

Law and Order in Sung China

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Published by the Press Syndicate of the University of Cambridge
The Pitt Building, Trumpington Street, Cambridge CB2 1RP
40 West 20th Street, New York, NY 10011-4211 USA
10 Stamford Road, Oakleigh, Victoria 3166, Australia

© Cambridge University Press 1992

First published 1992

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

McKnight, Brian E.

Law and order in Sung China / Brian E. McKnight.

p. cm. – (Cambridge studies in Chinese history, literature,
and institutions)

Includes bibliographical references (p.) and index.

ISBN 0-521-41121-1 (hardback)

1. Law enforcement – China – History. 2. Corrections – China –
History. 3. China – History – Sung dynasty, 960–1279. 1. Title.
II. Series.

HV8260.A2M35 1992 91-34373
363.2'0951'09021 – dc20 CIP

A catalog record for this book is available from the British Library.

ISBN 0-521-41121-1 hardback

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Introduction

Politics and law

This book is about social control. More specifically, it is about certain law-enforcement and penal institutions, practices, and policies used by the Chinese of Sung times to support the social order. It describes these institutions, practices, and policies during the Sung dynasty. It also tries to illuminate some of the ways in which they were shaped by the ideas and attitudes of the ruling elite, the fiscal situation of the state, the nature of the economy, political realities, local geography, bureaucratic skills, and technology. It seeks to show what functions these institutions, policies, and practices played in Sung society and why they were needed.

The topic also illuminates, incidentally, the character of the traditional Chinese state. Western thinkers on the origins and continuation of states are divided into two opposing camps. One tradition stresses the integrative nature of the state. From Plato and Aristotle to English writers of the eighteenth century to some modern sociologists like Talcott Parsons, these thinkers have emphasized the origins and continuing role of the state as a positive integrative system. Such thinkers tend to view stability and order as normal, with conflict an abnormal distortion of the natural order. The other tradition, more specifically modern, from Hobbes to Marx to some modern anthropologists like Maurice Freedman, sees the state as a system born out of violence and coercion. For such thinkers the state is created from conflict and continues as a mechanism by which the majority is subjected to external control through fear or force.

These opposing lines of thinking are deeply embedded in the Western tradition. The central tradition of Chinese culture – with its belief in a world of complementarity rather than contradictory opposites, a world in which change defines stability and stability defines change, a world in which integration is the organically interrelated counterpart of dis-

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integration, and cooperation is not conceivable without conflict or conflict without cooperation – is a much more realistic vision of the human world as it is and has been. This traditional Chinese view of the world, in which the appearance of disorder and conflict are embedded in a higher level of integration, made possible a measured response to disorder that could legitimately be modified to accord with current conditions.

Law-enforcement and penal institutions are surely quintessential instruments and symptoms of conflict in society, but as we shall see, the Sung Chinese envisioned and constructed law-enforcement agencies in ways which fostered the integration of disparate elements of society. Furthermore, Sung Chinese penal systems, while embodying the state's power to outcast wrongdoers from normal society, also were designed to allow and encourage the reintegration of the reformed into ongoing community life. People who break widely shared social norms threaten the common good, but they are still people. The problem is not simply how to stop their abuses but also how to save them from themselves.

The Sung Chinese reaction to the threat of disorder posed by those who violated important social norms was conditioned by the interaction of their beliefs about the nature of people, the level of managerial and physical technology, the state of economic development, the collective perception of the lessons of the past and the character of the present, and their control over resources. Ideology, finances, and technology interacted to create a constellation of institutions and practices designed to preserve the social order and the political power of the ruling group. Some of these institutions and practices were educational, having as their aim the inculcation of "proper" views and patterns of behavior. Some were legal, in that they were concerned with determining the boundaries of permissible behavior and the appropriate treatment of those who promoted disorder by going beyond those boundaries.

The ways in which a society deals with its deviants reflect both fundamental intellectual commitments and the historical situation. We cannot adequately understand the traditional Chinese view of their place in the world or the evolution of their society without understanding how those deviants who violated laws were controlled through the organized use of force. Relatively little has been written on this problem for traditional China. Some reasons for the paucity of studies are clear. In part it mirrors and perpetuates the tendency of the traditional Chinese elite to ignore or minimize the importance of law and the police power in society. The self-justification and self-image of the elite in traditional China stressed their moral superiority over the common people. They systematically downplayed the importance of the formal judicial system

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and law enforcement. They were remarkably successful in disguising the degree to which law and force governed Chinese society in times past. As a result, among ordinary Chinese today and even among scholars concerned with China, there is a widespread misunderstanding of the importance of the judicial system in premodern China. This misapprehension can be overcome by the work of legal scholars, but so little has been done that for the moment we need to explore limited periods and special topics within the Chinese tradition in preparation for the more general works which will make possible a more balanced understanding of the patterns of the Chinese past.

The Sung dynasty makes a particularly attractive starting point in studying how the premodern Chinese dealt with these problems. Because printing became widespread in the Sung period, a larger quantity and greater variety of sources have survived from this period than from earlier eras. In particular, we have more and larger sets of the collected papers of individuals, more collected government documents, and more detailed annalistic histories based largely on government archives. Furthermore, a study of Sung institutions provides a benchmark for examining the institutions of later dynasties. In some ways the Sung was very different from later times. In others, the Sung experience helped shape late imperial institutions, the institutions that existed when the Chinese empire came into conflict with the Western powers in the nineteenth century. An exploration of Sung sources can illuminate not only the particularities of the Sung experience but also the more general problems that plagued succeeding Chinese dynasties.

In one sense the problems of lawbreaking faced by the Sung Chinese were universal problems, and the Sung responses therefore share certain basic characteristics with law-enforcement and penal strategies used elsewhere. We shall be concerned with the ways in which the specific responses of the Sung Chinese show how answers to universal problems are idiosyncratically shaped by a society's particular constellation of means and goals. Some usages may seem hauntingly familiar because they are used in our own culture. Others are distinctively Chinese, not in the sense that they are unknown elsewhere, but that they are grounded in commitments that were common to the Chinese elite under the empire. Still other usages are especially characteristic of Sung people.

An examination of the Sung Chinese experience can be of value as an example of a specific response to general problems. All societies in all times and all places face problems of disorder. The view that order in society is normal and disorder abnormal is fundamentally naive. Order implies stability, but in society, as in nature, the world is constantly in flux. People have to work very hard to create a recognition of a social

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order that persists through time. Furthermore, at any given moment in any given social system, the sharing of values, worldviews, and ways of acting is never complete. The human problem is to create and recreate, moment by moment, a sense of continuity and of a shared life sufficiently convincing that social organization becomes possible. The idea of social order is an indispensable collective creation, but the idea, though indispensable, always and everywhere corresponds only in an imperfect way to real life. "Society," whether in China or elsewhere, is in reality an aggregation of discrete individuals experiencing a sequence of unique and unrepeatable moments. People have to learn to see enough continuity in this flux to enable ongoing social organization.

One key to the successful creation of a sufficiently compelling vision of order in society is the adequate education of newcomers, whether infants or significant outsiders. Education in turn is dependent on communication. Each individual new to the social group must be schooled in its patterns of communication, verbal and nonverbal. More than this, each individual must be imbued with sets of ideas, attitudes, beliefs, feelings that will make possible ongoing if ever faulty communication. To live together we must be socialized. People learn patterns of behavior at the primary level that enable them to function reasonably well beyond the family. An appreciation of this is one of the hallmarks of the early Confucians and was a widely held belief among later members of the Chinese ruling elite. Later Confucian statesmen thought in terms of "educational transformation" (*chiao-hua*), which meant for them the molding of people through the power of example and exhortation into patterns of behavior more like those advocated by the elite. One prime element in this belief was the conception that people mirror authoritative exemplars and can learn proper behavior within the family by observing others. If a person has learned the appropriate patterns of behavior in a primary-level setting, he or she can then extrapolate the learned patterns to other people who are filling roles in some sense analogous to the roles first encountered in the home. A disciple of Confucius in the fourth century B.C. stated:

It is rare for a man whose character is such that he is good as a son and obedient as a young man to have the inclination to transgress against his superiors; it is unheard of for one who has no such inclination to be inclined to start a rebellion. The gentleman devotes his efforts to the roots, for once the roots are established, the Way will grow therefrom. Being good as a son and obedient as a young man is, perhaps, the root of a man's character.¹

1 Confucius, *The Analects*, trans. D. C. Lau (New York: Viking Penguin, 1979), p. 59.

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Socialization is absolutely necessary, but it never succeeds in making one individual like another. Because communication is always imperfect, because each particular is unique, and because each time and place is different, teaching and socialization are always imperfect and incomplete. Although the majority of the members of a given social system may be in general agreement on some norms, it is important to remember that such agreement is never total between any two individuals. By definition, individuals differ. Even when they share a given value, worldview, or way of acting, individuals will weight it differently and see it differently reflected in the affairs of everyday life. The differences may be, in a given instance, too small to affect a decision, but they nonetheless are there. More than this, a society of any size is composed of subgroups whose members share certain values, attitudes, ideas, feelings, and patterns of behavior which are not shared equally by outsiders. Like individuals, subgroups not only differ in values, views, and behaviors but also weight differently those that they do share with the larger society.

The law, in China as elsewhere, is able to function because individuals are able to place their own views and the views of the subgroups to which they belong in a hierarchy and to subordinate inevitable differences in nuance or detail on specific subjects to higher levels of broad agreement. Despite their unavoidable disagreements in detail, juries continue to bring in verdicts of guilty or not guilty, and magistrates agree on judgments. When people say a society continues, they mean that the imperfections of communication, failures of socialization, and the resulting conflicts are insufficient to destroy the basic ground of agreements among a sufficiently large number of aggregated individuals.

In real life there is much miscommunication and failed teaching. The order created and recreated by endless labor always threatens to break down in the face of the failures in socialization and the incommensurable aims of social subgroups. Forces of disintegration and disorder lurk behind the facade of stability. Individuals and groups repeatedly violate norms that are widely shared within society. Worse, some important and widely shared norms, under some conditions, are in practice incompatible with other widely shared norms.

The problems are particularly acute when external conditions such as warfare or economic dislocations put unusual strains on the social order. The Confucians recognized this from the beginnings of their tradition, but it was stated with special clarity by the philosopher Mencius (372–289). After discoursing on the importance of government policies that support a healthy economy, he remarked that if these policies were followed,

when the people have more grain, more fish and turtles than they can eat, and more timber than they can use, then in the support of their parents when alive and in the mourning of them when dead, they will be able to have no regrets over anything left undone. This is the first step along the kingly way.²

Basic beliefs

Mencius, and indeed most thinkers in traditional China, believed in the immanence of order in the world. Correct behavior was behavior consonant with this immanent order. Man's uniqueness consisted of his ability to be consciously participatory and creative in his responses to this immanent order. Man makes himself: Only man is fundamentally a creature of art rather than instinct. His ability to create appropriate behavior by performance (*li*^a) is not, of course, unlimited.³ The immanent order sets boundaries to appropriate responses, though within these boundaries men can respond in somewhat different ways. "Normal" people usually respond within the boundaries; deviance is going beyond them. For some behaviors the law, *fa*, defines the boundaries, and the punishments, *hsing*,^a state the potential cost to the individual of exceeding them. But we should not overstate the distinction between these two concepts of law and punishment. In Chinese the word *fa*, which is often translated as "law," also means "model," a word that implies boundaries and edges, and the word *hsing*,^a which is usually translated as "penalties," is in many classical contexts interchangeable with another word, *hsing*,^b which means "form," "model," or, as a verb, "to shape." The Chinese, like other peoples, have created the boundaries in law through legislation, indicated what particular acts fall within the boundaries through adjudication, and attempted to coerce people to staying in bounds by means of punishments.

In China the behavior of those whose acts accorded with what was orderly was *cheng* – "orderly," "straight," "correct." The behavior of those whose acts did not accord with what was orderly was *hsieh* – "not correct," "deviant." The state of the world was determined by people's behavior, either correct or deviant. An emphasis on the importance of not being *hsieh*, "deviant," can be traced to Confucius, who quotes a line from the *Book of Poetry* to emphasize the fundamental need not to go astray and to keep to the correct path.⁴ The degree of disorder intro-

2 D. C. Lau, trans., *Mencius* (Baltimore: Penguin Books, 1970), p. 51.

3 For this insightful understanding of the relationship of men and *li*,^a I am indebted to Roger Ames and David L. Hall, *Thinking Through Confucius* (Albany: State University of New York Press, 1987).

4 This line from the *Book of Poetry*, *ssu wu hsieh*, is translated in radically different ways, but in all cases the word *hsieh* itself is not so problematical. It implies leaving or deviating

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duced by deviant behavior varied with both the importance of the deviant individual within the social system and the seriousness of the misbehavior. According to this view, the misdeeds of the emperor, even relatively minor ones, might have serious repercussions, whereas misdeeds by an ordinary man, though not unimportant, would hardly have the same impact on the world. Given the Chinese view of the importance of role modeling in the teaching of behavior, and the key place played by authority figures in setting standards by the proper performance of their duties, it is hardly surprising that so much attention was paid to the moral weight of imperial acts.

The Classical Confucian thinkers differed in their views on how people knew and why they observed or violated the boundaries of appropriate behavior. For the Mencian tradition the roots of such knowledge and the tendency to behave well were innate but could be obscured. For the tradition of the last of the great Classical Confucian thinkers, Hsün-tzu (fl. 298–238), such knowledge was not innate, and people by nature tended toward evil, but the knowledge of the boundaries could be learned, and the commitment to stay within them could be instilled. For Han (and most later) Confucians, people by nature possessed the potential for recognizing and observing these boundaries, but also the potential for violating them. This conception of a mixed human nature, containing the capacity for both proper and improper behavior, was widely accepted by members of the Sung elite. It was expressed most coherently by the philosopher Chu Hsi (1130–1200), who was in part repeating widely shared views when he described people as being composed in part of principle (*li*^b) – by definition the regularity that constituted continuity in the immanent order of the universe – and in part of what we might call material force (*ch'i*), which varied in its purity.⁵ Because people's actions were affected by their material force and because some people's material force was less clear than the material force of others, the level of ethical behavior varied.⁶

When looking at the problems of deviance and disorder, Sung

from the correct path. See Confucius, *The Analects*, p. 63; James Legge, trans., *The Analects* (Hong Kong: Hong Kong University Press, 1960), *The Chinese Classics*, vol. 1, p. 146; James Legge, trans., *The She King or Book of Poetry* (Hong Kong: Hong Kong University Press, 1960), *The Chinese Classics*, vol. 4, p. 613.

5 The appropriate translation for *ch'i* is a much debated question. In a recent collection of writings on the philosophy on Chu Hsi, the editors have chosen to offer their readers a menu of possibilities – material force, ether, vital force, breath. See Wing Tsit-chan, *Chu Hsi and Neo-Confucianism* (Honolulu: University of Hawaii Press, 1986), p. 618.

6 These conceptions are reflected in various works by Chu Hsi but are perhaps most clearly accessible in the records of his conversations with disciples that were gathered together under the title *Chu-tzu yü-lei*. See Chu Hsi, *Chu-tzu yü-lei* (Taipei: Wen-lu ch'u-pan she, 1986).

Confucians accepted the validity of both the internal roots of evil à la Hsün Tzu and the impact of environment à la Mencius. In either case, appropriate education, which could properly be received only within Chinese culture, was needed to lead people to good behavior.

For all these thinkers, an educative process, what we would call socialization, was necessary. Education was an intellectual process in part, but always and more importantly, it was moral. The aim of education was to produce good people. Whether this process uncovered innate goodness or inculcated a penchant for behaving properly in creatures that were by nature amoral was not of decisive importance. Preserving the process of education itself was. The learning of good behavior and the reformation of bad behavior were clearly possibilities. Human behavior was voluntary and subject to formation and reformation. People could learn where the boundaries of appropriate behavior were and how to act within them. If they were provided with appropriate models and had placed before them the proper mixture of rewards and penalties, the people could be led toward transformation. The thirteenth-century official Yüan Fu wanted the government to “reward the village officials so that the people will be pleased and will mutually encourage one another, so that customs will gradually be transformed. . . . By rewarding the good, the evil can be made to feel ashamed.”⁷ Toward those who would learn, the authorities could be forgiving; toward the willfully intransigent, they would be ruthless.

Environmental influences

For Hsün Tzu, with his belief that human beings were basically amoral and driven by desires, the problem was how to train them to goodness. The existence of bad behavior was not an intellectual problem. The basically optimistic Mencian view, that people were by nature good, had raised the problem of the origin of evil. Mencius traced evil – the knowing violation of those norms and behavior patterns that were in accord with the roots of human nature – to the influence of the environment. Environmental influences were both short term, embodying people’s reactions to their immediate surroundings and problems, and long term, reflecting both long continuing relations with individuals and social systems and continuing physical environmental problems. The short-term problems included such things as the temporary devastation of the economy resulting from warfare or natural disasters, or currently associating with undesirables. Long-term problems included having been

7 Yüan Fu, *Meng-chai chi*, *Ts’ung-shu chi-ch’eng* (hereafter cited as TSCC) ed., 3:33.

improperly raised from childhood or growing up in an impoverished region. Geography molded character. The Sung Chinese firmly believed that people had regional characters determined by their environment. Thus a Sung official, writing about Ching-hu South Circuit, could say that "the terrain is dangerous and the people hard."⁸

Types of lawbreakers

In their writings about the problem of current criminal behavior, Sung thinkers began by dividing lawbreakers into types based on their motivations. One group consisted of those who were basically good, in that they had been so socialized that their proclivity for appropriate behavior would ordinarily be dominant. Under normal conditions they would be law-abiding, though they lacked that special intensity of moral commitment which kept the superior person moral in adversity. They might err but would not be evil. In the words of the Southern Sung official and poet Lu Yu, "When the four quarters are without troubles and the autumn grain is like a cloud, who would be a bandit?"⁹ In hard times, this line of thought ran, such people could be driven to crime by their will to survive. The second Sung emperor, T'ai-tsung (r. 976-97), speaking to his chief minister in the autumn of 985, observed: "The people are the foundation of the state; the people know food to be their lifeblood. . . . Recently because of natural disasters in Chiang-nan, conditions are terrible. . . . As a result there is the calamity of refugees and bandits."¹⁰

This view was the dominant one among the Sung literati when faced with widespread unrest. Indeed, there are numerous essays by Sung officials that reflect this widely shared belief. In the words of the official Fan Chün (1120-50), the people in years of drought and locusts "flee death and seek for themselves. They pilfer gold and steal provisions. They know no shame. At worst they gather together to do evil. . . . In this way they become bandits. They are compelled by circumstance. Surely they should be soothed and pacified, and their punishments should be minimized."¹¹ Many others, such as Su Ch'e (1039-1112), Ts'ai Hsiang (d. after 1128), Ch'en Yüan (d. 1145), Li Mi-hsün (1089-

8 Ts'ai Kan, *Ting-chai chi*, Ch'ang-chou hsien-che i-shu ti-i chi ed., 2.13b. Sung circuits were units of local supervision, many of which corresponded geographically if not functionally to the provinces of later dynasties. For more about these circuits, see Chapter 2 in this book.

9 Lu Yu, *Wei-nan wen-chi*, *Ssu-pu ts'ung-k'an* (hereafter cited as SPTK) ed., 13.11b.

10 Li Tao, *Hsü tzu-chih t'ung-chien ch'ang-pien* (hereafter cited as HCP) (Taipei: Shih-chieh shu-chu, 1964), 26.3a-b.

11 Fan Chün, *Hsiang-ch'i chi*, TSCC ed., 15.149.

1153), P'eng Kuei-nien (1142-1206), and Liu Yüeh (1144-1216), also appealed to this common wisdom in suggesting answers to banditry.¹² In times of troubles, the government might even be able to forestall banditry if it dealt expeditiously with these economic roots of unrest.¹³

In the Northern Sung, Ch'in Kuan (1049-1100) voiced a traditional refinement to this analysis, saying that "since antiquity, robbers have arisen because floods and droughts had occurred, while the taxes are still fully collected and the labor services vexatious. Therefore the people become robbers."¹⁴ Ch'in Kuan was following a famous tradition. A fellow official speaking in the same vein quoted the T'ang emperor T'ai-tsung (r. 627-50) - seen by some as a paragon among rulers - as stating that "people become robbers because the taxes are high and the demands for labor services vexatious. Officials are corrupt. . . . If the people have sufficient food and clothing, they will not be robbers."¹⁵ An almost identical position was taken by Li Kuang (1077-1155), who wrote that the answer to the constant banditry in Ch'ien and Chi prefectures in Chiang-nan West Circuit was simply to send in prefects and district magistrates who would lighten taxes and service burdens.¹⁶

The problem was in part economic. Bad conditions allowed the potential for evil to surface, exposed the results of improper socialization, and drove even basically decent people to commit crimes. However, the impact of such conditions was exacerbated by the inappropriate responses of incumbent officials. Abusive officials could create the preconditions of lawbreaking even in good times. In bad times their juridictions were often plagued by serious uprisings.

The state was faced with a dilemma: It had to secure resources, but excessive demands would lead to unrest. During the troubles of the 1040s, the official Yü Ching (1000-64) put the dilemma neatly: "The best policy would be to head off trouble by offering tax relief and by guarding against bandits, but with the current troubles on the border, it clearly will be hard to reduce taxes."¹⁷ To survive, the state needed revenues, but it also needed good administrators, men capable and desirous of balancing the requirements of the government against the

12 Su Ch'e, *Luan-ch'eng chi*, SPTK ed., 36.12a; Ts'ai Hsiang, *Tung-ming chi*, *Ssu-k'u ch'üan-shu chen-pen* (hereafter cited as SKCSCP) ed. 1973, 23.9b-10a; Ch'en Yüan, *Mo-t'ang chi*, SKCSCP 1972, 14.19b-22b; Li Mi-hsün, *Yün-ch'i chi*, SKCSCP ed., 9.10b ff; P'eng Kuei-nien, *Chih-t'ang chi*, *Ssu-k'u ch'üan-shu* (hereafter cited as SKCS) ed., 11.137; Liu Yüeh, *Yün-chuang chi*, SKCSCP 1971, 7.15a.

13 Yü Ching, *Wu-ch'i chi*, SKCSCP ed., tsou-i shang 7b-8a.

14 Ch'in Kuan, *Huai-hai chi*, SPTK ed., 17.4a.

15 Fan Tsu-yü, *Fan-t'ai shih-chi*, SKCSCP ed., 22.11a.

16 Li Kuang, *Chuang-chien chi*, SKCSCP ed., 12.17b.

17 Yü Ching, *Wu-ch'i chi*, tsou-i shang 7b.

capacity of the people. A stress on the role of bad administration in causing unrest is one of the most common themes in the critical writings of Sung officials.¹⁸ To critics who charged that the root problem was an excessively harsh legal system, Fan Chung-yen (989–1052) and Han Ch'i (1008–75) replied that the problem was not that the legal system was too harsh but that the administrators were incompetent. If the administrators were good, then the people would benefit from the legal system. If the administrators were bad, then the people would suffer.¹⁹

Individuals driven by want represented many – perhaps most – criminals, but not all. There were also those who were by nature recalcitrantly evil. In the words of Wang Chih (1127–89):

Bandits arise from three causes – because people are hungry, because people are thoughtless, or because people are evil. Hungry people are seeking to survive. Thoughtless people are seeking riches. Evil people are seeking personal advantage (*li*^c). The origins thus emerge from what people are seeking to avoid and from what they want, yet with regard to the ultimate end points of these feelings, some can be reversed and some cannot. The feelings of the hungry can be reversed. The feelings of the thoughtless and evil cannot. Why is this so? Hungry people who become bandits do not have any great desire to do so. They have no way of living, and so they are willing to face death. It is not that at heart they do not value life and fear to die but that because they are pressed by circumstance, they repress their feelings. They feel that if they are to continue living, they must be willing to die, and so they become bandits. When placed between living and dying, who at such a time, except the pure and upright, will sit quietly and wait to die? Thus when they suffer a year of dearth, they must make shameless plans, attack and pillage. . . . When it is a good year, they again become peaceful. . . . Hungry people are to be pitied rather than hated, to be helped rather than killed, to be grieved over rather than feared. On the other hand, thoughtless people who covet riches have no self-control. They would seek riches from the Buddha and still would not consider them enough. They would seek riches from ghosts and goblins and still would not consider them enough. Therefore they are deluded heterodox people. The Manichaeans are this sort of people. Trouble is born when these thoughtless people seek riches without being sated. The evil people, who seek personal advantage without stopping, are lazy and will not farm. They are crude and will not work as artisans. . . . Therefore they come together un-governably, with swords, depending on good fortune to grasp tenfold advantage. Such people will not even regret dying if they can gain personal advantage.²⁰

18 Compare Ch'in Kuan, who said that one problem was the overemphasis on using examination graduates. He advocated using the able, including clerks, thereby following the T'ang practice of letting local officials choose their own subordinates and sparing local officials corporal punishment for errors. Ch'in Kuan, *Huai-hai chi*, 17.5b ff. See also, for example, Wang Shih-p'eng, *Mei-ch'i chi*, SPTK 2.10b–11b.

19 HCP 141.12b–13b (1043).

20 Wang Chih, *Hsüeh-shan chi*, TSCC ed., 3.25–26. On the Manichaeans in China at this time, see Chapter 3.

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The Chinese thus made a clear analytical distinction between those who erred and those who were evil, and they stressed the importance of treating these two types of lawbreakers in different ways: The errant were to be helped; the evil were to be suppressed.

Leaders and followers

In part, this distinction between the basically good and the basically evil was equated with a distinction between leaders and followers. From very early in the Chinese written tradition, a distinction was drawn between evil leaders who had to be destroyed and followers who might be saved. The mid-eleventh-century official Yü Ching remarked that "since antiquity, when bandits have caused injury, the authorities have always pardoned the followers while strictly punishing the leaders."²¹ The Southern Sung official Li Kuang, concerned about the unrest which had followed the invasion of north China by the Jurchen tribesmen who founded the Chin dynasty (1115-1232), argued for mercy for some and extermination for others. He quoted a widely known passage from the classical *Book of Historical Documents*:

"When the fire blazes over the ridge of K'uan, the gems burn equally with the stones. . . . I will thus destroy only the chief criminals and will not punish their forced followers." . . . When the Sung founder came to the throne he followed this Way. Therefore his ability to unify the districts and pacify the world stemmed from winning the people's hearts and nothing else. Since the Chien-k'ang period (1125), the men of Chin have oppressed the people, who have lost their livelihoods and have no way to support themselves. The weak die in the ditches; the strong gather together to become bandits. Thus they do not have hearts that hate the ruler or detest the emperor. Their evildoing stems only from their want.²²

In practice, the Sung authorities adopted policies that reflected both this belief in the importance of the division between leaders and followers and their belief that in the case of followers in particular, the impetus to wrongdoing was want and suffering. This Sung analysis was admirably summarized by the official Ts'ai K'an, who also articulated the widespread belief among the traditional elite that judicial abuses could upset the balance of the natural order symbolized by the harmonious ethers:

I have heard that although the bandit gangs of Kuang-nan West Circuit contain many men, the key evil leaders and those who arose with them are but a handful. The rest are simply coerced followers. How important this is! For these latter

21 Yü Ching, *Wu-ch'i chi*, tsou-i shang 5a. 22 Li Kuang, *Chuang-chien chi*, 11.12b.

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are the children of your majesty. They are the stupidly honest and ignorant, oppressed by hunger and cold. Being credulously deluded, they fall in with the bandits. I am concerned that if they should inappropriately suffer injury and death, the harmonious ethers will be harmed. I hope that the Court will inform the bandits capturing officials that if they are wholly able to spare such men's lives their merit will be the greater. It is not necessary to exterminate [them].²³

Incorrigible wrongdoers

Although most men might behave well except when twisted by environmental pressures, there were always some who would violate the social order even under the best conditions. The appropriate response to the first sort of lawbreakers was to alleviate the conditions that had led them to break the laws, to persuade them to change their ways, and to make possible their reintegration into normal society. The appropriate response to the second sort of criminals depended not on persuasion but on control or elimination. Sung officials, like judges everywhere, sometimes came to have a jaundiced view of the nature of many people. In the thirteenth century Yüan Fu remarked that whenever lawsuits were heard, it became abundantly clear that many people loved money and paid no attention to propriety. They were willing to act with force and valued life lightly, breaking the laws and violating principle.²⁴ For this reason the mechanisms for socialization, for creating order, always had to be accompanied by mechanisms for preventing or punishing deviance.

Political implications

It is important also to recognize the political implications of this view of deviance. If moderately good men, many of whom had rather limited opportunities for a proper education, could be driven into doing evil only by the stark demands of survival, then those who behaved improperly when not so driven must be basically flawed. Wrongful behavior among members of the official elite could hardly be excused on the grounds of immediate physical environmental pressures. The bitterness of Sung partisan politics in part reflects the underlying feeling that political opponents, whose views were seen as deviant, were behaving in illicit ways despite the best physical conditions.

During the late Northern Sung (960–1126), with its bitter political struggles, the problem of disorder loomed large in the minds of officials. They were especially concerned by what they saw as deviant behavior by

23 Ts'ai K'an, *Ting-chai chi*, 1.20a. 24 Yüan Fu, *Meng-chai chi*, 3.32.