ARTICLE

THE LEGAL THOUGHT OF EMPEROR TAIZONG OF THE TANG DYNASTY (618–907)

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Abstract  Little scholarly work has been done on understanding Taizong’s (one of China’s most influential emperors) legal thought. Existing historiography has been descriptive and has not fully contextualized Taizong’s legal thought in his broader political thought. Furthermore, it has been influenced by the traditional bias in Tang historiography as a whole, which has been adulatory toward Taizong’s reign. Drawing from a variety of sources, including dynastic histories and Taizong’s writings, this article seeks to complicate the existing historiography. It lays out key characteristics of Taizong’s legal thought, situating them in the historical context in which Taizong operated, as well as contextualizing them within his broader political thought, to present a more balanced analysis. It will argue that Taizong was an emperor who was concerned with legality, competent legal administration, and leniency in punishments. His actions and rhetoric also suggest that he believed that law should be applied to the emperor’s conduct as well. At the same time, this article also argues that Taizong should not be viewed primarily as an innovative legal thinker or as someone with an ideological or idealistic commitment to legal reform for its own sake. Rather, he was a man whose views on law were greatly motivated by practical, political concerns, such as concerns regarding the stability and legitimacy of his rule. More broadly, this article contributes to the historiography of traditional Chinese legal history by complicating the so-called dominant narrative of the process of “Confucianization of law” in premodern Chinese history by highlighting the role that specific historical actors (such as Taizong) played in that process.

Keywords  legal theory, Chinese legal theory, Chinese legal history, jurisprudence, Tang dynasty

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INTRODUCTION

Much of the success of the Tang dynasty (618–907) has been attributed to Emperor Taizong 唐太宗 (599–649; r. 626–649) — also known by his personal name, Li Shimin 李世民 — who served as the second emperor of the Tang dynasty and was and continues to be regarded as one of Chinese history’s most renowned emperors. His reign, which he himself termed the “Zhenguan” 贞观 (“Constancy Revealed” or sometimes translated as “True Vision”) reign, has been seen as an exemplary period in government.¹ He has been described by traditional and modern historians alike as “the most heroic ruler of all Chinese history,”² a “moral sovereign who listened to his talented officials, implemented wise policies, and sought to bring an age of prosperity and peace,”³ and a ruler who possessed “keen intelligence, boundless energy” and great diligence.⁴ Of course, it is key to remember that Taizong’s reign was not perfect, marked by failings both on personal and policy fronts — namely, he forced his father from the throne, himself usurping the throne after killing two brothers — but traditional historiography has been very kind to him, instead focusing on his achievements and describing him as an open-minded, civil ruler who embodied Confucian values and who also accepted criticism and remonstrance from his ministers.⁵ Perhaps most significant, Taizong’s reign became an enduring political symbol not only for the Tang but also for later dynasties as well. He also became a cultural symbol and model, a ruler that other leaders sought to emulate — for example,

² Charles O. Hucker, China’s Imperial Past: An Introduction to Chinese History and Culture, Stanford University Press (Stanford), at 140 (1975).
³ See Chen, fn. 1.
⁵ See Chen, fn. 1 at 32–33.
later emperors, including Kublai Khan 忽必烈 (1215–1294; r. 1260–1294) and the
Emperor Qianlong 乾隆 (1711–1799; r. 1735–1796) attempted to model themselves after
Taizong.6

More specifically, Taizong is often considered to be an important figure in the
development of Chinese law. He himself took an active role in Tang dynasty’s legal
reform and legal development, ordering a review of the law code that had been
promulgated under his father and the first emperor of the Tang dynasty, Emperor Gaozu
高祖 (566–635, r. 618–626). Taizong’s revision of 637 laid the foundation for the
celebrated Tang Code of 653, which incorporated the important shuyi 疏议 (commentary). The Tang Code itself had a great influence on Chinese criminal law as a
model penal code for subsequent dynasties as well as kingdoms in Japan, Korea, and
Vietnam. For example, 30 to 40 percent of the Qing dynasty (1644–1912) criminal code
was composed of articles adopted directly from the Tang Code.7 Indeed, the traditional
narrative of Chinese legal history gives great weight to the Tang dynasty as a whole,
describing the development of Chinese law from the Han dynasty (202 B.C.–220 A.D.) to
the Sui dynasty (581–618) as a process of the so-called “Confucianization of law,”
meaning that Confucian values influenced the administration of law, and the content of li 礼 (ritual propriety) slowly made its way into formal legal provisions.8 It is in the Tang
when this process of the Confucianization of law reached its peak and completion, “with
the Tang Code representing an almost perfect expression of the legal recognition of
Confucian morality and the li.”9

Given the fame of Taizong, it is not surprising that multiple biographies of him have
been written, focusing mostly on his life, major historical events in his reign, and his

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6 Id. at 47.
8 For an example of a representative work that sets forth this traditional narrative, see Albert Chen, An Introduction to the Legal System of the People’s Republic of China (4th edition), LexisNexis (Hong Kong), at 16–17 (2011). The phrase “Confucianization of Law” was first coined by Chinese legal historian T’ung-tsu Ch’ü; see T’ung-tsu Chü, Law and Society in Traditional China, Mouton (Paris & the Hague), (1961). I am grateful to Paul Goldin for this point; see Paul Goldin, Han Law and the Regulation of Interpersonal Relations: “The Confucianization of Law” Revisited, 25(1) Asia Major, 2–3 (2012). Goldin defines “Confucianization of Law” as the “process by which the legal system, comprising not only statutes and ordinances, but also principles of legal interpretation and legal theorizing, came to reflect the view that the law must uphold proper interactions among people, in accordance with their respective relationships, in order to bring about an orderly society.” See Goldin, id. at 6. For a scholarly reassessment of the “Confucianization of law” label and narrative, see Geoffrey MacCormack, A Reassessment of “Confucianization of the Law” from the Han to the T’ang, in LIU Liyan, 中国史新论: 法律史分册 (New Discussions on Chinese History: Legal History), LinkingBooks (Taipei), at 397–442 (2008).
9 See Chen, fn. 8 at 16–17.
policies and accomplishments. However, little scholarly work has been done on understanding Taizong’s legal thought. Given the Tang’s significant accomplishments in law and Taizong’s historical role in legal reform, as well as Taizong’s importance to Chinese history more generally, I believe that it is important to understand Taizong’s legal thought. Indeed, Taizong perhaps stands out among other Chinese emperors, given that he did explicitly put forth his own various views on laws and punishments. Furthermore, it is also important to understand how Taizong himself applied the law in specific cases from the Tang historical record.

To my knowledge, no scholarly work in English specifically examines Taizong’s legal thought. Some Chinese historians have written specifically on Taizong’s legal thought, focusing primarily on descriptively laying out aspects and characteristics of Taizong’s legal thought; for example, they describe Taizong’s views on legislating law and implementing the law, arguing that Taizong believed that laws should be concise, clear, and lenient, and that they should be applied without regard to one’s status. Furthermore, they show that Taizong believed that punishments — particularly the death penalty — should be carried out cautiously, and ministers tasked with implementing the law should be upright individuals. While I do not disagree with these descriptions, I think that the existing scholarship and historiography on Taizong’s legal thought can be further developed in a few ways. First, the existing scholarship does not really contextualize this largely descriptive presentation of Taizong’s legal thought in his broader political thought.

10 For example, see Weschler, fn. 4 at 188–241; Charles Patrick Fitzgerald, Son of Heaven: A Biography of Li Shih-min, Founder of the T’ang Dynasty, Cambridge University Press (Cambridge), (1933); HU Rulei, 李世民传 (A Biography of Li Shimin), Zhonghua Book Company (Beijing), (1984); ZHAO Keyao & XU Daoxun, 唐太宗传 (A Biography of Emperor Taizong), People’s Publishing House (Beijing), (1984); ZHENG Yingde, 唐太宗本传 (A Biography of Emperor Taizong), Liaoning Chinese Classics Publishing House Co., Ltd (Shenyang), (1984); and ZHENG Xuemeng, LU Huayu & ZHANG Yu et al., 李世民评传 (A Critical Biography of Emperor Taizong), Nanjing University Press (Nanjing), (2006). I am grateful to Jack W. Chen for pointing out these sources and describing them; see Chen, fn. 1 at 13.

11 In this article, I use the term “legal thought” mostly to refer to views on laws and punishments.

12 The main book and articles in Chinese scholarship on Taizong’s legal thought are YANG Hegao, 魏晋隋唐法律思想研究 (Research on the History of Legal Thought in the Wei, Jin, Sui, and Tang Dynasties), Pekig University Press (Beijing), (1994); WANG Weixuan, 唐太宗的法律思想 (The Legal Thought of Emperor Taizong), 3 文史哲 (Journal of Literature, History and Philosophy), 72–77 (1985); HE Ruquan, 唐太宗统治时期的法律思想 (A Brief Discussion of Legal Thought in the Reign of Emperor Taizong), 1 西南师范大学学报 (人文社会科学版) (Journal of Southwest China Normal University (Humanities and Social Sciences)), 19–26 (1980); WANG Shuchun, 论唐太宗的法律思想和司法实践 (Taizong’s Legal Thought and the Implementation of Law), 2 延边大学学报 (哲学社会科学版) (Journal of Yanbian University (Social Sciences Edition)), 43–47 (1991); ZHANG Tingting, 唐太宗的法律思想 (The Legal Thought of Emperor Taizong), 7 黑龙江史志 (Heilongjiang Journal of History), 19 (2014); YANG Shengqiong, 论《贞观政要》中唐太宗的法律思想——兼与隋文帝法律思想之比较 (Taizong’s Legal Thought as Seen through “The Essentials of Government in the Zhenguan Reign” along with a Comparison to the Legal Thought of Emperor Wen of the Sui), 1 历史文化 (Chinese Culture) 28–30 (2004); and CHEN Yu, 唐太宗法律思想初探 (A Preliminary Inquiry into Taizong’s Legal Thought), 5 内蒙古大学学报 (Journal of Inner Mongolia Radio and TV University), 15–17 (1996).
or in historical context. Second, there also tends to be a reliance in the existing historiography on just a few sources in explicating Taizong’s legal thought — namely, the Zhenguanzhengyao 贞观政要 (The Essentials of Government in the Zhenguang Reign), a collection of anecdotes about Taizong and his ministers compiled by the Tang historian Wu Jing 吴兢 (670–749). Though this text is an invaluable source for Taizong’s reign and for understanding the basic elements and aspects of Taizong’s legal thought, one must also note that Wu Jing compiled these stories largely to present a positive account of Taizong’s relationship with his ministers. Therefore, it should be read along with other sources — notably, Taizong’s own writings and the dynastic histories — to present a more complete analysis of Taizong’s legal thought. Third, perhaps unsurprisingly, much of existing scholarship has studied Taizong’s legal thought not on its own historical terms, but through a Marxist interpretation, treating Taizong’s legal thought as a reference point to strengthen China’s socialist legal system. Fourth, existing scholarship makes limited use of actual cases from Taizong’s reign — even though cases are crucial to understanding Taizong’s legal thought in practice. Fifth, perhaps influenced by the traditional historiographic bias, which largely praises Taizong as an outstanding emperor (as discussed earlier), much existing scholarship adopts a similarly normative, adulatory attitude toward Taizong’s legal thought, praising Taizong’s contributions to Chinese legal development and Chinese legal thought. For example, the existing historiography generally has described Taizong or his reign as “the most outstanding politician and legal thinker in feudal China,” “the most outstanding politician in feudal China,” and the most developed and illustrious reign in China’s feudal past. One historian has even argued that Taizong himself “can be rated and counted as an outstanding philosopher” in Chinese history.

This article seeks to address these issues and makes the following arguments. It attempts to lay out Taizong’s legal thought, situating it in the historical context in which he lived and operated, as well as contextualizing his legal thought within his broader political thought and other writings to present a more complete, balanced analysis. It argues that Taizong was very much concerned with legality, competent legal administration, leniency, and through his actions, even implied that the law applied to himself. More specifically, it sets out key characteristics and aspects of Taizong’s legal thought — for example, his deep care about the correct application of law, his emphasis on moderation and caution in the application of law with respect to capital and corporal punishment, his concern for clear and concise laws, and his stress on the careful selection

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13 I use Jack W. Chen’s translation of this text’s title. See Chen, fn. 1 at 26.
14 For example, see WANG Weixuan, fn. 12 at 72.
15 Id. at 77.
16 See WANG Shuchun, fn. 12 at 13.
17 See ZHANG, fn. 12 at 19.
18 Id.
of officials tasked with implementing the law. But this article also notes that his attention to legality and the like was most likely not driven out of a genuine concern for legal reform for its own sake, but rather by concerns of improving his reputation and legacy, as well as addressing legitimacy questions, due to his violent history as a usurper of the throne from his father and brothers. In other words, Taizong was not necessarily the perfect hero for legal reform that existing scholarship on his legal thought has made him out to be. Furthermore, through my analysis of Taizong’s legal thought, I argue, contrary to some scholars, that Taizong was not really that innovative or “outstanding” a political or legal philosopher. Rather, Taizong’s legal thought shows him to be a deeply practical man whose views on laws and punishments fit in with his broader political thought—that is, to ensure legitimate, successful government and the continued stability and vitality of his dynasty. Ultimately, this article makes the point that, in studying Taizong’s legal thought, we should not focus on praising or condemning his legal thought as most existing scholarship has done. Rather, we should look at Taizong’s legal thought on its own historical terms and not focus on making normative evaluations from a modern perspective. Finally, in drawing from a variety of sources and presenting them in full, original English translation wherever possible, including relevant excerpts from the Zhongguan zengyao, the dynastic histories, and Taizong’s own writings, I hope to introduce to scholarly inquiry more Tang dynasty sources on Tang law that have never previously been translated into English.

On a larger level, this article also contributes to our understanding of premodern Chinese legal history and Tang history. It argues that the dominant narrative of “Confucianization of law” in premodern Chinese legal history is a lacking tool for understanding early Chinese legal development because it fails to make clear who the main actors or agents were who helped bring this so-called “Confucianization of law” process about (or perhaps, at times, hindered it). This article highlights the role and legal thought of such major actors as Taizong in this process. With respect to Tang historiography more generally, this article may also help enhance our understanding of Taizong and complicate the dominant adulatory historiography of his reign.

This article proceeds as follows: Part 1 provides a biographical orientation of Taizong and his reign. Part 2 provides an analysis of Taizong’s broader political philosophy. Part 3 then discusses and analyzes Taizong’s legal thought, laying out specific aspects and characteristics of his views on law and punishments while contextualizing them and making reference to specific cases and events in Taizong’s reign. The article then concludes.

I. TAIZONG THE MAN AND HIS REIGN

This part provides a brief biographical orientation and overview of Taizong and his

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19 For a brief overview of the term “Confucianization of law,” see fn. 8 and accompanying text.
reign to set the context for better understanding Taizong’s political and legal thought as well as his concerns regarding his reputation, legacy, and legitimacy. Taizong was born in modern Shaanxi Province in 599 as the second son of Li Yuan 李渊, who later became Emperor Gaozu, the first emperor and founder of the Tang dynasty. Taizong received an upper-class, noble Confucian education and also was trained in the martial arts, archery, and horsemanship. In his youth, he was noted for his valor, military abilities, and penchant for military strategy. His father was part of the aristocracy and served the Sui dynasty as an official and military commander. Eventually, riots broke out in the Sui around 617, and Taizong’s father was asked to help quell rebellions and rewarded with an appointment to Taiyuan (in modern Shanxi Province) Garrison. Taizong then began to recruit troops and to conspire with other officials to revolt against the Sui. 20

In 617, Taizong forced his father into rebellion against the Sui. Traditional Chinese historiography tells us that Taizong, through an associate of his, had some of Emperor Yang’s palace women sent to Li Yuan, his father. Oblivious to where these women came from, Li Yuan enjoyed their company, only to be later told by the same associate that Taizong had deceived him. Enjoying the company of the Sui emperor’s palace women was a crime, and as a result, Li Yuan had no choice but to go along with Taizong’s rebellion. 21 Li Yuan then ordered his son to raise more troops in Taiyuan, and eventually led his armies against the Sui, deposing Emperor Yang and ascending to the throne as the first emperor of the Tang in 618. Although Li Yuan was technically the founder of the Tang, most historical scholarship has described him as indecisive and hesitant to take action against the Sui, instead labeling Taizong as a co-founder of the Tang. 22 During Li Yuan’s reign, Taizong continued his decisive and ruthless style. In 626, he discovered that his two brothers — older brother and crown prince Li Jiancheng 李建成 (589–626) and younger brother Li Yuanji 李元吉 (603–626) were plotting against him; with the help of his associates, he ambushed his two brothers at Xuanwu Gate (the northern gate leading to the palace in Chang’an). This fraternal assassination is often known as the “Xuanwu Gate Incident.” Taizong’s brothers were eventually decapitated. Taizong then made “sure his father understood the reality of the situation,” and his father eventually abdicated the throne to Taizong (under some coercion) in 626. 23 From the above, we can see that Taizong was a ruthless usurper of the throne (and therefore faced a legitimacy problem right at the start of his reign), as well as a man of strong willpower who possessed a decisive personality, both of which influenced his legal thought. He has been described as an “intimidating and magnificent figure…highly emotional and easily provoked” whose “face would turn purple with rage and strike fear into those around him.” 24

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20 See Hucker, fn. 2 at 138–139; Chen, fn. 1 at 14–17; and Wechsler, fn. 4 at 188–189.
21 See Chen, fn. 1 at 18.
22 Id. at 16.
23 Id. at 25–26.
24 See Wechsler, fn. 4 at 189.
The first years of Taizong’s reign were difficult and taxing. Taizong’s experience was mostly in military command, not in government administration. Nevertheless, he was able to push forth numerous pragmatic policies related to defense, personnel selection, and legal reform, aimed at solving immediate problems. In defense, concerned about possible threats from non-Han tribes and from kingdoms on the Tang borders, he pacified the border and made peace with the Eastern Turks in September 626 (he would later defeat them in 630). He also had to deal with an immediate problem related to government personnel — at the start of his reign, there was a dearth of suitable candidates for government appointments. Furthermore, Taizong wanted to replace militarized local administration, an institutional structure that was in place in the Sui–Tang conflict, with a more centralized system of administration and government appointment to enhance the power of the central government and to reduce the authority of localized rulers. He appointed many of his supporters in the Xuanwu Gate Incident to key positions in the government. For example, Taizong appointed his brother-in-law and childhood friend, Zhangsun Wuji 长孙无忌 (d. 659), as president of the Board of Civil Office. Fang Xuanling 房玄龄 (579–648), another one of Taizong’s supporters, was appointed as president of the Secretariat, one of the “Three Departments” that comprised the powerful executive-administrative nexus of the Tang government and that was responsible for the transmission of government documents to and from the emperor, advising the emperor, and drafting royal edicts. In legal reform, Taizong continued the project of revising legal codes started by his father. As early as 619, his father, Emperor Gaozu, had created a commission to revise the Kaihuang Code, a legal code promulgated by Emperor Wen in 581. No longer extant, the Kaihuang Code is said to have been composed of 500 articles. Emperor Gaozu’s commission’s revised version led to a code of 53 articles, and in 624, a more expanded version was promulgated. In 637, Taizong ordered Fang Xuanling to lead a commission to make further revisions to the code, as he felt that many of the laws under his father had been too strict. These revisions, among other things, reduced the punishment for various crimes that originally would have been punishable by death or life exile. One Chinese historian has summarized the key features of Taizong’s reign as the following: a welcoming attitude to criticism from officials; a desire to promote talent and knowledge of how to recognize and employ talents of others; a conservative, reserved policy toward the issuing of laws and ordinances; de-emphasis on punishment in the governance of people; and constant vigilance toward possible dangers.

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25 See Twitchett, fn. 1 at 16.  
26 Id. at 17.  
27 Id.  
29 CEN Zhongmian, 隋唐史 (A History of the Sui and Tang Dynasties), Zhonghua Book Company (Beijing), at 112–113 (1982). I am grateful to Jack W. Chen for directing me to this source. See Chen, fn. 1 at 32.
As discussed earlier, the traditional historiography on Taizong has been adulatory, and Taizong has enjoyed a reputation as a frugal and wise ruler who embodied Confucian virtues and who was sensitive toward and inviting of direct, frank criticism from officials. However, the historiography is complex because Taizong himself was self-conscious about his historical legacy, and he attempted to control his image, again most likely due to his legitimacy concerns after his usurpation of the throne; for example, Taizong sometimes acted as if he were “performing a role before court diarists whose records would allow future historians to pass judgment on the reign.”

However, as Jack W. Chen has argued, “construction of the imperial image cannot be reduced to mere propaganda.” Indeed, at least in the beginning years of Taizong’s reign, he did in fact demonstrate much respect for court advisers, acting almost like a student before his ministers, and showed much empathy to the people; his court also was characterized by a high level and degree of self-confidence and participation on the part of officials and ministers. By the mid-630’s, the character of Taizong’s reign changed, as he consolidated his power. He became more arbitrary, and by 637, some ministers began to complain about his leadership style and arrogance, urging him to return to the governing style of the late 620’s. Taizong eventually died in 649, and passed the throne to one of his sons, Li Zhi 李治 (628–683; r. 649–683), who became Emperor Gaozong.

Nevertheless, historical memory has either forgiven or overlooked Taizong’s faults, and he has become a symbol of Chinese greatness. Indeed, by the time of the reign of the Empress Wu (r. 690–705), Tang ministers were already expressing deep nostalgia for Taizong’s era.

This part has provided a brief overview of Taizong’s life and reign. More important, from this biographical summary, we can see that Taizong was a deeply pragmatic man who adopted policies to solve problems of his time (such as those of government personnel) and also to ensure a strong legacy, all ultimately aimed to guarantee the survival of his dynasty and to deal with potential doubts as to the legitimacy of his reign, given his vicious (and indeed, non-Confucian) usurpation of the throne. And, though the dominant portrayal of Taizong as a model ruler and a paragon of Confucian morality and virtue is not wholly without merit, we can also see from his life that he could be a ruthless, opportunistic, and violent man with a dynamic personality. Characteristics such as ruthlessness, pragmatism, and opportunism also play a role in his political and legal thought; as discussed earlier, one of the arguments of this article is that Taizong’s legal

31 Id. at 48.
33 See Wechsler, fn. 4 at 191–193.
34 See Chen, fn. 1 at 47.
35 Id.
thought shows him to be a practical man whose concern with legality was not necessarily driven by an idealistic or ideological commitment to legal reform for its own sake, but rather by political considerations in order to buttress his legitimacy.

II. TAIZONG’S BROADER POLITICAL THOUGHT

This part provides an overview of Taizong’s political thought to contextualize his legal thought. It lays out key elements of Taizong’s political thought and argues that Taizong’s political thought, similar to his legal thought (for which it provides context), further shows Taizong to be a deeply practical man focused not on innovative political theory, but rather on ensuring successful government, buttressing his reign’s legitimacy and legacy, and ensuring the longevity of the Tang dynasty. This part also refers as needed to other, earlier political thinkers in the Chinese tradition. First, a quick note on sources used in this part is in order. This part draws mainly on Taizong’s two most famous essays on the role of the emperor and how the ideal emperor should rule: The Golden Mirror 金镜 and Plan for an Emperor 帝范. The former essay was promulgated in court in 628, soon after Taizong ascended to the throne, and was partly aimed at legitimizing his rule and garnering support from ministers in court. The Plan for an Emperor was written in early 648 as a set of lessons and advice for Taizong’s successor, Li Zhi. Though these two essays are not totally objective, as Taizong was attempting to portray himself “sympathetically,” we cannot simply write them off as “cynical window-dressing to present his [Taizong’s] power in a favorable light, nor simply a construction of official diarists and historians.”

First, Taizong’s views on the relationship between heaven (tian 天) and man highlight his political pragmatism. The question of the relationship between heaven and man has occupied Chinese political thought since the early Zhou dynasty. Generally speaking, the concept of heaven emerged in the early Zhou dynasty — heaven was seen as the power that governed all things in the world and as a cosmic moral order that also influenced the destiny of human beings. The concept of the “Mandate of Heaven” also developed in the Zhou dynasty. It was used by the Zhou to justify and legitimize their conquest and victory over the preceding dynasty, the Shang dynasty, and it was based on the notion that because the last Shang emperor was cruel and vicious, heaven removed its mandate from the Shang and instead gifted it to the Zhou. Some early Chinese thinkers, however, did not think that the will of heaven had any connection or relationship with government administration or worldly affairs. Xunzi 荀子 (ca. 313–238 B.C.), for example, argued famously that heaven is essentially amoral, and that good things happen in the world not because of the intervention or will of heaven, but rather because of good decisions and

36 Id.
37 See Twitchett, fn. 1 at 7, 18.
good planning undertaken by people in the world. Dong Zhongshu (179–104 B.C.), the Han dynasty scholar, official credited with persuading Emperor Wu (156–87 B.C.; r. 141–87 B.C.) of the Han to establish Confucianism as the state orthodoxy, generally described heaven as anthropomorphic and acting like a human being, with the ability to oversee government actions on earth and to take away the ruler’s tenure. For Dong, the human and natural worlds were linked. Actions in the human world would bring about corresponding reactions in the natural world, brought on by heaven. Basing his philosophical system on the yin–yang theory and the five phases theory, Dong argued that rulers had to correspond their actions to the proper order and movements of yin and yang and also to the five phases. If the ruler failed to do this, the forces of nature would be out of sync, so to speak. For example, punishments too harshly imposed on subjects might lead to a negative reaction in the natural world, such as floods and epidemics brought down by heaven. Furthermore, certain punishments such as executions — which were considered yin — were not to be carried out in seasons where yang was on the rise or most prominent, such as spring. Otherwise, it was feared that such reactions as poor harvests would occur. Therefore, heaven, for Dong, potentially is a limiting and constraining force on the power of the emperor.

Taizong took a pragmatic, flexible approach toward this question of heaven and man’s relationship. He believed that men, not necessarily heaven, controlled and shaped human destiny. For example, when certain ministers from different sections of the Tang reported auspicious and inauspicious omens (natural reactions that they saw in the world), Taizong gave a Xunzian retort, arguing that the success of a dynasty was dependent on the quality of its government and the actions of individuals and not on omens or on heaven. Indeed, in further evidence of his attitude toward portents and superstitions, he also made fun of previous emperors who drank magical portions to prolong their lives. In The Golden Mirror, Taizong addressed the question whether we can simply interpret catastrophes raining down on bad rulers and successes enjoyed by great rulers as simply the workings of heaven. He wrote, “…these events were nevertheless also [influenced by] the doings of men” and cited the historical example of Tang (ca. r. 1675–1646 B.C.) of the Shang dynasty, the founder of the Shang dynasty, who, in dealing with a 7-year drought, did not simply surrender to heaven but had gourds carved to be used as sacrificial offerings,

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39 The specifics of Dong Zhongshu’s philosophy and political thought are outside the coverage of this article. For a good overview of Dong’s political thought and underlying philosophical beliefs, see id. at 484–503.

40 For a discussion on yin–yang theory and the five phases theory in Chinese thought generally and in Dong Zhongshu’s thought, see Lee Dian Rainey, Confucius and Confucianism, Wiley Blackwell (West Sussex), at 132–145 (2010).

41 See Wechsler, fn. 4 at 189.
showing his humility and frugality. Rain eventually “fell over an area of a thousand li,” which Taizong attributed to King Tang’s upright actions. Of course, we should note that Taizong did not totally deny heaven’s importance (note his use of the word “also” in “also [influenced by] the doings of man”). There are probably a few reasons for his view. Regardless of his own views on heaven, omens, and superstitions, the concept of heaven and the notion of the “Mandate of Heaven” were still important to legitimize his rule. Furthermore, the political philosophy of Dong Zhongshu had become the state orthodoxy since the Han dynasty, and though there were other schools of thought (such as Daoism) and interpretations to which officials subscribed, the political language of the importance of heaven had become ingrained in Chinese political culture; no emperor could just disregard heaven. Indeed, in The Golden Mirror, Taizong wrote that the ruler not only must lead his people, but must also keep an eye on heaven and on earth: “if he [the ruler] slights or offends against heaven and earth, the multitude of spirits will manifest their baleful omens; if he disregards or shows disrespect towards the deities and spirits, tempests and rain will occur in response to his violence…” Thus, from his views on the relationship between heaven and man, we can see that Taizong adopted a practical, flexible approach. He was aware of his responsibilities and obligations before heaven, as were rulers before him, but he simultaneously empowered himself to make decisions as well.

Another aspect of Taizong’s political thought focused on the selection of good men to serve in government positions and also on the responsibility of the ruler to heed their advice. This emphasis should not be surprising, given the personnel issues that had plagued the first few years of Taizong’s reign. In The Golden Mirror, Taizong wrote:

Disorder has always been the result of employing men of inferior worth: Good government has always come about by employing loyal and worthy men. If one employs the loyal and worthy, then one’s empire will enjoy good fortune; if one employs men of inferior worth, then one’s empire will suffer calamity.44

In other words, the employment of proper people to government positions is critical to the survival of the state. Taizong also analogized the importance of selecting talented and loyal officials to constructing a building. Men of virtue are just like the “ridge-poles” and “cross-beams” of the state, indispensable to the state just as “ridge-poles” and “cross-beams” are crucial to the structural integrity of a building.45 Besides stressing the general importance of selecting good men to serve, Taizong also believed that rulers should examine people carefully for their different talents and use them effectively. In Plan for an Emperor, he compared the selection and examination of officials to the

42 See Twitchett, fn. 1 at 15. I rely on Denis Twitchett’s full translation of The Golden Mirror, which appears in Twitchett, fn. 1 at 18–33.
43 Id. at 26.
44 Id. at 19.
45 Id. at 22.
cutting of timber by a skilled carpenter. A skilled carpenter “makes the cart’s shafts out of the straight timber and the wheels from the curved pieces; he uses the long timbers for after sand ridgepoles and the short pieces for roof brackets and eaves rafters.”

Regardless whether the timber is curved or straight, long or short, the skilled carpenter knows how to use each piece of timber to the best of its ability. Likewise, Taizong argued every good man can be used — for wise people, the ruler can of course listen to their advice on policy issues. But even “stupid” people can be used — the ruler can use their strength. In addition, of course brave people are desirable, as they can lend a sense of “majesty” to the emperor, but Taizong made the point that even cowards are useful, as they can teach the emperor “prudence.” What was the ultimate policy rationale for employing good people in government? The rationale was a practical one — as Taizong wrote in Plan for an Emperor: “[a]ssistance in the task of rectifying the state must wait upon loyal and good [ministers]. If in the employment [of officials] the emperor obtains the appropriate men, then the empire will rule itself.”

In other words, once good people are employed in government, the emperor will not have to do much and can, with confidence, leave day-to-day affairs of state to his trustworthy ministers.

Once good people are employed, Taizong argued, the ruler must also allow for open communication between ruler and minister. The ruler should eschew an autocratic governing style and be open to remonstrance from his officials, while avoiding flatterers and sycophants. In Plan for an Emperor, Taizong wrote:

Now the king occupies the highest place, and oversees his government from the depths of his seclusion [in the palace]. This impairs his clearly hearing [about events], and stops him from clearly [seeing what is happening]. He is afraid that, if there are faults committed, he will not hear of them, and frightened that, if there are deficiencies in government, nobody will repair them…He should give careful thought both to the policies that are accepted and to those that are declined, and will listen to proposals carefully with an open mind (that is, with no preconceptions); this is the way in which he should stand and await loyal and just counsel. Whatever is said that is right, even though it comes from servants or slaves, grass cutters and firewood gatherers, still may not be rejected…counsel that is worthy of attention [should be looked at] without criticizing [its authors] over their precise details; policies that are fit for use should be adopted without demanding eloquence of style from their authors…

In other words, the emperor must keep his mind open to advice and must pay attention to the actual substance of that advice, not to the status of the person giving the advice or to the form of that advice. The ruler should act this way not only because it will lead to good policy, but also because he may lack first-hand knowledge about things.

46 Id. at 66. I also rely on Denis Twitchett’s full translation of Plan for an Emperor, which appears in Twitchett, fn. 1 at 50–92.
47 Id. at 67.
48 Id. at 63.
49 Id. at 69–71.
because he abides deep in the “seclusion” of the palace. By contrast, unenlightened rulers reject people’s opinions, causing important ministers to become frustrated and to no longer remonstrate; lower-ranking officials no longer will provide advice out of fear of being punished for it.\(^\text{50}\)

Note that Taizong’s emphasis on selecting good people for government service and listening to their advice so that the empire can “rule itself” are not new concepts in Chinese political thought. The emphasis on selecting upright men to serve as ministers was discussed by Confucian and Legalist thinkers alike, and Taizong’s point regarding the empire ruling itself through good ministers, as well as his point regarding the king “overseeing his government from the depths of his seclusion [in the palace]” both harken back to the concept of non-action (\textit{wuwei} 无为) as an important tool of rulers, as advocated by the noted 3rd century B.C. Legalist thinker, Han Fei 韩非. For Han Fei, the ideal ruler was one who could govern a state authoritatively by non-action, which requires work by ministers who are in awe and respect of the ruler. As Han Fei wrote:

\textit{This is the way of the way of an enlightened ruler: he makes it so that the wise fully exert themselves in making plans, while he uses their wisdom to manage his affairs. Thus, he is never lacking in wisdom. He makes it so that the worthy refine their natural talents, while he makes use of those talents and employs them. Thus, he is never lacking in ability. He makes it so that when there are achievements he gets the credit for their worthiness, and when there are errors the ministers take the blame. Thus, he is never lacking in reputation. Thus, though he himself is not worthy, he is taught by those who are worthy; though he himself is not wise, he is corrected by those who are wise. The ministers perform the work, and the ruler enjoys the final achievement. This is what is called the guiding principle of a worthy ruler.}^\text{51}\)

Similarly, Han Fei also advocated that the ruler retreats into his palace when ruling and “see others but do not allow yourself to be seen; hear others but do not allow yourself to be head; know others, but do not allow yourself to be know.”\(^\text{52}\)

For Taizong, the ruler must also balance his temperament, engage in constant self-examination and self-introspection, and exercise self-restraint in his own conduct and also in implementing policies. On the issue of balance, as Taizong wrote in \textit{The Golden Mirror}, “...the correct way to establish oneself depends upon compromise between differing principles, not upon being partial to one extreme.”\(^\text{53}\) For example, a ruler must lead his people by “civic virtue,” but he also must balance the civil aspect of governance with the martial, in order to protect the borders of his state.\(^\text{54}\) The ruler must have a heart

\(^{50}\) Id. at 72.


\(^{52}\) Id.

\(^{53}\) See Twitchett, fn. 1 at 21.

\(^{54}\) Id.
of impartiality and fairness, as well as magnanimity, but he also must balance that with “awesome power” to make his authority known to the far reaches of the empire.\(^{55}\) Ever the pragmatist, Taizong also warned in *The Golden Mirror* that rulers must be flexible and balanced in the implementation of policies. For example, if a ruler acts too generously and kindly, he will be unable to ensure that laws are enforced:

*He who acts as ruler of the empire occupies the position of superior to the myriad people. How can this be easy? If he turns his back on the Way and offends the Rites, he not only injures himself, but makes himself a laughing stock for the sages [wise men]. If he humbles himself but acts forcefully, he can truly be a superior man, but will be derided by ordinary men. If he advances men in office beyond their appropriate rank, their fellows will certainly be profoundly resentful...if he abandons himself to his passions and gives way to anger then the court and countryside alike will shudder with fear. If he restrains his emotions and acts generously and kindly, then the laws and regulations will not be into effect...*\(^{56}\)

Therefore, the ruler constantly must engage in a sort of balancing act with respect to policy-making. It is important, for example, to advance worthy individuals to higher positions, but the ruler must be careful not to do so inappropriately. Nor should the ruler give in to his “passions” or allow his temper to flare. Taizong also made the point here that ruling is challenging. Therefore, rulers also must engage in self-examination during self-introspection. In another passage from *The Golden Mirror*, Taizong wrote that “ignorant rulers cling tight to their own shortcomings, and thus perpetuate their stupidity...[e]nlightened rulers ponder upon their own shortcomings and thus improve their good qualities.”\(^{57}\) Rulers also must exercise self-restraint not only in their emotions (such as their temper, as mentioned above) but also their own interests. As Taizong wrote in “Plan for the Emperor,” the ruler must “repress his own [personal interests] and toil diligently, so as to put into practice virtue and righteousness” and also practice frugality “to nourish his nature and seek tranquility to cultivate his individual self.”\(^{58}\) Curbing one’s desires and exercising self-restraint also will lead to good policy. As Taizong wrote, “if the ruler lightens taxes and reduces corvee duties, the people’s families will be well provided for. Above, there will be no exactions based upon harsh [violent] laws; below, there will be the chanting of songs of praise. By curbing his own desires (emphasis mine), such a prince will bring joy to all the people...”\(^{59}\) In turn, these good policies had a very practical effect — the ruler would be able to win the hearts of the people.

Indeed, for Taizong, it was very important to provide for the material well-being of the people. Though genuine concern for the people most likely was a motivating factor, Taizong had practical considerations, too: Providing for the material well-being of the

\(^{55}\) Id. at 58.

\(^{56}\) Id. at 31.

\(^{57}\) Id. at 24.

\(^{58}\) Id. at 58, 76.

\(^{59}\) Id. at 26.
people would make them easier to rule. As he wrote in Plan for an Emperor, “[f]ood is the Heaven for the people, and agriculture the essential basis for good government. If the granaries are full, the people know the rules of propriety and moderation. If food and clothing are deficient, then they will forget all feelings of integrity and shame.” By emphasizing agriculture and therefore encouraging people to farm and engage in other similarly “basic occupations,” Taizong believed that people would be able to rediscover their true simplicity, reducing the possibility of conflict and the constant “yearning for greed.” These concepts are certainly not new with Taizong — the discussion above of full granaries and deficient food and clothing is a line from the Guanzi text, a text traditionally attributed to the 7th century B.C. proto-Legalist thinker, Guan Zhong. Taizong’s emphasis on subjects being as simple as possible (and thus easier to rule) harkens back to early Daoist thought, such as the Daoist classical text Dao De Jing’s call for people to return to a primitive, pre-cultural, agrarian utopian world and the exhortation to the sage ruler to treat people as children and to keep his subjects dumb so as to achieve this utopian world in practice.

Finally, Taizong asked, what resources or reference points should rulers consult for implementing the above policies and aspects of political thought? For Taizong, the answer was Chinese history. In other words, rulers should look up to excellent emperors in previous dynasties and “their virtuous conduct.” Taizong’s paragon emperor was Emperor Gaozu, known by his personal name as Liu Bang 刘邦 (ca. 256–195 B.C., r. 202–195 B.C.), the first emperor of the Han dynasty. Indeed, Taizong considered the Han dynasty as a whole the glorious era of Chinese civilization, and he tried to identify himself with Gaozu and to emulate the ways of the Han. He also upheld as models the sage emperors Yao, Shun, and Yu, as well as Emperor Tang of the Shang dynasty. By contrast, Taizong considered Emperor Yang of the Sui dynasty as an example of a bad emperor. For example, in a short essay of his entitled “The Fundamentals of Governance,” Taizong wrote that “the key to governing well lies in realizing its fundamentals…[s]hortly after Emperor Yang of Sui seized the throne, the entire state was at first strong and prosperous, but then he abandoned virtue and deprived the military [of essentials], which caused his downfall.” Again, this emphasis on the importance of

60 Id. at 81.
61 Id. at 83.
62 Id. at 24.
63 Id.
64 Id. at 95.
65 This is my translation — unless otherwise indicated in this article, all translations of primary sources are mine. TANG Taizong, 政本论 (The Fundamentals of Governance), in WU Yun & JI Yu comp., 唐太宗全集校注 (The Collected Works of Tang Taizong), Tianjin Chinese Classics Publishing House (Tianjin), at 160 (2004). The original Chinese text can also be found in the Quan Tang wen 全唐文 (The Complete Prose of the Tang Dynasty), Vol. 10. The Quan Tang wen is conveniently available at http://www.guoxue.com/wenxian/wxji/qtw/ml.htm (last visited Aug. 4, 2017).
tradition as a mirror and as a reference point from which to learn did not emerge with Taizong’s political thought — it has a long pedigree in classical Confucian thought. For example, Confucius dreamed (literally and figuratively) of the glory days of the early Zhou under King Wen of the Zhou dynasty, and also famously related, “I [Confucius] transmit rather than innovate. I trust in and love the ancient ways.”

In sum, as we can see from Taizong’s views on the relationship between heaven and earth, the importance that he gave to government personnel selection and the relationship between rulers and ministers, and his focus on a ruler’s personal self-restraint, self-examination, the need for balanced policies focused on the people, and the utility of the past as a mirror, Taizong’s political thought is characterized by a concern for practical solutions to ensure the stability, legitimacy, and longevity of his dynasty. Furthermore, we cannot deem him an innovative thinker in political theory; rather, many of his ideas are continuations and creative adaptations of previous strands of Chinese political thought.

As the next part shows, Taizong’s legal thought also fits these characteristics of his political thought.

III. TAIZONG’S LEGAL THOUGHT

This part, the heart of this article, sets forth the salient features of Taizong’s legal thought. On the broadest level, this article argues that Taizong was concerned with legality, competent legal administration, and leniency, and through his actions seemed to imply the law applied to himself. To highlight these broad points, it discusses the following as specific features of Taizong’s legal thought: first, his belief that laws should be clear and concise; second, his belief that law should not be the primary norm governing society, but rather should be a tool for making manifest such primary norms as benevolence and righteousness; third, his belief that law should be applied without undue attention to the background or previous accomplishments of the offender; fourth, his belief that, as to punishments, leniency should be a guiding principle, and there should be a reduction of corporal punishment and capital punishment — and, if capital punishment should be carried out, it must be done so cautiously; fifth, his belief that because officials are the ones implementing and enforcing the law on a daily basis, much attention must be given to selecting upright officials and also listening to the advice of ministers; and sixth, his belief that granting imperial amnesties should generally be avoided, but that practical concerns may necessitate granting amnesties (or perhaps even ignoring past amnesties in effect). The goal of this part is not purely descriptive, however (as has been the dominant scholarship in the historiography). This article also shows that Taizong’s legal thought, like his political thought, also cannot be considered very

67 See Analects 7.1. id. at 20.
68 Denis Twitchett has also made this point. See Twitchett, fn. 1 at 97.
innovative but is instead couched strongly in practical concerns for the stability and legitimacy of his rule. This part introduces a variety of primary sources in English translation and discusses actual legal cases involving Taizong. In examining these sources, we better understand his legal thought in action, avoiding a discussion purely in the abstract.

A. Views on Law-Making: Laws Should Be Clear and Concise

In our discussion of Taizong’s legal thought, we ought to begin by looking at Taizong’s views on law-making and the essential characteristics of laws in general. Taizong believed that laws should be clear, concise, and consistent. The Zhenguan zhengyao records the following remarks given by Taizong to his ministers in 636:

Laws must be concise and to the point. There should not be multiple provisions on one crime. If there are too many standards, officials will not be able to memorize them all, and there will be more fraud and treachery. [For example], if they [officials] wanted to exonerate a criminal, they would then look for a provision levying a light punishment, and if they wanted to punish a criminal more severely, they would then search for a provision imposing a heavy punishment instead. [Also], changing laws too often is not beneficial to the state. Laws should be examined and legislated carefully. There should not be any repetition or ambiguity in legal provisions.69

As we can see from Taizong’s remarks, he was interested in making laws clear, concise, or consistent not necessarily out of lofty commitments to legal reform for its own sake, but for more pragmatic reasons. Having too many conflicting provisions on one criminal offense, Taizong feared, would lead to too much sentencing discretion on the part of officials hearing cases. Ambiguity, repetition, inconsistency, and also lack of stability in the laws also would be harmful to the state. In addition, law and imperial orders had to be promulgated cautiously and they had to be standardized and stabilized carefully; as Taizong said, issuing orders is “like beads of perspiration” — once they are issued, there is no way to take them back.70 Otherwise, Taizong feared, the “people’s hearts would be tempted and led astray, and treachery would increase.”71 In other words, unstable and unclear laws would sow the seeds for disorder and lawlessness in society. Thus, for Taizong, clarity and consistency in law were important to control both officials and the common people.

Again, Taizong’s views on law-making were not new. To support his views on law-making, he also quoted a king of the Zhou dynasty, as recorded in The Book of Documents, one of the Confucian classics: “Be careful in the commands you issue;

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70 Id.
71 Id.
for, once issued, they must be carried into effect, and cannot be retracted.” The importance of laws being easy to understand and consistent were also themes emphasized by the prominent Legalist thinkers Shang Yang 商鞅 (ca. 390–358 B.C.) and Han Fei. Han Fei, for example, wrote that “[s]o if when making laws for the masses, you use language that even the wisest people find difficult to understand, then no one will comprehend or follow your laws” and blamed the ancient Chinese state of Han’s 韩 weakness and official corruption on conflicting and inconsistent laws: “[s]ince the old and the new laws were mutually contradicting [in the state of Han], and the former and the later decrees were mutually conflicting…the corrupt ministers still had the means to deceive [the ruler of Han] with their words.” Thus, Taizong’s pragmatism-driven concerns on law-making have an intellectual heritage within classical Legalism.

B. Law as a Secondary Norm and Tool for Promoting the Primary Norms of Benevolence and Righteousness

Ascribing much importance to law-making and the consistency and clarity of laws to state survival, Taizong also adhered to the traditional Confucian notion that law should not be the primary governing norm in society, but a norm secondary in importance to the primary norms of benevolence 仁 (ren) and righteousness 义 (yi). Indeed, as Confucius had famously argued, “If you try to guide the common people with coercive regulations and keep them in line with punishments, the common people will be evasive and will have no sense of shame. If, however, you guide them with Virtue, and keep them in line by means of ritual, the people will have a sense of shame and will rectify themselves.” In other words, though law may be necessary to govern and order society, Confucius did not believe it should be the primary norm in society — for Confucius, it was more effective to lead people by good, moral example. Mencius, one of Confucius’s most prominent successors, similarly advocated what he termed renzheng 仁政 (benevolent government), or rule by moral, virtuous, and educated officials focused on ensuring the well-being of the people as a whole. We should also recall that Taizong’s broader political thought emphasized caring for the material well-being of the people and ensuring they are fed and provided for. Drawing on all of these strands of thought, Taizong remarked to his ministers in 627:

Since antiquity, rulers have used benevolence and righteousness to govern the state; through these means, the longevity of the state was secured. However, when punishments

73 See Sahleen, fn. 51 at 345.
74 Id. at 337.
75 Analects 2.3. The Analects, fn. 66 at 5.
and laws were used to govern the people, although certain problems could be resolved for a short time, the defeat and decline of the state also came quickly. The successes and failures of previous emperors are invaluable mirrors and reference points for consideration in the present day. Therefore, I have now decided to especially rely upon benevolence, righteousness, and trust to govern the state. Through these means, I hope to remove the unhealthy, superficial, and harsh atmosphere that has plagued society as of late...77

This statement to his ministers, made soon after he ascended to the throne, shows Taizong’s commitment to the primary norms of benevolence and righteousness in government, which, in Taizong’s view, guarantees and ensures long-term survival of the state, a practical and important concern. Commitment to these primary norms also reflects the practices of previous successful emperors. Indeed, Taizong also remarked that the reason for the fall of the Sui dynasty was Emperor Yang of Sui’s failure to rule by means of benevolence and righteousness, not because of military defects or military shortages.78

The next year, Taizong delivered another remark to his ministers, continuing to echo Confucius’s emphasis on benevolence and righteousness as the primary norms in guiding the populace:

I previously believed that it is hard for customs and habits to change after the state goes through tumult and chaos. However, I have recently seen the common people gradually understand shame and humility, ministers and the people exercising their public duties well and abiding by the law; and the number of robbers and bandits decreasing on a daily basis. Therefore, from these, I can see that the people do not have customs and habits which are permanently ossified and which cannot be changed. Rather, changes in customs and habits can be attributed to the governing method of the state. As such, the key to governance is to comfort and nurture the people by means of benevolence, righteousness, and morality and to lead the common people by means of stately dignity and trust. It is also important to act in accordance with the people’s hearts, abolish harsh laws and regulations, and eschew crooked and dishonest practices. Through all of these means, the state will naturally be at peace...79

Taizong again took a pragmatic view of governance, arguing that there are no set human ways; rather, human “customs and habits” can be changed and molded by governing techniques, and the ideal techniques of government lie in benevolence and righteousness and leading the people by “stately dignity and trust,” which in turn closely echoes Confucius’s exhortation to lead the people “by means of Virtue.” Taizong also made it more explicit here that ruling by means of benevolence and righteousness is more important than relying on “harsh laws and regulations,” which he juxtaposed with “crooked and dishonest practices.” Note that Taizong merely said that the state needed to abolish harsh laws and regulations, not all laws and regulations, which also was the

77 See WU, fn. 69 at 5.250.
78 Id. at 5.252.
79 Id. at 5.251.
position of Confucius, who saw law not as the primary norm in society while recognizing that it was necessary in society. Again, we ought to note that Taizong clung to benevolence and righteousness largely for pragmatic reasons — to lead to peace in the state. For Taizong, in addition to bringing about peace, policies anchored in benevolence and righteousness ultimately would cause the people to submit and to be loyal subjects. In 639, he remarked to his ministers:

*When the forests are verdant and lush, birds will perch and roost there. When rivers are deep and vast, fishes will swim and congregate there. When benevolence and righteousness are concentrated and palpable, people will naturally submit and be loyal. People all know to fear and avoid disasters and harm, but they do not know how to realize benevolence and righteousness. When benevolence and righteousness are realized, disasters and harm will no longer occur.*

80 Here, Taizong argued that people were unable to make manifest benevolence and righteousness, and therefore they needed the guidance of a ruler. Ruling with benevolence and righteousness as the primary norms could also bring benefit to the state, in Taizong’s view, by making people more loyal to the state. Furthermore, using colorful and descriptive analogies to forests and rivers, Taizong also argued that yet another benefit to the state would be perhaps population benefits — more people would come to the state, which most likely would strengthen the state with more manpower. The power of benevolence and righteousness to lead and transform the people beyond sole reliance on law was also discussed by Confucius, in a conversation between Confucius and Ji Kangzi 季康子 (d. 468 B.C.), who had served as chief minister of the feudal state of Lu 鲁 in the Spring and Autumn period:

*Ji Kangzi asked Kongzi [Confucius] about governing, saying, “If I were to execute those who lacked the Way in order to advance those who possessed the Way, how would that be?” Kongzi [Confucius] responded: “In your governing, Sir, what need is there for executions? If you desire goodness, then the common people will be good. The Virtue of a gentleman is like the wind, and the Virtue of a petty person is like the grass—when the wind moves over the grass, the grass is sure to bend.”*

81 Confucius here made the point that reliance on legal punishments — executions — to transform the people onto the Way (Dao 道), or the right path to self-cultivation and virtue, was not effective. Rather, the transformative effect of a ruler who embraces virtue and morality, according to the norms of benevolence and righteousness, would be substantial, just as wind has the power to bend grass. Therefore, we see Taizong’s recognition of benevolence and righteousness as the key tools and foundation of governance had an intellectual pedigree in Chinese thought and also was animated by practical concerns for efficient and effective rule.

In addition to Taizong’s recorded remarks to his ministers, the dynastic histories

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80 Id. at 5.254.
record an event whereby Taizong led a “sting operation” and was criticized by one of his high-ranking ministers, Pei Ju (547–627), for his perceived lack of benevolence and righteousness in using that investigative tool; after hearing the criticism, Taizong realized that the minister’s remonstrance was indeed correct:

After Taizong ascended to the throne, he was disgusted by corrupt officials in government and wanted to severely punish them. Therefore, he set up a sting operation. He secretly dispatched agents to offer and deliver gifts to various officials. One lower official accepted such a gift (of silk). Taizong became enraged, and ordered that this official be executed. Pei Ju remonstrated, saying: “Officials who accept bribes should indeed be put to death. However, your Majesty has used a sting operation to deceive this official. This is using the law to entrap someone and is deceiving someone to commit a crime. This is not the way of using virtue and righteousness to lead the people.” Taizong was pleased [with Pei Ju’s criticism], and he told the other ministers about the matter, saying: “Pei Ju is willing to debate in court and set forth his own views. He does not simply say what he thinks I want to hear. If every matter was handled in this manner, there is no way that our state would not be governed well.”

This event highlights two competing approaches to solving a problem faced by the court: corruption. One side is represented by Taizong’s sting operation, which was not necessarily an illegal technique. Although effective, the sting operation was strongly criticized by the side represented by Pei Ju, who argued against such leading methods. Indeed, Pei Ju’s statement that “this [the sting operation] is not the way of using virtue and righteousness to lead the people” also reminds us of Confucius’s recommendation for the ruler to lead the people “by means of Virtue.” Taizong eventually did praise Pei Ju’s criticism and seemed to endorse what it stood for, although it is not clear whether he canceled the investigation or commuted the sentence of the condemned individual. This passage is also important because it highlights perhaps the vicious side of Taizong which did not always comply with law — for example, he sentenced the corrupt official to death due to his becoming “enraged.”

C. Laws Should Be Applied without Overdue Attention to the Background of the Offender

In imperial China, the emperor’s words were technically law. In other words, the emperor theoretically was the highest authority and, in his role as a legislator, in effect stood above the law. However, in his role as an adjudicator and judge, one element of Taizong’s legal thought which becomes apparent is his belief that law should be applied without overdue attention to the background of the offender, apart from what the Tang Code prescribed (since the Tang Code in levying punishments did distinguish between categories of persons based on their status). Though Taizong never explicitly mentioned that in all instances he would be subject to the law, he did seem to make an effort to follow the law himself and, as a judge, he also applied law impartially to wrongdoings.

82 OUYANG Xiu & SONG Qi. 新唐书 (The New Book of Tang), Ting Wen Book Company (Taipei), at 100.3934 (1981).
committed by his ministers, not taking into account such extra-legal factors as their background or past contributions to the imperial court. This part examines three cases which arguably highlight this element of Taizong’s legal thought.

In the first case, recorded in the Zhenguan zhengyao, Taizong refused to pardon a prominent 7th century general named Gao Zengsheng 高甑生 (ca. 7th century) despite his previous meritorious service and contributions to the state. Gao Zengsheng served as a military commander-in-chief in Yanze Circuit (in modern-day the Xinjiang Uygur Autonomous Region) and was a subordinate of Li Jing 李靖 (571–649), one of the Tang dynasty’s most accomplished generals who defeated the Eastern Turks in 630. Gao Zengsheng had disobeyed Li Jing’s orders for reassignment and also falsely accused Li Jing of plotting a rebellion, and he was sentenced to death (which was later commuted to exile to a faraway place). An official memorialized to Taizong in 639, urging Taizong to be more lenient because Gao had been a prominent minister. However, Taizong replied: “Gao Zengsheng went against Li Jing’s reassignment orders, and he also falsely accused Li Jing of plotting a rebellion. Of course, his previous service should not be forgotten. However, one must be consistent when governing the state and following the laws.” 83 In addition, Taizong explained, pardoning Gao Zengsheng would be problematic because he as the emperor had led armies since the founding of the Tang dynasty. During and since then, Taizong explained he had been surrounded by many meritorious military personnel. If he were now to pardon Gao, all of these meritorious military personnel would have an expectation of being pardoned in similar circumstances, which would result in them committing more crimes with abandon. In the end, Taizong announced, he definitely would not pardon Gao due to these concerns. 84 Thus, as we can see from this case, Taizong emphasized the consistent application of law — in his view, Gao’s meritorious service and official status did not entitle him to escape criminal responsibility for his actions, just as it should not allow the other meritorious military men who accompanied Taizong since his dynasty’s founding to escape from criminal liability for illegal actions. At the same time, the Gao case highlights Taizong’s practical use of law — as mentioned above, Gao’s sentence eventually was commuted to life exile, which could have happened only with at least the tacit consent of Taizong. Therefore, Taizong was able to pay rhetorical homage to the principle of equal application of law, while preserving Gao’s life, satisfying the practical considerations of recognizing his military supporters. 85

At the focus of the second case was Zhangsun Wuji, again, one of Taizong’s closest advisers, a childhood friend, and his brother-in-law. 86 Zhangsun inadvertently had forgotten to take off his sword when entering into the palace, which was an offense.

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83 See WU, fn. 69 at 8.438–439.
84 Id.
85 I am grateful for Clayton Gillette (NYU Law) for contributing this point.
86 See Wechsler, fn. 4 at 194.
is a complete translation of the case account as recorded in the *Zhenguan zhengyao*:

In the year 627, Zhangsun Wuji, who was Minister of Personnel, was called by Emperor Taizong for a meeting. Zhangsun did not take off his sword at his waist and walked into the side entrance of the palace. The military guard stationed at the entrance did not notice this until Zhangsun had exited the palace. Feng Deyi 封德彝 (568–627), a co-head of the Department of State Affairs, argued that the military guard should be sentenced to death for not noticing that Zhangsun had worn his sword into the place. Feng Deyi also believed that Zhangsun Wuji should be punished by imprisonment for two years and fined 20 jīn\(^87\) of copper for wearing his sword into the palace. Emperor Taizong agreed with Feng Deyi’s advice. However, Dai Zhou 戴胄 (d. 633), the Vice Minister of the Court of Judicial Review, retorted: “Zhangsun Wuji brought his sword into the palace, and the military guard did not realize this. Both have been gravely neglectful. But, officials cannot simply be absolved of criminal responsibility because they were neglectful. The law states: “when making offerings of liquid medicines, food and drink, and boats for imperial use, if there are errors which [cause such offerings] to not be in accordance with regulations, the offeror shall be put to death under all circumstances.” If your Majesty considers [only] Zhangsun’s meritorious service [in making a decision to this case], then there is nothing for our judicial institutions to say or discuss. If you [decide this case] in accordance with the law, then the fine of copper is not an appropriate punishment.”

Taizong replied: “The law is not my own personal law. It is the state’s law. How can we distort the law simply because Zhangsun is related to the imperial family?” Taizong then ordered that the case be re-decided. Feng Deyi reiterated his original stance, and Taizong prepared to agree with it yet again. Dai Zhou again retorted: “The military guard stationed at the door suffered criminal liability because Zhangsun wore his sword into the place. According to law, he should be punished more leniently. If we speak about their errors, the circumstances surrounding their crimes are similar. However, one is being sentenced to death while one is being permitted to leave. The discrepancy between these punishments is too large. I dare to request his Majesty to consider my original proposal.”

Because of this, Taizong spared the life of the military official.\(^88\)

As we can see from the above account, in the end Taizong accepted Dai Zhou’s judgment. Of significance is Taizong’s own words, which made clear that the law is not something that is simply subject to his own personal whim, but rather should be seen as the consistent law of the government. Furthermore, even though Zhangsun was not only one of his most trusted officials but also a childhood friend and his own brother-in-law, Taizong was adamant that the law could not be distorted simply because of these relationships.

Additionally, it appears Taizong’s decision was in accordance with the Tang Code itself, showing Taizong’s concerns with legality when adjudicating cases. For example,

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\(^{87}\) A jīn 斤, or translated as “catty,” was a unit of weight in premodern China. One jīn was equivalent to approximately 670 grams, so 20 jīn is approximately 134 kilograms.

\(^{88}\) See Wu, fn. 69 at 5.278.
his commutation of the military guard’s sentence was arguably in accordance with Tang Code provisions. Article 59.2b of the Tang Code provides that “if a person carrying a weapon enters the imperial presence, the punishment is decapitation,” but the accompanying Commentary 59.2c provides that “those who do so through confusion or by error may send up a petition,” presumably to petition for reduced punishment. While reading this case, it is also important to keep in mind Article 58, which generally provides that imperial guardsmen who admit unauthorized persons (such as the armed Zhangsun) shall “receive the same punishment as the criminal,” provided the guard “deliberately connive[d]” — i.e., knew that such person should not be allowed to enter and yet allowed that person to enter. Although it is not clear whether the guard’s knowledge of Zhangsun’s sword only after Zhangsun exited the palace would constitute deliberate connivance under the Tang Code, Taizong appeared to have followed the provisions of the Code — that is, he did not accept the discrepancy of punishment between Zhangsun and the military guard, ignoring calls for the execution of the military guard. We can safely assume that Zhangsun petitioned for relief pursuant to Commentary 59.2c and likely had his sentence reduced, and therefore, in accordance with the equality of punishment under Article 58, Taizong therefore could not sentence the military guard to death. Finally, it is important to note that Taizong’s adjudicative involvement in this case was also lawful in the first place — because Zhangsun was facing capital punishment for his offense under Article 59 (decapitation), the emperor’s involvement was required under Article 8, which mandated that the emperor “fix the punishment” for individuals of Zhangsun’s rank who had committed an offense punishable by death. In sum, although this account speaks more about Taizong’s decision on the military guard than that on Zhangsun, it nevertheless shows that Taizong did have a belief that law should be applied without undue attention to the background of the offender (i.e., Zhangsun). Taizong followed the Tang Code provisions and refused to accept proposals to execute the guard.

The focus of the third case was Taizong’s main wife, Empress Zhangsun 长孙皇后 (601–636), who was Zhangsun Wujī’s sister. Empress Zhangsun enjoyed a reputation as a proper, educated empress who also assisted Taizong with government administration. Although this case did not involve Taizong, it nevertheless is another example of the imperial family’s emphasis on the applicability of law to their own family members — even to the empress herself. Recorded in the Zhenguan zhengyao, this case dates to near the end of Empress Zhangsun’s life. She had become gravely ill and was approaching closer to death every day. The Zhenguan zhengyao records a conversation between the crown prince at that time, Li Chengqian 李承乾 (619–645), and his ill mother:

The crown prince reported to [the Empress Zhangsun] that “the medicines have all
been used up, and still, you have not been restored to full health. I will ask Taizong to grant amnesties to criminals and to also order people to make offerings to the Buddha, and therefore we can hope for protection from the gods.” The Empress Zhangsun replied: “Life and death are all determined by fate. We, as human beings, are not in a position to interfere. Doing good will lead to a long life, and I have indeed never done evil. But if doing good has not made a bit of difference [in my case], then what blessings can I hope for? Granting amnesties is a serious matter for the state. With regards to Buddhism, Emperor Taizong has frequently said that we are just retaining a foreign religion [in our state]. Indeed, on several occasions, he has expressed concerns that Buddhism will hinder good governance. Therefore, how could he possibly distort and make a mess of the law just for the sake of a woman like me? We cannot proceed based on your recommended method.”

Even if a bit of drama has been injected into this account, we can still see that the empress refused to allow the crown prince even to ask his father, Taizong, to grant amnesty and make Buddhist offerings for her own health (Taizong may not have agreed to do these things, but she would not even allow the crown prince to take the first step), despite her extremely high social status as wife to Taizong. Empress Zhangsun also explicitly expressed concern for a possible weakening of the law and the state if amnesties were given out simply to protect her life. This case shows us that even on the brink of life and death, such members of the imperial family as Empress Zhangsun were resistant to acting in ways that would “make a mess of the law,” even though theoretically they could act in ways contrary to the written law at the time, given their status as members in the imperial family nucleus.

D. Philosophy on Punishment: A Preference for Leniency in Punishments, Reduction of Corporal and Capital Punishment, and the Careful Application of Capital Punishments

Taizong’s views on the character and application of punishments also highlights the practical motivations behind his legal thought, as well the importance he placed on legality and leniency. As a general matter and a starting point for this part’s discussion, we find that Taizong had a preference for leniency in punishments, as seen through his support for the reduction of corporal and capital punishment, as well as for the cautious application of capital punishment.

With respect to corporal punishment, the Jiu Tang shu (The Old Book of Tang), one of the dynastic histories, records an exchange between Taizong and his ministers regarding corporal punishment, specifically Taizong’s concerns over the corporal punishment of foot amputation. Soon after Taizong ascended to the throne, he relaxed capital punishment, sentencing certain criminals originally condemned to death instead to the amputation of their right foot. However, not long after, Taizong felt sorry for those who were to suffer the punishment of foot amputation, and he remarked to his

92 See WU, fn. 69 at 8.451.
attending ministers: “The previous dynasties have not carried out corporal punishments for a while. We are now suddenly cutting off a person’s right foot — I cannot bear this.” One of his ministers remarked that the ancients used corporal punishment actually as a more lenient punishment and therefore urged Taizong not to worry that much. The minister explained that in levying corporal punishment, Taizong was actually being merciful, because these criminals originally were going to die but now would only get their right foot cut off. Not persuaded, Taizong replied: “I originally thought that my commutation of their death sentence to the amputation of the right foot was considered merciful, and so I suggested that we adopt that change. But every time I hear the pains and sufferings [of someone] getting their right foot amputated, I cannot forget it.” Some ministers continued to argue that Taizong was being lenient by sparing these criminal’s lives. Taizong then responded, “that was my original thinking as well, and that is why I did what I did. But there have been memorials saying that my action were not appropriate; you [ministers] should go back and think about this.” Eventually, a decision was reached to remove the punishment of amputation of the right foot and replace it with more lenient penalties (relatively speaking), including exile and forced labor. Thus, from this account, we can see that Taizong had concerns for the “pain and suffering” of those sentenced to forms of corporal punishment.

Taizong also advocated leniency in and reform of certain forms of collective punishment, whereby family members could be punished for crimes committed by their relatives. The Jiu Tang shu records a case of collective punishment between the Fang brothers and Taizong’s order for leniency. I have translated the account in full below:

There was another provision in the old law which mandated that even brothers who were living apart and whose rank privileges were different would both be executed should the offense be punishable by collective punishment; furthermore, their successors (i.e., grandchildren) would be taken into slavery by the state. At the time, there was a man of Tong Prefecture (in modern Shaanxi Province) named Fang Qiang. His younger brother, Fang Ren, led military forces in Min Prefecture (in modern Gansu Province). Because Fang Ren was plotting treason, he was executed, and Fang Qiang also should have been executed due to collective punishment. Taizong previously had seen the indictment [for Fang Qiang], and he felt compassion for Fang Qiang and was emotionally moved. He [eventually] remarked to his ministers: “Our penal code continues the previous practice [regarding collective punishment]. This is because morality [in our society] is not in harmony. What crime did the oblivious person commit [referring to the person subjected to collective punishment] which deserves such a heavy penalty? This only causes the people to believe that the emperor is immoral. The Way of using punishments lies in carefully considering and weighing the gravity or levity of the case, and only then should the punishment and penalty be applied. How can we not investigate the root of the case and

93 LIU Xu, 旧唐书 (The Old Book of Tang), Ting Wen Book Company (Taipei), at 50.2135 (1981).
94 Id.
95 Id.
proceed in one sweep to execute [everyone]? This is not the way of applying punishments carefully or of considering human life as paramount. There are two types of rebellious behavior: One is raising an army and causing alarm among the people, and the other is spreading malicious talk and committing offenses. The seriousness of these offenses are different, and if we impose collective punishment and execute both the offender [and his relatives and associates], how can my heart possibly be at ease?” Taizong asked his court ministers to discuss and consider this matter very carefully. After their deliberations, Fang Xuanling and his colleagues remarked: “In accordance with li (ritual propriety), when offering sacrifices to ancestors, the grandson acts (plays) the role of the (paternal) grandfather and accepts the sacrifices [on the ancestors’ behalf]. According to laws and regulations, descendants of ancestors can enjoy their yin privilege (privilege whereby offspring of high ranking officials were allowed to enter directly government). We can therefore see that the bonds between grandchildren and grandparent are very significant, while the relationship between brothers [is] considered less significant [and thus the connection with respect to collective punishment is less strong]. [With respect to collective punishment], the familial ties between grandparents and grandchildren are considered more significant, and yet the grandchildren are sentenced to exile; the familial ties between brothers are considered less significant, and yet a brother is sentenced to death. With reference to ritual propriety and emotions, this approach is indeed not appropriate. Now, we will reform the law — when there is collective punishment of grandchildren and brothers, the family members will all be sent away to be slaves to the state. For offenses where there is malicious talk which cannot create any real, actual harm, and where the state of affairs is not serious, the brother [to be punished under collective punishment] should not be executed but rather be exiled. This is more appropriate.” Taizong agreed with this proposal, and from that point on, and capital punishment decreased by almost 50% as compared with previous dynasties.96

This case shows Taizong’s preference for leniency and for the careful application of punishments, but we also see Taizong’s pragmatism at play, as he was concerned about people possibly thinking that he “was immoral” if collective punishment was implemented in such cases. We also see the emphasis on Confucian values and morals reflected in Taizong’s discussions with Fang Xuanling. Fang, justifying the reform of collective punishments of brothers, did not draw primarily on law or codes but rather on rites and ritual propriety, analogizing the issue of fraternal collective punishment and the fraternal relationship with the relationship between grandchildren and grandparents. He argued that ritual propriety in ancestor worship showed that the relationship between grandparent and grandchild is stronger than a fraternal relationship, but yet the collective punishment suffered by grandchildren is actually less severe, which did not make sense (the purpose of collective punishment, after all, was to punish relatives closer to the offender to reduce the risk that the close relatives themselves would be prone to the offense and also as an effective deterrence).

96 Id. at 50.2136.
We have thus far looked at Taizong’s views on corporal punishment and collective punishment, and we now proceed to his approach to capital punishment. Taizong called for the careful application of capital punishment and also reduced use of capital punishment. As a preliminary matter, he was even concerned with the health of criminal prisoners in the capital, decreeing that the Board of Punishments send a memorial to him every month regarding the condition of prisoners in the capital. 97 There were also certain days and/or periods in which memorials requesting executions of criminals were not accepted, namely spring to autumn, days of ritual sacrifices, ritual cleaning and purification before sacrifices, the first and fifteenth day of the lunar month, and the waxing or waning moon. 98 Furthermore, with respect to criminal procedure, Taizong had to personally approve executions, and in 631, Taizong decreed that memorials requesting executions in the capital had to be sent up to the emperor five times before they could be carried out. In addition, all capital cases had to be reviewed by the Chancellery as well, one of the highest ranking departments in Tang administration and one staffed by the most able officials. 99 However, later that year, Taizong further tightened the procedure for executions, as recorded by the Zhenguan zhengyao:

In the year 631, Taizong ordered: “Judicial officials in the capital have recently sent memorials to the throne asking for permission to execute convicted criminals sentenced to death. Although they have technically asked for permission five times [as per my earlier order], this entire approval process is completed within one day. I do not have adequate time to think seriously about the cases before me — therefore, what use is this approval system? Even if a decision is later regretted, it will be too late. From this point forth, the relevant offices in the capital shall ask for execution permission five times through a three-day period. For capital cases outside the capital, the death sentence must be approved three times.” Taizong also personally wrote an imperial edict which indicated: “Judicial officials hearing cases lately have all been judging cases according to the written law. Although there may have been compassionate circumstances that could have been taken into account, these officials did not dare go against the written law, and so levied sentences based solely on the written law. This, I fear, has led to miscarriages of justice in certain cases. From this point forth, the Chancellery must make a record of, and memorialize to the throne, any circumstances in cases where someone has been sentenced to death in accordance with the law but where there might be certain extenuating, compassionate considerations.” 100

Thus, Taizong tightened the execution procedure in two ways: first, by stretching out the memorial process across three days so he would have more time to consider the

97 Id. at 50.2138.
98 Id. Executions were prohibited from the spring to autumn because this was the period in which yang was at its highest. Since punishments and executions were considered yin, they were not to be carried out in yang periods out of fear that harvests would be affected. Therefore, executions were carried out in yin periods, such as the autumn and winter.
99 See WU, fn. 69 at 8.430, 8.438.
100 Id. at 8.438.
request for execution; and second, by providing explicitly for a reporting mechanism for extenuating or special cases.\footnote{The \textit{旧唐书} (The Old Book of Tang) gives us more details about the memorial submission cycle: “the five memorials shall be sent up at the following times: Two days before the scheduled day of executions, a memorial should be sent on each of these days. On the day of execution, memorials should be sent up 3 times again (but for those who committed contumacy, it is enough to memorialize once on this day).” See LIU, fn. 93 at 50.2140.}

Besides his discussion of government policies relating to capital punishment, Taizong seemed also to be deeply affected personally by executions, even ordering fasting rules to be imposed on himself on days of executions; the \textit{Jiu Tang shu} records the following remarks by Taizong:

\textit{In antiquity when rulers executed criminals, they also removed musical instruments, and reduced their food intake.}\footnote{Here, Taizong referred to the ancient rulers’ practice of removing and dismantling musical instruments to express grief and sorrow whenever disasters, certain astronomical phenomena, or other similar occurrences befell the state.} My palace these days does not often have musical performances or instruments, so I am not sure which instruments to dismantle. However, with respect to food intake, I shall not drink wine or eat meat. From his point, the Matron for Food shall be notified that on days when capital punishment is carried out wine and meat shall not be served, and the palace women dancers...will temporarily rest [and not carry out performances].\footnote{See LIU, fn. 93 at 50.2140.}

Besides personally sacrificing certain things on days of executions, we ought to note here that Taizong also attempted to emulate what he saw as the positive, proper practices of antiquity, fitting into his broader political use of history as a mirror and reference point. In sum, the sources discussed above show us a Taizong who was very much committed to the careful application of capital and corporal punishment and an emperor with a heart for leniency who expressed his views on punishments not only through policy decisions but also through rules that affected his personal daily life.

I do not disagree with the general portrayal of Taizong as an emperor committed to leniency and the careful application of corporal and capital punishments, but the current historiography does not take into account evidence that also reveals Taizong to be an imperfect emperor with respect to his views on punishment. Taizong, for all of his emphasis on leniency and reduction of capital punishment, also acted on violent impulse (again, we should remember his past as a violent usurper), on whim, or on practical considerations. His leniency for those facing capital punishment, for example, was not enjoyed by servants in the servant–master relationship, for example. The \textit{Zhenguan zhengyao} records the following remarks by Taizong to his ministers in 628:

\textit{Recently, there was a servant who accused his master of plotting against the state. This is an extremely harmful act, and it must be especially prohibited. If someone is plotting against the state, he wouldn’t do it alone. He would most definitely discuss his plot with}
others. And, when people discuss matters with others, they most certainly would ask their conspirators to come out [and meet] for the discussion. Therefore, how can we possibly rely on the servant’s accusation of his master? From this point forth, if there is any servant who accuses his master, you are not to accept such accusations and cases, and the servant making the accusation must, without exception, be put to death.\(^{104}\)

Here, a very different Taizong emerges than the lenient, compassionate Taizong whom we have previously seen. Taizong’s indictment of servants was total and absolute. He did not want to give servants any possibility of having their cases heard and discounted their accusations totally. Furthermore, the sweeping order to use capital punishment against such servants, without any consideration for exceptions or compassion (e.g., there is no room for the Chancellery to memorialize on possible compassionate factors to consider), also contrasts with the image of Taizong as wary of capital punishment. Taizong clearly placed the preservation of societal hierarchies above the possible value of the servant’s accusations. Indeed, the status of servants in Tang society was among the lowest.

Taizong’s impulsive application of capital punishment was not limited to the servant class, however. The Zhenguan zhengyao records Taizong’s execution of Zhang Yungu 张蕴古 (d. 631), an official in the Court of Judicial Review who had impressed Taizong with his skills:

In 631, Zhang Yungu was serving as an Aide in the Court of Judicial Review. Li Haode 李好德, a native of Xiangzhou (in modern-day Henan Province), had been suffering constantly from a mental disorder, and as a result, spewed absurd, illicit nonsense [in verbal outbursts]. Taizong ordered that this matter be looked into. Zhang Yungu said to Taizong: “There is evidence that Li Haode is suffering from a mental disorder. According to the law, he should not be punished.” Taizong agreed and planned to pardon Li Haode. Zhang Yungu then proceeded to secretly tell Li Haode of Taizong’s intentions and also invited Li Haode to play chess. Quan Wanji 权万纪 (d. 643), the secretarial censor, accused Zhang Yungu of misconduct [and sought to remove him from his post].\(^{105}\) Taizong was also greatly angered [by Zhang Yungu’s conduct], and he ordered that Zhang Yungu be taken to the Chang’an execution grounds to be beheaded.\(^{106}\)

We do not know much about Li Haode or exactly what “nonsense” he spewed, other than it was illegal and punishable under the law. The account above clearly tells us that Taizong executed Zhang in a fit of anger, without any procedural protections. Indeed, not soon long after Zhang’s execution, Taizong felt deep regret for his impulsive decision, telling Fang Xuanling:

As recipients of official salaries from the ruler, you [ministers] must take the ruler’s

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\(^{104}\) See Wu, fn. 69 at 8.430.

\(^{105}\) The 旧唐书 (The Old Book of Tang) provides more details here, recording that Quan accused Zhang of also being biased in favor of Li, because they were both from Xiangzhou. Quan also accused Zhang of not being truthful in his memorialis regarding Li Haode. See Liu, fn. 93 at 50.139.

\(^{106}\) See Wu, fn. 69 at 8.430.
worries as your own worries. You should always pay heed to both large and small matters.
At present, if I do not explicitly and actively ask you about something specific, you
министры will not say anything. When you [министры] see something that is unreasonable,
you also do not actively protest or debate — what kind of help is this? 张用度, a
judicial official, played chess with a criminal and leaked out my plans. These are serious
crimes, but according to the law, they are not capital crimes. At the time, I was extremely
angry and gave the order to execute 张用度, and not one of you uttered a word. The
relevant government office also did not send me any memorials and proceeded with the
execution. Is this considered the proper Way of governing? 

Taizong took responsibility for his impulsive act and admitted that he was at the time
“extremely angry,” but he also blamed his ministers for not uttering any protest or
remonstrance. Indeed, Taizong felt so sorry for 张用度’s execution that shortly afterwards,
he ordered the implementation of various procedural protections, such as memorializing
five times to the emperor for any capital cases, review of capital cases by the Chancellery,
and submission of memorials for any possible compassionate cases. The 郑国 zhengyao
tells us that “the requirement of the emperor approving death sentences five
times began [after] the 张用度 case.”

Thus, the existing historiography has to be moderated. Though Taizong did espouse a
general policy for leniency and careful application of capital punishments, he also did
give in to impulse, whim, and his emotions, sentencing an individual to death in a fit of
anger. Indeed, 魏徵 (580–643), one of Taizong’s most notable ministers,
criticized Taizong directly for opting for leniency (symbolized by Confucian and Daoist
thought) when in a good mood but opting for severity (symbolized by Legalist thinkers
such as 申不害 (d. 337 B.C.) and 韩非) when in a bad mood: “…when
[you, Taizong] are at rest and in a good mood, you uphold and hold Confucius and
Laozi’s thought in reverence; when you are angry, you look for answers from 申不害
and 韩非.”

E. Careful Selection of Officials and Keeping an Open Ear to Ministers

Given that law was enforced and implemented on a daily basis by officials and
ministers serving in the government, it is not surprising that an important aspect of
Taizong’s legal thought was his emphasis on the careful selection of such officials and
also on keeping an open ear to their advice and criticism. This emphasis also fits into
Taizong’s broader political thought; Taizong was very much focused on personnel issues
especially after his ascension to the throne.

Taizong’s emphasis on selection of officials was driven largely by practical
considerations and not by any commitment to a lofty commitment to legal reform. It was

107 Id.
108 Id.
109 Id. at 8.441.
important to choose good officials who would carry out the imperial laws and orders consistently and fairly, to ensure the stability of the state and also to preserve the authority and power of the emperor himself. Controlling officials was also important to reduce their power, which could be threatening to the emperor.\(^{110}\) Officials who did not carry out their duties properly would be punished. For example, in 627, soon after coming to power, Taizong had to confront the problem of officials who either delayed in carrying out his orders or who acted in a way contrary to his orders. To solve this problem, Taizong wrote and announced the following edict in 627:

I, Taizong, have been privileged to receive and bear the Mandate of Heaven. In governing the kingdom, I will always take the former sages as my mirror and model and learn from the laws, institutions, and practices [of the former sages]. Although customs, social practices, and [the process of] historical development have changed substantially [from the ancient times], there has always been one consistent, single ideal method for issuing commands, orders, and laws. This is the means for fully realizing the ancient sagely methods [of governance] in our current society and opening the eyes and ears of the people, as well as vigorously and speedily carrying out orders...[the actions of the officials who are not carrying out orders or who are acting in way contrary to my orders] indicate that they have something to hide, and their virtues are not able to be seen by the people. How is acting this way any different from executing someone lawlessly? How can this be considered acting uprightly and serving the state properly and following the law? From this point forth, those officials who do not act in accordance with the law will be reported [to the relevant departments] and impeached, and their names will be publicized for all to know.\(^{111}\)

In this edict, Taizong criticized the acts of these officials, also setting out their punishments clearly. We also see various strands of Taizong’s broader political thought in this edict — for example, his acknowledgement of heaven’s role, and his deference to antiquity and history as reference points. Taizong also uses history as a source of authority to justify his edict and the importance of following commands, orders, and laws. We can also see Taizong’s pragmatic concerns with keeping the state secure and also arguably ensuring continued loyalty from his officials. Note that Taizong wrote above that these ineffective officials were not allowing their virtues “to be seen by the people.” In other words, he did not condemn these officials as evil or incorrigible, which may have been detrimental to the emperor–minister relationship, but rather said that their actions were obscuring their true, good heart. The emphasis on image before the masses also highlights another practical consideration of Taizong that we have already seen in his broader political thought: winning the support and hearts of the people.

Indeed, to ensure continued loyalty from his ministers, Taizong believed in

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\(^{110}\) For example, in 642, Taizong expressed concern over officials who were executing criminals to benefit their own careers and also threatening others “to increase their fame and reputations.” Id. at 8.446.

\(^{111}\) TANG Taizong, 禁官人违律诏 (Edict on Officials Who Do Not Comply with Regulations), in WU & JI, fn. 65 at 231. The original Chinese text can also be found in the Quan Tang wen, Vol. 4.
punishment of bad officials but also in fair punishment. In the following case from 640, recorded in the *Zhenguan zhengyao*, Taizong refused to punish an official for heinous offenses committed by someone living in his jurisdiction:

In the year 640, a censor lodged an accusation to Taizong against Jia Chong 贾崇, the prefect of Dai Prefecture (located in modern Shandong Province), because one of Jia Chong’s subordinates had committed one of the ten abominations. Taizong remarked to his accompanying ministers: “Emperor Yao was a great sage, but his son, Danzhu, was not like him at all. Liuxia Hui was also a great and virtuous person, but his younger brother Zhi was a vile person who committed grave offenses. Neither the teachings of the sage and virtuous nor the love of a father or older brother could transform them into better people and to lead them away from evil and to follow good. We now propose to dispatch a censor to transform the people under Jia Chong’s jurisdiction and to lead them on the right path — how could this possibly be effective? If we demote an official simply because someone living under his jurisdiction commits an offense, I fear that one official after another will simply cover up such matters, and the real criminal will escape. If a prefect has a person who has committed one of the ten abominations, we cannot also implicate the prefect. We should only order the prefect to diligently investigate the crime and to impose [the proper] sentence. Perhaps this way we can also eliminate the pernicious who commit evil.

Despite the severity of the crime committed by one of his subjects, Jia Chong was not punished by Taizong. The Jia Chong case also resonates closely with Taizong’s reluctance to use collective punishment in certain circumstances (as discussed earlier). Again, we see Taizong’s reliance on history as a source of justification, citing examples of exemplary figures in Chinese antiquity who preserved their posthumous reputations despite unluckily having less than illustrious family members. Taizong’s attitude in the Jia Chong case also highlights his pragmatic side; he seemed to be motivated more by practical concerns about punishing Jia Chong (i.e., officials being afraid to report crimes in their jurisdiction and criminals going free) rather than by pure compassion or benevolence.

Finally, Taizong valued clear and open communication between ministers and the emperor, especially with respect to matters concerning criminal cases. The *Zhenguan zhengyao* records the following case where Taizong again acted in a fit of anger in applying punishments to officials lying about their qualifications, only to be corrected by Dai Zhou, a high-ranking official in the Department of State Affairs. Taizong, in turn, was greatly satisfied at being corrected:

At the time, the imperial court instituted large-scale recruitment measures to recruit

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112 Then “ten abominations” were considered the most heinous of crimes in the Tang, and included offenses such as plotting rebellion, plotting great sedition, plotting treason, and crimes against the emperor. Given the severity of these offenses, they were exempted from amnesties. See Johnson, fn. 7 at 17.

113 Also known as Zhan Huo 展获 (720–621 B.C.), an ancient Chinese political figure from the state of Lu who was revered for his moral and virtuous conduct.

114 See Wu, fn. 69 at 8.445–446.
officials to serve in various posts. Some individuals, however, lied about their official rank, experience, and qualifications. Emperor Taizong ordered that such individuals confess and give themselves up. Those who did not confess and give themselves up would be convicted and sentenced to death. Not long after, information about one such individual leaked out, and Dai Zhou, in accordance with the law, sentenced such individual to exile and reported the case to Taizong. Taizong said: “I previously issued an edict which said those individuals who did not confess and give themselves up shall be sentenced to death. Now, in sentencing this individual to exile per the law, you are announcing to the world that my words cannot be trusted.” Dai Zhou replied: “if your Majesty had killed him, then I would not have been able to interfere in this case. However, since you turned him over to the judicial agencies to deal with, I do not dare go against the law.” Emperor Taizong said in response: “You yourself follow the law, but cause me to lose trustworthiness?” Dai Zhou answered: “Law is great, trustworthy constant promulgated to the people by the state, but his Majesty’s words are made in only a fleeting, ephemeral moment, spurred on by either anger or happiness. With respect to this case, his Majesty remarked that those who did not confess and turn themselves in shall be executed, but these comments were made in a moment of venting his Majesty’s anger. You knew that punishment should not really be carried out, and so you allowed me to sentence this individual in accordance with the law — this is indeed forbearing momentary anger and preserving great trust and justice. I will indeed help his Majesty cherish this [virtuous behavior].” Emperor Taizong replied: “When I make mistakes in applying the law, you are there to help correct me — indeed, what need is there for me to worry?”

Thus, as we can see from the above account, for Taizong, Dai Zhou was an example of an ideal minister — one who was loyal to the state and to the emperor’s person and who therefore did not hold back in his criticisms and advice.

F. Amnesties to Be Used Cautiously

Our final discussion on the features of Taizong’s legal thought focuses on Taizong’s views on amnesties. Taizong’s views on amnesties also support the thesis that he was a man not committed to any lofty, innovative theory of law but rather someone who took a very practical, political approach to amnesties. The existing historiography has largely argued that Taizong was generally against amnesties, but it has not analyzed or referred to actual amnesties written and issued by Taizong himself. As this part shows, Taizong was not an ideologue but a practical man, issuing amnesties for particular reasons, or sometimes going against previous amnesties in effect as well. Amnesties, in other words, were used by Taizong to cement his political status and legitimacy, and for other practical reasons.

By way of background, amnesties in premodern Chinese history could be announced by emperors on auspicious occasions. There were great amnesties, which pardoned

115 Id. at 5.281.
116 See, for example, YANG Shengqiong, fn. 12 at 14.
criminals for any crimes (except the ten abominations) across the empire, and also specific amnesties, which could be announced for particular regions or offenses. Approximately 174 great amnesties were announced in the Tang dynasty. Amnesties also were popular in later dynasties, notably the Song dynasty (960–1279), which granted more amnesties than any other dynasty in Chinese history. There were three main rationales behind amnesties: First, criminals would be encouraged to reform themselves after receiving the state’s mercy; second, amnesties helped to display imperial power and authority; and third, especially in later dynasties, amnesties helped reduce the burden of criminal caseloads.

Generally speaking, Taizong was suspicious of amnesties; the Zhenguan zhengyao records Taizong’s remarks on amnesties that seemingly absolutely reject the issuance of amnesties, drawing on history to show that exemplary leaders also did not issue amnesties and to voice his concern that amnesties actually might cause an increase in crime:

In the year 633, Taizong remarked to his ministers: “There are many ignorant people and very few intelligent people in our world. Those who are intelligent will not commit evil, but the ignorant frequently break the law. All pardons conferred by an act of grace have only been bestowed on those who have broken the law. The ancients said: ‘the fortune of the petty person is the misfortune of the ruler,’ and ‘if you grant amnesties twice a year, good people will remain silent.’ If you cultivate weeds, you will harm the seedlings. Likewise, by extending grace to law-breakers who cause chaos, good people are being harmed. In the past, ‘King Wen of Zhou, in applying the criminal law and educating the people, punished those who committed crimes and did not grant amnesties to them.’ Also, [let us not forget] what Liu Bei, the first ruler of Shu, said to Zhuge Liang: ‘I have repeatedly read the works of Chen Yuanfang and Zheng Kangcheng. Their recommended methods for governance are good. They did not speak of amnesties.’ Therefore, when Liu Bei ruled Shu for 10 years, he did not grant any amnesties, and the state of Shu was governed well. Emperor Wu of Liang granted great amnesties every year, and in the end, [his government] collapsed. Those who bestow small favors harm the great virtue of benevolence. Therefore, as long as I am in power, I will never announce or bestow any amnesties. The world is now at peace. Ritual propriety and righteousness are everywhere…I fear that petty people will break laws and [not think anything about it] as they hope for amnesties, rather than correcting their failures and wrongdoings.”

The existing historiography therefore has largely argued Taizong’s stance was against amnesties. However, because it has relied on a limited source base, it has not examined many of Taizong’s own writings, namely, some of the amnesties he wrote and issued during his reign. He was not an ideologue blindly committed to a “no amnesty” policy,

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117 See Johnson, fn. 7 at 16.
118 Norman P. HO, The Legal Philosophy of Zhu Xi (1130–1200) and Neo-Confucianism’s Possible Contributions to Modern Chinese Legal Reform, 2 Tsinghua China Law Review 167, 190–191 (2011).
119 See WU, fn. 69 at 8.447–448.
120 See, for example, YANG Shengqiong, fn. 12 at 14.
but a practical ruler who issued amnesties at appropriate times. We now examine
examples of amnesties issued by Taizong and conclude with a collective discussion of
these examples.

First, as was relatively common practice, Taizong wrote and issued an amnesty at his
ascension to the throne in 626:

When Heaven is great, the qizheng (i.e., metal, wood, water, fire, earth, day and month)
will have their proper place and timeliness. When the ruler makes offerings to Heaven,
Heaven-Earth-and-Man will foster each other. From this, the universe will be embraced,
the cosmos will be ordered, the people will be shielded, and great achievements can be
realized. My great Tang kingdom has received the Mandate of Heaven and has fortunately
begun with great prosperity...and has already begun to make its mark on the historical
annals. My father [i.e., the retired emperor] was able to become a sagely ruler very
quickly and pronounce his sagacious authority and control over the state and far-away
territories...and has spread jade-like virtue as far as the remote regions of the
realm...today my reign as the successor [to my father] has begun. To answer and repay
Heaven’s blessing, I think of extending such blessing and grace...and therefore I grant the
following amnesty upon the state: Before dawn on the ninth day of the eighth month of the
year 626, regardless of the severity of the crime, regardless of whether the crime has been
discovered or not, all who are imprisoned or in forced labor pardoned. Furthermore, from
the year 618 on, those who have been exiled or banished will also be permitted to return to
their original locations...

In the above amnesty, Taizong also awarded promotions to officials, as well as gifts of
rice for the elderly; he ended the amnesty with a written warning — i.e., those who
dared accuse people of crimes already pardoned would themselves be punished as if they
committed the crimes. Note Taizong’s portrayal of himself as carrying on his father’s
legacy and also his rhetorical gratitude to heaven, which fits into his broader political
thought.

Second, Taizong issued amnesties in times of natural disasters or calamities. The
justification for this practice derived from Dong Zhongshu’s identification of
corresponding reactions in the natural world and in heaven — the thinking being that
natural disasters were a sign of heaven’s displeasure with events in the natural world, and
amnesties were a way to restore balance in the natural world and also to please heaven.
For example, in 628, Taizong wrote and issued the following amnesty following a period
of incessant, damaging rains, drought, and locusts, which had all caused agricultural ruin:

Through pardoning criminals, the emperors of previous dynasties were able to
mercifully reach those under them. When the ancient kings hunted, the pursued their prey
in only 3 directions, allowing one path for animals to escape; this was the means by which
the sages were able to extend [their sagacity] to things. Therefore, they understood [and
utilized] the non-corporal punishment of criminals wearing different clothes and caps in

\[121\] TANG Taizong, 即位大赦诏 (Great Amnesty upon Ascension to the Throne), in WU & JI, fn. 65 at
208–209. The original Chinese text is also available in the Quan Tang wen, Vol. 4.
order to change [bad] customs, as well as the righteousness of non-corporal punishments [more generally]. People beat on drums asking for mercy and compassion, and [the sages] resolved to make penal law more lenient. However, [since the time of the sages]...[virtues like] honesty have gradually become diluted, hierarchy distinctions have become disordered, litigation and cases have grown in number, and records and accounts of criminal activities have increasingly appeared in official documents...however, moral education of our society is not yet perfected, and indeed my own moral education is not yet refined. Last year’s incessant heavy rains have already severely harmed the autumn harvest, and this year’s droughts and locusts have harmed the winter wheat. The people are wailing [in pain], and the resultant poverty is unprecedented. This is all because of my lack of morality; the people are innocent. [These disasters occurred because] of a dearth of cognizance and punishments lacking standards. Therefore, the cycles of yin–yang have been disrupted, and the four seasons are disordered...I am willing to bring calamities on my person if it means that the harvests will be plentiful and the state as a result will be at peace and the realm preserved.122

Taizong concluded by saying he wanted to make the above words and his heart manifest to all in the state. He then announced that the great amnesty would take effect in the spring, to make for a good spring harvest and rains and to be in accordance with the “virtue and pattern of thunder and rain.”123 A similar amnesty, albeit on a lesser scale, was also issued in 643, much later in Taizong’s reign. Taizong continued to issue amnesties in his reign and not simply in the beginning years. In the winter of 642, there was very little snow, and in the spring of 643, there was an unseasonal dearth of rain. Taizong was concerned, writing in an “Edict Ordering the Reduction of Punishments Due to Prolonged Drought” that:

Agriculture is the root of governance, and food is [the base of] heaven and man. The people are suffering and wailing. How we hope that the rice granaries be full and replete! In antiquity, there were people like Zou Yan 邹衍 (ca. 305–240 B.C.) and the wife of Qi Liang 杞梁.124 They were people of utmost sincerity, and they influenced and were impacted by heaven-earth. In the present time, there is often a backlog of cases involving miscarriages of justice and unjust verdicts in the prefectures and districts...it is proper to order temporary officials to go to these prefectures and districts to inspect the state of criminals, as well as to report and redress cases of injustice or false conviction. They must have a heart of lenience and make manifest my concern and care...

122 TANG Taizong, 旱蝗大赦诏 (Great Amnesty Due to Floods, Droughts, and Locusts), in WU & JI, fn. 65 at 239–240. The original Chinese text is also available in the Quan Tang wen, Vol. 4.
123 Id.
124 Zou Yan was an important thinker and scholar in the 3rd century B.C., most noted for his synthesis of yin–yang and the five elements theory. Qi Liang was a noted soldier of the state of Qi who died in battle. He and his wife did not have a son, so she rested her head on his corpse at the foot of a wall, weeping. People who saw her were all moved by her commitment and dedication to her husband.
125 TANG Taizong, 久旱减刑诏 (Edict Ordering the Reduction of Punishments Due to Prolonged Drought), in WU & JI, fn. 65 at 452. The original Chinese text is also available in the Quan Tang wen, Vol. 7.
Taizong did not issue amnesties only out of rhetorical service to heaven, however. He also issued amnesties to mark, celebrate, and bring attention to his own accomplishments, strengthening his own power and legitimacy (especially due to his violent usurpation activities). For example, in 630, he granted an amnesty to commemorate his victory over the Eastern Turks in 630. In 630, General Li Jing, under Taizong’s orders, attacked the Eastern Turks (also known as the Tujue, who were Eastern Turkic peoples in medieval inner Asia) and defeated them, capturing their leader Ashira Duobi, who was delivered to Taizong in Chang’an. In his “Amnesty Due to Victory over the Eastern Turks” (630), Taizong began with a discussion of heaven’s importance and how the ruler and the people must take heaven’s mandate seriously. He related how he as a ruler tried his best to be industrious, “rising early and sleeping late,” to carry out the functions of his office. He then discussed the problems in Chinese history posed by barbarian peoples and their invasions. For example, he brought up the historical humiliation suffered by Emperor Gaozu of the Han dynasty in 200 B.C. at the Battle of Baideng, where the Xiongnu army surrounded Gaozu’s armies for seven days. By contrast, Taizong related how his armies won a great victory over the Eastern Turks, bringing about “peace in the world.” He attributed this victory “all due to Heaven’s blessings” and remarked that his own abilities were limited, and therefore, “how could I [Taizong] take credit?” Motivated by a desire to “extend benevolence” and to “share these blessings,” Taizong granted a general amnesty, releasing all those imprisoned or held in forced labor, regardless of whether their crimes were discovered or not and regardless of the seriousness of their offenses. However, Taizong made clear that certain people were exempted from the amnesty, including those who plotted treason, those who killed certain family members, slaves acting against their masters, and officials taking illegal bribes. Similar to the amnesty issued when he ascended to the throne, Taizong concluded this amnesty by warning people not to accuse others of crimes committed before the amnesty.126

So far, we have examined Taizong’s amnesties that applied to large groups of offenders. However, Taizong also issued specific amnesties that absolved individual criminals for individual crimes. In the early years of his reign, Taizong pardoned a villager named Wang Juncao 王君操, who had committed a revenge killing against the murderer of his father. The Jiu Tang shu records the entire case account:

Wang Juncao was a native of Lai Prefecture (located in modern-day Shandong Province)...his father was involved in an altercation with a fellow villager named Li Junze during the Sui dynasty (some time in the period between 605–618) and was beaten to death by Li Junze. At the time of his father’s murder, Wang Juncao was only 6 years old. His mother...reported the crime to the district authorities, requesting that they arrest Li Junze. Li Junze then abandoned his family and escaped. Years of searching for him proved unsuccessful. In the year 627, with the changes to government and the ascension of

126 TANG Taizong, 大赦詔 (Granting of Amnesty Due to Victory over the Eastern Turks), in WU & JI, fn. 65 at 270–271. The original Chinese text is also available in the Quan Tang wen, Vol. 5.
Taizong to the throne, Li Junze assumed there was no more need for him to fear punishment for his crimes. Furthermore, he saw that Wang Juncao was weak and poor, and therefore no longer had a heart for revenge. Therefore, Li Junze went to the prefectural government to give himself up. But Wang Juncao had secretly hidden a knife in his sleeves, and then stabbed Li Junze to death, cutting out his heart and liver and quickly eating them. Wang Juncao then proceeded to fully report his actions to the prefect. Because Wang Juncao had murdered someone without any authorization or permission, the prefect said to him: “Murder is a crime punishable by death — the law clearly states this. What can you possibly do to try and walk away with your life?” Wang Juncao replied: “It has been already about 20 years since my father was murdered. From laws and principles of ritual propriety and ceremony I have learned that one cannot live in this world simultaneously with the enemy of one’s father. I was plotting [to kill Li Junze] very early on, but I was not able to realize my plan for a long time. I was afraid he would die first and that I would be unable to make known and address the injustices [suffered by my father]. The disgrace and humiliation [of my father’s death] have now been redressed. Therefore, I most willingly submit to punishment.” The prefect sentenced Wang Juncao to death in accordance with the law. He then reported the sentence to the throne, and Taizong ordered that Wang Juncao be pardoned.127

Here, Taizong pardoned Wang Juncao specifically, going against written law, despite the cruel and cannibalistic nature of Wang’s crime. Though the account is not explicit on the reasons for Taizong’s pardon, he was most likely impressed by Wang’s expression of filial devotion to his father. Furthermore, revenge killings (particularly on behalf of one’s parents) elicited much sympathy and indeed admiration throughout much of traditional Chinese history.128

These examples show that Taizong was not an ideologue blindly committed to a “no amnesty” policy, despite his remarks to the contrary. At the same time, Taizong, ever the practical emperor, sometimes tried to go against the spirit of amnesties as well, only to be criticized by his ministers. The Jiu Tang shu records an event when Taizong was criticized by Wei Zheng for reneging on amnesties that had been issued by his father. On the day following the murder of Taizong’s brothers and several times afterwards as well, Emperor Gaozu of Tang had announced amnesties for the followers of Taizong’s brothers (at Taizong’s own request). However, their supporters nevertheless fled the capital to their homes in the northeast and elsewhere because they were afraid of persecution. Wei Zheng was sent by the royal court as an emissary of sorts to reassure them that the amnesties would be honored and that they would not be in danger. However, while on his trip, Wei Zheng discovered that two former supporters of Taizong’s brothers were being sent under custody to the capital.129 Wei Zheng expressed his dissatisfaction directly to Taizong,

127 See LIU, fn. 93 at 188.4920.
129 See Wechsler, fn. 32 at 76.
pointing out that amnesties had already been issued and that no further investigations of these supporters should take place. He also complained that Taizong’s actions would jeopardize his mission, causing people to doubt his sincerity as an emissary. Furthermore, Wei Zheng argued that this was a “matter of national interest” as the state had to uphold the credibility and reliability of imperial amnesties. Eventually, these two supporters were released from custody with Taizong’s approval.130

At this point, we should analyze the above amnesties collectively. We can see that the existing historiography on Taizong’s views on amnesties does not take adequate account of their complexity. He was not totally against amnesty, but he was a practical emperor who issued amnesties at opportune times. Through the above amnesties, we can also see that the actual textual part that announced the logistics of the amnesty (e.g., crimes covered and forgiven) comprised a relatively small component of the entire written amnesty. Amnesties therefore served other practical functions for Taizong. Besides forgiving criminals, amnesties allowed Taizong to bolster and improve his image. He took responsibility for natural disasters and also was self-deprecating (e.g., pointing out his own moral failings), thus displaying his humility. In his amnesties, he also emphasized his dedication to his role as emperor (e.g., getting up early and going to sleep very late), displaying his industriousness. He also took credit for successes and explicitly used amnesties to make manifest his “benevolence,” displaying his compassion. From his amnesties, we can see that Taizong viewed them as ways to solve practical judicial problems, such as the backlog of wrongful conviction cases. We can also see that Taizong was prone to not following previous amnesties when it suited him to do so. Finally, tying his amnesties back to his broader political thought, we can also see the influence of Dong Zhongshu’s thought on heaven and earth in the intellectual heritage of these amnesties, as well as the use of history as a mirror and reference point. Therefore, the intellectual foundations of Taizong’s amnesties were not necessarily innovative. In sum, for Taizong, amnesties served other political purposes for his reign. They reaffirmed rather than diverged from existing thought about the meaning and use of amnesties.

**CONCLUSION**

This article has sought to identify and lay out the key features of Taizong’s legal thought, arguing that he was concerned with legality, competent legal administration, and leniency. It appears that Taizong also suggested — through rhetoric and action — that law applied to the emperor himself. Specifically, Taizong emphasized on clear and concise laws, the careful selection of officials tasked with implementing the law, careful application of law without overdue attention to the offender’s background, and moderation and leniency in the use of capital and corporal punishment. This article has also tried to situate Taizong’s legal thought in historical context and in the context of his

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130 See LIU, fn. 93 at 71.2546–2547.
broader political thought, as well as in the context the thought of earlier philosophers in Chinese history. This article also has complicated the dominant historiography on Taizong’s legal thought by stressing the importance of understanding Taizong’s legal thought in historical context — especially viewing his legal thought in light of his bloody and violent usurpation of the throne. Specifically, contrary to the overwhelmingly adulatory historiography on Taizong’s reign, Taizong’s legal thought was not necessarily wedded or committed to a love of legal reform or some abstract ideology, but rather was motivated by practical considerations. These practical considerations regarded the stability of the state and his own authority and own legitimacy. His legal thought need not be seen as innovative or new, but rather drew upon a deep intellectual heritage rooted in Confucian and Legalist political thought.

Through Taizong’s legal thought, we see that the so-called “Confucianization of law,” which reached its apex in the Tang dynasty (per the common narrative of premodern Chinese legal history), was not necessarily a smooth, automatic process. It was a process that relied strongly on historical actors, including Taizong and his ministers. More importantly, it should also be understood as a process that was not simply and solely driven by Confucian ideology or ideals, but also by political and practical concerns related to government and legitimacy. It was also a process that was affected at times (perhaps almost derailed) by impulsive, violent decisions by individuals like Taizong and also by the advice of his ministers. Finally, this article has contributed to the broader historiography of traditional Chinese legal history by setting forth a more actor-focused component of the narrative, as well as complicating the portrayal of Taizong in Tang historiography.