



The Obsession of China in Learning Western Institutions to Prohibit Tortures in 1902-1911: From the Perspective of Ethnic Spectatorship Theory

Yiming Zhao*

Wuhan University

E-mail: Birdsong_Jaw@163.com

Abstract. China was actively seeking change, embracing Western legal culture as knowledge while drawing strength from its traditions in 1902-1911. According to the concept of “ethnic spectatorship” mentioned by Rey Chow in “Woman and Chinese Modernity”, Chinese at this time, especially the elite gentry, while using the western mirror to reflect their laws, are the observed cultural image playing their subjectivities. Because they are in the images being observed, and this observation comes from themselves, these images are no longer static and stagnant but have the meaning of dialogue, the interaction with western culture. Chinese gentries were willing to assimilate the Other’s wisdom, but they go on with their ethnic identity, trying to develop the inner logic of tradition. Tortures, as the main target of criticism by foreign media, is claimed to be prohibited while being found to be reasonable in educating people.

Keywords: Ethnic spectatorship; Tortures; The New Policy of late Qing

1 Introduction

Rey Chow criticized Laura Mulvey and developed her theory of ethnic spectatorship based on Mulvey’s “Visual Pleasure and Narrative Cinema”. Rey Chow’s criticism centers on two points. (a) The dismissal of feminine spectators in consideration of visual pleasure and gaze formation; (b) The exclusion of patriarchal order—the ideology in light of a correctness and falsehood dichotomy. Rey Chow uses Althusser, Teresa de Lauretis, and Silverman to point out that ideology or illusion, or image is not something merely passive, which contains the potential for a future reformation as well as the unequivocal background with all the formative conventional cultural elements. As Rey Chow extends the concepts of the female image and the male gaze, the ethnicized Chinese spectators have dual identities: they are both identified with the camera gaze and stranded in the screen story. In light of their dual identities, their position is both defensive with historical awareness and aspiring of being in the film. And the ethnic passion, or rather, “the obsession of China” is a kind of fetishism according to Freud, because contemporary westernized Chinese know the lack of pure Chineseness of themselves. Since the interstice between ancient and modern China created different Chinese

societies and Chinese are anxious about mantling the absence of their Chineseness, Rey Chow suggests the position of coevalness for scholars, that is, analyzing Chinese in the westernization process with their dual identities and trying to articulate the dialogue between oriental and occident in the same time and space.

In 1902, in order to relinquish consular jurisdiction (a concept which was often mixed with “extraterritoriality” or “exterritorial” by people then), the Chinese government (the court of the Qing Dynasty) commissioned Shen Jiaben and Wu Tingfang to amend laws regarding western laws. Under the influence of the government’s decision, gentries felt obligated to learn western institutions. In the process of learning, cultures met and collided. How did gentries then maintain the Chineseness facing the urgency to adopt a management system from another culture? How did they expatiate on the western spirit of laws they are going to learn from? Considering the context of the tension between oriental and occident cultures in Chinese intellectual history, where Chinese intellectuals experience the “coevalness” of sources of tradition and reform, the ethnic spectatorship theory from Rey Chow fits well to explain the aforementioned questions.

2 Endeavors of Gentries with Close Ties to The Central Government

Because of the awareness that it needs to learn extensively and understand civilizations outside China, Chinese gentries, especially those who affiliated closely with the imperial court as pioneers, had reflection and examination and embraced a new perspective to improve the traditional system. In 1901, Liu Kunyi, the governor of Liangjiang, and Zhang Zhidong, the governor of Lianghu, in response to Empress Dowager Cixi’s edict soliciting proposals for law transformation, mentioned foreigners’ perception of Chinese criminal justice in The Second Jointly Signed Memorial to the Throne for Transformation of Laws: “Foreigners who come to China often go to the prisons of prefectures and counties, watch the interrogations along with tortures of these places, and sneer at the contempt of human beings.” [1] The official document suggests that tortures to extract confessions should be prohibited. Foreigners’ reactions are the mirror of Chinese officials ruminating on domestic institutions.

For the sake of commercial profit and political propagation, there were a lot of paragraphs in oversea newspapers about Chinese tortures and punishments during the late Qing period. In 1801, the William Miller publishing house in London issued *The Punishments of China*. The reporter of *The Illustrated London News* said, “The penal code of China, arranged under no fewer than fifteen hundred and fifty-seven heads, is marked by great barbarity.” [2] Zhao Shengwei and Li Xiaoyu edited *Chinese History Lost in Occident: The Image of China in French Color Pictorials 1850-1937*, a book contains excerpts concerning China of several French pictorials, which brings western color drawings of Chinese tortures and punishments as well as wars and disasters to light. [3] Punishments and tortures are the main targets of criticism when it comes to Chinese legal system.

Given the stimuli of exposing drawbacks to interlopers, Shen Jiaben was appointed to revise the law for ten years, consulting the legal provisions translated from various countries to improve the law; he read the laws of many countries, and also said in an article proposing the reform of the death penalty: “We have studied scrupulously the death penalty in Europe, the United States, and Japan, which were extremely cruel in the past, but in recent years they have been mitigated gradually..... The Law of our Dynasty..... In the current law, there are more than 840 articles of capital crimes, which increase by 70%~80% compared with the Shunzhi period (1638-1661, the first emperor since Manchu replaced Han dominance). The data is not only appalling to outsiders, but also to Chinese who have never born such a heavy burden in the past thousands of years.” [4] The above account was written in the context of the comparison between the laws of other countries, especially the laws of Western countries, and Japan, a neighboring country that had learned from Western countries to change their laws, and in the case that the Qing Dynasty urgently needs to be in line with international standards.

Despite the self-reflection, admitting deficiencies of the self, gentries, at their traditional standpoint using an occident lens, dug in finding the chance for the dialogue between Self and the Other to generate changes following the inner development logic of local culture. Yan Fu (1854-1921), linked closely to the central government’s New Policy Reform, translated Montesquieu’s (1689-1755) *De l’esprit des lois*. His translation, in fact, often mixed with his own opinions, which is a symbolic case of dialogue between the indigenous Chinese intellectual elite and the Gentile elite. Yan Fu critically absorbed Montesquieu’s thoughts. He often extracted philosophy from his tradition in response. To be specific, when referring to the issue of the severity of punishments, Montesquieu believes that punishment is mainly for the purpose of forbidding uncommitted offenses, not to murder, not to create terror, and he believes that a very light punishment should be used, however, Yan Fu euphemistically proposed that this opinion is not perfect enough. Yan Fu stated that the Qing Dynasty law doesn’t follow the idea mainly because: “The general purpose of the criminal law is three: the first is terrifying miscreants, the second is the prevention of villainy, and the third is eliminating errors. There is no remaining purpose beyond the above three. Implementation of the law should consider all the three factors. And that’s the reason why the national code of Qing is different and favors severe punishment.” [5] From Yan Fu’s perspective, it is not comprehensive to simply think that criminal law is a tool for edification, and Montesquieu’s exposition is not enough to support his view that criminal law should be mitigated, because he does not take into account the function of criminal law that it needs to achieve to violently kill criminals who are unrepentant and have an extremely bad social impact, and once there is no such enforcement to terminate social upheavals, the meaning of criminal law is no longer complete. Yan Fu also refuted Montesquieu’s psychological overview that “when one is extremely elated, or amid excessive hardship, he is liable to become cruel. The tendency can be testified if you observe a victorious army and ascetic monks.” Yan Fu points out that a victor of an army may be brutal because he is accustomed to ignoring life in the march, or because the captives are not easy to place, but not because the victor is overwhelmed by joy; Monks may be fiendish because of doctrine or superstition, under which circumstance, the pious believers see

what people think sadistic as benevolent practices, without psychopathy out of harsh conditions. [5] Yan Fu's views on the psychology of the torturer are obviously more insightful. Yan Fu paralleled the spirit of French law with the spirit of ancient Chinese criminal law: "The tolerance of intellectuals in ancient French law is exactly the same as that in the Qing Dynasty's law" and "The deserter in the Song Dynasty will be tattooed on the face, which is in accordance with Montesquieu's suggestions", which is exactly the cultural similarity, to facilitate understanding, acceptance, and practice. [5] Nonetheless, Yan Fu is not blindly emphasizing similarities and defending the criminal law of the Qing Dynasty. In the following paragraphs of the laws on intriguing for places in Rome, Yan Fu demonstrates that the light punishment set by this law is conducive to the enforcement of the law, which is worth referring to, as the laws of the Qing Dynasty are relatively heavy in this regard, which does cause problems. Yan Fu admits that in conformity to the reality of the Qing Dynasty, the same method is difficult to implement due to the dishonest atmosphere of the society then. [5] In another comment about torture for confessions, Yan Fu agreed with Montesquieu's view that torture should not be used much. The cruelty of the Qing Dynasty's interrogation methods was notorious in the world so he reflected that the situation was due to the legal system and the lack of well-educated interrogators, and he realized the necessity of changing the law. [5]

These are the officialdom, the elite gentries' attitude. In the face of the pressure of the invaders, they reflect on and improve themselves. The Other constitutes a mirror for reflecting on the Self, and the Self that chooses to use this mirror tries to perfect the unsightly self in the mirror.

3 Enterprises of Local Gentries

The ordinary intellectuals of this period, the local gentry, also had the same sense of national concern. This kind of self-reflection and obsession with China aroused through the diorama is also evident in Li Weiqing's children's textbook "Shanghai Local Records". Published in 1907, the "Shanghai Local Records" has 160 lessons, which are sketchy in the ancient period but detailed in that period, and are good materials for understanding the social customs of Shanghai in the late Qing Dynasty. It is also a widely adopted textbook then. Lesson 118 of the "Convict Learning Center" comments on the imperfection of the indoctrination of prisoners in China about overseas observations, which walks further comparing with opinions put forward in 1901:

"The criminals of our country are the most miserable. They are either naked whipped or wear shackles for months by the roadside, letting people watch. For those who have self-esteem, how ashamed they can be! Isn't it intervening in the way to behave better? Criminals with minor offenses enter prisons, and they stay in jails all day long doing nothing. Won't they be lazier and become worse? In Jiangsu province, officials set up institutes for convicts to learn skills, imitating the system of Japanese prisons, in order to nourish convicts' honesty and sense of shame, to learn from their hard work, and to ensure they can make a living for themselves after the imprisonment. I hope that this matter will be held as soon as possible." [6]

It can be seen that in the increasingly heated national territorial disputes, the urgent desire to stand on its own in the new international world, strengthen the country and the people, and safeguard sovereignty made people of insight in the late Qing Dynasty refer more to Western laws and ideological culture.

However, it is still worth noting that although the Qing local gentry in this period learned from the West actively and urgently, they generally stood in the position of inheritors of traditional culture, interpreting and absorbing Western civilization with their own cultural traditions and using the concept-matching way which has been used since Buddhism entered China. Whether it is the Chinese and Western comparisons used by Yan Fu in translation or the critical thinking of Montesquieu's views in his criticisms, although Shen Jiaben was instructed to practice the law and read the laws of Western countries, at the same time, he also studied Chinese law and made the "Examination of Criminal Law in Past Dynasties", in which the interpretation of the public execution of the death penalty adopts the phrase "renounce the convict with the people of the country", so that the democratic and indoctrination spirit in this traditional execution can be known. They know that their position is outside the mirror, and the ultimate goal of the mirror is not to watch but to improve themselves outside the mirror with the help of mirroring. As Hu Xianghan said when remembering the old things that were obsolete in Shanghai:

"It is not the strongest of the species that survive, but the one most responsive to change. This rule applies universally. There is no need to march far away, but to reminisce about all kinds of things that have been eliminated in Shanghai in the past forty years... people must say that I am stubborn and conservative and that for obsolete substances, there is a great self-appreciating and the urgent intention of preservation. But in fact, it is not like that. A man knowing that he is clumsy believes that he cannot improve it separately, so he imitates and never develop following his inner logic. I am afraid that this situation would arise." [6]

4 Conclusions

The repeated signing of reparation treaties and loss of sovereignty, the import of new and convenient things, the unfolding of the new international environment, and the obsession of the Qing Dynasty are factors that constitute the background of the law reformation and discussions about tortures and severe punishments in 1901-1911. Chinese gentries living at a time when national autonomy and power were threatened, and when facing the West as the other, had to admit that their nation was inferior to others. From gentries affiliated close to the central government to local gentries, in the short process, their views about tortures and punishments are more detailed and they are more humanistic. They absorbed new knowledge and new laws on the one hand, and try to seek a slow change from their own inherent culture, trying to internalize the new civilization brought by the West like what they have done to Buddhism on the other. This is the ultimate purpose of dialogue, not just a temporary response to the situation.

References

1. Shen Yunlong, *Jindai Zhongguo Shiliao Congkan*, volume 48, Wenhai Publishing House, 1966.
2. The Illustrated London News, 1857, April 4th
3. Zhao Shengwei and Li Xiaoyu, *Chinese History Lost in Occident: The Image of China in French Color Pictorials 1850-1937*, Chinese Ji Hua Publishing House, 2016.
4. Shen Jiaben, *Ji Yi Wen Cun*, the Commercial Press, 2015.
5. Yan Fu, *Fa Yi*, the Commercial Press in Beijing, 1981.
6. Hu Xianghan, Li Weiqing, Cao Sheng, *Shanghai Xiao Zhi Shanghai Local Records Yi Huan Bei Chang Ji*, Shanghai Guji Press, 1989.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

