

## Limitations on Legal Privilege in *The Tang Code*

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The section called “The Confucianization of Law” in Ch’ü T’ung-tsu’s *Law and Society in Traditional China* has had great influence on views of Chinese law ever since the book’s publication in 1947.<sup>1</sup> Much of his essay describes the legal privileges that separated the upper classes from the commoners and to a great extent protected the former from punishment.<sup>2</sup> The stand of this class of persons was always that reflected in *The Book of Rites (Li ji 禮記)* which stated that: “Punishments do not extend up to the Great Officials (*xing pu shang tafu* 刑不上大夫).”<sup>3</sup>

This was particularly true in the centuries following the collapse of the Latter Han 後漢dynasty (25-219) at the end of the second century A.D. During this time, there was a resurgence of feudalism, the great families dominated China, and the central authority was weak. Dynasties came and went like a game of musical chairs. And as early as the Wei 魏dynasty (220–265), a group of laws that codified special privileges for those at the highest levels of the political and social hierarchy appeared. They were called the Eight Deliberations (*ba yi* 八議) and were modeled on a similar set of regulations contained in the *Rites of Zhou (Zhou li 周禮)*, a utopian constitutional document that appeared in final form during the first part of the Former Han 前漢dynasty (206 B.C.-A.D. 8).<sup>4</sup>

If those who possessed the right of deliberation committed a capital offense, they could not be tried without the emperor’s consent. And should they then be found guilty, the emperor also decided what if any punishment they would suffer. Several of the eight categories are extremely vague and we have no way of known how one qualified under them. There may also have been other laws at that time which lessened punishment for the upper classes. At least several such laws are included in the code of the Tang 唐dynasty

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<sup>1</sup> Ch’ü T’ung-tsu 瞿同祖, *Zhongguo falü yu zhongguo shehui* 中國法律與中國社會. 上海: 商務印書館 1947. A translation into English appeared in 1961, published by Mouton and entitled Ch’ü T’ung-tsu, *Law and Society in Traditional China*.

<sup>2</sup> A clear exposition of punishments and legal benefits in historical context can be found in Geoffrey MacCormack, *Traditional Chinese Penal Law*. Edinburgh: Edinburgh University Press, 1990. On the Tang dynasty in particular, see his “The T’ang Code: Early Chinese Law,” *The Irish Jurist*, 1983, pp. 132-150.

<sup>3</sup> 禮記, 55; James Legge, in F. Max Müller, *Sacred Books of the East*. Oxford: Clarendon Press, 1885, XXVII, 90.

<sup>4</sup> Wei shu 魏書, 357. See Balazs, *Traité Juridique du “Souei chou”*. Bibliothèque de l’Institute du Hautes Etudes Chinoises, IX Leiden: E. J. Brill, 1954, p. 145n185; and also Edouard Biot, *Le Tcheou-li ou rites des Tcheou*. 2 vols. plus index. Paris: L’Imprimerie Nationale, 1851. While his introduction reflects the view of Chinese history current at his time, the translation itself is very good indeed. He even affords the reader alternate interpretations by different commentators.

(618-906), the earliest to have survived as a whole.<sup>5</sup> While those who were members of the group possessing the right of deliberation was certainly not very large, the number of persons included in the other groups having at least some degree of legal benefit expanded as the effect of these benefits on punishment lessened. However, it is perhaps significant that most of these have to do with members of the bureaucracy—controlled by the emperor—and their families and that the holders of noble titles are mentioned only once—in number six covering persons in high position—and there including only those with noble titles of the first rank.

The three most important of these rights are set out in the General Principles Sections of that *Code* immediately after the article on the Eight Deliberations. Article 9.1a allowed persons in somewhat lower political or social position than those who possessed the right of deliberation to petition (*qing* 請) the emperor if convicted of a capital crime and to have punishments of life exile (*liu* 流) or less reduced by one degree. Article 10 permitted to a broader group of persons possessing still lower official rank a degree of reduction (*jian* 減) for punishments of life exile or less, and lastly, Article 11 gave all members of the bureaucracy the right to redeem punishment by payment of copper (*shu* 贖). This last also allowed those who could petition a capital sentence, or have sentences of penal servitude reduced one degree to make redemption through payment of copper for the remainder of the punishment.

But beginning with the re-unification of China by the Sui 隋 dynasty (581–617) and the following Tang 唐 dynasty (618–906), we see a strengthening of the state and the power of the emperor. This is shown in the criminal law in a corresponding reduction of the privileges of the powerful officials and gentry. While the Sui *Kai-huang* 開皇 code of 581 has not survived, much of it was taken over and expanded during the following Tang dynasty. It was this Sui code that first introduced legislation severely punishing any action against the emperor or the state through an article called the Ten Abominations (*shi o* 十惡). While Ch'ü is correct in emphasizing the parts of that article that supported hierarchy within the family, most important are the four sections covering cases of plotting rebellion (*mou fan* 謀反), sedition (*mou dani* 某大逆), treason (*mou pan* 謀叛), or committing great irreverence (*da buqing* 大不敬) which cancel all the benefits mentioned above. Indeed, violation of any of the first three of these, as well as that part of the fifth dealing with the making or keeping of *gu* 蠱 poison, not only brought execution to the criminals themselves and confiscated all their goods and real property, but also involved some or all of their families in collective

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<sup>5</sup> *Tanglü shuyi* 唐律疏議, hereinafter *Code*. References to articles of the *Code* and the translation are by number, a system that was first proposed by Karl Büniger. It is used both in the Chinese text of the 唐律疏議 in the edition published in the *Journal of Asian Legal History* at <http://jalh.ku.edu> and in my translation of *The T'ang Code: General Principles*, Vol. I and *The T'ang Code: Specific Articles*, Vol. II. (Princeton: Princeton University Press, 1979 and 1997.

prosecution (*yuanzuo* 緣坐). This meant that otherwise innocent persons were punished for no other reason than family relationship to the criminals.

Moreover, coming to the Tang period, in the *Code* of 653, we see a further reduction of legal benefits through articles that effectively cancelled them. The crimes which came under the Ten Abominations—Article 6 of the *Code*—and the punishments imposed by them are well known and are not discussed here.<sup>6</sup> Rather, this essay deals first with those persons who had the rights of petition, reduction of sentence, and redemption of punishment by payment of copper and then with the replacement of punishment by surrender of office. The limitations on the rights of petition, reduction of punishment, and redemption of punishment by payment of copper involve a much wider range of criminal behavior. And disenrollment (see below) can add to the punishment.

Thus Article 9.2 of the *Code* denies the right of petition not only to those who commit a crime involving any of the Ten Abominations, but also to all persons of whatever status who commit a crime punished by collective prosecution for rebellion or sedition (*fanni yuanzuo* 反逆緣坐), or who kill (*sha* 殺) anyone. The subcommentary then states that it is irrelevant whether the killing was done as the result of a plot (*mou* 謀), through intent (*gu* 故), or in an affray (*dou* 鬥). Furthermore, no distinction is made between the punishment of principals (*shou* 首) and accessories (*cong* 從), though ordinarily accessories are punished one degree less than principals.

The article goes on to specifically include officials who commit the crimes of illicit sexual intercourse (*jian* 姦), robbery (*dao* 盜),<sup>7</sup> and kidnapping (*lie ren* 略人) within their areas of jurisdiction (*jianlin zhushou nei* 監臨主守內) or who take bribes and subvert the law (*shoucai wangfa* 受財枉法).<sup>8</sup> Only if in a robbery no goods have been taken or if the intended victim in kidnapping or illicit sexual intercourse has not yet been seized, may the punishment be reduced. If any of these crimes is punished capitally, petition will not be allowed.

Benefits are further limited by the following articles. Article 10 states that the right of reduction of punishment is allowed only to those who also have the right of petition under Article 9. And under Article 11.1a, at least one of these rights must be possessed by a person for they themselves or

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<sup>6</sup> It should be noted that in addition to the offenses included in Article 6, the subcommentary to Article 264 expands the use of spells intended to cause death which comes under the fifth of the Ten Abominations to include that offense when intended to cause illness or pain for relatives of a higher generation or of the same generation but older who are within the third degree of mourning. The same rule is contained in Article 266 dealing with the destruction of corpses. Thus a total of 31 offenses come under this article.

<sup>7</sup> Article 283 provides that the punishment of supervisory and custodial officials as well as imperial princes, that is, brothers and sons of the emperor, have their punishment for ordinary robbery, as distinguished from robbery by force, increased by two degrees above that for commoners and where the goods are valued at 30 *pi* 匹 of silk be punished by strangulation.

<sup>8</sup> Area of jurisdiction is defined in Article 54 with reference to the responsibilities of supervisory and custodial officials. However, Article 153 expands those who can commit the crime of taking bribes and subverting the law to include village headmen.

certain of their relatives to be able to replace punishment by payment of copper. What this complex series of rules means is that for the crimes listed in part 2 of Article 9, those punished capitally may not be petitioned, have their punishment reduced one degree, nor redeemed by payment of copper.

Also severely treated are five types of crimes listed in part 2 of Article 11, all of which are punished by life exile.<sup>9</sup> These are those where the punishment is: life exile with added labor (*jiayi liu* 加以流), life exile for collective prosecution for rebellion or sedition (*fanni yuanzuo liu* 叛逆緣坐流), life exile for lack of filial piety (*buxiao liu* 不孝流), life exile for children and grandchildren in the male line who accidentally kill [their parents or grandparents] (*zisun guoshi sha* 子孫犯過失流), and life exile despite amnesty (*huishe you liu* 會赦猶流).

Those sentenced to these punishments are: “disenrolled (*chuming* 除名) and sent into life exile in accordance with the law.” Disenrollment means that both official and noble titles are revoked.<sup>10</sup> And the revocation of noble titles deprives the person of the right to redeem punishment by payment of copper.<sup>11</sup> This is an example of where officials were punished more heavily than commoners for the same crime. The only exception allowed is where the family has no other adults, in which case beating with the heavy stick is substituted.<sup>12</sup>

I believe that these strictures on privilege are extended more widely by a provision found towards the end of the General Principles Section that affects a large number of articles in the following Specific Articles Section. This article is number 53 entitled “*References to Reciprocal Punishment*.”<sup>13</sup> Its title comes from a basic principle of the *Code* which is that anyone who makes a false accusation against another person will, with only a few exceptions, receive the same punishment—though not more than life exile—that would have been administered to his victim. It continues by describing two methods of determining the punishment for one offense by making use of the sentence provided by another offense in another article.

The citation of some article was required for conviction of a crime and if the trial magistrate did not do so in every case, he would himself be

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<sup>9</sup> A list of the articles sentenced by any of these five types of life exile is found in Part B below.

<sup>10</sup> Article 21.

<sup>11</sup> Article 22.3.

<sup>12</sup> Article 27 permits such substitution in order that younger members would not become destitute. Such substitution for the time remaining was even permitted if the household became without other adults when the criminal was already at the place of exile.

<sup>13</sup> On this article, see also Huo Cunfu 霍存福 and Ding Xiangxu 丁相須, *Tanglü shuyi yi zhun zilixi* 《唐律疏義》以准字例析 (An Analysis of the Usage of the Characters *yi* and *zhun*). 吉林大学社会科学学报, 1994, 第五期. In their discussion, the two authors do not treat the two characters as expanding the coverage of later articles in the *Specific Articles Section* to cancel or limit legal benefits which is the point of my treatment here. Rather they see the two characters as a part of a group that is important in understanding the meaning of the *Code*.

punished.<sup>14</sup> The majority of the laws found in the Specific Articles Section of the *Code* specify the crime and its punishment(s) together in the same article. But a considerable number of articles refer to another one to provide a sentence. Various language is used to do this. Single characters commonly found in these contexts are: 1) *ru* 如 or *tong* 同 to show that the present violation is “like” or “the same as” another by indicating that the punishment to be sentenced is that found in another named article; 2) *cong* 從, and *yi* 依, both of which mean that the punishment in one article “follows” that in another article; and *ru* 入 which is used to state that other crimes are covered “under” a particular article.<sup>15</sup>

Conversely, at times the language used in one article may control other articles, as in the phrase: “The use of force in other articles follows this article (*xu tiao chiangzhe zhun ce* 餘條強者準此).” Here the language is specific but it may be general as in the phrase: “Other articles follow this article (*xutiao junci* 餘條準此).” Such phrases may precede or follow the articles which must follow the prescribed action. Since the *Code* has no cross references and the subcommentary was not included in the written copies that were in general circulation, such phraseology must have caused great difficulties for officials at the county level.<sup>16</sup>

The first method—the least important for the argument presented here—determines the punishment for the crime that has been committed by stating that is to be “comparable” (*zhun* 准) to that for another offense. An example is given of an official subverting the law in sentencing a crime and afterward taking a bribe. The law states that the two offenses are comparable and the punishment is that sentenced for robbery (*zhun dao lun* 准盜論). The text goes on to state that since the crime is comparable, the punishment is limited to life exile (*liu* 流) at a distance of 3,000 *li* 里, that is, it may not be punished capitally. Punishment is further reduced since disenrollment, resignation from office (*mianguan* 免官), double repayment of illicit goods (*cang* 藏), adding punishment for crimes committed by supervisory or custodial officials, or sentencing to life exile with added labor are not required. The subcommentary then still further lessens punishment by permitting all sentences to be reduced one degree.

But then follows the more important of the two methods which will be dealt with in detail in this essay. Under this rule, the first crime is sentenced for the punishment prescribed for a second crime in another article (*yi . . lun*

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<sup>14</sup> See article 484. Punishments could also be sentenced by analogy under Article 50 and catch-all law was provided by Article 450.

<sup>15</sup> Wang Mingde 王明德, *Dulü peixi 讀律佩觿* (Key to Reading the Code). 北京: 法律出版社, 2000, argues that different characters were used in the Ming and Qing codes to indicate different kinds of relationships between the articles. This is not the case in *The Tang Code*, as far as I can determine.

<sup>16</sup> See Yamamoto Tatsuro, Ikeda On, and Makoto Okano, *Tunhuang and Turfan Documents Concerning Social and Economic History*, 2 vols. Tokyo: The Toyo Bunko, 1980; I, 59-60.

以 . . . 論).<sup>17</sup> The subcommentary then states that this means that the first case is sentenced as if it were the “actual” (*zhen*真) second crime. Further, disenrollment, resignation from office, and double repayment of illicit goods all follow as for a normal crime. This differentiates the use of *yi* from the other indicators listed above since only the actual punishment specified by the law referred to can be sentenced.

But I believe that there is still further applicability which is that if the crime referred to as the basis of the sentence is one of those listed in Article 9.2 that the restrictions on legal benefits referred to there are also brought in. That is, if the designated case were robbery committed by an official within his area of jurisdiction, following the rule in Article 9.2 he could neither petition if sentenced to death nor get a reduction of punishment if sentenced to life exile<sup>18</sup> In fact, I believe this to be the intent of the *Code*.

My reasoning is as follows. Most of the articles in the Specific Articles Section of the *Code* directly link a given crime with its punishment by the “If . . . then” formula, that is, if a specified crime is committed, then the punishment is such and such. This allows the benefits set out in the *Code* to be used unless the article itself cancels or lessens them. If another article is called on to specify the punishment, then one of the characters listed above is used. When the intent is to expand rights, the character *zhun* 准 “comparable” is used in connection with the punishment provided by the second article.

Yet the number of times that the formula *yi* . . . *lun* is used to cite a crime included in Articles 9.2 to provide punishment is sufficiently large that I believe that such citation is deliberate, that is, the intent of the citation is to take away legal benefits otherwise available to the criminal. All of the crimes so cited save one are either punished by death or can reach the death penalty. Every instance of such citation in the Specific Articles Section of the *Code* is listed and summarized immediately below in Part A.

## A. Articles Where the Use of the Formula *yi* . . . *lun* 以 . . . 論 Cancels Legal Benefits

謀殺 (one article)

Article 264

*Hatred and Sorcery*

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<sup>17</sup> The first occurrence of *yi* 以 with this usage that I could find is in a *Wei History* edict of 538. See *Weishu* 魏書, 3047. But there is no mention there of punishments being *zhun* 准 “comparable.” The two are compared in a discussion of law in the *Northern History*. See *Beishi* 北史, 2857. There, however, the discussion ends with *yi* 以 being defined as *tong zhenfa* 同真法 “the same as the actual law.”

<sup>18</sup> For goods worth 20 *pi* of silk, Article 283 would punish the official by life exile to 2,500 *li* 里 and were they worth 30 *pi*, he would be strangled. Thus the punishment would be three degrees more than that of an ordinary person who committed the same crime.

The text of this article states that using magic, summoning demons, making written charms, or cursing by means of spells with the intent to kill a person is punished for plotting to kill reduced two degrees. But if the intended victim is a relative of a higher generation or of the same generation but older of the second degree of mourning, or parents-in-law, the husband, or the husband's parents or paternal grandparents, the punishment will not be reduced. The crime comes under Depravity, the fifth of the ten abominations.

故殺 (six articles)

Article 73

*Shooting Arrows in the Direction of the Imperial Palace  
or an Imperial Audience Hall*

Here the punishment is gradually increased from two years of penal servitude to strangulation if the arrow enters a building where the emperor is present. If someone (other than the emperor) is killed or wounded, then the punishment is for intentional killing or wounding.

Article 395

*Doctors Who Compound Medicine That Is Not According to the Prescription*

If the correct prescription is not followed or if by mistake in the label or in the use of a needle a person is killed, the punishment is two and one-half years of penal servitude. Where the act that causes death, however, is intentional, the punishment is for intentional killing or wounding.

Article 425

*Cutting a Dyke to Steal Water*

Here again, when the act is done intentionally and results in killing or wounding, the punishment is for intentional killing or wounding.

Article 432

*Burning Government Buildings or Private Homes*

The contrast is between acts done accidentally as described in the preceding article and intentionally as here. In the former case, the maximum punishment is life exile; when the act is done intentionally, the punishment is for intentional killing or wounding.

Article 453

*The Law Regarding Arrests When a Person Has Been Beaten or Hit  
or Robbery or Illicit Sexual Intercourse Has Occurred*

The relevant crimes are not those given in the name of the article. If the criminal is killed after having been arrested and tied up, the killer is punished for intentional killing or wounding. Under somewhat similar circumstances in Article 269 *Entering a Person's House at Night without Reason*, the maximum sentence for the master of a house who kills an intruder who has entered the house at night without reason after tying him up is life exile with added labor.

## Article 471

*Criminals Whose Cases Have Ended with Their Having Been Condemned to Death*<sup>19</sup>

The relevant part of the article is 471.3 refers to a personal retainer or a slave who kills or has their master killed in the circumstances described in the name of the article. They are punished for intentional killing. The subcommentary adds that even an amnesty will not exempt these persons from punishment.

## 鬥殺 (ten articles)

## Article 257

*Breaking Prison*

Here sentencing for killing or wounding in an affray is for crimes committed in connection with breaking prison. If anyone is wounded, or if the prisoner is under a death sentence, the punishment is strangulation (*jiao* 絞). If anyone is killed, the punishment is decapitation (*zhan* 斬).

## Article 261

*Pushing an Object into a Person's Ears or Nose*

The relevant crime in this article is not that given in the title but rather in part 261.2 which states: “Intentionally throwing away a person’s clothing or articles of food or drink with the result that the person is killed or injured is punished as for killing or wounding in each case.”

## Article 269

*Entering a Person's House at Night without Reason*

Part 269.2b provides that if the master of the house knows that no harm is intended and still kills or wounds the intruder, the punishment is for killing or wounding in an affray reduced two degrees.

## Article 289

*Accidentally Killing or Wounding a Person Because of a Robbery*

Part 289.1 punishes accidental killing or wounding as if done in an affray. Part 289.2a provides that if a robbery is committed collectively and incidental to the crime a person is killed or wounded, the punishment is as for robbery by force. The punishment is decapitation.

## Article 336

*Mistakenly Killing a Bystander Because of Beating in an Affray*

If the punishment reaches the death penalty, it is reduced to life exile. However, if because of a plot to kill “A,” through mistake “B” becomes the victim, the punishment is for intentional killing or wounding.

## Article 385

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<sup>19</sup> The last three words in 471.3, “in an affray” should be omitted.

*Causing a Person's Death or Wounds through Deception*

The Commentary states that this refers to such situations as one person knowing a ford or lake to be deep and muddy or a bridge or boat to be broken or rotten through deception persuades another person to enter the stream or lake or go onto the bridge or boat. The first person will be punished for killing or wounding in an affray if either death or wounds result. The subcommentary also extends the article to where a domestic animal is killed or wounded under this article. In such cases the article on digging a pit is declared to be comparable and the reduced value must be paid to the owner.<sup>20</sup>

Article 393

*Shooting Arrows at City Walls or at the Homes of Officials or Private Persons*  
Slinging missiles or throwing tiles are also included. In any of these cases if someone is killed or wounded, the punishment is for killing or wounding in an affray reduced one degree.

Article 452

*Criminals Who Use Weapons to Resist Arrest*

Here if the criminal has been caught and is not resisting arrest and is killed, or a tooth or limb is broken the punishment is for killing or wounding in an affray.

Article 483

*A Supervisory Official Who Beats a Person with the Heavy Stick*

The text of this article makes it clear that any official or person whose duties are not concerned with crime is included, even village headmen and clerks. If these persons beat or improperly punish supposed criminals, they will be punished for killing or wounding in an affray.

Article 495

*Judicial Torture or Beating of Pregnant Women*

This article punishes the beating of such women by 100 blows with the heavy stick. But it is particularly interesting because it also states that if Article 483 (described immediately above) provides a heavier punishment, then the sentence should be for killing or wounding in an affray.

姦 (three articles)

Article 182

*Marriage by Those with the Same Surname*

Under this article, officials who marry relatives within the fifth degree of mourning are punished for illicit sexual intercourse.

Article 186

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<sup>20</sup> Article 394.

*Supervisory Officials Who Take Women within Their Area of Jurisdiction as Concubines*

Supervisory officials who violate this article are punished by 100 blows with the heavy stick. However, if the woman is the wife, concubine, or daughter of another man, the sentence is for illicit sexual intercourse. The crime is the same if the woman is taken for one of the supervisory official's own relatives within the fifth degree of mourning or those by marriage of the third degree of mourning.

Article 195

*Violation of the Code in Giving and Taking in Marriage*

A supervisory or custodial official who violates this article within his area of jurisdiction is sentenced for illicit sexual intercourse if this is specified by the relevant article that is violated.

盜 (eleven articles)

Article 197

*The Examination of the Condition of Domestic Animals Not Being Reported Truthfully*

The Statutes (*ling* 令) have reference to horses, donkeys and other domestic animals that are owned by the state. If an official in charge of them makes a false report of their condition from which he benefits, he is punished for robbery.

Article 212

*Supervisory or Government Officials Who Borrow Government Property*

Such officials as well as those to whom they lend such property are all punished for robbery if no record has been made of the items. If they take it for their private use the punishment is reduced one degree.

Article 279

*Robbery or Killing of Government or Private Cattle or Horses*

The article punishes this crime according to the value of the illicit goods, or under ordinary robbery where the punishment is increased by one degree. However, the subcommentary then extends the coverage of the crime to yaks and other such animals that are not used either for riding or cultivating the soil and punishes such cases for robbery

Article 280

*Punishment for Robbery Where the Value of the Illicit Goods is Not Calculated*

For certain crimes, the value of the goods taken is not relevant to the punishment. And in others, circumstances reduce the punishment. This article provides that in such crimes if punishment would be increased if the value of the goods were calculated and sentenced as robbery this is done with the punishment increased by one degree.

## Article 284

*Intentionally Burning Another Person's Home*

The text of the article adds places where articles are stored and committing robbery. The reduced value of either place is combined with the value of what was stolen and the sentence is for robbery by force.

## Article 290

*Exchanging Private Goods and Slaves for Government Articles*

The text of the article adds other things to goods and slaves. But the point is that where the exchange produces profit for the criminal, the sentence is for robbery.

## Article 291

*The Produce of Mountains and Wilderness Areas That Has Already Been Cultivated*

Taking such produce improperly is punished for robbery.

## Article 419

*Market Officials Who Set the Price of Articles*

If an official benefits from not setting a fair price, he is punished for robbery.

## Article 420

*Privately Making Hu and Dou Measures of Capacity. Steelyards, and Measures of Length*

If any of these are inaccurate and this results in government goods coming into private hands, the punishment is for robbery.

## Article 435

*Throwing Away or Destroying Objects of the Spirits*

The text of this article adds objects of the great sacrifices, the imperial seal, the imperial clothing, and other possessions of the emperor. The punishment is for robbery.

## Article 441

*Eating Fruits or Melons from Government or Private Orchards*

If an official takes fruits or melons by force, the punishment is for robbery.

## 略 (one article)

## Article 375

*Wrongly Claiming a Commoner to Be a Slave*

The text of the article adds claiming a commoner to be a personal retainer, wife, concubine, son, or grandson in the male line to this crime. The punishment is for kidnapping reduced one degree in any case. If the intended victim is a personal retainer, the punishment is reduced another degree.

## 受財而枉法 (five articles)

Article 138<sup>21</sup>*Supervisory and Custodial Officials Who Take Bribes and Subvert the Law*

All cases of supervisory and custodial officials who take bribes and subvert the law are punished by 100 blows with the heavy stick for goods worth one *chi* 尺 of silk, increased one degree for goods worth one *pi* 匹 of silk. For goods worth 15 *pi* of silk, the punishment is strangulation.

## Article 260

*Paternal Grandparents or Husband Being Killed by Someone*

If anyone within a supervisory official's family is killed and he takes a bribe and makes a private settlement, then he is guilty of subverting the law.

## Article 285

*Getting Goods and Articles from Persons by Threats*

If a supervisory official by threats obtains goods and articles from someone who has committed a crime, he is guilty of subverting the law.

## Article 472

*Custodial Officials Who Instruct Prisoners on How to Change Their Statements*

Custodial officials who take bribes for such instruction are sentenced for subverting the law.

## Article 473

*Custodial Officials Who Instruct Prisoners on How to Change Their Statements*

This article deals with taking bribes to transmit messages for prisoners as well. If the prisoner's sentence is affected as a result, the jailor or other official is punished for taking bribes and subverting the law.

## B. Crimes Sentenced by the Five Kinds of Exile

## 加役流 (twenty-eight articles)

## Article 63

*Entering the Imperial Palace Because of Some Matter and Improperly Staying There Overnight*

If an official allows unauthorized persons to enter the imperial pavilions or come into the imperial presence, he is punished by life exile with added labor.

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<sup>21</sup> There are two important points to be made in connection with this article. Firstly, the character *cai* 財 translated as bribes has a general meaning for any goods (*cang* 藏) that are given or taken by a person illegally. Secondly, the article requires that the bribe be given before the law was subverted to come under this law. The following article, number 139, covers bribes given after such subversion and sentences them as "comparable" (*jun* 準) to subverting the law with the reduced punishments described above.

## Article 79

*Punishment for Offenses Involving the Imperial Ancestral Temple,  
Altars of the Soil, and the Imperial Gardens*

This article covers shooting arrows or throwing tiles or rocks at any of these places and killing or wounding someone. But where the death penalty would be sentenced, the punishment is reduced to exile with added labor.

## Article 88

*Going Around a Frontier Customs Barrier*

Trade with foreigners of goods to the value of 15 *pi* of silk is punished by life exile with added labor.

## Article 123

*Postal Relay Couriers Who Fall Behind Schedule*

If what is carried involves urgent military matters and the delay causes harm or loss, the punishment is life exile with added labor.

## Article 153

*Village Headmen or Officials Who Wrongly Omit a Household from the  
Household Register or Who Leave Household Members off of It*

The value of the taxes or labor services is punished for subverting the law though the maximum penalty is life exile with added labor.

## Article 169

*Drought, flood, Frost, or Hail within a Region*

Where the exemption awarded for such disasters goes to a private person (i.e., an official) the punishment is for subverting the law. But the maximum punishment is life exile with added labor.

## Article 172

*Not Allowing Rightful Exemption from Taxes and Labor Services*

Where an official receives illicit goods in connection with this crime, the punishment is life exile with added labor.

## Article 173

*Violation of the Law in Making Selective Imposition of Taxes and Labor  
Services*

The illegal or unauthorized collection of taxes which go to a private person (rather than the government) is punished by life exile with added labor.

## Article 210

*Inspection by the Officer in Charge of a Warehouse or a Treasury*

If the official in charge deliberately connives at the robbery of goods worth a full 50 *pi* of silk at either of these places, the punishment is life exile with added labor.

## Article 236

*Conscripts Who Avoid Military Service through Craft or Fraud*

If the officer in charge knows of the illegal attempt to avoid service by someone and this results in delay of the army, the punishment is life exile with added labor.

## Article 269

*Entering a Person's House at Night without Reason*

If the intruder is killed or wounded, the maximum punishment is punishment is life exile with added labor.

## Article 270

*Robbery of the Sacred Objects of the Spirits and the Great Sacrifices*

The robbery of cauldrons, boilers, kitchen knives, and spoons—things which have not been presented to the spirits—to the value of more than forty *pi* of silk is punished by life exile with added labor.

## Article 276

*Robbery or Damage of the Heavenly Immortal or the Buddha*

If either of these offenses is committed by a Buddhist or Taoist monk or nun, the punishment is life exile with added labor.

## Article 277

*The Violation of Tombs*

Such offenses are punished by life exile with added labor.<sup>22</sup> This refers to where the coffin is exposed. If either the outer or the inner coffin is opened, the punishment is strangulation.

## Article 282

*Robbery by Stealth*

The punishment for robbery by stealth of goods to the value of 50 *pi* of silk is life exile with added labor.

## Article 286

*Seizing a Person's Articles after Originally Beating Him or Her for Another Reason*

This article follows the punishment specified in Article 281 *Robbery by Force* which punishes the robbery by force of goods worth 10 *pi* of silk or of any amount if someone is wounded by strangulation. Here, however, if the death penalty is reached, life exile with added labor is substituted.

## Article 289

*Accidentally Killing or Wounding a Person Because of a Robbery*


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<sup>22</sup> This is the only article in the *Code* that sentences life exile with added labor initially with the death penalty to follow for more serious violations.

All such cases are punished as for killing or wounding in an affray (Articles 302-306) but if the death penalty is reached, life exile with added labor is substituted.

Article 331

*A Wife or Concubine Who Beats or Curses with Bad Language Her Late Husband's Parents*

If the beating breaks a tooth or more or causes a wound, the punishment is life exile with added labor.

Article 354

*Accusations to the Court of Offenses that Occurred before an Amnesty*

Such accusations of crimes that have been amnestied punish the accuser with the penalty for the crime. But where the death penalty is reached, life exile with added labor is substituted.

Article 379

*Use of Post Horses under False Pretences*

This crime is punished by life exile with added labor.

Article 393

*Shooting Arrows at City Walls or at the Homes of Officials or Private Persons*

If the punishment for intentionally aiming and shooting arrows or missiles with the results of killing or wounding a person, the punishment is for killing or wounding in an affray but here reduced to life exile with added labor.

Article 452

*Criminals Who Use Weapons to Resist Arrest*

If a criminal who has committed a capital offense has been caught and is not making any resistance is killed by a person who made the arrest, that person is punished by life exile with added labor.

Article 453

*The Law Regarding Arrests When the Person has Been Beaten or Hit, or Robbery or Illicit Sexual Intercourse has Occurred*

In these cases even a bystander (that is, someone other than a runner) may make the arrest, under the same conditions as specified above.

Article 465

*Prisoners Who Fight with Officials and Run Away*

If the prisoner wounds a person while committing the crime which is the title of this article, the punishment is life exile with added labor.

Article 471

*Criminals Whose Cases Have Ended with Their Being Condemned to Death*

If such a criminal is killed by relatives or old friends without having asked them to kill him, these persons are punished for killing or wounding in an affray. If the punishment reaches the death penalty, life exile with added labor is substituted. The punishment is not affected by age, generation, or status difference.

Article 472

*Custodial Officials Who Instruct Prisoners on How to Change Their Statements*

If such an official receives a bribe worth 15 *pi* of silk, his punishment is life exile with added labor.

Article 474

*Those Who Have the Privileges of the Eight Deliberations, Petition, Reduction of Punishment, or Are Aged or Juvenile*

Though not included in the title of the article, the text adds those who are disabled to this list. Such persons may not be tortured to obtain evidence and if they are it death or injury results, the magistrate is sentenced for killing or wounding in an affray. The question of whether the injury was caused intentionally or accidentally<sup>23</sup> affects the punishment but if it reaches to the death penalty, the sentence is reduced to life exile with added labor.

Article 483

*A Supervisory Official Who Beats a Person with the Heavy Stick*

This refers to officials who neither sentence prisoners nor are in charge of interrogations. Where a person should not be judicially tortured but is, such officials are punished for killing or wounding in an affray. If the punishment reaches the death penalty, life exile with added labor is substituted.

反逆緣坐流 (one article)

Article 248

*Plotting Rebellion and Committing Great Sedition*

Part 248.1e punishes the paternal uncles and nephews in the male line of those who plot rebellion or commit great sedition by life exile at a distance of 3,000 *li*.

Part 248.2b punishes the fathers, sons, mothers, daughters, wives, and concubines of those who plot rebellion but whose words and reasoning are not able to incite great numbers of people and who through coercion and physical strength are not able to lead others on by life exile at a distance of 3,000 *li*.

不孝流<sup>24</sup> (two articles)

<sup>23</sup> This question is dealt with in Article 487.

<sup>24</sup> This is not listed as a punishment in any of the specific articles. A crime being so classified is due to its being included under the seventh of the ten abominations that is called “lack of filial piety” (*bu xiao* 孝流).

## Article 120

*Concealing and Not Mourning the Deaths of Parents or Husband*

Those who upon hearing of the deaths of parents or husband conceal it and do not mourn are punished by life exile at a distance of 2,000 *li*.

## Article 264

*Hatred and Sorcery*

Part 264.3 punishes those who use magic or spells only to gain the doting love of the paternal grandparents, parents, or master by life exile at a distance of 2,000 *li*.

## 子孫犯過失流 (one article)

## Article 329

*Beating or Cursing with Bad Language a Paternal Grandparent or Parent*

Part 329.1b punishes the accidental killing of a parent or paternal grandparent by life exile at a distance of 3,000 *li*.

## 會赦猶流 (one article)

## Article 489

*Knowing That There Will Be an Amnesty and Intentionally Committing a Crime*

Part 289.2 states that under the circumstances described in the title of this article if one kills a fourth-degree mourning relative of a higher generation or an older second cousin in the male line, or plots rebellion, or commits great sedition—even though there is an amnesty, these crimes will be punished by life exile at a distance of 2,000 *li*.

**Conclusion**

The organization of the *Code* I believe supports my argument. Insofar as punishment is concerned, the citation of other articles could have three results. An article might directly state that the punishment for the crime covered was that specified in another article. And in such case that punishment was sentenced. Those who had legal benefits could make use of them to lower or even cancel punishment; those who had none suffered the punishment prescribed. In other cases, the article stated that the crime was “comparable” to another offense. This was favorable to all offenders, for in these cases capital punishment was not allowed. Rather Article 53 specifically limited punishment to life exile at a distance of 3,000 *li* and further gave officials exemption from disenrollment, resignation from office, double repayment of illicit goods, added punishment for supervisory and custodial officials, and life exile with added labor.

However, an article might also state that the crime that it described was to be treated the same as the “actual” crime covered in another specified article, that is, exactly as though it were the second crime. In many cases, of course, such a reference would not affect the punishment. But for thirty-seven

offenses listed in the *Code* the reference is to one of the crimes contained in Article 9.2. Here I argue that the use of the word “actual” meant that such a reference cancelled legal privileges entirely. When to this group are added the original five serving as the basis for this ruling in Article 9.2, there are a total of forty-two. Certainly this was a significant number and particularly so since the crimes included were very serious indeed, as is obvious from the list given above.

In addition to these forty-two cases involving offenses where the term “actual” was used or directly described in Article 9.2, a further thirty-three come under one of the five kinds of life exile set forth in part 2 of Article 11, making a total of seventy-five. And lastly, when the thirty-one crimes covered under Article 6 on the Ten Abominations are also included, the total reaches one hundred and six crimes where official privilege is cancelled. This total includes almost all of the most heinous crimes specified in the *Code*.

So while there were indeed legal privileges permitted to members of the official and noble class during the Tang period, they were mostly limited to crimes of lesser importance. Even then, the use of legal benefits could be recorded on an official’s record which affected his chances not only of promotion but even of being kept on in the civil service.<sup>25</sup> The result of all this was to sharply diminish the privileges of the bureaucracy and the nobility as compared with earlier times and to increase the power of the state during the Tang dynasty.

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<sup>25</sup> See the translation of the relevant statute in Article 92 of the *Code*.