

“十一五”国家重点图书出版规划项目

“中国研究”外文旧籍汇刊·中国记录

第二辑·1

中国旅行记

Travels in China

[英] 约翰·巴罗 John Barrow 著

[美] 李国庆 整理

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CHAP. VII.

Government—Laws—Tenures of Land and Taxes—Revenues
—Civil and Military Ranks, and Establishments.

Opinions on which the Executive Authority is grounded.—Principle on which an Emperor of China seldom appears in public.—The Censorate.—Public Departments.—Laws.—Scale of Crimes and Punishments.—Laws regarding Homicide.—Curious Law Case.—No Appeal from Civil Suits.—Defects in the Executive Government.—Duty of Obedience and Power of personal Correction.—Russia and China compared.—Fate of the Prime Minister Ho-chang-tong.—Yearly Calendar and Peking Gazette, engines of Government.—Freedom of the Press.—Duration of the Government attempted to be explained.—Precautions of Government to prevent Insurrections.—Taxes and Revenues.—Civil and Military Establishments.—Chinese Army, its Numbers and Appointments.—Conduct of the Tartar Government at the Conquest.—Impolitic Change of late Years, and the probable Consequences of it.

THE late period at which the nations of Europe became first acquainted with the existence even of that vast extent of country comprehended under the name of China, the difficulties of access to any part of it when known, the peculiar nature of the language which, as I have endeavoured to prove, has no relation with any other either ancient or modern, the extreme jealousy of the government towards foreigners, and the contempt in which they were held by the lowest of the people, may serve,

serve, among other causes, to account for the very limited and imperfect knowledge we have hitherto obtained of the real history of this extraordinary empire: for their records, it seems, are by no means deficient. For two centuries at least before the Christian era, down to the present time, the transactions of each reign are amply detailed without any interruption. They have even preserved collections of copper coins, forming a regular series of the different Emperors that have filled the throne of China for the last two thousand years. Such a collection, though not quite complete, Sir George Staunton brought with him to England.

Before this time, when China consisted of a number of petty states or principalities, the annals of the country are said to abound with recitals of wars and battles and bloodshed, like those of every other part of the world. But, in proportion as the number of these distinct kingdoms diminished, till at length they were all melted and amalgamated into one great empire, the destruction of the human race by human means abated, and the government, since that time, has been less interrupted by foreign war, or domestic commotion, than any other that history has made known. But whether this desirable state of public tranquillity may have been brought about by the peculiar nature of the government being adapted to the genius and habits of the people, which in the opinion of Aristotle is the best of all possible governments, or rather by constraining and subduing the genius and habits of the people to the views and maxims of the government, is a question that may admit of some dispute. At the present day, however, it is sufficiently evident, that
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the heavy hand of power has completely overcome and moulded to its own shape the physical character of the people, and that their moral sentiments and actions are swayed by the opinions, and almost under the entire dominion, of the government.

These opinions, to which it owes so much of its stability, are grounded on a principle of authority which, according to maxims industriously inculcated and now completely established in the minds of the people, is considered as the natural and unalienable right of the parent over his children; an authority that is not supposed to cease at any given period of life or years, but to extend, and to be maintained with undiminished and uncontrollable sway, until the death of one of the parties dissolves the obligation. The Emperor being considered as the common father of his people is accordingly invested with the exercise of the same authority over them, as the father of a family exerts on those of his particular household. In this sense he takes the title of the *Great Father*; and by his being thus placed above any earthly control, he is supposed to be also above earthly descent, and therefore, as a natural consequence, he sometimes styles himself the *sole ruler of the world* and the *Son of Heaven*. But that no inconsistency might appear in the grand fabric of filial obedience the Emperor, with solemn ceremony at the commencement of every new year, makes his prostrations before the Empress Dowager, and on the same day he demands a repetition of the same homage from all his great officers of state. Conformable to this system, founded entirely on parental authority, the governor of a province is considered as the father of that province; of a city, the father of that city; and the head of

of any office or department is supposed to preside over it with the same authority, interest, and affection, as the father of a family superintends and manages the concerns of domestic life.

It is greatly to be lamented that a system of government, so plausible in theory, should be liable to so many abuses in practice; and that this fatherly care and affection in the governors, and filial duty and reverence in the governed would, with much more propriety, be expressed by the terms of tyranny, oppression, and injustice in the one, and by fear, deceit, and disobedience in the other.

The first grand maxim on which the Emperor acts is, seldom to appear before the public, a maxim whose origin would be difficultly traced to any principle of affection or solicitude for his children; much more easily explained as the offspring of suspicion. The tyrant who may be conscious of having committed, or assented to, acts of cruelty and oppression, must feel a reluctance to mix with those who may have smarted under the lash of his power, naturally concluding that some secret hand may be led, by a single blow, to avenge his own wrongs, or those of his fellow subjects. The principle, however, upon which the Emperor of China seldom shews himself in public, and then only in the height of splendor and magnificence, seems to be established on a policy of a very different kind to that of self-preservation. A power that acts in secret, and whose influence is felt near and remote at the same moment, makes a stronger impression on the mind, and is regarded with more
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dread and awful respect, than if the agent was always visible and familiar to the eye of every one. The priests of the Eleusinian mysteries were well acquainted with this feature of the human character, which is stronger in proportion as the reasoning faculties are less improved, and which required the enlightened mind of a Socrates to be able to disregard the terror they inspired among the vulgar. Thus also *Deiöces*, as Herodotus informs us, when once established as king in Ecbatana, would suffer none of the people, for whom before he was the common advocate, to be now admitted to his presence, concluding that all those who were debarred from seeing him, would easily be persuaded that his nature, by being created king, was transformed into something much superior to theirs. A frequent access indeed to men of rank and power and talents, a familiar and unrestrained intercourse with them, and a daily observance of their ordinary actions and engagements in the concerns of life, have a tendency very much to diminish that reverence and respect which public opinion had been willing to allow them. It was justly observed by the great Condé, that no man is a hero to his valet-de-chambre.

Considerations of this kind, rather than any dread of his subjects, may probably have suggested the custom which prohibits an Emperor of China from making his person too familiar to the multitude, and which requires that he should exhibit himself only on particular occasions, arrayed in pomp and magnificence, and at the head of his whole court, consisting of an assemblage of many thousand officers of state, the agents of his

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will, all ready, at the word of command, to prostrate themselves at his feet.

The power of the sovereign is absolute ; but the patriarchal system, making it a point of indispensable duty for a son to bring offerings to the spirit of his deceased parent in the most public manner, operates as some check upon the exercise of this power. By this civil institution, the duties of which are observed with more than a religious strictness, he is constantly put in mind that the memory of his private conduct, as well as of his public acts, will long survive his natural life ; that his name will, at certain times in every year, be pronounced with a kind of sacred and reverential awe, from one extremity of the extensive empire to the other, provided he may have filled his station to the satisfaction of his subjects ; and that, on the contrary, public execrations will rescue from oblivion any arbitrary act of injustice and oppression, of which he may have been guilty. It may also operate as a motive for being nice and circumspect in the nomination of a successor, which the law has left entirely to his choice.

The consideration, however, of posthumous fame, would operate only as a slender restraint on the caprices of a tyrant, as the history of this, as well as other countries, furnishes abundant examples. It has, therefore, been thought necessary to add another, and perhaps a more effectual check, to curb any disposition to licentiousness or tyranny that might arise in the breast of the monarch. This is the appointment of the censorate,

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rate, an office filled by two persons, who have the power of remonstrating freely against any illegal or unconstitutional act about to be committed, or sanctioned by the Emperor. And although it may well be supposed, that these men are extremely cautious in the exercise of the power delegated to them, by virtue of their office, and in the discharge of this disagreeable part of their duty, yet they have another task to perform, on which their own posthumous fame is not less involved than that of their master, and in the execution of which they run less risk of giving offence. They are the historiographers of the empire; or, more correctly speaking, the biographers of the Emperor. Their employment, in this capacity, consists chiefly in collecting the sentiments of the monarch, in recording his speeches and memorable sayings, and in noting down the most prominent of his private actions, and the remarkable occurrences of his reign. These records are lodged in a large chest, which is kept in that part of the palace where the tribunals of government are held, and which is supposed not to be opened until the decease of the Emperor; and, if any thing material to the injury of his character and reputation is found to be recorded, the publication of it is delayed, out of delicacy to his family, till two or three generations have passed away, and sometimes till the expiration of the dynasty; by this indulgence they pretend, that a more faithful relation is likely to be obtained, in which neither fear nor flattery could have operated to disguise the truth.

An institution, so remarkable and singular in its kind in an arbitrary government, could not fail to carry with it a very

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For the administration of the affairs of government, there are six boards or departments, consisting of,

1. The Court of Appointments to vacancies in the offices of government, being composed of the minister and learned men, qualified to judge of the merits of candidates.
2. The Court of Finance.
3. The Court of Ceremonies, presiding over the direction of ancient customs, and treating with foreign Embassadors.
4. The Court for regulating military affairs.
5. The Tribunal of Justice.
6. The Board of Works.

These public functionaries resolve upon, recommend, and report to the Emperor, all matters belonging to their separate jurisdictions, who, with the advice of his ordinary and, if considered to be necessary, of his extraordinary council, affirms, amends, or rejects their decrees. For this purpose, the late Emperor never omitted to give regular audience in the great hall of the palace every morning at the hours of four or five o'clock. Subordinate to these supreme courts held in the capital, are others of similar constitution established in the different provinces

vinces and great cities of the empire, each of which corresponds with its principal in Peking.

It would far exceed the limits of the present work, were I to enter into a detail of their code of laws, which indeed I am not sufficiently prepared to do. They are published for the use of the subject, in the plainest characters that the language will admit, making sixteen small volumes, a copy of which is now in England; and I am encouraged to hold out a reasonable hope, that this compendium of the laws of China may, ere long, appear in an able and faithful English translation, which will explain, more than all the volumes that have hitherto been written on the subject of China, in what manner a mass of people, more than the double of that which is found in all Europe, has been kept together through so many ages in one bond of union. This work * on the laws of China, for perspicuity and method, may justly be compared with Blackstone's Commentaries on the Laws of England. It not only contains the laws arranged under their respective heads, but to every law is added a short commentary and a case.

I have been assured, on the best authority, that the laws of China define, in the most distinct and perspicuous manner, almost every shade of criminal offences, and the punishment awarded to each crime: that the greatest care appears to have been taken in constructing this scale of crimes and punishments; that they are very far from being sanguinary: and that if

* It is called the *Ta tchin Leu-Lee*, the laws and institutes under the dynasty *Ta-tchin*, which is the name assumed by the present family on the throne.

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the practice was equal to the theory, few nations could boast of a more mild, and, at the same time, a more efficacious dispensation of justice. Of all the despotic governments existing, there is certainly none where the life of man is held so sacred as in the laws of China. A murder is never overlooked, except in the horrid practice of exposing infants: nor dares the Emperor himself, all-powerful as he is, to take away the life of the meanest subject, without the formality at least of a regular process, though, as will be seen in the case of the late prime minister of *Kien-Long*, the chance of escaping must be very slender, where he himself becomes the accuser. So tenaciously however do they adhere to that solemn declaration of God delivered to Noah—"At the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed,"—that the good intention is oftentimes defeated by requiring, as I have elsewhere observed, from the person last seen in company with one who may have received a mortal wound, or who may have died suddenly, a circumstantial account, supported by evidence, in what manner his death was occasioned.

In attempting to proportion punishments to the degrees of crimes, instead of awarding the same punishment for stealing a loaf of bread and taking away the life of man, the Chinese legislators, according to our notions, seem to have made too little distinction between accidental manslaughter and premeditated murder. To constitute the crime, it is not necessary to prove the intention or malice aforethought; for though want of intention palliates the offence, and consequently mitigates the punishment,

punishment, yet it never entirely excuses the offender. If a man should kill another by an unforeseen and unavoidable accident, his life is forfeited by the law, and however favourable the circumstances may appear in behalf of the criminal, the Emperor alone is invested with the power of remitting the sentence, a power which he very rarely if ever exercises to the extent of a full pardon but, on many occasions, to a mitigation of the punishment awarded by law. Strictly speaking, no sentence of death can be carried into execution until it has been ratified by the monarch. Yet in state crimes, or in acts of great atrocity, the viceroy of a province sometimes takes upon himself to order summary punishment, and prompt execution has been inflicted on foreign criminals at Canton when guilty only of homicide. Thus, about the beginning of the last century, a man belonging to Captain Shelvocke had the misfortune to kill a Chinese on the river. The corpse was laid before the door of the English factory, and the first person that came out, who happened to be one of the supercargoes, was seized and carried as a prisoner into the city, nor would they consent to his release till the criminal was given up, whom, after a short inquiry, they strangled. The recent affair of the unfortunate gunner is well known. An affray happened in Macao a few years ago, in which a Chinese was killed by the Portuguese. A peremptory demand was made for one of the latter, to expiate the death of the former. The government of this place, either unable or unwilling to fix on the delinquent, proposed terms of compromise, which were rejected and force was threatened to be used. There happened to be a merchant from Manilla then residing at Macao, a man of excellent character,

rafter, who had long carried on a commerce between the two ports. This unfortunate man was selected to be the innocent victim to appease the rigour of Chinese justice, and he was immediately strangled*.

The process of every trial for criminal offences, of which the punishment is capital, must be transmitted to Peking, and submit-

* Various accidents having happened at different times to Chinese subjects in the port of Canton, which have generally led to disagreeable discussions with the Chinese government, the supercargoes of the East India Company thought proper, on a late occasion of a person being wounded by a shot from a British ship of war, to make application for an extract from the criminal code of laws relating to homicide, in order to have the same translated into English, and made public. This extract consisted of the following articles :

1. A man who kills another on the supposition of theft, shall be strangled, according to the law of homicide committed in an affray.
2. A man who fires at another with a musquet, and kills him thereby, shall be beheaded, as in cases of wilful murder. If the sufferer be wounded, but not mortally, the offender shall be sent into exile.
3. A man who puts to death a criminal who had been apprehended, and made no resistance, shall be strangled, according to the law against homicide committed in an affray.
4. A man who falsely accuses an innocent person of theft (in cases of greatest criminality) is guilty of a capital offence; in all other cases the offenders, whether principals or accessaries, shall be sent into exile.
5. A man who wounds another unintentionally shall be tried according to the law respecting blows given in an affray, and the punishment rendered more or less severe, according to the degree of injury sustained.
6. A man who, intoxicated with liquor, commits outrages against the laws, shall be exiled to a desert country, there to remain in a state of servitude.

In this clear and decisive manner are punishments awarded for every class of crimes committed in society; and it was communicated to the English factory from the viceroy, that on no consideration was it left in the breast of the judge to extenuate or to exaggerate the sentence, whatever might be the rank, character, or station of the delinquent.

ted to the impartial eye of the supreme tribunal of justice, which affirms or alters, according to the nature of the case. And where any peculiar circumstances appear in favour of the accused, an order for revising the sentence is recommended to the Emperor, who, in such cases, either amends it himself, or directs the proceedings to be returned to the provincial court, with the sentiments of the supreme tribunal on the case. The proceedings are then revised, and if the circumstances are found to apply to the suggestions of the high court, they alter or modify their former sentence accordingly*.

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* The following law case, which is literally translated from a volume of reports of trials, published in the present reign of *Kia-King*, and with which I have been favoured by a friend (who was himself the translator), will serve to shew the mode of proceeding in criminal matters of the provincial courts of judicature. The circumstances of the transaction appear to have been enquired into fairly and impartially, and no pains spared to ascertain the exact degree of criminality. Being given to me about the time when the trial took place of Smith, for the murder of the supposed *HammerSmith ghost*, I was forcibly struck with the remarkable coincidence of the two cases, and with the almost identical defence set up by the Chinese and the English prisoners, and on that account it excited more interest than perhaps it might otherwise be considered to be entitled to.

Translation of an Extract from a Collection of Chinese Law Reports, being the Trial, Appeal, and Sentence upon an Indictment for Homicide by Gun firing.

At a criminal court held in the province of Fo-kien, upon an indictment for shooting, and mortally wounding a relation; setting forth, that *She-fo-pao*, native of the city of *Fo-ngan-fien*, did fire a gun, and by mischance, wound *Vang-yung-man*, so that he died thereof.

The case was originally reported, as follows, by *Vu-se-Kung*, sub-viceroy of the province of Fo-kien:

The accused *She-fo-pao*, and the deceased *Vang-yung-man*, were of different families, but connected by marriage, were well known to each other, and there had always been a good understanding between them.

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As in some of the Grecian states, and other nations of modern times, the punishment of treason was extended to the relations of the criminal, so in China, even to the ninth generation,

In the course of the first moon, of the 25th year of *Kien-long*, *She-fo-pao* cultivated a farm on the brow of a hill belonging to *Chin-fe-kien*, and which lay in the vicinity of certain lands cultivated by *Vang-yung-man* and *Vang-ky-hao*, inasmuch as that the fields of *Vang-yung-man* lay on the left of those of *She-fo-pao*, which were in the center, and those of *Vang-ky-hao* on the right side of the declivity of the hill. It occurred that on the 7th day of the 5th moon of the same year, *She-fo-pao* observing the corn in his fields to be nearly ripe, was apprehensive that thieves might find an opportunity of stealing the grain; and being aware, at the same time, of the danger which existed on those hills from wolves and tygers, armed himself with a musquet, and went that night alone to the spot, in order to watch the corn, and seated himself in a convenient place on the side of the hill. It happened that *Vang-ky-hao* went that day to the house of *Vang-yung-man*, in order that they might go together to keep watch over the corn in their respective fields. However *Vang-yung-tong* the elder brother of *Vang-yung-man*, conceiving it to be yet early, detained them to drink tea, and smoke tobacco until the second watch * of the night, when they parted from him, and proceeded on their expedition, provided with large sticks for defence.

Vang-ky-hao having occasion to stop for a short time upon the road, the other *Vang-yung-man* went on before, until he reached the boundary of the fields watched by *She-fo-pao*.

She-fo-pao, on hearing a rustling noise among the corn, and perceiving the shadow of a person through the obscurity of the night, immediately hailed him, but the wind blowing very fresh, he did not hear any reply. *She-fo-pao* then took alarm, on the suspicion that the sound proceeded from thieves, or else from wild beasts, and lighting the match-lock, which he held in his hand, fired it off, in order to repel the invaders whoever they might be.

Vang-yung-man was wounded by the shot in the head, cheeks, neck, and shoulder, and instantly fell to the ground. *Vang-ky-hao* hearing the explosion, halted forward, and called aloud to enquire who had fired the gun. The other heard the voice, and going to the place from whence it proceeded, then learned whom he had

* Each watch is two hours, and the second watch begins at eleven o'clock.