Ming, since contracts for land sales studied in 1980 by Fu I-ling 傅衣凌 show little use of silver and a broad use of paper currency to calculate and record value.<sup>49</sup> Gradually, however, the paper currency was radically inflated. In 1376, one *kuan* 貫, or "string of cash" in paper currency, was worth one ounce (*liang* 兩) of silver and one picul of rice. By 1397, one ounce of silver was equated to four piculs of rice when one paid one's grain tax, but it took two and half strings of cash in paper currency to acquire one picul of rice. Thus the

<sup>47</sup> Ibid., p. 15.

<sup>48</sup> P'eng Hsin-wei 彭信威, *Chung-huo huo-pi shih* 中國貨幣史 (Shanghai: Jen-min, 1958), pp. 452-53. For general comments on Ming monetary problems, see Ray Huang, 1587, *A Year of No Significance: The Ming Dynasty in Decline* (New Haven: Yale U.P., 1981), pp. 146 ff. See also William S. Atwell, "International Bullion Flows and the Chinese Economy circa 1530-1650," *Past & Present* 95 (May 1982), pp. 68-90.

<sup>49</sup> Fu I-ling, "Ming-tai ch'ien-ch'i Hui-chou t'u-ti mai-mai ch'i-yüeh chung ti t'ung-huo" 明代前期徽州土地買賣契約中的通貨, *She-hui k'o-hsüeh chan-hsien* 社會科學戰線 11 (1980.3), pp. 129-34.

depreciation of paper currency in relation to silver was 1,000 per cent, and in terms of rice 25 per cent, over a span of twenty-one years.<sup>50</sup> It is clear, therefore, that the paper currency issued early in the Ming was not a constant measure of value. Yet *The Great Ming Code* of 1397 calculated redemption fines in paper currency and set punishment for corruption and stealing by reference to values set in currency.

The three judicial offices (the Censorate, the Ministry of Justice, and the Grand Court of Revision) complained in 1440 about the effect of currency depreciation on the legal system:

When the code was set during the Hung-wu 洪武 era (the founder's), paper currency was dear and goods were cheap, and therefore in cases of corruption involving subversion of the law where the illicit goods (for example, a bribe) amounted to 120 strings of cash [in paper currency], the sentence of strangulation was changed to military exile. Now, however, currency is cheap and goods dear. If all cases of corruption involving subversion of the law by means of such valued illicit goods are to be sentenced in this way, the relationship between crime and punishment will be lost.<sup>51</sup>

The officials then recommended that 800 strings of cash be made the cut-off point for sentencing to strangulation, which then could be converted to military exile; and amounts lower than 800 could be punished according to the provisions in the *hsien-hsing t'iao-li*, the compilation of precedents mentioned above.

Redemption of punishments by cash payments was an ancient practice in China, dating back textually to the *Book of History*. The latter states that the sage emperor Shun had employed fines for certain offenses rather than corporal punishments. Furthermore, in the section known as "Lü hsing" 呂刑 ("The Punishments of the Prince of Lü"), we find details of the five kinds of redemption fine to be used in place of corporal punishment when doubt existed as to

<sup>50</sup> P'eng, *Chung-huo huo-pi shih*, p. 462.

<sup>51</sup> MS 93, pp. 2289.

the facts of a case. Thus, someone whose crime would normally have incurred tattooing would, in a case of doubt, be able to redeem that punishment by paying a fine of 100 *huan*-weights 銖 of bronze; for cutting off the nose, the redemption was twice that, and so forth.<sup>52</sup>

In Sung times, redemption fines were apparently available only to criminals who were otherwise eligible for special treatment under the "eight deliberations" (*pa-i* 八議), which were granted to outstanding individuals by virtue of such things as merit and birth.<sup>53</sup> Under the Ming, however, redemption was employed more broadly. As *Ming shih* explains, this was because the state pursued two aims: the alleviation of otherwise severe punishments provided in the code, and the provision of supplemental revenue for the state coffers.<sup>54</sup> Both *The Great Ming Code* and the various compilations of precedents contain detailed provisions on redemption. The payment of cash fines was not the only means of redemption, for a criminal could often — and was often compelled to — redeem his crime by performance of specific labor duties. These included transporting coal, bricks, or other materials to Peking and border regions.

The codes and the precedents each defined a method of redemption, and thus came into conflict. *The Great Ming Code* spoke of redemption payments received in accordance with the code 律得收贖, and on the other hand there were redemption payments to be paid in accordance with the precedents 例得納贖. The former type was immutable; the latter, however, was frequently changed by imperial fiat. Thus the redemption system became a disorderly area of jurisprudence. By the time of emperor Chu Ch'i-chen's reign, it had long since become the subject of criticism by officials.

*The Great Ming Code* sets down the basic redemption fines in the General Principles section.<sup>55</sup> For example, for a sentence of forty

<sup>52</sup> Bernhard Karlgren, trans., *Book of Documents* (Stockholm: Museum of Far Eastern Antiquities, 1950), p. 77.

<sup>53</sup> Such, at least, is the claim made in *MS 93*, p. 2293. For a discussion of the *pa-i*, see Bodde and Morris, *Law in Imperial China*, pp. 34-35.

<sup>54</sup> *MS 93*, p. 2293.

<sup>55</sup> There are many editions of the code that could be cited. For convenience, the one cited here is a modern punctuated reprint of Ogyū Sorai 荻生徂徠 (1666-1728), *Ritsurei taishō teihon Min ritsu kokuji kai* 律令對照定本明律國字解, ed.

blows of the light stick, the alternative fine is set at 2.4 strings of cash, payable either in copper cash or paper currency. For a sentence of two-and-a-half years of penal servitude, the fine is 21 strings of cash. The maximum fine of 42 strings of cash is levied for sentences of strangulation and decapitation.<sup>56</sup>

Chu Yüan-chang's preface to the code specified that redemptions were available to persons sentenced under the provisions regarding "miscellaneous capital sentences, penal servitude, life exile, and transportation."<sup>57</sup> The code itself, however, extends the use of redemption to the following classes of criminal:

1. Officials who committed crimes in the course of their duties (that is, *kung tsui* 公罪, "public crimes"; article 7).
2. Military officials who committed crimes outside their official duties (*ssu tsui* 私罪, "private crimes"; article 8).
3. Officials whose "public crimes" committed prior to taking office were discovered only after they took office (article 13).
4. Individuals sentenced to capital punishment, not eligible for imperial amnesty, whose grandparents or parents were aged and in need of care (article 18).
5. Students of astronomy whose studies had advanced to the point where the students were qualified to perform their functions independently (article 19).
6. The old (persons 70 and older) and the young (those 15 and younger), and the handicapped and the infirm, who committed crimes punishable by life exile or less (article 21).
7. Persons aged 80 or more, or 10 or less, and the infirm, who committed acts of robbery and injury (article 21).
8. Persons who injured or killed through mistaken acts 過失 (article 315).
9. Persons who falsely accused others of two or more crimes, and the accusation was false with respect to the more serious

Uchida Tomoo 內田智雄 and Hihara Tomokuni 日原利國 (Tokyo: Sōbunsha, 1966). The articles are numbered. This text also includes the Wan-li 萬曆 period edition of *Wen hsing t'iao-li*.

<sup>56</sup> Ogyū, *Min ritsu*, article 1, pp. 7-8.

<sup>57</sup> *Ibid.*, preface, p. 21.

crime but correct with respect to the less serious, or the accusation was for a crime more serious than the one of which the accused was actually guilty. (In these cases, the accuser was to suffer reciprocal punishment, that is, undergo the punishment the accused would have suffered or had already suffered as a result of the accusation, and he was also to pay redemption fines for the remaining crimes accused; (article 359).

For the most part, these provisions are found also in the T'ang code,<sup>58</sup> but they were broadened by the first article of *Wen hsing t'iao-li* of 1500. The article specifies that redemption of various kinds, other than through cash payments, were to become available regardless of the degree of punishment to the following categories:

Soldiers and common people performing corvée labor service, sons other than eldest sons who upon examination are found to be able-bodied 審有力, civil and military officials, government clerks, National University students, students in local schools, honored commoners 冠帶官, keepers of official seals, students of *yin-yang* (geomancy), physicians, elders, and eldest sons.<sup>59</sup>

Furthermore, *Wen hsing t'iao-li* outlined the types of redemption to be made available; they are generally nonmonetary, and included labor services: transportation of charcoal, lime, or bricks, and the payment of materials or rice.

The same article further specified some conditions to the application of these redemptions. Officials and clerks whose infractions were serious would be dismissed; and soldiers and common people performing corvée service who were determined as not able-bodied 審無力, could not be redeemed from punishments involving the light or heavy stick. In the event of punishments of penal servitude, life exile, and miscellaneous capital sentences, convicts were to serve as laborers at relay stations or as watchmen at border guard posts. For

very serious crimes, the individuals would be required to work in salt or iron refineries for five years (in capital crimes) or four years (in crimes sentenced by life exile).

This system of redemptions outlined in 1500 seems to have been a move away from cash payments. Prior to 1500 there had been many attempts of this sort. In 1461, for example, during the reign of Chu Ch'i-chen, the court issued a "precedent" providing a detailed list of redemptions:

For ten blows of the light stick, the available redemptions were: transporting 1,200 catties of lime, or 70 bricks, or 2,800 catties of crushed brick, or 200 catties of mortar, or 1,200 catties of stones. Increases of every degree in the number of penal blows of the stick were redeemable at 35 bricks, 1,400 catties of crushed brick, 100 catties of mortar, and so forth.<sup>60</sup>

In the same year, however, the court issued regulations governing redemption by payments in paper currency:

For ten blows of the light stick, the payment was set at 200 strings of cash in paper currency, with increases of 150 strings for every increment in the number of blows; for sixty blows of the heavy stick, it was set at 1,450 strings of cash in paper currency, with increments of 200 strings.<sup>61</sup>

Thus the two systems — redemption by labor service and redemption by cash payment — coexisted, despite the obvious problems with the latter.

By 1501 the court was incorporating redemption payments in silver. It issued a precedent in that year specifying payments commuted in silver for certain classes of wrongdoers, including individuals who under the precedents were held to be unable to endure the statutory punishments 例難的決, as well as women and able-bodied males.<sup>62</sup>

<sup>58</sup> See Johnson, *The T'ang Code*, pp. 55, 57-61, 93-102

<sup>59</sup> *LLHP*, vol. 1, p. 248.

<sup>60</sup> *LLHP*, vol. 1, *ch'uan shou*, p. 49.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, pp. 49-50; *MS* 93, p. 2295.

For a sentence of one hundred blows of the heavy stick, which would have been redeemed by a payment of 2,250 strings of cash in paper currency, the silver commutation was set at one ounce. Other sentences were then calculated by reductions from this amount. Thus, for each ten blows fewer in the sentence, the commuted payment was reduced the equivalent (at that time) of 200 strings of cash, reaching six *ch'ien* 錢<sup>63</sup> in silver for a sentence of sixty blows of the heavy stick. Similar calculations are set down for sentences involving the light stick. Interestingly, this regulation also provided for conversions to payment in copper (*t'ung* 銅). Each ounce of silver was in turn commutable to 700 *wen* 文 in copper cash.<sup>64</sup>

The "Treatise on Penal Law" in *Ming shih* traces the history of the redemption system, pointing out that redemption payments specified in *The Great Ming Code* were lighter than those specified in the precedents, but that originally the case had been the reverse, a situation caused by the radical depreciation of currency. Thus, conversion formulae were devised in order to maintain the fiction that *The Great Ming Code* provisions were continuing to be enforced. Under these formulae, one *wen* in paper currency in the original code, equal to 0.001 ounce of silver, was converted by the rule: "ten blows of the light stick equals 600 *wen* of paper money and is set at 0.0075 ounce of silver," the equivalent of six *ch'ien* of silver in the earlier time. For the heavy stick, the conversion rule was "100 blows of the heavy stick equals six strings of cash in paper money and is set at 0.075 ounce of silver," the equivalent of six ounces of silver in the earlier time. Thus the redemptions in the code were reset in silver valuations at a thousandth for punishments at the low end of the scale, and a hundredth at the high end.<sup>65</sup>

In an effort to keep the complex redemption system in some sort of reasonable relationship to commodity prices, the court from time to time issued detailed tables outlining the conversions.<sup>66</sup> One

<sup>63</sup> One *ch'ien* was .10 ounce (*liang*)

<sup>64</sup> One *wen* was one standard copper coin, or .001 string of cash

<sup>65</sup> MS 93, p. 2299

<sup>66</sup> For an imperially-proclaimed list of commodity prices from 1489, see *LLHP*, vol. 1, pp. 350-57.

of the main difficulties in this was the fact that the currency system apparently functioned reliably in Peking, but not outside. Thus separate provisions for capital and non-capital regions had to be promulgated. The earliest known list of this type dates apparently from 1461 and is entitled "Compiled and Set Rules Governing Work Requirements in the Categories of Transporting Bricks, Transporting Lime, Etc." 會定運磚運灰等項做工則例.<sup>67</sup> Under "Seventy blows of the heavy stick," for example, we find the following entries:

4,800 catties lime  
280 bricks  
11,200 catties crushed brick  
820 catties mortar  
4,800 catties stone  
7 piculs rice  
4 1/2 months labor  
1,650 strings of cash in paper currency converted to 490 *wen* in copper cash.

The table also gives various options available to eligible criminals to redeem their statutory punishments.

A similar list, directed specifically at criminals in Peking, was promulgated in 1507.<sup>68</sup> The redemption options for the same seventy blows of the heavy stick were identical to those given above except for the item "rice." In the 1507 list, seven piculs of rice may be commuted to 10.5 piculs of grain, presumably meaning substitute grains. There is, however, one major difference between the tables of 1461 and 1507. The former provided redemption options for capital sentences (strangulation and decapitation) as follows:

64,200 catties of lime  
3,200 bricks  
128,000 catties crushed brick  
9,000 catties mortar

<sup>67</sup> *LLHP*, vol. 1, *ch'uan shou*, pp. 46-48.

<sup>68</sup> *Ibid.*, pp. 53-56.

64,200 catties stone  
5 years labor  
50 piculs rice

The latter, however, made these available only to persons sentenced under the category of "miscellaneous capital crimes" 雜犯死罪. The former list gave options available apparently to all capital criminals, unless the limitation was understood and simply not written down.

In any case, the *Ming shih* treatise points out clearly that under the Ming there were two types of redemption: labor and money.<sup>69</sup> Redemption in labor, a factor that cannot be inflated as money can, was the less preferred by criminals. Labor services for redemption purposes were convertible to money payments at specified rates. As the paper currency system fell into disorder and even disuse, money payments took the form of silver and rice (or other grains).<sup>70</sup>

It is curious to note that, according to *Ming shih*, while labor service redemption tended to be abandoned, one traditional practice associated with it was retained for ceremonial reasons. Under the traditional rules, criminals who performed labor-service redemption, such as construction work, tree planting, and work in salt and iron refineries, would be taken at the end of their service to the imperial bridge in Peking to perform the kowtow, signifying their obedience to the throne. Afterwards they were escorted to Ying-t'ien prefecture 應天府, where they were issued travel permits to return home. Those who had originally been sentenced to military service in exile were sent to the Shan-hsi provincial authorities for registration and dispatch. In later times, the practice of going to the bridge to kowtow was retained, even though criminals were no longer performing labor

<sup>69</sup> MS 93, p. 2300.

<sup>70</sup> Silver ingots cast in the Cheng-te 正德 and Chia-ching 嘉靖 reigns (1506-1567) and used by criminals as redemption payments were unearthed in a tomb in Szechwan in 1955. See Liu Chih-yuan 劉志遠, "Ssu-ch'uan Hung-ya hsien Ming mu ch'u-t'u ti yin-t'ing wen-tzu" 四川洪雅縣明墓出土的銀錠文字, *Wen-wu ts'an-k'ao tzu-liao* 文物參考資料 69 (1956.5), pp. 45-46. (I am indebted to James Ceiss for this reference.)

service but were redeeming their punishments by cash payments.<sup>71</sup>

These examples of attempts to reorder the redemption system, and of complaints by Ming officials about the irrationality of the legal system, suggest that a severe problem was inherent in Ming rule. Naturally the areas of dislocation in law went beyond the ones discussed above. The late-Ch'ing legal historian Hsüeh Yün-sheng 薛允升, in his detailed comparison of the T'ang and Ming codes, noted that "in instances where the Ming code was very discordant [with actual circumstances], it was permissible not to enforce it." In this instance he was referring to the provision in the code whereby the giver of a bribe to an official was punished more severely than the receiver. This provision, not found in pre-Ming law, was not actually enforced.<sup>72</sup> Similarly, Ray Huang has recently observed that the Ming code's restrictions on interest that could be charged on mortgage agreements were in practice not enforceable.<sup>73</sup>

Written law in Ming times was conceived as a body of specific concrete rules specifying sanctions for forbidden actions. At the same time, it was recognized that no statutory code could contain provisions against every form of behavior that should be considered punishable. In short, the codes outlined concrete ways for punishing crime but did not exhaust the potential number of criminal acts. Thus a code was inherently limited in terms of its efficacy.<sup>74</sup> But as already noted above, the Ming founder had placed a premium on the code and had ruled that it should forever form the basis of Ming law. He could not have anticipated the great social and economic changes that would take place over the more than two centuries of Ming rule. These changes created the need for adaptations in the system of justice, and to some extent the code itself had either to be overridden or simply ignored by later rulers. Later emperors themselves issued laws and decisions, and these often conflicted not only with each

<sup>71</sup> MS 93, p. 2300.

<sup>72</sup> Hsüeh Yün-sheng, *T'ang Ming li ho-pien* 唐明律合編 (rpt. Taipei: Shang-wu, 1977), vol. 2, p. 210.

<sup>73</sup> Huang, 1587, pp. 138, 144.

<sup>74</sup> For discussion of this issue in earlier Chinese law, see my "Living Law' in Sung and Yuan Jurisprudence," *HJAS* 41.1 (1981), pp. 165-217, esp. pp. 165-69.

other but also with the code. Thus the laws on the books outside the code became an area of disorder. It was only in 1500 that complaints from officials led to the production of a careful attempt to remedy this disorder by reducing the number of "precedents" and by eliminating the internal contradictions within the applicable laws.

The attempt of 1500 was simply a one-shot effort. It did not entail an institutionalized, on-going method for dealing with the root cause of disorder. The cause was the nearly unlimited power of emperors to make law by fiat. Although the Ming rulers never resolved this problem, they allowed criticism and study of it, a fact that probably allowed the succeeding Manchu rulers to succeed in this area. This they did, first by devoting considerable attention to revisions of their own Ch'ing code, and, second, by making revision of the subsidiary *li* a matter of high priority.<sup>75</sup>

#### LIST OF ABBREVIATIONS

- DMB      Goodrich and Fang, eds., *Dictionary of Ming Biography*  
LLHP     Huang, comp., *Ming-tai lü-li hui-pien* 明代律例彙編  
MS        *Ming-shih* 明史

<sup>75</sup> See Bodde and Morris, *Law in Imperial China*, pp. 66-67.