The Mandate of Heaven and The Great Ming Code

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Early January, 1368. Zhu Yuanzhang (1328–1398), the future founding emperor of the Ming Dynasty (1368–1644), 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. 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 “renqing” (human sentiment, i.e., human compassion based on Heavenly principle). Thus, they considered the law code to be a moral textbook, 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 super-human 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 non-autonomous and nongeneralized “bureaucratic” Chinese law as a negative example (Unger 1976, 86–109). Within these and other similar theoreti-
cal 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.

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 (lù) 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.7

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 legal-philosophical 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
the Judeo-Christian interpretation of religion. For instance, in *Law in Imperial China*, Derk Bodde and Clarence Morris examine the close connection between law and religion in several major civilizations of the ancient world, and contrast it with Chinese legal culture. They conclude:

The contrast of the Chinese attitude to the belief in a divine origin of the law is indeed striking, for in China no one at any time has ever hinted that any kind of written law—even the best written law—could have had a divine origin. (Bodde and Morris 1967, 10)

Bodde and Morris are correct—the Chinese have never envisioned a transcendent lawgiver who handed down divine laws to a Chinese “Son of Heaven” like God did to Moses in the Judeo-Christian tradition. But the question still remains: Does this deny the religiosity of Chinese legal culture in the past, or do the Chinese have some legal beliefs and practices that are different from those of Judeo-Christianity or Islam, yet still of a religious nature? Furthermore, how shall we assess the religiosity of a given culture: shall we judge it only on a Judeo-Christian basis (e.g., believing in and worshipping a single transcendent God), or can we use other standards? Evidently, Bodde and Morris conceptualize religion within the Judeo-Christian worldview. Therefore, in assessing certain cosmic principles such as yin and yang and the Five Phases (*wuxing*) (ibid., 43–48), they do not conceptualize them as religious, but rather as examples of the “naturalization” of Chinese law (ibid., 44–45).

This stance of judging the secular nature of Chinese law on the basis of Judeo-Christian tradition can also be found in works by other Sinologists. John K. Fairbank, for instance, also denied the existence of higher law through divine revelation in Chinese legal culture. For him, the religiosity of a legal system is solely determined by a divine origin. He further separates religion from morality and maintains that Chinese legal rules are an expression of morality rather than of religious beliefs. He concludes that “the breaking of such rules was a matter of practical expedience rather than of religious principle” (Fairbank 1976, 118–20).

Some Chinese scholars share ideas about the secular nature of Chinese legal culture with their Western colleagues. Ch’en Ku-yuan, a leading legal historian in Taiwan, maintains that although Chinese law originated at a time when the concept of divine authority was predominant, it had little to do with religion. What made Chinese law secular was that the Chinese upheld a polytheistic worldview that prevented any single deity from dominating the
legal order. The concepts of “heavenly way” and “heavenly punishments,” Ch’en further asserts, indicate the prevalence of the notion of natural law in Chinese history (Ch’en Ku-yuan 1969, 30–40). Ch’ü T’ung-tsu, an influential legal historian from the Mainland, also argues that “legal sanctions [in Chinese history] were independent of religious or ritual sanctions.” Although he tries to articulate the functional relationship between religion and law, his findings are limited to that of “magic and law,” including ordeal, supernatural recompense, taboo in punishment, and black magic (Ch’ü 1961, 207–25). And it is noteworthy that, as he himself acknowledges, Ch’ü’s understanding of the secularity of Chinese law has been deeply influenced by the English jurist Sir Henry Maine (1822–1888), who asserts that imperial China had long passed the stage in which law was closely associated with religion.9 Zhang Jinfan also claims that, contrary to laws in Islamic and Indian societies where religion plays a dominant role in legal culture, Chinese law has little to do with religion; instead, it is overwhelmingly influenced by Confucian ethical codes (Zhang Jinfan 1982b, 13, 35, 78).

Zhu Yong (1991), greatly influenced by Derk Bodde and Clarence Morris, examines legal practices such as “making law by imitating heaven,” “meting out punishments according to seasons,” and “granting amnesties when anomalies occur.” He characterizes these as manifestations of naturalism (ziran zhuyi) in Chinese law. For him, one of the reasons why naturalism became a striking feature of Chinese legal culture is that religion and theology were not fully developed and religion was never closely associated with temporal polity. Law in ancient China, he concludes, was a product of the concept of “using evil against evil”; it had the function of promoting the good without itself comprising the good, and was always arbitrarily employed as an instrument by rulers. And the concept ‘naturalism’ justified the use of the legal instrument and made it mysterious and flexible. In short, scholars in both China and the West, regardless of their intellectual backgrounds, share a remarkable consensus in their discourse on the nature and role of Chinese law. Their assumptions undoubtedly muddle our understanding of China’s history in general and her legal culture in particular.

Since the 1990s, a few scholars have begun to reconsider the “secularity” hypothesis of Chinese legal culture. In his study of the Collected Statutes of the Great Ming (Da Ming huidian), Romeyn Taylor observes an encompassing cosmic pattern in that official document. The imperial law, he argues, “was not merely the will of the emperor, but it was his will insofar as it faithfully expressed the heavenly patterns” (Taylor 1993, 47). In his recent work on the official religion of the Ming, Taylor also points out the close connec-
tion between *The Great Ming Code* and Ming religious policies: the Ming state “established the sanctions of law to uphold the official religion and to suppress religious activity that was held to be an intolerable danger to the state and society” (1998, 891). In his study of the concepts of purity and pollution in early China, Robin Yates (1997, 507–12) also observes religious dimensions in legal culture. But these insightful findings have not received sufficient scholarly attention.

**THE PROBLEMS PERSIST**

The presumptions concerning the repressive function and secular nature of imperial Chinese law have been so deep-rooted that they are still enormously influential among Chinese law specialists, even those intending to revise the West-centered Chinese history at the turn of the twenty-first century. Regarding the repressiveness of Chinese law, for example, Karen Turner, in her recent study of the legal regulation of the body in early China, maintains that “the state aimed to deter crime rather than to reform individuals deemed guilty of deviance.” A major difference between the legal cultures of China’s imperial government and her contemporary socialist state is that modern China witnessed a “shift away from viewing the criminal’s body as a means to exact retribution through labor service to its importance as a vehicle for reeducation” (Turner 1999, 237, 252).

In her study of Chinese cosmology, Chinese religion specialist Julia Ching makes the following assertion:

The evolution of law in China may be described as the devolution of ritual (li) into law (fa) and of law into punishment. For this reason, law is regarded as having played a mainly penal role in Chinese society, protecting the rights of the rulers and enjoining passive obedience on the part of subjects. Until today, the Chinese fear law, because law has been an arbitrary instrument in the hands of the rulers. . . . Throughout history, Chinese law served public interest only insofar as it also served the interests of the government. (Ching 1997, 240)

Concerning the secularity of Chinese imperial law, Liu Yongping states in his recent work on Chinese law (1998, 13) that “unlike Western and Islamic law, even in its early days Chinese law was not significantly influenced by religion or religious thought. Although since Shang and Western Zhou times China’s rulers had asserted that they had received the mandate to rule
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from Heaven, few attributed the law they used to a divine origin.” Clearly, like Bodde and Morris, Liu equates religiousness with a divine origin.

In his brief survey of law and religion in East Asia, Denis Twitchett does describe some religious elements in Chinese legal culture and stresses that China was not “a purely secular state.” But when assessing the overall relationship between religion and imperial law, he maintains that the penal law did not embody many provisions directly concerning religious belief and practice. In general, the law confined itself to the proscription of magical practices, especially black magic, to the prohibition of heterodox doctrines (which in effect meant doctrines potentially hostile to the state or social stability and capable of provoking rebellion), and to preventing private persons from performing religious functions proper to the state. The lawmakers were particularly anxious to ban predictions and prophecies and the making of charms and amulets. (Twitchett 1987, 470).

Thus, Twitchett sees Chinese imperial law primarily as a tool of the state to impose social control.

This line of argument is echoed by Randall Peerenboom in his most recent essay “Law and Religion in Early China.” Like Twitchett, Peerenboom observes that some legal rules and practices incorporated and reflected religious ideals, values, practices, and norms. “For the most part, however, the state sought to control religion by limiting the formation of religious sects, the spread of religious ideas and particular religious practices,” which displayed the “Chinese state’s distrust of religion.” While Peerenboom acknowledges some religious elements in Confucianism and the concept of transcendent natural law in Huang-Lao thought on a theoretical level, he emphasizes that “such religious cum normative concepts played a limited role with respect to particular institutions, rules or practices,” and concludes: ”Whole areas of positive law had little if anything to do with religious beliefs, even broadly construed” (Peerenboom 2002, 91–92, 99, 102). In addition, he reiterates the fundamental assumption underlying standard views on Chinese law: it is an oppressive tool for furthering the political interests of the state. For him, the purpose of the legal system in imperial China “was to serve the state. There was, for instance, no notion of individual rights.” And the concept of Mandate of Heaven “rarely if ever served as the rallying cry for the disgruntled, oppressed masses. Rather, it simply served to legitimate whatever warlord or faction was able to vanquish its rivals and rise to power” (ibid., 99).

Apparently, up to the present time, a great number of China scholars and specialists have still held to the conventional presumptions of repressive
function and the secular nature of Chinese imperial law. This study on *The Great Ming Code* integrates the new intellectual trends advocated by scholars such as Paul Cohen and William Alford and goes one step further to argue for the cosmological foundation and educational purpose of Chinese legal culture, including the dynastic law codes—the fundamental form of “positive law” in imperial China. Chinese imperial law, as the making of *The Great Ming Code* indicates, did not serve as a punitive tool for controlling society without any provisions for protecting people; rather, it was perceived as a powerful device for maintaining social boundaries, even for restraining the arbitrary forces of the emperor and his civil and military representatives. Furthermore, envisioned as an instrument to manifest the Mandate of Heaven, the Chinese law code served as a moral textbook to educate the people and transform society. In their efforts to achieve these ends, then, the early Ming ruling elite endowed law codes with religious meaning; religion and law were unified as indispensable components of their social practices and belief system. By looking at these problems holistically, this study sheds new light on China’s social, political, intellectual, and legal history during the early Ming in particular and throughout imperial times in general.

**RELIGION: A WORKING DEFINITION**

For the purpose of this discussion of the unity of religion and law and the legal role of social transformation in pre-Republican China, a working definition of religion is required. The criteria by which religious phenomena are judged in any given society are by no means simply a matter of nomenclature; they constitute a serious issue concerning the perspectives from which we observe different peoples’ beliefs and practices. Although it is almost impossible to reach a consensus regarding the essence of religion, some trends in the intellectual discourse surrounding it can still be identified, from which workable concepts that will be of use in this study can be derived.

As noted above, China scholars who argue for the suppressive role and secular nature of Chinese imperial law have been fundamentally influenced by the Judeo-Christian tradition. This tradition, espousing a personlike, transcendent God, emphasizes the intrinsic difference between creation and Creator and the separation of the sacred from the profane. Its doctrinal elements and ecclesiastical or synagogical model, including the ban on magic and strict membership within only one religious community, also contrast with other religious beliefs and practices. Based on this tradition, some
scholars define religion as the belief in supernatural beings, especially of a single transcendent God. The English ethnologist Edward B. Tylor (1832–1917), one of the pioneer anthropologists who extensively studied religious behavior and belief, defined religion as a belief in spiritual beings ranging from souls of the departed dead to the gods of the universe (Tylor 1958, 8).

Tylor’s classic proposition is shared by many present-day scholars. Melford E. Spiro, for instance, asserts that the belief in supernatural beings and their ability to aid humans is the “core variable” of religion. Religion, according to him, is “an institution consisting of culturally patterned interaction with culturally postulated superhuman beings” (Spiro 1966, 94, 96). And this definition of religion is even “standardized” in Webster’s Third New International Dictionary: “Religion is the personal commitment to and serving of God or a god with worshipful devotion, conduct in accord with divine commands esp. as found in accepted sacred writings or declared by authoritative teachers” (Gove 1986, 1918). This stance apparently precludes many practices from being termed “religious,” such as those in which rituals or immanence are given precedence over ethical values and transcendence. It also makes it difficult to study the relationship between religion and law in non-Western societies. Therefore, when scholars like Derk Bodde, John Fairbank, Ch’ü T’ung-tsu, and Zhu Yong compare the legal culture of China with that of other countries, they must address themselves to the question of whether or not there is belief in a transcendent God who made a body of divine law that guided but was separate from human-made positive laws. When they find no evidence of this sort of higher law, they can only come to the conclusion that Chinese legal culture is secular; and that magic within a Chinese context counts as superstition rather than religion.

The “suppressive” and “secular” interpretation of Chinese law might also have been influenced by the Marxist viewpoint on religion. According to Marxism, religion has two fundamental problems. First, it is a nonscientific (and thus backward), superstitious, and distorted understanding of the universe and human life. Second, viewed as “the opiate of the people,” it has been manipulated by the ruling classes to legitimize their governance and to dupe the people.” According to this Marxist perspective, Chinese law in the past was much more advanced and civilized than any other nonmodern legal culture because it was secular or naturalistic. The religious influence on imperial Chinese law, if any, was the result of intentional, rational manipulation of religion by “sober” rulers to fool the “ignorant” people (e.g., Zhu Yong 1991, 145–46).

Other sociologists and anthropologists have proposed alternative ways of defining religion that are useful in our reevaluation of Chinese legal culture.
The French sociologist Emile Durkheim (1858–1917), for example, argued that religion played an all-important role in primitive societies by creating social solidarity and shared categories of human experience. The core element of religion is not the worship of divine beings, but the expression of the collective values and function of social differentiation (Durkheim 1915).

In her *Purity and Danger*, Mary Douglas tries to reunite some disparate elements of human experience, and argues for a broader approach to religion. In order to understand religion, according to her, one should not be limited to considering belief in spiritual beings; rather, one should address “all extant beliefs in other beings, zombies, ancestors, demons, fairies—the lot” (Douglas 1991, 28). More importantly, she maintains that belief in spiritual beings is not a key issue in understanding religion. Even if the entire spiritual population of the universe were duly catalogued, the essentials of religion might still elude us (ibid.). In challenging the separation of religion from magic and superstition, she extends the idea of ritual as symbolic of social processes to include both religious and magical beliefs, and suggests that none of the so-called hygienic rules are devoid of social symbolism (ibid., 22). Furthermore, she notes a close relationship between magic and moral codes and asserts that “the magic of primitive ritual creates harmonious worlds with ranked and ordered populations playing their appointed parts. . . . [I]t is primitive magic which gives meaning to existence” (ibid., 72). Hence, Chinese geomancy (*fengshui*), considered by most China historians as superstitious or “magical” behavior, is treated by Douglas as a religious affair that ties the whole universe to the lives of human beings (ibid., 84–85).

The holistic and undifferentiated worldview articulated by Durkheim and Douglas initiates a new understanding of religion. Since they emphasize “instrumental, expressive, symbolic, and cultural” as fundamental characteristics of religion, their proposition challenges the “spiritual being” argument and includes many non-Judeo-Christian and non-Islamic religions. And they have certainly altered the way we look at Chinese religion in particular.

In his challenge to the emphasis on the supernatural factor, C. K. Yang defines religion as

the system of beliefs, ritualistic practices, and organizational relationships designed to deal with ultimate matters of human life—such as the tragedy of death, unjustifiable sufferings, unaccountable frustrations, uncontrollable hostilities—that threaten to shatter human social ties, and the vindication of dogmas against contradictory evidences from realistic experience. (C. K. Yang 1961, 1)
Like Durkheim, Yang suggests that “the essential function of religion was to provide a collective symbol” within a given community (ibid., 81). In defining religion, although he acknowledges the supernatural factor as an important component, he is equally interested in including “religious phenomena without supernatural expressions” (ibid.).

While these sociologists and anthropologists have contributed valuable insight on religion, they leave some questions unanswered. When they challenge the narrow sense of belief in spiritual beings,12 they have not suggested any other unique qualities that can distinguish religion from other cultural and social phenomena. Indeed, shaping the form of social relations and controlling human experience are the social functions of most cultural institutions, and expressiveness and instrumentality are not unique to religion. In studying religion at the turn of the twenty-first century, what can serve to distinguish religious activity from other issues such as morals, politics, and kinship in human society?

More recent scholarship on Chinese religious experience has shed more light on the issue in question. In his study of fortune-tellers in traditional Chinese society, Richard Smith (1991) reviews a variety of Qing dynasty divination techniques, such as geomancy, physiognomy, and dreams. Building on Emile Durkheim’s notion of collective representations and William Skinner’s theory of hierarchical regional systems,13 Steven Sangren demonstrates a holistic Chinese culture by looking at the concept of and rituals associated with “ling” (spirit, magical power). In doing so, he understands the power of supernatural entities “as a function of their mediating order and disorder with reference to the entire set of cosmological categories” (Sangren 1987, 230). In her recent study of the mid-Qing imperial ritual, the grand sacrifice, Angela Zito (1997) emphasizes the relationship between the emperor and cosmic forces such as Heaven and yin-yang as a focal point in understanding the nature of imperial sovereignty. Julia Ching examines the relationship between kingship and mysticism in Chinese history, and argues that the concept of human harmony with the cosmos “lie[s] at the very heart of Chinese wisdom,” a concept that represents “an integrated whole, an all-encompassing unity” (Ching 1997, xi). To be sure, these scholars have not put forth a definition of religion in their works, but they share a common assumption: while they do not limit their studies to superhuman beings, they primarily base their research on the existence of a superhuman world and the relationship between the spirit world and human beings. This preoccupation with superhuman force distinguishes their area of research from other social phenomena and scholarly disciplines.
In line with the work of these scholars, then, it can be argued that the essence of religious life is the belief in “superhuman force” and practices based upon this belief. This superhuman force, which might include either superhuman beings or non-beings, is believed capable of producing strong effects in human affairs. It is invoked by means of certain ritual patterns to achieve or prevent transformations in humans and their environment. In general, this concept of religion is composed of three fundamental elements. One of these elements is a belief system, a worldview that defines the cosmos and formulates meaning; the second is ritual practice, a set of repeatable, symbolic actions defining the normative human place in the cosmos; the final element is the relationship between superhuman forces and human beings, a pathway for human transformation. This approach prevents an overly narrow understanding of religion (as argued by Tylor and Spiro) or one that is too broad (as articulated by Durkheim and Douglas), and thus provides a workable conceptual framework for analyzing law and religion in Chinese history.

When Chinese history is observed on the basis of the foregoing definition of religion, rich religious meaning becomes readily apparent in Chinese cosmology, worldview, and practices that address fundamental structures and relationships within the cosmos. While cosmology has been envisioned rather differently by a variety of individuals and religious schools throughout Chinese history, Chinese legal cosmology—the belief system and practices that were promoted and endorsed by the imperial legal apparatus—presents the ruling elite’s understanding of the origin, structure, and function of the cosmos, including an envisioned world of spirits, the ruler’s role as Son of Heaven in mediating between Heaven (Tian) and human beings, and the dynamic interaction between the world of spirits and the human realm.

OUTLINE AND SOURCES

In order to make a systematic study of The Great Ming Code, this book first explores early Ming legal cosmology (chapter 2)—the ruling elite’s understanding of the nature and role of law in the cosmos—as the general intellectual background for law in the early Ming worldview. It illustrates how the ruling elite viewed law as a concrete embodiment of the cosmic order and based the Code on what they understood as heavenly principle and human sentiment. Violating the law, therefore, would be a transgression against “principle” (li), and law codes were considered moral textbooks with the dual function of education and transformation.
Chapters 3 to 5 illustrate how *The Great Ming Code* replicates the cosmic order; they include an analysis of the three major cosmic entities—the world of spirits (the cosmic parents), the realm of human beings (the cosmic children), and officialdom (representatives of the Son of Heaven who serve as mediators between spirit and human domains). Chapter 3 focuses on the world of spirits, touching upon official sanction for the worship of spirits such as Heaven and Earth, state control over popular religions like Buddhism and Daoism, and the prohibition of “heretical religions” like the White Lotus Sect. The differential treatment accorded these belief systems indicates that *The Great Ming Code* regulated ritual issues not only for behavioral control, but also to modify the spiritual orientation underlining human behavior. By promoting, regulating, and prohibiting different categories of ritual behavior, the early Ming ruling elite intended to provide spiritual guidance for their subjects, as well as to acquire political legitimacy.

In chapter 4, the second cosmic element, the human realm, is discussed. Borrowing anthropologist Mary Douglas’s concept of “social pollution,” this chapter introduces legal efforts seen in *The Great Ming Code* that were intended to create physical and cultural boundaries for human beings, and to suggest profoundly religious overtones in the prohibitions against transgressing those boundary lines. In this chapter, the official creation of boundaries based upon a cosmological worldview is examined, revealing a three-realm division of all under Heaven—i.e., “Zhongguo” (the Central Kingdom), the Ming empire, and the whole world. The Ming court redefined China in geographical and cultural terms: the former was identified with the Ming empire, and the latter, or “Zhongguo,” was only the territory where the Han Chinese resided. Hence, the Ming ruling elite conceptualized Zhongguo and the Ming as two separate geographical and cultural entities. Next, stipulations in the *Code* that construct a world order are examined. For geographical China, the Ming empire—the *Code* was designed to defend national borders, guarding against outside danger that threatened the purity of Chinese civilization. For cultural China, Zhongguo—the law aimed at extending Han values across regional boundaries to the entire Ming empire, so as to bring non-Han subjects in line with Han civilization. These legal projects reflect the worldview shared by the early Ming ruling elite: the superior Han Chinese and Ming empire (the yang force) versus the inferior non-Han ethnic peoples and foreigners (the yin force) in the cosmic order. The Ming saw it as their mission to uphold the yang force by shielding off, in Mary Douglas’s words, danger “pressing on external boundaries” (foreigners outside the Ming empire) and “in the margins of the lines” (non-Han ethnic groups within Ming territory).
In chapter 4, another dimension of early Ming efforts to establish boundaries is analyzed: the structure of Han society, “the internal lines of the system.” Here, a case study is presented on the purification of social customs as expressed in legal rules concerning marital relations; it is argued that while the ruling elite claimed to eliminate foreign-influenced customs with “the stinking smell of mutton” and to restore Chinese civilization to its former purity, they in fact extensively borrowed Mongol rules on marriage. This chapter shows that for the early Ming ruling elite, the concept of a Mandate of Heaven was not an abstract philosophical term; instead, it designated a concrete intellectual orientation with a social agenda primarily devoted to establishing a harmonious cosmic order, especially one that would positively affect the human realm. And *The Great Ming Code* served as an important instrument for transforming the human realm in accordance with these cosmic principles.

Chapter 5 deals with stipulations in *The Great Ming Code* designed to rectify the behavior of officials. In early Ming cosmology, the ruler served as a mediator whose task it was to maintain cosmic harmony between the spiritual and human realms by organizing human society. But the ruler could not see to everything himself; so he must rely on officials in order to care for “all under Heaven.” As the “arms and legs” of the ruler, officials were charged with responsibilities of cosmological significance. This chapter examines the duties prescribed for officials from Zhu Yuanzhang’s imperial perspective. According to Zhu, officials did not receive their posts from Heaven, but from the ruler who represented Heaven in order to govern the realm. A good official should, first, repay the ruler who granted him authority and wealth; second, he should repay any local deities who have bestowed superhuman blessings; third, he must repay the parents who gave him life; and his final task is to repay the common people, who support him with food and clothing.

By way of conclusion, chapter 6 recapitulates the religious nature and educational function of *The Great Ming Code*. It first reiterates the cosmological significance of the Code, and again contests the popular assumption that law in pre-Republican China was merely used as an arm of the state serving the end of social control, and that it was a secular tool to exercise naked power. Based on a holistic viewpoint, it argues that the Ming ruling elite envisioned the cosmos as an integrated unit; they saw law, religion, and political power as undifferentiated, which is remarkably different from the “modern” compartmentalized worldview. In serving as a cosmological instrument to manifest the Mandate of Heaven (to educate the people and transform society),
The Great Ming Code is replete with religious meaning. The final chapter sets forth the view that Chinese official cosmology was the philosophical foundation of legal culture throughout imperial Chinese history. An expression of cosmic principles, the legal apparatus endorsed, implemented, and protected the official interpretation of cosmic order. Law in pre-Republican China was not secular; rather, it represented a powerful religious worldview.

Before proceeding to the body of this study, three points on sources should be raised. First, this is a reinterpretation and reconstruction of the official legal cosmology reflected in The Great Ming Code. In analyzing this dynastic law code, both the Code and its commentaries are utilized. Since the texts of the three extant versions of the Code are nearly identical, the final version of 1397, which has been published in various editions (Langlois 1998, 211–13; Franke 1968, 184–87) and translated into English (Jiang Yonglin 2005), has been selected. Wherever a specific article from the Code is cited, the English translation is used. Two types of commentaries on the Code are employed here. One is the conventional exegesis of the historical background, intellectual context, and semantic meaning of the legal text (e.g., DLSY; JJFL; LJBY), the other is written in the form of either “panyu” (model verdicts) or “gaoshi” (model notices), which are often attached to various editions of commentaries on the Code (e.g., BLPX; LMBJ; ZPZZ). To be sure, most extant commentaries on the Code—except for He Guang’s Code with Commentaries and Explication of Questions (Lüjie bianyi)—were composed long after the Code was finalized; and, occasionally, the commentators did not concur as to the exact meaning of certain legal phrases. On the whole, however, these commentaries can be taken as valuable sources for comprehending the fundamental law of the Ming.

Second, this work represents a social and historical study of early Ming legal cosmology, which was the intellectual foundation for legal institutions designed to educate the people and transform society. Cosmology, nevertheless, is by no means a mere cluster of ideas; more significantly, it entails specific ways (e.g., ritual practices) of manifesting and realizing these ideas and visions. Therefore, on one hand, this study will not provide an extensive examination of early Ming legal practice; although there is some discussion of the enforcement of the Code (including Zhu Yuanzhang’s harsh penalties) in the work, the primary aim is to examine the worldview of the ruling elite. On the other hand, although this book does not focus on the enforcement of the Code or its impact on Chinese society, it still includes law cases and other materials collected from sources like dynastic records, official histories, and case collections that offer lively accounts of the dynamic legal process involved in manifesting the Mandate of Heaven.
And third, this is a study of the cosmic and social order envisioned by the early Ming ruling elite—government officials headed by the Ming founding emperor Zhu Yuanzhang. The focus is on materials that recount the words and deeds of members of the upper class rather than commoners. To discern collective viewpoints on law and cosmology, individual writings as well as other sorts of materials are examined, including privately published notes and observations known as "jottings" (biji). This kind of study of collective mentality runs the risk of ignoring different voices among the ruling party and different meanings that a single person’s ideas might bear at different times and places. Nevertheless, in the wide range of documents collected there is clear evidence that common themes exist in the ideas shared by Zhu and his officials, and that these shared ideas were often forcefully expressed in their disputes over government policies and law case judgments. It is the ruling elite's common beliefs and identity that established the intellectual background for *The Great Ming Code*. 

*Introduction: Religion and Chinese Legal Cosmology*