

Prison tradition: The philosophy of punishment in ancient Mongolia, China and Japan

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Absztrakt:

Ha meg akarjuk érteni a mai mongol börtönrendszert, fontos, hogy tisztában legyünk a mongol börtön hagyományok társadalmi, kulturális, jogi, politikai és történelmi aspektusaival. A jelenlegi mongol börtönrendszer tükrözi az elmúlt korok kultúráját, mélyen gyökerező elméleteit és hiedelmeit. Mongólia börtönrendszerére hatással voltak még külső tényezők is, például a szovjet jogrendszer és a nyugati jogi alapelvek keveredése, valamint az európai kontinensen található országok törvénykezése.

Az 1990-ben lezajlott békés politikai és gazdasági változások után a mongol börtönrendszerre nagy befolyással voltak, a világ büntető igazságszolgáltatási rendszerei. Az utóbbi 25 év során Mongólia sok törvényt és szabályt átvett különböző nemzetközi forrásokból. A börtönök jogi, szervezeti és működési szempontokból történő átfogó megreformálása azonban elmaradt, bár a közigazgatás más területein történtek változások. A büntető törvénykönyvben voltak „kozmetikai” változtatások, de a börtönrendszer alapelvei nem különböztek a szocialista korszakétól. A büntetés-végrehajtási intézetek hatékony és eredményes működtetése céljából sürgősen el kell érni, hogy a rendszer megfeleljen a nemzetközi előírásoknak.

Kulcsszavak: büntetés, börtön, jogrendszer, büntető igazságszolgáltatási rendszer, csoportos felelősség, megbékélés, társadalmi csoportok, börtön létesítmény

Abstract

In order to develop an understanding of contemporary Mongolian prison system, it is important to be aware of the socio-cultural, legal, political and historical aspects of Mongolian prison tradition. Mongolia's prison system reflects a number of influences including the culture and deeply rooted ideas and beliefs of previous times. Mongolia's prison system is also affected by external forces such as the mixture of the Soviet legal system and Western legal principles such as the codes of continental European countries.

After the peaceful change of the state political and economic system in 1990, Mongolian prison system was influenced heavily by the universal criminal justice system. Over the last 25 years, Mongolia has adopted a number of laws and regulations from various international sources. But the overall reform of prison institutions in terms of legal, organizational and operational aspects lagged behind of other sectors of public governance.

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There were „cosmetic“ changes in penal code. The basic principles of prison system are still not different from socialist era. It is urgent to accommodate and adopt universally acceptable international standards for the effective and efficient operation of prison institutions.

Keywords: Punishment, prison, legal system, criminal justice system, group responsibility, reconciliation, social groups, prison institutions

Introduction

Punishment is a natural response to fear and injury and prison seems to be one of the most favorite types of punishment. Punishment a pain or unpleasant experience inflicted upon an individual in response to a violation of a rule or law by a person or persons who have lawful authority to do so.² Like any other institution, prisons have reflected the cultures, societies, governments, and eras to which they have belonged.³

Ancient Mongolian society as a nomadic and pastoral society

Distinct characteristic of way of life of the ancient Mongols was nomadic pastoralism. *Nomadic pastoralism* is a more intensive exploitation of the domesticated herds on arid land or grasslands unsuitable for the cultivation of cereal crops⁴. In this case the herders have no permanent dwellings but follow the herds continuously, living in tents (*ger*). Every part of the animals was used since no other agricultural source of food was available.

Tribal law was enforced by a council of elders whose judgments were based on a code of honor that specified personal rights and obligations, rights of revenge, guidelines for granting and receiving asylum, hospitality, bravery, steadfastness, righteousness, persistence, defense of property, honor, and the chastity of females.⁵

Tribunals acted as arbitrators rather than judges in negotiations that determined guilt and consequent penalties paid in cash, services, livestock, and transfers of land rights, women, and bondsmen.⁶

The Mongol chieftain Genghis Khan united the diverse central Asian tribesmen and reorganized them into 1,000-man fighting and administrative forces (*ming-*

² Pollock Joycelyn M.: *The Philosophy and History of Prisons: The Rationale For Imprisonment*, Texas State University–San Marcos, 2005, pp.3-17
http://www.jblearning.com/samples/0763729043/Chapter_01.pdf (Viewed 24 December 2016)

³ Pollock Joycelyn M.: *The Philosophy and History of Prisons: The Rationale For Imprisonment*, Texas State University–San Marcos, 2005, pp.3-17
http://www.jblearning.com/samples/0763729043/Chapter_01.pdf (Letöltés: 2016. December 24.)

⁴ Crabtree Pam J.: *Encyclopedia of Society and Culture in the Medieval World*, FactsOnFile, New York, 2008, pp. 775-778 (ISBN-13: 978-0-8160-6936-1, ISBN-10: 0-8160-6936-0)

⁵ Ibid: Crabtree Pam J.: 2008

⁶ Ibid: Crabtree Pam J.: 2008

gan). To maintain order among his ranks, he institutionalized the local codes of honor into a common code of law that provided examples of appropriate military and social behavior.⁷ Since the army was so crucial to the nation, the laws enforced strict military discipline.

Great Yasa or Ikh Zasag, as an early criminal code for Mongolian society, was predominantly put more emphasis to a *collective responsibility* in order to prevent an offense under commanders responsible for crime warriors, masters of servants, parents for children.⁸

The main characteristic of Mongolian state during the reign of Great Khans (after the death of Genghis Khan, his descendants rule the Mongols for more than 400 years) was that the interests of privileged groups (military leaders and members of nobles) and the expression of their will were put above the rest of society in terms of implementation of statutes and rules.⁹

The main role of punishment in ancient Mongolian society, as it is today, was to serve as a deterrent to would-be criminals and also to satisfy the victims of crimes with the terms of punishment. The ancient Mongolia was relying on oral tradition and the enforcement of laws by rulers or tribal chiefs. This usually meant that punishments were imposed on the basis of legal precedents, with the penalties meted out generally reflecting the existing practice of the group or area. Early Mongolian tribal leaders made attempts to codify laws, in terms of recording in legal works or by carvings on stone, the punishments for specific named crimes.¹⁰

In ancient Mongolia serious crimes resulted in capital punishment. Executions generally were conducted in public, not only to show the power of the state but also to show that the person actually had been executed.

Although prisons existed, they usually served as places to hold people until they were tried. Common punishments were monetary fines, flogging, being sentenced to a certain number of years of hard labor or exile, or execution. Punishment for any of these offences was execution either by beheading or by strangulation with a cord. The latter was used on wealthier people to avoid the

⁷ Ibid: Crabtree Pam J.: 2008

⁸ Dugarova S.J.: Characteristic of a Criminal and Legal Ban of Great Yasa, Law Enforcement, Theoretical and Methodological Quarterly Journal, Ulaanbaatar, 2016, #2(10), pp.53-59

⁹ Crabtree Pam J.: Encyclopedia of Society and Culture in the Medieval World, FactsOnFile, New York, 2008, pp. 264-279 (ISBN-13: 978-0-8160-6936-1, ISBN-10: 0-8160-6936-0)

¹⁰ Ibid: Crabtree Pam J.: 2008

shedding of blood (*honor execution*).¹¹ If a member of the noble was found guilty with a crime, the effort to avoid spilling royal blood went as far as sentencing the offender to commit suicide by taking poison. The crime of assault was punishable by amputation of the hands or by the victims wounding their attackers in the same manner they had been injured.¹²

The larger was a society, the more complex was the laws. According to Mongolian belief, the blue eternal heaven has the highest and utmost power on the earth. The Khan was commanded from heaven to lead the people. The criminal law was the embodiment of the “Heaven Power”.

Socialist period

Throughout 70 years (1921-1990) as a socialist state, Mongolia was something of an enigma to the rest of the world. Mongolia engaged in diplomatic relations almost exclusively with one state: the Soviet Union.

The fundamental principle of socialist prison system was that the offenders as convicted ones who acted against society values should be rehabilitated by actively participating in labor activities (*social value*). The labor was the highly proposed end state for every convicted one to transform him or her as a law abiding citizen in the future. The state government made it possible to set up the legal environment for the promotion of prison industrial entities. Providing job opportunities for all prisoners was the utmost importance.

The theoretical foundation for the functioning of socialist society was the Marxism-Leninism. Marx said, “*Within any social relationship legal initiators do not create the act but rather shape it. For example, criminal law was the result of social and economic factors. The state must put more attention of the well-being of its citizens who are enforced in prison. Any prisoner is still the valuable member of society with limited rights. To ignoring prisoners would create the atmosphere of social alienation*”¹³.

¹¹ Crabtree Pam J.: Encyclopedia of Society and Culture in the Medieval World, FactsOnFile, New York, 2008, pp. 264-279 (ISBN-13: 978-0-8160-6936-1, ISBN-10: 0-8160-6936-0)

¹² Ibid: Crabtree Pam J.: 2008

¹³ Astrada Sebastian R.: Exporting the Rule of Law to Mongolia: Post-socialist Legal and Judicial Reforms, Denver Journal of International Law and Policy, 2010
[http://tsogt.blogmn.net/11185/exporting-the-rule-of-law-to-mongolia:--post-socialist-legal-and-judicial-reforms,-by-sebastian-r.-astrada\[1\].html](http://tsogt.blogmn.net/11185/exporting-the-rule-of-law-to-mongolia:--post-socialist-legal-and-judicial-reforms,-by-sebastian-r.-astrada[1].html) (Viewed 24 December 2016)

Lenin believed that we could recognize the authority of punishment for crimes, but we could gradually make it possible that the prisons could be transformed as *places for rehabilitation and education*.¹⁴

Modernity

In 1990, Mongolia undertook a joint transition from socialism and a centrally-planned economy to democracy and a free-market economy.¹⁵ Mongolia has radically adopted democratic values since 1992 and right after the communist regime has been broken down, it lost its formal social controls over the society¹⁶. Such sudden changes resulted in increased social disorder.¹⁷

Despite the promulgation of the new Constitution in 1992, which established the main legal and institutional framework for Mongolia, there have been significant deficiencies in implementing the rule of law and persistent problems with reasonable and reliable access to justice. According to the Mongolian Human Rights Commission, the law enforcement system is characterized by red-tape, delays, a 'bribing epidemic', 'systemic corruption', *tribalism and cronyism (traditional link!)*.¹⁸

At the moment, Mongolia is in a process of reforming its socio-economic sectors by adopting some universal standards. In order that the standards become fully applicable, the agility of implementation is needed. For instance, in prison institutions it is very important and urgent to smoothly introduce some universally implemented standards such as re-socialization and re-education of current and former inmates by the way of "*localization*".

¹⁴ Astrada Sebastian R.: Exporting the Rule of Law to Mongolia: Post-socialist Legal and Judicial Reforms, Denver Journal of International Law and Policy, 2010
[http://tsogt.blogmn.net/11185/exporting-the-rule-of-law-to-mongolia:--post-socialist-legal-and-judicial-reforms,-by-sebastian-r.-astrada\[1\].html](http://tsogt.blogmn.net/11185/exporting-the-rule-of-law-to-mongolia:--post-socialist-legal-and-judicial-reforms,-by-sebastian-r.-astrada[1].html) (Viewed 24 December 2016)

¹⁵ Ibid: Astrada Sebastian R.: 2010

¹⁶ Ibid: Astrada Sebastian R.: 2010

¹⁷ Chuluunbat Sh., Li Min Sik: Fear of Crime and Contemporary society, Law Enforcement, Theoretical and Methodological Quarterly Journal, Ulaanbaatar, 2016, #2(10), pp.11-22:;

¹⁸ Dr. Landman Todd, McEvoy Claire, Larizza Marco: State of Democracy in Mongolia a Desk Study, Human Rights Centre, University of Essex, Wivenhoe Park, Colchester, Essex CO4 3SQ, United Kingdom (Paper prepared for 'Democracy Development in Mongolia: Challenges and Opportunities', National Conference, Ulaanbaatar, Mongolia 30 June to 1 July 2005) p. 3

http://www.openforum.mn/res_mat/State%20of%20Democracy%20in%20Mongolia.pdf (Viewed 24 December 2016)

More efforts need to give the chances for the first time offenders and convicted ones by being involved in labor activities.¹⁹

The Buddhist spiritual leader Dalai Lama, who is notorious among the people, recently made some statements about the issue. He said *“Majority of offenders are used to be in prisons. They are thought to be marginal of society. In that context, it is difficult for them to try to change. We must not put them in this unbearable situation. They are same with all humans. They have ability as we to change for the good. It is quality of all human beings. The society ought to support them in the way to change their behavior. The courts could make decision on individual base. It means to give them some leniency according to the degree of wrongdoing”*²⁰.

If there are not any conditions given for ex-offenders to self-realize themselves in the community after their release, the chances of re-offending are very high. At the moment, Mongolia does not have the efficient and effective mechanism dealing with ex-offenders. To put it in another way, there is an urgent need to establish the well-developed *probation service*.

The following steps could be taken to enhance the current prison system. First, revision of legal aspects of prison system related with rehabilitation of prisoners, second, formulate and implement new concept for the criminal sentencing policy thus to nurture the conditions for the human oriented development of the inmates.

The philosophy of punishment in ancient China and its influences on Chinese criminal justice system

Confucianism

Confucian codes of conduct, which are clearly defined patterns of *obedience*, have become intertwined in ancient Chinese society and culture.²¹ The traditional Chinese view of law is primarily influenced by Confucian teachings that an

¹⁹ Khash L.: Tradition of Mongolian Accusation Policy and Imprisonment, Law Enforcement, Theoretical and Methodological Quarterly Journal, Ulaanbaatar, 2016, #1(09), pp.98-114

²⁰ Jantsan S.: Origin and Development of Philosophy of Sentences, It's Law, Theology and Doctrine, Law Enforcement, Theoretical and Methodological Quarterly Journal, Ulaanbaatar, 2014, #1(01), pp.24-32

²¹ LeFande August Matthew: Aspects of Legalist Philosophy and the Law in Ancient China: The Ch'in and Han Dynasties and the Rediscovered Manuscripts of Mawangdui and Shuihudi:, November 2000, pp.1-15

<http://www.commonwealthprotection.org/AncientChinaLaw.pdf> (Viewed 24 December 2016)

individual should be guided by *li* (virtue or propriety) rather than by *fa* (the law).²²

Confucianism emphasized the duties and obligations of people rather than their individual rights. The focus is more on the interests and harmony of the family, clan, or community than the rights of a single person.²³ Confucius taught that most of the ills of society existed because people forgot their stations in life and rulers failed to practice virtue.

The rationale of Confucianism is that society is organized in a hierarchy of superior– inferior relationships: the rulers to the subjects, parents to children, men to women. If every person performs his or her role, stability and social order will be sustained. Confucius emphasized *complete obedience* and loyalty of the inferior to the superior and at the same time, the benevolence of the superior to the inferior.²⁴ Confucianism influenced every aspect of Chinese life, including governmental systems, politics, and the law.

An important element of the ancient Chinese legal system was the concept of *collective responsibility*. Traditionally, Chinese defined a person's identity in relation to others within the society. The illegal action of one person could lead not only to the prosecution of the original offender, but also the punishment of many others who were guilty by association.²⁵

Daoism

Daoism (Taoism), a school of thought developed by philosophers Lao Zi (5th century BC) and Zhuang Zi (4th century BC). Daoists advocated inaction (*wuwei*), political passivity without human interference.²⁶ Daoism opposes institutions and organizations, moral laws, and governments as human artifices that obstruct the *Dao*.²⁷ Daoism sought to promote the inner peace of individuals and the harmony with the environment (the term could be projected towards society in modern era).

Legalism

The third school of thought that significantly influenced the current Chinese criminal justice system is Legalism (*fajia*). The Legalists advocated rewards and punishments by which to keep all people in order. The Legalist philosophy advo-

²² Ibid: LeFande August Matthew 2000

²³ Ibid: LeFande August Matthew 2000

²⁴ Ibid: LeFande August Matthew 2000

²⁵ Ibid: LeFande August Matthew 2000

²⁶ LeFande August Matthew: Aspects of Legalist Philosophy and the Law in Ancient China: The Ch'in and Han Dynasties and the Rediscovered Manuscripts of Mawangdui and Shuihudi., November 2000, pp.1-15

<http://www.commonwealthprotection.org/AncientChinaLaw.pdf> (Viewed 24 December 2016)

²⁷ Ibid: LeFande August Matthew 2000

cated dismantling feudal privileges, strict accountability for actions, and the standardization of individual duties in a manner whereby everyone is bound equally to the same standard.

Group responsibility was ordered within the family and among units of families, and all people were under an honor system to report crime or face collective punishment.

External influences on the development of modern mainland Chinese law

For centuries, China flourished in isolation from the rest of the world. During the colonial era, the Western powers imposed the *system of extraterritoriality*.²⁸ The primary objections to China's criminal justice system were that the use of penalties was too severe, torture was employed to obtain confessions of guilt, and the courts were corrupt (Figure 1).

The Soviet legal system and the development of mainland Chinese Law

In February of 1949, the Communist Party of China (CCP) forcefully removed the Nationalist government, including its judiciary and the entire body of laws.²⁹ After the process, communist leaders started to shape the new legal system. They had highly appreciated the legal system of the Soviet Union. There was a huge enthusiasm among the leaders about the achievements of the Soviet state with building up of society on the basic of different cultural, social and political values. But Mao Zedong and other leaders in mainland China did not want to establish the copied legal system of the Soviet Union, but to add some indigenous qualities (political, social and cultural features of mainland China) into it. The core fundamental principles were the protection of the fundamental values and rights of peasants and workers (major social groups of Chinese society). The political organization had ultimate prerogative over the legal system. It means that the political leadership could shape and lead the criminal justice system in mainland China. The lack of independence had hampered the daily activity and overall operation of the courts of all level.

During the opening up and reform era, mainland China brought forward some of the universally accepted legal norms and procedures. The process of adaptation of international norms regulating business and commerce, foreign investment, and financial securities issues had an influence on the whole legal system including the criminal justice system was no exception.

²⁸ Ibid: LeFande August Matthew 2000

²⁹ Ibid: LeFande August Matthew 2000



Figure1. China was famous for its varieties and use of wooden collars and cages, called *cangue*.³⁰

Restorative justice practices in mainland China

Since 2002, *criminal reconciliation (Xingshi Hejie)*, debatably the *indigenous restorative justice* practice, has been gradually implemented in the criminal justice system.³¹ Criminal reconciliation is a mechanism in the criminal proceedings where the judicial organ exempts suspects from criminal liability or punishment, or imposes lenient penalties, after the offender and the victim reconcile with each other through offender's sincere remorse, compensation, apology or other measures.³²

The philosophy of punishment in ancient Japan

*Kamakura shogunate*³³

With the rise of the warrior class and the unification of Japan under the Kamakura shogunate (governing ruler), the Japanese legal system acquired the form of

³⁰ Duhaime Lloyd: *China - A Legal History*, 2008
Published at <http://www.duhaime.org/LawMuseum/LawArticle-367/Crime-and-Punishment-in-Ancient-China.aspx> (Viewed 24 December 2016)

³¹ Ibid: Duhaime Lloyd, 2008

³² Duhaime Lloyd: *China - A Legal History*, 2008
Published at <http://www.duhaime.org/LawMuseum/LawArticle-367/Crime-and-Punishment-in-Ancient-China.aspx> (Viewed 24 December 2016)

³³ The Kamakura shogunate (Japanese: 鎌倉幕府, Kamakura bakufu) was a Japanese feudal military government that ruled from 1185 to 1333. The heads of the government were the shoguns. https://en.wikipedia.org/wiki/Kamakura_shogunate (Viewed 24 December 2016)

the traditional samurai code of ethics focused on maintenance of the hierarchy and familial honor and obligation.³⁴ Another major contribution was the development of principles of *group responsibility* known as *renza* and *enza*³⁵. In accordance with these values, blame was not simply assigned to the guilty individual when a crime was committed, but it was also assigned to that individual's family and perhaps the larger community of which he was a penalty as the one who had committed the crime.³⁶

Even in modern time, there is an extensive use of suspended prosecution by public prosecutors, fines and suspended sentences by criminal courts, and dismissal and probation by family courts.³⁷

A better explanation may be grounded in social immobility that breed responsibility, as well as in the hierarchical status roles in the Japanese social and family tradition.³⁸ It is also important to delegate the settlement of disputes to other social groups such as the family and village.

This group responsibility is, of course, probably one of the main reasons for the traditionally low levels of crime. If a person was convicted, this had enormous effects on all his wider relatives, his village and neighbors and others. *This was traditionally a society where people were expected to confess their guilt.*³⁹ The tradition of confession has continued since early ages. *Most of those who come to court nowadays confess their guilt.*

The vast majority of disputes are settled out of court. Today there are three major forms of reconciliation. The first is widespread in *Tokugawa* villages and was informal conciliation or *jidan*.⁴⁰ The second, called *chotei*, is primarily a formal pre-litigation procedure, and was devised piecemeal in Japan in the years between the two world wars.⁴¹ The third, *wakai*, is a direct German borrowing, a procedure by which the judge encourages and assists the disputants to reach a compromise settlement.⁴²

³⁴ Deal, William E.: Handbook to life in medieval and early modern Japan, FactsOnFile, New York, 2006, pp.101-105 (ISBN 0-8160-5622-6)

³⁵ Ibid: Deal, William E.: 2006

³⁶ Ibid: Deal, William E.: 2006

³⁷ Macfarlane Alan: Law and Custom in Japan: Some Comparative Reflections, Continuity and Change 10 (3), Cambridge University Press, 1995, pp.369-390

<http://www.alanmacfarlane.com/TEXTS/law&custom.pdf> (Viewed 24 December 2016)

³⁸ Ibid: Macfarlane Alan, 1995

³⁹ Ibid: Macfarlane Alan, 1995

⁴⁰ Macfarlane Alan: Law and Custom in Japan: Some Comparative Reflections, Continuity and Change 10 (3), Cambridge University Press, 1995, pp.369-390

<http://www.alanmacfarlane.com/TEXTS/law&custom.pdf> (Viewed 24 December 2016)

⁴¹ Ibid: Macfarlane Alan, 1995

⁴² Ibid: Macfarlane Alan, 1995

The origin of the first prison in Japan

The first prison in Kanazawa, originally for holding prisoners of war, was located within the castle walls. The castle prison's original function became obsolete by 1590, after Toyotomi Hideyoshi established hegemony over Japan.

Suspects who were declined to speak, could be subjected to harsh methods of coercion (Figure 2). In such cases, the prison interrogation room served as a torture chamber to extract the confession necessary to resolve crimes during the Edo period.

In seventeenth-century Kanazawa, the most prominent forms of capital punishment still practiced were saw-pulling, ox-pulling, boiling alive, drawing and quartering, burning at the stake, crucifixion, and beheading.⁴³



Figure2. Example of an *uchikomi*, a device used to apprehend a criminal suspect⁴⁴

Conclusion

The overall historical evolution of ideas about punishment in general and the prison institutions in particular was the result of the combination of factors.

⁴³ Nelson D.: The Consolidation of Place and Punishment in Seventeenth-Century Japan: Kanazawa Prisons and Criminal Justice, Austin Peay State University, Southeast Review of Asian Studies, Volume 30 (2008), pp. 188–195
http://www.uky.edu/Centers/Asia/SECAAS/Seras/2008/23_Nelson_2008.pdf (Viewed 24 December 2016)

⁴⁴ Deal, William E.: Handbook to life in medieval and early modern Japan, FactsOnFile, New York, 2006, pp.101-105 (ISBN 0-8160-5622-6)

Otherwise in order to outline the whole picture about the development of prisons a multifactor analysis is necessary. The historical periods defined by analyzing social, political, cultural and economic entities which shape the relationship between people to people and state to people. The prison creation followed by mature establishment of firm bonds between state as dominant and people as subordinate. It was vividly reflected in the historical documents of ancient Mongolia, China and Japan. However, should be emphasized that in ancient time ideas about prison in Mongolia, China and Japan have some similarities and differences.

Similarities:

- In ancient Asia, *social groups* who had the authority (whether it is Khan and his nobles in Mongolia, Emperor and his inner circle in China or the shogun and samurais in Japan) to command and rule others made it possible to formulate ideas about to whom, where and how to punish;
- Sometimes the dominant social groups could change the rules and ideas of punishment. It depended on the situation. It could have been both negative and positive effect to subordinates;
- The authorities often used harsh and severe methods of punishment.
- There were wider use of both capital and corporal punishment;
- The distinct unique common characteristic of Mongolian, Chinese and Japanese punishment of ancient time was that even though they were different in terms of value system, belief and norms; they consistently adopted “*collective or group responsibility*”. When someone acted irresponsibly, his or her relatives and the community were regarded responsible as well;
- The whole historical view on punishment of these countries depended on both internal and external factors.

Differences:

- In ancient Mongolia, distinct characteristic of way of life was nomadic pastoralism. The nomadic pastoralism as main way of life created tribal thinking. Tribal thinking makes it possible to shape whole society activities. Tribal laws was formulated and implemented on the basis of tribal thinking. The tribal dominant group comprised of nobles and the Khan who had the highest authority and mandate from “Heaven”. The nobles and Khan were able to create laws and punish other subordinate groups. It was not a one sided process. The member of the noble group involved in crime could be punished in less severe way. The so-called “honor killing” applied to them. These form of thinking (tribalism and cronyism) is still alive in current Mongolian society and one of the main characteristic of all areas of society. The prison system is not an exception. The Soviet legal system impacted the development of Mongolian prisons in the course of 20th century. The widespread “tribalism and

cronyism” is impeding the real reform of the prison system of current Mongolia.

- In China the following three concepts had a powerful influence on ancient philosophical thinking. The Confucian, Daoism and Legalist approaches to punishment made impact on the development of overall Chinese legal system. The Confucian ideas were the prevalence of duty and obligation over individual rights. The punishment methods had to be severe and perceptible. The Western legal system tried to shape the legal system during the colonial period. After the rise of communist ideology, Soviet legal system with native model of communist ideas shaped the attitude towards the punishment. During the last 30 years, due to the opening up and reform, the international standards were established. It accelerated the reform of the legal system in China. Restorative criminal practices are actively promoted and maintained.
- The Japanese legal system acquired the form of the traditional *samurai* (dominant group) code of ethics focused on maintenance of the hierarchy and familial honor and obligation. The Japanese view on punishment has firmly supported by traditional concepts. These unique characteristics exist in current Japanese system. Japanese society still relies on basic values and norm created in ancient time. One of the core fundamental principles of the modern Japanese view on punishment which differs from other societies’ is the legal “reconciliation”. It is a tool in hands of society to smooth the process of solving the legal issues related to the punishment. The Japanese view is that the reconciliation is one of the most efficient methods to punish others for their wrongdoings.

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