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Summaries of Articles

[Articles]

Transformation of Tuxing and the Introduction of Distance-based Exile in the Mid-Qing Era

By Kim Hanbark
Key words : Tuxing, intra-provincial exile, temporary banishment, distance-based exile, the chart for exiles

Tuxing(徒刑), which has been functioning as penal servitude in China since the Sui-Tang era, is said to have become exile punishment without forced labor in the Qing era. If so, under what standards, where were the criminals sent? This paper explores the answer to this by referring to "distance", which was a punitive element in the execution of the exile punishment.

The emphasis on the distance in the exile administration, which began in earnest since the establishment of the Chart for the Five Military Exiles, became more diffused with the introduction of the Chart for the Three Exiles. In other words, the exile distance was no longer the nominal one, but instead served as a standard for determining the place of exile. As a result, the distance from the criminal' s place of origin became the first principle for designating the place of exile.

On the other hand, tuxing was originally a punishment that had no connection with distance, and after the reign of Kangxi and Yongzheng, the relay-station in the criminal's original province served as the place of exile. However, even from this point, forced labor had not been carried out smoothly, and there were livelihood problems for criminals who could not work. Under such circumstances, Yunnan Governor Tan proposed a reform plan for tuxing. He suggested three guidelines for the placement of criminals: with or without a relay-station, calculating the distance, and taking into account the number of criminals already exiled. With the approval of the ministry of punishments, this became an uniform provision for the execution of tuxing.

Here, "calculating the distance" shows that the proposal of Tan was influenced by the distance-based exile. After that, each province started to create its own placement rules based on the new ordinance and in Shandong province, the Chart for the Five Penal Servitude was created. Based on the five grades of the punishment, it specified certain places of the exile so that light criminals were sent closer to the place of origin and heavy criminals were sent further away.

Die Hexenprozesse und die Rechtsgelehrte: die Gerichtspraxis der Hexenprozesse in dem Herzogtum Westfalen

Von Hoshi MAEDA

Der Zweck vorliegender Abhandlung ist es, die Präsenz der Rechtsgelehrten in den Hexenprozessen im Herzogtum Westfalen, wo die Hexenverfolgung intensiv war, zu beurteilen. Besonders es versucht zu zeigen, wie viel Kontrolle sie tatsächlich über die Prozesse hatten. Zu diesem Zweck vergleiche ich die Praxen der Hexenprozesse von Rechtsgelehrten Heinrich von Schultheiß mit den Behauptungen, die er in seiner Instruktion für Hexenprozesse „ INSTRVCTION" (1634) aufgestellt hat. Als Praxisbeispiele benutze ich ein Verhörprotokoll des Hexenprozesses in Werl von 1643 und die Berichte von Beichtvater Michael Stappert.

Das Verhörprotokoll des Hexenprozesses in Werl von 1643 zeigt eine Reihe von Punkten der Übereinstimmung mit der „INSTRVCTION". Die Übereinstimmung des Verfahrens von dem Verhör und der Tortur oder der Bild von der Hexe und Magie mit der „INSTRVCTION" lässt vermuten, daß Schultheiß die Absicht hatte, die Verfahren der „INSTRVCTION" in allen Einzelheiten zu befolgen. Aus dem Protokoll ergibt es, daß der Schwerpunkt des Verhörs auf der ferneren Verfolgung der Mittäter lag, wie in der „INSTRVCTION". Er beschrieb auch die Verhinderung des Hexenprozesses von dem Teufel.

Der Bericht von Stappert gibt uns einen Einblick in die Praxis von Schultheiß bei den Hexenprozessen zwischen 1616 und 1628. Stappert berichtet, daß Schultheiss „ Suggestivbefragung“ gebrauchen. Aber sie werden zum Zweck der Verfolgung der Mittäter wichtiger als „Suggestion“, die in der „INSTRVCTION“ erlaubt wird, in der Verfahren benutzt. Er scheint zu der Verhaftung und der Folter des Beschuldigten durch die unzuverlässigeren Indizien als solche, die nötig in seinem Buch hält, zu verfahren. Andererseits scheint er sich an die Regel der damaligen Kriminologie zu halten, wie etwa die Freilassung von Angeklagten, die ohne Geständnis Folter geduldet hatten.

Bei der Durchsicht der beiden Typen der Quellen zeigt sich, daß die Praxis von Schultheiß entweder allgemein mit seiner „INSTRVCTION“ ubereinstimmte oder in einer herzloseren Weise durchgefürt wurde. Schultheiß scheint sich jedoch das offenen „Unrecht“ nicht durchführen. Dies deutet darauf hin, daß Schultheiß die Hexenprozesse als „juristischer Fachmann“ geführt hat und daß sie innerhalb eines rechtlichen Rahmens stattfanden. Und die Übereinstimmung der Praxis mit der „INSTRVCTION“ deutet darauf hin, daß Schultheiß dort eine sehr starke Kontrolle über die Hexenprozesse hatte. Dies kann nicht übermäßig verallgemeinert werden. Aber die Tatsache, daß das System des Kommissares ihm erlaubte, die Prozesse direkt und oftmals allein zu leiten, scheint der Grund dafür zu sein, daß Schultheiß einen so starken

[Miscellanies]

A Colloquy about Judicial History, Political History, andEconomic History: Rethinking the Legal World of Early Modern Japan

By Takatsuki Yasuo, Sugimoto Fumiko, Ōhira Yūichi, Matsuzono Jun’ichirō

Keywords：trials, political space, Judicial Council, commercial order, gradation ranking of lawsuits, territorial dispute, horizontal movement, vertical movement, agon timetos, consensus building, law, reason, public sphere, oral communication, judicial settlement edict, judicial settlement writ, source of law, senior councillor (rōjū), daimyō lawsuit, acceptance of judgement

On 1 February 2020, the Japan Legal History Association held a symposium at its 279th Tokyo Branch Meeting (at the Institute for Advanced Studies on Asia, University of Tokyo) on “Law and the Economy in Early Modern Japan: With Reference to Early Modern Political History in Terms of Spatial Theory by Sugimoto Fumiko.” Delineating as it does Japan’s political history from the latter part of the early modern period to the Bakumatsu-Restoration period while incorporating the perspective of spatial theory, and informed by the underlying question of the nature of the public sphere in a status society, Early Modern Political History in Terms of Spatial Theory represents one end point reached in the study of early modern political history. Planned as a response from researchers of medieval and early modern legal history and economic history, the symposium was attended by close to fifty people, and a lively discussion was held. In addition, there had been lively exchanges of views both on-line and via email between the speakers be- fore and after this symposium. The aim of this section on “Research Trends” is to communicate the findings of this symposium to the wider academic community. Sugimoto summarized her views on judgements passed by the Judicial Council of the Edo shogunate, clarified in part 1 of her book, and discussed some outstanding issues and future possibilities. Then, Takatsuki Yasuo, Ōhira Yūichi, and Matsuzono Jun’ichirō discussed primarily how to respond to and develop the arguments set forth in Early Modern Political History in Terms of Spatial Theory (especially part 1) from the standpoints of early modern economic history, early modern legal history, and medieval legal history, respectively.

Sugimoto Fumiko, “The Possibilities of Early Modern Judicial History”
Ōhira Yūichi, “Trials and Law in a Composite State”
Matsuzono Jun’ichirō, “Trials and Consensus Building in the Medieval and Early Modern

[Symposium]

History of Study of Legal History in Japan

By Masaki TAGUCHI, Kiyoshi JINNO, Mieko AKAGI, Natsuko FUJINO, Yusaku MATSUZAWA, Arinobu ONAKA

The Japanese Association of Legal History had in 2019 the 70th anniversary since its foundation. In this occasion a scholarship-historical mini-symposium was planned. It treated the period from the beginnings of the research of legal history in modern Japan to ca. 1920, in order to review the courses and contexts of the Japanese study on legal history and to reflect on now and future of the legal-historical study in Japan.

First of all Masaki TAGUCHI, the organizer, epitomized the present situation of the legal history in Japan and introduced the German "Wissenschaftsgeschichte", which had inspired him to plan the symposium. Kiyoshi JINNO revealed the beginnings of the study of Japanese legal history by investigating "sources (shiryo)" in Hogaku-kyokai-zasshi, Nobushige Hozumi's study of Japanese history, and Hiroyuki Miura's relation to jurists. After Mieko AKAGI indicated potentials of the study of Chinese legal history and practical demands for it in modern Japan, she inquired careers and works of the pioneers of the historical study of Chinese law such as Senkuro Hiroike, Baishi Tanomura, Tokuji Higashikawa and Torao Asai. When Natsuko FUJINO investigated the birth of the historical study of the western law in Meiji-Japan, she focused on the background of Grigsby's invitation, who had taught the Roman law for the first time in Japan, Nobushige Hozumi's recognition of the Roman law, and Michisaburo Miyazaki's lecture on the Roman law.

From the viewpoint of the history of historiography and historical study in modern Japan Yusaku MATSUZAWA commented on the concept of the source (shiryo), the connections with the premodern Japanese scholarship, and the relationship between the jurisprudence and the historical study of law. From the field of the reception of the western law in Japan Arinobu ONAKA's comments showed the situation of the Japanese students and scholars in Meiji-era, who had studied abroad in Europe and USA, and the contemporary legal education at the universities in Germany and France.

The Potential of Textbooks of Japanese Legal History: Queries for beginners and extents to adjacent fields
By Chika TAKATANI, Yuichi DEGUCHI, Ichiro NITTA, Takehiro OHYA, Takashi UCHIDA

The aim of this symposium is to review and compare two textbooks of Japanese Legal History for beginners published in March 2018, aiming to be used in Faculty of Law and Law School. These books, edited by coordinators of this symposium, mainly written by mid-career and young researchers of Legal History, researchers in Japanese History and Legal Sociology also participated in. In the process of writing these texts and comparing them with each other after their publication, and especially receiving critical book review, various issues came to light such as the nature of the discipline of Legal History as an interdisciplinary study, the friendly competition with adjacent fields as practical law, and what should be conveyed to beginners as a "textbook", etc.

The reports from the speakers in this symposium included many issues raised from a broader perspective, in connection with the relation- ship among adjacent fields and the question of what a "textbook" is. Based on previous discussions of interdisciplinarity, Professor Ichiro Nitta foresaw a path for "reconstructing standards" of Legal History. Through the theories of Legal Philosophy, Professor Takehiro Ohya discussed the question of "what defines people's behavior and social order," which has been the subject of much debate in recent years in various adjacent fields, especially pre-modern era. Professor Takashi Uchida had opened up the possibility of treating the activities of Myoubo-ka(明法家, resercher of law) and Bugyo-nin(奉行人, magistrate) as "jurisprudence" in pre-modern Japan, which has been considered to lack the equivalent of modern jurisprudence. These interesting and critical issues should be shared