

14 Religion in the Law Codes of the Ming and Qing Dynasties (1552)

Introduced and translated by Hubert Seiwert

Introduction

Beginning with the Qin dynasty (221–206 BCE), Chinese states were administered by a bureaucracy that had to observe the laws promulgated in the emperor's name. While most dynasties' law collections have survived only in part, complete versions of the legal codes of the Ming (1386–1644) dynasty, which was then largely transferred directly into the code of the Qing dynasty (1644–1911), still exist.¹ The Ming and Qing codes provide an insight into the normative system that ruled Chinese society until the end of the empire in the early twentieth century. It was permeated by Confucian morality, combined with the legalist attitude of enforcing the law through harsh punishments.

Legal texts do not describe social reality, however. Penal laws, in particular, do not reveal what is, but what ought or ought not to be (indeed, it would be very rare and unusual to legislate against behaviours unseen in society). They are normative texts, intended to implement social order according to the values and interests of the ruling elites. Legal terminology discloses a conceptual framework used to grasp the variety of social phenomena, and make them conceptually and practically manageable by the administration. In traditional China, religion was not part of the legal terminology, indicating that the modern distinction between religion and secular spheres of society was not considered significant from a legal perspective. Nevertheless, some rules in the Ming and Qing codes refer to matters that, in modern Western terminology, would be classified as 'religious.' Since the penal code only mentions the offences and their punishments, a Ming-era commentary on the laws concerned has also been translated, explaining the reasons for the prohibitions.

The first of the laws translated below forbids the building of new Buddhist or Daoist monasteries, and the private ordination of monks and nuns. Also translated is a commentary on the law, which reflects the views of officials belonging to the Confucian elite, and reveals a deep mistrust of the two religions. The law is part of the regu-

¹ For translations of the laws of both codes, see *The Great Ming Code: Da Ming Lü*, Asian Law Series 17 (Seattle, WA: University of Washington Press, 2005), Jiang Yonglin, trans. *The Great Qing Code* (Oxford: Clarendon Press, 1994), trans. William C. Jones, assistance Tianquan Cheng and Yongling Jiang.

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lations on households (*hu lǜ* 戶律), which were the basic units of taxation.^{II} Buddhist and Daoist clergy enjoyed a special legal status, conferred through ordination. They were exempted from some of the obligations of ordinary household members, such as paying tax, or corvée service.^{III} Thus, the law distinguished the two religions, their clergy, and their institutions from other spheres of social life, and subjected them to their own specific regulations.

The second of the laws translated below is from the section on rituals (*li lǜ* 禮律). It deals with practices that, from a modern perspective, are religious. Its target is teachers who attract followers, and popular sects that have emerged from such communities. The fact that the law threatens the leaders of such sects with the death penalty shows that these religions were considered a great danger to the state. The commentary on the law reveals a general mistrust of religion, even including famous monks highly esteemed by Buddhists. The motives behind such suppression were political in nature, rather than being based on religious intolerance, however. The primary concern of the law was to prevent the formation of associations that could eventually turn into mass movements that might challenge the political order. As the commentary shows, uprisings connected with religious movements were deeply rooted in the historical memory of the political elites (and remain so to this day).

Bibliographical Information

Da Ming lǜ shiyi 大明律釋義 [The Statutes of the Great Ming with Commentaries]. Compiled by Ying Jia 應價, printed 1552. Facsimile reprinted in *Xuxiu siku quanshu, shi bu, zhengshu lei* 續修四庫全書, 史部, 政書類, no. 863. Shanghai: Guji chubanshe, 1995–2002.

Page numbers refer to the original pagination in the facsimile.

They are given as follows: “j. 4, p. 4b” means “*juan* 卷 4, page 4 *verso* (i.e., the left side of the reprinted facsimile). ”

^{II} Laws regulating the status, rights, and obligations of the Buddhist and Daoist clergy existed from early on. Copies of the comprehensive regulations of the Song dynasty have survived intact. For a translation, see Werner Eichhorn, *Beitrag zur rechtlichen Stellung des Buddhismus und Taoismus im Sung-Staat* (Leiden: Brill, 1968).

^{III} Corvée service is unpaid forced labour undertaken for a fixed and finite time – usually a prescribed number of days.

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Private Establishment of Buddhist and Daoist Convents and Private Ordination of Buddhist and Daoist Clergy (*Si chuang anyuan si du sengdao* 私剏庵院私度僧道)

The law concerns the following cases: Apart from already existing Buddhist and Daoist monasteries and nunneries, it is forbidden to establish additional ones on private initiative. Whoever violates this law shall be sentenced to a hundred strokes of the heavy bamboo, Buddhist and Daoist monks shall [in addition] be relegated to lay status, and exiled to a distant border region for military service. Buddhist and Daoist nuns shall become state slaves.

If Buddhist or Daoist monks without an official ordination certificate wear the [Daoist] hairstyle, or shave their heads [like Buddhist monks], the penalty shall be eighty strokes of the cane. If the head of the household instigated the offence, [j. 4, p. 4b/5a] he shall also be punished. If the abbot of the monastery or the teacher has carried out the private ordination, they shall receive the same punishment, and are to be relegated to lay status.

The commentary explains: Buddhist and Daoist monasteries and nunneries are places where Buddhist or Daoist monks or nuns live. They are possible places of extremist (*yiduan* 異端)^I teachings, and practices that should be forbidden. However, the law considers that, these days, completely removing monasteries where Buddhists or Daoists have lived for a long time would probably provoke a rebellion. Therefore, it only determines that, excluding already existing locations, it is forbidden to build new ones. The offence of wearing a Daoist hairstyle or shaving one's head [as a Buddhist monk or nun] without having received an official certificate of ordination, amounts to separating oneself from ordinary households. The names of Buddhist and Daoist monks have already been expunged from the registers of their native places. It is probably difficult to detain and send them immediately to military service. For this reason, the law first says that they must be returned to lay status, and, after that, sent to a frontier region to serve as soldiers. When Buddhist or Daoist monks have been returned to lay status, the monasteries and nunneries that have been privately constructed shall be confiscated, and transferred to other uses.

^I HS: The term *yiduan* 異端 is usually translated as “heterodox,” but it is not confined to deviant teachings (*doxa*). It literally means “different and extreme.” Its connotation seems to be similar to the modern Chinese concept of extremism (*jiduanzhuyi* 极端主义), which is also applied to some religions.

Prohibition of Magicians and Heterodox Practices (*jinzhi shiwu xiexu* 禁止師巫邪術)

The law concerns the following cases: male and female magicians (*shiwu* 師巫) who pretend to summon heterodox spirits (*xie shen* 邪神); the writing of magical formulas and casting of spells over water;^{II} spirit-writing (*fuluan* 扶鸞); the invocation of saintly persons; people who call themselves *duangong* 端公 (“High Lord”), *taibao* 太保 (“Great Protector”), or *shipo* 師婆 (“Master Old Lady”);^{III} societies absurdly calling themselves Maitreya, White Lotus, or Venerable of Light Teachings;^{IV} the White Cloud Tradition and similar societies;^V all other forms of depraved ways that disturb the correct teaching (*zuodao luanzheng* 左道亂正); or the concealing of [illicit] drawings and images; the burning of incense when assembling adherents to gather at night and disperse at dawn, under the pretext of practicing good deeds to incite and mislead the populace.^{VI} [In all these cases] the leaders will be sentenced to strangulation, the followers to a hundred strokes of the heavy bamboo and exile to three thousand *li*.^{VII} [j. 11, p. 6a/6b]

If soldiers or civilians dress and adorn images of gods, and beat gongs and drums in processions to welcome these gods (*yingshen saihui* 迎神賽會), the punishment will be a hundred strokes of the heavy bamboo for the leader [of this event]. If the head of the local community knows [of the event] but is not its leader, the punishment shall be forty strokes of the light bamboo. This prohibition does not apply to the local population’s appropriate spring and autumn festivals.

The commentary explains: Those who pretend to invoke heterodox spirits also spread these spirits’ [alleged] words. Writing magical formulas, casting spells over water, and spirit writing is all the same kind, because it implies praying to [alleged] saintly persons and spreading the words of spirits. *Duangong*, *taibao*, *shipo*, Maitreya Buddha, White Lotus Society – these all correspond to the teachings of Huiyuan from

II HS: The expression alludes to a practice attributed to Zhang Jiao 張角 (d. 184 CE), the leader of the Daoist Yellow Turban rebellion, who wrote magical formulas and cast spells to heal the sick.

III HS: The terms *duangong*, *taibao*, and *shipo* are some of many vernacular titles common in different regions, referring to practitioners who, in Western terminology, would be called ‘shamans,’ ‘mediums,’ ‘magicians,’ ‘ritual masters,’ etc. The translations given here are tentative.

IV HS: Maitreya Teaching (*Milejiao* 彌勒教) and White Lotus Teaching (*Bailianjiao* 白蓮教) were stereotypical names for popular religious sects during the Ming and Qing dynasties. Venerable of Light Teaching (明尊教) refers to sects connected with Manichaeism.

V HS: The White Cloud Tradition (*Baiyunzong* 白雲宗) was a lay Buddhist sect originating in the Song dynasty.

VI HS: This is a standard formulation used to characterise folk religious communities outside the recognised structures of Buddhism and Daoism, which were seen by the authorities as illegitimate, and a possible source of rebellion.

VII HS: Three thousand *li* denotes a distance from the capital. Though one *li* has now been standardised as 500 metres, its historical value fluctuated across the eras.

the Jin dynasty.^{VIII} So too does the worship of Amitābha Buddha, the belief in the eighteen dragon kings (*shiba longtian* 十八龍天), vegetarian eating, and the recitation of the Buddha's name. The male and female followers of the Venerable of Light Teaching observe vegetarian precepts, and follow the law of Mani, the Buddha of Light. The White Cloud Tradition is one of the seventy-two branches of Buddhism. They are the same kind of people as Huangmei, Caohan and Linji.^{IX} If a teaching (*dao* 道)^X worships the left [j. 11, p. 6b/7a] and is not the correct teaching, it is called [teaching of] the left.

The common people are stupid, and can easily be misled and agitated. During the Later Han dynasty, Zhang Jiao^{XI} 張角 [d. 184 CE] could propagate heterodox practices (*xieshu* 邪術), and his followers spread throughout the empire; the outcome was the fall of the house of Han. For this reason, concerning all such associations and teachings of the left that disturb the right by concealing the images of heterodox gods, burning incense when assembling adherents, gathering at night and dispersing at dawn under the pretext of practising good deeds to incite and mislead the populace, the law provides for death by strangulation to the leaders, and to the followers a hundred strokes of the heavy bamboo and exile to three thousand *li*.

VIII HS: The text states Jin Huigong 晉慧公 (Lord Hui of the Jin Dynasty), which refers to the famous monk Huiyuan 慧遠 (334–416). On Huiyuan, see also the introduction to the controversy over the relationship between Buddhism and state in the fourth century, in this volume (p. 110).

IX HS: The three people named here are famous Buddhist monks of the Chan school. Huangmei 黃梅 refers to Hongren 弘忍 (601–674), the sixth patriarch, who was born in Huangmei; Linji 臨濟 refers to Linji Yixuan 臨濟義玄 (d. 866), the eleventh patriarch. Caohan 曹漢 could not be identified.

X HS: The word *dao* 道 has a variety of meanings. The basic meaning is “way” or “path.” In Daoist contexts, it usually refers to the impersonal source of all being, and is often left untranslated as “Dao.” However, *dao* is also used metaphorically, to refer to the way or path of specific teachings, such as the “way of the Buddha” (*Fodao* 佛道). As Robert Company has shown, in such contexts, the term comes close to the modern concept of ‘religion’ (Robert F. Company, “On the Very Idea of Religions [In the Modern West and in Early Medieval China],” *History of Religions* 42, no. 4 (2003): 287–319, 300–305) In the present text, *zuodao* 左道 (“ways of the left”) has the negative connotation of depraved teachings, or practices deviating from the right way.

XI HS: Zhang Jiao 張角 [d. 184 CE] was the leader of the Yellow Turbans rebellion.