

# Sources for Teaching about Chinese Law and Politics

By Kristin Stapleton

**B**ureaucracy is arguably the most significant Chinese contribution to world history. Chinese rulers interested in maintaining their authority learned early on the value of closely monitoring a cadre of trained civil servants whose job it was to monitor closely the movements and activities of a vast population.

The record-keeping impulse of the Chinese bureaucrat has supplied us with extremely rich sources for understanding the theory and practice of Chinese law and politics. Here, I introduce a few of the most useful sources for teaching in four general areas: 1) philosophical principles underlying imperial law and politics, 2) imperial codes and institutions, 3) law and politics in late imperial popular culture, and 4) post-imperial, revolutionary, and contemporary law and politics. Not all periods of Chinese history are covered equally—due in part to the research interests of those who have translated the sources into English. The liveliest debates about the nature of Chinese law and politics at present concern the Qing period (1644–1911) and the post-Mao era (1976 on), but all periods supply abundant research materials. I have included brief descriptions of short “classroom friendly” primary source documents in the second part of this essay.

## Philosophical Principles Underlying Law and Politics

The officials and bureaucrats who staffed imperial governments in China between the third century BCE and 1911 studied the ethical systems and institutional ideals found in key texts that Confucius (551–479 BCE) was understood to have valued. These include chronicles of the Zhou dynasty (circa 1050–256 BCE), as well as the *Book of Changes* (Yijing or I-Ching) and *Book of Poetry* (Shijing). Essays on human nature and the social order by followers and antagonists of Confucius also formed part of the education of the would-be ruler in imperial times, in addition to Confucius’ own teachings in the *Analects*. One of the most concise and lucid introductions to the worldview promoted by these early texts may be found in Frederick W. Mote’s *The Intellectual Foundations of China* (McGraw Hill, 1988). Most of the texts have been translated into English and are available in various editions. Two useful sourcebooks provide excerpts from the most significant: William Theodore De Bary, et al, eds., *Sources of Chinese Tradition*, vol. 1 (Columbia University Press, 2000) and Patricia Buckley Ebrey, ed., *Chinese Civilization: A Sourcebook* (The Free Press, 1993).

Buddhist ideas began influencing Chinese politics and society in the second century CE and continued to do so throughout the imperial era, especially during the Tang dynasty (618–906). Buddhist belief could justify withdrawal from ordinary society and family life into a community of the faithful (*sangha*), which had its own conceptions of law (*dharma*) and a very different sort of politics from that of the imperial court. The De Bary and Ebrey sourcebooks include numerous Buddhist texts. Whereas De Bary emphasizes translations of texts presenting the teaching of the Buddha (*sutra*), Ebrey includes more documents that show how monastic life was organized, as well as how lay Buddhists could appeal in times of trouble to higher authorities than the imperial government (see especially chapter 22).

## Imperial Codes and Institutions

The Tang Code, a compendium of laws in force during that dynasty, set the pattern for subsequent dynastic codes. An English translation by Wallace Johnson was published by Princeton University Press in two volumes (1979 and 1997). The second volume includes a long list of punishable behavior, as well as the punishment to be meted out for it. The Qing Code has also been translated (William C. Jones, trans., *The Great Qing Code: A New Translation*, Oxford University Press, 1994). Legal cases recorded in other Qing legal texts have been translated and made available in various ways. Columbia University’s ExEAS program of Web-based resources for teaching about Asia includes a unit with eight such cases translated by Ming-te Pan (see <http://www.exeas.org/resources/law-society-east-asia.html>). Derk Bodde and Clarence Morris translated many of the cases from the Qing *Xing’an huilan* (Conspectus of Legal Cases) in their volume *Law in Imperial China* (University of Pennsylvania Press, 1973). Both the provisions of the Codes themselves, and the details of the cases that served as precedents for local magistrates, can inspire very interesting classroom discussions of comparative legal principles.

The magistrates who presided over local courts in imperial times had to be familiar with the Code, but they also relied heavily on the advice presented in magistrates’ handbooks. Many of these exist from the Ming (1368–1644) and Qing eras, but one early Qing handbook has been published in English translation. *A Complete Book Concerning Happiness and Benevolence* (trans. Djang Chu, University of Arizona Press, 1984) was written late in the seventeenth century by an experienced magistrate named Huang Liuhong (Huang Liu-hung). Huang’s handbook dwells on the need to mete out justice fairly and effectively, but also shows how local politics can influence legal proceedings. Excerpts from the book are very useful for class discussions of early Qing law and politics. Jonathan D. Spence drew on one of Huang’s cases, that of the murdered Woman Wang, for his lively exploration of Qing local history (*The Death of Woman Wang*, Penguin, 1998).

In the Confucian-influenced imperial system, families and lineage organizations were seen as the main defenders of the social order. Expectations for women’s behavior appeared in widely distributed texts, such as the Tang-era *Book of Filial Piety for Women*. That and other interesting material is translated in Susan Mann and Yu-Yin Cheng, eds., *Under Confucian Eyes: Writings on Gender in Chinese History* (University of California Press, 2001). Ebrey’s *Chinese Civilization* includes a valuable translation of a Ming-era lineage code of conduct (chapter 54).

## Law and Politics in Late Imperial Popular Culture

Popular attitudes toward law and politics are reflected in some of the fiction of the Ming and Qing periods. In the opening chapters of the famous eighteenth-century novel *Dream of the Red Chamber* (also published under the titles *Dream of Red Mansions* and *The Story of the Stone*), a wealthy man who murdered a rival in love manages to escape punishment with the help of his well-connected family. Ebrey’s *Chinese Civilization* includes a short excerpt from another



Cover of *Li Fengjin: How the New Marriage Law Helped Chinese Women Stand Up*, trans. Susan Glosser (Opal Mogus Books, 2005), from a Chinese pamphlet about the Marriage Law of 1950.

work of fiction that more directly addresses issues of law and politics. *Water Margin* (excerpted in chapter 53) is a Ming novel about honorable bandits who attack corrupt officials.

The genre of detective story became popular in the late Ming, often featuring the fictional exploits of real magistrates from earlier dynasties. The Dutch diplomat Robert van Gulik translated three of these stories under the title *Celebrated Cases of Judge Dee* (Dover, 1976), before writing more Judge Dee cases out of his own head. Another famous upright magistrate, Judge Bao of the Northern Song era (960–1127 CE), is featured in movies and a TV series in China, but has not made much of an appearance yet in English-language materials.

#### Post-imperial and Revolutionary Law

Sun Yat-sen and other advocates of the overthrow of the imperial system in the early twentieth century hoped to see the implementation of a constitutional system that resembled those in place in the US, Western Europe, and Japan. The painful struggle to transform China's legal and political institutions in the years before and after 1911 is documented very well in many English translations. Perhaps the best sourcebook for this period is Pei-kai Cheng, et al, eds., *The Search for Modern China: A Documentary Collection*

(W.W. Norton, 1999). This book was produced as a companion to Jonathan Spence's textbook of the same title, but is valuable on its own, as well.

Mao Zedong's views on politics and law may be analyzed based on the essays translated in Timothy Cheek, ed., *Mao Zedong and China's Revolutions: A Brief History with Documents* (Palgrave, 2002), particularly "On New Democracy" and "On the Correct Handling of Contradictions among the People." Feng Jicai's *Ten Years of Madness* (China Books and Periodicals, 1996) presents personal accounts of the politics and law(lessness) of the Cultural Revolution era (1966–76). Of particular interest is the story of a worker found guilty of murder who serves ten years in prison before his verdict is overturned ("I Refuse to Admit I Was a Sacrificial Object," 143–170).

The post-Mao years have been another time of major transition in the arena of law and politics. Film director Zhang Yimou's *Qiu Ju* (1992) offers a story of a village woman seeking justice at a time in the 1980s when few people were certain what their legal rights were and whether the formal legal system could serve the people. Some school and public libraries may still have the VCR set of "The Heart of the Dragon," a 1988 BBC production that surveyed daily life in

post-Mao China. Episode ten, “Mediating,” follows a divorce case and shows how formal and informal legal institutions functioned in what now seems like the distant past.

Much of recent Chinese legal reform concerns commercial law. When China joined the World Trade Organization at the end of 2001, it agreed to overhaul aspects of its legal system to bring the system in line with international legal norms. Many people inside and outside China are interested in monitoring the progress made in this effort. One useful source on both commercial and civil law is the “Virtual Academy” of the US government’s Congressional-Executive Commission on China (<http://www.cecc.gov/pages/virtualAcad/index.phpd>), which includes links to many reports on Chinese legal reform issued by the United Nations and other international bodies.

Donald C. Clarke of George Washington University maintains the “Chinese Law Prof Blog” at [http://lawprofessors.typepad.com/china\\_law\\_prof\\_blog/](http://lawprofessors.typepad.com/china_law_prof_blog/). It provides commentary on recent developments in Chinese law and politics.

#### Short Documents to Assign to Students

The following primary sources in translation illustrate some of the key themes and principles in the history of Chinese law and politics. They can be assigned for class discussion or take-home essays in world history or government classes.

“The Metal Bound Box,” pages 6–7 in Patricia Buckley Ebrey, ed., *Chinese Civilization: A Sourcebook* (The Free Press, 1993). Three pages.

Rulers need to justify the political systems they preside over. Early in China’s Zhou period (c. 1050–256 BCE), its kings spread the idea that they had received a mandate from heaven to replace the corrupt Shang dynasty. Heaven and the royal ancestors communicated with the Zhou rulers in various ways. The story of the Metal Bound Box shows the Duke of Zhou seeking the aid of the ancestors to protect his brother, the king. It also describes the response he received because of his great virtue. This short piece from the *Book of Documents*, which was particularly valued by Confucius, can be used to discuss early Chinese conceptions of virtuous rule and the relationships between the king, his ancestors, and Heaven.

“Eight Cases and Rulings from the Qing” translated from various sources by Ming-te Pan and published on the ExEAS Web site at <http://www.exeas.org/resources/eight-cases.html>. One page.

Case Five of these eight cases is that of a father who strangled his son to death in 1800 because the eleven-year-old boy stole from the neighbors and ignored his father’s instructions. The translated case record shows that Qing magistrates paid careful attention to how the legal statutes defined crimes and determined punishments. If the boy had actually scolded or hit his father, the father would not have been punished for killing him; however, this father was sentenced to beating because his son had only been disobedient. This case illustrates how the legal system supported the authority of the family head, although not unconditionally.

Two short essays on the role of the people in politics from Pei-kai Cheng, et al, eds. *The Search for Modern China: A Documentary Collection* (W.W. Norton, 1999). One, Zhang Zhidong on the Central Government, 1898, 181–184. Two, Tongmeng Hui Revolutionary Proclamation, 1907, 202–206. Nine pages.

These two essays illustrate well the reformist and revolutionary approaches to changing China around the turn of the twentieth century. Zhang Zhidong was one of the most distinguished officials of the late Qing. In this essay, he calls on Chinese people to rally around the emperor and criticizes the idea that a parliament can solve China’s problems. Americans, he points out, criticize their own Congress for its corruption and inefficiency. Sun Yat-sen’s Tongmeng Hui (Revolution Alliance), on the other hand, calls the emperor a foreign invader and demands the establishment of a republic with equal rights for all citizens. Students can be asked to compare the two perspectives and discuss which Chinese at the time would be most likely to support one or the other.

Mao Zedong, “On the People’s Democratic Dictatorship,” published in his *Selected Works*, volume 4, available online at [http://www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4\\_65.htm](http://www.marxists.org/reference/archive/mao/selected-works/volume-4/mswv4_65.htm). Thirteen pages.

In this essay written in 1949, Mao lays out his justification for denying political rights to “reactionaries” (without identifying them very clearly) and defines what he means by “democratic dictatorship.” Many of his most important ideas and conceptions of history and the role of the Communist Party appear in this source.

*Li Fengjin: How the New Marriage Law Helped Chinese Women Stand Up*, edited and translated by Susan Glosser (Opal Mogus Books, 2005), <http://www.opalmogusbooks.com/>. Forty-two page public education comic book published in China in 1950.

The story of a poor girl sold into marriage with a brutal man is told in comic strip fashion in this publication from 1950. Glosser translated the text and provides a good introduction that explains that marriage reform was a common goal of both the Nationalists and Communists. An appendix provides a translation of the Marriage Law of 1950 that mandated freedom of choice in marriage and divorce. The pamphlet was originally produced as a way of teaching barely literate people about the provisions of the Marriage Law. It will provoke discussion of a range of topics related to marriage customs and Chinese government attempts to change them.

A vast body of translated material makes it easy to bring the history of Chinese law and politics into the classroom. From the wisdom of Confucius to the detail of a Qing legal case, these sources are bound to excite the imaginations and critical faculties of your students. And, you can tell them to thank the Chinese bureaucrats for preserving so much of their historical record. ■

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