

Inheriting Mother's Surname: Subject Position and Legal Consciousness in Multiple Relationship

Yuan- Huei Ko* · Hsiao-Tan Wang**

Abstract

Since 2007 the amendment of article 1059 in Taiwan's civil law has provided that husbands and wives have equal rights when negotiating their children's surnames; however, there has been little change in practice. Past studies on maternal surnames have discussed the contemporary diversity of traditional patrilineal inheritance practices, but they do not discuss the social process of negotiation that parents face as they struggle to give their children the mother's surname. This paper aims to explore this process that parents must navigate when realizing their rights by presenting the findings of 14 in-depth interviews from 10 couples who successfully gave their children their mother's surname. An analysis of their legal consciousness suggests that parents must manage multiple relationships within the patrilineal system and that this has a great influence on the recursive nature of identity and legal consciousness. Many efforts are made to challenge their gender roles across these multiple relationships, such as by strengthening their marital identity to contest any objections from the pressure of patrilineal relationship, by bypassing gender norms to challenge the dominant ideas and practices, or by producing their own discourse to persuade other members of the larger family. During this process, their self-identity and sense of

* Master, Institute of Law and Inter-Disciplinary Studies, National Chengchi University.
E-mail: yuanhueiko@gmail.com

** Ph.D., Law in Development, University of Warwick, UK; Professor, College of Law,
National Chengchi University.
E-mail: hsiaotan.wang@gmail.com

belonging go through three emotional stages: first, affective imbalance and sense of injustice; second, anger and self-protection as a way of contest; third, alienation or distancing from other members of the larger family and a redefining of the meaning of negotiation. This research shows that the conventional father's surname is not an unchangeable gender structure, and similarly, that agencies in the diverse system of oppression and multiple role relationships are not unreceptive to change. The key to success appears to lie in establishing a more appropriate subject position or self-identity and reshaping the collective legal consciousness, while simultaneously resetting the distance between themselves and others.

Keywords: gender structure, gender role, identity, legal consciousness, emotion, social change, maternal surname, family law