Conclusions

The Function and Effectiveness of the Laws in Early Imperial China

Statutes and ordinances are the warp of government affairs and the weft of the myriad exigencies.

—ZHANG FEI, Preface and Commentary on the Han and Jin Statutes (ca. 268 CE)

What were the functions of law in early imperial China? If you asked a powerful Qin official, he might say that, in general, the purpose of the law was “to teach and guide the common people, to remove their wrong inclinations as well as their evil customs, and to enable them to proceed to goodness.” Such were the sentiments expressed by Teng, the Qin Governor of Nan Commandery, when he addressed this subject in a circular letter to his subordinate officials in 227 BCE. In his view, the laws were created by the sage-kings of antiquity to help correct wrong thinking and to unify the customs of a diverse and sometimes wicked people.

In our broader, more critical analysis, however, the real purpose of the Qin and Han laws was to serve as both the idealized blueprints for the construction of the engine of the state and the instruction manual for officials to operate its intricate and interrelated mechanisms. As such, the law made possible the projection of state power into all levels of society, ideally, down to the family level and onto its individual components, the bodies of individuals.

Although individual statutes do not always fall exclusively into one category rather than another, the functions of the extant statutes and ordinances can be divided as follows:

1. Controlling public order
2. Establishing rules for legal procedure
3. Managing state finances and the state’s fundamental economic activities
4. Managing and controlling the bureaucracy
5. Managing the flow of information, communications, and personnel

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1 Translation by Wallacker (1986), with modifications. The Chinese text reads: 律令者，政事之經，萬機之緯也. This statement is not found in the Jin shu version of this commentary but is in Yiwen leiju, juan 54.10a.
2 For this letter, found in Shuihudi tomb no. 11, see Shuihudi (1990), 13–14 “Yu shu.”
6. Controlling ideology and religious practices
7. Managing and exploiting the labor power of the population
8. Projecting state power into the heart of each family in the empire
9. Monopolizing and organizing the status system
10. Managing the army

In this list, only the first two types of function involve matters related to what we would call 'penal law;' and so we would declare categorically that early imperial Chinese law was not focused solely on criminal matters, as it has been frequently characterized. Most of the laws punishing crimes of assault, robbery, or other violations of the public and social order were placed in the “Statutes on Assault” (sec. 3.1) and the “Statutes on Robbery” (sec. 3.2). Violations of sexual taboos or crimes of sexual violence are addressed in the “Statutes on Miscellaneous Matters” (sec. 3.8). Rules of fundamental procedure for legal cases and sentencing guidelines are laid out in great detail in the “Statutes on the Composition of Judgments” (sec. 3.3) and are exemplified in nineteen of the case records in the Book of Submitted Doubtful Cases text. Additional judicial procedures are included in the “Statutes on Denunciations” (sec. 3.4), the “Statutes on Arrest” (sec. 3.5), and the “Statutes on Impoundment” (sec. 3.7). All these Han laws seem to have been based on statutes and procedures that existed during the Qin. Based on our analysis in sections 2.6 and 2.7, the Qin and early Han developed very sophisticated rules for legal procedures, and officials theoretically were held accountable for errors at all stages of a legal case. It was not true that the law was arbitrarily applied and was merely a tool for the totalitarian exercise of state power on the bodies of the people.

As for functions 3–5, which focus on administrative matters, it is obvious from the documents found at the Liye site that the Qin state was deeply involved in the market economy, despite the strictures in Legalist philosophical texts against such activities, and that the economy was rapidly evolving from one based on the barter of goods to one that was much more highly monetized. This monetization continued at an even faster pace after the conquest of contending states and the establishment of the empire. Early-Han statute collections from Zhangjiashan tomb no. 247 concerning the management of state finances, natural resources, taxation, and currency include the “Statutes on Cash” (sec. 3.9), the “Statutes on Equalizing Transportation” (Junshu lü 均輸律) (sec. 3.11), the “Statutes on Agriculture” (sec. 3.13), the “Statutes on [Passes and] Markets” (sec. 3.14), the “Statutes on Exemption from Taxes” (Fü lü 復律) (sec. 3.16), the “Statutes on Households” (sec. 3.18), the “Statutes on [passages and] Markets” (sec. 3.14), the “Statutes on Exemption from Taxes” (Fü lü 復律) (sec. 3.16), the “Statutes on Households” (sec. 3.18), the “Statutes on

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3 See Bodde and Morris 1967; MacCormack 1990.