

## THE EUROPEANS DISCOVERY OF XINA

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#### THE FRIAR'S MISSIONS AND MENDOZA'S BOOK

##### MING LAW

Mendoza's highly positive and comparative approach is very obvious in the chapters on civil service, political and administrative organization, and especially justice. The influence of the Portuguese initial very positive vision of Chinese justice is clearly visible in Mendoza's book.

His two chapters on justice come directly from Escalante, who in turn had copied them from Gaspar da Cruz. And Gaspar da Cruz had closely followed Galeote Pereira, who first affirmed that "in doing justice these gentiles did exceed Christians and were even better than the Romans had been."

Mendoza's book presented a paradigm of Chinese justice, in clear contrast with the main legal text in 16th century Castile, *Las Siete Partidas*. Some points were stressed as essential:

First, the unified jurisdiction of China. This stood in stark contrast to what happened in Castile, where all crimes fell under a tangled mess of different jurisdictions: the Church, the nobility, the cities, all retained their own jurisdictions.

In fact, in the time that Mendoza published his book, in Spain the penal law of general application was more a political tendency sponsored by the kings than a reality.

But in China, since Ancient times, judicial procedure had rested more firmly in the hands of the state than had been the case in many other societies.

Second, the transparency of the judicial proceedings, due to the fact that they were public and were always endorsed by many scribes. It is interesting to note that at this point Mendoza's text suggests that there must be a huge corpus of legal literature in China, something that has been forgotten or even denied for centuries, but that recent research is now calling into question.

Third, the integrity of the Chinese judges, due to the fact that they were paid a salary and didn't have to rely on the fines that they imposed. At that moment in Castile the judges extracted money from the accused because they participated directly in the pecuniary penalties that they imposed.

Fourth, the strict control over judges, both by the Visitors, who paid regular visits to inspect the local courts and punished bribery severely, and by the pyramidal structure of Chinese bureaucracy.

All officials were controlled by other officials at a superior level and they in turn controlled those at an inferior level, and were responsible for their actions. Mendoza specifically highlights the double procedure of rewards and punishments that guaranteed the high standing of Chinese officials.

The French writer Montaigne would pick up on this appraisal of the system's mixture of rewards and punishments in his extremely rare allusions to China.

Fifth, the better conditions of those arrested. Prisons were dirty and cruel, but not worse than those in 16th century Spain. Torture, however, was applied quite differently. In China the tortures inflicted to obtain confession were public and had established regulations.

Abuse of these regulations would lead to the impeachment of the judges. The courts were quite open about their torture instruments, that were legally regulated and on display in the courts.

By contrast, in Spain, although a normative regulation of torture was contemplated in the code, in practice no dispositions were issued to apply the norm. Moreover, in a couple of letters that Rada sent to his superior fray Alonso de Veracruz in 1577, and that Mendoza probably knew, Rada denounces the horror of tortures in the Philippines as being arbitrary, secret and extremely cruel, causing the death of most of those that suffered them.

Sixth, restraint over use of the death penalty. Capital punishment was applied with much more leniency than in Spain.

Only the Emperor could inflict a death penalty, and it was only executed after many revisions. Moreover, amnesty given by the Emperor was a much more usual procedure than it was in Spain. In China executions were a simple act, totally devoid of the extraordinary and staggering theater that was the usual scenography of the death penalty in Spain, with the culprits exposed in the middle with special robes and caps, the king and queen watching the scene, and the rest of the culprits queuing in an orderly manner to be sentenced.