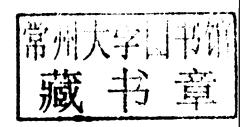


# The Mandate of Heaven and The Great Ming Code

JIANG YONGLIN



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## **Abbreviations**

BLPX Jiao Hong, Biaolü panxue xiangshi

BX Zhu Yuanzhang, Baoxun

CHC7 Mote and Twitchett, *The Cambridge History of China*, vol 7 CHC8 Twitchett and Mote, *The Cambridge History of China*, vol 8

DGSB Zhu Yuanzhang, Yuzhi Dagao sanbian DGXB Zhu Yuanzhang, Yuzhi Dagao xubian

DLSY Lei Minglin, Du lü suoyan

DMB Goodrich and Fang, Dictionary of Ming Biography

ER Mircea Eliade, The Encyclopedia of Religion

HJAS Harvard Journal of Asiatic Studies

HMZL Zhu Yuanzhang, Huang Ming zhaoling

HMZS Zhang Lu, Huang Ming zhishu

HMZX Zhu Yuanzhang, Huang Ming zuxun HWYZQS Zhang and Mao, Hongwu yuzhi quanshu

JAS Journal of Asian Studies

JHXZ Da Ming lüli juhui xizhu

JJFL Gao Ju, Da Ming lü jijie fuli

JMBW Zhu Yuanzhang, Jiaomin bangwen

IS Wang Kentang, Wang Kentang jianshi

LFQS Gong Ju, Da Ming longtou biandu pangxun lüfa quanshu

LJBY He Guang, Lüjie bianyi

LMBJ Su Maoxiang, Da Ming lüli linmin baojing

LSFL Da Ming lüshu fuli

LTSY Zhang Kai, Lütiao shuyi
MHD Shen Shixing, Ming huidian
MHY Long Wenbin, Ming huiyao
MLSY Ying Jia, Da Ming lü shiyi
MS Zhang Tingyu, Mingshi
MTJ Xia Xie, Ming tongjian

SSJZS Ruan Yuan, Shisan jing zhushu

TLSY Liu Junwen, Tanglü shuyi

TS Huang Chang-chien, Da Ming Taizu Gao Huangdi shilu

TSPZ Xu Changzuo, Da Ming lüli tianshi pangzhu

TZTG Fang Linggui, Tongzhi tiaoge jiaozhu

XSJH Peng Yingbi, Xingshu juhui XTFL Xiao Jingao, Xingtai falü

XXBJ Dong Yu, Da Ming lüli zhushi xiangxing bingjian

YDZ Da Yuan shengzheng guochao dianzhang

YS Song Lian et al., Yuanshi
YZDG Zhu Yuanzhang, Yuzhi dagao
YZWJB Zhu Yuanzhang, Yuzhi wenji bu

YZWJ Zhu Yuanzhang, Ming Taizu yuzhi wenji ZJQS Zhu Jingxun, Da Ming lüli zhijun qishu ZPZZ Yu Yuan, Santai Minglü zhaopan zhengzong

ZSTX Zhu Yuanzhang, Zishi tongxun

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# The Mandate of Heaven and The Great Ming Code

## 1 | Introduction

Religion and Chinese Legal Cosmology

arly January, 1368. Zhu Yuanzhang (1328–1398),¹ the future founding emperor of the Ming Dynasty (1368–1644),² had already eliminated most of his rival warlords in contending for the realm. When his followers vigorously exhorted him to take the throne, however, Zhu hesitated. He dared not make the decision on his own, he said, but would have to invoke Heaven for a judgment. He set up an altar to worship the supreme cosmic deity and prayed that if the Lord on High approved the new ruling house, January 23—the appointed day of enthronement—would be a bright day; otherwise, anomalies would appear. When the scheduled day arrived, the sky did clear up after several consecutive days of snow. Upon receiving this propitious sign sanctioning the new regime, Zhu happily claimed to have obtained the Mandate of Heaven (Tianming) and thus announced the founding of the Ming dynasty (TS, 429–30, 477–82).

Subsequently, in his strenuous efforts to rebuild the Chinese empire, Zhu initiated a series of social programs, for which *The Great Ming Code* (Da Ming lü, promulgated first by the end of 1367 and finalized in 1397) stood out as an essential blueprint for reform.<sup>3</sup> Indeed, in order to promote their reform pro-

grams, the early Ming ruling elite produced a tremendous number of legal documents that constituted what Edward Farmer calls the "Ming Constitution," "covering every facet of imperial concerns" including governmental institutions, cultural orientations, and social customs (Farmer 1995, 10). As an integral part of the early Ming social reform efforts, *The Great Ming Code* not only set forth the value system and social norms of the Ming empire for several centuries, but also had a profound impact on the legal cultures of the Manchu Qing Dynasty (1644–1912) and China's neighboring countries, Korea, Japan, and Vietnam.

The early Ming claim of having received the Mandate of Heaven, accompanied by this momentous legislation, raised intriguing questions concerning the nature and function of law in imperial China: What was the relationship between the legal establishment and belief in the cosmic order? Was the concept of the Mandate of Heaven merely a tool manipulated by the ruling elite to justify state power, or was it an essential aspect of the belief system shared by the ruling elite that became the intellectual foundation of Ming legal culture? What role did law play in imperial efforts to carry out social reform programs? Was it simply a device utilized by the imperium to exercise oppressive power, or was it intended to educate the people and transform society as well?

This book addresses such questions, examining the making of The Great Ming Code in terms of its transformative role in educating the people and its religious nature in carrying out the Mandate of Heaven, and arguing that the early Ming ruling elite headed by Zhu Yuanzhang did not see law merely as a tool for behavioral control. More significantly, they viewed law as a concrete embodiment of the cosmic order. They based The Great Ming Code on "tianli" (Heavenly principle, i.e., the ultimate origin and fundamental pattern of the cosmos) and "renging" (human sentiment, i.e., human compassion based on Heavenly principle). Thus, they considered the law code to be a moral textbook,4 which "all under Heaven" (tianxia) should study in order to be transformed and exist harmoniously within the cosmic order. This goal is illustrated by three groups of regulations in The Great Ming Code: rituals for communicating with the world of spirits, especially Heaven and Earth, the cosmic parents of human beings; norms for structuring and purifying the human realm; and rules for rectifying the ruling elite's behavior in mediating between the world of spirits and the human realm. These legal regulations reflect and give meaning to early Ming legal cosmology.

On the basis of their understanding of the cosmic order, the early Ming ruling elite endowed *The Great Ming Code* with religious meaning. Like ruling

groups in other Chinese imperial dynasties, the Ming envisioned the superhuman world as a dynamic realm where Heaven and its subordinate spirits possessed the power to intervene in human affairs. If the ruler violated the cosmic order, Heaven would send down a warning and might eventually revoke the emperor's mandate to rule. Therefore, it was the ruler's mission to follow Heavenly principle and preserve harmony both within society, and also between human beings and superhuman spirits. One way to achieve this goal was to establish law by following heavenly principle. Law, in other words, served as a cosmological instrument to transform human beings.

### CHANGING PARADIGMS OF CHINESE LEGAL HISTORY

The argument for the educational function and religious nature of The Great Ming Code laid out in the present work challenges the conventional assumption—that law in imperial China was used as an arm of state, serving the ends of social control and as a secular instrument for exercising naked power. Indeed, law in imperial China has long been studied from Western perspectives, and many perceived characteristics of traditional Chinese law reflect Western conceptual frameworks (Alford 1997). Charles Montesquieu (1689-1755), "the codifier of the concept of 'despotism," maintained that the foundation of Chinese law is "fear," the primary recourse of a despotic state (Montesquieu 1990, 174). Georg Hegel (1770-1831) perceived a Chinese society where change and freedom did not exist and law supported despotism (Hegel 1956, 104, 111, 116). Max Weber (1864–1920), explaining the emergence of capitalism in the West (Weber 1951; Eisenstadt 1983), also asserted that China lacked an independent and rational legal system.

These classic viewpoints have continued to influence recent Western scholarship, which has primarily depicted Chinese imperial law as an obstacle to social progress. John K. Fairbank (1907-1991), one of the leading Sinologists in the West, attributed the nondevelopment of capitalism and an independent business class in old China to the "nondevelopment of Chinese law" (Fairbank 1976, 117-23). Joseph Needham (1900-1995) argued that Chinese legal culture lacked the notion of genuinely universal law, which was critical in promoting the rapid growth of new science in the West, and thus hindered the emergence of "laws of nature" in China (Needham 1956, 518-83). Roberto Unger, in analyzing Western legal order, utilizes the nonautonomous and nongeneralized "bureaucratic" Chinese law as a negative example (Unger 1976, 86-109). Within these and other similar theoretical frameworks, law in imperial China has generally been assessed on the basis of Western legal culture. Therefore, the Chinese legal system has been regarded as unjust or arbitrary because no due process evolved and because it emphasizes duties and collectivity rather than rights and the individual. Chinese law is subordinate to political authority because there has been no separation of power and no independent legal profession—from the emperor down to local magistrates, one single person possesses all of the governmental powers within his jurisdiction. Chinese legal culture is less developed, for it has not been differentiated into fields such as constitutional, criminal, and civil law, and its law has never been separated from morality.<sup>6</sup>

In line with such assessments, law has also been viewed "as little more than an instrument of authoritarian control throughout pre-twentieth-century Chinese history," as critiqued by William Alford (1997, 402). For Roberto Unger, Chinese law is a set of "mere devices of state policy" or "devices of political control" (Unger 1976, 65, 87). John K. Fairbank argued that contrary to Western tradition, where the individual has access to legal protection, "the law in Chinese life has not been similarly developed to protect the individual either in his political rights or in his economic position" (Fairbank 1976, 117). Jerome A. Cohen also views Chinese "law and legal institutions . . . principally as instruments for maintaining the power of the state rather than enhancing the sense of security of its citizens" (Cohen et al. 1980, 7–8). Clearly, a broad agreement among Western scholars has been reached that Chinese imperial law has been manipulated as an arm of the state, only serving the end of social control.

Interestingly enough, almost all of the characteristics noted by Western scholars are shared by most of their post-cultural-revolution counterparts in mainland China, who try either to justify the Chinese revolution or to promote modernity. For example, the concept of "oriental despotism" has been used to criticize the emperorship (Zhang 1982a). Major law codes ( $l\ddot{u}$ ) are considered less advanced than modern Western law since they encompass various kinds of rules; i.e., they contain criminal, civil, procedural, administrative, family, and other laws in one textual body. The feudal administration of justice has not been "modernized" because separate legislative, judicial, and executive bodies never evolved (Zhang Jinfan 1990, 3).

A dramatic example of this form of literature is provided by a group of young scholars headed by Liang Zhiping and Qi Haibin who followed the example set by Montesquieu in his *Persian Letters* (1721), written to criticize French society (Montesquieu 1990, 55–84). Montesquieu wrote his book in the form of letters from Europe penned by two Persians; these Chinese

scholars finished their work in the form of letters from China by five French visitors, and entitled it *New Persian Letters* (Xin Bosiren xinzha). According to Liang and his collaborators, Western legal culture is based on the principles of rights, equality, contract, and individual value, whereas Chinese law emphasizes power, hierarchy, and collectivity (Liang and Qi 1988, 11). As exclusively a set of imperatives attached to certain penalties, Chinese law advocates the fundamental principle of obligation, which is completely different from the Greek theory of justice and the Roman principles of contract and rights (ibid., 20, 131–37). Hence, the Western concepts of freedom, liberty, equality, and democracy are alien to China; Chinese law cannot provide individuals with necessary protection (ibid., 53, 86). For these authors, Chinese law limits itself to the punishment of crime; it is a violent tool utilized by the state for eliminating dissidents, suppressing the people, maintaining social order, and carrying out the personal will of despotic rulers.<sup>7</sup>

Since the 1980s, however, more and more China scholars have challenged these misconceptions. They have critically appraised the intellectual bias that equates "modern" with "Western" and "Western" with "important," calling for a "China-centered history of China" that would begin with Chinese problems set in a Chinese context (Cohen 1984, 2, 149, 154). In the field of legal history, William Alford attacks the "conceptual frameworks that are products of our own values and traditions, and that are often applied merely to see what foreign societies have to tell us about ourselves" (Alford 1986b, 946). He examines certain aspects of the formal criminal justice process in late imperial China and argues against some of the prevailing stereotypes prevalent in American scholarship, such as what is seen as a lack of separation of power and due process. Thus, he contends, "we ought not to assume that the process was then seen only as a tool of state control little concerned with the attainment of individual justice" (Alford 1984, 1243). One of these Western intellectual frameworks, according to Alford, can be seen in Roberto Unger's abuse of the Chinese past. Unger appraises Chinese traditional law only in terms of whether or not it possessed qualities shared by Western tradition—"his focus is far more concerned with why China did not follow Europe's course than with the course it actually did follow" (Alford 1986a, 962).

Karen Turner makes comparisons between the Chinese and Greek legalphilosophical traditions. Besides noting their differences, she also observes certain traits common to the two different legal cultures. Classical Chinese legal philosophers, for example, were as concerned with the problem of "rule of law" as their Greek counterparts. They both respected law as "a means to

curb the arbitrary, personal element in rulership," although Chinese thinkers stressed a more flexible balance between the certainty and impartiality of the written law and the discretion of sage-rulers and their worthy ministers (Turner 1990, 86-87, 111). In her recent articles, Turner maintains that the "rule of law ideal" is not exclusively a product of Western legal culture—it is also advocated by the Chinese, and that "laws of nature," a set of higher principles embodied in the Dao, served as universal and normative standards in legitimizing laws and punishments in China's past (1993a; 1993b). R. P. Peerenboom studies natural law theory in early China by examining silk manuscripts on government found in a Han tomb at Mawangdui, and contends that the Huang-Lao school (Huang-Lao xuepai) of Han China espouses a foundational naturalism in which "humans are conceived of as part of the cosmic natural order understood as an organic or holistic system or ecosystem," and the Way (Dao)—a set of natural principles or natural laws—generates and guides human laws (Peerenboom 1993, 27, 62). These scholars have made noteworthy efforts in identifying the values governing Chinese imperial law.8

#### CHANGING PERSPECTIVES ON RELIGION AND CHINESE LAW

The aforementioned negative assumptions regarding the role of Chinese law go hand in hand with assessments of the secular nature of Chinese legal culture. To most Western scholars, imperial Chinese law is a secular instrument serving the purpose of naked power. For some scholars like Roberto Unger, Chinese law is secular simply because, as a set of "imperatives of instrumentalism," it solely serves as "a tool of the power interests of the groups that control the state" (Unger 1976, 64-65). One of the major reasons that China failed to develop a Western-style legal order, he asserts, is that the Chinese have not conceived "a 'higher' universal or divine law as a standard by which to justify and to criticize the positive law of the state" (ibid., 66, 76-83). Although he finds "a body of religious precepts" accompanying secular law, he sees them only as an expedient employed by the state to ease the tension between instrumentalism and legitimacy within Chinese law. As William Alford criticizes, religious elements were manipulated by Chinese rulers "to cloak their instrumental use of law with an appearance of legitimacy, rather than imbuing law with what he sees as a truer legitimacy derived from genuine consensus" (Alford 1986a, 921-22).

Other scholars characterize the secularity of Chinese law on the basis of

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