

## The Establishment of the *Ritsuryō Danzai* Penal System in Ancient Japan

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One of the articles in the *Ritsuryō*, which was the basic national law in ancient Japan, was known as *Gokuryō*, or “penal code.” *Gokuryō* stipulated a series of steps to be followed when a person has committed a crime, including the investigation of the crime and the determination and execution of the sentence. In this paper, these steps will be called *danzai* (penal system). There have been a variety of studies on the *Ritsuryō danzai* system of ancient Japan from the perspectives of general and legal history, as well as of the new system arising after the end of the *Ritsuryō* system, whose main element was the *Kebiishi* (officials with functions similar to those of the police and judges today). However, none of these studies have considered the *Gokuryō* penal code in its entirety, and there have been few attempts to compare it to the Tang Chinese legal system upon which it was based. Another issue is that the relationship between the *Gokuryō* penal code, a legal system inherited from Tang China, and legal systems that were unique to Japan remains unexplored. Thus, this study aims to identify the process by which the *Ritsuryō danzai* system was established in ancient Japanese society, and its significance, by comparing the *Gokuryō* penal code and related systems to those of Tang China and by identifying the characteristics of the penal system that were unique to Japan.

Chapter 1 compares the *Gokuryō* penal code and the Tang Chinese *Gokkanrei* penal code, with a particular focus on their position within the overall *Ritsuryō*. Differences emerge with respect to the order, title, and structure of the text of the articles due to the importance that the *Gokuryō* penal code places on capturing and imprisoning those who have committed crimes.

Chapter 2 compares Japanese *Ritsu* (criminal law) and the Tang Chinese *Ritsu*, with respect to punishment. As a result, it was found that actions that directly harmed or betrayed the nation, as well as murder and theft, were considered felonies and thus appropriate crimes for the death penalty—the most extreme form of national punishment—in the form of decapitation and hanging.

Chapter 3 analyzes the functions of the *Gyōbukyō*, *Shūgokushi* and *Zōshokushi*, the central government officials in charge of *danzai*. *Gyōbushō* (the ministry of criminal affairs) made sentencing decisions, including decisions regarding retrials, and carried out imprisonment. Therefore, the appointee to the position of *Gyōbukyō* (in charge of *Gyōbushō*) were those who had practical skills such as military experience and an understanding of legal principles. *Shūgokushi* was in charge of running prisons in the capital, while *Zōshokushi* was in charge of managing financial resources for the operation of prisons. Thus, both of these types of officials were symbolic of the nation under the *Ritsuryō* system, in which prisons were the most important part of the *danzai* system. However, the *Ritsuryō danzai* system underwent a transformation as the *Kebiishi* became involved in the operation of prisons.

Chapter 4 examines why Japan made changes to the Chinese method of pardoning criminals in the year 701, the first year of the *Taiho* period. The changes were meant to reflect the status of the

Japanese emperor, who, unlike the Chinese emperors, intervened in *danzai* system through the medium of government officials, and to emphasize the pardon of the state by liberating criminals from prisons in light of the establishment of penal officials who maintained the prisons. This can be seen as being a part of the emergence of a uniquely Japanese pardons that departed from the Chinese legal system.

Chapter 5 compares Article 1 of the *Gokuryō* penal code, which stipulated the government officials who would preside over initial court trials, with the code of Tang Chinese and Japan's, *Taihōryō* (*Taihō* code) and *Yōrōryō* (*Yōrō* code). The wording of Article 1 underwent major revisions in *Yōryōryō* based on legal revisions that recognized a right to punish according to hierarchical relationship that existed prior to the establishment of the *Ritsuryō* system and the policy of encouraging confessions that was designed to improve the nation's ability to determine whether a crime had been committed. Thus, the revisions were intended to clearly indicate a uniquely Japanese penal authority. However, as the revisions were drafted under the assumption that the *Keibiishi* would carry out punishments in the capital, they also created a situation in which *Kyoshiki* (government agencies in the capital) had only weak penal authority and therefore little capacity to govern.

In summary, the discussion above and in the following chapters show that the establishment of the *Ritsuryō danzai* system in ancient Japan entailed the establishment of prisons as places where apprehended criminals were incarcerated and punished. With the establishment of prisons, *Gokuryō* penal code was included as a practical section of *Ritsuryō: Gyōbushō, Shūgokushi* and *Zōshokushi* were appointed as officials who carried out the detailed centralized operation of prisons; and pardons became purely a system of releasing criminals from prisons. The major reason that prisons took on such importance is that the capital region was indicated as the location of the centralized administrative system. To ensure order in the capital region, prisons had to perform various functions, including serving as the locations where those who committed crimes would be incarcerated and punished by the nation and as the locations where the catastrophes that would otherwise be wrought upon society in the form of crime could be isolated. These revisions to prisons are thought to have begun with the establishment of the *Asukakiyomiharyō* (*Asukakiyomihara* code) of Emperor *Tenmu*. During this period, revision of *Ritsu* had begun with the establishment of a concept of serious crimes based on the legal systems of Sui and Tang China but was unique to Japan, and which designated punishments that fit the crimes. The results of these legal revisions were included in the *Taihō Ritsuryō*, which was then adopted in the capital and throughout the country. The *Ritsuryō danzai* system, whose central emphasis was on prisons, subsequently underwent further revisions. *Ritsuryō danzai* system included problems *Kyoshiki's* weak penal authority and insufficiency of the system by which officials uncovered crimes with uniquely Japanese notions that punishment should be carried out only rarely. In the 9th century, the *Keibiishi* emerged in order to deal with these problems and the crimes that actually existed in society.