

*The Great Ming Commandment (Ta Ming Ling):*  
An Inquiry into Early-Ming Social Legislation

Chu Yüan-chang 朱元璋, who drove the Mongols out of China, criticized the Mongolian Yüan dynasty's lack of a strict system of penal law. Thus he initiated one of the longest and most complex efforts at legal codification in all of Chinese history, occurring during the first three decades of the new Ming dynasty (1368-1644). Among the early-Ming codifications was *The Great Ming Commandment (Ta Ming ling 大明令)*,<sup>1</sup> which this paper describes and places in the context of social legislation.

In 1368, just eighteen days after founding the dynasty, Chu Yüan-chang, as the Hung-wu 洪武 emperor (r. 1368-1398),<sup>2</sup> proclaimed the enactment of the *Commandment*.<sup>3</sup> It is best understood in relationship to another legal work, *Ta Ming li 大明律*, or *The Great Ming Code*, which was put into final form in 1397.<sup>4</sup> The word "commandment" was chosen rather than such terms as "ordinance," in large part because it suggested a positive order, a meaning which is alluded to in the opening lines of the document. "Code" was the most appropriate term for the later compendium because it represented the principal source of penal regulations for the Chinese empire. Note, however, that "statute" commonly refers to the articles of the *Code*, so as to conform to well-established usage in the study of Ch'ing law.<sup>5</sup> Before discussing in detail the character and significance of the *Commandment* it will be useful to consider its historical context.

<sup>1</sup> The *Ta Ming ling* may be found in Chang Lu 張鹵, comp., *Huang Ming chih shu 皇明制書 (Regulations of the Imperial Ming)*, completed 1579 in 20 *chüan*; hereafter *HMCS*). Two recent reprints with slightly different contents are: Tokyo: Koten kenkyukai, 1966-67, vol. 1, pp. 5-32; and Taipei: Ch'eng-wen ch'u-pan-she, 1969, vol. 1, pp. 7-117. The Taiwan edn. is generally more legible but the Tokyo edn. has detailed tables of contents at the beginning and tables of variants at the end of each volume. I have prepared a draft translation of the *Ta Ming ling*.

<sup>2</sup> The date was Hung-wu 1, first month, 18th day, or February 6, 1368. Chu Yüan-chang (1328-1398) was posthumously known as Ming T'ai-tsu 明太祖. A biography is in L. Carrington Goodrich, ed., *Dictionary of Ming Biography* (New York: Columbia U.P., 1976) 1, pp. 381-92; and Wu Han 吳晗, *Chu Yüan-chang chuan 朱元璋傳* (Peking: Hsin-hua shu-tien, 1965; rpt. 1979).

<sup>3</sup> For a listing of major codifications, see Charles O. Hucker, *The Ming Dynasty: Its Origins and Evolving Institutions*, Michigan Papers in Chinese Studies 34 (Ann Arbor: Center for Chinese Studies, University of Michigan, 1978), pp. 44-45.

<sup>4</sup> *Ta Ming-li* appears in its 1397 form in *HMCS*. Later in the dynasty it was greatly expanded by addition of substatutes 例, and commentaries 解. See John D. Langlois, Jr., "The Code and *ad Hoc* Legislation in Ming Law," *AM* 3d ser. 6.2 (1993).

<sup>5</sup> See Derk Bodde and Clarence Morris, *Law in Imperial China* (Philadelphia: U. of Pennsylvania P., 1973), for a general overview of Chinese law. The contents of the *Ming Code* are outlined on pp. 60-61.

## THE MING FOUNDING

The founding of any state is apt to be a time of considerable institutional change.<sup>6</sup> This is so for two closely related reasons. First, the creators of the new political order are obliged to convert themselves from power seekers into power holders. Inherent in this conversion is a shift of emphasis from military power — invariably the key to establishing a state — to making institutional arrangements that stabilize order and render further recourse to armed force less likely. The second reason is that the great opportunity — the “open situation” of institutional innovation — does not last very long. Rulers have a greater opportunity to impose their will on society at the time of state creation than in later generations, when the state sector loses its capacity to take the initiative, and interest groups and unplanned social forces determine the direction of events.

The founding of the Ming dynasty was an unusually open historical situation.<sup>7</sup> As a consequence, the social legislation authored by the Hung-wu emperor far surpassed the efforts of most other dynastic founders. Five factors help account for this:

1. The overthrow of the alien Mongol rule by Han-Chinese insurgents based south of the Yangtze created a sharp disjunction in the cultural orientation of the ruling elite. While not primarily a nationalistic rising of Chinese against Mongols, it is fair to say that ethnic conflict was present, and the insurgents were rooted in the agricultural communities of the south, an environment profoundly remote from the Mongols' Central Asian grasslands.<sup>8</sup>
2. Despite the accommodation of traditional Chinese government practices, it was precisely the Yüan failure to enact a law code that inspired the Ming efforts at codification.<sup>9</sup> Indeed, the Ming founder viewed Yüan laxness in legal matters as a weakness.

<sup>6</sup> I have discussed this process in some detail in “Chi-kou hsüan-tse ho she-hui kai-ko Ming wang-ch'ao ch'u-ch'i (1350-1425) ti cheng-t'i fa-chan” 機構選擇和社會改革明王朝初期的政體發展 (“Institutional Choices and Social Innovation: Constitutional Developments in the Early Ming Dynasty, 1350-1425”), in *Chung-hua wen-shih lun-t'ung* 中華文史論叢 (Shanghai: Shang-hai ku-chi ch'u-p'an-she, 1981) 2, pp. 29-54.

<sup>7</sup> Accounts of the Ming founding include: F. W. Mote, *The Pao Kao Ch'i* (Princeton: Princeton U.P., 1962); Edward L. Farmer, *Early Ming Government: The Evolution of Dual Capitals* (Cambridge, Mass.: East Asian Research Center, Harvard University, 1976); Edward L. Dreyer, *Early Ming China: A Political History* (Stanford: Stanford U.P., 1982); John W. Dardess, *Confucianism and Autocracy: Professional Elites in the Founding of the Ming Dynasty* (Berkeley: U. of California P., 1983); and F. W. Mote and Denis Twitchett, eds., *The Cambridge History of China*, vol. 7, *The Ming Dynasty, 1368-1644, Part I* (Cambridge: Cambridge U.P., 1988).

<sup>8</sup> See Wu Han, “Yüan ti-kuo chih peng-k'uei yü Ming chih chien-kuo” 元帝國之崩潰與明之建國 (“The Collapse of the Yüan Empire and the Founding of the Ming”), *CHHP* 11.1 (1936), p. 359.

<sup>9</sup> See John D. Langlois, Jr., “Law, Statecraft, and the *Spring and Autumn Annals* in Yüan Political

3. The Ming founding was contemporaneous with, and became an instrument of, neo-Confucian state ideology.<sup>10</sup> The revived Confucian doctrines that had been systematized by leading Sung-era thinkers gained a degree of state approval already in the Yüan period, when Chu Hsi's 朱熹 (1130-1200) commentaries were made the basis for the civil service examinations in 1315.<sup>11</sup> Under Chu Yüan-chang, the state's preference for the School of Principle (*li-hsüeh* 理學) was confirmed for the remainder of the imperial age.
4. The Hung-wu emperor's reign witnessed an increase in the ruler's power over a state apparatus more tightly centralized than those of earlier dynasties.<sup>12</sup> This signaled what has often been called Ming despotism, which was characterized by inner-court power, but also by arbitrary and sometimes vengeful abuse of power by the emperor and his agents.<sup>13</sup>
5. Both elements of Ming despotism — the systematic and the personal — had their origins in the past but found fruition in the career of Chu Yüan-chang. Chu was at once a ruthless despot and a thoughtful and tireless legislator. He was personally frustrated with the world as he found it and thus issued legal codes to create an order that would endure long beyond his time.

Chu Yüan-chang for a brief time had been a begging monk, before joining an insurgent movement then contesting for territory in central China. This movement was a branch of the White Lotus sect, which fused Buddhist and Manichean millenarian elements and looked for the appearance of a Prince of Brightness 明王 who would usher in a new era.<sup>14</sup> Once Chu left his original movement and set up an independent regime, an effort was made to obscure the details of his earlier loyalty to the White Lotus cause. Crucial in Chu Yüan-chang's rise as a potential emperor was the acquisition of educated advisers who could provide ideology, policy, and administrative capability. Recent research has focused on the ideological views of Chu's advisers, and the way local Chekiang Confucianism found its way into the early-Ming court. Specifically,

Thought,” in Hok-lam Chan and Wm. Theodore de Bary, eds., *Yüan Thought: Chinese Thought and Religion under the Mongols* (New York: Columbia U.P., 1982), pp. 89-152.

<sup>10</sup> See Wm. Theodore de Bary, *Neo-Confucian Orthodoxy and the Learning of Mind-and-Heart* (New York: Columbia U.P., 1981), pp. 1-66.

<sup>11</sup> *Ibid.*, pp. 53-56. <sup>12</sup> Hucker, *Ming Dynasty*, pp. 53-56.

<sup>13</sup> The best discussion of the despotism issue is that of F. W. Mote, “The Growth of Chinese Despotism: A Critique of Wittfogel's Theory of Oriental Despotism as Applied to China,” *OE* 8.1 (1961), pp. 1-41.

<sup>14</sup> See Hok-lam Chan, “The White Lotus-Maitreya Doctrine and Popular Uprisings in Ming and Ch'ing China,” *Sinologica* 10.4 (1969), pp. 211-33; and John W. Dardess, “The Transformation of Messianic Revolt and the Founding of the Ming Dynasty,” *JAS* 29.3 (1970), pp. 539-58.

views about the utility of law found a receptive audience with the Ming founder,<sup>15</sup> whose version of Confucian orthodoxy was presumably colored by the lobbying and instruction he received from Chekiang scholars. His view was also colored by personal biases; for example, he had the classical text *Mencius* edited in order to excise passages lending support to the mandate of heaven as a sanction for revolution.<sup>16</sup> The enactment of the *Commandment* is best seen as an attempt to promote a social order compatible with Confucian social norms.

Chu Yüan-chang's legislative career must have begun even before he became emperor,<sup>17</sup> perhaps from the time that he became duke of Wu 吳 in 1362 at the age of 35. He was then already wrestling with the issues of setting up his state. In 1364 Chu became prince of Wu, echoing the actions of Chang Shih-ch'eng 張士誠 the year before.<sup>18</sup> The Sung state, to which he was nominally subordinated, ended in 1366, and in the following year Chu adopted Wu as a reign title and established the *Commandment*. In 1368 Chu had himself installed as emperor of the Ming dynasty.

Over the course of his reign, Chu tried to legislate many areas of Chinese life. In addition to the *Commandment* and the *Code*, he issued a "family law" to govern his own imperial clan (the *Imperial Ming Ancestral Instruction*, or *Huang Ming tsu-hsün* 皇明祖訓),<sup>19</sup> a code for village governance (the *Placard of People's Instructions*, or *Chiao min pang-wen* 教民榜文),<sup>20</sup> and a broad set of instructions to the general populace on matters of penal law (the *Great Pronouncements*, or *Ta kao* 大誥).<sup>21</sup> Besides these were codifications dealing with governmental organization, the activities of censors, ritual, school regulations, mourning, and various essays and edicts.

The process of codification, which stretched over more than thirty years, can be broken into four shorter periods for the purpose of analysis. The years 1362-1367, when as duke and then prince of Wu he controlled a regional state but produced no enduring codes, may be thought of as a preparatory period. The *Ming History* (*Ming shih* 明史) informs us that Chu Yüan-chang began dis-

ussion of law codes 律令 in 1364, when he took Wu-ch'ang 吳昌.<sup>22</sup> The first period began at the end of 1367, when Chu issued *Lü-ling chih-chieh* 律令直解 (*Statutes and Commands Directly Explained*),<sup>23</sup> the title of which shows the founder's strong interest in communicating the substance of the law code to the populace. In 1380 the Hu Wei-yung 胡惟庸 affair shook the new regime to its foundations.<sup>24</sup> Hu Wei-yung, who had been a chief councillor (or prime minister) since 1377, was charged with plotting rebellion and executed. In addition to conducting a purge of Hu's associates, Chu Yüan-chang abolished the post of chief councillor and the central censorial and military offices as well. What followed was a third period characterized by intensive reorganization of the government and purges lasting more than a decade. During these years the ruler's control over the empire was tightened in numerous ways. While there was no sharp break in the later years of the Hung-wu reign comparable to the rupture of 1380, it might be useful to think of this phase as comprising adjustments to the body of the codifications. A convenient, if somewhat arbitrary year from which to date a final phase of the founder's career is 1392, when the heir-apparent died and a grandson of the founder was named as successor.

#### THE COMMANDMENT AND THE CODE

The *Great Ming Commandment* has the appearance of an early, groping effort at social regulation and displays no evidence of the adjustments that historical events were to make necessary in other codes. It stated the behavioral norms, including both criminal law and administrative regulations, for violation of which its companion, the *Great Ming Code*, provided detailed punishments. When compared with the *Code*, it is hard not to think of the *Commandment* as a temporary or transitional document important only in the early years. After the Hung-wu era it seems not to have played a major role in the administration of Ming law. It is granted only passing mention in the "Essay on Penal Law" (*hsing-fa chih* 刑法志) of the *Ming History*.<sup>25</sup>

<sup>15</sup> Dardess, *Confucianism and Autocracy*, pp. 183-253. <sup>16</sup> Goodrich, *Dictionary*, p. 389.

<sup>17</sup> A convenient chronology of Chu's career is to be found in Wu, *Chu Yüan-chang chuan*, pp. 7-18.

<sup>18</sup> See Otagi Matsuo 愛宕松男, "Shu Gokoku to Chō Gokoku" 朱吳國と張吳國 ("Chu's Kingdom of Wu and Chang's Kingdom of Wu"), *Bunka* 文化 17.6 (1953), pp. 597-621.

<sup>19</sup> *Huang Ming tsu-hsün* may be found in *HMCS* (Tokyo edn.) 2, pp. 1-21. I have made a draft translation of the text and numbered the articles. The contents are analysed in my article "Social Order in Early Ming China: Some Norms Codified in the Hung-wu Period, 1368-1398," in Brian E. McKnight, ed., *Law and the State in Traditional East Asia*, vol. I, *Six Studies on the Sources of East Asian Law* (Honolulu: U. of Hawaii P., 1987).

<sup>20</sup> *Chiao min pang-wen* can be found in *HMCS* (Taipei edn.) 3, pp. 1405-47. An English translation has been published by George Jerlang Chang, in *Ming Studies* 7 (1978), pp. 63-72.

<sup>21</sup> *Ta kao* can be found in *HMCS* (Tokyo edn.) 1, pp. 33-169.

<sup>22</sup> See Chang T'ing-yü 張廷玉, comp., *Ming shih* (Peking: Chung-hua shu-chü, 1974), *chüan* 92. For the fall of Wu-ch'ang see Romeyn Taylor, trans., *Basic Annals of Ming T'ai-tsu* (San Francisco: Chinese Materials Center, Inc., 1975), p. 48.

<sup>23</sup> I have benefited from a summary of these events prepared by John D. Langlois, Jr., for the *Cambridge History of China*. His summary follows the *Ming shih* account, as does that of Hsü Tao-lin 徐道鄰, *Chung-kuo fa-chih shih lun-lieh* 中國法制史論略 (*A Brief History of the Chinese Legal System*) (Taipei: Cheng-chung shu-chü, 1953), pp. 80 ff.

<sup>24</sup> See Charles O. Hucker, *A Dictionary of Official Titles in Imperial China* (Stanford: Stanford U.P., 1985), p. 72; and Thomas Massey, "Chu Yuan-chang and the Hu-Lan Cases of the Early Ming Dynasty" (unpub. Ph.D., U. of Michigan, 1983).

<sup>25</sup> See Noguchi Tetsurō 野口鐵郎, *Minshi keihashi sakujin* 明史刑法志索引 (Tokyo: Kokusho kankōkai, 1981).

The connection between the *Commandment* and the *Code* is neither simple nor clear. The *Ming History* tells us that late in 1367, senior chief councillor Li Shan-ch'ang 李善長 and a commission of scholars were charged with composing law codes that the people could understand. Early in 1368 they completed the *Commandment*, consisting of 145 articles, and the *Code*, consisting of 285. The emperor further ordered that excerpts from these laws bearing on the life of the people be collected and issued under the title *Lü-ling chih-chieh* for proclamation throughout the country.

I assume that the *Commandment* that has come down to us with 145 articles is in fact the first part of this initial effort at systematic codification. It was issued as a free-standing document only a month after the events described in the *Ming History*. In the edict accompanying the document the emperor mentions the relationship between the two compendia.<sup>26</sup> As he explained it, the *Commandment* was to come first in order to instruct the people before acts were committed, while the *Code* was intended to govern their behavior after they had acted. Again the emperor stated his view that laws should be simple, so that the people could abide by them. He quoted a passage in the *Book of Documents* (*Shu ching*) to the effect that punishments should be so used as to reduce the need for punishments.<sup>27</sup>

The 285-article *Code* issued along with the *Commandment* is now lost. Its evolution was a long and complicated process.<sup>28</sup> In the first year of his reign the Hung-wu emperor convened a group of four scholars and charged them, together with the Ministry of Justice, to discuss the contents of the *T'ang Code* and to present twenty articles per day to the throne for possible adoption. By 1374 a *Great Ming Code* was issued containing 606 articles arranged under the twelve headings used in the *T'ang Code*. These statutes were derived from several sources: carry-overs from the 1368 code, extensions of its statutes, new statutes, and 31 articles taken from the *Commandment*. The *Code* was revised three more times, emerging finally in 1389 in a version containing 460 statutes and divided under seven headings: an introductory section devoted to terms and general principles followed by the functional categories of the Six Ministries. This version of the *Code* was reissued in 1397 and remained unchanged throughout the dynasty in line with Chu Yüan-chang's stipulation that it could never be changed. The story is somewhat more complicated than this brief account implies, however,

<sup>26</sup> See *HMCS* (Tokyo edn.) 1, p. 5.

<sup>27</sup> The passage in *Shu ching* occurs in the "Counsels of the Great Yü" ("Ta Yü mo" 大禹謨), item 11; James Legge, trans., *The Chinese Classics* (rpt. Hong Kong: Hong Kong U.P., 1960), vol. 3, *The Shoo King*, pp. 58-59; S. Couvreur, S.J., trans., *Chou King* (Sien Hsien: Catholic Mission, 1927), pp. 36-37.

<sup>28</sup> These matters are described in John Langlois' chapter on Ming law, to be included in *The Cambridge History of China*, vol. 8, forthcoming; and summarized in idem, "Code and *ad Hoc* Legislation."

because the *Code* did not stand alone. Combined with it were some selections from the *Great Pronouncements* (*Ta kao*) that supplemented the statutes in the *Code*. The combined document, known as *Ta Ming li-kao*, has not survived.

A structural similarity between the *Commandment* and the *Code* is at once apparent if we compare their tables of contents (table 1). The six-part division of the *Commandment* was carried over to the *Code* in its final form. The matters taken up in the extra "Terms and Principals" section of the *Code* were covered in the "Justice" section of the *Commandment*. In terms of the percentage of total articles assigned to each subsection the two documents show some marked differences. The *Code* gives about half of the space to Personnel and Rites that the *Commandment* does, while roughly doubling the allocations for War and Works. Revenue and Justice come out about the same if we add the items from Terms and General Principles to the count of Justice articles in the *Code*. These differences reflect the general, regulatory nature of the *Commandment* as opposed to the more narrowly penal character of the *Code*. For example, the twenty articles in the Personnel section of the *Commandment* are concerned with the staffing and management of governmental offices. Only four of the articles require punishment for failure to comply and even in these cases the exact punishment is not specified, but is referred over to the *Code*. In the *Code*, by contrast, the Personnel section lists thirty-three articles, constituting a catalogue of abuses with appropriate punishments stated for each. The same contrast is to be found under other headings. The Rites section offers another example. Where the *Commandment* is concerned with the proper forms for court audiences, dress, mourning, marriage, religious ceremonies, and the like, the *Code* is content to list transgressions in these areas and to prescribe punishments. Only in the Justice section do the *Commandment* and the *Code* share a primarily penal character. The difference in that case is that the *Code* is far more detailed.

Table 1. Comparison of the Contents of the *Commandment* and the *Code*

SUBJECT	COMMANDMENT (145 ARTICLES)		CODE (460 ARTICLES)	
	No. articles	% (rounded)	No. articles	% (rounded)
Terms and Principles	0	0	47	10
Personnel	20	13	33	7
Revenue	24	17	95	21
Rites	17	12	26	6
War	11	8	75	16
Justice	71	49	171	37
Works	2	1	13	3
Totals	145	100	460	100

## CONTENTS OF THE COMMANDMENT

A useful perspective on the *Commandment* can be gained by looking at the categories of people mentioned in it. While it is difficult to avoid some overlap and imprecision, a count of the number of articles in which various kinds of people are mentioned, and the frequency with which different categories of persons were mentioned, is a good indication of the principal aims of the document. A count of the number of articles that make substantial reference to the actions of various categories of people can be summarized as follows:

Table 2. Categories of Persons Mentioned in the Commandment

CATEGORIES	NO. OF REFERENCES
Civil officials (all levels)	67
Central level only	5
Provincial/local level only	19
Military officers	11
Subofficials	14
Populace at large	59

The figures in table 2, which counts some articles in the *Commandment* more than once and others not at all, are at best a rough approximation because of the varied ways groups are mentioned in the text. Yet we can see that the *Commandment* is focused on the mass of the people rather than the imperial family and court, which are the primary concerns of the *Ancestral Instruction*. Indeed, the emperor and his circle all but disappear from view. There is only one mention of a eunuch, and one mention of the servants and retainers of imperial relatives, nobles, or high officials. Where officials are mentioned they are more likely to be local officials than part of the central administration in the capital. The small number of articles referring to military officers and the nature of their involvement confirms that the *Commandment* is not concerned with military affairs in a substantial way. Although the number of items dealing with subofficials is only slightly larger, their contents do reveal that low-level administration was a central concern, as indicated by the large number of local officials and lesser functionaries mentioned. For example, we learn of the staff supervisor (*shou-ling kuan* 首領官), the staff foreman (*ssu-li* 司吏), writers (*t'ieh-shu* 帖書), seal keepers (*chih-yin* 知印), couriers (*hsüan-shih* 宣使), agents (*tsou-ch'ai* 奏差), functionaries (*li* 吏), and five different kinds of clerk (典吏, 令史, 書吏, 掾, 掾吏).<sup>39</sup> These titles represent the underside of the

government bureaucracy, which reached to the county level. There is only one passing reference to the community head (*li-chang* 里長) at the village level.

The concern of the *Commandment* with the administration of justice is evidenced in the number of offices of functionaries in the legal system, both civil and military, which we find mentioned in the code. In addition to a judge (*t'ui-kuan* 推官) and a warder (*ssu-yü kuan* 司獄官), there are two kinds of jailer (*chin-tzu* 禁子, *t'i-lao kuan* 提牢官), guards (*yü-tsu* 獄卒), ushers (*chih-hou* 祇候), constables (*kung-ping* 弓兵), accusation writing clerks (*shu-chuang jen-li* 書壯人吏), coroners (*chien-tso* 仵作), and messengers (*hsing-jen* 行人).

Those articles in the *Commandment* dealing with revenue and justice are the ones most likely to be phrased in all-inclusive language that would apply to officials and civilians alike. Nevertheless, there are numerous points at which specific groups within the population are singled out. Of the registration categories into which the populace of the Ming empire was divided, commoners 民 are mentioned more frequently (five times) than military families 軍, artisans 匠, physicians 醫, and geomancers 陰陽. Groups mentioned by occupation include merchants, shopkeepers, brewers, brokers, hostel keepers, Buddhist monks, Taoist priests, and matchmakers. Robbers and thieves constitute another category which might not quite fit the definition of an occupation. Masters, servants, and male and female slaves are other descriptions that fall short of telling us what work people were engaged in. Some entries refer to people simply by their condition, for example, the young, the aged, the sick, widows, widowers, orphans, and women.

It should not surprise us that the *Commandment* often sees the individual in terms of family relationships.<sup>40</sup> In many articles people are defined by their standing in kinship units. The most frequent references were made to sons and grandsons, followed by parents, wives, fathers, and daughters. Mention is made at least once of clan heads, grandparents, grandfathers, mothers, guardians, husbands, concubines, younger brothers, bastard sons, children, sons-in-law, nephews, grandchildren, and relatives.

What kinds of behavior were regulated by each of the articles of the *Commandment*? The answer might take the form of a survey of articles dealing with various categories of behavior, as set out in table 3. The primary interest of the *Commandment* in the judicial-penal category is at once apparent. The next most frequent group of articles touches on policy and administration, revealing the regulatory nature of the *Commandment*, which sets out rules for the operation of a bureaucracy whose structure is already known. The category of ceremony

<sup>39</sup> I have basically followed the suggested translations in Hucker, *Dictionary of Official Titles*.

<sup>40</sup> On the importance of family status in T'ang law, see Hsü, *Chung-kuo fa-chih shih*, pp. 46-48.

Table 3. *Kinds of Behavior Regulated by the Commandment*

TYPE OF BEHAVIOR	NO. OF REFERENCES
Justice and punishment	67
Policy and administration	28
Ceremony and ritual	18
Resources and taxation	15
Family and marriage	9
Movement and security	7

ranks third because it includes both the religious observances required of state and family and also the sumptuary regulations employed to reinforce the status hierarchy. The resources category is prominent because of the important tax-collecting function of officials, as well as the tax payment and service obligations of commoners. The activities of commoners are included in the family category, while the items on movement and security are more often directed towards officials on government business.

#### *Justice and Punishment*

These articles constitute a brief but comprehensive criminal code. Articles on the five punishments, the ten abominations, the eight considerations, commutation, and penal instruments provide the basic definitions of crimes and punishments upon which the penal system was based. The technical details of court procedure and pleading are covered in articles on accusations; interrogation; confession; investigative reports; rules governing testimony by dependents; substitutes pleading for the old, the infirm or the disabled; and provisions for autopsy reports. The participation of the public in the criminal justice system was encouraged by rewards to those who captured robbers or thieves. Restraint was shown, however, in a requirement for investigation of cases in which victims of a robbery pursued and killed the robber.

Aside from some concern for the handling of stolen property, the *Commandment* is remarkable for the scant interest it shows in the regulation of the economy. The lone exception to this neglect is a statute requiring government permission for slaughtering of horses and oxen. On the other hand the law was very much concerned with the social status and condition of those whom it governed. Consideration was given to the aged and the sick even if they had been in good health at the time a crime was committed. By the same token, a crime committed in youth was still to be judged as a crime by a youth if it was discovered and came to trial after the criminal had come of age. Women were given consideration at several points. A woman guilty of a crime less serious than murder was

spared jail if she could be held in the custody of close relatives. On the other hand, a woman was barred from lodging complaints in the court so long as there was a husband or son to act on her behalf. Buddhist and Taoist clergy who were convicted of crimes lost their special status: they were returned to the lay world to perform labor service.

Questions of jurisdiction figure prominently among the concerns in the articles on justice. The *Commandment* and *Code* had the force of law from the moment of their proclamation, even applying retroactively to crimes committed before their enactment. Imperial edicts, however, might outlaw a certain action on a temporary basis, but, unless they were codified in the *Commandment* and *Code*, officials were not allowed to add them to the body of formal law. Care had to be taken that cases were not decided by the wrong authority. Where two jurisdictions were involved, the officials where the complaint was first lodged were to request allocation of jurisdiction from the home district of the accused person. Officials were expected to practice avoidance in deciding cases involving their relatives, teachers, or old antagonists. Transient officials passing through an area on government business were not allowed to hear local cases. The independence of local judges (*t'ai-kuan*) was specifically protected. Likewise, the local magistrate was precluded from interfering with the censors' investigation of the staff supervisor (*shou-ling kuan*). We see the legal system's awareness of status in several provisions of the law. Serious crimes, as classified by severity of punishment, were to be decided at higher levels of the administrative hierarchy, with the court making a determination in cases involving banishment and life exile. In a similar manner, crimes involving officials of the sixth rank and below could be handled by the censors at their discretion, but cases involving officials of the fifth rank and above had to be referred to the throne. The censorate was also authorized to handle routinely the prosecution of low-ranking military officers but had to memorialize about higher officers.

Without entering an overall judgement about the quality of Ming justice, it is fair to say that these regulations reveal a concern for sentencing — the assignment of punishment for a crime — greater than that concerning determination of guilt. Where more than one crime was committed, the more serious offense was used as the basis for punishment. The Ming magistrate, in his capacity as judge, had to calculate the value of bribes and stolen goods in deciding upon the proper sentence. Ill gotten goods were either to be returned to the original owner or confiscated by the government. Out of consideration for the family system, however, ancestral tombs were not to be included among the items seized when a criminal's property was taken. Compassion or lenience was manifested in the many provisions that mitigated the severity of punishment. For

example, if stolen property was returned to the owner before the crime was discovered the thief was to be treated as one who had made a voluntary confession. Sentences were to be reduced by lowering the degree of punishment specified for the crime committed. Amnesties were important in mitigating the severity of punishments. Good behavior, and in some cases, participation in the capture of armed criminals, could hasten the restoration to the community of a convict whose sentence was up and facilitate the removal of tattoos marking them as outcasts. There were limits to the amnesties, however. Those who made false accusations that caused others to die could not be pardoned. Life exiles sent to live in distant places were not allowed to return. In the Ming as today, China had a well-developed system of banishment that consigned southerners to the north and northerners to the south to toil in iron smelters and salt farms, or to open new land as farmers. Humane administration of jails and prisons was the chief concern of two articles in the *Commandment*.

Crimes by officials were treated somewhat differently from crimes committed by ordinary persons. An immunity was granted for those who reported mistakes in government business. Officials enjoyed a limited immunity from prosecution while in mourning. When they were charged with a crime, depending upon its seriousness, they could remain in office, take a demotion, or be reassigned to the frontiers. A magistrate could redeem the punishment for a minor crime by paying copper cash. Former officials were not to be exempted from prosecution, nor were the servants and retainers of imperial relatives, nobles, or high officials. Military officials were to be treated more leniently than civil officials.

Consideration for the family system is shown in a number of items in the penal law. Leniency was shown to those who loyally tried to shield their masters or close relatives who were guilty of crimes. The shielding of more distant relatives still within the mourning grades yielded a reduction of sentence. This consideration was not applicable for the most antisocial acts — rebellion or assault upon a superior. When a family lost a member to murder, the perpetrators of the crime were expected to pay for funeral expenses incurred by the survivors. When crimes were committed by family members acting as a group, the senior members of the group might be held responsible. In more serious crimes, however, all were to be punished without regard to family status. Crimes that threatened the family were singled out for strict treatment. Infidelity by a wife is another example. Women, who were normally allowed to keep on their undergarments during beatings and who were to be spared tattooing when exiled, were to be stripped and beaten for infidelity. I presume that the special attention to infidelity was related to the potential threat it posed to the continuity of the male line.

#### *Policy and Administration*

Questions of policy and administration ranked second in the frequency of matters regulated by the *Commandment*. Here we encounter general policies for recruiting and regulating the bureaucracy. The very first articles in the code concern the recruitment, through recommendation, of talented individuals from throughout the government. Talent was also sought for the national university, which was to be filled with 100 students aged twelve and over from official families, and 50 students above the age of fifteen from commoner families. The retirement age for officials was set at seventy with the proviso that the emperor could command individuals to work longer if he chose. Regular officials were to practice the law of avoidance and never serve in their native places. In a like manner officials and functionaries both were required to avoid conflicts of interests by not conducting government business with close relatives. In such cases the junior person was to avoid the more senior.

A number of references are made in the *Commandment* to the evaluation of officials. The censors were charged with investigating the performance of local officials and reporting their findings as a basis for promotions and demotions. A special office in the Secretariat was charged with maintaining registers containing the service records of all officials. Regional officials were to serve three-year terms, renewable with satisfactory performance, after which they were to come to the capital for an audience with the emperor. In general evaluations of official performance in the capital were to take place every thirty months, while the standard tour of duty for officials in the provinces was three years. Successful completion of a term of service generally should have led to an elevation of rank. Subofficial functionaries, who were assigned to each office by quota, served in their positions for thirty-month terms. They could become probationary officials after they had served well for ninety months. A magistrate newly appointed to a local office was required to report on the population and tax receipts of a district at the time he took over. Upon completion of a term he was expected to remove his family members promptly from the official residence and to proceed to the capital for an imperial audience. Time limits were set for the conduct of public business, five to ten days depending upon the complexity of the business. Clerks and staff supervisors were charged with keeping an eye on the performance of public officials. Special punishments were specified to encourage rapid reporting of military intelligence.

#### *Ceremony and Ritual*

Under this heading I have placed together a variety of references in the articles. One grouping concerns official religion, specifying when and under

what circumstances certain official sacrifices were supposed to take place. These include the Temple of the Three Emperors, the Altar of Soil and Grain, the Temple to King Wu and King Cheng, and the Confucian Temple.<sup>31</sup> These articles thus governed the relation of the Ming regime with the spirit world.

A second group of articles concerned the way the state regulated the family system. The longest single article in the *Commandment*, running eighteen pages in the Chinese text, provides the official Ming definition of the grades of mourning.<sup>32</sup> By classifying family relationships—both through descent and through marriage—under the headings of the ancient forms of mourning observance, the *Commandment* in effect provides a legal definition of the Chinese kinship system. The proximity of relationship between two people could be found through the degree of mourning required of each upon the death of the other. Built into such classifications was an elaborate set of assumptions about the ideal social order, hierarchically structured so as to discriminate among individuals on the basis of generation, age, and sex.<sup>33</sup>

An assertive aspect of the *Commandment's* legislation of family affairs was the support for desirable behavior and the curtailment of its opposite. An element crucial to the integrity of the male-dominated lineage system was the willingness of women who married into a family to remain loyal to it. For this reason women who were widowed before the age of thirty but held to their vows until after they were fifty were to be recognized with publicly posted citations and their households excused from labor service. Filial sons, obedient grandsons, righteous men, and chaste women were likewise to be recognized with public placards. In official families special emphasis was placed on the requirement to care for aged parents and grandparents even if this meant leaving official service. A grandson who gained official position thanks to his grandfather's government service was required by the regulations to observe a three-year term of mourning when the latter passed away. This protection privilege (*yin* 蔭) was one of many intersections of the state system with the family structure.

The power of the state to shape the organization of society through the use of symbols is best seen in the elaborate sumptuary regulations spelled out in the *Commandment*, which specify the styles of clothing, residences, equipage, dishes,

<sup>31</sup> The Three Emperors were ancient culture heroes, variously explained, but often referring to Fu-hsi 伏羲, Shen-nung 神農, and either the Yellow Emperor 黃帝 or Sui-jen 燧人, the discoverer of fire. The Altar of Soil and Grain (*she-chi*) was the square earth altar to the south of the palace. Kings Wu 武 and Ch'eng 成 were the first rulers of the Chou dynasty.

<sup>32</sup> A short account of mourning grades can be found in Bodde and Morris, *Law*, pp. 35-38; for a longer account see J. J. M. de Groot, *The Religious System of China* (Leiden, 1892-1910; rpt. Taipei, 1964) 2, pp. 493-566.

<sup>33</sup> For a general account, see Hugh D. Baker, *Chinese Family and Kinship* (New York: Columbia U.P., 1979).

and tombs suitable for persons of each rank. Certain symbols, notably the dragon and the phoenix, were reserved for imperial use. It is noteworthy that the sumptuary regulations that were so carefully described for civil officials and commoners did not necessarily apply to military personnel. This is a minor indication of the relatively high status which the military enjoyed at the time of the dynastic founding. Closely related to the sumptuary laws were the titles and posthumous titles conferred upon those who had served the state at the highest levels.

More mundane uses of symbolic regimentation are to be found in articles that specified the protocol to be followed in arranging officials at court audiences and the exact appearance of the uniforms prescribed for each rank. A practical concession to reality was made in the provision that officials did not need to wear their finest court gowns when it was snowing or raining. Even the style in which documents sent to the throne were to be written was specified in the regulations.<sup>34</sup>

#### *Resources and Taxation*

The concern for resources and taxation in the *Commandment* has two primary focuses. One is the regulation of the economy so as to produce revenue and the other is the control of the officials who levied the taxes. The standardization of weights and measures was an essential element of an orderly tax collection system. The requirement that all households register with the officials and stay in their categories was another. Mention is made of a sales tax on land, houses, livestock, and of a tax on brewer's grains. The most important tax was the land tax. The local magistrate was to keep a register of all land transactions and report them annually to the prefecture. The regulation appears to prohibit the sale of surface rights while retaining the tax obligation with the original owner. Taxpayers were explicitly prohibited from presenting the title to their land to imperial relatives or other powerful persons so as to escape the tax collector's net. Compassion is shown in the regulations for the aged who might hire someone to perform their labor service or be excused altogether, and widowers, widows, orphans, and the childless, who were to be given a monthly grain allowance and an annual cotton allowance.

The desire to control the revenue-raising activity of officialdom is evident in a number of articles. Officials were not allowed to squeeze what they needed from the people but were required to pay the going rate to merchants. When requisitions and deliveries were permitted they were to be managed in a uniform

<sup>34</sup> There is considerable lore about the Ming founder's sensitivity to possible hidden criticisms in court documents. See Wu, *Chu Yuan-chang chuan*, pp. 266-75.



matter. Taxes were not to be levied without authorization from the Secretariat. Military officials were not allowed to impress into the ranks commoners who did not come from military households. The procurement of weapons and fabrics were to be carried out with special attention to quality control.

#### *Family and Marriage*

Under this category a number of articles can be linked that are aimed at regulating the family system of the population at large. Here we can see the state's power exerted in support of preferred norms. Marriages were to be arranged by parents and grandparents, and the conditions under which engagements could be broken off were spelled out in some detail. Parents were not supposed to pledge their children in marriage before birth, but the age at which men and women were permitted to marry was not specified. The seven traditional grounds for divorce and the three reasons for denying divorce defined the legal limitations of the marriage bond.

The strongest concern running through the articles on family and marriage was for the continuity of the family unit. The problem was to provide for family survival in the face of the mortality of its members. Sons and grandsons whose parents and grandparents were still alive were not to divide their wealth and residences unless the members of the elder generation gave their permission. A widow who had no son by the time her husband died and who remained faithful to her vows was to defer to the head of her husband's clan to designate an appropriate heir. Those who had no sons were to bring in a nephew to act as heir. Failing that, any relative of the same surname was acceptable, as long as the generation was correct. A family without a son could also contract with an outsider to join the family so as to continue its line and care for the parents, but such a son-in-law, even if he changed his surname, could not carry on the ancestral rites. Only sons were forbidden to hire themselves out in this manner. Daughters inherited property only when there were no suitable heirs in the lineage and the family line was cut off. Normally, land and other property were to be equally divided among the sons of the primary and secondary wives, concubines, and servants. An exception was made in the case of families with official protection, in which case the eldest son or grandson of the principal wife was given special consideration. This was a trace of the practice of primogeniture, which characterized the inheritance pattern of the nobility and the imperial family.

#### *Movement and Security*

Attention to the control of movement appears at a number of points in the *Commandment*, but not as a central concern. Generally speaking, travel was tightly

restricted in early-Ming society. The chief exceptions were merchants, criminals undergoing banishment or exile, and persons on government business. Hostels were required to keep a register of merchants staying with them and to show it to the local authorities monthly. At the national and provincial capitals travel permits were issued by the military authorities and at the local level by civilian officials. Regular checkpoints required inspection of travel documents. Although common people were not allowed to travel freely, allowance was made for persons sentenced to life exile to take members of their family and household with them. When the exile died the dependents were allowed to return to the original place of registration except in the case of the most severe crimes. Along the main routes of travel the government maintained a network of water stations and express stations with boats and soldiers supplied by local households. Those traveling on official business were entitled to a specified retinue and a standard issue of grain at the points where they stopped.

#### SOCIAL LEGISLATION IN THE *COMMANDMENT*

It is clear that the Ming founder intended to use law as an instrument of social control.<sup>35</sup> Law was a sanction, a tool, for compelling people to behave the way the ruler thought they ought to behave. Implicit in the *Commandment* were a number of devices for shaping and controlling the social order. The populace at large were bound to their places of residence by travel restrictions and registered under tax categories that fixed their occupations. Those few individuals who enjoyed the mixed blessing of employment by the government were tightly held in the grip of an elaborate civil service system. Sumptuary laws governing dress, carriages, and residences visibly reinforced the social pecking order. The worthy could hope for special consideration in employment, honorary titles, or public placards proclaiming their virtue while the deviant faced beatings, fines, tattooing, banishment, or execution. Even religious ceremonies were designed to elevate the ruler by magnifying his connection with the spirits. The family was the primary unit of orientation and control of individuals. Through its legislative powers the state did its part to define and reinforce a kinship system that would embody something approaching the ideal status gradations based on distinctions of generation, age, and sex.

It is well to bear in mind that as ideals fabricated by the ruler and his advisers, the standards of behavior set forth in the *Great Ming Commandment* tell us only what was demanded of the Ming subjects on paper. They do not tell us

<sup>35</sup> Ming perspectives on the law are briefly characterized by Yang Hsueh-feng 楊雪逢, *Ming tai ti shen-p'an chih-tu* 明代的審判制度 (Taipei: Li Ming wen-hua shih-yeh kung-ssu, 1978), pp. 26 ff.

what the actual norms of everyday life were in the minds of the people of China in the latter half of the fourteenth century. Still less do they tell us how people behaved. From such a code we can learn more about the authors than the target population. Yet even in regard to the authors, the *Commandment* speaks in muffled tones. Only in the edict announcing the *Commandment* is the Ming founder directly quoted. The language of the document itself is the dry and technical terminology of his scholarly advisers. Much of it restates traditional legal doctrines hundreds of years old, raising for us the question of archaism. How much of it was alive and how much was formal verbiage carried over from the T'ang? In light of these facts, it is fair to ask what the historical significance of the *Commandment* may have been.

### HISTORICAL SIGNIFICANCE

Chu Yüan-chang drew on many sources in the organization of his empire. His hereditary military system was modeled, with a few changes, on that of the Yüan. For his ideology he turned to the neo-Confucian school, which was essentially a product of the Sung. After 1380, when crisis forced a reorganization of the central government, he located his sons' frontier fiefs in an arrangement based on Han-era precedents. In the codification of law, Chu Yüan-chang was guided primarily by the T'ang model. Li Shan-ch'ang is given credit for first recommending T'ang law to the Ming founder.<sup>36</sup>

What we see in the *Great Ming Commandment* is the first effort to adapt T'ang codifications to Ming conditions. Many T'ang elements, such as the ten abominations, the eight considerations, and the five punishments are in evidence. Of course, one must be alert to slight changes of content or meaning, even in those elements of the T'ang law taken over directly.

What is new and of Ming origin is the organization of the contents under the categories of the Six Ministries, a practice which was later to be extended to the *Ming Code* itself. Not yet apparent in the *Commandment* are adjustments that emerged in response to problems during the founder's reign. The elimination of the post of prime minister and the problems of governing the imperial princes, which became so central to the survival of the regime after 1380, problems that pervaded the *Great Ming Ancestral Instruction*, are not yet to be glimpsed. Absent, too, are the questions of extra-legal punishments used by the emperor, the abuse of power by corrupt bureaucrats, and the evasion of the law by a grasping public, all of which we learn about in the *Great Pronouncements*. Also absent from the

*Commandment* is the personal stamp of Chu Yüan-chang that colored some of the later works, especially the *Ancestral Instruction* and the *Great Pronouncements*, and which accounts for the exhausting reworking of the *Ming Code*.

When the *Commandment* was issued Chu Yüan-chang's legislative career had just begun. For this reason the work provides us with a baseline from which to measure later codes.

### LIST OF ABBREVIATIONS

HMCS            *Huang Ming chih shu* 皇明制書

<sup>36</sup> *Ming shih* 93, p. 2279.