

## **The Making of Juvenile Justice in Postwar Taiwan: Looking for Legacies of Republican China's Criminal Policies**

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The history of juvenile justice in postwar Taiwan can be traced back to the Japanese colonial period (1895-1945) and to Republican China (1912-1945, its influence on Taiwan began from the KMT's ruling in 1945). Much literature has discussed the impact of colonial criminal policies on establishing juvenile justice in Taiwan while little has focused on the influence of criminal policies in Republic China on the postwar making of new juvenile justice system. This paper therefore aims at investigating into the legacies of Republican China's criminal policies to postwar Taiwan.

In this paper, I first delineate how the Republican Chinese government developed and failed its modern juvenile justice: how it defined juveniles, regulated juvenile delinquency and facilitated juvenile justice (courts, reformatory schools and juvenile prisons). I also examine the official and academic discourse on youth and crime. Second, I discuss how scholars from Mainland China started to remake juvenile justice during 1950s and 1960s in Taiwan and the impact of theoretical legacies on the establishment of the new system. In the final part of this paper, I point out that the current juvenile justice in Taiwan has multiple historical roots and they still affect the way we envisage juvenile justice now.

## **Dilemma of “Innocent but Mad” and “Sane but Guilty”: A Legal History Study of Criminal Trial and Female Offenders through Legal Feminism Perspective**

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Female offenders, especially “women who have suffered long-term abuse in family/marriage”, have always been the focus of research in criminal law and feminist criminology. Whether and how we argue that the women mentioned above should be innocent or not responsible for the death of their husbands, if they killed their husbands after their mental breakdown, is a difficult question. In Taiwan, there was “Deng Ru-wen case (鄧如雯)” and “Zhao Yan-Bing (趙岩冰) case” belonging to this situation. There are articles discussing whether legitimate defense can be applied to these by judicial system (Chih-Jen Hsueh 2015). There are also scholars discussing how female offenders are reshaped into objects without any agency through the reconstruction of narrative process in the criminal trial (Chia-Wen Lee 2005). A woman with clear logic must be a perpetrator, and only a woman who is mentally abnormal can be excusable: this is how the mainstream judicial system views female crimes. In view of this, this article focuses on the way how female offenders are treated by the law, and analyzes how the law recognizes and constructs female offenders sexuality and personality through the historical data of them in the legal history of East Asia (especially in traditional China and Taiwan). This article finds that no matter it is the ancient official admonition (官箴書) or the Penal Memorials (刑科題本), the “ignorance” is the most important excuse for making women offenders “innocent”.

What’s more, there has not been an article studying the female offenders in the TanHsin Archives (淡新檔案) from the perspective of legal feminism in the past. This article finds that although the way of legal reasoning in Tan-Hsin Archives still focus on “eliminating women’s agency ” to make them innocent, there were still a few female offenders emphasizing their rationality. This article argues that contemporary criminal trials force women to choose between the dilemma of “innocent but mad” and “sane but guilty.” This phenomenon has always existed in legal history, but it is reborn in a different face, which is consistent with the legal history theory “preservation through transformation” (Siegel 1997).

## **Confucianism Influence over the Legal Status of Women in the Law of Nguyen Dynasty**

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Many opinions believe that the law of the Nguyen Dynasty (1802-1945) considered to be strongly influenced by Confucianism and Chinese feudal law. Confucianism influenced the change of the legal status of women in the family and society during the Nguyen dynasty.

The Confucian key statement about the position of women focuses on two points. The first is the "tam tông" (three relationships that bind a woman's life). When women are at their parents' house, their lives depend on their father. After being married, the husband will be the most powerful and they depend on their husband. If the husband dies, the woman will have to obey her son. The second is the "tứ đức" (four essential characteristics and moral rules); ingenuity at work, beautiful, well-speaking, and ethics. These points were built on the basis of Confucian ideology and were changed to suit the requirements and practical tasks serving the purposes of the Nguyen feudal class.

This article adopts the discourse analysis method with a historical approach to explain female status in society. The article will examine the provisions of "Hoang Viet Luat Le" (Vietnamese royal law and practice), also known as the Gia Long Code of 1815 to clarify this argument. The article argues that the legal status of women in the Nguyen Dynasty's law is lower than that of Vietnamese women in previous feudal times. On the other hand, since the Nguyen Dynasty was the last dynasty of the Vietnamese feudal regime, this legal thought shaped Vietnamese people's thinking about the position of women in the family and society until nowadays.

## **Protection of the Marriage Regime in Vietnam with Criminal Law - From History to Present**

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As a country in Asia, Vietnam is influenced by the Eastern culture, which attaches great importance to the marital system. Therefore, Vietnam has a policy of laws and regulations to protect the marriage regime on the basis of attaching importance to voluntary marriage of both parties. All acts of infringing upon the marriage regime such as: forced marriage or divorce, obstruction of voluntary and civilized marriage, obstruction of voluntary divorce; adultery; organization of child marriage or incest are subject to administrative or criminal penalties if certain conditions are met.

Under the influence of ideology, culture and economy of countries around the world, especially Asian countries, this has affected the change and development of the marriage regime in Vietnam. Therefore, the criminal law provisions to protect the marriage regime have also changed significantly from history to the present. The study of crimes of infringement of the marriage regime in Vietnamese criminal law as well as comparison and evaluation with similar provisions in the laws of some Asian countries is to see the similarities and characteristics featured in Vietnam's criminal policy on these crimes. At the same time, research also shows the change and development of Vietnam's criminal policy over historical periods, thereby in order to further improve the criminal law to be able to protect the most effectively marriage regime.