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Impaginazione
Gabriella Clabot

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Back cover:

大清律例 (Da Qing lü li), 1740, reprint edited by 鄭秦 (Zheng Qin)
and 田濤 (Tian Tao) (Beijing: 法律出版社, Falü chubanshe, 1998)

Law, Justice and Codification in Qing China

European and Chinese
Perspectives

Essays in History
and Comparative Law

edited by
Guido Abbattista

FIGURE 1 – “Fac-simile of the Title page of the 1805 edition of the *Ta Tsing Leu Lee* published in the Year 10th of the reigning of the Emperor Kia King”, from: George Thomas Staunton, *Ta Tsing Leu Lee; Being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China* (London: Cadell, 1810), frontispiece

嘉慶十年新年鐫

輯註通纂

比引條例督
捕則例附後

大清律例重訂

遵照嘉慶六年奉
部頒行續纂并增修近年條例

工本浩繁每部發
價番銀三兩六錢

Mutou sculp.

Fac-simile of the Title page of the latest edition of the

TA TSING LEU LEE

Published in the Year 1805, the 10th of the reigning Emperor Kia King.

see page lxxiii. note.

FIGURE 2 – George Thomas Staunton, *Ta Tsing Leu Lee; Being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China* (London: Cadell, 1810), title page

TA TSING LEU LEE;
BEING
THE FUNDAMENTAL LAWS,
AND A SELECTION FROM THE
SUPPLEMENTARY STATUTES,
OF THE
PENAL CODE OF CHINA; *K*

ORIGINALLY PRINTED AND PUBLISHED IN PEKIN,
IN VARIOUS SUCCESSIVE EDITIONS,
UNDER THE SANCTION, AND BY THE AUTHORITY, OF THE SEVERAL
EMPERORS OF THE *TA TSING*, OR PRESENT DYNASTY.

TRANSLATED FROM THE CHINESE;
AND ACCOMPANIED WITH AN APPENDIX,
CONSISTING OF AUTHENTIC DOCUMENTS, AND A FEW OCCASIONAL NOTES,
ILLUSTRATIVE OF THE SUBJECT OF THE WORK ;
BY SIR GEORGE THOMAS STAUNTON, BART. F.R.S.

Mens, et animus, et confilium, et sententia civitatis, posita est in LEGIBUS.
CICERO PRO CLUENTIO.

LONDON:
PRINTED FOR T. CADELL AND W. DAVIES, IN THE STRAND.
1810.

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Guido Abbattista

CHINESE LAW AND JUSTICE: GEORGE THOMAS STAUNTON
(1781-1859) AND THE EUROPEAN DISCOURSES ON CHINA
IN THE EIGHTEENTH AND NINETEENTH CENTURIES

PREFACE – INTRODUCTION – I. EIGHTEENTH-CENTURY DISCOURSES ON CHINESE LAW AND JUSTICE – I.1. European Views on China in the Early Modern Period – I.2. Du Halde on Chinese Justice – I.3. Views on Chinese Law and Justice after Du Halde: Admirers and Detractors – I.4. British Views on Chinese Institutions from William Temple to Adam Smith – I.5. Contributions and Opinions in the Last Thirty Years of the Eighteenth Century – II. AN END-OF-THE-CENTURY TURNING POINT – II.1. Diplomatic Evidence: Lord Macartney, George Leonard Staunton, John Barrow – II.2. French Perspectives from the Early Nineteenth Century – II.3. Chrétien-Louis-Joseph de Guignes – II.4. Popular Images of Chinese Penal Justice – III. GEORGE THOMAS STAUNTON AND THE QING CODE – IV. ENGLISH REACTIONS TO THE QING CODE – V. THE QING CODE IN EUROPE AND THE ITALIAN AND FRENCH EDITIONS

PREFACE

I had two objectives in writing this essay. The first and most specific is to introduce the digital reprint of the Italian translation of the *Ta Tsing Leu Lee* (*Da Qing lü li* in modern transliteration), the so-called Qing ‘penal code’ (Milan, Silvestri, 1812, 3 volumes in-8°): something I deal with also in the General Introduction. My second objective is to present the work that was translated into Italian in 1812, the *Ta Tsing Leu Lee* published in London in 1810, and its author George Thomas Staunton by reconstructing the relevant aspects of the latter’s biography, his role in the culture and politics of early nineteenth-century Britain, his reasons for translating the Qing code into English and the set of motivations guiding the work. For a better understanding of this matter, we also need to reconstruct what served as the context for both the English and the Italian edition: a long-standing European cultural discourse on China and its institutions, civilization, philosophical and literary traditions, society, economy, and religion, and above all its political, administrative and judicial systems.

This discourse is central to the history of European culture because of the blend of political, religious and philosophical aspects for which China – along with its “greatest and most marvellous characteristics” referred to in *The Travels of Marco Polo* – offered itself to Western observers as a particularly distinctive subject of analysis from the sixteenth to the early nineteenth century, a period when its contact with the Christian West grew gradually more regular and intense, however rigorously disciplined by the rigid regulations of the Chinese imperial government. Even before the skills and general conditions could be developed for researchers to carry out close and in-depth studies, China had already been a peculiar point of reference, a mirror, a starting point from which to reflect upon forms of social, cultural, political and religious diversity due to both the quantitative “incomparability” and the undeniable alterity of the nature, essence and deep-seated characteristics of its way of life.¹ The vast amount of literature that exists on the protagonists, episodes, evolution and meaning of this European discourse thoroughly dissects its most important aspects, especially when it comes to religious matters and the missionary work of the Jesuits.² My intention is obviously not to reconstruct the entire discourse. I simply wish to analyse its most salient expressions regarding the issue of law and justice and thus better understand the value and meaning of the first European translations of the Qing ‘penal code’. We will explore this text in greater detail later, but for now it must be stated that while it was a legal source of primary importance, it was neither a ‘code’ in the Western sense of the term, i.e. the result of filing regulations under general categories, nor a set of exclusively penal regulations.³

To provide proper historical and cultural context for the production in Europe of the first translations of the *Da Qing lü li*, this essay is divided into five parts, preceded by an Introduction. The first two parts trace the evolution of the eighteenth-century discourse on Chinese law and justice, considered as a specific aspect of a more general and very animated interest that made China an important subject of discussion and controversy in Europe during that century. I will therein seek to show how this discourse cannot simply be compressed into rigid interpretive schemas that distinguish between sympathizers and adversaries of China. The matter is more nuanced and even contradictory, part of an overall evolution that towards the end of the century witnessed the

1 See Adriano Prosperi’s reflections in “Lo specchio del diverso”, an introductory note to the Italian edition of Jacques Gernet, *Chine et christianisme* (Paris: Gallimard, 1982, It. transl. Casale Monferrato: Marietti, 1984), ix-xxiv.

2 For some bibliography to this regard, see par. I.1, 8, note 9.

3 See Marina Timoteo’s essay “Of Old and New Codes: Chinese Law in the Mirror of Western Laws” included in this volume.

waning of Enlightenment sympathies for China as both a model worthy of admiration and imitation and, especially in France, an instrument for arguments over the characteristics of *ancien régime* societies and institutions. The third part is expressly dedicated to the significance, importance and reception of Staunton's translation, with respect both to the history of Western knowledge about China and to the building of imperial knowledge, considered in relation to the globalizing processes of trade, politics and diplomacy. The fourth and fifth parts deal with the English reactions and discussions and the Italian and French translations by presenting the respective authors, characteristics and contexts in which they were organized and produced and, to some extent, their reception and influence.

I have discussed the issues addressed herein at various conferences, in particular the 22nd International Congress of Historical Sciences in Jinan (August 2015) and the final conference of the PRIN 2011 project on the "The Liberty of Moderns. Long Enlightenment and Civilization (1750-1850): Commerce, Politics, Culture, Colonies" held in Turin in March 2016 entitled "Global Perspectives in a European 'Long Enlightenment' 1750 to 1850". On these occasions I publicly and profitably discussed the general and more detailed questions that led me to begin the present study. I am referring in particular to the possibility of analysing European discussions about China to understand a part of the Enlightenment legacy that may well be of central importance to the history of Western culture, especially if we consider its direct influence in the nineteenth century on some of the more distinguishing aspects of liberalism, free trade and modern legal-political culture.

This contribution nevertheless owes a great deal to my discussions with Michele Graziadei, Zhang Lihong and Marina Timoteo, whose advice and competence in the subject of Chinese law has greatly helped me understand issues and concepts previously unknown to me. Edoardo Tortarolo and Girolamo Imbruglia made careful reading of successive versions of this essay and did not spare extremely useful comments, of which I hope to have profited enough. Of course, I take full responsibility for whatever good or less good, inaccuracies or mistakes included, these pages contain. I am also very grateful for the patience and interest with which the students in my upper level course on global history at the University of Trieste have followed my line of reasoning about the importance of Europe-China relations during the modern era. I hope to have convinced them of the need to address this issue diligently and to open themselves to relatively unusual research perspectives. Finally, special thanks go to my translator Michelle Tarnopolsky for her remarkable skill and painstaking editing that far surpassed what is usually expected from a linguistic assistant.

I would like to dedicate this work to my doctoral students with whom I have shared such constructive and meaningful moments in every way throughout their studies and

research, and from whom I have learnt so much. Their extraordinary work, commitment and passion have reinforced my conviction, if that were even necessary, of how vital it is to support, listen to and give opportunities to those who climb the steep, slippery path hopefully leading to an academic research career, dedicating so much of their energy and lives to this journey, which often intersects with important events both joyous and painful and requires them to make difficult choices. I can only think with admiration and affection of the dedication, determination, courage and skill with which they have faced trying challenges and put themselves to the test on an international stage, often with less than adequate institutional support. The debt of gratitude that I owe to them all, and some in particular, is so large I could only ever hope to settle it in full.

Turin, July 2016-June 2017

INTRODUCTION

From the moment that relationships between the West and China started becoming relatively stable and constant in the mid-sixteenth century, law and justice became key components of the representations and narratives developed in China-related European travel accounts, diplomatic memoirs, historical-descriptive texts and philosophical-political treatises. Is China a state governed by stable laws or an arbitrary government? Does legal protection exist for its subjects or are they left to the despotic arbitrariness of the government and the administration? Can judicial apparatuses ensure such protection in an effective, impartial way? Evaluating the state of late Ming and Qing China's society, the features of its institutions and the degree of its civilization means deepening our knowledge of the historical, political, economic, linguistic, cultural and religious aspects of this great country; but it also means seeking answers to these specific questions.

This subject has recently been addressed in important contributions that, despite belonging to the disciplines of social studies and comparative legal studies and often being inspired by contemporary issues, have endorsed a historical perspective by proposing retrospective reconstructions to which it could be useful for us to refer, particularly when it comes to introducing stimulating interpretive categories such as that of "legal Orientalism" recently coined by Teemu Ruskola.⁴ Such studies have sought out the foundations of political-institutional and legal alterity between the West and China less by analysing institutions and traditions and more by considering the European representations, interpretations and images that proposed both positive and negative overall views of the Chinese civilization through discursive narratives and formulations about law and justice. Ruskola has thus taken up Edward Said's interpretation of Orientalism by using the expression "legal Orientalism" to identify the set of concepts through which modern Western culture represented the subjects of law and justice in the Oriental world, and China specifically. Such representations produced an essentialization, that is, they gave rise to the stereotype of an indistinct despotic Oriental world characterized by the absence of the legal foundations upon which the European, Western tradition of civil and political liberty was based, a stereotype that served perfectly to legitimize

4 Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, MA: Harvard University Press, 2013). Another important contribution is Timothy Brook, Jérôme Bourgon, Gregory Blue, *Death by a Thousand Cuts* (Cambridge, MA: Harvard University Press, 2008), which is more specifically devoted to European representations of Chinese penal justice. With reference to specific cultural areas or authors, for example Adam Smith and Montesquieu, attention is also paid to the subject of law and justice in China in Ashley E. Millar, "Revisiting the Sinophilia/Sinophobia Dichotomy in the European Enlightenment through Adam Smith's 'Duties of Government'", in *Asian Journal of Social Science*, 38, no. 5 (2010), 716-737, see 725 ff., and Jacques Pereira, *Montesquieu et la Chine* (Paris: L'Harmattan, 2008), see chapter 4, "La justice chinoise", 387-412.

certain Western ‘imperial’ actions. With particular reference to China, Ruskola refers to the prevalence in the eighteenth and nineteenth centuries of a view authoritatively supported by Montesquieu and endorsed by many Western observers whereby the absence of the law and arbitrary power were constituent parts of Chinese society, partly due to the supposedly irrational nature of its laws expressed in an obscure language incapable of evolving.⁵ “Legal Orientalism” is certainly a stimulating approximation to describe a significant aspect of the European view of Asian judicial systems. However, as already occurred in the case of Said with the more general concept of Orientalism, an analysis of the sources reveals a much more complex expression of the fact-finding and interpretive processes through which European culture approached and conceptualized the nature and reality of Chinese institutions, law and justice. Indeed, the purpose of the present study is precisely to demonstrate this point.⁶

Despite the need for a synthesis of this topic that includes the entire modern era, I will restrict my foray into this discussion to a chronology that begins in the seventeenth century, not only for obvious reasons of space, but also because the focus of my attention is the moment when discussions about China and its institutions took a decisive turn in the early nineteenth century. In a nutshell, this change was sparked by the rapid and profound development of commercial and political relations between Europe, especially Great Britain, and China that took place at the turn of the nineteenth century. By identifying this moment as a *Sattelzeit*, with the homogeneity of a “Gegenstandsbereich”, Reinhart Koselleck and John Pocock emphasized the significance of synthesizing the passage from one form of modernity to another, complete with distinctly new features.⁷

This evolution primarily regarded material – commercial, diplomatic, political – relations while involving the cultural sphere in a similarly profound way. I am referring to the progress made and the directions taken at the time by Sinological knowledge in response to new needs emerging from increasingly direct and intense encounters with the Chinese world, as compared to the academic-erudite and missionary traditions that

5 Ruskola, *Legal Orientalism*, 37 and 47.

6 In a footnote, Ruskola acknowledged that Western opinions on Chinese law were nuanced and sometimes positive, especially during the early modern period, but he maintained that often those were, as Derrida said, “domestic representations” mostly motivated by the desire to criticise the European situation through contrast (46). With the emergence of merchants as the dominant group of Westerners active in China, the perception of Chinese law and justice grew increasingly negative. *Legal Orientalism*, 252, note 81.

7 Reinhart Koselleck, *Über die Theoriebedürftigkeit der Geschichtswissenschaft*, in *Theorie der Geschichtswissenschaft und Praxis des Geschichtsunterrichts*, Hrsg. Werner Conze (Stuttgart: Klett Cotta, 1972), 10-28, see 14 ff.; John G. A. Pocock, “Political Thought in the English-Speaking Atlantic, 1760-1790. II. Empire, Revolution and the End of Early Modernity”, in *Varieties of British Political Thought, 1500-1800*, ed. John G. A. Pocock with the assistance of Gordon J. Schochet and Lois G. Schworer (Cambridge: Cambridge University Press, 1993), 311.

had prevailed until the late eighteenth century. However, I am also referring to the more general growth of information on China placed at the disposal of cultivated opinion and public discourse by abundant European publications of varying nature and origin.

As mentioned above, a decisive turning point in European knowledge of, representations of and discourse on Chinese law and justice is represented by the 1810 English translation of the Qing penal code – the *Da Qing liü li* – by George Thomas Staunton (1781-1859). As a leading figure in the history of early nineteenth-century Sino-Western relations, Staunton’s fascinating political and intellectual biography has yet to be reconstructed as it deserves. We can only fully understand Staunton’s contribution to the construction of the archives of imperial knowledge if we consider it not only from the point of view of Sinological studies and the history of Chinese law – inevitably extraneous to the perspective and knowledge of the writer – but also in relation to at least two other contexts. The first is the discourse on Chinese law and justice that took place within modern Western culture and to which Staunton’s work programmatically intended to bring an original voice. The second was formed by the establishment of a specialized kind of learning and knowledge that we could generically call ‘imperial’ – the direct result of needs and incentives produced by the forms of political and economic globalization practiced by certain states of the European West, especially Great Britain, in the eighteenth and nineteenth centuries. Because of the particular season of British expansionist policy to which Staunton belonged, his case lends itself particularly well to studying the motives, tensions and stakes at play within discursive structures, narratives and representations tied not to some abstract cultural field but to logics of knowledge production that were profoundly connected to the practice of imperial power.

My primary intention with this essay is therefore to recapitulate the essential terms of Western representations of Chinese law and justice, especially with respect to eighteenth-century developments. After exploring why Chinese law and justice became such an important issue, I will try to demonstrate the significance of Staunton’s work by contextualizing it within the historical moment when it appeared and spread throughout Europe, and the discourse that took place around its emergence. In so doing, I hope to help clarify the mechanisms involved in forming both positive and negative stereotypes as well as the source of the affirmation in Western culture of the “constructed bipolarism of East and West” that contains the perception of Oriental alterity.⁸

⁸ John M. Hobson, *The Eastern Origins of Western Civilisation* (Cambridge: Cambridge University Press, 2004), 322.

I. EIGHTEENTH-CENTURY DISCOURSES ON CHINESE LAW AND JUSTICE

I.1. EUROPEAN VIEWS ON CHINA IN THE EARLY MODERN PERIOD

In seventeenth- and eighteenth-century Europe, China was an object of curiosity, attention and interest for observers, missionaries, commentators and scholars engaged in discussing a great variety of subjects, including historical chronology, political and administrative institutions, philosophical-religious traditions, language, cultural heritage, economic forms, and diverse aspects of social life and customs. Yet China had also long maintained a high degree of opacity for Westerners seeking to know it better. Even during the first decades of the nineteenth century, following three centuries of contacts, relations and abundant literature, the country was still considered impenetrable and indecipherable and remained effectively unknown in great measure. While this was mainly due to linguistic barriers, political obstacles had also long thwarted Western efforts at familiarization.

Starting in the mid-sixteenth century, various kinds of direct testimony – on the part of merchants, ambassadors and especially missionaries – produced a considerable number of narratives about China, thus transmitting knowledge to the West that was then developed by prominent European cultural figures who integrated it into broader historiographical, philosophical, religious, political and economic reflections.⁹ From the

⁹ The works dealing with European representations of and opinions on China are so numerous that it is impossible to give a full bibliography. I only list here some of the most important ones, not including those on missionary history and Sinology: Pierre Martino, *L'Orient dans la littérature française au XVII^e et au XVIII^e siècle* (Paris: Hachette, 1906), digitalized copy from the library of the University of Michigan available on *Internet Archive*, accessed May 15, 2017, <https://archive.org/details/lorientdanslali00martgoog>; Henri Cordier, *La Chine en France au XVIII^e siècle* (Paris: H. Laurens, 1910), digitalized copy available on *Gallica*, accessed May 15, 2017, <http://gallica.bnf.fr/ark:/12148/bpt6k6204391s>; Adolf Reichwein, *China and Europe: Intellectual and Artistic Contacts in the Eighteenth Century* (London: Kegan Paul, New York: A. A. Knopf, 1925 (German or. ed., 1923)); Geoffrey Francis Hudson, *Europe and China: A Survey of Their Relations from the Earliest Times to 1800* (London: Edward Arnold & Company, 1931); Virgile Pinot, *La Chine et la formation de l'esprit philosophique en France, 1640-1740* (Paris: Librairie orientaliste Paul Geuthner, 1932); Lewis A. Maverick, *China, a Model for Europe* (San Antonio: Paul Anderson Company, 1946), I; Basil Guy, *The French Image of China before and after Voltaire*, in *Studies on Voltaire and the Eighteenth Century* (Genève: Institut et Musée Voltaire, 1963), XXI; Donald F. Lach (with Edwin J. Van Kley), *Asia in the Making of Europe* (4 vols., Chicago: The University of Chicago Press, 1965-1993); Raymond Dawson, *The Chinese Chameleon: An Analysis of European Conceptions of Chinese Civilization* (London: Oxford University Press, 1967); Edwin J. Van Kley, "Europe's 'Discovery' of China and the Writing of World History", *The American Historical Review*, 76, no. 2 (April 1971): 358-385; Henry A. Myers, ed., *Western Views* (Hong Kong: Asian Research Service, 1982-1984); René Étiemble, *L'Europe chinoise* (2 vols., Paris: Gallimard, 1988-89); Thomas

start, Jesuit missionaries, who were interested in transmitting the image of a civilization and a culture of great complexity, exerted a predominant influence on this process of communication, which from the sixteenth century to the eighteenth century gave cultivated Europeans access to descriptions and representations of Chinese civilization more or less openly inspired by polemical or controversial intentions; a variety of texts that gradually spread new knowledge and “a manipulative fixation of images”.¹⁰

In its radical alterity with respect to the Western Christian world, China assumed the role of an original case study and cause for reflection. It also became a touchstone, a reference model, placed at the centre of a ‘Chinese myth’: the mythical vision of an ancient civilization whose development had begun in the distant past, with unshakeable foundations secured by a wise government of paternally benevolent sovereigns and a competent, committed administration, and an infinitely large, hardworking population disciplined by the values of a social morality based firmly in the Confucian tradition. Es-

H. C. Lee, *China and Europe: Images and Influences in Sixteenth to Eighteenth Centuries* (Hong Kong: Chinese University Press, 1991); Julia Ching and Willard G. Oxtoby, eds., *Discovering China: European Interpretations in the Enlightenment* (Rochester, N. Y.: University of Rochester Press, 1992); A. Owen Aldridge, *The Dragon and the Eagle: the Presence of China in the American Enlightenment* (Detroit: Wayne State University Press, 1993); Jonathan Spence, *The Chan's Great Continent: China in Western Minds* (New York-London: Norton, 1998); *The Vision of China in the English Literature of the Seventeenth and Eighteenth Centuries*, ed. Adrian Hsia (Hong Kong: Chinese University Press, 1998); David E. Mungello, *The Great Encounter of China and the West, 1500-1800* (Lanham: Rowman & Littlefield Publishers, 1999); *China and Historical Capitalism: Genealogies of Sinological Knowledge*, ed. Timothy Brook and Gregory Blue (Cambridge: Cambridge University Press, 1999); Colin Mackerras, *Western Images of China* (Hong Kong-Oxford: Oxford University Press, 1989) and Mackerras, *Sinophiles and Sinophobes: Western Views of China: An Anthology Selected and Edited by Colin Mackerras* (Oxford-New York: Oxford University Press, 2000); Rupert Hodder, *In China's Image: Chinese Self-Perception in Western Thought* (Basingstoke: Palgrave Macmillan, 2000); David Martin Jones, *The Image of China in Western Social and Political Thought* (Basingstoke: Palgrave, 2001); Wang Gungwu, *Anglo-Chinese Encounters Since 1800: War, Trade, Science and Governance* (Cambridge-New York: Cambridge University Press, 2003); Zhan Shi, “L'image de la Chine dans la pensée européenne du XVIII^e siècle: de l'apologie à la philosophie pratique”, *Annales historiques de la Révolution française* [En ligne], 347 (janvier-mars 2007), accessed May 15, 2017, doi: 10.4000/ahrf.8523; *Perceptions and Images of China*, ed. Heinz-Dieter Assmann-Thomas M. H. Chan-Karin Moser von Filseck (Baden-Baden: Nomos, 2008); Shunhong Zhang, *British Views of China at a Special Time: 1790-1820* (Beijing: China Social Sciences Publishing House, 2011); Georg Lehner, *China in European Encyclopaedias, 1700-1850* (Leiden: Brill, 2011); Roger Hart, *Imagined Civilizations: China, the West, and their First Encounter* (Baltimore: JHU Press, 2013); Simon Kow, *China in Early Enlightenment Political Thought* (Oxford-New York: Routledge, 2016); Christophe Van Staen, *La Chine au prisme des Lumières françaises* (Bruxelles: Académie royale de Belgique, 2016); I also take the liberty of citing my own essay, “At the Roots of the ‘Great Divergence’: Europe and China in an 18th-Century Debate”, in *Cultural Transfers, Encounters and Connections in the Global 18th Century*, ed. Matthias Middell (Leipzig, Leipziger Universitätsverlag, 2014), 113-162.

¹⁰ Gregory Blue, “China and Western Social Thought in the Modern Period”, in *China and Historical Capitalism: Genealogies of Sinological Knowledge*, ed. Timothy Brook, Gregory Blue (Cambridge: Cambridge University Press, 1999), 69.

pecially at the height of the Enlightenment period, China became the living testimony of a great empire endowed with historical continuity and administered with order and regularity, as compared to a Christian Europe torn apart for centuries by internal conflicts between states and religious denominations, revolts, profound social and economic inequality tied to hereditary privilege in specific sectors of society, and overall instability. However, as Arthur F. Wright clearly demonstrated, this kind of representation was not merely a Western invention; it also corresponded to and was fuelled by an image of the Middle Kingdom that the influential “literati” class – the so called *guan*, belonging to the body of Mandarin government officials – had carefully developed, spread throughout the empire and presented to European observers, especially from 1750 to 1840.¹¹

As we know, one particularly important aspect of the discourse on China was the ‘rites controversy’¹² that raged from the late seventeenth century to the 1740s involving Jesuit missionaries, the Holy See, the Sorbonne censors, the French Société des Missions Étrangères, and Franciscans and Dominicans friars, culminating in the definitive condemnation, by pope Benedict XIV’s 1742 bull “Ex quo singulari”, of Jesuit arguments about the compatibility of Chinese rites with Christian doctrine. The matter regarded not only missionary issues and related strategies but also more generally the nature of Chinese philosophical and religious traditions, their possible relationship with the cultures of the Mediterranean area and the Judeo-Christian tradition, the chronology of Chinese history, and religious tolerance.¹³ It also formed one of the polemical contexts in which the pro-Chinese sympathies of the Jesuits and the information they conveyed to Europe influenced illustrious German and French Enlightenment figures like Leibniz, Wolff and Voltaire, thus fuelling the juxtaposition between Confucian traditions of a ‘practical philosophy’ based on rational ethics and quasi-deistic thought, and using China as a full-fledged weapon of free thought against Catholic orthodoxy.¹⁴

By the mid-eighteenth century, China had become the object of great intellectual fervour, a fad, albeit for people with considerably different opinions. As a topic of discussion it was addressed not only in historical and moral treatises and Enlightenment salons but also in opinion periodicals and the great works of historical, geographical and

11 Arthur F. Wright, “The Study of Chinese Civilization” (1958), in Ching and Oxtoby, *Discovering China*, 189-211.

12 George Minamiki, *The Chinese Rites Controversy from Its Beginnings to Modern Times* (Chicago: Loyola University Press, 1985).

13 See Rolando Minuti, *Orientalismo e idee di tolleranza nella cultura francese del primo '700* (Firenze: Olschki, 2006).

14 Mungello, *The Great Encounter*, 125-128; Walter W. Davis, “China, the Confucian Ideal and the European Age of the Enlightenment”, in Ching and Oxtoby, *Discovering China*, 2-26; Pinot, *La Chine et la formation de l'esprit philosophique en France*, “Chapitre II: La Querelle des Cérémonies Chinoises”, 103 ff.

encyclopaedic popularization. China's history, political system, administrative structure, natural and economic resources, literary and cultural traditions in general, social organization, religious doctrines and cults, and scientific and technological patrimony were sources of curiosity, debate and conflict. Opposing currents of thought, either sympathetic to or critical of China, divided European opinion. On the one hand there was the affirmation of a Chinese political-social model and a laudatory vision among certain leading exponents of the French Enlightenment (Voltaire, the Physiocrats). On the other hand there were the much less sympathetic, indulgent attitudes towards the Middle Kingdom, not only among other figures of that culture (Montesquieu, Rousseau, Diderot) but also in English culture where expressions of Sinophilia were far more lukewarm than south of the Channel, due in part to the obvious unwillingness to be persuaded by positive Jesuit portrayals.¹⁵

We must recall that not only were often distorted or simplified images of China used to fuel religious, philosophical or political arguments, but the country also became the object of growing erudite interest through the study of the language; the first attempts to edit dictionaries and grammar guides; the translation of philosophical and literary texts of the Confucian tradition, especially on the part of Jesuit missionaries residing in Beijing, and their reception in European countries, including England;¹⁶ and subsequently through the development of Sinological expertise within the Académie des Inscriptions et Belles Lettres thanks to figures like Nicolas Fréret, Etienne Fourmont and Joseph de Guignes, precursors of what in the second half of the century would become, especially with reference to the Indo-Iranian world, the eighteenth-century "Oriental renaissance".¹⁷ Nor can we forget the growing influence of art and artisan products and

15 In general, Anthony Pagden, *The Enlightenment, and why It still Matters* (Oxford: Oxford University Press, 2013), 226-246; Étienne, *L'Europe chinoise*; Kow, *China in Early Enlightenment Political Thought*; on England, Qian Zhongshu, "China in the English Literature of the Eighteenth Century", in Hsia, *The Vision of China in the English Literature of the Seventeenth and Eighteenth Centuries*, 117 ff.

16 See Thierry Meynard, *The Jesuit Reading of Confucius: The First Complete Translation of the Lunyu (1687) Published in the West* (Amsterdam: Brill, 2015); Virgile Pinot, *Documents inédits relatifs à la connaissance de la Chine à France de 1685 à 1740* (Paris, 1932; Genève: Slatkine Reprint, 1971). See also Thomas Hosuck Kang, *Confucian Studies in the West, 1662-1990* (Washington DC: Confucian Publications, 1997); David E. Mungello, *Curious Land: Jesuit Accommodation and the Origins of Sinology* (Honolulu: University of Hawaii Press, 1985); Nicholas Dew, *Orientalism in Louis XIV's France* (Oxford: Oxford University Press, 2009), in particular chap. 5 "Printing Confucius in Paris", 205 ff. With reference to England, see Fan Cunzhong, "The Beginning of the Influence of Chinese Culture in England", and Chen Shouyi, "John Webb: a Forgotten Page in the Early History of Sinology in Europe", both in Hsia, *The Vision of China*, 69-86 and 87-114.

17 In accordance with the well-known definition set out by Raymond Schwab in *La Renaissance orientale* (Paris: Payot, 1950, repr. 2014). On Chinese studies inside the French Académie des Inscriptions et Belles Lettres, see Yuan Pei, "La Chine dans les Mémoires de l'Académie des Inscriptions et Belles-Lettres de 1700 à 1750", these de doctorat, Université de Paris-Sorbonne, 2008.

aesthetic motifs – fabrics, wallpaper, porcelain, lacquered furniture, decorative motifs, architectural forms and garden designs – on European taste and consumption habits thanks to commercial exchanges that, while not always fluid, were by then stabilized. The work of the great English architect Sir William Chambers (1726-1796) provides some of the clearest proof of this influence. As a traveller to China himself in the employment of the Swedish East India Company in 1743 and 1747, Chambers, who counted himself among China's admirers with some reservation, opened the printed collection of his drawings of Chinese objects by referring to what appeared to him as a sort of infatuation, albeit an ambiguous one: "The boundless panegyrics which have been lavished upon the Chinese learning, policy, and arts, shew with what power novelty attracts regard, and how naturally esteem swells into admiration".¹⁸

In the discourse on the infinitely complex expressions of the Chinese civilization, the subject of the law attracted the attention of observers from the start due to its importance in evaluating the degree of order and regularity with which the society was administered. It was interpreted in two ways. The discussion about Chinese law took shape with reference not only to the legal foundations of political and legislative authority, the existence or not of a written and codified law, and the judicial system, but also to the application of the law through administrative (for example fiscal) and judicial practices, especially in the penal sphere (nature of punishments, use of torture, prisons, capital executions), that is, as an issue regarding the practical operation of judicial institutions.¹⁹ Specific elements of Chinese law and justice are mentioned more or less frequently by everyone who left testimony and commentary from the early sixteenth century onwards, including Tomè Pires, Galeote Pereira, Gaspar da Cruz, Mendoza, Botero, Semedo and Matteo Ricci. This is understandable if we think of the frequency with which the presence of Western foreigners occasioned controversy and various kinds of legal cases that, it should be noted, not infrequently gave Europeans a very positive idea of how scrupulously and impartially the Chinese justice system functioned. By way of example we may recall the episode in which Matteo Ricci was a protagonist during his stay in Zhaoqing (Scianquino in his Italian text *Dell'entrata nella Cina*) in 1583-1586 when the residence of the missionaries

18 Sir William Chambers, *Designs of Chinese Buildings, Furniture, Dresses, Machines, and Utensils, Engraved by the Best Hands, From the Originals drawn in China by Mr. Chambers, Architect* (London: printed for the Author, 1757), "Preface", and Chambers, *A Dissertation on Oriental Gardening* (London: printed by W. Griffin, 1772).

19 This point has been touched upon in general terms by Brook, Bourgon, Blue, *Death by a Thousand Cuts*, 152-202. Two other books are also very important in this regard, and extremely useful for the present analysis: Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2016), which I unfortunately only read when my essay was nearly finished and could therefore only profit from to a limited extent; and Ulrike Hillemann, *Asian Empire and British Knowledge: China and the Networks of British Imperial Expansion* (Basingstoke: Palgrave Macmillan, 2009).

prompted hostile acts by members of the local population. The investigation that followed, led by Governor Wang Pan and including the examination of various witnesses, allowed the Jesuits to demonstrate their role as victims rather than cause of the violences and to obtain punishment for the guilty Chinese parties.²⁰ We may also recall the episode referred to by Gaspar da Cruz in his *Tractado [...] das cousas da China* (1569) in which Ming authorities conducted a detailed judicial investigation into alleged acts of piracy by the Portuguese who were eventually given a favourable sentence by the *Ping-pu* imperial court of Beijing in denial of Mandarin officials and other powerful local figures.²¹ In Enlightenment culture the subject catalysed the attention of commentators both for its relevance when making observations and evaluations about individual societies in Europe and elsewhere and because of a more general interest in forms of justice and judiciaries.

On the one hand, this is unsurprising in a century that witnessed Voltaire's judicial battles and written interventions; the publication of Beccaria's masterpiece *Dei delitti e delle pene*; the debates and proposals on penal justice reform in general; the legislative initiatives against torture; the codification enterprises; the pushes to reform civil law; the projects to reform prison systems; and the effort to completely rethink Europe's criminal justice system, with its weighty legacy of bloody practices, inhuman punishments and the indiscriminate, almost ubiquitous application of capital punishment, as with the English "Bloody Code" in force from 1688 to 1815.²² It is easy to understand how observers of China were prompted to pay attention to and be aware of the subject of justice during an epoch, also described as the "age of codification", when the legal philosophy of the ancien régime was being re-examined, with a process which led to the adoption of new civil and penal codes in Austria, France, Prussia and other European states.²³ China was even portrayed negatively in contrast to the Western world, appar-

20 See Matteo Ricci, *Entrata nella China dei padri della Compagnia del Gesù (1582-1610)* (Napoli, 1622; Roma: Edizioni Paoline, 1983), 185 ff. This episode was also related by Ron Po-chia Hsia, *A Jesuit in the Forbidden City: Matteo Ricci 1552-1610* (Oxford: Oxford University Press, 2010), 107, and by Michela Fontana, *Matteo Ricci. Un gesuita alla corte dei Ming* (Milano: Mondadori, 2005), 59-60.

21 See the re-edition of the 1569 English translation of Cruz's *Tractado in South China in the Sixteenth Century: Being the Narratives of Galeote Pereira, Fr. Gaspar Da Cruz, O. [and] Fr. Martin de Rada, O.E.S.A. (1550-1575)*, ed. Charles Boxer (London: Hakluyt Society, 1953), 45-239, in particular 199-206.

22 Frank McLynn, *Crime and Punishment in Eighteenth Century England* (Oxford-New York: Oxford University Press, 1991), ix ff.; Brian Block and John Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain* (Sheffield-on-Loddon: Waterside Press, 1997); Simon Webb, *Execution: A History of Capital Punishment in Britain* (Stroud: The History Press, 2011).

23 Damiano Canale, "The Many Faces of the Codification of Law in Modern Continental Europe", in *A Treatise of Legal Philosophy and General Jurisprudence*, vol. 9, *A History of the Philosophy of Law in the Civil Law World, 1600-1900*, ed. Enrico Pattaro, Damiano Canale, Paolo Grossi, Hasso Hofmann (Dordrecht: Springer, 2009), 135-183.

ently in complete neglect of the inhuman, bloody legacy of the European ancien régime tradition of penal justice.²⁴

On the other hand, Enlightenment thinkers, asking what institutional conditions were needed to ensure social, economic and civil progress also started addressing the subject of justice and the law, making it one of the most important parameters with which to establish the degree of a society's civilization. A society can call itself civilized and its government can claim to perform its basic duties if there exist clear, reasonable and comprehensible laws in the interest of the governed, and if justice is guaranteed in an impartial, certain way to protect individuals' rights to personal safety and property. For Adam Smith, "the second duty of the sovereign [is] that of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice" and "the first and chief design of all civil governments is [...] to preserve justice amongst the members of the state and to prevent all incroachments on the individuals in it, from others of the same society".²⁵ Lord Kames, author of the *Historical Law-Tracts* (1758), similarly believed that the historical evolution of the law, in its various aspects, was crucial for identifying the relationship between legal obligation, moral duty and social progress.²⁶ For Smith's student John Millar, the successive stages of law and justice represented a sure sign of a society's progress. Scottish Enlightenment culture considered it an axiomatic fact that an evolved society, an "opulent community" was bound to offer a complex system of laws and the administration of justice in response to an increase in social intercourse and mutual interests, just as the behaviour and overall conditions of a society's members were directly influenced by the manner in which disorder and conflict were prevented and justice imparted.²⁷ In terms of equity, humanity, leniency and the ability to promote the achievement of a society's goals in its evolution through the history of domes-

24 Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (New York: Oxford University Press, 1996); Richard Ward, ed., *A Global History of Execution and the Criminal Corpse* (New York: Palgrave Macmillan, 2015); Guy Geltner, *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present* (Amsterdam: Amsterdam University Press, 2014).

25 See, respectively, Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, in *The Glasgow Edition of the Works and Correspondence of Adam Smith*, general editors R. H. Campbell and A. S. Skinner (Oxford: Oxford University Press, 1976, reprint 2 vols., Indianapolis, Liberty Fund, 1981), II, 708-709, and Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael and G. Stein, in *The Glasgow Edition of the Works and Correspondence of Adam Smith* (Oxford: Oxford University Press, 1978, reprint Indianapolis, Liberty Fund, 1982), V, 7.

26 John Millar, *The Origin of the Distinction of Ranks* (1771), ed. and with an Introduction by Aaron Garrett, in *The Works and Correspondence of John Millar* (Indianapolis: Liberty Fund, 2006) (reproducing the fourth and posthumous 1806 edition), "Introduction", xi.

27 Millar, *Origin*, 85.

tic and social relationships, justice, the law and the penal system collectively reflected the temporally and spatially diverse conditions of society and their position with respect to an ideal path of civilization. Issues of legal importance like property, marital relations, the condition of women, the nature of punishments and judicial procedures represented a matter of reflection for the purposes of reform and improvement in Europe as well as a particular lens through which to observe non-European societies and understand their organization and position on a scale of civilization. The direct relationship between justice and the happiness of subjects or citizens meant that legal regulations, mechanisms of laws production, the nature of laws, the administration of justice and the legal foundations of government were absolutely privileged objects of attention in the observation of societies both near and far in time and space.

In the case of China, two different views on Chinese justice can be identified to represent the attitudes of admirers and detractors of the Celestial Empire around the 1760s.

However, before discussing this, we should recall that information on the Chinese justice system, especially penal law and the prison system, reached Europe early on. This information was furthermore based on the direct experience of those with the misfortune of running up against Chinese severe and intransigent judiciary, as occurred in the mid-sixteenth century to Portuguese sailors and soldiers. The experience of the first Portuguese envoy in Beijing, Thomé Pires, in 1519-1524 is vividly described for example by Christovão Vieyra and Vasco Calvo, who refer to extortion at the hands of the Mandarins and harsh treatment received by compatriots in Chinese prisons, where some died of hunger or beatings and others were strangled.²⁸ This also occurred to Galeote Pereira who took part in a later Portuguese embassy to the imperial court in 1549 that failed miserably and ended with the imprisonment of its members. Pereira remained in prisons in southern China until 1553 and later wrote an account of his experience.²⁹ It is easy to imagine that his testimony was influenced by having lived through some difficult moments. He referred to prisoners massed together on top of each other in wooden cage-like structures and practices of torture and cruel beatings with bamboo so bloody and painful they frequently led to offenders' deaths. As observed by Jonathan Spence,

28 Donald Ferguson, *Letters from Portuguese Captives in Canton, Written in 1534 & 1536: With an Introduction on Portuguese Intercourse with China in the First Half of the Sixteenth Century* [reprinted from the *Indian Antiquary*] (Bombay: Educ. Steam Press at Byculla, 1902), 103-143. See also Henri Cordier, *Histoire générale de la Chine et de ses relations avec les pays étrangers* (4 vols., Paris: Librairie Paul Geuthner, 1920-1921), III, 118 ff.

29 Boxer, *South China in the Sixteenth Century*, 45-239. See in particular 210: "the rigorous justice of this land is the cause of bridling the evil inclinations and inquietudes to which the people thereof are prone, which being so strict as it is, yet withal the prisons are commonly full of prisoners, there being so many of them, as we have said".

Pereira's account "became a fundamental source for later descriptions of the Chinese capacity for cruelty, introducing a permanent new element into the Western view of China". It was also shortly thereafter confirmed, with the addition of even crueller details, by another eyewitness, the Dominican friar Gaspar da Cruz. Yet the same Pereira also paradoxically praised certain aspects of Chinese justice, like the public nature of witness examination and trials and the ability to obtain clemency, even on the part of foreigners like him and his companions, who did not speak the language and were accused by important figures in power (who however in Pereira's case lost). He even ended by praising the Chinese judicial system in general for its efficiency in maintaining order and keeping crime in check in what he saw as a certainly turbulent society.³⁰

Testimonies revealing peculiar, contradictory aspects of the Chinese judicial system therefore started becoming available in Europe in the second half of the sixteenth century. Others would arrive throughout the seventeenth century, especially thanks to the contributions of Jesuits like Matteo Ricci and Louis Lecomte, whom I will discuss below. Indeed, not only did such authors enrich information but they also allow us to thematize the problem of Chinese government's nature and its relationship to law and justice, thus bestowing the next century with an important heritage of representations and ideas. This rich legacy would find an authoritative interpretation in the 1730s thanks to a text that presented a full description of the Chinese civilization, including a systematic treatment of Chinese justice, by taking up and recapitulating all the information available at the time. I am referring to the work that influenced eighteenth-century knowledge about China more than any other, the *Description de la Chine* by the Jesuit historian Jean-Baptiste Du Halde.³¹ Virgile Pinot argued authoritatively that the *Description* "C'était une somme des connaissances acquises mais dont quelques-unes étaient acquises depuis longtemps déjà: ce n'était pas une révélation". Although it was based entirely on what the Jesuits had already made known through their own correspondence and publications and was therefore not an original work, it greatly influenced the knowledge of the cultivated European public.³²

30 See Jonathan Spence, *The Great Chan's Continent. China in Western Minds* (London: Penguin Books, 1998), 20-21 and 27.

31 On its preparation and structure, see Isabelle Landry, *La preuve par la Chine: la 'Description' de J.-B. Du Halde, Jésuite, 1735* (Paris: EHESS. École des hautes études en sciences sociales, 2002). See also Theodore Nicholas Foss, *A Jesuit Encyclopedia for China: A Guide to Jean-Baptiste Du Halde's Description de La Chine (1735)* (Chicago: University of Chicago, Committee on History of Culture, 1979), and Horst Hartmann, "Die Erweiterung der europäischen Chinakennntnis durch die 'Description de la Chine' der Jesuitenpaters Du Halde" (Göttingen: Universität zu Göttingen, Diss. Fakultät der Georg August, 1949); Yian Tsouan-Lin, *Essai sur le P. Du Halde et sa "Description del la Chine"* (Fribourg: Fragnerès, 1937).

32 "[the *Description*] n'apportait rien de bien nouveau aux savants. C'était une mise au point pour les demi-savants ou pour les gens du monde de ce qu'il y avait de plus intéressant dans les écrits antérieurs des

Written on the basis of Jesuit materials sent from Beijing, this ambitious compilation was in fact widely disseminated. It was published in 1735 in Paris and a pirated edition produced in La Haye the very next year was circulated throughout Europe. Translated shortly thereafter into English, German and Russian, it was largely used by authors like Montesquieu, d'Argens, Quesnay and Voltaire, and was a fundamental source of many historical-political and encyclopaedic compilations. It continued serving as an indispensable source for writers on China during the Enlightenment period and into the early nineteenth century, as was the case for the Milanese author Giulio Ferrario (1767-1847) when he wrote his extremely well informed and successful multi-volume *Costume antico e moderno* (Milan, 1817-1834).³³ From the moment it was published, the *Description* was considered “un événement éditorial capital qui va opérer un déplacement de tendance décisif”³⁴ in the sense that it offered European culture the representation of a true Chinese model of society and its institutions, marked by the successful integration of ethics and politics, a supreme monarchic authority and the rule of law. Because of its exceptional influence on eighteenth-century readers and the breadth of its analysis, Du Halde's description of Chinese justice deserves a closer look.

I.2. DU HALDE ON CHINESE JUSTICE

Even if José de Acosta in his *De procuranda Indorum salute* (1588) had defined China as a “barbarous” country of the first class, that is possessing a stable government, fortified towns, civil laws, magistrates, a prosperous commerce and a venerable literary tradition, for Western observers the question of whether or not the Chinese government was based on the application and respect of stable, regular laws and was able to guarantee its subjects justice and security through an efficient system of magistrates had long posed a problem without an easy solution. How do you reconcile what appears to be an absolute monarchy – with an omnipotent monarch at the head and a complex, formalized and

Jésuites sur la Chine”, Pinor's comment is to be found on the website *Chine ancienne*, accessed May 15, 2017, <http://www.chineancienne.fr/17e-18e-s/du-halde-description-de-la-chine/#preface>.

33 More than 500 pages are dedicated to China in the first of the 15 volumes of this work, which is now available in digital format, copy digitalized by the Library of the University of Illinois at Urbana-Champaign, on *Internet Archive*, accessed May 15, 2017, http://www.library.illinois.edu/blog/digitizedbotw/2008/07/il_costume_antico_e_moderno_o_1.html. On the *Costume antico e moderno*, see ahead par. V, 150-151 and note 343. On Ferrario, see the entry by Stefano Nutini, “Ferrario, Giulio” in *Dizionario Biografico degli Italiani*, XLVI, 1996, available on *Treccani.it*, accessed May 15, 2017, [http://www.treccani.it/enciclopedia/giulio-ferrario_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/giulio-ferrario_(Dizionario-Biografico)/).

34 Pereira, *Montesquieu et la Chine*, 325.

disciplined hierarchical bureaucracy – with the existence of apical figures like magistrates who exercised supreme power alongside the sovereign? And to what extent could the existence of such rigorous and meticulously respected administrative and judicial procedures and checks coexist with the idea of a distant, inaccessible sovereign endowed with powers of the utmost breadth?

This issue was addressed early on by Matteo Ricci, a witness of exceptional talents who identified precisely this paradox by focusing on the role of the magistrates and how it gave the Chinese state the characters of a monarchy and of a republic as well:

Se bene habbiamo detto di sopra esser questo governo Monarchico, con tutto ciò, considerando questo che ho già detto et ho da dire in questa materia, tiene molto del Republico. Percioché, se bene tutto quanto si fa nel governo deve essere approvato dal Re nei pubblici memoriali che i magistrati gli danno di tutto quello che hanno da fare, con tutto il Re non fa altra cosa che approvare e riprovare quello che gli propongono, e quasi mai fa niente sopra qualche negozio senza l'essergli proposto prima da' magistrati che hanno cura di quello. (Although we stated above that this government is monarchical, with all this, considering what I have said and still have to say on the matter, it shares much with a republic. Therefore, even though all that happens in the government must be approved by the king in the public records given to him by the magistrates regarding everything they propose to do, all the king does is approve or reject that which they propose to him, and almost never does anything, aside from a few acts, without first being proposed to do so by the magistrates in charge of it.)

Later in his description of China, Ricci clarified how “The entire kingdom is ruled by literati, as stated above, and the true mixed empire depends on them”.³⁵ However, Ricci also very correctly noted that, on the one hand, “there are no ancient laws in China, like our imperial ones or the ancient ones of the twelve tables, by which they govern”. On the other hand, he explained, the laws gradually promulgated by the emperors wind up constituting a store that all successors are obliged to respect or at least take into consideration with acknowledgements, changes or deletions when promulgating new laws and collections of laws.³⁶ Thus, even if the laws are subject to revision, abrogation and recodification, to Ricci there seemed no doubt that the Chinese government was

35 Matteo Ricci, *Descrizione della Cina* (Macerata: Quodlibet, 2004), 68 and 79. This is the most recent edition of the main work by Matteo Ricci entitled *Della entrata della Compagnia di Giesù e Christianità nella Cina*, 1st Latin edition, 1615, 1st Italian edition, 1622. The most recent, complete critical edition is the one supervised by Piero Corradini, with a preface by Filippo Mignini and edited by Maddalena Del Gatto (Macerata: Quodlibet, 2000). The *Descrizione della Cina* corresponds to Book I of the *Entrata*.

36 “il primo Re di quella famiglia sempre fa nove leggi, le quali sono obligati i Re suoi successori a guardare e non possono facilmente mutare le prime leggi stabilite e riceute”, Ricci, *Descrizione della Cina*, 65.

based on the law and respectful of the forms and procedures it established, with magistrates charged with monitoring its application and any censure of its transgressions. Ricci therefore established an authoritative representation of China as a great empire with a monarchical structure in which the emperor's authority was exceptionally vast, yet also run by a government founded on the law – a law to which even the emperor was subject. Importantly, Ricci provided a brief description of the operation of imperial justice, attributing characteristics to it that, while not especially harsh, at least in principle, together demonstrated the arbitrariness and cruelty of the corporal punishments that Mandarins inflicted on Chinese subjects. In fact, while the death penalty was rarely and prudently applied, many Chinese died because of the extreme severity of the bamboo beatings imposed by officials, who also abused their authority to obtain financial compensation through outright extortion. The result was therefore a decidedly ambiguous picture with respect to the security of the subjects, and to that regard Ricci unhesitatingly concluded that:

Con queste et altre ingiustizie che fanno i magistrati per odio, per danari et a requisizione de' suoi amici, nessuno nella Cina è patrone del suo, e sempre si vive con paura de machinarsegli qualche calunnia per spogliarlo di quanto tiene, e quanto è uno più ricco più paura tiene, e si guarda di mostrarsi tale, nascondendo quanto tiene e fingendo di aver puoco. (With these and other injustices done by the magistrates out of hate, for money or at the behest of their friends, no one in China is his own master, everyone lives in perpetual fear of some false accusation to strip them of their possessions, and the richer they are the more fearful they are, and they try to appear thus, hiding how much they have and pretending to have little).³⁷

From this point of view, when Du Halde addressed the subject of Chinese law and justice, he was working with a complex image consolidated in one of the most prestigious works of Jesuit literature. It is therefore unsurprising that he painted such a positive image, one that reflects a substantial, precisely informed outlook and maintains a careful balance between an appreciation of the formal aspects of the institutions and a realistic evaluation of the administrative practices.³⁸ As Du Halde demonstrated, the Chinese model of government was founded primarily on the patriarchal figure of the emperor and the filial duties of the subjects. By referring back to Confucian texts (which he

³⁷ Ricci, *Descrizione della Cina*, 116-117.

³⁸ J.-B. Du Halde, *Description géographique, historique, chronologique, politique et physique de l'Empire de la Chine et de la Tartarie chinoise* (4 vols., à Paris: chez Le Mercier, 1735), in-4°. The relevant sections on Chinese justice are in II, 22-43 and 131-137. The present description, based on Du Halde's text, does not differ substantially from that in Pereira, *Montesquieu et la Chine*, 389-394.

knew thanks to partial Jesuit translations from the late seventeenth century), Du Halde presented an image of the Chinese government and its imperial authority as mainly based on a natural law that prescribed to fathers the protection of their children – and correspondingly, to the emperor, the “zèle pour le peuple” – and to children the duty to respect and obey their fathers. This natural law inspired private moral conduct but also regulated relations between those who governed and those who were governed. On the other hand, if the imperial government lacked any trace of arbitrariness or despotic oppression, despite the emperor’s absolute authority, it was partly thanks to the existence of laws binding the conduct of the sovereign, thus making the Chinese government ‘legitimate’, that is, based on laws and practices that kept the emperor’s conduct in check.³⁹

The imperial court system was further proof of a complex governmental system based on laws and apparatuses directing its administration. Du Halde offered a detailed description of the Mandarin system and the six sovereign courts – part ministries, part tribunals – that both governed the empire from Beijing by supervising the affairs of the provinces according to a precise division of skills and, above all, administered the highest degree of justice thus checking the decisions coming from the system of lower tribunals in the various jurisdictions. Among the sovereign courts, in which sat functionaries of varying degrees who belonged to the Mandarin hierarchy and were subject to severe meritocratic selection, Du Halde emphasized the importance of a supreme penal tribunal that presided over the fourteen provincial tribunals. In the delicate matter of crimes, he reassured the reader that punishments were given according to “ce que les Loix ont sagement établi”.⁴⁰ A shrewd balancing between the authority of one court and that of another prevented forms of absolute power from prevailing.⁴¹ The existence of functionaries, “sorte d’inspecteurs ou de Censeurs publics”, mandated to check the conduct of the sovereign courts and even the emperor himself, showed the power was not despotic. A network of local tribunals, subject to the provincial courts and also composed of magistrates belonging to the Mandarin caste, represented the lower ranks of the justice

39 “Ce pouvoir, attaché à la dignité impériale, tout absolu qu’il est, trouve un frein qui le modère, dans les mêmes loix qui l’ont établi [...] Un autre frein que les loix ont mis à l’autorité souveraine, pour contenir un prince, qui serait tenté d’abuser de son pouvoir, c’est la liberté qu’elle donne aux mandarins de représenter à l’empereur dans de très-humbles et de très respectueuses requêtes, les fautes qu’il ferait dans l’administration de son État, et qui pourraient renverser le bon ordre d’un sage gouvernement”, Du Halde, *Description*, II, 12.

40 Du Halde, *Description*, II, 25.

41 “il n’y a aucun de ces Tribunaux qui ait un pouvoir absolu dans les affaires qui sont de son ressort, et qui n’ait besoin pour l’exécution de ses jugemens, du secours d’un autre Tribunal, et quelquefois de tous ensemble”, Du Halde, *Description*, II, 25.

system. This system, described so painstakingly by Du Halde, was therefore regulated by the law and set in motion by a bureaucratic hierarchy, comprised of the literati, that was integrated and animated by a perfect spirit of obedience towards the upper ranks and service towards subjects, a system that guaranteed the latter's complete respect and subjugation, as within a well ordered family.

To Du Halde it seemed that, under such conditions, the imperial government would be unrivalled for its wisdom and functionality and that China should be the happiest country in the world. The reality was nevertheless different, given that the conduct of the Mandarins did not always comply with the law and was often dominated by personal passion, interest and ambition.

Rien ne seroit comparable au bel ordre, que les loix Chinoises ont établies pour le gouvernement de l'Empire, si tous les Mandarins, au lieu de suivre leurs passions, se conformoient à des loix si sages; et l'on peut dire qu'il n'y auroit point d'Etat plus heureux: mais comme parmi un si grand nombre, il s'en trouve toujours, qui bornent leur félicité aux biens de la vie présente, et à tout ce qui peut la rendre commode & agréable, ils font quelquefois peu de scrupule de ne pas suivre les loix les plus sacrées de la raison & de la justice, et de les sacrifier à leur propre intérêt.⁴²

However, in this regard too, there existed mechanisms of control to ensure respect for the law and checks on the conduct of the Mandarins, in accordance with an idea of bottom-up administrative responsibility culminating in the figure of the emperor and representing a simple, natural and rational system based on the fundamental principle of paternal authority and filial piety; a system Du Halde defined as "parfaitement monarchique" and thus in no way 'despotic'.

Du Halde's description of the penal justice system presents an extremely favourable, if peculiar, picture. The slowness of the procedures caused by successive degrees of justice meant that no subject was arbitrarily deprived of the fundamental rights to life and honour. Long prison stays, the consequence of a procedural slowness that favoured the accused, was mitigated by the fact that the prisons were much more comfortable and spacious than European ones. At the same time, punishments of the guilty were inevitable, severe and above all commensurate with the seriousness of the crimes: "il n'y a pas de fautes impunies à la Chine". Moreover, corporal punishments, especially the "cangue" (a sort of portable pillory) and beatings with bamboo, were very widespread and inflicted on people of all classes, up to the highest levels of the empire. Indeed, based on this observation, Du Halde concluded with the note, later made famous by Montesquieu, that "on peut dire que le Gouvernement Chinois ne subsiste guères que par l'exercice

42 Du Halde, *Description*, II, 37.

du bâton” – a definition repeated several times afterward up to Cornelius de Pauw and Benjamin Constant.⁴³ While torture certainly existed with varying degrees of severity and Du Halde underscored the variety and cruelty of the methods, he refrained from making negative comments to this regard. On the contrary, he remarked that the respect for human life was such that capital sentences – reserved only for major crimes like treason – only became definitive after successive revisions and, in particular, only after the emperor had given his final, indispensable confirmation – a prerequisite for proceeding with an execution. This happened in three different ways according to the seriousness of the guilt: strangulation, decapitation or *lingchi*, the so-called cutting up of the body in ten thousand pieces, a terrible punishment reserved for rebel subjects guilty of having led revolts.⁴⁴

Three elements emerge from Du Halde’s detailed description that are worth underscoring: that justice was equal for everyone and no one escaped it because of class or wealth;⁴⁵ that there was utmost respect for human life; and that despite some arbitrariness when it came to lesser crimes, punishments were inflicted almost as paternal reprimands, based not on the caprices of the magistrate or a despotic sovereign but solely on the provisions of the law, that is, on what was “marquez dans le corps des Loix Chinoises” and that “les Loix Chinoises prescrivent”.⁴⁶

It is worth noting that Du Halde referred to “Loix Chinoises” or the “texte du Code” in at least three passages⁴⁷ without however supplying details about such sources. The extracts from Chinese literature, including classical books, that appear in the appendix to volume II of *Description* do not include any actual legal texts. Yet, even if he provided no information or extracts, it is clear that he had precise knowledge of an existing collection of written laws. At the time these might well have been the version of the 1646 Qing Code that had been updated in 1723-1725, the so-called *Ta Ch’ing lü chi-chieh fu-li* (expanded to include commentary and appendices of sub-statutes), in

43 Du Halde, *Description*, II, 134. See Cornelius de Pauw, *Recherches philosophiques sur les Egyptiens et les Chinois* (2 vols., à Berlin: chez Decker, 1773), II, 342; Benjamin Constant, *Principes de politique applicables à tous les gouvernements représentatifs*, in *Œuvres complètes* (Berlin-New York: De Gruyter, 2011), V, 254, and *Commentaire sur l’ouvrage de Filangieri* (Paris: Dufart, 1822), chap. IV, 20.

44 “Il y a un autre genre de mort très-cruelle, dont on a puni autrefois les révoltez et les criminels de lèze Majesté: c’est ce qu’ils appelloient être hache en dix mille pièces [...] selon les Loix, ce troisième supplice consiste à couper le corps du criminel en plusieurs morceaux, à lui ouvrir le ventre, et à jeter le corps ou dans la rivière, ou dans une fosse commune pour les grands criminels”, Du Halde, *Description*, II, 136.

45 “Ainsi à la Chine on accorde à l’homme le plus vil et le plus misérable, ce qui ne s’accorde en Europe comme un grand privilège, qu’aux personnes les plus distinguées, c’est-à-dire, le droit de n’être jugé de condamné que par toutes les Chambres du Parlement assemblées en corps”, Du Halde, *Description*, II, 137.

46 Du Halde, *Description*, II, 136-137.

47 Du Halde, *Description*, II, 502

its turn destined for further modifications leading to the definitive eighteenth-century edition known as the *Ta Ch'ing lü-li*, or *Da Qing lü li*, according to the current transliteration.⁴⁸

Significantly, the image of China illustrated by Du Halde, whose analysis of China's judicial mechanisms was similar to those supplied by fellow brother Louis Lecomte in 1696 and the traveller Le Gentil in 1728,⁴⁹ while surely peculiar, also provided Europe with an example that was worthy of admiration in many respects. He did not interpret China as a radical 'other', a mirror to Europe occupying an antipodean space. Instead, Du Halde's China displays recognizable features of the European tradition, including a "perfectly monarchical" government based on the rule of law and above all a justice system that was humane, fair, rational and perfectly admissible within the parameters defining advanced civilizations. If anything, its alterity was the entirely positive one of a model to be admired for its rationality, organization and proximity to nature, compared to which Europe was the one that represented otherness.

48 See John W. Head and Yanping Wang, *Law Codes in Dynastic China: a Synopsis of Chinese Legal History in the Thirty Centuries from Zhou to Qing* (Durham, NC: Carolina Academic Press, 2005), 200. On the Chinese legal tradition, see in particular the project "Legalizing space in China: the shaping of the imperial territory through a layered legal system" funded by the French Agence Nationale de la Recherche, with such partners as the Institut d'Asie Orientale (IAO, ENS de Lyon), the École Française d'Extrême Orient (EFEO Taipei and Beijing Centres), TGIR HUMA-NUM and Academia Sinica. This four-year project (2011-2014) was coordinated by twenty specialists in the history of Chinese law and comparative law, including Jérôme Bourgon. It has produced and continues to produce important results that are accessible on its website, *Legalizing space in China*, accessed May 15, 2017, <http://lsc.chineselegalculture.org/>. On the Chinese legal tradition in general and its evolution, and on the importance of the *Da Qijing lü li*, see Jinfan Zhang, *The Tradition and Modern Transition of Chinese Law* (Berlin-Heidelberg: Springer Verlag, 2014).

49 Louis Lecomte, *Nouveaux mémoires sur l'état présent de la Chine* (2 vols., à Paris: chez Jean Anisson, 1696). In the second edition (2 vols., Paris: chez Anisson, 1697), which I used, the relevant sections are in vol. II, "Lettre IX. À Monsieur le Cardinal d'Estrées. De la Politique et Gouvernement des Chinois", 1 ff., especially 24 ff. See for instance the statement, fully embraced by Du Halde, whereby "Parmi toutes les idées de gouvernement, que l'antiquité s'est formée, il n'en est peut-être aucune qui établisse une Monarchie plus parfaite que celle des Chinois", founded as it was on absolute, not tyrannical, power attributed to the sovereign by the laws: "L'autorité sans bornes, que les loix donnent à l'Empereur, & la nécessité qu'elles luy imposent en mesme temps de s'en servir avec modération, sont les deux colonnes qui soutiennent depuis tant de siècles ce grand édifice de la Monarchie Chinoise" (3-4). Lecomte described the operation of this monarchy using expressions like "Les Loix disent", "les Loix ordonnent" and "les Loix ont déterminé", and that constitutes a government "admirable par son antiquité, par la sagesse de ses maximes, par la simplicité et l'uniformité de ses loix, par les exemples de vertu qu'il a produit dans une longue suite d'empereurs, parle bon ordre qu'il a conservé parmi les peuples", even if Lecomte also referred to rebellions, unjust kings and greedy mandarins oppressing the people (103-104). See also J. B. Le Gentil de La Barbinais, *Nouveau Voyage autour du Monde [...] avec une description de l'empire de la Chine* (3 vols., à Amsterdam: chez Pierre Mortier, 1728), I, 287-302.

The second reason Du Halde's portrayal is important for our reconstruction of the European discourse is that it spawned two concurrent, divergent interpretive traditions that led to the construction of paradigmatic visions: that of Montesquieu, published in 1748, which paints China as the model of an Asian despotism so antithetical to the Western world that it represents a true 'Chinese syndrome'; and those of Voltaire and Quesnay, which from the mid-1750s to the mid-1760s would develop elements of Du Halde's work by carrying out a positive, strongly normative-prescriptive evaluation of Chinese civilization in comparison to certain aspects of the society and politics of the European West. The representation of the legal and justice system would play a central role in both cases.

I.3. VIEWS ON CHINESE LAW AND JUSTICE AFTER DU HALDE: ADMIRERS AND DETRACTORS

It should be taken into account that, in eighteenth-century discussions, original translated texts were only used as sources for European knowledge of Chinese law and justice in a very limited, indirect way. Unlike what had occurred and continued occurring unabated with philosophical, literary and historical material, knowledge of Chinese law had long rested on second-hand descriptions, that is, synthetic presentations and summaries, albeit well informed, as in the just examined case of Du Halde and, later, that of the great Jesuit collection *Mémoires* discussed below.⁵⁰ This circumstance helps us grasp the extraordinary significance of the 1810 English edition of the important Qing legal code produced by George Thomas Staunton, who thereby presented the Western public with a Chinese legal source for the first time, even if not in its entirety and with limits we will see.

Getting back to the opposing attitudes towards China that emerged following the publication of Du Halde's work, a particularly significant case is that of Voltaire, whose fame necessitates but a brief mention with reference to the subject at hand.⁵¹ That law and

⁵⁰ See ahead par I.5, 58 and note 146.

⁵¹ See Pinot, *La Chine et la formation de l'esprit philosophique en France*, 103 ff.; Guy, *The French Image of China before and after Voltaire*, 214-283; Shin-ichi Ichikawa, "Les mirages chinois et japonais chez Voltaire", in *Raison présente*, 52 (1979): 69-84; Jean-Robert Armogathe, "Voltaire et la Chine: une mise au point", in *La mission française de Pékin aux XVII^e et XVIII^e siècles: Actes de colloque international de sinologie*, Centre de Recherches interdisciplinaire de Chantilly (CERIC), 20-22 septembre 1974 (Paris: Les Belles Lettres, 1976); Shun Ching Song, *Voltaire et la Chine* (Aix-en-Provence: Publications de l'Université d'Aix-en-Provence, 1989); Hua Meng, *Voltaire et la Chine* (thèse soutenue à la Sorbonne, 1988). See also the recent Marie-Hélène Janvier, "Une confrontation du discours missionnaire et philosophique: L'interprétation de l'image de la Chine par Montesquieu et Voltaire, 1721-1776" (*Mémoire de Maîtrise en Histoire*, Quebec: Université Laval, 2014).

justice represented a basic criterion of judgement for Voltaire is evident in chapter CLVI-II of his *Essai sur les Mœurs* (first edition, 1756),⁵² from which clearly emerges the idea already expressed in the late seventeenth century by Leibniz, another great Sinophile,⁵³ of the Chinese government as wise, well-regulated and founded on laws that both prevented arbitrary conduct and protected the life, honour and rights of its subjects.

Voltaire echoed the Jesuit admiration for China's system of central courts and its peripheral administration, from viceroys to local officials. He viewed the justice system as the heart of the Chinese government and the demonstration that its essence was comprised of a class of literate magistrates, experts and 'philosophers'.⁵⁴ He also admired

52 In the edition by René Pomeau (2 vols., Paris: Garnier, 1963) this corresponds to chapter CXCIV, "De la Chine au XVIIe siècle et au commencement du XVIIIe", II, 785 ff.; in the first edition the same chapter is numbered CLXIII, IV, 308-318.

53 Gottfried Wilhelm Leibniz, *Novissima Sinica*, 1697: "the laws of the Chinese [...] are directed to the achievement of public tranquillity and the establishment of social order", in Leibniz, *Writings on China*, ed. Daniel J. Cook and Henry Rosemont (Chicago and La Salle: Open Court, 1994), 45 ff., see 47. See also Patrick Riley, "Leibniz's Political and Moral Philosophy in the *Novissima Sinica*, 1699-1999", *Journal of the History of Ideas*, 60, no. 2 (April 1999): 217-239; Donald F. Lach, "Leibniz and China", *Journal of the History of Ideas*, 6, no. 4 (October 1945): 436-455; Oliver Roy, *Leibniz et la Chine* (Paris: Vrin, 1972); and, more recently, Franklin Perkins, *Leibniz and China: A Commerce of Light* (Cambridge: Cambridge University Press, 2004), see 146 and 158 ff.

54 "L'esprit humain ne peut certainement imaginer un gouvernement meilleur que celui où tout se décide par de grands tribunaux, subordonnés les uns aux autres, dont les membres ne sont reçus qu'après plusieurs examens sévères. Tout se règle à la Chine par ces tribunaux. Six cours souveraines sont à la tête de toutes les cours de l'empire. La première veille sur tous les mandarins des provinces; la seconde dirige les finances; la troisième a l'intendance des rites, des sciences, et des arts; la quatrième a l'intendance de la guerre; la cinquième préside aux juridictions chargées des affaires criminelles; la sixième a soin des ouvrages publics. Le résultat de toutes les affaires décidées à ces tribunaux est porté à un tribunal suprême. Sous ces tribunaux, il y en a quarante-quatre subalternes qui résident à Pékin. Chaque mandarin, dans sa province, dans sa ville, est assisté d'un tribunal. Il est impossible que, dans une telle administration, l'empereur exerce un pouvoir arbitraire. Les lois générales émanent de lui; mais, par la constitution du gouvernement, il ne peut rien faire sans avoir consulté des hommes élevés dans les lois, et élus par les suffrages. Que l'on se prosterne devant l'empereur comme devant un dieu, que le moindre manque de respect à sa personne soit puni selon la loi comme un sacrilège, cela ne prouve certainement pas un gouvernement despotique et arbitraire. Le gouvernement despotique serait celui où le prince pourrait, sans contrevenir à la loi, ôter à un citoyen les biens ou la vie, sans forme et sans autre raison que sa volonté. Or s'il y eut jamais un État dans lequel la vie, l'honneur, et le bien des hommes, aient été protégés par les lois, c'est l'empire de la Chine. Plus il y a de grands corps dépositaires de ces lois, moins l'administration est arbitraire; et si quelquefois le souverain abuse de son pouvoir contre le petit nombre d'hommes qui s'expose à être connu de lui, il ne peut en abuser contre la multitude, qui lui est inconnue, et qui vit sous la protection des lois", Voltaire, *Essai sur les mœurs*, éd. René Pomeau (2 vols., Paris: Garnier, 1963), chap. CXCIV, "De la Chine au XVII^e siècle et au commencement du XVIII^e", II, 785. Voltaire's high opinion of the imperial central tribunals derived mainly from the opinions expressed by Father Contancin in the *Lettres édifiantes et curieuses* (à Paris: chez Le Clerc, 1736), XXII, 192, 199-200, see also Guy, *French Image of China*, 261.

Chinese justice for its ability to guarantee impartial defence of the accused without religious prejudice and for having a penal system in which penalties were commensurate with the crimes.⁵⁵ The existence of complex institutions and a well-established law and justice system was precisely what testified favourably to the “prodigieuse antiquité” of the Chinese empire, thus reinforcing an image of positive exceptionalism.⁵⁶

Quesnay would develop this idea in what would become the Physiocratic doctrine of “despotisme légal”, in contrast to “despotisme arbitraire”, that is, a government in which the strength of the law animated the power of the sovereign and respect for the law was absolute, a “constitution [...] fondée sur des lois sages et irrévocables, que l’empereur fait observer, et qu’il observe lui-même exactement”.⁵⁷ These were “natural” laws, in the sense that they accorded perfectly with the principles naturally necessary for governing prosperous societies, starting from the protection of property and the security of subjects.⁵⁸ They were also fully coherent with morality, in accordance with a continuity between politics and moral principles that characterized China and lent it a peculiar stability: “tout est permanent dans le gouvernement de cet empire”.⁵⁹ Taking up elements from Du Halde’s work, Quesnay referred to penal laws as generally lenient, proportionate, applied with moderation and deliberation, with slow procedures that guaranteed the accused a fair trial, without exceptions or privileges, and with much better prisons than those in Europe.⁶⁰ In short, he viewed the law and its administration as the glue of Chinese institutions. This was the same impression that Diderot – himself certainly never an admirer of China⁶¹ – attributed to Jesuit Sinophile Father Hoop, who

55 Voltaire, *Essai sur les mœurs*, éd. René Pomeau, chap. CXCIV, 785.

56 See the article “De la Chine”, in *Dictionnaire philosophique, portatif. Sixième édition* (2 vols., Londres: 1767), t. I, 99-104, see 102.

57 François Quesnay, *Despotisme de la Chine*, in *Ephémérides du Citoyen*, 1767, t. III, “Avant propos”.

58 After observing the extent to which the Chinese peasant was forced to do hard labour every day, Quesnay commented: “Mais ce Paysan a sa liberté, & sa propriété assurée, il n’est point exposé à être dépouillé par des impositions arbitraires, ni par des exactions de publicains, qui déconcertent les Habitans des Campagnes, & leur font abandonner un travail qui leur attire des disgrâces beaucoup plus redoutables que le travail même. Les hommes sont fort laborieux par tout où ils font assurés du bénéfice de leur travail: quelque médiocre que soit ce bénéfice, il leur est d’autant plus précieux, que c’est leur seule ressource pour pourvoir autant qu’ils le pensent à leurs besoins”, *Despotisme de la Chine*, 1767, t. III, 55.

59 Quesnay, *Despotisme de la Chine*, 1767, t. IV, 45.

60 Quesnay, *Despotisme de la Chine*, 1767, t. V, 10.

61 See his article “Chinois, Philosophie des”, in *Encyclopédie*, III, 1753, 341-348. Where Diderot, after a detailed exposition of the doctrines of Chinese philosophers of successive ages, blamed the Chinese for the dubious antiquity of their history, the imperfection and ineffectiveness of the language, literature, poetry and theatre, their idolatry, lack of creative genius and inability to meet the changing needs of society by developing the arts and sciences.

participated in the October 1760 to the Grandval rendezvous at the residence of Baron d'Holbach where China was much discussed: "La loi est sur le trône. Le prince est sous la loi, et au-dessus de ses sujets. C'est le premier sujet de la loi".⁶²

In similar positions that emerged in the 1760s, elements like the form of government and the state of justice and the law, which in former analyses had also been dissociated and evaluated separately, tended to come together as part of an altogether positive vision. In other words, the issue of justice in China could spark positive commentary independent of overall evaluations of the imperial government's nature. In the late sixteenth century for example Giovanni Botero had characterized the latter as definitely despotic with slaves for subjects, yet one that rested on a system of laws and an apparatus of justice adequate and effective enough to guarantee good government, peace, tranquility and the durability of its institutional and social framework.⁶³ By the mid-eighteenth century, on the other hand, these two aspects – the form of government and the state of justice – appeared indissolubly connected. D'Holbach, for example, could praise Chinese institutions overall for the care they took in protecting human life thanks to, say, the existence of scrupulous legal safeguards to prevent the killing of subjects in ways not rigorously provided for by the law.⁶⁴ The idea of a 'legitimate' government based on a tradition of laws excluded the possibility of arbitrariness and guaranteed justice to its subjects. By contrast, the existence of a despotic government founded on the sovereign's unchecked power and thus illegitimate precluded the existence of minimal conditions to safeguard subjects, that is, to ensure them justice and the protection of a law removed from the discretion of the despot. This was the authoritative argument made by Montesquieu, who led the second, enduring trend that emerged in the mid-eighteenth century regarding the issue of Chinese governance, law and justice.

Montesquieu's *L'Esprit des Loix* (1748) addresses the issue of Chinese law and justice in both simple and complex ways, and it accords the Chinese case a peculiar status.⁶⁵

62 See Diderot, "Lettre LI [à Mademoiselle Volland]", 6 Novembre 1760, in *Mémoires, Correspondance et Oeuvres inédits* (Paris: Paulin, 1830), I, 409-410, in which the author recalls the Grandval conversations on China. See also Jonathan I. Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790* (Oxford: Oxford University Press, 2011), 558-572, especially 561.

63 Botero says: "il governo della China ha del despotico assai [...] il che avilisce grandemente gli animi de' popoli e li rende schiavi anzi che sudditi [...] è finalmente regno regolato di tal maniera che non ha altra mira che la pace e la conservazione dello stato: e per questo vi fiorisce la giustizia, madre della quiete, e la politica, maestra delle leggi, e l'industria, figliuola della pace: e non è regno né dominio antico né moderno meglio regolato di questo [...] sono già più di duemila anni [...] che si governa con le medesime leggi", *Relazioni universali* (in Venetia, per li Bertani, 1659), 296, the *Relazioni* first edition was published in 1592.

64 D'Holbach, article "Hing-pu", in *Encyclopédie*, VIII, 1765, 210.

65 The significant sections of Montesquieu's major work are VIII, chap. XXI and XIX, chaps. XVI-XIX, which were carefully analyzed by Jacques Pereira in *Montesquieu et la Chine*, 394-412. See also René

Having carefully read Du Halde, Montesquieu grasped perfectly the characteristic mixture of laws and ethics that reigned in China and lent the laws a strength and stability non-existent elsewhere, thus augmenting the capacity of the institutions and the society. And yet Montesquieu's negative opinion, taking up and generalizing an incidental note made by Du Halde about China being governed by the stick,⁶⁶ is well known. In fact, he believed that this circumstance dissolved any notion of honour, which was essential for the existence of a legitimate monarchic government; that members of the imperial family being also victims of this insecurity revealed a "plan de tyrannie"; that the extortion and theft carried out by the Mandarins, particularly to the detriment of Europeans, their corruption, and the habitual trickery of Chinese merchants gave lie to any portrayal of a society run by moral principles and legality; that, in sum, the Jesuits had let themselves be blinded by "une apparence d'ordre". As confirmed by the testimony of figures like Laurent Lange, who was sent to China first in 1715-1717 and later as a member of the Russian Ismailov embassy to Beijing in 1720-1722, and the commodore George Anson, a famous English circumnavigator who landed in Canton in 1742,⁶⁷ the image of Chinese society endorsed by Montesquieu was one where commercial exchanges (or that which kept the state in motion and ensured its prosperity and development), especially with Westerners, were dominated by the cheating spirit of merchants, the injustices of officials and the limitless greed of the common people. The necessary contractual and legal guarantees were also lacking, in confirmation of the dishonest nature of the local customs so praised by admirers of China. Montesquieu went beyond simply describing the institutional structure designed by the laws and the bureaucratic machine that carried them out to highlight the reality of social relations and behaviour.

On the other hand, despite being aware of the importance of the law in China – even arguing in some places that its mixture of the three main forms of government lent it some original features, and acknowledging the existence of "loix fixes et des tribunaux réglés" and a complex justice system – Montesquieu chose to stick to certain assertions of principle, including the idea that effective laws cannot exist where there is despotism. The coexistence of laws and despotism was a paradox, a contradiction in terms, that the admirers of China could not come to terms with:

Étiemble, *L'Europe chinoise. II. De la sinophilie à la sinophobie* (Paris, Gallimard, 1989), chap. "La Chine de Montesquieu", 50-72.

⁶⁶ Montesquieu, *Esprit des Lois* (Paris: Firmin Didot, 1862), VIII, chap. XXI, available on *Chine ancienne*, accessed May 15, 2017, www.chineancienne.fr.

⁶⁷ *Journal of the Residence of Mr de Lange, Agent of his Imperial Majesty of All the Russias Peter The First, at the Court of Peking, during the Years 1721, 1722, Translated from the French* (printed at Leyden: Abraham Kallewier, 1726) in John Bell, *Travels from St. Petersburg, in Russia, to diverse parts of Asia* (2 vols., Glasgow: Robert and Andrew Foulis, 1763), II, 169-321.

On y [in China] a voulu faire régner les loix avec le despotisme; mais ce qui est joint avec le despotisme n'a plus de force: nous voyons donc à la Chine un plan de tyrannie constamment suivi, & des injures faites à la nature humaine avec règle, c'est-à-dire, de sang froid.⁶⁸

And Montesquieu believed China's was a true despotism, based on fear and force expressed through corporal punishment and confirmed by particular aspects of the penal system, such as the principle whereby fathers were responsible for the crimes of their children. As he wrote, "[l]a Chine est donc un État despotique, dont le principe est la crainte".

Teemu Ruskola identifies *L'Esprit des Lois* as the source of the idea that despotism is a natural form of government and an inherent aspect of the Chinese state whose constituent element is the absence of law. He is referring, in other words, to a Chinese exceptionalism consisting of a form of institutional and legal Orientalism destined to occupy Western culture and representations for years to come thanks to thinkers like Hegel, Marx and Weber.⁶⁹ Whatever the accuracy of Ruskola's analysis of Montesquieu's thoughts on China, with a linearity that considerably contrasts the more articulated, complex readings of Étienne de La Boétie and Pereira, we can be certain that Montesquieu was received by his contemporaries as the main and most authoritative supporter of the idea that the Chinese state was despotic and devoid of law, and he was criticised as such (or quoted approvingly in a fiercely anti-*philosophique* perspective by Abbé Bergier in his *Apologie de la religion chrétienne* of 1770-1771).⁷⁰ As we have seen, both Voltaire and Quesnay criticised Montesquieu's representation of law and justice. In 1782 another of his critics, the Jesuit missionary Pierre-Martial Cibot, would similarly protest that Montesquieu had wanted to "plier le code de la Chine à son système", without understanding that any violation of the law on the part of the emperor, far from being the unavoidable consequence of despotic authority, was equivalent to abuse, a failure of his "droits" as defined by the legitimate foundations of the Chinese government.⁷¹

To understand how central the subjects of law, rights and justice were to a criticism of Montesquieu and the idea that a despotism lacking written, stable laws represented a typically Eastern form of government, suffice it to recall a work that sought to strongly counter Montesquieuian theories with facts, evidence and documentary proof. The 1778 *Législation orientale* by the French academic, traveller and Indologist Anquetil-Duperron did not address directly the case of China, but rather those of Turkey, Persia and

68 Montesquieu, *Esprit des Lois*, VIII, chap. XXI, also available on *Chine ancienne*, accessed May 15, 2017, www.chineancienne.fr.

69 Ruskola, *Legal Orientalism*, 37-38.

70 See Israel, *Democratic Enlightenment*, 562-563.

71 Étienne de La Boétie, *L'Europe chinoise*, II, 72.

India. The author's expertise was concentrated on these three countries, which proved to be united within the same simplifying vision that sought to relate their types of government to what would later be called 'Oriental despotism'. Anquetil sought to demonstrate that the portrayal of their governments as despotic rested on the completely false idea that they lacked written, definite and certain laws. However, as he demonstrated, documents in hand, there did exist written legal codes in all three countries that were equally binding for the subjects and for the prince. More specifically, he showed that the private ownership of both movable and immovable property was perfectly protected by the law and the judicial process. Anquetil's was an authoritative attempt to dismantle "legal Orientalism" based on a clear awareness of the bad faith and self-serving nature of those Western representations that tended to negate the existence of codified laws and stable forms of justice in Oriental nations. It also testifies to the great importance of these subjects with respect to the prominent trend of the European culture to see an essential difference, precisely at the level of justice and the law, between Western civilization and Asiatic societies, united by the stereotype later highlighted by Ruskola. It is unfortunate that Anquetil never tackled the case of China, which if anything would find its own Anquetil precisely in George Thomas Staunton, at least in part.

In any case, Montesquieu's vision of China was destined to prevail in an increasingly comprehensive way as the century progressed. As Jonathan Israel has argued,

the pattern of positions characteristic of the pre-1750 debate broke down and was fundamentally reconfigured. In particular, the pre-1750 radical tradition of Sinophilia was replaced by a harshly damning critique, a shift driven partly by Montesquieu's great impact but more by the growing stream of reports from the Far East spreading doubt about the reliability of earlier reports and hence the constructions vying Enlightenment factions had placed upon them [...] Enthusiasm for China as a source of inspiration and a model haltingly receded after 1750, though many traces of the older articulation.⁷²

It is true that the influence of *L'Esprit des Lois* was particularly marked in the second half of the eighteenth century, despite the persistence of admiration for China due, for example, to writers like Quesnay, Lemercier de la Rivière, the Abbé Roubaud (though with oscillations and ambiguities, as we will see), the Raynal of the first two editions of the *Histoire des Deux Indes* and the same Voltaire. The impact of negative testimonies about Chinese conditions also started being felt later in the century. Montesquieu's work therefore surely reinforced a trend that for simplicity's sake we can call Sinophobic and that endorsed an image of the Chinese state that was seriously lacking when it came to the legitimacy of its government, laws and justice system.

⁷² Israel, *Democratic Enlightenment*, 560.

Two works very clearly symbolize the gradual establishment of this image. While the first two editions of the *Histoire des Deux Indes* (1770 and 1774) only record the opinions of China's "panégyristes", the third edition (1780) includes a long section devoted to the opinions of China's "détracteurs", thus making the identification with Sinophobic arguments of Diderot, as the author of this addition, plain to see.⁷³ The idea of a positive Chinese exceptionalism was clearly repelled from the pages of this collective work under the direction of the Abbé Raynal. The first two editions convey the idea of a rational Chinese justice system with commensurate punishments, one that could combine severity with humaneness, as well as a good government based less on laws and more on the emperor's interest in preventing subjects from rebelling against the abuse of officials, thus keeping the conduct of the latter strictly in check. However, what bursts forth from the 1780 edition is instead the image of a professedly "barbarous" country in which the value of human life was barely considered, infant exposure was widespread, feelings of humanity and solidarity were unknown, humans were treated like animals, and government practices were severe with the frequent use of corporal punishment using the "bâton", as per the famous expression by Montesquieu on the basis of Du Halde. The alleged paternal nature of the emperor's authority concealed the reality of a "père et despote". And the relationship between imperial power and the people was described using an unequivocal metaphor:

la barrière qui protège le peuple [n'est à] la Chine qu'une grande toile d'araignée sur laquelle on auroit peint l'image de la justice & de la liberté, mais au travers de laquelle l'homme qui a de bons yeux apperçoit la tête hideuse du despote.⁷⁴

While laws did therefore exist by all appearances, they actually concealed a dreadful reality and the practice of despotism. Ultimately, Diderot concluded his demolition of the positive image of Chinese law by stressing that the "mœurs" and the traditionally ceremonial nature of the Chinese people did not reliably mirror a social virtue whose solidity was dubious, as confirmed by the widespread fraudulent conduct within commercial relations, especially with Europeans – clear proof, in sum, of China's place outside what would later be called the family of civilized nations.⁷⁵

⁷³ See Guillaume-Thomas Raynal, *Histoire philosophique et politique des établissements et du commerce des Européens dans les deux Indes*, Édition critique, comité éditorial Anthony Strugnell (directeur), Andrew Brown, Cecil Patrick Courtney, Georges Dulac, Gianluigi Goggi et Hans-Jürgen Lüsebrink (Ferney-Voltaire: Centre International d'Étude du XVIIIème siècle, 2010), I, chaps. XX-XXI, "État de la Chine, selon ses panégyristes" and "État de la Chine, selon ses détracteurs", 102-124.

⁷⁴ Raynal, *Histoire philosophique et politique*, I, 117-118.

⁷⁵ Raynal, *Histoire philosophique et politique*, I, 119.

Diderot's positions reflected those expressed shortly before him by Cornelius de Pauw in *Recherches philosophiques sur les Egyptiens et les Chinois* (1773), and perhaps also those of Adam Smith in the *Wealth of Nations* (1776). In both these works, the law, the legitimate foundations of government and justice (especially penal laws) and institutions in general play a central role in defining the features of the Chinese state, if in different ways.

De Pauw, who used only a few well known European publications and no new empirical evidence related to China, took up Du Halde's decontextualized text, to which Montesquieu had already referred, and used it to describe the Chinese government as based not on law and justice but on the unstable efficacy of the "police" and, as in all the "états despotiques de l'Asie", the use of force: "Les principaux ressorts de ce gouvernement sont le fouet & le bâton", or "la crainte et l'intérêt".⁷⁶ The Dutch author therefore fit perfectly within the "legal Orientalism" current, using legal and judicial aspects to interpret the differences between the West and China in terms of degrees of civilization. Regarding the tribunals, whose existence did not contradict the despotic nature of the government since they existed in all the despotic states of Asia, de Pauw stressed (correctly, despite the name) their bureaucratic and administrative, not just judicial, nature. Contradicting an accepted fact among Europeans about the humane nature of Chinese justice, de Pauw went on to claim that the local viceroys could condemn people to death without checks or formalities and with procedures that did not match the "méthode adoptée dans les pays les mieux policés de l'Europe".⁷⁷ Penal justice offered a frightening picture of cruelty, recalling the barbaric practices of the ancient Scythians.⁷⁸ De Pauw was particularly horrified by the Chinese practice of condemning fathers and husbands for the offences committed by their children and wives, and used it to emphasize Western superiority:

On ne peut en aucun cas, ni par aucun motif, punir l'innocence. Et alléguer la nécessité au défaut de la justice, c'est renouveler une ancienne maxime de tyrannie, qui a fait frémir les hommes dans tous les états de l'Europe.⁷⁹

De Pauw also described Chinese punishments in detail, thus helping to give deliberate shape, perhaps for the first time in European representations, to a textual image of

⁷⁶ De Pauw, *Recherches*, II, 332, 338.

⁷⁷ De Pauw, *Recherches*, II, 334-335.

⁷⁸ "Il n'y a rien de plus révoltant dans la jurisprudence criminelle des Chinois, que l'usage emprunté des Scythes, par le que l'on punit les parens du coupable jusque dans le neuvième degré, quoique leur innocence soit avérée, quoiqu'elle soit au-dessus de tout soupçon", de Pauw, *Recherches*, II, 336.

⁷⁹ De Pauw, *Recherches*, II, 338.

Chinese justice as not only cruel and ruthless, but also mercenary, given the widespread practice of atoning for corporal punishment with money.⁸⁰ De Pauw's negative representation of Chinese law and justice reached beyond the penal field. That which falls under what we could call civil law also revealed a picture of uncertainty and arbitrariness, with seizures and obligatory labour limiting the free possession of assets and generating a state of insecurity around property ownership for both city and country residents.

If Montesquieu has been said to make "si grand cas de la justice et [that he] va même jusqu'à considérer qu'elle est en soi un excellent indicateur de l'état du régime politique d'une nation",⁸¹ we can say the same about Adam Smith. This is demonstrated by his discussion of China in *Wealth of Nations* that in recent years has started being recognized for the importance it holds in Smith's thought.⁸² Before we address Smith's reading, however, it would be helpful to take a brief look at the main positions and the climate of opinion about China characterizing the British cultural scene in the eighteenth century.

I.4. BRITISH VIEWS ON CHINESE INSTITUTIONS FROM WILLIAM TEMPLE TO ADAM SMITH

Chinese subjects make frequent appearances in English literature from the late seventeenth to the mid-eighteenth century, albeit with less of the intensity and significance of the continental Enlightenment discourse. Attention to and admiration for China were also manifest within English culture in the second half of the seventeenth century thanks to figures like John Webb who were interested in chronology, language, the arts and gardening. Governance and politics were likewise discussed thanks to Sir William

80 "à la Chine on trouve des hommes allez avarés ou assez pauvres pour porter la cangue & recevoir une bastonnade à la place du criminel, qui les paye pour cela. Le juge veut faire une exécution, & il lui saut un patient: or il prend celui qui se présente [...] les Chinois sont peut être les seuls hommes au monde, qui vendent & qui achètent des supplices", de Pauw, *Recherches*, II, 271.

81 Pereira, *Montesquieu et la Chine*, 401.

82 I dealt with the question of Smith and China in the above cited essay, "At the Roots of the 'Great Divergence': Europe and China in an 18th-Century Debate", and in a contribution for the 22nd International Congress of Historical Sciences (Jinan, 24-29 August 2015) entitled "Europe, China and the Family of Nations: Commercial Enlightenment in the *Sattelzeit* (1780-1840)", in *China from a Global Perspective*, ed. Lola Elizalde and Wang Jianlang (Cambridge: Cambridge Scholars Publishing, forthcoming in late 2017). See also Ryan Patrick Hanley, "The 'Wisdom of the State': Adam Smith on China and Tartary", *American Political Science Review*, 108, no. 2 (May 2014): 371-382; and the already cited Ashley E. Millar, "Revisiting the Sinophilia/Sinophobia Dichotomy in the European Enlightenment through Adam Smith's 'Duties of Government'", especially where the author deals with Smith's opinions on the Chinese judiciary, 725 ff.

Temple (1628-1699), a diplomat during the Restoration period and a famous polemic eulogist of Chinese antiquity in the context of the quarrel on the Ancients and the Moderns.⁸³ Temple helped fuel the idea of a Chinese political tradition of Confucian origins centred entirely on the exaltation of wisdom and virtue as the fundamental qualities required of rulers. He also strengthened an image of the Chinese government as founded on elevated ethical precepts and wise, capable sovereigns, as well as a complex and rigorous institutional, administrative and judicial system.⁸⁴ Many factors – drawn, in essence, from Jesuit sources (Semedo, Kircher, Couplet, Martini and Magalhães)⁸⁵ – prompted Temple to describe the Chinese empire admiringly, especially in his 1692 essay “Of Heroick Virtue”. Such factors included the attention paid to agriculture; the existence of a complex canal system; the wealth and stability of a state able to withstand civil wars and invasions, the last of those being that of the Manchu; and even a form of philosophically-inspired religiosity, which he described very succinctly in almost deistic terms.⁸⁶ What interests us here, of course, are the aspects related to institutions, governance and laws. However, we must bear in mind that Temple’s focus China was more than just erudite; his account was also propelled by a disappointing diplomatic experience in the service of King Charles II and his discontent with an English politics marked by a high degree of conflict between the Crown and the Parliament. Domestic preoccupations like these helped direct his gaze towards the Far East in search of a possible model.

Temple sketched an image elucidating the nature of the Chinese government and explaining the relationship between the exertion of political authority and the law. Notably, he described the Chinese empire as what he believed to be an aggregate of fifteen distinct “kingdoms” rather than a coherent colossus of ancient historical origins. Though they had now been reduced to the rank of “provinces”, each of the viceroys ruling over them was endowed with the same prestige and splendour as true sovereigns. For Temple, this empire was an admirable governmental structure based on the selection of

83 Eun Kyung Min, “China between the Ancients and the Moderns”, *The Eighteenth Century*, 45 (2004): 115-29.

84 William Temple, *The Works* (2 vols., London: printed for A. Churchill [et al.], 1720), on China see in particular the essay “Of Heroick Virtue” [1692], in *Miscellanea: The Second Part*, vol. I of this edition, 191-232; see also Fan Cunzhong, “The Beginnings of the Influence of Chinese Culture in England”, 79-80.

85 See Clara Marburg, *Sir William Temple: A Seventeenth Century ‘Libertin’* (New Haven: Yale University Press, 1932), 56-60, and *Sir William Temple’s Essays ‘On Ancient & Modern Learning’ and ‘On Poetry’*, ed. J. E. Spingarn (New York: Scholar’s Choice Edition, 2015, 1st ed. Oxford: Clarendon Press, 1909), both quoted in Min, “China between the Ancients and the Moderns”, 128.

86 In opposition to the “gross and sottish idolatry” of the “Vulgar and illiterate”, “the Learned adore the Spirit of the World, which they hold to be Eternal; and this without Temples, Idols or Priests”, Temple, “On Heroick Virtue”, 205.

employees destined for magistracies and the highest offices of the state based on merit deriving from education and knowledge of Confucian teachings on public and private virtue. Its structure also allowed executive power to be exercised (and the highest administrative tasks assigned) in a collective way, albeit in the context of an absolute monarchy in which only the emperor's command was law. This was guaranteed by the direct involvement of state councils located at the apex of a complex administrative system that stretched from the centre to the furthest regions of the empire and was placed under the firm control of the highest magistrates, first among which was the inner council that Temple compared to the "Privy Council" of the English monarchy. This institutional apparatus was structured so that government action was guided not by will, favouritism, adulation or corruption but simply by "merit, learning and [...] virtue" through systematic communication between the centre and the periphery and rigorous control of those at the bottom. Temple paid particular attention to the administration of justice, that is, the system of "reward and punishment" that formed the true foundation of the government. And he had no doubt that China's justice system was rigorous, severe and inflexible in how it won respect for the law, especially in its punishment of corrupt judges. It was, in sum, a methodical, orderly government founded on solid, efficient institutions, which Temple assessed in laudatory terms that are worth repeating in full:

Upon these Foundations and Institutions, by such Methods and Orders, the Kingdom of China seems to be framed and policed with the utmost Force and Reach of Human Wisdom, Reason and Contrivance; and in Practice to excel the very Speculations of other Men, and all those imaginary Schemes of the European Wits, the Institutions of Xenophon, the Republick of Plato, the Utopia's or Oceana's of our Modern Writers. And this will perhaps be allowed by any that considers the Vastness, the Opulence, the Populousness of this Region, with the Ease and Facility wherewith 'tis govern'd, and the Length of Time this Government has run.⁸⁷

Notably, this image of China as an absolute monarchy in which the great central councils participated in the exercise of power, especially by recommending people to be appointed as magistrates, would continue to circulate within the British political discourse. Commonwealth man Andrew Fletcher, for example, extensively cited Temple in a 1703 parliamentary speech to support the request for public offices to be assigned by Parliament: "it seems as if that wise people [the Chinese] designed this constitution for a remedy to the like inconveniences with those we labour under at this time".⁸⁸

⁸⁷ Temple, "On Heroick Virtue", 203.

⁸⁸ Andrew Fletcher, *Political Works*, ed. John Robertson (Cambridge: Cambridge University Press, 1997), 163-164.

China therefore continued to serve as a positive model to support requests for reform in Europe, thus confirming the tendency of its instrumental use in the European political discourse.

Nevertheless, just as admiration of Confucius and the ancient philosophical and political wisdom of the Chinese was far from unanimous in the late seventeenth century, as William Wotton demonstrates with his polemic with Temple, so too did an enduring Sinophile trend fail to establish itself in eighteenth-century England. Indeed, the religious and political attitudes, that in France expressed such positive attention towards China on the basis of the Jesuits' information and notions, did not have a similar diffusion north of the Channel. Fairly disparaging attitudes towards Chinese society and civilization generally prevailed, often inspired by accounts of the direct experience of travellers and eyewitnesses. What influenced representations of and opinions about China therefore continued to oscillate between aspects tied to the cultural tradition, the literary and philosophical heritage and the formal structure of the institutions, on the one hand, and a greater attention to the actual contemporary reality that could be perceived within the restricted peripheral area to which the direct experience of Europeans was long confined, on the other hand. This was demonstrated by two very diverse figures who nevertheless helped transmit this negative image, for different reasons, even beyond England: Daniel Defoe and the commodore George Anson. Although their references to China appeared at different times and in different forms – a fictional account written in 1719 in Defoe's case and the narrative of an actual travel experience in the early 1740s by Anson – both were strongly critical of Chinese society. While Defoe wrote of fraudulent merchants crushed by a tyrannical government and a society plunged into general misery and servility,⁸⁹ Anson told of an oppressive Mandarin administration quick to carry out extortion and violent justice.⁹⁰ Both portrayed a society lacking the protection of the law, where the subjects were at the mercy of those in power. In Anson's case specifically, his testimony was widely circulated in Europe with translations and new editions issued throughout the eighteenth and nineteenth centuries. It also directly influenced Montesquieu's ideas and helped negatively orient the extensive account on China contained in the volume of the *Modern Part* (VIII, 1759) of the famous English

89 Daniel Defoe, *The Farther Adventures of Robinson Crusoe* (1719), in *The Novels and Miscellaneous Works by Daniel Defoe* (2 vols., Oxford: Talboys, 1840), II, 273-274. See also G. A. Starr, "Defoe and China", *Eighteenth-Century Studies*, 43 (2010), 435-454, and Chen Shouyi, "Daniel Defoe, China's Severe Critic", in Hsia, *The Vision of China*, 215-248 (originally published in 1935).

90 George Anson, *A Voyage Round the World in the Years 1740-1744 [...] Compiled from papers [...] of [...] Lord Anson [...] by Richard Walter and Benjamin Robins* (2 vols., London: Printed for John and Paul Knapton, 1748).

Universal History.⁹¹ A partial exception to these negative portrayals was the case of Oliver Goldsmith whose *Chinese Letters* appeared in 1762. While his pages are certainly not steeped in admiration for China, with which he was by no means infatuated, and he did not share the popular taste for chinoiserie, Goldsmith did praise the Chinese government for being enlightened, being based on wise and ancient laws, and having a legislation capable of punishing vice and crime but also awarding virtue.

Various kinds of eighteenth-century English publications are full of more or less cursory references to China reflecting various concerns and points of view. However, we must turn to David Hume and Adam Ferguson. In the case of Hume, we should focus on his essay “Of the Rise and Progress of the Arts and Science”.⁹² While he did refer to China in other texts and letters, especially regarding economic-monetary subjects, he never mentioned institutional aspects or those belonging to the judicial-legal sphere.⁹³ Here, on the other hand, Hume unhesitatingly defined China as a great, ancient, venerated empire with a community that lived happily, richly and in “good police”, even though it lacked an idea of “free government”. He explained that these two circumstances could coexist because the Chinese government was monarchical yet not absolute, and was limited by the fear of popular rebellion, especially where provincial governors were subject to the control of “general laws”. Certainly, Hume’s China was a vast country with an ancient civilization and a precocious development whose capacity for continuous progress had clearly been hindered. However, Hume believed that the cause of this paradox was not a lack of a political, legislative and administrative structure but, essentially, the extent of the territory, the uniformity – that is, the inability to adapt to changing circumstances – reigning within the empire, and a stability that had become paralyzing.

In his *Essay on the History of Civil Society* (1767), Adam Ferguson dedicated important pages to China that are worth recalling for his original way of interweaving a vision of the Chinese empire strongly tied to an image of its traditions and judicial-institutional organisation with an individuation of political and “moral” issues that Ferguson realized were dangerously imminent in contemporary Europe. The Scottish philosopher

91 Rolando Minuti, “Montesquieu et le récit de voyage de l’amiral Anson”, in *Montesquieu, Œuvre ouverte? (1748-1755). Actes du Colloque de Bordeaux (6-8 décembre 2001), présentés et publiés par C. Larrère* (Napoli: Liguori-Oxford: Voltaire Foundation, 2005) (Cahiers Montesquieu, 9), 253-270. On the part devoted to China of the *Modern Part of the Universal History* (VIII, 1759), see my “At the Roots of the Great Divergence”, 137 ff.

92 In David Hume, *Essays Moral Political and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 2005), 111-137, see 122.

93 *David Hume’s Political Economy*, ed. Margaret Schabas and Carl Wennerlind (Abingdon-New York: Routledge, 2008).

had no doubt that China represented a state with an ancient, elevated civilization and an age-old tradition of mercantile and manufacturing practices. Its population demonstrated an industriousness that was unparalleled in the world, albeit less because of natural gifts and more because of an unstoppable spirit of competition caused by inequality. Ferguson found it remarkable that the Chinese were “still” so industrious after centuries of commercial and productive exertions.⁹⁴ In his *Essay*, he made observations about the country’s populous nature, the practice of abandonment of infants and the diffusion of fraud, without ever falling into a banal repetition of clichés. What Ferguson wrote about trade and especially “great trade” demonstrates his unwillingness to generalize. He observed that the indubitable existence of a “great trade” conducted by “great merchants” was incompatible with the custom of fraud, which instead was typical of a more primitive lack of vision and perspective. While he acknowledged that testimonies certainly referred to trickery, everyday petty thefts and corruption as dominant practices in Chinese daily life, with only the severity of the law to keep this general delinquent attitude in check, he believed this surely could not count for the “great merchant” for whom it was vital to operate in a regime of “great confidence”. Ferguson’s most original reflections, however, regard the organization of the state, the institutions and the laws, and are once again void of clichés. Quite the contrary, they convey a clear desire to distinguish between appearance and reality. In fact, on first impression, he believed it was undeniable that “The policy of China is the most perfect model of an arrangement at which the ordinary refinements of government are aimed”.⁹⁵

The imperial Chinese state had reached an enviable and unparalleled degree of organization within human history, using a large number of people to control civil and military administration. The population found itself in possession of all the “arts” on which the “felicity and greatness of nations” depended according to “vulgar minds”. Above all, Ferguson was struck by how meticulously the management of public affairs was divided and ritualized. He described a practice of breaking up and simplifying administrative tasks to bring them within anyone’s reach and clothe them with such solemnity as to arouse general deference.⁹⁶ Obedience to the law and the government was thus obtained through the pervasive societal presence of administrative practices cloaked

94 Adam Ferguson, *An Essay on the History of Civil Society. The Fifth Edition* (London: Cadell, 1782), 239-240, 342, 362, and most of all 377-379 and 450. On Ferguson’s ideas on China see also Iain McDaniel, *Adam Ferguson in the Scottish Enlightenment: The Roman Past and Europe’s Future* (Cambridge, MA-London: Harvard University Press, 2013), in particular 93-104.

95 Ferguson, *Essay on the History of Civil Society*, 377.

96 “They have done what we are very apt to admire; they have brought national affairs to the level of the meanest capacity; they have broken them into parts, and thrown them into separate departments”, Ferguson, *Essay on the History of Civil Society*, 378.

and celebrated by ritual, symbolism and formality. When obedience could not be obtained, the punitive rigour of a law “armed with every species of corporal punishment” took over. Whips and sticks would strike people of all conditions, including magistrates, inexorably. But Ferguson paid particular attention to the organization of the state. To attest to the independence of his judgement, he was not particularly impressed by the imperial exam system. It was clear to him that the extensive training required for admission to one of the various levels of the bureaucracy had been reduced to the acquisition of basic skills. And while he admired the structure of the “tribunals” or secretaryships of the state, he thought what it ultimately resulted was the empire’s weakness in terms of a meagre civic spirit and a lack of military attitude, both of which were caused by the excessive specialization and the separation of two rigidly distinct yet inseparable sectors: administrative operations, on the one hand, and productive, namely agricultural, activities on the other. Since the “council” worked to make the great products of the “field” usable, the fragmentation of activities and skills caused an absence of civic and martial spirit, which for Ferguson could only exist in terms of the propensity of a society’s members to fight for their own rights. The apparently paradoxical though greatly perspicacious consequence that Ferguson derived was that a state that was this highly organized and gifted with such evolved institutional and legal apparatuses could prove quite similar to a despotism that resulted from an excess and a ‘formalism’ of the law, rather than its absence:

such a state, like that of China, by throwing affairs into separate offices, where conduct consists in detail, and in the observance of forms, by superseding all the exertions of a great or a liberal mind, is more akin to despotism than we are apt to imagine.⁹⁷

Clearly, Ferguson cannot simply be ascribed to either of the parties into which learnt opinion was divided regarding China. However, in an essay where the sources do not explicitly shine through, we can also see how, all in all, China was not considered interesting in and of itself as an object of independent study and analysis. Instead, it was used once again to support the more general reasoning underpinning the text at hand, in this case regarding the possible effects on the public spirit, the state of the society and the civic virtue of a civilization that had reached the highest levels of specialization, in a way that connects Ferguson to Benjamin Constant, if not Max Weber.

As mentioned earlier, Adam Smith framed the subject differently. Addressing China analytically and in a detached mood, his writing is free of polemical intonation and pays particular attention precisely to the subject of law and justice. Smith himself made the

⁹⁷ Ferguson, *Essay on the History of Civil Society*, 450.

subject of justice central by underscoring that it was the government's duty to guarantee the legal protection of its subjects by keeping their property rights secure and running its administration effectively and honestly. Smith contended that China's laws and its political-institutional structure could not adequately ensure the country's economic development, which depended less on the security of landed property than on the government's inability to open the country to foreign trade. The Smithian discourse therefore tended to stress the inadequacy of the institutions and the legislation compared to the potential development of a populous, hardworking and organized country like China. It would be wrong however to consider Smith a Sinophobe. His attitude was not informed by some declared Eurocentric feeling of superiority towards China; nor was it dictated by the will to weaken some mythical view of the country, as in the case of de Pauw. As Millar has already correctly observed, we cannot simply frame Smith's position within the Sinophilia/Sinophobia dichotomy.⁹⁸ On the contrary, Smith admired various aspects of the empire – the great industry of the people, the care taken with public works, the abundant population – even if he assimilated China to medieval Europe as to capacity for economic development, thus suggesting a very different position of the first on the temporal scale with respect to contemporary Europe. In his opinion, such development was possible only through the improvement of institutions and legislation to stimulate foreign trade and internal demand. This is what he meant when he said that China “had probably long ago acquired that full complement of riches which *the nature of its laws and institutions* permits it to acquire” (my italics).⁹⁹ Rather than placing the accent on the judicial system, threatening cruelty of penal justice and the penal laws or the inadequate protection of people's rights, Smith implicated the political-institutional sphere in its entirety. He considered the latter the determining factor for any economic, social and civil development, in China or elsewhere. And from the situation described in *Wealth of Nations* we gather that China seemed doomed to a “stationary” condition unless the “wisdom of the State” could guide it towards creating the right conditions for a successful commercial civilization, which Smith considered the best possible context for the achievement of human potential and dignity.¹⁰⁰

98 See Millar, “Revisiting the Sinophilia/Sinophobia Dichotomy”, 730, and my “At the Roots of the ‘Great Divergence’”, 149.

99 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, book I, chap. IX, in *The Glasgow Edition of the Works and Correspondence*, ed. Roy H. Campbell and Andrew S. Skinner (2 vols. Indianapolis: Liberty Fund, 1981), 111.

100 Hanley, “The ‘Wisdom of the State’: Adam Smith on China and Tartary”, 372.

I.5. CONTRIBUTIONS AND OPINIONS IN THE LAST THIRTY YEARS OF THE EIGHTEENTH CENTURY

In the last part of the eighteenth century the discourse on China carried on with remarkable intensity, especially when it came to its institutions and laws. First and foremost was Mably's attack of Physiocratic mythicizing with the "doutes" he presented about Quesnay in his *Examen du Despotisme de la Chine* of 1768.¹⁰¹ In criticizing Quesnay, Mably proposed an interesting conceptual refinement. He wrote that China's particular form of despotism was "soumis à une sorte d'ordre et de règle" and was therefore different from the cruel, brutal and arbitrary despotism of Turkey. Rather than a "legal" despotism, it was simply a different form of oppression over subjects. While it was certainly not a model to be emulated, it did have the potential to change as a consequence of external illumination that could reawaken an apathetic people plunged in submission:

Permettez aux Chinois d'acquérir de nouvelles lumières, & de juger avec justesse de leur situation & vous verrez sur le champ le despotisme devenir soupçonneux; ensuite timide, & enfin furieux.¹⁰²

Contemporary opinion close to the physiocratic position had plenty to say on the matter. This is the case of the "voyageur-philosophe" Pierre Poivre (1719-1786), a native of Lyon and a pupil of the Société des Missions Etrangères. Poivre was a missionary to China and Cochinchina in 1741-1745 before dedicating himself to tropical botany in the service of the French East India Company. He was also the protagonist of a second voyage to various parts of Asia including China from 1749 to 1757 as an agent for the French Ministère de la Marine and ended his career as the 'intendant' of the Île de France and the Île Bourbon (1767-1772) after having spent a total of two and a half years in China. As an expert in the spice trade and the great (unheeded) deviser of "conquête des épices" projects through transplantation to the Île de France¹⁰³ with Physi-

101 Mably's chapters on the "Examen du Despotisme de la Chine. Doutes sur l'Histoire de cet Empire, ou sur la perpétuité de ses mœurs, ses loix et de son gouvernement" and "Réflexions sur le despotisme actuel de la Chine. Pourquoi ce gouvernement arbitraire n'y produit pas les mêmes maux qu'il produiroit ailleurs. Des abus sourds et journaliers de cette forme de gouvernement. Des mœurs des Chinois" were part of his work *Doutes proposés aux philosophes économistes, sur l'ordre naturel et essentiel des sociétés politiques* (à La Haye et se trouve à Paris: chez Nyon, veuve Durand, 1768), 97-163.

102 Mably, *Doutes proposés aux philosophes économistes*, 102, 105, 127, 107.

103 On the conservationist programmes of Poivre, see Richard H. Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600-1860* (Cambridge: Cambridge University Press, 1996), paragraphs "The conservation programmes of Pierre Poivre, 1767-72", 199-216, and "Pierre Poivre and Philibert Commerson: Co-operating in the development of conservationism", 216-222.

ocratic sympathies, Poivre consigned his ideas to *Voyages d'un philosophe*, a book with strong Sinophile undertones drawn from two lectures he gave in Lyon and published in 1768. He dedicated a good deal of the book to Chinese agriculture, declaring without hesitation “qu'il n'est point de contrée sur la terre où l'agriculture soit plus florissante qu'en Chine”.¹⁰⁴ It seemed to Poivre that this happy circumstance could be attributed not to the hardworking nature of the Chinese or to technical-agronomic motives but rather to structural or, better, “institutional” causes, i.e., good laws on which the state rested and that regulated the economic life of subjects. As he explained, these rational laws supported the empire's government in a solid, enduring way. These were not laws written in “obscure codes” as a result of the deceiving spirit of astute governors but were imprinted by nature in people's hearts. The existence of social distinctions deriving solely from differences of merit and talent; the paternal nature of the sovereign authority; public and private virtues rooted in the filial respect for fathers; and the great attention paid to agriculture on the part of a government composed of men who came from the working classes themselves: these were the fundamental laws upon which the great edifice of the Chinese nation had rested for centuries. However, more concretely, the laws that secured subsistence and well-being for the population were those guaranteeing the possession and free enjoyment of land. His portrayal was strongly idealized: free lands; free people; no land wasted by being closed off in reserves; no greedy tax contractors; no seigniorial rights or feudal laws through which to extort farmers; and certain, moderate taxes due only to the emperor through upstanding natural magistrates and protectors of the people. In sum, “le peuple Chinois, gouverné comme une famille & soumis aux seules loix de la raison” stood out from the rest of Asia, which was dominated by despotism and feudal laws. It thus stood as the demonstration of a great, universal truth whereby “l'état de l'agriculture dépend uniquement des lois qui y sont établies et des mœurs, même des préjugés que les lois donnent”.¹⁰⁵

Another testimony traceable to Physiocratic environments but much more complex and multifaceted, if not contradictory, was that of the Abbé Pierre-Joseph-André Roubaud,¹⁰⁶ a very active collaborator of the *Éphémérides du citoyen*, the editor of the

104 Pierre Poivre, *Voyages d'un philosophe, ou observations sur les mœurs et les arts des peuples de l'Afrique, de l'Asie & de l'Amérique* (Yverdon: n.e., 1768), quotation at 120. On Poivre, see Louis Malleret, *Pierre Poivre* (Paris: Éditions de l'École Française D'Extrême-Orient, 1974), and Madeleine Ly-Tio-Fane, “Pierre Poivre et l'expansion française dans l'Indo-Pacifique”, *Bulletin de l'École française d'Extrême-Orient*, 53, no. 2 (1967): 453-512, accessed May 15, 2017, doi: 10.3406/befeo.1967.5053; and the website “Pierre Poivre & Compagnie”, accessed May 15, 2017, <http://www.pierre-poivre.fr/>.

105 Poivre, *Voyages d'un philosophe*, 131-134.

106 On Roubaud, with regard to other themes of discussion, see Ann Thompson, “Diderot, Roubaud et l'esclavage”, *Recherches sur Diderot et l'Encyclopédie*, 35 (2003): 69-94, document 5, mis en ligne le 16

Journal d'agriculture and the author of important works critical of colonial European politics like *Politique indien, ou considérations sur les colonies des Indes orientales* of 1768. We are mainly indebted to Roubaud for a work of great commitment, the *Histoire générale de l'Asie, de l'Afrique et de l'Amérique*, which appeared between 1770 and 1775 in a full fifteen volumes¹⁰⁷ and was inspired by the ambition to offer the public an alternative *philosophique* to the great and famous English *Universal History* (1736-1764). In fact, the synchronicity with the first two editions of Raynal's famous work is striking. It is worth lingering for a moment over Roubaud's *Histoire* because it reveals strong oscillations within the bosom of the Physiocratic body with specific reference to China. To appreciate the text properly, we must consider two successive, very lengthy parts dedicated to China: the first, subdivided into volumes I (antiquity to the tenth century) and II (the modern age), both published in 1770; and the second, "Supplément et corrections à l'histoire de la Chine", in volume IX, which appeared immediately thereafter, in 1771. Roubaud's exposition as a whole seems to be characterized by the desire to establish a comparison – at least implicitly, and not without ambiguities and contradictions – between a formal description of Chinese institutions and the philosophical-moral Confucian tradition as a theoretical foundation of Chinese society and the operation of the state itself (a description that, in the first volume, seems mainly to recall Du Halde), on the one hand; and the concrete reality of the exercise of power, the administration of justice, and public and private behaviour, on the other hand. However, the supplemental volume also presented decidedly different assessments and interpretations when it came to Chinese history.

While we will refrain from addressing subjects that are not of direct interest to the topic at hand – namely political institutions, the place occupied by the law, the legal tradition, the system of administering justice and judicial practice – it is useful to point out what Roubaud wrote about China's ancient history in volume I. Here he took a decisively anti-Jesuit position fuelled by a rich apparatus of sources including the père Du Halde himself, and de Guignes, Bayer, Parennin and the "sçavans auteurs anglois de l'Histoire universelle". His representation was quite unfavourable to Chinese history and civilization, starting with his denial of the ancient nature of the chronology and stories with origins so dear to "leurs partisans", which he claimed had transformed simple fables and "notions confuses" into history.¹⁰⁸ He also rejected the "absurd" theory of a continuously existing single empire since antiquity, supporting instead the opinion

février 2011, accessed May 15, 2017, doi: 10.4000/rde.179.

107 [Pierre-Joseph-André Roubaud], *Histoire générale de l'Asie, de l'Afrique et de l'Amérique*. Par M. L. A. R. [Pierre-Joseph-André Roubaud] (15 vols., Paris: chez Des Ventes de la Doué, 1770-1775), in-8°.

108 Roubaud, *Histoire générale*, I, 311-312.

of critics like de Guignes – albeit without accepting his theory of the Egyptian origins of the Chinese shared by Huet and Dortous de Mairan – who believed the country had been divided into many small monarchies until the unification occurred only in more recent times. In this way, all of ancient history turned out to be a succession of civil wars, revolutions, dynastic changes, rebellions and “continuelles tempêtes”, only to reach a certain stability starting with the Song dynasty at the end of the tenth century. Regarding the *Chou King*, a key text for understanding ancient Chinese history compiled by Confucius in the second half of the sixth century B.C.E. and known in the West thanks to a translation by the French Jesuit missionary Antoine Gaubil published with major corrections and comments by Joseph de Guignes precisely in 1770, his opinion was concise:¹⁰⁹

moins, un ouvrage d’Historiens qu’une fable de Philosophes qui contient tout-à-la fois un système philosophique sur l’origine & la filiation des Arts, & un système politique sur les caractères d’un bon Gouvernement.¹¹⁰

Roubaud’s analysis became much more multifaceted when it went on to illustrate the institutions of the government and the administration, with a precise description based mainly on Du Halde that nonetheless belies an attitude with little relation to Physiocratic admiration. On the contrary, it reveals a clear desire to reject the viewpoint of Sinophile enthusiasts or at least to partner it with a consideration of the concrete reality of Chinese institutions and society. From this perspective, it was undeniable “que la Chine a d’excellens réglemens & de très bons principes de régime”. For Roubaud, such principles had not been established in the first place by the laws but rather had been built on the set of rites and rituals that symbolized, and in which were expressed, the “general sentiments” of the nation and served to translate those sentiments into customs and habits. First among these was the feeling of paternal protection and the submission of children upon which the entire government system was based. The Chinese government, though ambiguously defined as “monarchical or despotic”,¹¹¹ was therefore limited not by laws but by opinion, not by a body of laws or depositaries of intermediate powers, but by principles and the belief that power was exercised for the general good. The result was

109 On the French debate on different aspects of the Chinese civilization with reference to the critical attitude developed by the erudites of the “Académie des Inscriptions” and of the *Journal des Sçavans*, let me quote my essay “*Quand a commencé leur sagesse?* Il *Journal des Sçavans* e il dibattito su antichità e civiltà della Cina (1754-1791)”, in *La formazione storica dell’alterità. Saggi in onore di Antonio Rotondò*, a cura di Henry Méchoulan, Richard H. Popkin, Giuseppe Ricuperati, Luisa Simonutti (3 vols., Firenze: Olschki, 2001), III, 975-1007.

110 Roubaud, *Histoire générale*, I, 394.

111 Roubaud, *Histoire générale*, II, 362.

a social harmony thanks to which quarrels and crimes were rare; justice could be imparted with moderation; penal laws were more lenient than in limited monarchies thanks to the submissive nature of the subjects; judicial procedures were simple, accessible, immediate, rapid and devoid of formality; corporal punishment was bestowed with a spirit of paternal correction; and the death penalty was rare, never inflicted hastily and remained under the supreme control of the emperor.¹¹² Upon confronting it with empirical reality, however, Roubaud completely overturned this seemingly positive portrayal with the declared intention to give lie to travellers' and missionaries' representations of the Chinese empire as Plato's Republic achieved on earth.¹¹³ In fact, several pages followed presenting a very different, more Montesquieuian picture in which a boundless imperial power weighed heavily upon the minds of subjects whom no "intermediate protection" or popular body could protect from slavery; tribunals were dominated by the anxious desire to please the imperial authority and the fear that their autonomy could look like a *lèse-majesté* crime, thus making judges liable to the death penalty; and the much vaunted simplicity of the justice system was nothing more than a hasty, arbitrary way to solve disputes. As he wrote, "la justice n'est jamais plu prompte qu'où le Juge est despotique". His opinion of Confucius was typical, considering him a philosopher of sublime reason, a "legislator of the world" and the author of not only the "true code of humanity" but also a political system of unequalled beauty based on the chief principles of a rational morality. However, Roubaud wrote that those principles had never been put into practice as the authentic guide of governments and the conduct of subjects, which was regulated not by virtue and honour but by the stick and the inflexible application of a pitiless, oppressive law. It followed that the prerogative of public morality was not devotion, deference and the public spirit but rather dishonesty, the propensity to deceive and "friponnerie". "Voilà un peuple de scélérats, & un Gouvernement de barbares", he concluded, thus voiding any representation of China as a society held up by judicious institutions and well-established laws. According to a vision once again recalling Montesquieu, the law constituted the pure promulgation of imperial power and the will to rule. It acted effectively because it was interwoven with a ritualized morality and the regularity of customs belonging to a people "shackled to work by necessity" and averse to change, communication or confrontation: "La Chine n'a d'ailleurs aucune communi-

112 Roubaud, *Histoire générale*, II, 377-379.

113 "Des Voyageurs & des Missionnaires, prévenus par la bonté de diverses institutions Chinoises, ont publié que la République de Platon subsistait de tems immémorial dans cet Empire, & l'enthousiasme l'a répété; mais en réfléchissant sur le Gouvernement, & en lisant l'Histoire, le merveilleux s'évanouit, et cet empire enchanté n'est que le théâtre du despotisme & de la tyrannie", Roubaud, *Histoire générale*, II, 379-380.

tion avec l'étranger; elle ne vit qu'avec elle-même, & l'habitude est sa loi".¹¹⁴ According to this vision, what regulated daily life was not so much the law in the strict sense – with all the procedures punctuating its formulation, approval and application – as it was the habit and stability of customs that both mirrored the internalization of an indisputable rule consecrated by tradition and ensured correspondence between pervasive norms and social behaviour: "L'empire des loix & des coutumes s'est fortifié par l'habitude; les Ordonnances ont passé en mœurs, la loi est devenue le génie de la Nation. Lorsqu'on dépouillera le Chinois de ses mœurs l'Empire tombera".¹¹⁵

Within the same work, Roubaud's portrayal presents strong oscillations and ambiguities. While his assessment of the Chinese institutional model and government as better than any other Oriental government was clear, many uncertainties remained. For example, where was the line in Chinese society and institutions between blind submission to authority and the conscious adherence to a political-social discipline founded on a recognized, well-established hierarchical principle? How did the inflexible regime of an arbitrarily applied law actually become a system through which to regulate daily life, one that was hallowed by tradition and thus accepted by the subjects? The ambiguity grows if we consider how Roubaud used Commodore Anson's testimony to draw a strongly negative picture of the practice of Chinese justice, administration in general and the conduct of commercial transactions. A portrait emerged of a country where the civil body appeared to be founded on the law and social morality yet daily life was actually dominated by money-hungry Mandarins, corrupt magistrates, tribunals full of intrigue and venality, and a general tendency towards trickery, deceit and theft. It was, in short, a highly negative account, one only confirmed by the author's analysis of other aspects of the society, cultural traditions and the economy. While we need not linger over such aspects here, it is significant that this account was overturned once again in chapters added to a subsequent volume, thus documenting the highly controversial state of this topic, which continued sparking opposing viewpoints in the early 1770s. Conflicting interpretations even managed to penetrate a large compilation like the *Histoire générale*, to some extent anticipating what would happen in the 1780 edition of the *Histoire des Deux Indes*.¹¹⁶ The fact remains that we cannot ignore the clear-cut reversal of opinion that appears in the "Considérations sur le gouvernement de la Chine", inserted in 1771 as a supplement, in which China was now transformed again into a model country worthy of favourable comparison to Europe precisely by virtue of its institutions, laws and justice system.

114 Roubaud, *Histoire générale*, II, 384, 389.

115 Roubaud, *Histoire générale*, II, 471.

116 See above par. I.3.

In essence, this new chapter – based on “more profound reflections” – reduced undeniably negative aspects of the Chinese government to simple “abuses” or “shortcomings”, independent of “defects” of the constitution, which instead remained an excellent system:

parfaitement conforme à l’ordre naturel des sociétés politiques; et que, malgré ces défauts mêmes, il offre, dans ses loix fondamentales, un modèle que les hommes d’Etat de tous les pays devoient avoir sans cesse devant les yeux.¹¹⁷

This change of opinion explicitly derived from a more detailed analysis of the *Chou King* in the de Guignes edition and was expressed using unequivocally Physiocratic language, as though Roubaud wanted to fall perfectly within the ranks of the doctrine in which he recognized himself, thus demonstrating particularly his support of Lemerrier de la Rivière’s 1767 text and the contemporary *Despotisme de la Chine* by Quesnay.¹¹⁸ There existed, therefore, an “ordre naturel”, “essentiel”, or even “physique et irrésistible”, and by conforming to this order, positive laws guaranteed stability, solidity and prosperity, as had occurred for centuries in the Chinese case: “la prospérité constante & inaltérable d’une nation est le signe manifeste & infaillible de l’alliance de sa législation avec cet ordre immuable, ou plutôt du règne de cet ordre”.¹¹⁹

Stability and prosperity were indisputable proof of a well-governed country, that is, one governed not by arbitrary human will but by laws that systematize and give order:

Cet Empire est sans doute gouverné par la loi, et non par l’homme; car, le règne des volontés ou des erreurs et des passions humaines, n’est, comme le règne des fléaux du ciel, qu’affliction, bouleversement & ruine: il est gouverné par de bonnes loix; car, les mauvaises loix font comme les mauvais Princes; en détruisant, elles se détruisent: il est gouverné par les loix de l’ordre essentiel des sociétés; car il existe, avant toute institution humaine, un ordre physique et irrésistible, par lequel tout vit & prospère, tout dépérit & meurt, individus & sociétés, suivant l’accord ou l’opposition des loix positives avec ses loix.¹²⁰

The same revolutionary episodes that had characterized the empire’s historical evolution had tested the efficacy of its laws by revealing the existence of a mechanism of reaction and self-defence towards a tyrannical sovereign. In short, they had attested to “la force et le despotisme des loix”.¹²¹ The agreement between positive laws and the natural

117 Roubaud, *Histoire générale*, IX, 359.

118 See above par. I.3, 26.

119 Roubaud, *Histoire générale*, IX, 360

120 Roubaud, *Histoire générale*, IX, 360.

121 Roubaud, *Histoire générale*, IX, 361.

order therefore supported a country in which the government and the people existed for each other; social rank depended solely on knowledge and merit; the sovereign primarily offered an example of virtue and consecrated the central role of work in the fields by bestowing honours and rewards on it; property was sacred; and the practice of the arts was free. All of this constituted “l’esprit du Gouvernement de cette merveilleuse nation”,¹²² according to an account that was decidedly, unwaveringly Physiocratic.

As we have already seen, the discussion in the years following the appearance of Roubaud’s work was marked by a hardening of views on the part of those who criticised China and Physiocracy, often directly inspired by Montesquieu, as in the aforementioned case of Cornelius de Pauw. And towards the end of the decade, the new Chinese materials inserted into Raynal’s *Histoire des Deux Indes* responded precisely to the need to account for this marked reversal of tendency towards the Sinophobic.¹²³ To this regard, we have at least two other important testimonies that, while very different from one another, both resulted from direct experience residing in China: that of French traveller and naturalist Pierre Sonnerat (1748-1814) and that by Swiss merchant Charles de Constant (1762-1835).¹²⁴ It is especially appropriate to recall these representations and interpretations of Chinese institutions for how they reveal the centrality of justice and the law.

As the nephew of Pierre Poivre, a botanist, a naturalist draughtsman and a traveller, Pierre Sonnerat was not just any observer.¹²⁵ He was a disciple of Philibert Commerson (1727-1773), another important French naturalist who partook in the circumnavigation of Bougainville, and he travelled to Asia three times: the first in 1770-1772, to the Île de France, the Molucca Islands, New Guinea and the Philippines; the second in 1774-1781, a much more demanding mission on behalf of the Ministère de la Marine that brought him to India and China; and a third, in 1781-1785, to India. Trained as an artist with strong naturalistic interests and extensive experience with the Oriental world and related colonial, commercial and naturalistic issues, Sonnerat was the author of two prominent travel accounts. The second of these, entitled *Voyage aux Indes orientales et à la Chine* and published in Paris in 1782 in two volumes, is richly illustrated with prints based on drawings by Sonnerat himself. It also contains a short but significant section

122 Roubaud, *Histoire générale*, IX, 363.

123 On Raynal and on de Pauw see above par. I.3.

124 On these two remarkable figures, see respectively Madeleine Ly-Tio-Fane, *Pierre Sonnerat, 1748-1814: An Account of His Life and Work* (Mauritius: Imprimerie & papeterie commerciale, 1976); and the two editions of selections of Constant’s manuscript writings on China by Louis Dermigny, *Les Mémoires de Charles de Constant sur le Commerce à La Chine* (Paris: S.E.V.P.E.N, 1964) and by Marie-Sybille de Vienne, *La Chine au déclin des Lumières: l’expérience de Charles de Constant, négociant des loges de Canton* (Paris: Honoré Champion, 2004).

125 Ly-Tio-Fane, *Pierre Sonnerat, 1748-1814*.

on China that was expanded in the 1806 edition with unpublished materials by Sonnerat related not only to Canton but all Chinese provinces of the interior.¹²⁶ Like the other parts of the *Voyage* dedicated to India, Siam, Bago, the Molucca Islands and the Philippines, these pages on China are not a report on the author's stay, about whose length and logistical aspects we actually know very little. They are, rather, true considerations on various aspects of the society, culture and natural resources of the country he visited, accompanied by reflections and interpretations that lend the work the aspect of a 'philosophical' voyage and certainly contributed to the publishing success attested to by its various translations. This is exactly why it is worth briefly discussing these pages of "Observations sur la Chine" in which Sonnerat began immediately to focus on the matter of the law. The "attention de l'observateur et l'examen du philosophe" towards a country and people subject to such great interest and admiration and "dont on ne cite les lois qu'avec éloge" seemed to him entirely justified.¹²⁷ However, Sonnerat neglected to acknowledge the favourable representations of the Jesuits. On the contrary, he criticised them explicitly as champions of theocracy and admirers of China because they saw in it the perfect image of the "despotisme sacré" they so wished to export throughout the world. He dismissed Jesuit accounts as "fables [...] débitées sur le commerce et le gouvernement des Chinois", later taken up by the "Philosophes économistes" who in their turn had employed a certain image of the Chinese government to criticise European institutions. Sonnerat intended to convey an image – and he declared his desire to do so based on what he had seen himself, what other eyewitnesses had told him and what he had learnt by studying Chinese traditions – of a population of slaves governed without laws, arbitrarily and with a stick by sovereigns who perhaps in ages of yore had been wise monarch-fathers of their people but now had been transformed into despots who were the object of a religious cult entrusted with a power founded on repression by the military hand. The Chinese therefore lay idle, "malheureux" in "l'ավիլissement et l'oppression", barred from external contact and driven by contempt for all foreigners. When he later went on to illustrate how commercial relationships with Europeans were carried out in Canton, Sonnerat presented a picture of fraud, extortion, shadiness and corruption involving the Chinese merchants called *hanistes*, i.e., those belonging to the Cohong authorized by the emperor to trade with Europeans. The degree of detail with which he described the mechanisms of exchange, the commercial operations and the

126 Pierre Sonnerat, *Voyage aux Indes orientales et à la Chine: fait par ordre du Roi, depuis 1774 jusqu'en 1781: dans lequel on traite des mœurs, de la religion, des sciences & des arts des Indiens, des Chinois, des Péguins & des Madéagasses [...]* (2 vols., Paris: chez l'auteur, Froullé, Nyon et Barrois, 1782); I quote from the new, 1806 edition, based on Sonnerat's manuscripts and enlarged with additional materials by Charles Nicolas Sigisbert Sonnini de Manoncourt (4 vols., Paris: Dentu, 1806), II, 4-5.

127 Sonnerat, *Voyage aux Indes orientales et à la Chine*, I, 367.

working of the imperial administration implies not only personal experience but also very well informed sources. In fact, while we do not know the exact dates that Sonnerat resided in China, we know he travelled there and to the West Indies from 1774 to 1781. So the possibility that his presence in Canton coincided with that of the aforementioned Swiss merchant Charles de Constant, who carried out the first of his three trips to China from 1779 to 1782, is striking. Considering that Constant's rich, unpublished writings have left us with an extraordinary testimony, thus revealing him as a meticulous, keen observer of the Cantonese world of commerce, the imperial administration and the local life, as we will see shortly, could we hypothesize that he may have been the source of the precise, detailed information presented in Sonnerat's *Voyage*? Certainly, what we do know is that there are many similarities between the descriptions, impressions and assessments they both gave of Canton and the position of the Europeans and their relationships with local authorities and Chinese institutions, starting precisely from the practical issue of justice but also including the more general issue of the Chinese government's legal nature or lack thereof. For Sonnerat, the conditions allowing Europeans to carry out commercial activities depended precisely on judicial practices and relationships with the imperial administration to obtain reparation in quarrels and conflicts with Chinese officials, merchants, suppliers and intermediaries. He had no doubt that Westerners had theretofore always found themselves at a disadvantage in the face of a system in which they did not understand the particularities of how things worked, from which they were unable to obtain the necessary protection from injustices suffered, and that in itself was based on an extreme, widespread and irreparable corruption in which Mandarins – the local “*dépositaires de la justice*” – thrived on the “*dépouilles*” of those who asked them for reparations, and whose conduct Sonnerat represented with a ghastly picture of arbitrariness and cruelty.¹²⁸ His portrayal was indeed one of a corrupt, oppressive and cruel justice system, and of venality in general, for which Chinese subjects paid the price and Europeans even more than they because of the particular restrictions they experienced and their lack of linguistic knowledge and useful techniques for interacting effectively with the imperial government. By distancing himself from any form of Sino-philial in the face of the admiration for Chinese institutions demonstrated by European opinion, Sonnerat's answer to the question “*quelle est donc cette administration si sage et si vantée?*” left no doubt about his view of Chinese society:

128 “Un mandarin passant dans une ville, fait arrêter qui lui plaît, pour le faire mourir sous les coups, sans que personne puisse embrasser sa défense: cent bourreaux sont ses terribles avant-coureurs, et l'annoncent par une espèce de hurlement. Si quelqu'un oublie de se ranger contre la muraille, il est assommé de coups de chaînes ou de bambous”, Sonnerat, *Voyage aux Indes orientales et à la Chine*, I, 383.

Qu'on cesse donc de vanter ces mœurs si douces, ce gouvernement si sage, où l'on achète le droit de commettre des crimes, ou le peuple gémit sous le joug de l'oppression et de la misère! Est-ce là de quoi justifier les éloges pompeux de nos faiseurs de relations?¹²⁹

Sonnerat expressed the limitless nature of the imperial authority precisely by representing a punitive justice symbolized by the retinue of “deux mille bourreaux” with “toutes sortes d’armes de justice” that accompanied the emperor’s public outings. And he argued that this government could only support itself on ignorances and the passivity of a nation devoid of enlightenment, incapable of conceiving of reforms for abuses, with no imagination, dominated by tradition and repetition, and unaided by science or civilized arts. In short, Sonnerat’s portrayal was strongly negative and extended to every aspect of Chinese civilization and traditions; he even considered the much admired texts of Confucius a mass of obscure phrases and “absurdités”. However, he primarily used direct experience, observed facts and collected testimonies to produce a representation that contrasted the image of China, received and relaunched by vast sectors of the Enlightenment culture based on Jesuit accounts, as a great empire governed by wise institutions, an administration founded on abilities and skills, laws consolidated by tradition, and a swift, accessible and protective justice system.

During this same period appeared another vastly important testimony to which we have already referred, that of Charles de Constant, a trader from Geneva whose Calvinist family originated in Vaud and the first cousin of the younger, very famous Benjamin. The manuscript materials edited by Louis Dermigny in 1964 and Marie-Sybille de Vienne in 2004,¹³⁰ along with their related critical studies, have revealed Charles de Constant to have been an exceptionally interesting figure not only for his family story and his economic and social trajectory but also, naturally, for the history of commercial relations between France and China. Constant was an important protagonist in the latter and left impressive first-hand documentation in the form of thousands of manuscript pages that he wrote on various subjects at different times and were deposited in 1835 in the Bibliothèque de Genève. We must take a moment to discuss the story of this merchant from Geneva. Analysing his writings on China would require much more space than is possible to set aside in these pages, not least because, having remained unpublished, they never entered the public discourse and had no direct influence on European opinion, remaining in a certain sense outside the perspective guiding the present reconstruction. However, it is impossible for us not to at least refer

129 Sonnerat, *Voyage aux Indes orientales et à la Chine*, I, 382, 384.

130 Dermigny, *Les Mémoires de Charles de Constant*.

to these writings and the exceptional nature of the first-hand experience they reflect to a minimal extent. Probably destined for an extensive treatise on contemporary China that Constant planned to compose after returning definitively to Europe but never carried out, these texts contain incredibly precious technical information on the system of Sino-Western commercial exchanges and, above all, careful, original reflections on the nature of Chinese society and the imperial administration. There are also letters he sent at different times from Canton, especially to family members, which record immediate, vivid impressions and considerations that are truly extraordinary for their understanding of late eighteenth-century Canton through the eyes of a European trader. Another reason Constant's testimony is particularly important from our point of view is his tendency to relate his personal experience directly to the ideas and images circulating in European culture thanks to the literature examined thus far to which Constant referred extensively. His first-hand testimony – owing to direct and certainly not purely bookish experience – was therefore a valuable document of the process to dissolve the Chinese myth that had been rampant during the middle decades of the eighteenth century, especially in continental Europe.

“Constant le Chinois”, as he was nicknamed for his long stay in China and his familiarity with the Chinese world, lived in Canton and Macao in three distinct periods of his life: 1779-1782, 1783-1786 and 1789-1793. He thus resided there for nearly ten years in total during a crucial period for the evolution of Sino-Western relations. This period coincided with the height of Emperor Qianlong's reign and was characterized by at least three elements: the affirmation of the preeminent position of the English in Sino-Western trade; the growing obstinacy of Chinese authorities towards Europeans, partly due to the increasingly dramatic phenomenon of Cantonese licensed merchants going into debt; and the increasingly evident crisis of the empire made manifest by revolts and shortages throughout the last two decades of the century.¹³¹ Constant was first employed by the Ostend Company, a failed commercial enterprise that closed in 1785, and then by the French East India Company until its monopoly was abolished in 1790. He then dedicated himself to private initiatives in the hopes of exploiting the opportunities opened up by the unrest taking place in colonial trade during the revolutionary period. In 1793 he returned definitively to Europe to continue his own work for a brief time and eliminate the considerable debts he had accumulated over a not always successful business career before spending his final days in Vaud as a landowner. Constant's experience in China gave rise to an extensive network of acquaintances, including leading figures in the Western community residing in Canton like Chrétien-Louis-Joseph de

131 Dermigny, *Les Mémoires de Charles de Constant*, 11.

Guignes and George Thomas Staunton, with whom he corresponded extensively.¹³² As Dermigny has observed, the fact that Constant witnessed first-hand the irresistible rise of the East India Company in Canton, the Anglo-French rivalry and the ability of the English to establish privileged relationships with the Chinese likely reinforced the negative view of China that he presented in his texts and letters. And we can be sure that his representation was entirely, consciously opposed to those of European admirers of the Celestial Empire, both Jesuits and Enlightenment thinkers, and was driven by a desire to use his personal experience to realistically portray what he called a “peuple si vanté et si mal connu”.¹³³ He certainly referred to subjects like the rules of commercial practices, relationships with the imperial administration, the law and the justice system more than others, sometimes using words that are as perfunctory as they are unequivocal. In 1781, for example, he reported the following in a letter to his father:

Les affaires se font avec la plus grande difficulté, et la Chine est ben différente que celle qu'elle était autrefois ou de ce que les missionnaires qui ont écrit sur la Chine et qui avaient leurs intérêts à mentir, nous ont dépeint. C'est le gouvernement le plus injuste et le plus abominable qu'il y a au monde; les grands volent ceux qui sont au-dessous d'eux, ceux-ci les autres et ainsi de suite.¹³⁴

Even though he was raised and educated in an environment that was receptive to Enlightenment culture, Constant was a businessman who rejected the Chinese myth and became a spokesperson for the increasingly prevalent opinion in Europe that China was not virtuous and wise but backward and barbarous, a place to be civilized. His strongly Sinophobic attitude, fuelled not only by experience but also by the writing of people like de Pauw,¹³⁵ places him in the ranks of other Europeans like Laurent Lange (1715), a source for Montesquieu, the Calabrian traveller Gemelli Careri (1699-1700), the circumnavigator Le Gentil (1727-1728), Commodore Anson (1747) and Lyon native Sonnerat (1782). However, Constant's account also has the merit of deriving from a prolonged stay rather than a short-lived experience like that of Anson, and of not being systematic, prejudicial or one-directional. In fact, he even bitterly criticised his fellow European residents of whom he painted a rather unflattering portrait that tends

132 De Vienne, *La Chine au déclin des Lumières*, 34, 84.

133 Charles de Constant, “Détails sur les marchandises de Chine”, quoted by Dermigny, *Les Mémoires de Charles de Constant*, 116.

134 Charles de Constant to Samuel Constant, from Canton, 12 January 1781, in de Vienne, *La Chine au déclin des Lumières*, 126.

135 Charles de Constant, “Remarques sur les recherches de M. de Pauw au sujet des Chinois”, in de Vienne, *La Chine au déclin de Lumières*, 180.

to highlight their responsibilities, lack of scruples and greed; and he admitted to the faults and injustices often reserved for Chinese merchants whom he often represented as respectable and honest. On the other hand, what stands out from Constant's great harvest of testimonies and reflections is the unreliability of the Chinese administration, the impossibility to obtain certain, indisputable rules and see them applied, the abuse of power, the endless oppressions and extortions carried out by imperial officials at every level to the detriment of Westerners, and the systematic theft and fraud practiced by Chinese suppliers. The Chinese government was doubtlessly despotic, extortion and dishonesty dominated public life, laws were non-existent, untrustworthy and, where they existed, thwarted by arbitrary acts, and the population was passive, inert and barbaric. It was, in sum, a frightening picture completed by Constant's open denial of laudatory representations such as those of Enlightenment thinkers:

Ce tableau a de quoy surprendre étrangement quelqu'un qui ne connaît les Chinois que par les relations publiées sur la prétendue sagesse de leur gouvernement [...] Aux difficultés, aux vexations, les Mandarins ne manquent point encore de joindre l'insulte [...] Ah! Chinois! Chinois! que vous êtes petits! Vous ignorez que votre exactitude minutieuse vous a valu le nom pompeux de Peuples de Sages! C'est un Français, c'est M. l'abbé Raynal qui vous donne ce titre qu'aucune nation n'a moins mérité que vous; il n'a pas vécu douze ans parmi vous, il n'a pas eu perpétuellement sous les yeux le spectacle de vos infamies, il n'a pas été ni témoin ni victime de vos perfidies, de vos rapines, il n'a pas vu la dépravation de vos mœurs, la scélératesse de vos Mandarins, il ne connaît point la tyrannie de vos maîtres, la rigueur et la bassesse de votre servitude [...] je change son éloge en critique, en vous appelant *peuples de Lâches, peuple d'Enfants, Peuple de Voleurs, Peuple d'ignorants* [...] *Peuple d'esclaves*; mais avez-vous assez d'âme pour sentir le prix de la liberté?¹³⁶

Constant's hundreds of memoir pages primarily regard economic and commercial matters, yet they are also full of observations on all aspects of social life, the functioning of the imperial administration and the relationships between Europeans, officials and the Chinese population in Canton.¹³⁷ Constant made many annotations on the subjects of justice, the government and the law, often reaching sententious conclusions, for example that China was "un pays où l'intérêt fait tout, où le despotisme peut tout et où les loix ne sont rien". A recurrent subject is that of Chinese despotism, regarding which he drew numerous examples from personal observations and the testimonies of

136 Charles de Constant, "Mémoire sur la position actuelle des Européens à la Chine, ses causes, et les moyens de l'améliorer", in Dermigny, *Les Mémoires de Charles de Constant*, 396.

137 Marie-Sybille de Vienne's edition is particularly useful as it regroups passages from different texts on a thematic basis and allows a better appreciation of Constant's ideas.

other Western religious and lay residents. According to Constant, proof of the Chinese government's despotic nature left no doubt about the inconsistency of the infatuation with the allegedly positive aspects of the Celestial Empire's authority fuelled by leading exponents of the Enlightenment out of ignorance and lack of experience.¹³⁸ However, for the Swiss trader it was not just an abstract matter of understanding how Chinese institutions functioned. Constant pointed his finger specifically at the mechanisms of justice, above all penal justice. There were certainly horrifying aspects of the Chinese penal system, such as the infliction of death by *lingchi* or torture by cutting in "dix mille morceaux", or the total lack of guarantees for detainees, especially those from the West.¹³⁹ Yet, the attention Constant paid to the tribunals, the procedures and penal law primarily derived from direct experience and his ascertainment that it collectively constituted one of the most delicate areas in Sino-Western relations. This was where the Chinese abuse of power manifested itself most glaringly and the need for change was the greatest:

Aucune parties de relations qui nous lient aux Chinois n'a plus besoin de réforme et de quelques réglemens fixes que celle des loix criminelles [...] depuis quelques années [...] les Mandarins se sont érigés, je ne dirais pas en juges entre les Européens, mais en bourreaux.¹⁴⁰

In Constant's opinion, the main problem was not the jurisdiction claimed by the imperial Chinese administration over Europeans in cases of conflict with Chinese subjects but the need for justice to be administered in a regular and, of course, impartial way. In the absence of the latter, Europeans found themselves completely exposed to the will of the Mandarin courts and their only means of escape, in a country where everything was for sale, was through corruption. Constant's affirmation was not generic or born of hearsay; it derived from an extremely well documented dossier full of episodes testifying to how things actually worked in the daily operations of European residents in Can-

138 "Ce n'est plus aujourd'hui que l'on puisse présenter le pur despotisme comme le modèle le plus parfait des gouvernements, le ridicule de représenter un souverain, dont le pouvoir n'est point limité, comme le père, le tendre père, d'une grande famille, est si frappant, que je ne m'arrêterai pas à le combattre. J'observerai seulement que ceux qui ont tant vanté le gouvernement chinois, bien plus pour dénigrer ceux d'Europe, ne l'ont tant prôné que parce qu'ils en étaient à six mille lieues. Voltaire et l'Abbé Raynal surtout me paraissent sans cesse en contradiction avec eux-mêmes à cet égard", in de Vienne, *La Chine au déclin de Lumières*, 438.

139 De Vienne, *La Chine au déclin des Lumières*, 201.

140 Charles de Constant, "Quelques idées sur l'ambassade de Lord Macartney à la Chine" (Février 1793), in Dermigny, *Les Mémoires de Charles de Constant*, 418.

ton.¹⁴¹ On the other hand, in a series of “Notes sur le gouvernement et les moeurs des Chinois” dating to 1789-1790 and in other texts that certainly came later, Constant also dwelled on the subject of justice not only by giving his opinion but also by demonstrating a knowledge of the subject matter, probably coming in part from his personal acquaintance, George Thomas Staunton.¹⁴² It is precisely in these pages that we encounter what is perhaps the first mention among contemporary European observers of the “*Ta Sing liou lii* ou le code de lois pénales de la Chine”. While we cannot know what edition Constant would have known directly, we do know that he believed that the code was not the instrument through which the sovereign power managed to keep its vast empire calm and orderly. In fact, as he wrote, it was the “livre le moins connu et le moins consulté” and one should not think that the imperial edifice supported itself on true fundamental laws such as those contained in the penal code. He explained that the government used other means to assert its authority and maintain “dans la dépendance la plus abjecte un peuple immense, qu’il vexe et tyrannise sans mesure”. Such means were unknown to any other government, especially the principle of the “immense chaîne” of responsibility that, together with a network of informants and spies and the extremely severe mandarin justice system, rendered the heads of families, neighbourhoods, villages, cities and provinces responsible for the acts of those subject to their authority. This required the arduous task of keeping an immense empire with an equally vast population subjugated, tyrannized by the intrusiveness of mandarin officials flanked by soldiers and mercenaries ready to violate homes and properties by imposing extortion and creating insecurity. While this was how justice made itself felt among the common people and in daily existence, justice at the higher levels of the mandarin state was no less oppressive. Characterized by a ritual system of submission that humiliated individuals of all ranks and, above all, by a procedural rigour of which the systematic use of torture and corporal punishment constituted the most common manifestation, Chinese justice involved a variety of torments and “tortures barbares” described by Constant with the same abundance of detail that we will later see documented by other, primarily illustrated, testimonies.¹⁴³ It was, in sum, a “système atroce” dominated by betrayal, corruption,

141 “[...] il est juste aussi que cet ordre soit connu et que la justice soit la même pour les Européens et pour les Chinois sans différence; et voilà ce qui n’existe jamais [...] il n’y a point de justice pour les Européens [...] le vols, les fraudes, les meurtres même sont restés sans châtement malgré nos cris et nos représentations, tandis que si un Européen tue un voleur qui s’introduit la nuit dans sa chambre, il est pendu sans rémission. Quelle disproportion!”, Constant, “Quelques idées sur l’ambassade de Lord Macartney”, 419; “tout est vénal en Chine. Les charges, les titres, les honneurs, la protection, la justice, tout s’y obtient à force d’argent”, de Vienne, *La Chine au déclin des Lumières*, 203.

142 De Vienne, *La Chine au déclin des Lumières*, 451-461.

143 See further ahead par. II.4.

vendetta and, as a last resort, the moderating power of money – the only means with which to attenuate the “férocité” or even guarantee impunity. As a result, the justice to which the Chinese rarely had recourse was mercenary, untrustworthy, oppressive of the poor and indulgent with the rich. The conditions of the prisons mentioned in the testimonies of the missionaries who had known dozens of them further confirmed for Constant a horrible picture of corruption, theft, oppression, neglect and lack of hygiene. Once again, any abstractly laudatory representation based only on legal texts had to be set up against how the justice system actually operated:

Qu'on ne cite donc pas la bonté des lois de la Chine et l'impartialité avec laquelle on rend la justice sur ce que les procès sont rares; le nombre des procès, tout comme leur extrême rareté, prouve la même chose. On pourra peut-être écrire sur les lois des Chinois, donner de codes qui exciteront d'autant plus la vénération qu'on pourra y répandre les sentences de la plus pure morale, qui sont répandues dans les ouvrages chinois comme elles sont pendues aux murailles, mais que les lecteurs de ces codes les comparent à la pratique, ils y trouveront un disparate complet.¹⁴⁴

There is no doubt, then, that Constant's testimony was based on both direct and indirect sources thanks to the extensive network of acquaintances he had built up over his successive, extended stays in China. His was certainly a very negative testimony, informed by the belief that the despotic government, the oppressive administration and the corrupt and violent justice system formed an institutional apparatus that was incapable of ensuring protection and security for its subjects. He described, in short, a society plunged in the most complete savagery, entirely incompatible with the mythical representations fuelling much of the Enlightenment culture. If Constant's opinions had become public, they certainly would have fuelled the Sinophobic sentiments of criticism and disdain already present within European culture at the end of the eighteenth century.

In the literature on China in the last three decades of the century, alongside testimonies and critical texts increasingly opposed to earlier forms of admiration and tending to overturn the country's image as held up by the wisdom of governors tied to tradition, laws and formalities there emerged new documentary sources deriving once again from the tireless hard work of the Jesuits, despite the suppression of the Company in 1773.¹⁴⁵ Did this lead to an increased capacity to know and appreciate the reality of Chinese law and justice?

¹⁴⁴ De Vienne, *La Chine au déclin des Lumières*, 457.

¹⁴⁵ Catherine Marin, “La mission française de Pékin après la suppression de la compagnie de Jésus en 1773”, *Transversalités* (2013): 9-28, see 17; see also André Thomas, *Histoire de la mission de Pékin* (2 vols., Paris: L. Michaud, 1923-1925).

The important collection *Mémoires concernant l'histoire, les sciences, les arts, les mœurs, les usages, &c. des Chinois* (1776-1814), written by missionaries still active in Beijing,¹⁴⁶ actually offered several translations of Chinese texts on various subjects, including politics and law. This is a true treasure trove of first-hand sources that tend to be expressly favourable to China, however disordered and difficult they are to use, partly due to a lack of the kind of expert editorial care Du Halde had ensured for the correspondence of the Jesuits in Beijing. While we cannot carry out a close analysis of the contents of this imposing collection, its motivations or the objectives posed by the coordinator, Father Joseph Amiot, and his brothers, for our purposes two relatively important facts should be noted since they attest to a Jesuit interest in legislative and legal subjects.

The first is the fact that volume five (1779) contains news, extracts from Chinese codices and a “Notice” related to the subject of filial piety according to the dispositions contained in the “Code des Loix de la dynastie régnante”; as well as a “Notice du Livre Chinois Si-yuen”, that is a brief synthesis of a fundamental Chinese judicial text, one of the first treatises on forensic practices in the world, the work of Sung Tz’u (1186-1249), which dates to the thirteenth century (and is itself based on a Chinese text from the sixth century), thus long preceding modern European treatises like those by Fortunato Fedele of 1602 and Paolo Zacchia of 1635.¹⁴⁷ The second is the fact that volume eight (1782) contains a note on “Des Loix en Chine” illustrating Chinese institutions in great detail by analysing the contents of a Qing code, the “*Tai-tsing-hoei-tien* [...] divisé en 250 livres, & [qui] comprend toutes les loix religieuses, civiles, politiques, militaires, criminelles, bursales, &c., de tout l’Empire”.¹⁴⁸ This was of course the *Da Qing Huidian*, a collection of Qing statutes defined in *Mémoires* as a “code des loix de la Dynastie régnante, que l’Empereur *Kien-long* vient de faire publier en vingt volumes”.¹⁴⁹ First

146 *Mémoires concernant l'histoire, les sciences, les arts, les mœurs, les usages, &c. des Chinois: par les Missionnaires de Pékin* [Amiot, Jean-Joseph-Marie, François Bourgeois, Aloys de Poirot, Pierre Martial Cibot, Louis-Georges Oudart Feudrix de Bréquigny, Antoine-Isaac Silvestre de Sacy et al.] (16 vols., Paris: chez Nyon, 1776-1814), in-4°. An accurate content analysis is that by Joseph Dehergne, “Une grande collection: *Mémoires concernant les Chinois* (1776-1814)”, *Bulletin de l'École française d'Extrême-Orient*, tome 72, 1983, 267-298, accessed May 15, 2017, doi: 10.3406/befeo.1983.1461. The missionaries residing in Beijing at the end of the eighteenth century and engaged in the preparation of the *Mémoires* included Joseph Amiot (1718-1793), Pierre-Martial Cibot (1727-1780) and François Bourgeois (1723-1792).

147 *Mémoires concernant [...] les Chinois*, IV (1779), 127-172 and 421-440. Sung Tz’u’s text has been translated into English as *The Washing away of Wrongs [Hsi yuan chi lu]. Forensic Medicine in Thirteenth-Century China*, translated by Brian E. McKnight (Ann Arbor, Michigan: The University of Michigan, 1981). For this information I am indebted to Michele Graziadei, whom I would like to thank once again for his interest and collaboration.

148 *Mémoires concernant [...] les Chinois*, VIII (1782), 220-226.

149 *Mémoires concernant [...] les Chinois*, X (1784), 420.

produced in 1684, the collection was updated under Emperor Yongzheng (1723-1735) and again under Qianlong in 1764. Though only synthesized briefly without commentary, this represented a notable documentary contribution by the Jesuits in Beijing, who close the collection with the hope for a future translation – apparently never realized – of this key text for understanding the reality of the Chinese state.¹⁵⁰

It is useful to remember that the appearance of the *Mémoires* series provided the occasion, in the late 1780s-early 1790s, for the resumption of arguments over Jesuit representations of China. Heated discussions on Chinese subjects continued to be carried on throughout the century. The *Journal des Sçavans*, with its critical accounts on the *Mémoires* written by Joseph de Guignes,¹⁵¹ shew the determination of French academic-erudite milieus to use critical realism to respond to the arguments of those who continued representing China favourably.

Significant for our focus here is the fact that de Guignes made frequent references in his long reviews to the subjects of justice, law and the relationship between subjects and political authority. For example, the French academician openly challenged the consistency of the idyllic portrayal of Chinese society as run and inspired by the paternal authority of the emperor and supported by the filial sentiments of the subjects. He argued that the society was instead profoundly marked by traits of cruelty and severity, with the emperor's power upheld by violence and the turbulence of riotous subjects ruthlessly repressed by capital punishments affecting a great variety of acts interpreted as *lèse-majesté* crimes. Expressing opinions against the government and reading books criticizing power could expose someone to the most serious punishments, including death. Far from basing itself on lofty principles of moral philosophy – confined to classical texts but totally set aside in the practice of power – government action was unleashed, responding with cruelty to the unrest of a society that was anything but peaceful and shedding the blood of thousands of “personnes égorgées”, such as Muslim minority rebels in north-western China. That China's political constitution was lenient, humane and peaceful could only be deduced from the country's political and moral theoretical precepts, certainly not from the daily practice of power and administration. In reality, de Guignes explained, China was subject to revolutions without rest and was ruled by an

150 For the identification of the *Da Qing Huidian* (大清会典) (see “Da Qing Huidian: Collected Statutes of the Great Qing”, in *Cultural China*, accessed May 15, 2017, <http://history.cultural-china.com/en/37History8946.html>), I am grateful to Xiaoqian Hu, a graduate student at Harvard Law School, and Michele Graziadei of the University of Turin. The Harvard Library houses complete hard copies of successive editions of the *Da Qing Huidian*, one of which comprises 250 volumes and seems to correspond to the description in the *Mémoires*.

151 I dealt extensively with this episode of the late eighteenth-century polemics on China in “*Quand a commencé leur sagesse?*”.

unbearable tyranny, where “le peuple est accablé sous le joug du despotisme & il paroît avoir toujours été dans la servitude”. De Guignes concluded that China’s government was “le plus dur & le plus despotique”.¹⁵²

Another very important contribution to European knowledge of China published around the same time is the imposing set of thirteen volumes comprising the *Histoire générale de la Chine*, which appeared between 1777 and 1785. This very complex work¹⁵³ was the product of French erudition, both religious and lay, and came to be widely known throughout Europe thanks to its full translation into Italian and partial translations into English and German.¹⁵⁴ The main part of the text is the French translation from Chinese and Manchu by a Jesuit of the Peking mission, Joseph-Marie-Anne Moyriac de Mailla (1669-1748), of one of the most important and extensive official annalistic collections of the Chinese empire, the “Tong-kien-kang-mou”. The Chinese text was begun under the Song dynasty with additions made under various dynasties (tenth to thirteenth centuries). It was later enlarged again, especially under the Ming, and was completed and translated into “Tatar” (Manchu) by Emperor Kangxi.¹⁵⁵ In the “Discours préliminaire” of the

152 *Journal des Sçavans*, Juin 1784, 404, quoted in “*Quand a commencé leur sagesse?*”, 1002-1003.

153 The complete title is *Histoire générale de la Chine, ou Annales de cet empire, traduites du Tong-Kien-Kang-Mou par le feu Jésuite français, missionnaire à Pékin, publiées par M. l'Abbé Grosier, et dirigées par M. Leroux Deshauterayes [...] Ouvrage enrichi de Figures et de nouvelles Cartes Géographiques de la Chine ancienne et moderne, levées par ordre du feu Empereur Kang-Hi [...]* (12 vols., à Paris: chez Pierre et Clousier, 1777-1783), plus a thirteenth volume published by the abbé Grosier in 1785 with the title *Description générale de la Chine, ou Tableau de l'état actuel de cet empire* (Paris: Moutard, 1785), and completed by an *Atlas général de la Chine pour servir à la description générale de cet empire* (Paris: Moutard, 1785): a separate, additional work that had a second edition in 1787 and a third, very enlarged seven-volume edition (Paris: Pillet, 1818-1820).

154 The Italian translation by Giuseppe Ramirez was published as *Storia generale della Cina ovvero grandi annali di quest'impero tradotti dal testo cinese dal fu P. Giuseppe Anna Maria De Moyrac De Mailla gesuita [...] pubblicata in Parigi dal sig. abate Grosier. Traduzione italiana dedicata a sua altezza Reale Pietro Leopoldo* (36 vols., in Siena: per Francesco Rossi Stamp. del Pubb., 1777-1783), in-8°; in English only Grosier's supplementary volume was translated as *A General Description of China: containing the topography of the fifteen provinces which compose this vast empire; that of Tartary, the isles, and other tributary countries; the number and situation of its cities, the state of its population, the natural history of its animals, vegetables and minerals. Together with the latest accounts that have reached Europe of the government, religion, manners, customs, arts and sciences of the Chinese. Illustrated by a new and correct map of China, and other copper-plates, translated from the French of the Abbé Grosier* (London: G. G. J. and J. Robinson, 1788); Grosier's supplement was also translated into German as *Allgemeine Beschreibung des Chinesischen Reichs nach seinem gegenwärtigen Zustande* (Frankfurt, Leipzig: Fleischer, 1789).

155 It is most probably the *Tong jian gang mu* (according to the French Sinologist Abel Rémusat, meaning “Miroir d'un usage universel”, or ‘mirror of a universal usage’), initiated by Xi Zhu (1130-1200) under the Song dynasty and continued afterwards. Moyriac worked on the 1708 edition and in part on the Manchu version requested by emperor Kangxi. On Sino-Manchu official historiography, see Achim Mittag, “Chinese Official Historical Writing under the Ming and Qing”, *Oxford History of Historical Writing*, ed.

additional volume he published in 1785, Grosier with good reason defined this great collection of chronicles as “le monument le plus complet qui ait été publié sur la Chine [... un] grand corps d’histoire, qui embrasse un espace de plus de quatre mille ans”.¹⁵⁶ Moyriac di Mailla presented the work – which he actually obtained by freely compiling different sources¹⁵⁷ – as “L’histoire authentique de la Chine”, which was distinguished from “histoires des particuliers” precisely for its reliability as an official text.¹⁵⁸ There is no reason for us to linger over a work that while surely of great importance regards matters – the chronology, antiquity and spread of the Chinese empire, all subject to heated contemporary debates¹⁵⁹ – that are peripheral to our focus here. Of greater interest is the volume published by Grosier containing a detailed geographic-naturalistic, socio-cultural and above all political-administrative description of contemporary China. After the expulsion of the Company of Jesus from France in 1764, Jesuit Abbé Jean Baptiste Gabriel Alexandre Grosier (1743-1823) became a private tutor and dedicated himself to literary journalism. In this role, Grosier collaborated with Élie Fréron on the *Année littéraire*, which was famous for its anti-Enlightenment discussions, as well as other periodicals in which he presented very critical opinions of the *philosophes*.¹⁶⁰ Grosier had acquired Sino-logical expertise under the guidance of Father François Bourgeois, formerly a missionary to Beijing, the author of numerous *Lettres* from the collection *Lettres édifiantes* and a collaborator on the aforementioned *Mémoires sur les Chinois*. Thanks to this expertise, Grosier took on the task of editing the translation by Moyriac de Mailla, with the support of the famous Orientalist of the Académie des Inscriptions Leroux Deshauterays, later deciding to integrate it with the aforementioned volume of the *Description générale de la Chine*. As mentioned earlier, the latter met with considerable success and was judged in

José Rabasa, Masayuki Sato, Edoardo Tortarolo and Daniel Woolf (Oxford: Oxford University Press, 2012), 24-42; On Cho Ng and Q. Edward Wang, *Mirroring the Past: The Writing and Use of History in Imperial China* (Honolulu: University of Hawaii Press, 2005), 239-243, and on the specific case Stephen Durrant, “Sino-Manchu Translations at the Mukden Court”, *Journal of the American Oriental Society*, 99 (1979): 653-61, accessed May 15, 2017, doi: 10.2307/601450.

156 Grosier, “Discours préliminaire”, *Histoire générale de la Chine*, I, xxiii-xxiv.

157 This is what, apparently on the basis of Abel Rémusat’s advice, explains the *Biographie universelle, Supplément*, LXIII (Paris: Michaud, 1839), 157.

158 Moyriac de Mailla, “Préface”, *Histoire générale de la Chine*, I, xlvi and l.

159 On the academic polemics against the Jesuit idea of the reliability of Chinese historiography and their favourable opinions on the ancient splendour of the Chinese empire and on the *Histoire générale de la Chine*, see for example Joseph de Guignes’s comments in *Journal des Sçavans*, Février 1780, 68-77, and my “‘Quand a commencé leur sagesse?’”, 996-999.

160 Hervé Guenot, “Jean Baptiste Grosier (1743-1823)”, *Dictionnaire des Journalistes (1600-1789)*, Édition électronique revue, corrigée et augmentée, accessed May 15, 2017, <http://dictionnaire-journalistes.gazettes18e.fr/journaliste/366-jean-baptiste-grosier>.

Grimm's *Correspondance littéraire* as "la compilation la plus exacte et le plus complète de tout ce qui a été écrit sur la Chine".¹⁶¹ From our point of view, Grosier's defence of the entirely positive Jesuit image of China that continued to inspire him in the mid 1780s, in direct conflict with contemporary detractors like de Pauw, is particularly interesting. His defence touched upon all aspects of Chinese civilization, society and institutions and focused precisely on the structure of the government, the administration, the law and the justice system. He disregarded the opinions expressed in the *Histoire des Deux Indes* and by de Pauw on the Chinese government's despotic nature and the unreliability of justice and the law in China. Grosier believed the sovereign's power was limited – this was "une de [...] premières Loix constitutives" of the empire. But he also believed this power was exercised with wisdom, moderation, a paternal spirit, care for the protection of subjects and respect for human life, and that it was always accompanied by the right of high officials to criticise and level complaints at the emperor. For that matter, history itself had demonstrated this:

Jamais pays ne vit naitre moins de mauvais souverains: jamais pays n'en vit naitre un aussi grand nombre d'excellens. Tel est le fruit de l'éducation qu'ils reçoivent, tel est aussi l'effet de leur propre situation. Rarement on abuse d'un pouvoir qui n'est pas disputé.¹⁶²

In these pages we find once again the image of a country wisely administered by a body of learnt officials educated in the principles of Confucian ethics, a place where morality regulated social relationships and formed the basis for the authority of the law. It was therefore an example of a state in which the law drew its strength from the moral principles of tradition on which it was based and in agreement with which it had been devised. Every aspect of the life was scrupulously regulated by an administration that permeated the territory from the centre, with its six sovereign courts, to the extreme peripheries, with their lower courts and officials inserted into a hierarchy disciplined by a gradation of checks extending both downward and upward. Moreover, some of the central courts at the highest level exercised checks on others at the same level. The censorship tribunal was also entirely unique, appointed to control every aspect of public life and the imperial authority itself – an institution Grosier held up as a singular example worthy of imitation.¹⁶³ However, when it came to civil and penal laws, he had

161 Friedrich Melchior Grimm, *Correspondance littéraire*, éd. Maurice Tourneux (Paris: Garnier, 1877-1882), XIV (Juillet 1786), 425-426.

162 Grosier, *Description générale de la Chine*, 440-442.

163 "Les Annales d'aucune autre Nation n'offrent d'exemple d'un pareil Tribunal; & il seroit nécessaire chez toutes, sans exception", Grosier, *Description générale de la Chine*, 459.

no specific sources to follow if not classic Confucian texts, in addition to following to the already classic Du Halde. Chinese jurisprudence was therefore portrayed as consisting of moral teachings, complete with imperial ordinances and above all ritual duties consecrated by tradition: “En un mot, la Jurisprudence Chinoise offre le fond du meilleur Livre de morale”. Regarding laws and penal procedures, only those who knew little about China could represent them as the most terrible in the world. In reality, the prerogatives of the Chinese were that no crime went unpunished, no punishment exceeded the seriousness of the crime and the accused were guaranteed the utmost protection; in sum: certainty, restraint, gradation of jurisdictions, slowness and revisions. It was even possible to say that “La procédure criminelle des Chinois est peut-être la plus parfaite de toutes celles qui existent”.¹⁶⁴ The notorious punishments by thrashing were actually corrections inflicted with moderation and a paternal spirit. While there were doubtlessly cruel forms of punishment, especially in the case of death penalty, they were rarely used arbitrarily or capriciously. Above all, what distinguished China from any other known nation were the precautions taken against false accusations, the protection of the innocent and the absence of arbitrariness in the treatment of the accused. In short, Grosier’s mid-1780s text proposed an extremely positive image of Chinese institutions, administration and justice, thus demonstrating a persistence in admiring Sinophile attitudes in late eighteenth century France and the fact that European opinion was still decidedly split according to the original cultural environment – Jesuit, in this last case – of certain representations.

To this regard, one late eighteenth-century contribution has only been mentioned rarely by previous studies and is worth taking into consideration. Because of its approach and authoritativeness, it lends itself particularly well to synthesizing and clearly stating the prevalent opinions about Chinese law and justice. I am referring to the long entry on “Chine” contained in volume II (1783) of the *Jurisprudence* collection in Panckoucke’s *Encyclopédie Méthodique* by M. Henry, a lawyer at the Parliament in Paris.¹⁶⁵ This text becomes even more interesting if we read what it says about justice alongside the entry on “Chine (Gouvernement de la)” (anonymous) contained in vol-

164 Grosier, *Description générale de la Chine*, 472.

165 *Encyclopédie Méthodique. Jurisprudence* (8 vols., à Paris: chez Panckoucke, à Liège: chez Plomteux, 1782). The entry “Chine” is in vol. II (1783), 603-617. On the volumes dedicated to Jurisprudence, see Françoise Briegel, “Asservir les jugements à la lettre, c’est en bannir la justice’: la Jurisprudence de l’‘Encyclopédie méthodique’”, in Claude Blanckaert, Michel Porret, Fabrice Brandli, dir., *L’Encyclopédie méthodique (1782-1832). Actes du colloque international tenu à la Faculté des lettres de l’Université de Genève du 17 au 19 mai 2001* (Genève: Droz, 2006), 311-339. For a very brief examination, see Georg Lehner, *China in European Encyclopaedias, 1700-1850* (Leyden: Brill, 2011), 209. Lehner’s claim that “eighteenth-century encyclopaedias contained little information on the judicial system of China” (209) is not supported by the evidence.

ume I, published in 1784, of the *Méthodique's Économie politique, Diplomatique* collection edited by Jean-Nicolas Demeunier.¹⁶⁶ Indeed, the two entries taken together, along with another entry on China in the first volume of the *Théologie* collection,¹⁶⁷ add up to a detailed treatise on the political and judicial (and religious) institutions of the Middle Kingdom in one of the most important, widely distributed reference books of the late Enlightenment period.

In his entry on China, Henry painted the picture of an “empire despotique”, which he described in realistic, non-mythologizing terms, making express reference to Montesquieu, Mably and Raynal, almost overthrowing Du Halde’s representation, and taking cues from the aforementioned Jesuit *Mémoires*, which was in the process of being published at the time. To this regard, we can consider these articles in the *Méthodique* and the just mentioned texts in the *Journal des Sçavans* as representing another, distinct chapter in the deconstruction of positive Jesuit portrayals of China in various writings from the late eighteenth century and later.¹⁶⁸

According to Henry’s entry in the *Méthodique*, the emperor’s authority was limitless: “Il n’existe pas sur terre de pouvoir plus absolu”. As the one and only supreme arbiter of the life, death and reputation of his subjects, the monarch could decide the fates of people from every class and limit their property and conditions, imposing taxes at will. Justice was arbitrary, mercenary and corrupt, despite the complex structure of the tribunals. Punishments from the minor to the serious were violent, bloody and cruel. Subjects found themselves in a condition of complete enslavement, even worse than in other degraded forms of human existence and symbolized again by the mandarin’s stick:

le Chinois est le parfait contraste du sauvage du Canada: il est le plus asservi de tous les êtres, comme le sauvage en est le plus indépendant; esclave de l’empereur, il est sans cesse courbé sous le bâton des mandarins: les liens les plus doux de la nature y sont changés pour lui en des fers accablans: la méfiance du despote le presse & l’environne de toutes parts, jusques dans le commerce de l’amitié, jusques dans le sanctuaire de sa maison; ses mœurs, ses manières, c’est-à-dire tout ce qui dans lui manifeste l’existence est tracé par le gouvernement, & inspecté par ses satellites.¹⁶⁹

166 “Chine (Gouvernement de la)”, entry in *Encyclopédie Méthodique. Économie politique, Diplomatique. Par M. Demeunier* (4 vols., à Paris: chez Panckoucke, à Liège: chez Plomteux, 1784-1786), I, 543-573.

167 “Chine”, entry in *Encyclopédie Méthodique. Théologie*, par M. l’abbé Bergier (3 vols., à Paris: chez Panckoucke, à Liège: chez Plomteux, 1788-1790), I, 328-332.

168 Typical in this regard is Pierre Sonnerat, *Voyage aux Indes Orientales et à la Chine* (1782), II, 4, and even more so the narratives of early nineteenth-century English travel literature, periodical essays and treatises on China.

169 *Encyclopédie Méthodique. Jurisprudence*, 610. The subsequent quotation comes from the same page.

Henry's description of penal justice, which also availed itself of extracts "d'un code chinois, rédigé sous les ordres des derniers empereurs" contained in *Mémoires*,¹⁷⁰ aimed to reinstate a gruesome image of the Chinese system. In it he stressed the generalized use of beatings with bamboo, the severity of the torture, the arbitrariness of magistrates in their infliction of punishments and the lack of consideration for the dignity and lives of the subjects. It also underscored the ruthless, cruel and inhuman nature of penal law, with its use of infamous punishments, the "tourmens qui sont des véritables supplices", and the death penalty inflicted even for crimes of opinion.¹⁷¹ He also described the use of atrocious methods in capital executions, the extension of guilt to all the relatives of a culprit and the absence of guarantees and checks on judicial procedures.

The picture presented by the civil laws was no better. Henry held up the absence of social distinctions, notably hereditary nobility, as a negative element *à la Montesquieu*. He also noted the existence of dishonourable occupations, the despotic power of fathers over families, women's complete submission to husbands and the existence of slaves. As for daily life and economic laws, he rejected the "tableaux brillans" described by the "panégyristes" and called for the reality of facts as witnessed by travellers – probably in reference to Sonnerat's recent report and the practice of inflicting corporal punishments on insolvent debtors – to disavow the idea of the "prestige de la sagesse de l'administration chinoise".

In light of all these elements, Henry concluded sarcastically: "Telle est la police admirable du sage empire de la Chine, de ce meilleur des gouvernemens possibles dans le meilleur des mondes possibles".

It is interesting to consider Henry's opinions on China in the *Méthodique* in light of the very different positions contained in another long entry on "Chine (Gouvernement de la)" in volume I (1784) of the *Économie politique, Diplomatique* collection. In expressly wanting to avoid both the excesses of the anti-Jesuit, and therefore Sinophobe, critique and the exaggerated admiration of the Sinophile panegyrists, this entry tried to re-establish a certain equilibrium with respect to the negative wave of those years by going against the general trend – and the previous entry on Chinese jurisprudence – by subscribing to a positive representation of Chinese civilization and society, especially regarding its institutions, laws and justice. The author was Guillaume Grivel (1735-

170 "Notice de ce qui a rapport à la piété filiale, dans le Code des Loix de la dynastie régnante", in *Mémoires*, t. IV, 127-167.

171 This observation coincides with de Guignes' aforementioned statement: "On ne sauroit croire jusqu'à quel point l'on étend à la *Chine* le crime de lèse-majesté [...] il est facile de faire considérer les fautes les plus légères comme des crimes de lèse-majesté [...] Une épigramme, un couplet contre le gouvernement sont effacés par des fleuves de sang: tout mandarin est empereur en cette matière & toute saison est l'automne pour ces fortes d'exécutions", *Encyclopédie Méthodique. Jurisprudence*, 611.

1810), a man of letters from Limousin, a lawyer in Bordeaux, a frequent visitor of the Paris salons, a member of various provincial academies and the Société philosophique des Philadelphie, and a law professor at the École centrale, also known for authoring a political novel, *L'Isle inconnue* (1783-1787), and a *Théorie de l'éducation* (1775).¹⁷²

Grivel, who also wrote important Physiocrat-inspired entries on economics for the *Méthodique*, opened his contribution by expressing admiration for the classical Chinese texts. As examples of some of the oldest and best law codes in history, he explained that they

détruisent absolument les critiques élevées contre le gouvernement de la Chine, & prouvent, de la manière la plus authentique, l'exactitude et la vérité des mémoires historiques & autres ouvrages, d'après lesquels nous avons rédigé cet article.¹⁷³

A statement like this in a volume of the *Méthodique's* economic-political series that clearly conflicted with the contents of a volume from the jurisprudential part suffices to demonstrate the inadequacy of representing the evolution of European opinion on China as a linear one that moves from a prevalence of admirers to a preponderance of detractors. In this case, radically opposing views were contained within the same work, in volumes published in the same year, 1784, as had also happened in some respects within the *Histoire des Deux Indes*. The view expressed in the entry on the Chinese government was based on the broad use of better and more diverse literature on China and, in particular, betrayed a close reading of Poivre's 1768 *Voyage d'un philosophe*. I would like to account for it, at least to emphasize what concerns China's representation in terms of judicial structure and institutions and the practice of the justice.

In his entry, Grivel identified the foundation of the Chinese government as natural law and more precisely the elementary, natural sentiment of filial piety, which inspired the concept of submission to the sovereign on the part of the subjects.¹⁷⁴ Once again, he turned to arguments such as the good government and the reliability of the law, not the

172 See Fabrice Brandli, "Entre utopie et réforme, les 'projets chimériques' dans l'Économie politique et diplomatique", in Claude Blanckaert, Michel Porret, Fabrice Brandli, dir., *L'Encyclopédie méthodique (1782-1832): des Lumières au positivisme* (Genève: Droz, 2006), 265-310, see 269.

173 *Encyclopédie Méthodique. Économie politique, Diplomatie*, I (1784), 544, note (1).

174 "Nul peuple n'est plus soumis à son souverain que la nation chinoise, parce qu'elle est fort instruite sur les devoirs réciproques du prince & des sujets j &, par cette raison même, nul peuple n'est plus susceptible d'aversion contre les infractions de la loi naturelle & des préceptes de morale, qui forment le fond de la religion du pays, & de l'instruction continuelle entretenue par le gouvernement. Ces enseignements si imposants forment un lien sacré & habituel entre le souverain & ses sujets", "Chine (Gouvernement de la)", in *Encyclopédie Méthodique. Économie politique, Diplomatie*, I, 546.

fertility of the earth or the abundant population and the people's hardworking nature, to explain the flourishing state of the country and the richness of its agriculture:

c'est que le gouvernement de la Chine est fondé sur l'évidence des loix naturelles & sur la raison éclairée; que tous les citoyens y jouissent de leurs droits de propriété & de la liberté qu'ils ne tiennent que de Dieu même, & que les cultivateurs en particulier y sont récompensés de leurs intéressants & pénibles travaux, par la considération & par l'aisance [...] La propriété des biens est très-assurée à la Chine.¹⁷⁵

Grivel therefore hinted at the existence of precise guarantees regarding subjects' rights to explain the country's prosperity, especially their free enjoyment of property without hindrance; the fact that landed property was unburdened by the stratification of rights; the absence of parks, reserves, feudal laws and seigniorial rights; and the consequent lack of countless legal disputes that could originate from the latter.¹⁷⁶ He presented the judicial system and penal law – with no indication of specific sources of information – in a very positive light: “rien n'est plus digne d'admiration que le façon de rendre la justice”. He also displayed admiration for the hierarchical structure of the tribunals, hinging on the central court in Beijing and guaranteeing controls, revisions and the possibility to correct errors, thus generating a beneficial procedural slowness but preserving “l'innocence [...] de l'oppression”. The Mandarins and the tribunals were profoundly respected. The possibility of being inspected, criticised or even dismissed counterbalanced the power concentrated in the hands of imperial functionaries, driving them to look after the people with great care. Overturning previous portrayals of a very different vein, Grivel presented penal laws as administered with leniency, with punishments strictly prescribed by the law and proportionate to the crime. He described the crudeness of corporal and capital punishments in detail without letting this dampen his substantially positive judgement, accompanied by the usual refrain about the spacious-

175 “Chine (Gouvernement de la)”, in *Encyclopédie Méthodique. Économie politique, Diplomatique*, I, 549.

176 “Les Chinois jouissent librement de toutes leurs possessions particulières & des biens qui, ne pouvant être partagés, appartiennent à tous par leur nature, tels que la mer, les fleuves, les canaux, le poisson qu'ils contiennent & toutes les bêtes sauvages: ainsi, la navigation, la pêche & la chasse sont libres. Celui qui achète un champ, ou qui le reçoit en héritage de ses pères, en est seul seigneur & maître. Les terres sont libres comme les hommes, & par conséquent point de services point de lods & ventes, point de ces hommes intéressés au malheur public, point de ceux dont la profession destructive a été enfantée dans le délire des loix féodales, & sous les pas desquels naissent des millions de procès. On ne connoît pas dans cet empire ces parcs, ces enclos, ces allées qui dérobent les terres à la culture”, “Chine (Gouvernement de la)”, in *Encyclopédie Méthodique. Économie politique, Diplomatique*, I, 577.

ness and cleanliness of Chinese prisons as proof of a sensitivity towards the conditions of prisoners.

More generally, Grivel's essay was meant to redeem the Chinese government from accusations of despotism and to that end it offered an accurate rereading of the "sophismes spécieux" of Montesquieu, who was accused of listening more to the merchants – with their superficial and limited knowledge of the country – than to the missionaries, whose extended stays guaranteed more dependable information. According to Grivel, despite minor defects, China's government remained the "plus paternel, plus sage, plus excellent" on earth, thanks precisely to its institutions and laws. Indeed, its constitution was "fondée d'une manière inaltérable sur les loix naturelles [et] par l'enseignement perpétuel des droits et des devoirs".¹⁷⁷ It was, in sum, a triumph of justice, the law and the "lumière de la raison" – a truly Voltairian eulogy.

It is worth recalling how one of the most authoritative voices of late Enlightenment Italy, Gaetano Filangieri, also supported this representation without hesitation. To this regard, a brief digression apropos Italian culture is appropriate.

Italian culture had in fact long adopted a positive image of China, thanks mostly to the works of Italian missionaries in the Middle Kingdom like Matteo Ricci, Martino Martini and Prospero Intorcetta, as well as the writings of late seventeenth-century men of letters like Lorenzo Magalotti (1637-1712), who never went to China but relied on Jesuit-sourced information to draw a rich and fascinating portrait of Chinese civilization in his *Relazione della China* (1672).¹⁷⁸ In the early eighteenth century – mainly thanks to his contacts with the Chinese novices of the Matteo Ripa College in Naples – Giambattista Vico had been extremely attentive to Chinese and Oriental history from a comparative, universal-history perspective. He had also shown a special interest in the Chinese language, without however expressing any appreciation, much less enthusiasm, for Confucian philosophy and even rejecting the alleged antiquity of Chinese chronology.¹⁷⁹ Remarkably, in his *De constantia jurisprudentis* (1721) Vico identified the mild

177 "Chine (Gouvernement de la)", in *Encyclopédie Méthodique. Économie politique, Diplomatie*, I, 567.

178 Lorenzo Magalotti, *Relazione della China* (Paris: 1672), see the reference edition a cura di T. Poggi Salani (Milano: Adelphi, 1974), see also Giuliano Bertuccioli and Federico Masini, *Italia e Cina* (Roma-Bari: Laterza, 1996), 170, Sergio Zoli, *La Cina e la cultura italiana dal '500 al '700* (Bologna: Pàtron, 1973), 41 and Lionello Lanciotti, "Lorenzo Magalotti e la Cina", *Cina*, 2 (1957): 26-33.

179 Paolo Daffinà, "La Cina nel giudizio di G. B. Vico", *Cina*, 3 (1957): 39-51; see also Vico e l'Oriente: *Cina, Giappone, Corea*, a cura di David Armando, Federico Masini e Manuela Sanna (Roma: Tiellemmedia Editore, 2008), Arnaldo Momigliano, "Roman 'bestioni' and Roman 'eroi' in Vico's *Scienza Nuova*", *Terzo contributo alla storia degli studi classici e del mondo antico* (1st edition 1966; Roma: Edizioni di Storia e Letteratura, 2007), I, 163.

nature of the customs and especially the cult of justice as peculiar to China and, rather surprisingly, proof (entirely unfounded) of its Scythian ancestry through the Seres.¹⁸⁰

The Italian culture of the Enlightenment period had largely embraced a positive representation of China that had mainly originated in France and was predominantly influenced by Physiocracy. Authors like Antonio Zanon, Alfonso Longo, Ferdinando Paoletti, Antonio Genovesi, Ferdinando Galiani and Pietro Verri had variously accepted the idea of a great and prosperous empire ruled by “Savj Legislatori” (wise legislators) and a “positive utopia”¹⁸¹ characterized by an efficient judicial system. While this appreciative view was certainly not unanimous, as demonstrated by Francesco Algarotti, Giuseppe Gorani, Paolo Mattia Doria and Giuseppe Baretti, it was only at the beginning of the nineteenth century that it began to be seriously reversed, thus re-establishing a closer adherence to the prevalent mood among European opinion.¹⁸²

Filangieri was a champion of the Italian Sinophile attitude, somewhat against the tide that in the rest of Europe was producing a reversal of the previous enthusiasm for China. In his *Scienza della legislazione* (1780-1791) he referred to it as a great, ancient, vast and populous empire wisely committed to agriculture and subjected to the paternal authority of the emperor, according to the image dear to midcentury French admirers of China and by then rather obsolete. He also more precisely described the Middle Kingdom – in truth referring to outdated sources – as a country with a government that was virtuous because it was based on respect for the law. According to Filangieri, China was a country where “le leggi e non gli uomini son que’ che comandano” (“laws, not men, are what command”) and it was a suitable illustration and model of a wise, just government:

Il solo mezzo utile allo Stato, e non distruttivo nel tempo istesso de’ dritti del sovrano, sarebbe quello di assegnare alcune cariche per quei cittadini che avran prestati alcuni servizi alla patria, espressi e determinati dalle leggi, e di stabilire in tutte le altre i meriti che si debbon avere per ambirle. Questo solo stabilimento fa da più secoli tutta la prosperità d’una nazione, ove ogni virtù reca qualche vantaggio, ogni talento utile diviene dominante, dove la nobiltà non è una sola rimembranza ereditaria, ma una ricompensa personale; dove colui che ha lumi e virtù è sicuramente preferito a colui che non ha altro che avi illustri; e dove non è il solo arbitrio del principe, non sono i favori d’un cortigiano, né le cabale o gl’intrighi della corte, ma la legge è quella che distribuisce le cariche; la legge è quella che le propone all’emulazione di tutti i cittadini; la legge è quella che l’assegna non all’uomo, non al rango, ma ad alcune azioni utili e virtuose. Io parlo

180 Daffinà, “La Cina nel giudizio di G. B. Vico”, 40-42.

181 Girolamo Imbruglia, “Genovesi e l’Oriente: tra Vico e William Temple”, in *Vico e l’Oriente*, 109-128, see 116.

182 Sergio Zoli, *La Cina e l’età dell’Illuminismo in Italia* (Bologna: Patron, 1974), 104 ff.

della China. Con questo metodo si conserva il buon ordine d'una famiglia nel più vasto impero della terra; con questo metodo le leggi animano e dirigono nella China l'amor del potere, questo principio unico ed universale di tutti i governi.¹⁸³

No original contribution therefore came out of late eighteenth-century Italian culture to discussions on China that in the rest of Europe were continuing with remarkable intensity and with texts that were often thorough and significant, like those we have examined above. These allow us to see how the subject of China – specifically Chinese law system and justice – continued provoking even radical differences of opinion. There were still those who praised it as a model of political and administrative rationality and triumphant moral values dictated by justice and the honest interpretation of the rights and duties of the governed. However, many others proposed the opposite vision of a country where arbitrariness, the abuse of power, legal violence, and cruel judicial trials and capital punishments reigned: the quintessence, that is, of “legal Orientalism”. Such visions were alternately contested and endorsed by the information the Jesuit missionaries had sent for decades; the eyewitness testimonies, however limited and impressionistic, of merchants; and various documentary sources containing political, administrative and judicial information. Around the turn of the century, the relative waning of Jesuit missionary accounts coincided with a significant increase in accounts by other types of people and documentary sources. Thus began a distinctly new phase for Western knowledge and representations of China in which a leading voice was that of Sir George Thomas Staunton.

183 *Scienza della legislazione* (Napoli, 1780-1791), books II and III. I am quoting from the critical edition edited by Vincenzo Ferrone (Venezia: Centro di Studi sull'Illuminismo europeo “G. Stiffoni”, 2003), III, 211, and I, 133, respectively. In the English edition (London: Thomas Ostell, 1806) the longer passage is translated as follows: “The sole expedient, that would be useful to the state without being destructive to the rights of the sovereign, appears to be comprised in an allotment of some specific employments for persons who render their country particular services, regulated by the laws, and a determination of the merit and qualifications indispensable for the other public offices, which are not included in this allotment. A similar regulation has formed for ages the prosperity of a nation, where every virtue is honoured with some reward, and every useful talent is exerted; where nobility is not only an hereditary distinction but a personal reward; where talents and merit are invariably preferred to mere family descent; where neither the will of the prince, the favourite of a minister, cabal, nor intrigue, but the laws, distribute the public offices and employments, stimulate the emulation of every citizen, and bestow public honours and recompences on the individual, independent of his rank, as rewards for useful and virtuous actions. By these means the order of a private family is preserved in the vast empire of China, and the laws animate and influence the love of power, the sole and universal principle of all governments” (I, 159). Filangieri drew his description of China from two early eighteenth-century sources: Eusèbe Renaudot's *Anciennes relations des Indes et de la Chine de deux voyageurs mahometans [...] traduites d'arabe* (Paris: chez J.-B. Coignard, 1718) and Constantin de Renneville, *Recueil des voyages qui ont servi à l'établissement et aux progrès de la Compagnie des Indes Orientales formée dans les Provinces Unies des Pays-Bas* (5 vols., Amsterdam: E. Roger, 1702-1707).

II. AN END-OF-THE-CENTURY TURNING POINT

While the European culture of the late eighteenth century was increasingly orienting itself towards a definite reappraisal and even a negative upending of the Chinese myth thanks to authoritative voices like Herder and Condorcet, in anticipation of writers like Constant and Hegel,¹⁸⁴ a series of circumstances and developments were creating the preconditions for a turning point not only in the history of material and political-diplomatic relations between the European West and China, but also the history of ideas, interpretations and representations of the Chinese world through an increasing amount of information and publications of every kind. The subject of justice and penal law – with the central image of “torments” or “Chinese tortures” as a particularly effective symbol of the country’s cruelty and inhumanity – played an even more important role in this shift than other subjects that had been at the heart of eighteenth century discourses, starting with that of despotism.¹⁸⁵

Let us first take a brief look at the context and modes of commercial relations and the forms of European presence within the framework of what came to be called the ‘Canton system’.¹⁸⁶ There are three main elements to recall in this regard and two for us to keep firmly in the background. Let us start with the two more general ones: 1) In the decades around the turn of the nineteenth century Great Britain experienced a phase of great economic vitality driven by incipient industrialization, despite the revolutionary

184 See Anthony Pagden, “The Immobility of China: Orientalism and Occidentalism in the Enlightenment”, in *The Anthropology of the Enlightenment*, ed. Larry Wolff and Marco Cipolloni (Stanford: Stanford University Press, 2007), 50-64, and Pagden, *The Enlightenment, and why it still Matters* (Oxford: Oxford University Press, 2013), 226-246; Jonathan I. Israel, *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750-1790* (Oxford: Oxford University Press, 2011), 558-572; Abbattista, “At the Roots of the ‘Great Divergence’”, on Condorcet, 159-160, on Constant, 116; and Eijiro Ohno, “Benjamin Constant et l’immobilité de la Chine”, *Annales Benjamin Constant, Le groupe de Coppet et l’histoire, 8ème Colloque de Coppet, 5-8 juillet 2006*, 31-32 (2007), 273-293; on Hegel, Ernst Schulin, *Die weltgeschichtliche Erfassung des Orients bei Hegel und Ranke* (Göttingen: Vandenhoeck & Ruprecht, 1958).

185 On what follows, see Brook, Bourgon, Blue, *Death by a Thousand Cuts*, see also Jérôme Bourgon, “Chinese Executions: Visualising their Differences with European Supplices”, *European Journal of East Asian Studies*, 2, no. 1 (2003): 153-184; Bourgon, “Les scènes de supplices dans les aquarelles chinoises d’exportation”, 2005, *Chinese Torture / Supplices Chinois*, accessed May 15, 2017, <http://turandot.chineselegalculture.org/Essay.php?ID=33>; Bourgon, “Qui a inventé les ‘supplices chinois’ ?”, *L’Histoire*, 7, no. 300 (2005): 54-57.

186 The vast amount of literature on these issues includes the classic Louis Dermigny, *La Chine et l’Occident. Le commerce à Canton au XVIII^{ème} siècle* (4 vols., Paris: S.E.V.P.E.N., 1964), and, more recently, John E. Wills Jr, *China and Maritime Europe, 1500-1800: Trade, Settlement, Diplomacy, and Missions* (Cambridge: Cambridge University Press, 2010), as well as Peter C. Perdue, *The Rise and Fall of the Canton System*, in *Visualising Cultures*, Massachusetts Institute of Technology, 2009, accessed May 15, 2017, http://ocw.mit.edu/ans7870/21f/21f.027/rise_fall_canton_01/index.html.

and Napoleonic wars; and 2) Great Britain expanded and consolidated its role in India as it began to turn the country into the future pearl of the British Empire and framed its economic interests ever more strictly within an overall Asian-Oriental perspective that included China, thus reinforcing its leading position in Sino-Western relations, which it held into the nineteenth century. The three particular elements referred to above are: 1st) the boom in the tea trade resulting from the abatement in 1784 of the import tax in Great Britain (from 119% to 12.5%), with the consequent eradication of smuggling, an increase in imports under the control of the East India Company and, directly tied to all this, an increase in opium importation to China starting in 1790, with an exponential rise from the late 1820s on; 2nd) the English attempt to change, through diplomatic channels, the nature and forms of its commercial relations with China (the Macartney embassy of 1792-1793 and the Amherst embassy of 1816-1817); and 3rd) the termination in 1833 of the East India Company's monopoly over trade between India and China following the cessation of its monopoly over trade between England and India in 1813.

Subsequent to these events, the evolution of relations between Great Britain, Western countries in general and China in the sixty-year time span from around 1780 to 1840 were marked by a considerable intensification (in terms of engagement in trade and diplomacy and occasions of contact/conflict with Qing administrative authorities and Chinese society) of the albeit geographically limited physical presence of Europeans in China (East India Company employees and especially private merchants and missionaries from Protestant missionary societies); a remarkable increase in printed information of all kinds, especially in English, coming out of China or at any rate about China and Chinese affairs;¹⁸⁷ and, finally, a clear watershed in European, especially English, opinions and representations of China, marked by an increasingly pronounced spirit of criticism, controversy, disparagement and intolerance regarding Chinese diversity and the legacy of eighteenth-century panegyrics of Jesuit or *philosophique* origin.

The Macartney embassy played a decisive role in this regard, not only because of the frustration generated by its failure, but especially for the quantity of publications that sprang from that experience, above all the report by Sir George Leonard Staunton that appeared in 1797 and the important travel account published by John Barrow in 1804.¹⁸⁸ The same can be said of the other British embassy sent to China immediately

187 See Charles Aylmer, ed., *Nineteenth Century Books on China*, who chronologically and thematically arrange extractions from Henri Cordier, *Bibliotheca Sinica* (Paris 1904-1907) and the related *Supplément*, 1921, both accessible at *The Nineteenth Century*, accessed May 15, 2017, <http://c19.chadwyck.co.uk/html/noframes/moreinfo/china.htm>.

188 The extremely rich bibliography on this publication includes *An Embassy to China: Being The Journal Kept by Lord Macartney During His Embassy to the Emperor Chi'en-Lung, 1793-1794*, edited with an Introduction and Notes by J. L. Cranmer-Byng (London: Longmans, 1962), and by the same Cranmer-

after the end of the Napoleonic wars, in 1816-1817, under the guidance of Lord William Amherst. This experience failed as well, but at least it made several new textual and iconographic publications available to the European public.¹⁸⁹

We must recall one last contextual element to better understand why in the early nineteenth-century Chinese justice and penal law not only served as a subject of theoretical historical-institutional analyses, as in the past, but was now also a matter of practical, direct and immediate interest. I am talking about a succession of judicial cases, starting in the late eighteenth century and peaking in the early nineteenth century, involving British subjects in Canton following accidents and killings of Chinese subjects during fights with Europeans, especially unruly, riotous English sailors on (frequently unauthorized) shore leave. There had in fact been similar cases in the past, for example with the Portuguese in Macao in the early sixteenth century¹⁹⁰ and, later, when English circumnavigator George Shelvocke's ship *Speedwell* had been docked in Canton

Byng, *Lord Macartney's Embassy to Peking in 1793: From Official Chinese Documents* (Hong Kong: Hong Kong University Press, 1961); Robert A. Bickers, ed., *Ritual & Diplomacy: The Macartney Mission to China, 1792-1794: Papers Presented at the 1992 Conference of the British Association for Chinese Studies Marking the Bicentenary of the Macartney Mission to China* (London: The Wellsweep Press, 1993); James Louis Hevia, *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793* (Durham, NC: Duke University Press, 1995). See also Shunhong Zhang, *British Views of China at a Special Time: 1790-1820* (Beijing: China Social Sciences Publishing House, 2011). The works by Staunton and Barrow are: Sir George Leonard Staunton, *An Authentic Account of an Embassy from the King of Great Britain to the Emperor of China: Including cursory observations made, and information obtained in travelling through that ancient empire, and a small part of Chinese Tartary [...] taken chiefly from the papers of [...] Lord Macartney* (3 vols., London: G. Nicol, 1797); and Sir John Barrow, *Travels in China: Containing descriptions, observations, and comparisons, made and collected in the course of a short residence at the imperial palace of Yuen-Min-Yuen, and on a subsequent journey through the country from Peking to Canton* (London: T. Cadell and W. Davies, 1804).

189 See, among other contemporary publications, Sir Henry Ellis, *Journal of the Proceedings of the Late Embassy to China: Comprising a Correct Narrative of the Public Transactions of the Embassy, of the Voyage to and from China, and of the Journey from the Mouth of the Pei-Ho to the Return to Canton* (London: John Murray, 1817), and Abel Clarke, *Narrative of a Journey in the Interior of China, and of a Voyage to and from that Country, in the Years 1816 and 1817: Containing an account of the most interesting transactions of Lord Amherst's embassy to the court of Peking, and observations on the countries which it visited* (London: Longman, Hurst, Rees, Orme, and Brown, 1818). Among the critical literature, see the essay collection Peter J. Kitson and Robert Markley, eds., *Writing China: Essays on the Amherst Embassy (1816) and Sino-British Cultural Relations* (Cambridge: D. S. Brewer, 2016); Hao Gao, "The Amherst Embassy and British Discoveries in China", *History*, 99 (2014): 568-587, accessed May 15, 2017, doi: 10.1111/1468-229X.12069; and Eun Kyung Min, "Narrating the Far East: Commercial Civility and Ceremony in the Amherst Embassy to China (1816-1817)", in *Interpreting Colonialism*, ed. Byron R. Wells and Philip Steward (Oxford: Oxford University Press, 2004), 160-180, as well as John Malcolm Wilson, *Mission to China: Lord Amherst's Embassy, 1816* (Boston, MA: Harvard University, 1978).

190 *South China in the Sixteenth Century: Being the Narratives of Galeote Pereira, Fr. Gaspar Da Cruz, O. [and] Fr. Martín de Rada, O.E.S.A. (1550-1575)*, ed. Charles R. Boxer (London: Printed for the Hakluyt Society, 1953).

in 1721.¹⁹¹ Having become more frequent due to an increase in contacts in the late eighteenth century, such cases forced Westerners to appear before Chinese tribunals and be directly exposed to judicial procedures (often described by contemporary authors as “mock trials”),¹⁹² the police and Qing jails. These cases include the dispute involving the ship *Lady Hughes* in 1784;¹⁹³ the ‘affair’ of the ship *Providence* (1800); the incident involving four sailors from the ship *Neptune* of the East India Company (1807); the 1821 case of an Italian-American sailor from the ship *Emily*, Francis Terranova, whose surreptitious execution by strangulation on the part of Chinese authorities sparked protests over the “sanguinary laws of this empire”;¹⁹⁴ and the case of the frigate *Topaze* in 1822. There were also episodes in which Chinese justice retaliated not against Westerners but Chinese subjects for violating imperial orders and aiding European ‘barbarians’. This was the case with the infamous summary executions of Chinese opium smugglers carried out in Canton in 1839 in front of the European factories in Respondentia Square, which led to riots involving both Western sailors and Chinese subjects.

While we certainly cannot discuss each of these cases in detail, it should be stressed that their development and outcome were the subject of repeated accounts in English periodicals for the Western community in Canton like the *Canton Press*, the *Canton Register* and the *Chinese Repository*, thus reinforcing among Europeans a belief in the need to know and better manoeuvre through the mechanisms of Chinese justice by having a more solid command of the language and the laws through the work of Western experts rather than unreliable local interpreters. At the same time, they also persuaded Europeans of just how radically different Chinese justice was for its cruelty, inaccuracy and corruption compared to Western customs, even if the latter were in fact no less cruel.¹⁹⁵ This influenced an attitude that led to a demand for extraterritoriality, especially in judicial matters, that is, a request for the right of Westerners in Chinese territory to be judged according to the legal rules and regulations of their native countries and not those of Chinese legislation.

191 George Shelvocke, *A Voyage Round the World by Way of the Great South Sea: Perform'd in the Years 1719, 20, 21, 22* (London: printed for J. Senex, 1726), see 448 ff.

192 See John Francis Davis, *The Chinese: A General Description of the Empire of China and Its Inhabitants* (2 vols., London: Charles Knight, 1836), I, 99 ff.

193 Li Chen, “Law, Empire, and Historiography of Modern Sino-Western Relations: A Case Study of the Lady Hughes Controversy in 1784”, in *Law and History Review*, 27, no. 1 (March 2009), 1-54, accessed May 15, 2017, doi: 10.1017/S073824800001644.

194 Hosea Ballou Morse, *The Chronicles of the East India Company Trading to China 1635-1834* (4 vols., Oxford: at the Clarendon Press, 1926), IV, 26.

195 Geltner, *Flogging Others*.

In more general terms, for the Europeans and especially the British active on the ground at the turn of the nineteenth century, knowledge of China and its institutions, society, administration, mentality and the nature of its different social classes was not just a cultural, intellectual issue but became increasingly tied to the way commercial relations, commercial diplomacy and imperial practice were carried out according to a development that had already taken place in India and was now affecting relations with China. The growing list of publications crowding the world of British and European public opinion – everything from economic and political pamphlets to historical syntheses, periodical essays, political-institutional texts and missionary accounts – were certainly good for more than just providing views and interpretations for the debates taking place in the world of high culture. They were also directly intended to help actively orient and define policies and relational forms with respect to the Chinese world. Imperial *practice*, by which I mean the contrivance of global commercial relations and power relationships on the part of an expanding world power, became the focus and inspiration of much contemporary literature. Erudite and cultural aspirations became ever more strongly marked – and often directly stimulated – by imperial demands or the need to build global relational systems, according to a tendency that can be observed in all areas, particularly India, where commercial and imperial powers like Great Britain were present and active in an intense way.

In the meantime, observations and discussions about Chinese justice continued to appear in the many publications on China and the British diplomatic missions. Since we cannot detail all the voices and phases of the narrative-linguistic and iconographical construction that developed a negative image of China and especially its judicial apparatuses at the beginning of the nineteenth century, we will restrict ourselves to those writings that would have directly impacted the work of George Thomas Staunton.

II.1. DIPLOMATIC EVIDENCE: LORD MACARTNEY, GEORGE LEONARD STAUNTON, JOHN BARROW

We must once again guard against reading the sources too simplistically. It is not enough to interpret late eighteenth- and early nineteenth-century Western accounts of China's political and legal institutions and its justice system based on the paradigm of a definitive, irreversible turning point in a negative or Sinophobic sense, to adopt the term often used in the literature. The idea of a radical alterity, an irreconcilable opposition between China and the West and a negative essentialization of China in the 'Asian' or 'Orientalist' sense, albeit long present in its constituent elements, never occupied Western representations entirely. Suffice it to read the first important report on the Macart-

ney embassy, which for good reason is considered a milestone in the history of relations between Great Britain (and Western Europe in general) and China.

George Leonard Staunton's vivid, extraordinarily interesting account of the British diplomatic mission to Beijing¹⁹⁶ is filled with observations, notes, impressions and evaluations that are anything but unilateral expressions of criticism or Sinophobic disdain. In other words, while the mission's failure prompted descriptions of the event in terms of a "choc des mondes", the account of Staunton senior does not betray feelings or ideas of prejudice, biased hostility or close-mindedness.¹⁹⁷ For example, Staunton noted the high level of personal security enjoyed by the members of the embassy on Chinese soil, which he ascribed to the population's sober propriety and respect for authority.¹⁹⁸ He also wrote of the order, efficiency, perfect obedience to authority, magnificence, sense of hospitality and refined manners with which the British envoys were received. To Staunton the country had offered a magnificent spectacle of nature shaped by human hands and the intervention of imperial authority. He had seen no sign of true indigence in the conditions of the common people, partly thanks to the attention and benevolence of the government. Neither had he witnessed any excessive economic or social disparity in the population. He also noted that the security of landed property was supplemented by the work of institutions inclined towards preventing concentration, so that "a constant tendency to level wealth" was at work.¹⁹⁹ The monarch at the head of the empire was flanked by the tribunals that, at the summit of a hierarchy of subordinate courts, helped him exercise his authority and acted on the basis of a jurisprudential tradition, a "body of doctrine", founded on rules of universal justice and the pure principles of humanity, according to a system endowed with great stability.²⁰⁰ The respect for authority, the self-control within

196 I am referring to George Leonard Staunton, *An Authentic Account of an Embassy from the King of Great Britain to the Emperor of China: Including Cursory Observations Made, and Information Obtained in Travelling through That Ancient Empire, and a Small Part of Chinese Tartary* (2 vols., London: printed for G. Nicol, 1797). This work circulated widely thanks to several English and American editions and to French, Italian and German translations. Sir George Leonard Staunton (1737-1801), father of George Thomas Staunton, was Lord Macartney's first secretary during the mission to China. Prior to that he had worked for several years as a local administrator in the West Indies and in India, including with the current governor of Madras and future ambassador to Beijing.

197 This is the subtitle of the book by Alain Peyrefitte, *L'empire immobile, ou le choc des mondes* (Paris: Fayard, 1989). "Collision of two civilizations" and "scontro di mondi" are the English (1993) and Italian (1990) translations.

198 "the high degree of civilization which was known to pervade every rank in that country, and the impending hand of authority", Staunton, *An Authentic Account*, II, 1.

199 Staunton, *An Authentic Account*, II, 152.

200 "There is a body of doctrine composed from the writings of the earliest sages of the empire, confirmed by subsequent lawgivers and sovereigns, and transmitted from age to age with increasing

the social structure and the efficiency of the judicial apparatus were such that “great order” reigned and crime was rare. The abandonment of infants, especially female ones, was widespread, but not without checks and balances. Without dwelling on Staunton’s other observations, it is interesting to note how his authoritative report, which immediately conveyed to the European public impressions of the most important embassy to China in the eighteenth century (though not in the form of a too detailed analysis), produced a relatively positive image of the empire, including the central subject of law and justice.

Interestingly, yet another, different position emerges from the coeval personal notes of Lord Macartney, which are accompanied by an interesting appendix entitled “Manners and Character of the Chinese”.²⁰¹ Various mental attitudes overlap in these pages without giving the impression of an absolute uniformity of views: appreciation, criticism, a perception of difference, admiration, moderation, patriotism, and a search for precision and distinction. Macartney primarily sought to give sufficient weight to the Tartar (Manchu)-Chinese dualism by noting all the aspects of late eighteenth-century Chinese society and institutions for which this difference still visibly counted. This was particularly true for the government, with the fundamental distinction between the traditional Chinese government and that of the Manchus. The former was certainly a “government by law”,²⁰² with the supreme power concentrated less in the hands of the emperor, formally a despot, and more in those of the great state councils (or tribunals). The present situation, however, was much different: “The government, as it now stands, is properly the tyranny of a handful of Tartars over more than three hundred millions of Chinese”. While Macartney identified signs of considerable civilization, technical ability and taste in various aspects of Chinese society, the negative elements nevertheless prevailed, for example in the sphere of the institutions. When it came to the government, notwithstanding the original distinction between Manchu tyranny and the legitimate government of ancient China, Macartney argued that there was a substantial difference in this

eneration, which serves as rules to guide the judgment of those tribunals. This doctrine seems indeed founded on the broadest basis of universal justice, and on the purest principles of humanity [...] The whole is a regular and consistent system, established at a very early period, continued with little alterations thro every dynasty, and revived, after any interruption from the caprice or passions of particular princes”, Staunton, *Authentic Account*, II, 154-155.

201 Lord George Macartney, “Appendix to the Journal: Manners and Character of the Chinese”, in John Barrow, *Some Account of the Public Life, and a Selection from the Unpublished Writings of the Earl of Macartney* (2 vols., London: Cadell, 1807, the quotations come from this edition), II, 411-531. Macartney’s Chinese journal has been published in the critical edition *An Embassy to China: being the Journal kept by Lord Macartney during his Embassy to the emperor Ch’ien-lung 1793-1794. Illustrated with watercolour sketches made during the embassy by William Alexander; introduced by Jonathan Spence; edited by J. L. Cranmer-Byng* (London: Longmans, 1962; repr. London: The Folio Society, 2004).

202 Macartney, “Appendix to the Journal”, 441.

regard between the West and the East, with the “policy of Asia” characterized by the great weight still held by those dynastic, familial and even ethno-racial aspects that in European politics had faded to the background.²⁰³ To make his point he wittily compared China under Manchu emperors to a performance at “Astley’s Amphitheatre” in London in which a single knight manoeuvred all the horses by holding them tightly by the reins: a metaphor for a government that was certainly absolute but also “methodical and regular”. Furthermore, according to Macartney, Qing rule had theretofore been “performed with wonderful ability and unparalleled success”, thanks to a “singular skill in the art of reigning”, that is, the ability of four successive emperors to ensure continuity of power and competence, thus favouring the territorial expansion of the empire and making it a “wonderful phenomenon in the political world”.²⁰⁴ Macartney’s observations are particularly valuable for the effort he made to underscore the persistent dualism between the Tartars and the Chinese, a fact that was omitted from most European literature – excepted works on the origin of the Manchu dynasty, like Martini’s *De bello tartarico Historia* (1654) and the *Histoire de la Conquête de la Chine par les Tartares Manchoux* (1754), by the Jesuits Vojeux de Brunem and Joseph Jouve – but for the British diplomat was indispensable for understanding the infinite complexity of the imperial government and the presence of unstable elements within the state. The frequent insurrections in the most distant provinces, the flourishing of secret societies and the animosity between subjects of different ethnicities, with renewed initiatives on the part of the Han Chinese, all revealed the potential for upheaval, fracture or even dismemberment within an empire that, under its current conditions, appeared to the English observer as anything but stable. In light of these elements, Macartney made interesting considerations on the state of Chinese justice, well aware of how many accounts had theretofore relayed a positive image of impartiality and equality before the law.²⁰⁵ Using information supplied by a Qing high official with whom he had close ties, Macartney explained that there was a wide gap between what had characterized the pre-Manchu-conquest “ancient government” and the current conditions, where an appearance of continuity in institutional forms belied a lack thereof when it came to the substance of judicial practice. For example, while the Chinese and even Christian missionaries may have considered the widespread use of offering gifts

203 “The science of government, in the Eastern world, is understood by those who govern very differently from what it is in the Western [...] The policy of Asia is totally opposite. There the prince regards the place of his nativity as an accident of mere indifference [...] it is not the country where he drew his breath, but the blood from which he sprung [...] He [the Qing emperor] remains at this hour, in all his maxims of policy, as true a Tartar as any of his ancestors”, Macartney, “Appendix to the Journal”, 444.

204 Macartney, “Appendix to the Journal”, 441-442 and 446.

205 “such high strains of eulogy, that we are tempted to suppose this was the spot where the last footsteps of Astrea were imprinted”, Macartney, “Appendix to the Journal”, 449.

to judges a purely ritual gesture, a form of etiquette sanctioned by tradition, Macartney considered it an “intolerable abuse”. Yet for Macartney, his observation of the rampant corruption of judges was not only a statement of fact, it could also give rise to essentialist, orientalist conclusions: “This infamous system is universal among the Orientals, and is, I conceive, a principal cause of their decay and subversion”.²⁰⁶

Other aspects of judicial practice seemed less negative. While punishments for debtors were particularly severe, capital punishment was inflicted more rarely than in England, the practice of substituting people to receive corporal punishments was less extensive than it was reputed to be, the jails offered an example of good administration, single criminal laws displayed significant flexibility and the broad use of imperial power for pardons corrected the harshness of the letter of the law. With regards to civil law, it was true that no property – and vast private land ownership existed in China – could be considered safe from the emperor’s preeminent right to tax and confiscate it. But in reality, anyone was free to bequeath property to whomever they wished, while in cases of death *ab intestato*, the inheritance was divided among the deceased’s male children. While the life conditions of much of the population were fairly poor and the abundance of labour tended to knock salary levels down and exposed much of the population to misery, famine, illness and death,²⁰⁷ the consequence lamented by many Western observers – the sale or abandonment of babies and infants – did not seem to Macartney as widespread as was believed.

Constant complaints about extortion by Mandarin officials to the detriment of Western merchants in Canton, on the other hand, were entirely well founded, even if this did nothing to dissuade Macartney from believing in the possibility of British commercial expansion on Chinese soil. In fact, in a series of supplementary notes on the subject of “Trade and Commerce”, Macartney followed his observation of the harsh treatment and all manner of difficulties suffered by Europeans in Canton with a sort of apologue – evidently built on an informed, realistic view of the state of Sino-Western relations – that displayed full, impartial awareness of the lack of scruples with which the same Europeans active in China were ready to act in “illegality and criminality” against local laws and regulations, to the point of provoking entirely understandable reprisals on the part of the imperial government. He nevertheless added an invitation not to despair over the possibility of improvement, thus displaying faith in the advantages of the traditional Chinese sense of justice and the law.²⁰⁸

206 Macartney, “Appendix to the Journal”, 451.

207 Macartney, “Appendix to the Journal”, 458.

208 “Let us not, however, exaggerate. The Chinese are by no means wanting in proper notions of justice, though they may often deviate from it in their practice”, Macartney, “Appendix to the Journal”, 519.

The case of Lord Macartney shows how, at the end of the century, British opinion was exposed to much more than just one kind of representation of the Chinese reality. There were also descriptions and opinions formed on the basis of first-hand experiences resulting from non-unilateral attitudes and an awareness of how difficult it was to obtain satisfactory and, all things considered, impartial knowledge on China. In light of the positions expressed by the ambassador himself and despite the embassy's failure, the experience did not produce completely unfavourable portrayals of China. The other important and influential testimony to come out of the Macartney embassy, that contained in Sir John Barrow's *Travels in China* published in 1804, was doubtlessly quite different, if no less problematic.²⁰⁹

Translated into several languages, known throughout Europe and used by some of the most important authors, historians, philosophers and politicians of the early nineteenth century like Hegel, Benjamin Constant and James Mill, Barrow's *Travels* signalled a turning point in the history of narratives and representations of China. It is also generally thought to have fuelled a more profoundly negative view of the Chinese world than any other text in the early nineteenth century. It bears close examination here both to understand more precisely the themes related to Chinese law and justice, and because it is the text to which George Thomas Staunton referred most directly in undertaking his edition of the Qing code. It is also a text that, in its turn, contains explicit references to the subsequent work of Staunton, whom Barrow had obviously met, along with his father, during the Macartney embassy.²¹⁰

In chapters IV-VII of *Travels* there is no doubt that Barrow – clearly driven by a desire to refute Jesuit and Physiocratic myths – developed an image of China as a country subject to a suffocating, violent despotism; a country where subjects were actual slaves, women were subject to male oppression, human dignity was humiliated by an arbitrary power, and there were no virtues of the good faith or reciprocal benevolence indispensable for the proper functioning of a society; a stationary country incapable of progress without a middle class that could strengthen the economy. According to Barrow, who was fully convinced of the civil superiority of Great Britain, China was confined to the lowest rungs of the “scale of civilized nations”. He described it as a country in which the abstract principles of a rule inspired by paternal love and filial respect corresponded

209 For a bibliography on *Travels*, see above, par. II, note 5. The text has also been available digitally since 2010 in the Cambridge Library Collection Online, accessed May 15, 2017, doi: 10.1017/CBO9780511708978. In 1805 it was translated into French by J. Castéra, *Voyage en Chine, formant le complément du voyage de lord Macartney* (2 vols., Paris: F. Buisson, 1805) and German, *Barrow's Reisen in China* (2 vols., Hamburg: Hoffmann, 1805).

210 On the life events of Staunton the younger and his participation in Macartney's mission, see note 259.

to a reality made of tyranny, abuse, oppression, injustice, deceit and disobedience.²¹¹ Notably, by blaming the limits of Chinese civilization on the “system of government” and not the “nature and disposition of the people”, Barrow avoided making any kind of ethnic-racial explanation. However, he also implicitly, if not programmatically, assumed a normative perspective by suggesting that changing the nature of the Chinese political and institutional system would set the country down a path that would align its conditions with those of the societies of the European West – a point of view that throughout the 1820s and 1830s was being increasingly argued by missionary, liberal and free-trade, interventionist literature.²¹² According to Barrow, China was prevented from progressing and kept shut in the same condition for centuries²¹³ primarily because of its obstinate closure towards the outside, its sense of superiority and its disdain for foreigners. The pernicious consequences of these elements stood in stark contrast to the vicissitudes of Russia, the other great Eurasian empire that had recently made great progresses with exactly the opposite policy and having started from a decidedly lower degree of civilization.²¹⁴

What place does the subject of law and justice occupy in this representation? The situation described above might lead us to expect a bleak picture, but Barrow actually took a very nuanced position in light of the fundamental distinction between theory – or the letter of the legislation and the organization of justice – and administrative and judicial practice. Above all, his entire description of the government system, the laws and the operation of justice reveals an internal tension, if not a contradiction, between positive appreciation and negative general conclusions, which seems to derive from an implicit relationship, surfacing from the text, with the attitudes of Staunton junior.

Barrow was well informed about the composite structure of the central Chinese government and administration. He underscored the rationality, regularity and suitability of what he called the “constitution” with respect to the complexity of the government’s tasks, albeit still referring in a rather contradictory way to an “arbitrary government”.²¹⁵ He was struck favourably by the Qing “code of laws” whose publication in English he anticipated with enthusiasm, indicating it as a source of knowledge on China of higher

211 Barrow, *Travels*, 360.

212 Barrow, *Travels*, 183. On the arguments in favour of an intervention, I permit myself to refer to my forthcoming “Europe, China and the Family of Nations: Commercial Enlightenment in the *Sattelzeit* (1780-1840)”, in Elizalde and Wang, *China from a Global Perspective*.

213 “Two thousand years ago China was civilized to the same degree, or nearly so, that she is at present. The governments were both arbitrary and the people were slaves”, Barrow, *Travels*, 384.

214 Barrow, *Travels*, 383-384.

215 Barrow, *Travels*, 366.

importance than any other work than had theretofore appeared. He described the code's structure as rational, comparable even to Blackstone's *Commentaries* (a landmark of contemporary British legal culture), and containing a detailed description of crimes and their related punishments based on principles of proportionality, information he claimed to have drawn from an anonymous "best authority" with whom it is easy to identify George Thomas Staunton himself.

Barrow did not embrace the image of bloody Chinese penal justice. Though critical of Chinese institutions, he did not unequivocally espouse Montesquieu's point of view on corporal punishment. Initially he seems to have considered the use of bamboo flogging, for example, more a system of "gentle correction" governed by a custom that mitigated harsher consequences than the symbol of despotic violence referred to in *L'Esprit des Lois*. However, on later pages he described a scene of punishment with bamboo that was anything but "gentle", a symbol of the degradation of human dignity, incompatible with a civilized society, thus apparently realigning his vision with that of Montesquieu.²¹⁶

While he admired the prison system, in line with a long narrative tradition, he regarded other aspects of the criminal legislation as particularly harsh. He described the use of the "cangue", the wooden board locked around the neck of a culprit, as a "terrible punishment" with however a strongly dissuasive power because of its public nature. While he maintained that torture was certainly an "abominable practice" and "the worst part of the criminal laws of China", its use also tended to be limited, thus confirming that the image of Chinese justice in Barrow's descriptions is not to be seen as unequivocally merciless.²¹⁷

Instead, Barrow stressed the fact that every capital sentence was subject to the control of the empire's supreme tribunal. The fact that executions were not public, unlike pun-

216 "In travelling through the country, a day seldom escaped without our witnessing the application of the *Pan-tse*, or bamboo, and generally in such a manner that it might be called by any other name except a *gentle* correction. A Chinese suffering under this punishment cries out in the most piteous manner; a Tartar bears it in silence. A Chinese, after receiving a certain number of strokes, falls down on his knees of course, before him who ordered the punishment, thanking him, in the most humble manner, for the fatherly kindness he has testified towards his son, in thus putting him in mind of his errors; a Tartar grumbles, and disputes the point as to the right that a Chinese may have to flog him; or he turns away in sullen silence [...] it is impossible [...] to suppress a glow of indignation, in witnessing so mean and obsequious a degradation of the human mind, which can bring itself, under any circumstances, patiently to submit to a vile corporal punishment, administered by the hand of a slave, or by a common soldier; and when this is done, to undergo the still more vile and humiliating act of killing the rod that corrects him [...] The punishment of the bamboo must, I suspect, be one of the most ancient institutions of China. Indeed we can scarcely conceive it ever to have been introduced into a society already civilized; but rather to have been coeval with the origin of that society", Barrow, *Travels*, 381-383.

217 Barrow, *Travels*, 379.

ishments of other kinds and European customs,²¹⁸ seemed to reveal a belief of the part of Chinese legislators that the spectacle of blood and human suffering was not an effective educational tool, thus reinforcing the idea that Qing judicial institutions were lenient. Regarding the operation of provincial tribunals, Barrow managed to obtain – thanks once again to Staunton’s assistance and by consulting acts of criminal cases in translation – examples of procedures in which “[t]he circumstances of the transaction appear to have been enquired into fairly and impartially, and no pains spared to ascertain the exact degree of criminality”.²¹⁹ With regards to the principles and operation of justice, especially the respect for human life, Barrow distinguished the Chinese government from other “despotic governments”, even maintaining that “few nations could boast of a more mild, and, at the same time, a more efficacious dispensation of justice”.²²⁰

However, according to Barrow, judicial theory and practice still failed to correspond. Some judicial customs contradicted the mildness of the principles contained in the code, like the ascertainment of guilt for homicide based on the scapegoat principle, or the lack of distinction between voluntary homicide and manslaughter, both of which came to light because of several cases in which Westerners were involved in criminal actions in Chinese territory and were forced to deal with imperial justice. Furthermore, regarding the practice of extending the responsibility for crimes of treason to relatives, Barrow commented that “nothing can be more unjust and absurd, however politic, than such a law”.²²¹

The picture that emerges when we shift our attention to civil justice is decidedly negative and reflects Barrow’s overall evaluation of Chinese society and institutions. He considered the lack of an adequate system for appeals and the revision of sentences particularly negative because the ubiquity of judge bribing left subjects with “no security against the caprice, malice, or corruption of his Judge”.²²² Barrow found property regulations particularly inadequate, not only the laws preventing a wife with children from inheriting or using property, but in general any regulation which failed to make property ownership secure and stable. He felt this normative inadequacy created an obstacle to the accumulation of wealth, together with the fact that private property was vulnerable to the greed of officials. This point, which Barrow significantly often

218 Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (New York, Oxford University Press, 1996); Richard Ward, ed., *A Global History of Execution and the Criminal Corpse* (New York: Palgrave Macmillan, 2015).

219 Barrow, *Travels*, 370.

220 Barrow, *Travels*, 367.

221 Barrow, *Travels*, 377.

222 Barrow, *Travels*, 377.

stressed, was very important as a basic parameter for establishing the degree of China's civilization.²²³

While overall Barrow tended to emphasize the subordination of the laws to the behaviour of the magistrates and therefore the arbitrary ways power was exercised, his conclusion was not without ambiguity:

although the laws are not so perfect as to procure for the subject general good, yet neither are they so defective as to reduce him to that state of general misery, which could only be terminated in a revolution. The executive administration is so faulty, that the man in office generally has it in his power to govern the laws, which makes the measure of good or evil depend greatly on his moral character.²²⁴

Despite his at least partial admiration for the legislative and judicial system, Barrow's text tends to insist on the despotic nature of the Chinese government, which in his words was supported by a "system of universal and implicit obedience towards superiors", or even a "universal servility", exemplified by, among other things, summary corporal punishments endured by the subject "at the will or the caprice of the lowest magistrate" and the relationship of mistrust that the weak inevitably developed with the powerful. The fact that the conduct of magistrates was subject to numerous and severe checks and punishments for their abuses did not change the reality of a situation in which "there [was] still little security for the subject" who was in fact "dreadfully oppressed", had no voice in the government, either directly or through a representative, and could only hope to see an abusive magistrate replaced by another dishonest one.²²⁵

Significantly, Barrow concluded by describing China's society as lacking the kind of security, protections, freedom and sense of human rights needed for the existence of a middle class comprising independent property owners who could make their voice heard in public affairs. Essentially, he believed there existed a sort of short circuit between the private condition of propertied people and their public role. However, he argued that there were also other causes conspiring to keep China in a condition of immobility, despite its being an ancient, abiding system with paradoxical facets of prosperity, wealth and even good government. In the first place, the absence of "intercourse". Barrow explained that "social intercourse" was absent due to the envy, suspicion and lack of reciprocal trust that existed beyond family limits, at the level of social relations,

223 "property is not so much an object of the laws in China as elsewhere, and consequently has not the fame security. In the governments of Europe, property seldom fails to command influence and to force dependence: in China, the man of property is afraid to own it, and all the enjoyments it procures him are stolen", Barrow, *Travels*, 386.

224 Barrow, *Travels*, 380.

225 Barrow, *Travels*, 390.

which were therefore deficient and incomplete. The type of “intercourse” ensured by extensive, free foreign trade and the ability to freely associate with foreign peoples and cultures, with all the stimuli that could derive from this, was also absent. Barrow’s point was, in sum, that China was radically different from Great Britain not only in terms of justice, but also in general because of its institutional and social characteristics.

With all its internal oscillations of opinion, albeit presented from a substantially critical perspective, Barrow’s *Travels* represents a transitory phase in how Westerners looked at China, still swinging between attitudes of admiration inherited from the previous century, though now being definitively overcome, and the emergence of a vision decisively inspired by a sense of the profound difference, the “great divergence” between China and the West, and the clear superiority of the latter.

II.2. FRENCH PERSPECTIVES FROM THE EARLY NINETEENTH CENTURY

The contributions analysed thus far show how attentive and aware people were at the turn of the century of the need to obtain deeper, more realistic knowledge of China’s institutions. Indeed, despite the input of those who had recently visited the country like Macartney, Staunton senior, John Barrow, or the Dutch ambassador Isaac Titsingh and Titsingh’s interpreter van Braam,²²⁶ the evidence clearly shows that knowledge remained unsatisfactory, especially when it came to “législation” and “lois”.

Of course, when we read printed sources from this period with respect to China’s representation, we must recall the rivalry that existed between Great Britain and revolutionary, Napoleonic France, with the latter soon to resume its plans for Eastern expansion or at least to relaunch its political-diplomatic initiative to counter-balance and possibly quash the influence England was trying to consolidate in its relations with the Middle Kingdom. As we will see later in the case of Chrétien-Louis-Joseph de Guignes, prejudice and national interests were also evident in the desire to allege the inadequacy of attitudes towards China on the part of European rivals, their inability to understand

226 Andreas Everardus van Braam Houckgeest (1739-1801) was the director of the Dutch colony in Canton and second in command in the Dutch East India Company’s embassy to Beijing in 1794-1795 guided by Isaac Titsingh (1745-1812) and authored *Voyage de l’Ambassade de la Compagnie Des Indes Orientales Hollandaises, vers l’Empereur de la Chine dans les années 1794 & 1795 [...] Publié en Français par M. L. E. Moreau de Saint-Méry* (2 vols., Philadelphie, 1797). An English translation was published in London and a German one in Leipzig both in 1798. On Titsingh, particularly his experience as an envoy to Japan, see Frank Lequin, “Isaac Titsingh’s Private Correspondence (1783-1812) as the reflection of an enlightened ‘voyageur philosophique’”, *International Research Symposium on Foreign Historical Documents Relating to Japan: Titsingh and Sebold*, 東京大学史料編纂所研究紀要 第17号(2007年), 3月, 1-22.

the country and an aggressiveness fuelled by disdain or at least a sense of superiority that thwarted the ability to know, understand and respect.

We can see this clearly, for example, if we take a small step backward in time and consider the writing of a French author from the late eighteenth century, Joseph-François Charpentier de Cossigny (1730-1809), a French colonial agent at Isle de France in the 1750s who travelled extensively throughout the East, from the Dutch East Indies to India and China. He left testimony of his experiences in various pieces of travel writing that touch upon agronomic, colonial and commercial topics. One of these was *Voyage à Canton*, published in 1798. Though it refers to a trip taken over forty years earlier, the text actually operated in the climate of discussion that followed the embassies of Macartney and Titsingh and explicitly referenced these two important experiences. Above all, the work had the declared goal of advocating for the resumption of the French initiative in the East against a Great Britain “aveuglé sur ses propres intérêts, insatiable de conquêtes et de domination, aspirant à l’envahissement du commerce du monde entier”.²²⁷

De Cossigny began by declaring openly that the authors of the report on the English and Dutch diplomatic missions in the early 1790s had not provided satisfying accounts of China’s institutions:

Leurs auteurs n’ont pas pris, sur les arts et sur la législation des Chinois, les renseignements que les mettoient à portée d’obtenir. Ils ne nous ont pas fait connoître l’esprit des lois qui sont le plus opposées à nos usages, à nos mœurs, à nos principes.²²⁸

However, he said it was objectively difficult to properly judge, without preconceptions, a people as radically different from Europeans as the Chinese, who were moreover driven by a spirit of superiority and disdain towards foreigners, whom they considered “barbarians”. De Cossigny openly declared that he had abandoned the challenging task of describing the country’s laws and customs and refrained from taking sides: “je ne prononcerai pas entre ses admirateurs et ses détracteurs”. The furthest he went was to recognize that a state such as this presupposed a “police sage” and that knowledge was too limited and prejudices too strong for anyone to develop an adequate interpretation of a reality that was so different from that of Europe.

227 The full title of De Cossigny’s account is *Voyage à Canton, suivi d’Observations sur le Voyage à la Chine de Macartney, et sur celui de van Braam, et d’une Esquisse des arts des Indiens et des Chinois* (Paris, an vi [1798]). The quotation is from 155.

228 De Cossigny, “Avertissement”, in *Voyage à Canton*, iii-iv.

His extremely discursive, narratively pleasing text is full of personal reminiscences and anecdotes, ultimately conveying an extremely respectful attitude towards China's institutions and civil and religious customs and an appreciation for many aspects of its society, economy and laws. He even countered the opinions of China's detractors, going so far as to suggest that the country possessed a superior capacity for political and social organization, with undertones betraying Physiocratic sympathies:

S'ils n'ont pas fait de progrès dans les sciences, ils sont nos rivaux en fait de morale spéculative et pratique, en agriculture et peut-être en législation; car ils paroissent avoir, depuis quarante ou cinquante siècles, celle qui convient le mieux à une immense population. Si des législateurs modernes étoient chargés de donner des lois uniformes à toute l'Europe, dont la population équivaut tout au plus à la moitié de celle de la Chine, j'ose croire qu'ils seroient fort embarrassés, malgré toutes les ressources de l'instruction, de l'exemple et du génie.²²⁹

Institutions like the tribunals of rites, of history and of mathematics, and especially the censorship tribunals seemed admirable, composed as they were of "lettrés, les plus savans et les plus recommandable par leur probité". In many respects, Chinese justice seemed inspired by feelings of humanity, especially when it came to the death penalty. However, there was no doubt that "par une contradiction trop fréquente dans les institutions humaines, les Chinois ont des supplices cruels", relics of a historic, primordial phase along the path towards civilization of a traditionalist society. But de Cossigny took pains to convey the sense of complexity, insisting on the coexistence within Chinese institutions of both backward aspects and aspects that could be appreciated for their "législation, moralité et humanité". The latter seemed nevertheless to prevail, representing a society and a state he described with explicitly Sinophile undertones: a "haut degré de civilisation"; an agriculture worthy of study and imitation; extensive internal and external trade that was substantially free and not corrupted by fraudulent tendencies, as elsewhere in the world; a government that was anything but despotic, founded not on religion or severe laws but paternal authority; and respect for ancestors and filial piety, which conferred the legislation with a moral foundation:

Ce sentiment inspiré par la nature, par l'éducation, par la législation, confirmé par l'exemple, maintenu par une pratique habituelle, est la base des mœurs des Chinois, et tient un grand peuple dans le respect et la soumission qu'il doit à ceux qui gouvernent.²³⁰

229 De Cossigny, *Voyage à Canton*, 96.

230 De Cossigny, *Voyage à Canton*, 119. On agriculture, see 128; on commerce, 143.

It is not surprising to discover that most of de Cossigny's work was dedicated to a doggedly close examination of George Leonard Staunton's report on the Macartney embassy, not only to highlight Staunton's deficiencies, errors and superficiality by making full use of all his personal, direct experience and knowledge of colonial agriculture and trade, but also to accentuate and sometimes even reinforce Staunton's positive opinions about certain aspects of Chinese society, institutions and economy. He even went so far as to reiterate ideas that had been common among mid-eighteenth-century Sinophiles and to argue for the untouchability of institutional structures that had stood the test of time for centuries.²³¹

Our brief look at de Cossigny's work shows us why we must read representations of China from the late eighteenth to the early nineteenth century while bearing in mind the controversies and rivalries that existed between France and England during this period of open conflict. This also explains the emergence of representations like de Cossigny's in an age when pre-existing mythical views of China were often being negatively overturned. In wanting to be resolutely positive and laudatory, de Cossigny sought to highlight the arrogance, aggression and disparaging attitude of British images, which were traced back to menacing motives of political and commercial interest.

II.3. CHRÉTIEN-LOUIS-JOSEPH DE GUIGNES

To better contextualize George Thomas Staunton's contribution and understand the peculiar nature of the French voices, it is useful to briefly mention another important testimony from the early nineteenth century, that of Chrétien-Louis-Joseph de Guignes, the author of *Voyage à Pékin, Manille et l'Île de France: faits dans l'intervalle des années 1784 à 1801* (1808).²³²

Chrétien-Louis-Joseph de Guignes (1759-1845) is a very interesting figure in the history of relations between the West and China in the modern age.²³³ His father was the illustrious Joseph de Guignes (1721-1800), a member of the Académie des Inscriptions

231 De Cossigny, "Observations sur le Voyage à la Chine de Lord Macartney", in *Voyage à Canton*, 153 ff. See in particular the following passage: "Cette multitude extraordinaire d'hommes, vivant sous les mêmes lois, suppose nécessairement une police perfectionnée, une administration sage et surveillante, un Gouvernement doux et paternel [...] Par quel art merveilleux une législation, une police uniformes entretiennent-elles cette immense multitude dans la soumission? [...] Quelle amélioration le plus profond politique voudrait-il donner à la législation chinoise?", 400, 402, 403.

232 Chrétien-Louis-Joseph de Guignes, *Voyage à Pékin, Manille et l'Île de France: faits dans l'intervalle des années 1784 à 1801* (Paris: Imprimerie Royale, 1808).

233 See Louis-Gabriel Michaud, *Biographie universelle ancienne et moderne [...] Nouvelle édition* (Paris: chez M.me Desplaces, 1857), t. XVIII, 129-130.

and a founder of French Sinology who had inspired the European historiographical discourse with his *Histoire générale des Huns, des Turcs, des Mogols, et des autres Tartares occidentaux* (1756-1758)²³⁴ and his controversial theory on the Egyptian origins of the Chinese.²³⁵ In fact, his father had taught him the rudiments of the Chinese and Arabic languages. During the time he resided in China from 1783 to 1797 as a French *chargé d'affaires* in Canton, de Guignes served as an interpreter for the Dutch embassy of Isaac Titsingh and Everardus Houckgeest van Braam in Beijing in 1794-1795. He thus had the chance to see the interior of the country thanks to two different trips, one on his way to Beijing and the other on his way back to Canton. During his fourteen-years residence in China, de Guignes developed a knowledge of Chinese language, culture and society, which after returning to France in 1801 helped him to compile a *Dictionnaire chinois, français et latin* (1813),²³⁶ as well as an interest that materialized in his collection of Chinese handicrafts and *objets d'art*.²³⁷ Even before that, in 1808, he published *Voyage à Pékin* to which he entrusted not only his travel memoirs but also his ideas about Chinese civilization, presented in a long section – nearly five hundred pages at the end of the second volume and the beginning of the third – entitled “Observations sur les Chinois”.²³⁸

Even a brief consideration of de Guignes’ writing seems justified in this context, for various reasons. For one thing, we are dealing with a work that was extremely well informed and descriptively much richer, given the author’s extended residence in China, than other famous contemporary publications. In fact, *Edinburgh Review* writer James Mill considered it one of the most important works of the “small catalogue of rational books” available on China, together with Barrow’s *Travels*.²³⁹ Secondly, we are talking

234 Joseph de Guignes, *Histoire générale des Huns, des Turcs, des Mogols, et des autres Tartares occidentaux* (Paris: Desaint & Saillant, 1756-1758).

235 On the first point, see Rolando Minuti, *Oriente barbarico e storiografia settecentesca. Rappresentazioni della storia dei Tartari nella cultura francese del XVIII secolo* (Venezia: Marsilio, 1994). A fundamental source on the second point is Salvatore Rotta, “Egiziani e cinesi a confronto. Intorno alle *Recherches philosophiques sur les Egyptiens et les Chinois* di Cornelius de Pauw (1773)”, originally published in *La geografia dei saperi. Scritti in memoria di Dino Pastine*, ed. Domenico Ferraro, Gianna Gigliotti (Firenze: Le Lettere, 2000), 241-267. It is now online at “Scritti scelti di Salvatore Rotta”, *Eliohs: Electronic Library of Historiography*, accessed May 15, 2017, http://www.eliohs.unifi.it/testi/900/rotta/rotta_pauw.html.

236 Chrétien-Louis-Joseph de Guignes, *Dictionnaire chinois, français et latin* (Paris: Imprimerie Royale, 1813).

237 See *Catalogue des objets d'art et des curiosités de la Chine, qui composent le cabinet de feu M. de Guignes [...] dont la vente aura lieu les [...] 12 [...] 13 [...] 14 [...] 15, et [...] 16 janvier 1846 [...] par le ministère de Me Bonnefons de Laviolle* (Paris: n. p., 1845), 88

238 Chrétien-Louis-Joseph de Guignes, *Voyage à Péking, Manille et l'Île de France: faits dans l'intervalle des années 1784 à 1801* (3 vols., Paris: Imprimerie Royale, 1808), II, 147-476, III.

239 [James Mill], review of *Voyage à Péking*, in *Edinburgh Review*, XIV, 28 July 1809, 407-429.

about a similar case to that of de Cossigny examined above, that is, the viewpoint of another subject of France, which in the years around the turn of the century and especially during the Napoleonic period was engaged in regaining positions and influence from its historic rival, Great Britain, in various colonial-imperial scenarios, and pursuing more or less realistic imperial global strategies, including with reference to political-commercial relations with China. For that matter, the fact that de Guignes represented a ‘French’ voice is very clear in the dogged criticism he made in 1804 of Barrow’s travel account.²⁴⁰

The fact that de Guignes was working from a different perspective and developing an alternative view to that of Britain is conveyed by several details, including the subjects he chose to write about, the way he confronted the issues, and the somewhat more detached, less ‘militant’ approach of *Voyage* than contemporary British accounts. This is obvious, for example, in how he sought to distinguish between English and French strategies, clearly influenced by his observation of contemporary Indian events. In other words, he wanted to state his position against England, whose goal of invading and installing itself indefinitely in Chinese territory in his view heralded disastrous changes to the Chinese government, social life and mentality, the failure of which would lead the Chinese state to collapse, as the example of India had demonstrated.²⁴¹ Such concerns seem to lend de Guignes’ text more descriptive balance on Chinese matters and less controversial aggressiveness, especially regarding social and cultural topics. There is also less of an intense critical charge regarding subjects like Chinese justice whose treatment by contemporary observers and commentators, especially British ones, were directly influenced by the practical implications of relations between Westerners and the imperial administration. To this regard, the last reason de Guignes’ text is of interest to us is that it demonstrates the undertones, sources and evaluations with which the subject of justice could be addressed precisely on the eve of the appearance of George Thomas Staunton’s contribution, which was destined to introduce undoubtedly radically new information to Western knowledge of Chinese legal traditions in the light and context of British imperial strategies.

240 Chrétien-Louis-Joseph de Guignes, *Observations sur le voyage de M. Barrow à la Chine en 1794. Imprimé à Londres en 1804. Lues à l’Institut* [Londres, 1804].

241 “Telle est la manière de gouverner à la Chine; elle diffère de celle qu’on emploie en Europe, mais tous les hommes ne peuvent être conduits de même. Les opinions, les institutions impriment aux habitans de chaque pays un caractère différent, et il est impossible de régir des Asiatiques comme des Européens [...] Depuis que la Chine subsiste, combien d’empires culbutés! Que de peuples anéantis et tombés dans l’oubli! Si elle est encore intacte, elle le doit autant à sa manière de voir qu’à sa situation géographique. En permettant aux Européens de s’établir chez elle, son antique gouvernement crouleroit bientôt: le renversement du trône des Mogols et l’asservissement de l’Inde sont des exemples assez frappans”, de Guignes, *Voyage*, II, 450-451.

In his “Observations sur les Chinois”, de Guignes treated the government and the administration separately, in distinct chapters, followed by subjects more directly related to judicial institutions and practices. Despite having more than superficial knowledge of the subject, when it came to the government all he actually did was to repeat the traditional representation of a system based on the emperor’s absolute power, without hereditary nobility, and that despite having a well-organized political-administrative structure based on the sovereign courts still lacked adequate guarantees for the life and liberty of its subjects. He resolutely rejected any idealized portrayal of the imperial government. He interpreted any appearance of magistrates’ conduct being checked or of a division of powers (with decisional powers split among different bodies) as the pure expression of formality, masking the search for omnipotence and complete control on the part of a shrewd, oppressive imperial power.²⁴² According to de Guignes, the nature and morality of the population included negative characteristics like a propensity for lying, a disdain for foreigners, a tendency towards trickery, a love of money pushed to the point of subordinating everything else in the pursuit of material interest, and widespread corruption.

However, the picture becomes more complex when it comes to “justice” and its related topics.²⁴³ de Guignes stressed how “c’est au souverain seul qu’appartient le droit de changer les lois ou d’en créer de nouvelles”. Laws nevertheless existed in codified form: penal legislation, with the law code on crime and punishment; the “Ta-tsing-lu-ly” or Qing code, i.e. the subject at hand, which he cited expressly; and the civil code, with its collection of imperial edicts by Manchu emperors called the “Ta-tsing-hoei-tien”, whose description we have already encountered in the Jesuit *Mémoires*. These were the instruments guiding the conduct of the Mandarins. Describing the course of Chinese justice as free, public, quick and effective led de Guignes to express his admiration: “Il faut avouer qu’une justice aussi prompte conviendrait dans plusieurs endroits, et qu’elle diminuerait de beaucoup le nombre des fripons et des voleurs”.²⁴⁴

The judicial procedure as presented by de Guignes was scrupulous in the collection and evaluation of proof, well-structured according to a system of appeals and careful to prevent the corruption of judges. When it came to punishments, traditional forms of torment going back to the time of Confucius were substituted by others described in the penal code. The most frequent of these was the bamboo beating, which could be exceptionally cruel, but could also be avoided through corruption. Rather than accentuating the cruelty of other corporal or physical punishments like the “cangue”, exile, the forced

242 De Guignes, *Voyage*, II, section “Gouvernement”, 448-449.

243 De Guignes, *Voyage*, III, sections “Justice”, “Prisons”, “Débiteurs”, “Voleurs”, 110-133.

244 De Guignes, *Voyage*, III, 112.

hauling of boats, capital punishment by strangulation or decapitation, interrogations through torture, or the particularly severe punishments reserved for insolvent debtors towards private citizens or the state, de Guignes simply took a meticulously detailed approach, had a certain taste for anecdote supported by personal experience and frankly admitted the values of Chinese legislation, especially that regarding punishments for debtors.²⁴⁵

While de Guignes was among those critical of China, anxious to replace previous ideal, mythical images with a realistic portrayal of the facts, and despite being sceptical of Chinese history's alleged antiquity,²⁴⁶ he did present a very informed image about the Chinese reality, including its political-administrative and judicial aspects, that was free of prejudice. His explicit references to the Qing codes demonstrate that Westerners working in China knew about the existence of such important tools of government and believed it necessary to know them in-depth, just like any other aspect of a country like China that was still considered relatively unknown by so many. As James Mill expressed in his commentary on de Guignes' text, this was especially true for a nation like Great Britain,

the nation which, above all others, maintains the greatest intercourse with China; the nation which, above all, has the greatest interests dependent on that intercourse; the nation which has had so many of her sons living for so many years on Chinese ground.²⁴⁷

This was the cultural and political atmosphere in which George Thomas Staunton made his hugely important contribution, one that brought very significant new elements to a discourse that, against the urgency of international politics, trade and diplomacy, was now entering a new phase in which a knowledge of China's reality seemed increasingly imperative for British imperial strategies. In 1809, future historian of British India and senior official of the East India Company James Mill once again expressed exactly these concerns, calling for the massive task of acquiring and translating Chinese books to facilitate Anglo-Chinese knowledge, understanding and relations. Moreover, continued Mill, evidently alluding precisely to the *Da Qing lü li*, "there is a book of Chi-

245 "Si les coutumes des Chinois ne sont pas toutes bonnes; si leur manière de rendre la justice est un peu trop expéditive, on conviendra pourtant que sur l'article du prêt ils sont plus avancés que nous, puisque chez eux les débiteurs infidèles sont punis; et qu'au contraire chez nous, on en voit souvent qui sont reçus, accueillis, fêtés même, au moins par des personnes capables de les imiter; mais nous n'aurions pas le spectacle de cette impudeur scandaleuse, si en Europe ceux qui s'approprient ainsi l'argent des autres, recevoient une punition telle qu'on la donne à la Chine", de Guignes, *Voyage*, III, 128-129.

246 Indeed, the first volume of the *Voyage* is dedicated to disproving the notion that China was an ancient empire whose unified state structure had existed since the most ancient times.

247 [James Mill], review of *Voyage à Pékin*, 412.

nese laws now in England; a book from which conclusions so decisive could be drawn”. However, he asked himself, “where is the Englishman that can interpret it?” Then he answered his own question: “Sir George Staunton’s son, a boy who made a considerable proficiency both in reading and writing Chinese, only during his passage from England to China”.²⁴⁸ In fact, George Thomas Staunton was now no longer the boy who had followed his father in the embassy of Lord Macartney but a nearly thirty years old official of the East India Company and a resident of Canton since 1799 with a better command of Chinese than any of his compatriots.

II.4. POPULAR IMAGES OF CHINESE PENAL JUSTICE

We can easily identify a distinct reversal at the start of the nineteenth century in how Westerners and especially the British interpreted and portrayed China. This shift was accompanied by the notion of an overall imbalance between the civilized West and a China stagnant in its barbarous condition, of which the cruelty of Chinese laws and justice served as convincing proof for public opinion.

To understand how this change was happening, especially regarding the subject of justice, as well as how a vision of Chinese justice, especially penal justice, was taking shape based on the subjects of cruelty, physical violence and the torments inflicted upon criminals, we must consider some publications that were expressly dedicated to exactly these aspects. Indeed, these publications had the declared objective of conveying a negative idea of Chinese justice to Western public opinion as effectively as possible using several iconographic devices, evidently to convince of the untrustworthy nature of the Chinese and the consequent need for Westerners active in Chinese territory to obtain greater guarantees, including the use of extraterritoriality. As mentioned earlier, the goal of such publications was to create an imperial, orientalist ‘emotional community’ regarding the subject of Chinese judicial violence, thus building both a literary description and a visual perception of cruel Chinese penal practices as the distinct marks of a despotic government and a barbarous, backward society.²⁴⁹

248 [James Mill], review of *Voyage à Pékin*, 412-413.

249 What follows is based on original sources and on Brook, Bourgon, Blue, *Death by a Thousands Cuts*, 170-174, and Li Chen, *Chinese Law*, 164-174. See also Jérôme Bourgon, “Chinese Executions: Visualizing their Differences with European ‘Supplices’”, *European Journal of East-Asian Studies*, 2, no. 1, 151-82; see also “Western Depictions of Crime and Punishment in Late Imperial China”, *The Sheridan Libraries Blog*, accessed May 15, 2017, <http://blogs.library.jhu.edu/wordpress/2011/08/Western-depictions-of-crime-and-punishment-in-late-imperial-china/#sthash.S8pEAdPQ.dpuf>.

I am referring to two main books. The first, *The Costume of China: Illustrated in Forty-Eight Coloured Engravings* (London: W. Miller, 1805) was the work of William Alexander (1767-1816), a painter, illustrator and engraver who took part to the Macartney embassy. The collections of watercolours, sketches, drawings and etchings related to travel experiences, above all in China,²⁵⁰ that Alexander produced represented an enduring source of inspiration for figurative works that he would later redevelop and put on exhibition in London. The second book, more important here for its direct pertinence to the subject at hand, is *The Punishments of China: Illustrated by Twenty-Two Engravings: With Explanations in English and French* (London: W. Miller, 1801) by George Henry Mason (1770-1851), a British official serving in Madras who purchased in Canton numerous Chinese watercolours made purposely for export to the West.²⁵¹

These are two very different kind of works. The first, by Alexander, who authored the illustrations included in the *Authentic Account* of the Macartney embassy by George L. Staunton (1797), later reprinted autonomously as *Views of Headlands, Islands, etc. taken during a voyage to China* (1798) and partially used to illustrate Barrow's *Travels in China* and *Voyage to Cochinchina* (1804 and 1806), only offers limited portrayals of Chinese punishments. The second, based on the reproduction of original Chinese watercolours (part of a series by artisans working for the Cantonese businessman Pu-Qa), extensively illustrate Chinese penal customs. Their different aesthetic registers, with the second accompanied by commentary in English and French, helped consolidate the idea of an extremely harsh penal Chinese justice system based on cruel physical punish-

250 Two albums of eight hundred and seventy drawings made during the embassy's term in China are at the India Office Library now at the British Library. Two more original drawings of China by William Alexander – “The Great Wall of China” (which he never saw personally) and a “View of the Yellow River from the North” – are in the British Library under the shelfmarks WD 961, f.60 and Maps 8.Tab.C.8.5. Alexander's own unpublished diary is under British Library Add MS 35174. On Alexander's pictorial works, see Mildred Archer, “From Cathay to China: the Drawings of William Alexander, 1792-94”, *History Today*, 12, no. 2 (December 1962): 864-871, Frances Wood, “Closely Observed China: From William Alexander's Sketches to His Published Work”, *British Library Journal*, 24, no. 1 (Spring 1998): 98-121; P. Connor and S. Legoux Solman, *William Alexander: An English Artist in Imperial China* (Brighton: Royal Pavilion, Art Gallery and Museums, 1981).

251 In 1800 Mason himself published a second collection of engravings, also entitled *The Costume of China, illustrated by Sixty Engravings, with Explanations in English and French* (London: W. Miller), not to be confused with the already cited collection by Alexander with the same title and containing images and descriptions (from original Chinese products for export) of representative figures of Chinese society, especially common people such as laborers, artisans and fishermen. On *Punishments*, see also Jérôme Bourgon, “Les scènes de supplices dans les aquarelles chinoises d'exportation”, in *Chinese Torture / Supplices Chinois*, 2005, accessed May 15, 2017, <http://turandot.chineselegalculture.org/Essay.php?ID=33>. On Chinese illustrations for export more in general, see Clunas Craig, *Chinese Export Watercolours* (London: V&A Publications, 1984).

ment, torture, suffering and above all the studied search for imaginative ways to inflict particularly painful torments upon criminals, a sign of the lack of regard for human life.

Alexander's style is realistic, aimed at capturing the immediacy of everyday life. As Mildred Archer has written, "Alexander belonged to that generation of eighteenth-century draughtsmen who drew with robust realism. Although he possessed a less exaggerated style than Thomas Rowlandson, his people have the same earthy quality. They are depicted with no sentimental or romantic distortion".²⁵² His scenes are detailed depictions of the landscape and the habits, dress and tools of the common people, represented with very precise lines, delicacy and pastel colours, and tinged with a taste for the picturesque.

As Archer explains, "[t]he drawings show us [...] industrious peasants tending their fields and irrigating them with ingenious devices. Villagers return from market, their purchases swinging in baskets on yokes. Itinerant blacksmiths work their small bellows; street-sellers cry their wares; actors gesticulate in a theatre. Other personages include jugglers, soldiers off-duty lounging in the streets, and trackers straining at the tow-ropes of heavy junks".²⁵³ Only three illustrations out of forty-eight contain scenes devoted to judicial punishments: the pillory (*Tcha*, or "cangue"), bamboo beatings (*Pant-tsee*, or "bastinado") and the confession of a guilty party before a judge and his secretary. His scenes are in fact quite elaborate, very plastic, placed within detailed contexts, and without dramatic overtones or the open intention of arousing horror or rejection. The artist's comments, on the other hand, are explicit. The "cangues" were "ignominious machines". Beatings were often inflicted arbitrarily, summarily, with criminals being struck from the waist down "in the most abject manner". Sometimes, when the victim was struck several times, the beatings could be fatal. Other times, when struck less, they could seem like a father's "gentle chastisement", or they could be softened by bribing the flogger or avoided altogether by paying a substitute. The way criminals were brought before a judge was also "characteristic of the insolence of office and harshness which (even female) delinquents [were] subject to in that country".

Mason's iconographic collections – *The Punishments of China* (1801) as well as *The Costume of China* that he published himself in 1800 – were very different from those of Alexander in terms of subject, quantity and quality. In fact, they comprise reproductions of watercolours originally produced by artisans to satisfy the curiosity of Western buyers in China. The images in both of Mason's collections lack background scenery and thus focus the observer's attention on the protagonists who are portrayed with strong colours, didactic graphics and prominent, expressive, almost caricatural lines.

252 Archer, "From Cathay to China", 870.

253 Archer, "From Cathay to China", 870.

Mason's images do not generally convey negative feelings about China; on the contrary, his *Costume of China* even displays an appreciation for Chinese penal justice, among other things:

The Chinese, collectively, appear to be ingenious in their peaceful arts; polished and courteous in their manners; moral and sagacious in their civil institutes; just and politic in their penal laws; and in want of nothing but the Blessing of Revealed Religion to render them one of the happiest people in the universe.²⁵⁴

Similarly, even if it undoubtedly conveyed the horrific nature of the culprits' penalties, the *Punishments of China* collection should not be viewed solely as an instrument to show the torments inflicted by Chinese penal laws in all their cruelty and to arouse the horror and disapproval of the Western public. In fact, Mason began by immediately recognizing the "wisdom of the Chinese Legislature" and the wisdom and moderation of the "Chinese code of penal laws". He also explained that he had excluded images portraying the cruellest torments like the *ling-chi*, or the terrible death by a thousand cuts, inflicted for more serious crimes, because of the negative effect they could have on European opinion regarding Chinese institutions.²⁵⁵ At the same time, his declared intention was to assert the superiority of Western penal laws by exalting Europeans' "sensation of security" regarding their physical safety and the protection they were guaranteed by the Western judicial system – evidently overlooking the frequent recourse to whipping in England, for instance in the Royal Navy, the anti-corporal punishments campaigns by Cesare Beccaria and Jeremy Bentham and the contemporary proliferation in Europe of books on corporal punishments and flogging and caning in particular as current practices to be criticised as what would be later defined the "flogging craze".²⁵⁶ Mason also sought to highlight the "instantaneous and least sanguinary", more humane nature of capital punishment in England compared to the useless, prolonged suffering imposed by Chinese justice at every turn. Mason's collection therefore helped produce a direct mental link between the idea of Chinese judicial practices, the lack of respect for human suffering, and the imaginative invention of particular types of corporal punishments according to the category of the crime and the social and occupational profile of

254 George Henry Mason, *The Costume of China: From Pictures in the Possession of G. H. Mason* (London: W. Miller, 1800), "Preface", n. n. [but no. 3].

255 "drawings, or even verbal descriptions, of [the most severe punishments] would be committing an indecorous violence on the feelings, and inducing us to arraign the temperance and wisdom, so universally acknowledged in the government of China", George Henry Mason, *The Punishments of China: Illustrated by Twenty-Two Engravings: with Explanations in English and French* (London: Printed for W. Miller by W. Bulmer, 1801), "Preface".

256 Geltner, *Flogging Others*, 70-72.



FIGURE 3 – William Alexander, *The Costume of China* (1805), “Examination of a culprit before a Mandarin”



FIGURE 4 – William Alexander, *The Costume of China* (1805), “Punishment of the Cangue. By which name it is commonly known to Europeans, but by the Chinese called the Tcha”



Figure 5 – George Henry Mason, *The Punishments of China* (1801), “Plate IX. The Rack. This horrible engine of barbarity and error is not peculiar to Roman Catholic countries, it is used even in China, for the purpose of extorting confession”

the criminal. Even without coarse imagery, Mason’s plates thus present Chinese justice as arbitrary, ingeniously cruel and lacking in humanity, with no respect for the physical or moral person of subjects and incomprehensively demeaning to their dignity through the imposition of useless, painful and humiliating punishments.

To be clear, Alexander’s and Mason’s descriptions and illustrations of Chinese corporal punishments were not the first contained in publications destined for Western readers. Successful textual and iconographic examples had been presented earlier in the 1665 travel account by the Dominican friar Domingo Navarrete or in the *Atlas Chinois* by Arnoldus Montanus (1671) based on written testimony left by the Dutch embassy of van Hoorn in Beijing.²⁵⁷ Moreover, the stereotype of a country governed despotically

²⁵⁷ *The Travels and Controversies of Friar Domingo Navarrete, 1618-1686*, vol. II, edited by J. S. Cummins (Cambridge: Cambridge University Press for the Hakluyt Society, 1960), 193-194; [Arnoldus Montanus] *Atlas Chinois* being a second part of a relation of remarkable passages in two embassies from the East-India Company of the United Provinces, to the vice-roy Singlamong and General Taising Lipovi, and to Konchi, Emperor of China and East-Tartary (London: printed by T. Johnson, 1671), 435-436.



FIGURE 6 – George Henry Mason, *The Punishments of China* (1801), “Plate XVII. Hamstringing a Malefactor. This punishment is reported to have been inflicted upon malefactors, who have endeavoured to make their escape. A vessel containing Chunam, a species of mortar, is at hand, to be applied, by way of styptic, to the wounds. It is said, that this punishment has been lately abolished, the legislature considering, that the natural inclination for liberty, merited not a chastisement of such severity”

and with the systematic use of cruel “celestial castigation” would become common in nineteenth-century European representations of China.²⁵⁸

In addition to creating a “visual archetype of Chinese torments” and an iconographic tradition that would later be perpetuated and enriched in the era of photography, illustration collections like those just described certainly helped generate a complete ‘othering’ of Chinese penal justice as compared to the European one. While the latter was in some respects no less cruel, in the late eighteenth and early nineteenth century it was also the subject of criticism and efforts to reform its least humane aspects in places like Habsburg Austria and Lombardy during the time of Cesare Beccaria’s *Dei delitti e delle*

258 See, for example, William M. Cooper, *Flagellation and the Flagellants: A History of the Rod in All Countries from the Earliest Period to the Present Time. With Numerous Illustrations* (London: John Camden Hotten, 1869): “The researches of travellers have, however, settled that point, and it has been ascertained beyond a doubt that the Chinese are governed entirely by the whip and the bamboo. The bamboo is the great moral panacea of China; and offences of every description are punished in all ranks of society by means of flagellation. Corporal punishment is indeed the most remarkable feature of the Chinese penal code”, 213.

pene (1764), as well as Prussia, Tuscany and the England of Bentham and Romilly. This reinforced the impression of a profound difference between Chinese civilization and an enlightened Western world considered the custodian of feelings of humanity and respect for human dignity and rights.

Throughout the first decade of the nineteenth century, in sum, significant new contributions were made to the discourse about the legal foundations of Chinese institutions, Chinese justice and penal law and how much these aspects could reveal about the degree of civilization in China. European and especially British public opinion referred to authoritative testimony and effective representations, including iconographic ones, that had considerably enriched the literature. The interest in China and peculiar aspects of its government and administration grew out of more than just curiosity about an exotic, still mysterious country. The unstoppable growth of commercial relations between the Middle Kingdom and European trading companies like the East India Company, with the consequent rise in occasions of encounter – and conflict – between Westerners and the Qing administration in the area of Canton, catalysed attention and made it impossible to forgo information that was becoming increasingly vast and detailed. European efforts to make breaches of various kinds in the so-called ‘Canton system’ were intensifying, not only with opium smuggling, which increased disproportionately in the early nineteenth century after the vertiginous growth of English tea imports, but also with the launch of a renewed Protestant missionary impulse. In response to the needs explicitly advanced by James Mill in the aforementioned review of de Guignes junior, George Thomas Staunton’s fundamental contribution intervened into precisely this context of increasingly intense relations, practical necessities imposed by commercial practice and the search for new tools of knowledge to help effectively manage relations with the Qing imperial government.

III. GEORGE THOMAS STAUNTON AND THE QING CODE

George Thomas Staunton (1781-1859) was indisputably a leading figure in the history of English Sinology and Anglo-Chinese relations during the modern era. He is considered the first true English Sinologist, along with English Presbyterian missionary Robert Morrison (1782-1834) of the London Missionary Society, who was close friends with him in Canton.²⁵⁹

²⁵⁹ On Staunton the younger’s biography, see in the first place his memoirs: George Thomas Staunton, *Memoirs of the Chief Incidents of the Public Life of Sir George Thomas Staunton, Bart., Hon. D.C.L. of Oxford: One of the King’s Commissioners to the Court of Peking, and Afterwards for Some Time Member of Parliament for South Hampshire* (Cambridge: Cambridge University Press, 1856). Then, of course, there

In 1792 Staunton travelled on the continent with his father, George Leonard, as a eleven-years old boy. First they went to France, where they attended a session of the national assembly (though George Thomas's memoirs are silent on this point), and then to the Collegio Matteo Ripa in Naples to recruit two Chinese interpreters to serve as Chinese language teachers on the return trip to London and then during the mission to China with the Macartney embassy. While he participated in the embassy as a page, his occasional service as an interpreter aroused the admiration of Emperor Qianlong. In 1798, after returning to England and completing a brief stint at Trinity College, Cambridge, Staunton became a writer for the East India Company and the following year was appointed to the factory in Canton. Subsequently, he took on the roles of "supercargo" (superintendent of commercial operations) in 1804 and chief interpreter in 1808, and became 'chief of factory' in 1816, before leaving China in mid-1817. As a Chinese interpreter he had the occasion to follow the trial of the fifty-two English sailors from the ship *Neptune* involved in the 1807 homicide of a Chinese subject. While not his only such experience (he had already served as an interpreter in a complicated case involving the ship *Providence* in 1800),²⁶⁰ this trial provided the decisive push for him to translate the (so-called) Chinese penal code. Staunton was in fact the first English resident of the English Canton factory to obtain the proficiency in the Chinese language needed to work as a translator. He even translated into Chinese a short treatise on the smallpox vaccine by Alexander Pearson, a doctor with the East India Company and

is Richard Davenport-Hines's entry, "Staunton, Sir George Thomas, second baronet (1781-1859)" in the *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), accessed December 31, 2013, <http://www.oxforddnb.com/view/article/26325>, as well as the entry in Samuel Couling, *Encyclopaedia Sinica* (London: Oxford University Press, 1917), 526. Staunton's manuscripts and letters, which have yet to be fully exploited, are kept in the British Library, the UCL Library, the NRA and the libraries of Duke University and the University of Southampton. Some important pages are dedicated to Staunton in the aforementioned volume by Li Chen, *Chinese Law*, in *The Great Qing Code*, translated by William C. Jones, with the assistance of Tianquan Cheng and Yongling Jiang (Oxford: Clarendon Press, 1994). See also William C. Jones, "Studying the Ch'ing Code. The Ta Ch'ing Lü Li", in *The American Journal of Comparative Law*, 22 (1974), 330-64, accessed May 15, 2017, doi: 10.2307/839280; and J. L. Cranmer-Byng, "The First English Sinologists: Sir George Staunton and the Reverend Robert Morrison", in *Symposium on Historical Archaeological and Linguistic Studies on Southern China, South-East Asia and the Hong Kong Region Papers* (Hong Kong: Hong Kong University Press, 1967), 247-57. For a focus on translation-related aspects, see James St. André, "The Development of British Sinology and Changes in Translation Practice", *Translation and Interpreting Studies*, 2, no. 2 (2007), 3-42; St. André, "Travelling Toward True Translation: The First Generation of Sino-English Translators", *The Translator*, 12, no. 2 (2006), 189-210; and St. André, "'But do they have a notion of Justice?': Staunton's 1810 Translation of the Great Qing Code", *The Translator*, 10, no. 1 (2004), 41-31.

260 See Li Chen, *Chinese Law*, 79-81.

a pioneer in using the Jennerian method in Macao and Canton.²⁶¹ In addition to his Chinese to English translation of the Qing code in 1810²⁶² he also translated in 1821 the official account the 1712-1715 Chinese embassy to the Tourgouth Tartars (Central Asia, region north of the Caspian Sea between the rivers Volga on the West and Ural on the East).²⁶³ Among his various publications, including collections of miscellaneous essays on China and writings on Anglo-Chinese trade,²⁶⁴ we should recall his 1853 English translation of one of the most important sixteenth-century Jesuit texts on China, the *Historia de las cosas mas notables, ritos y costumbres del gran reyno de la China* (1585) by the Padre Juan González de Mendoza.²⁶⁵ The 1824 publication of Staunton's account of his participation as an interpreter for the Amherst embassy in 1816-1817 is also significant.²⁶⁶

After inheriting the baronetcy upon his father's death in 1801 Staunton remained actively engaged in both publishing and public life. He was a liberal Tory parliamentarian who supported Canning and Palmerston, took sides in favour of Catholic emancipation, was engaged in colonial issues and spoke out against the opium trade even though he also supported the Palmerston government in the First Opium War. After

261 Louise Fu, "The Protestant Medical Missions to China: The Introduction of Western Medicine with Vaccination", in *Journal of Medical Biography*, 21, no. 2 (May 2013): 112-117, accessed May 15, 2017, doi: 10.1258/jmb.2011.011075.

262 George Thomas Staunton, *Ta Tsing Leu Lee; Being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China* (London: Cadell, 1810). The English version was the basis for subsequent European editions, including in French (*Ta-Tsing-Leu-Lee ou les lois fondamentales du code pénal de la Chine: avec le choix des statuts supplémentaires* (2 vols., Paris: Lenormant, 1812), translated by Félix Renouard de Sainte-Croix); in Italian (*Ta-Tsing-Leu-Lee o Sia Leggi Fondamentali del Codice Penale della China*, 3 vols., Milano: Silvestri, 1812, translation by Giovanni Rasori); and in Spanish (*Ta-Tsing-Leu-Lee o Las Leyes Fundamentales del Código Penal de La China, con Escogidos Estatutos Suplementarios*, Habana: Imprenta del Gobierno, 1862; and Madrid: Imprenta de la Revista de Legislación, 1884).

263 *Narrative of the Chinese Embassy to the Khan of the Tourgouth Tartars: In the Years 1712, 13, 14 & 15 [...] by the Chinese Ambassador [...] translated from the Chinese [...] by Sir George Thomas Staunton* (London: John Murray, 1821).

264 Sir George Thomas Staunton, *Miscellaneous Notices Relating to China: and Our Commercial Intercourse with That Country, Including a Few Translations from the Chinese Language* (London: J. Murray, 1822), *Remarks on the British Relations with China, and the Proposed Plans for Improving them* (London: Edmund Lloyd, 1836), *Observations on Our Chinese Commerce; Including Remarks on the Proposed Reduction of the Tea Duties, Our New Settlement at Hong-Kong, and the Opium Trade* (London: John Murray, 1850).

265 Juan Gonzalez de Mendoza, *The History of the great and mighty Kingdom of China and the situation thereof. Compiled by J. Gonzalez de Mendoza, and now reprinted from the early translation of R. Parke. Edited by Sir G. T. Staunton; with an introduction by R. H. Major* (2 vols., London: printed for the Hakluyt Society, 1853-1854).

266 George Thomas Staunton, *Notes of Proceedings and Occurrences during the British Embassy to Peking in 1816* (Habant Press, H. Skelton [for private circulation only], 1824).

FIGURE 7
John Hoppner
(1758-1810),
*Lady Staunton
with Her Son George
Thomas Staunton
and a Chinese Servant*,
School of Oriental
and African Studies,
London



FIGURE 8
Martin Archer Shee
(1769-1850), *Portrait
of Sir George Staunton,
2nd Baronet, British
Politician, Writer and
Sinologist (1781-1859)*,
circa 1820, British
Embassy, Beijing



being elected a Royal Society fellow in 1803 and a member of the Royal Academy and other important academic associations like the Société Asiatique in Paris, in 1823 he helped found the Royal Asiatic Society to which he donated his impressive collection of Chinese books. He also travelled in Europe between 1818 and 1850. At his Leigh Park property in Hampshire he assembled his collections of Chinese art and objects and erected Chinese-style pavilions, gardens and bridges.

Staunton was therefore a man of action who worked in the field, a man of learning and a public figure in England after his return from China. It was in the first two capacities that he undertook his translation of the code, which was conceived as an instrument of practical use to support English initiatives in Canton and later Hong Kong. Given the complexity of this figure, it is best to reserve a complete reconstruction of Staunton's career and publishing activities for another occasion. For the present context let us limit ourselves to analysing the meaning of the English edition of the *Ta Tsing Leu Lee* (in the contemporary transliteration) with respect to the decades-old European discourse on Chinese law and justice. With the support of specialists, we will begin by clarifying the text in question and the characteristics of its translation.

In the first place, we must stress the fact that this was the first Chinese legal text known to Westerners and was in fact mentioned and quoted in the aforementioned Jesuit *Mémoires*, which also contains syntheses of other Chinese legal texts.²⁶⁷ Even more importantly, it was the first such text to be translated into a Western language, albeit not in full. It is hard to overestimate the significance of this text, which was still in force under the reigns of Qianlong (1735-1790) and his successor Jiaqing (1796-1820).²⁶⁸ Its basic structure was modelled on the Ming codes of 1397 and 1585, with their 460 articles and statutes distinguished on the basis of the six central councils (sorts of ministries) into which the central imperial government was divided. The *Da Qing lü li* – not a code in the Western sense, but literally the “statutes and sub-statutes of the great Qing” – were promulgated under the Qing in six successive versions between 1646 and 1795, including the statutes and comments added over time. It thus represented the most important result of the legislative systematization efforts implemented by the Manchu dynasty.²⁶⁹ Staunton used the 1799 edition printed in Beijing by Emperor Jiaqing of the text promulgated by

267 See note 146.

268 It is still considered “an enormously important legal document” according to its modern-day translator, William C. Jones. A complete online digital edition of the 1740 Chinese text is now available; it is based on the modern edition edited by Zheng Qin and Tian Tao, published by Zhonghua shuju (Beijing, 1998) and coordinated by Sun Jiahong and Luca Gabbiani as part of the project “Legalizing space in China”, which is accompanied by introductory English texts: accessed May 15, 2017, http://lsc.chineselegalculture.org/eC/DQLL_1740/.

269 Head and Wang, *Law Codes in Dynastic China*, 200.

Emperor Qianlong in 1795. As has been observed elsewhere, until its repeal with the fall of the Qing dynasty in 1911, this collection, its founding components dating back to at least the Tang era (eighth century), and the corresponding judicial apparatus “probably constituted the oldest continuously operating legal system in the world”.²⁷⁰

However, the translation of the Qing code was in no way an isolated case. It belonged to and originated from an effort British imperial-colonial governmentality to become familiar with the legal traditions of areas of the globe affected by British expansion in the second half of the eighteenth and the beginning of the nineteenth century, especially in the Indo-Islamic world.²⁷¹ The East India Company’s assumption of the responsibility to rule Mughal-run north-Western India after 1757, for example, had immediately given rise to the need to learn the language, culture and traditions – especially administrative and judicial – of the Hindu and Muslim populations in the areas taken under direct British control. In fact, under the aegis of governor general of Bengal Warren Hastings, a complex project to translate Hindu and Muslim legal texts had been launched with particular dedication in the mid-1770s after the foundation of the Asiatick Society of Bengal by the great specialist in Arabic, Iranian and Sanskrit studies William Jones. This led to the translations of the *Code of Gentoo Laws* (1776); the *Institutes of Hindu Law: Or, The Ordinances of Menu, According to the Gloss of Cullúca* (1796); the *Ain-i-Akbari* (1783-1786); the *Institutes of Timur* (1787); the *Hedaya or Guide: a Commentary on Musulman Laws* (Calcutta, 1791); the *Mohamedan Law of Succession to the Property of Intestated in Arabic* (London, 1782); *Al Sirajiyyah: or the Mohamedan Law of Inheritance: with a Commentary* (Calcutta, 1792); and the *Digest of Hindu Law, on contracts and successions* edited by Henry T. Colebrooke (1798). This group of translations, carried out by Nathaniel B. Halhed, Charles Wilkins, Joseph White, William Jones and others, had coincided with what has been called “the making of modern Indology”, thus beginning a long phase of interest in Indian cultures that continued well into the following century.²⁷² At the same time, however, they had also responded to the functional and practical needs of the new Western governors, thus supplying the English with the technical tools to understand and administer the social and economic realities of Hindu and Mughal India that had passed under their jurisdic-

270 Jones, “Studying the Ch’ing Code. The *Ta Ch’ing Lü Li*”, 330.

271 John Barrow was the first to recommend the Qing code translation be contextualized. In his important review of the *Ta Tsing Leu Lee* for *The Quarterly Review* (III, May 1810, 273-319) he hinted at the intense programme of translations of Persian and Sanskrit texts begun in India in the 1770s after a similar season of contacts, discoveries and the emergence of imperial-commercial needs. On the same context, see Ulrike Hillemann’s *Asian Empire and British Knowledge*, especially the part on Staunton, 45 ff.

272 Rosane Rocher and Ludo Rocher, *The Making of Western Indology: Henry Thomas Colebrooke and the East India Company* (London: Routledge, 2012).

tion, with particular reference to crucially important topics like landed property rights and the related taxation, the administration of justice, and public order.²⁷³

While we certainly cannot compare the position of the English in Canton in the early nineteenth century to that they had assumed in India some decades prior because of their substantial subordination to the government in Beijing and the imperial administration, Staunton's work nevertheless operated in this context of erudite governmentality and tried to fulfil its operative and practical goals. A connection to the Indian earlier experience is not just our interpretive suggestion. Staunton actually knew and had relationships with key figures of Indological disciplines, which grew as an effect of British expansion in India between the late eighteenth century and the early decades of the nineteenth century. He was well acquainted with Jones and his work, referring to him explicitly in his preface to the Qing code. He also took part in the foundation of the Royal Asiatic Society in 1823 with Henry Thomas Colebrooke. Most importantly, James Mackintosh (1765-1832), a notably important figure in Anglo-Indian administration and English public life as a member of Parliament and a champion of legal reform, was the one who in 1807 directly encouraged Staunton to undertake the translation of the Qing code.²⁷⁴

As mentioned above, the translation, which represented the "first major contribution in a Western language to the study of Chinese law",²⁷⁵ was achieved not only because of cultural requirements but also as the product of Staunton's experience as a legal interpreter. In particular, the two judicial cases from 1800 and 1807 involving sailors of British ships in Canton persuaded Staunton of the difficulties that could arise from a lack of familiarity with the spirit of the laws and the operation of Chinese justice.²⁷⁶ With these cases the fundamental importance of what has been termed "new linguistic power"²⁷⁷ started being understood. This power consisted of a complete command of

273 Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), and Christopher A. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1996).

274 This important detail, pointed out by Li Chen (*Chinese Law*, 109), is disclosed in one of Staunton's letters preserved at the William R. Perkins Library, Duke University, Durham, N.C.

275 Brook, Bourgon, Blue, *Death by a Thousand Cuts*, 174.

276 Staunton himself explained that "[t]he Translator may be allowed to remark, that the choice of his subject was originally influenced by circumstances, in some degree accidental. It first occupied his attention in consequence of his having been personally a witness to many of the unnecessary provocations, groundless apprehensions, and embarrassing discussions, of which, since the first commencement of our present important commercial and national intercourse with the people of China, false or imperfect notions of the spirit of their laws have been, but too often, the occasion", Staunton, "Translator's Preface", in *Ta Tsing Leu Lee*, xxxiii.

277 Li Chen, *Chinese Law*, 82.

the language on the part of a Western expert (rather than relying on traditional native interpreters lacking specific knowledge and unable to use more than an unrefined pidgin) in order to act and negotiate successfully before an imperial tribunal, and the ability to obtain copies of legal texts amid the persistent hostility of Qing authorities to help Westerners acquire linguistic skills and access to language teachers.²⁷⁸ From this point of view, we may consider Staunton's translation as one of the first initiatives to start breaking down the linguistic walls protecting the Chinese empire from Western intrusion:²⁷⁹ an enterprise that continued especially after the Amherst embassy, thanks to the work of other English and American Sinologists like missionaries Robert Morrison, William Milne, Karl Gützlaff and Samuel Wells Williams.

Specialists have highlighted the extreme complexity and lack of neutrality of Staunton's translation, which has been pointed to as a typical case of "recodification" rather than textual "equivalence".²⁸⁰ Starting from the translator's choice to call it a 'code', the result was a text that used a linguistic operation to propose an assimilation to completely different European models of the Euro-Roman tradition, up to the recent Napoleonic civil code.²⁸¹ The English text also omitted part of the subsidiary statutes and, most importantly, the kind of comments that were fundamental to a jurisprudence based essentially on the case record. The text produced by Staunton was organized into front and back matter, all of which is extremely significant: title, subtitle, supplementary information in the frontispiece, preface, index, annotations, appendices with notes and translations of supplementary texts. The final product was quite different from the Chinese original in many respects and is interesting to us primarily as a complex 'narrative' of Chinese legal culture intended for Western use.

Staunton was fully aware of the complex linguistic and conceptual problems with translating the text from Chinese. We can appreciate the significance of his interventions from the frontispiece where expressions like "fundamental laws" and "penal code" appear alongside the title. Staunton chose not to translate the original Chinese title, which, as mentioned earlier, means simply the "statutes and sub-statutes of the Qing dynasty". In fact, scholars of Chinese law and legislation have long debated over the 'penal'

278 Hillemann, *Asian Empire and British Knowledge*, 56 ff.

279 This metaphor is by Li Chen, *Chinese Law*, 83.

280 What follows in this regard is based on the aforementioned study by Li Chen and the contributions by Jones, Cranmer-Byng and St. André cited in par. III, 101, note 259. Terms like "recodification" and "equivalence" are used by William Frawley in "Prolegomenon to a Theory of Translation", in *Translation: Literary, Linguistic, and Philosophical Perspectives*, ed. William Frawley (Newark, DE: University of Delaware Press, 1984), 159-175; re-published in Lawrence Venuti, ed., *The Translation Studies Reader* (London: Routledge, 2000), 251-263.

281 See Marina Timoteo "Chinese Law in the Mirror of Western Laws" in this volume.

content of the code's legal provisions. They have also stressed how traditional Chinese jurisprudence lacked clear distinctions between penal and civil law, and between substantive and procedural law, which were only introduced by Chinese legal reformers at the beginning of the twentieth century.²⁸² As demonstrated by such experts, the Qing code thus contains regulations on both civil law (e.g. on taxation, public administration and public works) and penal law, understood as the specification of the various punishments provided for any violation of imperial law.

Staunton was perfectly familiar with the peculiarities of Chinese law and considered translating the *Da Qing li li* not only of technical-legal interest but also an entry key into China's culture, mentality, customs and institutional system.²⁸³ His adoption of expressions like "fundamental laws", "penal code" and "constitution" and a conceptual structure expressed through a subject index based on European definitions was prompted by the basic goal of making the text understandable to the European legal culture. It was thus not only a "solid and useful"²⁸⁴ translation, but a veritable transcultural adaptation, based on Staunton's explicit awareness of the text's "unsuitableness for translation into English".²⁸⁵ As mentioned earlier, we can gather this from how he tried to explain his methodological choices. He openly acknowledged having been inspired more to find a middle road between precision and intelligibility – between textual accuracy, at the price of being obscure and dull, and an excessive freedom that sacrifices the original – than to pursue "absolute fidelity to the original text".²⁸⁶ Nevertheless, he said the main reason he had decided to change syntactical constructions and the selection, sequence and integration of words and expressions had been to restore the nature and principles of the laws rather than the style, linguistic form or literal meaning of the words, since the work was meant to illustrate the former, not the latter.²⁸⁷

In addition to imperial-colonial governmentality there existed yet another frame of reference for the translation of the Chinese code in the essentially global context of early nineteenth-century Anglo-Chinese relations during the period between the failed Macartney and Amherst embassies, both of which Staunton participated in, albeit in very different roles. I am referring to the context that I have reconstructed over the long term in the present study: the interpretations and representations of Chinese justice that were made

282 Li Chen, *Chinese Law*, 94.

283 Staunton, "Translator's Preface", i and xvi: "the *Ta Tsing Leu Lee* [...] treats indirectly and incidentally of all the branches of the Chinese constitution".

284 Cranmer-Byng, "The First English Sinologists", 251.

285 Staunton, "Translator's Preface", i.

286 St. André, "'But do they have a notion of justice?'" , 3.

287 Staunton, "Translator's Preface", xxxi.

for the benefit of Western public opinion. Staunton's translation unleashed all its interpretive and communicative potential in precisely this context by taking on a precise position regarding both the Jesuit tradition and more recent contributions animating the discourse on Chinese law and justice to which Staunton explicitly referred. One of these was John Barrow's text discussed earlier. Staunton actually dedicated his own work precisely to Barrow, whom he had known since the days of the Macartney embassy, "in testimony of sincere regard and esteem" on the part of an "obliged and attached friend". The second contribution was that of George Henry Mason, who had imposed the subjects of cruelty and Chinese "torments" or "torture" upon the European imagination by leveraging the effectiveness and immediacy of coloured images with his 1801 *The Punishments of China*. Mason had also helped reintroduce and strengthen the image of a country where human life was of little account, corporal punishment was practiced widely and unfailingly with nonchalance and refined cruelty, torture was inflicted systematically, and the standards of justice – with its lack of respect for the individual reflecting the government's despotic nature – were unfit for a civilized country. What, then, are the salient points of Staunton's interpretation in his preface to the *Da Qing lü li*? In my opinion, there are three.

The first consists of the desire to present, through a credited textual source, a complete, reliable image of Chinese institutions and their operation. The confirmation by Qing authorities of the code's importance as an authentic mirror of the complex Chinese situation has been referred to as a "textualization", a "textual essentialization" or even an "auto-essentialization" of China.²⁸⁸ From this point of view, Staunton intended to offer an especially important text in order to have better documented, more reliable knowledge about China. Not only did he do this to fill the widespread gaps in knowledge lamented by commentators from the late eighteenth century onwards,²⁸⁹ but also to bring back to realistic proportions the negatively and positively distorted images produced by both the Jesuit testimonies, which had provided relatively little information on political, civil and judicial institutions, and those of observers lacking the necessary expertise.²⁹⁰

288 Li Chen, *Chinese Law*, 107.

289 See, for instance, Diderot in the *Histoire des Deux Indes* (1780): "Lecteur, on vient de soumettre à vos lumières les arguments des partisans & des détracteurs de la Chine. C'est à vous de prononcer. Et qui sommes-nous, pour aspirer à l'ambition de diriger vos arrêts? S'il nous étoit permis d'avoir une opinion, nous dirions que, quoique les deux systèmes soient appuyés sur des témoignages respectables, ces autorités n'ont pas le grand caractère qu'exigeroit une foi entière. Peut-être, pour se décider, faudroit-il attendre qu'il fût permis à des hommes désintéressés, judicieux, & profondément versés dans l'écriture & dans la langue, de faire un long séjour à la Cour de Peking, de parcourir les provinces, d'habiter les campagnes, & de conférer librement avec les Chinois de toutes les conditions", I, chap. XXI.

290 "Although having, personally, access to all the principal objects of curiosity, and chief sources of information, and possessing sufficiently the requisite talents of description, we too often find that a want of substantial impartiality and discriminating judgment in their writings, has tended to throw a false colouring

The second salient point was tied specifically to knowledge of China's penal justice system. Staunton sought to atone for the unjust, truculent way it had theretofore been portrayed by painting a more sympathetic, realistic picture, one more worthy of an "enlightened age". In so doing he continued the information-gathering work begun by the Macartney embassy, which he praised for having thrown "an entire new light" on the Chinese empire and thus launched a phase comparable even to the discovery of America:

In short, if it has not led to the discovery of a new world, it has, as it were, enabled us to recover a portion of the old, by removing, in a considerable degree, those obstacles by which our contemplation of it has been intercepted.²⁹¹

Staunton's translation also shed light on the conditions of foreigners, especially Westerners, in the face of Chinese law, with all the "embarrassing consequences of the footing upon which foreigners are at present received in China". Thanks to his direct experience, Staunton was fully aware that when disputes arose with the imperial government, foreigners found themselves in a very uncomfortable, imprecise position somewhere between submission and resistance, compliance and overreaction, one that involved serious potential threat to European commercial activities.²⁹²

By offering a non-neutral, "re-codified" translation that he manipulated with devices like selection, positioning, additions, comments, stratified texts and interpolations in which the specialist could understand the intentions of the translator, Staunton sought to convey a positive image of Chinese justice and the code in particular. He used the code's text, especially accessory materials like cases, sentences and commentary, to demonstrate, for example, the judicial system's ability to effectively regulate the daily life of Chinese society, or how it concretely applied to every member of the social hierarchy.²⁹³ Albeit with a clear belief in a civilizational hierarchy between the West and China in favour of the former,²⁹⁴ Staunton's translation was intended as a reply to Barrow, the

on many of the objects which they delineate, and has sometimes produced those inconsistencies by which errors and misrepresentations of this description are often found to contribute to their own detection", Staunton, "Translator's Preface", vi.

291 Staunton, "Translator's Preface", viii.

292 "a line, on one side of which submission is disgraceful, and on the other resistance is justifiable; but this line being uncertain and undefined, it is not surprising that a want of confidence should some times have led to a surrender of just and reasonable privileges; or that at other times, an excess of it should have brought the whole of this valuable trade, and of the property embarked in it, to the brink of destruction", Staunton, *Ta Tsing Leu Lee*, 515.

293 St. André, "But do they have a notion of justice?", 20.

294 Staunton, "Translator's Preface", viii-ix.

“ingenious” Cornelius de Pauw and the author of *Punishments of China*, all of whom he considered responsible of having presented a partial or fallacious picture of Chinese penal judicial practice and Chinese institutions in general. Staunton did more than just offer detailed amendments of such images. This is clear from his well-balanced comments on various points. He stressed, for instance, the limited use of infanticide. On corporal punishments he pointed at them as as less frequent and harsh in actual judicial practice than in theory. Judicial torture he considered as not arbitrary but subject to precise legal limits. The disciplining intrusion in the private lives of subjects by painstakingly described legal regulations, had to be read, according to him, as a consequence of the lesser weight assumed by honour and religion than in Europe. And the frequency of legal violations or breaches in the application of the law on the part of officials and magistrates he believed they were definitely proportionate to those of any other country, even in the West. Staunton was even fair-minded about something as delicate for the European community in Macao and Canton as China’s laws on “offences committed by foreigners”, by underscoring the fact that foreigners subject to the imperial government were nevertheless treated on the basis of established laws and the leniency and flexibility of such laws, including the exemption of Westerners from the ordinary course of Chinese penal law.²⁹⁵ His impartial attitude about Chinese society also led him to admire certain aspects like the “almost total” absence of feudal laws and privileges, the widespread industry of the common people, the “equitable” distribution of landed property, the protection of the family, the appreciation for learning, abilities and personal merit as the basis for bureaucratic careers, and the imperial government’s policy of abstention from exterior conquest and lack of aggressiveness in foreign relations. What he esteemed most of all was China’s system of penal laws, which he called “if not the most just and equitable, at least the most comprehensive, uniform and suited to the genius of the people for whom it is designed, perhaps of any that ever existed”.²⁹⁶

Staunton’s message, which went against the trend during a historical phase characterized by the West’s mounting hostility towards China, can therefore be summarized as an invitation to appreciate the foundations and the true, authentic features of Chinese

295 “the laws of China have never, however, been attempted to be enforced against those foreigners, except with considerable allowances in their favour, although, on the other hand, they are restricted and circumscribed in such a manner that a transgression on their part of any specific article of the laws can scarcely occur, at least, not without, at the same time, implicating and involving in their guilt some of the natives, who thus, in most cases, become the principal victims of offended justice”, Staunton, *Ta Tsing Leu Lee*, 36, footnote.

296 This subject is dealt with in section XXXIV of the *Ta Tsing Leu Lee*. Staunton’s comments are in the long footnote on 36 of the main text.

institutions, for which he expressed frank admiration through a form of “sympathetic identification” and never connoted with terms like ‘despotism’ or ‘tyranny’.²⁹⁷

The third fundamental aspect of Staunton’s contribution can be recognized in his ‘culturalist’ attitude, denoting an Enlightenment inspiration but also clearly revealing quasi proto-Romantic elements of historical sensibility. In fact, his interest in studying China’s laws and justice system went well beyond just learning more about the country or accessing a technical-legal instrument. With explicit references to classical antiquity and to authors like Gibbon, Montesquieu and William Jones, Staunton considered a country’s legal system to be one of the most important indicators of the condition of that society’s civilization.²⁹⁸ Staunton used a long quotation from book I, chapter III of *L’Esprit des Lois* on the necessary correspondence between laws and a people’s nature, way of life, religion, political system, climate and natural environment as a methodological criterion for interpreting the Chinese code, thus reinforcing his opinion that it was erroneous to judge it according to an “imaginary standard of perfection”. From this perspective, looking closely at the code allowed Staunton to extract an overall image of the Chinese “civil polity” – i.e., not only its penal laws, but also its “general system of a government and constitution” – about which he expressed a substantially positive opinion precisely in consideration of its perfect correspondence to the national spirit, calling it

not indeed the best or the purest but certainly the most anciently, and, if we may judge from its duration, the most firmly established, and the most conformable to the genius and character of the people, of any of which mankind has had experience.

On this subject, there emerged the matter of what judgement criteria to adopt in regards to legislative and legal documents such as the one under examination. As intimated earlier, Staunton used openly relativistic terms to repel the idea that the Chinese code could be judged on the basis of culturally extraneous parameters. Neither the result of theoretical elaboration nor conceived and drafted by a philosopher, the code was, rather, the outcome of a long historical evolution that made it impossible to compare to abstract models of perfection:

any code of laws, which is not professed to be, either the result of the meditations of a philosopher, or the untried theory of a legislator, but which, on the contrary,

²⁹⁷ Li Chen, *Chinese Law*, 98.

²⁹⁸ “the laws of a nation form the most instructive portion of its history”, Edward Gibbon, *History of the Decline and Fall of the Roman Empire* (London: Strahan and Cadell, 1776-1788, 2nd edition), IV, chap. XLIV, 334.

actually is in force, forms the basis of the government of a nation, and as such, has been fairly submitted to the important test of experience, are not to be estimated by any imaginary standard of perfection. Such a Code can be justly compared only with those other codes of law, whose practicability and expediency have already been tried by a similar ordeal and in making the estimate, the consideration of those local circumstances and peculiarities, upon a conformity to which, the excellence of the national laws in every country so greatly depend, is certainly least of all to be omitted.²⁹⁹

According to Staunton, the matter was therefore not so much about the code's intrinsic merits in comparative terms, even if he made such considerations himself and formed both positive and negative opinions. He believed there undoubtedly existed defects and "laws altogether indefensible" that did not withstand comparison to such principles of the English rules as the presumption of innocence and the acknowledgement of one's right not to accuse oneself. However, he showed that to more than balance such defects the Chinese code also contained elements that could even be recognized as superior to the laws of the so-called 'enlightened' nations of the European West.³⁰⁰ Still, as Staunton argued, the only truly well-founded assessment was that which considered the specific aspects of each code in relative terms, thus weighing up

those local circumstances and peculiarities, upon a conformity to which, the excellence of the national laws in every country so greatly depend [... because] the best intended legislative provisions would have no beneficial effect, even at first, and none at all in a short course of time, unless they were congenial to the disposition and habits, to the religious prejudices and approved immemorial usages, of the people, for whom they were enacted.

Staunton concluded by exhorting "that the reader should form his judgement of the Chinese Laws by these criteria". Unlike the interpretative procedure of someone like John Barrow, Staunton's approach did not allow for a single standard. For Staunton, one civilizational scale was not enough to establish the relative position of different cultures, countries, customs, institutions and legal codes. This attitude was closely tied to his certainty about the need for better, more profound, more authentic knowledge of Chinese society. He believed that this had been hindered partly by logistical other kinds of limits and prohibitions imposed by Chinese authorities on Western visitors, and that its lack was the primary culprit for the misinformation, misunderstandings and preju-

299 Staunton, "Translator's Preface", xxv.

300 "there are other parts of the code which, in a considerable degree, compensate these and similar defects, are altogether of a different complexion, and are perhaps not unworthy of imitation, even among the fortunate and enlightened nations of the West", Staunton, "Translator's Preface", xxiv.

dice that had marred perceptions between the Chinese and Europeans. For Staunton this was not simply a matter of acquiring better knowledge and reciprocal understanding; he considered it crucial to abandon, or at least carefully circumscribe, the very idea that one culture could be superior to another, despite sometimes betraying a personal conviction about the overall advantage of the Christian West.³⁰¹ He explained that one could do this, for example, by distinguishing high scientific culture, in which Europe boasted undoubted primacy, from the kind of practical, socially widespread knowledge capable of creating the skills and expertise that “fairly entitle the Chinese to be put in competition with some, at least, of the nations of Europe in respect to all the essential characteristics of civilization”.³⁰²

Some recent commentators³⁰³ deem Staunton’s translation practically useless for correctly understanding the Qing code, or what has been called the key text of one of the most important, long-lasting legal systems in the world. Nevertheless, there is no doubt that the 1810 English edition – together with the following translations elsewhere in Europe, the interest it aroused in the European periodical press, the fame it enjoyed among cultivated opinion and even the recent reprints³⁰⁴ – represents a turning point in Western knowledge of Chinese society and thus a decisive step forward in Sinological studies.

However, as we tried to clarify, Sinological expertise is only one of the contexts to which Staunton’s contribution belongs. Its ‘strategic location’ and its ‘strategic formation’ – to use two analytic concepts proposed by Edward Said – suggest placing it in relation to a second context, that is the longstanding European discourses on the forms of Chinese law and justice. A third context was provided by the contemporary demands to put on a more regular basis and control forms of interaction between Westerners and the Chinese in China – including the judicial cases and the related negotiations involving Westerners – during a phase when global trade was growing quickly. Finally, a fourth context is given more generally by the series of available portrayals of the Chinese world presented in print to a Western public increasingly hungry for information on China.

301 “a considerable proportion of the opinions most generally entertained by Chinese and Europeans of each other was to be imputed either to prejudice, or to misinformation, and that, upon the whole, it was not allowable to arrogate, on either side, any violent degree of moral or physical superiority”, Staunton, “Translator’s Preface”, ix-x.

302 Staunton, “Translator’s Preface”, x.

303 According to William C. Jones, the editor of the most recent translation of the code (1994), Staunton’s work is “essentially useless since it was so free as to be inaccurate”, *The Great Qing Code*, “Preface”, v.

304 A reprint was made in Taiwan in 1966.

In subjective terms, it is clear that Staunton consciously positioned himself between the second and the third, which were surely his immediate contexts of reference. In so doing, he was driven by the desire to make available an official, indisputably authoritative text for the understanding of the Chinese justice system, that had not been taken into consideration by the Jesuits in their intensive programme of translations from the second half of the seventeenth century onward. Staunton's translation efforts were guided by the idea of making available a text that the Western reader could grasp from both a linguistic and a legal point of view. And his interpretation was certainly inspired by the desire to rectify tendentious earlier readings of Chinese institutions, both positive ones like those of the Jesuit missionaries and negative ones like those of de Pauw, Barrow and Mason with their decidedly critical views of China and especially its justice system. The Enlightenment legacy, the lessons of Montesquieu, a strong relativistic conscience, and a sense of the geographic-ethnological, socio-cultural and historical differences provided Staunton with the sensibility to evaluate dispassionately the code's nature and meaning. He closed his preface by eloquently reaffirming his intention to offer both a sufficiently complete portrayal of China's penal law system and, above all, a true idea of Chinese customs and mentality. As he wrote, referring to himself in the third person:

His own wishes will be gratified in their full extent, if he can be considered to have succeeded in giving, through the medium of an authentic work, containing incidental notices upon the manners, customs, civil and religious habits, national characteristics, and moral principles of the Chinese, a just idea of the spirit, and a sufficiently extended specimen of the substance, of the coercive and penal laws by which the government of that vast empire has so long been maintained and regulated.³⁰⁵

In objective terms, then, it is also clear that the translation that appeared in 1810 became part of a broad European discourse that kept public attention on the Qing empire at a time when the system of commercial relations based on the so-called Canton system was still relatively fluid.

305 Staunton, "Translator's Preface", xxxv.

IV. ENGLISH REACTIONS TO THE QING CODE

Can we say that the unquestionable publishing and cultural success of Staunton's translation corresponded with a positive reception of his sympathetic interpretation of Chinese institutions and justice? If we look at the rich array of comments, critiques and reactions engendered in England and in Europe, it is clear that Staunton did not actually succeed in convincing anyone, despite the fact that his merits were recognized by all the reviewers, including John Barrow who was a close acquaintance of Staunton's and, as we have seen, the addressee of the dedication of the English edition of the Qing code, about which he wrote in the *Quarterly Review*.³⁰⁶

It is not surprising that the Chinese penal code received considerable attention in the country of Jeremy Bentham and Samuel Romilly, considering the intensity of discussions and initiatives regarding the reform of English penal law at the time. Such efforts were mainly aimed to mitigate the harshest aspects of the law such as the excessive use of capital punishment in the so-called Bloody Code, the frequency of corporal punishments, their inadequacy and ineffectiveness and the arbitrariness of judges. In comparison, the proportional spirit of the punishments in the Chinese code, the detailed definition of their variety and the prudence taken in the practical implementation of the death penalty could seem like positive elements from which to draw inspiration.³⁰⁷

Some general observations emerge from a close, extensive examination of the comments that appeared in the periodicals and two of these contributions, among others that we will consider, are of particular importance. The first was Barrow's aforementioned 1810 article in the *Quarterly Review* covering a rich selection of themes, from language and literature to diplomatic relations. The second was an incisive, outspoken essay by Francis Jeffrey in the influential *Edinburgh Review*, also from 1810. We should also recall a third, long anonymous article that appeared in 1833 in the important English periodical published in Canton, *The Chinese Repository* (1832-1851), and was surely

306 Li Chen, *Chinese Law*, 127-150. Chen devotes considerable attention to the reception of and discussions about Staunton's translation. Chen and I have basically (and independently) looked at the same British periodicals that published reviews of the English version of the *Ta Tsing Leu Lee*, with just a few exceptions. Our conclusions differ somewhat because I place greater emphasis on the negative opinions expressed by the British reviewers and look less at the positive reception of the Chinese code amongst British public opinion. However, I do acknowledge that there is evidence of some attention paid to the code in the debates over the reform of English criminal law, as in the case of the anonymous pamphlet *Hints for a Reform in Criminal Law* (1811) and some of Samuel Romilly's speeches and writings; see Li Chen, *Chinese Law*, 143-150. In my view, if Chinese law played any role "in the formation of European modernity", it was essentially that of providing a negatively, not positively, inspiring example.

307 Li Chen, *Chinese Law*, 143.

the work of an expert like Robert Morrison, Elijah Bridgman or Karl Gützlaff. Let us start from the last one.

The Chinese Repository was founded in 1832, quite a long time after Staunton's translation, but the fact that it immediately felt the need to discuss the Qing code despite twenty years having passed since its publication is proof of the work's vitality and importance. Yet, given the periodical's familiarity with confronting delicate subjects and taking clear positions, in addition to its predictable descriptive precision we might expect to find greater incisiveness in the three articles it dedicated to the Qing code. Instead, surprisingly, what we find are long textual extracts, but an essential abstention from expressing any conclusive judgement. The harshest remark regards the code itself being "very defective",³⁰⁸ which makes one believe that Staunton's approach and opinions were not endorsed in full, in spite of his prestige in Anglophone Sinological milieus for which the *Repository* represented one of the most important, original forums.

Practically all the reviews in the surely incomplete sample we have gathered (fifteen or so from England, France and Italy),³⁰⁹ contain praise and acknowledgment for the indisputable weight of Staunton's contribution to Western knowledge of Chinese justice and legislation. An admission of the translation's exceptional nature for having facilitated an approach to the Chinese situation, long hindered by ignorance or distorted by prejudice and vested interest, is nearly ubiquitous.³¹⁰ While some of the reviews are substantially informative, illustrative and free of judgement, others contain more resolutely evaluative comments that directly challenge the translator's ideas. The latter case usually converges with negative representations of the Chinese government, described with expressions like "jealous and unenlightened despotism" or comments like "a more corrupt and profligate government than that of China does not exist in the universe".³¹¹

308 *The Chinese Repository*, 1833, 111.

309 Reviews and extracts of various lengths were published in *The Edinburgh Review* (XVI, August 1810, 476-499), *The Quarterly Review* (III, May 1810, 273-319), *The British Critic* (XXXVI, September 1810, 209-223); *The Monthly Review* (LXIV, January-April 1811, 114-130), *The Eclectic Review* (VI, July-December 1810, 942-946 and 1025-1041), *The Scots Magazine* (LXXII, 1810, 660-662 and 746-749), *The Anti-Jacobin Review* (XXXIX, May-August 1811, 225-238), *The Monthly Repertory of English Literature* (XIV, 1812, 66-81 and 148-167), *The Asiatic Journal and Monthly Register* (III, Sept.-Dec. 1830, 120-127, 211-217, 293-299; IV, Jan.-Apr. 1831, 53-58, 97-101, 192-197; V, May-Aug. 1831, 80-84, 123-128, 277-281; VI, Sept.-Dec. 1831, 17-20, 139-141, 265-270), *The Chinese Repository* (II, 1833-1834, May 1833, 11-19, June 1833, 61-73, July 1833, 97-111), *Journal général de la littérature de France* (XIV, 1811, 336-341; XII, 1812, 27-29), *Annali di Scienze e Lettere* (VII, 1811, 140-141), *Giornale enciclopedico di Firenze* (IV, 1812, 23-24), *Giornale bibliografico universale* (IX, 1811, 136-143), *Giornale popolare di viaggi* (II, vol. IV, 2° sem. 1872, 227-230).

310 See, for example, *Edinburgh Review*, 1810, 476-477.

311 *The Monthly Review*, 113. The second one is by John Barrow in *The Quarterly Review*, 1810, 314.

The reviewers expressed admiration, albeit ambiguously, for the code's structural complexity, along with reservations about the text's excessive detail and sometimes irrational nature. But the prevailing representation to emerge from the corpus of reviews is of Montesquieuan tenor, sometime with direct references to the late eighteenth-century Sinophobic legacy such as that of de Pauw. The prevailing image is one of a cruel, despotic government for which the individual person of the subject did count for nothing; property ownership lacked protection; respect for human life was non-existent; corruption was rampant; women were subjected to a regime of inequality and oppression; and materialistic principles held complete dominion over the society and customs of a people referred to as "the most vicious on Earth" for their lack of morality instilled by religion. As explained by Francis Jeffrey in *The Edinburgh Review* using an eighteenth-century style schematic reconstruction of society's progress in terms of releasing individuals from the intrusion of power, the expectation for legislation to regulate every aspect of individuals' lives in an invasive, detailed way that reduced spaces of personal affirmation to the minimum was considered not just a sign of absolute, tyrannical rule but also an effective indicator that a country belonged to a backward "period of civilization". In the case of Chinese society, which actually featured elements of merit and excellence compared to other "Asiatick systems", its stage of civilization appeared indisputably far behind that of Europe.³¹²

In the interesting case of *The Anti-Jacobin Review*, the anonymous reviewer used the negative example of Chinese family-related civil laws to argue against revolutionary, Napoleonic France, calling the bastardization of French civilization and the Christian tradition – that is, the 'sinisization' of France through the introduction of civil regulations on marriage, divorce, inheritance and property ownership "copied from the Chinese" – a stain on "French atheistic Republicans".³¹³ In several instances, describing China's detailed system of corporal punishments, which continued to attract the special attention of Western observers, prompted the reviewers to observe that this system was aimed at maintaining "fear" and that "the principle of fear" was the core element of a state that used severity to protect internal order and tranquillity.³¹⁴ Reviewers considered the fre-

312 "The state of society for which it [the code] was formed, appears incidentally to be a low and a wretched state of society [...] almost all the actions of a man's life are subjected to the control of the government [...] Now, this extraordinary minuteness and oppressive interference with the freedom of private conduct, is not to be considered merely as arising from that passion for governing too much, which is apt to infest all persons in possession of absolute power; but appears to us to indicate a certain stage in the progress of society, and to belong to a period of civilization, beyond which the Chinese have not yet been permitted to advance", *The Edinburgh Review*, 1810, 482.

313 *The Anti-Jacobin Review, and True Churchman's Magazine*, XXIX, May-August 1811, 235-238.

314 See, for example, *The Eclectic Review*, 1810, 1027: "The code begins, very significantly, with

quent, systematic use of bamboo beatings – rarely attenuated with Staunton’s argument about the distance between normative expectations and common practice³¹⁵ – as a sign of a serious lack of social rules and an imperfect development of the notion of justice.³¹⁶ The “excessive and atrocious severity” and “keen and vindictive jealousy”, especially regarding crimes against the government or the emperor, were also bitterly criticised, as was the essential weakness of a normative system that relied solely on the fear of its subjects and the violence exerted upon them.³¹⁷ The anonymous *Anti-Jacobin Review* writer did not hesitate to express repulsion for a “fraudulent, oppressive, and degrading system of law” whose normative pervasiveness was incapable of eliminating public or private corruption and demonstrated the law’s inadequacy to deal with moral weakness.³¹⁸ Insisting on the distinction between the formal expression of the law and judicial practice, the writer called it a “mockery of justice”. Barrow, in his *Quarterly Review* account, went so far as to express explicit reservation about Staunton’s opinions.³¹⁹ Others declared their “decided protest” against his outright partiality for China’s law and justice system rather than just simple admiration.³²⁰ In light of all this, it is clear that the reception of

a section on punishments. From the first to the last page, we have ‘blows’, ‘blows’, ‘blows’, without intermission. It is the bamboo, says Du Halde, that governs China. The source of every thing in that vast empire is fear; the end of everything, tranquillity”. *The Eclectic Review* was founded by the British Dissenters and published between 1805 and 1868; Mary Ruth Hiller, “The Eclectic Review, 1805-1868”, *Victorian Periodicals Review*, 27 (1994): 179-283.

315 An isolated example of a writer being receptive to Staunton’s point is found in *The British Critic*, 1810, 224.

316 “È impossibile [...] di non sorprendersi nel vedere da un punto all’altro le nozioni del giusto e dell’ingiusto valutate da un numero preciso di bastonate con una bacchetta di bambou dritta e liscia, ridotta alla lunghezza di 5 piedi e mezzo, avente un pollice e mezzo di diametro e del peso all’incirca di due libbre [...]”, in *Giornale bibliografico universale*, IX, 1811, 143.

317 See *The Eclectic Review*, 1811, 1041.

318 “there is no country where bribery in the shape of presents is so systematically carried on to such an extent, a proof of the inadequacy of the mechanism of law as a substitute for moral sentiment. The Chinese, as far as motive and design are concerned, are unquestionably the most vicious people on earth, although they pay great obedience to the law”, *The Anti-Jacobin Review*, 237.

319 John Barrow says that “[i]n this preface he has also made an ingenious attempt to defend the Chinese against those writers who have not held up their moral character as a model for imitation: We suspect, however, that his argument, like their morality, is more theoretical than substantial; and that, as himself acknowledges, ‘their virtues were found (by the English in Lord Macartney’s embassy) to consist more in ceremonial observances than in moral duties, more in profession than in practice’”, *The Quarterly Review*, May 1810, 295.

320 “Perhaps we may not find a more convenient opportunity of protesting against Sir George Staunton’s constant propensity to palliate the faults of the Chinese in general, and particularly his defence of their legal system, on the score of its being ‘constituted on the basis of parental authority’”, *The Monthly Review*, 1810, 122; “we cannot conclude without repeating our strong objections to his [Staunton’s]

the Chinese penal code among cultivated British opinion was characterized by a relatively marked ‘counter-discourse’ geared towards undermining Staunton’s appreciation.

Li Chen has suggested that the Chinese penal code played a certain role in contemporary discussions about English legal reform, from the criticisms formulated by Blackstone to the works of Bentham, Mackintosh, Romilly and Brougham in the first two decades of the nineteenth century. However, if anything, he brings in just a meagre evidence of this, and this seems testifying only to a widespread idiosyncrasy of British legal culture with respect to Chinese regulations and penal practices as illustrated by the *Ta Tsing Leu Lee*. Aside from those who appreciated the moderation, wisdom, prudence and proportionality of the Qing penal system, the prevailing tendency was to stress the incompatibility between the Chinese system, formed of painstakingly described, codified regulations adapted to single case records, and the respect for individual liberty typical of a liberal, constitutional system like that of Britain. The discretion accorded to judges within the limits of the latter were openly interpreted by critics of written codification and champions of common law flexibility as something that actually protected people’s rights, preserving them from the executive power’s normative invasion. The Chinese example was therefore rejected as being negatively affected by the prescriptive obtrusion into the private lives of individuals and the propensity to discipline society using governmental and administrative instruments typical of an oriental despotism. It has therefore been suggested that there was a correspondence between the opposition to early-nineteenth century English codification projects and the widespread Sinophobia among British public opinion that acted powerfully in “Orientalizing the Chinese” and negatively essentializing the nature of Chinese government and justice.³²¹

Significantly, during the first fifteen years of the nineteenth century this kind of discourse reintroduced Sinophobic attitudes that, immediately and later, would seep through continental publications, thus attesting to the dependence on foreign sources in Italy and elsewhere and the relative lack of independent judgement, especially regarding strongly specialized matters like Sinology.³²² For that matter, during the first three

partialities in favour of a fraudulent, oppressive, and degrading system of law, and our decided protest against all the admiration which he claims on behalf of the ‘paternal’ or flogging government of Imperial China”, *The Monthly Review*, 1810, 130.

321 Li Chen, *Chinese Law*, 139-150. Li Chen admits though that “it is now very difficult to assess exactly how much direct influence Chinese law had on the actual legislative proposals of British or other Western reform programs in the nineteenth century”, and even that “the stigma of China’s Oriental despotism, symbolized by ‘the graduated bamboo’ or cudgel, would have posed a far greater risk to the success of any Western reform program that explicitly invoked Chinese law as its inspiration”, *Chinese Law*, 142.

322 This is the case, for instance, of the Italian, Milan-based *Giornale bibliografico universale*, IX, 1811.

decades of the nineteenth century British opinion on various issues related to Chinese history, culture, society, commercial relations and more general forms of intercourse with China was decisively oriented towards intolerance, disparagement and aggression. Lord William Amherst's unsuccessful embassy of 1816-1817 and the anti-Chinese publications that followed only strengthened this tendency. At the time, Great Britain was in full economic development after the victorious parenthesis of the revolutionary and anti-Napoleonic wars. Strongly projected towards consolidating its position in India, it viewed the affairs of South Asia and the Far East from an increasingly imperial, global perspective as the prospect of a more determined initiative on the Chinese front also started taking shape. England aimed to do more than just reform its own structure of commercial relations in light of the growing campaigns for free trade, which reached their objectives in 1813 and 1833. It also sought to reshape Anglo-Chinese relations by overcoming the 'Canton system' and to open new spaces to commercial initiative and penetration. An idea, if not yet a plan, of action began to appear aimed at bringing Chinese political, administrative, judicial, diplomatic and commercial practices, as well as social and cultural relational modes, within coordinates compatible with Western equivalents. Moreover, the idea that the gap between China and the West had to be filled to some extent by opening China to Western economic, cultural and religious influxes and by facilitating the introduction of Western standards in different spheres of economic and social life became increasingly widespread.

George Thomas Staunton would play a leading role in the complex scenarios of the first half of the nineteenth century. In the meantime, his project to introduce Western culture to a key text of the Chinese tradition was a significant publishing and cultural success, though not, it would seem, to the extent of ensuring the spread of a more careful, culturally and psychologically sensitive attitude towards China. On close inspection it appears that Westerners, and especially the English, were increasingly set on 'changing' Chinese matters rather than understanding them from the inside. Especially after the enormous emotional impact of later traumatic events like the revolts of the Taipings and the Boxers, Western knowledge, representations and experiences of Chinese justice were increasingly flattened into the stereotype of "legal Orientalism", thus consolidating the idea that China's judicial apparatus was unknowable, untrustworthy, arbitrary, violent, with no guarantees for the accused and merciless in its infliction of cruel punishment and agonizing death. While the extraterritoriality obtained by Westerners in Chinese territory starting from the First Opium War protected them from Chinese procedural pitfalls, the country's political, administrative and legal culture and international relations remained far from acceptable in the context of the 'family of nations'. Even today the process to achieve such acceptance has not yet entirely concluded.

V. THE QING CODE IN EUROPE AND THE ITALIAN AND FRENCH EDITIONS

It must be stressed that the English translation of the *Ta Tsing Leu Lee* was by no means the first in a Western language. Various scholars have drawn attention to the fact that China was the object of notable appeal in the Russia of Peter the Great, especially throughout the eighteenth century. As the goal of several important diplomatic missions during that century and the next,³²³ it was appealing in terms of both a taste for chinoiserie and an admiration for the institutions of the Middle Kingdom and the operation of its government as an illustrious example of an effective, enlightened despotism.³²⁴ We have particularly significant testimony from Catherine the Great, who turned an admiration for China drawn from her friend Voltaire, the most illustrious Sinophile of the European Enlightenment, into concrete initiatives.³²⁵ In 1757 the czarina commissioned the translation of a history of the Qing dynasty in sixteen volumes from Ilarion Rassokhin (1717-1770) and Aleksiei Leontiev (1716-1786), two former students of the Russian orthodox mission installed in Beijing in the early eighteenth century. In 1762 she ordered the construction of a Chinese palace inside the residential complex at Oranienbaum.³²⁶ Finally, animated by a zeal for codification, Catherine entrusted the Russian translation of the Qing code to the same Leontiev, who guided a group of experts to produce a text that was published in 1778-1783. In fact, Russian Sinology nurtured an enduring admiration for the Qing code, as evinced by the work of the great Russian Orientalist Nikita Bichurin, also known as Father Hyacinth (1777-1853). In the late 1830s Bichurin, who had resided in China from 1801 to 1832 with the Beijing orthodox mission and authored several translations from Chinese of original historical and philological texts, in addition

323 Alexander Lukin, *The Bear Watches the Dragon: Russia's Perceptions of China and the Evolution of Russian-Chinese Relations Since the Eighteenth Century* (New York: Routledge, 2016, 1st ed. New York: M. E. Sharpe, 2003).

324 Lukin, *The Bear Watches the Dragon*, 10-11. On Russian cultural interest in China, see David Shimmelpenninck Van Der Oye, *Russian Orientalism: Asia in the Russian Mind from Peter the Great to the Emigration* (New Haven: Yale University Press: 2010), chap. 2, "The Petrine Dawn", and chap. 3, "Catherinian Chinoiserie"; and more specifically Barbara Widenor Maggs, *Russia and 'le rêve chinois': China in Eighteenth-Century Russian Literature*, in *Studies on Voltaire and the Eighteenth Century*, 224 (Oxford: The Voltaire Foundation, 1984), 24, 37; as well as Li Chen, *Chinese Law*, 125-127. See also Susanna Soojung Lim, *China and Japan in the Russian Imagination, 1685-1922: To the Ends of the Orient* (London-New York: Routledge, 2013), especially chapter 2, "Confucius on the Northern Throne. China in the age of Catherine, 1762-1796", 42 ff.

325 P. E. Skachkov, *Ocherki istorii russkogo kitaevedeniia [Outline of the History of Russian Sinology]* (Moscow: Nauka, 1977).

326 Will Black and Simon Sebag Montefiore, *The Chinese Palace at Oranienbaum: Catherine the Great's Private Passion* (Boston: Bunker Hill Publishing Inc., 2003).

to being an admirer and translator of Voltaire's work, maintained that the Qing code was "so close to the true foundations of government that it can teach something even to the most well-developed states".³²⁷ Leontiev's translation, for its part, was evidence of an early interest in Chinese law and justice, despite being only an abbreviated version with negligible circulation and influence outside Russia. Things would go very differently in the early nineteenth century thanks to the English, Italian and French translations.

The reception of the Chinese penal code and Chinese law in general in Italy is the subject of a 1958 essay by Lionello Lanciotti, the doyen of Italian Sinological studies.³²⁸ As the basis for his study Lanciotti took what constitutes the most important evidence of the Italian attention towards Chinese institutions and legal traditions at the beginning of the nineteenth century: the review of the *Ta-Tsing-Leu Lee* that appeared in three instalments of the *Annali di Scienze e Lettere*. Founded in 1810, this Milanese journal was edited by "Jacobin doctor" and Parma-born patriot Giovanni Rasori (1766-1837)³²⁹ and fellow Parma native and man of letters Michele Leoni (1776-1858), and it counted Ugo Foscolo among its contributors.³³⁰ Lanciotti explained that the anonymous "long essay" had been attributed to Foscolo, as confirmed by its (partial) inclusion in later editions of his writings (an attribution also made by Sinologist Giovanni Vacca).³³¹ However, Lanciotti also reported that other writers had argued that Foscolo had only inspired the essay and that the author was actually Giovanni Rasori. One such writer referred explicitly to the *Annali* article, saying "[q]uella [scrittura] sul codice penale dei

327 Shimmelpenninck Van Der Oye, *Russian Orientalism*, position 2924 of the Kindle edition. On Bichurin, see also Boris Pankratov, "N. Y. Bichurin as a Translator", *Far Eastern Affairs*, 30 (3): 113-127.

328 Lionello Lanciotti, "Il diritto cinese ed i suoi interpreti italiani nel 1800", *Cina*, 4 (1958), 58-69.

329 On Rasori, see Giorgio Cosmacini, *Il medico giacobino. La vita e i tempi di Giovanni Rasori* (Roma-Bari: Laterza, 2002) and the earlier Cosmacini, ed., *Scienza medica e giacobinismo in Italia: l'impresa politico-culturale di Giovanni Rasori, 1796-1799* (Milano: Franco Angeli, 1982). On Rasori's work as director of the *Annali*, see the first volume, 170-177, which however only deals with Rasori's arguments on medical matters and the journal's institutional relations with the government of the Regno d'Italia.

330 The text is distributed throughout volumes VIII (1811, 289-304), IX (1812, 35-44) and X (1812, 3-38). The same text is included in subsequent editions of Foscolo's works. The title preceding the first instalment and present in Foscolo's editions is inaccurate in that it identifies the English translator, only named as "George Staunton", not with George Thomas Staunton but the "Segretario d'Ambasciata nella missione di Lord Macartney" who, as is well known, was George Leonard Staunton, the father of the future sinologist.

331 *Prose e Poesie edite e inedite di Ugo Foscolo ordinate da Luigi Carrer* (Venezia: co' tipi del Gondoliere, 1842), 199-203; *Opere edite e postume di Ugo Foscolo. Saggi di critica storico-letteraria tradotti dall'inglese. Raccolti e ordinati da F. S. Orlandini e da E. Mayer* (Firenze: Le Monnier, 1862), 313-323. Vacca attributed it to Foscolo in "Il valore morale del popolo cinese", in *Bollettino della Società Geografica Italiana*, fasc. V, 1911, 569-590. The same (mistaken) attribution has been confirmed by Sergio Zoli, *La Cina e l'età dell'Illuminismo*, 201-202.

Chinesi è una versione di Giovanni Rasori dall'inglese" ("that text on the Chinese penal code is a version by Giovanni Rasori from English"), thus adding the detail that it was not an original text but a translation.³³² Yet, remarkably, Lanciotti accepted the review as original – be it inspired or written by Foscolo or by Rasori – calling it the "frutto diretto od indiretto del grande poeta" ("direct or indirect fruit of the great poet"), evidently trusting the editors of an Italian collection of Foscolo's works according to whom the article included "echi del pensiero del Foscolo, delle conversazioni probabili tra lui e il Rasori circa quel codice, di cui il Rasori stesso fu il traduttore" ("echoes of Foscolo's thought and the probable conversations between him and Rasori about that code, which was probably translated by Rasori himself").³³³ In addition to the precious information identifying Rasori as the author of the Italian translation, working off Staunton's English version, we can see these notes clearly led Lanciotti astray since he analysed the article as though it effectively testified to an original critical capacity on the part of a certain "saggista degli *Annali*" ("*Annali* essayist"), while instead it was simply a translation of Francis Jeffrey's aforementioned long review of Staunton's English edition in an 1810 issue of *The Edinburgh Review*. Lanciotti's assertion at the end of his own survey of the partially negative opinions expressed in the *Annali*, that is, that "Foscolo o Rasori non compresero [...] che i Cinesi andavano giudicati secondo il modo di vedere cinese" ("Foscolo or Rasori did not understand [...] that the Chinese had to be judged according to the Chinese way of seeing"), should therefore be related to Jeffrey, and not to the Italian men of letters, who at the most reported with no comment the Scottish reviewer's opinions. According to Lanciotti, what appeared in the *Annali* was an "interessante [...] tentativo di interpretazione di un documento di primaria importanza per comprendere un popolo come quello cinese, di cui tanti parlavano o vanamente elogiandolo o senza motivo vituperandolo" ("interesting [...] attempt to interpret a document of primary importance for understanding the Chinese people, of which many spoke, either praising them in vain or reviling them for no reason").³³⁴ However, the fact remains that this attempt was not the original work of Italian scholars or commentators but rather presented the image of the Chinese code and Chinese legal and judicial traditions sketched by Jeffrey. As we have seen, this largely critical image aimed to highlight the limits of Chinese legislation, especially regarding political and individual freedom, though not

332 Michele Leoni, *Carteggi italiani inediti o rari, antichi e moderni* (Firenze, Bocca, 1892), IV, 31-32, quoted in Lanciotti, "Il diritto cinese", 59.

333 *Edizione Nazionale delle Opere di Ugo Foscolo, vol. VII, Lezioni, Articoli di Critica e di Polemica (1809-1811)* (Firenze: Felice Le Monnier, 1933), 457-481 for the text of the article, xlviii-xlix, for its authorship, qt. in Lanciotti, 59-60.

334 Lanciotti, "Il diritto cinese", 65.

without appreciating the organic nature, concision and stylistic clarity of the code itself and Chinese laws in general for their ability to ensure social order and discipline.³³⁵

On the other hand, there is no doubt that the existence of an Italian edition of the Chinese code is enough to attest to a strong interest in the history and culture of China and a remarkable readiness to acknowledge some of the most important publishing novelties to appear in Europe on this subject, as several other contemporary Italian publications can attest.³³⁶

It must be said that certain Italian periodicals had already paid some attention to Staunton's English version before Milanese bookseller Silvestri produced the 1812 Italian edition. In 1811, for example, Sonzogno's *Giornale bibliografico universale* printed

335 It may be useful to reproduce a passage from the review published in the *Annali* (which, we must recall, is a literal reproduction of the original from the *Edinburgh Review*): “incominceremo dal confessare che ciò, onde fummo più d'ogni altra cosa meravigliati in questo codice, si è la somma ragionevolezza, chiarezza e coerenza di esso, la brevità, colla quale è scritto, come si scriverebbe di comuni affari, la retta tendenza dei vari provvedimenti, la semplicità e la moderazione del linguaggio. In esso tu non trovi punto di quelle frasi gonfie, che sono singolarmente proprie della maggior parte delle opere asiatiche; nessuno dei deliri superstitiosi, delle meschina incoerenza, e delle terribili inconseguenze, e le eterne ripetizioni di tutte cosiffatte composizioni da oracoli; e neppur nulla di quella turgida adulazione, di quegli epiteti ammucchiati, e di quelle lodi noiose che si assumono tutti gli altri despotismi orientali; ma tu trovi da per tutto una tranquilla, concisa e distinta serie di ordinazioni, che sentono profondamente il giudizio pratico ed il retto senno europeo, e le quali se non sono sempre conformi alle raffinate nozioni di convenienza dei nostri paesi, generalmente però vi si accostano più assai di quello che i codici di tutte l'altre nazioni per quanto sieno queste leggi, in molte particolarità, assurdamente minute, pure non conosciamo alcun codice europeo che sia al tempo stesso così abbondante e così coerente, e che, come questo, sia scevro d'oscurità, d'ipocrisia, di finzione. È vero che esso è disgraziatamente difettivo in ogni cosa relativa a libertà politica o individuale; ma, quanto a reprimere il disordine, e a tener soggetta con gentil freno una vasta popolazione, a noi sembra in generale essere egualmente dolce ed efficace. Lo stato della società, per la quale fu esso destinato, sembra incidentalmente essere depresso e miserabile; ma noi non crediamo che si potessero dividere più savi mezzi per mantenerla in pace e tranquillità”, *Annali di Scienze e Lettere*, vol. VIII, 301.

336 The Italian reception of historical, literary, philosophical and religious works on China (and Eastern Asia in general) published in Europe is a chapter in early nineteenth-century Italian cultural history that has yet to be thoroughly investigated. Its importance is demonstrated by the Italian translations of English and French works such as – just to make some early nineteenth-century examples – those by Samuel Holmes, Henry Ellis, John Francis Davis, Chrétien-Louis-Joseph de Guignes, Peter Simon Pallas and Guillaume Pauthier. Neither should we ignore the presence of original compilations and essays such as Giulio Ferrario, *Il costume antico e moderno* (Milano, 1817-1834); Davide Bertolotti, *Storia della Cina* (Milano, 1825); the sections on China in Cesare Cantù, *Storia universale*, Torino, 1838-1846); Giuseppe La Farina, *La Cina considerata nella sua storia, ne' suoi riti, ne' suoi costumi, nella sua industria, nelle sue arti e ne' più memorevoli avvenimenti della guerra attuale: opera originale italiana; illustrata da una serie di finissime incisioni in acciaio*, Firenze, 1843-1847; Carlo Cattaneo, “La China Antica e Moderna”, in *Il Politecnico*, X, 1861, fasc. 56, 198-223, online edition in *Eliohs: Electronic Library of Historiography*, accessed May 15, 2017, <http://www.eliohs.unifi.it/testi/800/cattaneo/CattaneoCina.html>; and Giuseppe Ferrari, *La Chine et l'Europe, leur histoire et leurs traditions comparées* (Paris, 1867).

in Milan had published a long article on the English edition of the *Ta Tsing Leu Lee*, which it assessed in very negative terms.³³⁷ According to the article's anonymous writer, the code revealed a "governo arbitrario e sofisticato" ("arbitrary and sophist government"). The extensive use of corporal punishment was such that the writer declared ironically his surprise at realizing the correspondence between ideas of right and wrong and the number of beatings. The code exposed a country that was "soggetto a un governo arbitrario" ("subject to an arbitrary government") and "grossolana superstizione" ("vulgar superstition"), with measures discouraging investment and the desire to make a profit. Most of all, there were "leggi [...] di una estrema severità e sempre minuziose e molte" ("laws [...] of an extreme severity, always numerous and detailed") and a tendency to regulate every aspect of individuals' private lives and to sanction a great variety of violations through corporal punishments. The writer concluded that "non v'è paese in cui più che alla China siano frequenti i delitti, e più frequentemente impuniti" ("there is no country in which crimes are more frequent and less punished than in China").

The fact that the Chinese penal code attracted a lot of interest in Italy was confirmed shortly thereafter by the *Giornale enciclopedico di Firenze*. To announce the launch of the Silvestri 1812 edition, which would come out in bi-monthly instalments to make it more attractive to the public, the journal's editors wrote that, regarding a "nazione [...] di tanta fama tra noi" ("nation [...] as famous among us as China"), "tante varie [erano state] sinora le opinioni relative ai gradi del suo incivilimento" ("many have expressed opinions about the levels of its civilization"), which "debbe accogliersi con avidità tutto quanto può contribuire a rettificare le nostre idee su quella vasta e bella parte del globo" ("must eagerly welcome anything that can help amend our ideas about that vast and beautiful part of the globe").³³⁸

It is difficult to reconstruct what specifically led to this publishing initiative in the workshop of bookseller-typographer Giovanni Silvestri (1778-1855). As demonstrated by Marino Berengo, who has traced an interesting entrepreneurial profile, Silvestri was one of the most important, enterprising and representative booksellers and publishers of early nineteenth century Milan responsible for some of the most innovative publishing formulas in Italy at the time.³³⁹ By then Silvestri had also already published works by

337 *Giornale bibliografico universale*, IX, nn. XXXIII-XXXVI, 1811, 136-143.

338 *Giornale enciclopedico di Firenze*, t. IV, 1812, 23-24.

339 Marino Berengo, *Intelletuali e librai nella Milano della Restaurazione* (Torino: Einaudi, 1980), especially 52-54 and 133-149. Berengo synthetically describes him in thus: "Questo, che sarà uno dei più grandi editori dell'Ottocento italiano, che introduce un nuovo gusto del libro nel pubblico abituandolo ai volumetti arancioni della «Biblioteca scelta», che nella sua bottega attrarrà tanta parte della cultura milanese, è forse tra i librai di Milano quello che meno cerca di cancellare le sue origini artigiane. Nessuna inclinazione alla politica ravvisava in lui la polizia, e nessuna preferenza culturale o ideologica ci rivelerà

Ugo Foscolo (his edition of *Sepolcri* dates to 1813) and he likely took Foscolo's advice, directly or indirectly, about readings and what to cover in his journal.

The translator was in all probability the aforementioned Giovanni Rasori, who was very active in many fields: from medicine, as a supporter of Brownian theories, to public health, as an important institutional figure in Napoleonic Lombardy; to politics, in which he took radically Republican and pro-French positions and held posts under Cisalpina and the Kingdom of Italy; to publishing, including the production of several important medical texts both as a translator, especially from German (he translated Goethe and Schiller among others, thus contributing to the Italian reception of the latter), and as a journalist, having edited the aforementioned *Annali di Scienze e Lettere* and contributed to *Il Conciliatore*, the early-nineteenth century Milan literary magazine to which many prominent Italian intellectuals contributed. Rasori translated the Qing code directly from Staunton's English version and made no reference to the French edition that, as we will see shortly, appeared the same year (1812).

The Italian online metaopac SBN reports just eight surviving copies of the Silvestri edition in Italian public libraries. While we cannot exclude the possibility that other copies have not been registered into the databank, this still makes it a fairly rare text and is one reason for the reprint project, which aims not only to highlight a very important chapter in the history of European discourses on China, but also to produce a digital edition that is still lacking. However, it should also be said that there is nothing particularly original about the Silvestri edition with respect to Staunton's version, whose text it reproduces faithfully without any additions. There is neither a translator's original preface nor any notes or comments such as those accompanying the contemporary French edition. We therefore cannot consider it an original contribution to historical, historical-legal or Sinological knowledge for which Rasori did not possess the adequate expertise to enrich. If anything, the edition remains interesting for having introduced an important text to the Italian culture of the early nineteenth century and as a key source for understanding a civilization, society and culture as distant and controversial as that of Qing China. This is demonstrated by the references made to the *Ta Tsing Leu Lee* in the works of leading Italian cultural figures like Giacomo Leopardi, who dedicated to it some notes in his *Zibaldone* in April 1821, as well as in later Italian collections and specialized texts.

l'analisi della «Biblioteca scelta», che lo accompagna per un quarantennio della sua semisecolare attività editoriale. Il Silvestri non ama le scelte culturali e non è forse neppure in grado di operarne, ma pochi sono a Milano pratici di libri come lui, capaci di muovere vittoriosamente mari e monti per accontentare un cliente o un corrispondente alla ricerca di un vecchio titolo da poche lire; nessuno forse degli altri librai prova per i letterati il suo affettuoso rispetto e ne coltiva con tanta cura l'amicizia”.

Leopardi's was little more than a passing mention of the *Ta Tsing Leu Lee*, based on the translation of the *Edinburgh Review* piece in the *Annali di Scienze e Lettere*, and was meant to identify, with reference to the work of the French Sinologist Abel Rémusat, a causal relationship between the characteristics of the Chinese language and the country's condition of "immobility and immutability". Though brief, this mention revealed Leopardi's support for the prevailing contemporary idea about China's irreparably stationary nature. In fact, after reading, via the *Annali* article, Francis Jeffrey's review of the translation by Staunton (whose false identification with his father George Leonard as secretary for the Macartney embassy he mistakenly drew from the *Annali* article itself)³⁴⁰ he was persuaded to come to the following conclusion: "Un tal popolo dev'essere insomma necessariamente stazionario. E qual popolo infatti è più maravigliosamente stazionario del Chinese [...] nel quale abbiamo osservato una somigliante costituzione?" ("In short, such a population must be necessarily stationary. And what people are in fact more wonderfully stationary than the Chinese [...] in whom we have observed such a constitution?").³⁴¹

While Leopardi's reflection may not have led to any deeper analysis, other references to the Qing code had a much more structural function in a series of Italian works dealing with Chinese history – an unexplored chapter of nineteenth-century Italian historiography worth a deeper analysis than what is possible to be made now. For example, in his 1828 *Storia della Cina*, Davide Bertolotti (1784-1860) quoted Staunton extensively from the Italian edition, taking up his theories favouring China's high degree of civilization as evidenced by the penal code.³⁴² In his encyclopaedic *Costume antico e moderno* (1817-1834) Giulio Ferrario also referred to the code as a source for his extensive, detailed and decidedly positive description of the Chinese government, which he defined, in perfect continuity with the Enlightenment admiration for the Celestial Empire, as monarchical, legal, limited, wise and in no way tyrannical.³⁴³ In particular, Ferrario

340 See above par. V, note 327.

341 Giacomo Leopardi, *Zibaldone di pensieri*, no. 942, digital online edition in *Biblioteca dei Classici Italiani di Giuseppe Bonghi da Lucera*, based on Giacomo Leopardi, *Tutte le opere, introduzione di Walter Binni, a cura di Walter Binni con la collaborazione di Enrico Ghidetti* (Firenze: Sansoni Editore, 1969), II, accessed May 15, 2017, http://www.classicitaliani.it/leopardi/Zibaldone/Leopardi_Zibaldone_0905_1082.htm. Leopardi alluded to the Chinese code by correctly citing the article in *Edinburgh Review* translated for the *Annali di Scienze e Lettere*. Leopardi had indirect knowledge of Rémusat's *Essai sur la langue et la littérature chinoises* (1811) through a review in the *Magasin Encyclopédique*, 5 (1811), 228 ff.

342 Davide Bertolotti, *Storia della Cina dai primi tempi sino all'ambasceria di Lord Macartney, tratta dagli Annali cinesi [...] in continuazione al Compendio della storia universale del sig. Conte De Segur* (4 vols. in 2 tomes, Roma: nella stamperia di Pio Cipicchia, 1828; 1st ed. 4 vols., Milano: Stella, 1825), I, 22-25.

343 "il governo de' Cinesi è monarchico già da tanti secoli, e [...] l'imperatore ha un potere assoluto, saggiamente moderato dalle stesse leggi che lo hanno stabilito. Per la qual cosa sono rarissimi nella Cina gli

used Staunton's translation to contradict the idea of a cruel and inhuman Chinese penal justice system. In the spirit of Staunton, he described it without any openly negative or positive prejudice and with a clear appreciation for its complexity, its goal to protect the innocent, and its organization and rigorous procedures aimed at ensuring punishment for culprits and preventing any crime from going unpunished legally. Cesare Cantù, on the other hand, used the *Da Qing Huidian*, another compilation of Qing statutes known through its description in the Jesuit *Mémoires*, for his *Storia universale*.³⁴⁴ Carlo Cattaneo did not mention the Qing code in his brilliant, perceptive essay on *La China antica e moderna* (1861),³⁴⁵ in which he referred mostly to Confucian or Taoist texts known through contemporary French Sinology. The *Ta Tsing Leu Lee* was however one of the main sources used by Giuseppe La Farina³⁴⁶ and Giuseppe Ferrari, with the latter making extensive, harsh comments on what he called "le code mantchou", one of the "codes absurdes" that ruled the Middle Empire.³⁴⁷

To conclude this brief and somewhat superficial survey of nineteenth-century Italian echoes of the Qing code we must mention the work of Florentine Alfonso Andreozzi (1821-1894), a jurist and lawyer who studied in Paris with the great French Sinologist Stanislas Julien.³⁴⁸ We should mainly recall Andreozzi for his 1878 text, *Le Leggi penali degli antichi Cinesi. Discorso proemiale sul diritto e sui limiti del punire e traduzioni originali dal cinese*, a dissertation to accompany his original translation of various ancient imperial Chinese legal texts from the Hsia dynasty to the Tang dynasty in which he

esempi di tirannia; e la massima dello stato che obbliga i popoli a prestare al sovrano una filiale obbedienza, impone altresì a questo uno stretto dovere di governare i proprii sudditi con una tenerezza paterna" ("Chinese government has been monarchical since several centuries and [...] the emperor has an absolute power wisely limited by the same laws which established it. Therefore in China extremely rare are the examples of tyranny; and those state maxims ordering the subjects to pay a filial obedience to their sovereign are the same that dictate the latter a strict duty to govern his subjects with paternal tenderness"), Giulio Ferrario, *Il costume antico e moderno di tutti i popoli* (1st ed. Milano: Tipografia dell'Editore, 1817-1834; 3rd ed. Torino, Fontana, 1829, *Asia*, vol. I;), 105-134, quotation from p. 107 of the 3rd edition. On China in Ferrario's work see also Pier Francesco Fumagalli, "La Cina descritta in Milano da Giulio Ferrario", *Asiatica Ambrosiana. Saggi e ricerche di cultura religioni e società dell'Asia*, 1 (2009): 115-122.

344 See above par. I.5, 58-59 and note 150.

345 In *Il Politecnico*, vol. X, I sem. 1861.

346 Giuseppe La Farina, *La China considerata nella sua storia, ne' suoi riti, ne' suoi costumi nella sua industria, nelle sue arti e ne' più memorevoli avvenimenti della guerra attuale* (4 vols., Firenze: Bardi, 1843-1847), see 153, 182, 185.

347 Joseph Ferrari, *La Chine et l'Europe, leur histoire et leurs traditions comparées [...] Deuxième édition* (Paris: Librairie Académique, Didier et C.ie, 1869; 1st ed. Paris, 1867), 157 ff.

348 See the entry by Anna Buiatti, "Andreozzi, Afonso", in *Dizionario Biografico degli Italiani*, III, 1961, available on *Treccani.it*, accessed May 15, 2017, [http://www.treccani.it/enciclopedia/alfonso-andreozzi_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/alfonso-andreozzi_(Dizionario-Biografico)/).

demonstrated his familiarity with Staunton's translation of the *Ta Tsing Leu Lee*, albeit by highlighting its incompleteness compared to the original. Although it is unclear whether Andreozzi used the English edition or the subsequent Italian translation, his work is further proof of the Qing code's circulation and notoriety among Italian culture. In this case we are talking about the writing of a fervent democrat, an adversary of the death penalty who used his study of Chinese law to reflect critically upon not only the common distortions regarding the cruelty and arbitrariness of Chinese punishments, supported by "alcuni disegni grossolani venduti a Canton" ("certain vulgar drawings sold in Canton"),³⁴⁹ but also Italian penal law and the need for its reform.³⁵⁰

As we have seen, the Italian edition of the *Ta Tsing Leu Lee* was not an expression of expertise or specific Sinological interest and made no original contributions to the discussion about the Qing code. The French edition also published in 1812 was a different story.³⁵¹

The translation from English to French was carried out by Félix Renouard de Sainte-Croix (1767-1840), an interesting military figure who served in the East as an agent for the Napoleonic government from 1803 to 1808. In addition to China, Renouard travelled to India, the Philippines, Cochinchina and the Sunda Archipelago in the context of operations, on the orders of General Decaen, connected to the war against England and the "impossible rêve oriental de Napoléon".³⁵² This direct experience, of which another important testimony is his 1811 *Mémoire sur la Chine adressé à Napoléon I^{er}* published by Henri Cordier in 1895,³⁵³ led to both a text that he published in 1810 with the

349 Alfonso Andreozzi, *Le leggi penali degli antichi cinesi: discorso proemiale sul diritto e sui limiti del punire e traduzioni originali dal cinese* (Firenze: G. Civelli, 1878), 96.

350 See Lanciotti, "Il diritto cinese", 67-68.

351 For its description see above, par. III, 102, note 262

352 On his life, see the entry in the *Biographie universelle*, XXXV, 438-439. On his adventures in the East, with particular reference to Cochinchina, see Bernard Gainot, "Autour du 'Voyage aux Indes orientales de Renouard de Sainte-Croix' (Paris, 1810). Les enjeux de la Cochinchine", *La Révolution française*, 8 (2015), accessed May 15, 2017, <http://lrf.revues.org/1345>. See also Gérald Arboit, "L'impossible rêve oriental de Napoléon", in *Revue du Souvenir napoléonien*, 402 (Juillet 1995): 26-37, now in *Napoléon.org*, accessed May 15, 2017, <http://www.napoleon.org/histoire-des-2-empires/articles/l'impossible-reve-oriental-de-napoleon/>. On the general context of French Eastern policy during the Napoleonic period, see Henri Prentout, *L'Île de France sous Decaen 1803-1810; essai sur la politique coloniale du premier empire, et la rivalité de la France et de l'Angleterre dans les Indes Orientales* (Paris: Hachette, 1901), on Renouard, see 476-477.

353 Félix Renouard de Sainte-Croix, "Mémoire sur la Chine adressé à Napoléon I^{er}, publié par Henri Cordier", in *Toung'pao. Archives pour servir à l'étude de l'histoire, des langues de la géographie et de l'ethnographie de l'Asie orientale. Mélanges* (Leide: Librairie et imprimerie ci-devant E. J. Brill, 1895-1905), 1-7, digital copy available in *Gallica*, accessed May 15, 2017, <http://gallica.bnf.fr/ark:/12148/bpt6k745629>.

title *Voyage commercial et politique aux Indes orientales*³⁵⁴ and his translation of the Qing code from English. After a trip to the United States in 1808-1809 and his aforementioned publications, Renouard continued to be involved in French colonial politics, first with an 1817 mission to Martinique – leading to his *Statistique de la Martinique, ornée d'une carte de cette île, avec les documents authentiques de sa population* (Paris: Chaumerot libraire, 1822) – and then as an envoy to Algiers in 1831. One circumstance directly connected to the preparation of the French edition of the Qing code is particularly noteworthy. In 1806, Renouard met in Canton and formed close ties with George Thomas Staunton, as evidenced in *Voyage* (III, 116-122) and the aforementioned *Mémoire* of 1811, both of which are of political, diplomatic and commercial interest for the revival of the French activities in China in an anti-British perspective.

The *Mémoire* of 1811 is interesting in general for its global perspective. Not only did Renouard stress the possibility of relaunching France's anti-English Chinese policy, but he also interpreted the Macartney embassy in terms of global politics. In his view, the English had clearly attempted to profit from the revolutionary upheavals in France by leveraging their collaboration with French missionaries in Beijing, who were evidently unhappy about the occurrences in their mother country, in order to obtain their assistance for convincing the imperial government to exclude all other European nations from trade with China. The Dutch embassy led the following year by Isaac Titsingh offset, though did not halt, English attempts to exclude France from Chinese ports, as documented by a letter from George III to Emperor Jiaqing in 1804. However, recent events like the 1807 accident involving the ship *Neptune* and the homicide of a Chinese subject by British sailors, as well as the judicial affair that followed, according to Renouard, had created favourable conditions for a French embassy to be sent to Beijing to protest the misdeeds of the English and have them expelled from Canton, thus depriving England of its considerable earnings from commercial trafficking, especially in tea. Renouard indicated the overall value of the latter on the basis of numbers supplied by the “auteur du Code Pénal”, that is, George Thomas Staunton. As he argued, the same embassy would also help improve knowledge about China, thanks to the “notions certaines qui seraient recueillies avec soin par des personnes savantes attachées a la Suite de l'Envoyé”. Its success would furthermore be ensured by the selection of highly qualified personnel in vari-

354 Félix Renouard de Sainte-Croix, *Voyage commercial et politique aux Indes orientales, aux îles Philippines, à la Chine, avec des notions sur la Cochinchine et le Tonquin, pendant les années 1803, 1804, 1805, 1806 et 1807. Contenant des observations et des renseignements, tant sur les productions territoriales et industrielles que sur le commerce de ces pays; des tableaux d'importations et d'exportations du commerce d'Europe en Chine, depuis 1804 jusqu'en 1807; des remarques sur les mœurs, les coutumes, le gouvernement, les lois, les idiomes, les religions, etc.; un aperçu des moyens à employer pour affranchir ces contrées de la puissance anglais* (3 vols., Paris: aux Archives du Droit français, chez Clament frères, Libraires-éditeurs, 1810).

ous fields, the secret nature of the preparations and carefully chosen gifts for the emperor. The latter were not to be handcrafted or fine art objects with which the Chinese would not know what to do but rather the finest French-produced weapons.

In addition to its proposal of an anti-British diplomatic mission, the *Mémoire* is also interesting for the evidence it contains of a relationship between the author and George Thomas Staunton, which Renouard refers to extensively in his 1810 *Voyage commercial et politique*. In this work, which contains a lively reconstruction of his travel experiences in the East, Renouard presented a detailed recapitulation of the matter regarding the English sailors of the ship *Neptune* in Canton in 1806-1807 and the ensuing jurisdictional clashes with the Chinese authorities. Certainly, Renouard's account does not fail to highlight the poor conduct, arrogance and abuses of which the English, especially the disembarked sailors, were found to be guilty against Europeans and especially the Chinese.³⁵⁵ However, it was on the occasion of this episode and its resulting negotiations that he met Staunton, "qui sait le chinois mieux qu'aucun Européen dans ce pays"³⁵⁶ and became his esteemed friend. Renouard appreciated Staunton's diplomatic and linguistic skills, which were so important for establishing good relationships with Chinese authorities without having to be subjected to Chinese interpreters known as *linguas* and therefore for ensuring the fair treatment of foreigners under investigation by Chinese judicial authorities.³⁵⁷ While Renouard could not have personally witnessed the negotiations and the Mandarin tribunal sessions charged with managing the *affaire*,³⁵⁸ he did come to know the Qing code that Staunton would later translate.

In addition to this particular circumstance, which illustrates the origin of Renouard's interest in the Qing penal code, the *Voyage* is also interesting for the author's reflections on China and his presentation of it as the materialisation of the most complete alterity in the world:

Je me croirais absolument dans un autre monde, où les hommes et les femmes ont des traits différents, et dont les usages, les lois, les idées mêmes, n'ont que peu ou point de rapport avec ce qui se passe dans les autres parties du globe: un Chinois n'est pas un homme comme un autre, il n'a que peu du Tartare qui l'avoisine, rien de l'Indien dont il n'est pas éloigné; c'est un homme à part, qu'il faut étudier,

355 Sainte-Croix, *Voyage*, III, 112-113.

356 Sainte-Croix, *Voyage*, III, 116.

357 Referring to the preliminary inquiries about whom to hold responsible for the murder of a Chinese subject, Renouard said that "cette différence de langue rendait l'interrogatoire très-difficile: sans sir Georges, ils auraient de suite trouvé un coupable", Sainte-Croix, *Voyage*, III, 116.

358 Sainte-Croix, *Voyage*, III, 122.

que son antiquité rend respectable, que ses mœurs séparent encore plus des autres peuples, que les distances.³⁵⁹

His quick sketches of Canton vividly portray the city as the backdrop for unbridled activism, unceasing movement and incessant work, a place where everyone raced busily through unbelievably crowded and narrow streets, thus offering a picture that was unequalled in the major European cities.³⁶⁰ However, what stands out from Renouard's pages, including those on the *Neptune affaire*, is the image of a country at the mercy of a profoundly corrupt administration that submitted its subjects – especially the Hong merchants authorized to deal with Europeans – and Europeans themselves to persecutions and imbroglios of every kind. What the author ironically called “le génie financier du mandarin tartare” was thus revealed, leading him to exclaim, by way of conclusion: “Vive la Chine pour l'esprit de friponnerie financière et fiscale, et vivent les Chinois pour savoir l'exercer à propos!”³⁶¹

Renouard's passages on Canton and China were rounded out by reflections on Chinese society, domestic habits, artistic expressions, religion and trade conditions, especially the risks involved would a complete freedom of private trade have been allowed and the need for the French government to provide support and guidance to maximize its earnings on Chinese trade. The future French translator of the Qing code was therefore not only an influential military and political-diplomatic professional, he was also endowed with first-hand knowledge of China and its administrative and judicial systems. He was not, however, a Sinologist and his contribution to the French edition was, as he himself explained in his brief “Avant-propos”, merely to introduce a document that could, in the same spirit as Staunton's text, replace the “vagues et souvent exagérées” pieces of information that had fuelled the conflict between China's “zélés protecteurs” and its “détracteurs” with something more concrete. In his brief presentation, Renouard paid homage to Staunton's expertise and expressed his indebtedness to his friend for having taken on the translation and extracted knowledge about China in general³⁶². Yet, the French translation differs from the Italian version for the translator's

359 Sainte-Croix, *Voyage*, III, 82.

360 Sainte-Croix, *Voyage*, III, 91.

361 Sainte-Croix, *Voyage*, III, 83, 92 ff.

362 “J'ai vu, par moi-même, les soins que sir Georges a donnés à sa traduction; il s'est fait un plaisir de me communiquer les écrits authentiques où il a puisé, et j'éprouve beaucoup de satisfaction de lui rendre justice à cet égard; il m'a été trop agréable d'avoir pu prendre, dans les rapports que j'ai eus avec lui, des notions sur l'état civil et politique des Chinois, pour ne pas lui témoigner ici toute l'étendue de ma reconnaissance”, Sainte-Croix, “Avant-propos du Traducteur français”, *Ta-Tsing-Leu-Lee ou les lois fondamentales du code pénal de la Chine*, ii.

original contribution in the form of several annotations at the foot of the page (on the order of several dozens in both volumes), albeit generally brief, mostly explicative or of internal reference, and at any rate lacking commentary or evaluations of interpretive relevance.

Without fully exploring the reception of Renouard's translation in France, suffice it to say that some interesting, detailed articles appeared at the moment of its publication. The *Journal de Paris*, for example, published an article in which the anonymous author tried to assuage current views about the exceptional harshness of Chinese penal law through comparison to the no less violent European law.³⁶³ Another substantial, and in this case extremely laudatory, article appeared in the *Journal de la littérature de la France*,³⁶⁴ primarily echoing Staunton's opinion that the translation of the Qing code was beneficial for reversing the tendency to interpret China with a "défaut d'impartialité" due to the influence of Jesuit missionaries. At the same time, by exposing the contents of the *Ta Tsing Leu Lee*, the periodical also managed to highlight certain peculiarities of the Chinese penal justice system such as the vague distinction between crimes pertaining to the private sphere and those pertaining to the public one, that is against political and administrative authority; the use of corporal punishment like bamboo beatings even for simple civil infractions, according to a procedure that contrasted starkly with European customs; or how the not rigorous, mild and tolerant application of the laws in judicial practice, that Staunton appreciated as a counterbalance to the cruelty of the punishments, in fact damaged the reverence due by the subjects.³⁶⁵

The silence of the French erudite periodicals, on the other hand, is surprising. The *Magasin encyclopédique*, for instance, made no mention of Renouard's translation. Similarly remarkable is the absence in the first 12 volumes (1822-1828) of the *Journal asiatique* of any mention of the still relatively recent European editions of the Qing code. Even if this journal only started being published in 1822, still its pages featured many erudite contributions on the subject of China by experts like Julius von Klaproth, Rémusat, Stanislas Julien, Clerc de Landresse and Fulgentius Fresnel, as well as reviews of works on China and its relations with Europe. We only find one allusion in a 1822 article by Abel Rémusat on the state of Chinese studies in Europe, when he refers to the contribution of the "honorable traducteur du Code Pénal des Mandchous" as an early example of English interest in Chinese literature that seemed to mirror Britain's great engagement in contemporary Sinological studies, especially in the linguistic field, compared to what French missionaries had done in the past. He even noted how profoundly

363 105 (14 Avril 1812), 3-4; and 131 (10 May 1812), 3-4.

364 *Journal de la littérature de la France*, XIV^{ème} année, onzième cahier (1811), 336-341.

365 *Journal de la littérature de la France*, douzième cahier, 1812, 27-29.

knowledge on China had improved in the previous ten years following the translation of legal, philosophical and literary texts: “Maintenant ce sont les originaux que l’on consulte et que l’on cite, avec autant de facilité que de sécurité. Ces ouvrages sont devenus l’une des sources qu’il n’est plus permis à la critique de négliger”. He also expressed enthusiasm for the “mine” of contributions that had been made towards Sinological studies. Yet Rémusat did not feel the need to cite among such texts either Staunton’s surely pioneering work or Renouard’s translation.³⁶⁶ In fact, we do not find the first extensive French reference to the *Ta Tsing Leu Lee* until a 1837 issue of the *Journal asiatique* in an essay by Edouard Biot, “Sur la condition des esclaves et des serviteurs gagés en Chine”.³⁶⁷

An investigation into the European and extra-European circulation of the *Ta Tsing Leu Lee* through its translation into Western languages other than those addressed here – among which we must recall the two in Spanish³⁶⁸ – and the influence of these editions on Sinological knowledge and discussions naturally goes well beyond the scope of the present study. For this occasion instead I wanted to reconstruct both the longstanding European discourses on Chinese institutions, legislation and justice to which Staunton’s translation gave such an outstanding contribution and its reception in England, Italy and France, in order to present the context in which the Italian publication took place, offering the Italian public, thanks to scientist-polemicist Giovanni Rasori and enterprising bookseller Giovanni Silvestri, one of the most important products of Sinological knowledge of the early nineteenth century.

366 Abel Rémusat, “Rémusat, Sur l’état et le progrès de la littérature chinoise en Europe”, in *Journal asiatique*, I (1822), 279-192, see 284.

367 *Journal asiatique. Troisième série*, III (1837), 246-299.

368 See par. III, 102, note 262.

FIGURE 9 – 大清律例 (Da Qing lü li), 1740, reprint edited by 鄭秦 (Zheng Qin) and 田濤 (Tian Tao)
(Beijing: 法律出版社, Falü chubanshe, 1998)

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