

# The Great Qing Code:

## LAW AND ORDER DURING CHINA'S LAST DYNASTY

THE GREAT QING CODE CONTAINED THE COLLECTION OF LAWS WRITTEN OVER A PERIOD OF MORE THAN 2,000 YEARS BY CHINA'S RULING DYNASTIES. THE QING, CHINA'S LAST DYNASTY, BROUGHT THE CODE TO ITS ULTIMATE FORM.

China's first laws emerged from customs, traditions, and declarations by regional rulers. The first written code of laws appeared in 536 B.C. The purpose of the code was to control the people and maintain order.

In 221 B.C., the Chin Dynasty arose and established the first centralized Chinese empire ruled by an emperor. This accomplishment was greatly aided by a law code written by Chin officials called "Legalists." Their idea was to eliminate special privileges for those of high status and treat everyone equally under the law, thus protecting the weak from the strong. The Legalists also believed in harsh punishments for law violations to prevent crime and disorder in society.

The followers of Confucius (551–478 B.C.) opposed the Legalists. Confucians taught that the emperor, family ancestors, senior relatives, and those of higher rank, such as government officials, should be treated with great respect. Therefore, the penalties for offenders should differ, depending on their family and social ranking.

Confucians also rejected mandating harsh punishment for each crime. They favored making the punishment fit the seriousness of the offense based on the circumstances of a case.

Over the centuries, Legalist and Confucian legal principles merged in the laws approved by each emperor. The first comprehensive law code was produced during the Tang Dynasty in A.D. 653. After that time, each ruling dynasty revised and added to the code of the previous dynasty. China also developed a judicial system of local courts and an elaborate criminal review procedure.

### Qing Dynasty in 1820



The Qing came from Manchuria, in the northeast, which contained the provinces of Heilongjiang, Jilin, and Liaoning.

### The Qing Dynasty

The Qing (pronounced "Ching"), China's last dynasty, ruled from 1644–1912. The Qing originated in Manchuria, a land northeast of China. In the early 1600s, Manchuria was a possession of China ruled by its Ming Dynasty. In 1636, Manchu leaders drove the Ming out of Manchuria and proclaimed their own Qing Dynasty to rule the country.

In 1644, the Manchus invaded China during a massive peasant revolt against the Ming, which caused the emperor to commit suicide. The Manchus crushed the revolt, occupied the capital (now called Beijing), and established the Qing as China's new ruling dynasty. Over the next 150 years, Qing armies conquered the rest of Ming China and expanded China's control over Taiwan, Mongolia, Tibet, and Central Asia.

Meanwhile, Qing emperors restored order throughout China and put Chinese and Manchu officials together to run the empire's bureaucracy. The highest officials, however, were always Manchu.

The Qing began work on their code of laws in 1646 when the emperor adopted the Ming Code. Changes and new laws were added for the next 100

years. In 1740, Emperor Qianlong approved the *Statutes and Sub-Statutes of the Great Qing* known today as the *Great Qing Code*.

### The Great Qing Code

The *Great Qing Code* of 1740 established the ultimate format of China's criminal and civil laws, which included laws reaching back more than 2,000 years. The *Code* was basically a set of instructions to local officials, known as magistrates, as well as to higher authorities. These instructions attempted to state the punishment for every possible offense that the emperor believed was necessary to maintain law and order.

At first glance, the *Code* was a "book of punishments" as the Legalists would have liked it to be. But in practice, the judicial system focused on the facts of cases and the wording of laws in order to make the punishment fit the offense, as the Confucians preferred.

The first part of the *Code* began with "The Five Punishments." This was a schedule of the traditional penalties used throughout the *Code* for both criminal and civil law violations. They were ranked by severity:

1. The lightest penalty was a beating with the **light bamboo stick**. There were five degrees from 10 to 50 strokes. Its purpose was to physically punish and also to make one feel ashamed.
2. The next level of punishment was beating with the **heavy bamboo stick**. The degrees ranged from 60 to 100 strokes. (The number of strokes was later reduced by the Qing after the dimensions of both the light and heavy bamboo beating sticks were enlarged.)
3. **Penal servitude** required forced labor in a region different from one's home province. Its purpose was to enslave and disgrace the law violator. This punishment involved an amount of time, ranging from one to three years, plus 60 to 100 strokes of the heavy bamboo stick. There were no prisons, only lockups where accused persons and sometimes even witnesses were held pending the outcome of a case.
4. **Exile for life** was considered a severe penalty since it removed a person from family and rituals at the graves of ancestors. The degrees of this punishment were based on how far from home the convicted person had to go (about 700 to 1,000 miles) plus 100 strokes of the heavy bamboo stick. This penalty was sometimes used by the emperor because "he cannot bear to inflict the death penalty."
5. The **death penalty** originally had two degrees: strangulation with a cord and beheading. But the Qing added a third degree of death by "slicing." This was a slow death by numerous cuts to the body followed finally by beheading. It was reserved for especially wicked crimes such as treason and murdering a parent or grandparent. Death penalty sentences were either "immediate" or "delayed" until the annual Autumn Court met to confirm or recommend a reduction of sentence to the emperor. The emperor had to approve all death penalty sentences.

There were other punishments in addition to the traditional five. These included whipping, wearing a wood



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A depiction of the punishment of a beating with the heavy bamboo stick.

collar, tattooing, and paying a sum of money to substitute for a sentence called for by the *Code*. The substitution option usually just applied to women, those over 70, children under 16, and government officials.

The *Code* contained nearly 4,000 punishable offenses. Over 800 called for the death penalty, although many condemned lawbreakers received reduced sentences after their cases were reviewed by higher authorities and the emperor.

The *Code's* statutes (laws) were not organized by subject. Instead, they were placed under the name of each government department to which they applied. The departments included administration, revenue and some civil law matters, rituals, the military, public works, and the Board of Punishments (which handled criminal matters). The *Code* contained 436 statutes and hundreds of sub-statutes.

One of the key principles of the *Code* was the Confucian idea that senior members and males within a family held superior status. For example, the punishment for a son striking a parent was beheading. But there was no penalty for a parent striking a son unless the son died. Even then, the penalty was less than death.

A magistrate had to tie his verdict and punishment to a statute in the *Code*. When no statute directly applied to a case, the *Code* advised the

magistrate to sentence by *analogy*. This meant that the magistrate had to find a statute or sub-statute in the *Code* that came close to describing the act in the case and apply its punishment.

The magistrate might also choose to sentence an offender to 40 strokes of the light bamboo or 80 strokes of the heavy bamboo for doing "that which ought not to be done." In deciding which penalty should apply, the *Code* instructed the magistrate to "consider whether the offense is serious or minor and, according to the circumstances, adjudge the penalty."

"Every law comes into effect the day it is [proclaimed]," the *Code* declared. "If the offense was committed [before] that, the punishment should nevertheless be determined under the new law." Thus, the *Code* did not ban ex post facto laws.

## Criminal Law Procedure

China's justice system developed along with the laws in the *Great Qing Code*. Criminal law procedure began with the magistrate. He was a local government official in charge of tax collection, the public granary, education, religious rituals, military defense of his city, and many other duties, including that of a judge. He was not trained in the law, but he usually hired a secretary who was knowledgeable about the *Code*.

## Excerpts from *Great Qing Code Criminal Statutes*

### Statute 266. Theft with Force (Robbery)

In the case of theft with force when it has been committed but no property has been taken, each [offender] will receive 100 strokes of the heavy bamboo and exile. . . . But if property is obtained from an owner, do not distinguish between principal and accessory. All will be beheaded.

### Statute 302. Affrays and Blows

Quarreling together is an affray. . . . Everyone who engages in an affray or inflicts blows. . . and, using hands or feet, strikes another but does not cause injury, will receive 20 strokes of the light bamboo. . . . If he inflicts a blow with some other object and does cause injury, then he will receive 40 strokes of the light bamboo.

### Statute 290. Killing Another in an Affray

1. Anyone who during an affray, strikes and kills another, regardless of whether he has struck with the hand, or the feet, or with another object, or with a metal knife, will be punished with strangulation with delay [until the Autumn Court considers mercy].
2. One who kills intentionally will be punished with beheading with delay.

### Statute 282. Premeditated Murder

In the case of one who plots . . . to kill another, the principal formulator of the plot will be beheaded with delay. . . . Only if the killing takes place is there punishment.

### Statute 284. Plotting to Kill Paternal Grandparents or Parents

In the case of anyone who plots to kill his paternal grandparents, parents, or his relatives. . . who are of superior rank or older, . . . or a husband . . . [will be] beheaded. If the killing has taken place, then [the murderer] will be condemned to death by slicing.

### Statute 319. Striking Paternal Grandparents of Parents

Every child or [grandchild] who strikes his paternal grandparents or parents . . . will be beheaded.

### Statute 315. A Wife Striking a Husband

Whenever a wife strikes a husband . . . she will receive 100 strokes of the heavy bamboo. . . . As far as the husband striking the wife, if he does not fracture, there is no punishment. If it amounts to fracturing or worse, then reduce the penalty for an ordinary person two degrees [80 strokes of the heavy bamboo]. The wife herself must complain. Only then can he be punished.

### Statute 329. Cursing Paternal Grandparents and Parents

In every case where someone curses his paternal grandparents or parents, . . . the punishment will be strangulation. It is necessary that [the victim] himself file a complaint. Only then can punishment be inflicted.

### Statute 338. Children Not Following Orders

In every case where a child or [grandchild] violates the orders of his paternal grandparents or parents. . . he will be sentenced to 100 strokes of the heavy bamboo. The paternal grandparents or parents must make the accusation themselves. Then there can be punishment.

Identify a law the Legalists and a law the Confucians would tend to favor. Explain why.

A criminal case began when someone went to the magistrate and filed a criminal complaint against another or when the magistrate himself began an investigation. The magistrate examined physical evidence and questioned the defendant as well as witnesses (sometimes using torture).

In minor cases, punished solely by bambooning, the magistrate conducted a trial and decided the verdict and sentence. No prosecution or defense lawyers were at these trials because the profession of attorneys did not exist in China. Also, a person accused of a

crime was presumed to be guilty until proved innocent by the magistrate's investigation and judgment. Someone found guilty could appeal to a judicial commission at the province level.

After the magistrate investigated the facts in the more serious cases, the cases were automatically sent to the province's judicial commission. It conducted another investigation and the trial for each case. The provincial governor ratified the commission's verdict and sentence and then forwarded the most serious cases to the Board of Punishments in Beijing for further review.

The Board of Punishments conducted yet another investigation of the facts in a case. The board was almost entirely concerned with the correct degree of punishment rather than guilt or innocence. It could confirm, reduce, or increase the punishment in a case. The board made the final judgment for crimes punished by penal servitude or exile. Capital punishment cases, however, went on to still another level of review by high courts.

Many death penalty sentences were delayed until a special Autumn Court met. Apparently, this court recommended reducing a considerable number of death sentences. But the reduction sometimes only meant changing a death sentence from beheading to strangulation.

In any event, the emperor always had the final say whether a criminal convicted of a capital offense would be executed or spared. In fact, the emperor could overrule his own *Code* in any case, although this was rare.

In 1870, the Board of Punishments petitioned Emperor Tongzhi to allow judges to reduce any *Code* statute punishment in order to make it more justly fit the circumstances of the crime. The emperor agreed, and judges no longer were forced to impose a harsh punishment dictated by the *Code* if an injustice would occur.

## Civil Law Procedure

The *Great Qing Code* dealt mainly with criminal matters. Civil laws did not appear in a separate section of the *Code*. Instead, they were scattered among criminal law statutes.

The most common lawsuit concerned land disputes, often within or between families. Other typical lawsuits involved marriage, inheritance, and debts.

In many cases, those who lost lawsuits faced criminal punishments. Take the example of when a lender won his lawsuit against a borrower who failed to pay his debt. The magistrate would first order the debtor to pay the principal and interest he owed and then sentence him to 10–50 strokes of the light bamboo, depending on how much he owed.

The government considered civil lawsuits “trivial disputes.” But lawsuits

were common and involved peasants, town people, and wealthy landlords all suing one another.

The role of the magistrate in lawsuits was to find the facts of a case and rule in favor of one side. The magistrate had more freedom to use common-sense reasoning in deciding civil cases. Nearly all lawsuits were decided at the local level. They could be appealed, but not above the province level.

Although no lawyers officially existed in China, people involved in disputes sometimes turned to lawsuit specialists, who had some knowledge of the civil law. For a fee, these specialists helped illiterate persons file the correct lawsuit forms and sometimes managed their cases before the magistrate.

The government accused the lawsuit specialists of cheating ignorant peasants and clogging up the courts with cases based on false claims. The government branded them as “tricksters,” but they provided poor people access to the courts and helped resolve disputes by the law rather than by violence.

### End of the Great Qing Code

The strength of Qing Dynasty rule weakened during the 1800s when European nations and Japan used military force to open up trade relations and seize territory. After 1900, Western law and constitutional rights began to influence government and legal reforms. But the reforms came too slowly as Chinese revolutionary movements arose.

In 1911, revolutionaries rebelled against Manchu Qing rule. The following year, the last Qing emperor, Xuantong (also known as Puyi), abdicated the throne. This act ended the rule of China’s last imperial dynasty.

The new Chinese republic based its laws on the German law code, as Taiwan still does today. Elements of the *Great Qing Code*, especially its great detail, remain in Taiwan’s code. After the Chinese Civil War, the victorious Communists established a socialist legal system. But it continued the Qing emphasis on using the law to control the people.

The *Great Qing Code* and the codes that came before it seem harsh and lacking in rights familiar to us today. But the rulings of magistrate-judges

and the elaborate review process for serious criminal cases, including the death penalty, apparently did achieve a sense of justice among the Chinese people for more than 2,000 years.

## DISCUSSION & WRITING

1. How did the law codes following the Tang code of A.D. 653 repre-

sent a compromise between the principles of the Legalists and Confucians?

2. In what ways did Chinese criminal and civil law procedures differ from those of the U.S. today?
3. What do you think were the best and worst features of the Qing Dynasty’s legal system?

## ACTIVITY

### The Case of Pu Yung-sheng (1812)

#### Facts of the Case

An affray occurred when a group of outsiders attacked the family of Pu Yung-sheng, age 12. Chang Chiu-lin, one of the attackers, pushed Pu’s older brother to the ground, sat on him, and beat him with his fists. Seeing this, Pu grabbed a rake and hit Chang on the side of the head, killing him.

#### Judicial History

After investigating the facts, the local magistrate sent the case to the judicial commission of Kiangsu Province. The commission conducted a trial and found Pu Yung-sheng guilty of violating Statute 290 of the *Great Qing Code* (see sidebar on page 8).

The governor of Kiangsu ratified the sentence and sent the case to the Board of Punishments in Beijing. The Board considered a Statute 290 sub-statute, which stated that if a son, grandson, or wife acts to save grandparents, parents, or husband when attacked, the rescuer will receive a reduced sentence even if an attacker is killed. But the sub-statute said nothing about a younger brother saving an older brother.

Another sub-statute said that when an offense was committed by a child aged 11 to 15, the regular punishment may be substituted by a money fine. But this privilege was denied for a death penalty offense unless the child was less than 11 years old.

After reviewing the case and the law, the board agreed with the Kiangsu governor’s sentence. The board reasoned that the absence of brothers from the list of victims and rescuers was a deliberate omission in the law. The case then went on to the Autumn Court to consider recommending mercy to Emperor Jiaqing. The recommendation of the Autumn Court and final decision of the emperor in this actual capital case are unknown.

#### The Autumn Court

In this activity, the class will meet in groups, each playing the role of Autumn Court judges. Their task will be to make a recommendation to the emperor, regarding the sentence of Pu Yung-sheng from among these choices:

- Confirm the finding of the Board of Punishments that Pu Yung-sheng should be executed by strangulation for killing Chang Chiu-lin.
- Use analogy to another statute or sub-statute to justify reducing the sentence from death to something less; recommend another sentence.
- Use the Confucian legal principle of “make the punishment fit the crime” for cases involving extenuating circumstances to justify reducing the sentence from death to something less; recommend another sentence.
- Petition the emperor to ignore the *Great Qing Code* and grant a lesser penalty to Pu Yung-sheng; recommend another sentence.

The role groups should use information from the article to justify their recommendations to the emperor. Students should remember they are acting as they think judges would during the Qing Dynasty.

Each group of judges will finally announce and defend its recommendation to the emperor.

## Standards

### Leopold and Loeb

National High School Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. (2) Knows historical and contemporary practices that illustrate the central place of the rule of law (5) Understands how the individual's rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by the principal varieties of law . . . . (7) Understands the importance of an independent judiciary in a constitutional democracy.

National High School Civics Standard 25: Understands issues regarding personal, political, and economic rights. (1) Understands the importance to individuals and to society of personal rights such as . . . the right to due process of law . . . .

National High School U.S. History Standard 22: Understands how the United States changed between the post-World War I years and the eve of the Great Depression. (1) Understands the major social issues of 1920s America . . . .

Common Core Standard RH.11-12.3: Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

Common Core Standard W.11-12.1. Write arguments to support claims with clear reasons and relevant evidence.

Common Core Standard W.11-12.4: Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

Common Core Standard RH.11-12.8: Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

### Great Qing Code

National High School World History Standard 30: Understands transformations in Asian societies in the era of European expansion. (4) Understands the cultural, economic, and social structure of China during the period of European commercial expansion (e.g., cultural and economic achievements of the Chinese during the reigns of the Kangzi and Qianlong emperors; . . . aspects of life of the elite in China; the family and its role in Chinese society).

National High School World History Standard 34: Understands how Eurasian societies were transformed in an era of global trade and the emergence of European power from 1750 to 1870.

(5) Understands China's relations with Western countries. . . .

National High School World History Standard 36: Understands patterns of global change in the era of Western military and economic domination from 1800 to 1914. (13) Understands significant political events in 20th-century China. . . .

California History-Social Science Standard 7.3: Students analyze the geographic, political, economic, religious, and social structures of the civilizations of China in the Middle Ages. (3) Analyze influences of Confucianism and changes in Confucian thought during the Song and Mongol periods. (6) Describe the development of the imperial state and the scholar-official class.

Common Core Standard RH.6-10.1: Cite specific textual evidence to support analysis of primary and secondary sources . . . .

Common Core Standard SL.9-10.1: Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 9-10 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

### Free Exercise of Religion

National High School Civics Standard 2: Understands the essential characteristics of limited and unlimited governments. (5) Knows essential political freedoms (e.g., freedom of religion, speech) and economic freedoms . . . and understands competing ideas about the relationships between the two . . . .

National High School Civics Standard 11: Understands the role of diversity in American life and the importance of shared values, political beliefs, and civic beliefs in an increasingly diverse American society. (1) Knows how the racial, religious, socioeconomic, regional, ethnic, and linguistic diversity of American society has influenced American politics through time.

National High School U.S. History Standard 8: Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights. (3) Understands the Bill of Rights and various challenges to it (e.g., . . . recent court cases involving the Bill of Rights).

National High School U.S. History Standard 31: Understands economic, social, and cultural developments in the contemporary United States. (3) Understands how the rise of religious groups and movements influenced political issues in contemporary American society (e.g., . . . how Supreme Court decisions since 1968 have affected the meaning and practice of religious freedom).

California History-Social Science Standard 11.3: Students analyze the role religion played in the founding of America, its lasting moral, social, and political impacts, and issues regarding religious liberty. (5) Describe the principles of religious liberty found in the Establishment and Free Exercise clauses of the First Amendment, including the debate on the issue of separation of church and state.

California History-Social Science Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, . . .) articulated in the First Amendment and the due process . . . clauses of the Fourteenth Amendment.

Common Core Standard RI.11-12.8: Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) . . . .

Common Core Standard SL.11-12.1: Initiate and participate effectively in a range of collaborative discussions . . . with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

Common Core Standard RH.11-12.1: Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

Common Core Standard RH.11-12.8: Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

Common Core Standard WHST.11-12.4: Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

Common Core Standard WHST.11-12.9: Draw evidence from informational texts to support analysis, reflection, and research.

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