

RESEARCH ARTICLE

## Re-cloistered Feminine Space: Chinese Women's Prison in Shanghai, 1888–1912

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### Abstract

This article examines China's first women's prison in the context of diplomatic disputes, legal reforms, and gender order at the turn of the twentieth century. It shows that the custody of female offenders in the Shanghai International Settlement became a battleground in which the interests and perceptions of late imperial China and the Western authorities clashed. Under pressure from the Western authorities, the first Chinese women's prison was established in 1907, even prior to the formal introduction of custodial sentences into China's criminal code. Notably, the Chinese officials did not embrace prison as a more benevolent punitive institution; rather, they saw it more as a tool to consolidate its judicial sovereignty and preserve gender norms. For Chinese women, the prison, functioning as a re-cloistered feminine space, further entrenched the confinement of their bodies, thereby perpetuating rather than changing orthodox values of female chastity. This article questions the universal modernity of European penalties by pointing out that the introduction of imprisonment as a supposedly more civilized and humane form of punishment may have placed Chinese women at a greater disadvantage.

**Keywords:** women's prison; diplomatic dispute; legal reform; gender order; modern China

### 1. Introduction

On 9 December 1905, *Shen Bao* (*Shanghai News*) covered a violent incident that occurred at the Mixed Court (会审公廨)<sup>1</sup> in the Shanghai International Settlement.<sup>2</sup> Upon her arrival in Shanghai by ship, Mrs Li (née Huang), accompanied by 15 girls and three servants, was apprehended by the French police on suspicion of being involved in kidnapping. On 8 December 1905, Chinese magistrates Guan Jiongzhi (关炯之) and Jin Shaocheng (金绍城), accompanied by British Vice Consul Bertie Twyman, heard the case at the Mixed Court. After checking the deeds of sale, the Chinese magistrates tentatively concluded that the girls were maids who were bought, not kidnapped, by Mrs Li (née Huang) and decided to return them to the Women's Detention Cells of the Mixed Court (会审公廨女押所),

<sup>1</sup> In 1869, the Mixed Court was established to deal with the mounting number of lawsuits in the International Settlement. According to the New Provisional Rules for the Mixed Court [洋泾浜设官会审章程], which was signed on 20 April 1845, cases involving foreign interests were to be tried by Chinese officials and foreign jurors together at the Mixed Court, while cases involving only Chinese were to be tried by Chinese officials themselves.

<sup>2</sup> The Shanghai International Settlement (上海公共租界) originated from the merger in 1863 of the British and American enclaves in Shanghai, in which British and American citizens would enjoy extraterritoriality and consular jurisdiction under the terms of treaties agreed by both parties.

pending trial. However, on the order of Twyman, several foreign police suddenly seized the woman and the girls in an attempt to take them to the police station by force. This unexpected action triggered a physical altercation between them and the Chinese runners, resulting in two injuries. The police eventually succeeded in taking the lady and the girls away in an iron carriage and then put Mrs Li (née Huang) into the Municipal Female Gaol in the International Settlement. The reporter from *Shen Bao* commented that “such a violent clash between the British and Chinese has never been witnessed since the establishment of the Mixed Court.”<sup>3</sup>

A few days after the incident, Chinese residents in the International Settlement went on strike in front of the Municipal Council<sup>4</sup> to protest against the detention of the Chinese women, the disruption of the courtroom, and the insults to the Chinese officials.<sup>5</sup> The strike resulted in over 30 Chinese residents’ being injured and 11 losing their lives in clashes with foreign police.<sup>6</sup> In 1906, Ruicheng (瑞澂), the circuit intendant (*daotai*) of Shanghai, proposed to establish a Western-style women’s prison next to the Mixed Court to house Chinese female suspects and convicts arrested in the foreign settlement.<sup>7</sup> This became the first modern prison<sup>8</sup> built by the Chinese government, even before custodial sentences were officially adopted in the Chinese criminal code.

Although the case of Mrs Li (née Huang) triggered such intense conflicts and violent confrontations, its historical significance has not garnered much attention from anglophone historians. Sinophone scholarship on this case has emphasized China’s determined efforts to assert its sovereignty and jurisdiction, the nationalist sentiments of the Chinese people, and their resistance to imperialist expansion (Ma, 2007, pp. 44–9; Peng, 2006, pp. 41–50). Nevertheless, the introduction of a Western punitive system stemming from this case, in addition to the subsequent disputes between the Chinese and Western authorities regarding punishment, sovereignty, and gender roles, is still open to examination. Some questions remain unanswered. Why, for example, was China’s first prison a women’s prison? What were the underlying reasons behind the diplomatic disputes and physical violence stemming from the custody disputes involving females? What were the differences in the approaches to female prisoners between late imperial China and the Western authorities? Furthermore, how did these differences clash and intersect within the operations of the first Chinese women’s prison?

This article will first investigate the diplomatic, judicial, and gender contexts of this violent conflict, showing how the custody of Chinese women became a battlefield in which conflicting interests and ideologies clashed. It will then analyze how prison, as a newly introduced punitive institution, had an impact on the legally and morally sanctioned space for Chinese women. Finally, the article will turn its attention to sentence durations, release conditions, as well as women’s lives behind bars in order to investigate whether the introduction of Western penalties did indeed improve women’s situations.

<sup>3</sup> “Foreign Police Made Trouble at the Mixed Court Hearing [公廨讯案巡捕房大起冲突],” *Shen Bao* [申报], 9 December 1905, p. 4.

<sup>4</sup> The Shanghai Municipal Council was founded on 11 July 1854 by a group of Western businessmen to govern the daily operation and infrastructure of the Shanghai International Settlement. By the mid-1880s, the council had become a practical monopoly over the city’s businesses. The British Consul was the *de jure* authority in the settlement, but he and the other consulates deferred to the council.

<sup>5</sup> “Stores on Strike [店铺罢市],” *Shen Bao*, 19 December 1905, p. 2.

<sup>6</sup> “Count of the Number of Injured Chinese [受伤华人计数],” *Shen Bao*, 19 December 1905, p. 3; “Second Count of the Number of Injured Chinese [再纪受伤各华人],” *Shen Bao*, 21 December 1905, p. 3; “Summary Records of Chinese and Foreign Negotiations [中外交涉汇志],” *The Eastern Miscellany* [东方杂志], vol. 3, no. 3, p. 30.

<sup>7</sup> “Approval of the Renovation of the Men’s and Women’s Detention Houses at the Shanghai Mixed Court [督批修改上海会审公廨男女押所],” *Shen Bao*, 31 May 1906, p. 3.

<sup>8</sup> In this article, the definition of a prison is limited to a facility for the incarceration of offenders as a form of punishment. Before imprisonment as a form of punishment was introduced into China, facilities used for temporary detention could not be referred to as “prisons.”

This article shows that Chinese women's bodies were deliberately targeted for control and manipulation by the Western authorities who attempted to expand their jurisdiction in the Shanghai International Settlement. At the same time, the late imperial Chinese government responded by establishing its first women's prison, aiming to assert its judicial sovereignty while upholding traditional gender norms. Despite providing women with a space beyond their homes, the prison remained a confined environment. Specifically, it served as a location where the paternalistic government re-confined women who had escaped from their homes, creating what is referred to as the "re-cloistered feminine space."<sup>9</sup> Outside of both the home and the prison, Chinese women still had nowhere to go. Notably, within this re-cloistered feminine space, the incarcerated women constantly challenged the stereotypes of vulnerability and submissiveness imposed on them by the male elite through their words and actions.

The article also suggests that the late imperial Chinese government viewed the women's prison primarily as a means to safeguard its judicial sovereignty and preserve gender norms rather than perceiving it as a more compassionate punitive institution. Hardly did the government embrace the Western notions of bodily discipline underlying confinement and prison labour; instead, it tended to underscore the protective but not punitive nature of imprisonment. Nevertheless, this unanticipated merging of imprisonment with Chinese gender norms served to reinforce the physical confinement experienced by Chinese women. Consequently, the introduction of imprisonment as a purportedly more civilized and humane mode of punishment may have exacerbated the situations faced by Chinese women.

## 2. Diplomacy, sovereignty, and women's prison

Prior to the Western-inspired legal reform, there were no custodial sentences in late imperial China; instead, the set of penalties, also known as the "five punishments," consisted of being beaten with a light stick, being beaten with a heavy stick, penal servitude, exile, and capital punishment (MacCormack, 1990, p. 15; Brook, Bourgon and Blue, 2008, pp. 37–41). There indeed were cells in government offices (*yamen*), but they were used to hold offenders awaiting trial or punishment, not for serving sentences (Bai, 2002, pp. 119–33). Previous studies have suggested that the introduction of imprisonment and modern prisons in China can be traced back to 1901, when two reformist governors, Liu Kunyi (刘坤一) and Zhang Zhidong (张之洞), submitted three reform petitions (江楚会奏变法三折) for legal reform to the emperor (Xu, 2008, pp. 49–51); it was not until the promulgation of the New Criminal Code of Great Qing (大清新刑律) in 1911 and the opening of the Capital Model Prison (京师模范监狱) in 1912 that Liu and Zhang's proposal was put into practice (Dikötter, 2002, pp. 53–8).

However, I argue that, before the promulgation of the Great Qing New Criminal Code, China's first women's prison was already completed and put into operation; 1907 saw its establishment next to the Mixed Court in the Shanghai International Settlement. Although the building was still formally named as Women's Detention House (女押所), both Chinese and foreign residents in Shanghai more often referred to it as the Mixed Court Female Prison (会审公廨女牢) (Mai, 2003, p. 98). Also, it had little difference from the Western prison built by the Municipal Council in Shanghai in terms of its design and facilities.

The Qing government's initial endeavours to establish a modern prison system were shaped within the backdrop of Western imperialist expansion in China, particularly by

<sup>9</sup> The phrase "feminine space" was originally borrowed from Wu Hung's study of space in Chinese art history. He develops this concept to emphasize the importance of situating the analysis of female figures in the spaces in which they are embedded. See Wu (1996, 2019). The "feminine space" discussed in this article refers to the space sanctioned for women by late imperial Chinese legal and moral norms.

Great Britain, and its infringement on China's judicial autonomy. Following Britain's triumph in the Second Opium War during the mid-nineteenth century, British nationals in China were granted extraterritorial privileges, enabling them to be governed by their own national laws rather than Chinese legal jurisdiction. Extraterritoriality emerged as a primary source of the Qing government's sense of humiliation and crisis, as well as a significant impetus for its pursuit of political and legal reforms.<sup>10</sup>

On 5 September 1902, China and Britain signed the Mackay Treaty (中英续议通商行船条约), in which the British authority proposed for the first time to conditionally abolish its extraterritorial jurisdiction in China. Article 12 of the treaty provided that

China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other consideration warrant her in so doing.<sup>11</sup>

The treaty offered the Qing government an opportunity to show its commitment to bringing its judicial and penal system into line with that of the Western nations. The promotion of modern prison facilities was a key focus in its agenda for penal reform. Shen Jiaben (沈家本), the vice minister of justice who was in charge of compiling the Great Qing New Criminal Code (大清新刑律), argued that "prison and extraterritoriality were intricately connected, much like the two sides of the same coin,"<sup>12</sup> highlighting the significance of introducing a prison system in ending extraterritorial jurisdiction.

While the high-ranking officials were still working on the introduction of imprisonment, the conflicts between the Chinese and Western authorities in the judicial practice and daily administration of the treaty port cities increasingly intensified. This directly prompted the local government to put the construction of a modern prison on the agenda even before custodial sentences were formally incorporated into the Chinese criminal code.

At the turn of the twentieth century, the Western authorities in Shanghai began to take a closer look at the conditions in the Chinese women's detention facilities, with specific concern for the wellbeing of the female offenders being held there. In 1904, a police report was submitted to the Municipal Council, detailing the conditions of the detention house:

The Female Ward is situated in a separate part of the Court premises, and has two cells, of 18 by 14 by 12 feet dimension. The first cell contained 15 women and the second 13 women and children. The ventilation was bad and the cells in a dirty condition showing that whitewash and disinfectants were much required. These did not seem to be any discrimination in separating serious cases from other cases. Four women sentenced to long terms of imprisonment for kidnapping were found in the same cell with stray children. . . The need is thus apparent and increasing for a female ward in the Municipal Gaol, where proper supervision and isolation can be enforced in all cases.<sup>13</sup>

This report criticized the Chinese women's detention cells in terms of their capacity, sanitary conditions, and lack of proper regulations. Based on this assessment, in its annual

<sup>10</sup> The compromised judicial sovereignty made the Qing government realize the necessity for legal reforms. The legislation for the new legal code was initiated during the last decade of the Qing Dynasty. See Huang (2014), pp. 325–32; Chen (2011), p. 198.

<sup>11</sup> "The Mackay Treaty [中英续议通商行船条约]," in Wang (1957), vol. 2, pp. 97–107.

<sup>12</sup> Shen, Jiaben, "The Ministry of Justice's Response to the Memorial on Implementing Prison Reform [法部奏议复实行改良监狱折]," in Xue, Lin, Chu and Li (2017), p. 44.

<sup>13</sup> *Shanghai Municipal Archives* (cited as *SHMA*), 1904, No. U1-5-18.

report of 1904, the Municipal Council claimed that “the custody of prisoners should be conducted under proper conditions and with well-defined disciplinary routine, a matter unobtainable in native hands.”<sup>14</sup> This constituted the main reason for its attempt to build a Western-styled women’s prison in the International Settlement.

In 1903, the Shanghai Municipal Gaol (上海公共租界工部局警务处监狱), also known as the Ward Road Gaol (华德路监狱) or Tilanqiao Prison (提篮桥监狱), was built by the Municipal Council. Then, in the following year, a Western-style women’s prison was built and completed in November. Despite strong opposition from the Chinese government, many Chinese female suspects and criminals arrested in the International Settlement were imprisoned there from 1904 to 1906.<sup>15</sup> The Shanghai circuit intendant (*daotai*) protested against handing over female offenders to the Western authorities because of the fact that no Chinese women heretofore had been imprisoned in Western gaols. But the Municipal Council did not respond to his concern.<sup>16</sup> The detention of female suspects and offenders by the Western authorities caused intense anger and resistance from the Chinese community. A commentary article in *Shen Bao* stated: “[We may] leave the construction of male prisons to the Westerners, but when it comes to female prisoners, we must fight [to regain custody].”<sup>17</sup>

The Chinese officials and the public expressed their demand for the return of Chinese female prisoners in several ways. First, they invoked the New Provisional Rules for the Mixed Court (洋泾浜会审章程) to reaffirm China’s jurisdiction in the foreign settlements. According to the rules, they argued that Chinese criminals were supposed to be tried by Chinese magistrates and held in the Mixed Court cells. There was no need for the British to establish prisons on behalf of the Chinese.<sup>18</sup>

Second, they explained the necessity for keeping Chinese women in Chinese cells in terms of maintaining gender order and protecting women’s reputations. A commentary article in *Shen Bao* argued that the Shanghai circuit intendant (*daotai*) disagreed with the handing-over of Chinese female convicts because he wanted to protect them from showing their faces in front of Western officials or being put in the Western prison. Also, a note sent to the British Consul by the magistrate of the Mixed Court said: “The Chinese attach the greatest importance to women’s honor and reputation, and it would cause much inconvenience once female offenders were taken into the Western prison.”<sup>19</sup> It can be

<sup>14</sup> *Ibid.*

<sup>15</sup> “On the History of the Female Detention House of the Mixed Court [记录公廨女犯押所之历史],” *Eastern Times* [时报], 13 December 1905, p. 1; “Request for Female Prisoner was Rejected [索交女犯不允],” *The News* [新闻报], 4 April 1906, p. 2.

<sup>16</sup> “Fight for Female Prisoners [力争女犯],” *Shen Bao*, 6 January 1905, p. 3; “Refusing to Allow Female Prisoners to Be Held in the Western Prison [不允女犯押入西狱],” *Shen Bao*, 24 February 1905, p. 5; “Report to Ask for Advice on How to Bring Back Female Prisoners [稟请索回女犯办法],” *Shen Bao*, 15 May 1905, p. 4; “Prostitutes Who Solicited Will Be Detained in the Western Prison [曳客妓女将收押西牢],” *Shen Bao*, 11 July 1905, p. 10; “Prostitute Who Solicited Was Imprisoned in the Western Prison [曳客妓女竟押西牢],” *Shen Bao*, 13 July 1905, p. 4; “Prostitute Who Solicited Was Imprisoned in the Western Prison Again [曳客妓女又押西牢],” *Shen Bao*, 20 July 1905, p. 4; “Shanghai Daotai Ordered to Negotiate with the Consul that the Prostitutes Should Not Be Sent to the Western Prison [上海道批令与领事磋商曳客妓女不宜押入西牢],” *Shen Bao*, 16 July 1905, p. 4; “On the Daotai’s Order to Stop the Establishment of a New Women’s Prison in the Settlement [论道宪飭阻租界中新设女狱事],” *Shen Bao*, 6 December 1904, p. 1.

<sup>17</sup> “On the Daotai’s Order to Stop the Establishment of a New Women’s Prison in the Settlement [论道宪飭阻租界中新设女狱事],” *Shen Bao*, 6 December 1904, p. 1.

<sup>18</sup> “Order to Compete for Female Prison [飭争女狱],” *Shen Bao*, 5 December 1904, p. 3; “On the Daotai’s Order to Stop the Establishment of a New Women’s Prison in the Settlement [论道宪飭阻租界中新设女狱事],” *Shen Bao*, 6 December 1904, p. 1.

<sup>19</sup> “The Correspondence from the Mixed Court Magistrate to the British Consuls for Not Imprisoning Female Offenders in the Western Gaol [会审臬员致英领事女犯不准押入西牢照会],” *Shen Bao*, 21 July 1905, p. 4.

inferred that the “inconvenience” he implied was the risk of Chinese women being sexually assaulted in the Western prison and their reputations being compromised.

This anxiety about the “inconvenience” was expressed more explicitly in a letter from a Chinese correspondent signed by “Fair Play” to the *North China Herald*. It said:

The only thing which the magistrate wanted was that the female defendants in the case be left to the Court and that is according to the feelings of the Chinese people who are not willing to see their women, however guilty they may be, be kept in foreigners’ custody . . . we do not want that under the guise of protection the police may enter our houses and wrongfully arrest our women, our sisters and daughters.<sup>20</sup>

The Chinese officials and male elites, whether stated directly or implied, voiced apprehensions not just regarding the loss of custody for female offenders, but also regarding the loss of control over all Chinese women. This also explains why male offenders’ being held in the Western prison was still tolerable, but not at all when it came to females.

Third, following the example of their British counterparts, the Chinese newspapers voiced concerns regarding the accommodation, meals, and management at the Municipal Gaol. The reporter of *Shen Bao* revealed that

Chinese prisoners held in the Western prison are often ill. This is probably because according to the rules there, they must shower with cold water, whether in winter or summer; speaking is forbidden inside, which makes them breathe poorly; and the humidity inside attacks their skin. Also, new prisoners are subjected to physical abuse by their cellmates.<sup>21</sup>

The alarming mortality rate among Chinese prisoners heightened public apprehension, with many perceiving being held in a Western-style prison as a death sentence.<sup>22</sup> Due to the perception of women as physically vulnerable, Chinese officials, the media, and the general public advocated for the protection of women from these perilous conditions and their exclusion from Western-style prisons.

From the debates and exchanges between the two parties, it becomes evident that, in the early twentieth century, Chinese women’s bodies were at the centre of diplomatic disputes between China and the Western authorities in Shanghai. While both sides sought to safeguard their interests and jurisdiction within the settlement, they also shared some similarities in their lines of reasoning. They both relied on newly emerging insights into public health to bolster their arguments, contending that women were physically more vulnerable than men and thus warranted more suitable accommodation. Also, they both believed themselves to be more qualified and capable of protecting and confining the bodies of Chinese women.

Unfortunately, after prolonged bargaining and negotiation, both sides failed to convince the other; instead, deep-seated resentments against each other continued to accumulate and ultimately erupted into violence during Mrs Li’s (née Huang) case hearing. The most comprehensive account of the courtroom violence that remains available was documented by a British journalist from the *Shanghai Times*. According to the report, after the Chinese magistrates decided to postpone the case for further investigation, British

<sup>20</sup> *North China Herald*, 15 December 1905, p. 608.

<sup>21</sup> “On the Need to Set up A Prison at the Mixed Court to Prevent the Prisoners from Suffering from Illness [论英美租界公廨宜专设监狱免寄禁犯人受病之苦],” *Shen Bao*, 5 December 1899, p. 1.

<sup>22</sup> “On the Daotai’s Order to Stop the Establishment of a New Women’s Prison in the Settlement [论道宪饬阻租界中新设女狱事],” *Shen Bao*, 6 December 1904, p. 1.

Consul Mr Twyman engaged in a conversation with magistrate Guan, during which they both shook their heads negatively, signifying their failure to reach a consensus. Suddenly, Twyman told the police that “the accused and the witness were to go back to the Police Station and the Children were to be sent to the Door of Hope.” The journalist wrote:

I saw that Inspector Gibson had held of one of the prisoners to take her out . . . . Then I saw one of the runners lay his hand on the Inspector in a threatening manner . . . . When Inspector Gibson shocked off the runner, the latter, to my great surprise, clenched his fist and struck Inspector Gibson, the blow landing on his left jaw.

At the same time, the tempers of the Chinese magistrates flared. Magistrate Jin erupted in furious shouts within the courtroom, while magistrate Guan declared that he would not permit the police to take her away unless “they (the police) could kill him and trample upon his body.”<sup>23</sup>

The forceful seizure of the Chinese woman by the British police was the catalyst for the heated altercation in the courtroom. In the late imperial Chinese gender norms, any physical contact with unfamiliar men was a grave affront to a woman’s honour and purity. Furthermore, the British police’s action was a huge humiliation for the magistrates, as it not only disrupted the order of the courtroom, but also diminished their authority over the bodies of Chinese women. This was a severe blow to their dignity, whether viewed as Chinese men, government officials, or Confucian elites.

In order to hasten the return of Chinese women under their custody, in 1906, the Chinese government started to build a modern Western-style women’s prison next to the Mixed Court. This action, however, led to continued obstructions from the Municipal Council, which demanded a halt to the construction and even sent police to demolish the already-built structures.<sup>24</sup> In addition, it deliberately shaped public opinion to attack the Chinese prison under construction. In a letter to British public health expert Authur Stanley, it wrote:

The council is going to challenge the erection of this institution on general grounds that its existence, under purely Chinese control, would be a menace to good order, and on other accounts. Will you please, however, briefly report on it as a Gaol from a Health standpoint, and give an opinion in regard to air, space, etc., etc.<sup>25</sup>

The letter reveals that the council’s primary concern was not the wellbeing or living conditions of Chinese women, but rather the potential loss of its jurisdiction within the settlement. Its purported concern for public health appeared to be a rhetorical device used to conceal its political purposes.

Despite the fact that the newly constructed prison offered improved accommodation for female prisoners, the Municipal Council remained dissatisfied and perceived it as a significant potential threat. In correspondence with Belgium Consul D. Siffert, Cecil Holliday, who was a member of the Defense and Security Committee of the Municipal Council, wrote:

The Council would regard such a building, either within the limits of the Settlement or in its immediate neighbourhood, as a direct menace to the safety of the Settlement,

<sup>23</sup> SHMA, 1905, No. U1-5-18.

<sup>24</sup> “Chronicle of China in June of the Thirty-Two Year of Guangxu [光緒三十二年六月中国事纪],” *The Eastern Miscellany* [东方杂志], vol. 3, no. 8, p. 40; “China Monthly Event List—the Sixth Month of the Year Bingwu [中国大事月表·丙午六月],” *Sein Min Choong Bou* [新民丛报], no. 84, p. 88.

<sup>25</sup> SHMA, No. U1-5-18.

and that, apart from the question of the supervision and custody of Chinese criminals, the application is one which on general public grounds should be refused.<sup>26</sup>

Holliday's words once again proved that the Municipal Council did not really care about Chinese women's health or living conditions. Instead, it was so wary of the women's prison because it further consolidated China's judicial sovereignty in the settlement, and that ran counter to their original intentions.

### 3. Prison as re-cloistered feminine space

In terms of diplomacy and legal modernity, the establishment of the first Chinese women's prison helped Qing China consolidate its judicial sovereignty in the treaty port city and was a significant step in introducing modern Western penalties and punitive infrastructures. But what the prison as a newly created space meant for Chinese women themselves has received little attention from historians.

In late imperial China, the ideal living space for women was situated deep within their fathers' or husbands' homes and was known as the "inner chamber" or "inner quarter" (Ko, 1995, pp. 12–4; Mann, 1997, pp. 49–50). Although previous scholarship has suggested that late imperial Chinese women, especially those from lower classes, were not entirely restricted to the domestic space (Sommer, 2015, pp. 84–5; Ma, 2015, pp. 12–9), their presence outside the home was indeed not sanctioned or encouraged by Confucian elites or the imperial law. Public spaces were regarded as perilous for women, who were deemed susceptible to sexual defilement in the absence of male family members' protection when they were away from home (Theiss, 2004, pp. 133–41).

Dealing with female offenders was also extremely challenging for both the community and the government. On the one hand, women's offences often took place outside the home, undoubtedly contradicting conventional values associated with women's domestic roles. On the other hand, when deviant women were apprehended, the government was compelled to return them home to safeguard their virtue and maintain the stability of patriarchal families. Moreover, because imperial law did not include imprisonment as a punitive measure, the government seldom detained women for extended periods. Under Qing China's law, women were to be held in cells only if they had committed a capital crime.<sup>27</sup> In all other cases, female offenders were typically released after receiving punishment or fines, and homeless women were handed over to official matchmakers to seek marriage prospects (Wu and Zhang, 2018, pp. 69–77). Therefore, one could argue that, given the legal and gender norms of late imperial China, the domestic space was the only appropriate space for honourable women to stay.

With the dramatic social changes at the turn of the twentieth century, the increasing presence of women, especially prostitutes, in public spaces became a social problem that could no longer be ignored in major cities like Shanghai. Women were often found in brothels, dance halls, and opium dens, and some of them even engaged in illegal acts—mostly prostitution (Hershatter, 1999, pp. 38–41). The official matchmaking system was found to be increasingly ineffective at protecting and watching over these "dangerous women." In 1882, an editor's commentary in *Shen Bao* wrote that, because of the lack of governmental supervision, some women were forced into prostitution by the matchmakers and became money-making tools. The editor argued that the biggest obstacle to solving this problem was that, in Shanghai, "there is no place to house women except in the hands of official matchmakers."<sup>28</sup>

<sup>26</sup> *North China Herald*, 10 August 1906, p. 316.

<sup>27</sup> Examples of the Collected Regulations of the Great Qing–Guangxu Reign, vol. 839, p. 1690.

<sup>28</sup> "On Setting up a Good Place for Detaining Women [论收押妇女宜另设善地]," *Shen Bao*, 16 January 1882, p. 1.



In order to address the presence of wandering and deviant women in the city, by 1888, two institutions were established in Shanghai. One was the Female Detention House at the Mixed Court (会审公廨女押所), which was mainly used to hold women awaiting trial. In 1898, the Mixed Court was moved to North Zhejiang Road, also with affiliated detention cells for men and women. The other was the North Shanghai Refuge (沪北栖流公所, commonly known to Westerners as the Sinza Refuge), which had an expanded 15-room cottage for women tried by the Mixed Court.<sup>29</sup> Both places employed official matchmakers who were subject to stricter government supervision. Although they both served to house female offenders, their function was very different from that of modern prisons. These places were viewed only as temporary holding locations for women; eventually, women were either to be returned home or married off with the assistance of official matchmakers. The duration of their stay was determined by when they were claimed by their families or suitable marriage partners (Ruan, 2008, pp. 37–9; Huang, 2008, pp. 48–59). In other words, the women's cells and the refuge acted solely as temporary shelters for those who were away from home. Beyond these enclosed spaces, women had no other alternatives.

In 1907, the Qing government built its first Chinese women's prison in Shanghai, thus opening up a new kind of space for women. Designed by Western architects and supervised by the Municipal Council, this prison was initially planned as a three-storey structure and was then expanded into a four-storey Western-style building, equipped with modern amenities such as electricity and running water.<sup>30</sup> The prison was organized to accommodate different categories of women: the first floor housed individuals with sentences exceeding one year, the second floor accommodated those with sentences of less than a year, the third floor was designated for convicted prisoners with severe offences, and the fourth floor was allocated for suspects with minor offences and witnesses.<sup>31</sup>

A report submitted to the Municipal Council in 1911 documented the conditions of the prison in greater detail:

This prison is situated in a four stories building comprising two blocks at right angles to one another, connected in the centre by a common staircase. Each story consists of a corridor into which the cells open. At the end of the corridor is the common latrine. There are in all 29 cells and a large vacant room on the upper floor of one of the blocks. 124 women and 23 children are at present confined in these cells. Roughly estimated the majority of these cells are 12×15×9 ft, giving a total capacity of 1620 cu.ft. per cells. Four, however, are somewhat smaller and in one of these 12 prisoners are confined. About a 100 cu.ft. of space could be allowed for each individual, thus at the outside not more than two should be allowed in each cell.<sup>32</sup>

In addition to the greatly upgraded facilities, the sanitary conditions in the prison also underwent significant improvement. During an inspection, both Chinese and Western physicians commended the cleanliness and neatness of the rooms and drainage system, which stood in stark contrast to the unsanitary conditions typically observed in Chinese yamen cells.<sup>33</sup>

<sup>29</sup> "Order to Widen the Female Detention Cells [批令加宽女犯押所]," *Shen Bao*, 19 May 1905, p. 4.

<sup>30</sup> "Female Detention House of the Mixed Court Was Established [公廨女押所落成]," *Shen Bao*, 16 March 1908, p. 19.

<sup>31</sup> "The Mixed Court Drew up Twelve Statutes for Male and Female Detention Facilities [公共公廨酌拟男女押所章程十二条]," *Shen Bao*, 9 November 1907, p. 18.

<sup>32</sup> *SHMA*, 1911, U1-2-395.

<sup>33</sup> "Chinese Public Hospital Stopped Inspection [中国公立医院停止检查]," *Shen Bao*, 4 December 1910, p. 3.

Although the first Chinese women's prison emulated the Western one in its design and facilities, they differed greatly in terms of administration. For example, to ensure female prisoners' sexual purity and reputation of honour, only women were employed to manage and guard the cells and no men were allowed there.<sup>34</sup> Even female guards—a profession that was still very rare at that time—faced substantial public scrutiny. The prison then had to replace the younger ones with the older ones, so as to “eliminate any gossip about these young women.”<sup>35</sup>

What set the Chinese prison apart the most from its Western counterparts was its continued reliance on official matchmakers as prison administrators.<sup>36</sup> This meant that, once a woman had completed her sentence, if no family members came to claim her, she would need to seek marriage through an official matchmaker. Otherwise, she would either remain in prison or be transferred to a women's refuge, continuing to wait for someone to claim her. The continuation of the official matchmaker system underscores that Chinese women were still restricted from accessing public spaces. The prison emerged as a newly established space for them, but it was still an enclosed space in which the patriarchal government re-incarcerated women who had left their families. Thus, it can be seen as a “re-cloistered feminine space.” The unexpected combination of the Western penal practices and the Chinese binaries of gender order—man-outer/women-inner—served to reinforce the restriction on women's physical freedom and perpetuated traditional values of chastity rather than challenging them.

Moreover, the creation of the re-cloistered feminine space further solidified patriarchal authority and state paternalism. Confinement of women's bodies was considered acceptable by the Chinese government, as it always had been. What really worried the government was where the female offenders were to be held. Under pressure from the Western authorities, the government compromised on holding the women somewhere outside their homes, but only under its control and without any foreign intervention. In other words, the women were to be confined and supervised by the Chinese government on behalf of their patriarchs.

The establishment of the women's prison also brought in a new category of gendered subjects—female prisoners. As can be seen in the discourses made by both the Western and Chinese male elites noted earlier, there was an underlying assumption that female prisoners were passive, submissive, and vulnerable. However, the words and actions of female prisoners often went beyond, and even challenged, these assumptions. Although there are no available records directly left by female prisoners, a police report submitted to the Municipal Council provides valuable insights into their experiences within the prison:

Any prisoner who has money is able to obtain many things such as food, clothing, bedding, etc. that she may require from outside . . . . While on duty at the Mixed Court I have counted on less than 10 people, all carrying baskets of food, bundles of clothing and bedding, going into the Female Cells within two hours . . . . There have been several cases brought before the Court where Wardresses have received bribes for allowing a bed, for permitting a visitor to interview a prisoner, and for allowing prisoners to communicate with their friends, etc. outside . . . . Any woman sentenced to imprisonment is allowed to take her children into the cells with her. Some of these

<sup>34</sup> “The Mixed Court Female Detention House Expelled Male Staff [公廨女押所斥逐男役],” *Shen Bao*, 5 November 1906, p. 17.

<sup>35</sup> “Order to Dismiss All the Young Official Matchmakers [谕飭年轻官媒伙一律开除],” *Shen Bao*, 4 October 1910, p. 19.

<sup>36</sup> “The Mixed Court Drew up Twelve Statutes for Male and Female Detention Houses [公共公廨酌拟男女押所章程十二条],” *Shen Bao*, 9 November 1907, p. 18.

children have been in the cells for years . . . . Lately there have been several complaints about the behavior of some of the female prisoners who crowd around the windows of their cells, about, and make filthy, obscene remarks to passersby on the adjacent roads . . . . On the morning of the 14th instant, Native P.C. 503 was passing along Tsepo Road, when some of the female prisoners looked through their cell windows, saw him, and at once commenced to make filthy remarks to him . . . Both prisoners and warders smoke the drug without the slightest attempt at concealment. Gambling is also carried on in these cells.<sup>37</sup>

The report detailing the words and behaviours of female prisoners offers a distinctive view into their experiences during incarceration. Despite their confinement, they managed to procure food, clothing, and bedding from the outside by offering bribes. They arranged meetings with relatives and friends, and even brought their children with them. Observations also revealed their participation in activities such as smoking, gambling, and using offensive language toward passing policemen. Even the correspondent from *Shen Bao* was shocked by their audacious behaviours and asked: “Why do Chinese female prisoners appear to have so much freedom?”<sup>38</sup>

In addition to these misconducts, prison breaks were a recurring problem. For example, one such incident took place in the early morning of 9 July 1907, when six female inmates colluded to escape by cutting a hole in their cell wall. They managed to escape but were apprehended one by one between August and late September. Another escape endeavour occurred on 16 February 1911, when three female prisoners on the third floor attempted to tunnel their way out but were ultimately discovered by the vigilant guards.<sup>39</sup>

The disorder and deviant conduct in the women’s prison became the targets of criticism by Western authorities, who accused the Chinese government of corruption and mismanagement, and pressured it to implement changes as soon as possible.<sup>40</sup> The Western police also made repeated attempts to enter the prison without authorization to conduct inspections.<sup>41</sup> In response to the demands of the Western authorities, Chinese officials introduced a plethora of new rules for the women’s prison. In July 1907, the Mixed Court magistrate enacted ten provisional rules for the prison, which had expanded to 37 by November of the same year. These rules prohibited smoking, gambling, and excessive noise, while also forbidding inmates from receiving supplies from outside sources. Additionally, following the examples of their Western counterparts, the prison established a set of regulations for physical discipline of female inmates, including schedules for waking, sleeping, eating, bathing, and cleaning.<sup>42</sup>

<sup>37</sup> SHMA, 1911, U1-2-657.

<sup>38</sup> “Female Inmates at the Mixed Court Are Really Free Like This [公廨女犯果自由若是耶],” *Shen Bao*, 7 July 1911, p. 19.

<sup>39</sup> “The Mixed Court Female Fugitive [公廨逃逸女犯],” *Shen Bao*, 10 July 1907, p. 19; “Female Fugitives Arrested [拘获女逃犯],” *Shen Bao*, 20 August 1907, p. 19; “Continue to Arrest Female Fugitives [续获女押所逃犯],” *Shen Bao*, 17 September 1907, p. 19; “Female Prisoners Colluded in Escape Attempt [女犯串合图逃],” *Shen Bao*, 17 February 1911, p. 19.

<sup>40</sup> “Female Inmates at the Mixed Court Are Really Free Like This [公廨女犯果自由若是耶],” *Shen Bao*, 7 July 1911, p. 19.

<sup>41</sup> “Order the Magistrate to Reorganize the Detention House [札饬廨员整顿押所],” *Shen Bao*, 1 October 1908, p. 18.

<sup>42</sup> “Newly Set Rules for Female Detention House [新定女押所规则],” *Shen Bao*, 24 July 1907, p. 19; “The Mixed Court Drew up Twelve Statutes for Male and Female Detention House [公共公廨酌拟男女押所章程十二条],” *Shen Bao*, 9 November 1907, p. 18; “The Mixed Court Drew up Thirty-Seven Statutes for Male and Female Detention House [公廨新设男女押所管理规则三十七条],” *Shen Bao*, 19 November 1907, p. 19.

Despite the officials' acknowledging that the purpose of tightening the rules was to "avoid providing excuses for foreigners" and to "avoid foreign interference,"<sup>43</sup> the implementation of rules did not meet the expectations of the Western authorities until the collapse of the Qing Dynasty.<sup>44</sup> But can the relatively lax management of the women's prison be simply explained by the Chinese government's lack of enforcement and coercive power? As can be seen from the persistence of the official matchmaker system in the prison, the Chinese government envisioned the prison to function not only as a punitive institution, but also as a temporary shelter for women until they returned to their patriarchal families. In the case of temporary shelter, the most important concern was to protect women's safety and chastity; strict regulations and discipline of other aspects of their bodies were not that necessary. Moreover, the officials set restrictive rules for the prisoners' bodies and behaviours largely in response to the interventions of and inspections by the Western authorities. Little evidence shows that they were fully convinced by the Western perceptions of physical discipline as a form of punishment and rehabilitation at this point. As will be seen in the next section, the way Chinese officials understood imprisonment and corporal punishment was notably distinct from that of their Western counterparts.

#### 4. Confinement and labour as punishment

With the construction of the first Chinese prison came new challenges for the Chinese reformers, and female prisoners were once again at the centre of controversy. Whether the benevolent treatment of women under imperial law was to be continued generated debates among the Chinese officials at different levels and in different departments. Aside from sentence durations, the issue of compelling women to engage in prison labour emerged as another major concern.

Late imperial Chinese law was highly gendered, as women were often convicted and punished less severely than men. In judicial practice, female offenders often faced even more lenient penalties than the legal code prescribed, as magistrates frequently opted to reduce or completely waive punishments. This leniency was rooted in the magistrates' empathy for women's perceived ignorance (MacCormack, 1990, pp. 115–6; Li, 2024, forthcoming). Many minor crimes that would normally be punished with physical discipline such as face-slapping or beatings with a stick were often reduced or waived for women in order to protect their chastity and honour. Additionally, fines were a common alternative form of punishment for female offenders (Sommer, 2015, pp. 347–56).

Even before the Opium War, Western explorers, missionaries, and intellectuals had criticized the violence and inhumanity of corporal punishment in late imperial China and considered it a symbol of a backward and barbaric penal system (Brook, Bourgon and Blue, 2008, pp. 152–202; Chen, 2015, pp. 156–200). Nonetheless, some Chinese officials and legal scholars remained hesitant to replace corporal punishment with imprisonment, especially when it came to women. For example, in 1904, Cen Chunxuan (岑春煊), the circuit intendant (*daotai*) of Shanghai, wrote:

The crimes committed by women were either adultery, lewdness or pugnacity and fury. They do not commit the same crimes that the law cannot condone as those

<sup>43</sup> "Order the Magistrate to Reorganize the Detention House [札飭廉员整顿押所]," *Shen Bao*, 1 October 1908, p. 18; "Magistrate's Discussions on the Reorganization of the Detention House [廉员整顿押所之条议]," *Shen Bao*, 28 July 1911, p. 18.

<sup>44</sup> "Magistrate Bao Reorganized the Female Detention House [宝谿员整顿女押所]," *Shen Bao*, 1 August 1911, p. 18.

committed by males, so either a simple face-slapping or fine is sufficient to show punishment. If they must serve their sentences in prison, then the law is too strict.<sup>45</sup>

In Cen's view, imprisonment was much crueller than corporal punishment because only women sentenced to death were to be confined in cells; otherwise, they were supposed to be treated at the mercy of the law and sent back home.

While Chinese officials did not share the Western perspective that imprisonment was unequivocally a more merciful and humane alternative to corporal punishments, in an attempt to reclaim judicial sovereignty sooner rather than later, the officials and legal experts had to dedicate great efforts to introducing custodial sentences. The conflicts over the custody of Chinese offenders and the establishment of the first women's prison made the initiatives more urgent than ever.

The new punitive measures and sentencing durations, especially those for female offenders, sparked a debate between the Ministry of Justice and the Shanghai Mixed Court. In December 1905, the Shanghai Mixed Court submitted a proposal on penal reforms to the Ministry of Justice through the Ministry of Foreign Affairs. It suggested that the prison sentences initially put forth by the Ministry of Justice were inadequate and should be modified to match the durations specified in Western legal systems. This adjustment aimed to prevent foreign authorities from finding any pretext to criticize China's legal and judicial reform initiatives.<sup>46</sup>

The Ministry of Justice, however, did not accept the significant increase in sentences. Instead, it modified the Mixed Court proposal and stipulated that

inmates who are unable to pay fines will be forced to work in workhouses. Fines of two taels will be converted to four days of work. The fine will be increased proportionally to fifteen taels, which means a maximum of sixty days of work. Since the Mixed Court prison did not yet establish a workhouse, punitive labor would be replaced by imprisonment under the original statute . . . . Women who committed minor offenses would be returned to their relatives or guardians, while those who committed crimes like abduction or fraud would face imprisonment for ten to one hundred days.<sup>47</sup>

The magistrate Guan of the Mixed Court then reported to the circuit intendant (*daotai*) that the sentences prescribed by the Ministry of Justice were too lenient, especially for female prisoners. Guan wrote that this benevolence "would not only fail to match the seriousness of the crime, but would also draw objections from foreigners." In addition, Guan offered a different opinion on the lighter sentences for female offenders. He said:

In the Western legal codes, abduction and fraud are considered highly grave crimes, typically warranting prison sentences spanning several years. If we do not consult with the foreign consuls beforehand, I am afraid they will interfere when cases are tried in this way at the Mixed Court.<sup>48</sup>

<sup>45</sup> "On Shanghai Daotai's Prevention of the Establishment of the New Women's Prison in the Concession [论道宪笞阻租界中新设女狱事]," *Shen Bao*, 6 December 1904, p. 1.

<sup>46</sup> "The Ministry of Justice Proposed to Re-establish the Criminal Rules of the Shanghai Mixed Court [刑部奏重定上海会审公堂刑章折]," *Shen Bao*, 25 February 1906, p. 4.

<sup>47</sup> *Ibid.*

<sup>48</sup> "A Report from Magistrate Guan to Shanghai Daotai [关谏员上沪道禀(为会审公堂变通刑章事)]," *Shen Bao*, 10 March 1906, p. 4.

Nonetheless, the Ministry of Justice persisted in its refusal to hastily raise the length of sentences, reiterating its earlier decision and affirming that the sentences would be uniformly applied throughout the entire empire, with no exception in Shanghai. Furthermore, the ministry explained how women's sentences would be determined.<sup>49</sup> "In some Western countries, the penalties for female offenders are the same as those for male offenders," the ministry argued. "This is because the educational levels of men and women in these countries are the same." But, in China, where the educational levels of women were not yet equal to those of men, it was unjust to subject both genders to the same trials.<sup>50</sup>

In this debate, the Ministry of Justice showed extreme caution in determining the length of sentences for women prisoners, primarily due to its perception of an educational disparity between women and men. This rationale aligned with the arguments supporting lenient punishments for women in late imperial China, implying that women's offences were often a result of their limited education. In contrast, the Mixed Court took a more radical approach by significantly prolonging sentences, mainly as a response to the pressures exerted by the Western authorities that it encountered during its routine judicial proceedings in the International Settlement.

While the Ministry of Justice insisted on limiting the length of sentences for women prisoners, Western observers in Shanghai surprisingly discovered that women were being held in Chinese prisons for significantly longer durations than their officially assigned sentences. In 1907, a Western correspondent's letter published in the *North China Herald* revealed 11 cases of women who were deferred in the Chinese female prison. Some of these women had been in custody for an extended period, awaiting their sentencing, while others had already completed their sentences but were not released due to the absence of family members to claim them. The author also visited the Sinza Women's Refuge (新闻栖流女所), where a similar situation was found.<sup>51</sup>

The Western correspondent interpreted this as an illegal extension of detention and abuse of women, urging the Chinese authorities to release these female prisoners. But there was no response from the Chinese side. What the correspondent failed to realize was that the women's prison actually functioned as a re-cloistered feminine space in the legal and social context of late imperial China. From the Chinese government's perspective, extending sentences was not seen as a form of abuse, but rather as a protective measure. Allowing these women to leave prison on their own was not considered granting them freedom; instead, it was regarded as exposing them to potential risks and dangers.

While the ministry's cautious approach to sentence durations and the prison's practice of delaying the release of women prisoners may seem contradictory, it actually underscores the distinct attitude of the Chinese imperial government toward the women's prison. Whether in legislation or in practice, the protective role of the prison was emphasized more than its punitive function. In this sense, there was not much difference between the women's prison and women's refuge. The primary motivation behind China's establishment of its first prison was to assert its judicial sovereignty rather than considering imprisonment as a better method to punish women, who, after all, were always supposed to be confined to enclosed spaces.

<sup>49</sup> "The Ministry of Justice's Reply to the Senior Supervising Secretary's Refusal of the Shanghai Mixed Court's Memorial on Criminal Law [刑部议覆左给谏奏驳上海会审刑章折书后]," *The Eastern Miscellany*, 1906, vol. 3, No. 9, p. 86.

<sup>50</sup> "The Ministry of Justice Proposes that the Fines for Women's Crimes Are too Small to Show Discipline [刑部奏妇女犯罪收赎银数太微不足以资警戒拟请酌量变通以昭画一折]," *The Eastern Miscellany*, 1906, vol. 3, no. 1, p. 7.

<sup>51</sup> "Detentions at the Mixed Court Gaol," *North China Herald*, 13 June 1908, p. 7.

In addition to confinement, penal labour as another form of punishment was introduced into Shanghai by the Western prison. The Municipal Gaol initiated the practice of employing and compelling male prisoners to engage in manual labour from the very beginning of its operation.<sup>52</sup> In the Western female gaol, there was a workhouse in which the prisoners undertook sewing work.<sup>53</sup> Acting upon the advice of the British Consul, the top floor of the Chinese women's prison was originally designed to function as a workhouse.<sup>54</sup> Although no formal workhouses were opened in the Chinese prison in Shanghai until the collapse of the Qing Dynasty, they were established in other major cities such as Tianjin and Beijing from 1903 onwards.<sup>55</sup>

In the early days of China's legal reform at the turn of the twentieth century, penal labour emerged as a particularly favoured method of punishment for women, endorsed by the Ministry of Justice as an alternative to imprisonment and banishment. In a 1906 memorial presented to the emperor, the ministry wrote:

If women commit crimes afterward, in addition to being fined according to the new statutes, those who should have been sentenced to banishment for unfilially, adultery, theft, or fraud will be sentenced to manual labor in workhouses for up to ten years. Women who should have received imprisonment sentences will also have the option to work in workhouses for the originally specified number of years.<sup>56</sup>

The late imperial officials' preference for punitive labour was primarily rooted in their considerations of social and economic realities. In 1901, Governor Zhang Zhidong and Liu Kunyi jointly proposed to the emperor the establishment of workhouses in every county. They argued that these workhouses would serve as places in which prisoners could acquire practical skills and produce their own clothing and footwear. Upon their release, they would possess the means to earn a living.<sup>57</sup> Also, in 1902, Governor Zhao Ersun (赵尔巽) suggested to the emperor that workhouses should be established throughout the country to engage prisoners in manual labour and manufacturing, thereby offsetting the financial burden of imprisonment and exile.<sup>58</sup>

At this point, labour was not given any special meaning except for its economic value, nor was it associated with notions of bodily discipline. But, in the subsequent Republican period, as Janet Chen reveals, with the expanded adoption of workhouses and the influence of European notions of poor relief, manual labour acquired both punitive and rehabilitative meanings. Public opinion of the poor and criminals shifted from sympathy and pity to criticism of them as "social parasites," further legitimizing forced and intense labour in workhouses (Chen, 2012, p. 2).

<sup>52</sup> SHMA, U1-2-1167; U1-2-1195; U1-14-638.

<sup>53</sup> "Observations of the Western Jail [观西牢记]," *Shen Bao*, 18 June 1906, p. 2.

<sup>54</sup> "Working House Added to Women's Detention House [女押所添设工艺场]," *Shen Bao*, 22 July 1907, p. 19.

<sup>55</sup> Tianjin Criminal Workhouse (天津罪犯习艺所) was opened in June 1904. Beijing's Capital Workhouse (京师习艺所) was established in 1906. See Chen (2012), pp. 25-30.

<sup>56</sup> "The Ministry of Justice Submits that the Fines for Women's Crimes Are Too Small to Be Sufficient for the Purpose of Warning" [刑部奏妇女犯罪收赎银数太微不足以资警戒拟请酌量变通以昭划一折], *The Eastern Miscellany*, 1906, vol. 3, no. 1.

<sup>57</sup> Zhidong Zhang and Li Hongzhang, "Joint Memorials by Governors of Liangjiang and Huguang [江楚会奏]," in Xue, Lin, Chu and Li (2017), p. 8.

<sup>58</sup> Erxun Zhao, "Acting Governor of Shanxi Zhao Ersun's Memorial Requesting All Provinces to Set up Workhouses for Criminals [护理山西巡抚赵尔巽奏请各省通设罪犯习艺所折文]," in Xue, Lin, Chu and Li (2017), pp. 11-2.

## 5. Conclusion

At the turn of the twentieth century, Chinese female offenders found themselves at the forefront of diplomatic and judicial conflicts between Chinese and Western authorities, with the custody of their bodies becoming a focal point of contention. Under pressure from Western authorities, the first Chinese women's prison was established in Shanghai. While the newly established prison did provide women with more physical space, it paradoxically functioned as a re-cloistered feminine space in which women who had previously left the confines of the "inner chamber" were once again incarcerated by the government. Their release from prison only occurred upon their being claimed by their families or through arranged marriages. The introduction of prison thus further reinforced the confinement of the female body and preserved the orthodox values of female chastity, rather than changing them.

The controversy sparked by the introduction of modern women's prison and the questionable improvements it brought to women imply that prison was not as universally applicable as the Western authorities asserted. As much scholarship in recent decades has highlighted, the institution of prison has deep roots in European history. Its origins can be traced back to early modern European initiatives in charity and poverty relief. This evolution marked a shift in social attitudes towards the impoverished and criminals, transitioning from relief-oriented strategies to punitive measures (Foucault, 1995 [1977], pp. 73–103; Spierenburg, 2007, pp. 12–38; Terpstra, 2013, pp. 19–42; Jütte, 1994, pp. 195–200). The European-originated notion of imprisonment was then described as a universally applicable form of modern punishment, which was promoted during the colonization of non-European countries (Gibson, 2011, pp. 1040–63).

Moreover, it is worth noting the differences between modern Europe and China in their approaches to handling female convicts. Single-sex custodial facilities were not established in Europe and North America until as late as the mid-nineteenth century. Prior to that development, female offenders were confined in unisex prisons and often fell victim to sexual assault and exploitation, as their sexual purity was deemed unworthy of protection. Even after prison reforms were introduced in the nineteenth century, though women's treatment remained less severe than that of their male counterparts, the level of care they received was less comprehensive. This situation was commonly referred to as a form of "partial justice." Furthermore, within society at large, female prisoners were viewed as the group who were least tolerant and most in need of reformation according to the standards upheld by the middle and upper classes (Morris and Rothman, 1995, pp. 329–62; Rafter, 2017, pp. 3–99).

On the contrary, in late imperial Chinese cells, there was indeed a separation of male and female offenders. The government believed it was necessary to protect female prisoners' sexual purity from infringement. From the Chinese officials' perspective, the prison should serve more as a protective facility than a punitive one, and they did not expect women to be rehabilitated through imprisonment and physical discipline. However, the Western authorities interpreted this reluctance and resistance to European penal measures as a deficiency in humanity and civilization. It was not until the collapse of the Qing Dynasty and the rise of the modern state that China's penal practices gradually aligned with Western standards, leading to more stringent control and harsher punishment for Chinese women's bodies.

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