

# LAW CODES IN DYNASTIC CHINA



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*A Synopsis of Chinese Legal History in the  
Thirty Centuries from Zhou to Qing*

John W. Head  
and  
Yanping Wang

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## PREFACE

I began writing this book to fill a gap. In my study of Chinese law, largely in the context of teaching a course called “Comparative Law” for about a dozen years, I have found no adequate English-language legal history of China that aims at telling the entire story in a nutshell. In hopes of conveying to my students some of the peculiar grandeur of that story, and to learn it better myself, I embarked on the adventure that eventually became this book.

It proved to be a more challenging adventure than I anticipated. More than once I nearly concluded that the sheer length and complexity of Chinese legal history made it impossible to capsule in a single book, except perhaps in a way that would be too shallow to be useful.

Fortunately, I hit upon two strategies to make the task manageable. First, I enlisted the help of my former student and now colleague, Ms. Yanping Wang. She is one of the very few people in the world who have earned full law degrees both in the United States and in China and have engaged in extensive legal practice in both countries. Her knowledge of Chinese legal history as revealed through Chinese language sources has given this book an authenticity that would have eluded me working alone. In addition, her cross-cultural legal training has served as a valuable corrective influence; she has ferreted out exaggerations or sloppy scholarship in both the Chinese-language and the English-language sources on which we have relied—yielding, we hope, a book that sacrifices nothing in the way of accuracy by striving for brevity.

My second strategy for overcoming the seeming impossibility of summarizing the whole of Chinese legal history in a one-volume book has been to select a single centralizing theme—codification—and to tie the entire story to it. This theme appeals to me for several reasons. For one thing, I am engaged in a more general research program to examine the role of legal codification in various countries and cultures, partly in order to illuminate why the experience with legal codification differs so much from one legal tradition to another.\*

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\* A product of that research program takes the form of a recently published article comparing selected codes in Chinese law, civil law, and common law. See John W. Head,

More importantly, legal codification is a natural theme to use in studying China. Legal codes have played a central role in Chinese law for at least two and a half millennia, although it has been a dramatically different role from that played by codes in the civil law tradition, such as Justinian's Code of the sixth century CE or Napoleon's of the nineteenth century. And, happily for researchers in this area, the 1990s saw important new discoveries and scholarship in the area of Chinese dynastic law codes, including the publication in English of the two most important such codes—those of the Tang dynasty, as translated by Professor Wallace Johnson of the University of Kansas, and of the Qing dynasty, as translated by Professor William Jones of Washington University in St. Louis.

Accordingly, it has seemed appropriate to Ms. Wang and me that we focus on legal codification as a central element of Chinese legal history. In doing so, we have adopted a straightforward chronological approach. The story starts with the Zhou dynasty (beginning in the 11th or 12th century BCE) and ends with the collapse of the Qing dynasty at the beginning of the twentieth century. (For reasons that have been explained elsewhere, the central contours of China's legal system, including the role of codification, still survive today in the People's Republic of China, so it would be a mistake to regard a study of dynastic Chinese legal history as anachronistic or irrelevant.)

In telling this abbreviated story of Chinese legal history, Ms. Wang and I have drawn liberally from a broad range of scholarship by experts whose work, based in their study of primary materials, vastly outshines ours. However, our aim is different from theirs. We seek breadth, not depth. Our goal is to paint a simple picture of the majestic sweep of China's legal tradition—allowing it to “emerge from the works of many scholars when surveyed and connected by a single pair of observers,” to paraphrase the words of one of the authors we have relied on in writing this book. And in striving to meet that goal, Ms. Wang and I have drawn also on our own legal training and experience in several different legal systems to give us a perspective that is different from those of others on whose work we have relied, most of whom are not lawyers. (Like Ms. Wang, I also have studied and practiced law in more than one country.)

Ms. Wang and I wish to express our gratitude to several friends and colleagues who have provided valuable assistance to us in bringing this book to completion and publication. These include in particular Professor Wallace

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“Codes, Cultures, Chaos, and Champions: Common Features of Legal Codification Experiences in China, Europe, and North America,” 13 *Duke Journal of Comparative and International Law* 1 (2003).

Johnson, Professor Raj Bhala, and Rob Mead at the University of Kansas, Professor R. Randle Edwards of the George Washington University, and Professor William Jones of Washington University in St. Louis. Our thanks also go to several research assistants who have devoted considerable time to this project, including Mikas Kalinauskas, Alison Ranson Anway, and Jeffrey Li. We also appreciate the help and patience that our families have shown while we worked to prepare this book (with a special thanks to my son Austen for helping me with the maps). Research funding support from the University of Kansas is also gratefully acknowledged.

J.W.H.  
8 March 2005



Map 1—Modern China, with key rivers and neighboring lands



Map by J.W. Head, based on Bradley Smith and Wan-go Weng, *China—A History in Art* 2–3 (1973).

Map 2—Modern China, with provinces and neighboring lands



Map by J.W. Head, based on J.A.G. Roberts, *A Concise History of China* xxv (1999).