

Rethinking JOSA(H)

In these short pieces, scholars reflect on the impact of articles published in the Journal of the Oriental Society of Australia, now the Journal of the Australian Society for Asian Humanities.

Traditional Chinese family values were not so virtuous and Republican women were not so quiet—Reflections on Bernice Lee’s ‘Women and the Law in Republican China’ (1977).

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Bernice Lee’s 1977 article pioneered research in women’s legal history in China. It was among the very first to explore the dramatic shifts in the legal status of women contained in the Nationalist’s (GMD) 1931 Civil Codes that recognised women’s personhood and legal equality. Lee not only maps the differences between the old and new laws but also places them into a rich historical context revealing the deep cultural challenges the new Civil Codes presented. At the time of publication, the article broke new ground because it was commonly assumed that there was nothing worth researching in legal history about women. Apart from the low status that accrued to *any* scholarly research on women prevailing at that time, there were two other conventions that stymied growth in the field. First, researchers sometimes assumed that the CCP, not the GMD, granted women equality in 1949. And second, for those who did recognise the advances of the GMD’s civil code, that these laws remained paper decorations to an incompetent, corrupt state. Lee’s meticulous research revealed the weaknesses in both these assumptions and as a consequence the article remains a classic reference in the field.

Her detailed discussion of the key legal texts and their related secondary literature revealed not only the emergence of ‘legal equality’ in the 1930s but simultaneously the extensive nature of the discrimination women faced under the Qing codes. In contrasting China’s ‘old and new’ legal codes, Lee shows the many inglorious aspects of the now much-vaunted ‘traditional Chinese family values’. The practice of ‘hiring out’ (prostituting) wives and daughters was sufficiently frequent that there were imperial-era laws prohibiting or limiting the practice. But, reaffirming the status of wives as property, Ming and Qing codes only prohibited men and mothers-in-law from pawning or hiring out wives to other men if they were *not* poor. For the poor, no such legal constraints against prostituting a wife or daughter-in-law applied. Girls who were traded for cash between families as child brides also had some protection in the imperial laws—it was illegal to beat them to death. Against this backdrop, the achievements of the 1931 Civil Codes in championing the principle of equality

of all human beings becomes evident. The GMD codes outlawed the pawning, renting, buying, and selling of people altogether. In the first thirty years after the establishment of the People's Republic of China, evidence of women's status as chattels in the Qing, served as proof of the evils of 'feudal values' and the virtue of the socialist state. One wonders how, or if, current advocates of 'traditional Chinese family values' reconcile their nostalgia of such 'traditional values' in the creation of the harmonious society.

How has the field of women's legal history built on Dr Lee's foundational research?

First, we know that women *did* in fact use their new legal rights in courts of law. Work by Lisa Tran and Margaret Kuo draws on archival records of the police and courts and provide lively and sometimes distressing evidence of fiery divorce cases, concubinage, adultery, bigamy and domestic violence.^[1] These sources were inaccessible in the 1970s. Lee tentatively concluded in 1977 that the new laws were not *entirely* moribund, even while she noted their limited reach and had, in the middle of the article, equivocated about their actual impact on the daily lives of women. The evidence available in 1977 about the extent of the legal activity undertaken by women, or the change in social practices these laws produced was extremely limited. Lee's tentative conclusion is a mark of responsible scholarship. As the field of Republican era legal history has expanded, archives have opened, and new sources have come available, Lee's suspicion has been confirmed.

Second, we now know far more about the activism of women in the first half of the twentieth century for women's rights. One of Lee's key arguments is that women were the beneficiaries of a change in law that was originally prompted by China's leaders' desire to abolish the extraterritorial rights of imperialist powers. This perspective accords with a long-held view that Chinese women did not seek their own liberation, but rather were granted it by enlightened men. And, in this case, Lee posits that women were almost inadvertent beneficiaries of a process in which 95 per cent of contemporaneous western laws were being adopted by China, and these just happened to include sex equality. On this view, women in China almost accidentally secured legal equality in the GMD Civil Code. We know now that China's feminists were extremely exercised about legal reform, active in seeking their rights as '#people too' and argued frequently in protests, associations, magazines, and newspapers to that end.^[2] The educated women of China wanted equal status with their brothers and husbands in all matters of family law including inheritance and divorce rights and protection as independent persons. The extensive sources now readily available, such as women's journals, daily newspapers as well as parliamentary documents and legal records show that China's feminists had laid the groundwork in advance of the drafting of the Civil Code. In so doing, they ensured the drafters did not blithely eliminate the sex equality provisions. The inclusion of French-trained lawyer, Zheng Yuxiu (Soumay Tcheng), an outspoken feminist, in the drafting committee, was a significant indication that the GMD was taking women's views into account.

Finally, Lee's article contributed to elevating scholarly work on women's history—before 'gender' had emerged as a common analytical tool—and provided a launchpad for what is

now a dynamic field of many scholars, such as Tran and Kuo, working on gender and the law in Chinese history.

[1] *Concubines in Court: Marriage and Monogamy in Twentieth-Century China*. (Lanham: Rowman & Littlefield, 2015); ‘Adultery, Bigamy, and Conjugal Fidelity: The ABC’s of Monogamy in Republican China’, *Twentieth-Century China* 36.2 (May 2011): 99-118; ‘Sex and Equality in Republican China: The Debate Over the Adultery Law’, *Modern China* 35.2 (2009): 191-223.

Margaret Kuo, *Intolerable Cruelty: Marriage, Law and Society in Early Twentieth Century China* (Lanham: Rowman & Littlefield, 2012); ‘Spousal Abuse: Divorce Litigation and the Emergence of Rights Consciousness in Republican China’, *Modern China* 38.5 (2012): 523-58; ‘The Legislative Process in Republican China: The 1930 Nationalist Family Law and the Controversy over Surnames for Married Women’, *Twentieth-Century China* 36.1 (2011): 44-66.

[2] For example, Louise Edwards, *Women’s Suffrage in China* (Stanford: Stanford University Press, 2008); Zhang Yun, *Engendering the Women Question: Men Women and Writing in China’s Early Periodical Press* (Leiden: EJ Brill, 2020).

About Bernice Lee

Bernice Lee (née Silk) first became interested in Chinese language and literature while teaching English to Chinese Primary school children in Hong Kong in 1960-62. Learning Cantonese became one of her spare time activities.

After returning to Sydney, she enrolled in a BA at Sydney University and her Hong Kong experience motivated her to study Chinese. In 1969 she graduated with First Class Honours in Chinese and a major in History.

Between 1970 and 1975 she undertook graduate research and completed her PhD thesis, titled “The change in the legal status of Chinese women in civil matters from Traditional Law to the Republican Civil Code” under the supervision of Professor A.R. Davis, Head of the Department of Oriental Studies at Sydney University, and with the assistance of Dr Agnes Syrokomla-Stefanowska. As part of her graduate studies she conducted research in Taiwan during 1972-73 where she received invaluable advice and guidance from two Chinese legal scholars, Professor Tai Yen-hui, Vice President of the Judicial Yuan and Professor of Law at National Taiwan University, and Dr Lee Tzu-wen.

From 1976-79 she was a tutor in Asian History in the Department of History at Sydney University. During that time, she wrote numerous articles on topics such as Chinese women and the law, the *tong yangxi* (where a young girl is brought into the family to be a future daughter-in-law for the family’s son), infanticide, footbinding, concubinage and revolutionary Chinese women.

In 1980 she joined the Commonwealth Public Service in Canberra where she worked in various roles until her retirement in 2002. Two of her positions related directly to China; China analyst at the Office of National Assessments 1981-86 and a posting to Beijing in 1990-93. She was also posted to Hanoi in 1997-2000.

From 2005-2008 she returned to Hanoi to teach at RMIT International University.

Retirement has given her the opportunity to renew her interest in China through reading widely and giving a series of talks to the [University of the Third Age - U3A](#) in Sydney and Canberra on Chinese literature, history and culture.