Rethinking Chinese Law and History: 
An Introduction

Li Chen and Madeleine Zelin

This volume is the product of an ongoing collaboration among scholars from Asia, Europe, and North America to explore what might be called the life of the law in early modern China. We have chosen this term purposefully, in part for the attention it draws to the active role that law plays in everyday interactions, not simply as an instrument of governance but as a site of negotiation between people and the state, and as a part of the repertoire of ideas and devices used by people in their interactions with each other. We have also sought to avoid the essentializing and causal implications associated with terms such as “legal tradition” and “legal culture.” The period covered by the chapters in this volume extends from the sixteenth century through the Qing dynasty (1644–1911) and the turbulent Republican period (1912–49), to the early years of the People’s Republic of China, as China is still known today. This was a period in which rulers and elites, the grounds of politics, the content of the law and the forms of its application, not to mention the territorial and demographic composition of the state itself, underwent multiple and dramatic transformations. “Culture” and “tradition” as conceived and reconceived are certainly part of the story of the law, but in China, as elsewhere, they must be viewed cautiously, with an eye to time, place, context, and a multiplicity of interpretive voices.

The contributors to this volume are particularly attentive to the perils of using “tradition” or “culture” as the overall framework for the study of law. Until the 1980s, scholarship on Chinese legal history focused largely on law as promulgated and administered by the state. Western knowledge of Chinese ideas of the law depended largely on interpretations of Confucian social norms for a


few centuries, and then on translations of the statutory parts of the Qing Code
dating from the 1780s onward. The code that formed the basis for formal jus-
tice appeared in close to its modern form in the seventh century, and although
significantly revised through a process of accumulated amplification, reor-
ganization, and revision, it was often misconstrued as a statement or symptom
of the unchanging nature of the traditional Chinese legal system. As it was
structured largely as an index of offenses and their appropriate punishments,
from the modern Western perspective its overriding concerns were often
viewed as administrative and penal. At the same time, legal codes throughout
our period reflected a paradoxical commitment to both equality before the law
and Confucian notions of the hierarchical nature of human relationships that
often stymied outside observers.

This approach to Chinese legal history was transformed by the publication
of Essays on China’s Legal Tradition in 1980, which, with new access to Chinese
archives beginning that year, was followed by a number of path-breaking stud-
ies based on extant legal cases and judicial archives at different levels. In
the United States, works by Jonathan Ocko, Philip Huang, Thomas Buoye, and
Mark Allee on local or central adjudication, Madeleine Zelin on contract
and business, Janet Theiss and Matthew Sommer on the gendered construction
of law and social relations, and Melissa Macauley on litigation masters joined
those of numerous Chinese and Japanese scholars determined to approach the
history of Chinese law as revealed in court records, legal documents, political
and private correspondence, and popular media and discourse.

---

3 For a discussion of the Western discourse of Chinese law in the eighteenth and nineteenth
centuries, see Li Chen, Chinese Law in the Imperial Eyes: Sovereignty, Justice, and Transcultural
4 See Jerome A. Cohen, R. Randle Edwards, and Fu-mei Chang Chen, Essays on China’s Legal
5 Philip C.C. Huang, Civil Justice in China: Representation and Practice in the Qing (Stanford:
Stanford University Press, 1996); Mark A. Allee, Law and Local Society in Late Imperial
China: Northern Taiwan in the Nineteenth Century (Stanford: Stanford University Press,
1994); Thomas M. Buoye, Manslaughter, Markets, and Moral Economy: Violent Disputes over
Property Rights in Eighteenth Century China (New York: Cambridge University Press, 2000);
Matthew H. Sommer, Sex, Law, and Society in Late Imperial China (Stanford: Stanford University
Press, 2000); Madeleine Zelin, The Merchants of Zigong: Industrial Entrepreneurship in Early
Modern China (New York: Columbia University Press, 2005). The Henry Luce Foundation was
particularly important in this regard, supporting the collection of Qing law court documents
and the convening of workshops at both UCLA and Columbia University, culminating in two
volumes that serve as models for this collection: Kathryn Bernhardt and Philip C.C. Huang,
Civil Law in Qing and Republican China (Stanford: Stanford University Press, 1994); Madeleine