

**Patronymic Norm and the Right to Use the Maternal Surname:
A Social-legal Study of the Legal Reform of Children's
Surname Law**

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Abstract

Patronymy is a norm in Taiwan's society. Mandating that children shall take their father's surname, Taiwan's old family law was both constitutive and reflective of patronymy as a norm. The law was revised in 2007 to entitle parents with the right to decide the surname of their child upon mutual agreement. This legal reform is celebrated as a milestone of feminist legal reform. However, official statistics shows that very few parents of newborns chose to give children their mother's surname, which means that patronymy stays as the norm. That the newly revised law fails to change the dominant practice of patronymy is often understood as a gap between law and society, but the gap theory of law and society does not offer satisfactory explanations for this phenomenon. This study therefore adopts the constitutive theory of law and society to investigate how individual and collective legal mobilization shaped and challenged patronymic laws, and how right framing were used to push legal reform. In this study, political and legal regimes are divided into two periods: the period of "strict regulation" (1945-1985) and the period of "loosening the restrictions on using maternal surname" (1985-2007), and patterns of legal mobilization are categorized into four types: legislative lobbying, judicial litigation, administrative lobbying and remedies, and extra-legal mobilization. The investigation into legal mobilization during the two periods finds that individual legal mobilization has played a significant role in shaping the law and that official population policy has facilitated the legal reform, and identifies several differences between forms of legal mobilization under the

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two regimes. The study of right framing used in legal mobilization demonstrates the transition from policy-based framing to right-based framing and the diversity of tradition-based framing, reveals the framing of “women’s right to continue the family line” as an invention of counter-tradition, and identifies the emergence of interest/right-of-the-child framing. It is concluded that legal mobilization in the past is dominated by formal equality thinking, and it is suggested that future mobilization for women’s equal citizenship be based on substantive equality.

Keywords: maternal surname, children’s surname, population policy, right, women’s movement, feminist legal studies, legal mobilization, legal framing, legal consciousness, law and society