

## **Bargaining with Patriarchy: Daughter's Right of Inheritance in Practice**

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### **Abstract**

Studies have consistently shown that most daughters in Taiwan do not enjoy their legal right of inheritance. It is commonly treated as an indication of Taiwanese women as victims of backward patriarchal tradition, and an example of the incapability of progressive westernized law in transforming the backward traditional society. The purpose of this study is to debunk the false dichotomy between victim and agency, and between law and tradition. My historical investigation showed that the formation of daughter's equal inheritance right is part of the de-gendering process of postwar Taiwanese legal system, and feminist legal reform movement has contributed to this reformulation. The reformed law of inheritance functions as background rules under which people negotiate their rights. Court decisions are used to analyze the practice of negotiation. Strategies and mechanism have been developed to disinherit daughters, and daughters have different reactions to them. Some daughters choose to give up their rights; it might be a compelled choice to show their identity and affections to their parents, or a result of negotiation: giving up their right in exchange of an amount of money. Once the negotiation fail, daughters may go to court to assert their right, but going to court can also be a legal action on the part of brothers and parents to disinherit daughters. When daughters go to court, they constantly encounter the conflict between tradition and the law. I have analyzed this conflict and discussed how tradition is more an invention than an essential fact, and how tradition and law can both work for and against a right-asserting daughter. I have also discussed the catch-22 situation facing a married daughter, and the

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dynamics of sisterhood. It is concluded that, daughters may choose to give up their right or to assert their right; these choices are results of negotiating under the shadow of law and demonstration of women's partial agency.

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