Qian Daqun (Translator & Annotator)
Tanglü yizhu
Jiangsu guji chubanshe, 1988, pp xx, 403 pp., paper, Renminbi 3.40

Cao Manzhi (Editor)
Tanglü shuyi yizhu
Jilin renminchubanshe, 1989, pp xiv, 1168 pp., hardcover, Renminbi 32.00

The "Tang code" is the oldest *corpus iuris* of imperial China whose text has been entirely preserved. It is also the classical embodiment of traditional Chinese law which has served as a model both for the similar codes of successive Chinese dynasties until 1911 and for codification in neighbouring Asian countries within the Chinese cultural orbit, such as Korea and Annam.

Following the pattern of earlier Chinese codes now wholly or partially lost, the Tang code is divided into twelve books comprising 502 sections. The twelve books cover, essentially, (1) general definitions, such as the "Five Punishments" or the "Ten Abominations" (particularly heinous crimes entailing Draconian sanctions), (2) rules on a multitude of restricted areas governing the modalities of entry into imperial palaces, crossing of boundaries, passage through town gates, checkpoints and the like, (3) dereliction of duty by government officials, (4) household affairs including marriage and property relations, (5) management of public property, (6) levying of corvée labour and troops, (7) (8) criminal offences against persons and property, (9) forgery and fraud, (10) miscellaneous provisions, (11) arrest and detention and (12) judicial procedure.

The 502 sections of the law proper, the so-called *lü*, are in most cases supplemented by an official commentary, the *zhu*, inserted in smaller type in the original block-printed editions of the Code. These *zhu* supplied statutory definitions of terms used in the *lü* and occasionally interpretations indicating, for example, whether a rule relating to a certain class of facts was to be extended to apply to other facts as described in the relevant *zhu*.

The *lü* and the *zhu* of the code now known as the *Tanglü shuyi* were adopted during the second year of the *Yonghui* reign (650-655 AD) of the third Tang Emperor, *Gaozong*, and were themselves closely modelled on the *lü* formulated by his predecessor. It was customary in imperial China for new dynasties to promulgate new codes, albeit frequently with few departures from the previous law, in order to symbolise the new political dispensation by an act of law-giving. Likewise, successive emperors of a dynasty also proclaimed "their" codes upon accession to the throne as a caparison of their sovereignty.

After the adoption of the new *lü*, the Gaozong Emperor summoned a body of legal scholars to compose an extensive sub-commentary on the *lü* and the respective *zhu*. This sub-commentary, the *shu*, was completed and officially appended as an integral part of each *lü* in 653 AD to form the composite codification known as the *lüshu* or, in Song times, as the *Yonghui lüshu* and, after the Yuan, as the *Tanglü shuyi*.

While the *zhu* contained terse definitions and shorthand interpretations of the *lü*, the *shu*, or *shuyi*, elaborated on finer points, often expounding the *ratio legis* as derived from the canonical texts of orthodox Chinese philosophy, occasionally also supplementing the exposition by questions and answers intended to elucidate difficult questions of law.

The *Tanglü shuyi* in its twelve books offers a multifacetted overview of Chinese government institutions, the practical working of the administration (as, e.g., in the rules on the imperial relay stations providing mounts for official couriers), family relations and the world of crime mirrored by the sanctions designed to repress it.

The Code shows a high level of meticulous and systematic draftsmanship and a number of its rules will appear enlightened to modern jurists raised on such tenets as *mens rea* and *in dubio mitius* (Although *lü* No. 50 on analogy and *lü* No. 450 making it an offence "to do what ought not to be done" somewhat dent the impression as regards the doctrine of *nullum crimen sine lege*). Thus, for instance, the attribution of responsibility based as a rule (departed from with implacable severity in the collective punishment of major crimes against the ruling dynasty) on the offender's knowledge of the relevant facts or the exemption from criminal liability of the young, the old and the seriously handicapped. Traditional respect of the aged is reflected in *lü* No. 31 whereby the privileges of aged offenders are extended to those who, although not qualifying for lenient treatment by virtue of their age at the time of the offence, nevertheless did so qualify later when the crime was discovered. Similarly, leniency was accorded to those who by their age counted as young offenders at the time of the offence but no longer at the time of its discovery. The Tang conflict rule, at *lü* No. 48, by which offences in China by a foreigner against another who was the subject of the same sovereign as the offender were to be dealt with according to the law of the parties' common country of citizenship is still to be found in contemporary German private international law regarding claims arising from torts.[1]

These aspects of ostensible modernity must, however, not be mistaken to suggest that the Tang Code, or any other traditional Chinese law, was a manifestation of law derived from "the consent of the governed". The law, even when serving as a self-imposed restraint of absolute imperial power by dint of its status as a founding element of the régime's own legitimacy not to be lightly disregarded, was nonetheless chiefly designed to order and expedite the processes of autocratic government under conditions of poor communications in a vast empire. It was a tool of domination and not the constitutional agreement of equals (not even of a class of "equals" apart from the general population, such as an aristocracy) who had adopted laws to govern their intercourse. Modern Chinese instrumentalisation of a legal system as an element of "modernisation" intriguingly evokes this traditional view of the law as a handmaiden of policy rather than a basic framework for the peaceful governance of the commenwealth.

1 Cf. Art. 38 of the Introductory Law of the Civil Code and the Decree of 07 December 1942 on certain questions regarding the proper law of the tort.

Translations of Chinese codes or their derivatives into Western languages have remained few[2], and Professor Wallace S. Johnson's translation of the *Tanglü shuyi*[3] is the only major study of this code. Two recently published Chinese works have now made marked and most welcome contributions to a better understanding of the Tang Code.

Professor Qian's *Tanglü yizhu* provides a rendering in modern Chinese language, *baihua*, of the *lü* and the *zhu*, with added notes on difficult terms in the original text. The *lü* are, in contrast to the original editions, consecutively numbered for easy reference, and the *zhu* within each *lü* are set in smaller type in the classical text, and enclosed in parentheses in the vernacular translation. The table of contents helpfully gives headings for each *lü* in a *baihua* version more readily indicative of the section's contents than the sometimes obscure originals. Unfortunately the notes do not indicate the sources whence their substance was derived so that the interested reader is left to trace the information himself.

The substantially larger *Tanglü shuyi yizhu* completed under the editorship of Professor Cao by a group of scholars from the East China Institute of Politics and Law in Shanghai gives the original text of the *lü* and their *zhu* plus the *shuyi* pertaining to each section. Each section is divided into passages comprising part of a *lü* with the relevant *zhu* followed by the text of the respective *shuyi*. This *shuyi*, or sub-commentary, is subsequently rendered in modern *baihua* and supplemented by notes (and these often do include reference to primary sources) on details of the original text of the *lü* and the *zhu*. The *shuyi* being as a rule much longer than the *lü* and *zhu* explained therein, the length of the book is also considerable. Appended is a tabulated presentation by the Yuan scholar Wang Yuanliang showing, inter alia, the evolution of the term "Five Punishments" (*wu xing*) from the Tang to the Yuan dynasty as well as numerous details on the application of certain sections of the Tang Code's twelve books.

The Tang Code of the *Yonghui* reign has shaped legal thought in East Asia as profoundly as Roman law informed the Western legal tradition. Comparative lawyers with an interest in Chinese legal history now have, through these two important works, much improved access to this great monument of ancient jurisprudence.

Wolfgang Kessler

2 *P.-L.-F. Philastre*, Le Code annamite, nouvelle traduction tom. I/II, Taipei, Ch'eng-wen, 1967.

3 *Wallace S. Johnson*, The T'ang Code, Princeton N.J., Princeton University Press, 1979.