“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

· 下 ·

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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 Pekin 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 the

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 uncontrouled 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 controul, 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 dread

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 *Deiŏces*, as Heredotus 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

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,

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

powerful influence upon the deciſions of the monarch, and to make him ſolicitous to act, on all occaſions, in ſuch a manner, as would be moſt likely to ſecure a good name, and to tranſmit his character unſullied and ſacred to poſterity. The records of their hiſtory are ſaid to mention a ſtory of an Emperor, of the dynaſty or family of *Tang*, who, from a conſciouſneſs of having, in ſeveral inſtances, tranſgreſſed the bounds of his authority, was determined to take a peep into the hiſtorical cheſt, where he knew he ſhould find all his actions recorded. Having made uſe of a variety of arguments, in order to convince the two cenſors that there could be nothing improper in the ſtep he was about to take, as, among other things, he aſſured them, he was actuated with the deſire only of being made acquainted with his greateſt faults, as the firſt ſtep to amendment, one of theſe gentlemen is ſaid to have anſwered him very nobly, to this effect: "It is true your Majeſty has committed a "number of errors, and it has been the painful duty of our "employment to take notice of them; a duty," continued he, "which further obliges us to inform poſterity of the converſation which your Majeſty has this day, very improperly, "held with us."

To aſſiſt the Emperor in the weighty affairs of ſtate, and in the arduous taſk of governing an empire of ſo great an extent, and ſuch immenſe population, the conſtitution has aſſigned him two councils, one ordinary, and the other extraordinary; the ordinary council is compoſed of his principal miniſters, under the name of Collao, of which there are ſix. The extraordinary council conſiſts entirely of the princes of the blood.

For

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 Pekin.

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.

the

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, 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,

racter, 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 Pekin, 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 *.

As

* 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-ſien*, 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-ſo-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.

In

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,

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In the courſe of the firſt moon, of the 25th year of *Kien-long*, *She-ſo-pao* cultivated a farm on the brow of a hill belonging to *Chin-ſe-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-ſo-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 9th moon of the ſame year, *She-ſo-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-ſo-pao*.

She-ſo-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-ſo-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, haſtened 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.