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General Introduction

The present collection of five critical essays is a companion volume to the republication of the rare 1812 Italian translation of the *Da Qing lü li* (*Ta Tsing Leu Lee* in the English original transliteration), the Qing 'penal code', which was first translated into English by the British Sinologue and East India Company employee George Thomas Staunton in 1810. Staunton's text served as the basis for later European translations, including the Italian one. The digital reprint of the 1812 Italian edition is a publishing enterprise undertaken by EUT Edizioni Università di Trieste, the Trieste university press. This project originated as part of a comprehensive initiative to recover, republish and make widely available in a digital, online, open access format some particularly valuable items belonging to the rare books collection of the University of Trieste Library System.

Other research-oriented concerns have been at stake in promoting this initiative, notably the historical research I have been carrying out on European knowledge and interpretations of China, in particular its economy and institutions, between the eighteenth and the nineteenth century. As part of this history, the 1810 English translation of the Qing 'penal code' by George Thomas Staunton, and the European translations that derived from it, represent a fundamental turning point in terms of both cultural history and the history of comparative law. To introduce this point and the motives behind this volume, let me briefly sketch the general historical context of Staunton's seminal work as well as the issues it raises and how these are addressed by the contributions collected in this book.

A few decades after a more or less permanent Western presence had been established in Canton and Macao, especially in the period roughly between 1780 and 1830, crucial transformations began to occur in the commercial and political relationships between the Middle Kingdom and the European commercial powers trading with China. During this period, the Catholic missionary concerns and activities of cultural brokering that had dominated Sino-European interactions for nearly two centuries were almost completely superseded – partly due to the suppression of the Society of Jesus in 1773 – by commer-

cial interests and the Western determination to radically change China's international position by forcing its entrance into the global network of trade and power relationships. Countless works of historical literature have explored Sino-European cultural relationships during the early modern period, looking especially at subjects like the experience of the Jesuits as religious and cultural agents and the emergence of a Chinese myth within libertine and Enlightenment Sinophile culture. However, in recent years greater scholarly interdisciplinary attention has converged on two areas of interest: China's economy and laws and European views on and attitudes towards them. As the Jesuit cultural mediation, interest in and representation of China began to lose the almost hegemonic importance they had held until the second half of the eighteenth century, new, more matter-of-fact issues started being discussed within European high culture, politics and public opinion. Europeans began viewing China mainly as a potential commercial partner of primary importance. Of course, this was chiefly an effect of the increasing relevance of Eastern trade within the European economy during the eighteenth century. The need for Western trading nations, most prominently Britain, to gain greater, more reliable access to Chinese markets at the end of the century played a crucial role as it led to efforts to overcome the traditional hindrances imposed by the Chinese government on Western merchants and trading companies, especially after the administrative procedures and checks known collectively as the 'Canton system' were hardened in 1757. In the context of such changes, the European effort to better understand Chinese society, institutions and culture, not to mention a language hard to come to grips with, was no longer an essentially religious or cultural issue in view of potential evangelisation of the empire. Certain questions that had already caught the attention of Enlightenment *philosophes* were increasingly prioritized within a discussion to assess China's rank on the scale of progress and civilization as well as its capacity for economic growth and cultural development, thus prefiguring later institutional and legal approaches to analysing economic and social issues. How did China's economy, society and demography work? Did Europeans have reliable knowledge of the economic resources and political-administrative peculiarities of the Chinese empire? How can we explain the apparently paradoxical situation of an immense, populous and prosperous state whose form of government was a matter of dispute between those who considered it despotism, albeit of a peculiar variety as an Oriental government, and those who exalted its features as an extraordinarily positive model against which to set *ancien régime* Europe? The crucial issue behind the representations relayed by late eighteenth- and early nineteenth-century Western commentators was to define the kind of government, institutions, laws and justice system that could be considered compatible with economic prosperity and growth, the personal fulfilment of the members of society and an orderly social and political life. What did the comparison between the European and Chinese cases suggest about the forms taken over time by the civilization process,

especially specific aspects like the security of property rights, individual liberty and the rule of law?[1] And, once clearly identified, how could the differences between Europe and China in terms of cultural and political traditions and practices be made to coexist within a truly global network of exchanges, where all partners had to share common principles and ways of resolving controversies and conflicts? While these and many other questions, including that regarding early formulations of the East-West 'divergence', had already been addressed in early modern European discussions on China, they assumed a prominent place in the discourse that accompanied the profound transformations in the structure of Sino-European relationships of the late eighteenth century and later. In fact, these same questions continue to be the focus of academic and political discussions today, especially now that China has improved its position in world politics and assumed an increasingly crucial role in the theatre of global economics, finance and policy-making. A very large body of literature, including part of this volume, has addressed European views – interpretations, representations, images – of China from the standpoint of cultural history and using a descriptive, illustrative comparative approach. Other lines of research have pursued different forms of comparison with the more ambitious intention to explain the divergent paths of economic and political dynamics. The latter is true, for instance, for the lively discussion on the "great divergence", especially after Kenneth Pomeranz's 2000 work and related books such as those by Roy Bin Wong in 2011, Karel Davids in 2012, Peer Vries in 2015 and Pim de Zwart in 2016. We could also add Ashley Millar's 2017 book, which specifically addresses eighteenth-century European interpretations of China's economy from a cultural perspective.[2] This is in many ways also true

1 This is clearly the eighteenth- and nineteenth-century Western way of approaching these issues, thus representing an undoubtedly Eurocentric view, presuming that there is only one way of speaking of private property, legal guarantees, liberty, rights, equality and social status and that it can provide a suitable benchmark for interpreting 'other' societies and their 'degree' of civilization along a hierarchical scale. Recent studies in comparative law show that a highly hierarchical society could go hand in hand with an economic constitution that preserved more favourable property arrangements for the poorer segments of society than those prevailing in England in the same period, for example. See Taisu Zhang, "Social Hierarchies and the Formation of Customary Property Law in Pre-industrial China and England", *American Journal of Comparative Law*, 62, no. 1 (2014): 171-220. Thanks to Michele Graziadei for calling my attention to this essay.

2 Kenneth Pomeranz, *The Great Divergence: China, Europe, and the Making of the Modern World Economy* (Princeton: Princeton University Press, 2000); Roy Bin Wong, *Before and Beyond Divergence* (Cambridge, MA: Harvard University Press, 2011); Karel Davids, *Religion, Technology, and the Great and Little Divergences: China and Europe Compared, C. 700-1800* (Amsterdam: Brill, 2012); Peer Vries, *State, Economy and the Great Divergence: Great Britain and China, 1680s-1850s* (London-Oxford: Bloomsbury, 2015); Pim de Zwart, *Globalization and the Colonial Origins of the Great Divergence: Intercontinental Trade and Living Standards in the Dutch East India Company's Commercial Empire, C. 1600-1800* (Amsterdam: Brill, 2016); Ashley Eva Millar, *Singular Case: Debating China's Political Economy in the*

for the current research, discussions and exchanges being carried out by scholars in other disciplinary contexts. The attention of political theorists, for example, is understandably drawn to the political system of post-Maoist China, and scholars of comparative law are engaged in the extremely important job of identifying the assumptions and conceptual tools with which to harmonize Western and Chinese laws within an obviously evolving context of global economic and political relationships. However, the Western effort to know and understand China's institutions, economy and law started well before the present historical phase of growing globalisation. The need for better knowledge and a more effective way to cope with the Middle Kingdom arose during earlier waves of proto- and modern globalisation, which coincided with the increasingly relevant centrality of the trade relationships between Europe and China in the larger context of East-West trade. It was exactly during this historical phase that George Thomas Staunton realized his 1810 translation of the Qing code. Not only did this work decisively improve Western knowledge of Chinese law and Sino-Western interactions and, more specifically, meet British needs, but its author also intended it as an act of commitment and an explicit appeal – contrary to the dominant Western opinion of the time – to consider a nation with such a venerable cultural, institutional and legal tradition as China with respect, albeit from a commercial and imperial standpoint. Staunton's cultural and imperial motivations are explored in the first essay.

As this volume shows, the fact that nineteenth- and early twentieth-century Chinese law reformers continued to place the Qing code at the centre of their attention confirms its unquestionable historical and legal importance. However, Staunton's translation and the later versions in other European languages can no longer be considered reliable tools for understanding Chinese imperial law, as demonstrated by specialized translation studies. All these translations nevertheless belong to a crucial phase of Western discourse on China's institutions, law and civilization, which is the main reason for the present reprint and the accompanying critical essays.

The first two contributions to this volume therefore take the perspective of cultural history to explore the protracted European discussions on Chinese laws and institutions that were carried out, particularly regarding Western knowledge and interpretations of the Chinese legal and justice systems during a time when contacts were increasing, especially in the area of Canton. Considerable attention has recently been paid to this historical issue and the related question of how the observation of China and its institutions and laws affected Western political and legal theories. Contributions such

European Enlightenment (Montreal: McGill-Queen's Press, 2017); on this entire debate, see "The Great Divergence Revisited", Matthias Middell and Philipp Robinson Rössner, eds., *Comparativ. Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung*, 3, no. 26 (2016): 7-118.

as Teemu Ruskola's *Legal Orientalism: China, the United States, and Modern Law* and Li Chen's *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* are particularly valuable for how they openly address these issues by applying methodological attention to Orientalism and post-colonial thinking.[3] The essays written by myself and Li Xiuqing contribute to this discussion in order to demonstrate that Western knowledge and views of Chinese laws and institutions changed significantly during the half century before the First Opium War (1839-1842) and immediately after that. Knowledge of Chinese laws and administrative and political institutions went from being principally a more general, abstract cultural issue to being a practical challenge in the effective regulation of Sino-European relationships. More specifically, at the beginning of the nineteenth century those speaking about Chinese laws and institutions, and gradually even society and culture, assumed a prescriptive tone and evolved in normative and interventionist directions under the influence of Western theories about the superiority of all aspects of European civilization and, of course, the Anglo-American Protestant evangelical and humanitarian discourse. Unlike in earlier centuries, Westerners began to view Chinese institutions and laws – to the extent that they were known through Confucian texts, missionary descriptions or travel accounts – as more than just abstractly positive models worth imitation, points of reference to support social and political criticism of European institutions, or negative examples of a radically 'other' political and legal order to be used in theoretical disputes. Now they started appearing collectively as a deficient, unsuitable institutional complex that had to be changed and adapted to the new needs of the integrated system of international economic and political relationships whose key concept was the Eurocentric idea of a 'family of nations' that shared basic political, economic, diplomatic, cultural and, ideally, religious principles. With its traditional cosmological views based on the belief of being the centre of the world, for centuries China had been separate and self-excluded from this 'family'. According to the European viewpoint, however, China had to find its own place within it and become a full member for the general good of humankind, thus opening itself to commerce and the "gentle civilizer of nations"[4] of foreign intercourse. The at least partial modernisation or Westernisation of important aspects of Chinese institutions – particularly those in which Westerners and the Chinese engaged in daily, direct interaction such as the judiciary, the customs system and diplomacy, but also the material conditions of life

3 Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, MA: Harvard University Press, 2013); Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2016).

4 Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2001).

of Western residents in China – was therefore considered necessary to improve the coexistence of Western powers and the late Qing empire whose 'barbarous' condition, according to the mainstream Western discourse (which Staunton tried to moderate to some degree), had to be reformed and brought to a level of civilization closer to that of the West. My essay focuses on the evolution of European interest, knowledge and conceptualisation regarding the Chinese institutional and legal system over more than a century. It follows this evolution starting from a period dominated by Jesuit representations and related Sinophile myths that captivated a large part of the notably French Enlightenment culture. It then goes on to trace the multi-layered dissolution of such myths in the second half of the eighteenth century when many more negative views emerged and began to prevail, particularly those regarding the nature and features of the Chinese government and administration. In particular, Europeans were forced to cope with the Chinese penal system and discover how it worked whenever they came into conflict with Chinese administrators, merchants and ordinary people in the area of Canton. This book-length reconstruction aims to highlight the significant reversal of cultural attitudes towards China, mainly visible in British accounts, which accompanied the post-Macartney period at the beginning of the nineteenth century. It describes the circumstances in which Staunton's translation of the Qing penal code was prepared and clarifies the meaning of his work from the more general point of view of an overall interpretation of the Chinese civilisation, the discussions sparked by the translation in European periodicals and the translations that followed the British one in France, Italy and Spain. Against this background, the Italian translation republished here is fully contextualized as a specific moment of a larger European discourse.

The essay by Li Xiuqing tracks Western discussions on Chinese judicature during the nineteenth century, starting exactly from the chronological moment when the previous essay stops. Her analysis focuses on two important English-language periodicals, the *Chinese Repository* (1832-1851) and the *China Review* (1872-1901), which were produced in two very different periods and locations. The first was started in pre-Opium War Canton on the initiative of the British and American merchant and missionary community. The second was published in British Hong Kong by British journalists and Sinologists at a time when the Qing imperial government started taking important steps towards modernising Chinese penal laws and procedures. What results from both essays is a very broad picture covering nearly two centuries of European interest in and interpretations of Chinese institutional and legal traditions and peculiarities, especially those concerning political institutions, the judicial system and penal laws.

The issue of how to harmonise judicial practices and legal concepts continued to engage scholars and reformers subsequent to this period both in the West and in China. In fact, the comparative study of Chinese and European legal traditions has become a

central issue in Western political and legal thought – suffice it to think of Max Weber's work – and remains a crucial issue animating an intense debate with important methodological implications.[5] One key point of controversy is codification and the concept of 'code', a word that, as Marina Timoteo makes clear, is rife with ambiguity. In the West this issue started being perceived in a much more concrete and realistic way – even with respect to eighteenth-century continental codification experiences – at the beginning of the nineteenth century when the prototype of all modern European civil law codes was framed with the promulgation of Napoleon's civil code in 1804. At the same time, the first English edition of the Qing 'penal code' and the successive translations into other European languages provided new impetus for reflecting on the comparability of such diverse legal traditions and the meaning of the word 'code' itself.

What 'codification' meant and the place it held in European and Chinese legal traditions and in the history of the nineteenth and twentieth-century attempts to reform Chinese law are the main subjects of the third and fourth essays in the present collection. Zhang Lihong and Dong Neng's essay is both historical and comparative in nature and retraces the history of the Great Qing Legal Code, including its first promulgation in 1647 and its role in the history of Chinese judicial institutions. The authors show how essentially different the meaning of 'legal code' is in the Chinese tradition and in Western legal language and culture. They also insist on the importance of eschewing any sort of "methodological Eurocentrism" as a fundamental precaution to take in any comparative approach. Most interestingly, they add substantially to the chapter on both European and Chinese discussions on the Chinese code during the nineteenth and early twentieth century, thus providing a useful, effective conclusion to the first two essays. In particular, their essay shows that knowledge of the Qing code's peculiar nature contributed, on the one hand, to the European codification process and, on the other, reinforced the notion of an essential 'otherness' of Chinese law and legal procedures. Teemu Ruskola has defined the latter as "legal Orientalism", a long-term cultural attitude that essentially goes back to Montesquieu and remained resilient for two centuries after him. The authors also address the issue of legal reform in late Qing China by showing how, in the first decade of the twentieth century, Chinese legal reformers realized that they needed to change several aspects of the Chinese tradition by importing aspects of Western ideas and grafting them onto what was a substantially pristine Confucian legal tradition in order to reinforce the Qing empire and keep it alive. The ensuing discussion and revision culminated in the official promulgation in 1911 of the "Great Qing

5 Taisu Zhang, "Beyond Methodological Eurocentricism: Comparing the Chinese and European Legal Traditions", *American Journal of Legal History*, 56, no. 1 (2016): 195-207.

Criminal Law, the first modern criminal code in Chinese legal history"[6] – the dramatic legacy of the Qing empire on the verge of its final dissolution and the beginning of the republican era.

Marina Timoteo makes it a priority to steer clear of the "methodological Eurocentrism" trap when dealing with the issue of reform and the codification of Chinese law from a comparative perspective. Her essay explores the different meanings of the term 'code' in the Chinese and European traditions and the extent to which the new codification process that started in Europe in the late eighteenth century, and for which a key moment was the drafting of Napoleon's civil code – "first a symbol, then a myth for legal modernity"[7] – influenced the nineteenth-century Chinese reform process and helped significantly reshape traditional Qing law codes. As she points out, this was not just a technical exercise but also a profoundly complex cultural process of conceptual adaptation. Adding substantially to Zhang Lihong and Dong Neng's contribution from both a historical and a comparative law perspective, Timoteo's essay focuses mainly on the Chinese side of the comparison and various transplants between different legal traditions with regards to law reform, especially in the field of civil law. Following this long process from the late dynastic era through the first republican decades and the Communist and post-Maoist years up to the reform initiatives of the 2000s, Timoteo emphasises how importation from the Western tradition involved a complex linguistic and semantic adaptation of Western concepts and considerable innovation of Chinese legal vocabulary that demanded close collaboration between legislators and academics. This contemporary China-centred contribution therefore significantly enriches the perspective of the essays in the first part of this volume that focus mainly on the European viewpoint, that is, on how knowledge of the Chinese legal tradition in the crucial decades between the end of the eighteenth and the beginning of the nineteenth century affected Western ideas about Chinese institutions (and civilization) and helped shape the belief that they were inconsistent with 'civilized' Sino-European relationships. Timoteo shows how, between the nineteenth and the twentieth century and at the beginning of the twenty-first century, Chinese legal reform efforts invigorated reflections on the Western tradition, first by taking into account continental civil law models, and more recently by paying increasing attention to the English and North American common law tradition.

6 See, in this volume, Zhang Lihong and Dong Neng, "A New Reading of the Great Qing Code: a Comparative and Historical Survey".

7 Marina Timoteo, "Of Old and New Codes: Chinese Law in the Mirror of Western Laws", in this volume, 178.

Closes the volume the reproduction of eight original illustrations signed by Albert Robida for Pierre Giffard's *La Guerre infernale* (1908), part of a series of fifteen bought by Diego de Henriquez, ex-soldier and passionate collector, in 1957, and today at the Civico Museo di guerra per la pace "Diego de Henriquez" of the City of Trieste. These drawings offer a graphic example of the collective imagery related to and popular representation of Chinese punishments and tortures, and the Yellow Peril in coeval Western public discourse.

Giulia Iannuzzi's essay accompanies their publication by critically assessing their position and outlining their precedents in Robida's work and in popular French and Western publications, and in early science fiction in particular. With the distinctive presence of ethnic stereotypes, which imbued the depiction of Oriental brutality and sadism, and visions of a future driven by scientific discoveries and technological progress, *La Guerre infernale* taps into broader cultural currents, and its reading today contributes to our knowledge and critical understanding of Sino-Western cultural relationships at the dawn of the Twentieth century (or at the end of a "long" Nineteenth century), and their reflections in popular media.

This volume is intended to encourage an interdisciplinary dialogue and to contribute to a better understanding of institutions and the law as central to the discourse on China in comparative law and in the history of ideas and cultural history. It tries to achieve this by assuming both a European and a Chinese perspective and moving from eighteenth-century perceptions and representations to the reform initiatives and theoretical discussions that continue to this day. The final result is hopefully an enhanced awareness of the extremely important role that Sino-Western encounters and comparisons have played, not only at a cultural level in global history over several centuries, but also in today's global politics and economics in which we are coping daily with concrete, pressing issues of reciprocal understanding in our efforts to achieve an enduringly peaceful and fruitful coexistence.

The EUT staff realized the digital reproduction of the 1812 Italian translation of the Qing Code and produced both a PDF version distributed in an open access, online format and a four-volume printed edition. The technical skills of the EUT staff, especially Gabriella Clabot, were crucial for the project's success given the delicate and complex nature of digitally reproducing a text originally published in 1812 with paper and binding preserved in near perfect condition, but with typographical peculiarities and imperfections that made it quite difficult to obtain a faultless digital facsimile edition.

My sincerest thanks go to everyone involved, especially the EUT's technical director Dr. Mauro Rossi for his invaluable coordination of the entire enterprise. I wish to thank in particular Dr. Giulia Iannuzzi who guided the editorial process with great efficiency and skill and was painstakingly precise in her copyediting of the present volume, and

most of all I would like to express my full satisfaction for her accepting of my truly last-minute invitation to write an interpretive essay on Albert Robida's representations of the Chinese atrocities. In this regard, special thanks must go also to Dr. Antonella Cosenzi, Curator of the "Museo della Guerra e della Pace Diego de Henriquez", Trieste, for her prompt authorization to reproduce Albert Robida's drawings, which I found unexpectedly during a totally unplanned visit to the Museum; her assistance to explore further Henriquez's materials owned by the Museum allowed us to have a more complete understanding of the provenance and meaning of Robidas's sketches. I owe a deep debt of gratitude to Piero Gondolo della Riva, who put a wealth of rare and valuable material at disposal of our research on Robida and *La Guerre infernale*: I would like to express my heartfelt thanks to him.

This book would not have taken its present form without the competent and precious advice, generous comments, insightful suggestions and patient, benevolent corrections I have received since starting this enterprise from Michele Graziadei thanks to his invaluable expertise in the field of comparative law. He has played a key, irreplaceable role in helping me find a way to bring together a historical and a comparative legal approach in order to offer complementary readings from an interdisciplinary, European and Chinese perspective of encounters, conflicts and dialogues between two such different traditions.

Turin, June 2017