

The New Paradigm of Taiwanese Family Law and the Changing Face of the Family Court

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Abstract

Since the 1990s, Taiwanese family law has been experiencing the change from the traditional model, which reflects and reinforces traditional family values and practices, to a new model, promoting individual autonomy, gender equality and the best interests of the child. This change not only mirrors the evolving social norms and values regarding marriage, gender and family in Taiwan, but also indicates a new understanding and regulatory framework of the relationship among individual, family, and the state. Under the new paradigm of family law, courts are expected to take on more responsibilities. They are to assume various roles, including adjudicators, protectors, and overseers, to help solve family disputes/problems, protect disadvantaged family members, and promote the best interests of the child.

This article is to discuss the changing face of the family court after the paradigm shift in law and provide a critical assessment. Drawing from two types of cases — the disputes over marital residence and child custody, the author raises concerns over the new tasks of the family court. Legitimacy of judicial interference and the institutional competence of the court, the article argues, are two issues critical to the performance of the court under the new family law model. The debate on family privacy and family autonomy helps clarify sources and limits of the legitimacy of judicial interference in family affairs. In addition, the new tasks invested to the family court require an overhaul of judicial system, including incorporating alternative dispute resolution and involving various

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professionals and resources. The article suggests that a paradigm shift in the family court system is called for to meet the challenge posed by the new development of family law.

Keywords: paradigm shift in family law, the best interests of the child, family privacy, gender equality, alternative dispute resolution, problem solving procedure, martial residence, child custody