

LECH BUCZEK

LAW IN IMPERIAL CHINA
AS PRESENTED IN THE RESEARCH OF
FATHER PROFESSOR ANTONI KOŚĆ SVD

Introduction

Father Professor Antoni Kość SVD (1949–2011) was a Verbite who dedicated twenty years of his life to exploring local cultures and languages in Asia and studying them. He constantly broadened his research to cover different aspects of East Asia. During his life and missionary work, he stayed in China, South Korea, Japan, and Taiwan, and he closely studied their cultures and languages. The research conducted by Professor Kość was devoted to Chinese law and became the principle theme of his habilitation (post-doctoral) thesis.¹ The aim of this article is to present the laws of particular Chinese dynasties. To this end, the issues are analysed in a chronological order, looking at them in terms of philosophy of law and customary law.

Development of Chinese law – a historical analysis

Kość studied Chinese law from both a philosophical and a historical perspective. He concentrated on the philosophical underpinnings of the Chinese legal system, as well as customs and codes developed by successive dynasties. His analysis starts from first mythological dynasties and ends with the fall of the empire and the rise of the first Republic of China.²

His research on Chinese law focuses on the analysis of particular dynasties, with regard to the culture of law and factors affecting the law. According to Kość, the Han period contributed to the development of civilization and the beginning

ORCID: 0000-0001-8446-4029

DOI: 10.4467/23538724GS.23.026.19021

¹ J. Potrzebacz, *Z Rokietnicy w świat* [in:] *Transkulturowość filozofii prawa Antoniego Kościa*, red. P. Stanisław et al., Wydawnictwo KUL, Lublin 2016, p. 28.

² A. Kość, *Prawo a etyka konfucjańska w historii myśli prawnej Chin*, Wydawnictwo KUL, Lublin 1998, p. 37.

of the Mandarin bureaucracy, which was heavily based on Confucianised law. Moreover, a more detailed study of law also requires a good understanding of the place of a human being in Chinese philosophy. Therefore, Kość analyses the main elements of Taoism, Buddhism, Confucianism, and Chinese folk religions.³

During the first Zhou dynasty the primary sources of law were “books of punishments”, inscribed on bamboo tablets and cast in bronze and metal,⁴ which date back to 513 BCE. The name of the bamboo punishments comes from the first books.⁵ The preserved collections of law are Shū jīng 书经 (*The Book of History*) and Zuǒ chuán 左傳 (*Zuo's Commentary*)⁶. Some characteristic features of the contemporary spirit of law are included in the so-called *Instructions for Kang*. This document emphasizes the importance of hierarchy and the necessity of severe punishment. Additionally, it stresses that the order of the family reflects the order in the state. Moreover, this document contains some interesting procedural rules, such as ownership based on the distribution of agricultural land in the state of Zhou. At that time, a system of feudal well fields was in force,⁷ whereby one (the middle field) out of nine fields was a public field (*kung-tien*) from which the state benefited.⁸

From the point of view of philosophy and the development of law, it is crucial to analyse the conflict between the Confucian and Legalist Schools. Confucians preferred to rule the state by means of LI, that is Confucian rites, and considered the law of FA as something worse and a “necessary evil”. In this conflict between LI and FA the former is always more important;⁹ law is for minimalists and it does not develop any virtues in humanity, and such a development was stressed by Confucianists.¹⁰ Legalists followed the law of FA¹¹ and the written law was for them the

³ T. Barankiewicz, *Chińska kultura prawna w poglądach Antoniego Kościa* [in:] *Transkulturowość filozofii prawa...*, pp. 135–137; A. Kość, *Prawo a etyka...*, pp. 47–64.

⁴ A. Kość, *Wczesne źródła prawa i powstanie pierwszych zasad prawa chińskiego* [in:] *Historia et ius. Księga Pamiątkowa ku czci Księdza Profesora Henryka Karbonnika*, red. A. Dębiński, G. Górski, Wydawnictwo KUL, Lublin 1998, pp. 235–251.

⁵ Cf. E. Caldwell, *Social Change and Written Law in Early Chinese Legal Thought*, “Law and History Review” 2014, vol. 32, no. 1, pp. 18, 21.

⁶ Cf. Yáng Bǒjùn, *Chūnqiū zuǒ chuán zhù* (楊伯峻, 春秋左傳注) [Spring and Autumn Annals. The Contemporary of Zuo], Beijing 1990, *passim*; A. Kość, *Prawo a etyka...*, p. 67.

⁷ Cf. R. Sławiński, *Nowożytnie dzieje Chin w wieku XIX* [in:] *Kraje konfucjańskie. Dzieje nowożytnie*, red. R. Sławiński, Oficyna Wydawnicza AFM, Kraków 2011, p. 11.

⁸ A. Kość, *Prawo a etyka...*, p. 72.

⁹ X.C. Quian, *Traditional Chinese law v. Weberian legal rationality*, „Max Weber Studies” 2010, vol. 10, no. 1, p. 43.

¹⁰ Some examples of Confucian virtues include: loyalty (*zhong* 忠), filial piety (*xiao* 孝), benevolence (*ren* 仁), love (*ai* 愛), fidelity (*xin* 信), righteousness (*yi* 義), harmony (*he* 和), and peace (*ping* 平).

¹¹ P. Dąbrowski, *Mysł polityczno-prawna starożytnych Chin – próba syntezy*, „Gdańskie Studia Azji Wschodniej” 2012, z. 2, p. 45.

most important. The third school known as the Taoist school is seen as peripheral to the dispute. Taoists (representing its classical tradition) considered the state as evil and did not get involved in politics, according to the principle of *wu-wei*¹², that is “inaction”, non-interference with the order of Heaven. In its *Shēn Bùhài* 申不害 variation the state is neither good nor bad.¹³

Kość emphasizes that under the Qin (Ch’in) dynasty, the Legalist School held sway. Though it lasted a relatively short time, this dynasty made a considerable contribution to the development of Chinese law in such areas as administrative reforms, the abolition of the hereditary aristocracy, unification of taxes, currency and trade, and the development of agricultural techniques and industry. This period is characterized by a strong centralization of power and unification of law.¹⁴ Within the tax system there was a clear division between tax on productivity, head tax, and tax on salt and iron.¹⁵

The succeeding dynasty, the Han, departed from Legalism and developed solid laws on Confucian foundations. Nevertheless, some of the previously introduced changes endured. The restoration of the feudal system had failed, and the Han rulers returned to the effective model of centralization of imperial power. The hierarchical structure of the social pyramid reflected Confucian relationships. At its apex, the emperor served as a good father of the family; below there were officials, the so-called “aristocracy of the spirit”; and at its base were farmers who maintained the whole society. Merchants, craftsmen, and soldiers were situated beneath farmers, in a less important social group. In fact, supra-regional trade was strictly controlled by the state. There was a gradual Confucianisation of law, which meant that legal codes incorporated the values endorsed by Confucian teaching into their description of offences.¹⁶ Confucian thinkers of that time, such as Dǒng Zhòngshū 董仲舒¹⁷ and Jiǎ Yí 贾谊, reiterate the supremacy of LI over FA and emphasize that decisions must be made in accordance with LI if there is a conflict between these two.¹⁸

The state institution of the Han dynasty consisted of court offices centered on the emperor and state offices (that is, not fully developed ministries and other professional administrative offices). Among court offices the most important position was held by the Three Councilors of State: the Chancellor, the Imperial Counselor,

¹² Cf. R. Sławiński, *Nowożytnie dzieje Chin...*, pp. 13, 17.

¹³ T. Barankiewicz, *Chińska kultura prawna...*, p. 140.

¹⁴ D. Bodde, *Basic Concepts of Chinese Law: The Genesis and Evolution of Legal Thought in Traditional China*, “Proceedings of the American Philosophical Society” 1963, vol. 107, no. 15, pp. 386–387.

¹⁵ Antoni Kość, *Prawo a etyka...*, pp. 88–93.

¹⁶ G. MacCormack, *The Legalist School and its Influence upon Traditional Chinese Law*, “Archives for Philosophy of Law and Social Philosophy” 2006, vol. 92, no. 1, pp. 76–77.

¹⁷ Cf. R. Sławiński, *Nowożytnie dzieje Chin...*, p. 48.

¹⁸ A. Kość, *Prawo a etyka...*, p. 99.

and the Grand Commandant. They formed a so-called internal cabinet and were the emperor's most trusted men. Among state offices, there were nine ministries.¹⁹ In the system of organs of power there was dualism and constant rivalry, both between court and state offices as well as between civil and military offices. Military officials were at the head of territorial divisions such as kingdoms, provinces, counties, and commanderies. They often had strong armies and gradually became independent of the central authority, thus posing a threat to the emperor's authority and the integrity of the state. To ensure consolidation of his power, the emperor appointed a new supervisory organ, the Censorate 御史臺. Its role was to check whether both officials and the emperor governed in the spirit of Confucian principles.²⁰

In terms of the tax system, the Han dynasty abolished consumption taxes and head tax. Land tax was reduced to one-fifteenth, and participation in public works was reduced to three days a year. After conducting a census and calculating the amount of land per family, the emperor Zhāng Dì 章帝 (78–88 AD) announced an agrarian reform which was to rationalize state tribute. The reform introduced the following taxes: a tax on land productivity, which depended on the quality of the land and was paid in kind; a head tax, which depended on the age of the taxpayer (three age groups were specified); and public works, which were fixed and amounted to twenty days a year.²¹

Wang Mang 王莽, the warlord and usurper who ended the Han dynasty, tried to abolish private ownership of land and wanted to establish strong state monopolies. However, he did not succeed in his attempts. His rule was short-lived and, therefore, he did not establish a new dynasty. The problem with monopoly lasted over several dynasties. For example, the Han established thirty salt committees (although other sources refer to from thirty-five to thirty-six committees²²) and forty iron committees; yet salt families (i.e., aristocratic families that owned salt mines) remained a major obstacle in establishing stable state monopolies. The so-called "salt disputes" to solve the problem of monopoly continued over several successive dynasties.²³

The Sui were the next dynasty; they united China after a period of wars and warring kingdoms.²⁴ Apart from uniting the state, the dynasty's major achievement was the expansion of the Great Wall and the construction of the Grand Canal. In terms of law and administration, the Sui dynasty based these on earlier codifications. The

¹⁹ Thus the term 三公九卿, *Sāngōng Jiǔqīng* (the Three Lords and Nine Ministers system).

²⁰ A. Kości, *Prawo a etyka...*, pp. 102–106.

²¹ *Ibidem*, p. 108.

²² Yan Xu, *The State Salt Monopoly in China, Ancient Origins and Modern Implications* [in:] *Studies in the History of Tax Law*, vol. 8, eds. P. Harris, D. de Cogan, Bloomsbury, Cambridge 2017, p. 529.

²³ A. Kości, *Prawo a etyka...*, p. 110.

²⁴ The Sui dynasty (Chinese 隋朝) was started by Sui Wendi (Chinese 隋文帝) and ruled in China in the period 581–618 CE.

dynasty collapsed as a result of multiple and unsuccessful military campaigns.²⁵ The next dynasty, the Tang, had a profound impact on the development of Chinese law. The extant sources of law are the Tang Code of 653CE,²⁶ chapters devoted to law from *The Old Book of Tang* and *The New Book of Tang*, and chapters from the *Táng Huìyào* 唐会要.²⁷ The Tang Code is the first codified set of laws that is fully preserved to this day. It includes eight privileges, for example, a reduction of any penalty imposed depending on the degree of Confucian relations.²⁸ There is a list of cardinal offences that did not entitle the offender to commutation of punishment. Usually, these were offences such as treason, disrespect for superiors and elders, or undermining the basic values of Confucianism. In addition to the Code, the following were also applied: acts (*ling*), which were a kind of administrative law; decrees (*keo*), which both constituted the new law and interpreted the old laws; and regulations (*shih*), which were applicable within particular ministries.²⁹

The Tang period was characterised by the introduction of a new legal institution, that is, the extensive responsibility of officials. There were three groups of relevant cases: responsibility for unjust judgement; officials' responsibility for order in their own districts; and responsibility for collective maintenance of order and for unjust behavior within the bureaucratic apparatus. The distinctive attribute of the period described was a uniform and formalised system of state examinations³⁰ and strong monopolies on salt.³¹

Within the system of organs of power, there were the so-called Three Departments and the Censorate, a body established during the Han dynasty. The Three Departments comprised: the Department of State Affairs (Shangshu Sheng 尚書省), which was an administrative, executive, and legislative authority; the Chancellery (Menxia Sheng 門下省), which was mainly responsible for ceremonies; and the Secretariat (Zhongshu Sheng 中書省), which maintained a secret archive and drafted imperial edicts. The next step was to reorganise the Censorate. It was still a collegial body, but consisted of a chairman, two vice-presidents, four censors, six in-palace enquiry censors, and fifteen enquiry censors. To increase the degree of

²⁵ A. Kość, *Pravo a etyka...*, pp. 111–112.

²⁶ G. MacCormack, *The Legalist School...*, p. 76.

²⁷ A. Kość, *Pravo a etyka...*, p. 114.

²⁸ The privileges include: kinship with the emperor; long service to the imperial family; merit vis-à-vis the state (the expansion of state territory in particular); wisdom evident in giving good counsel and setting a recognized moral example; suitability for military service and administration; dutifulness; belonging to the aristocracy or holding a high clerical rank; and being a descendant of earlier dynasties.

²⁹ A. Kość, *Pravo a etyka...*, pp. 115–117.

³⁰ The imperial examination was three-tiered: *xiuca*, *mingjing* and *jinsbi* (at the level of a county, a prefecture and the capital).

³¹ A. Kość, *Pravo a etyka...*, pp. 117–122.

centralisation of the state between provinces and districts, the institution of Tao 道 was introduced to control provinces and districts. The number of Tao ranged from ten to fifteen, and officials were appointed on the basis of rotation. Despite the reforms of the system of power, there was still a dualism between court and state organs, civil and military administration, and central and local offices.³²

Under the tax system, there were three taxes: field tax paid in grain, a *corvée* comprising a maximum of twenty days a year of free work for the state and supply of agricultural produce paid in kind (in the form of mulberries and hemp). In 780 CE, Yáng Yán (杨炎)³³ introduced the Law of Two Taxes, a tax reform under which tax in kind was collected twice a year (in summer and fall, and, thus, the name of the system), adjusted to field size. Moreover, agricultural produce was not all transported to the capital, but it was distributed before transportation.³⁴

The next Chinese dynasty, the Song, was strongly Neo-Confucian and, thus, the legal system in this period also became neo-Confucian in character. As a result, social relations were radicalised even further. They were more one-sided and favored the strong, so that the emperor, the father, and the elder were always right to punish those who were lower in the hierarchy. As regards law, from 963 CE the Song Code was in force, which contained the provisions of the Tang Code, the Tang Acts incorporated into the Code, as well as new regulations.³⁵ Apart from the Code, sources of law included “A Collection of Imperial Edicts”, “A Collection of Court Judgements”, and “A Handbook of Administration”. The Handbook is a very important source of knowledge of the law. It consisted of fifteen main categories³⁶ and eleven chapters that were further divided into subchapters.³⁷ One of the most intriguing proposals regarding legal reforms was the one made by Prime Minister Chang Ju-lin in 1189 CE. It was aimed at promulgating the law³⁸ to the people so that everyone could know new regulations. However, this reform was not adopted because of strong resistance from neo-Confucian thinkers.³⁹

³² *Ibidem*, pp. 123–126.

³³ Yang Yan (Chinese 杨炎) (727–781), a high rank state official, a chancellor in the reign of Emperor Dezong of Tang (personal name Li Kuo).

³⁴ A. Kość, *Prawo a etyka...*, p. 129.

³⁵ *Ibidem*, p. 132.

³⁶ These categories are: order of offices, personnel policy of officials, official documents, monopolies, finances, grain warehouses, taxes, public works, agriculture, religion, the system of punishments, the order of funerals and mourning, barbarian peoples, animal husbandry, and miscellaneous regulations.

³⁷ A. Kość, *Prawo a etyka...*, p. 134.

³⁸ Promulgation is a formal proclamation that a new legal act (which is made known to the public) has been adopted in accordance with the prescribed law-making procedure.

³⁹ A. Kość, *Prawo a etyka...*, p. 133.

In his description of the Mongol dynasty, the Yuan, Kość was relatively pejorative. Nonetheless, that attitude did not result from his negative assessment of this dynasty. It stemmed from the unique, non-Chinese approach to law taken by the Yuan, which led to the destruction of many important regulations and legal institutions developed by earlier dynasties. Despite various changes introduced by the Mongols in the Chinese state (such as their own military institutions, the reversal of the Confucian hierarchy, and giving privileges to Mongols), the Yuan dynasty applied the Tang Code for a relatively long time, namely from 1279 to 1323 CE. In 1323, they introduced transitional provisions and then developed their own “Handbook of Administration”, whose first part, “Institutions and documents of the Yuan dynasty”, is preserved to this day. Apart from the Tang Code, the Mongols also retained the civil administration from the Song period;⁴⁰ however, they introduced their own system of military administration. Commanders commanded troops divided into 10, 100, 1,000, and 10,000 warriors, all supervised by the Supreme Commander. There was also a collegial body, the Supreme Military Office, which, together with the Censorate and the Secretariat, supervised the military and controlled local administration units.⁴¹

As emphasized by Kość, the next dynasty, the Ming, was the last Chinese ruling dynasty. It was established by Chu Yuan-chang.⁴² This new dynasty removed almost everything associated with the hated Yuan dynasty – even the well-functioning institutions of military administration. The Ming dynasty introduced its own law and returned to Neo-Confucian principles. The rulers had to deal with many problems, such as external threats from Japanese pirates and the potential return of the Mongols, as well as some internal problems, for instance struggles between factions at the court.⁴³

As regards the law, the Ming introduced two new codes: one in 1374 and the other in 1397⁴⁴. The latter was in force until the end of the dynasty and consisted of 460 articles. For better systematization, Kość divides the provisions into the following sections, corresponding to the modern understanding of law. These are:

⁴⁰ E. Endicott-West, *Imperial Governance in Yuan Times*, “Harvard Journal of Asiatic Studies” 1986, vol. 46, no. 2, pp. 543–544.

⁴¹ A. Kość, *Prawo a etyka...*, pp. 138–142.

⁴² See also: Zhu Yuanzhang (Chinese: 朱元璋) (1328–1398), born to a family of peasants farmers, the leader of the anti-Mongol uprising and the founding emperor of the Ming dynasty.

⁴³ A. Kość, *Prawo a etyka...*, pp. 142–144.

⁴⁴ A. Kość, *Rozwój prawa chińskiego w latach 1368–1911*, „Czasz Nowożytny” 1999, vol. 7, no. 1, p. 16.

General Rules (articles 1–47), Administrative Law,⁴⁵ Civil Law,⁴⁶ Rites,⁴⁷ Military Law,⁴⁸ Criminal Law,⁴⁹ and Public Works.⁵⁰ A characteristic feature of law from this period is its Neo-Confucianisation which manifests itself in the introduction of more severe penalties, including military exile and forced labor. As regards law, there were two social groups which were privileged, namely civil servants and the military. It was forbidden to apply humiliating penalties to civil servants (instead they were transferred or dismissed from office), whereas the military could be put on trial only upon prior consent and under the supervision of the imperial court. Moreover, there was also a set of original laws – the so-called “family purity laws” – which punished adultery, cousin marriages, and even marriages between people with the same surname.⁵¹

To consolidate their imperial power the Ming dynasty used the salt and iron monopolies from the Tang period. Also, to centralize power even more they unified the tax system and strengthened the imperial council at the expense of the Censorate. A system of public works was developed in order to cover the growing costs of maintaining the court, organizing military campaigns and corruption. The Yellow Register was in force which covered three social groups: peasants, craftsmen, and soldiers⁵². These groups were obliged to perform different forms of unpaid work for the state. These can be divided into the following categories: the system of equal public service (proportionate to land owned or rented); mixed service (which applied only to peasants, regardless of land and with no time limit for transportation, administration, and taxes); and a third sector of rural communities (the system of villages LI). The LI (village) system consisted of eleven units of 110 families (10 elites and 100 families). Every year one elite and one family administered the commune on a rotating basis (security, taxes and works).⁵³

⁴⁵ Offices are described in articles 48–62 and official documents in 63–80.

⁴⁶ The census is included in articles 81–95, lands and buildings in 96–106, marriage in 107–124, finances in 125–148, taxes in 149–167, monetary obligations in 168–170, and open-air markets in 171–175.

⁴⁷ Sacrifices are described in articles 176–181, and state ceremonies in 182–201.

⁴⁸ Guarding the palace is described in articles 202–220, military affairs in 221–240, control posts in 241–247, stables in 248–258, and courier stations in 259–276.

⁴⁹ Rape and theft are described in articles 227–304, homicide in 305–324, coercion and threat in 325–346, slander in 347–354, criminal procedures in 355–366, bribes in 367–377, fraud in 378–389, sexual offences in 390–399, miscellaneous categories in 400–410, stopping fugitives in 411–418, and interrogation in 419–448.

⁵⁰ Constructions are included in articles 449–456 and irrigation in 457–460.

⁵¹ A. Kość, *Rozwój prawa chińskiego...*, pp. 20–21.

⁵² Wenxian Zhang, *The Yellow Register Archives of Imperial Ming China*, “Libraries & the Cultural Record” 2008, vol. 43, no. 2, p. 150.

⁵³ A. Kość, *Rozwój prawa chińskiego...*, pp. 23–25.

The last dynasty to rule China was the Manchurian dynasty which, unlike the Mongols, adopted Chinese traditions, culture, and law, completely assimilating with the Chinese over time. However, the Manchus introduced a system of double administration (parity of the Manchu and the Chinese in offices⁵⁴) so that they could maintain power and privilege the Manchus. Similarly to the Ming dynasty, Qing rulers introduced two codes which also incorporated the laws of previous dynasties. The first code dates back to 1646 and is an exact copy of the *Great Ming Code* of 1397. The other code issued in 1740, *The Great Qing Legal Code*, also referred to earlier codes of the Ming and even the Tang (it is estimated that about thirty per cent of the articles was derived from the Tang code).⁵⁵ The *Great Qing Code* consists of the following parts: General Rules, Public Administration, Taxes, Rites, Military Affairs, Criminal Law, and Public Works.⁵⁶ Due to numerous internal and external threats, at the end of the Qing dynasty some laws were introduced which were unknown hitherto. The most characteristic ones are: the *Canton System* of 1757, aimed at controlling all trade with the West by focusing it on the port of Canton; and *Sumptuary Laws*, introduced to prevent inordinate expenditure by a small privileged group (as it increased the risk of rebellion). Another problem of the last dynasty was connected with the presence of secret societies that wanted to overthrow the Manchus and restore the Chinese dynasty to power.⁵⁷ Such societies can be found in earlier Chinese history; however, they were now more formalized and, for the first time in history, laws against secret societies were passed. These societies undermined basic Confucian relations and even the mere fact of belonging to this type of organization, not only planning and participating in a rebellion, was punishable by death.⁵⁸

Analysis of particular branches of law

Kość analyses both substantive and formal law on the basis of the best preserved code, introduced by the last dynasty that ruled the Middle Kingdom.

Substantive criminal law included the so-called Five Punishments, which mainly involved punishment by mutilation. The punishments were as follows: beating (already present in the *Great Ming Code*) with light or heavy bamboo; penal servitude (hard labor in a salt or iron mine from one to three years); exile up to 2,000–3,000 miles⁵⁹;

⁵⁴ Compared to the Chinese there were very few Manchus.

⁵⁵ W.P. Alford, *Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law*, “Modern China” 1997, vol. 23, no. 4, p. 404.

⁵⁶ A. Kość, *Rozwój prawa chińskiego...*, p. 27.

⁵⁷ Cf. R. Sławiński, *Nowożytnie dzieje Chin...*, p. 25.

⁵⁸ A. Kość, *Rozwój prawa chińskiego...*, pp. 28–30.

⁵⁹ P.-E. Roux, *The Great Ming Code and The Repression of Catholics in Chosŏn Korea*, “Acta Koreana” 2012, vol. 15, no. 1, p. 76.

and, from 1397, the punishment of military exile (either temporary or permanent exile, 1,000 miles away from the borderline territories affected by malaria). The death penalty was usually in two forms (either death by beheading or hanging), and, from 1397, there was a qualified form⁶⁰ consisting of quartering.⁶¹ A system of reduced punishment applied to distinguished officials, the emperor's relatives, descendants of previous dynasties, members of the aristocracy, as well as long-term civil administration and military officials.⁶² The following groups were exempted from punishment: children up to seven years old and the mentally ill, male children over sixteen years old (who otherwise would not be able to care for their parents and thus would disrespect them),⁶³ people over ninety years old (due to their poor physical and mental condition), and women (due to their gender; they were not subject to severe penalties and could substitute a financial penalty for exile). Furthermore, people who confessed before being tortured and those who were granted individual and collective amnesties were also exempted from punishment.⁶⁴

Administrative law under the Qing dynasty was included in particular provisions of the code and in the so-called *Collection of Institutions of the Great Qing Dynasty*.⁶⁵ The state administration comprised the emperor and officials who were divided hierarchically and accordingly adjusted to five degrees of administrative units, whereas counties were characterised by a fairly high level of self-government. Each province was administered by a governor; regency districts were headed by a provincial military commander; prefectures operated under a prefect, and sub-prefectures operated under a sub-prefect. The lowest unit was the county, which was administered by a county magistrate. The central government consisted of six ministries: the Ministry of Officials, the Ministry of Finances, the Ministry of Rites, the Ministry of Military Affairs, the Ministry of Justice, and the Ministry of Public Works. An interesting system of administering villages were the Li-chia and Pao-chia systems.⁶⁶ Chinese administration was characterized by a clear structure, centralization, lack of interference in the affairs of rural communities, lack of specialization of officials,⁶⁷ the principle of collegiality, and the concentration of control in the hands of the Censorate.⁶⁸

⁶⁰ The punishment given for the most serious crimes or acts against the Confucian order.

⁶¹ „8 cuts” – from cuts to the face, amputation of both hands and legs, cuts to the chest and stomach, and finally decapitation.

⁶² X.C. Quian, *Traditional Chinese law...*, pp. 35–36.

⁶³ Otherwise, it would deprive parents or grandparents of due care which was unacceptable in a Confucian society.

⁶⁴ A. Kość, *Pravo a etyka...*, pp. 165–171.

⁶⁵ *The Collection of Institutions of the Great Qing Dynasty* (Ta Ching hui tien) was reprinted five times and published in 1694, 1727, 1764, 1815 and 1885.

⁶⁶ A. Kość, *Pravo a etyka...*, p. 183.

⁶⁷ Every state official was a specialist in Confucian ethics and had passed an examination in them, whereas particular knowledge and skills were gained through experience.

⁶⁸ A. Kość, *Pravo a etyka...*, pp. 188–190.

Civil law included in the *Great Qing Code* was made up of the following parts: the census for tax purposes, land and leases, marriage, public property, and taxes on duty, private property, and open-air markets. *De facto* only the provisions of military law were a typical civil law matter.⁶⁹ Apart from the code there were also two other collections of regulations in force: one from 195 and the other from 1930, known as the *Report of the Ministry of Justice on customs in civil and commercial matters*, issued in Nanjing. The latter was divided into a general section⁷⁰, property law, obligations, and family and inheritance law.⁷¹ A characteristic feature of this document was its simple language, devoid of legal specificity.⁷²

The law of rites was divided into the great rite, which was related to the emperor and the court (sacrifices to the emperor), and other rites (e.g. sacrifices to ancestors).⁷³ Military law⁷⁴ included guarding the palace, policy on military affairs, control posts, discipline, courier stations, and the maintenance of horses for the military.⁷⁵ Public works⁷⁶ concerned the construction of border walls, the construction and repair of city walls and fortifications, the construction of dams, canals, roads, and bridges, and the production of silk.⁷⁷

Conclusions

Kość understood the philosophy of China in some depth, and Confucianism in particular. This understanding gave him greater methodological possibilities to analyse the development of Chinese law and understand it in a more complete way. He emphasizes that successive dynasties adopted the codes of earlier dynasties, supplementing them with new laws and legal institutions.

In the dispute between Legalists and Confucianists, Confucian principles had the most lasting and powerful influence on shaping Chinese law. Only during a short period of the Qing dynasty was “FA” placed above “LI”, and a strong, centralized state built on the supremacy of law over Confucian ethics. In the other periods (under the dynasties of the Han, the Tang, the Song, and even the Yuan, and then under the Ming and the Qing), law was governed and determined by principles of Confucianism and Neo-Confucianism. For the emperor, the court, the officials,

⁶⁹ *Ibidem*, p. 195.

⁷⁰ The General Part comprised 12 articles.

⁷¹ The Detailed Part comprised 1046 articles.

⁷² A. Kość, *Prawo a etyka...*, p. 199.

⁷³ *Ibidem*, p. 218.

⁷⁴ Qing devotes 71 articles to this branch of law.

⁷⁵ A. Kość, *Prawo a etyka...*, p. 221.

⁷⁶ The law of public works is included in the Qing Code in thirteen articles.

⁷⁷ A. Kość, *Prawo a etyka...*, p. 223.

and the common people Confucian principles were a more important imperative underlying social behavior than the written law. Law was treated as an evil or at least a “necessary evil”, especially by Confucianists. To this day, the law and the legal professions in China do not enjoy the same esteem as they do in the “western world”.

References

- Alford W.P., *Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law*, “Modern China” 1997, vol. 23, no. 4.
- Barankiewicz T., *Chińska kultura prawna w poglądach Antoniego Kościa* [in:] *Transkulturowość filozofii prawa Antoniego Kościa*, red. P. Stanisz, T. Barankiewicz, T. Barszcz, J. Potrzyszcz, Wydawnictwo KUL, Lublin 2016.
- Bodde D., *Basic Concepts of Chinese Law: The Genesis and Evolution of Legal Thought in Traditional China*, “Proceedings of the American Philosophical Society” 1963, vol. 107, no. 15.
- Caldwell E., *Social Change and Written Law in Early Chinese Legal Thought*, “Law and History Review” 2014, vol. 32, no. 1.
- Dąbrowski P., *Mysł polityczno-prawna starożytnych Chin – próba syntezy*, „Gdańskie Studia Azji Wschodniej” 2012, z. 2.
- Endicott-West E., *Imperial Governance in Yuan Times*, “Harvard Journal of Asiatic Studies” 1986, vol. 46, no. 2.
- Kość A., *Prawo a etyka konfucjańska w historii myśli prawnej Chin*, Wydawnictwo KUL, Lublin 1998.
- Kość A., *Rozwój prawa chińskiego w latach 1368–1911*, „Czasy Nowożytne” 1999, vol. 7, no. 1.
- Kość A., *Wczesne źródła prawa i powstanie pierwszych zasad prawa chińskiego* [in:] *Historia et ius. Księga Pamiątkowa ku czci Księdza Profesora Henryka Karbonnika*, red. A. Dębiński, G. Górski, Wydawnictwo KUL, Lublin 1998.
- MacCormack G., *The Legalist School and its Influence upon Traditional Chinese Law*, “Archives for Philosophy of Law and Social Philosophy” 2006, vol. 92, no. 1.
- Potrzyszcz J., *Z Rokiety w świat* [in:] *Transkulturowość filozofii prawa Antoniego Kościa*, red. P. Stanisz, T. Barankiewicz, T. Barszcz, J. Potrzyszcz, Wydawnictwo KUL, Lublin 2016.
- Quian X.C., *Traditional Chinese law v. Weberian legal rationality*, „Max Weber Studies” 2010, vol. 10, no. 1.
- Roux P.-E., *The Great Ming Code and The Repression of Catholics in Chosŏn Korea*, “Acta Koreana” 2012, vol. 15, no. 1.
- Slawiński R., *Nowożytne dzieje Chin w wieku XIX* [in:] *Kraje konfucjańskie. Dzieje nowożytne*, red. R. Slawiński, Oficyna Wydawnicza AFM, Kraków 2011.
- Xu Yan, *The State Salt Monopoly in China, Ancient Origins and Modern Implications* [in:] *Studies in the History of Tax Law*, vol. 8, eds. P. Harris, D. de Cogan, Bloomsbury, Cambridge 2017.
- Zhang Wenxian, *The Yellow Register Archives of Imperial Ming China*, “Libraries & the Cultural Record” 2008, vol. 43, no. 2.
- Yáng Bójùn, *Chūnqiū zuǒ chuán zhù 楊伯峻, 春秋左传注* [Spring and Autumn Annals. The Contemporary od Zuo], Beijing 1990.

SUMMARY

The article concerns Chinese law in the imperial period as presented in the research of Father Professor Antoni Kość SVD. The philosophical foundations of Chinese law are analysed mainly from the point of view of Confucianism and Legalism. In order to show the particular character of Chinese law, an outline of the assumptions of other philosophical and religious schools is also presented. The subject of the article is the preserved legal codes, the system of state authorities and taxes, the structure of the social hierarchy, and individual branches of law. The aim of the article is to show the changing nature of the Chinese legal system over the course of successive Chinese dynasties.

The article attempts to answer the question as to which of the foundations of Chinese philosophy have influenced Chinese law to the greatest extent. The main research methods used are historical and legal analysis.

STRESZCZENIE

PRAWO CHIŃSKIE OKRESU CESARSTWA W BADANIACH KS. PROF. ANTONIEGO KOŚCIA

Artykuł dotyczy tematyki prawa chińskiego okresu cesarstwa w ujęciu badań Ks. Prof. Antoniego Kościa SVD. Analizie poddano filozoficzne podstawy prawa chińskiego głównie z punktu widzenia konfucjanizmu i legizmu. W celu ukazania specyfiki prawa chińskiego przedstawiono również zarys założeń innych szkół filozoficzno-religijnych. Przedmiotem rozważań są zachowane kodyfikacje prawne, system organów władzy państwowej, podatki i struktura hierarchii społecznej oraz poszczególne gałęzie prawa. Artykuł ma na celu ukazanie odmienności ewoluującego na przestrzeni poszczególnych dynastii systemu prawa Chin. Podjęto próbę odpowiedzi na pytanie: jakie podstawy filozofii Chin w największym stopniu wpłynęły na prawo chińskie. Główną metodą badawczą jest metoda analizy historycznej i dogmatycznoprawna.