Orientating Feminisms in the Taiwanese Context
—A Men-Inclusive Approach

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"When you ask Taiwanese why they wish for the independence of their island from China, they would give you hundreds of reasons — for example, that the difference in terms of living standard between Taiwan and China is too big or that totalitarianism is unbearable for Taiwanese. Here I offer a further explanation: Taiwanese are trying to recover from a sickness, from which they have been suffering for a long time and which one can call: 'cultural schizophrenia.'"[1]

-Lung Jingtai

INTRODUCTION

Taiwanese have long suffered from living in a state in which they are told who they are and how they should lead their lives. As children at school, we had to memorize the names of rivers, mountains, fauna and flora in China, whereas we learned little about Taiwan's own geography, history, literature, and language.[2] We learned that we all were "Chinese" living in Taiwan and that we would someday fight to regain the mainland, where we belonged. The reality is that the people of Taiwan

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[1] *See* Lung Jingtai, *Die Namen der Flüsse-Ach, Taiwan: Wie ein Volk ohne Eigene Identität Lebt [The Names of the Rivers-Ah, How a Nation Lives Without Its Own Identity],* Frankfurter Allgemeine Zeitung, Jan. 24, 1997, at 35.

[2] Prior to 1998, the standard curriculum at junior and senior high schools in Taiwan included a "National Geography" course, in which China's thirty-six provinces, including Taiwan, were defined as the country's geography. The reality, then and now, however, is that People's Republic China is divided differently than the way we were taught. After the lift of the ban to travel to China in 1987, millions of Taiwanese have traveled aboard to China and found out what they learned in the "National Geography" course has become historical terms or only

have different ethnic origins, speak different languages, and lead distinct everyday lives and that—for at least four hundred years—Taiwan has gradually developed its own identity separate and apart from China.

Surprisingly, I found that a similar "schizophrenic" phenomenon exists in the realm of gender relations in Taiwan. An unrealistic and unrepresentative set of assumptions about gender roles embedded in laws, policies, and cultural norms contradicts the complex struggle and unending dialogue between gender norms and individual practices. This "pluralistic ignorance" hinders the potential to deconstruct the existing patriarchy and reconstruct more egalitarian gender relations.[3] For instance, the homemaker/ breadwinner division of labor along gender lines—whereby women are uncompensated for their labor as full-time homemakers,[4] while men are the sole economic providers in the family—has not been traditional for all families, and is certainly not feasible today for all families. In families that own small farms or businesses, the traditional arrangement is for women to work without pay not only in

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exists in the KMT's construct of China.

[3] The term "pluralistic ignorance" was coined by the social psychologist Floyd Allport in the 1920s. It refers to a process whereby members of a group inaccurately perceive norms or wrongly estimate others' conforming to the norm and are thereby misled into thinking that their opinions are less popular and less widely shared than they actually are. *See* Jacob Shamir & Michal Shamir, *Pluralistic Ignorance Across Issues and Over Time: Information Cues and Biases*, 61 PUB. OPINION Q. 227 (1997).

[4] *Cf.* One of the unique exceptions is Taiwan's latest revision of Civil Code passed on June 4th, 2002. The new Article 1018-1 of the Taiwan Civil Code recognizes the value of housework and allows couples to agree upon a "freely disposable sum of money" to provide homemakers monetary support to sustain their contributions to the marriage. However, how exactly this nominal "paid housework" entitlement will be transformed into social reality in Taiwanese society remains to be observed. *See* Department of Legal Affairs of the Executive Yuan, The Conference Record dated June 17, 2002, "Discussion of the Related Changes Following the Amendment of Conjugal Property Rights Law of Civil Code" (visited Nov. 28, 2002) <http://www.moj.gov.tw/g_21_detail.asp?id=133>.

the home but also in the family business. Today, however, one paycheck in one household is no longer enough. Why, then, is this gendered homemaker/breadwinner assumption so persistent and pervasive? This article examines these and other such contradictions.[5]

The gender system is constructed multi-dimensionally, is manifested in various gender role stereotypes, and operates within dichotomous spheres: male-female, public-private, work-family.[6] The gender system, comprised of masculine and feminine ideologies,[7] sustains and reproduces the vicious circle faced by working women and is nurtured by the vicious circle in turn.[8] To break this vicious circle that involves women's employers at work and partners at home, we must investigate the problematic dichotomies of masculine and feminine ideologies which underlie it[9] and that invariably affects women disproportionately while also frequently constraining men's choices as well. For example, the ultimate stereotypical role for women is that

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[5] The issue of national identity is related to gender equality issue in that each Taiwanese citizen should be guaranteed to freely develop her/his own personality with the least constraints from both external forces (including foreign countries and his/her own state) and internal forces (such as internalized social expectations). Furthermore, if Taiwan continues to focus most of its policy concerns on combating the "One China" ideology, the gender equality issue—as a part of larger legal reforms in Taiwan—is less likely to be a priority on the political agenda.

[6] *See generally* THE GENDERED SOCIETY READER (Michael S. Kimmel & Amy Aronson eds.., 2000).

[7] The concept of ideology I rely on comes out of a socialist feminist tradition. The beliefs, images, explanations, and evaluations that constitute ideology are constructed historically in conjunction with, and in relation to, material and cultural conditions and power relations, which are then represented as natural, inevitable, and necessary in the current social order. *See* S. A. M. Gavigan, *Paradise Lost, Paradox Revisited: The Implications of Familial Ideology for Feminist, Lesbian, and Gay Engagement to Law*, 33 OSGOODE HALL L. J. 589-624 (1993).

[8] *See infra* text accompanying note 43-50.

[9] For a discussion of problematic dichotomies see ARTHUR BRITTAN, MASCULINITY AND POWER 14-18 (1989).

of "mother." Therefore affirming motherhood runs the risk of reinforcing the patriarchal vision of women's "natural" role.[10] However, the reality of women's uncompensated, disproportionate share of housework and childcare persists and continues to create a disincentive for employers to hire and promote women in the workplace.[11] Unresponsive employment benefits and inadequate public support for childcare contribute to making "equal opportunity employment" an empty slogan, and often leave women with the vexed dilemma of choosing between work and family. Furthermore, certain philosophical underpinnings retain the stereotype that mothers are expected to devote all their time to their children, whereas ideal workers are expected to devote all their time to their employers. Where women work outside the home, they are thereby left alone to manage two tasks simultaneously. Even when they can cope with these demands, they constantly face harsh gender policing from others, and often internalize corrosive gender ideals that lead them to question whether they are "good" mothers.[12] Thus, despite a legitimate concern about reinforcing gender stereotypes, the complexity of social reality requires us to examine more carefully "gendered motherhood."

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[10] *See* Linda J. Lacey, *As American as Parenthood and Apple Pie: Neutered Mothers, Breadwinning Fathers, and Welfare Rhetoric*, 82 CORNELL L. Rev. 79, 81 (1996) (book review).

[11] The United Nations concludes that women's unpaid work worldwide produces the equivalent of US$11 trillion, almost half the value of the US$23 trillion world economy. The output from the unpaid labor of women has seldom been evaluated and is not included in most nations' Gross Domestic Product calculations. Even in the American legal system, various legal doctrines systematically devalue homemaking. *See* UN Development Program, Human Development Report 97 (1995); Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 Nw. U. L. REV. 1 (1996).

[12] Interview with Prof. Dr. Wang Pei-lein, record on file with author; *see also* JOAN WILLIAMS, UNBENDING GENDER (1999); Rachel L. Toker, *Note: Multiple Masculinities: A New Vision for Same-Sex Harassment La*w, 34 HARV. C.R.-C.L. L. REV. 577, 581-83 (1999).

And what about men? What does it mean to be a man in "a time of fallen heroes"?[13] If we continue to think in dualistic terms whereby women are assigned exclusively to certain roles, aren't men left with the remaining responsibilities and confined to those areas? What costs do men have to bear in order to enjoy the privileges provided by mainstream sociocultural norms and legal institutions? Men, who believe or are restricted by the idea that masculinity is equivalent to an ability to support their family on their own salary, suffer greatly from the changing global labor market which has seen an enormous growth in overall income inequality, high poverty rates, and expanding poverty.[14] Some men feel ashamed that they alone cannot support their family and that their wives therefore must work outside the home.[15] What choices are left for the man who does not want to put fifty or sixty hours a week into work and does not want to die of a heart attack in his fifties without ever spending significant time interacting face-to-face with his children?[16] Are men satisfied with their established hard-working breadwinner role? Are they afraid that they will merely

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[13] *See* R. WILLIAM BETCHER & WILLIAM S. POLLACK, IN A TIME OF FALLEN HEROES-THE RE-CREATION OF MASCULINITY (1993); HAU-WEI WANG, TAIWAWNESE MEN 78-87 (1998).

[14] *See* Joel F. Handler, *Symposium: Institutional Barriers to Women in the Workplace: Women, Families, Work, and Poverty: A Cloudy Future*, 6 UCLA WOMEN'S L. J. 375, 383-93(1996); LAWRENCE MISHEL, JARED BERNSTEIN & JOHN SCHMITT, THE STATE OF WORKING AMERICA 2000-2001(2001). It is undeniable that single poor working mothers and welfare mothers are those harmed the most by changing labor market conditions. Here, I merely want to also bring the eroded economic position of working men back into the discussion. Their compromised position, in turn, has invariably affected the lives of women as well.

[15] Some have committed suicide because of their perceived failure. *See* an example in Japanese context, the increased suicide rate of Japanese men in facing the economic depression. Howard W. French, *Japanese Trains Try to Shed a Gruesome Appeal*, N.Y. TIMES, June 6, 2000, at A4.

[16] *See* VICTOR R. FUCHS, WHO SHALL LIVE? HEALTH, ECONOMICS, AND SOCIAL CHOICE 47-52 (1998); At the executive and managerial levels, 50 percent of men and 30 percent of women worked more than 44 hours in a week. *See* Daniel Hecker, *How Hours of Work Affect Occupational Earnings,* MONTHLY LAB. REV., Oct. 1998, at 8-9.

become sperm donors when their partners are self-sufficient independent working women? Yet a man who assumes housekeeping or childcare duties does not lead an easy life either: he faces constant gender policing from others and himself.

Considering the present oppressive and limiting relations between men and women, I will attempt in this article to increase understanding between the sexes by showing that men as well as women suffer from narrowly-defined gender role stereotypes. The common interest of men and women in dismantling established gender norms and practices could establish the foundation for a progressive coalition between men and women. Law in its traditional form of theorizing has proved to be impotent in handling the hardships women and men experienced in the real world in the challenge of gender discrimination.[17] My concern is not only a method of *thinking* but also a method of *working*. We need not only a cross-disciplinary method, but also a change in legal theorizing. Feminist legal theory has, famously, spotlighted the connection between substance and method. Epistemological assumptions, forms of reasoning, even nuances of tones, feminists remind us, can help to entrench or disrupt damaging gender rules or norms.[18] I have written this article bearing this tradition in mind.

In this article, I draw on different types of information, including both

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[17] *See* generally Catharine A. MacKinnon, *From Practice to Theory, or What is a White Women Anyway?* 4 Yale J. L. & FEMINISM 13 (1991); CAROL SMART, FEMINISM AND THE POWER OF LAW (1989).

[18] Kathryn Abrams, *Book Review: Cross-Dressing in the Master's Clothes, Unbending Gender: Why Family and Work Conflict and What To Do About It. By Joan Williams.*, 109 Yale L. J. 745 (2000); Kathryn Abrams, *Hearing the Call of Stories*, 79 Cal. L. REV. 971 (1991); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990); SANDRA HARDING, WHOSE SCIENCE? *WHOSE KNOWLEDGE? THINKING FROM WOMEN'S LIVES* (1991).

"objective" materials researched in different disciplines and "subjective" materials.[19] These different kinds of resources provide a variety of temporal, contextual, and personal views, and in combination they provide a "thick description" of the phenomena under analysis, one that is helpful for designing an operational policy.[20] In order to identify once invisible gendered structures and processes in everyday life, we need to move beyond "objective" date to more "subjective" evidence. Conversations, popular images, and personal experiences all have an ideological content similar to formal academic analyses and often contain a stronger message than abstract theorizing in support of activism.[21] For instance, it is usually easier to find in personal narratives an inspirational theme that spurs further action. The touching part of narratives often lies in their ability to reveal contrasts between the bright inner world and the dark external world. By reading my interpretation of those narratives, readers can construct an alternative understanding of the story, thereby allowing room for personal involvement, even as a passive reader. It is my hope that every reader can relate to the issue in the narratives below in some way and react to them on a personal level.

Through years of observing my parents' struggles in resolving their conflict between work and family, and though caught myself between the reality I saw

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[19] Objective materials include information gathered mainly in law, sociology, psychology, anthropology, cultural studies, and gender studies. Subjective materials include interviews conducted formally and informally; mass media images and stories collected and analyzed (such as films, advertisements, magazines and TV series); personal observations on gender politics in Taiwan, Germany, and the United States; and fictional and real-life narratives.

[20] CLIFFORD GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture, in* THE INTERPRETATION OF CULTURES 3 (1973).

[21] *See* bell hooks, OUTLAW CULTURE: RESISTING REPRESENTATIONS 39 (1994); COMMUNITY ACTIVISM AND FEMINIST POLITICS-ORGANIZING ACROSS RACE, CLASS, AND GENDER (Nancy A. Naples ed., 1998).

everyday in my family and the outside world, I came to see both the possibilities and the limitations of individual resistance to the oppressive system of gender role stereotypes.[22] Constant interrogation and critical reflection in everyday life has inspired me and given me the confidence to include in this legal paper interviews, stories, and different forms of narrative.[23] My family's life story below serves both as a methodological example and as a true story highlighting the difficulties Taiwanese gender non-conformists face when they attempt to creatively combine work and family.[24]

PART ONE: A TAIWANESE FAMILY'S PATRIARCHAL BARGAINING

I. *The Story of A Taiwanese Family*

I was raised in an unconventional family within a patriarchal society.[25] Patriarchy may be broadly defined as male control over female labor and

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[22] For an argument that the exercise of autonomy is frequently a collective rather than an individual enterprise, *see* Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-Direction,* 40 WM. AND MARY L. REV. 805, 806 (1999).

[23] hooks, *supra* note 21; *see* also JANA SAWICKI, DISCIPLINING FOUCAULT (1991).

[24] Kathryn Abrams, *The Narrative and the Normative, in* REPRESENTING WOMEN: LAW, LITERATURE, AND FEMINISM *44* (Susan Sage Heinzelman & Zipporah Batshaw Wiseman eds., 1994); Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25-43(1990) (Advocating that in regard to feminist scholarship, it is appropriate to conclude that method is theory in its most relevant form.)

[25] *See also* SANDRA BEM, AN UNCONVENTIONAL FAMILY (1998). My family is "unconventional" in the sense that the power dynamics, control, and division of labor within my family was different from other families. My parents raised my sister and I without any larger goals in mind, which is different from Bem's family in which they intentionally arranged their domestic life to exemplify their egalitarian values.

sexuality—that is, over women's productive and reproductive roles.[26] In this type of society, women are educated to follow the instructions of their fathers (or, if the father is absent, elder brothers), husbands, and sons. Women are channeled to devote their lives to their families, both their father-centered and their husband-centered families, working mainly in the home and obtaining gratification from maintaining that home and raising the children.[27] These are the goals towards which a girl is expected to direct her talents, her interests, her education, and her profession (if she manages to have one).

A. *Education—For a Woman, to be without Talent is a Virtue*

All of my grandparents were farmers in Changwha. My mother has six siblings and my father has nine. Neither set of grandparents could afford education beyond the six-year compulsory education level for any child in their family.[28] My father attended junior high school because his elder sister began working on the farm after graduating from elementary school, so his labor was not so badly needed to support the family. As a male family member, he was encouraged to receive further education. Compared to my aunt, my mother was lucky to be able to study further because she was the youngest child in the family. With five elder brothers and sisters coming before her, there was enough labor to take care of the home (including the rice field)

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[26] Heidi Hartman, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, *in* WOMEN AND REVOLUTION 1-42 (L. Sargent ed., 1981).

[27] *See* Li Book   :Women are ones who follow. In childhood they obey fathers and elder brothers. If married, women obey their husbands. If husbands pass away, they obey their sons."
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[28] They not only could not afford the tuition and living expenses for college, but they also had to get a job as soon as they finished their basic education. They grew up during the 1950's~60's in Taiwan. In 1968, a nine-year mandatory education scheme was put in place by the government.

without her assistance. Furthermore, her teacher visited my grandparents, spoke of her excellent academic performance, and persuaded them to let her continue with her high school education.[29] Later, my father and mother both went to public teachers' colleges after junior high school, where tuition and living expenses were funded by the state. They met at an elementary school in Beidou, Changwha, where they both taught after graduation.

B. *Marriage—The Appropriate Door Fits the Frame of the Correct House*

They fell in love. My father rejected his mother's arranged marriage to a girl from a wealthy family and married my mother instead. My paternal grandmother opposed their marriage because my mother came from a poor family of farmers (just like my father, ironically). My grandmother, like other Taiwanese mothers, had prepared a good candidate for her son to marry, a woman who had a better family background and potentially better dowry.[30] When my father talks about his decision to marry my mother, he explains: "Wealth can be earned by working hard together

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[29] For Taiwanese girls growing up during the 1960's, higher education required cooperation from their families, particularly from their mothers, and considerable encouragement from their teachers. For a parallel finding in Japan, *see* MYRA H. STROBER & AGNES MILING KANEKO CHAN, THE ROAD WINDS UPHILL ALL THE WAY-GENDER, WORK, AND FAMILY IN THE UNITED STATES AND JAPAN 20 (1999).

[30] Men seem to enjoy more liberty than women in deciding whether their future spouse have the appropriate wealth and prestigious family background to match theirs. Confucian ideology—with its stress on patrilineality over matrilineality and affinal ties—combined with legal restrictions on women's claims to property in historic times created a dowry complex distinct from those in Europe. For a further elaboration on this proposition, *see generally* MARRIAGE AND INEQUALITY IN CHINESE SOCIETY (Rubie S. Watson & Patricia Buckley Ebrey eds., 1991).

with your spouse, but a person's talent, potential to grow, and willingness to learn is a more precious quality than the dowry that person could bring you. It is better to raise children with a person like this." My grandmother continued to arrange her other sons' marriages.[31]

It was my father's intuition to insist on his own choice over a traditional arranged marriage. His emphasis on the potential of a person with whom you raise a child, rather than a person whom you love or with whom you would like to spend your lifetime, illustrated the meaning and the function of marriage in Taiwanese society at that time. Women as well as men were expected to have their offspring early, and the sooner the better, although the respective roles husbands and wives play in childrearing are quite different. This also suggests in Taiwanese society how the raising of children is differentially incorporated into the personal development of men and women.

C. *Work and Family—Marry a Chicken, Follow a Chicken; Marry a Dog, Follow a Dog*

When I was three years old and my sister was one and a half years old, my mother received a scholarship to attend university in Taipei based upon her excellent teaching performance. With my father's support, she moved to Taipei alone and proceeded to earn her bachelors, masters, and Ph.D. degrees in Chemistry. The decision to leave her husband and young children was viewed as a serious challenge

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[31] The youngest uncle gave in and married a woman from the same farming town. His frustrated love affair with another woman was once a legend for the children in the extended Chen family.

to conventional wisdom, according to which it is the common practice of wives to follow their husbands whoever they are and wherever they go.[32] Her implicit refusal to keep trying to have children until she produced a son made her my grandmother's least favorite daughter-in-law. To compensate for her guilty feelings, my mother worked very hard to clean my grandparents' house and cook for thirty to forty people every time we returned to Tienchung to celebrate Chinese New Year, the traditional time for (extended) family reunions. The relationship between my grandmother and my mother improved only when my mother obtained her Ph.D. degree and my grandmother hung my mother's Ph.D. diploma on the wall next to her sons' diplomas.[33] Later, my mother became a Professor of Chemistry and Dean of the Environmental Education Center at a university, whereas my father remained the primary caretaker of two young children in Changhwa and ambitiously educated himself in order to become a junior high school teacher, postponing in the process his dream of becoming a judge. Under the traditional male-breadwinner/female-homemaker norm, had my father not firmly supported my mother's decision and

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[32] This conventional wisdom was pronounced in Article 1002 of the ROC's Civil Code provision which gave husbands the last say in designating a family's place of legal residence. The ROC Council of Grand Justices has declared this provision unconstitutional in its Interpretation No. 452 of the ROC Constitution on April 10, 1998. Also, the Nationality Law before its amendment in January 19, 2000 recognized only a father's nationality as the basis of his children's nationality. If a Taiwanese woman married a non-Taiwanese citizen, her husband and children could not automatically attain Taiwanese citizenship, whereas by contrast, when a Taiwanese man married a foreign citizen, his wife and children received citizenship.

[33] As a Taiwanese woman from a farmer's family from the countryside, my mother had to excel to show her talent in academics (the highest level in Confucian teachings), so that she could break through other hierarchies in Taiwanese society. Different forms of discrimination based on intertwined factors like gender, class, and ethnic origin in Taiwan can be further fascinatingly observed. With a higher education, my mother did win herself more esteem in my paternal grandparents-centered family.

sacrificed his own dreams, she could not have pursued her academic interests and resolved her conflict between work and family.

My sister and I lived with my father in Changhwa until I was in the second grade. He was, by then, a full-time junior high school teacher. Since no one else could help take care of my little sister, she had to go with me to kindergarten at the age of two. Sometimes we stayed in my father's classroom while he was teaching.[34] Later, my sister and I moved to Taipei to live with my mother for a year. She worked on experiments in a lab for most of the time during her studies. We often stayed in the back of her office (next to the lab) and did our homework after school, and sometimes, during her finals, we went to stay with my aunt. Once, my mother broke a glass while working in the lab. I watched her clean her wounded hand and heard her say: "Girls better not study chemistry, or other hard sciences. It is hard to keep up with men in this field." Subsequently, my sister and I transferred back to school in Changhwa and lived with my father for two more years. This dual-career, dual-household hardship for my family ended when my father transferred to a high school in Taipei when I was fourteen years old.

D. *Sexual Division of Labor—Men Master Outside the Home, Women Master At Home*

When I was growing up, my father was more responsible for our day-to-day existence and now he is equally responsible for my mother's day-to-day existence.

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[34] There was not much pre-school childcare at that time. Childcare was/is often arranged within the private home, usually within the extended family; for instance, seeking help from grandparents, or from relatives, mostly women, who are available. Now, in big cities, there is more pre-school childcare. Still, the social practice in the rural countryside is not to hand your children to strangers at an early age.

He cooks meals, drives my mother to work, washes clothes by hand (he does not trust washing machines), and loves to garden whenever he has free time. While I was still living with my parents, my father would prepare dinner before my mother came home from work, during which time we would discuss my day at school and chat about social changes in Taiwan. Now living alone with my mother, he prepares their dinner and then picks her up at the university. My mother spends many hours at work, often staying at least ten hours per day at the university, and even more after we grew up and left home. Her job requires her to fly around the island to give seminars and workshops. My father often accompanies her everywhere on the weekends.

My father exhibits an "ethic of care," not only towards children and students but also toward the elderly. Once I caught him crying while he was cooking dinner, because he was thinking of my grandmother, who had served her husband and raised nine children and passed away suddenly before she could enjoy life. After my grandmother passed away, my grandfather left his farm and grocery shop in Tienchung and moved to Taipei. His five sons now rotate caretaking responsibilities for him.[35] He moves to a different house every two weeks. Usually, his daughters-in-law take care of his everyday needs, because they are all homemakers, with the exception of my mother. My father still runs between school and home to take care of my grandfather, since he currently has a less demanding schedule than my

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[35] He would love to stay with his youngest daughter in Hwalain, where I believe life quality is much better than Taipei for an 85-year-old man. However, his eldest daughter, a farmer herself, thinks this arrangement would have caused relatives and friends to think that his sons do not want to take care of him. Parents are expected to live with their sons, not with their daughters, especially not with the married ones. I had a hard time to understand a once dominant old man's life and happiness is decided by the social norms, which are based on the gender role stereotypes.

mother.

E. *Reflection and Refraction*

As I look back on my childhood, I know that my feminism sprouted while witnessing my parents at various points in their lives take those giant leaps into what was then the unknown, knowing full well that, with every leap, they were defying deeply-held traditions in our culture. My mother does not identify herself as a feminist, nor does my father. Reflecting on my studies in feminist jurisprudence, she recently commented: "It is useless to study that in Taiwan. You should study environmental law instead. We need a lot of experts on this subject." My father, at least, has read a book I gave him: "A New Psychology for Women."[36] My mother has given me multiple, conflicting signals about the contours of an acceptable and satisfying life for a woman. She once said to me that: "it does not matter if you do not get married, as long as you can be independent, self-supporting, and lead a happy life on your own." Most of the time, however, she has acted like other Taiwanese parents, who worry about their daughters' marriages and think that it is most important for a girl to have a good marriage and a good family.[37] When I was deciding between studying law and philosophy, she tried to convince me to study pedagogy and become a schoolteacher because that training would not interfere with my ability to be a wife and mother. What she asserts about work and family is different from what she herself has accomplished in her own life. How she arranged domestic matters with

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[36] JEAN BAKER MILLER, TOWARD A NEW PSYCHOLOGY OF WOMEN (Zheng zhi-hui trans., 1997) (1976).

[37] I do think family is the most important in life, while I do not see how it should be different for men and women. And my definition of family is any relationships existing between people that empower and support our well-being.

my father is certainly different from how she thinks about feminism. The complexity of a working mother's relationship with feminism bewilders me.[38]

Taking my parents' unusual arrangements for granted, my ignorance of feminist thinking continued unchecked until my life was struck by the suicide of one of my best university friends. After having discovered that her boyfriend was having an affair with another woman before he broke up with her, she slowly lost interest in life. It did not matter that she had just passed the bar exam while pursuing graduate study in law and had a promising future. It did not matter that we both were so happy after the exam, thinking we could start enjoying our lives. A district attorney in Taipei found an envelope on her desk and gave me one of four letters contained inside. She wrote to me that she realized now one has no control over one's life and she felt it was too late to have discovered this painful truth. I was stunned by how much her self-worth was dependent upon her relationship with a man and how the perceived failure of their relationship destroyed her belief in the value of her existence in the world. And I could not help but think of the oppressive gendered norms embedded in Taiwanese education. The media, when describing the cause of her death, only attributed it to her failed romantic relationship.

I was still searching for the answers to this puzzle when the suicide of another best friend whom I had known since high school occurred in 1998. She had suffered for a long time from depression, yet still got married in May 1998. Her family had

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[38] To understand my mother one would have to look at her in her own social context, a Taiwanese context, and situate oneself squarely within her social reality. *See* Devon W. Carbado, *Motherhood and Work in Cultural Context: One Woman's Patriarchal Bargain*, 21 HARV. Women's L. J. 1, 12 (1998); Isabelle R. Gunning, *Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1992).

hoped this "joyous occasion (   )" would somehow do her some good. Maybe I have tried too hard to find the cause of their deaths, but several pieces of evidence over time made me realize how the sexist patriarchal system in Taiwan had contributed to these tragic decisions.[39] This system, and the destructive lifestyles arranged around gender, is suffocating for women as well as men in Taiwan.

Having witnessed my parents' professional and domestic adaptations, combined with what I have observed in other families, has informed my approach to gender and law. I did not link what people do (or should do) and who they are with their biological sex. I know our neighbor Wei ma-ma (Mother Wei) stayed at home to take care of her children and she cooked well, just like my father did.[40] I thought that she and my father just had the same interests and talents. The division of household labor is irrelevant to either the sex of my father or Wei ma-ma. Yet, our family life did not exist in an economic, cultural, or social vacuum. These "externalities" acted upon us. At some point in my life, I learned that my father taking care of housework and raising his daughters was not at all "normal" for someone with his biological sex. As time went by, I sensed and learned the differences between our family and other families. There was no cultural precedent for him to be actively involved in parenting, cooking, or housework. Every Taiwanese grows up knowing what men, as a general matter, do not do.

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[39] In the last emails she had written to me, she expressed her discomfort with sex and said that she needed to adjust herself to her husband's family which they had to visit once a week. This reveals other gender-related social problems: sex education in Taiwan and the traditional male-centered extended family life after a woman marries a man.

[40] Wei ma-ma is what we call this woman, who is married to Mr. Wei and is his sons' mother. A married woman is called Mrs. X, where X is her husband's last name, regardless of whether she really legally takes her husband's name or not. After she becomes a mother, she will then be called by her children's friends as 'X ma-ma.'

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Compared to other Taiwanese, my sister and I are less confined by gender role stereotypes—for instance, in choosing our professions. My sister completed a double major in physics and chemistry as an undergraduate, earned her Ph.D. in electrical engineering, and is now working in Silicon Valley.[41] I have always been interested in public issues and enjoyed going with my father to social gatherings, where Taiwanese men chatted about politics and criticized the corrupt KMT government. Later, I became a lawyer. But I am not at all suggesting that we are immune to gender stereotyping. Again, we do not exist in a social vacuum. Rather, we notice more easily the different patterns men and women in Taiwan are supposed to follow and the deviant trajectory of our family. At times, I find myself deliberately following gender norms when I am in Taiwan or surrounded by Taiwanese, lest they preach to me or silently make a judgment about my moral character and family background.[42] As for my sister, knowing that she cared immensely when relatives in Taiwan were talking about her and judging her behavior, she decided to forgo it all and live outside Taiwan.

My parents did not plan to have an egalitarian family. They neither acknowledge it, nor can they afford to have the leisure time to articulate this idea as I do now. In practice, they engaged in micro-progressive politics, seeking to transform the very personal and private aspects of their social lives. Their arrangements were simply born out of necessity and guided by intuition. I doubt my parents would openly admit

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[41] During orientation week in May 2000 in her company, a major U.S. semiconductor company, she went with 120 other people to a seminar room. She was at first thrilled to have found so many women (around 30) in that room—which was not typical at all in her usual work environment—but, then she was disappointed when she discovered that she was the only female engineer in that meeting.

[42] The gender norms could be details such as how I sit, how I dress, how I express my opinions in public, how I view feminism, or the way I talk about it.

that my mother's "freedom," in the context of her successful career, was really my father's "freedom" in the context of our family life. They together made a patriarchal bargain wittingly or unwittingly. I witnessed what happened and believe that in their experience lies a fertile ground for a more egalitarian concept of family life in Taiwanese society. Individuals should have the chance to compose their lives according to their interests, tastes, talents and opportunities. However, the difficulties my parents faced in combining career and family also illustrate how far Taiwanese society and its legal system still has to travel before less traditional work and family roles for women and men can become a reality.

II. *Vicious Circle—Raising Feminist Questions*

Why is my parents' strategy for combining work and family perceived as unusual? One obvious reason is that my father sacrificed his dream of being a judge in favor of my mother's career. He thereby became the primary caretaker with a full-time job while my mother spent, and continues to spend, more time at work and earns more money than my father, defying what has come to be accepted as the standard scenario in most dual-earner households: that the man and the woman both work in the paid labor force (with, generally, the man as the primary breadwinner), while the woman also works a "second shift" at home, a shift that is not shared fully by her husband. Their arrangements contradict these traditional gender role stereotypes, the male-as-ideal-worker/female-as-mother norm in the workplace and the male-as-breadwinner/female-as-homemaker conception of the family. Though traditional gender stereotypes face increasing challenges through particular individual practices (my parents, for example), they remain powerful social norms in determining the acceptable scope of bargaining, shaping an individual's taste and

ideology, as well as structuring labor market institutions.[43]

A frustrating, yet inspiring, conversation that I often have with management consultants concerns discriminatory hiring against women from an employer's point of view.[44] Although employers understand and sympathize with women's domestic responsibilities (and therefore 'take this factor into account in the hiring process'), they ultimately consider women more likely to leave the labor force to bear and raise children.[45] Employers therefore see themselves as facing a short-term financial risk in hiring women (even though they might obtain a long-term financial gain from their expertise). They fear that they might soon lose the woman's expertise when she puts her career "on hold" to take care of her new-born baby, since employers provide little flexibility in hours of employment, leaves, and career tracks that would be compatible with workers who have parenting duties.

Instead of taking "the natural propensities of mothers, requirements of children, and the nature of the workplace" for granted, feminists have critically posed the

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[43] Bina Agarwal, *Bargaining and Gender Relations: Within and Beyond the Household*, 3 FEMINIST ECON. 1 (1997); STROBER, *supra* note 29, at 86-90.

[44] Their responses often resemble statistical discrimination at least preliminarily, rather than taste-based discrimination. Statistical discrimination functions as a cheap method of avoiding potentially large losses. For a further discussion of "statistical (rational) discrimination" *see* Edmund S. Phelps, *The Statistical Theory of Racism and Sexism*, 62 AM. ECON. REV. 287 (1973); David Charny & Mitu Gulati, *Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for "High-Level" Jobs*, 33 HARV. C. R. –C.L. L. REV. 57, 63-65 (1998); Keith N. Hylton & Vincent D. Rougeau, *Lending Discrimination: Economic Theory, Econometric Evidence, and the Community Reinvestment Act*, 85 GEO. L. J. 237, 247-50 (1996).

[45] Does this presumption describe fully women's actual labor market behaviors after all? For a detailed objection to this common statistical discrimination, *see* Michael Selmi, *Family Leave and The Gender Wage Gap*, 78 N.C. L. REV. 707 (2000). (He argues that actually women take less time off to take care of their children and return to their work within a shorter time than people expect.)

question: why are employers so certain that a parental leave taker is always a "she"?[46] Why are employers so certain that "she" does not have a husband or partner who is interested and willing to participate equally, in parenting duties? Why does the presumption persist that childcare is a burden that typically falls on women? Is the present ideal of intensive mothering the only appropriate way to raise children? What are the social contexts in which these ideas arise and persist? How would most employers react to male workers who wish to take parental leave? Why and how are the workplace and employment laws structured in such a way that workers with childcare duties—primarily mothers—cannot also be seen as good workers?

The answer to why the leave taker is often a "she" lies in the persistence of the gender wage gap—men still earn more than women, and the vast majority of childcare is still performed by women.[47] Thus, when it comes to unpaid parental leave (if there is any), economic pressures reinforcing cultural tradition dictate that women are more likely to take leave and that men will stay at work. Furthermore, gender discrimination against women in the workplace—such as lower wages and sexual harassment—reduces the incentives for women to stay in the labor market and pushes

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[46] Although there is much disagreement among feminists, a generally shared objective is to raise questions about women's relationships to social institutions, including law and legal institutions. *See* Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship,* 42 FLA. L. REV. 25-43 (1990). Due to space considerations, this article focuses on two of these three issues. For the "cynical question" of intensive mothering, *see* SHARON HAYS, THE CULTURAL CONTRADICTIONS OF MOTHERHOOD (1996).

[47] In the U.S., women on average earn between 73.2 % and 83.8 % of what men earn, depending on the particular measure used. In 1999, the female-to-male ratio for full-time workers measured by hourly wage was 83.8%, the percentage for weekly wages 76.5%. Working women also continue to perform between two to three times as much housework as men, and remain overwhelmingly responsible for child rearing. *See* Women's Bureau, U.S. Dep't of Labor, Women's Earnings as Percent of Men's, 1979-1999 (visited Aug. 14, 2000) <http://www.dol.gov/dol/wb/public/ wb_pubs/7996.html>.

them back into the domestic sphere to do invisible, unpaid work.

Equal employment opportunities and equal pay are structural preconditions necessary for the development of equality between men and women in the family. Increased paternal involvement in childcare will not become a widespread reality unless these structural preconditions, especially economic equality for women, exist.[48] Sadly, the very fact that women currently bear disproportionate responsibilities for dependents (children and the elderly) and household tasks renders equal employment and pay at the workplace an empty slogan. Workers with family duties do not fit comfortably into today's labor market structure under which the male-as-worker norm is dominant: long hours with little flexibility in hours of employment, work leave, and career tracks.[49] With little bargaining power at home vis-à-vis their husbands and partners, as well as vis-à-vis their employers in the workplace, women are left alone in this vicious circle to fight against inequality in both institutions.

This debilitating dynamic which undermines the bargaining power of women illustrates how inequality in the labor market and the sex-based division of labor in the family intersect and perpetuate the breadwinner/homemaker gender norm. The gender ideology system sustains and reproduces the vicious circle and is nurtured by it in turn. Private decisions, such as the division of labor between men and women in childcare and housework, is intimately related to national employment policies—such as parental leave policy or a lack of one—through organizational and institutional choices made by the state and private sector. Private practices in the form of domestic sexual division of labor informs and maintains the masculinist workplace ideology on

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[48] LYNNE SEGAL, SLOW MOTION: CHANGING MASCULINITIES, CHANGING MEN (1990).

[49] For a detailed discussion of the ideal male worker norm *see infra* Part Two I. A.

which the regular operations of national political institutions depend.[50] How can we break this vicious circle—a circle supported in the family, the workplace, and the state—when it employs many perceptions that become self-fulfilling prophecies as women adapt to the lesser opportunities that are made available to them?

At the same time, similar difficulties exist for individual men who wish to take a more active role in parenting. The current structure of the labor market and the actions of employers also frame men's decision to participate in childcare. The labor market is organized around the ideal of a worker who is employed full-time (and overtime) and takes little or no time off for childbearing or childrearing. Though this norm of the ideal-worker does not define all jobs today, it defines the most prestigious and remunerative ones: full-time blue-collar jobs for the working-class, and high-level executive and professional jobs for the middle and upper class. When labor demands are structured in this way, caregivers often cannot perform as ideal workers. As long as gender norms still mandate that men become the primary providers for their families, it is unrealistic to hope that individual men will participate more in childcare and forgo their careers by risking marginalization in their workplace. When they do conduct themselves like my father, they are often subject to even harsher social policing. How can we change the male-as-ideal-worker norm and restructure the workplace to make it easier for both men and women to "feel free" to participate actively in childcare without being penalized by the labor market? Where can we find

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[50] Seemingly private conduct can also be intimately related to international politics through its organization and institutionalization by public authorities (e.g. the context of military prostitution). For an interesting discussion on the nature of military prostitution as not simply a women's issue and a sociological problem, but as a matter of international politics and national security as well, *see* CYNTHIA ENLOE, MANEUVERS: THE INTERNATIONAL POLITICS OF MILITARIZING WOMEN'S LIVES (2000).

the power for such a change? This article seeks to explore and tentatively answer these questions.

PART TWO: WHY SHOULD TAIWANESE MEN CARE?

This Part asks two questions: (1) how are gender role stereotypes manifested in gender discrimination against women, in the form of inadequate childcare leave laws in the workplace, and (2) how do gender role stereotypes reflected in the sexual division of childcare responsibilities restrict men's self-development.[51] It is a premise of this paper that gender role stereotypes are the source of both gender inequality and infringement upon one's freedom of personal development. The solutions to these two problems is to provide insights which will convince men that while sexism, racism and imperialism may appear distinct, they are interrelated as causes of oppression. If Taiwanese men can fearlessly fight against racism and imperialism, they can also certainly fight alongside with women against sexism.

Taiwanese men should embrace and assert a feminist political identity for their own sake. I am not suggesting that men should endeavor to speak in a woman's voice or to speak for women. Men should speak for themselves, identify the limits that gender role norms subtly and silently place upon them, recognize the loss of freedom in self-development caused by conformity to gender role stereotypes, and come to terms with and challenge male and heterosexual privileges. The often invisible harm that gender role stereotypes inflict upon men provides a motive for their active support of the feminist movement. *The legal recognition of that invisible harm* shall provide a

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[51] How gender role stereotypes reflected in the sexual division of childcare responsibilities restrict women's self-development has been often the focus of earlier research. This article also recognizes that gender role stereotypes restrict women's self-development and attempts to focus on the constraints on men, whom the conventional wisdom considers to be the beneficiary.

foundation for creating a progressive coalition both among Taiwanese women and between Taiwanese men and women. I argue that Taiwan's continuing struggle with colonial powers, rapid industrialization, the Chinese military threat and international political isolation create a situation in which, *given the contemporary gender role expectations*, Taiwanese men are not as privileged as their counterparts in the U.S. and Germany.[52] In other words, the social and personal costs for men of restrictive gender role stereotypes are more easily observed in the Taiwanese context.[53]

I. *The Gender System: the Gender Role Stereotypes—the Source of Harm*

The gender system is manifested in various gender role stereotypes.   In particular, the male-as-ideal-worker/female-as-ideal-mother mother norm in the workplace and the man-as-breadwinner/woman-as-homemaker conception of family dictate "approved of" behavior for men and women both at work and at home. Gender inequality is an obvious consequence of applying these strict gender role norms, a consequence which I term *the first-degree harm of the gender system.* While it is well documented that men enjoy various privileges at the expense of women, this article further explores the heavy costs that men pay for this narrowly defined masculine ideology. The gender system profoundly limits women and men's visions of and options for self-development. I will label this infringement upon one's freedom of self-development *the second-degree harm of the gender system.*

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[52] Here I refer mostly to the most privileged upper and middle-class, heterosexual white men in the U.S. and Germany. On the other hand, in the Taiwanese context, there are even less privileged men, for instance, Aborigines or homosexual men.

[53] In my opinion, even the most privileged white men in these countries suffer from established gender norms. The costs are simply harder to recognize in their context. *See infra* Parts Two I.B. and II.

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I distinguish gender inequality from infringement upon one's freedom of self-development because women endure both forms of harm, while men suffer only the latter. The unequal treatment of men and women is easier to scrutinize, whereas the infringement upon self-development tends to be masked by the symmetries of the gender role stereotypes. (There are equally numerous gender roles stereotypes for men and women.) Feminists have therefore concentrated more on gender inequality against women, and generally neglected infringements upon the freedom of self-development that affects both men and women.[54] The potential opportunity for feminists to work together with men against sexism has, thus, been overlooked.[55] Downplaying restrictions upon the freedom of self-development that "mere" gender role ideology produces has also caused the feminist community to disagree on strategies for eliminating this inequality. By reexamining the first-degree and second-degree harms of the gender system, I wish to establish a connection between the two by offering *the self-development argument*, my label for the building of a progressive coalition among men and women from different groups.

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[54] Few of the exceptions in American feminist legal theory include NANCY LEVIT, THE GENDER LINE-MEN, WOMEN, AND THE LAW (1998).

[55] *Cf.* bell hooks, FEMINISM IS FOR EVERYBODY-PASSIONATE POLITICS 3-6 (2000) (She reveals that it was in the interest of mainstream white supremacist capitalist patriarchy to suppress visionary feminist thinking which was not anti-male or concerned with getting women the right to be like men, reformist feminists were also eager to silence these forces. The discussion of class and race, and thus of inclusion of men, was there as early as the mid-70s but simply was not conveyed through the mass media).

A. *First-Degree Harm of the Gender System: Gender Inequality in the Form of Inadequate Childcare Leave Policies*

The Norm of Female-Mother

First, let us examine the female-mother/male-ideal-worker norm in the workplace and the man-as-breadwinner/woman-as-homemaker conception of family. By "female-as-mother" and "male-as-ideal-worker" norms, I mean the constellation of ideas and images that constitute the dominant ideals of motherhood and worker against which women and men's lives are judged respectively. These ideals, which inform the dominant criteria of "good" and "bad" mothering and wage work, exist within a larger framework of dominant gender role ideologies, and they intersect with dominant ideologies about family life: man-as- breadwinner, woman-as-homemaker.

There are several core expectations that constitute the dominant ideology of motherhood.[56] These expectations are certainly not met, in practice, by every mother, but they are accepted as the norm against which women (and men) are judged. First, it is thought that women are nurturing mothers and that childrearing is mothering. Conventional wisdom dictates a fusion of womanhood and mothering, to the point that they are two indistinguishable cultural constructions. Even when a man takes care of his child, this act of labor and love is called "mothering"—twenty-four-hour responsibility for the child's survival. In the American context, people talk about a man "mothering" a child if he is the child's primary caregiver, or if he acts in a nurturing manner. Being a mother means not only bearing, but also socializing and

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[56] HAYS, *supra* note 46, at 8-9.

nurturing a child. Motherhood means being the primary caretaker for children.[57] In the German language, the word "Rabenmutter" refers to a careless, cruel mother who does not care for her child; there is no equivalent "Rabenvater for careless, cruel fathers." In Taiwan, where male and female roles and labor are highly differentiated, "fathering (   )" and "mothering (   )" are defined as two different concepts. In Chinese we hear the phrase "the father is concurrently rendering mothering (

)" often used in "unusual" cases to describe a single father taking care of children in the absence of the mother. "Mothering" and "fathering" are treated as two naturally distinct tasks. In the absence of a mother, a father then has two sets of tasks to perform. Despite the fact that a father may do whatever he can to take care of his children, the conventional understanding of motherhood—that women are responsible for childrearing—remains. Ideas of what a father should do (support the family financially) and what a mother should do (take care of the children) are sustained even in "unusual" cases. Sadly, the exceptions prove the rule. In fact, socially constructed female motherhood is reinforced in exceptional scenarios by being reified as natural and inevitable even in the absence of any mother who fits the norm.

The second expectation that constitutes the dominant ideology of motherhood is that mothers should devote all their time and love to their children:[58] a good mother has total responsibility for her children at all times. The ideology of *intensive mothering* is more evident in the U.S. and Germany than in Taiwan; in the agrarian society of Taiwan, this notion seemed, until recently, like a romanticized myth.

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[57] Nancy J. Chodorow, Why Women Mother, in FAMILIES IN THE U.S.-KINSHIP AND DOMESTIC POLITICS 271 (Karen V. Hansen & Anita Ilta Garey eds., 1998).

[58] For a discussion of the historical construction of intensive mothering in industrial nations, *see supra note* 56, at 19-50.

Peasant women not only had to care for their in-laws and rear their children, but were also expected to spend much time on such other household tasks as planting rice, harvesting, preparing meals, caring for livestock, gathering firewood, sewing, and selling goods to increase the family's income. My paternal grandmother had to run between the rice field and the grocery shop, feed the livestock in the back yard, and prepare and deliver meals to my grandfather in the rice field during the harvesting season. According to my father, all these tasks left her little time for her nine children; instead, the eldest child took care of the younger ones.   Before Taiwan's industrialization in the 1950s, less time consuming methods of mothering were an appropriate norm, and mother was not always expected to be a child's primary caregiver. The primary caregivers were often grandparents, relatives, or someone else in the community, though usually women. Additionally, in the urban areas of Taiwan, most of the kindergarten, daycare centers and primary schools (for children between three-months and twelve-years-old) assume childcare responsibilities from the early morning until four or five o'clock in the afternoon, a schedule that generally fits well with the demands of working parents. In Germany, on the other hand, school ends at one p.m. and there is therefore a need for a guardian to be at home. An established German tradition holds that the mothers of young children should be at home with their children, and so this guardian is usually the mother. This practice is sustained by many family-friendly, women-specific workplace policies, such as part-time jobs.[59]

Finally, the third expectation of a "good" mother is that she is unselfish and self-sacrificing. She puts her children's needs before her own, and she is expected to

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[59] Wolfgang Tietze & Debby Cryer, *The Silent Crisis in U.S. Child Care: Current Trends in European Early Child Care and Education*, 563 ANNALS 175 (1999).

conform to the ideologically dominant form of the family, one that is "heterosexual in form, patriarchal in content."[60] In a recent biography, a Taiwanese politician recalled with pride and tears, "if I had not knelt down and begged my mother not to remarry after my father passed away, I would not have had the success I have today."[61] He regarded his achievement of success as an act of the highest filial piety--recognition of what his mother sacrificed for her children. In ancient China, women who were widowed at a young age, raised their children on their own, and did not remarry were honored and rewarded with a chastity stone arch (   ). The message to women in Taiwan remains clear even today: women as mothers should silently forgo their interests and happiness in life if those interests are in conflict with their "natural duty" of mothering.

Some areas of family and employment law reflect these gender role stereotypes. Judicial and legislative pronouncements about when mothers have custody of their children, when mothers may or must work, and with whom mothers may live are all legal elaborations upon cultural ideals of motherhood.[62] Corporate and state policies concerning work and family have always rested upon implicit or explicit assumptions about what constitutes a family and how family roles are defined. The existing childcare leave law reflects also a common assumption: the family is a nuclear household unit made up of a married heterosexual couple and their biological or

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[60] Marlee Kline, *Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women*, *in* Mothers in Law-Feminist Theory and the Legal Regulation of Motherhood 118, 120 (Martha A. Fineman & Isabel Karpin eds., 1995) (quoting Gavigan, 1993).

[61] *See* Jame Soong, Autobiography (2000).

[62] Jane C. Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare Reform, Family, and Criminal Law*, 83 Cornell L. Rev. 688 (1998).

adopted children; the male ideal worker labors without interruption and has no family duties; women are primary care takers who are undervalued as wage earners.[63]

Women in Taiwan experience work and family conflicts with differing degrees of intensity, depending on the level of childcare support individual women receive from their partners, the community, and the state. However, they all experience the inequalities of gendered motherhood in the workplace and at home. The increasing prominence of women's wage labor has generated intense debate over its effects on women's status. Does wage labor merely exploit women as a source of cheap labor and add to the burden of their domestic chores? Or does wage labor give women greater autonomy and raise their consciousness regarding gender subordination? Interestingly, similar questions are seldom raised in reference to men's involvement in wage labor. It is assumed men must be employed and be economic providers for their families, while for women paid employment is still considered an option.[64]

The Norm of Male-Ideal-Worker

The ideal that men as economic providers labor without interruption is often reinforced by certain Taiwanese state policies that continue to neglect men's familial duties. The earlier version of child leave regulation for civil servants allowed and encouraged only female servants to take childcare leave, the intention of the laws was to accommodate working women's needs in a traditional male-dominant workplace.

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[63] For a critique of the current childcare leave law, *see* Yi-Chien Chen, *Men for Feminism: Self-Development as a Constitutional Value in Achieving Gender Equality*, in MODERN THEORIES OF PUBLIC LAW REVISITED-FESTSCHRIFT IN HONOR OF PROFESSOR DR. YUEN-SHENG WENG'S 70TH BIRTHDAY 627-33 (2002).

[64] *See* WILLIAMS, *supra* note 12, at 20-24; HELEN I. SAFA, THE MYTH OF THE MALE BREADWINNER-WOMEN AND INDUSTRIALIZATION IN THE CARIBBEAN 39-41 (1995).

The policy fell short of challenging the root cause of childcare problems—the dominant female-mother and male-ideal-worker norms—and served, unintentionally, to reinforce women's subordination as well as restrict the choices open to men. The law sent the message to women that unpaid childcare was, in fact, their primary job, while it also taught men that their first duty was as family breadwinners—childcare had little place in their working life.

The Taiwanese paid labor market as an institution—its structures, dominant concepts, and norms—was constructed at a time when women were systematically excluded from participation. Insofar as women's lives and experiences as workers were (are) the subject in the workplace, they were (are) of necessity represented by men.[65] As Joan Williams points out, workplaces are designed around this ideal employee—everything from equipment which is designed specifically for men's bodies, to career patterns, advancement, and social security based upon an employee who enjoys a free flow of family work and whose worklife is not interrupted by childbirth or caregiving activities.[66] Men are expected and required by gender norms to put all their energy into work, and to depend almost entirely on their employment for happiness in life. Today, the ideal worker is one who works full-time (or better, overtime) with no childrearing obligations. The underlying rule accepted here is that what is required, among other things, to become successful at work is to put long

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[65] I am in no way suggesting women's and men's behaviors at work are fundamentally different by nature. Rather, I recognize that in reality men and women are currently constructed and socialized as different. Most of us continue to cling to the content of gender norms, treating them as a means for legitimizing what we actually do, or we at least use them as important guides for what we should do.

[66] Joan C. Williams, *Restructuring Work and Family Entitlements Around Family Values*, 19 HARV. J. L. & Pub. Pul'y 753, 756 (1996); WILLIAMS, *supra* note 12.

hours, a requirement that was designed by and for ideal workers who had wives at home to subsidize them. For women who are expected to assume childcare and housework duties, meeting this standard of the ideal worker creates conflict between family and work responsibilities.[67] Who set this standard? Why is the fact that all the successful "career men" are subsidized by their unpaid female homemakers never questioned? Why should women, who entered the profession historically later than their male counterparts, have to comply with such standards in the workplace? The woman-as-homemaker/ man-as-breadwinner norm at home enhances the female-as-mother/ male-as-ideal-worker norm in the workplace. It leads to the lower bargaining power of women vis-à-vis their employers, and vis-à-vis their husbands and partners.

Interlocking Systems of Power

Gender is about power. Households are sites of power relations just like any other social institution. The family-based household is a primary site of gender-determined relations, and the balance of those relations is no more hallowed because they are based principally, if not exclusively, on gender-differences than on any other set of power relations.[68] Gender-based inequality in the domestic sphere is not purely a matter of familial relationships. Rather, it is one aspect of several interlocking systems of gender based on unequal power embedded in society's

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[67] For the same issue in the context of poor single mothers, *see* generally GWENDOLYN MING, WELFARE'S END (1996). (The debate on welfare reform and its impact on poor single mothers: how they are forced to work in the paid labor market and take care of children at the same time.)
[68] *See* Gender Planning in Development Agencies-Meeting the Challenge 20 (Mandy Macdonald ed., 1994).

fundamental institutions: the family, school, and the workplace.[69]

The corresponding separation of private (women's place: home) and public (men's place: workplace) spheres further reinforces male dominance and female subordination.[70] The private and the public, the family and the workplace, women and men—all of these dichotomies are constructed as distinct institutions and entities, and yet the power arrangements which underlie these differences are interrelated. For instance, law, as a dominant discourse, has developed in the context of theories and institutions which are controlled by men and reflect their concerns. Historically, law has been a "public" arena, and its focus has been on public concerns, whereas women have belonged to the "private" recesses of society: in families, in relationships controlled and defined by men, and in silence.[71] Recall, the U.S. Supreme Court, in sustaining a law denying women the right to practice law, said the following about the nature of family, civil life, men and women:

Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of

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[69] *See supra* note 6.

[70] For an exploration of how popular culture imagery on television advertising reflects and reproduces work-family segregation and gender inequality, *see* Coltrane Scott & Adams Michele, *Work-Family Imagery and Gender Stereotypes: Television and the reproduction of difference, in* 50(2) JOURNAL OF VOCATIONAL BEHAVIOR 323, 326 (1997).

[71] Martha Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25 (1990).

womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.[72]

Perhaps we now easily laugh at this outdated message from 1872. Yet maybe we should cautiously pay attention to the resurgence of often similar ways of thinking across culture. The recent debate about the constitutionality of the German Basic Law provision denying women the right to serve in military combat positions mirrored this rhetoric at which we laugh.[73] The concern that "it is against womanhood" to resort to force and fire weapons reminds women of their "natural and proper timidity and delicacy," which "unfits then for many of the occupations of civil life." It is not just caretaking (in reality, *mothering*) in the domestic sphere that the Supreme Court justices opined upon and the German Constitution was concerned about; it was the timidity, the delicacy, the natural womanhood, which supposedly constitutes a real woman and follows her everywhere (at home, at work, in the army); it was this separation of institutions in appearance and the recurring theme of gender

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[72] *See* Bradwell v. Illinois, 16 Wall. 130, 141 (1872) (Bradley, J. concurring).

[73] For a discussion of Germany's refusal to grant women the right to fight in military combat position as discussed in the European Court of Justice, *see* Frauen in der Bundeswehr [Women in the Military] (visited Aug. 16, 2001) http://www.bundeswehr.de/index_.html.; Urteil des Europäischen Gerichtshof zum Waffendienst von Frauen in der Bundeswehr [The Decision of the European Court of Jusitce on Women in the combat position in the military] (visited Aug. 16, 2001), http://www.bundesregierung.de/ frameset/index.jsp; Hans-Werner Laubinger and Ulrich Repkewitz, *Freiwilliger Waffendienst von Frauen in der Bundeswehr*, 91 Verwaltungsarchiev 297 (2000); Stefan Mückl, *Ziilässigkeit des Freiwilligen Dienstes von Frauen in der Bundeswehr-Kollision von Nationalem Verfassungsrecht und europäischem Gemeinschaftsrecht*, 8 JURA 406 (2000).

differentiation existing in all institutions feminists should be alert to.

Distinctions between men and women are neither neutral nor equal. To many, the values and characteristics associated with men, the masculine, and the public sphere are seen as dominant and inherently superior to those associated with women, the feminine, and the private sphere. Accordingly, men are seen as the rightful leaders of society while women are seen as natural subordinates. Moreover, public welfare often outweighs private interest. Work in the labor market outside the home receives higher social recognition than does housework. One often hears a homemaker answer the question, "what do you do?" with "oh, I am 'just' a housewife."[74] When woven together, these intersecting matrices of separation ideology enable, and at the same time constrain and virtually determine one's life choices and experiences according to one's gender.

Given the increased involvement of women, including many who are mothers of young children, in work outside the home, the consequence of this gendered differentiation in parenting and employment, and the gendered institutions is that working mothers suffer from gender inequality in the form of inadequate childcare leave policies. Deborah Rhode and Martha Minow have correctly suggested that fostering substantive gender equality means a necessary bridging of the public and private spheres.[75] It is futile to want to eliminate gender discrimination in the workplace without also examining the arrangements of power in the traditionally

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[74] During my graduate studies both in Germany and the U.S., I have met many women who accompany their husbands or boyfriends when they study, research or work abroad. "I am just a housewife," or "I am just a homemaker" is often the standard answers to the question "what do you do." For examples in the U.S. context, *see* WILLIAMS, *supra* note 12.

[75] DEBORAH L. RHODE, JUSTICE AND GENDER 174 (1989); MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1991).

defined private sphere—for example, in the realm of childcare. A workplace that does not provide for childcare leave in the course of employment is organized around the separate sphere ideology and a masculinist ideology, which asserts that a worker's necessary parenting role is incompatible with paid employment, as society chooses to define it. Unpaid childcare leave, given the fact that men still earn more than women and the vast majority of childcare is still performed by women, is practically a maternal leave. Conversely, by providing paid childcare leave in the course of employment, we can start to break and transform the asymmetric power relations between men and women, the workplace and the home.

Inequality in the market requires stronger enforcement of existing discrimination laws as well as affirmative restructuring. The role of anti-discrimination laws could be significantly expanded if the laws were vigorously used to attack sex segregation and gender stereotyping, as well as to enforce pay equity.[76] Under the liberal jurisprudence model, formal equality ensures that women are treated the same as men. In its strongest form, liberal jurisprudence reaches beyond facial differentiation to include bias due to the disproportionate gender impact of facially neutral policies. An argument for paid childcare leave that produces otherwise disproportionately negative impacts upon women fits the liberal model. In addition to removing a barrier to the advancement of gender equality in the workplace, a proposal that provides each parent with his/her own individual leave also recognizes a key shift in the character of contemporary marriages, from the male worker-headed couple to a more egalitarian, individual model. To the extent that women are viewed

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[76] *See* Nancy E. Dowd, *Taxing Women: Thoughts on a Gendered Economy: Symposium: a Look at Equality: Women's, Men's and Children's Equalities: Some Reflections and Uncertainties*, 6 S. CAL. L. REV. & WOMEN'S STUD. 587, 592 (1997).

as independent workers with childcare duties rather than as dependent mothers, this model of independence and individual worth also plays into individualized notions of equality and responsibility that resonate within liberal jurisprudence. Nevertheless, if this expansive application of current anti-discrimination law cannot be accepted by the policy makers to support an operational childcare leave policy, I will further advance an argument in the following section to do so.

B. *Second-Degree Harm of the Gender System: Infringement upon the Right to Self-Development*

The gender system, composed of masculine and feminine ideologies, includes role prescriptions for men and women across a range of interpersonal contexts: characteristics, labor divisions at home, leisure activities, professional goals, and physical appearance, etc. There are already different life styles normatively constructed for each sex before individuals participate in and negotiate with the dominant gender norms. This is not to claim that masculinity and femininity are timeless and universal, but rather to recognize, depending on how forcible the gender norms are in any given society, the effort individuals must make to lead their own lives, especially if they have ideas different from the dominant norms. The dichotomy of male and female not only provides an important ontological blueprint for preexisting hierarchical inequalities, but also enables, contains, and almost entirely determines one's life choices and experiences. The gender system limits the visions and options pursued by any given individual, male or female. However, as a group, men do enjoy institutional privileges at the expense of women. Men also pay heavy costs in living up to social expectations to be "real men"—physically tough, emotionally stoic, ideal

workers in the paid labor force, and the sole breadwinners for their families.[77] The cost of men's privileges is their loss of freedom in self-development, what I call the second-degree harm of gender role stereotypes.

I draw on insights from Michael Messner's examination of men and masculinities. [78] Messner illustrates three themes forming the dynamics of masculinities: men's institutionalized privileges, the costs of adherence to narrow conceptions of masculinity, and the differences and inequalities among men. If we shift the focus away from the "wrongdoers" to the root cause of sexist oppression — the gender system itself which produces these "wrongdoers" and establishes the environment within which those limited choices occur and on which patriarchy is based—we can see that this gender system hurts not only women, but also men and children. I will pay particular attention to the race/ethnicity and class-specific aspects of the costs men pay.[79]

By focusing on the gender system, I am by no means advocating being "gender-blind" in reviewing law and legal institutions. Rather, my approach is gender-sensitive. Women and men are both oppressed by sexism in distinct ways based on their biological sex and sexual orientation. The institutionalized privileges that men enjoy at women's expense, which have already been widely discussed in the literature, will not be overlooked. Rather, the ongoing ideologies and economic,

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[77] Both feminist-oriented men and those in men's studies have concluded that patriarchy is harmful to both women and men. *See* Toker, *supra* note 12; R.W. CORNELL, MASCULINITIES: KNOWLEDGE, POWER, AND SOCIAL CHANGE (1995); MEN'S LIVES (Michael Kimmel & Michael A. Messner, eds., 1995); MICHAEL A. MESSNER, POLITICS OF MASCULINITIES-MEN IN MOVEMENT 3 (1997).

[78] *See generally* MESSNER, *Id.*

[79] *See Id.*

political and social structures that maintain such privileges will be treated as a given, underlying condition that elicits the heavy costs men pay.

The Masculine Mystique[80] and the Harm It Confers

While the boundaries of what does and does not constitute femininity have been blurred and broadened,[81] however, masculinity, unlike femininity, has not yet been seriously deconstructed.[82] The work that is being and has been done by feminists to deconstruct the essence of femininity, must be matched by a more progressive interrogation of masculinity. Men are promised status and privilege if they conform to normative masculinity and the masculine ideology that underlies it. The claim that a community will rarely accept more than one gender ideal for each sex is truer of normative masculinity than of normative femininity.[83] Moreover, males as a normative referent have been the focal point of most psychology studies, which proceed to view the male gender as representative of humanity as a whole. Feminist

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[80] This term was inspired by Betty Friedan's classic work: The Feminine Mystique. She focused on the widespread myth of the femininity constructed by mainstream media and how that contradicted the reality of individual woman. *See* BETTY FRIEDAN, THE FEMININE MYSTIQUE (1963).

[81] This pluralization of feminine characteristics has been more successful with some traits than with others. For example, physical strength is no longer viewed as non-feminine, although physical weakness is still a characteristic of femininity. German and American societies are inundated via the media and popular culture with images of physically powerful women, while in Taiwan, people are now more likely to accept physical strength as a feminine trait than was previously the case. The public appearance of Madonna, and Demi More is a good example in the US. They are physically strong and feminine at the same time.

[82] Toker, *supra* note 12, at 596-97.

[83] By "normative masculinity" I mean the values, attitudes, and behaviors that are learned by most men during the course of their socialization within their specific culture and timeframe. *See id.* at 591-94; Joseph H. Pleck, *The Gender Role Strain Paradigm: An Update, in* A NEW PSYCHOLOGY OF MEN 11, 12 (Ronald F. Levant & William S. Pollack eds., 1995).

scholarship has been successful in challenging this *prime facie* gender-neutral but in actuality male-biased viewpoint. Less is known, however, about both how individual men suffer by trying to conform to gender role stereotypes and the general gender role conflicts that shape men's experiences throughout their lives.[84]

Men are often presented as a homogeneous group in complete conformity with general cultural norms, the capitalist system, and the patriarchal nation, all of which dominate, oppress and exploit women.[85] I have conducted elsewhere a tentative analysis of the male mystique, which I examined from a micro perspective some elements of normative masculinity, as well as the neglected destructive effects of masculine ideology on individual men.[86] Some elements of normative masculinity examined include: men being physically tough and emotionally stoic; being aggressive; men being economic providers; being "the first sex," as the ultimate referent; being constructed as autonomous beings. Joseph Pleck has also formulated a Gender Role Strain Paradigm to describe these negative consequences of masculine ideology on individual men.[87] In his terminology, that rigid, narrowly-defined masculinity generates various forms of gender role strain: "discrepancy-strain," "trauma-strain," and "dysfunction-strain."[88]

In theory, implicit in the standards or norms of masculinity are three broad ideas about how normative masculinity and gender role norms produce potentially negative

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[84] *See* James M. O'Neil, Glenn E. Good, and Sarah Holmes, *Fifteen Years of Theory and Research on Men's Gender Role Conflict: New Paradigms for Empirical Research*, *in* A NEW PSYCHOLOGY OF MEN 164-65 (Ronald F. Levant & William S. Pollack eds., 1995).

[85] NANCY LEVIT, THE GENDER LINE, MEN, WOMEN, AND THE LAW 189-98 (1998).

[86] *See supra* note 63.

[87] *See* Joseph H. Pleck, *The Gender Role Strain Paradigm: An Update*, *in* A NEW PSYCHOLOGY OF MEN 11-32 (Ronald F. Levant & William S. Pollack eds., 1995).

[88] *See Id.*

consequences for individual males. First, when individual men cannot meet the requirement of the normative masculinity, which happens often, they experience shame, anxiety, or other negative psychological and physical harm.[89] Second, the process of acquiring all these male traits and of fulfilling all these role expectations is cruel, traumatic and not liberating. Third, even when individual men do successfully acquire the normative masculinity, the achievement could bring them damaging consequences. The reason is that many of the characteristics viewed as desirable or acceptable in men have inherent negative side effects, both for themselves and for others. In practice, as new economic and social conditions require more diverse and sometimes conflicting gender role expectations, there is an exacerbation of the damaging consequences for those men who adhere to narrowly-defined masculinity. Indeed, the dominant masculine ideology obscures the reality of "multiple masculinities,"[90] and deflects attention from feminists' effort to unpack sexist thinking as well as their desire to offer more liberating visions of masculinity.

Men's Constricted Freedom of Self-Development as Harm

I now focus on the implied constraining and repressive consequences of the process of conforming to gender roles and the dysfunctional consequences of actual acquisition of the normative masculinity of individual men. I identify this as a

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[89] For a discussion of the role shame plays in American men's lives and contemporary shame theory, *see* Steven Krugman, *Male Development and the Transformation of Shame*, *in* A NEW PSYCHOLOGY OF MEN 91-126 (Ronald F. Levant & William S. Pollack eds., 1995). The author argues that strains within normative male development mitigate against effective shame integration, and that this lack of integration, in turn, accounts for a particularly male emotional vulnerability and male proclivities for social withdrawal and recourse to violence.

[90] In my opinion, even the dominant masculine ideology simply contradicts the reality of multiple personality traits with little relevance to gender.

second-degree harm of the gender system—the loss of freedom in self-development.

In the process of acquiring male traits, for many men the integration and transformation of shame presents itself as a crucial (however negative or positive) mechanism. By disrupting integration and transformation of shame into the developing male self, gender norms and standards further inhibit men's self-development. Normative masculinity leaves many a boy and man feeling that he does not "measure up," that he has no place in the male world. Shame thus serves at a primary level as a powerful cultural mechanism for ensuring compliance with masculine norms. Shame, at a secondary level—as a source of interpersonal and intrapsychic feedback—plays an important adaptive role in the socialization and development of the self.[91] Girls have a similar problem in dealing with the feeling of shame, because that is how they learn to manage themselves in relation to authority, peers, and intimate others. However, gender norms facilitate female tolerance and acknowledgment of shame, while male norms deny its motivational importance and inhibit its adaptive transformation.[92] For instance, one lesson men learn is that psychological vulnerabilities of all kinds must be concealed from other males and that, ultimately, the best way to achieve this is to conceal it from oneself as well. The ideology of a masculinity that denies vulnerability, then, disrupts the integration and transformation of shame in the developing male self; boys and men compensate by masking their insecurities, creating the appearance of control, and developing substitute behaviors that externalize their concerns. Failure to integrate shame-based

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[91] *See supra* note 89, at 105.

[92] According to Krugman, the adaptive transformation of shame occurs when a primary, unmodulated affect with deep visceral connections to fight-flight reactions changes into a mature and subtle signal affect. *See id.* at 91-96, 103-04.

experiences, however, ultimately inhibits the male development of psychological knowledge and interpersonal skills needed in the new economic and social realities.[93] The male self often then faces difficulties in developing himself further.

Moreover, even the actual acquisition of the normative masculinity means the dysfunctional consequences for individual men. For instance, in the context of the family and the workplace, when men are conditioned to be ideal workers and emotionally uninvolved and physically absent fathers, their freedom to develop themselves is deprived practically in two senses. First, they lose the opportunity for flexible participation in their family and work lives (playing their preconfigured familial and social roles), and thus men suffer from shunted self-development over the span of a lifetime. Second, the subjective value of engaged parenting—in particular, as an ongoing, negotiated project of self-definition and development—is excluded or limited by the dominant ideology of masculinity.

This article argues that "gender nonconformity" is to be protected as a part of "self-development." The right to personality development I propose is a constitutional principle rather than an explicit constitutional provision around which detailed analysis has been developed. It does not impose particular answers; as part of the constitutional framework, it will be assessed in the same way one asks, "does this policy respect the arrangements of checks and balances establishing the relations between and among constitutional institutions?" In the case of a foundational constitutional principle of the freedom of self-development, the question that must be asked is "has this person or group of persons been treated in a manner consistent with the recognition of them as persons deserving of self-determination and with their

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[93] *Id.*

definition of self?"

A recent Title VII case in the United States concerning workplace harassment suffered by male workers at the hands of male co-workers and supervisors offers an insightful example. There the Supreme Court in *Oncale v. Sundowner Offshore Services, Inc.,* recognized that the assumption that it is not in a person's self-interest to discriminate against members of one's own sex in the workplace does not always hold true.[94] A better and clearer explanation of the sexual violence motivated by homophobia is that a person may choose to discriminate against members of his own sex or of his opposite sex 'because of their respective sex' to *enforce the gender role norms*. In short, one could discriminate against a member of the opposite sex because of sexual desire, "showing" male supremacy, or in order to enforce the gender norms in a non-sexual context. One could also discriminate against a member of the same sex because of sexual desire or the fear of gender nonconformity. The harm done in common is an offense to agency, to an individual's freedom to develop oneself.

Gender discrimination laws should be designed to prohibit all forms of gender regulation which produce sex stereotypes that deny people the liberty of exercising human agency in the creation of their selves. Sexual harassment and other forms of gender discrimination should be defined as processes of enforced gender conformity, which consciously inflict harm via enforced sexuality (one way of enforcing gender). Such harm is an offense to agency.[95] My theory frames the sex discrimination issue as one of a denial of an individual liberty interest: gender regulation denies human

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[94] Oncale v. Sundowner Offshore Servs., Inc., 118 S. Ct. 998 (1998). *See supra* note 82.

[95] *See* Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169, 1215 (1998); Katherine M. Franke, *Gender Sex, Agency and Discrimination: A Reply to Professor Abrams*, 83 CORNELL L. REV. 1245 (1998).

agency and an individual's power to define him or herself. The wrong of sex discrimination should be further interpreted to reach rules and policies that reinforce masculinity as the authentic and natural exercise of male agency and caring-nurturing as the authentic and natural exercise of female agency. Rules and policies which aim to dismantle gender discrimination should be designed in a way which defeats these static, separated conceptualizations of the sexes.

II. *A Taiwanese Experience*

"Patriarchy is never absolute in a 'frontier society' like Taiwan, as men and women immigrants from China had to toil alongside each other since the early days of settlement," wrote columnist Yang Chao.[96] Indeed, new rules formulated in frontier societies are often just expedients for survival. Social crisis is often the very turning point in which power relations, including gender relations, are reconfigured. The historical and contemporary oppression of Taiwan has restructured the balance of power between Taiwanese men and women and shaped their struggles to create and maintain numerous social institutions—including work and family. Today, stormy cross-strait relations and international political isolation persist as constraints on the social and economic goals pursued by Taiwanese. Given the minimal childcare provided by the state and the widespread cultural pressure to bear children, Taiwanese men and women are in the same boat when facing the changing dynamics of, and persistent conflicts between, work and family in their everyday lives. Taiwan's unique "worst of all" situation is restructuring the power relations between Taiwanese men

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[96] *More Powerful Women in Taiwan Politics: Not One But Seven Women Ministers Will Assume Governance of the Island, as Academics Note an Increasing Trend in the Past Two Years,* THE STRAITS TIMES (Singapore), May 14, 2000.

and women, and in the process creates a sink or swim sentiment in which gender norms have become a point of ideological debate.

A. *The Marginalized Status of Taiwan*

Taiwan has been excluded as a meaningful participant in the international community and maintains full and normal diplomatic relations with few nations.[97] The Chinese missile exercises in the Taiwan strait during the Taiwanese presidential elections of 1996 and 2000 provoked a consensus among the island's inhabitants that Taiwan has crawled its way out of military dictatorship, is progressively learning to make its own decisions, and cannot return to the old days and accept totalitarian political rule. Taiwan's internationally marginalized status, moreover, inspires Taiwanese women and men to fight alongside each other for the preservation of democracy and peace on the island. However, every year Taiwan spends around 18 percent of its government budget on national defense and 96 percent of the manpower in the military are men.[98] The Taiwanese constitution prescribes for "citizens, " meaning males, the obligation to serve in the military. As the state attempts to create "citizens" out of "Taiwanese" and "men" out of "boys," conscripts simultaneously lay claim to militarized conceptions of masculinity to advance their own agendas. Taiwanese men are required to play the "strong protector" role in its extreme form. Yet, when they were denied actualization as "hard" men (for instance, when they feared they could not defeat a potential invasion by China) and they were constantly

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[97] Taiwan now has twenty-seven official diplomatic allies. (visited Nov. 29, 2002) < http://www.mofa.gov.tw/newmofa/policy/ nation-h.htm?FaqId=15>.
[98] The proportion of national defense budget in total government budget has dropped annually from 25.32% in 1993 to 17.19% in 2002. (visited Dec. 1, 2002) <http://www.mnd.gov.tw/report /REPORT/revised/bb/IND1.htm>.

reminded that "hard" men existed, either in the form of a U.S. military ally or the Chinese communist enemy. This actualization can be a source of great anxiety.[99]

B. *Minimal Childcare Support from the State*

The KMT government's adoption of cheap labor, unrestricted land usage, and the availability of competitively priced raw materials in its economic development strategy of minimizing costs and maximizing profit has turned Taiwan into an industrial powerhouse. But it also produced unwanted side effects, such as political corruption, environmental pollution, and poorly designed infrastructure. KMT government maintained a policy and practice of keeping all the country's resources for its own party members, rewarding conformity, and externalizing the costs of caring for dependents such as children, the elderly, and the disabled. Taiwan has never developed extensive social welfare policies in the European sense and has never had a government that focuses on the welfare of its citizens.[100] The people of Taiwan are not promised cradle-to-grave economic security by the state. Rather, Taiwanese citizens believe in the old Taiwanese saying: "the sun up there is so damn hot, each has to take care of himself(   )". The responsibility for social reproduction is left largely to individual families. For ordinary people, the family acts

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[99] This statement requires certainly a further examination. For an interesting parallel discussion about the complex intersections among masculinity, patriarchy, state authority, national identity, race and domesticity in post World War II Germany context, *see* Susan Jeffords, *The "remasculinization" of Germany in the 1950s:Discussion*, 24 SIGN 163-169 (1998).

[100] New Taiwanese President Chen wishes to infuse a different spirit into the new Cabinet, and yet it is still uncertain whether he can institutionalize Taiwan's social welfare system by drafting a Basic Welfare Law within two years and issuing a policy white paper as he has promised. Catherine Sung, *Chen Sets Out Pension Program*, TAIPEI TIMES, May 12, 2000 (visited May 13, 2000) <http://www.taipeitimes.com/news/ 2000/05/12/story/ 0000035683>.

as a comprehensive private welfare system to be counted on for better or worse. Because of minimal governmental involvement in care for children and the elderly and the elimination of gender discrimination in the workplace,[101] gender-related battles are largely left to individual men and women. Women fight, bargain, and negotiate with their partners in verbal and nonverbal ways in everyday life. Conflict between work and family for modern Taiwanese men and women is part of an ongoing, everyday struggle, subject to the problem solving of individual families.

C. *The Overall Pressure to Bear Children in Taiwanese Society*

In Taiwan, on the one hand, the family provides individuals with a defense mechanism against a hostile and capricious environment and centuries of oppression. On the other hand, the family plays an active role in instilling social norms and constraining people's development. For instance, in Taiwanese society it is not easy for someone to stay single. An unmarried person is like an unfinished project in the eye of Taiwanese society. Because the idea that bearing children shows filial piety and makes one's personal life complete is so profoundly incorporated into self-development in Taiwanese culture and so strongly reinforced by the family, individual Taiwanese men and women are under great pressure to get married, to have children and to face conflicts between family and work.[102]

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[101] The earthquake in Taiwan on September 21, 1999 also demonstrated how unorganized the Taiwanese government is and how much it depends on social welfare service provided by private charity group, such as the Buddhist Compassion Relief Tzu Chi Association (   ), which raised over 7.2 billion NTD to help the victims of the earthquake (visited April 10, 2000.) <http://magazines.sina.com/thejournalist/contents/ 683/683-009_1. htm1>.

[102] For instance, over the past thirty years, the number of babies per German woman has fallen by half to 1.3, one of the lowest rates in the European Union. One woman in three of childbearing age now remains childless. The intensity of work-family conflicts for German

D. *Changing Dynamics in the Family and Work in Contemporary Taiwan*

Ever since more women started to work in the wage labor force, the changing dynamics of power between men and women have intensified the need to redistribute the responsibility for and the labor of caregiving. Over the past two decades, Taiwan has witnessed increases in women's employment, [103] changes in family composition,[104] and changes in the ways in which young children are cared for and reared.[105] More mothers are now working and the traditional childcare network based on the extended family is not always available. Decisions about childcare (and household work), therefore, become a battlefield for working parents.

Childcare remains largely a women's, rather than a parent's, concern about entering or staying in the labor market.**[106]** Wang and Yu's research on 'Fatherhood in

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men and women is assumably less. *See No German Children? Then Pay Up*, ECONOMIST, April 13 , 2001, at 54.

[103] Women's labor force participation rate in Taiwan now increased to 46.61 percent in 2002, although this is a relatively lower figure than in Japan, Korea, and the U.S. (visited Dec.1, 2002) < http://www.dgbas.gov.tw/census~n/four/ manpower.htm>.

[104] Nuclear families are rather popular, 48.12 percent of all the families in 2000. The proportion of the three-generation-family decreased to 15.23 percent in 2000. See Statistic from The Executive Yuan (visited Nov., 2002) <http://vol.moi.gov.tw/sowf3w/23/fer.htm >.

[105] The proportion of married women aged 15 to 64 years taking care of their babies aged under three years by themselves decreased from 84.71 percent in 1979 to 75.30 percent in 1993. Interestingly, for women who receive higher education (college, graduate school or above), having their young children cared for by nannies in a nannies' home is an alternative. 28.18 percent of these women managed childcare by this method, while 27.64 percent of them cared for their young children themselves, and 34.26 percent of them relied on the assistance of parents or relatives. The expense of child care in nannies' home, however, ranked highest among all possible methods. It cost 11,030 NTD per child per month, while the average salary of women workers was 23,306 NTD. Report on Fertility and Employment of Married Women, Taiwan Area, Republic of China 15-6 (1994).

[106] This gendered allocation of childcare thus persists as an important cause of the wage gap between men and women, along with other major factors such as Taiwan's sex-segregated

Dual-Wage Family' further suggests that cultural norms, the rigid gender socialization and the labor market structure dictate fatherhood as a secondary parenting role in Taiwan.[107] According to the findings of the in-depth interviews in Wang & Yu's research, fathers spend less time with their children than do mothers, and they only "help" (instead of perceiving themselves as the main childcare provider) when their wives are too tired or too busy. Also, fathers spend more time playing with children on weekends, while mothers sustain children in a more routine way throughout the week. Fathers express their "helplessness" when they cannot give more time to children and justify their lack of participating in childcare with reference to their heavy workload, but seldom feel guilty. Mothers, on the other hand, have higher expectations for themselves in childcare and are more likely to feel guilty if they can not devote as much time to children as they would like.[108]

Yet, the good news is that in reality men in Taiwan bear more household responsibility than they are willing to admit. Seeing their wives work as hard as them in the workplace and then engage in endless childcare and housework at home at night, men are more likely to first "help out" and then gradually assume permanent responsibility. Men have started to do more.[109] The bad news is that changes in

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occupational structure and outright gender discrimination.

[107]Shu-Yung Wang & Hon-Yei Annei Yu, *Fatherhood in Dual-Wage Family*, 8 J. WOMEN AND GENDER STU. 115 (1997).

[108] *Id.* at 115, 123.

109 On the social norm level, husband's authority in the family derives from the recognition of traditional culture; however, on the practical level of policy-making in the family, a form of equal participation in decision-making is often observed. *See* Chi-Chun Yi and Yau-Lin Chai, *The Analysis of Power Relations Between Married Couples in Taipei Area: Policy-Making in the Family as an Example, in* THE ANALYSIS OF SOCIAL PHENOMENON IN TAIWAN, 115-51 (1989); The Research on the Trend of Social Development in Taiwan Area, Directorate-General Budget, Accounting and Statistic Executive Yuan, (1998) (visited Dec.1,

individual men's behavior have been determined more by economic considerations than by egalitarian ideals and that dominant social norms regarding gender are lagging behind.

Over and over again women tell their stories that as long as they and their husbands are facing overwhelming childcare and housework alone without others around, their husbands help to cook meals, wash dishes, change diapers, etc. Men and women find themselves risking criticism when they publicly step out of their traditional familial roles. By remaining loyal to their fathers, husbands, and other male authorities in the community, Taiwanese women expect respect and praise in "reciprocity."[110] In the family, individual women and men alike easily become the gatekeepers of patriarchy if they are not consciously confronted by their sexist thinking and behavior. In the Taiwanese context, almost twenty percent of married women rely on their parents' families (mostly female relatives) to take care of their young children. Within Taiwanese families, filial piety is a focal concern.[111] The pressure to conform to the traditional gender division of labor at home is indeed great. In addition, in a society where manhood is linked to supporting a family, a man's ability to provide is a source of self-esteem. The fact that their wives work outside the home is humiliating in itself; doing "women's work" at home is an additional stigma.[112] Understandably, these men did not want there situation publicized for this

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2002) <http://www.dgbas.gov.tw/dgbas03/bs2/gender/ lifetrend2.htm>.

[110] "I am sorry that I educated my daughters wrongly, so that now you are so burdened," my maternal grandmother once said to my father when he had to prepare meals for us before he went to teach.

[111] David K. Jordan, *Filial Piety in Taiwanese Popular Thought, in* CONFUCIANISM AND THE FAMILY 267 （Walter H. Slote et al. eds., 1998).

[112] A Taiwanese Writer, Lung Jingtai, wrote a fascinating article in the German weekly newspaper "Die Zeit" describing how she received letters from angry Chinese men who read

undermines their manhood. Although some men walk the walk, it is much harder to get them to talk the talk.[113]

Taiwan's unique "worst of all" situation, the constant threat of war in the minds of Taiwanese, minimal support in childcare from the state, and overall pressure to have offspring, presents an interesting case. On the one hand, Taiwanese men are under great pressure to meet the requirement of "being a real man", to be strong protectors of their country, to be the economic providers of the families, and to change themselves in accordance with changing gender relations.[114] On the other hand, Taiwanese men and women are forced to stand up for a world in which men and women work together to create a reasonable family life. The sink-or-swim situation of Taiwan in which gender norms become a debatable ideology provides Taiwanese men and women an opportunity to make sense of all the different forms of oppression and foster more egalitarian gender relations in practice. The conflict between gender norms and reality in contemporary Taiwan could lead to two possible responses by men. First, national security and ethnic identity issues could be foregrounded and sexism can be silently maintained. Taiwanese men can tell the world about the importance of freedom while subordinating women in their ranks.[115] Or Taiwanese

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her compliments to men in Shanhei for helping their working wives at home. She meant to take men in Shanhei as a good example, for they have a reputation for being gentle and participating in household work. Some male readers, however, felt that her praise was an insult, because they consider doing traditional women's jobs a shameful role reversal.

[113] Interestingly, the opposite result was found among middle-class and working-class men in the American context. *See* WILLIAMS, *supra* note 12, at 158.

[114] For a detailed discussion about the elements of normative masculinity, *see supra* note 63.

[115] This is a familiar scenario which has arisen among both the earlier feminist activists in the U.S. working alongside men in anti-classist and anti-racist settings and many current feminists struggling for change in the "third world" countries in fighting against imperialism. *See* hooks, *supra* note 55, at 67.

men could recognize the common pursuit of self-determination at various levels (at national and domestic levels against racism, imperialism and sexism), by each man and woman and work alongside Taiwanese women.

Because individual men and women are forced by the worst of all situation, the swim or sink sentiment, to come directly to grips with the demands of everyday life, they must respond in a pragmatic manner rather than just blindly following the established gender norms. As Taiwanese are forming their views about gender roles in response to new daily demands, now is the crucial time for feminists to initiate a critical dialogue by inviting men to join the gender development planning and create a space which encourages the transformation of Taiwanese gender norms. I believe (if not hopelessly) that when Taiwanese men begin to identify the harm that the gender norms have done to them, they might start to support the movement against gender norm conformity as a valid struggle for social justice, instead of sacrificing gender equality in the name of national interests.

PART THREE   ORIENTING FEMINISMS

I. *A Men-Inclusive Approach*

This article advocates a gender-redistributive/transformative approach, and that is also a male-inclusive approach. It seeks to make existing gender relations more democratic and egalitarian by redistributing more equitably resources, responsibilities, and power between women and men.[116] A gender-redistributive approach does not

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[116] *See also* Naila Kabeer, *Gender-Aware Policy and Planning: A Social-Relations Perspective, in* GENDER PLANNING IN DEVELOPMENT AGENCIES—MEETING THE CHALLENGE 80-97 (Mandy MacDonald ed., 1994).

simply seek to channel resources to women within the existing framework, but encourages and requires men to take on certain new responsibilities in order to break down the existing sexual division of labor and to achieve greater equity in development outcomes.[117] For instance, one may apply this approach to the issue of childcare leave.–Instead of providing childcare leave only to female employees, this approach would require the law to not only provide childcare leave for both male and female workers but to also create incentives that would encourage both men and women to utilize it equally. Instead of focusing only on developing childcare centers within companies employing large numbers of young women, a gender redistributive approach would aim to develop childcare centers within companies employing large numbers of young workers, whether male or female, who might have childcare needs. If we continue to fail to challenge the presumption that child rearing is a woman's job, persist in excluding men from caring and nurturing roles when designing childcare policies, and focus solely on the current reality that women bear more of the responsibility for children, the status quo of gender inequality will remain and gender role stereotypes will reinforce themselves.

Thus, neither the female-specific social benefits without any questioning of preexisting patriarchal norms and gender role stereotypes in both the workplace and domestic childcare nor an anti-discrimination framework that relies on men's work pattern as the normative standard is a useful model for Taiwan.

I am promoting the restructuring of what a society understands as its available gender roles. The very act of *speaking* about men and to men in a feminist voice indicates, by that very gesture, a change in women's subordinate status. The very act

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[117] *Id.*

of men *performing* traditionally viewed women's job, such as childcare, carries, by that very gesture, a challenge and threat to the established gender order. Third, through their participation in non-traditional men's work, men are provided with the opportunity to develop themselves emotionally and psychologically in ways that might broaden their horizons of self-development. This male-inclusive approach to the fight against discrimination against women is an organic development out of the Taiwanese experience.

One important element of the reform is to encourage men to participate in traditionally female roles—to cross the gender divide. Everyone is entitled to the freedom to raise a child (or not), and to participate (or not) in their child's development as well as their own. Women have been viewed as natural-born caregivers, and thus have not been given the choice to decline such a role. Men, on the other hand, have been long excluded from any substantive caretaking role. Indeed, gender role stereotypes harm men as well as women, and each specific gender role stereotype harms one gender while rigidifying the role expectations for the other gender.[118] If men are given the opportunity to more fully develop themselves through deep and extensive interactions with their children on an everyday basis, they would broaden their horizons of what being a man consists of and would, in turn, benefit their children with regards to their gender socialization.

Interestingly, despite Taiwan's prevalent gender discrimination against women in every walk of life, from the level of law to political policies and social practices, Taiwanese feminists seem to have expressed more sympathy for men, been more concerned about the place of men within feminism, and begun to map out strategies

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[118] *See supra* note 54, at 247.

for the transformation of masculinity in an earlier stage of their feminist movement.[119]
With liberal feminism treating men as the referent of analysis, cultural feminism
treating men as an "other," and dominant feminism treating men as oppressors, an
undercurrent of separatism has characterized much of second-wave feminism
throughout the late sixties and seventies in the U.S.[120] Not until the mid-1990s did
feminist legal scholars venture into discussions of masculinity.[121] "Men and
feminism" is still a phrase at which people raise their eyebrows.[122] This gender
separatism reflected in Western feminist legal theory has been understood as
historically necessary, a starting point of critical separation required for the rebellion to
begin and instrumental in raising opposition to the unjust subordination of women and
establishing women's consciousness.

Taiwan, on the other hand, tells another story. In a news conference held by
the ruling party of Taiwan, the DPP, last year, the needs of single fathers were
highlighted in order to call on the public to show more concern for single parents in
Taiwan and to appeal to the government to amend gender-biased regulations.[123] As
the president of the Children of Single Parents Educational Foundation, Ellen Huang,

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[119] The Awakening Foundation organized the year 1986 as "The Year of Dialogue Between the Sexes," which was designed to produce the "new male." Though not successful, it demonstrated the earlier effort in not excluding men from feminist struggle in Taiwan; *See* also Natalie Tso, *Feminism Frees Women and Men, TAIPEI TIMES*, March 8, 2000 (visited Mar. 8, 2000) http://www.taipeitimes.com/news/2000/03/08/ story/0000027075 .

[120] *See supra* note 54, at 189-95.

[121] *Id*. at 196-97.

[122] MEN DOING FEMINISM (Tom Digby ed. 1998); FEMINISM AND MEN-RECONSTRUCTING GENDER RELATIONS (Steven P. Schacht & Doris W. Ewing eds., 1998).

[123] *See* Lin Mei-chun, *DPP Promotes Awareness, Support For Single Parents—Social Ills: Taiwan's Single-Parent Population is Growing, and the DPP Says the Government Can Help Ease the Hardships of Raising Children Alone*, TAIPEI TIMES, August 6, 2000, (visited Aug. 6, 2000) http://www.taipeitimes.com/news/ 2000/08/06/story/0000046647 .

explained: "More aid should be provided to single fathers. More than 99 percent of the individuals approaching us for assistance are women. Traditionally, men are expected to be tough and strong, and are therefore ashamed to seek help in times of trouble. I am calling on men in need to stand up boldly and request help. I think society should be more supportive of single fathers." Chen Shih-yen, director of the Single Parent Support Association, expressed the same concern: "Being a single father is more difficult than being a single mother. Frequently when people talk about single parents, people automatically think of single mothers, but single fathers have the same needs as single mothers…."[124] A newly-founded grassroots group, the Taiwan 21st Century Male Development Association, marked International Women's Day this year by urging Taiwanese men to better understand male-female relations in order to create harmony between the sexes, and to appreciate the softer, or emotional, side of their characters in order to build up their capacity to seek assistance when needed. As the psychiatrist Yang Trung-tsair, the president of the association, pointed out, men who follow the stereotype of being the family breadwinner are hesitant to share their feelings of depression. This inability to express frustrations results in insomnia, anxiety, depression and digestive problems, especially during times of economic depression. Ignored and untreated emotional problems have, in turn, fostered conflicts within Taiwanese families.[125]

Labeling men "the enemy" or "male chauvinist pigs" is not characteristic of the

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[124] *Id.*

[125] Chuang Chi-ting, *Men Need to Get in Touch with Themselves, Group Says-Bridging the Gap: A New Association Hopes to Improve Relations Between the Sexes by Offering Programs to Help Men Learn How to Deal With Personal Problems,* TAIPEI TIMES, March 9, 2001 (visited Mar. 9, 2001) http://www.taipeitimes.com/ news/ 2001/03/09/00007679 .

Taiwanese feminist rebellion against patriarchy and male domination.[126] One can argue that this is a strategic move on the part of Taiwanese feminists due to the severity of women's oppression in Taiwan. Moreover, Taiwan's long struggle for political self-determination makes it especially unrealistic for feminists in Taiwan to assert that feminism is exclusively for women. Taiwanese women do not have one world of their own, separate from the world of men. Taiwan's unique "worst of all" situation has indeed restructured the balance of power between Taiwanese men and women, and created a sink-or-swim sentiment in which gender norms have become a debatable ideology. As a result, more egalitarian gender relations are politically feasible in practice. Feminist legal thinking in the Taiwanese context, thus, needs to explore more fully just how the legal system constructs masculinity, and feminist activists must politically reach out to men as they seek to build a progressive coalition.[127]

Taiwan's experience with feminism sheds light on, first, the connection between "the oppressed" and "the oppressors." Oppression harms the oppressor regardless of how manipulatively subtle or veiled its form is. Second, Taiwan's experiences show us that the specificity of cultural, economic, racial, and class circumstances powerfully shape the different experiences of men. Even when men's experiences are treated as "the norm," there are men whose experiences conform to the norm and there are men whose experiences diverge from that standard. Broader suppositions that gender role stereotyping is unjust and that an awareness of the social, cultural, and political

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[126]bell hooks, TALKING BACK—THINKING FEMINIST, THINKING BLACK 127 (1989). bell hooks comments that in the U.S. labeling men as the "enemy" was an effective strategy for women in the early stages of the feminist movement. However, as the feminist struggle has progressed and a critical consciousness has deepened and matured, this rhetoric is a political detriment.
[127] *Id.*

ramifications of this categorization must be critically examined can be taken as just cause for building a coalition between men and women in the contemporary feminist movement. The harms suffered by men due to gender role stereotypes are, in addition, more easily observed in the Taiwanese context and thus can serve as a cautionary example for the privileged men in other countries.[128] If males acknowledge that gender role stereotypes leave them with limited choices and personal misery, and that the very same gender role stereotypes contribute to gender discrimination against women, they would then be more likely to participate in the long due elimination of gender discrimination.

Very recently, Germany amended its childcare law to allow men and women to take childcare leave together and began to show increasing governmental attention to men's participation in childcare and its positive impact on men's lives.[129] In the U.S., although national legislation and policy provides less support for encouraging men's participation in childcare or the assumption of any traditional female roles, more and more legal scholarship has devoted itself to inquiring into the legal construction of maleness, the varieties of masculinity, the concrete experiences and emotional needs of men, and the ideological construction of maleness across time and cultures.[130] Both

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[128] According to Michael Messner's model, minority males in the U.S. also endure more obvious hardship than their privileged male peers in the same country. *See supra* note 78.

[129] See Mehr Rechte fuer erwerbstaetige Vaeter [More Rights for Working Fathers], Pressemitteilung Nr. 0187/2000 der Bundestagsfraktion Buendnis 90/Die Gruenen, Mar. 29, 2000 (visited Apr. 14, 2000) http://www.gruene-fraktion.de/archiv/pm/2000/_00%2D0 187.htm ;[129] Bundesministerium fuer Familie, Senioren, Frauen und Jugend [Ministry for Family, the Elderly, Women and the Youth] (visited March 29, 2001) http://www.bmfsfj.de/dokumente/Struktur/ix_29069.htm .

[130] *See supra* note 54; Martin H. Malin, *Fathers and Parental Leave*, 72 TEX. L. REV. 1047 (1994); Martin H. Malin, *Fathers and Parental Leave Revisited*, 19 N. Ill. U. L. REV. 25 (1998); *see supra* note 82.

are inspiring examples of recognition of the male-inclusive approach.

II. *Potential Allies, Coalition Building and Consciousness-Raising*

Men in general have benefited from various social movements that have questioned the prevailing politics of gender, such as feminism and gay/lesbian liberation. Due to these movements, society has become less and less accepting of men's traditional roles as good soldiers and economic providers.[131] Freedom of self-development as a core concept in the fight for gender equality offers an understanding of a society's structure of gender role stereotypes as a network of relationships (embedded in the language, experience, and knowledge of a patriarchal world) which creates barriers for individuals—not only for women but also for men—to freely make choices for themselves. The "enemy" that childcare laws target are not men who do not participate in childcare, but rather, the system of gender role stereotypes and attendant policies that rarely consider men's roles in the private sphere. Childcare leave law reform at the same time opens a particularly interesting window on the connection between those traditionally perceived as oppressors and oppressed, and allows us to consider other social factors—such as race, ethnicity, class and sexual orientation—which also play a role in constraining our choices. The implications of escalating the feminist struggle from a fight against male domination to a fight against

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[131] The Ministry of Justice in Taiwan has recently produced a draft of its basic human rights law designed to further protect and promote human rights in Taiwan, including a provision that gays and lesbians shall be allowed to have families as well as to legally adopt children. The relaxation of Taiwan's strict view on homosexuals has come gradually due to the efforts of many gay and lesbian rights and feminist groups. Chang Sheng-en, *Gays and Lesbians Should be Able to Wed,* TAIPEI TIMES, July 3, 2001 (visited Jul. 3, 2001) http://www.taipeitimes.com/news/2001/07/03/story/0000092545 . *see also* BOYHOOD, GROWING UP MALE—A MULTI-CULTURAL ANTHOLOGY 2 (Franklin Abbott ed., 1998).

the system of unjust gender role norms is twofold. First, due to the claim that gender role stereotyping is the principle cause of injustice, this strategy facilitates greater support from men. Second, this strategy also helps feminists from different camps to build a broader political coalition and work on their respective interests while collectively fighting against gender discrimination.

A. *Initiating a Feminist Dialogue with Men*

In November 1994, Chang Jun-Hong, a Democratic Progressive Party (DPP) candidate for major of Kaoshung brought his mistress and their son to a public stage where he as a candidate was scheduled to talk about his policies for the city. Instead, his mistress and their son showed up to "apologize" to the people in Kaoshung.[132] The reason was that they had become "a barrier to democracy." In other words, the opposing KMT candidate had used this scandal to attack Chang in the election, and so the chances of Chang, a rising star from within DPP, of winning the election decreased. Consequently, according to Chang's supporters, his concubine and his son by her had become a barrier to democracy. The ritual proceeded. She cut her hair in a mess to symbolize her determination to cut off her 20-year-relationship with this married man. Then Chang's wife wrapped a scarf around the mistress' head to symbolize that as "sisters" in a "family" (formed around the man, with whom they both have relationships) they had reconciled.[133] Several high-ranking leaders of the DPP and two female party members witnessed the ritual. The candidate Chang stood outside

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[132] Caimei, *Stepping on Women, How do We Achieve Democratic Progress?*, 152 AWAKENING 7-8 (1995).

[133] A similar idea to ask different wives of one man to maintain a sisterhood kind of relationship can be observed in many Chinese films. For instance, *see* RAISE the RED LANTERNS (1992).

the scene constantly wiping away his tears.

In 1998 a woman was found burned to death with her two children in Chiayi County in Taiwan. Her husband approached her charred remains and kicked them cruelly. According to the neighbors, her husband and in-laws had abused her for years. She finally brought her children with her to the lakeshore and immolated herself and her children.[134] A women's rights organization reported the incident to the Justice Department and a prosecutor investigated the case. As a result, the husband may possibly be charged with offences against a corpse.[135]

In 1998 the district court of Taichung granted a divorce to a couple and the decision read, in part: "…ever since the defendant joined the 'New Women Association of Taiwan' she started to change and did not take good care of the children and the household. The couple started to have serious quarrels and fights. The would-be harmonious marriage life changed. Their marriage failed therefore not only due to the plaintiff's fault." The court did not consider the fact that the defendant was physically abused by the plaintiff because there was only one certificate for a single incident of physical abuse and that was not severe. Custody of the children was granted to the plaintiff.[136]

These three life stories illustrate the status of male-female relations in contemporary Taiwan. Together they reflect several common themes. First, a

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[134] In the film "BELOVED," the same theme was developed. The black slave mother was afraid that her children would suffer from slavery and therefore killed them before her white owners could take them away.

[135] (visited Nov. 25, 1998) <http://news.sinanet.com/rtn/1998/1105/1105093708.html>.

[136] *See*   [The Civil Decision of Taichung District Court of Taiwan, 'Marriage' No. 404,1998].

woman's loyalty and love for her family or failure to achieve this are still subject to public scrutiny. How women behave in fulfilling their familial role is closely monitored by society. Male assertions of their right to women's love, labor, and unconditional submission are carried out on the political stage, as well as within the community, the extended-family, and the judiciary. Second, each of the stories reflects the striving for an important Chinese value—"harmony"—in family life. Women have traditionally been socialized to submit to men's wishes in Taiwan, not so much to please them and win their affection and protection in marriage as Mary Wollstonecraft observed of English women,[137] but rather to appease or pacify them in order to preserve harmony within family life.[138] In other words, Taiwanese women, as guardians of their "uterine families,"[139] have been taught and encouraged to avoid any confrontation in the family, regardless of the cost to their own dignity, autonomy, and freedom.[140] Taiwanese society's adherence to a cultural ideal in which both the governors and the governed know their "place" and devote themselves to the ideal of "balance" and "harmony" has limited both party's claims against each other to such a degree that competing claims of right require no mediation by the ugly and adversarial mechanisms of formal legal coercion. Even when a case comes before judicial

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[137] MARY WOLLSTONECRAFT, VINDICATION OF THE RIGHTS OF WOMEN (1985).

[138] Ku Yen-lin, *The Feminist Movement in Taiwan, 1972-87,* 21 BULLETIN OF CONCERNED ASIAN SCHOLARS 12, 14 (1987).

[139] The term "uterine families" comes from the work of Margery Wolf. *See* MARGERY WOLF, WOMEN AND THE FAMILY IN RURAL TAIWAN (1972); WOMEN IN CHINESE SOCIETY (1975).

[140] A similar observation is also made by E. Patricia Tsurumi in arguing that factory girls in the late 1800s in Japan were bound to the factories, not because they had much of the feudal loyalty to their employers for which Japanese workers have long been renowned, nor because they were persuaded that their sacrifices constituted service to the nation. Rather, their loyalty and love for their own families bound them to the factories. *See* E. PATRICIA TSURUMI, FACTORY GIRLS: WOMEN IN THE THREAD MILLS OF MEIJI JAPAN 97-98 (1990).

authorities, the objective of maintaining "harmony" for the involved parties is very often reflected in the judges' decisions. Third, these stories reveal men's alienation from the feminist movement in Taiwan and the violent backlash against it: pathetic male politician in the struggle of his political life; an angry father in grief at the loss of his children, and a judge's uncritical assistance to the continued male assertion of women's unconditional labor. Each of these stories presents a worrisome picture.

Men's indifference to and misunderstanding of the feminist movement in Taiwan is especially apparent in the third story. That court decision is typical of a fault-based divorce system in a social context in which judges often accept the unspoken assumption that children and men are entitled to be cared for by women, but that the latter cannot make any claims on the former.[141] What is unique in this particular case is the normative assessment that took this woman's participation in the women's rights movement into account as a consideration of her "fault." Such political participation in an activity considered inimical to mothering is perceived as detrimental to women, a judgement which reinforces the dominant social norms regarding what constitutes a "good wife and mother." This legal case has sent shock waves throughout both the women's rights activist community and the legal community as they seek to reexamine Taiwan's fault-based divorce laws along with the intertwined cultural norms regarding gender roles present in legal rulings. The fact that the male plaintiff and the judge targeted the feminist movement provides a painful challenge to the Taiwanese feminist movement and points to the necessity of mutual understanding and coalition building between men and women.

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[141] *See* Taipei Times for a recent case in which a wife and mother is in a coma and her husband filed a divorce suit and won the case and the custody of the child in the first instance.

Orientating Feminisms in the Taiwanese Context
—A Men-Inclusive Approach

To avoid rhetoric of animosity against men is essential in this situation, since such language will only trigger increased anger and aggression against women and further intensify the backlash against the feminist movement. My proposal of the right to self-development, a men-inclusive approach, thus provides an alternative approach that can dismantle gender role stereotypes by providing a justification that appeals to men as well as women. In addition, however, this approach also facilitates realignment between different factions within the feminist movement.

B. *Realigning Internal Relations Among Feminists*

On April 15, 2001, Taiwan's feminist movement entered a new phase of its development with the formation of the National Union of Taiwan Women (

). This nationwide women's network seeks to rectify the imbalanced attention given to women's rights in urban and rural areas and to coordinate women's organizations with respect to resources and information. "Through the union, we will be able to access complete information about women's conditions nationwide, and work to spend our financial resources economically and efficiently," explained You Mei-Nu, newly elected chairperson of the union.[142] The Union has now been joined by over sixty women's organizations from across the country that are concerned with issues such as women's rights, development, education, health, culture and the environment.

The presence of the Union itself evinces a hopeful as well as angst-ridden

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[142] Irene Lin, *Women's Groups Join Forces—Network: The National Union of Taiwan Women Hopes To Increase Support and Education For Women in Rural Areas Through the Coordination of Resources From Across the Nation,* TAIPEI TIMES, April 16, 2001 (visited Apr. 16, 2001) <http://www.taipeitimes.com/news/ 2001/04/16/story/0000081887>.

self-reflexivity about the future state of the feminist movement in Taiwan. The limited resources of and the imbalance of resource-allocation of the feminist groups has been a great challenge to the further growth of grassroots feminist activism and the new formation of a network aimed exactly at solving this problem. However, the umbrella concept of this Union is very broad and includes any group with an interest in women's rights, development, education, health, culture and the environment. It is not clear how all of these women's groups (including both vocal feminists and less radical organizations) will work together in spite of their different histories and agendas. It is also not clear whether or not all of these women's groups that joined the Union agreed that established social roles for men and women—the pervasive, persistent gender stereotyping system—confine men's and women's development and creates gender discrimination against women. Thus, I suggest that escalating the feminist struggle from a fight against male domination to one against unjust gender role stereotypes could provide an umbrella concept which would politically unite the various individual groups within the splintered women's movement so that they could truly work together and share resources and information as they desire.

CONCLUSION

I have met many men in my life who are sympathetic to issues of gender equality and supportive of feminist objectives, but see feminism as *irrelevant to their own interests*. There are also numerous examples of individual arrangements and actions that are not based on male control, dominance, exploitation, or violence. They advance feminist goals, but never are examined in a feminist framework. Herein, I sought to demonstrate feminism's relevance to men by identifying the harm men

endure silently, caused by narrowly-defined gender role stereotypes—men's loss of freedom in self-development. Then I seek the power for change.

Reexamining my own experiences as a Taiwanese girl brought up in an unconventional family within a patriarchal society has informed my approach to the law and to a greater extent, gender equality politics. This is largely what I tried to show with my parents' story and the other narratives in this article. Growing up, I witnessed the shared harm produced by the dominant gender norms, which forms part of the vicious cycle and exercises as part of the "externalities" I described. It is encouraging, however, to see that in individual practice, the cycle is broken up through patriarchal bargaining more often than we realize or care to admit. At this crucial time, legal recognition of the harm can bring about revolutionary changes on both a personal and a collective level. At last, given Taiwan's unique situation, gender role norms have a harsher impact on Taiwanese men. Taiwanese men should care and must be comrades in the gender equality struggle for their interests are at stake. This male-inclusive approach to the fight against gender discrimination is an organic development out of the Taiwanese experience. The feminist movement in Taiwan was inspired by American feminist legal theorizing and in its maturity can now provide critical feedback.

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