

## Chapter Two

### The Origin and Development of the Penal System in Late Imperial Taiwan

#### Introduction

When Taiwan was incorporated into the Chinese empire in the seventeenth century, it was brought under the Qing legal code. This legal system relied on a variety of punishments, including exile, capital and corporal punishments rather than custodial sentences to deal with crime. However, while imprisonment was not a legally sanctioned punishment, offenders were, nevertheless, detained whilst awaiting trial or sentencing and jail facilities existed to fill this need. Thus while there was no prison system featuring imprisonment as a legal sanction operating in Taiwan pre-1895, there did exist a system of punishment and detention based on Chinese penal practice. And this Qing-era Taiwanese penal system was characterised by its corporal, often arbitrary nature, which contrasted strongly with the rational penal ideas that were to be introduced under the Japanese colonial rule.

This chapter initially examines the evolution of penal practice in China and some basic concepts regarding punishment in the pre-imperial and imperial Chinese state. By uncovering some key attitudes “towards general questions of deviance and correctness” as well as attitudes “towards the meaning and role of punishments and the type of practical constraints that helped shape particular responses to deviance”<sup>1</sup> this paper hopes to clarify some basic characteristics of the penal system that existed in Qing dynasty Taiwan.

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<sup>1</sup> McKnight, *Law and Order in Sung China*, p. x

## 2.1 Basic Concepts of Chinese Law

*“There is a close relation between society and law. A legal system would be understood more fully if we take into account the social structure from which the law emerged and functioned. Law must be seen as an integral part of social institutions. Moreover, law, as one type of social control, is closely related to custom and mores. It maintains and affects existing values and institutions, and it reflects the social structure of a particular society at a given time.”*<sup>2</sup>

While it is beyond the scope of this paper to go into detail about the uniqueness of Chinese legal development, some basic concepts of Chinese law and attitudes to punishment can be identified. At the risk of over-simplification, we can state that the peculiarity of the ‘cultural and political entity’ that is China has influenced historical responses to crime and deviance.<sup>3</sup> A general concern with the overriding importance of social order led to a written law that was strongly penal in nature. The law was primarily designed not to protect the individual, but to prevent disruption of the social order and to restore cosmic harmony. Those that committed “acts of moral or ritual impropriety or of criminal violence” had to be punished in order to exact retribution.<sup>4</sup>

Another characteristic that can be identified is the “hybrid” nature of law as it developed in imperial China, due to the two ideologies of Confucianism and Legalism.<sup>5</sup> The concern of the Legalists, during the Qin Dynasty (221-207 B.C.) was to unite a disparate empire through the force of the state as expressed through law.<sup>6</sup> According to the Legalist position, man was a selfish creature that could only be prevented from wrongdoing by fear of dire punishment. The Confucian position, gaining prominence during the Han dynasty, (206 B.C. – A.D. 220) was that in order to maintain a stable society, it was essential for everyone to know their correct place

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<sup>2</sup>Chu Tung Tsu, *Law and Society in Traditional China*, Rainbow Bridge, Taiwan, 1973 p. 10

<sup>3</sup>McKnight, *Law and Order in Sung China*, Cambridge University Press, Cambridge, p. x

<sup>4</sup>Bodde and Morris, *Law in Imperial China, Exemplified by 190 Ch'ing Dynasty Cases*, Harvard University Press, Cambridge, Mass., 1967, p. 5

<sup>5</sup>Bodde and Morris, *Law in Imperial China*, p.50

<sup>6</sup>L Lyons, *The History of Punishment*, Amber Books, London, 2003,p. 77

in the social hierarchy and to behave accordingly.<sup>7</sup> The process of incorporating Confucian ideals and values into the law naturally led to a greater emphasis being placed on differences in social status.<sup>8</sup> The combination of these two ideologies therefore produced a legal code that was not concerned with equality before the law, but rather detailing punishments for a vast number of crimes in accordance with the social and family hierarchy of those involved.<sup>9</sup> Sprenkel describes how, prior to sentencing, an individual's age, sex, rank, family position and relationship to the plaintiff were all taken into consideration. Thus an enduring concern of Chinese law was the reinforcement of both state power and Confucian values.

## **2.2 Punishment and the Origins of the Prison in China**

### **2.2.1 System of Punishments**

How were attitudes to deviance and correctness demonstrated in the types of punishments that traditionally existed in China? While early punishments were brutally corporal in nature, during the Han dynasty the major pre-imperial legal penalties of castration, tattooing and amputation were abolished, being replaced by different kinds of penal servitude, leaving death and beating as the sole remaining corporal punishments.<sup>10</sup> According to Bodde and Morris, in their highly regarded study of Qing dynasty legal cases, the five punishments assumed their standard form in the Sui Code of 581-583, namely: beating with a light stick, beating with a heavy stick, penal servitude (removal to and forced labour in another region), life exile and death. These punishments were inflicted according to a graduated scale. These

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<sup>7</sup> Lyons, *The History of Punishment* p. 78

<sup>8</sup> Chu, *Law and Society in Traditional China*, p. 9

<sup>9</sup> Chu, *Law and Society in Traditional China* p. 9

<sup>10</sup> Bodde and Morris, *Law in Imperial China*, p. 76

punishments were maintained, with some minor additions and alterations, until the Qing dynasty.

Thus the system of punishment that endured in pre-imperial and imperial China was characterised by the public infliction of pain on the body, a state of affairs no different from many other countries prior to penal reform and the introduction of modern disciplinary technologies in the eighteenth and nineteenth centuries. This corporal punishment was intended to have a deterrent effect, and functioned as a demonstration of the power of the state. However, inherent in the system of punishment was reliance on punishment by status, reflecting the overriding concern with preserving the values of a Confucian society reliant on strict hierarchical social order.

### **2.2.2 Origin of the Prison in China**

Despite imprisonment not being formally recognised as a separate punishment in China, there is evidence to suggest that while the actual sentence of criminals may not have included imprisonment, there are frequent instances of criminals being detained in jail, often for long periods, prior to sentencing or the carrying out of their sentence.<sup>11</sup> And as well as those imprisoned awaiting conclusion of their cases “even after conviction, if placed among those ‘deserving of capital punishment’ [the accused] might remain ten years in prison before the continuing threat of death was finally replaced by penal servitude.”<sup>12</sup> Thus the penal institutions that existed in China were not the prisons that we know today, but rather jails that despite their official description as sites for temporary detention of criminals, often became the unintentional sites for longer-term incarceration.

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<sup>11</sup> Bodde and Morris, *Law in Imperial China*, p. 79

<sup>12</sup> Bodde and Morris, *Law in Imperial China* p. 141.

Before we go any further, we must stop to carefully consider the definition of the terms ‘prison’ and ‘jail’. Morris and Rothman distinguish between the terms ‘jail’ and ‘prison’ in the American context as follows: jails are for holding those awaiting trial and awaiting punishment, and prisons are for holding convicted offenders as punishment.<sup>13</sup> The same distinction can be made in China. Thus prior to the modern era of custodial punishment in China, suspects awaiting trial and witnesses to crimes waiting to give testimony were detained in ‘spaces of confinement’ such as county jails or gaols.<sup>14</sup> Modern penitentiaries or prisons with the function of punishment of convicted offenders did not exist. However, these distinctions are not always followed so carefully in works discussing the origin of the prison in China. The term ‘prison’ is used constantly in describing places of confinement in China, and seems to be used interchangeably with the term ‘jail’. We must be aware that when we see the term ‘prison’ referring to places of confinement in the pre-imperial or imperial era in China, it has the meaning ‘jail’.

Despite imprisonment not being a legally sanctioned punishment, the use of places for detention and confinement in China has a long history “and these institutions were shaped by the ideas and attitudes of the ruling state, the fiscal situation of the state, the nature of the economy, political realities, local geography and bureaucratic skills and technology.”<sup>15</sup> However, any inquiry into the history of this system of incarceration is necessarily hampered by the “lack of knowledge of how the system functioned in pre-modern China.”<sup>16</sup> One of the earliest legends relating to the origin of the prison in China concerns the famous minister, GaoTao (皋陶), in charge of administering

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<sup>13</sup> Morris and Rothman, *The Oxford History of the Prison*, p. ix

<sup>14</sup> Dikotter, *Crime, Punishment and the Prison in Modern China*, p. 3

<sup>15</sup> McKnight, *Law and Order in Sung China*, p.1.

<sup>16</sup> Bodde, *Prison Life in 18<sup>th</sup> Century Peking*, *Journal of the American Oriental Society*, Vol. 89, No. 2, (April-June 1969), p. 311

punishment under the legendary Shun Emperor (circa 2200 B.C.), who devised a prison consisting of a circle drawn on the ground around the offender.<sup>17</sup> For more concrete historical evidence, however, the discovery of mud-walled compounds point to the existence of places of confinement as early as the Xia dynasty (2205-1766 B.C.). This architectural form, primarily a circular compound was called the huan-tu, (圜土) which can be translated as 'earthen circular city'.<sup>18</sup>

Stronger buildings of confinement were built in later dynasties, and by the Zhou dynasty (1122 B.C.-256 B.C.) we find mention of prisoners being incarcerated at night and sent out to perform corvee labour during the day. This served to utilize the labour of prisoners for the state, while humiliating them in the community as they performed their assigned work.<sup>19</sup> The practice continued in later dynasties although by the Qin dynasty, prisoners could substitute family members or household slaves in their place until their debt was paid.

During the Qin and Han dynasties (221-207 B.C. and 206 B.C.-220 A.D. respectively) the disciplinary regime continued to grow in strength. Not only were the number of jails increased, but also more detailed administrative practices were developed to run them. Distinction was made between central jails and regional jails, with many jails moved to regional areas and coming under the jurisdiction of local magistrates in the yamen. In addition, while stricter regimes of surveillance were established, and prisons established based on the rank of prisoners, this was balanced by the delay or lessening of punishment for prisoners under the age of eight or over eighty and pregnant women. While academics disagree about the amount of different prisons, it

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<sup>17</sup> 吳憲璋, <<監獄建築概論>> (台東: 群品股份有限公司, 1993), 頁 52

<sup>18</sup> Dutton, *Policing and Punishment in China: From Patriarchy to the People*, Cambridge University Press, New York, 1994, p. 106

<sup>19</sup> Dutton, *Policing and Punishment in China* p. 106

seems that a Confucian value system stressing the importance of rank influenced the expansion of specialized jails.<sup>20</sup> The next major period of prison reform occurring during the Sui-Tang period (581-907 A.D.) when administrative divisions were streamlined, classification and codification within the jail was strengthened and a record system was implemented.<sup>21</sup>

### **2.2.3 Later Imperial Jails**

In the Sung dynasty (960-1279) the imperial state, mindful of the fact that incarceration did not count towards punishment and was also costly, sought to limit periods of detention. However, as is apparent from other dynasties, despite these official regulations, prisoners often spent long periods of time languishing in jail due to the slow progress of their cases through the courts, or bureaucratic mismanagement. Also here we should also note that an interesting mixture of motives was apparent regarding detention of offenders. While it was thought that those arrested and questioned must be guilty and therefore deserved to be punished, this sat uneasily with the traditional conviction that most people had the ability to act correctly and thus were capable of reforming their behaviour<sup>22</sup>.

The majority of jails, whether located in the capital Kaifeng or in local districts and associated with the sheriff's office, tended to be small in scale, which led to difficulties in providing facilities for the segregation of offenders. Sung jails were characterized by their inability to not only separate different categories of prisoners, but also to provide adequate food or sanitation. Despite state mandates for the

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<sup>20</sup> Dutton, *Policing and Punishment in China*, p. 121

<sup>21</sup> Dutton, *Policing and Punishment in China*, p. 126-127

<sup>22</sup> McKnight, *Law and Order in Sung China*, p. 354

provision of food for poor prisoners or those whose families were unable to provide for them, food was a constant concern for all prisoners, with starvation occurring frequently in jails.<sup>23</sup> Health care was another concern, despite edicts that ordered the establishment of jail hospitals for serious offenders. Thus it appears that there was a wide gap between prison policy and practice, with regulations mandating prisoner care frequently being ignored and abuse and corruption widespread throughout the system. The penal system up to this point therefore demonstrates the “interaction between what a society believes and what it does”<sup>24</sup> as according to Confucian ideals, people could be rehabilitated, yet in practice they could be incarcerated in a brutal penal system for long periods of time and even die before their cases were ever heard.

It is during the Ming dynasty (1368-1644) that we see the Ming legal code becoming the basis for the establishment of the jail administration system, under the jurisdiction of the Board of Punishments. Ming dynasty jails, while still relatively harsh, showed increased concern for separation of prisoners as characterized by separate confinement being mandated for men and women as well as for those over the age of 70 or under the age of 15, in accordance with the seriousness of their crime.<sup>25</sup> Ming prison regulations also show concern for traditional family values, as evidenced by the delay of the death sentence for pregnant women until 100 days after giving birth and for a married man without an heir, until his wife (who could come into the prison) became pregnant.<sup>26</sup>

During the Qing dynasty, the jail system developed under the Ming was continued. Jail administration was carried out centrally by the Board of Punishment with

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<sup>23</sup> McKnight, *Law and Order in Sung China*, p. 363,364

<sup>24</sup> John Watt, *The District Magistrate in Late Imperial China*, Columbia University Press, New York, 1972, p.2

<sup>25</sup> 吳憲璋,《監獄建築概論》, 頁 52

<sup>26</sup> 吳憲璋,《監獄建築概論》, 頁 52

prefectural prisons, county and regional jails coming under local jurisdiction. Jails were usually located within the walls of the yamen and this was due to the fact that the local magistrate, being the dominant symbol of political power in the area under his control, managed all local judicial affairs there.<sup>27</sup> If a crime was committed in a certain area, the magistrate could be petitioned to investigate the case and punish the offenders.<sup>28</sup> As judge of the court of first instance, the magistrate not only conducted investigations of criminal cases, issued warrants for arrest and examined suspects and witnesses, he decided cases and gave sentences according to the detailed instructions in the penal laws and statutes. He also supervised their execution and if the sentence was not serious he could decide the punishment himself, for example, the cangue. If punishment was more serious, the case was reviewed by the superior courts, the level of the review dependant on the degree of the offence.<sup>29</sup> Individual commoners could be arbitrarily summoned as suspects or witnesses and forced to wait for long periods before presentation of a case.<sup>30</sup> The custom of incarcerating witnesses to crimes must have deterred many from volunteering information relevant to trials to avoid imprisonment.

Thus the gaols located inside the magistrate's yamen were primarily used for the incarceration of suspects awaiting trial and criminals sentenced to penal servitude or awaiting exile or execution. Similarly those awaiting judgement in the capital, Peking, as well as witnesses to the cases, were imprisoned in the Board of Punishment jails, while waiting final review by the Board of Punishment.<sup>31</sup> This vast number of prisoners imprisoned throughout the Qing empire was intended to be strictly

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<sup>27</sup> Watt, *The District Magistrate in Late Imperial China*, p. 11

<sup>28</sup> Van Der Sprenkel, *Legal Institutions in Manchu China: A Sociological Analysis*, Athlone Press, New York, 1977, p. 66.

<sup>29</sup> Watt, *The District Magistrate in Late Imperial China* p. 12

<sup>30</sup> Watt, *The District Magistrate in Late Imperial China* p. 16

<sup>31</sup> Bodde, *Law in Imperial China*, p. 315

segregated according to category. Dikotter states that male and female prisoners as well as different categories of prisoners were separated according to imperial regulations. Suspects awaiting trial, secured with manacles and shackles, were confined in the inner prison (lijian 里監), while criminals awaiting exile or penal servitude (secured and linked together with chains) were confined in the outer prison (waijian 外監) and convicted bandits and murderers awaiting the death penalty were kept in the dark prison (anjian 暗監). However, as we have seen with other regulations concerned with prisoner welfare or safety, it appears that the degree of separation for offenders very much depended on the individual jails.

#### **2.2.4 Prison Conditions**

“Notes on Prison Life” written by the scholar Fang Pao (方苞) in the eighteenth century is an extremely rare example of an account detailing with the subject of incarceration in the Qing dynasty. Fang Pao was imprisoned for his involvement with a seditious tract, and his account gives much information about the Board of Punishment jails. According to his account, there were no single cells, and most prisoners were held in rooms with approximately 50 other prisoners. The lack of space in the cells must have caused serious discomfort with “cells [being] so crowded that there was no place for the scholars to put their feet.”<sup>32</sup> The uncomfortable and unsanitary conditions were compounded by the requirement that prisoners wear fetters, the amount varying according to the seriousness of their crime, which were then attached to the wall in the cell. All prisoners slept on one common platform and subsisted on a basic amount of food provided by the jail. The guards were often not

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<sup>32</sup> Meng Sen, Hsiu-chih, quoted in Wakeman, Fredrick, *Conflict and Control in Late Imperial China*, University of California Press, Berkeley, 1975p.22.

much better off than prisoners as they were shut up with the prisoners at night time to ensure the prisoners were adequately supervised.

However, as was common throughout other dynasties (and other countries as well), one's prison experience could vary according to one's financial situation. Fang Pao points out that, "it sometimes happened that really serious criminals [are]...released from prison and stay outside, while lighter offenders and those who are innocent [remain there] to suffer its poisons and accumulate sorrow and resentment. Their ordinary standards of sleeping and eating are disregarded and should they fall ill, no doctor or medicine is provided. This is why they so often meet their death."<sup>33</sup> Sir Henry Parkes, a British diplomat imprisoned in Peking in 1860, in describing his prison experiences, agrees with this assessment. He records that while the majority of prisoners were filthy and disease-ridden, those that could afford to "fee the gaolers, and purchase such things as they wanted, lived in comparative fullness and comfort."<sup>34</sup>

According to the penal code, the magistrate had a duty of care towards the prisoners that included supplying prisoners with adequate food and bedding, medical treatment, exercise, adequate sanitation and protection for mistreatment.<sup>35</sup> This included the supply of two bowls of millet to the prisoners each day, with prisoners being responsible for any other required food. However, in reality even this minimum requirement was not always met and the prisoners frequently suffered from starvation as well as unsanitary conditions, abuse, torture and overcrowding. Conditions were compounded by the long periods of incarceration awaiting trial and by deferment of

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<sup>33</sup> Bodde, *Prison Life in 18<sup>th</sup> Century Peking*, p. 320

<sup>34</sup> Parkes, article in *North China Herald*, Shanghai, March 30, 1861, p. 527, quoted in Bodde and Morris, *Law in Imperial China*, p. 105.

<sup>35</sup> Bodde and Morris, *Law in Imperial China*, p. 27

sentencing, leading to serious illness or death of prisoners. The deplorable state of the jails was exacerbated by the disappearance of the discipline and mutual checking practices and procedures of the Ming, which resulted in the breakdown of the prison system.<sup>36</sup> In addition to the problems already listed, the system was plagued by prisoner escapes due to both inadequate security in prisons, as well as collapse of jail buildings in poor repair.<sup>37</sup>

Qing dynasty officials contrasted the Chinese and British penal systems after a UK visit in the 1870s, and from this we can ascertain some of the common problems inherent in the Chinese system. They describe how in the UK system there was no “cruelty as torturing and beating him by bamboos and clubs so that his blood and flesh spread all over.” In addition the prisoner received adequate food and clothing and was “taught to work and not allowed to become idle...He is never maltreated by those in charge of the prison. The excellence of the prison system is what China has never had since the Golden age.”<sup>38</sup> However, while awareness of the need for change was growing in reformist circles with the study of Western models, widespread reform was not to occur in China prior to 1895.

### **2.2.5 Architecture**

From the early earthen-walled compounds, through to later stronger jail constructions, the early evolution of jail architecture in China was characterised by ad-hoc attempts to provide facilities for detaining offenders at a reasonable cost. There was no standard, centrally mandated regulation for jail design. It appears that jail facilities

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<sup>36</sup> Dutton, *Policing and Punishment in China* p. 154

<sup>37</sup> Dikotter, *Crime, Punishment and the Prison in Modern China*, p. 30

<sup>38</sup> Wang Tao, quoted in Sprenkel, *Legal Institutions in Manchu China* p. 77.

were often improvised making use of buildings not originally designed for imprisonment, which resulted in insufficient space, poor ventilation and lack of basic amenities. One report, from a circuit intendant in the Sung dynasty, stated that due to lack of facilities and funds, prisoners in his jurisdiction were frequently given to the provincial army for detention, or failing that, held in available stores and shops.<sup>39</sup>

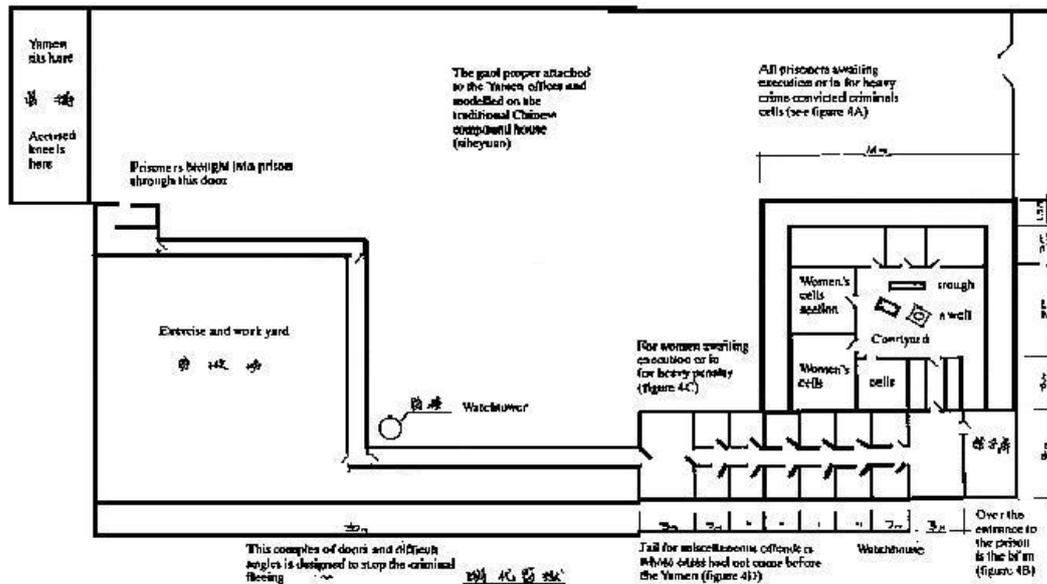
The completion of a new jail in Wu-ning District in the early Southern Sung period would have been a proud occasion for local officials and they describe a building with a number of columns, “with a number of jail cells running east to west, with a separate place for interrogation. The kitchen, bathroom, and living quarters are in the back.”<sup>40</sup> As we know that imprisonment during the Sung period was deleterious to the health, uncomfortable and even dangerous, we would expect that the physical conditions of the majority of jails to be of a low standard. From records detailing repairs to the jail in Chu-chi District in 1236, it seems that the jail there was more of a walled compound containing cells, an interrogation room, storehouses and living quarters on the surrounding sides.<sup>41</sup> However, the construction of this type appears to be the exception rather than the norm as many places of detention were sited in any available buildings rather than purpose-built jails.

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<sup>39</sup> McKnight, *Law and Order in Sung China*, p. 357

<sup>40</sup> McKnight, *Law and Order in Sung China*, p. 367

<sup>41</sup> McKnight, *Law and Order in Sung China*, p. 357



Source: Diagram drawn by Zhao Fengshan after visiting the site. Detailed information on the prison layout drawn from Liu Yutai and Chen Lingsheng, "Susan yi yi yishi", *Shanxi minjian wenxue*, No. 1, 1982, pp. 52-4.

Figure 2.1 Ming prison compound.<sup>42</sup>

By the Ming dynasty we find the walled compound being described as the typical penal architectural style of the period.<sup>43</sup> The Hongdong county jail in Shanxi is a rare existing example of a Ming county jail and “a typical and perfect example of county jails.... it is of great significance in that it verifies the existence in the Ming dynasty of Hongdong county jail being an attached institution of the yamen.”<sup>44</sup> Dutton believes that its general architectural form is closely reminiscent of a traditional Chinese compound house, and despite important differences in form and function, both demonstrate “the arrangement of space which ensured an ordering of surveillance practices and the establishment of very definite lines of visibility to allow policing to take place.”<sup>45</sup>

Jails during the Qing period continued to follow the Ming form, with the walled compound remaining prevalent. From Fang Pao’s description of the Board of

<sup>42</sup> Dutton, *Policing and Punishment in China*, p. 102  
<sup>43</sup> Dutton, *Policing and Punishment in China*, p. 101  
<sup>44</sup> Dutton, *Policing and Punishment in China*, p. 101  
<sup>45</sup> Dutton, *Policing and Punishment in China*, p. 105

Punishment prison we know that it was an enormous walled compound containing various smaller walled compounds, some of which were designated as jails.<sup>46</sup> The northern and southern jails had a total of eleven separate compounds each with five rooms connected end-to-end. These rooms had a central ward, which served as a guardhouse, and at night, a number of guards slept in the rooms locked up with the prisoners. Some special categories of prisoners were able to stay in “wooden houses” (panwu 板屋) that were separate from the old jails, but still within the jail enclosure.

Thus we can say that despite imprisonment in China prior to 1895 not being a recognized punishment, many prisoners underwent long periods of incarceration in central or local jails. These jails were characterized by their harsh nature, with prisoners frequently receiving inadequate food and clothing. The gap between penal policy and practice continued throughout the dynasties. It is hard to avoid the conclusion that the political will did not exist to change the frequently deplorable condition of Chinese jails. While this was rooted in the belief that prisoners who had been found guilty deserved harsh punishment, the situation was exacerbated by the difficulty of maintaining standards in a jail system stretched over a huge geographical area, and hampered by lack of funds. As district officials had to make do with incarcerating prisoners in a variety of provisional local facilities, prison conditions varied widely according to location. Another difficulty was the regulation that prisoners only be incarcerated for short periods of time. While there was no recognition of the reality that prisoners often spent long periods in jail, there was no will to improve the places of detention. Thus, provision of food and attention to sanitation suffered. As stated, penal architecture, while based on the walled compound, was not standardized and imprisonment would have varied from jail to jail and from

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<sup>46</sup> Bodde, *Prison Life in 18<sup>th</sup> Century Peking*, p. 313.

era to era. While punishment was intended to be visited on the body as a demonstration of the power of the state, the incarceration of prisoners for long periods in the yamen jails also testify to the inability and ineffectiveness of the state to regulate penal practices.

## **2.3 The Penal system in Late Qing Dynasty Taiwan**

### **2.3.1 Administration of Taiwan**

Taiwan was a province of China, from the seventeenth century until it was ceded to Japan in 1895, and during this period its legal system was based on the traditional Chinese legal system. Qing rulers applied the Qing code to Taiwan, in addition to two special provisions, which were designed to avert rebellion in the frontier province. Officials in Taiwan were empowered to execute criminals for robbery or treason, and the manufacturing of guns or extraction of sulphur for military purposes was prohibited.<sup>47</sup> While Taiwan was originally designated as a prefecture subordinate to Fujian province in 1684, it finally became a fully-fledged province in 1887. Periodic administration reorganisations had occurred over the previous two centuries, with the original division of counties and subprefectures adjusting to the new political realities of late imperial Taiwan, culminating in the establishment of a new prefecture in the north to control the upper third of the island.<sup>48</sup>

Taiwan had always been viewed as a frontier territory; home to bandits and pirates, and the late Qing period was no exception. Popular uprisings, banditry and communal strife represented a threat to the social order of Taiwan, and authorities were kept

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<sup>47</sup> Wang, *Legal Reform in Taiwan under Japanese Colonial Rule (1895-1945): The Reception of Western Law*, Uni. Of Washington, Washington, 1992, p. 45

<sup>48</sup> Allee, *Law and Local Society in Late Imperial China*, p. 20

busy keeping order and suppressing crime. As can be expected from an island with a population of mainly young, single males (a result of immigration restrictions imposed by the Qing government), the most common offences of late Qing Taiwan were theft, robbery, assault, gambling and banditry.<sup>49</sup>

### **2.3.2 Prison Administration in the late Nineteenth Century**

As stated, under the Chinese legal system, the penal system in Taiwan did not sanction imprisonment as a legal punishment, with offenders only supposed to be incarcerated for a short time while awaiting trial or sentencing. However, Mark Allee, in his study of Xinchu county legal records of the late nineteenth century, has found that despite the lack of legal basis for imprisonment and attempts to limit the length of detention of offenders by authorities, guidelines were often ignored. There was in fact “exceptional frequency with which the yamen resorted to long-term imprisonment for suspects and convicted criminals alike.”<sup>50</sup> Legally, short-term temporary detention of suspects and witnesses was allowed for a period of three months and by the end of that time it was expected that the case would be settled. In practice this was not always the case and in some cases imprisonment acted as an “accepted alternative punishment in cases of major crimes to which one of the statutory sentences applied.”<sup>51</sup> Thus local officials could, in practice, “be creative and flexible in responding to particular circumstances, litigants and criminals” despite regulations to the contrary.<sup>52</sup> Nevertheless, under the law, imprisonment was not allowed, thus the

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<sup>49</sup> Wang, *Legal Reform in Taiwan under Japanese Colonial Rule*, p. 288

<sup>50</sup> Allee, *Law and Local Society in Late Imperial China*, p. 235

<sup>51</sup> Allee, *Law and Local Society in Late Imperial China*, p. 238

<sup>52</sup> Allee, *Law and Local Society in Late Imperial China*, p. 249

incarceration that occurred in Taiwan in the late imperial period was of an irregular nature and had no fixed term, being at the discretion of local officials.

Jails existed throughout the island on the county, prefectural and later, provincial level for the purpose of housing a variety of offenders. The different jails served to provide facilities for incarcerating prisoners according to the degree of seriousness of their crime. For example, county jails in the later Qing period in Taiwan were under the jurisdiction of the county administrator and were divided into two types according to the degree of punishment: jails for the custody of serious offenders, and detention houses for the detention of less serious offenders.<sup>53</sup> These county jails were mainly small in scale and were manned by about 20 guards with detailed instructions issued regarding county prison organisation. These penal facilities, though small, demonstrated traditional concerns with segregated confinement of prisoners. Regulations stated that male and female offenders were to be kept apart, and there were to be no more than 5 people to every cell, although how closely these regulations were followed in practice is unclear. Authorities sought to prevent escapes by specifying that leg shackles had to be worn in the cells, with every 5 people bound together with wooden shackles.<sup>54</sup> Overcrowding must have been a problem as when extra facilities were needed for temporary custody of defendants, sheriffs' offices were used in addition to county detention centres and were managed by county or prefectural runners.<sup>55</sup>

Prefectural jails and detention houses, while governed by similar rules and regulations as the county jails, were reserved for the incarceration of serious offenders from all counties, government officials who had committed crimes, or serious criminals who

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<sup>53</sup>蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>> (嘉義: 台灣嘉義監獄, 2004) 頁 36

<sup>54</sup>蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>>, 頁 35

<sup>55</sup>蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>>, 頁 35

were to be escorted to the capital. An indication of the increased responsibility of running a prefectural jail was the attempt to ensure that those running the jail had a higher level of qualification than those at county level. Thus regulations mandated that the warden of the jail have some degree of prefectural government experience. In addition the warden had jurisdiction over a greater number of staff, which consisted of one inspectorate, 2 custodial runners, one (publication) clerk, 2 supervisory servants, one medical staff, one nightwatchman and one cook in addition to guards.<sup>56</sup> Prefectural detention houses, primarily for the custody of both serious offenders such as murderers or robbers, as well as people involved in general civil cases, were staffed by 2 guards, 2 supervisory staff, and one medical staff.<sup>57</sup>

As jails were primarily located within the yamen compound, there were various enclosures that could be utilized for incarceration. There were enclosures with varying levels of security, including jails as well as different rooms and offices within individual runner sections that were used for detention of suspects.<sup>58</sup> By 1756, the sub-prefectural yamen in Zhuqian<sup>59</sup> had three separate jails. The first of these was the Runner's Jail (zongjia guan 總甲館), also known as the Outer Compartment (waishi 外室), which was for the detention of prisoners convicted of the lesser crimes such as burglary and was supervised by runners. It could also hold prisoners sentenced to the cangue (jia) who could be held for several months, or prisoners sentenced to confinement in chains (suodun 鎖礮) for up to five years. The detention centre (yaguan 押館) was also called the Main Gate Office (touguan 頭門館) and held those prisoners who had committed more serious crimes such as assault and banditry.

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<sup>56</sup> 蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>>, 頁 36

<sup>57</sup> 蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>>, 頁 36

<sup>58</sup> Allee, *Law and Local Society in Late Imperial China*, p. 236

<sup>59</sup> Present-day Hsin-chu.

It was called the Main Gate Office due to its proximity to the main entrance of the yamen. The Main Jail (jianyu 監獄) or Tigerhead Jail (hutoujian 虎頭監) was for those prisoners convicted of the most serious crimes such as murder, robbery, and piracy.<sup>60</sup>

Provincial prisons, a relatively late development in imperial Taiwan, were generally known as *lixing ting* (理刑廳). They were designed for the incarceration of committed criminals and governmental officials who committed crimes, and were waiting for trials in autumn. A provincial prison, or *lixing ting* (理刑廳) was installed at Xidingfang in Tainan in 1885, but it was only established for only a short period of time and facilities were never completed.<sup>61</sup> The Board of Penal Administration governed provincial prisons and in 1885 an official position was established called the “Ansiyu (按司獄) and this official was institutionally responsible for prison affairs.

### 2.3.3 Jail Conditions

Similarly to China, there are very few accounts of imprisonment in Qing dynasty Taiwan. Unfortunately, despite the numbers who must have spent time in detention, their voices have been lost, as many were either illiterate or reluctant to describe their experiences due to the stigma attached to imprisonment. However, from the few that exist, we can surmise that, as in China, jail conditions were cramped, dirty, dangerous and improvised. Two British sailors, Mr Gully and Captain Denham who were shipwrecked from the “Ann” to the southwest of Danshui in the late nineteenth century and imprisoned in Taiwanfu (modern day Taipei) both furnished accounts of their experiences. While some of the prisoners were confined in the prefectural jail, others were held in the district granary, which was described as a number of small

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<sup>60</sup> Allee, *Law and Local Society in Late Imperial China* p. 237

<sup>61</sup> 蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>>, 頁 37

houses forming a square.<sup>62</sup> They describe being held in a den so small they couldn't stretch their legs at night. There were ten people in a space 11'6" by 7'6" and they were only allowed out to wash once a day. While they describe provisions being plentiful, with a variety of fruit and vegetables, they were galled to find that they were only given a small portion.<sup>63</sup>

As we have seen elsewhere, those with money or connections could be held in better conditions as evidenced by cases where imperial degree-holders were held in such facilities as the tea department office (chafangguan 茶房館) or even in the custody of the county director of schools.<sup>64</sup> However for the majority of prisoners, jail conditions were very unsatisfactory. Indeed they have been described as "filthy, dark and sunless. Under conditions of hunger, cold and overcrowding, disease flourished...many died of ill treatment. Wardens and guards, moreover, made extortionate demands. If a prisoner did not acquiesce, he encountered bitter and poisonous treatment. In a house of darkness and silence he became a companion of ghosts."<sup>65</sup> In Allee's study, nearly all long-term inmates became ill with such complaints as diarrhoea, dysentery, influenza and assorted respiratory illnesses, often resulting in death, not surprising when we consider the combination of unsanitary jail conditions and damp local weather.

While the yamen had a duty of care towards the medical needs of the prisoners, for serious cases, they often preferred to send prisoners home for treatment. The prisoners so released, were required to produce a guarantor willing to enter into a bond for the

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<sup>62</sup> W. Maxwell, quoted in Davidson, *The Island of Formosa: Past and Present*, SMC Publishers, Taipei, 1988, p. 109.

<sup>63</sup> Davidson, *The Island of Formosa*, p. 106.

<sup>64</sup> Allee, *Law and Local Society in Late Imperial China*, p. 237

<sup>65</sup> Lian Yatang, Taiwan Tongshi, quoted in Allee, *Law and Local Society in Late Imperial China*, p. 326

return of the prisoner to detention once they had recovered. Obviously, this would be easier for rich prisoners than poor ones. Allee believes that, as yamen personnel were held accountable for the death of prisoners due to judicial torture or mistreatment, they were motivated to ensure that inmates either received adequate care, or that any mistreatment was successfully concealed. He concludes that while the yamen may not have complied with all statutes for prisoner care, the fact that funding for prisoner maintenance is a regular item in local government budgets shows that some thought must have been given to prisoner welfare.<sup>66</sup>

### **2.3.4 Penal Architecture**

Jails were ideally intended to be rectangular enclosures, with dormitories along one wall for guards, and prison cells along 3 sides for prisoners, with a wooden-roofed central courtyard to prevent escapes. In addition, regulations stated that there should also be two gates in the outer wall- one for the use of everyday prisoners and the other called the “iron-section gate”, for special use of those condemned to death.<sup>67</sup> Thus, penal architecture in Taiwan in late imperial times is similar to China, with the jails located within the yamen walls, generally in a compound form. However, while prison regulations mandated certain requirements for jail construction, in many cases facilities were below standard, unsanitary and often in poor repair. And again, as we have seen, provisional facilities were also utilized, such as the granary in Taipei, hardly an ideal space for incarceration.

Thus to conclude, we can state that the system of punishment in Taiwan followed the Chinese model. Imprisonment, despite not being legally sanctioned, did occur. Prisoners found themselves in jails that were unsanitary and cramped, and they were

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<sup>66</sup> Allee, *Law and Local Society in Late Imperial China* p. 246

<sup>67</sup> 蘇明修, <<嘉義舊監獄修護調查及再利用規劃研究>>, 頁 36

lucky if they didn't contract an illness or even die before their release. Imprisonment functioned to hold suspects awaiting trial or sentencing as well as ensuring that witnesses for crimes were available to testify. It also functioned unofficially as a method to deal with specific cases, where they sought an alternative punishment to those proscribed by law. Punishment was also characterized by its arbitrary nature during Qing times as many officials had a certain amount of leeway in proscribing punishment.