

Article

A Socio-Legal Analysis of the Regulations on Foreign Spouses in Taiwan

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ABSTRACT

This paper focuses on legal discourse to analyze how legal regulations have been altered to respond to the foreign spouses phenomenon. In particular, it employs a socio-legal analytical perspective to discuss how amending, executing, and manipulating the legal regulations on foreign spouses reflects an ideology of gender, patriarchy, social stability, and national security in Taiwan. The issue of the high rate of marriage with Mainland Chinese spouses involves unique complexities of nationality identity, terrain threats, and political-social climate changes between Taiwan and Mainland China. This paper explores how the intimacy regulation is different between Southeast Asian foreign spouses and Mainland Chinese spouses (with a primary focus on the former rather than the latter). It concludes by summarizing that, from a social perspective, cross-border marriages are promoted by multiple hierarchies (e.g., class, gender, culture, etc.) and are casting the female foreign spouse as an obedient wife, qualified mother, and dutiful daughter-in-law in order to profit the family/state. From a regulatory/legal perspective, the enforcement of various acts, rules, laws, and regulations may create a backlash originating from the nostalgia of patriarchy and stereotypical gender roles in marriage.

Keywords: *Foreign Spouse, Citizenship, International Marriage, Marriage Immigration, Immigration Regulations, Socio-Legal Analysis, Feminist Jurisprudence*

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I. BACKGROUND

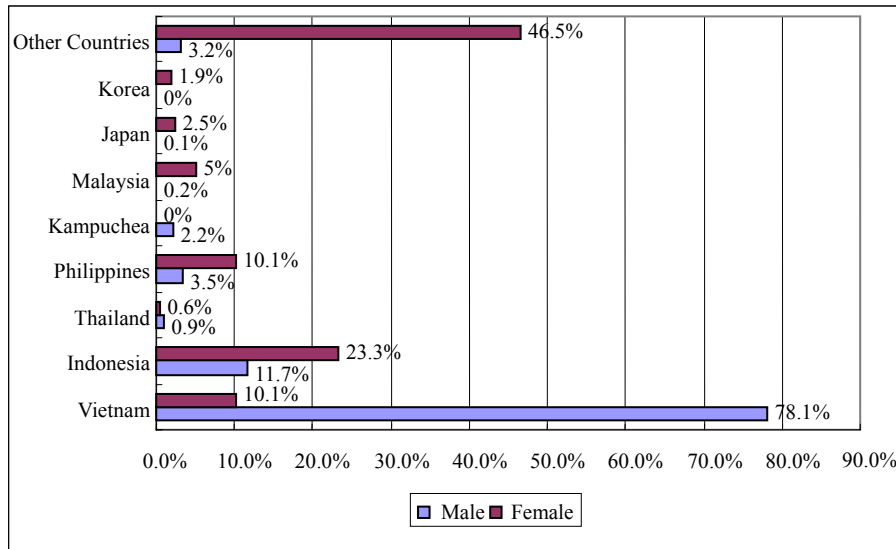
A story featured by the *Taiwan Lih Pao* Daily illustrated the harshness of foreign spouses' lives in Taiwan:

A Vietnamese woman, Shuang Shuang, married a Taiwanese man and entered into a big family with her husband's parents, sisters, and brothers. Shuang Shuang's husband was not in a position of power in this family; he relied on his older sister's business. Several years ago, the older sister arranged a cross-border marriage for him, which is how he came to marry Shuang Shuang. After Shuang Shuang married into the family, she became the lowest person in its patriarchal hierarchy. Her harsh life made her act violently to her own children, and she sometimes fought with her husband. Shuang Shuang's husband filed an "order of family protection" in the court for their children. Therefore, a social worker from TransAsia Sisters Association took over this case. When the social worker interviewed all the family members, she found that nobody apparently had any bad intentions. Shuang Shuang's tragedy represents a very typical "international marriage" in Taiwan. Such marriages suffer multiple structural disadvantages, especially in cases of female spouses coming from Southeast Asia or Mainland China. This case represented "a disadvantageous group forced into a more disadvantageous group within a patriarchal family." The social worker for this case signed, "In this tragedy, everyone has good intention yet why is everyone so pitiful?"¹

According to the statistical data provided by the Department of Statistics, Ministry of the Interior (hereafter MOI) in 2010, 96.5% of immigrants to Taiwan had married Taiwanese citizens and thus become naturalized. Among these naturalizations, 97.78% of immigrants were female, of which 99.01% came from Southeast Asia. The vast majority was from Vietnam, followed by Indonesia and then the Philippines (see Figure 1).

1. Shih-Ying Cheng, *Jo Jo Hsiang Pi [The Disadvantages Always Bully Each Other]*, TAIWAN LIH PAO [TAIWAN LIH DAILY], July 13, 2011, at 5, available at <http://www.lihpao.com/?action-viewnews-itemid-108907>.

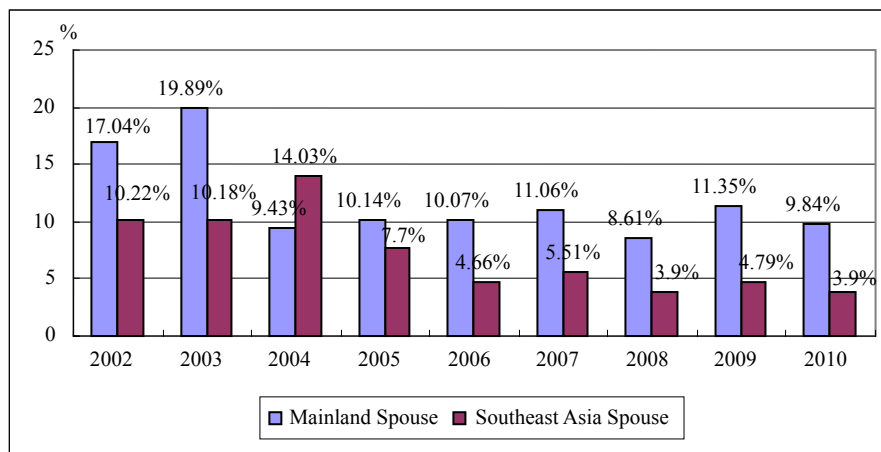
Figure 1: Nationality of Origin of Foreign Spouse



Resource: MOI, <http://sowf.moi.gov.tw/stat/week/week10009.doc>.

Figure 2 shows that the rate of naturalization of foreign spouses from Mainland China climbed to 17.04% in 2002, and peaked at 19.89% in 2003. Afterward, the rate became stable. The rate of naturalization of foreign spouses from Southeast Asia peaked at 14.03% in 2004, and thereafter fell and became stable.

Figure 2: The Rate of Naturalization of Mainland and Southeast Asia Spouses



Resource: MOI, <http://sowf.moi.gov.tw/stat/gender/ps03-04.xls>.

There is abundant literature, especially from the sociological, anthropological, and feminist approaches, that discusses how the phenomenon of marriage immigrants/foreign spouses has made a great impact on the local marriage market, family values, society, and legal discourse in Taiwan since the 1990s. For example, the American anthropologist Sara Friedman observed that the institution of marriage in Taiwan is facing a crisis that is marked by a high divorce rate, a low birth rate, and a high rate of late marriages.² Taiwanese sociologists such as Hsiao-Chuan Hsia and Hong-Zen Wang agree that when Taiwanese men have problems finding Taiwanese women to marry—especially when the men are economically disadvantaged—they turn to “international marriage” to find partners. This group of Taiwanese men therefore searches out “foreign brides” to share their responsibilities—namely taking care of elders and having children to fulfill their family duties.³

Unlike other social scientists’ approaches to foreign spouses, this paper focuses on the terrain of legal discourse to discuss how legal regulations have been altered in accordance with the foreign spouses phenomenon. I will discuss how amending, executing, and manipulating the legal regulations on foreign spouses reflects the ideology of gender, patriarchy, social stability, and national terrain security in Taiwan.

Regarding the limitations of this paper, I must clarify two points. First, this paper employs a socio-legal perspective to discuss foreign spouses and primarily uses the literature, published documents, and legal doctrines as analytical materials. This paper does not incorporate qualitative or quantitative methods. Second, while some parts of this paper do mention spouses from Mainland China, the focus will not be on them. The issue of marrying Mainland Chinese spouses involves unique complexities of nationality identity, national security threats, and political-social climate changes between Taiwan and Mainland China.⁴ Therefore, the intimacy regulation remains different between Southeast Asian foreign spouses and

2. Sara L. Friedman, *Marriage Crises: Wedding Population and Sovereignty Across the Taiwan Strait* (June 4-6, 2011) (paper presented at the “Marriage in Cosmopolitan China” workshop in The University of Hong Kong) (on file with author).

3. Hsiao-Chuan Hsia, LIULI HSINAN: TZUPEN KUOCHIHUA HSIA TE “WAICHI HSINNIANG” HSIENHSIANG [INTERNATIONALIZATION OF CAPITAL AND THE TRADE IN ASIAN WOMEN—“FOREIGN BRIDES” PHENOMENON] (TAIWAN SHEHUI YENCHIU TSACHHSHE [TAIWAN: RADICAL Q. SOC. STUD.], TAIWAN SHEHUI YENCHIU TSUNGKAN NO. 9 [A RADICAL QUARTERLY IN SOCIAL STUDIES RESEARCH SERIES NO. 9], 2002); Ching-Ying Tien & Hong-Zen Wang, *Nanhsing Chipo yu Kuakuo Hunyin: Weiho Taiwan Nantzu Yao Yu Yuehnan Nutzu Chiehhun?* [Masculinity and Cross-Border Marriages: Why Taiwanese Men Seek Vietnamese Women to Marry?], TAIWAN TUNGNANYA HSUEHKAN [TAIWAN J. SOUTHEAST ASIAN STUD.], Apr. 2006, at 3.

4. The sovereignty threat mixes with the cross-border marriage between Taiwanese men and Chinese women (from Mainland China), see Sara L. Friedman, *Determining ‘Truth’ at the Border: Immigration Interviews, Chinese Marital Migrants, and Taiwan’s Sovereignty Dilemmas*, 14 CITIZENSHIP STUD. 167 (2010).

Mainland Chinese spouses. This paper will focus primarily on the former rather than the latter.

In order to provide sufficient background knowledge on the legal discourse of foreign spouses and then offer a socio-legal study of “intimacy citizenship,” this paper is framed in the following way. In Part I, I briefly address the importance of discussing the issue of foreign spouses. In Part II, I examine the official term “foreign spouse”, which exists in all official documents from local to central government. The term “foreign spouse” is the most politically correct label available, especially when compared to the alternate term, “foreign bride”. “Foreign bride” was a popular term used for Southeast Asian female marriage immigrants. The term “foreign bride” indicates the typically disadvantageous gender, race, and economic circumstance of female foreign spouses from Southeast Asia. In Part III, I analyze the related acts and regulations that govern foreign spouses in Taiwan, which leads to a discussion about the implications of gender, race, and class that are hidden behind the political and legal discourse about foreign spouses and their families. In Part IV, I discuss the implications legal amendments regarding the equality of gender and race for foreign spouses. While such equality is gaining ground nowadays in Taiwan, there remains the possibility of backlash in the form of strong support for stereotypical gender roles of husbands and wives. On the contrary, I suggest in Part V that international marriage reminds us to further consider multicultural and alternative models of families in this transnational era.

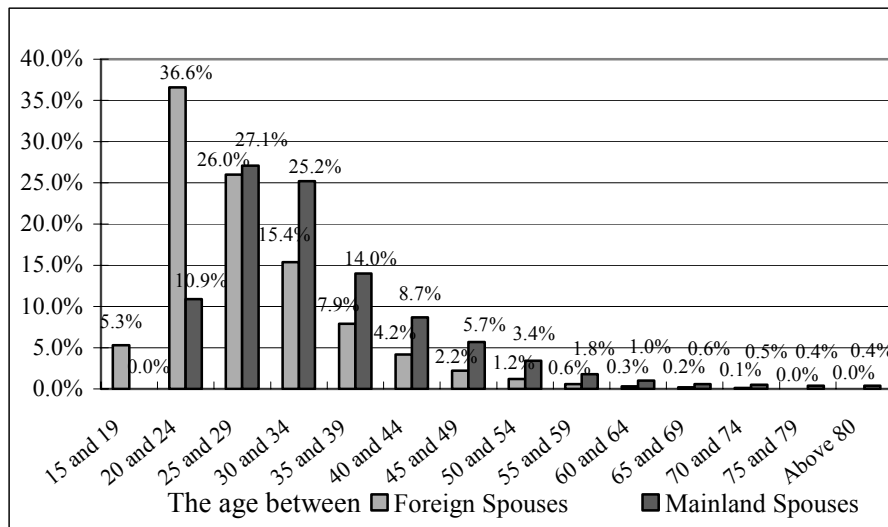
From a jurisprudential level, the phenomenon of interracial marriage/family demonstrates how the state recognizes the family through the lens of the law. This paper ultimately aims to present a socio-legal discussion of foreign spouses that may lead legal scholars not only to concentrate in a practical manner on the issue of the state’s border control, but also to reconsider the existing barriers in terms of international human rights within the local social-legal context.

II. PROBLEMATIZING “FOREIGN SPOUSES”

Official reports and statistics demonstrate that the number of international marriages is significantly increasing in contemporary Taiwanese society. International marriages substantially alter the demographic structures in Taiwan. According to a demographic report released by the Directorate General of Budget, Accounting and Statistics of Executive Yuan, the percentage of newly married couples in an international marriage was 31.9% in 2003, 23.8% in 2004, and 14.0% in 2008. This information shows that there is one international marriage for every seven new marriages in Taiwan.

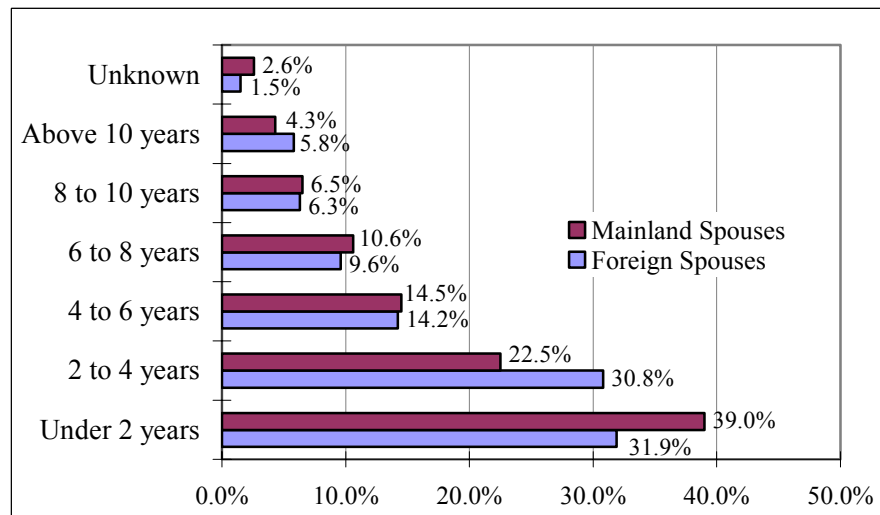
The official reports show that the majority of international marriage immigrants are women, and that 36.6% of them are between 20 and 24 years of age (see Figure 3). What's more, 31.9% of them have resided in Taiwan for less than two years, and 30.8% of them have resided in Taiwan for longer than two years but less than four years (see Figure 4).

Figure 3: The Ages of Foreign Spouses vs. Mainland Spouses



Resource: MOI, <http://sowf.moi.gov.tw/stat/gender/ps03-04.xls> (Figure Maker: Huiping Hsu).

Figure 4: The Length of Residence in Taiwan



Resource: MOI, <http://sowf.moi.gov.tw/stat/gender/ps03-04.xls> (Figure Maker: Huiping Hsu).

The Life Situation Report of Foreign Spouses and Mainland Spouses, conducted by MOI, shows that of non-Taiwanese spouses, 65.4% are from Mainland China and 34.6% are from other countries such as Vietnam (22.0%) and Indonesia (4.4%).⁵ These statistics demonstrate that most female marriage immigrants to Taiwan come from the so-called less economically developed countries of Southeast Asia. For this reason, feminist sociologist HSIA Hsiao-chuan uses the term “foreign brides”. “Foreign” indicates the distance from a woman’s mother state to her new resident country and her husband’s family, and “bride” is a term exclusive to women and is parallel to “mail-order bride.” Therefore, according to HSIA Hsiao-chuan, “foreign bride” implies the commercial character of the international marriage.⁶

However, because of the stigma associated with the term “foreign bride,” and also because of the pressure from scholars and grass roots groups, “foreign spouse” has become the politically correct label in recent years. This term refers to a certain group of women who are non-Taiwanese and who leave their homelands to enter a new stage of their lives in Taiwan. Yet, even the term “foreign spouse” still hints at the complex dilemma of the international marriage issue in MOI and other official governmental organizations use “foreign spouse” in all official and legal documents⁷ to refer to female international marriage immigrants who are originally from Vietnam, Indonesia, Thailand, the Philippines, Malaysia, and other Southeast Asian countries, thereby indicating that female spouses from Southeast Asia primarily make up the international marriage immigrant group in Taiwanese society.⁸ However, the term “foreign spouse,” if it were to be used accurately, should refer to *all* non-Taiwanese spouses. On the other hand, spouses from Mainland China are exclusively called “Mainland spouses,” and therefore are not in the same category as “foreign spouses” from Southeast Asian countries.⁹

5. DIRECTORATE GEN. OF BUDGET, ACCOUNTING AND STATISTICS EXEC. YUAN, SHEHUI CHIHPIAO TUNGCHI NIENPAO 2009 [SOCIAL INDICATORS 2009] 20 (2010), available at <http://www.stat.gov.tw/public/Data/071617231971.pdf>.

6. Hsia, *supra* note 3, at 51-156; Hsiao-Chuan Hsia, *Hsinimin Yuntung te Hsingcheng: Chai Chengchih Chutuhua yu Shehuihsing Yuntung* [The Making of Immigrants Movement: Politics of Differences, Subjectivation and Societal Movement], 61 TAIWAN SHEHUI YENCHIU CHIKAN [TAIWAN: RADICAL Q. SOC. STUD.] 1 (2006) [hereinafter Hsia, *Immigrants Movement*].

7. Ministry of Educ., Republic of China (Taiwan), *Toyuan Wenhuan, Joshih Kuanhuai yu Teshu Chiaoyu* [Muticulture, Care of the Disadvantaged and Special Education], 23-24 (2010), http://www.edu.tw/files/site_content/B0010/%E6%95%99%E6%94%B9-%E5%8D%81%E5%A4%A7%E8%AD%B0%E9%A1%8C06.pdf.

8. *Id.*

9. Due to the special tension between China and Taiwan, the conditions for female Mainland spouses are very different from foreign spouses. See Antonia Chao, *Kungmin Shenfen, Hsientai Kuo chia yu Chinmi Shenghuo: Yi Laojungmin yu “Talu Hsinmiang” te Hunyin wei Yenchiu Anli* [The Modern State, Citizenship, and the Intimate Life: A Case Study of Taiwan’s Glorious Citizens and their

However, with gender sensitivity in mind, one could question whether MOI's officially selected usage of "foreign spouse" is, in fact, more neutral and less prejudicial than "foreign bride." I believe the usage *is* hypocritical, and that both terms are equally problematic. Literally, "foreign spouse" should include males, females, are admitted to the citizens of Taiwan through marriage. But the ongoing plans and programs facilitated by the government to improve the welfare of foreign spouses appear to be solely focused on *female* foreign spouses, especially the women of similar socio-economic status as the Southeast Asian mail-order brides in HSIA Hsiao-Chuan's work.¹⁰ In other words, female foreign spouses from Southeast Asia are treated differently in most cases from other international marriage partners—and even unequally. However, this paper does not intend to criticize the usage of "foreign spouses" completely; rather, it will seek to point out that the usage of this term may actually be blind to gender, race, class, and the myth of the neutrality of law—especially in reference to the naturalization process and the discourse of family law.

Still, the general discourse regarding foreign spouses, as generated by official documents along with the media, may also produce and reinforce multiple traps for foreign marriages. These traps include: (1) viewing marriage as a form of social mobility; and (2) emphasizing women's traditional gender roles as obedient wives and fertile mothers. In so doing, these multiple traps force women into an even more disadvantaged position.¹¹ It does not matter if "foreign spouse" or some other officially sanctioned term is used to rectify the stigma of "foreign brides" or "Vietnamese brides."¹² In fact, these terms all signify the same group of women who share the same stigmatization. As importantly, the problematic usage of "foreign spouse" ignores the multiple identities (e.g., husband/wife, father/mother, daughter-in-law/son-in-law, etc.) that a spouse may assume upon marriage.

Mainland Wives], 8 TAIWAN SHEHUIHSUEH [TAIWANESE SOC.] 1 (2004) [hereinafter Chao, *Citizenship*]; see also Antonia Chao, *Chingkan Chengchih yu Linglei Chengyi: Tsaitai Talu Peiou te Shehui Yuntung Chingyen* [Politics of Sentiments and Alternative Social Justice: How Mainland Spouses Have Engaged in Social Movements in Taiwan], 16 CHENGCHIH YU SHEHUI CHEHSUEH PINGLUN [J. FOR PHIL. STUD. PUB. AFF.] 87 (2006) [hereinafter Chao, *Politics of Sentiments*].

10. Hsia, *supra* note 3, at 157-252.

11. NICOLE CONSTABLE, ROMANCE ON A GLOBAL STAGE: PEN PALS, VIRTUAL ETHNOGRAPHY, AND "MAIL ORDER" MARRIAGES 63-90 (2003); NICOLE CONSTABLE, *A Tale of Two Marriages: International Matchmaking and Gendered Mobility*, in CROSS-BORDER MARRIAGES: GENDER AND MOBILITY IN TRANSNATIONAL ASIA 166, 166-68 (2005); Hsia, *supra* note 3, at 157-252; Hsia, *Immigrants Movement*, *supra* note 6, 34-38.

12. Tien & Wang, *supra* note 3.

III. MARRIAGE AS THE ENTRY POINT OF CITIZENSHIP

A. “*Foreign Spouses*” Through the Socio-Legal Lens

American legal academia has maturely developed its socio-legal scholarship as well as its self-criticism within the disciplines of Law and Society.¹³ The emphasis of socio-legal study can be illustrated by the following assertion:

[J]urisprudence is mostly devoted to examine what takes place inside the box of legal logic. Law and society takes exactly the opposite approach—it examines the influence on law of forces outside the box.¹⁴

Researchers who follow the socio-legal study tradition are interested in discovering how the lawmaking root in social struggles, and how the effect of law substantially affects people’s daily lives. The socio-legal scholars ask, how do all the actors intertwine law and everyday life? How does “real law” and its actors contribute to the phenomenon of “legal knowledge”? In tune with the research tradition of socio-legal study, this study adopts the method of “building the relationship between law and anthropology,” which encourages disciplinary research to take ethnography into consideration.¹⁵ Therefore, employing a socio-legal perspective, this paper will discuss how the state governs and regulates marriage immigrants through the written law by primarily focusing on regulations that apply to them, especially through Entry/Exit and Immigration Law, the Nationality Act,¹⁶ the Employment Service Act,¹⁷ family law,¹⁸ and the rhetoric of legal reform. This paper ultimately aims to explore how marriage to immigrants/foreign spouses, as a socially constructed category, is being presented in the discourse of law and,

13. Mariana Valverde, *Theoretical and Methodological Issues in the Study of Legal Knowledge Practices*, in HOW LAW KNOWS 72 (Austin Sarat et al. eds., 2007).

14. KITTY CALAVITA, *INVITATION TO LAW AND SOCIETY: AN INTRODUCTION TO THE STUDY OF REAL LAW* 4 (2010).

15. See Annelise Riles, *Representing In-Between: Law, Anthropology, and the Rhetoric of Interdisciplinarity*, 1994 U. ILL. L. REV. 597 (1994).

16. Information about the major acts and regulations and about immigrants in Taiwan, see NATIONAL IMMIGRATION AGENCY (TAIWAN), <http://www.immigration.gov.tw/lp.asp?ctNode=30026&CtUnit=16705&BaseDSD=7&mp=2> (last visited Sept. 30, 2011).

17. See Employment Service Act, Ch. 5, (1992, amended 2009) (Taiwan), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0090001>.

18. Family Law in Taiwan is included in Civil Code, which consists of five divisions based on the German system. Part I is “General Principles”, Part II is “Obligations”, Part III is “Property”, Part IV is “Family”, and Part V is “Succession”. See Civil Code, (1919, amended 2010) (Taiwan), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001> (In this essay, for better fluency and better comprehension, I use “Family Law” referring to Civil Code Part IV and V).

vice versa, how the discourse of foreign spouses is “being translated into the language of law.”¹⁹

This paper specifically refers to the regulations regarding marriage immigrants and family law. These facets of law have been selected for several reasons. First, foreign spouses (along with some non-profit organizations) are calling on the government in Taiwan, legislators, and legal practitioners to refine the applicable immigration regulations. These amendments would directly influence foreign spouses’ civic and family lives. It is thus necessary for us legal scholars to carefully re-examine the reform discourse of immigration regulations because subtle biases can be hidden within these amendments. Second, although family law is not usually a part of the scholarship of immigration law, this paper aims to demonstrate that the transnational phenomenon of international marriage challenges the ideology, practice, and litigation of family law in this global era. In the author’s opinion, the academic discourse and judicial practice of family law has long been considered a solid moral standard that serves as the basis of the state.²⁰ Therefore, it is meaningful to broaden the boundaries of family law discourse by including the issues that affect foreign spouses, and to further examine what challenges foreign spouses bring to the study and implementation of family law.

B. *Regulation on Intimacy and Citizenship*

From a lawyer’s perspective, *citizenship* is directly related to the topic of foreign spouses. The questions regarding marriage immigrants are as follows: How do foreign spouses legally and efficiently obtain citizenship? Is there any inherent discrimination in this naturalization procedure that goes against the constitution or the code of human rights set out by any international conventions?

The answers to the above inquiries about foreign spouses and their citizenship may be found in wide-ranging areas of law such as constitutional law, international human rights, and immigration law. Indeed, vast legal aspects weigh enormously on citizenship studies.²¹ The following section will introduce the basic principles and procedures related to how foreign spouses become marriage immigrants and, finally, become naturalized in Taiwan.

19. Riles, *supra* note 15.

20. Li-Ju Lee, *Law and Social Norms in a Changing Society: A Case Study of Taiwanese Family Law*, 8 S. CAL. REV. L. & WOMEN’S STUD. 413 (1999).

21. THOMAS H. MARSHALL, CLASS, CITIZENSHIP AND SOCIAL DEVELOPMENT 3-48 (1964); ENGIN F. ISIN & PATRICIA K. WOOD, CITIZENSHIP & IDENTITY 4-13(1999); Michael Muetzelfeldt, *The Changing State and Changing Citizenship*, in CITIZENSHIP AND DEMOCRACY IN A GLOBAL ERA 77, 89-90 (Andrew Vandenberg ed., 2000).

At the first stage, a foreign spouse applying for residency must have an Alien Residence Certificate (or Residence Certificate). According to the Entry/Exit and Immigration Law²² and the Regulations Governing Visiting, Residency, and Permanent Residency of Aliens,²³ the applicant must go to the local service center of the National Immigration Agency with the required documents. A foreign spouse must apply for an Alien Resident Certificate within 15 days of entry into the country. The fee is \$30 USD and the certificate is valid for one year. If she/he needs continuous residence, the foreign spouse must go to the local service center of the National Immigration Agency to apply for an extension within 15 days before the expiration of her/his Alien Resident Certificate.

According to the Entry/Exit and Immigration Law²⁴ and the Regulations Governing Visiting, Residency, and Permanent Residency of Aliens,²⁵ the documents required to obtain a Resident Certificate include a passport, residence visa, photos, and, most importantly, a transcript of the spouse's domiciliary register (issued within the last three months with a record of marriage registration). A foreign spouse applying for permanent residence must also provide a valid, passing health examination certificate, a certificate of payment of (or exemption from) taxes for the past three years, a certificate of property or special talents and skills, and the applicant's police records from the past five years.

In the case of the death of the Taiwanese-citizen spouse, according to Article 29 of the Entry/Exit and Immigration Law, as well as Article 11 of the Regulations for Governing Stay, Residence and Permanent Residence of Foreigners, the foreign spouse can theoretically apply to continue to reside in Taiwan by law, regardless of whether she/he has children. However, the local service center, if directed by the National Immigration Agency-Taiwan, can withdraw the Resident certificate if the local officers or police find any danger to the public interest.

In the case of a divorce, on the other hand, the foreign spouse will lose residency and may no longer reside in principle; however, for the sake of taking care of a child (or children), she/he may be allowed to continue to reside based on the reason of "other need for residence." In general, the spouse's residency may be extended depending on the individual divorce case; the decision will ultimately be made by the National Immigration

22. See Immigration Act, (1999, amended 2009) (Taiwan), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080132>.

23. Regulations Governing Visiting, Residency, and Permanent Residency of Aliens, (2000, amended 2009) (Taiwan), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080129>.

24. See Immigration Act.

25. Regulations Governing Visiting, Residency, and Permanent Residency of Aliens.

Agency-Taiwan.²⁶

According to Article 7 of the Enforcement Rules of the Nationality Act, for a marriage immigrant to qualify to become naturalized, unless she/he has sufficient property or professional skills to enable her/him to be self-reliant, then she/he must conform to the regulations as recognized by MOI.²⁷

Except for the above rules of stay, residence, and naturalization, foreign spouses are allowed to legally work in Taiwan if they conform to the rules of the Employment Service Act, Chapter 5. According to the Employment Service Act, Article 46, foreign workers are limited to the following occupations as regulated by Council of Labor Affairs.²⁸

These above mentioned criteria are the primary regulations regarding foreign spouses as marriage immigrants to Taiwan. After reviewing these rules and regulations, this paper will aim to determine whether these

26. Usually in local foreign affairs, the police are in charge of the individual cases of foreign marriage divorces and their residence issues. The report and decision made by the local foreign-affair police weighs greatly on the residence permission for foreign spouses.

27. See Enforcement Rules of the Nationality Act, art. 7, (2001, amended 2010) (Taiwan), available at <http://law.moj.gov.tw/eng/LawClass/LawContent.aspx?PCODE=D0030022> (“A person who applies for restoration of nationality or naturalization due to marriage to an ROC citizen shall prepare one of the following documents recognized by the MOI: (1) Proof of domestic income, tax payment, moveable property, or immovable property ownership; (2) Proof of employment by the employer or written documentation of the applicant’s job content and income; (3) Certificate of a specific professional/technical skill or document of technical assessment issued by a competent authority of the government; or (4) Other documents that can prove the applicant is able to be self-reliant. If the foreign spouse does not conform to any of the above conditions, she/he must: (1) earn an average monthly income within the ROC over the past year more than double the basic wage as promulgated by the Council of Labour Affairs, Executive Yuan; (2) own property, movable or immovable, worth more than NT \$5 million; (3) possess a specific professional/technical skill certificate or document of technical assessment issued by a competent authority of the government; (4) serve as a skilled employee in demand by high-tech industries in the ROC as prescribed in Subparagraph 2, Paragraph 3, Article 25 of the Entry & Exit and Migration Act, and thus is granted permission to reside permanently in the ROC; or (5) meet other requirements as recognized by the MOI.”).

28. See Employment Service Act, art. 46, (amended 2009) (Taiwan), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0090001> (“Unless otherwise provided for in the present Act, the work a Foreign Worker may be employed to engage in within the territory of the Republic of China is limited to the following: (1) Specialized or technical work; (2) Director/Manager/Executive of a business invested in or set up by overseas Chinese or foreigner(s) with the authorization of the Government of the Republic of China; (3) Teacher at the following schools, as indicated: (a) school established especially for foreign residents; (b) approved teacher teaching course(s) on foreign language(s) at a public or registered private high school or below; (c) Teacher teaching course(s) at a public or registered private experimental high school’s bilingual department or at bilingual school; (4) Full-time teacher teaching course(s) on foreign language(s) in a short-term class registered for supplementary schooling in accordance with the Supplementary Education Act; (5) Sports coach or athlete; (6) Religious, artistic, and show-business work; (7) Crew member of a merchant vessel, working vessel, or vessel ad hoc permitted by the Ministry of Transportation and Communication; (8) Marine fishing/netting work; (9) Household assistant; (10) Work designated by the Central Competent Authority in response to national major construction project(s) or economic/social development needs; and (11) other specialized work ad hoc approved by the Central Competent Authority due to the lack of such specialist in the domestic employment market and the business necessity to retain the service of such specialist therefore.”).

regulations genuinely fulfill the needs of female foreign spouses and their families in Taiwan—individuals who are generally in a relatively low financial class in Taiwanese society. Specifically, it will seek to uncover any bias that may be hidden beyond these major marriage immigration regulations, even though these rules have been greatly discussed, modified, and reformed in Taiwan in recent years.

In the following section, the concept of “intimate citizenship” is employed through the approach of socio-legal study to find out how the laws recognize the private sphere in Taiwan in this transnational era.

C. *Law as Recognition for Both Legal and Cultural Citizenship*

[I]n these domains [persons, gender, and family], legislative and adjudicative processes are involved in “recognition” rather than constitutive exercises, in recognition or non-recognition of realities²⁹

The law that signifies these regulations forms a vital “material condition” for constructing citizenship. When Ken Plummer challenges the public/private dichotomy by proposing “intimate citizenship,” he asserts that “Families, for all their privacies, are structured through laws and politics”³⁰ Plummer’s core concern is to forward the “plurality of multiple public voices and positions”³¹ as a political (as well as an academic) agenda while simultaneously proposing “intimate citizenship.”³²

In fact, from the tradition of feminist legal scholarship, the law has never been neutral.³³ For example, feminist legal scholar Carol Smart asserts that the law does not only exercise power, but also disqualifies the experiences and knowledge of women and constructs a “masculine culture.”³⁴ A similar contestation arises in the field of citizenship studies. Similar with Plummer and Smart’s points, Vera Mackie asserts the idea of the “masculine model of citizenship”³⁵ and offers a way to reconsider

29. Tim Murphy, *Legal Fabrications and the Case of “Cultural Property”*, in *LAW, ANTHROPOLOGY, AND THE CONSTITUTION OF THE SOCIAL: MAKING PERSONS AND THINGS* 115, 138 (Alain Pottage & Martha Mundy eds., 2004).

30. KEN PLUMMER, *INTIMATE CITIZENSHIP: PRIVATE DECISIONS AND PUBLIC DIALOGUES* 70 (2003).

31. *Id.* at 71.

32. *Id.* at 68-83.

33. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1988); CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989); MARTHA A. FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); JUDITH A. BAER, *OUR LIVES BEFORE THE LAW: CONSTRUCTING A FEMINIST JURISPRUDENCE* (1999).

34. SMART, *supra* note 33, at 2-3.

35. Vera Mackie, *Dimensions of Citizenship in Modern Japan: Gender, Class, Ethnicity and Sexuality*, in *CITIZENSHIP AND DEMOCRACY IN A GLOBAL ERA* 245, 246-47 (Andrew Vandenberg ed.,

citizenship. As Mackie proposes:

[A]nother way to consider citizenship is through a focus on the marginalized others, their marginality highlighting the limits of discourses of citizenship, and the exclusions built into the model of the citizen as a male, heterosexual, white-collar worker.³⁶

Female foreign spouses coming from Southeast Asian countries who are hoping for better lives by marrying Taiwanese husbands and settling in Taiwan often bear multiple perceived inferiorities, both in their home countries and in their new husbands' country (Taiwan). These 'inferiorities' include gender, class, culture, education, and economics.³⁷ How does Taiwan, as a "receiving country" of marriage immigrants, rectify the various difficulties and inequalities for these "foreign brides" through its laws and regulations? When the phenomenon of "foreign brides" touches the national border issue and challenges the single-culture/ethnic family type, how does the law influence this social change? And further, when it comes to foreign spouse legal reform, what does Taiwan's socio-legal tradition reflect about the legal ideology surrounding the transnational marriage market?

In order to answer these questions, an old debate about the boundaries between the public and the private must be revisited. Marriage is a personal choice; it belongs in the private sphere. Yet, the issue of marriage immigrants involves the state's power and its recognition—namely for national security³⁸ and population regulation reasons, both of which remain in the public sphere.³⁹ In order to present the limitations of the public/private debate on foreign spouse citizenship, Plummer proposes the concept of "intimate citizenship":

[I]ntimate citizenship refers to all those areas of life that appear to be personal but that are in effect connected to, structured by, or regulated through the public sphere.⁴⁰

2000).

36. *Id.* at 254.

37. Mei-Hsien Lee, *Yuehnan "Haonuhsing" te Wenhua Pienchieh yu "Yuehnan Hsinniang": "Tsunyen" vs. "Linghun chihChai"* [*The Cultural Boundary of "Good Women" in Vietnam and "Vietnamese Brides": "Pride" vs. "Debt of the Soul"*], TAIWAN TUNGNANYA HSUEHKAN [TAIWAN J. SOUTHEAST ASIAN STUD.], Apr. 2006, at 37.

38. The nation's stability is the major concern for the national border's control and regulations; therefore, the policy regarding the stability and security for the nation is the core discussion for citizenship scholarship; *See generally* ISIN & WOOD, *supra* note 21, at 50-55, 125-37 (1999).

39. However, it would be naive to identify that marriage and family only involve the private sphere. The extension of Family Law into the social welfare terrain of law goes beyond the scope of this paper.

40. PLUMMER, *supra* note 30, at 70.

He adds:

[I]ntimate citizenship—as a designation in public discourse on the personal life—makes for a certain tension: it appears to be an oxymoron [T]his very juxtaposition sensitizes us to the important fact that the public and the private are no longer separate, autonomous spheres, if indeed they ever were.⁴¹

Turning to the authoritative institute (i.e., the law), I will delineate the relationship between law and private intimacy by taking a step beyond Plummer's definition to find a trajectory within the law that can relate the private to the public.⁴² In fact, cultural anthropologist Antonia Chao employs Plummer's concept of "intimate citizenship" to study the "old singles" in Taiwan—that is, those who were retired veterans but now are officially named *Jungmin* (Glorious Citizens).⁴³

In Chao's study, the law in Taiwan has overwhelmingly dominated the intimate lives of *Jungmin* over the past five decades.⁴⁴ *Jungmin* were forbidden to get married under the prohibition of the Army Marriage Rules released in the early 1950s, because the state needed to maintain the "strength and stability" of the army in response to the critical situation between China and Taiwan. However, after the Army Marriage Rules were repealed in the late 1950s, these glorified citizen soldiers still had difficulties in finding wives because the state had already successfully enforced a distance between the *Jungmin* and the local common citizens.⁴⁵ In this way, retired veterans' intimate lives were entirely determined through various laws, rules, and administrative orders that all symbolized the authority of the state during wartime or semi-wartime. More specifically, the laws also demonstrated the legitimacy of the state to impede the citizenship of a certain group of citizens.

As the critical situation between China and Taiwan eased, many *Jungmin*, who had eventually become elders and were of a relatively lower economic status in contemporary Taiwanese society, continued to find it difficult to obtain Taiwanese women to marry and therefore turned to the marriage market in China to look for wives. The most common reasons for forming such China-Taiwan marriages were because, unlike Southeast Asian spouses, Mainland spouses shared a similar culture with the *Jungmin* and

41. PLUMMER, *supra* note 30, at 68.

42. For doing the interdisciplinary study and integrating Family Law and other social sciences, I borrow the idea of Riles' strategies: "Building relationship," on which she provides a theoretical analysis to connect Law and Anthropology, *see* Riles, *supra* note 15, at 600-01.

43. Chao, *Citizenship*, *supra* note 9.

44. *Id.* at 3-10.

45. *Id.* at 7-11.

could easily communicate with them in Mandarin Chinese.

In Chao's study of Mainland female spouses, she demonstrates the extensive rules governing these foreign marriages that go beyond immigration regulations. These rules include the laws of the naturalization procedure, and regulations about (and permissions for) political activities. These laws are not only "in the books," but are also demonstrated "in action," as they are operated by legislators at the central level and bureaucrats at the local level. For example, when Mainland spouses and their families participated in a social movement striking for their right to become citizens, the laws, procedures, and media were unfriendly toward them. Chao illustrates their situation by saying they occupy a "location at the borderland of civic society."⁴⁶ Ultimately, Chao's research demonstrated that the law established and regulated both legal and cultural citizenship for Mainland spouses.⁴⁷

D. *Regulation of the Private Sphere — Foreign Spouses and their Inspiration to Family Law*

I have discussed the dynamics between law and intimate citizenship in the case of the *Jungmin* and their Mainland spouses in Taiwan. But how does this case inform the study of the marriage immigrant regulations, family law for foreign spouses, and their intimate citizenship in Taiwan? Two topics for discussion will be addressed in this section. First, I discuss the *materiality* for marriage immigrants that appears within the immigration regulations. Second, the multicultural concerns and future family law design will be examined in terms of foreign marriage. These discussions will take place keeping in mind that, in this global era with more and more cross-border couples marrying, we need to be careful that legal amendments do not create a backlash that reaffirms gender role stereotypes.

As for the first topic, the Southeast Asian female spouses and their husbands in Taiwan are facing *materiality* issues similar to those exemplified by the *Jungmin* cases in Chao's study. All the laws reviewed in Part II of this paper are vivid material barriers that hinder personal intimate lives—especially intimate lives involving national territorial security and state citizenship. Accordingly, it is important to keep in mind that if lawyers and policy makers distance themselves from being neutral or objective, and

46. Chao, *Politics of Sentiments*, *supra* note 9.

47. In Antonia Chao's works, she remarks that the topics of the glorious citizens and the Mainland spouses also intertwined with the intense political condition between China and Taiwan and the complex among various ethnic groups in Taiwan. See Chao, *Citizenship*, *supra* note 9; Chao, *Politics of Sentiments*, *supra* note 9. Yet in this article, I mainly focus on the acts, regulations, and citizenship but do not extend my project to Mainland spouses in Taiwan.

if they do not take the materiality of foreign spouses and their husbands into consideration (e.g., the conditions appearing in laws in terms of self-reliant occupational skills, the required fees, and the sufficient net worth), then any legal amendment or policy reform may become another trap or difficulty that the regulations can hardly solve.

As for multicultural concerns, Teemu Ruskola notes that the characterization of the family should be a “paradigmatic governance model.” He further denounces “the notion of a metaphorical ‘political family’ on the level of the state,” especially under the shadow of Confucian tradition.⁴⁸ In Taiwan, it is the society that has been influenced by Confucian tradition greatly. Yet, under the social climate that advocates for the pursuit of individual autonomy, gender equality, and children’s best interests, the Confucian tradition is today having less and less influence on family law. Taiwanese family law has undergone numerous reforms since 1985, and has made impressive progress. However, marriage and family are still seen as the chains that secure the nation’s stability, and are thus considered to be in the public interest in most discourse on Family Law reform and constitutional interpretations.⁴⁹

But how should the foreign spouse be considered in the forum of Taiwanese Family Law? And further, how is the notion of the foreign spouse impacting the discourse of contemporary Family Law? In the earlier work of American legal theorist Mary Ann Glendon, who reviewed the transformation of American Family Law through a historical perspective, she notes, “Many traditional family law norms have been found inconsistent with the values contained in constitutions or international conventions.”⁵⁰ Glendon takes the position that, on the one hand, a constitution is the symbol of modern law, and international conventions are artifacts of globalization; in this way, gender equality, free will, personal choices, and so forth are ensured within modern legal norms. On the other hand, there generally are still “traditional family law norms” present that are inconsistent with the modernization of family law.

Thus, given Glendon’s proposition, a binary condition—the modernization of law versus traditional social norms—can exist within the transformation of family law. Furthermore, I assert that the contemporary issue of the foreign spouse as a phenomenon of globalization has created the multicultural legal and social welfare reform discourse in Taiwan—a

48. Teemu Ruskola, *Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective*, 52 STAN. L. REV. 1599 (2000).

49. Shu-chin Grace Kuo, *A Cultural Legal Study on the Transformation of Family Law in Taiwan*, 16 S. CAL. INTERDISC. L.J. 379 (2007).

50. MARY ANN GLENDON, *THE TRANSFORMATION OF FAMILY LAW: STATE, LAW, AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE* 2 (1989).

discourse that will possibly further reaffirm the idea of the sexual family. For clarification, I invoke a sociological work on Vietnamese brides as an example.⁵¹ In their work, Tian and Wang ask a core question in regards to interracial marriage: Why would Taiwanese men pay the price (i.e., tolerating cultural differences and possible stigmatization) to marry Vietnamese spouses? The answer they arrive at is that Taiwanese men view Vietnamese women as “ideal wives” who can satisfy their masculinity.⁵² Tian and Wang go on to argue that, because of the improving social status of Taiwanese women, Taiwanese men have problems demonstrating masculinity in their marriages to Taiwanese women as a result of traditional gender role expectation.⁵³ Therefore, Taiwanese men turn to “foreign brides” to continue enjoying their superiority in the male-dominated society.⁵⁴ In this manner, the transnational phenomenon caused by globalization—in this case, Vietnamese female spouses flowing into Taiwan—is representing (and generating) a 1950s nostalgia image of marriage that certain interracial married couples are now re-enacting in the twenty-first century.⁵⁵

Thus, before investing resources to further multi-value legal and social welfare reforms that are meant to help foreign spouses and facilitate more liberal family models, we first need to re-examine the ideology that is hidden within the enforcement of legal regulations for female foreign spouses.

IV. RETHINKING A LEGAL DISCOURSE FOR FOREIGN SPOUSES: EMBRACING MULTIPLE VALUES

The legal system has at best to decide whether or not to “recognize” it.⁵⁶

(Murphy 2004:116)

These legal structures (rights to work, choice of domicile, choice of

51. Tien & Wang, *supra* note 3.

52. *Id.*

53. *Id.*

54. There are numerous sociological works that confirm similar research results about the masculine character for the Taiwanese groom and the structural gender bias in interracial marriage. See Hsiao-Chuan Hsia, “*Waichi Hsinniang*” *Hsienhsiang chih Meiti Chien Kou* [*The Media Construction of the “Foreign Brides” Phenomenon*], 43 TAIWAN SHEHUI YENCHIU CHIKAN [TAIWAN: RADICAL Q. SOC. STUD.] 153, 155-92 (2001); Hsia, *supra* note 3, at 51-156; Hsing-Ju Shen & Hung-Jen Wang, “*Jungju*” *huo* “*Taoli*”?-*Yuehnan Hsinniang te Tsaiti Fankang Tselueh* [*Norms of Integration and Strategies of Escape: A Daily Life of “Vietnamese Brides” in Taiwan*], in TAIWAN YU TUNGNYA: NANHSIANG CHENGTSSE YU YUEHNAN HSINNIANG [TAIWAN & SOUTHEAST ASIA: GO SOUTH POLICY AND VIETNAMESE BRIDES] 249 (Hsin-Huang Hsiao ed., 2003).

55. Of course, such gender divisions within the interracial marriage and family life do not all fall into the stereotype: Female foreign spouses may seek help from NGOs, from social movements, and from their self-developed strategies in their daily local lives. See Hsia, *Immigrants Movement*, *supra* note 6.

56. Murphy, *supra* note 29, at 116.

religion, freedom of assembly and association, and freedom from discrimination on the grounds of sex, race, status or religion) do not, however, exhaust discourse on citizenship. (Mackie 2000: 246-247)⁵⁷

On the one hand, from a social perspective, cross-border marriages are the result of multiple hierarchies (e.g., class, gender, culture, etc.) and are casting the female foreign spouse as an obedient wife, qualified mother, and dutiful daughter-in-law in order to profit the family/state. On the other hand, from a regulatory/legal perspective, the enforcement of various acts, rules, laws, and regulations may create a backlash originating from the nostalgia of patriarchy and stereotypical gender roles in marriage.⁵⁸ In other words, the issue of foreign marriage, which became a highly scrutinized practice in the early 2000s in Taiwan, may be revitalizing traditional gender role-playing in the twenty-first century. The foreign spouse's story reminds us to alert there is stigma and gender/cultural/class discrimination under the one roof of *family*, in which should be a safe, warm, and comfort place for all family members no matter what kind of minority groups he/she falls into.

The discussion of female foreign spouses should not be restricted to the realms of family law and immigration regulations with legal doctrinal methods. The foreign spouses' issues push us to ask the old question again: What constitutes "family" for foreign spouses and their families in their new countries? If marriage becomes simply a category on an immigration application and involves economic mobility during the global era, then what is the essence of that marriage, and how can the law make distinction between "real marriage" and "fake marriage"? Can family law and marriage immigrant regulations, which represent the power of state, step into citizens' private intimacy zone and decide the legitimacy of marriage? In this sense, the fundamental concern of this paper is not just to provide a socio-legal study for immigration law and the foreign marriage issue. Rather, it is to take the case of the marriage immigrant as a starting point from which to rethink the methodology and theories regarding the contemporary challenges for family law and globalization.

I hope to have illustrated the case of foreign spouses as a triangular prism that generates different reflections from bureaucrats, politicians,

57. Mackie, *supra* note 35, at 246-47.

58. Tien & Wang, *supra* note 3.

media, lawyers, sociologists, advocates, feminist groups, foreign spouses themselves, and their husbands' families. Furthermore, I hope to have contributed to the examination of how the acts and regulations for family, gender, race, class, and global/local issues affect foreign spouses' citizenship and civil lives—and ultimately their marriages and families.

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外籍配偶相關規範之 法律與社會分析

郭 書 琴

摘 要

本篇論文以「法律與社會」的研究方法，分析近年來在臺灣的外籍配偶相關法律規範修正論述。本文的主要問題意識為：雖經過眾多學者專家與人權團體的呼籲，加上行政、司法、立法機關各相關單位的努力，改良了外籍配偶在臺灣的相關法律規範與政策，例如放寬歸化條件、改善各項輔導與補助。但這些改進過後或正在改進中的各項法規範、政策與相關論述背後，是否帶有女性主義法理學向來所批評的，陷入單一的父權家庭模式的刻板性別偏見？本篇論文的研究限於篇幅，僅討論東南亞籍的女性外籍配偶相關法規範論述的法律與社會分析，將不涉及大陸配偶的問題，因為複雜的兩岸關係，使得兩岸人民通婚的法律、政策、單一婚姻個案中的性別與權力等，遠比臺灣男性與東南亞籍女性通婚更為複雜。本文的貢獻主要有二：一為提供「法律與社會」分析模式，希望這對於向來注重「立即提出對策式」的法學研究方法，有另類的啟發。二是本文以「外籍配偶」議題所涉及的性別、權力，與「家庭的物質化基礎」等議題，企圖擴大身分法的研究主題與研究規模，希望在研究身分法的程序面與實質面的同時，能夠注意到跨國流動時，一個屋簷下已經發生的多元家庭現象。

關鍵詞：外籍配偶，公民身分、國際通婚、婚姻移民、移民法、法律與社會分析、女性主義法理學