

Chinese legal pioneers

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 English ▾

This issue of the *China Business Law Journal* is a significant milestone as it marks the 10th anniversary of the journal. Similarly, this column is a significant milestone as it is the 100th column of *Lexicon*. I am sincerely grateful to readers for their support and interest over the past decade.

The issue also comes just after the end of 2019, which was the year that marked the 70th anniversary of the founding of the People's Republic of China. As reported by Xinhua News on 1 October 2019: "Today enables us to pay tribute to the heroes and pioneers of the Republic".

In a similar vein, this column pays tribute to Chinese legal pioneers in common law jurisdictions; namely, Chinese people who have been pioneers of the legal profession in the common law jurisdictions of Australia, the UK, the US and Canada. The column commences by outlining the meaning of "pioneer" in Chinese and English, and how the term might be applied to legal pioneers. It then discusses some of the most famous Chinese legal pioneers by highlighting their pioneering achievements and characteristics.

Meaning of pioneer

The Chinese term for "pioneer" (先锋) consists of the character *xian* (先), meaning "first" or "front", and *feng* (锋), meaning the point or sharp edge of a tool such as a sword or knife. When *feng* is combined with the character *qian* (前), meaning "front", the resulting compound *qianfeng* (前锋) refers to the spearhead or vanguard of an army.

Similarly, the English word "pioneer" is derived from the Old French word "peonier", which means a foot soldier. A synonym of "pioneer" is "vanguard", which is also based on Old French and literally means "before guard". It was first used to refer to the "advance guard"; namely, the leading unit at the front of an army.

The term "pioneer" was subsequently used to refer to a person who was a member of a group of people who were the first to enter a region and open it up for settlement. Similarly, both the terms "pioneer" and "vanguard" subsequently came to be used generally to refer to a person who was the first to do or achieve something.

In the case of Chinese legal pioneers in common law jurisdictions, the origin of the Chinese and English words is particularly apt, as many of them had to struggle against discrimination and other obstacles in order to become members of the legal profession in common law jurisdictions.

There are several other characteristics of Chinese legal pioneers that are interesting to note. First, many of them worked as advocates for fellow Chinese people against racial discrimination generally. Second, many of them had careers in areas other than law, particularly diplomacy and politics. Third, all of them appear to have embraced Western culture and to have successfully maintained their Chinese cultural identity within a Western context.



The struggle against discrimination

Hong Yen Chang (1860-1926) was the first Chinese person to practise law in the US. A citizen of China who obtained a law degree at Columbia University, Chang was unable to sit the bar examination in New York as a result of the Chinese Exclusion Act of 1882. This was a racially discriminatory act that prohibited the immigration of Chinese workers into the US and prevented them from becoming citizens.

Chang was subsequently successful in becoming a naturalised citizen, but the New York Supreme Court still opposed his admission to the New York bar on the basis of his race. It was only after the New York State legislature passed a special act in favour of Chang that he was allowed to sit the bar examination and gain admission to practise as an attorney. Despite his naturalisation and his admission to the New York bar, the California Supreme Court later refused to admit him to the California bar when he relocated to California on the ground that his naturalisation was invalid as a result of the Chinese Exclusion Act.

Advocates against discrimination

Many Chinese legal pioneers were fierce advocates against discrimination. Kew Dock Yip (1906-2001), the first Canadian lawyer of Chinese descent, fought successfully in 1947 for the repeal of Canada's Chinese Exclusion Act of 1923, and for the removal of barriers to the immigration of Chinese people into Canada.

William Ah Ket (1876-1936), the first Australian lawyer of Chinese descent to practise as a barrister at the independent bar in the state of Victoria in Australia, was particularly active in fighting against racial discrimination against the Chinese.

In the High Court case of *Ingham v Hie Lee*, Ah Ket represented a Chinese laundry owner who was charged with an offence under the Factories and Shops Act 1905 in Victoria. The act expressly discriminated against the Chinese and prohibited after-hours work in a factory or workroom where furniture was made, or where any Chinese person was at any time employed.

The reason why the Chinese laundry owner had been charged was that a Chinese man had been found between 9pm and 10pm at night ironing a shirt, apparently in breach of the after-hours work prohibition. Ah Ket's legal team successfully proved that the man was not an employee of the laundry but instead a boarder at the laundry, and had been simply ironing his own shirt!

Ah Ket appeared in another High Court case, *Potter v Minahan*. In that case, Ah Ket represented a man who was born in Australia of a Chinese father and a white Australian mother. At that time, people born in Australia were British citizens by right, regardless of their parents' origins.

His father had taken him to China when he was about five years old. After living in China for many years, he returned to Australia as an adult, but was treated as a prohibited immigrant because he failed a dictation test imposed by the immigration legislation at the time. The

dictation test required all immigrants from China to write in English a passage of not less than 50 words dictated by a customs officer.

Ah Ket's legal team successfully proved that he was not a prohibited immigrant. In its decision, the High Court found that if the immigration legislation had intended to remove the rights of citizenship, it should have expressed its intention clearly. In a passage that is still current law in Australia, one of the High Court judges stated:

“It is ... improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness ...”

Diverse careers

One of the most interesting characteristics of many Chinese legal pioneers is that they pursued diverse careers that took them beyond the legal profession and into other areas, particularly diplomacy and politics.

A famous exemplar in this regard is Wu Tingfang (1842-1922), who was the first barrister of Chinese origin to be called to the bar in London. Born in the modern-day Malaysian city of Malacca, Wu is widely credited with being the first Chinese barrister in history.

In addition to this significant achievement, Wu worked as a magistrate in Hong Kong in 1880, and subsequently became Minister of Justice in 1912 and later Minister of Foreign Affairs for the Republic of China in 1917. He also served briefly as Acting Premier of the Republic of China in 1917.

Wu Tingfang's descendants included a number of distinguished persons. His son, Wu Chaoshu (1887-1934) who studied law at the University of London, was Foreign Minister of the Republic of China in 1927-1928 and a Chinese diplomat in the US from 1928-1931. Wu Chaoshu's grandson, George H Wu (born 1950), is a sitting judge of the US District Court for the Central District of California.

William Ah Ket, too, spent time as a diplomat, serving as acting consul-general for China in 1913-1914, and in 1917. A similarly diverse career was pursued by Hong Yen Chang, who spent time as a Chinese diplomat, including working in Washington DC at the Chinese embassy. Chang also worked as a banker in California and a professor of law in China.

Embracing both Western and Chinese cultures. Many Chinese legal pioneers embraced both Western and Chinese cultures and were conversant in each. It was reported by newspapers in

Australia that William Ah Ket had possessed a deep knowledge of the Western classics and modern languages. In addition, it was said that he had a strong love for the language of Shakespeare and quoted Shakespeare in his submissions to the court. Kew Dock Yip, the first Canadian lawyer of Chinese descent, also studied Shakespearian English.

Female Chinese legal pioneers. Not surprisingly, not all Chinese legal pioneers were men. Famous female pioneers include the following:

- Lim Beng Hong (1898-1979), who was the first Chinese woman to be called to the English Bar (1926), and the first Chinese woman barrister in Penang (1927).
- Gretta Wong Grant (1921), who became the first Chinese Canadian woman to become a qualified lawyer in Canada.
- Linda Lee Oland (1950), who became the first Chinese Canadian to be appointed to the Supreme Court of Nova Scotia in 1998, and subsequently became the first Chinese Canadian to be appointed to a Canadian Court of Appeal.

More work to do

Despite the impressive achievements of the Chinese legal pioneers that I have mentioned, there is still more work to do in order to redress the diversity imbalance – in both ethnicity and gender – among the legal profession and judiciary in common law jurisdictions such as Australia.

I am grateful to my friends – William Lye QC and Cam Truong QC, who were the first barristers of Chinese origin to be appointed senior counsel in the State of Victoria, and Reynah Tang, who was the inaugural President of the Asian Australian Lawyers Association and the first lawyer of Chinese ethnicity to be appointed President of the Law Institute of Victoria – for their inspiration and insights as I learn more about Chinese legal pioneers myself. I am also grateful to Professor Chen Li of Fudan University for providing his insights on issues relevant to this column.

This is my first modest contribution to promoting the stories of Chinese legal pioneers and I am particularly proud to be able to do so on the occasion of the 10th anniversary of the *China Business Law Journal* and the 100th column of *Lexicon*.

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