Modern Asian Studies (2025), 1–21
doi:10.1017/S0026749X24000386

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Abolitionist parallels: International law and domestic servitude in South China (1900–1940)

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(Received 16 February 2024; revised 7 August 2024; accepted 19 August 2024)

Abstract

This article examines the intertwined processes between China's making of anti-slavery laws and the evolution of international legislation against slavery in the early twentieth century. By tracing international interventions into domestic servitude issues in Chinese communities both in China and Southeast Asia, the article analyses how the international legal regime was absorbed into the domestic laws of late Qing and Republican China. Drawing on two threads of scholarly discussion—namely, the histories of humanitarian internationalism and modern China's legal reform—this article argues that late Qing and Republican jurists intentionally maintained an ambiguous definition of domestic servitude. This ambiguity served to affirm the humanitarian governance of the modern state while simultaneously preserving social customs, in defiance of international law.

Keywords: Slavery; humanitarian internationalism; international law; legal reform; modern China

Introduction

In 1934, a case of bondmaid abuse reported in a newspaper issued by the Chinese Nationalist Party (KMT) caught the attention of George Maxwell (1871–1959), a retired colonial governor of British Malaya who later served as a leading member of the League of Nations' Slavery Commission. The newspaper reported that a 12-year-old girl, who had been sold to a male cotton weaver in Yunnan, a province of Southwest China, was forced to eat human ordure after being suspected of stealing yarn. The cotton weaver, Hu Ping-lin, was summoned by the local police and fined 500 Chinese dollars. This brutal case confirmed Maxwell's assumption that slaveholding was widespread among Chinese communities in Asia. He referred to a case in his collected documents that had occurred in Penang, lamenting that what had happened there 'was as serious a miscarriage of justice as the Yunnan case',[1] given that the bondmaids in both locations were unregistered, unpaid, and mistreated.

[1]Maxwell to Mr. Orde, 'Mui-tsai system in China and Straits Settlements', 28 November 1934, F7080/782/10 in FO371/18135, Adam Matthew Digital.

In the summer of 1934, a Cantonese girl named Liew Ah Har was brought to the office of the assistant Protector in Penang by her mother, Yeow Ah Keow. Liew was handed over to Lei Kim Fuk's household by Yeow when she was eight years old. Serving as a *mui tsai*,[2] Liew complained that she was overworked, was not paid by Lei's household, and that she was often kicked and punched by Lei's wife, Wan Ah Soo. Based on Liew's complaint and evidence from a medical examination, Lei Kim Fuk and Wan Ah Soo were summoned and tried by the district court.[3] Regarded as the master of the household, Lei was convicted under the Mui Tsai Ordinance of having an unregistered *mui tsai* in his custody and failing to pay her. Wan Ah Soo was charged with wilfully assaulting and ill-treating a child under the Children Ordinance. Lei and Wan were fined a total of 60 Strait dollars.[4] In 1936, based on the documents he had collected, Maxwell presented a report on slavery in Asia to the League, in which he enquired about the failure of the British colonial and Chinese governments to carry out the abolitionist principles of the 1926 Slavery Convention.

This article examines the intricacies underlying the interactions between the international legal institution, the Nationalist government in China, and the British colonial government. It sets out a two-layered argument that addresses the impact of international interference and its limited resonance in domestic legal reforms. The international legal regime imposed transformative power on China's domestic anti-slavery legislation. This regime encompassed two aspects: a universal definition of slavery established through international law, and an international institution—the League's Slavery Commission—that facilitated the international legislation and urged colonial and nation-states to implement international law through their domestic legislation. Through this international legal regime, the practice of keeping domestic slaves (*mui tsai* in Cantonese or *bi* in Mandarin) was racialized as a Chinese custom; the contested definition of *mui tsai* and *bi* was fixed in the legal category of slavery; and the universal definition of slavery was incorporated into domestic laws in China and Southeast Asia.

Scholarship on humanitarian intervention in the early twentieth century often characterizes Western countries' support in Asia and Africa as 'humanitarian imperialism', holding that interference undertaken in the name of goodness could result in extraterritoriality, debt dependency, and the exploitation of local labourers.[5] Focusing on how the League's Slavery Commission intervened in the legislation

[2]*Mui tsai* is a Cantonese term referring to domestic servitude, in particular to Chinese girls living on the edge between bona fide adoption and exploitative domestic labour. Rachel Leow, '"Do You Own Non-Chinese Mui Tsai?" Re-Examining Race and Female Servitude in Malaya and Hong Kong, 1919–1939', *Modern Asian Studies*, vol. 46, no. 6, 2012, pp. 1736–1763; David M. Pomfret, '"Child Slavery" in British and French Far-Eastern Colonies 1880–1945', *Past and Present*, vol. 201, no. 1, 2008, pp. 175–213, https://doi.org/10.1093/pastj/gtn017; Karen Yuen, 'Theorizing the Chinese: The Mui Tsai Controversy and Constructions of Transnational Chineseness in Hong Kong and British Malaya', *New Zealand Journal of Asian Studies*, vol. 6, no. 2, 2004, pp. 95–110.

[3]J. W. Norton Kyshe, 'A Judicial History of the Straits Settlements 1786–1890', *Malaya Law Review*, vol. 11, no. 1, 1969, pp. 38–180.

[4]Colonial Office to Mr. Orde, 9 April 1935, FO371/19270, Adam Matthew Digital.

[5]Amalia Ribi Forclaz, *Humanitarian Imperialism: The Politics of Anti-Slavery Activism, 1880–1940* (Oxford: Oxford University Press, 2015); Maeve Ryan, *Humanitarian Governance and the British Antislavery World System* (New Haven: Yale University Press, 2022); Michelle Tusan, '"Crimes against Humanity":

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

around domestic servitude in China, this article indicates a different side of Western interference: I argue that, despite being characterized as an 'imperialist club', with the majority of members of the Slavery Commission being representatives of the European colonial powers,[6] the procedural structure of the Commission prevented the imperialist encroachment of sovereignty and self-determination.

Moreover, although the social custom of domestic servitude was not eradicated in the early twentieth century, the domestic legislation prompted by the international legal regime against slavery did, indeed, entail certain legal protections for domestic servants and labourers. As seen in the cases examined in the following sections, anti-slavery laws and ordinances became an effective legal reference point to prevent slave girls from being abused and mistreated. In the long term, the Article concerning enslavement that was first laid out in the 1918 Second Amendment of the Republican Criminal Code remains effective in today's Criminal Code in Taiwan. Humanitarian advocacy invokes this Article to protect the human rights of immigrant workers. Scholarship on the history of interwar internationalism acknowledges the League's failure to prevent warfare but recognizes its function in facilitating social reforms.[7] This article confirms this argument.

China's anti-slavery legislation in the early twentieth century had a limited impact on reforming the social custom of domestic servitude. Scholarship on the legal history of twentieth-century China suggests that many laws devised by late Qing reformers and the Nationalist government aimed to impress international society so as to gain recognition for China as a civilized nation, rather than having a de facto effect on the ground.[8] On the other hand, legal and judicial reforms that followed Western standards of modernity would result in unintended consequences for local people and society.[9] Though the international legal regime of slavery was transformed in the domestic laws and ordinances of China and the British empire in Southeast Asia, the social custom of female domestic servitude persisted for decades.[10] The late Qing and Republican

Human Rights, the British Empire, and the Origins of the Response to the Armenian Genocide', *The American Historical Review*, vol. 119, no. 1, 2014, pp. 47–77.

[6]Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (New York: Oxford University Press, 2015).

[7]Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003); Pedersen, *The Guardians*.

[8]Yue Du, 'Reforming Social Customs through Law: Dynamics and Discrepancies in the Nationalist Reform of the Adoptive Daughter-in-Law', *NAN NÜ*, vol. 21, no. 1, 2019, pp. 76–106; Johanna S. Ransmeier, *Sold People: Traffickers and Family Life in North China* (Cambridge, MA: Harvard University Press, 2017); Yuansheng Huang, 'Cong Ban Ren Ban Wu Dao Qimin: Wanqing Minguo Jinge Maimai Nubi de Guang Yu Ying', in *Xingbie, zongjiao, zhongzu, jieji yu zhongguo chuantong Sifa*, (ed.) Liyan Liu (Taipei: Academia Sinica, 2013).

[9]Kathryn Bernhardt's study reveals how the KMT's modern reform of inheritance rights resulted in a less privileged position for widows and widows-in-law compared to the late imperial laws. Xu Xiaoqun's study indicates that the modernization of judicial procedures under the Nationalist government significantly increased the costs and personnel for the courts, which surpassed the government's fiscal capacity. Kathryn Bernhardt, *Women and Property in China: 960–1949* (Stanford: Stanford University Press, 1999); Xiaoqun Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901–1937* (Stanford: Stanford University Press, 2008).

[10]In Hong Kong, incorporating unpaid female domestic slaves into concubinage became a normal practice since the 1920 prohibition of *mui tsai*. In China, county officials from the southern provinces still

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jurists intentionally maintained an ambiguous definition of slavery in the letter of law. This ambiguity served to affirm the modern state's humanitarian governance while simultaneously preserving social customs, in defiance of international law. The laws against domestic servitude only functioned when physical abuse and mistreatment occurred and were verified by medical reports, as seen in the cases in Yunnan and Penang. These laws were, thus, ineffective in abolishing the social custom; in other words, legislation against domestic servitude, influenced by the international legal regime, provided some protection for *mui tsai* but had a limited impact on abolishing the custom of keeping these women.

This article also advances the scholarship on slavery in early twentieth-century China. Two previous scholarly works have provided valuable historical accounts of human trafficking and domestic servitude in North China. Drawing on police files from Beijing and Tianjin, Johanna Ransmeier's *Sold People* illustrates the late Qing and early Republican state's tolerance of selling and buying people under circumstances of economic hardship.[11] Though one of the central themes of Ransmeier's book is unpacking 'modern slavery' in the context of early twentieth-century China, it does not sufficiently analyse the legal Articles that cover enslavement in the Republican Criminal Code. Also focusing on North China, Zhang Xiuli's work offers a comprehensive account of the Republican state's regulation of domestic servitude.[12] Zhang's book addresses the impact of international law in shaping China's domestic anti-slavery legislation; however, it does not give equal attention to the process by which the *mui tsai* controversy in Hong Kong was integrated into international anti-slavery legislation through the British colonial network. Focusing more on slaveholding than human trafficking, this article sheds light on the distinct legal genealogy of enslavement and 'sold people'. Drawing on League of Nations' documents, British colonial archives, and local archives in the southern provinces of China,[13] the article further explores how global legal encounters contributed to the internationalization of regulating domestic servitude.

Through an examination of the regulation of domestic servitude in China in the early twentieth century, this article illustrates how the international definition of slavery was absorbed into Chinese legal codes and ordinances, on the one hand, while domestic servitude was excluded from the legal category of slaveholding, on the other.

complained that the custom of keeping slave girls persisted 'despite repeated bans' in response to the Nanjing government's enquiry about social reforms in the late 1940s. See Nai-Fei Ding and Oona Jin, 'Kanbujian dieying: Jiawu yu xinggongzuo zhong de biqie shenying', *Taiwan shehui yanjiu jikan*, vol. 48, 2002, pp. 135–168; Maria Jaschok, *Concubines and Bondservants: A Social History* (London: Zed Books, 1988).

[11]Ransmeier, *Sold People*.

[12]Zhang Xiuli, *Minguo beijing binü wenti yanjiu* (Beijing Shi: Beijing Shifan Daxue Chubanshe, 2016).

[13]A substantial part of this article uses the archives of the Sun Yat-sen Library of Guangdong province, the Shantou Municipal Archives, and the Fujian Provincial Archives. I selected this region for two reasons. First, its proximity to Hong Kong, as well as the large number of migrants to British colonial Southeast Asia, means that the issue of domestic servitude was more prominent in Guangdong and Fujian in the eyes of abolitionist internationalists. Second, the KMT, with its power initially rooted in Guangzhou, promulgated an anti-slavery ordinance in Guangdong in the early 1920s, which made Guangzhou an experimental field for abolishing domestic servitude. Abolitionist experience in Guangdong was later adopted by the Nanjing Nationalist government and subsequently promulgated in other provinces.

In doing so, the article first traces the parallels between international anti-slavery legislation and domestic legislation in China in the early twentieth century. Second, it examines the strategies used by jurists, legal scholars, lawyers, and commoners to skirt around the definition of enslavement in judicial interpretation, circumvent certain terms for 'slaves' in contracts and complaints, and redefine the meaning of slavery in jurisprudential language. This article shows that although equality and freedom were promoted in the official discourse for constructing a modern civilized state, the state and society collaborated to maintain the status quo of domestic servitude and make the household an institution for providing social welfare to the poor.

International pressure and late Qing anti-slavery law (1900–1910)

There were two realms of anti-slavery regulation in the late Qing and early Republican era:[14] ordinances addressing slave trading and slaveholding, and Articles in the criminal code related to abduction and offence against freedom in general. These two realms supplemented each other. In terms of regulating slave trading and slaveholding, both the criminal code and ordinances could be used as a legal reference for prosecution and court trials. In 1909, legal reformers from the Commission of the Constitutional Government (*xianzheng biancha guan*) drafted the Prohibition of Buying and Selling Human Beings. Comprising ten Articles that attempted to criminalize transactions concerning human beings and eliminate the category of 'slave' from the legal language, this ordinance became an important legal reference during the alternating regimes in the early twentieth century. It was incorporated into the 1910 Criminal Code issued by the Qing court. In the early years of the Beiyang government, the 1909 draft was still in effect and became a supplementary source for the 1912 Provisional Criminal Code.[15]

The Prohibition of Buying and Selling Human Beings was a product of the late Qing New Policies (*xinzheng*), a reform that aimed to achieve constitutionalism in the central government and self-government at the local level.[16] Legal modernization—namely, judicial independence, the reform of criminal penalties, separation between criminal and civil codes, and the formalization of procedural law—was a crucial part of these New Policies. Scholars have pointed out that the most important motive for China's

[14]Prior to the 1909 draft of the Prohibition of Buying and Selling Human Beings, the late imperial laws had banned the trade of slaves under two conditions: if the transaction and transportation were predatory, and if the sold people were not part of the debased class or adulterous wives. Kidnapping a commoner's daughter and selling her as a domestic slave could be punished, but holding hereditary slaves in a bannerman's household, or selling one's own daughter into another household, was usually permitted. Ransmeier, *Sold People*; Matthew Harvey Sommer, *Polyandry and Wife-Selling in Qing Dynasty China: Survival Strategies and Judicial Interventions* (Oakland: University of California Press, 2015).

[15]As the 1912 Provisional Code issued under the Beiyang government was not based on the 1910 Criminal Code, it did not include the 1909 draft. However, the legal reformers of the Beiyang government believed that the Articles in the draft would be in line with the principles of the new legal code; therefore, the 1909 draft functioned as an ordinance supplementary to the 1912 Provisional Criminal Code. See Zhang Xiuli, *Minguo Beijing Binü Wenti Yanjiu* (Beijing Shi: Beijing Shifan Daxue Chubanshe, 2016), Chapter 1; Ransmeier, *Sold People*, Chapter 3.

[16]Regarding late Qing constitutionalism and the ideals of local self-government, see Xiaowei Zheng, *The Politics of Rights and the 1911 Revolution in China* (Stanford: Stanford University Press, 2018).

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

legal reform in the first decade of the twentieth century was to bring Chinese law in line with Western laws and, thereby, abolish extraterritoriality, as was promised in the treaties of commerce and navigation.[17] Legal reformer Shen Jiaben, who drafted the Prohibition of Buying and Selling Human Beings, was one of the active promoters of legal modernization. Situating the Prohibition in the context of the New Policies reform, it is indubitable that international pressure was an important concern of Chinese abolitionists. Nevertheless, there were two specific events that accelerated the making and promulgating of the anti-slavery law in the 1900s: the 1905 Shanghai Riot and the international legislation against 'white slavery'.

The first event that drew the attention of Qing officials to the slavery issue was the 1905 Shanghai Riot. In the winter of 1905, a Mrs Li was arrested in Shanghai by patrols of the international settlement. These Western officers had received a message from an American missionary in Zhejiang accusing Mrs Li of trafficking human beings. When interrogated in the Mixed Court by the British vice-consul Bertie Twyman and the Chinese magistrate Guan Jiongzhi, Mrs Li insisted that the 'slave girls' (*binü*) were purchased from their parents with valid contracts recognized under Qing law. Some of the girls confirmed that they were sold by their parents and relatives, while others said they were abducted by male strangers. Following the instruction of the British consul in Shanghai, Twyman sent Mrs Li and the girls to the foreign-controlled municipal prison for women. Twyman's decision was strongly contested by Guan, who argued that Mrs Li and the girls should not be sent to a foreign-controlled prison as they were Qing subjects. This confrontation soon escalated into intense unrest targeted at Westerners. Chinese commoners flooded the streets in Shanghai, demanding the release of Mrs Li and the girls, and even burnt the patrol station in the international settlement. Several months after the riot, Zhou Fu, the viceroy, engaged in negotiations with the European consuls in Shanghai and submitted a memorial to the throne, proposing the abolition of human trafficking.[18] Zhou Fu expressed his awareness of the internationalization of slave trade regulation in his memorial:

> … each country would be interrogated when (cross-border) human trafficking occurred. Therefore, the virtue of caring for fellow human beings is common for all under the heaven, and to value people's lives is the universal value.[19]

Zhou Fu's concern echoed the agenda of the international legislation concerning the 'white slave' trade at the turn of the twentieth century, which also coincided with the riot in Shanghai. The legislation was intended to implement international surveillance of the trafficking of women and girls across national borders among signatory

[17]From 1902 to 1903, the Qing government signed treaties with Britain, the United States, and Japan that promised to align domestic tax and legal reform with Western standards. See Xu, *Trial of Modernity*, Chapter 1.

[18]For details of the 1905 Shanghai riot, see Claude Chevaleyre, 'The Abolition of Slavery and the Status of Slaves in Late Imperial China', in *The Palgrave Handbook of Bondage and Human Rights in Africa and Asia*, (eds) Gwyn Campbell and Alessandro Stanziani (New York: Palgrave Macmillan, 2019), pp. 57–82. Regarding the institutional structure of the Mixed Court, as well as legal pluralism under extraterritoriality in late Qing and modern China, see Pär Kristoffer Cassel, *Grounds of Judgment Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press, 2012).

[19]Zhou Fu, 'Zhouqueshengong quanji sishiyi juan', *Qiupu zhoushi kanben*, vol. 4, 1922, pp. 491–492.

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

parties. In Britain, 'white slavery' became a parlance for exploitative and migrant sex work in the 1860s,[20] referring particularly to British girls being trafficked to licensed brothels in Belgium and France.[21] At the turn of the twentieth century, the problem of white slave traffic was internationalized among European states.

Called by the British National Vigilance Association, an organization targeting the sexual exploitation of women and children, the International Congress on the White Slave Trade was held in London in 1899. During the meeting, the Congress outlined enquiries concerning the penalties for the sex trade that would be discussed at the following diplomatic conference. These enquiries were intended to urge states to enhance their domestic legislation for penalties for the trafficking of women and girls for the purpose of prostitution. At the 1902 International Conference on the White Slave Traffic, participants from Europe and Brazil negotiated on whether the term 'white slaves' was appropriate, whether kidnapping should be punished more severely than consensual trade, and whether there should be uniformity in the age of consent in the domestic legislation of different countries. During the discussion, the trafficking of underage girls aroused significant sympathy. The Legislative Commission suggested that trading an underage girl with her consent should be punished as severely as kidnapping, as underage girls were believed to be unable to give valid consent. The discussed provisions were concluded in an international agreement in 1904 and, ultimately, formalized in the 1910 International Convention for the Suppression of the White Slave Traffic, which confirmed the extradition of 'white slave' traffickers among signatories.[22] Public opinions of anti-'white slave' traffic in the West might have further rendered Mrs Li's actions—as an adult woman travelling with underage girls from Southwest China to Shanghai in the lower Yangzi River delta, a place known for prostitution—as punishable in the eyes of missionaries and British officials.[23]

[20]In this article, I mainly focus on 'white slavery' in the form of the sex trade and the trafficking of women and girls. Nevertheless, the term 'white slavery' has multiple historical meanings. By the early nineteenth century, it had been identified with Christian subjects enslaved in Muslim states. Stimulated by Christian countries' social movements against North and East African Muslim slave traders, Brussels held an international Anti-Slavery Conference from 1889–1890. This conference was characterized by scholars as a continuum of the Berlin Conference from 1884–1885 as the European participants of the Brussels anti-slavery conference intended to expand their humanitarian interference in North and East Africa. See Robert C. Davis, *Christian Slaves, Muslim Masters: White Slavery in the Mediterranean, the Barbary Coast, and Italy, 1500–1800* (Basingstoke, Hampshire: Palgrave Macmillan, 2003), Part I; William Mulligan, 'The Anti-Slave Trade Campaign in Europe, 1888–90', in *A Global History of Anti-Slavery Politics in the Nineteenth Century*, (eds) William Mulligan and Maurice Bric (London: Palgrave Macmillan, 2013), pp. 149–170, https://doi.org/10.1057/9781137032607_9; Daniel Laqua, 'The Tensions of Internationalism: Transnational Anti-Slavery in the 1880s and 1890s', *The International History Review*, vol. 33, no. 4, 2011, pp. 705–726, https://doi.org/10.1080/07075332.2011.620742.

[21]See Julia Laite, 'White Slaves and Alien Prostitutes: Trafficking, Protection and Punishment in the Early Twentieth Century', in *Common Prostitutes and Ordinary Citizens: Commercial Sex in London, 1885–1960*, (ed.) Julia Laite (London: Palgrave Macmillan, 2012), pp. 100–115, https://doi.org/10.1057/9780230354210_7; Rachel Claire Attwood, 'Vice beyond the Pale: Representing "White Slavery" in Britain, c.1880–1912', PhD thesis, University College London, 2013.

[22]See Jean Allain, 'White Slave Traffic in International Law', *Journal of Trafficking and Human Exploitation*, vol. 1, no. 1, 2017, pp. 1–40.

[23]Regarding studies on prostitution in Shanghai, see Christian Henriot, *Prostitution and Sexuality in Shanghai: A Social History, 1849–1949* (Cambridge: Cambridge University Press, 2001); Isabella Jackson,

The international legislation against 'white slaves' in Europe constituted international pressure for Asian countries, especially for those regimes whose sovereignty was undermined by extraterritorial jurisdiction. For example, Siam signed the International Agreement for the Suppression of the White Slave Traffic in Paris in 1904.[24] In April 1905, King Chulalongkorn of Siam issued a decree to outlaw slavery in the kingdom because the institution of slavery was considered 'an impediment to the progress of [the] country'.[25] The 1905 Slavery Abolition Act was incorporated into the 1908 Penal Code, which also stipulated penalties for the trafficking of women and girls. In 1909, Siam passed the Venereal Disease Control Act (VDCA) to regulate prostitution and manage public health. Echoing the 1904 draft of the international agreement, both the 1908 Penal Code and the 1909 VDCA emphasized consensual sexual intercourse and criminalized selling women into prostitution through 'violence', 'threat', or 'deceitful means'.[26] These laws made Siam a qualified signatory to the 1910 International Convention, which aimed to prohibit cross-border human trafficking intersecting with the sex trade.[27]

Siam's legal modernization endeavours, including the abolition of slavery and the issuing of the penal code, were reported by public media in China in the first decade of the twentieth century. A missionary newspaper urged China to follow Siam's example and take anti-slavery action.[28] A diplomatic newspaper praised Siam's promulgation of the 1908 Penal Code, highlighting its potential contribution to the abolition of

Shaping Modern Shanghai: Colonialism in China's Global City (Cambridge: Cambridge University Press, 2017), https://doi.org/10.1017/9781108303934.

[24]Leslie Ann Jeffrey, *Sex and Borders: Gender, National Identity, and Prostitution Policy in Thailand* (Vancouver: UBC Press, 2002), p. 13.

[25]The translation of the 1905 Slavery Abolition Act can be found in Siam's correspondence with the League of Nations Secretariat, in the catalogue of Mandates Section. 'Reply of Siam to Questionnaire on Slavery', 29 November 1922, United Nations Library and Archives, Geneva, p. 12. See also Eugénie Mérieau, 'Self-Enslavement as Resistance to the State? Siamese Early Modern Laws on Slavery', *Harvard Journal of Asiatic Studies*, vol. 81, no. 1, 2021, pp. 157–177.

[26]As above, the Articles regarding human trafficking in the 1908 Penal Code, as well as relevant Articles in the 1909 VDCA, can be found in Siam's correspondence with the League, in the Health and Social Questions Section. 'Traffic in Women and Children—Enquiry—Siam', United Nations Library and Archives, Geneva, pp. 5–19.

[27]Regarding how the international legislation against 'white slave' traffic drove Siamese anti-slavery legislation and prostitution regulations, see Edith Celine Marie Kinney, 'Stuck in Traffic: Sexual Politics and Criminal Injustice in Social Movements against Human Trafficking', PhD thesis, University of California, Berkeley, 2011, Chapter 2. More evidence that further confirms the transformative power played by anti-white slave advocacy in Siam is the role of Gustave Rolin-Jaequemyns, a Belgian international lawyer who served as King Chulalongkorn's adviser. Rolin-Jaequemyns had been engaging in the discussion of 'white slaves' sold into the Ottoman empire since the mid-nineteenth century and was particularly concerned with white slavery issues in the 1890s. See Davide Rodogno, 'European Legal Doctrines on Intervention and the Status of the Ottoman Empire within the "Family of Nations" Throughout the Nineteenth Century', *Journal of the History of International Law/Revue d'histoire Du Droit International*, vol. 18, no. 1, 2016, pp. 5–41, https://doi.org/10.1163/15718050-12340050; Davide Rodogno, 'Exclusion of the Ottoman Empire from the Family of Nations, and Legal Doctrines of Humanitarian Intervention', in *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815–1914*, (ed.) Davide Rodogno (Princeton, NJ: Princeton University Press, 2011), https://doi.org/10.23943/princeton/9780691151335.003.0003.

[28]Ransmeier, *Sold People*, p. 109.

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

extraterritorial jurisdiction and the recovery of sovereignty.[29] The international legislation against 'white slave' trafficking, as well as semi-colonial Siam's achievement in legal modernization, accelerated the Qing reformers' progress towards abolishing slaves in China. One year after promulgating the Prohibition of Buying and Selling Human Beings, China became a signatory to the 1910 International Convention for the Suppression of the White Slave Traffic.[30] Qing officials translated this International Convention, copies of which were preserved in the Ministry of Foreign Affairs under the Beiyang government following the regime change in 1911.

The International Convention attracted Chinese diplomats' attention again in the early 1920s, when the post-Great War European powers convened a new round of discussions on 'white slave' traffic. The Beiyang government of China, which was a member of the League of Nations, sent delegates to the conference and signed the newly published international convention against human trafficking. The 1921 Convention replaced the term 'white slave traffic' with 'the traffic in women and children'. The Beiyang Ministry of Foreign Affairs considered this revision 'an improvement of international interactions' to 'reduce prejudice'.[31] Before signing the convention, the Chinese delegate Wei Chenzu asked the Beiyang government whether there were any reservations about joining the agreement. In response to this enquiry, the Ministry of Justice undertook a careful comparison of the 1921 Convention and Chinese law.[32] The comparative study suggested some deficiencies in China's laws and society, including the lack of shelters for women and girls, and the absence of a law to prohibit child prostitutes. However, the Ministry did not believe that these deficiencies would contradict the Convention as 'other countries [had] not agreed on a convention for shelters' and 'laws concerning child prostitutes can be made later'.[33] Nevertheless, Articles in the 1910 and 1921 Conventions against trafficking women and children were not fully incorporated into Chinese legislation. Although the Beiyang government disseminated the translations of the Convention to provincial police stations, explicit legislation prohibiting child prostitutes was not issued thereafter.[34] In this case, joining the international agreement became a performative act to symbolize the state's humanitarian governance, yet it contributed very little to abolishing social vice.

The Beiyang government's interaction with the League's anti-trafficking conference indicates the intricacies of the relationship between China and the international

[29]'Shijie dashiji: Dongyang zhi bu: xianluo: xianluo gongbu xingfa', *Waijiaobao*, vol. 9, no. 1, 1909, p. 22.

[30]Ransmeier, *Sold People*, p. 121.

[31]Beiyang zhengfu waijiaobu, '03-23-120-02-010', 1921, Archives, Institute of Modern History, Academia Sinica.

[32]'Chinese law' here refers to the 1912 Provisional Criminal Code promulgated under the Beiyang government. This code was derived from the 1907 Drafted Criminal Code.

[33]Beiyang zhengfu waijiaobu, '03-23-120-02-014', 1922, Archives, Institute of Modern History, Academia Sinica.

[34]Despite the absence of laws prohibiting child prostitution, having sex with children could be punished under the Article of the Offence against Vice Crimes in the Criminal Code. In 1928, the Criminal Code promulgated under the Nationalist government raised the age of consent from 12 to 16 years old to keep pace with the 'civilized states' in the world. In the 1935 revision of the Criminal Code, the age of consent was lowered to 14 years old. See Huang Yuansheng, *Wanqing minguo xingfa shiliao jizhu* (Taipei: Yuanzhao chuban youxian gongsi, 2010), vol. 2.

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legal regime in the early twentieth century. Scholars have argued that the translation and circulation of international law in the late nineteenth century drove regimes like Qing China, Siam, and the Ottoman empire to adopt certain European norms such as civilization and sovereignty.[35] If China's legal reform in the late Qing era demonstrates a convergence with international law, the following sections show how legal reform in the Republican era diverged from this international law. For semi-sovereign states, the tension brought about by legal modernization should not be overlooked—though the state calibrated domestic laws according to the international legal regime in order to abolish extraterritoriality, the pursuit of sovereignty and the persistence of social customs could, on the other hand, have driven jurists to conceptually distinguish domestic laws from international laws. This paradox will be unfolded in the following discussion of the legislation against domestic servitude.

Categorizing domestic servitude in international law

Slavery involves the trade of humans, but enslavement means more than transactions and human trafficking. Specifically, in the history of international law in the first half of the twentieth century, human trafficking and slavery were considered to belong to different genealogies.[36] In the years following the publication of the International Convention for the Suppression of the Traffic in Women and Children, the League convened the Temporary Slavery Commission (TSC) and launched a decade-long investigation into slavery issues from the Atlantic to Asia. The TSC was transformed into the Advisory Committee of Experts on Slavery (ACES) in 1934. It functioned as a technocratic institute aiming to conduct comparative research on legislation against slavery in different regions, thereby providing advice to the countries accused of slaveholding.[37] Scholars have characterized the League's Slavery Commission as a 'humanitarian imperialism' crusade because the Commission's original motive was to expand intervention into Ethiopia and the Republic of Liberia by accusing them of tolerating slave-raiding within their territories.[38] Less discussed is how knowledge of Chinese *mui tsai*, introduced by colonial officers and the British Anti-Slavery Society to the Slavery Commission, shaped the definition of slavery in international law and how this 'modern' definition of slavery transformed China's practice of regulating domestic servitude in the early twentieth century.

The discussions of the *mui tsai* problem helped place slave-owning within the international legal regime of slavery, a system that had previously focused primarily on slave raids and trades.[39] Outlining the context of *mui tsai* legislation in the British

[35]See Richard S. Horowitz, 'International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century', *Journal of World History*, vol. 15, no. 4, 2004, pp. 445–486; Yue Du, 'From Dynastic State to Imperial Nation: International Law, Diplomacy, and the Conceptual Decentralization of China, 1860s–1900s', *Late Imperial China*, vol. 42, no. 1, 2021, pp. 177–220.

[36]Jean Allain, 'Genealogies of Human Trafficking and Slavery', in *Routledge Handbook of Human Trafficking*, (ed.) Ryszard Piotrowicz (London: Taylor and Francis, 2017; 1st edn).

[37]Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Pattern* (Walnut Creek, CA: Altamira Press, 2003).

[38]See Ribi Forclaz, *Humanitarian Imperialism.*

[39]The *mui tsai* problem had already been put forward by the British Anti-slavery Society in meetings about suppressing traffic in women and children. However, since those meetings primarily focused on

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empire is helpful for tracing the intersection between colonial governance and international governance in the early twentieth century. In British Hong Kong and Malaya, the discovery of Chinese child slaves drove colonial governments to readdress the 1834 Slavery Abolition Act by establishing indigenous charities and making laws to protect women and children. British female activists and the Anti-Slavery Society also directed the League's attention to the '*mui tsai* controversy' debated between Chinese elites and colonial officials.[40] In 1884, the Protection of Young Girls Ordinance was issued in Hong Kong, aiming to prohibit the forced sexual labour of girls under 16 years old. In 1893, Po Leung Kuk, a charitable organization established by Chinese elites, was incorporated into an ordinance for preventing the trafficking of women and children. In the mid-1920s, the Female Domestic Servants Ordinance (*mui tsai* Ordinance) was issued in Hong Kong and the Straits Settlements.

In the spring of 1924, the TSC started an enquiry into slavery issues in different countries using a questionnaire. Establishing a definition of slavery was a precondition of investigating it: an appropriate definition would draw a parameter for the international legal regime of slavery, delineating the subjects of enslavement that needed intervention. Nevertheless, the TSC faced two difficulties in defining slavery: first, to combine the various forms of slavery practised in different regions into a universal definition; and second, to cover all the different methods of acquiring slaves, including slave raids, slave trades or deals, and slave-owning, within this definition. Members of the TSC debated whether domestic slaves should be included in the category of slavery presented in the questionnaire. Since the League was supposed to deal with interstate issues such as slave trades, including domestic slaves in the investigation would have inevitably interfered with domestic legislation, which could have been perceived as challenging the 'self-determination' of the countries involved. Nevertheless Frederick Lugard, the British delegate in the TSC who drafted the questionnaire, insisted on enquiring into all the 'practices restrictive of liberty of the person', including dowries and adoption.[41]

Having served as a governor in Hong Kong from 1907 to 1912, Lugard's interactions with Chinese elites and Po Leung Kuk informed him of the existence of *mui tsai*.[42] In the

human trafficking and implementing extradition laws among the member states, the issue of domestic slaves was neglected. See '*Questionnaire on Traffic in Women and Children—Transmits Replies of British Colonies Not Possessing Self Governments*', 1922–1921, United Nations Library and Archives, Geneva.

[40]Scholars recognize three rounds of the '*mui tsai* controversy'. The first round emerged in the 1880s, when five Chinese individuals were convicted of kidnapping and selling women into prostitution in Hong Kong. The controversies were revived in the 1920s and 1930s when the colonial government in Hong Kong and the Straits Settlements began to strengthen control over prostitution in order to prevent venereal diseases. The 1930s controversy was also regarded as a response to the League's slavery investigation and the promulgation of the Slavery Convention. All these debates were centred on the conflict between 'Chinese customs' of child adoption and British jurists' understanding of slavery. See Susan Pedersen, 'The Maternalist Moment in British Colonial Policy: The Controversy over "Child Slavery" in Hong Kong 1917–1941', *Past and Present*, vol. 171, 2001, pp. 161–202; John M. Carroll, 'A National Custom: Debating Female Servitude in Late Nineteenth-Century Hong Kong', *Modern Asian Studies*, vol. 43, no. 6, 2009, pp. 1463–1493.

[41]'1st Session of the Temporary Slavery Commission, July 1924—Minutes', 19 July 1924, United Nations Library and Archives, Geneva.

[42]See Bernard Mellor, *Lugard in Hong Kong: Empires, Education and a Governor at Work, 1907–1912* (Hong Kong: Hong Kong University Press, 1992).

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year Lugard served in Hong Kong, the police had already collaborated with Po Leung Kuk to regulate child labourers working in Chinese households, though the effect was limited.[43] Lugard left Hong Kong for a position as a colonial governor in Nigeria in 1912. His experiences in Hong Kong and Nigeria shaped his knowledge of 'adoption as a disguised form of slavery' in the 'tropical countries'.[44] Insisting on including adoption within the category of slavery, Lugard emphasized that adoption 'in the sense given to the word by European law' was 'almost unknown among primitive natives'.[45]

Lugard's stance ultimately found its way into the 1926 International Convention on Slavery.[46] This Convention adopted a very inclusive definition of slavery based on property law, which stated that '[s]lavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' and that the slave trade included almost 'all acts' to reduce a person to slavery.[47] Though the Articles in the 1926 Convention did not explicitly mention 'adoption as a disguised form of slavery', two Articles brought 'indigenous forms' of adoption under the spotlight. Article 2 required the signatories to ensure 'the complete abolition of slavery in all its forms'. Meanwhile, Article 5 demanded that the contracting states 'take all necessary measures to prevent compulsory or forced labour', including forced labour for both public and non-public purposes, 'from developing into conditions analogous to slavery'.[48] If a girl was sold to a household by her parents and tasked to do some domestic work without being paid, this situation would fall under the category of slavery. Later, in the 1930s, amendments that tightened control over *mui tsai* registration were published in Hong Kong as a response to increased pressure from the League's Slavery Commission.

Defining slavery in the Republican law (1912–1930)

The more inclusive the definition of slavery became in international law, the more exclusive it became in Chinese domestic law. At the turn of the twentieth century, slavery was defined rather broadly in China. The intellectual discourse attached a sense of national humiliation to 'slaves' and 'enslavement'. People in countries colonized by Western powers were deemed to be 'slaves of lost countries' (*wangguonu*). Elite women considered themselves as being enslaved by their families, in much the

[43]Carroll, 'A National Custom'.

[44]'Minutes of the Second Session of the Temporary Slavery Commission, Geneva', United Nations Library and Archives, Geneva, p. 56.

[45]'1st Session of the Temporary Slavery Commission, Geneva, July 1924—Minutes', 9 July 1924, United Nations Library and Archives, Geneva, p. 13.

[46]In fact, the definition of slavery in the 1926 Convention was first drafted by Lugard in 1924. His draft was later discussed and revised by British officials in an inter-departmental meeting organized by Viscount Cecil of Chelwood, the British representative on the League's Political Committee. Lugard's draft became the British Draft of the Protocol against Slavery and was submitted to the TSC. Lugard's original definition was already very inclusive, for example, 'slavery is a status in which one person exercises a right of property over another'. The inter-departmental meeting developed this definition with more precise language based on property law. See Robin Hickey, 'Seeking to Understand the Definition of Slavery', in *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford: Oxford University Press, 2012), pp. 220–241.

[47]League of Nations, 'Slavery Convention, Geneva, 25 September 1926', Treaty Series, n.d.

[48]Ibid.

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way they believed their country had been enslaved by foreigners.[49] Elite men believed that what made China fall behind Western countries and Japan was Chinese people's inherently inferior nature and tendency to 'being slaves' (*nuxing*).[50] Critiques of slavery in the intellectual sphere had repercussions in the state's legislation: the 1910 Prohibition of Buying and Selling People stipulated the replacement of domestic slaves with hired labourers who had the autonomy to leave a household,[51] and the 1912 Provisional Constitution announced that 'the people of the Republic of China are all equal'.[52] In the early 1920s, jurists in Guangdong were informed of the League's enquiry into the transactions around *mui tsai* in British Hong Kong. After attending meetings held by Hong Kong's Anti-Mui Tsai Society, Xu Qian, the Minister of Justice of the Guangdong government, argued that the custom of keeping female domestic slaves (*xubi*) should be abolished in China as it was a form of slavery that had been prohibited in Britain, the United States, and all other civilized countries.[53] In the same year, an ordinance was published in Guangdong to prohibit domestic servitude.[54] Whether focusing on national reform or international reputation, intellectuals and jurists aimed to disseminate abolitionist ideals through writing for the public and lawmaking.

As Xu Qian proposed, domestic servitude was included in the category of slaveholding in the 1918 Second Amendment to the Criminal Code and the 1919 Revision of the Second Amendment to the Criminal Code.[55] The 1918 Amendment added a chapter on the 'Offence of Obstructing Liberty', in which the practice of enslavement was explicitly criminalized. The first Article in this chapter, Article 307, stipulated that anyone involved in enslaving individuals or subjecting them to an analogous condition of unfreedom would be sentenced to imprisonment for more than one year and less than seven years.[56] This Article was adopted by the 1928 Criminal Code promulgated under the Nanjing government (Article 313) and kept in the 1935 Revised Criminal Code (Article 296), albeit with some language modifications that aligned

[49]Rebecca E. Karl, *'Slavery,' Citizenship, and Gender in Late Qing China's Global Context* (Leiden: Harvard University Asia Center, 2002), pp. 212–244.

[50]Chiu-yee Cheung, 'Lu Xun's View of the Awakening of the Chinese People—Was There Really an "Epistemological Break"?', *Frontiers of Literary Studies in China*, vol. 6, no. 3, 2012, pp. 410–425.

[51]Shen Jiaben, 'Shanchu nubi liyi', *Lidai Xingfak kao fu jiyi wencun*, vol. 4, 1985; Ransmeier, *Sold People*.

[52]'Zhonghua minguo linshi yuefa', *Jiangsusheng sifa huibao*, vol. 2, 1912, p. 195.

[53]'Xuqian tiyi jinzhi xubi', *Shenbao*, 16 February 1922, No. 17592 edition; Mai Meisheng (ed.), *Fandui xubi shilue* (Hong Kong, 1932), p. 82.

[54]'Guangdong shixing jinzhi xubi', *Minguo ribao*, 2 April 1922, sec. 0008; 'Jinzhi xubi zhi dhengling (Guangdong)', *Shi Bao*, 7 April 1922, sec. 0005. The Anti-Mui Tsai Ordinance issued in Hong Kong was also published in *Shi Bao*, following the report of the Guangdong Ordinance. See 'Xianggang shixing jinzhi xubi', *Shi Bao*, 19 April 1922, sec. 0002.

[55]See *Shen Bao*, 2 February 1922, sec. 17599. After attending the Anti-Mui Tsai Conference in Hong Kong, Xu submitted a proposal to the Ministry of Internal Affairs, suggesting that people who were keeping domestic workers in servitude should be punished according to the new criminal code. Although the news article did not specify which criminal code Xu was referring to, it is highly possible that this 'new criminal code' was the 1918 Second Amendment of the Criminal Code and the 1919 Revision of the Second Amendment. Both the 1918 and 1919 Criminal Codes included an Article concerning the enslavement of other people.

[56]Huang, *Wanqing minguo xingfa shiliao jizhu*, vol. 1, p. 737.

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it with the 1926 Slavery Convention.[57] Although the Law Revision Institute has no recorded minutes that allow us to trace the discussions behind the legislation, the explanations provided alongside the published Amendment reveal Beiyang jurists' concerns regarding domestic slaves.

The Law Revision Institute argued that the reason for adding this Article was to apply more inclusive legislation to the trade in children that involved parents or foster parents. In 1914, the Beiyang government promulgated some supplementary statutes to the 1912 Provisional Criminal Code, which laid out that parents or foster parents who sold their children or anyone under their custodianship would be penalized.[58] For example, if a foster parent sold an adoptive daughter to another household as a *mui tsai*, they would be given a prison sentence of at least three years.[59] In the 1915 Draft of the Criminal Code Amendment, the sentence was reduced to a fine (Article 365) as the legislators believed that the punishment stipulated in 1914 was too severe for 'crimes committed by the superior against the inferior' (*yizunfanbei*) within a patriarchal family.

In both the 1918 Second Amendment and the subsequent revisions of the Criminal Code in 1928 and 1935, the Article penalizing parents or foster parents involved in selling their (adoptive) children was eliminated. Instead, the Republican jurists aimed to classify this crime as a form of enslavement according to Article 307. They believed that the practice of '(foster) parents selling (adoptive) children' listed in the previous Article 365 had still 'missed many things' (*yiloushangduo*).[60] This explanation alongside the Amendment did not explicitly point out what exactly had been omitted in the 1914 Supplementary Statutes and 1915 Draft of the Criminal Code. Nevertheless, this legislative amalgamation of selling one's children and enslavement suggested that the Republican legislators intended to penalize various forms of exploitation and control encompassing slave trading and slaveholding. Trading and keeping domestic slaves under the guise of adoption could, thus, be criminalized according to this Article. Conversely, the lack of a clear definition of slavery in the chapter on the 'Offence of Obstructing Liberty' created a space for the court, lawyers, and commoners to negotiate on whether certain practices fell within the category of enslavement or not. From

[57]Compared to Article 307 of 1918, Article 313 of 1928 removed the phrase 'subjecting people to an analogous condition of unfreedom'. The explanation alongside this Article did not clarify why this change was adopted, although it pointed out the legislators' concerns regarding domestic slaves: 'Slavery is against humanity. Euro-American countries have already abolished slavery. But the vice of keeping domestic slaves (girls and boys) in China has not ended … Now in the era of liberation, regarding the vice of keeping domestic slaves, it is necessary to strictly prohibit it. This is why this article is being promulgated.' Huang, *Wanqing minguo xingfa shiliao jizhu*, vol. 2, p. 1000. In the 1935 Criminal Code, the language of this Article was changed to refer to 'anyone involved in enslaving individuals or subjecting them to the unfree conditions analogous to slaves…'. This expression is closer to the language used in Article 5 of the 1926 Slavery Convention, which addressed the condition of forced labour. Changes in legislative language suggest how the international slavery law affected domestic legislation in China. Ibid., p. 1239.

[58]Huang, *Wanqing minguo xingfa shiliao jizhu*, vol. 1, p. 513.

[59]The exact punishment depended on the age of the sold girl and whether she gave her consent to being sold to another household. Ibid., pp. 350, 513, 514.

[60]Huang, *Wanqing minguo xingfa shiliao jizhu*, vol. 2, p. 737.

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that point onwards, the ambiguous form of household labour that was domestic servitude was contested in both discussions regarding international legislation and the courts of China.

In the early years of the Nanjing Nationalist government, jurists from the Supreme Court tended to categorize domestic servitude as slavery. In 1928, following the promulgation of the Criminal Code under the Nationalist government, some provinces issued ordinances prohibiting domestic servitude. In June, the Provincial Ministry of Civil Affairs in Fujian dispatched an ordinance to county magistrates and police stations, urging local governments to 'promote the Party's rule' by forbidding practices that could restrict individual freedoms such as domestic slavery, concubinage, and adopting daughters-in-law.[61] A month after the ordinance was published, the chief prosecutor of the Fujian High Court consulted the Supreme Court on how to try cases of domestic servitude. In the correspondence the prosecutor noted several tricky scenarios. In one of them, an individual purchased a young woman over the age of 20 from a household where she had been a domestic slave (*binü*). On the deed for this transaction, the girl was addressed as an adoptive daughter by the buyer. However, the buyer was still 'perpetuating the custom of keeping domestic slaves' and treated the girl as a *binü*. The prosecutor wondered, under these circumstances, whether the court should send the young woman to a shelter or seek other ways to protect her. In the reply from the Supreme Court, the jurist refused to offer instructions on the recommended method of protection, as it was 'beyond the scope of explanation'. Nevertheless, the Supreme Court suggested that 'if the buyer addressed the girl as an adoptive daughter on the deed but treated her as a domestic slave in reality, then the buyer should be charged under Article 313 (1928 Criminal Code) for enslaving other individuals'.[62]

Neither the Supreme Court nor the Fujian High Court gave an explanation of the conceptual difference between adoptive daughters and domestic slaves or how to tell if the practice of enslavement was conducted under the guise of adoption. Just as the League's Slavery Commission tended to equate adoption practised by 'primitive natives' with enslavement, the judicial institution of China seemed to share the tacit understanding that adoptive daughters and slave girls were usually interchangeable. The situation outlined in the case was not uncommon. As the ordinance prohibiting slaveholding spread from Guangdong to other provinces with the promulgation of the 1928 Criminal Code, people became aware of the risk of using the term 'domestic slaves' (*bi*) in deeds. In addition to addressing domestic slaves as adoptive daughters, guidebooks for writing deeds also recommended replacing the price for indenture (*shenjia*) with a one-off salary as a way to transform the master-slave relationship that had been prohibited by the Criminal Code into an employer-employee relationship according to the Civil Code.[63] Legal experts reminded readers of the guidebook to 'pay extreme attention to the use of language when writing the deed'.[64] Though legal interactions between China and the international institutions did indeed result in the materialization of abolitionist ideals in national legislation, the impact on social customs on the

[61] *Fujiansheng zhengfu gongbao*, no. 47, 1928, pp. 14–16.
[62] Guo Wei (ed.), *Zuigao fayuan jieshili quanwen* (Faxue bianyi chubanshe, 1928), pp. 156–157.
[63] 'Binü guyong qi', in *Qiyue chengshi daquan* (Shanghai zhongyang shudian, 1933), Chapter 8.
[64] Ibid.

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ground was limited. Judicial institutions could decide on how to sentence the slave-owner but not on how to protect liberated slave girls, and the conceptual ambiguity of domestic servitude was exploited by legal experts to defend the interests of their clients—usually the household that had purchased girls for domestic labour.

Anti-slavery legislation in early Republican China not only penalized enslavement in the Criminal Code but also sought to terminate the master-slave relationship in the Civil Code. Nevertheless, ensuring slave girls' right to self-determination by dissolving the master-slave relationship within a household could have placed the girls in a less favourable situation. In 1930, a juror from Pinghu Local Court in Zhejiang province consulted the Judicial Yuan regarding whether the masters of a household held custodianship or guardianship over a domestic slave according to the Civil Code. The Supreme Court confirmed that since the keeping of domestic slaves was prohibited in the Criminal Code and ordinances, a household where a slave girl resided was not liable to exercise custodianship or guardianship over her.[65] The prohibition of domestic servitude coincided with the rising debate over daughters' rights to property inheritance in the Civil Code. In December 1930, the inheritance book of the Republican Civil Code was promulgated by the Central Political Council (*zhongyang zhengzhi huiyi*).[66] According to the letter of the inheritance book, daughters enjoyed the same inheritance rights as sons. Adoptive children had half the inheritance rights of biological children; however, when adoptive parents had no biological children, adoptive children acquired full inheritance rights.[67] Given that households tended to claim domestic servitude as bona fide adoption, liberating slave girls from their masters' custodianship might have disadvantaged them when it came to acquiring rights to property inheritance.

Obliterating slaves in legal practices (1930–1940)

By the end of the 1920s, the official discourse in China had incorporated domestic servitude, especially the practice of enslavement under the guise of adoption, into the legal category of slavery. Nevertheless, as legal and judicial institutions were not responsible for resettling the liberated slave girls, the social vice of slaveholding had not been resolved through the legislation per se. Codifying the practice of enslavement into the Criminal Code brought Chinese law in line with the international legal regime against slavery but would also bring about unexpected consequences in terms of legal practices. By the mid-1930s, Chinese jurists found themselves trapped in a dilemma of abolitionism—categorizing domestic servitude as slavery according to the Criminal Code seemingly confirmed the existence of slavery in China, which contradicted the statement presented to the League's Slavery Commission that 'there is no slave in China'.[68] A new round of enquiry into slavery issues spearheaded by George

[65]Si fa yuan can shi chu, *Sifayuan jieshi huibian*, vol. 1, 1931, p. 351.

[66]Bernhardt, *Women and Property in China*, Chapter 4.

[67]Bernhardt, *Women and Property in China*, Chapter 6; see also *Minfa jichengbian shiyi* (Shanghai fazheng xueshe, 1931), p. 12.

[68]See Wang Chong Hui's reply to the League's Mandates Section. 'The Enquiry on Slavery-Information Concerning China', 1924, United Nations Library and Archives, Geneva.

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Maxwell pushed Chinese jurists to realize the dilemma they faced. Efforts to distinguish China's domestic servitude from slavery were launched in legal discourses and practices in order to confront the League's humanitarian interference.

In 1934, the ACES was established under the League's Council. The establishment of a permanent League commission on slavery had been part of the blueprint since the first meeting of the TSC in the 1920s.[69] Born into a family where three generations had served as colonial governors in British Malaya and the Straits Settlements, George Maxwell, the British member of the ACES, was particularly interested in slaves in Asia.[70] His colonial experiences in British Malaya might have shaped Maxwell's knowledge about *mui tsai*. When fulfilling his advisory responsibility to gather information about slavery in China, Maxwell devised a questionnaire that specifically targeted the *mui tsai* system and assumed that domestic servitude was the only form of slavery that existed in China. Dispatched to the British consulates in China and the Nationalist government,[71] the questionnaire was intended to collect comprehensive information about the slavery and abolitionist movements in the nation. It included questions on whether the *mui tsai* system existed in municipal areas, whether there were any laws or provisions against the *mui tsai* system, whether public opinion regarding the abolitionist issue was favourable or indifferent, and whether there were charitable organizations for slave girls in China similar to Po Leung Kuk in Hong Kong.[72] In their response to the questionnaire, most British consul-generals reported that domestic slaves, known as *binü* or *yatou* in most provinces, were still widespread in China. The consul-general in Canton even bluntly expressed his pessimism about enforcing the ordinance against the keeping of domestic slaves in the province, which was known for being a pioneer in liberating slave girls. He considered the abolitionist effort as 'one of *non possumus*'.[73]

In response to the accusatory voices aimed at the Nationalist government's incompetence in abolishing slavery, Chinese jurists tried to counter the League's enquiry by indicating the essential difference between slavery as defined in international law and domestic servitude as a Chinese custom. In his response, Cheng Tien-hsi, the former vice-minister of the Ministry of Justice who later served as a judge in The Hague in 1936, gainsaid the Slavery Commission's confusion regarding Chinese

[69]See Suzanne Miers, 'Slavery and the Slave Trade as International Issues 1890–1939', *Slavery and Abolition*, vol. 19, no. 2, 1998, pp. 16–37.

[70]See John Michael Gullick, 'William George Maxwell: A Biographical Note', *Journal of the Malaysian Branch of the Royal Asiatic Society*, vol. 90, no. 2, 2017, pp. 117–126.

[71]The working procedure of the League's Slavery Commission did not allow its members to communicate directly with the state's government, nor did it permit on-site investigation. If a member of the ACES wanted to enquire into slavery issues in China, they could either communicate with the consulates of their country or through the League's Council. The questionnaires were dispatched to the British consulates in port cities in China by Maxwell and to the Chinese government by the League's Council. Responses to the questionnaire from the British consulates were varied. Some consulted Chinese officials for information, whereas others reported their observations or impressions. The ACES learnt about slavery issues in China through the British knowledge conveyed by the consulates and the Chinese government. Regarding the correspondences between Maxwell and the British consulate in China, see FO 371/18315, Adam Matthew Digital. Regarding the correspondence between the League's Council and the Chinese government, see 022-080700-0035 in Archives, Academia Historia, Taipei.

[72]F2337/782/10 (FO371/18315, 1934), Adam Matthew Digital, pp. 99–102.

[73]Ibid., p. 191.

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domestic servitude (*nubi*) and slavery. He described domestic servitude in China as an 'open' slave system[74] in which slave girls, who were usually from impoverished families, achieved a certain social mobility by serving in middle-class households and marrying into another family when they reached adulthood. This Fujian-born, London-educated jurist attempted to extinguish Maxwell's abolitionist passion, arguing that the persistence of domestic servitude was not a result of lagging humanitarian legislation by the Nationalist government but of its indispensable charitable function in an underdeveloped country.[75]

Caught in the tension between enquiries from the international anti-slave regime and the persistence of domestic servitude, Chinese jurists started to adjust the definition of slavery in legal discourse and practice. In 1932, the Nationalist government promulgated a nationwide ordinance, entitled 'Prohibition of Keeping Male and Female Domestic Slaves' (*jin zhi xu nu yang bi ban fa*). Regarding the genealogy of Chinese slavery, both Western Sinologists in abolitionist circles and Chinese officials confirmed that the direct translation of *nu* should be 'slaves', whereas *bi* did not necessarily carry the meaning of slaves and could, instead, be translated as 'domestic servants' (*puren*). In this sense, the Nationalist government considered *nu* to be a more sensitive term than *bi*. In 1936, an amendment was made to the 1932 Anti-slavery Ordinance, which changed the title to 'Prohibition of Keeping Female Domestic Slaves' (*jin zhi xu bi ban fa*) but left most Articles untouched.[76] Some legal experts even suggested that lawmakers should replace the term 'domestic slaves' (*bi*) with 'domestic servants' so as to distinguish slavery as defined in Chinese national laws from slavery as defined in the 1926 International Convention, given that China, unlike European countries, had no tradition of a large-scale slave trade in which full ownership was exercised over individuals.[77] The penalties for people who enslaved others was in the 1935 revised Criminal Code (Article 296),[78] although legal practices tended to avoid substantiating this crime. Explanations of cases alongside the new Criminal Code also emphasized the difference between domestic servitude and de facto slavery. Although part of the international slave regime, Chinese jurists and judges followed a tacit principle: the fewer people sentenced under the crime of enslavement, the less evidence there was to suggest the existence of slavery in China.

[74]Regarding the definition of the 'open slave system', see Anthony Reid, *'Closed' and 'Open' Slave Systems in Pre-Colonial Southeast Asia*' (Leiden: Brill, 2017), pp. 1462–1485.

[75]F2337/782/10 (FO371/18315, 1934), Adam Matthew Digital, p. 205.

[76]Regarding the content of the ordinance, see 'Neizhengbu gongbu jinzhi xunu yangbi banfa', *Zhonghua faxue zazhi*, vol. 3, no. 9, n.d., pp. 142–149, and *Neizheng gongbao*, vol. 9, no. 3, 1936, pp. 215–218. Regarding discussions on translating the term, see the Archives of the Anti-Slavery Society at Bodleian Libraries, Oxford, MSS. Brit. Emp. s. 22 / G362.

[77]In 1937, Sha Hui, a lawyer in the service of the chairperson of the Fujian provincial government, wrote an article explaining the debates surrounding the crime of enslaving others. He indicated that among jurists, there were two factions debating the legal definition of slavery. The 'faction of reality' believed that slavery should be defined by how the individual was treated. According to this faction, if a slave girl was treated well, then an accusation that her master's household was enslaving her should not be established. Conversely, the 'faction of status' believed that slavery should be defined by the status—namely, the position—ascribed to an individual, no matter how they were treated. Sha was inclined towards the faction of reality and suggested that the definition of domestic slaves should be reconsidered. See Sha Hui, 'Shiren wei nuli zui zhi jiantao', *Fujian xueyuan yuekan*, vol. 3, no. 2, n.d., pp. 15–19.

[78]Huang, *Wanqing minguo xingfa shiliao jizhu*, vol. 2, p. 1239.

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

A case appeal to the Southwest Branch of the Supreme Court (SC) in 1936 reveals how the judicial system managed to circumvent the crime of enslavement. In 1927, after his wife passed away, Chen Shuxiu, a commoner living in Xingye County of Guangxi province, sent his four-year-old daughter Zhaodi to his cousin sister's household for foster care. Several years later, his cousin's sister died of illness, and Zhaodi remained living with the cousin sister's son, Zhong Yasheng. In 1935, Zhong, assisted by his aunt, Liang Shisan, sold Zhaodi to the household of his relative Liang Shiyi as a domestic slave (*binü*) with an indenture price of 110 silver yuan. Learning of this transaction, Chen sued Zhong, Liang Shisan, and Liang Shiyi for abducting Zhaodi through deception. The initial trial of the case was handled by the judicial office of Xingye County[79] and Zhong, Liang Shisan, and Liang Shiyi were accused of enslaving others under the Offence of Obstructing Liberty. Zhong and Liang Shiyi were identified as the main perpetrators and were sentenced to one year of imprisonment; Liang Shisan was identified as an accomplice and sentenced to six months of imprisonment.

Sentencing the defendants under the crime of enslaving others indicates that the judiciary of Xingye County recognized Zhaodi's status as a domestic slave. The judiciary provided three reasons for doing so: despite Liang Shiyi claiming Zhaodi as an adoptive daughter, Zhaodi came to Liang's household through a contractual transaction with an indenture price, which was not the regular procedure of adoption according to the Civil Code; Liang was from a large household that 'liv[ed] together and shar[ed] the use of property' (*tongju gongcai*), so she had no need to adopt a daughter; and during the interrogation, Liang acknowledged that she made Zhaodi do domestic labour like cooking and cleaning.

Liang Shiyi disagreed with the judgment and appealed to the Guangxi High Court (GHC). In the second trial, the GHC's decision was consistent with the initial trial. Liang, thus, appealed to the Supreme Court. After re-examining the case, the Supreme Court urged the GHC to revoke the judgment, debunking every reason provided in the previous verdicts that identified Liang's practices as enslavement. The GHC was blamed for not following the Criminal Procedure Law and quoting the facts narrated by Chen Shuxiu from the verdict of the initial trial without verification. Even if the facts outlined in the verdicts of the initial and second trials were the truth, the Supreme Court further argued, the crime of enslaving others could not be established given that Liang's practices seemed irrelevant to enslavement. There was no legal term stipulating that paying a price for adoption was unlawful; thus, the indenture price listed in Zhaodi's deed could not suggest that she was sold as a slave under the guise of adoption. Similarly, asking Zhaodi to do domestic labour was not equal to enslaving her. Regarding the reason concerning the background of Liang's household, the Supreme Court criticized the GHC for merely relying on 'intuitive assumptions'.[80]

[79]The Republican judicial system under the Nanjing Nationalist government (1928–1949) was a three-level system: the Supreme Court (national level), the High Court (provincial level), and the Local Court (county level). Local courts did not cover all the counties. For counties such as Xingye that were not covered by any local courts, the magistrate from the county government bore the responsibility of trying cases. See Xu, *Trial of Modernity*.

[80]*Guangdong sifa yuekan*, vol. 5, no. 4, 1936, pp. 59–64, Sun Yat-sen Library of Guangdong Province.

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

The way the Supreme Court examined the 1936 Xingye County case had changed significantly from how the court tried similar cases in the late 1920s. As I addressed above, case explanations published alongside the 1928 Criminal Code encouraged local courts to adhere to the anti-slavery ordinances and penalize the practice of enslavement under the guise of adoption.[81] Nevertheless, after the international slave regime escalated abolitionist pressure in the mid-1930s, official discourse and legal practices began to avoid categorizing the custom of keeping domestic slaves as slavery. Although both the county's judiciary and the provincial High Court unquestionably identified the girl sold under an indenture deed as a slave, the Supreme Court, which was potentially mostly concerned with the state's abolitionist reputation, dedicated itself to distinguishing this transaction from enslavement. The lack of a clear definition of slavery in the 1928 and 1935 Criminal Codes made it possible for Chinese jurists to adjust their judgments to align with the state's political and diplomatic demands. The result rendered the anti-slavery movement in early twentieth-century China a performative effort to present the state's humanitarian governance and abolitionist capability.

But should we entirely deny the constructive transformation brought about by the legal interactions between China and the international slave regime over the decades? Cases from local archives indeed suggest that aligning national legislation with the international law against slavery achieved a certain degree of protection for slave girls. For example, in 1934, two slave girls working in a prestigious business household in Swatow grew tired of the abuse they received and escaped to Hong Kong. With assistance from the Hong Kong-based Swatow Society, the girls were escorted to the municipal shelter of Swatow by Po Leung Kuk. When the wife of the household attempted to reclaim her 'adoptive daughters', the shelter asked her to sign a letter of guarantee in front of the municipal government, promising that the girls would no longer be abused and that their master-slave relationship would soon be dissolved, in line with the ordinance against keeping domestic slaves.[82] Though the household was not penalized by the Criminal Code for enslaving the girls, the letter of guarantee recognized by the government might have provided the girls with legal protection when they faced abuse in the future. In addition, in 1942, a slave girl in Datian County of Fujian province wrote a letter to her biological father, complaining that she was being abused by the household of Huang, which had 'adopted' her. Her father soon petitioned the county government, seeking to reclaim his daughter and accusing Huang of unlawfully keeping domestic slaves. Although the county judiciary did not sentence Huang's household under the crime of enslaving others, it mandated Huang to dissolve the bonded relationship with the girl, facilitating her return to her natural family.[83] Despite the state's reluctance to invoke the crime of enslaving others, it was possible for laws and ordinances against slaveholding to serve as tools for charitable institutions and slave girls to avoid mistreatment in their masters' households.

[81]Guo (ed.), *Zuigao fayuan jieshili quanwen*, pp. 156–157.
[82]M028_12_9_821, Shantou Municipal Archives.
[83]0001-004-001053, Fujian Provincial Archives.

https://doi.org/10.1017/S0026749X24000386 Published online by Cambridge University Press

Conclusion

Through examining China's interaction with the international legal regime of slavery, this article has shown the intricacies of global legal encounters. While the international anti-slave regime imposed transformative power on China's domestic anti-slavery legislation, the ambiguous definition of slavery in the late Qing and Republican codes helped preserve the social custom of domestic servitude. While the state avoided categorizing domestic servitude as slavery in order to maintain its abolitionist reputation, local cases suggest that slave girls could use anti-slavery laws and ordinances to protect themselves from mistreatment. While the legal interactions between China and the international legal regime had limited effects on social reforms in the early twentieth century, their legacy has been adapted to confront new forms of labour exploitation and human rights challenges.

Today, the crime of enslaving others (Article 296) is still codified in the Criminal Code of the Republic of China in Taiwan. From 1989, when the government of Taiwan started importing migrant workers from underdeveloped countries in Southeast Asia to supplement the shortage of labour in the manufacturing industry, Article 296 has been mostly invoked to protect migrant workers from forced labour and mistreatment.[84] Although the legal interactions between China and the international slave regime initiated by the controversy surrounding domestic servitude did not fully fulfil its abolitionist goal in the early twentieth century, this humanitarian interference on anti-slavery legislation has, ultimately, reaped fruit in the twenty-first century.

Acknowledgements. I am grateful to Mara Yue Du, Jenny Huangfu Day, Si-yen Fei, Durba Ghosh, T. J. Hinrichs, and Jack Neubauer for their suggestions on developing this article. Early drafts of this article were presented in panels at the Association for Asian Studies Annual Conference and the International Society for Chinese Law and History Biannual Conference. I would like to thank all the panel participants and audiences for their valuable comments. Finally, I would like to thank the editors and the two anonymous reviewers of *Modern Asian Studies*. The article would not have been possible without their helpful feedback.

Funding statement. The project was supported by the Einaudi Center and the East Asia Program at Cornell University, as well as the East and Inner Asia Council of the Association for Asian Studies.

Competing interests. The author declares none.

[84]Kuo-Jung Lo, 'You guojifazhan guandian lun renkoufanmai laoliboxue zhi xingshiguifan', *Zhongzheng daxue faxue jikan*, no. 56, 2017, pp. 19–98.

Cite this article: Wang, Anke. 2025. 'Abolitionist parallels: International law and domestic servitude in South China (1900–1940)'. *Modern Asian Studies*, pp. 1–21. https://doi.org/10.1017/S0026749X24000386