

THE LEGALISTS AND THE LAWS OF CH'IN

A. F. P. HULSEWÉ

All handbooks tell us that the three or four centuries preceding the establishment of the unified empire in 221 B.C. are the time of the great flowering of Chinese philosophy. Those are the years when Confucius and his later followers Mencius and Hsün-tzu spread their ideas, when Mo Ti and his disciples preached their message of universal love, and when Chuang-tzu gave his lyrical interpretation of the Taoist worldview. The flourishing of these different schools of thought at this particular time is directly connected with the profound changes that had taken place in the political and social organization of China. The ancient situation with its multitude of small states had eventually been replaced by a division of the Chinese culture area into a small number of large states which came to fight each other bitterly for supremacy.

The changes that had taken place were not only political and geographical; the new conditions also implied profound social changes. Perhaps the most important of these was the emergence of a new type of rulers, who were intent on consolidating and extending their authority by breaking the power of the old local aristocracy. It is in this political configuration that one has to seek the reason for the rather sudden emergence of a number of men who proposed ways and means to cope with the new situation. It should be stressed that these thinkers were hardly interested in problems which to us seem to be typical philosophical concerns, like the theory of knowledge, or the essence of being, or logic, or metaphysics. No, these men were concerned first and foremost with methods—or the best method—to organize society, to establish a new social order. Over against the Confucians with their conservative plea for a return to the methods of the saintly kings of antiquity, the gospel of universal love preached by Mo Ti, and the mystical quietism of the Taoists, another school of thought arose. This was the *fa chia*, the School of Law, or the Legalists, as they were called by bibliographers a few centuries later.¹

¹ Ssu-ma Ch'ien, *Shih-chi* 130.12 (Takigawa ed.); cf. E. Chavannes, *Les mémoires historiques de Sse-ma Ts'ien* (Paris, 1895), vol. I, Introduction, p. xviii.

The authors of the School of Law were political thinkers, whose aim it was to ensure the absolute supremacy of the ruler. In order to attain this supremacy, the ruler was to make his armies strong and his state rich, so as to enable him to overcome his neighbours and to gain the overlordship over the whole of China. To make this possible, the people were to devote all their energies to agriculture and, if the occasion demanded it, to warfare. To enforce his policies, the ruler was to manipulate two "handles", *ping* 柄, namely rewards and punishments. Rewards were to be given only rarely, and then only for prowess in war. Punishments, on the contrary, were to be both frequent and severe; even the slightest fault was to be drastically punished. But both rewards and punishments were to be absolutely reliable and certain: *hsin* 信 and *pi* 必. It was this reliance on the law, *fa* 法, which made later authors call these thinkers *fa chia* 法家, the School of Law; in actual fact these men were statesmen, "Realpolitiker", political thinkers. But though they supported their contentions with numerous historical examples, they never quote articles from the law code.

Here it should be clearly noted that through the ages "law" to the Chinese always meant public law; neither ancient China nor traditional China knew an officially established code of private law, whereas private law in our Western society with its Roman heritage occupies such an important place. Both family law with all its regulations concerning marriage and divorce or inheritance, as well as commercial law were private concerns in China, left respectively to the family and to the guilds. Chinese law was preeminently public law; penal law on the one hand and administrative rules on the other. Hence, when the Legalists talk about law, they mean essentially penal law.

Also in another important aspect Chinese law differed from Western law in that it completely ignored rights; it only knew duties: duties towards the state and duties towards one's elders and betters. The only apparent exception is to be found in the more lenient treatment which the penal law accorded to persons who possessed a certain status, either in public office or within the family; this favoured treatment originates from the sense of hierarchy which pervades all Chinese ideas of society.

To return to the Legalist philosophers, it may at first sight seem surprising that these thinkers hardly ever quote any laws. But this omission becomes less surprising when it is realized that the

Legalists were not concerned with the contents of the laws but with their use as a political tool. Their silence shows that they took the laws as a given entity. Their aim was not to create laws; rather they discoursed on their use as instruments to ensure the realization of perfect government.

But what do we know about the contents of the laws in existence at the time of the Legalists, say at the time of one of the earliest Legalists, Shang Yang, in the middle of the 4th century before the Christian era? The answer to this question is very disappointing: we know next to nothing. For, although other ancient texts mention law codes, these texts again tell us nothing about the contents of these codes.² Still, it is important that these ancient texts tell us at least that such codes existed.

In his masterly study on the formation of Legalist ideas Professor Vandermeersch rightly stresses that there existed an ancient tradition of codification in many of the states that formed "la Chine antique"; the earliest date he mentions is the 7th century B.C.³ There are references to early law codes in the *Tso chuan*⁴ as well as in other texts;⁵ the *Chou li*, for instance, refers to a code which covered 2500 crimes.⁶ The oldest text which mentions penal prescriptions is probably the chapter "The punishments of Lü", *Lü hsing* 呂刑 in the *Shu ching*, the Book of Documents; to this chapter modern scholars attribute a surprisingly early date, namely between the 8th and the 10th century B.C.⁷ This chapter not only mentions 3000 punishable

² The 70th chapter of the *Mo-tzu* mentions penal rules, but this chapter is rightly suspected of being late, i.a. in view of its terminology.

³ Léon Vandermeersch, *La formation du légisme; recherche sur la constitution d'une philosophie politique dans la Chine ancienne*. — Publication de l'Ecole française d'Extrême Orient, vol. LVI (Paris, 1965), p. 17.

⁴ See my *Remnants of Han Law* (Leiden, Brill, 1955; further referred to as *RHL*), p. 366, note 123.

⁵ *RHL*, p. 366, note 128.

⁶ E. Biot, *Le Tcheou-li* (Paris, 1849), vol. II, p. 354.

⁷ Ch'en Meng-chia, *Shang-shu t'ung-lun*, 陳夢家, 尚書通論 (Shanghai, Commercial Press, 1957), p. 112, dates the chapter *Lü hsing* at the end of the Western Chou, hence around 800 B.C. The 8th century is indicated by Chang Hsi-t'ang, *Shang-shu yin-lun*, 張西堂, 尚書引論 (Sian, Jen-min ch'u-p'an-she, 1958), p. 198. Ch'ü Wan-li, *Shang-shu shih-i*, 屈萬里, 尚書釋義 (Taipei, Commercial Press, 1956), p. 136, prefers the traditional dating in the reign of the Chou king Mu, in the 10th century B.C. A later date is proposed by Kuo Mo-jo, *Shih p'i-p'an shu*, 郭沫若, 十批判書 (rev. ed. of 1950, Shanghai, Ch'ün-i Publishers 群益), p. 3;

crimes, but it also refers to written texts that should be consulted.⁸ All these informations necessarily lead to the conclusion that it appears certain that the Chinese states possessed written penal laws at least since the 8th century B.C. and perhaps even earlier; what the thinkers of the School of Law did several centuries later was to propagate the strict application of these laws.

Our practically complete ignorance of the Chinese laws of antiquity has recently been improved by an unexpected archaeological discovery, but before entering into a description of this exciting find, something should be said about the writings of the Legalists.

It is a remarkable fact that, in spite of the disrepute into which these thinkers had fallen in a society dominated by the Confucianist ideology, some of their works were preserved and these works came to receive the same loving care which Chinese scholarship has always lavished on any testimony of antiquity. In this way, many scholars, especially of the Ch'ing dynasty, have edited and annotated these texts.

A new phase began when at the end of the 19th and the beginning of the 20th century, with the growing demand for law reform, Chinese scholars turned their attention to the laws in use in ancient China, especially to the laws of the Han period.⁹ Other scholars took up the study of early thinkers whose ideas—as distinct from their texts—had been rather neglected in the past. To these neglected thinkers also belonged the political philosophers from the School of Law. This renewed interest evidently stimulated also Western scholars, with the result that already in 1912 the Russian sinologist Ivanov published his translation of the work of the foremost legalist thinker Han Fei-tzu.¹⁰ After the first world war, others followed suit. In 1926 Jean Escarra published a translation of that part of Liang Ch'i-ch'ao's history of Chinese political ideas

he suggests that this text was composed in the state of Lü during the Ch'un-ch'iu period, but as Lü appears to have been destroyed as early as the 7th century, this leaves the possibility, that the *Lü hsing* was written in the 8th century.

⁸ See Bernhard Karlgren, "The Book of Documents", in *Bulletin of the Museum of Far Eastern Antiquities* 22 (Stockholm, 1950), p. 77, paragraph 18, and p. 78, paragraph 20.

⁹ See *RHL*, p. 19 ff.

¹⁰ A. Ivanov, *Materiali po kitaiskoi filosofii* (St. Petersburg, 1912); see also the extensive critical review of this work by Paul Pelliot in *Journal asiatique*, septembre-octobre 1913, XIe série, tome III, pp. 401-423.

which dealt with the School of Law¹¹ and in the following year Henri Maspero devoted several pages to these thinkers in his famous *La Chine antique*,¹² whereas Alfred Forke wrote a sizable chapter on their subject in his history of ancient Chinese philosophy.¹³ In 1928 a notable event was the publication of an annotated translation of the work attributed to the oldest Legalist, Kung-sun Yang or Shang Yang, by J. J. L. Duyvendak, accompanied by an extensive and highly valuable introduction.¹⁴

The interest in the School of Law has not abated, as is witnessed by the publication of a German version of the Book of Lord Shang by Kroker¹⁵ and above all by the study on the formation of the School of Law by Professor Vandermeersch.¹⁶ Other studies on this subject are the mediocre translation of the *Han Fei-tzu* by W. K. Liao¹⁷ and the work which Professor Creel has recently devoted to Shen Pu-hai;¹⁸ to these studies should be added the work by Professor Rickett on the *Kuan-tzu*¹⁹ who is often ranked with the Legalists, and the pages devoted to the School of Law by Professor Hsiao Kung-ch'üan.²⁰

¹¹ *La conception de la loi et les théories des Légistes à la veille des Ts'in*; extrait de l'*Histoire des théories politiques à la veille des Ts'in* (Peking, China Booksellers, 1926). — Liang Ch'i-ch'ao, *Hsien-Ch'in cheng-chih ssu-hsiang shih* 梁啟超，先秦政治思想史 (Shanghai, Commercial Press, 1923).

¹² *La Chine antique* (Paris, de Boccard, 1927), pp. 518-528.

¹³ *Geschichte der alten chinesischen Philosophie* (Hamburg, Friederichsen, 1927), pp. 421-482.

¹⁴ *The Book of Lord Shang, a classic of the Chinese School of Law* (London, Probsthain, 1928).

¹⁵ Eduard Josef Kroker, *Der Gedanke der Macht im Shang-kün-shu. Betrachtungen eines alten chinesischen Philosophen*. St.-Gabrieler Studien XII. Band (Wien-Mödling, St.-Gabriel Verlag, no date).

¹⁶ see Vandermeersch, note 3, above.

¹⁷ W. K. Liao, *The complete works of Han Fei Tzu, a classic of Chinese legalism*, 2 vols. (London, Probsthain, 1939 and 1959). See also Burton Watson, *Han Fei Tzu, Basic Writings* (New York/London, Columbia University Press, 1964).

¹⁸ Herrlee G. Creel, *Shen Pu-hai, a Chinese political philosopher of the fourth century B.C.* (Chicago and London, The University of Chicago Press, 1974).

¹⁹ W. A. Rickett, *Kuan-tzu, a repository of early Chinese thought* (Hongkong, Hongkong University Press, 1965).

²⁰ Hsiao Kung-chuan, *A history of Chinese political thought*, vol. I, *From the beginnings to the sixth century A.D.*, translated by (Professor) F. W. Mote (Princeton, N.J., Princeton University Press, 1979), pp. 319-426.

On a previous page, mention was made of an unexpected archaeological discovery, but before describing this, a few general remarks should be made.

During the last thirty years Chinese archaeology has developed enormously; this was—and remains—closely connected with the manifold activities where earth has to be shifted, such as construction work, road building, the extension of the railway system, and the digging of canals, drainage channels and wells, which often led to all kinds of discoveries. This development is well known in the West, for newspapers and illustrated journals, as well as the television continue to acquaint the public with some of the most important discoveries. Moreover, during the last seven years several travelling exhibitions of the most striking finds, organized by the government of the Chinese People's Republic, have been held in a number of cities in Europe, the United States and Japan.

However, in the West far less publicity has been given to discoveries that are less spectacular and that have no artistic connotations, and consequently far less appeal to the general public, but which are nonetheless of capital importance. These discoveries are the discoveries of written texts.

Up to about 1965, finds of written texts were extremely rare. The most notable discoveries had been on the one hand the wooden documents of the Han military administration, found near the watchtowers of the Chinese defence lines on the edge of the Gobi and datable in the 1st century before and the 1st century after the beginning of the Christian era.²¹ On the other hand there was the epochmaking find of the monastery library near Tun-huang, whose rich contents covered six centuries, up to about the year 1000.²² But apart from these valuable discoveries there had been nothing.

But in the nineteen sixties a dramatic change took place with the ever more frequent discovery of texts in graves, which before that time had been extremely rare.²³ The finding of texts on bamboo or wooden strips and on silk, mainly dating from the Han period, as well as of texts on paper of slightly later times occurs with

²¹ Michael Loewe, *Records of Han administration*, 2 vols. (Cambridge, University Press, 1967); see vol. I, p. 4.

²² See Lionel Giles, *Six centuries at Tun-huang* (London, The China Society, 1944).

²³ See my "Texts in tombs", in *Asiatische Studien/Etudes asiatiques* 18-19 (Bern 1965), pp. 78-89.

increasing frequency, and hardly a month goes by without the archaeological journals reporting such discoveries. In 1977 Dr. Loewe published a detailed survey of manuscript finds practically up to the date of publication.²⁴ The texts unearthed include both simple lists of funerary gifts, and long texts, consisting of thousands of characters. They include known texts, like the *Tao-te ching*,²⁵ and works known to have existed but which had been lost long since, as well as completely unknown writings. Beside the texts found in tombs, renewed and systematic excavations in the ancient defence lines in the far North-West have brought to light no less than nearly 20.000 mostly well preserved wooden strips, including quite a number of complete multi-strip documents.²⁶

Now, in December 1975 the digging of a drainage canal in central Hupei, some fifty miles northwest of Hankow, led to the discovery of a dozen tombs, and it was in the waterlogged coffin of one of these tombs that no less than a thousand inscribed bamboo strips were found. The unexpected discovery alluded to earlier was the discovery that more than six hundred of these strips contained laws and administrative regulations. Moreover, it soon proved possible to demonstrate beyond doubt that these texts were of the 3rd century B.C.²⁷ Specifically, they proved to be texts of the Ch'in

²⁴ Michael A. N. Loewe, "Manuscripts found recently in China; a preliminary survey", in *T'oung Pao* 63 (1977), pp. 99-136. See also Ōba Osamu, "Chūkoku shutsudo kandoku kenkyū bunken mokuroku", 大庭脩, 中國出土簡牘研究文獻目錄, in *Kansai Daigaku Bungaku bu ronshū* 28 (1979), pp. 51-86.

²⁵ See Robert G. Henricks, "Examining the Ma-wang-tui silk texts of the *Lao-tzu*", in *T'oung Pao* 65 (1979), pp. 166-199, and R. Homan, "Die Laozi-Diskussion in der Volksrepublik China nach den Funden von Ma-Wang-Dui", in *Asiatische Studien/Etudes asiatiques* XXX (1976), pp. 79-113.

²⁶ See *Wenwu* 1978/1, pp. 1-25. I have translated one of these multi-strip documents in "A lawsuit of A.D. 28", included in *Studia sino-mongolica, Festschrift für Herbert Franke*, Münchener Ostasiatische Studien, Band 25 (Wiesbaden, Steiner, 1979), pp. 23-34.

²⁷ See my survey article "The Ch'in texts discovered in Hupei in 1975", in *T'oung Pao* 64 (1978), pp. 175-217 and 338. The texts have been published in modern simplified characters in 1) *Wenwu* 1976/6, 7 and 8; 2) a folio edition, including also the photographs of the bamboo strips and some explanatory notes, entitled *Shui-hu-ti Ch'in-mu chu-chien* 睡虎地秦墓竹簡 (Peking, Wen-wu ch'u-pan-she, 1977); 3) a small in-8° volume with the same title and publishers as 2), published in 1978, without photographs, but with much richer notes and a complete translation into modern Chinese. A fourth edition is to be published soon. — In the following pages, references to these texts will be to edition 3, the title being abbreviated to *SCCC*.

state, all dating from before the unification of China by Ch'in Shih Huang-ti. This means that they are laws and regulations of the homeland of the Legalists; some authors of recent articles were therefore quite ready to identify these rules with the laws supposedly made by Shang Yang!

The Ch'in strips present us with nearly two hundred articles from nearly thirty statutes, *lü* 律, mentioned by title, and also with quite a number of isolated phrases and expressions found in other laws. The large number of statutes may come as a surprise, because some traditional sources state that in the 4th century B.C. Shang Yang had compiled a code consisting of only six statutes which he was supposed to have taken over from a Canon of Laws, *Fa ching* 法經, written by Li K'uei 李悝. The much larger number of statutes found now, as well as the number of Han statutes already known,²⁸ show again, that the story about Li K'uei and his Canon of Laws must be a late legend, perhaps as late as the 6th century of our era.²⁹

However, the newly discovered Ch'in strips are far from being the complete Ch'in code. These texts are clearly a selection from a much larger body of laws—a selection made for the immediate, day to day use of a subordinate official in the local administration. This is easily observed from the large number of statutory rules concerning labour performed by both free labour conscripts³⁰ and convicts condemned to hard labour, and from the many rules concerning the control of granaries and the distribution of rations. On the other hand, although at first sight the penal material is as voluminous as the administrative statutes, a closer look shows that it does not contain the text of the penal laws, but only a considerable number of examples as well as explanations of isolated terms and phrases. Many of the paragraphs are cast in the form of questions and answers and evidently form a guide for subordinate officials who had to do the preparatory work on cases, whereas the final sentence was pronounced by the Prefect, who had been appointed by the central government and whose duties included those of the regional

²⁸ See *RHL*, p. 32 ff.

²⁹ See Timoteus Pokora, "The Canon of Laws by Li K'uei—a double falsification?", in *Archiv Orientální* 27 (1959), pp. 96-121, and cf. *RHL*, pp. 28-30.

³⁰ Cf. my contribution "Some remarks on statute labour during the Ch'in and Han period" in the forthcoming volume in honour of Professor L. Lanciotti.

judge.³¹ Still, in spite of his relatively subordinate position the man buried in this tomb must have been a person of consequence, to judge from the expensive construction of this deep shaft tomb with its subterranean tomb chamber and from the quality of the funerary gifts.

The reason why these legal texts were deposited in the coffin will have been that they were this man's cherished personal property; similar cases are mentioned in literature, showing that persons occasionally wished to have certain writings buried with them.³² It is, of course, impossible to determine who it was that copied these texts; it may have been the man himself, in view of one of the rules which prescribes that officials had to copy out the regulations pertaining to their office.³³ It has also been suggested that the questions on penal matters had been asked by this man; this remains a possibility, but it is also possible that these questions and answers were explanatory material,³⁴ provided as a guide for their daily work. Less uncertainty surrounds another part of the penal material which consists of a number of very interesting and lively reports on criminal investigations; these models—for that is their title, *shih* 式—were certainly provided by some government agency.

Information concerning the occupant of the tomb is provided by another piece of writing found in the coffin, for this contained more than the legal texts alone, namely a chronicle, some rather homely essays which admonish all officials to be diligent in the performance of their duties,³⁵ and some still unpublished mantic texts with indications what to do and what to avoid on certain days.³⁶

It is the so-called Chronicle which is important for our present purpose. This is a chronological table, covering the years between 306 and 217 B.C. Its importance lies in the fact that it not only records the most important historical events (mainly military),³⁷

³¹ See *RHL*, p. 81.

³² Cf. "Texts in tombs" (see note 23 above), p. 81.

³³ A rule (*SCCC*, p. 104) stipulates that the statutes needed for an office had to be copied out by the prefecture for the use of the men appointed by the central government working there.

³⁴ Perhaps "exegesis of the statutes", *lü shuo* 律說; cf. *RHL*, p. 55.

³⁵ See *TP* 64, pp. 181-185.

³⁶ See *TP* 64, p. 181.

³⁷ The historical information in the Chronicle has been compared with the relevant passages in the *Shih-chi* by—as far as I know—two authors: Huang Sheng-

but that it also provides information concerning a few private individuals, especially about a man named Hsi 喜. Now it seems very likely that it is this man Hsi who lies buried here,³⁸ and if this identification is accepted, a perfect explanation is available for the presence of both the administrative statutes and the judicial texts in his coffin.

According to the Chronicle, Hsi, born in 262 B.C., became a scribe or clerk in 244 B.C., rising to the status of Prefectural Clerk, *ling shih* 令史, in 241 B.C. After having served in his home prefecture of An-lu, he continued his service as Prefectural Clerk in Yen Prefecture³⁹ in 240 B.C. For the year 235 B.C. the Chronicle notes an event that is of capital importance for explaining the presence of the judicial texts, for it records that in this year Hsi "tried criminal suits in Yen"; as the Chronicle does not mention his nomination to a new post, it will have to be assumed that Hsi performed his judicial tasks in his quality of Prefectural Clerk.⁴⁰

Both the administrative statutes and the judicial texts are a mine of information, allowing us to observe many aspects of daily life in ancient China about which our traditional sources remain silent. The following lines indicate some of the most important points; they are only a brief survey.⁴¹

chang, "Yün-meng Ch'in-chien 'Pien nien chi' ch'u-pu yen-chiu", 黃盛璋, 雲夢秦簡「編年記」初步研究, in *Kaogu xuebao* 1977/1, pp. 1-21, and by Kao Min 高敏 in a chapter of his *Yün-meng Ch'in-chien ch'u-t'an* 雲夢秦簡初探 (Honnan Jen-min ch'u-pan-she, 1979), pp. 122-147.

³⁸ See TP 64, p. 177.

³⁹ Yen 鄆, identified with modern I-ch'eng 宜城, is situated more than a hundred miles to the northwest of Hsi's place of burial, which was also the scene of his early career, viz. An-lu 安陸 (SCCC, p. 6).

⁴⁰ The Chronicle simply reads *chih yü Yen* 治獄鄆; that *chih yü* is not a title is clear from the use of this term in the "models", SCCC, p. 245. The editors' suggestion (SCCC, p. 12, note 50) that Hsi may have been appointed *yü yüan* 獄掾, "Bureau Chief for criminal suits" (mentioned in *Shih-chi* 7.3; *Mémoires historiques* II, p. 248; Burton Watson, *Records of the Grand Historian of China* (New York and London, Columbia University Press, 1961), vol. I, p. 37; *Han shu pu-chu* (Ch'ang-sha, 1900) 31.9a, and SC 54.2; HSPC 39.7a) is unwarranted, for the Chronicle is silent on this point (Chavannes and Watson both translate *yü yüan* as "prison warden", which seems doubtful). The Ch'in organization of the Prefect's office is still unknown; it is quite possible that it was similar to that in use during the Han period, briefly described in RHL, p. 88, and in considerable detail in Yen Keng-wang, *Ch'in Han ti-fang cheng-chih chih-tu*, 嚴耕望, 秦漢地方行政制度 (Taipei, Academia Sinica, 1961), vol. I, pp. 216-244.

⁴¹ I hope to be able to publish a complete, annotated translation of the administrative and legal material before long.

Starting with the judicial material, one is struck by the care bestowed on the investigation of criminal suits. It began with detective work, on which detailed reports⁴² were required, down to the last detail. This is shown by a report on the corpse of a man found murdered on the highway, describing the exact location of the body, the fatal wounds, the man's clothes, and even his shoes found at some distance from the body. Another report contains the detailed description of the body of a man found hanging on a roof beam; here the essential point was to discover whether the man had committed suicide or whether he had been murdered and then hung up so as to make his death appear as suicide. A final illustration of such a criminal investigation is the report on a robbery, where the thieves had dug a hole through the wall of beaten earth. The report presents numerous measurements on the size of the hole and the location of various objects; it even gives details on the old shoes worn by the thieves, based on a reading of the footprints!⁴³

Once a suspect had been caught, he was interrogated. In one of the texts the investigation officials are urged, not to lose their patience when the suspect continued to prevaricate and when his statements were contradictory, showing that he was obviously lying. In that case, the officials are warned not to be too quick in applying torture in the form of beating, in order to obtain a confession; they should only do so in those cases, where the statutes permitted this.⁴⁴ A confession wrung from a subject by means of torture was considered inferior.⁴⁵ This warning is supported by an official complaint made some two centuries later that, when prisoners could no longer bear the pain, they would produce false confessions; as the author put it: "once the stick is applied, (the prosecutor) can obtain anything".⁴⁶ For the rest of the trial and the

⁴² *Yüan shu* 爰書. Although in many cases *yüan shu* has its original meaning of "transposed writing", i.e. the transposition of an oral statement into writing (cf. the French "procès verbal"), on many other occasions a *yüan shu* is just a report by a subordinate submitted to his superior. An actual record of a hearing called *yüan shu* was published in *Wenwu* 1978/1, pp. 1-25 and translated in "A lawsuit of A.D. 28" (see above, note 26).

⁴³ SCCC, pp. 264, 267, 270.

⁴⁴ This probably means that children or aged persons were not to be beaten; cf. RHL, p. 298 ff.

⁴⁵ SCCC, pp. 245-246.

⁴⁶ See RHL, p. 425; these sentences are found in a memorial submitted to the throne in 74 B.C. (HSPC 51.32a).

verdict, the texts under discussion do not provide more details,⁴⁷ except the rule that after the termination of the trial the accused could ask for another enquiry,⁴⁸ a practice also known during the Han period.⁴⁹ In this context it deserves notice, that already at this early date there existed a difference between the written code and the precedents created by the courts,⁵⁰ either by providing details that were lacking in the code,⁵¹ or by modifying the prescriptions of the code and applying heavier punishments than those demanded originally.⁵²

Another aspect of the penal law deserves to be mentioned. In the 4th century B.C. Shang Yang had propagated what seems to have been a new idea, namely, that in criminal suits no distinction should be made between high and low.⁵³ However, whereas Shang Yang appears to have advocated that the law should be applied impartially to all offenders, the newly discovered texts show, that position in the hierarchy continued to count, with the result that superiors were often punished more lightly than their subordinates and in particular that the possessors of aristocratic rank suffered less than ordinary commoners and slaves.⁵⁴ The principle remains that all offenders were to be punished, but nevertheless a certain gradation is introduced.

Still in the sphere of penal law, a different point of interest in the new texts concerns manslaughter. The texts show, that already in the 3rd century B.C.—and perhaps even earlier—a clear distinction was made between wounding or killing a person in a fight, resulting in involuntary, unpremeditated manslaughter, and killing

⁴⁷ For the Han period, when the conduct of trials would seem to have been largely, if not wholly, identical with Ch'in practice—the Han had, after all, adopted the whole of the Ch'in legislation—see *RHL*, p. 80.

⁴⁸ *SCCC*, p. 200.

⁴⁹ See *RHL*, pp. 79-80.

⁵⁰ *T'ing hsing shih* 廷行事.

⁵¹ See *SCCC*, pp. 108, 214-216.

⁵² *SCCC*, pp. 167, 176, 179-180.

⁵³ Duyvendak, *The Book of Lord Shang*, p. 273 ff.

⁵⁴ See on this point Huang Sheng-chang, "Yün-meng Ch'in-chien pien-cheng", 黃盛璋, 雲夢秦簡辨正, in *Kaogu xuebao* 1979/1, pp. 6-7, and in particular Hori Tsuyoshi, "Shin Kan keimei kô", 堀毅, 秦漢刑名考, in *Waseda Daigaku, Daigaku-in, Bungaku kenkyûka kiyô*, Special Issue 4 (March 1978), pp. 113-131, esp. pp. 120-122, as well as Kao Min (see above, note 37), pp. 244-247.

somebody intentionally, committing murder with malice aforethought.⁵⁵ The two relevant terms occur frequently in Han texts, where a third term is also found: to hurt or kill somebody when playing or frolicking,⁵⁶ but this word does not occur in the new strips. What we do find, however, are detailed rules for punishing people who in an unpremeditated fight attacked others with a needle or an awl, which was punished by a heavy fine,⁵⁷ or who did so with a weapon which they first had to draw or to unsheathe, like a dagger or a sword or a halberd, for which they incurred a sentence of a long term of forced labour.⁵⁸ Other rules indicate the punishments for pulling out the adversary's hair, or tearing off an ear, or biting.⁵⁹

The penal texts in the strips pay special attention to the killing of one's own children, for this was prohibited. In case a father wished to kill his unfilial son, he was not allowed to do so, but he had to ask the authorities to execute him;⁶⁰ in the same way, he could request the officials to have his son banished for life, going in chains, like an ordinary criminal.⁶¹ From other articles it becomes clear that a father could also kill his children, or mutilate them, provided he had first obtained official permission to do so; unauthorized killing, however, was punished by being tattooed and serving a long term as a hard labour convict.⁶² This prohibition was evidently directed especially against infanticide, for we read that whereas killing a deformed newborn child was not considered a crime, the murder of a healthy baby because the father had already too many children was heavily punished;⁶³ this rule applied both to free persons and to slaves.⁶⁴

⁵⁵ *SCCC*, pp. 184, 188; *tou shang sha* 鬪傷殺, and *tsei* 賊 *shang sha*; see the discussion in *RHL*, pp. 253-257.

⁵⁶ *Hsi* 戲; see *RHL*, p. 254.

⁵⁷ *SCCC*, p. 188.

⁵⁸ *SCCC*, p. 187.

⁵⁹ *SCCC*, pp. 186, 188.

⁶⁰ *SCCC*, p. 263; cf. p. 195.

⁶¹ *SCCC*, p. 261.

⁶² *SCCC*, pp. 181-182. The provision that a denunciation for such unauthorized killing was not to be accepted must have been restricted to the members of the family or the household (*SCCC*, p. 195), for otherwise the prohibition would have been meaningless.

⁶³ *SCCC*, p. 181.

⁶⁴ *SCCC*, p. 183.

Punishment for theft or robbery was determined in the first place by the money value of the stolen goods, and secondly by the fact, whether the theft had been committed by one person or by a band.⁶⁵ We therefore find the example of two men who had independently decided to rob the same place. If each of them had continued to act on his own, he was to be punished according to the value of what he had stolen personally, but if they had cooperated, they were both condemned for the total value of the stolen goods.⁶⁶

A good deal of attention is paid to receiving stolen goods. Here, as well as elsewhere, no general principles are enunciated, but the texts show plainly that a person to whom stolen goods had been entrusted was only found guilty if it could be shown, that he had been aware of the fact that the goods placed in his care had been stolen. Furthermore, he was punished according to the value of the goods entrusted to him and not for the total value of the thief's actual booty.⁶⁷ However, all persons who had known about the robbery and who had joined the thief in wining and dining on the proceeds were subject to the same punishment as the thief.⁶⁸

The punishments applied in the state of Ch'in appear on the whole to have been the same as those in use during the Han period. The death penalty was carried out by beheading,⁶⁹ whereas criminal lepers were drowned; the same passage which mentions this also refers to burying alive, but the texts do not contain any example of this.⁷⁰ The mutilating punishments included tattooing, cutting off the nose and cutting off a foot, similar to Han practice,⁷¹ but castration is only mentioned once,⁷² whereas this punishment was frequently used in Han times,⁷³ the most famous victim being the historian Ssu-ma Ch'ien. A corporal punishment was the bastinado, which is mentioned several times.⁷⁴

⁶⁵ *SCCC*, p. 150. ⁶⁶ *SCCC*, p. 156. ⁶⁷ *SCCC*, p. 157. ⁶⁸ *SCCC*, p. 158.

⁶⁹ The strips once mention (*SCCC*, p. 180) the punishment of *che* 磔. As explained in *RHL*, pp. 110-111, this term seems to mean that the executed criminal's corpse was publicly exposed; it does not seem to have been that the culprit was torn apart by chariots.

⁷⁰ *SCCC*, p. 203.

⁷¹ See *RHL*, p. 124 ff.; amputation of the feet was abolished in 167 B.C.

⁷² See *SCCC*, p. 200.

⁷³ *RHL*, p. 127.

⁷⁴ I.a. *SCCC*, pp. 30 ff. and 137. That during the Han period the bastinado was not only used as a subsidiary punishment in cases of condemnation to hard labour

Of great frequency was the condemnation to hard labour; with one exception⁷⁵ the curious names for the different lengths of this punishment were the same as during the Han period,⁷⁶ although the exact lengths are still unknown.⁷⁷ The work of the hard labour convicts consisted in the main in construction work, especially the building of walls of pounded earth; it should not be forgotten, that such pisé walls not only served as defence works or as enclosures,⁷⁸ but that the walls of large buildings and ordinary houses were of the same material, as is shown by the case mentioned above (p. 11), where thieves dug a hole through such an earthen wall.⁷⁹

Another punishment that is mentioned quite often is banishment, *ch'ien* 遷; exile to Shu 蜀, i.e. present-day Ssu-ch'uan, is well known from literature. It seems that, similar to Han practice, banishment was not necessarily accompanied by further punishments.⁸⁰

A remarkable phenomenon is the great frequency of redemption, *shu* 贖, not in the form that a man already condemned was permitted to redeem his punishment,⁸¹ but by sentencing persons to the redemption of a certain punishment, even including the death penalty!⁸² This curious form of redemption is therefore equivalent to a fine; the amounts, however, are unknown. Another peculiar feature of the Ch'in penal system was that persons who were unable to pay the required sum were allowed to refund it by performing labour together with the ordinary convicts. Their "earnings" amounted to eight cash per day, or, if they received rations, six

(see *RHL*, p. 128), but also as an independent punishment, is now definitely proved by an Edsin-gol document; see *Wenwu* 1979/1, pp. 70-71.

⁷⁵ *Hou* 侯; *SCCC*, pp. 107, 129, 130, 202; here a *hou* can hardly be a military look-out as suggested by the editors.

⁷⁶ See *RHL*, pp. 128-132.

⁷⁷ See *TP* 64, pp. 211-212.

⁷⁸ Cf. *SCCC*, p. 76. Also the Long Walls as well as other defence works were constructed with the same material.

⁷⁹ The essential structure of any traditional building in the Far East is formed by wooden pillars and cross beams, supporting the wooden frame of the roof; the walls are merely a filling between the pillars and in principle they have no supporting function.

⁸⁰ See *RHL*, p. 132 ff.

⁸¹ Cf. *RHL*, p. 205 ff.

⁸² See e.g. *SCCC*, pp. 84 (death), 231 (mutilation), 200 (castration), 143, 178, 179, 231 (hard labour).

cash.⁸³ All persons who worked off their debts to the government had a privilege which distinguished them sharply from ordinary convicts in that twice a year they were permitted to go home and work their fields during twenty days.⁸⁴

Beside the redemption fees there also existed fines, *tsu* 費, but in the majority of cases mentioned in the strips it seems that this was a punishment reserved for officials. The amount of the fine was not expressed in cash but in arms, namely suits of armour, shields, and laces used to string the armour together. Unfortunately, the value of these objects is nowhere indicated and consequently we ignore the amounts.⁸⁵ Sometimes the word "fine", *tsu*, was used for conscript service imposed by way of punishment; persons were "fined" with one or two years' military service or thirty days' statute labour.⁸⁶ The difference between such "fines" and ordinary hard labour may have been that they did not include the bastinado and the obligation to wear red felons' clothes or even chains.⁸⁷

These are a few points which strike the philologist who has not had an education in law; trained jurists will undoubtedly find many more points of interest.

When turning now to the administrative statutes, one observes that the bulk of the articles is directly or indirectly concerned with two main subjects: labour and food; the food being destined to be distributed as rations to the labourers. This is the chief indication that the occupant of the tomb, and therefore probably the man Hsi, held a subordinate position, where he had to supervise the labour force and the issue of different types of rations.

The editors of these texts have rightly placed an article at the very beginning of the collection,⁸⁸ namely an article from the Statute on

⁸³ *SCCC*, p. 84.

⁸⁴ *SCCC*, p. 88.

⁸⁵ See *TP* 64, p. 208 ff.

⁸⁶ *SCCC*, pp. 133, 134, 154; see also *Kaogu* 1976/1, pp. 24-27, and 1977/1, pp. 42-50, and *Wenwu* 1977/1, pp. 40-42, for such a fine, imposed for abuses in weighing coins, also discussed in my "Weights and measures in Ch'in law", in D. Eikemeier ed., *State and Law in East Asia* (Festschrift Professor Karl Büniger) (Wiesbaden, Harrasowitz, 1981), pp. 20-29.

⁸⁷ Cf. *SCCC*, p. 84.

⁸⁸ As the photograph in *Renmin huabao* 人民畫報 1976/7, p. 43 (poorly reproduced in *SCCC*, pp. 1 and 2) shows, the strips were in considerable confusion

Agriculture.⁸⁹ This article stipulates that the local authorities had to keep their superiors informed, by runner or by post horse, on the state of the grain crop. They had to report on the exact area of cultivated and fallow land and on the acreage affected by seasonable rain as well as by rainstorms, inundations, drought or insect plagues. Agriculture was the mainstay of the country and the crop was of immediate local importance to an official responsible for feeding a host of labourers.

Of equal importance was the storage of the harvest. The grain had to be stored in heaps of 10,000 bushels, to which the seals of the officials in charge had to be affixed.⁹⁰ The personnel in control of a granary was punished if there were leaks letting in the rain, so that the grain was spoilt,⁹¹ or if the doors could not be tightly closed so that the grain escaped,⁹² or if there were three or more rat holes—with the amusing detail that three mouse holes counted as one rat hole.⁹³

The texts provide detailed rules for checking the contents of the granaries; there even existed a separate Statute on Checks and Controls.⁹⁴ The granaries possessed, or course, their own weights and measures,⁹⁵ and a separate rule indicates the deviations from the standard that were allowed. This tolerance was between one

when they were discovered, so that the editors had to arrange them according to their own insight.

⁸⁹ *T'ien li* 田律; *SCCC*, p. 24.

⁹⁰ *SCCC*, pp. 35 and 98. — This amount is equivalent to about 200,000 litres or 200 cubic meters; see H. H. Dubs, *History of the Former Han dynasty*, vol. I (Baltimore, Waverley Press, 1938), p. 279. In the former capital of Ch'in, Yüehyang, the heaps were to contain 20,000 bushels and in the actual capital, Hsienyang, 100,000 bushels. — In view of the large quantities mentioned, the granaries must have been of considerable size. The only large granary I know is the enormous magazine described by Aurel Stein; this consisted of three halls, whose interior measurements were c. 42 × 14,5 meters, whereas the walls of the ruin (c. 1,6 m thick) were still c. 7,5 m high; it was located in the vicinity of Tun-huang, at Stein's site T xviii. See his *Serindia; detailed report on explorations in Central Asia and westernmost China* (Oxford, Clarendon Press, 1921), plate 41, and *On ancient Central-Asian tracks; brief narrative of three expeditions in innermost Asia and westernmost China* (London, 1933), plate 78.

⁹¹ *SCCC*, p. 97.

⁹² *SCCC*, p. 215.

⁹³ *SCCC*, p. 216.

⁹⁴ *Chiao li* 效律; *SCCC*, pp. 96-101 and 112-126.

⁹⁵ *SCCC*, p. 108.

twentieth and one thirtieth for measures of capacity, but for weights a far greater exactness was demanded, the tolerance being only one hundred and twentieth; if the permitted tolerance was exceeded, the Overseer was fined.⁹⁶ Checks were made when grain was issued, but particularly when there was a change of personnel; if shortages were discovered, these had to be made good by the men responsible for the granary as well as by those directly in charge.

There existed rules for the quantities of seed to be used for sowing a standard surface of one *mu*,⁹⁷ differing for the different kinds of grain.⁹⁸ In the same way, standards were set for pounding or refining grain, establishing the quantities of more or less polished grain to be obtained from treating a certain amount of unhusked cereals.⁹⁹ Of all these and similar activities reports had to be made; some of these even had to be sent to the central government in Hsien-yang.¹⁰⁰

It was not only the stocks of grain that were subject to a regular and strict control, but also the condition of the cattle and horses was inspected. If the cattle were fat, rewards were given, whereas punishment was meted out to the men in charge in case they were thin.¹⁰¹ Calving cows were given extra rations,¹⁰² as were the horses in the courier service;¹⁰³ when cows and goats produced insufficient offspring, the personnel was fined.¹⁰⁴ Particular attention was paid to government horses, which were inspected and graded;¹⁰⁵ wounding these animals was punished.¹⁰⁶ When government horses or cattle died, detailed reports were expected and their hides, horns and bones were to be handed over.¹⁰⁷

⁹⁶ SCCC, pp. 113-114; this system is discussed in my "Weights and measures" (see above, note 86). For the title Overseer, *se fu*, see TP 64, pp. 201-204.

⁹⁷ About 460 square meters.

⁹⁸ SCCC, p. 43.

⁹⁹ SCCC, pp. 44-45; this point is discussed in my "Weights and measures" (see above, note 86).

¹⁰⁰ SCCC, pp. 39-42.

¹⁰¹ SCCC, pp. 30, 33.

¹⁰² SCCC, p. 58.

¹⁰³ SCCC, p. 47.

¹⁰⁴ SCCC, p. 142.

¹⁰⁵ SCCC, p. 132.

¹⁰⁶ SCCC, p. 141.

¹⁰⁷ SCCC, p. 33. As already remarked in TP 64, p. 187, this rule shows similarities with the T'ang documents reproduced on pp. 129-147 of Henri

What was the origin of all this grain? It may have been produced by government farms, but clear signs that such farms existed are lacking. The bulk of the stock in the granaries must have been delivered there as the proceeds of the land tax. Whereas the level of the Han land tax is known—at first one fifteenth, and after 168 B.C. one thirtieth of the harvest¹⁰⁸—the percentage demanded in the Ch'in state is unknown,¹⁰⁹ but there is no doubt about its existence, in view of the rule which prescribed punishment for suppressing taxable fields and embezzling the tax.¹¹⁰

But if we are not clearly informed about the origin of the grain, we possess many details on its distribution. To put it briefly, grain was issued as rations, especially to persons condemned to hard labour,¹¹¹ but also to officials¹¹² and to men serving in the armies.¹¹³ Several rules were directed against abuses; for instance, no rations were to be issued to persons who had already been provided with food from another source,¹¹⁴ whereas soldiers were prohibited to sell their rations.¹¹⁵

All issues had to be carefully registered, in view of the demand that the number of the recipients had to be reported.¹¹⁶ The many hundreds of wooden strips found in the Edsin-gol area, mostly dating from the 1st century B.C., furnish excellent examples of this type of meticulous bookkeeping.¹¹⁷

Before concluding, a few brief remarks on the labour force available to the local authorities, and more especially on the conscript service, on which the Ch'in texts throw some new light. It is

Maspero, *Les documents chinois de la troisième expédition de Sir Aurel Stein en Asie Centrale* (London, British Museum, 1953).

¹⁰⁸ See N. L. Swann, *Food and money in ancient China* (Princeton, N.J., Princeton University Press, 1950), pp. 171-172.

¹⁰⁹ The remark that under the Ch'in the taxes were "twenty times those of old" (Swann, *op. cit.*, p. 182) is of no help.

¹¹⁰ SCCC, p. 218.

¹¹¹ SCCC, pp. 49, 53, 76, 87, 88, 110.

¹¹² SCCC, p. 46, 101, 103.

¹¹³ SCCC, p. 133.

¹¹⁴ SCCC, pp. 46, 47.

¹¹⁵ SCCC, p. 133.

¹¹⁶ SCCC, p. 42.

¹¹⁷ See Loewe, *Records of Han administration* (See above, note 21), vol. I, p. 93 ff., vol. II, pp. 64-93; cf. also the documents of the 2nd century B.C., discussed in *Wenwu* 1974/7, p. 49 ff., esp. p. 51 ff.

well known that under the Ch'in and Han all men, except the holders of the higher degrees of aristocratic rank,¹¹⁸ were obliged to perform two kinds of service: military service and labour service. The military service took two years: one year's training in the men's place of origin, and one year's garrison service; in the Han period this garrison service could be in the national capital or on the frontier. Labour service was theoretically one month each year. The men who performed both types of service were called *tsu* 卒, a term usually rendered as "conscript".¹¹⁹

Now, although the general lines of this system were well known, the Ch'in strips provide additional information. They show in the first place that young men were enrolled¹²⁰ already in their 15th year, whereas formerly it had been assumed that their names were entered in the service registers at twenty, if not at twenty three years of age.¹²¹ Failing to enter young men in the service rolls was a punishable offence; in the same way the responsible officials were punished if they did not remove the names of "old" men from the registers,¹²² although we do not know which age is indicated by "old"; it may have been fifty six, but it is also quite possible that it was sixty.¹²³

Another new piece of information is that the responsible officials were punished if they mobilized more than one person from the same household at the same time;¹²⁴ this is additional proof that the majority of households were small and did not count more than five persons. However, once the men had been called up, they would be bastinadoed if they did not answer the summons or if they ran away from the work site.¹²⁵ The work done by the labour conscripts was chiefly construction work,¹²⁶ including the building of pisé walls, like the hard labour convicts. These walls had to be solid, and if

¹¹⁸ See Michael Loewe, "The orders of aristocratic rank of Han China", in *T'oung Pao* 48 (1960), pp. 145 and 157.

¹¹⁹ For further details see Loewe, *Records of Han administration*, vol. I, p. 80 ff.

¹²⁰ *Fu* 傅.

¹²¹ See Kao Min (see above, note 37), pp. 18-28, and cf. my "Some remarks..." (see above, note 30).

¹²² *SCCC*, p. 143, and cf. p. 131.

¹²³ See my "Some remarks..." (see above, note 30).

¹²⁴ *SCCC*, p. 147, reading *t'ung chü wu ping hsing* 同居勿并行.

¹²⁵ *SCCC*, pp. 220-221 and 279-279.

¹²⁶ For further details, known from Han time sources, see my "Some remarks..." (see above, note 30).

they happened to collapse within a year, the conscripts who had erected them had to rebuild them, but this extra work was not to be counted as labour service; the Controller of Works and the men in charge were punished.¹²⁷

After this brief survey, a few remarks remain to be made by way of conclusion.

The new material shows conclusively that in the 3rd century before the Christian era the state of Ch'in possessed an extensive corpus of administrative and criminal law, which was handled by a complex hierarchy of officials. These rules show a considerable degree of sophistication, the only "primitive" trait being a certain lack of abstraction as shown by the laws on theft and on false accusation. This complexity and this sophistication hardly bear witness to the oftmentioned backwardness or the semi-barbarian condition of the state of Ch'in, which is then attributed to its position on the edge of the Chinese culture area, with a population of but recently subdued alien tribes. It seems only reasonable to suppose that the development of this considerable body of written law had taken several centuries and not just the hundred years since the activities of Shang Yang—who, as remarked above, takes the existence of the laws for granted. It should not be forgotten that the state of Ch'in occupied the original homeland of the Chou, whose early development is now generally recognized. It will therefore not do to attribute to the Ch'in region a complete lapse into barbarism once the king of Chou had fled East in the 8th century B.C.; after all, North China remained Chinese during its occupation by nomadic tribes during the centuries following the fatal year A.D. 317, in spite of the fact that part of the cultured upper strata of society had fled to the Yang-tzu region.

From this standpoint it does therefore not seem reasonable to suppose that the Ch'in had to adopt all their laws from the states further East because they were culturally backward.¹²⁸ On the contrary, the Ch'in may well have produced original solutions for the problems that had to be confronted also by the other states during the process of centralization and bureaucratization that had started in the 7th century B.C. In this respect the quotation of two laws of

¹²⁷ *SCCC*, pp. 76-77.

¹²⁸ See Huang Sheng-chang, "Yün-meng Ch'in chien pien-cheng" (see above, note 54), pp. 11-15.

the state of Wei in one of the prose pieces is insufficient proof of this supposed backwardness.¹²⁹

Another remark that can be made is that these new texts show, how the Ch'in state tried to extend its influence over all spheres of the life of its inhabitants. This may well be, at least partly, the result of the ideas and the activities of the School of Law. Collective responsibility is a general trait of primitive law, but its systematization is probably a product of the School of Law. After all, it is Shang Yang who is credited with the idea of organizing all families in groups of five, whose members were to be held collectively responsible for the misdeeds of any other member.¹³⁰ Mr. Momiyama is probably right, when he traces all these measures to the military organization;¹³¹ it is in a military context that the groups of five are mentioned in the Book of Lord Shang and in the predominantly military 70th chapter of the *Mo-tzu*. Proof of the relative newness of this idea of collective responsibility may be seen in the necessity which the new texts feel for explaining the relevant terms.¹³²

But the desire to have the state regulate everything is also shown by other traits, where this desire seems to have been carried *ad absurdum*, such as the exact measurements for the clothing to be issued to convicts or for the quantity of grease to be used for greasing carriage axle-trees.¹³³ Still, in spite of these absurdities—which are after all unimportant—the overall impression gained from the new Ch'in texts is that the state was able to exercise its control effectively, trying as far as possible to remedy the weaknesses of men by means of a vast network of regulations, the slightest fault being punished severely and rewards being only rarely bestowed. In this respects we can say that the School of Law did strongly influence the laws of Ch'in.

Romont (Switzerland).

¹²⁹ It is significant that these Wei laws are not included in the legal material. *SCCC*, pp. 292-295; see *TP* 64, p. 185.

¹³⁰ *Shih-chi* 68.7 (Takigawa ed.), Duyvendak, *The Book of Lord Shang*, pp. 14 and 58. The division of the population into groups of five families is older, but it seems to have been Shang Yang who introduced the element of mutual responsibility; cf. Vandermeersch, *La formation du légalisme* (see above, note 3), p. 93.

¹³¹ Momiyama Akira, "Hōka izen", 稷山明, 法家以前, in *Tōyōshi kenkyū* 39 (1980), pp. 249-285, also Vandermeersch, *loc. cit.*

¹³² *SCCC*, p. 194 for "the four neighbouring households", *ssu lin* 四鄰, and p. 160 for "members of the same household", *t'ung chū* 同居.

¹³³ *SCCC*, pp. 66-67 and 82.

THE TRUE EMPEROR OF CHINA

B. J. MANSVELT BECK

Modern sinologists, with their middle class background, cannot understand very much of emperorship, and the living emperor thinks as much of their views as said sinologists hold of so-called workers' poetry: interesting but worthless.

Sixteen times (some say seventeen) our European civilisation created an institution called "emperorship". In addition, it granted the title "emperor" by courtesy to nine lines of non-European rulers. To some women it granted the title "empress" though their husband remained a mere "shah". Why he, and the Afghan shah, the pharaoh, the caliph, the sultan, and Alexander were refused the title "emperor" I do not know. Whether Russia had an emperor or a czar is a moot point, but the Bulgarian czar, though representing a vastly older and more enduring institution than the Russian one (893-1946), was never recognised as "emperor" by the courts of Europe. In these matters, arbitrariness is the rule.

European emperorship came in two varieties: before 1804 it was elective with religious support; after 1804 one sees only hereditary, secular emperors. As for non-European emperors, since they are emperors by courtesy it is useless to look for common characteristics between, say, Bao-Dai and Montezuma.

In 1979 the last authentic European-style emperorship perished in Bangui after gouging out children's eyes over a matter concerning the empress's clothes. This leaves, as is well known, only the Japanese emperor but since he is neither elected nor secular it is not clear why he should have that title and I think that the translation "king" would be better.¹

¹ The sixteen emperorships are: 27 B.C.-1453 Rome, Byzantium; 800-899 Carolingians; 962-1806 Holy Roman; 1804-1806 Haiti; 1804-1918 Austria; 1804-1814 Napoleon; 1814-1815 Elba; 1822 Mexico; 1822-1889 Brazil; 1849-1859 Haiti; 1852-1870 Napoleon III; 1863-1866 Mexico; 1870-1918 Germany; 1876-1947 London; 1936-1943 Rome; 1976-1979 Central African Empire. In 797 the empress Irene mounted the throne in Byzantium. In the West this was not recognised, because women were constitutionally barred from emperorship. Therefore Byzantine emperorship after 797 is considered by some to be a new creation. The nine non-European "emperors" are: 322 B.C.-185 B.C. Maurya