HKU03x Humanity and Nature in Chinese Thought

Week 2: Confucius
Section 7: Confucius on Punishment: Law and Deontology?

- *Punishment* is the specific target of Confucius' focus here, not *law*
- 刑 *xing*[punishment] uses a 'knife' radical
- 形 *xing*[shape:appearance] uses a 'feather' radical
- Many punishments in ancient China involved amputation--cutting/shaping with knives
- The other target of Confucius' criticism is typically translated as 'government' or 'administration'. It consists of the character 正 with a radical that usually suggests 'slap', 'beat', 'force' or 'coerce'. Max Weber defines the state as the institutional monopoly on legitimate force. This gives us an interpretive metaphor for remembering how to write the character for *governing*: "Rectify with beating"
- 政 *zheng*[govern]
- 正 *zheng*[rectify]
- Confucius' passage in Analects 2:3 may be a response to a famous historic event
- The publication on cauldrons and bamboo of *The Five Punishments* was the supposed first approximation of penal codes in China and drew criticism from Confucian officials
- The conception as a code of punishment suggests it had a different form from Western laws—typically general commands or restrictions on behavior
- The punishments were the consequence of disobedience, not the content of the law
- The code of 刑 *xing*[punishment] was conceived as a publication of allowed punishments perhaps with the names of the offences, or the criminal statuses attached
- The promulgation of this list to the public may have drawn criticism from officials because they saw it as limiting their punishing discretion

- Confucius' argument against punishment in the Analects does not take the same form as the officials
- "Guide (道 *dào*[guide]) them with 政 *zheng*[coercion], order them with 刑 *xing*[punishment], the people will avoid [wrongdoing?] but will have no 恥 [shame]. Guide (道) them with 德 *dé*[virtuosity] and order them with 禮 *li*[ritual] and they will have shame and learn to fit in." Analects 2:3
- You train a child better by teaching and practicing a good behavior (as if it were a cooperative game) than by suddenly hurting them—leaving them to wonder why you did it. (Or worse, to treat it as an example of how to behave themselves—hurt people who annoy them)