THE AUTUMN ASSIZES IN CH'ING LAW

BY

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The basis of the Chinese emperor's power was his vocation to keep order in the universe. His task was to ensure that the "celestial", "cosmic", or "natural" harmony or order, the t'ien-ho 天和, be maintained. That task included the guarantee that the natural or constant relationships among the people, the ch'ang-lun 常倫 were maintained, so that every citizen behaved well and fulfilled the duties and obligations which belonged to his station in life. The maintenance of order naturally included also the protection of the citizens' lives and goods. Ideally the order was maintained by moral education, but where education was proved of no avail, punishment was needed. When we say that "justice is done", the expression reveals satisfaction at the victory of the good, the just over the unjust, the evil. With a good deal of exaggeration we might say that the attitude of the Chinese government towards punishment was that of regrettable necessity; it should be sparingly used. Therefore a strict balance should be observed between the seriousness of the crime and the heaviness of the punishment (p'ing-yün 平允). This is to a certain extent true of any penal system, but the factors which determined the seriousness of the crime were different in China. The relationship between criminal and victim was one of the most important determinants of the gravity of the act, it was even more important than the intention with which the crime had been committed. Relationship; intention; the weapon that was used in homicide; purpose of the crime, were taken together in the concept of ch'ing-hsing 情形; they were all elements of the crime, and contained in the qualification

1 "We do not consider government by punishment a noble achievement and think highly of improving (the people) by virtue. However, how could We restrict persons who cannot be improved through virtue unless We do so by punishment?" Ch'ing Kao-tsung, in 1754; Ta Ch'ing hui-tien shih-li (henceforth HTSL) Ch. 847, p. 8b.

"We have verbally impressed upon your Board that by imposing punishments and conducting trials your work is related to (the maintenance of) cosmic harmony and that your attitude towards the people's lives shall be one of respect and solicitude." Shih-tsung, 1722; Ch'ing-ch'ao wen-hsien t'ung-k'ao (henceforth CCWH-TK) Ch. 207, p. 6707).

2 P'ing-yün is not an expression which occurs in the Code, it is only found in edicts and cases.
of the act in the criminal code. The translation “circumstances” is inadequate.

Though there was great respect for the law in China, it was realized that this particular feature implied many specific provisions and that the law could never encompass the endless variety of *ch'ing-hsing* and provide exact equivalence in punishments. Often there were gaps, *chien* 間, between the definition of the crime in the law and the concomitant punishment and the circumstances. In such cases the law had to be applied by *pi-fu* 比附, by analogy. Only in that way the magistrate could use his discretion to some extent. Some of them were quite clever in discovering gaps. It seems that this facility was more frequently used to mitigate punishment than to “fabricate crimes”. Since Peking insisted on uniformity in the administration of justice in the whole realm, regulations were promulgated in the course of the dynasty which gave directions how to use analogy, and official precedents were circulated. Still, analogy was the main source of change in the law which started from below, in the provinces, but the tendency to check its use is understandable.

The Emperor himself felt, or should feel, responsible for the justice that was administered in his name, and for the errors of it as well. Errors were especially important when the sentence had been death. This problem had been cause of imperial concern since the Sui dynasty and gradually had led to a system where every capital sentence had to be approved by the Emperor himself. To make sure that no blood would be spilt unnecessarily, Ming law had introduced a system of two kinds of capital sentences, one for “execution without delay” — *li-chüeh* 立決, the other to capital punishment subject to revision at the Autumn Assizes, which was called *chien-hou* ch’iu-hou *ch’u-chüeh* 監候秋後處決, “waiting in jail till after the autumn a decision about the punishment were taken”, abbreviated to *chien-hou* 監候 “waiting in jail”. In the Ch’ing dynasty this qualification was contained in the law for every capital crime. This study will attempt to describe and evaluate this system of reevaluation, in other words, the institution of the Autumn Assizes.

All capital sentences, whether labelled by the words “execution without delay” or “waiting in jail”, needed imperial approval. A capital crime was always subjected to a preliminary investigation by the district magistrate, who sent his findings, the criminal and the witnesses to the Prefect. The Prefect held an official trial and gave

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