

犯罪与偏见：16世纪西班牙文献中中国明朝司法状况研究

Crime and Prejudice: Ming Criminal Justice as Seen in 16th Century Spanish Sources

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胡安·冈萨雷斯·德·门多萨于1585年出版的《中华大帝国史》第一次以西班牙语和葡萄牙语全面整理了有关中国的记述。该书正面记录了中国明朝司法制度，并探讨了这些司法制度与当代西班牙和墨西哥司法制度之间的巨大差别。其中包括对法律和公共框架的曲解，公众对证人的质疑，多层面不同形式的惩罚，经济上的惩罚以及死刑的场景。作者在书中强调通过奖励和惩罚双重方式对各级官员、下属大臣进行严格控制，以保证对各级官员的选拔任用标准，这一点也曾在蒙田对明代官员的评价中得到体现。此外，胡安·冈萨雷斯·德·门多萨还十分崇敬守护印

González de Mendoza's book on China, published in 1585, compiled all the first narratives about China, both Portuguese and Spanish. It contains a highly positive account of Ming criminal justice in which he emphasizes those elements of Chinese justice that deeply contrasts with contemporary Spanish and Mexican practices: the legal and public frame of torture, the public questioning of witnesses, the multilayered revisions of penalties, the public placing of the monetary fines, and the *mise en scène* of the death penalty. He insistently highlights the strict control upon every layer of officers and inferior ministers through a double procedure of rewards

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第安人的拉斯卡萨斯，他决定从他的文献中删掉那些为对抗中国而向强硬派提供的所谓正当权利的论辩，如洛阿尔卡所目睹的邪恶和杜拉埃尼亚所描述的死刑等。

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and punishments that guarantees the high standing of Chinese officials, an appraisal that Montaigne would pick up in his extremely rare allusions to China. At the same time, González de Mendoza, a thorough admirer of father Las Casas, the defender of Indians, decided to omit from his sources those elements that could provide the hardliners with arguments, the *just title*, to confront China, such as the nefarious sin witnessed by Loarca and the death by a thousand cuts described by Dueñas.

Key words: Justice; Ming Dynasty; Spanish reports on China; 16th century.

1. The Portuguese legacy

The first European accounts on 16th century Ming China came all from Iberian people: up to the seventy's they were Portuguese, and the most important book that sum them up was the Gaspar da Cruz's *Tractado en que se contam muito por estesso as cousas da China*, published in 1569-1570. From the mid-seventies on, the Castilians, who were in the Philippines since 1564 and in Manila since 1571, produced quite a lot of testimonies that were summed up in González de Mendoza's book, *Historia de las cosas más notables, ritos y costumbres del Reino de la China*, published in 1585. Those two groups produced two packs of testimonies, that although correlated, were the results of very different circumstances and were quite different in scope.

The Portuguese sources grew up amidst the Portuguese intents to establish bases on China, when the Chinese, who were then assailed by continuous pirate raids, were determined not to let them in. The Chinese reluctance to maritime trade brought together pirates and smugglers, be they Chinese, Portuguese, or Southeast Asian. That was the situation in the first half of the 16th century, which doesn't amount to say that there were not Chinese vessels plying the Indic Ocean during this period: the account of García da Orta¹ gives clear testimony of it.

¹ Orta, Garcia da (2004). *Coloquios dos Simples e Drogas he Cousas Mediciniais de Índia*. Goa:1563. Modern edition: Arles, Actes sud. Orta (1501-1568) is an exceptional testimony of the importance of XVIth century Chinese navigation in the Indic Ocean. He not only gives evidence of Zheng He's great travels (Orta: 185), but also of the enormous quantities of silk that circulated through the Indic Ocean in spite of

The first Portuguese testimonies come from two prisoners, Cristovao Vieyra and Vasco Calvo. Their letters, sent in 1524 from prison, are the first direct testimonies on China, and they were used by all the Portuguese chroniclers that came after them: Galeote Pereira, Joao de Barros and Gaspar da Cruz. They have threefold content: they give testimony of the first encounters between Portuguese and Chinese; they include lengthy and detailed proposals for the conquest of China, and they provide a first description of China's provinces, based on a Chinese book that they had been able to obtain².

Those letters contain also the first information about Chinese justice: their opinion about the functioning of the Chinese justice was devastating and they gave a picture of extreme cruelty. They lived through the horrible conditions of the prisons, the pains produced by manacles, fetters and *cangas*; they talk of tortures - crushing fingers and feet -. They also saw quite a lot of flogging and beating, even if that didn't shock them specially: they³ even recommended that in case of conquest, Chinese people must continue to be flogged, to avoid problems⁴. As for penalties they give evidence of beating and of banishment⁵ and they display a long catalogue of death penalties: burning and hanging, beheading and quartering, cutting by the middle through the waist, and also crucifying and strangling⁶.

Chinese bans on maritime trade.

² The first Portuguese ambassador, Tomé Pires, arrived in 1517, with Cristovao Vieyra in his retinue: they were escorted from Guangzhou to Beijing to meet the emperor, but when the emperor denied them audience they were sent back to Guangzhou in very harsh conditions. While they were on their way up and back from the capital, the Portuguese in Malacca kept on sending ships to China: in 1521, in one of those, Vasco Calvo arrived at Canton. At that moment the Chinese authorities in Guangzhou were already fighting on regular bases all the ships - Portuguese, Malay or Siamese - that anchored in China. The ambassador Tomé Pires arrived back at Guangzhou in the midst of those skirmishes and when soon after, in 1522, China closed the Guangzhou port and arrested all those considered wrongdoers, many Portuguese were executed and the rest of them were thrown in prison: among them Tomé Pires, and both Cristovao Vieyra and Vasco Calvo. Conditions in prison were very rough, and Tomé Pires died in prison, probably the same year, 1524, in which Cristovao Vieyra and Vasco Calvo managed to send letters out from the prison.

³ Ferguson attributes the letter to Cristovao Vieyra, but D'Intino ascribes it to Vasco Calvo.

⁴ *The people are bad, and so as a consequence they must be flogged if they are not prompt at that which they are ordered to do* (Ferguson, 55; D'INTINO:42).

⁵ *It is comparable, sir, to the men that in Portugal are banished to the islands* (Ferguson: 56; D'Intino, 43).

⁶ Cristovao Vieyra: *E o mandou queimar depois de emforcado* (D'Intino: 9); *Forao na praça descabeçados e feitos os corpos em troncos* (D'Intino, 14); *forao estas vinte tre pessoas feitas em pedaços dcada hua scilicet cabeças pernas braços e suas naturas nas bocas e tronco do corpo em redondo pella barriga em dous pedaços* (D'Intino:16) *As mortes na terra da China a mais cruel e posto na cruz, alli lhe*

Joao de Barros (1496-1570), the great chronicler of the Portuguese expansion in the east, and whose book, *Décadas de Asia*, was to be highly influential, included in his work all these assertions, specifying even that the traitors were burned to avoid soiling the earth with their bones⁷. In fact the Portuguese testimonies give the impression that even if they had first hand information on prisons, they lacked direct experience on Chinese executions, and their peculiar version of them was much more based on Portugal practices than on China's procedures. The Chinese executions could be very cruel and in ancient times had resorted to a wide range of options⁸, but the by the time that the European arrived in China, Chinese, at difference with their European visitors, were no hangers, burners or crucifiers.

The Portuguese vision of Chinese justice took a new turn when, in the midst of the 16th century, the Portuguese prisoners went through a striking experience. In 1547 the Beijing court appointed a new Viceroy for the southern provinces, Zhu Wan, with orders to clear the coasts of Japanese pirates, Portuguese smugglers and Chinese collaborators. That didn't stop Portuguese boats from coming and in one of them, in 1548, arrived Galeote Pereira, who was taken prisoner in the southern tip of Fujian, together with ninety others, mostly Chinese collaborators. Most of them were summarily executed while the others were transferred first to Quanzhou and later to Fuzhou: they were sure that they would be executed in a very short time. But when they were judged, a year later, the enemies of Zhu Wan impeached him and, to the great surprise of the prisoners, they were absolved and set free, while their judge, Zhu Wan, was thrown in prison. That produced a radical turn on the Portuguese opinion about Chinese justice: Galeote Pereira⁹, who wrote about it all, described the punishments and prisons of

tirao tres mil fatias e estando vivo e depois o abre e tiranlha a fresura pera os algozes comerem e fazem todos e pedazos e dam na aos caes que alli estao pera isso dam l'ha comer, isto a capitaes de ladroes a quem elles querem. A segunda ecortar a cabeça e sua natura cortada e metida na boca e o corpo feito em sete pedaços, a terceira cortar a cabeça pello toutiço, a quarta e afogar (D'Intino: 25-26).

⁷ La first *Década de Asia* was published in 1552, the second in 1553, the third in 1563. The fourth is a posthumous work and was not published until 1613. It is the third one that contains the relevant data for the Portuguese expansion in China. The assertion of Joao de Barros belongs to this third Decade: *foi queimado con pregao de tredor, porque este crime se pune com fogo, por nao ficar memoria na terra dos ossos da culpabkle* (Barros, Decada III, Liv. VI. Cap I:5).

⁸ McKnight (1992:446).

⁹ Galeote Pereira went to India in 1534, in the same boat than García d'Orta. From Malacca, where

the Chinese, but gave a general vision of Chinese justice that was not only positive but overtly admiring in comparison with Portuguese justice: he said that *in doing justice (...) these Gentiles do exceed Christians*; and also that *These men are unique in the doing of their justice, more than were the Romans or any other kind of people*¹⁰. Pereira's eulogy of Chinese justice didn't please at all his Italian censors, who drastically abridged it¹¹. From Galeote Pereira and Gaspar da Cruz onwards, they continued to mention the beatings but they talk with a great respect about Chinese death penalty: *with how much pity and leisure they kill, with so much cruelty and speed they whip*¹².

The clashes of the Portuguese with the Chinese tribunals gave them an acute interest for Chinese judicial proceedings: it is in the Portuguese published texts and in the Spanish who in fact copied them that the more systematic exposition of Chinese justice in the early modern era is to be found. The most influential 16th century Portuguese text on China was Gaspar da Cruz *Tractado* (1569-70)¹³ and the two chapters that he dedicates to the Chinese justice embody the statements about its proceedings, punishments and prisons that would be universally accepted in 16th and 17th Europe: those were so firmly established by the mid sixteenth century that from then on even the most influential books on China didn't bother to deal with justice any more. In the first decade of 17th century, the Jesuit Matteo Ricci, who has a very keen interest in the Chinese state and in the Chinese bureaucracy doesn't even mention in its work the Chinese

he met Francis Xavier, he sailed at least two times to China before 1549, when he was taken prisoner in the Fujian coast, near Zhangzhou. From there the captives were taken to Quanzhou and Fuzhou, where they remained a year: this is the same itinerary that Rada would make almost 30 years later. Once the trial was over, they were exiled to Guilin and from there he managed to reach Shangquan, on the coast, and leave China. (Boxer, 1953: l-lv).

¹⁰ Boxer (1953:17, 20).

¹¹ The account of Galeote Pereira was copied by the Jesuit College at Goa in 1561. When it arrived at Rome, it was translated to Italian and included in the *Nuovi Avisi Particolari*, printed in Venice in 1565: that is the edition that was expurgated by his Italian censors. The English version of 1577 follows this abridged version. Its reprint in the Hakluyt and Purchas collection assured a fairly circulation. Boxer (1953):lv-lvi; 21, n.1.

¹² Gaspar da Cruz, en Boxer, C. R. (1953). *South China in the Sixteenth Century*. Londres, The Hakluyt Society:178.

¹³ Gaspar da Cruz went to Goa as a Dominican missionary in 1548. In 1556 he spent a few weeks in Canton and a few months on the China coast. After spending more than 10 years in Portuguese Asia, he returned to Portugal in 1569, and there he died by the plague in 1570. His book, *Tractado em que se cotam muito por esteco as cousas da China*, was the first European book entirely devoted to China, but, printed in the plague year it was not widely circulated. BOXER (1953:lviii-lxv)

justice¹⁴. So, to sum up: in spite of their harsh beginnings in China, the Portuguese left a legacy of a very positive vision of Chinese justice, and this was to have a decisive influence on all 16th and 17th century texts.

2. The Mendoza Paradigm

The influence of the Portuguese initial and very positive vision of Chinese justice is clearly visible in 16th century's Castilian texts. Following the Portuguese, all the main books have chapters on Chinese justice, the basic source being Gaspar da Cruz. Even if this book was not very widely spread and was never translated to the big European languages, the book came to the hands of a Spanish Inquisition officer, named Bernardino de Escalante. He was a commissioner both in Galicia and Sevilla, and on his transfer from one position to the other he spent a time in 1576 in Lisboa, where he found the books of Joao de Barros and Gaspar da Cruz. A year after, in 1577, he published in Sevilla a small book, well written in excellent Spanish, that in fact glosses, a bit shortened, the book of Gaspar da Cruz¹⁵. He adds little to the Portuguese text and many times he copies it literally: that's the case of his chapters on Chinese justice, that were copied with almost no change at all from the two chapters of Gaspar da Cruz: in fact the only sensible difference lies in the fact that he reintroduces the burning as a form of death penalty, something that he copied from de Joao de Barros text¹⁶.

The importance of this little book lies in the influence it had on the Spanish writers on China, especially on González de Mendoza. Born in 1545, Mendoza entered the Augustinian order in 1564 in Mexico. In 1574 the Augustinians in the Philippines sent an anguished emissary to the court of Philipp the II, to denounce the abuses of the colonizers and the general deception about the possibilities of the colony, whose unique interest seemed to be the trade with the *sangleys*, that is the Chinese merchants in

¹⁴ Ricci, M. (1610). *Della entrata della Compagnia di Giesú e Christianità nella Cina*. Macerata, Quodlibet.

¹⁵ This book, *Discurso de la Navegación que los Portugueses hazen a los Reinos y provincias del Oriente, y de la noticia que se tiene de la grandeza del Reino de la China*, was immediately translated to English and published in 1579. Even so, Escalante's work had not a great circulation.

¹⁶ *Queman a los que an cometido traición contra el rey, porque no quede memoria de los huesos de los culpables de este delito* Escalante (1577) 85a. Look at Barros' text in note 6.

the Philippines. On his journey from Manila to Madrid the emissary stopped in the Augustinian convent in Mexico, and aroused the interest for China of a young priest, González de Mendoza. He asked to be sent to China, but was not included in the group of missionaries that the Augustinian emissary took back with him to China: lucky for him, too, because the whole expedition got drowned. He spent some years in Spain, always in touch both with the court and with the news about China that reached Spain, and which were quite a lot during the whole XVI century as can be seen by the richness of the documents that are now stored in the Archive of Indies in Sevilla and other Spanish Archives.

In the late seventies the news arriving from China took quite a new turn when the accounts of the travels through China of a group of Augustinians and soldiers in 1575, and another account of Franciscans trip in 1579 reached the court. This time Philip II was duly impressed with the undeniable importance of China, fully assessed by those records. He didn't give support to the idea of conquering China, even if it was quite a popular feeling among the Philippines' Spaniards around 1580, but in 1581 he decided to send an embassy to the King of China and entrusted Gonzalez de Mendoza as the head of it. As entitled ambassador he had access to all the documents about China then available in Spain and Mexico. Those documents included reports from the Philippines' governors, letters from the Philippines' friars of various orders and letters from almost everybody of the colony, mostly addressed to the governor of Mexico. Mendoza received the assignment of buying a present for the Chinese Emperor, and with the present in hand he set sail to Mexico, where he awaited for the rest of the embassy members, and talked extensively with everybody in Mexico that was knowledgeable about China, especially with the Augustinian Jerónimo Marín, who had been in China with the Rada expedition, and probably with some of the 85 Chinese that, according to Mendoza, were already living in Mexico.

But at the beginning of the eighties the Spanish empire got involved in too serious troubles for the projected embassy to go on. One has to say also that there was always in Spain a strong party who opposed the China project, the project of developing commercial relations with China, for fear of an extremely serious competition of Chinese silk with Spanish textiles in the American market. So, at the end, Mendoza's embassy

amounted to nothing and the present for the Emperor was sold at public auction. But he had both the information and the connections required to try to publish the results of his work, and in 1584 the Pope asked him to do it: the first edition was published in Rome in 1585. More than 30 editions in all European languages were to appear before the end of the century. Even so, the intellectual impact of Mendoza's book seems to have been more important in Europe than in Spain¹⁷.

The sources of Mendoza are quite another matter altogether, but from the point of view of Chinese Justice, they are quite clear: he copied almost integrally the Escalante's chapters on justice. I don't think that he ever saw the book of Gaspar da Cruz, and even if it had been so, he clearly preferred to draw from the must easy Spanish version of Escalante. That is undeniable, because the errors of comprehension of Escalante on the Gaspar da Cruz text are all to be found again in Mendoza. He made some changes, though, all aimed at minimizing the most scabrous points that appeared in Portuguese sources. Mendoza goes even further than the Portuguese in his intent to shed over the Chinese justice a very positive light: the cruelty of the prisons, for example, is clearly attenuated. The Portuguese sources and Escalante with them, talked of the rats that infested the Chinese prisons and who ate the dead, and added that out of hunger even the prisoners ate also their dead companions. Mendoza cuts that, just as he cuts the universal scars that almost everyone has as a result of the frequent beatings, the enormous quantities of prisoners in Chinese prisons or the way to get rid of those who had died in prison. For the rest, it is important to retain that for the three chapters that contain all the information that Mendoza gave about the Chinese justice, the only source of Mendoza is Escalante, and that he didn't make any use of the Castilian sources that were otherwise available to him. Ten years after, in 1595, Jerónimo Roman¹⁸, who had read Mendoza and didn't like it very much, published another book, in which he again copied directly Escalante in everything related to Chinese justice¹⁹.

¹⁷ Rubies (2011):313.

¹⁸ Jerónimo Roman (1534-1597), born in Logroño, entered the agustinian order in 1560, where he very soon stood out as a historian. His *Republicas del Mundo*, first published in 1575, encountered immediately the reject of the Inquisition who had some passages expurgated. Harassed by the Inquisition, who put him on the same trial that his contemporary fray Luis de Leon - he escaped to Portugal in 1586. He returned in time to see the final edition of his *Republicas* printed in Salamanca in 1595, and died in 1597.

¹⁹ Roman, Jerónimo O.E.S.A. (1595). *Repúblicas del Mundo, divididas en tres partes*. Salamanca.

It is to González de Mendoza to which we have to credit the positive image of Chinese Justice that prevailed in 16th century Europe: in this he followed the path that Galeote Pereira had opened in his claim that China was a gentile²⁰ civilization in many points superior to the European one²¹. This image of the civilization of China, was one of special significance because it potentially challenged the ideological assumption that in order to be fully civilized one needed to be Christian: this might explain why the intellectual impact of Mendoza's book was weak in Spain and Italy and much stronger in protestant north Europe²².

The positive version of Chinese justice in 16th and 17th century Spanish texts on China was based mainly on the following statements.

2.1. The transparency of the judicial proceedings

The transparency of the judicial proceedings has been maintained due to the fact that they were public and were always endorsed by many scribes. This transparency has three main consequences:

The transparency of all the process prevents the use of bribes, and in doing so prevents corruption. This vision was in sheer contrast with the proceedings of the Spanish justice, where judges were always prone to bribery, and where the salaries of the inquirers (*perquisidores*) came from the fines and from the properties confiscated to the accused that were found guilty²³. Mendoza remarks that the Chinese justice officials were so honest because they were paid regularly by the state and didn't have to rely on the fines imposed by themselves: in the second half of the 16th century, the judges abuses in order to extract money from the accused were quite general in Castilla, because judges had a direct participation in the pecuniary penalties that they imposed²⁴.

²⁰ "Gentiles" were those nations who were not Christians, Jews or Muslims. It was a crucial category for early-modern missionaries and ethnographers. (Rubies, 2011: 312, n. 4)

²¹ *Es una grande virtud y que había de ser imitada de todos los que lo son para evitar muchos daños que suceden por no hacerse con el cuidado que esos gentiles en ello ponen* (Mendoza: L3,c10).

²² Rubies (2011): 313.

²³ Alonso (1982): 106, 133.

²⁴ Tomás y Valiente (1969): 163. Mendoza relies on the 1579 narrative of Francisco de Dueñas, who went to China with the Franciscan expedition: Dueñas remarks *that no llevan los jueces derechos de todo cuando juzgan porque el rey les paga sus salarios*.

The transparency had also another effect: in China, it was not so easy to accuse someone as it was in Spain. To begin with, the accusations had to be nominal and couldn't be anonymous. Moreover, while waiting for the judgment the accusers were kept in prison as well as the accused, while in Castilla the name of the accuser was always kept secret, as a device to encourage denunciations²⁵.

The transparency of the legal procedure generates a great amount of writing that can be re-examined once and again, and that is collected in the memorials²⁶ that the judges sent to their superiors²⁷. This assertion is to be found already in Gaspar da Cruz²⁸ and Escalante²⁹. Obviously this practice produced a huge corpus of legal writings. During the Ming, after judicial officials, in prefectures or districts, heard cases, they were required to compose court opinions—unless the matters involved were extremely minor. Each court opinion would record the circumstances revealed by the hearings, provide an analysis regarding the offenses, and propose remedies - either naming penalties or requesting decisions from the superior offices. Much of all this legal writing was published in the Ming magistrates' casebooks, that primarily contain such court opinions³⁰. What is relevant here is that Mendoza text takes for granted that there must be in China a huge corpus of legal literature, something that in Europe will be forgotten for centuries.

2.2. The strictly controlled judges

The judges are strictly controlled both by the Visitors, who paid control visits to the local courts on a regular bases, and by the pyramidal structure of the Chinese bureaucracy. All the officials are controlled by officials in a

²⁵ Tomás y Valiente (1969): 159.

²⁶ *Todo va por memoriales* (Semedo, 1642: 2, c12).

²⁷ *En los negocios de mucha importancia, tocantes a personas graves, no fian los jueces a los escribanos el escribir las informaciones, sino que ellos, por su mano, escriben todos los autos, mirando una y muchas veces lo que dicen los testigos* (Mendoza, 1585: L3, c10).

²⁸ *When they examine any matter of great weight, or grave persons, then they writw themselves the process of the examination, although they have many scriveners to take down tje evidence, since they wish to trust nobody but themselves.* (Gaspar da Cruz, in Boxer, 1953: 175)

²⁹ *En los negocios de mucha importancia, y que tocan a personas graves, no fian los luezes a sus escrivanos el escrevir las informaciones; sino ellos por su mano assientan todos los autos.* (Escalante: 78)

³⁰ Jiang (2007): 32-33.

superior level and they in turn control those in an inferior level, and are responsible of their doings. In fact, the Ming code suggest that the Ming founder must have assumed that his officials were not necessarily possessed of superior moral qualities and would tend constantly to wrong acts unless restrained: the Laws on Personnel of the Ming Code are a the detailed codification of rules for officials, of a very coercive nature, which included the sins of omission³¹. Mendoza specially highlights the strict control upon every layer of officers and inferior ministers trough a double procedure of rewards and punishments that guarantees the high standing of Chinese officials. Montaigne would pick up this appraisal of the system's mixture of rewards and punishments in his extremely rare allusions to China³².

Moreover, once the sentence given, it passes through a thorough revision by a superior level of court. That also contrasted with the Spanish procedure: even if the right to appeal was admitted in the *Siete Partidas*, the main legal text in 16th century Castilla, there were so many exceptions to the general norm that it was impossible to know what the rule was and what was the exception³³. Moreover, Castilla was not under a unified jurisdiction, even if the king and the *Siete Partidas* intended to do it: in fact all crimes fell under the gibberish of jurisdictions: the Church, the nobility, the cities, all retained their own jurisdictions. By the time when Mendoza published his book, the penal law of general application was more a political tendency advocated by the kings than a reality³⁴. But in China, from ancient times to nowadays judicial procedure has rested more firmly in the hands of the state than has been the case in many other societies³⁵.

³¹ Farmer (1978): 16-17.

³² *Les fonctionnaires délégués par le Prince pour inspecter les provinces, de même qu'ils punissent ceux qui font des malversations dans l'exercice de leur charge, rémunèrent aussi par pure libéralité ceux qui s'y sont bien comportés, au-delà de la façon ordinaire et au delà des obligations de leur devoir. Montaigne, Essais, Livre III, Chapitre XIII.* Comparar con el texto de Mendoza: *Tras esto alaba con mucha ponderación de palabras a los que han ejercitado bien sus oficios, mejorándoles luego en los asientos y prometiéndoles dar muy larga cuenta al Rey y a su Consejo de sus buenos servicios, para que sean premiados como merecen; y reprendiendo asimismo ásperamente a los que han faltado a sus obligaciones.* Mendoza, *Historia del Gran Reino de la China Parte Primera*, Libro III, cap. XI.

³³ Alonso (1982): 246.

³⁴ Tomás y Valiente (1969): 26.

³⁵ Alford (1997): 414.

2.3. The tortures

The tortures inflicted to obtain confession have established regulations and those rules are public. Mendoza describes the tortures and says that they are painful but he is not shocked by them for a very simple reason: they are almost identical, in their squeezing of fingers and ankles than the ones that were inflicted in contemporary Spain³⁶. What really struck him of China was the public exposure of tortures and of torture implements, when in Spain those were secret proceedings³⁷, and the fact that in China torture had to be applied according to strict regulations: using it in ways that the regulations didn't allow could lead to the impeachment of the judge who had ordered them.

On the contrary, in Spain, the normative regulation of torture was very scarce: it is contemplated in the *Siete Partidas*, but in practice no dispositions were issued to apply the norm³⁸. The abuses of tortures were so usual that they motivated many letters to the king from the Cortes' deputees, denouncing that the tortures inflicted were so cruel and so extraordinary, that they would never fit in any law.

2.4. The penalties

The penalties that appear in Mendoza text are not as harsh as the ones that appear in the *Siete Partidas*. Of course, the frequency and cruelty of the beatings appear in the Mendoza text, but flogging was also a penalty in Spain, and the *Siete Partidas* went farther: one of the penalties listed in the *Siete Partidas* as being the last of the three minor penalties consist in tying the accused to a pillory, rubbed with honey, and leave him some hours under the sun with the flies eating him³⁹.

2.5. The death penalty

The death penalty was applied with a much more leniency than in Spain. Only the king could inflict a death penalty, and the death sentence

³⁶ *Otra forma de tormento era meter unos garrotes entre los piés y manos de los pacientes, y con cordeles aprietan tan fuertemente que los dexan muy delgados con el inmenso dolor que padece.* Quevedo Y Hoyos (1632): II parte, cap. 1), cit. en Alonso (1982): 253.

³⁷ *E devele dar el tormento en lugar apartado,* Alfonso X: Título XXX, Ley 3: 398.

³⁸ Alonso (1982): 246.

³⁹ *Azotar; poner en la picota; desnudarlo, untarlo de miel y hacerlo estar al sol algunas horas del día para que se lo coman las moscas.* Alfonso X: Título XXXI, Ley 4: 409-411.

was only executed after many revisions, and only in autumn⁴⁰. Moreover, amnesty given by the king was a much more usual procedure than in the Iberian Peninsula, even if this possibility was present in the *Siete Partidas*⁴¹. But in Spain amnesties were extremely scarce, while in China amnesties came often enough for the convicts to entertain some hope to escape their punishments, even if Ming rulers were sparing in their use of ordinary acts of grace⁴². On behalf of the death penalties, Mendoza's real source was his own experience in Spain and Mexico. Mendoza listed as standard Ming forms of execution, hanging, impaling on stakes, and burning⁴³, a death penalty that Escalante had already introduced in his text and that is not to be found in Gaspar da Cruz text. In fact, one has to wait until the mid seventeenth century to see a clear statement in Semedo that in China there were only two kinds of death sentences: beheading and strangling⁴⁴.

And in any case, the *mise en scène* of the death penalty in Spain was an extraordinary and staggering theater, with no relation at all with the staging of the death penalty in China. The European way of tormented executions used religious deeds, aesthetic devices and performing arts techniques that recalled the artistic representations in paintings and theaters. Moreover, Christian civilization believed that the spectacle of a painful execution had a redemptive effect on the criminals and the attendants as well, while in China, capital executions were not organized as a show nor subject to aesthetic representations, and they had no redemptive function⁴⁵.

2.6. Chinese prisons

Chinese prisons even being very hard were not presented as worst than the Spanish ones. Some of the descriptions are even surprisingly

⁴⁰ Since Kubilai Khan, the law required that death sentences had to be centrally reviewed by the Board of Punishments. The Ming introduced an annual review known as the Autumn Assizes (Brook, 2008: 51).

⁴¹ Alfonso X: Título XXXII, Ley 1: 424.

⁴² McKnight (1991): 97.

⁴³ Mendoza (1585) L3, c12: 118: *Las maneras de muertes que dan son ahorcar o empalar o quemar; aunque esta ena de fuego se ejecuta sólo contra los que han sido traidores al Rey.*

⁴⁴ *Entre ella es abominable toda accion de crueldad: por ello entre las penas de sus delitos, no se usa lo que en las de los nuestros atozes, que es hazer quartos a uno, atenzearle, o arrastrale. Al que merece muerte, o le deguellan, o le dan garrote.* (Semedo, 1642: 2, c1).

⁴⁵ Bourgon (2003): 153.

similar: the shops and artisans inside the prisons offering their services and products to the accused are very similar to those described in a 16th century Spanish text about the Sevilla prison⁴⁶, and the way in which the prisoners are to be kept at night, with fetters and chains, has its echo in the dispositions of the *Siete Partidas*⁴⁷. Moreover, both in China and in Spain, prison was not meant as a punishment but only as a place to await either sentence or death⁴⁸. The main 17th century authors who intended to give a general vision of China like the Jesuit Alvaro Semedo (1642)⁴⁹ and the Dominican Domingo Fernandez de Navarrete (1676)⁵⁰ are equally enthusiastic about the superior quality of Chinese judiciary proceedings and even of Chinese prisons in comparison with Europeans⁵¹, and their positive opinion is quite noteworthy because both of them had been in Chinese prisons. Navarrete spent some months in prison while Semedo spent a year in prison and thirty days in a cage while being transported from Nanjing to Guangzhou, but one has to keep in mind that 16th and 17th Europe made also a widespread use of cages as mechanisms of torture and punishment⁵².

2.7. Mutual responsibility

Mutual responsibility, which meant that men were grouped in groups of families, the *lijia*, who had the duty to denounce any misdeed of one

⁴⁶ Chaves, Cristobal (1591) *Relación de las cosas de la cárcel de Sevilla*.

⁴⁷ *E de noche los deven guardar de esta manera, echándolos en cadenas o en cepos e cerrando las puertas de la cárcel muy bien, e el carcelero mayor debe cerrar cada noche las cadenas e los cepos* Alfonso X: Título XXIX, Ley 6: 377.

⁴⁸ *La cárcel no es dada para escarmentar los yerros, mas para guardar los presos solamente en ella, fasta que sean juzgados*. Alfonso X, Título XXXI De las penas. Ley 4: 410.

⁴⁹ Álvaro Semedo (1586-1658) was a Portuguese Jesuit priest that arrived in China in 1613, where he lived mostly in southern China for the next 23 years until he died. His book, *Imperio de la China*, became by mid 17th century the most read book about China, as Mendoza's and Ricci's books had been before it. Two thirds of the book deal with general aspects of China and the final third is a strong apology of the Jesuit mission, with no mention whatsoever of the other orders' missions.

⁵⁰ Domingo Fernández de Navarrete (1610-1689) was a Spanish Dominican missionary that, after some years in Manila, went to China in 1657: he stayed mainly in Fujian province, where the Dominican missions were based. His book *Tratados históricos, políticos, éticos, y religiosos de la monarquía de China*, published in 1676, contained a long description of China and a strong anti-Jesuit diatribe and was translated into most major European languages.

⁵¹ *Sus carceles son mayores i más comodas que las nuestras* (Semedo, P2, c17); *Quanto al gobierno, quietud, sossiego, y limpieza de la carcel, no dudo excede a lo que se halla en las de Europa* (Navarrete. L1, cVII, 5).

⁵² Brook (2008): 157.

of them. If they didn't do so, this was labelled as a form of concealment, and punished in consequence. This kind of social control came from very ancient times, but with the Ming population growth, that implied a steady growth of population at county-level units, the governmental control over local affairs weakened and it had to depend increasingly upon local elites and community associations for social control. At the very beginning of the dynasty, Zhu Yuanzhang had issued a document, the *Jiao min bangwen* (*Placard of people's instructions*), which regulated the supervision of local affairs by the elders of a village: the matters that were to be judged by the elders are clearly stated and only the most serious cases were to be reported to the officials for their action⁵³. The European observers assumed that the fact that the eldest in the social unities could resolve the minor offences kept the Chinese away from courts. The only thing that really shocked Mendoza was the familiar responsibility implied in the sentences, something that was expressly forbidden in the *Siete Partidas*⁵⁴.

To sum up, Mendoza establishes a paradigm of a judiciary system more rational, more regulated, more controlled and more lenient than its Spanish correspondent. His model comes from Escalante, who in turn copied the Portuguese, but he embellishes the model up to a paradigm.

A last remark: all those books that we have been talking about until now, were published in a very official devise: all of them had official stamps on their covers.

3. The direct witnesses

It is important to state that neither Escalante nor Mendoza nor Roman had never been to China. The first Portuguese accounts reached Lisboa before mid century, but they were not circulated due to the Portuguese policy of secrecy with everything related to their oriental possessions. In 1555 some notices about China reached the Jesuit College in Malacca, and this time those were sent to the Superior of the Company and not to Lisboa, gaining with it a higher diffusion⁵⁵. From the point of view of

⁵³ Farmer (1978: 6) and Chang (1978). Chang translated the *Jiaomin bangwen*, and published it in Chang (1978b) For a listing of the items in the Placard of People's Instructions, see Farmer (1978: 27-28).

⁵⁴ *Como non deven dar pena al hijo por el yerro que el padre ficiesse* Alfonso X: Titulo XXXI, Ley 9: 416.

⁵⁵ The majority of those letteres were included in the *Avisi Particolari*, sent to Europe in 1555.

justice, one of them is especially outstanding, because it comes from a personal experience: the one written by Jesus Hernan Mendez, who for six years was prisoner in China⁵⁶.

But from 1575 onwards, many Castilian expeditions went to China from Manila and all of them left many accounts of it. The first expedition went to China in 1575 in an official basis: the Chinese appreciated the Spanish fighting against the Chinese pirate Limahon, who attacked Manila after having been a nightmare for years for the Chinese authorities in Fujian: deeply grateful for that, the Chinese official envoys to China invited a group of Spanish to visit China. Even if the Spanish didn't know it, they were assimilated to a tributary mission and were treated according to that. The expedition was formed by persons and at least two of them left a written account of it, together with a general description of China: those were Martin de Rada, an Augustinian friar and head of the expedition, and Miguel de Loarca, a soldier and *encomendero* who went with it. Both were acute observers: Rada, a prototype of a Renaissance intellectual, was inclined to more general statements, while Loarca was very sensible to details. Both are excellent accounts that gather an astonishing amount of information, if one remembers that, in all, they stayed 45 days in China. Rada had already gathered a considerable amount of knowledge about China before the expedition, through his conversations with the *sangleys* - the Philippines' Chinese - and through the careful study of a big Chinese map that he partly translated and sent to Spain together with two pages of commentaries. Moreover, Rada bought in China a big pack of books, 30 titles with many editions of some of them, among them one on Chinese law⁵⁷. But neither Rada nor Loarca seem to have made any use of this text in their accounts.

⁵⁶ The letter, *Informacion de algunas cosas acerca de las costumbres, y Leyes del Reyno de la China, que un hombre (que alla estuvo captivo seys años) conto en Malaca, en el Collegio dela compañia de Jesus*, was printed in Coimbra in 1555 and again in Zaragoza in 1567.

⁵⁷ The list of those titles appears in Loarca from where it was copied by Mendoza, with small differences between them: Loarca, *sus leyes por donde se gobiernan*; Mendoza: *De las leyes que tiene el Reino, y en qué tiempos y por quién fueron hechas y las penas que por el quebrantamiento de ellas se han de dar, con otras muchas cosas tocantes a buen gobierno* It might have been the Ming Code or a case collection. The Ming code had undergone a much more great diffusion than any other code before him, because the Ming founder, Zhu Yuanzhang, wanted it explicitly to be known by everyone in the realm (Langlois, 1998: 179). But, at the same time, in the last century of the Ming dynasty a large number of legal case collections were published as case collections that functioned to assist both specialists and laypeople in understanding legal matters and in participating in litigation. In recent years, scholars have discovered six major casebooks from the late Ming dynasty (Jiang, 2007: 31-32).

The second expedition was much more problematic from the very beginning: it was launched by a Franciscan friar, Pedro de Alfaro, without neither the permission of the Chinese authorities nor the Spanish ones. But Alfaro was no match for Martín de Rada. He was consumed by religious zeal, more impressed by the fact that the Chinese were heathen than by their civilization and culture. He was never invited to China, got there illegally and from the very start was a problem which the Chinese wanted to get rid of. The experience of this expedition is very interesting because it went through less official channels than Rada and Loarca, but the outlook of its chroniclers is much more limited. Alfaro left only a long and pious letter, leaving the work to another Franciscan who was with him, fray Tordesillas and to one soldier who also went along with them, Francisco de Dueñas. Tordesillas wrote the expedition account, while Dueñas took in charge a general vision of China, much less systematized than the previous ones, but with a lot of direct remarks.

The vision that we can deduce from the accounts of those four direct witnesses is in some points similar to the Mendoza paradigm, but introduces some elements that doesn't appear in the Mendoza text.

3.1. The transparency

In accordance with the official vision, they also praise the transparency of the judicial procedure and the fact that judicial procedures are public, and Dueñas also links the honesty of the officials to the fact that their salary doesn't come from the fines⁵⁸. But they saw quite a lot of corruption, especially the Alfaro expedition that was not treated at all like a tributary mission: Tordesillas complains tirelessly that everybody, from the interpreters to the judges, is abusing them. Of course the Rada expedition fared much better, but even so Rada states clearly *that they never accept bribes but they like them very much, and it is impossible to negotiate with them without greasing their palms*⁵⁹.

⁵⁸ Dueñas *No llevan los jueces derechos de todo quando juzgan porque el rey les paga sus salarios y viven con tanta rectitud y justicia que pone admiracion.*

⁵⁹ *o si Reçiben dones porque en esto son rrecatadißimos aun que muy amigos dellos y apenas se negoçiará bien sin untarles las manos, pero a de ser muy en secreto quen publico no rreçibirán nada y esto digo de los que nosotros bimos, otros muchos puede aver de otra condición (Rada 28 vº).* Mendoza ignored the criticism of Rada, but Jerónimo Roman, who felt no enthusiasm for Mendoza's text, picked it up: *Con todo eso dice Rada que son los más avarientos del mundo, y que aunque en público andan recatados en lo secreto miran de aprovecharse de lo que pueden (Roman, 232b).*

3.2. The control of the central state

As for the control of the central state over the judges and their proceedings, embodied in the figure of the Visitor, they especially highlight the fact that officials were never from the same province and that they were changed every six years. Only the governor of the Philippines, doctor Sande, who had a strong animosity against the Chinese, took for granted that the King changed them so often because he knew that they were great robbers⁶⁰.

3.3. The tortures

They all talk of tortures to obtain confessions, mainly the crushing of fingers and feet, but they are basically struck by the fact that torture in China is as closely regulated as any other bureaucratic procedure⁶¹. Moreover, they were not horrified by them. They came from a world where tortures were terrible and secret: in comparison, they thought that the Chinese were doing things much better. And Rada knew very well what he was talking about because he had witnessed and strongly denounced horrible tortures in Manila⁶².

3.4. The punishments

As for the punishments, they all talk about the whipping, which in their accounts appears to be very public and frequent. In fact, they saw so much beating because they witnessed the proceedings of low courts, and beating was the only sentence that those could give in firm and execute immediately. Sentences to penal servitude, exile or death had to go to higher

⁶⁰ Sande (1576): punto 80. *Dizen estos que cada tres años muda el Rei de china los Visorreyes, por yspiriencia que tiene que an robado toda la tierra.*

⁶¹ Brook (2008): 47.

⁶² Rada, 1577b, Carta a Veracruz, 15 julio 1577 *A unas indias recién christianas se les dio cruelísimos tormentos, que yo vi el burro todo muy ensangrado, hizieronles dezir todo lo que querian, y a un muchacho español de onze o doze años que estuvo arreptio por hechizos dellas, presente a los tormentos de las indias, viendo lo que passava confesso ser bruxo, aunque no como lo avian hecho, y que estava amancebado con una dellas que estava 40 leguas de çubu adonde el estava. Hizieron quartos a las indias, al muchacho lo encoroçaron y emplumaron y condenaron a diez años de galeras despaña. Dieronle por procurador al muchacho hombre que ni savia leer ni escrevir y era alguacil y carcelero del mismo muchacho.*

courts for revision. But for the punishments, the best informant is without doubt Dueñas. He clearly identifies some of the Five Punishments that were established in the Ming Code: he mentions the beating with the light stick and the penal servitude⁶³, but he sees others that are not listed among the Five Punishments: he talks of tattooing in such a way that he seems to have seen it⁶⁴. Tattooing had been a classic punishment in China, but since the Tang dynasty the corporal punishments in the codes were all substituted by beatings. Even so, tattooing is found in many of the punishments that appear inside the articles, even if exemption from tattooing appears much more often than tattooing itself⁶⁵. Tattooing were a punishment quite usual for robbers, who even had to face severe penalties if they removed the tattoos⁶⁶. We also owe to Dueñas the most exact description of the *canga* that appears in those texts: what most impressed him was the fact that the *cangas* had inscriptions plastered on them, stating what was the crime and for how long had he to bear the *canga* ⁶⁷. In contrast, 16th century Spanish penal laws do never emphasize that the punishments have to be legal and according to the Code: all the punishments held a deliberate legal indetermination⁶⁸.

⁶³ Dueñas: *El castigo que hazen a los ladrones por el primer hurto aunque sea de cantidades es azotallo y pintalle una pinturilla en las espaldas de seys dedos de dos de largo y tres de ancho, esculpidas en la carne de la suerte que los yerros de los esclavos y mandanles andar quatro o seys meses desnudos de la çinta arriba porque sean conocidos por ladrones, y a otros les hechan unos tablones como çepos al pescuezo de una vara de quadro, de suerte que no puede llegar con las manos a la boca, antes para poder andar lo a de andar siempre sustentando con las manos porque es pesado, porque tiene de grueso tres o quatro dedos. Ponen encima unos rotulos en que declaran el delito que hizo y el tiempo que lo a de traer. Al segundo hurto lo azotan y hechan por esclavo a los navios del rey, que es como a galeras, y al tercero lo cortan la cabeça. Y si acaso al primer hurto haze alguna resistencia a los que le prenden, hiere o descalabra alguno, por poco que sea muere por ello.*

⁶⁴ Dueñas: *El castigo que hazen a los ladrones por el primer hurto aunque sea de cantidades es azotallo y pintalle una pinturilla en las espaldas de seys dedos de dos de largo y tres de ancho, esculpidas en la carne de la suerte que los yerros de los esclavos y mandanles andar quatro o seys meses desnudos de la çinta arriba porque sean conocidos por ladrones.*

⁶⁵ The exemption from tattooing appears, among others, in articles 10, 19, 25, 41, 129, 294 (Jiang: 2005).

⁶⁶ Article 304 (Jiang, 2005: 169).

⁶⁷ Dueñas: *a otros les hechan unos tablones como çepos al pescuezo de una vara de quadro, de suerte que no puede llegar con las manos a la boca, antes para poder andar lo a de andar siempre sustentando con las manos porque es pesado, porque tiene de grueso tres o quatro dedos. Ponen encima unos rotulos en que declaran el delito que hizo y el tiempo que lo a de traer.*

⁶⁸ Tomás y Valiente (1969): 354.

3.5. The death penalty

As for the death penalty, all of them agree that the Chinese are not at all prone to the death penalty⁶⁹, and all highlight the fact that no execution can proceed without the King's approval. Dueñas is again an important source for the death penalty: he says that the main penalty is beheading, and that sometimes the corpses are torn to quarters. But he also saw a case of *lingchi*, Death by a thousand cuts⁷⁰, applied to an adulterous woman⁷¹: this is to my knowledge the very first mention of *lingchi* in western sources, 120 years before that the first official mention of it appeared in Louis Lecomte's *Nouveaux Mémoires sur l'état present de la Chine* (1696)⁷². It has to be said that this kind of death was not utterly strange to a Spanish subject: in 1493, for example, Ferdinand the Catholic was assaulted in Barcelona: the culprit was condemned to be cut in little bits, first the hands, then the eyes, then the nipples, and so on⁷³.

3.6. The prisons

Of all those witnesses, only Rada mentions the prisons. He mentions that someone has said that they are gloomy and stinky, but he states that they are only for those condemned to death and waiting for the endorsement of their sentence by the king. What he sees everywhere and

⁶⁹ Jesus Hernan Mendez: *Buscan todas las industrias posibles para no condenar a muerte*.

⁷⁰ The *lingchi* is mentioned for the first time in the Liao code of 1036 and in *the Treatise on Punishments* in the official dynastic history of the Liao. The growing steppe influence in XI century China extended itself to Chinese law, who became harsher. The Song tried to avoid it, but with the Yuan it entered the Code. (Brook, 2008: 74-83). The Ming maintained it, but it doesn't appear in the Five Punishments, only in some articles of the code, as for example in Article 338 (Jiang, 2005:185).

⁷¹ Dueñas: *Desta mesma color se visten quando an de condenar a muerte a algun delinquente, como vimos que lo hicieron en Canton una vez que hizieron justicia mientras alli estuvimos, porque no sentencian a muerte sino es de quatro a quatro meses, y de aquella vez sentenciaron setenta y cinco hombres por ladrones y salteadores. La justicia que les hazen es cortarles las cabezas por detras y a los salteadores de caminos los hazen quartos y los ponen por los caminos. Lo que con mayor seguridad se castiga es la muger adultera que mata o ayuda a matar a su marido. Ponenla en un carreton y pasean-la por las calles acostumbradas con voz de pregonero que va manifestando su delicto, vale derribando todo el pellejo de la frente sobre los ojos, desollandola de suerte que la cubren la vista y luego la cortan las tetas y la van asiendo de la carne con un garavato de hierro y cortan con una navaja todo lo que ase de la carne el garavato, porque ella va desnuda de la cinta arriba y assi la sacan docientos o mas bocados segun fue la sentencia. Pocas hay que buelvan bivas a la carcel y si acaso buelve biva la dejan assi sin hazella beneficio hasta que muere.*

⁷² Brook (2008: 161) quotes Lecomte as the first western source to mention *lingchi*, but points out that some Jesuit missionaries could have know of it before.

⁷³ Tomás y Valiente (1969): 293.

that he assimilates to prisons, are the *cangas*.⁷⁴ So, the official vision that there were as much as 13 big prisons in every big city, doesn't seem true.

3.7. Familiar responsibility

As for the familiar responsibility, the sources abound about that. Rada mentions it explicitly⁷⁵, and Loarca gives an example of it, with the wife, mother and son of the accused thrown to prison.⁷⁶ But the statement so often repeated in the Ming Dynastys's official legal texts of the supervision of all local current affairs by the elders of the village⁷⁷, is in contradiction with the fact that, according to these narratives, the Chinese seem to take one another to court quite often. All those witnesses saw real cases in all the cities that they went through, and sometimes the accusations were really minimal: Loarca saw one boy that denounced that after having gone through homosexual practices with two elder men, they didn't pay him⁷⁸. And Tordesillas saw a bloody street dispute that ended at court⁷⁹. This struck him especially because private revenge prevailed in Castilla up to the 18th century: Castilian government lacked the adequate administrative channels to impose its political purposes⁸⁰. At least in the cities, the courts seem to be very active: as recent scholarship on Chinese law is beginning

⁷⁴ Rada 28 vº: *Si alguno mereçe pena de muerte tienen lo en la carçel hasta que dan aviso de su causa al rrey y por su mandado es condenado y assi tienen muchas carçeres y algunos questan en ellas muchos años. Sus prisiones las que nosotros vimos son unas esposas en las manos de palo o un gran tablon en el pescueço a manera de çepo aunque anda levantado con el y trae buena carga y travajo y en el trae escrita la causa de su prision, dizen ser las carçeles muy oscuras y hediondas.*

⁷⁵ Rada 28 vº: *y tambien usan de castigar a los hijos o hermanos o parientes del delinquente faltandole como vimos y oimos de algunos, y según dizen Si el delito es grave aunque tengan presente al delinquente castigan no solo a el si no a todos sus parientes.*

⁷⁶ Loarca 123: *viendo que no queria ir el Sinzai le echaron preso al hijo y a su muger y a su madre, que ansi se usa en aquella tierra como vemos muchas vezes pagar los hijos por los padres.*

⁷⁷ Farmer (1978:6).

⁷⁸ *todos generalmente usan el pecado nefando y mucho mas los mayores que cada uno tiene dos otros muchachos bardajas y no se castiga a nadie por ello. Porque nosotros vimos en la ciudad de Ucheo venir un muchacho a quejarse a la justicia que un chino grande avia cometido aquel pecado con él, y porque le pedía la paga le avia dado de moxicones: el alcalde mando dar al chino grande ocho açotes por los moxicones que avia dado al muchacho, y que le pagase, y no uno mas, y suelen dar 20, y 30 açotes a uno por no mas de que pisa el sol (Loarca, 10).*

⁷⁹ *eneste interin seoffrecio que un chino Todo ensangrentado entro dando boces sin ningunconcierto ypostrandose por tierra sequexo de otros que le hauian parado deaquella manera, luego enunpunto fueron los verdugos ytraxeron treschinos hombres alparecer baxos yleuantandose elJuez yoydas laspartes sin escreuir letra les sentencio aXX azotes (Tordesillas).*

⁸⁰ Tomás y Valiente (1969): 46.

to realize, formal legality was a far more pervasive factor in daily life that had therefore been assumed⁸¹. They saw courts in every city district and they remark that the most influential courts systematically delegate the punishment to the smaller ones.

Loarca is also an important witness because he saw a real case where homosexuality was involved. As I told before, Loarca saw one boy that denounced that after gone to homosexual practices with two elder men, they didn't pay him. Here it is important to mention that the references on the Chinese homosexuality appear insistently on the Portuguese texts but never on the Castilian ones. The Castilians arrived to the Philippines in the heat of the polemics in the Spanish Court and Mexico about the American Indian's sodomy: it was a very important issue because it justified (together with the other two accusations of being heathen and cannibals) the right of the Spanish to conquer America. The denouncers of Spanish abuses in America like Las Casas and Veracruz, had strongly denied the Indians sodomy: and Rada was a very close follower of Veracruz and one with whom he had an active correspondence by mail. There was at that moment an active party who advocated for the conquest of China (the governor of Manila, Sande, was a great supporter of it) and that's why the most influential informants, Martin de Rada and González de Mendoza, never mention the *pecado nefando* in their chronicles about China, sure as they were that this would be a very polemical issue. That's why Rada, who was also there, never said a word about it, and that's also why Mendoza, who followed very closely Loarca text - and not Rada's as is usually said, also erased the homosexuality from his History. Sande of course seized the opportunity and included it in a long letter sent to Philipp the II. In the same line, Mendoza omitted from his text the mentions of cannibalism in Chinese prisons that appear in Gaspar da Cruz and Escalante - where the hungry prisoners would eat the dead out of hunger ⁸².

4. Conclusions

The positive vision of Chinese justice that prevailed in Europe in the 16th and 17th centuries came entirely from the Portuguese, which even

⁸¹ Alford (1997): 400.

⁸² Gaspar da Cruz in Boxer: 179; Escalante: 83b.

after having suffered prison and being confronted to death, were absolved in a judgment. On the other hand, the death in prison of the ambassador Tomé Pires and the harsh treatment inflicted to the Portuguese party was to remain very vivid in images of China, but not as an example of bad judicial practices but as a symbol of the lack of diplomatic sensibility of China's rulers.

The chapters on justice of the seminal book of the Castilians, Mendoza's, are a copy from the Portuguese Gaspar da Cruz through the prism of the Escalante's translation of this text: even so, he eliminated the most scabrous descriptions of life in the prisons: he clearly embellishes his sources. He draw a model in which China, a gentile civilization, posed a challenge to western political, economic, social and intellectual life. The book sought to impress an European audience with the size and power of Chinese civilization and it could also serve to gain support for the Catholic missions amongst European patrons, especially with the Pope, who in the last analysis was the patron of the book. The positive paradigm of Chinese justice became so firmly established in Europe, that the interest for it faded in the 17th century: the landmark book of Ricci doesn't touch law at all, and this in a moment when Chinese Ming law was providing a model for Korean, Japanese and Vietnamese codes. But Ricci identified himself thoroughly with what he thought to be the world-view of Confucian scholar-officials, that is that the law is an inferior social instrument and that resorting to it was indicative of the ruler failing to lead its people by moral persuasion and exemplary behavior.

Mendoza also ignores in his book the untimely testimonies of the Castilian sources themselves. Even if he says (and everybody else up to the 21th century has said after him) that he drew on materials prepared by Martin the Rada, he made very little use of this document, while relying heavily and often literally, on Loarca's text⁸³. It is from Loarca that comes the narrative of the Rada expedition, and it is Loarca's text that he copies when he is not copying Escalante. But he makes some striking omissions in order not to disturb his positive paradigm:

First, Mendoza omits all the Escalante's scabrous details on Chinese prisons.

⁸³ Brook (2008): 278; Boxer (1953): lxxviii-lxxix.

Second, he doesn't mention some very severe forms of death penalty that are clearly described in Dueñas's text because it would obscure the beautiful vision that inspired his chapters on Chinese justice. Third, he decided to omit from his sources the Loarca testimony on Chinese homosexuality for fear that it could provide the hardliners with arguments, the *just title*, to launch the conquest of China. Mendoza's book has to be analyzed in the context of the strong polemics about the *just title* to conquer Mexico. Mendoza himself was an explicit admirer of Las Casas and one of his main sources, Martin de Rada, was very close to fray Alonso de Veracruz, another strong protector of the Mexican Indians. Because at that very moment proposals were arriving to Philip II's court to conquer China, Mendoza chooses to thoroughly embellish the image of China to protect it from the target of conquest.

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