

Westerners' Impressions of the Chinese View of Legal Penalty in the Early 19th Century—A Case Study of *The Chinese Repository**

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Newspapers and magazines were primary media for Sino-Western cultural exchange in the early 19th century. *The Chinese Repository*, a monthly periodical founded by American missionary Elijah Bridgman in 1832, reported on Chinese social life as well as legal cases, system, and penalty. These reports served as a crucial window for the West to observe 19th-century Chinese criminal practices and significantly shaped Western perceptions of Chinese penal systems. Analysis of the periodical's reports and reviews reveals a predominantly critical and negative Western view on China, arising from the collective Western impressions of China at the time and the identities and experiences of *The Chinese Repository*'s main contributors. The Western impressions of China formed during this period of time have had lasting negative impacts on Western legal demands towards China. Studies on the negative Western impressions of the Chinese view of legal penalty with a case study of *The Chinese Repository* offer valuable insights into the current Sino-Western legal cultural exchanges and dissemination.

Keywords: *The Chinese Repository*, the early 19th-century China, Chinese view of legal penalty, Western impressions

Introduction

There has arisen an intriguing topic titled “Western perspectives on Chinese law in the 19th century” in studies on legal history in recent years. This is a topic concerning discussions on both Chinese and Western legal systems and the Sino-Western legal and cultural exchange. However, little research has been done in this respect, for most research has been either unilaterally focused on the legal history of China or on that of foreign countries. The meagre studies that have been conducted tend to concentrate on China's comparing and adopting foreign legal systems. With the evolution of legal concepts and practices in the East and the West, numerous disagreements arise on various issues. Then, studying how “the other” perceives the Chinese legal culture not only fills a gap in this field but also serves as an essential means to enhance mutual understanding and clarify misconceptions in the process of legal cultural exchange.

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This paper will conduct a study of the Western perceptions of the Chinese view of legal penalty in the 19th century with a case study of *The Chinese Repository* founded by Western missionary Elijah Bridgman. *The Chinese Repository* is an important Sinological work, which played a significant role in shaping Western perceptions of China in the 19th century by providing a fundamental set of documents for Western Sinologists studying China at that time.

Reports and Impressions of Chinese View of Legal Penalty in *The Chinese Repository*

Reports of Chinese punishments comprise current affairs and specialized commentary. Reports on current affairs were mainly composed on the basis of the contributors' personal observations and experiences in Guangzhou, which may detail the means of criminal penalty mainly in an objective manner. Most of the commentaries and reviews were written prior to 1836, which may reflect the negative Western perceptions of the Chinese penal system.

Reports of Chinese View of Legal Penalty in *The Chinese Repository*

Reports of *The Chinese Repository* often resorted to detailed descriptions of the process of criminal penalty, such as the overall report on the executions in Guangzhou. These reports were mainly objective, with very little revelation of the reporters' emotional attitude. A comprehensive report on the executions in Guangzhou in Volume 19 of the periodical, published in 1850, states that "in Guangzhou, there are about a few hundred people beheaded every year", "Last year, about 400 people were executed here, though no official government statistics has been conducted", "In Guangzhou, the death penalty is carried out in an open square, usually used for firing kilns, called brick kilns", "It is shocking to witness the indifference with which life is taken on these occasions, and the moral effect of such scenes to prevent crime is nothing at all ..." Then, the process of execution is described in detail, including taking criminals to the execution place and showing the audience how quickly they (referring to the executioners) can perform a bloody act, how orderly and quiet the execution scene is, "Not a word, not a sign, not a groan... Criminals sentenced to the slow and ignominious death sometimes called 'cutting into ten thousand pieces' and to strangulation, are bound to a cross before their execution" (Bridgman, 1850, pp. 55-56).

Perceptions of Chinese View of Legal Penalty in *The Chinese Repository*

Although reports on current affairs are relatively objective, the negative perceptions of Westerners on the Chinese penal practices can still be seen from the reporters' choice of words and handling of materials. In a long article focusing on Chinese law and its implementation found in the fourth volume of 1835, the author first introduced the methods of punishment, but the author did not introduce the names and implementation methods of the "Five Punishments" in the order of *The Great Qing Code* (translated by George Staunton as the Penal Code of China), but changed it to the order of "torture interrogation", "torment", "punishment", "imprisonment", "exile", and "execution" (Bridgman, 1835). Obviously, the author's perception of the Chinese penal code is not sufficient.

In the writing of this article, the author made use of phrases and expressions like "if one does not confess, they will be tortured", "these methods are unrestricted", "the most cruel and morbid, and humiliating", "rude and ostentatious trials", "torture carried out in a cruel manner", "punishment is terribly severe". All these reveal the author's evaluation of Chinese punishment as "cruel", "excessive", and "frequent" (Bridgman, 1835). The diction of the author carries a strong sense of negation and disgust towards the penal code of China at that time.

Negative Assessments of Chinese View of Legal Penalty in *The Chinese Repository*

In the discussions on Chinese penal sanctions in *The Chinese Repository*, particular emphasis was placed on the implementation of the death penalty. The table of contents compiled by Wells Williams, one of the publishers, reveals that references to beheading, public executions, and *lingchi* (a form of slow slicing) can be found in almost every volume. Especially in the reports prior to 1836, there were not only many accounts of penal executions related to current affairs but also several articles devoted to systematic discussions on Chinese law. After 1836, the number of articles reporting on the situation leading up to the Opium War and its subsequent developments significantly increased, while discussions on the existing social conditions in China decreased considerably.

It is difficult to find any positive terms concerning the attitudes of the authors in *The Chinese Repository* towards Chinese penal sanctions. When discussing these penalties, whether in current affairs or specialized commentaries, the authors frequently employed evaluative words such as “cruel”, “indifferent”, and “immoral”. The authors expressed a deep aversion to what they referred to as China’s “paternal law”, believing that these severe punishments had a significant corrupting influence on the human spirit. They argued at length that “the design of such exhibitions... are intended to be a terror to evil doers...”, “but it may well be questioned whether the end of proposed is attained”, “such gross exhibition of cruelty...not only shock the better feelings of the human heart, but tend to render the hard to more hard...”, “there is no knowledge of God, no love to his name, or fear of his wrath in the land...”, “...urges them on to desperation, till they fall victims to the ‘paternal laws ‘of the land’” (Bridgman, 1832, pp. 291-292). In these evaluations, which are characteristic of the missionary spirit, the authors obviously held a negative view of Chinese penal sanctions.

Reasons for the Negative Assessments in *The Chinese Repository*

Limitations Arising From the Epochal and Social Backgrounds

It is worthwhile to explore the reasons why the authors of *The Chinese Repository* held positive attitudes towards Chinese penal punishments. Generally speaking, these attitudes epitomize the shift of the Western impressions of China at the turn of the 17th century and the negative impressions of the Westerners that culminated in the early 19th century. The cataclysm for this may be ascribed to the conservative and aggressive attitude held the Qing government towards trading and political relations with the West (Li, 2015).

Towards the end of the 18th century, the intelligentsia that had commanded some right of speech in Europe were still tentative in assessing the Chinese legal system. Even in 1810, Sir George Thomas Staunton, a member of the George Macartney Mission to China and translator of the first English edition of *The Great Qing Code*, still maintained a “prudent affirmative attitude” when evaluating Chinese law and legal customs, though he personally witnessed the Mission’s failure in its negotiations with China and the legal conflicts between China and the West (Staunton, 2015). In *Chinese Penal Laws*, another publication that conveyed knowledge of Chinese penal sanctions to the intellectuals in the West, Staunton held a critical attitude towards the various cruel punishments (Li, 2015). Staunton noted the purpose of Chinese legal penalty for mitigating guilt and the small number of executions as against the large population in China at that time (Staunton, 1997).

However, when time came to the 19th century, with the global strategic expansion of the Western ideology, China met with strong criticism from the Westerners for its incongruent legal ideas. In an article published in the 16th issue of the *Edinburgh Review* in 1810, China was labeled as a “nation without a sense of honor”. The author

claimed that China was the only country, ancient or modern, barbaric or civilized, that was completely devoid of this sense of honor. The author obviously was assessing Chinese law in an overtone that is more critical than complimentary. In the writings of Robert Morrison and William Milne, founders of *The Indo-Chinese Gleaner*, who provided significant help to Elijah Bridgman, the founder of *The Chinese Repository*, the image of China turned even more degraded and negative (Li, 2015).

All in all, *The Chinese Repository* was a periodical that was produced amidst a gradual shift in Western mainstream perceptions of China, so it could not be unaffected by the spread of the ever increasing negative ideas towards China. It was inevitable for the contributors to have some preconceived notions about Chinese legal practices. Then, they were often particularly sensitive to the most brutal and covertly cruel aspects of Chinese law, while often “turning a blind eye” to the gentler side that was more prevalent. This was also influenced by the power gap between China and Western countries at that time.

Factors of the Founder and Contributors of *The Chinese Repository*

As a missionary periodical in the 19th-century China, *The Chinese Repository* was also influenced by its individual contributors. The main contributors included Elijah C. Bridgman, Samuel Wells Williams, Robert Morrison, Karl Friedrich Gutzlaff, and John Robert Morrison. Together, the articles they had composed added up to 671, accounting for 53.4% of the newspaper's 1,257 articles in total. On the list of contributors to *The Chinese Repository* were the main Western figures in China at that time. Their denominator was that they were all missionaries, who were all heavily influenced by Christianity. In the 19th century, the missionaries were bent on fulfilling the so-called mission of converting the non-Christian people in the backward regions to Christianity, a notion that was ever more intensified in China, the largest non-Christian nation in the oriental world. Therefore, it was inevitable for their writings to be manipulated by their subjective ideology (Gu, 2009).

Furthermore, the situation of these missionaries in China also had a significant impact on their writings. While the West was gradually expanding its global colonies in the 17th and 18th centuries, China consolidated its control over its boundary and became even more conservative. In the 59th year of Emperor Kangxi (1720), the Qing government ordered a ban on Catholicism and prohibited Chinese people from practicing it. In the 10th year of Emperor Jiaqing (1805), the Qing government issued the “Regulations for Investigating Western Religions”, which actually prohibited Westerners from printing and preaching in China. This is a policy that borders on isolationism. In diplomacy, following the frustration of the Macartney Mission in 1793, the West sent the Amherst Mission to China in 1816, which also ended in failure. Then the missionaries in China would often conceal their identities to avoid expulsion by the Qing court. They made a living by working as Chinese translators in foreign firms. They saw no hopes of improving their lives even after the founding of *The Chinese Repository*. The obstacles to their missionary work and the various hardships they encountered in China combined to worsen their impressions of the country (Gu, 2004).

Last but not least, the education the missionaries had received was also an important factor worthy of note. The missionaries had not received regular legal education at home, so they could not assume an objective and comprehensive attitude towards the Chinese legal penalty. For example, missionaries in Guangzhou were most frequently exposed to the punishment of public beheading. Without understanding the five punishments of China and their additional penalties, they were apt to exaggerate the role of “decapitation” in the death penalty within the Chinese penal system. They often neglected other forms of punishment in the Chinese penalty. That explains why contributors of *The Chinese Repository* would record beheading as a matter of

routine. Overall, their lack of systematic knowledge of law rendered them unable to analyze the legal cases theoretically and objectively.

Impacts of the Chinese View of Legal Penalty as Reflected in *The Chinese Repository*

Impact on the Western Perceptions of Chinese Law

Westerners began to gradually get acquainted with Chinese law around the mid-16th century during the European Age of Discovery. However, the interactions between the West and China were mainly conflicts and confrontations, because

Apart from a few clergymen, the Westerners can be categorized into two types: fugitives and profit-seeking merchants. Their sole objective was to seek fortune in the East, without any consideration for the local laws and customs; their mission was to satisfy their greed for money. Once they achieved their goal, they would return home. Thus, these dangerous adventurers posed a significant threat to the local judicial authority. (Su, 2003, p. 76)

Though the earliest exchanges of legal culture between China and the West commenced with trade and missionary activities, both sides were ignorant of and indifferent to each other's legal systems and national conditions. By the early to mid-18th century, Britain had become the dominant trading partner with China; the Sino-British relations became even worse with China's implementing a stricter policy of "closed-door" isolation. At this time the East India Company gradually gained a monopoly on trade in China. However, the mutual misunderstanding and potential conflicts in legal values between the two sides did not improve at all (Chen, Deng, & Song, 2011).

As an island country, Britain had less knowledge about China compared to some traditional European countries. According to Su (2003), towards the end of the 18th century, Britain was completely ignorant of the operation of China's legal system. However, following the Macartney Mission to China, the publication of *The Punishments of China* by George Henry Mason, the translation and dissemination of *The Great Qing Code*, and the founding of *The Indo-Chinese Gleaner*, constituted the efforts made by the Westerners to further understand Chinese law.

But with the increased attention, there was increased criticism of Chinese culture, including its legal system. Then the negative views about China went trendy in Western countries, including Britain. This trend intensified and eventually became deeply entrenched from the 18th century to sometime in between the two Opium Wars. (Li, 2017, p. 34)

Robert Morrison and William Milne, the founders of *The Indo-Chinese Gleaner* directly influenced Elijah Bridgman's writing with their journalistic philosophy and writing approach, for Bridgman frequently reprinted content from *The Indo-Chinese Gleaner*, which invisibly deepened the Western world's impressions of Chinese law.

Impact on Western Legal Demands Towards China

The negative impressions of the Chinese law on the missionaries at that time had an obvious impact on their perceptions of Chinese legal penalty, who often labeled China's legal system as barbaric and cruel. Whoever followed China's jurisdiction "would be seen as devaluing themselves in the eyes of Westerners" (Ruskola, 2016, p. 140), because they did not believe that they would receive a fair trial under such a legal system. Peter Parker, an American medical missionary in Guangzhou, played a significant role in the negotiations of the Treaty of Wanghia between China and the United States. Research has shown that many substantive clauses of the Treaty of Wanghia originated from *The Chinese Repository* (Ruskola, 2016). The negative impressions the Westerners had formed about Chinese law (including its conception of punishment) prompted the Westerners to think that it

was “essential” to implement extraterritorial rights in China during the early 19th century, amidst their imperial expansion. In the interactions between the West and China after the 19th century, this bias against the Chinese law would inevitably become a significant source of conflict and contradiction between the East and the West. The negation of Chinese law by Western media such as *The Chinese Repository* also served as an excuse for the Western governments to gain extraterritorial rights in China. They had actually done so in China for many years.

Nevertheless, in the middle and later 19th-century, the Westerners shifted their attention to the actual enforcement of Chinese law. For Westerners, this perspective could serve as a basis for criticizing the flaws in Chinese law. In this way, they could avoid the increasingly untenable situation of labeling Chinese law as barbaric, while also providing a rationale for Westerners in China to evade the constraints of Chinese law. As Hosea Ballou Morse once stated, “It is not sufficient to focus on its theory in evaluating the effect of a law, it is also a necessity to pay attention to its enforcement and how its provisions change due to interpretation and implementation” (Li, 2016, pp. 34-35). In essence, this conflict in legal conception between China and the West arises from the irreconcilable disparity between the Western conception of legal sovereignty and China’s efforts to maintain its traditional legal and cultural sovereignty during its process of modernization. It is also the result of conflicts between the Western unjustified legal demands towards China and the Chinese resistance to the West’s practice of extraterritorial rights in China.

Conclusion

From the 15th to the 19th century, Europe was gradually moving towards modernization. The European society witnessed quite a few social reforms and revolutions, such as the Age of Discovery, the Renaissance, the Protestant Reformation, the Enlightenment, the Scientific Revolution, and the Industrial Revolution. The drastic changes that had taken place during the four centuries brought about the redistribution of social power and reshuffling of ideological concepts. The ideological expansion launched by the countries collectively called the West met with resistance in China, a country proud of its long-standing civilization. China was drawn into this struggle before the mysteries of the Western world were unveiled to it. The Western world’s scrutiny of China had actually begun much earlier than the year historically recognized as the beginning of modern Chinese history. The missionaries formed their negative impressions and perceptions of China against this backdrop and limited by their education, heavily influenced by their religious conception of redemption, and out of their dissatisfaction with their situation in China. It was inevitable for them to focus on the cruel punishments, extrajudicial penalties, public executions, and the prevalence of the death penalty in China, while forgetting about or completely ignoring the innate logic and grand narrative of Chinese legal system.

To sum up, to evaluate the missionary newspapers and periodicals such as *The Chinese Repository*, we should note their objective descriptions of the legal punishments in China, while carefully distinguishing the biased personal viewpoints of the contributors. The circulation of their prejudiced impressions of China’s legal penalty has had great impact on the formation of the overall perceptions of Chinese legal system in the 19th century and before. The influence remains extant in the 21st century when China is propagating the great achievements of its legal system to the world.

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