

## Gender and National Membership

### – A Feminist Legal History of Gender and

### Nationality in Taiwan

*Chao-ju Chen\**

#### Abstract

The relationship between women and the nation is a highly contested terrain in the setting of Taiwan where its history of colonization and racial/ethnic relationship has together produced extremely complicated national politics. This paper examines the ways in which women are related to the nation in Taiwan from a rather different perspective by discussing the legal mechanism that affiliates – and disaffiliates – women with the nation, that is, the legal regulation of nationality. The law plays a critical role in the construction of community boundaries as well as the status of a member within a community. It, from an institutional perspective, determines who will be admitted to the community and who will be excluded, and designates the entitlements and responsibilities attached to membership. Namely, it involves in the imagination of selfness and otherness as well as relationships between members and the nation in a coercive fashion.

Legal regulation on women and nationality often operates to produce and facilitate gender inequality. My investigation into the subject of gender and nationality in Taiwan reveals, through historical lenses, the ways in

which law constructs national membership along gendered lines that discriminate against women, that is, how a woman's membership to the nation was dependent on her marital status, and how citizen-mothers were deprived of the entitlement to define the nation. Part I explains how the law of nationality functions to shape gendered borders. Part II offers an investigation of various forms of gender inequality in nationality laws that existed during the Japanese colonial period (1895-1945). Both the legacy of this inequality and new forms of discrimination in the legal regulation of women and national community membership under the KMT regime (1945-2000) are discussed in Part III. Part IV begins with a critical examination of recent legal reforms since 2000 that have rewritten women's overall relationship with the nation in a gender-neutral fashion, and ends with a critique of this reshaping of women's national membership.

**Keywords:** feminist legal history, feminist jurisprudence, gender history, Taiwanese legal history, nationality, citizenship, race/ethnicity, colonialism, postcolonial, transnational marriage, motherhood