

Human Rights Concepts and Their Institutional Expressions in Legal Codes: Focusing on the Rights and Protection of Prisoners in the Tang Dynasty

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Abstract: *During the Tang Dynasty, incarcerated prisoners enjoyed various rights during their detention, including access to clothing, food, medical care, hygiene, rest, and burial arrangements. Under specific conditions, prisoners were even granted leave for family events such as funerals or weddings. The Rules for Prison Officials (Yuguanling) detailed the rights and safeguards for prisoners and set clear guidelines on the use of restraints during detention. Additionally, the Statutes on Deciding Cases (Duanyu Lü) outlined explicit penalties for judicial officials who failed to ensure prisoner rights or committed related violations. Interrogation processes adhered to strict procedural and substantive requirements, including direct questioning by judges, the avoidance of cases involving personal connections or conflicts of interest, evidence-based cross-examinations, careful investigation of circumstances, and consistent rulings across similar cases. The Tang legal code imposed comprehensive, detailed, and stringent limits on the application of coercive interrogations, specifying restrictions on tools, methods, subjects, and extent. Any breaches of these restrictions were met with severe punishments. While the concept of “human rights” did not appear in Tang legal and administrative texts, these laws and regulations embody abundant principles of people-centered governance, benevolence, and human rights concepts. Systematic examination of these ideas, values, and principles — when integrated with the Marxist perspective on human rights — can enrich China’s contemporary human rights practice, contribute to articulating China’s unique narrative on human rights, and play a role in constructing a distinctly Chinese discourse on human rights. Such efforts could provide Chinese wisdom and proposals for the advancement of human rights globally.*

Keywords: *Rules for Prison Officials (Yuguanling); Statutes on Deciding Cases (Duanyu Lü) ♦ incarcerated prisoner ♦ guarantee of rights and interests ♦ human*

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rights concepts

The concept of “human rights” formally emerged in the United Nations documents after World War II.¹ However, the ideas, values, and concepts contained in the concept of human rights are common themes in the thousands of years of human civilization’s evolution. As Xi Jinping, general secretary of the Communist Party of China (CPC) Central Committee states, “Chinese culture has always stressed the importance of respecting and caring for others.”² The philosophies of Confucianism, Mohism, and Taoism all encompass ideas that emphasize the value of human beings themselves. Chinese traditional legal culture and its institutional carriers fully express a universal love for humanity, respect for human life, affirmation of human value, and protection of the rights and interests of specific individuals in specific aspects. *Tanglü shuyi* (*The Tang Code*) is a representative code of the Chinese legal system and a concentrated presentation of Chinese legal civilization. The *Statutes on Deciding Cases* (*Duanyu Lü*) is the last chapter of the code and also a “special regulation” of the code. The “Preface to the Commentary” of the *Statutes on Deciding Cases* states: “This chapter interweaves the various provisions of the entire code to serve as a method for decision-making, and hence, it follows after all other chapters.”³ The main content is the judicial trial system and the relevant penalties. “The orders define the ranks of the high and the low, the noble and the humble, and are the institutions of the state. ... Any violation of these orders, as well as any act of evil that leads to criminal liability, shall be decided by the law.”⁴ The *Rules for Prison Officials* (*Yuguanling*) and the *Statutes on Deciding Cases* complement each other and provide a comprehensive view of the litigation and trial process during the Tang Dynasty. It is noteworthy that the legislators made detailed provisions for prisoners’ clothing, food, medical care, hygiene, leave, and funeral arrangements, and strictly limited the judicial officers’ powers centered around interrogation. Focusing on the rights and protection of the Tang Dynasty’s prisoners and conducting a detailed observation and description of the human rights concepts and institutional expressions in the legal codes will offer us a new perspective on the important elements of China’s excellent traditional legal culture, as well as further promote its creative transformation and innovative advancement.

¹ Zhang Yonghe, “Fully and Correctly Understanding the Concept of Human Rights, Human Rights Discourse, and the Discourse System,” *Red Flag Manuscript* 14 (2017): 7.

² Xi Jinping, “Steadfastly Following the Chinese Path to Promote Further Progress in Human Rights,” *Qiushi Journal* 12 (2022): 4.

³ [Tang Dynasty] Zhangsun Wuji, et al., *Tanglü shuyi*, annotated by Liu Junwen (Beijing: Zhonghua Book Company, 1983), 545. All the original texts of the Tang Code cited in this paper are from the said book, and only the chapter, article label, and total number of articles are indicated in the text without citing the sources one by one.

⁴ [Song Dynasty] Ouyang Xiu, [Song Dynasty] Song Qi, *The New Book of Tang (Xin tangshu)*, vol. 56, *Record on Penal Code (Xingfa zhi)* (Beijing: Zhonghua Book Company, 1975), 1407.

I. Prison and Prisoner

“The character ‘狱’ (yù) is derived from the idea of silence, representing a place where the two parties of dispute are confined in silence for their crimes.”⁵ As a noun, it refers to the place where the disputing parties are detained. “囚” (qiú) means to “confine or hold in custody.”⁶ As a verb, it signifies the act of imprisonment. Literally, these two characters together (yù qí ú) convey the idea of detaining someone in a specific place. By extension, this word refers to the disputing parties held in such a place. In the context of the ancient Chinese prison system, its functions, and related judicial institutions, the scope of this concept is broader than the modern understanding of “prison inmates.” Overall, ancient Chinese prisons were places where disputing parties were detained to ensure the smooth progress of judicial trials, and imprisonment was an essential part of the judicial process.

A. The establishment and division of labor in prisons

In the Tang Dynasty, prisons were established by specialized institutions with judicial authority, while those without such authority were not permitted to set up prisons. From the perspective of institutional setup, prisons possessed certain judicial functions. According to the organizational structure and official positions of the Tang government, institutions with judicial authority consisted of two levels generally: Central and local. At the local level, there were the county offices, prefectural offices, provincial offices, as well as the offices of the regional military governors and the protectorate offices. At the central level, there were permanent institutions such as the Ministry of Justice, the Censorate, and the Secretariat. The specialized institution known as the “Three Departments” (San si)⁷ and dispatched institutions such as the inspector, the inspector general, and the governor on tour all had the power to accept and adjudicate cases. Correspondingly, the establishment of prisons also consisted of these two levels. Local institutions with the authority to accept and adjudicate cases were permitted to set up prisons,

⁵ [Han Dynasty] Authored by Xu Shen, [Qing Dynasty] annotated by Duan Yucui, *Notes on an Explication of Written Characters (Shuowen jiezi zhu)* (Shanghai: Shanghai Ancient Books Publishing House, 1981), 478.

⁶ [Jin Dynasty] Annotated by Guo Pu, [Song Dynasty] commented by Xing Bing, *Notes and Commentaries on Erya (Erya zhu shu)*, vol. 3, “the second interpretation,” (Beijing: Peking University Press, 1999), 82.

⁷ The “Three Departments” (San si) refers to a specialized judicial body composed of the Censors from the Censorate, the Remonstrance Officers from the Department of State Affairs, and the Drafting Officers from the Secretariat. The entry “Remonstrance Officer” in *Tang liudian* states: “For major cases in the country, the Three Departments shall conduct a detailed review. If the legal classification is inappropriate or the severity of the punishment is incorrect, they shall refer to the legal precedents and make a decision accordingly. ... For all unresolved misjudgments in the country and cases that have been harshly treated by officials, their complaints must be heard, and the matters shall be jointly discussed with the Censors and the Drafting Officers to seek a proper resolution.” The annotation states: “Each day, one Censor, along with the Remonstrance Officer and the Drafting Officer, shall receive complaints. If the complaints pertain to the conduct of officials, the administration of governance, or cases of injustice, they shall be reported to the throne; all other matters shall be handled according to the usual legal procedures.” [Tang Dynasty] Li Linfu, et al., *Tang liudian*, vol. 8, annotated by Chen Zhongfu (Beijing: Zhonghua Book Company, 1992), 244-245.

namely, the county offices, prefectural offices, provincial offices, as well as the offices of the regional military governors and the protectorate offices. No other institutions or departments at various levels were allowed to establish prisons. The setup of central prisons was somewhat different: specialized and dispatched institutions naturally could not set up prisons alongside their offices; among the permanent institutions, only the Ministry of Justice held the authority to establish a prison, while no other institutions were permitted to do so. “The division of labor among prisons was as follows: prisoners from the counties were detained in county prisons, those from the provinces were detained in provincial prisons, and prisoners from the county-level cities were sent to county prisons. In the capital, general prisoners were distributed among the prisons of the Jingzhao and Henan Prefectures, as well as the prisons of the Chang’an, Wannian, Henan, and Luoyang counties. Prisoners captured by the Imperial Guards were detained in the prison of the Ministry of Justice, and prisoners from various departments were sent to the prison of the Ministry of Justice.”⁸

B. Connotations and characteristics of prisoners

The term “prisoner” (qiu) does not exclusively refer to individuals who have been sentenced and are awaiting or currently serving their punishment. It also includes those whose freedom is restricted while awaiting trial. After the competent authority accepts a complaint, it must go through a “three-tier review” before a formal case can be established. “For all accusations of crimes, except for those of rebellion or above, a three-tier review is required according to official instructions. When receiving the complaint, the officials must clearly inform the accuser of the potential consequences of false accusation, including the punishment for rebellion. Each review must be conducted on a separate day, and the official must sign and record the completion of the review before forwarding it to the relevant department. If the matter is urgent and poses significant harm, this rule does not apply. If the accuser is illiterate, the official clerk shall write it on their behalf. Both the accused and the accuser shall be detained if necessary, and released after the matter is resolved.”⁹ To prevent frivolous lawsuits and false accusations, except for cases involving “rebellion or above” and “murder, theft, desertion, or rape of a commoner, as well as other urgent matters,” a “three-tier review” is strictly required before a case can be officially filed. That is, the court receiving the complaint must first inform the accuser of the legal responsibility for false accusation, then question and record the details of the case being reported, with each questioning and recording session taking place every other day. However, if the complaint is made to dispatched institutions such as the inspector, the inspector general, or the governor on tour, the three questionings can be completed in one

⁸ Liu Junwen, *Study on the Legal System in the Tang Dynasty* (Beijing: Wenjin Publishing House, 1999), 183.

⁹ [Tang Dynasty] Du You, *Tongdian*, vol. 165, *Criminal Law III: Criminal Systems (Part II)*, annotated by Wang Wenjin, et al. (Beijing: Zhonghua Book Company, 1988), 4260.

day without the need to space them out. The questioning record must be signed and confirmed by the accuser; if they are illiterate, it will be signed on their behalf by the official clerk. Only after three consistent questionings and records can the court officially file the case. After the case is accepted, the court will forcibly summon the defendant to appear and, based on the nature of the case, detain both parties pending trial; that is, “both the accused and the accuser shall be detained if necessary.” The cases that required detention included those committed by ordinary people punishable by caning or above. In the *Statutes on Deciding Cases*, Article 469 “Prisoners who should be detained but are not” states in the *Commentary* part: “Those sentenced to flogging should not be detained; only those with crimes punishable by caning or above are subject to detention and investigation.” Based on the “Five Punishments and Twenty Levels” set in the Tang Code,¹⁰ “crimes punishable by caning or above” means that 15 levels of the legal punishment system require detention for interrogation, which means that 75% of the cases need to be detained for interrogation. If the case involves an official, he should not be detained first. As the *Ministry of Justice Regulations (Xingbu ge)* records: “If an official is accused, he does not need to be immediately detained. Only after the facts are ascertained should the case be handled according to the usual law.”¹¹ If an official is found guilty upon investigation, he shall be detained in accordance with the law applicable to ordinary people. For “officials of the fifth rank and above in their posts, and those with honorary titles of the second rank and above,” if they “commit crimes that warrant detention,” those in the capital who commit crimes punishable by banishment or below must have their cases reported to the throne for a decision on whether to detain them. Those outside the capital who commit crimes punishable by caning or above, or those in the capital who commit capital offenses, shall be “detained first and then reported to the throne.”¹² The reason for detaining both parties in a lawsuit pending trial is that, “according to the law, all accusations must be thoroughly investigated. If the accusation is found to be true, the accused is guilty and will be punished accordingly. However, if the accusation is false, the accuser becomes the guilty party and must face the legal consequences. Therefore, at the beginning of a case, before the facts of the crime and the identity of the guilty party are fully established, both parties should be detained simultaneously. Only after the trial is completed and the case is finalized should the innocent party be released.”¹³

¹⁰ The “Five Punishments and Twenty Levels” in the Tang Code are as follows: five levels of flogging, five levels of caning, five levels of penal servitude, three levels of banishment, and two levels of capital punishment. For specific content and corresponding explanations, please refer to Articles 1 to 5 of the *Law of Names and Examples (Mingli li)*.

¹¹ *The Song Code of Criminal Procedure • Statutes on Deciding Cases • Regulations on Imprisonment and the Use of Shackles and Manacles*, in accordance with the *Criminal Department Regulations (Xingbu ge)*, annotated by Xue Meiqin (Beijing: Law Press • China, 1998), 530.

¹² *Ibid*, in accordance with the *Rules for Prison Officials*.

¹³ Liu Junwen, *Study on the Legal System in the Tang Dynasty*, 177.

After the plaintiff in a case lodges a complaint with the competent authority, they are, in principle, legally imprisoned. Once the case is formally accepted by the competent authority, the defendant will also be forcibly summoned to appear for interrogation and will be legally detained. From then on, the parties involved in the case are imprisoned and become “prisoners.”

II. Basic Rights and Interests and Related Protection During Imprisonment

During the period of detention, prisoners are entitled to rights and protection in areas such as clothing, food, medical care, hygiene, rest, and funeral arrangements, and under certain conditions, they are also granted leave for marriage and funerals. The *Rules for Prison Officials* stipulate the various rights and protective measures for prisoners and clearly define the use of restraints such as cangues, locks, and manacles during imprisonment. The *Statutes on Deciding Cases* specify clear penalties for judicial officers who fail to provide adequate protection and for corresponding illegal acts, thereby protecting the basic rights of prisoners during their detention.

A. Basic living conditions and related protection

In the Tang Dynasty, prisoners were detained in separate prisons based on their social status and gender, that is, “different prisons for the noble and the common, for men and women.”¹⁴ The legal codes and related documents provide relatively detailed records of the basic living conditions during imprisonment. According to the *Rules for Prison Officials*: “All prisons shall provide thick mats for bedding, and during the summer months, porridge and water shall be available. Prisoners shall be allowed to bathe once a month. If a prisoner’s home is far away and it is difficult for the family to supply clothing and food, the government shall provide these necessities and later collect the corresponding fees from the prisoner’s family.”¹⁵ The *Criminal Department Regulations (Xingbu shi)* also contain similar provisions: “For prisoners who should be provided with mats, medical care, and bathing facilities, as well as those who need cangues, chains, collars, manacles, nails, and other such items, these shall be funded by the proceeds of the crime or redemption fines. If these are insufficient, official property shall be used.”¹⁶ It can be seen that prisons are equipped with essential living items such as straw mats, clothing, food, soup, water, and medical supplies, as well as various restraints. In conjunction with the relevant content in the *Rules for Prison Officials* from the Jin Dynasty, there are requirements for the accommodation conditions of prisoners,

¹⁴ [Song Dynasty] Ouyang Xiu and Song Qi, *The New Book of Tang*, vol. 48, “*The Third Record of Officials*,” (Beijing: Zhonghua Book Company, 1975), 1257.

¹⁵ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, edited and translated by Li Jin, et al. (Changchun: Changchun Publishing House, 1989), 724-725.

¹⁶ *The Song Code of Criminal Procedure • Statutes on Deciding Cases • Regulations on Imprisonment and the Use of Shackles and Manacles*, in accordance with the *Xingbu shi*, 535.

such as “complete and solid prison houses” and “thick straw mats.”¹⁷ The daily necessities for prisoners are generally prepared by their families or offset by the proceeds of the crime or the payment of fines. If the prisoner’s home is too far away and it is very difficult for the family to supply clothing and food in a timely manner, the government will provide the necessities and legally collect the corresponding fees from the prisoner’s family. If the prisoner has no family, the government will supply clothing and food according to the statutory standards.¹⁸ In addition to stipulating that “prisoners shall be allowed to bathe once a month,” the authorities also had clear standards for the hygiene conditions of prisons and related items. On the second day of the fourth lunar month, in the second year of Changxing of the later Tang Dynasty (AD 931), an imperial edict stated: “Moreover, from the beginning of summer to the end of the eighth lunar month each year, a person shall be assigned to scrub the cangues and shackles once every five days.”¹⁹

If a prisoner falls ill during detention, they shall be provided with medical treatment upon written application by the prison authorities and verification by the senior officials. In case of serious illness, the prisoner may be relieved of their restraints and be allowed one family member to attend to them within the prison. The *Rules for Prison Officials* stipulates: “If a prisoner falls ill, the prison authorities shall submit a written application, and the senior officials shall personally verify the illness. Medical treatment shall be provided. In case of serious illness, the prisoner may be relieved of their cangues, chains, and manacles and be allowed one family member to attend to them within the prison.”²⁰ If the prisoner is an official of the third rank or above in a regular or honorary position, they are allowed to have “two descendants or granddaughters to attend to them.”²¹ Prisoners sentenced to banishment or penal servitude who fall ill during their period of labor

¹⁷ [Song Dynasty] Li Fang, et al., *Imperial Overview from the Taiping (Taiping yulan)*, vol. 643, *Criminal Law Department IX: “Prison”* citing the *Jin Code* (Beijing: Zhonghua Book Company, 1960 photocopy), 2880 (the upper half).

¹⁸ The imperial edict issued on the fifth day of the fourth lunar month in the second year of Xiande of the Later Zhou Dynasty (AD 955) can be referred to: “For all prisoners currently detained in various regions who have no family to provide food, two *sheng* of official rice shall be allocated per person per day, and the prison officers shall not be allowed to reduce the prisoners’ food.” See *The Song Code of Criminal Procedure • Statutes on Deciding Cases • Regulations on Imprisonment and the Use of Shackles and Manacles*, in accordance with the “The imperial edict issued on the fifth day of the fourth lunar month in the second year of Xiande of the Later Zhou Dynasty (AD 955),” 536.

¹⁹ The imperial edict issued on the fifth day of the fourth lunar month in the second year of Xiande of the Later Zhou Dynasty (AD 955) can be referred to as: “Furthermore, ensure the continuous supply of water and broom for cleaning the prison, and every five days, the cangues and manacles shall be washed and cleaned.” Ibid.

²⁰ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 724. The imperial edict issued on the fifth day of the fourth lunar month in the second year of Xiande of the Later Zhou Dynasty (AD 955) can be referred to: “If there are those who are ill, medical personnel shall be promptly assigned to provide care and treatment.” See *The Song Code of Criminal Procedure • Statutes on Deciding Cases • Regulations on Imprisonment and the Use of Shackles and Manacles*, in accordance with the “the imperial edict issued on the fifth day of the fourth lunar month in the second year of Xiande of the Later Zhou Dynasty (AD 955),” 536.

²¹ [Song Dynasty] Ouyang Xiu and Song Qi, *The New Book of Tang*, vol. 56, *Record on Penal Code*, 1410.

are also permitted to remove restraints such as iron collars and wooden cangues, and are conditionally granted leave. The *Rules for Prison Officials* stipulates: “Those sentenced to banishment or penal servitude and assigned to labor shall wear iron collars. If iron collars are unavailable, they shall wear wooden cangues. Those who are ill or have a guarantor may remove them. They are not allowed to wear headwear or belts. They are granted one day off every 10 days and two days off during the Laba Festival and the Cold Food Festival, but they are not allowed to leave the courtyard where they are assigned to labor. The days of illness are counted as part of their service, and upon completion of their term, they are sent back to their original jurisdiction.”²²

For prisoners sentenced to banishment who encounter the death of their grandparents or parents while en route, a short leave is granted for mourning at the place where they are; if they encounter such a death while at the place of exile, a longer leave is granted for mourning. The *Rules for Prison Officials* stipulates: “For those sentenced to banishment who have not yet reached their destination and whose grandparents or parents have died in their hometown, a seven-day leave is granted for mourning, and a three-day leave for the death of a spouse’s parents. For those sentenced to banishment who are already in service and whose parents have died, a 100-day leave is granted for mourning, and the same applies to the death of grandparents if the prisoner is the eldest grandson responsible for carrying on the family line, with a seven-day leave for the death of a spouse’s parents, and the travel time is not included.”²³ Prisoners sentenced to death for crimes other than heinous offenses, if they encounter the death of their grandparents, parents, or spouse during detention, are still granted leave for mourning after fulfilling specific procedures. The *Rules for Prison Officials* stipulates: “For those sentenced to death for crimes other than heinous offenses, if they encounter the death of their parents, the death of their spouse (for women), or the death of their grandparents (if they are the eldest grandson responsible for carrying on the family line), they shall be granted a seven-day leave for mourning. A 30-day leave is granted for those sentenced to banishment or penal servitude. The travel time is not included. All these leaves are granted after the case is finalized and the prisoner is released on bail.”²⁴ Prisoners sentenced to banishment or below, after their confessions are determined, can still be granted “marriage leave.” The *Rules for Prison Officials* stipulates: “For those sentenced to banishment or below, once their confessions are finalized, if they wish to get married, they shall be granted a seven-day leave with bail, and three days for the main festivals in winter and summer. This also applies to those who have already been assigned to labor. The travel time is not included. For those without bail, only the festival leave is granted, and they are not allowed

²² Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 707.

²³ Gao Mingshi, *Translation and Annotation of Tiansheng lin* (Taipei: Yuanzhao Publishing Company, 2017), 551.

²⁴ *Ibid.*, 552.

to leave.”²⁵

The prison officials conduct a routine inspection every five days. The “Criminal Department Director and Assistant Director” section in *Tang liudian* states: “All prisoners under detention shall be inspected every five days.” The annotation explains: “Inspection means to review and check.”²⁶ This can be corroborated by the previously mentioned Tang and Later Zhou imperial edicts stating “once every five days, specific personnel shall be assigned to scrub the cangues and shackles” and “every five days, the cangues and manacles shall be washed and cleaned,” which demonstrates that the requirement for the senior officials to “inspect every five days” indeed ensures the hygiene conditions of the prison.

Judicial officers at all levels must ensure the basic living conditions of prisoners. Those who fail to provide adequate support, or who embezzle or abuse prisoners, shall be severely punished. Article 473 “Prisoners who should be provided with clothing, food, and medical care but are not” in the *Statutes on Deciding Cases* stipulates: “For prisoners who should be provided with clothing, food, and medical care but are not, or whose families should be allowed to visit but are not, or who should be relieved of their cangues, chains, and manacles but are not, the punishment is 60 strokes of the cane; if this results in the prisoner’s death, the punishment is one year of penal servitude. For those who embezzle the prisoner’s food, the punishment is 50 strokes of the cane; if this results in the prisoner’s death, the punishment is hanging.” Officials who fail to provide prisoners with necessary clothing, food, and medical care, who do not allow family members to attend to seriously ill prisoners, or who do not remove restraints from seriously ill prisoners, shall be punished with 60 strokes of the cane. If the actions of the officials lead to the death of a prisoner, they shall be sentenced to one year of penal servitude. Officials who embezzle the prisoner’s food shall be punished with 50 strokes of the cane, regardless of the amount embezzled. If the embezzlement of food leads to the death of a prisoner, the punishment is hanging.

B. The use of restraints and related limitations

The personal freedom of prisoners was restricted to varying degrees during their imprisonment, which was achieved through the use of different types of restraints. The *Rules for Prison Officials* stipulates: “Cangues should be between five and six *chi* in length, with a cheek length from two *chi* and five *cun* to six *cun*, a total width from one *chi* and four *cun* to six *cun*, and a diameter of between three and four *cun*. Manacles should be from one *chi* and six *cun* to two *chi* in length, three *cun* wide, and one *cun* thick. Iron collars should weigh between eight *liang* and one *jin*, and be from one *chi* to one *chi* and five *cun* in length. Chains should

²⁵ Ibid., 556-557.

²⁶ [Tang Dynasty] Li Linfu, et al., *Tang liudian*, vol. 6, 190.

be from eight *chi* to one *zhang* and two *chi* in length.”²⁷ Different types of restraints correspond to different methods of imprisonment and are applied to different prisoners. The main basis for their classification is the severity of the crime, which can be generally summarized as “strict management for serious crimes and lenient management for minor crimes.” That is to say, “The instruments for detaining prisoners include cangues, manacles, iron collars, and chains, all of which have specific regulations regarding their length, width, and size. The severity of the crime is taken into account, and they are used accordingly in a graded manner.”²⁸

In addition to the severity of the crime, the prisoner’s status, gender, age, and health condition also have a direct impact on the use of restraints or the method of imprisonment. The *Rules for Prison Officials* stipulates: “For prisoners under detention, those sentenced to death shall be put in cangues and manacles. Women and those sentenced to banishment or below shall be exempt from manacles. Those sentenced to caning shall be under loose detention. Persons aged over 80 or under 10, as well as individuals with disabilities, pregnant women, and dwarfs, even if they have committed capital offenses, shall also be under loose detention.”²⁹ “Those who are subject to deliberation, petition, or reduction of punishment, as well as those sentenced to banishment or above, or those who are to be dismissed, exempted, or subject to official punishment, shall all be detained in chains.”³⁰ “For those sentenced to banishment for official misconduct or penal servitude for private offenses, and those not subject to official punishment, they shall be released on bail for interrogation. Officials of the ninth rank and above, and those without official positions who should be fined, if sentenced to penal servitude or above, or subject to dismissal, exemption, or official punishment, shall be detained in cangues. For those sentenced to penal servitude for official misconduct, they shall be detained loosely, without removing their headwear and belts. Once the case is settled, they are allowed to participate in the interrogation outside.”³¹ Based on the objective, specific, and case-by-case legislative style of ancient China, there is much overlap in the relevant standards, making the enumeration of the use of restraints for prisoners seem overly detailed. Taking the Tang legal code as the basis and referring to the Tang Code and related documents, we can sort out the use of restraints for prisoners as follows: Officials of the seventh rank and above and those without official positions who are subject to deliberation or reduction, if convicted of a private crime punishable by death or banishment, shall be detained with a chain. Officials of the ninth rank and above and those without official

²⁷ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 729-730.

²⁸ [Late Jin Dynasty] Liu Xu, et al., *The Old Book of Tang*, vol. 50, *Record on Penal Code* (Beijing: Zhonghua Book Company, 1975), 2139.

²⁹ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 715.

³⁰ Law Commentary of Article 469 “Prisoners who should be detained but are not” in the *Statutes on Deciding Cases* cites from the *Rules for Prison Officials*.

³¹ *The Song Code of Criminal Procedure • Statutes on Deciding Cases • Regulations on Imprisonment and the Use of Shackles and Manacles*, in accordance with the *Rules for Prison Officials*.

positions who are subject to redemption, if convicted of a private crime punishable by death, banishment, or penal servitude, shall be detained with a cangue. Common men, if convicted of a crime punishable by death, shall be detained with a cangue and manacles; if convicted of a crime punishable by banishment or penal servitude, shall be detained with a cangue; if convicted of a crime punishable by caning, shall be detained without restraints; if sentenced to banishment or penal servitude with labor, shall wear an iron collar. Common women, if convicted of a crime punishable by death, banishment, or penal servitude, shall be detained with a cangue; if convicted of a crime punishable by caning, shall be detained without restraints; if sentenced to banishment or penal servitude with labor, shall wear an iron collar. The elderly, children, the sick, pregnant women, and dwarfs are all exempt from the use of restraints. It can be seen that in the use of restraints, the legislature gives the elderly, children, the sick, the disabled, and pregnant women much more preferential treatment than officials with privileges.

In the Tang Dynasty, extremely detailed provisions were made for the use of restraints on prisoners, and judicial officers at all levels were required to implement these regulations strictly. Those who failed to use restraints in accordance with the law were severely punished. Article 469 “Prisoners who should be detained but are not” of the *Statutes on Deciding Cases* stipulates: “For prisoners who should be detained but are not, or who should be put in cangues, chains, or manacles but are not, or who have removed them, the punishment is 30 strokes of the cane for those sentenced to caning, with an increase by one degree for those sentenced to penal servitude or above; for those who have changed the restraints they are wearing, the punishment is reduced by one degree. The same punishment applies if the prisoner removes or changes the restraints themselves. If a prisoner is detained when they should not be, or is put in cangues, chains, or manacles when they should not be, the punishment is 60 strokes of the cane.” Judicial officers who fail to detain when they should, fail to use restraints when they should, or detain or use restraints when they should not, are punished according to the sentence that the prisoner deserves. Specifically, if a prisoner sentenced to caning is not detained and restrained, or the restraints are removed, the punishment is 30 strokes of the cane. For those sentenced to penal servitude, banishment, or death, the punishments for not being detained or restrained, or for removing the restraints, are 40, 50, and 60 strokes of the cane, respectively. If the restraints are changed without authorization, the punishments are reduced by one degree compared to those for not being detained, not using, or removing the restraints. That is, for those sentenced to penal servitude, banishment, or death, the punishments for changing the restraints are 30, 40, and 50 strokes of the cane, respectively. If detention or the use of restraints is applied when it should not be, regardless of the severity of the prisoner’s crime, the punishment is 60 strokes of the cane. It is evident that the legislation imposes the most severe punishment for detaining or using restraints when it should not be done. “The code of law, based on the Confucian principle of ‘it is better to err on the side

of leniency than to execute an innocent person,' is lenient in releasing and strict in detaining, lenient in partial changes and strict in complete entry or exit."³²

C. The death of a prisoner and disposal

If a prisoner dies naturally during detention, the body shall be retrieved by the family for burial. If the prisoner has no family, the government shall be responsible for the funeral arrangements and bear the corresponding expenses. The *Rules for Prison Officials* stipulates: "If a prisoner dies and has no relatives, a coffin shall be provided, and the body shall be temporarily buried in an official land (the coffin shall be supplied by the Ministry of Works in the capital, and by the local authorities outside the capital. However, no coffin shall be provided for those who have committed heinous crimes. For burial purposes, the official land shall be at least one acre, located more than seven *li* from the capital. The death of prisoners under the jurisdiction of various departments shall be supervised by the Ministry of Justice). A brick with an inscription shall be placed in the grave, and a sign shall be erected above it, bearing the deceased's name. The local authorities shall be notified to inform the family to retrieve the body. The same applies to those who die on the way to exile, at the place of exile, or while serving penal servitude."³³ Prisoners who die without family members are to be provided with coffins by the government and temporarily buried on government land. No coffins are provided for prisoners who have committed heinous crimes. The graves are marked with inscriptions, and wooden signs are erected outside to indicate the prisoners' names and notify their families to claim the bodies. The same procedure applies to prisoners sentenced to banishment who die during transportation or those serving sentences of banishment or penal servitude.

If a prisoner dies during detention under unnatural circumstances, a thorough investigation must be conducted to determine the cause of death and the responsible party. The *Rules for Prison Officials* stipulates: "In case of death, if there are other causes, an investigation shall be carried out accordingly."³⁴ "If a prisoner dies as a result of interrogation, the case must be reported to the local chief official, who shall conduct a joint verification with the supervisory officer."³⁵ That is, the prison officials must report the prisoner's body and detailed documents to the local authorities, who will jointly inspect and verify the case with the supervisory officials to determine whether there were any violations in the interrogation and detention process, including the use of tools, methods, subjects, and quantities. If any violations are found, the officials responsible will be severely punished according to the law.

³² Liu Junwen, *The Tang Code with Commentary and Annotations (Part II)* (Beijing: Zhonghua Book Company, 1996), 2017.

³³ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 707.

³⁴ *Ibid.*, 724.

³⁵ *Ibid.*, 713.

III. Basic Requirements for Interrogations

In ancient China, the “interrogation” process began with the acceptance of a lawsuit. The section “Criminal Department Director and Assistant Director” in *Tang Liudian* states: “For those who commit crimes, the case shall be investigated and judged by the local state or county where the crime occurred. For crimes committed in the capital, those punishable by penal servitude or above shall be sent to the Ministry of Justice, while those punishable by caning or below shall be judged by the relevant department. If the Imperial Guards arrest a criminal, the case shall be sent to the Ministry of Justice.”³⁶ Local judicial cases are accepted by the county offices, prefectural offices, provincial offices, as well as the offices of the regional military governors and the protectorate offices where the case occurred. Cases of penal servitude and above in the capital are accepted by the Ministry of Justice, while cases punishable by caning and below are accepted by the corresponding institutions. However, “major cases in the country” are all reviewed in detail by the “Three Departments,” that is, “one Censor, along with the Remonstrance Officer and the Drafting Officer, shall receive complaints.”³⁷ From the moment a complaint is accepted, judicial officers must strictly adhere to the statutory requirements for interrogation.

A. The judge shall personally question, and relatives or enemies shall be recused

The case must be interrogated by the principal officer in charge, and no other personnel are allowed to interfere with the case or inquire about any information related to the case. The *Rules for Prison Officials* stipulates: “For the interrogation of prisoners, no one other than the principal officer in charge is allowed to approach the prisoner’s place of detention to listen or obtain information,” and “For the questioning of prisoners, the judge must personally ask the questions. Once the confession is determined, the prisoner shall write it down themselves. If the prisoner is illiterate, the principal clerk shall write it down according to the prisoner’s statement and read it back to the prisoner in the presence of the judge.”³⁸ Strictly requiring the principal officer in charge to conduct the interrogation ensures that the judicial process is maximally insulated from external influences unrelated to the case, thereby safeguarding judicial fairness.

If the official in charge of the trial has a conflict of interest with the parties involved in the case, he must be replaced by another official with no conflict of interest. The “Criminal Department Director and Assistant Director” section in *Tang liudian* stipulates: “Judicial officers who have relatives or conflicts of interest

³⁶ [Tang Dynasty] Li Linfu, et al., *Tang liudian*, vol. 6, 189.

³⁷ *Ibid.*, 244-245.

³⁸ *The Song Code of Criminal Procedure • Statutes on Deciding Cases • Regulations on Imprisonment and the Use of Shackles and Manacles*, in accordance with the *Rules for Prison Officials*, 539.

with the person being interrogated may be replaced.”³⁹ “Relatives” include not only blood relatives and relatives by marriage, but also relationships such as teacher-student and old acquaintances; “enmity” encompasses all relationships involving conflicts of interest. The *Rules for Prison Officials* stipulates: “Judicial officers who have within-five-generations blood relatives, relatives by marriage with the duty of mourning for more than one year, teachers from whom they have received instruction, former local officials such as military governors, prefects, or county magistrates of the area where the case occurred, or have any conflicts of interest with the person being interrogated, must be replaced according to instructions. The same applies to those who have served as assistants to the prefectural governor or national officials under the jurisdiction of the local governor.”⁴⁰ This regulation strictly requires that the principal officer in charge not have any conflict of interest with the case, thereby excluding any potential influences on the trial process from factors outside the case to ensure judicial fairness.

B. Question according to statements and conditions and examine the circumstances reasonably

Judicial officers must strictly adjudicate based on the content of the complaint and are not allowed to “seek other crimes” beyond what is stated in the complaint. Article 480 “Investigation of cases according to the complaint” in the *Statutes on Deciding Cases* stipulates: “All cases shall be investigated in accordance with the content of the complaint.” If the “investigating officer” discovers clues to other crimes outside the complaint during the investigation and interrogation of the crime stated in the complaint, they may also conduct an interrogation. However, the newly discovered crime must be documented separately and registered as a new case for “separate investigation and discussion.” “The previous complaint shall not be used as a basis for immediate investigation,” and the new crime shall not be confused with the former complaint. If a judicial officer “beyond the original complaint, additionally investigates and seeks to find crimes punishable by flogging, caning, penal servitude, banishment, or death,” this is considered “intentionally framing someone with a crime,” and they will be severely punished for the additional crime sought. The judicial officer should still be punished even if the additional crime is true.

In ancient China, it was clearly advocated early on to obtain the truth of a case through interrogation without beating. The Qin bamboo slips from Shuihudi, “Sealing and Examination Style - Prison Management,” state: “In managing a prison, it is best to obtain the truth through written records and follow the statements without resorting to flogging or torture.” Although obtaining the truth through legally sanctioned torture is not prohibited, it is not encouraged, and the

³⁹ [Tang Dynasty] Li Linfu, et al., *Tang liudian*, vol. 6, 191.

⁴⁰ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 720.

authorities have expressed clear disapproval, that is, “flogging or torture is considered inferior.” The reason for disapproval is that torturing prisoners can easily lead to wrongful cases; that is, “there is a fear of causing miscarriages of justice.”⁴¹ The Tang Dynasty rulers continued to maintain a disapproving attitude towards torture during interrogation. Article 476 “Interrogation and examination of the suspect’s statements” in the *Statutes on Deciding Cases* stipulates: “For those who should be interrogated as prisoners, the circumstances must first be examined, the statements and reasons reviewed, and the evidence repeatedly verified.” It also explicitly states that judicial officers who conduct torture during interrogation without examining the circumstances and repeatedly verifying the evidence shall be severely punished, “If the circumstances are not examined and the evidence is not repeatedly verified, but torture during interrogation is conducted, the punishment is sixty strokes of the cane.”

C. Establish case files and obtain joint approval, then proceed with torture during interrogation

Judicial officers may resort to torture during interrogation only after careful questioning and examination fail to clarify the case, and the suspect refuses to confess. If the criminal facts are clear and the evidence is sufficient, torture during interrogation is not allowed even if the suspect does not admit the crime; that is, “If the criminal facts are evident and there is no doubt, even if the suspect does not confess, the case shall be decided according to the evidence.” The *Rules for Prison Officials* stipulates: “Judicial officers in charge of prisons shall first employ the five methods of observation, and then verify all evidence. Only if the case remains doubtful and the suspect still does not confess can torture be applied.”⁴² However, the fact that “the case remains doubtful and the suspect still does not confess” after careful questioning is only the factual premise for torture during interrogation. Judicial officers must also keep a written record and conduct the torture during interrogation together with the senior official of their department, which is the procedural prerequisite. Article 476 “Interrogation and examination of the suspect’s statements” in the *Statutes on Deciding Cases* states in the *Commentary* part: “If it is necessary to conduct an interrogation, a case file must be established, and the interrogation must be jointly reviewed and judged by the senior official present, before torture during interrogation can be carried out.” If judicial officers violate the law by conducting torture during interrogation without written records or without the presence of a senior official, they shall be severely punished. “If an officer is assigned to investigate and there is no other official to jointly review the case, he may conduct his separate interrogation. However, if he does not carefully examine the case and repeatedly verify the evidence, but resorts to torture during

⁴¹ The Group for the Collation of the Bamboo Slips from the Qin Tombs at Shuihudi, *The Bamboo Slips from the Qin Tombs at Shuihudi* (Beijing: Cultural Relics Press, 1990), 147.

⁴² Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 712.

interrogation, he shall be punished with sixty strokes of the cane.”

IV. Strict Limitations of Torture During Interrogation

The primary means of interrogation for ancient Chinese judicial officers was “torture with detention” or “torture during interrogation,” which is what we today refer to as “torture.” It is an inherent product of a historical stage where investigative methods and concepts of evidence were not yet well-developed, and it is also a common feature in the early history of human society and the legal systems of both the East and the West. The Tang Dynasty rulers inherited the previous dynasties’ clear attitude of disapproval toward torture during interrogation and imposed restrictions on it in both procedural and substantive aspects. Even when torture during interrogation was deemed necessary, the legislative level also made comprehensive, detailed, and strict limitations on its tools, methods, subjects, and quantities. These legislative achievements and the demonstrated high regard for and effective protection of prisoners’ rights and interests were unparalleled in the world then. The strict restrictions on torture during interrogation also directly reflect the prominent characteristics of Chinese judicial civilization.

A. Tools and ways

The Tang legal orders explicitly stipulated the specific tools for torture during interrogation, as well as their names and forms. The *Rules for Prison Officials* states: “All canes shall have their knots removed and be three *chi* and five *cun* in length. The interrogation cane shall have a larger end with a diameter of three *fen* and two *li* and a smaller end with a diameter of two *fen* and two *li*; the regular cane shall have a larger end with a diameter of two *fen* and seven *li* and a smaller end with a diameter of one *fen* and two *li*; the flogging cane shall have a larger end with a diameter of two *fen* and a smaller end with a diameter of one and a half *fen*.”⁴³ The interrogation cane, used for torture during interrogation, is larger in size compared to the regular cane and the flogging cane. The removal of knots and the regulation of size are intended to prevent excessive harm during torture interrogation. Judicial officers are only permitted to use the interrogation cane that conforms to the legal specifications for torture during interrogation; failure to do so will result in severe punishment. Article 482 “Punishments not in accordance with the law” in the *Statutes on Deciding Cases* states in the *Commentary* part: “If the length and thickness of the cane do not comply with the order, the punishment is 30 strokes of the cane; if this results in death, the punishment is one year of penal servitude.” If judicial officers use tools other than the interrogation cane for torture during interrogation, they will also be severely punished. Article 477 “Torture during interrogation shall not exceed three times” in the *Statutes on Deciding Cases* states in the *Commentary* part: “If torture during interrogation is conducted using

⁴³ Ibid., 727.

methods other than the legal cane, such as suspending and binding with ropes, or beating with sticks, all these are considered ‘other methods’ apart from the legal cane. Offenders shall be punished with one 100 strokes of the cane.”⁴⁴ If a prisoner dies as a result of torture during interrogation using “other methods,” the judicial officer shall be sentenced to two years of penal servitude.

The Tang legal code also made specific provisions for the methods of torture during interrogation. Judicial officers were only allowed to use the interrogation rod to strike specific parts of the prisoner’s body. The *Rules for Prison Officials* stipulates: “For those sentenced to flogging, the legs and buttocks shall be struck alternately; for those sentenced to caning, the back, legs, and buttocks shall be struck alternately, with equal numbers of strokes for each part; the same applies to torture during interrogation. For those sentenced to flogging or below who wish to have their back and legs struck evenly, this is permitted.”⁴⁵ Torture during interrogation must be carried out by evenly striking the corresponding parts of the prisoner’s body with the interrogation rod to avoid causing excessive harm. Similarly, during the process of torture during interrogation, the executor must not be changed to prevent continuous severe injury to the prisoner. The *Rules for Prison Officials* stipulates: “Those who conduct torture during interrogation and carry out punishments shall not change personnel midway.”⁴⁶ Furthermore, if a prisoner is already injured or ill, torture during interrogation is not allowed until they have recovered. If judicial officers violate the prescribed methods of torture during interrogation, they shall be punished according to the specific harm caused. Article 482 “Punishments not in accordance with the law” in the *Statutes on Deciding Cases* stipulates that if the method of punishment does not follow the provisions of the Tang Code, it is “considered ‘not in accordance with the law,’ and the punishment is 30 strokes of the cane. If punishment not in accordance with the law results in death, the punishment is one year of penal servitude.” Article 477 “Torture during interrogation shall not exceed three times” stipulates: “If a prisoner has wounds or illness and is tortured before recovery, the punishment is one 100 strokes of the cane.” If torture during interrogation results in serious injury or death of the prisoner, the judicial officer shall be sentenced to one and a half years of penal servitude.

B. Target and quantity

The Tang legal codes explicitly stipulate that torture during interrogation is not allowed for specific individuals. Article 474 “Determining guilt based on multiple testimonies” in the *Statutes on Deciding Cases* states: “For those who are subject to deliberation, petition, or reduction of punishment, as well as those aged 70 or

⁴⁴ The “legal cane” referred to in the Tang Code means “the cane prescribed by law,” that is, the tool for torture during interrogation explicitly stipulated by law.

⁴⁵ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 727.

⁴⁶ *Ibid.*, 714.

above, 15 or below, and those with severe disabilities, torture during interrogation is not permitted. Their guilt shall be determined based on multiple testimonies. Violators shall be punished for intentional or negligent misconduct.” It is evident that individuals with privileges for deliberation, petition, or reduction of punishment, the elderly, children, and those with severe physical impairments⁴⁷ are absolutely exempt from torture during interrogation and can only be convicted based on multiple testimonies, that is, “only if three or more people clearly testify to the matter can a conviction be made.” At the same time, pregnant women are also exempt from torture during interrogation. Article 495 “Torture and punishment of pregnant women” in the *Statutes on Deciding Cases* states in the *Commentary* part: “If a pregnant woman commits a crime and is subject to torture or caning/flogging, she shall only be subjected to torture or punishment after 100 days postpartum.” Clearly, the legislation only relatively restricts the torture during interrogation of pregnant women; that is, torture during interrogation is not allowed from the time of pregnancy to 100 days after childbirth. But whether it is an absolute restriction or a relative restriction, the Tang Code severely punishes judicial officers for illegal torture during interrogation. If torture during interrogation of individuals with deliberation, petition, or reduction of punishment privileges, the elderly, children, and the disabled leads to wrongful conviction or acquittal, it is considered “judicial officers causing wrongful conviction or acquittal”; if illegal torture during interrogation obtains the truth of the case, it is punished according to the “law on not allowing torture during interrogation for those who do not meet the criteria,” that is, “treated as intentional injury or homicide, with the death penalty increased to penal servitude.” If a pregnant woman who has not given birth is tortured, the punishment is 100 strokes of the cane; if a woman within 100 days postpartum is tortured, the punishment is ninety strokes of the cane; if torture during interrogation causes serious injury to a pregnant woman, it is punished according to the “law on not allowing torture during interrogation for those who do not meet the criteria.”

The Tang legal orders strictly regulate the upper limits on the frequency and quantity of torture during interrogation and clearly stipulate the corresponding calculation standards. First, there must be a gap of at least 20 days between two consecutive instances of torture during interrogation,⁴⁸ and the total number of

⁴⁷“Severe disabilities” can be understood as individuals with severe physical impairments. The *Regulations on Households (Hu lin)* stipulates: “Those who are blind in one eye, deaf in both ears, missing two fingers on a hand, missing three toes on a foot, lacking a thumb on either hand or foot, bald with sores and no hair, suffering from chronic severe diarrhea, or having a large goiter are considered to have disabilities. Those who are mentally challenged, mute, dwarfs, have a broken spine, or have one limb disabled are considered to have severe disabilities.” See Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 136.

⁴⁸ The time measurement unit “day” had a clear calculation standard in the Tang Dynasty. Article 55 “On the terms ‘day,’ ‘year,’ and ‘joint plotting’” in the *Law of Names and Examples (Mingli li)* states: “Wherever the term ‘day’ is used, it refers to a hundred periods.” The Imperial Secretariat section in *Tang liudian* stipulates: “A water clock with a floating arrow is used to measure time, to examine the times of midday, dusk, and dawn. The arrow has forty-eight marks, with a total of a hundred periods for day and night.” [Tang Dynasty] Li Linfu,

torture during interrogations shall not exceed three times. The *Rules for Prison Officials* stipulates: “There must be a gap of 20 days between each interrogation. If the interrogation is not completed and the case is transferred to another department, which still requires torture during interrogation (when a prisoner is transferred to another department, the case file shall be transferred together), the previous interrogations shall be taken into account to fulfill the three-time limit. However, if the crime is not serious or there is little doubt, it is not necessary to conduct the full three interrogations.”⁴⁹ It should be noted that if the interrogation is not completed and the case is transferred to another department, it still counts as one instance of torture during interrogation. Moreover, the upper limit of “three times” for torture during interrogation does not mean that three interrogations must be conducted. For cases where “the crime is not serious” or “there is little doubt,” the number of torture during interrogations should be reduced. Second, the total number of torture during interrogations shall not exceed 200. If the prisoner is sentenced to caning or below, the number of torture during interrogations shall not exceed the number of strokes corresponding to the crime. Article 477 “Torture during interrogation shall not exceed three times” in the *Statutes on Deciding Cases* stipulates: “Torture during interrogation shall not exceed three times, the total number shall not exceed 200, and for those sentenced to caning or below, it shall not exceed the number of strokes corresponding to the crime.” If judicial officers violate the upper limit on the number of torture during interrogations, they shall be severely punished. Specifically, if judicial officers conduct more than three tortures during interrogation, they shall be punished with 100 strokes of the cane. If the upper limit on the number is exceeded, then “for those who exceed the number of strokes, the remaining number shall be applied to them in reverse,” that is, if the total number of strokes for a prisoner sentenced to penal servitude or above exceeds 200, or if the total number of strokes for a prisoner sentenced to flogging or caning exceeds the number corresponding to their crime, the excess number of strokes shall be applied as a punishment to the judicial officer. If a prisoner dies as a result of excessive torture during interrogation by a judicial officer, the punishment is two years of penal servitude.

C. Legal consequences

Torture during interrogation is merely a means; the true objective is to uncover the essence, truth, and reality of the case. If, based on careful examination of the circumstances and verification of the facts, judicial officers manage to obtain a confession from the defendant through torture during interrogation, the trial process comes to an end. However, if the defendant still refuses to confess after the frequency and quantity of torture during interrogations have reached the legal upper limits, the defendant shall be “released on bail.” Article 477 “Torture during

et al., *Tang liudian*, vol. 10, 305.

⁴⁹ Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, 712-713.

interrogation shall not exceed three times” in the *Statutes on Deciding Cases* provides an example in the *Law Commentary* part for clarification: “If the original crime is punishable by caning or below, and flogging of more than ten strokes, and the defendant does not admit to the crime during interrogation, torture during interrogation shall not exceed the number of strokes corresponding to the crime. For instance, if the original crime is punishable by 100 strokes of the cane, and the defendant does not confess after 100 strokes of torture, they shall be released on bail and exempted from further punishment. If the original crime is punishable by one year of penal servitude, torture during interrogation may also reach up to 200 strokes. If the defendant still does not confess after the full number of strokes, they shall be released on bail.” While the defendant is “released on bail after the full number of strokes and still does not confess,” the plaintiff should also be subjected to torture during interrogation. Article 478 “The limit for torture during interrogation reached without confession” in the *Statutes on Deciding Cases* stipulates: “If the prisoner does not confess after the limit for torture during interrogation is reached, the accuser shall be subjected to torture during interrogation. However, if the accuser is a family member or relative of the victim of murder, theft, or damage by water or fire, they shall not be subjected to torture during interrogation.” The legislative intent of applying the same frequency and quantity of torture during interrogation to the accuser as to the defendant is to prevent false accusations. “If the accuser is a family member or relative of the victim of murder, theft, or damage by water or fire, they shall not be subjected to torture during interrogation, to prevent them from being afraid of torture and not daring to report the crime.”⁵⁰ If the accuser confesses during the “counter-interrogation,” it is deemed as “false accusation,” and the trial process comes to an end. If the accuser does not confess after the full number of strokes, they shall be “released on bail.” The legislative intent is twofold: on one hand, it aims to improve judicial efficiency, and on the other hand, it is beneficial to the prisoner, that is, “to prevent wrongful convictions or incomplete investigations.”⁵¹

Judicial officers who refuse to release a defendant who has undergone the full number of torture during interrogations or an accuser who has undergone the full number of counter-interrogations shall be severely punished. Even if a prisoner has “undergone the full number of strokes” but is released without bail, they shall still be punished. Specifically, those who should release on bail but do not, shall be punished according to the provisions of Article 469 “Prisoners who should be detained but are not” in the *Statutes on Deciding Cases*, with the corresponding caning or flogging punishment; those who release without bail shall be punished according to the provisions of Article 450 “Acts not permitted” in the *Miscellaneous Law*, with 40 strokes of the flogger or 80 strokes of the cane.

⁵⁰ Liu Junwen, *The Tang Code with Commentary and Annotations (Part II)*, 2046-2047.

⁵¹ *Ibid.*, 2047.

Conclusion

General Secretary Xi Jinping states that the Chinese legal system enjoys a long and storied history, while the excellent traditional Chinese legal culture contains rich ideas of the rule of law and profound political wisdom, and is a great treasure of Chinese culture.⁵² The mature form of the Chinese legal system is the code-based system of laws and orders, as well as the entire set of legislative and judicial techniques and legal theories that are based on it. More importantly, it has given birth to a tradition of the rule of law, legal culture, and civilized order. The system of laws and orders contains profound people-oriented ideas, values of benevolence, and human rights concepts regarding the guarantee of prisoners' rights and interests, which are expressed through meticulous legislative techniques, profound legal principles, and an exquisite legal system. In the Tang Dynasty, the *Rules for Prison Officials* and the *Statutes on Deciding Cases* complement each other: the former stipulates specific norms in aspects such as accepting complaints, trial, enforcement, and prison management, while the latter specifies clear penalties for violations of the specific norms in complaint, acceptance, trial, and prison management. There are two issues here that require some clarification. First, static legal provisions are not always fully implemented in practice, and it is undeniable that there have indeed been cases of corrupt officials and the abuse of torture in practice. However, legislation is ultimately a comprehensive summary and abstract generalization of countless individual cases, and it has been compiled by contemporaries and verified by later generations, eventually taking shape in the form of legal texts. Compared to individual cases in the documents, the legal codes can more comprehensively and profoundly reflect the thoughts, values, and concepts of the people of the Tang Dynasty. The individual cases recorded in the documents are precisely because they deviate from the norm that they are documented and widely spread, such as the corrupt officials' practices of "pouring vinegar into the nostrils," "digging the ground to make a prison," and "inviting the accuser into the jar."⁵³ Second, it is quite evident that the provisions in the laws and orders of legal codes that protect the rights and interests of prisoners and the penalties set for judicial officers have strong practical value and are not merely institutional imagination or value pursuit. The legal codes and classics express people-oriented, benevolent, and compassionate concepts through systematic legal norms, which are not simply declarative of certain goals but are a set of highly operational technical specifications, such as standards for facilities and restraints, calculations of quantities and time, and requirements for food, lodging, and

⁵² "Strengthening the Construction of Foreign-related Legal System to Create Favorable Legal Conditions and External Environment," *People's Daily*, 2023-11-29, page 1.

⁵³ [Song Dynasty] Ouyang Xiu, [Song Dynasty] Song Qi, *The New Book of Tang (Xin tangshu)*, vol. 209, *Biographies of Corrupt Officials (Kuli zhuan)*, page 5906; [Song Dynasty] Sima Guang ed. [Yuan Dynasty] Hu Sanxing's phonetic annotation, *Zizhi tongjian*, vol. 204, "Tang Annals, Part 20: Empress Wu Zetian, Tian Shou Second Year," (Beijing: Zhonghua Book Company, 1956), 6472.

hygiene. From the moment these norms were established, they had a distinct practical significance, or rather, they were designed for implementation from the outset. Otherwise, there would be no need to establish the detailed and even cumbersome quantitative indicators included in the regulations. Therefore, based on the living conditions of the Tang Dynasty's prisoners presented in the legal codes and classics, especially these judicial scenarios, we can, to some extent, summarize the rights and protection of the Tang Dynasty's prisoners.

Firstly, the laws and orders in the codes provide very comprehensive regulations on the basic rights and interests of prisoners during their imprisonment, covering not only aspects such as clothing, food, medical care, hygiene, leave, and funeral arrangements, but also the use of restraints and methods of detention. It is particularly noteworthy that the legislation stipulates clear standards and operating procedures for prisoners' bathing time, leave for marriage and funerals, and funeral specifications, while also establishing routine supervision measures to ensure prisoners' living conditions and specific penalties for judicial officers. This point is quite different from our previous understanding.

Secondly, the regulations and penalties in the laws and orders are designed for both prisoners and judicial officers, with the primary focus on the latter. These regulations and penalties play a direct role in protecting prisoners' basic rights and interests during their detention period. The high level of preferential treatment given to the elderly, children, the sick, the disabled, and pregnant women, as well as the strict requirements and severe penalties imposed on judicial officers, are particularly noteworthy. Especially, the low threshold for criminalizing the embezzlement of prisoners' clothing and food by judicial officers, and the inclusion of capital punishment provisions, clearly demonstrate the intent and attitude of the legislators.

Lastly, the laws and orders set forth specific procedural and substantive regulations for interrogation, reflecting the clear stance of the legislators. The Tang Code provided detailed and strict restrictive regulations on the tools and methods of torture, the subjects and quantities, as well as the legal consequences, and formulated corresponding calculation and operational standards from a standpoint favorable to prisoners. If judicial officers exceeded the limits in torture, they would be subjected to torture themselves. The restrictive provisions for judicial officers in the laws and orders also reflect the emphasis on prisoners' rights from an entirely new perspective.

In summary, although the concept of "human rights" does not appear in the laws and orders of the code directly, almost all the provisions contain rich people-oriented ideas, values of benevolence, and human rights concepts, and there is a complete set of technical means to ensure their implementation. These ideas, values, concepts, and their institutional expressions have had a far-reaching impact, not only being inherited by later generations in legislation, but also directly influencing and serving as a model for the development of the rule of law in East

Asian countries.⁵⁴ Although the human rights concepts in the legal codes and classics have unique expressions that are distinctly different from Western human rights discourse and hold temporal and spatial gaps with modern concepts of the rule of law, they are the rational sedimentation of the Chinese nation's million-year history of humanity, 10,000-year cultural history, and over 5,000-year civilization. They have become important to China's excellent traditional legal culture and legal civilization. The human rights concepts in the legal codes and classics are significant for contemporary Chinese human rights practices, especially for the construction of Chinese human rights discourse. China owns its unique path, theory, system, and culture of human rights, which include the common pursuits of human society and important elements of China's excellent traditional legal culture. As General Secretary Xi Jinping states: "In advancing the human rights cause, we have combined the Marxist outlook on human rights with China's specific realities and the best of traditional Chinese culture, reviewed our Party's successful experience of leading the people in respecting and protecting human rights, and learned from the outstanding achievements of other civilizations. This has allowed us to forge a path that is in keeping with the times and the conditions of China."⁵⁵ Based on China's human rights practice, we should conduct in-depth excavation, systematic sorting and comprehensive summary of ancient Chinese legal texts, and fully activate the people-oriented thought, benevolence value and human rights concepts contained in them with Marxist human rights view. Only through such approaches can the rich human rights spirit contained in the excellent traditional Chinese culture be revitalized with strong vitality that transcends time and space. This will "enable us to have sufficient historical confidence in facing the excellent traditional Chinese legal culture that spans thousands of years, and to have a scientific attitude towards the innovative development of Marxist legal theory"⁵⁶; it will also contribute significant Chinese wisdom and solutions to the common human rights cause of humanity.

⁵⁴ The *Japanese Yōrō Prison Code* essentially comprehensively emulated the procedural provisions and corresponding penalties for interrogation and torture during interrogation in the *Rules for Prison Officials* during the Kaiyuan period of the Tang Dynasty. For instance, Article 35 of the *Japanese Yōrō Prison Code* stipulates: "Judicial officers in charge of prisons shall first employ the five methods of observation, and then verify all evidence. Only if the case remains doubtful and the suspect still does not confess can torture be applied. There must be a gap of twenty days between each interrogation. If the interrogation is not completed and the case is transferred to another department, which still requires torture during interrogation (when a prisoner is transferred to another department, the case file shall be transferred together), the previous interrogations shall be taken into account to fulfill the three-time limit. However, if the crime is not serious or there is little doubt, it is not necessary to conduct the full three interrogations. If a prisoner dies as a result of interrogation, the case must be reported to the local chief official. In the capital, the case shall be jointly verified with the supervisory officer." Noboru Niida, *Supplementary Records of the Tang Code (Tangling shiyi)*, "Reference 3," 714.

⁵⁵ Xi Jinping, "Steadfastly Following the Chinese Path to Promote Further Progress in Human Rights," *Qiushi Journal* 12 (2022): 6.

⁵⁶ Zhang Wenxian: "Significant Achievements in the Sinicization and Modernization of Marxist Rule of Law Thoughts: The Innovative Development of Xi Jinping Thought of Rule of Law in the 20th National Congress of the Communist Party of China Report," *Contemporary Law Review* 5 (2023): 17.

(Translated by *LI Donglin*)