

THE EUROPEANS DISCOVERY OF XINA POMPEU FABRA UNIVERSITY BARCELONA

THE CHINA THAT EUROPEANS DISCOVERED: THE MING DYNASTY LAWS AND AUTOCRATS

The legal framework of the Ming came to light even before the proclamation of the new dynasty: Hongwu considered it an absolute priority to compile a Ming code, and have it diffused throughout the whole empire. The Ming Code, which followed the general lines of its precedents in Tang and Song dynasties, was deliberately simple in its wording, so that people could understand it easily. Furthermore, immediately after the promulgation of the first Ming code in the first year of the dynasty, Hongwu ordered the compilation of a simplified version that was accessible to everyone.

At the level of local administration justice was in the hands of the mandarins, a Portuguese name meaning that these were the ones in command. The mandarin was the highest official at a given level, serving as judge, prosecutor and jury. The first article of the Ming code dealt with the five punishments. The least severe punishment was being beaten with a light stick. The next was being beaten with a heavy stick. At county and prefecture level, only these two lowest punishments could be administered. This is why the European accounts speak frequently of beatings. Next up in severity was servitude. This implied hard labour for the government, such as making salt or smelting iron, and was always accompanied by a great number of strokes. The next punishment was exile to a distant place, far away from the family support. This entailed also a hundred strokes. The most severe punishment was the death penalty, which always had to be approved by the emperor and was only administered using strangulation or decapitation. Even so, within the code, some especially hideous crimes were detailed that could be punished with the terrible Death by a thousand cuts.

In 1579 a Spanish soldier called Dueñas will be the first European to witness one of these and leave a detailed description of it. All punishments carried with them a collective responsibility that extended to the family or even to the whole lijia. The Chinese legal tradition emphasized the social nature of crime, and punishments were inflicted to serve as an example.

The primary purpose of Ming Law, as with all former Chinese codes, was to impose tighter political control upon society. The law was essentially concerned with disruptions of social order, and not at all with defending the rights of individuals against the state. The law was not equal for everyone. Imperial family members, high officials had some explicit privileges that secured them legal protection from the lower courts. All criminal cases brought against them could only be heard by the emperor himself. This is a similar practice to the one still lingering in some European countries, as for instance in the so-called *aforados* in Spain. Even scholars at the lowest level had certain legal privileges. The relative position of the criminal and the victim was always taken into account. This is why one of the first articles of the law specified the general mourning degrees, because these determined the relationship between relatives and therefore the punishment that ought to be applied. The proceedings of the law were always public, even in the case of tortures. These were clearly publicized and could not be applied arbitrarily. Penalties had always to be supervised and ratified at a higher level.

The Ming code was highly influential in East Asia. Vietnam and Korea copied it closely, and it also inspired the laws of Tokugawa state in Japan. It was greatly admired by the Iberian travelers who first wrote about it. Ming state organization followed the great lines that had characterized the Song, with six ministries coordinated by a prime minister. But Emperor Hongwu was a great admirer of Kubilai Khan and he was keen to retain an absolute authority similar to his. As Kubilai Khan had done before him, Hongwu distrusted the literati, found their examinations cumbersome and didn't want to be lectured by any scholar about how he should act. In 1380 a major process against the Prime Minister Hu Weiyong had him executed together with 15,000 others suspected of having connections with him. Ten years later, another 40,000 state officials were also executed. It was probably the biggest political bloodbath of Chinese history before the twentieth century Cultural Revolution.

The Prime Ministry was abolished and the emperor became the apex of power in every branch of the Chinese state. He had ultimate decision-making power over the civil administration, the military establishment, and the body of Censors that controlled both civil and military officials.

Ming China became an autocracy and its civil service was no longer able to act as a balance to the completely unrestrained and paranoid emperor. The emperor's suspicions about the career officials made him increasingly dependent on the eunuchs, those handpicked associates bound to him by a powerful personal loyalty.

Because the eunuchs' power came exclusively from their ties with the emperor, they never criticised his actions. The scholars, who are the ones who wrote the history, attribute all kinds of perversions to the eunuchs, but in fact their power was far less than they claimed and the personal ambitions and lust for power of both scholars and eunuchs had a good deal in common. The great problem of the eunuchs was not their morality but the fact that they strengthened the autocracy of the Ming emperors.