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Symposium: Rethinking the Masculine Character of the Legal Profession: A Case Study of Female Legal Professionals and their Gendered Life in Taiwan

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RETHINKING THE MASCULINE CHARACTER OF THE LEGAL PROFESSION:

A CASE STUDY OF FEMALE LEGAL PROFESSIONALS AND THEIR GENDERED LIFE IN TAIWAN

SHU-CHIN GRACE KUO*

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INTRODUCTION

It is by characterizing the legal profession as masculine-oriented that we can describe comprehensible scenarios to explain how power, in terms of gender and institutional discipline, constructs law and legal professionalism. The gender bias against women, as well as other minority groups within the legal profession, has been thoroughly examined by feminist legal scholars studying how power is transferred into the processes by which laws are made, interpreted, enforced, and amended, especially by a certain group of people, namely those who compose the patriarchal institution of law.¹ In this sense, the legal culture is viewed as a patriarchal institution.² In

1. See MARTHA A. FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* 11 (1991) (noting the law can be construed "as a manifestation of power in society"). Furthermore, Martha Fineman notes that there is no division between law and power, law represents both a discourse and a process of power, and that law is found in discourse and language used in everyday life, reflecting understandings about what constitutes the law. *Id.* She says that "[i]t is evident in the beliefs and assumptions we hold about the world in which we live and in the norms and values we cherish." *Id.*; see also VIRGINIA DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998) (illustrating vividly early generations of female lawyers from a historian's perspective); see also Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617, 627 (1990) (observing that "critical feminism offers varied and ambivalent responses" to the issue of "the dominance of liberal liberalism and the role law has played in maintaining it"). See generally JUDITH BAER, *OUR LIVES BEFORE THE LAW: CONSTRUCTING A FEMINIST JURISPRUDENCE* (1999) (asserting that the legal system has a male bias and must do more to help women combat violence and overcome political, economic, and social disadvantages); NICOLA LACEY, *UNSPEAKABLE SUBJECTS: FEMINIST ESSAYS IN LEGAL AND SOCIAL THEORY* (1998) (considering the relationship between feminist and other critical approaches to legal theory); Mary Jane Mossman, *Feminism and Legal Method: The Difference it Makes*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* 283 (Martha A. Fineman et al. eds., 1991) (inquiring whether a feminist agenda can be accommodated within the legal system).

2. See, e.g., Richard Collier, *(Un)Sexy Bodies: The Making of Professional Legal Masculinities*, in *LEGAL FEMINISMS: THEORY AND PRACTICE* 21-45 (Clare McGynn ed., 1998) (illustrating that the legal culture has been gendered as masculine); see also CAROL SMART, *FEMINISM AND THE POWER OF LAW* 27-28 (1989) (acknowledging the power of feminism to create an alternative to mainstream legal discourse); MORAL VISION AND PROFESSIONAL DECISIONS: *THE CHANGING VALUES OF WOMEN AND MEN LAWYERS* 130-55 (Rand Jack et al. eds., 1989) [hereinafter *MORAL VISION AND PROFESSIONAL DECISIONS*] (observing that female lawyers think in terms of "care," social order, and individual well being, while men think more of terms of "rights"). See generally CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 53 (2d ed. 1993) (discussing the barriers that women encounter when entering the legal profession); *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL AND INSTITUTIONAL CHANGE* (Lani Guinier et al. eds., 1997) [hereinafter *BECOMING GENTLEMEN*] (identifying the recognition of gender differences as a major factor as an improvement in American legal education); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1402 (1997) (observing that "the moral reasoning style of the legal profession is overwhelmingly masculine"); S. Elizabeth Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Sill Have So Few Female Partners?*, 42 UCLA L. REV. 1361 (2001) (examining reasons for the glass ceiling's creation and perpetuation); Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 119 (1988) (tracking the progress of women lawyers employed

consequence, the masculine legal culture presents itself as the greatest target for feminist legal scholars.³

Adopting the concept of “gendered life”⁴ from Martha Fineman to study female legal professionals, in this essay, I explore the possibility of re-characterizing the masculine nature of the legal profession by using Taiwan as a case study. This work centers around one year of ethnography on female legal professionals in Taiwan, where the legal field is being joined by an increasing number of women, who eventually will account for half of the legal professionals. In Taiwan’s case, I shall argue not only that the gender equality theories adopted from the United States need to be recast to take into account the characteristics of the indigenous legal culture and its societal differences, but also that the core task is to reconsider the masculine culture of the legal profession. If the masculine character of the legal profession cannot easily explain the patriarchy of the law, then the neutrality of the law should also be re-examined, both to seek a new, invigorated strategy to solve the dilemma for women in law and to thoughtfully re-characterize the gendered nature of the legal profession.

As a female lawyer who has received legal training in Taiwan and academic training in the United States, I took advantage of an ethnographic approach to compare these two legal cultures by way of a close-up, comparative-lawyer’s lens. Part I of this essay reviews the legal culture in the United States, which is characterized as masculine-oriented, and also indicates an alternative research strategy on the topic of women in the legal profession. Part II provides a brief background of the legal profession in Taiwan and then addresses life-stories based on ethnographic study of female legal professionals,

by large law firms); Ellen S. Podgor, *Lawyer Professionalism in a Gendered Society*, 47 S.C. L. REV. 323 (1996) (proposing that gender bias reform be included in efforts to develop a “new professionalism” among lawyers); Jacquelyn H. Slotkin, *You Really Have Come a Long Way: An Analysis and Comparison of Role Conflict Experienced by Women Attorneys Today and by Educated Women Twenty Years Ago*, 18 WOMEN’S RTS. L. REP. 17 (1996) (examining “role conflict” among female lawyers in the 1990s).

3. See Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29, 37 (1987) (stating that legal doctrines excluding women were made by men who believed that women belong in the home and are too timid to be part of a man’s world); see also Diane Polan, *Toward a Theory of Law and Patriarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (David Kairys ed., 1982).

4. See MARTHA A. FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 47-48 (1994) (explaining that “gendered life is based on the premise that as a socially and legally defined group, women share the potential for experiencing a variety of situations, statuses, and ideological and political impositions in which their gender is culturally relevant”). “These experiences, be they actual or potential, provide the occasion for women to develop an identifiable perspective that is rooted in their application of, and reaction to, the gendered nature of our social world.” *Id.* at 48.

including female judges, prosecutors and lawyers.

Part III develops my three-fold argument. First of all, the legal culture in Taiwan is widely recognized as a masculine one, yet gender difference and gender bias have been covert, given the assumption of the neutrality of law. Under such circumstances, while female legal professionals in Taiwan confront common traps, such as balancing marriages, family, community, and rewarding careers. This particular group of women – along with its male colleagues – tends to conclude erroneously that such conflicts originate from outside rather than inside the legal field. I will argue that this thesis is problematic, because it essentially assumes that laws and the legal field, should be gender-neutral, or even value-detached. Second, by examining two institutions that have been recognized as primary promoters of gender equality in Taiwan’s legal field the legal recruitment examination system and seniority-based promotion judicial system, I will show how gender bias subtly functions in both systems. Third, I will argue that, although development from a masculine to a so-called neutral legal culture appears to promote gender-equality, subtle gender biases will nonetheless be neglected and possibly turn into gender-blindness. Finally, I will summarize the major concern of this essay, namely that the discourse of the gendered division of labor based on gender differences, which paradoxically responds to a masculine legal culture, needs to be refined in order to surpass the double-bind dilemma so common among professional women today.

I. THE MASCULINE LEGAL CULTURE IN THE UNITED STATES

Historically, entrance into the legal field, including gaining admissions to law school and passing the bar, was a long journey for women and other minority groups in the United States.⁵ American women gradually increased their population in the legal field, yet they shared the experience of being antagonized in law school.⁶ In looking at female lawyers in the United States, it is acknowledged that this particular group was excluded from the gentleman’s club. Feminist legal scholars argue that women in the legal field still confront resistance and are excluded from the “white male club.” As Menkel-Meadow remarks, since there have been more women present in the legal field, the issue of women being characterized as “the excluded voice” should be noticed and discussed greatly among the

5. See DRACHMAN, *supra* note 1, at 9 (stating that judges and scholars interpreted the law of nature to mean that women should bear children, remain loyal to their husbands and maintain a healthy home life).

6. See *id.* at 37 (collecting the experiences of women who were the only females in their law schools).

various stains of feminist scholarship.⁷ There is some optimism that, with more females in legal practice, more gender-consciousness and gender equality will be pursued in the United States.⁸

The major themes of studies of women in law in the United States context are as follows. First, there is a focus on discovering the causes and reasons for gender exclusion in the legal field.⁹ Second, the strategies of assimilation versus innovation have been expansively discussed.¹⁰ Third, scholars have discussed whether the traditional gender role for women would be changed by the legal culture, or whether the legal profession, more so the legal epistemology, would be challenged by the increased presence of women.¹¹ Furthermore, the discourse of women in the legal profession has created a focal point for numerous feminist legal scholars emerging with the second-wave of feminist theorists.¹² Such feminist legal scholars developed

7. See Menkel-Meadow, *supra* note 3, at 29 (observing that the “lawmakers” throughout United States history have been from a single group, middle to upper class white males); see also Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 L. & SOC. INQUIRY 289, 312-13 (1989) [hereinafter Menkel-Meadow, *Research Agenda*] (noting that exclusion has given women the benefit of an outsider’s critical perspective); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women’s Lawyering Process*, 1 BERKELEY WOMEN’S L.J. 39 (1985) [hereinafter Menkel-Meadow, *Portia Different Voice*] (acknowledging a male-derived model of moral reasoning and applying it to analyze differences between men and women in the legal field).

8. See Patricia Yancey Martin et al., *Gender Bias and Feminist Consciousness Among Judges and Attorneys: A Standpoint Theory Analysis*, 27 SIGNS 665-80 (2002) (citing empirical data to demonstrate that female judges, lawyers and prosecutors have less gender bias than their male counterparts); Martha Minow, *Adjudicating Differences: Conflicts Among Feminist Lawyers*, in CONFLICTS IN FEMINISM 149 (Marianne Hirsch et al. eds., 1990). See generally DEBORAH L. RHODE, ABA COMM’N ON WOMEN IN THE PROFESSION, *BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE* (2001), available at <http://www.abanet.org/women/balancedlives.pdf> (providing a reference manual for legal employers to consult with regard to issues such as alternative work schedules and family leave).

9. See, e.g., DRACHMAN, *supra* note 1, at 9. See generally BECOMING GENTLEMEN, *supra* note 2.

10. See, e.g., Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1312-13 (1987) (exploring “equality as [the] acceptance” of gender-based differences).

11. See generally Cynthia Grant Bowman, *Women and the Legal Profession*, in FEMINIST JURISPRUDENCE, WOMEN AND THE LAW: CRITICAL ESSAYS, RESEARCH AGENDA, AND BIBLIOGRAPHY 625 (Betty Taylor et al. eds., 1999) [hereinafter Bowman, *Women and the Legal Profession*]; Cynthia Grant Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 AM. U. J. GENDER SOC. POL’Y & L. 149 (1998/1999) [hereinafter Bowman, *Bibliographical Essay*] (commenting on the increased presence of women in the legal profession but noting the absence of women in the upper level of the legal profession); Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 FORDHAM L. REV. 249 (1998) (stating that the patriarchal structures of power must be changed in order to achieve gender neutrality).

12. See Bowman, *Bibliographical Essay*, *supra* note 11, at 171 (commenting on the disagreements between feminist scholars on whether to emphasize the differences

the “self-conscious observation” of how women’s participation in formerly male-dominated fields challenged “both the knowledge base of the field and the methodology by which knowledge is acquired.”¹³ This type of observation, including striving for equal access for women in law, perceiving the nuanced changes in legal culture due to women’s participation, and innovating legal discourse from a woman’s standpoint, can be retraced to the late-nineteenth century: *Bradwell v. Illinois*¹⁴ and other female lawyers in Mrs. Bradwell’s generation.¹⁵

The major conflicts for female lawyers in the United States, Cynthia Bowman concluded, are the femininity of female lawyers and masculinity of legal culture, which female lawyers need to confront. These conflicts have originated a “paradox” and “double bind” dilemma.¹⁶ The paradox refers to “the contradiction between the socially defended images of ‘wom[a]n’ and ‘lawyer,’” due to the *masculine* nature of the legal profession.¹⁷ For the sake of adapting to the masculine legal profession, women lawyers found themselves caught in the dilemma of the “double bind,” which dictated that women who modeled themselves upon the stereotypical image of an

between men and women lawyers because women are less adversarial and more problem-solving and this may be viewed as a weakness in women). *See generally* Bowman & Schneider, *supra* note 11 (arguing that feminist practice generated feminist legal theory which in turn reshaped feminist practice which then reshaped feminist legal theory); JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS’ LIVES* (1995) (discussing views of some in the legal profession, including the view that women are less committed than men in advancing their careers and the view that what men view as choices are actually constraints on women); Kathleen E. Hull, *The Paradox of the Contented Female Lawyers*, 33 *LAW & SOC’Y REV.* 687 (1999) (discussing job satisfaction as another form of gender bias); Menkel-Meadow, *supra* note 3 (analyzing the exclusion of women from the legal profession and stating that knowledge of the exclusion will allow for the eventual inclusions of the excluded); EPSTEIN, *supra* note 2; MORAL VISION AND PROFESSIONAL DECISIONS, *supra* note 2; SEX DISCRIMINATION IN THE LEGAL PROFESSION (Bernard F. Lentz et al. eds., 1995); Hilary Sommerlad, *The Gendering of the Professional Subject: Commitment, Choice and Social Closure in the Legal Profession*, in *LEGAL FEMINISM: THEORY AND PRACTICE* (Clare McGlynn ed., 1998); Collier, *supra* note 2; Menkel-Meadow, *Research Agenda*, *supra* note 7; Menkel-Meadow, *Portia Different Voice*, *supra* note 7; RHODE, *supra* note 8; Podgor, *supra* note 2; Valorie K. Vojdik, *Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions*, 17 *BERKELEY WOMEN’S L.J.* 68 (2002); Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 *DUKE J. GENDER L. & POL’Y* 119 (1997).

13. Menkel-Meadow, *Portia Different Voice*, *supra* note 7, at 39-40.

14. 83 U.S. 130 (1872).

15. *See generally* VIRGINIA G. DRACHMAN, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890* (1993).

16. *See* Bowman, *Women and the Legal Profession*, *supra* note 11, at 625 (stating that “paradox” and “double bind” are terms frequently used in the literature of women and the legal profession).

17. *Id.*

attorney risked “being accused of inappropriate aggressiveness.”¹⁸ In other words, the conflict for women in law originated from their femininity, and such a thesis is linked to a rigid gender dichotomy. For example, Deborah Rhode asserts that professional women were caught in the puzzle of *sexual roles* while they tried to adapt themselves to traditional male occupations. Rhode notes that “the traditional understandings of sexual roles continue to constrain women’s occupational choices,”¹⁹ and that such stereotypes mislead “attitudes and practices” of women in professional positions and “translate into gender disadvantages.”²⁰ Slightly different from Rhode’s concern on gender role conflict for female lawyers, Mona Harrington introduces the idea of the construction of women’s bodies by men who gaze through the lens of the legal profession.²¹ Harrington takes the “ritual clothing adopted by the thinking professions” as an example and notes that, the “main feature is some form of body-enveloping, desexualizing fullness or asceticism.”²² In Harrington’s analysis, the puzzles that exist for professional women’s body images in the legal field present a subtler gender bias functioning in the masculine legal field.

While feminist legal scholarship focuses on gender role conflicts, Carrie Menkel-Meadow elaborates on educational psychologist Carol Gilligan’s analysis of the different moral development tendencies between men and women. According to Gilligan, women are more likely than men to reason in a “different voice,” which indicates that women place more emphasis on responsibility and relationships than men.²³ In other words, women’s lawyering styles differ from that of male lawyers; women typically perform differently in legal tasks, in ethical decision-making, and in law enforcement and interpretation.²⁴

18. *Id.*

19. Deborah Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1187 (1998) [hereinafter Rhode, *Perspectives on Professional Women*]; see DEBORAH RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 5 (1989) (stating that “[w]hether the law has employed the terms [gender and sex] synonymously, that usage should be understood to encompass the interlocking patterns of biological and cultural differences between men and women”).

20. Rhode, *Perspectives on Professional Women*, *supra* note 19, at 1187.

21. See MONA HARRINGTON, WOMEN LAWYERS: REWRITING THE RULES 98-101 (1995).

22. *Id.* at 99-100.

23. See CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1996).

24. See Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism and Legal Ethics*, 2 VA. J. SOC. POL’Y & L. 75, 76 (1994) [hereinafter Menkel-Meadow, *Portia Redux*] (proposing that the “male mode of reasoning was based on abstracted, universalistic principles applied to problematic situations to create an ‘ethic of justice;” in contrast, “the female ‘ethic of care’ [is] based on the

In Menkel-Meadow's work, *Portia Redux*, the heroine of Shakespeare's *The Merchant of Venice*, serves as a metaphor for female lawyers. *Portia* demonstrates the differences in which female lawyers are being labeled and also indicates the negation toward the female lawyers. Menkel-Meadow notes that the model of *Portia*'s different voice would possibly "valoriz[e] women's differences," and lead to "legitimate discriminatory treatment of women's difference and assign women to conventional domestic, maternal, and other 'caring' roles."²⁵ In fact, according to the reviews above, the unbending gender dichotomy seemingly generates a trap for female lawyers. While Keith Aoki asked the question: "does nothing ever change; is everything new?,"²⁶ then, I wish to propose a question: how will feminist legal scholars explain the masculine legal culture?

In *Theoretical Perspectives on Sexual Differences*, Deborah Rhode proposes that sexual differences originate from different expectations and opportunities rather than biological distinction or early childhood socialization.²⁷ Rhode calls for a close examination of the different social contexts that constrain the disfavored, conventional gender stereotypes for women. Rhode's volume represents feminist legal scholars' attempts to decentralize the traditional, binary structure of gender in order to involve varied concerns for other social factors (e.g., class and race) and thereby raise a theoretical gender strategy: the *fluidity* of gender.

However, these feminist legal scholars have not yet provided forceful rhetorical strategies to resolve what remains when society's binary view of gender has been blurred through such discourse. For example, the feminist theorist, Spelman, reassesses classic male philosophers (e.g., Plato and Aristotle) and suggests that the concept of gender is a multiple, rather than a binary, scheme of social distinction.²⁸ However, I question the utility of Spelman's analysis of

structure of the 'web'" and is "grounded in a relational, connected, contextual form of reasoning that focused on people, as well as the substance of a problem"); see also Carrie Menkel-Meadow, *The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession*, 24 OSGOOD HALL L. J. 897, 899 (1986) (exploring whether and how the legal profession will change due to the increased presence of women).

25. Menkel-Meadow, *Portia Redux*, *supra* note 24, at 76-77.

26. Keith Aoki, *Does Nothing Ever Change; Is Everything New?: Comments on the "To Do Feminist Legal Theory" Symposium*, 9 CARDOZO WOMEN'S L.J. 415 (2003).

27. See Deborah Rhode, *Theoretical Perspectives on Sexual Differences*, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCES 4-5 (Deborah Rhode ed., 1990); see also Deborah Rhode, *Definitions of Difference*, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCES 212, 259 (Deborah Rhode ed., 1990) (stating "the indeterminacies, inconsistencies, and inadequacies of the law's traditional responses to sex-related differences make clear its limitations as a vehicle for social change").

28. See ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN*

detailed gender choices or gender roles, when gender becomes a multiple scheme.²⁹ Furthermore, from where will the more subtle comprehension and theoretical analysis originate when the multiple scheme of gender unfolds?

Prompted by discussions regarding the deconstruction of the gender dichotomy, I turn to the legal field and ask: how does such an intellectual inspiration of shifting gender discourse influence the discourse of women in law for feminist legal scholarship? For female legal professionals who encounter salient or subtle gender discrimination, will the discourse of deconstructing the gender binary system help to transcend the double bind? Why is anger the major tone and “striving for equality” the major theme in most cases for studying women in law?³⁰ Will feminist legal theorists look for alternative theoretical strategies to deconstruct the idea of “masculine legal culture” in order to make women more welcome? Should the gendered legal field tone down the gendered degree and put “neutrality” into real practice?

In *Beyond Portia*, Jacqueline St. Joan seems to give a broad answer to these questions: women lawyers should move beyond Portia, where Portia signifies the traditional patriarchal symbol of female perfection in the law.³¹ Jacqueline St. Joan urges surpassing the “binaries of male/female, insider/outsider, rights/caring, and justice/mercy” and proposes animating “imaginative actions” rather than merely focusing on the excellent nature of law and literature.³² I believe that one application of St. Joan’s suggestion is to generate empirical studies, particularly to study women’s gendered lives with subtle examination of multiple consciousnesses.

In fact, aside from the discourse on the masculine character of the legal culture above, some scholars examine the derivation of the legal culture’s character as a gendered institution, particularly its masculine-oriented nature. For example, sociologists Jennifer Pierce and Amy Wharton’s description of a “gendered institution” provides a

FEMINIST THOUGHT 10-11 (1998) (invoking these philosophers’ recognition of differences among humans to challenge the notion that all women share the same goals, priorities, and “essential womanness”).

29. *Id.*

30. See BAER, *supra* note 1, at ix (expressing the author’s anger and hope in the lack of equality of women in the legal field).

31. Jacqueline St. Joan & Annette Bennington McElhiney, *Introduction to BEYOND PORTIA* 1, 4 (Jacqueline St. Joan & Annette Bennington McElhiney eds., 1997) (juxtaposing women’s experiences in law and literature to critique women’s experiences in the courtroom).

32. *Id.*

material structure for the legal profession.³³ This structure is based on Max Weber's model of bureaucratic work arrangements, which includes the necessity of maintaining the hierarchical system involved with specialization, division of labor, and meritocracy rules and regulations.³⁴ Wharton inserts the feminist perspective to claim that bureaucracy is gendered, and even that gendering is a central theme to both the formal and informal social relationships in the workplace.³⁵ Furthermore, Pierce's ethnographic project can be taken as an application of Weber's model revised from the gender perspective. In her studies, she interprets the emotional labor in large law firms to result from a "gendered bureaucracy."³⁶ According to Pierce, the large law firms are configured as "a pyramid structure with a professional stratum resting on top of a non-professional or support-staff tier. . . . The bottom tier contains librarians and their assistants, clerks, and duplicating operators[,] most of whom are female. . . . As a consequence, the firm is stratified by occupational status and by gender."³⁷ Pierce further asserts that "Cravathism" was the principle leading to a gendered bureaucracy and became a disadvantage for women working in law firms.³⁸ Cravathism epitomized the "ideology of efficiency" under corporate capitalism in early-twentieth-century America.³⁹

Pierce ascribes the strong and durable stratification and gendered

33. See JENNIFER L. PIERCE, GENDER TRIALS 27-29 (1995) (describing the gendered nature of large law firms); Amy S. Wharton, *The Annals of the American Academy of Political and Social Science*, 57 ANNALS 167, 175 (expressing the Institutional approach that gender is embodied in social structures, indicating that even those areas of the workplace that are regarded as gender-neutral are, in fact, gendered).

34. See Wharton, *supra* note 33, at 176-77 (noting Weber's definitive sociological understanding of work hierarchies); see also Joan Acker, *Gendered Institutions*, 21 CONTEMP. SOC. 565, 567 (1992) (explaining the role that gender plays in the processes, practices, images, and ideologies, and distributions of power in the various sectors of social life, which were historically developed and currently dominated by men).

35. See Wharton, *supra* note 33, at 175 (suggesting that gender roles are perpetuated in the workplace in that bureaucracy perpetuates the interests of the powerful over the powerless).

36. See PIERCE, *supra* note 33, at 31 (noting that the female employees at law firms are primarily put in positions that are then sex-stereotyped as requiring nurturing and empathizing attitudes, while male-dominated positions are seen to require detachment and objectivity).

37. *Id.* at 29.

38. See *id.* at 38 (discussing Paul Cravath's introduction of "Cravathism" in the late nineteenth century). Its core concept was a large, national, commercially oriented, multi-purpose law firm. *Id.*

39. See David M. Trubek et al., *The Future of the Legal Profession: Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE W. RES. L. REV. 407, 423-24 (1994) (describing the way in which large law firms in the United States, which are predominantly Cravathist, shape American legal culture).

division of labor to the big law firm's need to pursue the most business under the Cravathism model. Although such a thesis supports law as a gendered institution that is unfavorable to female workers, I accede that the contribution from Pierce's work is her tracing of the masculine legal culture and gendered division of labor to Cravathism. Pierce's tracking trajectory and attempt to connect it to the core issue – the roots that made legal culture masculine in nature – inspire me both on a theoretical and practical level. While essential feminism and gender difference perspectives on women in the public sphere have been challenged,⁴⁰ the task for feminist scholarship will be to penetrate the surface of the fixed gendered institution and discover the mundane, which transforms bias into a gendered division of labor. In the following section, I will provide a descriptive background introduction and ethnographic material on female lawyers in Taiwan to suggest that feminist legal scholars should unpack the specific mechanisms that originate and intertwine to form a gendered institution. Then, we can challenge or even rectify the distorted patriarchal mechanism both in theory and in practice.

II. THE LEGAL CULTURE AND FEMALE LEGAL PROFESSIONALS IN TAIWAN

The aims not only of Global Critical Race Feminist scholars⁴¹ but also of committed researchers of gender, power, law and culture are to examine local contexts as a starting point to develop theoretical strategies for productive feminist solidarity and to encourage local and global dialogues.⁴² With this in mind, in this section, I will

40. See, e.g., Judith Butler, *Variations on Sex and Gender: Beauvoir, Witting and Foucault*, in *FEMINISM AS CRITIQUE* 128 (Seyla Benhabib & Drucilla Cornell eds., 1987) (exploring the definition of “gender” as a “cultural interpretation of sex”); Maria Markus, *Women, Success and Civil Society*, in *FEMINISM AS CRITIQUE* 96 (Seyla Benhabib & Drucilla Cornell eds., 1987) (noting feminist theorists' rejections of femininity as social expectations dictated by the biologically predetermined reproductive capacity of women rather than the cultural and social determinants of sex-roles); Michelle Zimbalist Rosaldo, *Women, Culture and Society: A Theoretical Overview*, in *WOMEN, CULTURE & SOCIETY* 17, 49 (Michelle Z. Rosaldo et al. eds., 1974) (evaluating gender differences theory and concluding that as long as the private sphere remains female, women will never achieve equality with men).

41. See generally Antoinette Sedillo Lopez, *A Comparative Analysis of Women's Issues: Toward a Contextualized Methodology*, 10 *HASTINGS WOMEN'S L.J.* 347, 348 (1999) (criticizing the ethnocentric tendencies of some feminist theorists and, instead, reconciling an American perspective on women's rights with respect for another culture); Adrien Katherine Wing, *Introduction: Global Critical Race Feminism for the Twenty-First Century* to *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* 1, 7 (Adrien Katherine Wing ed., 2000) (explaining the development of critical race feminism and the importance of local stories to point out the intersections of race, gender, and culture on identity).

42. See June Starr & Jane F. Collier, *Introduction: Dialogues in Legal Anthropology* to *HISTORY AND POWER IN THE STUDY OF LAW* 1, 25 (June Starr & Jane F.

provide descriptive texts in brief to demonstrate how the social/cultural context imbues the legal field. In particular, I will focus on contextual influences on female legal professionals in Taiwan.

A. "Law Persons," the Legal Education and Recruitment System in Taiwan

Scholars in law and society, like Yves Dezalay and Bryant Garth, conduct expansive empirical research on legal professionals.⁴³ For example, in *Dealing in Virtue*, Dezalay and Garth illustrate the peculiar research strategy of studying "individuals" (i.e., arbitrators and lawyers) in international commerce within the frameworks of law, rather than investigating the web of formal legal institutions, organizations, existing treaties, codes, rules, etc.⁴⁴

Adapting Dezalay and Garth's research strategy, I endeavor to study the legal culture among "law persons" (*fa lu ren*) in Taiwan, particularly from a gender perspective. To make this research aim more explicit, I adapt Bourdieu's thesis: by being "constantly engaged in a struggle with those outside the [judicial] field to gain and sustain acceptance for their conception of the law's relation to the social whole and of the law's internal organization."⁴⁵ Therefore, "law persons" serve as keynote actors in operating the legal system as well as maintaining the monopoly of law as an institution. In fact, in Asia, where Confucianism influences civilization, the concept of "intellectuals/elites" is also connected to a legal elite class.⁴⁶ For

Collier eds., 1989) (using historical analysis and the study of power to understand legal change); June Starr & Mark Goodale, *Introduction: Legal Ethnography: New Dialogues, Enduring Methods* to PRACTICING ETHNOGRAPHY IN LAW 1, 2 (June Starr & Mark Goodale eds., 2002) (collecting ethnographers' essays from a variety of countries to study legal phenomena).

43. See YVES DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS 1 (2002) (hypothesizing that the results of exporting national expertise depend upon the presence or absence of structural homologies in the exporting and importing countries); see also YVES DEZALAY & BRYANT G. GARTH, DEALING IN VIRTUE 1 (1996) (using international arbitration as a point of entry into an analysis of the role of law, the relationship between the national and the international, and the relationship between business, state, and law).

44. See *id.* at 16-17 (focusing on individuals and their relationships, rather than institutions, to provide a better understanding of how institutions impose themselves on individual actors, while the institutions, themselves, remain the product of the actors' continuing struggles).

45. Pierre Bourdieu & Richard Terdiman, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 809 (1987).

46. See Setsuo Miyazawa, *Legal Education in Japan: Legal Education and the Reproduction of the Elite in Japan*, 1 ASIAN-PACIFIC L. & POL'Y J. 2, 2-11 (2000) (discussing legal elites such as jurists, lawyers, and judges in Asian society); Luke Nottage, *Reform in Japanese Legal Education: Reformist Conservatism and Failures of Imagination in Japanese Legal Education*, 2 ASIAN-PACIFIC L. & POL'Y J. 28, 34

example, Setsuo Miyazawa employs Mill's concept of the "power elite" to explain the legal elite class in Japanese society and emphasizes the influence of the prominent legal elite on Japanese politics, the judicial system, legal professions and legal academia.⁴⁷ In this essay, I follow Kahei Rokumoto's usage by defining "law persons" as people who have "the basic knowledge of and skill in law and legal reasoning in the university and, without possessing the certificate of a lawyer, specialize in handling the legal matters of the firm."⁴⁸

In fact, "law persons" (*fa lu ren*) have rapidly increased in Taiwan, and they have become the largest elite class over the past two decades. They overwhelmingly dominate politics in Taiwan because "law persons" hold most Democratic Progressive Party ("DPP") leadership positions, especially since Chen Shui-bian won the Taiwanese presidential election in 2000.⁴⁹ The competitive legal qualification examination systems and the elite heritage originating from their statuses as law experts, guarantee the Taiwanese legal professionals an extended occupancy in social positions at middle to upper levels, along with substantial influence in legal and political reform and other social movements that have originated in recent decades. In order to honor their families, earn self-satisfaction, and obtain material wealth, the most common choice for most ambitious young law persons is to join one of three occupations: judge, prosecutor, or

(2001) (describing the current legal education reform in Japan and criticizing it for not being sufficiently widespread); see also Haesook Kim, *Dynamics of Gender and Legal Professions: The Case of Women Jurists of South Korea* (2000) (unpublished Ph.D. dissertation, Columbia University) (on file with author) (exploring Korean elite women's experiences of how being jurists has afforded them the opportunity to have a greater impact on both the public and private spheres); Shen Zongling, *The Role of Lawyers in Social Change: China*, 25 CASE W. RES. J. INT'L L. 163, 164-68 (1993) (explaining the roles of judges, procurators, lawyers, and law teachers in the changing Chinese Communist society). See generally Shozo Ota & Kahei Rokumoto, *Issues of the Lawyer Population: Japan School of Law*, 25 CASE W. RES. J. INT'L L. 315 (1993) (noting that lawyers in Japan are a very small percentage of the population compared to other countries); Jae Won Kim, *The Ideal and the Reality of the Korean Legal Profession*, 1 ASIAN-PAC. L. & POL'Y J. 45 (2001) (stating that lawyers are the most privileged class in Korean society); Darryl D. Chiang, *Foreign Lawyer Provisions in Hong Kong and the Republic of China on Taiwan*, 13 UCLA PAC. BASIN L.J. 306, 325-70 (1995) (discussing the different provisions for foreign lawyers, especially for American lawyers, in Taiwan and Hong Kong). This article also provides insightful information about the indigenous lawyers in both societies. *Id.* at 306.

47. See Miyazawa, *supra* note 46, at 2 (explaining that the "power elite" in Japan is composed of persons who are in positions where they make decisions with major consequences, similar to their counterparts in the United States).

48. Kahei Rokumoto, *The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization?*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 128, 134 (Richard L. Abel & Philip S.C. Lewis eds., 1989).

49. See Jane Kaufman Winn & Tang-chi Yeh, *Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation*, 20 LAW & SOC. INQUIRY 561, 564-65 (1995) (analyzing the "legal persons" and Taiwanese politics).

lawyer.⁵⁰ Therefore, pursuing one of these three professions seems to be the ultimate goal for most law students, even though such a path will cost an average of two to five years' effort in the *buxiban*,⁵¹ where law persons concentrate intensively on preparing for legal qualification examinations. In order to highlight the elite nature of law persons, I now turn to describing how law persons are educated, trained, and selected in Taiwan.

The education system in Taiwan is greatly influenced by Germany and Japan. Formal legal education is exclusive to the law school/law department, which is housed in the university. Most law schools provide four years of education for the bachelor's of law (LL.B.), but some schools require five. Junior law students are required to take Constitution Law, Civil Law, Criminal Law, Commercial Codes, Sociology, Politics, Economics, etc. The requirements for senior law students are Civil Procedure Law, Criminal Procedure Law, Law Clinic Program, Conflict of Laws, etc. Law students must memorize a certain amount of codes and rules and demonstrate their knowledge in long essay questions on their schools' written tests.

The students seldom experience the Socratic Method as commonly employed in United States law schools. On the contrary, most law classes in Taiwan are primarily lectures. Generally, two features can distinguish the legal education in Taiwan. First, because it is conducted at the undergraduate level, most courses cover the necessary background but do not include specialized legal training.⁵² Second, these undergraduate-level law courses do not emphasize the cultivation of skills and knowledge in litigation and advocacy.⁵³ Instead, the students focus on understanding the fundamental

50. Other than being lawyers, judges and prosecutors, there are other choices for "law persons," such as paralegals, in-house legal consultants, politicians, reporters, bankers, researchers, law professors, etc. *Id.* However, taking the bar examinations or National Judicial Examinations is the most common choice for young "law persons," and most of them at least attempt the legal qualification examinations. *Id.* Therefore, in this research, I will only focus on the three most common occupations (judges, prosecutors, and lawyers), without extending into other, related occupations.

51. *Buxibans*, which means "cram school" or "supplementary class," are primarily private schools offering special classes meeting the demands of a variety of students' levels. Generally, the supplementary courses *buxiban* provide include: (1) academic classes such as Mathematics, English, and Chemistry for high school students; (2) nonacademic classes such as calligraphy or floral arrangement; (3) a variety of different qualification examination preparation courses, such as accountants' exams, the bar exams, civil officers in government, etc.

52. See Hungdah Chiu et al., *Taiwan's Legal System and Legal Profession*, in TAIWAN TRADE AND INVESTMENT LAW 33 (Mitchell A. Silk ed., 1994) (contrasting legal education in Taiwan with the more professionally oriented legal education programs in the United States).

53. See *id.* (attributing this to the fact that after graduation most Chinese students will become public officials or private-sector employees, rather than litigators or advocates).

principles of law and the general relations among different courses.⁵⁴

Due to the highly competitive nature of the legal qualification examinations in Taiwan, law students begin to prepare for the legal qualification examinations when they are in their third year of college or even earlier. To help them pass these examinations, students choose to depend on the *buxiban* more than on formal law school education. It is common for law students to spend one to three years in the *buxiban*, and sometimes retaking the legal qualification examinations takes even longer than the length of their formal legal education.

Some students will go for the advanced legal education of a master's degree (LL.M.). It usually takes three to four years to complete the LL.M. degree in Taiwan. After receiving the LL.B., law students can either choose to take the National Bar Examination to obtain their licenses as lawyers or take the National Judicial Examination (Judge and Prosecutor Examination) to receive authority. All in all, most students become full-time "test takers" (examinees, *Kao Sheng*) after they graduate from four-year law schools.

1. Judges and Prosecutors

Judges and prosecutors are selected and trained in a unified examination system, the major features of which are the National Judicial Examination and a special institution, the Judge and Prosecutor Training Institute ("JPTI"). After succeeding on the exams and completing the training programs, new judges and prosecutors are assigned to district courts, pursuant to their grades and personal concerns. Judges and prosecutors then begin their probationary period, which lasts for no more than six years.⁵⁵ The whole recruitment system and its legal culture in Taiwan are similar to those in other Asian countries, especially Japan and Korea.⁵⁶ The

54. See *id.* (reporting that specialized legal training is not practicable, since students must take law classes in addition to a normal undergraduate course load).

55. CODE OF JUDGE IN TRIAL [SI FA QUAN HO BU GUE ZE] (Taiwan 2003).

56. The Taiwanese legal recruitment and training process for judges, prosecutors, and lawyers, is similar to the processes used in its neighboring Asian countries, Japan and Korea. For training judges and prosecutors in Taiwan, it is directed by the Judge and Prosecutor Training Institute ("JPTI"); in Japan, it is by Institute of Legal Training and Research ("ILTR"); in Korea, it is by the Judicial Research and Training Institute. In these three countries, the entry into the legal field is extremely restricted through the national unified written examination; therefore, the population of legal professionals has remained small. For comprehending the judge's training programs and seeing the parallels among Japan, Korea and Taiwan, see Kim, *supra* note 46, at 45, which explains the features of the legal profession in Korea and notes that the profession is small. See also Rokumoto, *supra* note 48, at 160 (stating that there are a relatively small number of Japanese lawyers in private practice and explaining that

legal recruitment system for judges and prosecutors basically depends on the written examinations, which are held by the Examination Yuan.⁵⁷ Since judges and prosecutors belong to the class of governmental officers but also belong to the judicial system, judges and prosecutors obtain their authority through the exams held by the Examination Yuan, but their employment and management are supervised by the Judicial Yuan.

The qualification examinations for judges/prosecutors consist of long essay questions covering Constitutional Law, Civil Law, Criminal Law, Commercial Codes, Civil Procedure Law, Criminal Procedure Law, Administrative Law, Conflict of Laws, and Mandarin Composition. Successful exam-takers are admitted to the second round examination, the oral examination.⁵⁸ After passing the oral exam, the exam-takers finally become “Judicial Officer Interns” (*Xue Xi Szu Fa Quan*)⁵⁹ and are required to complete a two-year training program. The JPTI is the national training center for all Judicial Officer Interns and is composed of senior judges and prosecutors, who are serving as mentors and faculty to trainees. Figure 1 demonstrates the number of exam-takers joining the National Judicial Examination from 1970 to 2000. The average passing rate is 4.28%.⁶⁰ The highest passing rate was 7.39% in 1978, and the lowest passing rate was 2.14% in 1976.⁶¹

2. Lawyers

Unlike judges and prosecutors, who serve as government judicial officers, lawyers are private practitioners in Taiwan. Some lawyers are

they generally play a small role in Japanese society).

57. See TAIWAN CONST. art. 83 (stating that “the Examination Yuan shall be the highest examination organ of the State and is in charge of matters relating to examination, employment, registration, service rating, scale of salary, promotion and transfer, tenure protection, commendation, pecuniary aid in case of death, retirement and old age pension”).

58. See Winn & Yeh, *supra* note 49, at 572-74 (explaining how the Kuomintang (“KMT”) cultivated its control in legal professions). In fact, the oral examination after the written National Judicial Exam does not have any substantial effect because there are very few cases in which successful written exam-takers fail the oral test. *Id.* at 573. Moreover, some criticisms indicate that the oral test served a political purpose in the early KMT autocratic era for selecting only “obedient and loyal youth” to become judicial officers. *Id.*

59. Trainees in the JPTI are called “Judicial Officer Interns” (*Xue Xi Szu Fa Quan*), which indicates that they are not official judges or prosecutors yet; they are in the process of being trained. See *supra* note 56.

60. See Figure 1, source: The Examination Yuan of Taiwan, ROC. The Examination Yuan is responsible for the national examinations and the management of all civil service personnel in the Republic of China (ROC), Taiwan. See the official introduction of Examination Yuan at <http://www.exam.gov.tw/>.

61. See Figure 1.

self-employed and own solo law firms, some work in big law firms, and some serve as in-house counselors in banks, large enterprises, or corporations. The extremely small scale of the lawyer's society and its character as an exclusive elite class are similar to those in two other Asian countries, South Korea and Japan.⁶² In the last decade, however, the small scale of the lawyer's society in Taiwan has been enlarged.⁶³ In 1991, the Ministry of Justice estimated that there were only 2,254 lawyers who were registered members of all the local bars in Taiwan.⁶⁴ This represents a ratio of approximately one lawyer per every 9,000 citizens.⁶⁵ By July 28, 1999, that number had increased to a total of 7,269 lawyers registered in all sixteen local bar associations in Taiwan, with 2,368 lawyers registered in Taipei's local bar association.⁶⁶ This represents a ratio of approximately one lawyer per every 2,888 persons in Taiwan.⁶⁷

The gradual increase in the number of lawyers has had an impact on the lawyer's society. For example, in Taipei, the most modernized and internationalized city, the growing population of lawyers has changed the legal field in a number of ways. First, it has expanded the scale of law firms and decreased the number of solo law firms. This, in turn, has created far more legal work for in-house consultants in enterprises, but not in traditional law firms. Second, there has been an increase in specialized law firms, such as in the areas of law and taxation, law and medicine, etc. Lastly, a number of different businesses have combined with legal offices, creating enterprises such as Lawyers and Accounting co-op firms.⁶⁸

Passing the National Bar Examination, which is also held by the Examination Yuan annually, is the major access point to the lawyer's

62. See Kim, *supra* note 46, at 46-47 (stating that the small size of the Korean Legal Profession is a feature that makes those in the legal profession a privileged class); Gerald Paul McAlinn, *Reforming the System of Legal Education: A Call for Bold Leadership and Self-Governance*, 2 *ASIAN-PAC. L. & POL'Y J.* 15, 16 (2001) (arguing that the legal training system in Japan constrains the number of lawyers that are trained each year, therefore, keeping the legal system smaller than required).

63. See Huang Xu-tian, *Lu Shi Da Liang Jia Ru Dui Lu Shi Yeh Qi Tai Pei Lu Shi Qung Hui Gi Ing Shan* [*The Impact of the Greatly Increasing Population of Lawyers on Lawyer's Practices and on the Taipei Bar Association*], *TAIPEI LAWYERS' MAGAZINE*, Aug. 2000, at 90-99 (concluding that the increasing number of lawyers has impacted the lawyers' society); see also *MOJ Attempted to Rise the Bar Rate*, *CHINATIMES*, March 22, 2001 (indicating that the Ministry of Justice ("MOJ") intends to raise the passing rate of the bar exam to recruit more lawyers in the future); Chiu, *supra* note 52, at 35.

64. Winn & Yeh, *supra* note 49, at 572.

65. *Id.*

66. *Id.*

67. Huang Xu-tian, *supra* note 63.

68. *Id.*

license in Taiwan. Accordingly, aside from taking the bar examinations to become a lawyer, a slightly easier route into the legal profession is to be certified through the Ministry of Examination and Selection as a lawyer. Only judges, prosecutors, associate professors of law, and military judges with the rank of lieutenant are eligible to apply for this certification. In this case, all forms of examination are waived.⁶⁹

On average, the total number of students enrolling for the bar exam is 58,106, and only 4,318 typically pass.⁷⁰ The average passing rate is 6.48% (from 1985 to 2000).⁷¹ The highest passing rate of 15.22% was in 1993, when there were 3,700 exam-takers sitting for the bar and 563 passed.⁷² The lowest passing rate of 0.34% was in 1982.⁷³ For most exam-takers, every year the passing rate is unpredictable. For example, there were 1,786 exam-takers sitting for the bar in 1982, and as few as six exam-takers passed (0.34%).⁷⁴ In 1988, there were 2,142 students sitting for the bar; and only sixteen exam-takers passed (0.75%).⁷⁵ However, in the next year (1989), the passing rate dramatically escalated to 14.06%, which was followed by five years of relatively high passing rates.⁷⁶ Until March of 2001, 7,659 individuals held lawyers' licenses, yet only 4,070 actually practiced law.⁷⁷ The MOJ considered the number of lawyers inadequate to fulfill societal demands;⁷⁸ yet, scholars and senior lawyers in Taiwan severely criticized the restricted entry of lawyers and instigated a debate between those who sought to maintain the exclusive status of the legal community and those who supported the American model.⁷⁹

69. See TAIWAN LAWYER LAW art. 3-II (1998) (explaining that judges, prosecutors, associate professors, professors and other judicial officers in certain judicial fields can be recruited after completing or performing judicial tasks in a certain period of time). In other words, lawyers can be licensed without passing the bar exam if they have relevant experience as judges or district attorneys (who must pass the National Judicial Examination) or if they hold an LL.B. degree and have taught for two or more years as a full professor or for three or more years as an associate professor in a Taiwan university law facility. *Id.*

70. See Figure 2, source: The Examination Yuan of Taiwan, ROC.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. See *MOJ Attempted to Rise the Bar Rate*, *supra* note 63.

79. See generally Huang Xiu-tian, *Szu Xun Suo Jiao Cai Jie Dou* [The Analysis of Studying Materials in JPT], 23 JUDICIAL REFORM MAG. 10, 15, 22 (1999) (stating that there are several criticisms about the recruitment and training process of judges and prosecutors in Taiwan). Most scholars and legal practitioners, including lawyers,

All successful exam-takers must accept a six-month lawyer internship, which is under the supervision of the Ministry of Justice.⁸⁰ There are two sections in a lawyer's internship. The first month is devoted to lectures on ethics and practical training, arranged by MOJ. The rest of the internship must be completed under a mentor-lawyer. Every "Lawyer Intern" (*Xue Xi Lu Shi*) must choose his or her own "Mentor Lawyer" (*Zhi Dao Lu Shi*) in a local law firm. The first one-month training program basically includes lectures and visits to special institutes, and the National United Bar Association manages and organizes all programs. In most cases, for the sake of reciprocity, lawyer-interns will continue working with their mentors, as junior associate lawyers in the same law firm after they complete their internships. For some lawyers, the first month of lectures within the institute helps build personal networks, which extend their future business opportunities.

To summarize, the legal recruitment system in Taiwan is based on a solitary written examination system, and many see this system as a mechanism designed to generate the elite class and sustain its stability and exclusivity. Most criticisms of the legal examination system in Taiwan focus on whether or not to adapt the American model to recruit lawyers and judges, or to sustain the German-Japanese models, as those models maintain a small population of legal experts.⁸¹ Yet, these debates seldom explore the impact that either model has on the indigenous legal culture among Taiwanese scholars, nor are they concerned with the growing population of women in the enlarging law experts' community.

B. Gendered Legal Field

The character of Taiwanese "law persons" (*fa lu ren*), seems similar to that of Lani Guinier's "gentlemen," whose characteristic females in American law schools are encouraged to adopt during the course of

senior judges, and prosecutors, are provoked to reform the recruitment and training system of judges and prosecutors. *Id.* All agree that the judge-selection system in the United States might be a better model for Taiwan to adopt. *Id.*; see Wu Dong-du, *Qian Tan Szu Fa Quan Jiao Yu De Ji Ge Wen Ti* [Several Questions on the Education of Learning Judicial Officers: From the Perspective of Being Prosecutors], 23 JUDICIAL REFORM MAG. 10, 15, 30 (1999); Shi Ching-hung, *Qian Tan Szu Fa Quan De Yang Cheng Jiao Yu* [A Judge's Perspective on the Training Education of Learning Judicial Officers], 23 JUDICIAL REFORM MAG. 10, 15, 31 (1999).

80. See TAIWAN LAWYER LAW art. 7 (1992). Article 7 states that "before completing their internship, lawyers will not [be] eligible to practice their duties." The law also requires that lawyers complete their mandatory internships; otherwise, they are not eligible to execute their duties.

81. Interview with Wu Tong-Du, Senior Male Prosecutor in High Court, Mentor of JPFI, in Taipei, Taiwan (Sept. 1999).

their legal educations.⁸² For Guinier, the term “gentlemen” symbolizes “the traditional values of legal education, including its mission to train the legal minds of detached, dispassionate advocates,” and it also indicates the capacity among American lawyers to be “detached, ‘neutral’ problem solvers, unemotional advocates for their clients’ interests.”⁸³ Yet, in the American context, “gentlemen” merely refers to *men*, and “assume[s] ‘men’ who possess neither a race nor a gender.”⁸⁴ This creates a hidden assumption and creates paradoxical situations for American women lawyers.

What is the gendered nature of “law persons” in Taiwan? A Taiwanese female senior prosecutor, who is also serving as a supervisor of intern judges and prosecutors in the JPTI,⁸⁵ gives her illustration of the ideal characteristics for judges and prosecutors, which can apply to all law persons. She says, “We hope they will all be incorruptible, honest, objective, and impartial when they are executing their duties. . . . We hope they will realize how important the legal ethic is.”⁸⁶ Similarly, one female lawyer research participant was proud of herself for being a lawyer with a great “sense of justice,” because, with such status, she is more capable of doing “something for this society . . . but [having] no need to isolate [herself] as judges and prosecutors do. . . . [Judges and prosecutors] must keep a certain distance from the people, because they have to prevent people from taking advantage of them.”⁸⁷ In the interviews of these two female legal professionals, the former in charge of training new judges and prosecutors, the latter enthusiastic to contribute to social justice through her status as a law expert, an orthodoxy of self-proclaimed

82. See BECOMING GENTLEMEN, *supra* note 2, at 28-29 (quoting a male professor who told a first-year law school class that, in order to become good lawyers, they would have to behave like gentlemen).

83. *Id.* at 85.

84. *Id.*

85. See CODE OF JUDGE IN TRIAL, *supra* note 55 (indicating that JPTI is the national institute in Taiwan for new intern judges and prosecutors).

86. Interview with Judge Huang, Director of Academic Affairs in JPTI Student Affairs, in Taipei, Taiwan (Sept. 1999).

87. Interview with Yi-ching, Female Senior Associate Lawyer in Small-sized Law Firm in Kaohsiung (the second largest city in Taiwan), in Taipei, Taiwan (Apr. 2000).

[I] think lawyers are more capable of serving the public, of getting more involved with any non-profit organizations compared to judges who are sitting higher in the courtroom. . . . Some lawyers feel they are in a lower status than judges and prosecutors because judges and prosecutors hold more judicial power and lawyers need to fawn over these judicial officers for making their job smoother. . . . But I disagree. I am glad I chose to be a lawyer, so I can help people at the grass root level.

Id. Yi-ching’s interview demonstrates the strong ambition of her ideal lawyer’s “sense of justice.”

neutrality, impartiality, and a sense of justice are evident. Apparently, these two female law persons are more concerned with their *class* in the legal professional continuum than with female gender consciousness. In fact, Rosabeth Moss Kanter, in her research on the interaction of gender and power within corporations, perceives a phenomenon where “power wipes out sex.”⁸⁸ Paralleling Kanter’s thesis regarding female legal professionals in Taiwan, the legal professional identity possibly originates as the “gender erasure” and even creates a professional identity that is gender-neutral.⁸⁹

To be more explicit, I assert that Confucianism presents a double-edge sword for women in law in Taiwan, and its presence can be tracked as a primary trajectory, which greatly influences gendered lives for women. On one hand, Confucianism enforces a patriarchal system in Taiwan. For instance, under Confucianist tradition, the maternity of women in a family unit was especially emphasized. Ester Yao compared the status of Chinese women in Mainland China (“PRC”) and Taiwan (“ROC”) and points out that in order to underscore the legitimacy of traditional Chinese values in Taiwan, and at the same time to differentiate Taiwan from the PRC, the Kuomintang strengthened the Confucianist model in terms of women’s virtues, maternity, and family values.⁹⁰ Consequently, under the Confucian family model, women in Taiwan held a more subordinate status with an emphasis on motherhood.⁹¹ On the contrary, women in Mainland China were liberated from traditional constraints due to the Communist party’s revolutionary ideology, which questioned and protested women’s traditional gender roles,⁹²

88. See ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* 200 (2d ed. 1993) (explaining that those who focus on power do not even notice sex).

89. See Mayfair Mei-hui Yang, *From Gender Erasure to Gender Difference: State Feminism, Consumer Sexuality, and Women’s Public Sphere in China*, in *SPACES OF THEIR OWN* 35, 40-44 (Mayfair Mei-Hui Yang ed., 1999) (arguing that the differences between the male and female genders became erased, for gender has lost its significance in society as gender-neutrality has become the norm).

90. See ESTHER S. LEE YAO, *CHINESE WOMEN: PAST & PRESENT* 236-40 (1983) (stating that there is a strong emphasis placed on family life and a woman is encouraged to be a good wife and mother as a way to contribute to society).

91. Esther Yao explains that women tended to quit their jobs upon marriage or childbirth in order to conform to the traditional roles that influenced them. *Id.*; see also Janet Clark & Cal Clark, *The Reserved Seats System in Taiwan*, in *DEMOCRACY AND THE STATUS OF WOMEN IN EAST ASIA* 61, 74-76 (Rose J. Lee & Cal Clark eds., 2000) (explaining that scholars also notice that the Confucian tradition does not necessarily conform to the stereotype of patriarchal subjection in this manner). Janet Clark notices that the indigenous culture, especially non-Western culture, did not necessarily constrain women’s development: the Chinese Confucian culture “[h]old[s] somewhat countervailing implications for the status of women in Taiwan and East Asia.” Yet, Clark is not straightforward about what is the countervailing implication in the case of Taiwanese women.

92. See Yang, *supra* note 89, at 40-46 (explaining that the PRC’s ideology was an

particularly during the Cultural Revolution.⁹³

However, despite the negative effects of Confucianist constraints on Taiwanese women, women in Taiwan have benefited from positive aspects of the Confucian tradition, including a respect for intellectuals and an emphasis on education. In the discourse of Confucianism, education and the status of scholastic elites (i.e., intellectuals) are highly valued. Moreover, one of the influential traditions from Confucianism is the hierarchal written examination system, which serves as a gatekeeper for most school and government occupations.⁹⁴ There is less hidden gender bias in the varied written examination systems, which were usually anonymous and open to the public. Thus, if women were successful in the merit-based examination system, they were encouraged to pursue and obtain a college education and/or professional training. Hence, universal education created an expanding group of well-educated women and enabled great progress towards improving women's status in Taiwan's changing society. Taking advantage of an interview from one research participant, I use Yi-ching's life story to illustrate a general scenario relating how important a successful examination is for a female lawyer to balance her marriage, family, community service, and law career.

Yi-ching graduated from a prestigious law school and passed the bar examination on her first try when she was only twenty-two years old, the same year she received her Bachelor's of Law degree.⁹⁵ This was an extraordinary early achievement, especially considering that other law students spend one or more years to retake the exams. After finishing a three-year master of law program, she began her career as a lawyer at the age of twenty-five. She married a doctor in the second year of her law career. When I interviewed her, she had already been married for four years and had two sons. She considered all of the experiences she obtained in law school—from legal studies to the philosophy of life to even the secret of having a successful marriage—as positive and supportive. Her experiences and achievements in law school were a near perfect model for any law school application

attempt to eradicate anything associated with traditional Chinese values and culture). Subsequently, eradicating traditional gendered roles was not a primary focus, but a side consequence of the PRC's anti-traditional stance. *Id.*

93. See YAO, *supra* note 90, at 168, 192-93 (stating that during the Cultural Revolution many government policies became more modernized and women became better skilled and family relationships became more equal).

94. See ICHISADA MIYAZAKI, CHINA'S EXAMINATION HELL: THE CIVIL SERVICE EXAMINATIONS OF IMPERIAL CHINA 30-31 (Conrad Shirokauer trans., Yale University Press 1981) (1963) (describing the ceremonial induction of new licentiates into the bureaucracy, which included paying homage to a statute of Confucius).

95. Interview with Yi-ching, *supra* note 87.

brochure, which she shares in the following passage:

My days in law school were the most wonderful period of my life. I worked hard and was rewarded when I passed both the bar examination and graduate school entrance examination. At that point, I thought, "Oh, finally!" It was about then that I started dating guys! I was so afraid of being distracted from my examination preparations by casual dating that I didn't have any romantic encounters in my four years of law school. Once I passed the bar, it was time to look for my soul mate! I had planned on getting married two or three years after finishing my graduate studies and everything was going well. So, I went on dates that my parents set up for me. I preferred professionals. My parents wanted me to have a doctor for a husband. I was lucky; I met my husband on my first blind date. Because I had a committed stable relationship with him, I could focus on my graduate studies and finished it in three years without any other distractions [from dating]. I wanted to marry him as soon as possible and to establish our own family. All of these things I planned myself: to find a job, be a judge or a lawyer, [(]either one would be fine[)] find a soul mate, get married, and in the end, enjoy the balanced lifestyle of having both a family and career. I am proud of all I have done so far . . . [Am I] lucky? Yes, I think I am lucky. But I studied hard and worked hard too. I always work hard at each different stage of my life.⁹⁶

Yi-ching's goal of becoming a lawyer could be tracked back to her father's insistence on pursuing this career track during her childhood. Yi-ching's father believed his daughters should have professional skills to "feed themselves and not rely on their husbands [financially]."⁹⁷ "If women want to have dignity, they must have a decent job first," is the lesson Yi-ching's father taught her. Yi-ching began her legal career as a junior associate attorney and was mostly in charge of civil litigation. However, Yi-ching left the position to work at another law firm after her husband's career required them to relocate to another city. In two years, Yi-ching was promoted to senior associate and will possibly be made a partner in another two years. As for the gendered roles of female legal professionals, she commented:

No, no gender discrimination against women. No such thing happened to me or to my female colleagues. Some people even believe that female judges usually have a higher standard of morality than male judges. . . . Female lawyers are even welcome to become associate attorneys when applying for jobs . . . [b]ecause senior partners believe that female lawyers are more stable and loyal

96. *Id.*

97. *Id.*

[than male lawyers]. Male lawyers usually leave the firms to run their own solo law firms after they learn all of the skills of running a firm. They threaten the original law firms business by taking advantage of the networks [which they shared with the original law firms].⁹⁸

When Yi-ching was asked about her experiences in taking the legal qualification examinations, she agreed that the examinations were difficult, but they were nonetheless necessary. She emphasized that,

[the] qualifying examination is a “necessarily evil.” Anyone [from various backgrounds] has an equal chance. No matter which law school you came from, what gender you are, or if you were the favorite student of any “big professor,” everyone has the same chance. No one can enjoy [the benefits of] privilege.⁹⁹

Yi-ching’s story looks like it perfectly matches each category that a career woman would dream about, and so does every law school’s brochure depicting a female student’s bright, professional life. According to her experience, Taiwan’s legal qualification examination system provides a gatekeeping function for women, in terms of fairness and gender equality.

In fact, Taiwan has recently experienced an overwhelming increase in the number of women who have succeeded in the legal professional qualification examination, and who later become lawyers. Thus, Taiwan’s gender structure has achieved equality by increasing the number of women lawyers to halve the discrepancy of merely a decade ago. In Yi-ching’s story, first of all, education and professional skills were valued as the most effective tools for both maintaining Yi-ching’s elite social class (e.g., doctor, lawyer, etc.) and to empower herself as a woman. Yi-ching was taught that professional skills would help her avoid being a financial burden to her husband. She also learned that professional skills would increase her attractiveness, confidence, and knowledge. Furthermore, given the demands of self-employed occupations, she would have more flexibility in her schedule to balance both a family and a career.

Secondly, all of the aforementioned benefits are a result of her success in Taiwan’s education/examination system and professional programs. Yi-ching reported that the education/examination system and professional programs she experienced were fair mechanisms that allow for the equal treatment of women. Finally, by highly valuing traditional gender roles, especially in conjunction with the traits of heterosexuality, middle-class status and intellectual elitism,

98. *Id.*

99. *Id.*

every choice Yi-ching made strengthened her abilities, both materially and emotionally, to be a high-profile wife, mother, and career woman. I would like to point out that the problematic gendered factors in Yi-ching's narrative show, on the surface, that she has made great achievements in her balanced life. Yet, every choice she made placed her family first and her career second. Pursuing higher education and professional skills were not merely acts to empower herself. Rather, such efforts served to prepare her to receive straight A's in each traditional female gendered role in her life. The inherent conflicts between gender, power, and class are invisible in Yi-ching's experiences, because those conflicts seemingly are all muted by her success in varied examinations. Even in the case of legal qualification examinations, Yi-ching's professional authority was assured.

However, I will not be naive and suggest that the examination system can be a "multi-antidote" against patriarchy as a means to achieving gender equality. It will be too simple to take women's success in the examination system (i.e., a gender equality mechanism) as a happy ending for women's liberation. I would rather take a close-up look at how gender represents a substantial factor that influences every stage of a female legal professional's life. I believe it will be worthwhile to observe how women negotiate with patriarchy as they are signing up for the law examination, taking the examination, and later, succeeding or failing the examination. Based on Yi-ching's extraordinary experience, I wish to point out that the examination system, along with the disciplinary legal institute, indeed plays a vital force on gendered relations of power and status for women in the legal field in Taiwan.

Studies of the legal profession from a gender perspective are still few. A Taiwanese prosecutor, Su Nan-huan, initiated a sample essay discussing Taiwanese women lawyers' gender consciousness and made a comparison to Japanese women lawyers.¹⁰⁰ In his essay, 44.2% of female lawyers in Taiwan did not think they had been discriminated against because of their sex, but 55% of female lawyers thought they had been. Of the female lawyers who found they encountered sexual discrimination, 50% of the discrimination came from their clients and 30% from their male colleagues and male judges. Su's work also indicates that: 58% of female lawyers do not think gender/sex had any impact on their careers; 14% of female lawyers agreed that being a woman had a positive impact on their careers; and 63.7% of female lawyers thought they must sustain gender-neutrality. Only a small

100. See Su Nan-huan, *Nu Xing Lu Shi Dui Jue Se Zhi Zi Wo Jian Shi* [Female Lawyers' Self-Examination to Gender Roles: Making Comparison of Japan and Taiwan], *TAIPEI LAWYERS' MAG.*, Dec. 1995, at 20-28.

number of female lawyers (0.8%) agreed that they needed to “learn the male-model” in order to be successful. In Su’s survey, 63.7% of female lawyers agree that sustaining gender-neutrality was important for maintaining their professional authority. Finally, Su concludes that female lawyers in Taiwan are more confident of their female gender roles than their Japanese counterparts.¹⁰¹ Although limited by the scale of his sample, Su’s research shows the positive attitude of women lawyers in Taiwan toward their gender roles in the legal field.

Meanwhile, “gender-neutrality” is a seemingly self-evident concept among Taiwanese female lawyers. Since I share Su’s cultural context, I agree that “gender-neutrality” in the context of Su and his research participants may be interpreted as including women lawyers who feel they must decrease their display of femininity, in order to win more trust and professional credibility in the legal field. In other words, it seems to me that Kanter’s gender/power intertwining thesis can be paralleled with Su’s conclusion on gender consciousness and gender-neutrality.¹⁰² To be more explicit and to further refine Kanter’s thesis, I assert that power and discipline function subtly to “wipe out sex,” in terms of Kanter. This is true when positioning a thesis on the gender dichotomy, which leads to a discourse on gender differences and the formation of gender stereotypes against women in the public sphere, even when such stereotypes are deformed or concealed by the problematic gender-neutrality argument. In the following section, I shall turn to “seniority-based promotion system,” “sense of justice,” and “gendered legal field” to further my assertion.

Besides the examination system, the “seniority-based promotion system” enhances gender-neutrality in the legal field such that this mechanism increases the attraction for women to enter the legal profession. Wu Tong-Du, a formal mentor of the JPTI as well as a senior prosecutor in the High Court, shared his observations and opinions concerning female legal professionals:

Women legal professionals would not suffer from gender discrimination because of the promotion system. . . . For judges and prosecutors, the promotion is based on seniority, not merit. In consequence, it becomes a strong hierarchy system [for all judges and prosecutors]. A junior judge needs to wait for her promotion until most of her senior colleagues move up to the higher level. After the senior class moves up, the junior class follows.¹⁰³

The emphasis on seniority decreases the weight of other factors,

101. *Id.*

102. See KANTER, *supra* note 88, at 200 (positing that power makes gender erase differences).

103. Interview with Wu Tong-Du, *supra* note 81.

such as merit, gender, personal network, etc. Thus, seniority increases the degree of gender-neutrality in the legal field.

Meanwhile, the distinctive sense of equality and justice should be another reason to motivate women's participation in the legal profession. A male research participant mischievously revealed:

I feel that [men] who major in law are less likely to bully girls. We know it should be wrong according to law. . . . Besides, [women] will resist when they are bullied. They know how to protect themselves by the law. . . . Who would dare to irritate law-school girls? They are so tough, even winning much better scores than us [male law students]! They are so good at arguing forcibly. . . . If I bully them, I bet they would shoot me by teaching me thousands of rules and codes they memorized from the books! (chuckling).¹⁰⁴

The sensitivity of equality and justice that female law students learn from books empowers them to respond aggressively while being bullied by men.

Compared to the formal recruitment examination system, the seniority-based-promotion system and sensitivity to equality and justices may seem to be more tacit mechanisms that co-construct the legal hierarchy. Yet, these three sample trajectories within the legal institutions seem to be considered paradoxically as "neutrality," without distortion by gender, personal relationship, network, or background in such a context. While, on the surface, female population increases in the legal profession are changing the field from one that was masculine into one that is gender-neutral, can such progress be ascribed to the previous analysis? And can one simply claim that gender bias is being erased through those mechanisms? In the following section, I shall provide another analytical observation to explain that female gender role conflicts remain and further create gender divisions in legal practice.

In JPTI, female trainees are more likely to choose to become judges rather than prosecutors. In fact, the power of gender stereotypes, such as those that depict passive and conciliatory women, has an impact on the segregation of judges and prosecutors. This is especially true when trainees have completed their training program and face a choice between these two positions. Since judges primarily stay inside offices and courtrooms, they are labeled with more feminine attributes, such as patience and passivity. In contrast, prosecutors must be outgoing and deal with hectic situations outside involving detectives and policemen. Thus, female trainees in the JPTI

104. Interview with Hui-don, Twenty-seven-years-old, Male Ph.D. Student in National Taipei University College of Law, Full-time Employee in a Publishing Company, in Taipei, Taiwan (Dec. 1999).

will be cautioned that if they choose to be prosecutors, they will encounter “the innocents vs. the street-wise” stereotype when they are instructed by the patrol groups, which were organized by male policemen. Except for some young women who see it as a real challenge to be relatively “outgoing” prosecutors, most female judicial interns prefer to be judges instead of prosecutors. In fact, women are frequently advised that being judges would be more comfortable for them for balancing family and judicial tasks.¹⁰⁵ However, Yi-ling, a junior female judge, recommends that women become lawyers. She said,

[B]eing a judge really requires lots of support from family, especially from an understanding husband. I am lucky that my fiancé understands and supports me. . . . My mother [lives with me] even takes care of my daily chores, so I can do my best as a judge. . . . I suggest that [female law persons] choose to be lawyers, because it will let them have more flexible schedules to take care of a family and children. . . . You know, as a lawyer, you can run your solo law firm or be a partner lawyer; then, you can decide how to adjust your schedule for your family life. . . . Unless they have good backup hands [to help them] like I do [with mother dealing with errands], they'[re] better not to be judges but[,] instead[,] prosecutors.¹⁰⁶

Yi-ling's experience emphasizes the conflicts between maternity and legal career. It also reveals traps arising the almost universally confronted stereotypes of women's virtues. Yi-ling's choice of her legal career can be included in the previous analysis on women in the legal profession. To fulfill the dual duties of domestic life and career, female legal professionals' choices serve to originate the gender segregation of the three major legal occupations in Taiwan. In other words, their choices are made according to the gender stereotypes surrounding the gendered division of labor. The two occupations of judge and prosecutor are gendered by the contents of their respective tasks: a judge requires a more feminine character, while a prosecutor requires a more masculine one. Moreover, the occupational decision one makes, to become either a judge, prosecutor, or lawyer, is made with consideration for the balance between one's domestic job and career that each occupation allows.

Reichman and Sterling, according to their study on women lawyers in Denver, Colorado, note that the “choices” made by women lawyers

105. See Laura Li, *Women Warriors of Justice*, SINORAMA MAG., Feb. 1997, at 33 (stating that judgeships in Taiwan require only two days a week in court, leaving the rest of the time for opinion-writing and leading to a relatively manageable schedule).

106. Interview with Yi-ling, Female Judge, Tainan District Court, Thirty-years-old, in Tainan, Taiwan (May 2000).

“reflect their ability to accumulate professional assets balanced against the pull of the family.”¹⁰⁷ Because of women lawyers’ disappointing experiences in the law firm, they “choose” to “move more frequently than men, move earlier in their careers, and are more likely to move downward than men.”¹⁰⁸ Yet, Reichman and Sterling deconstruct such “choices” made by women lawyers, and argue that these decisions should be reconsidered in light of women’s special needs and with the complicity of the law firm. In Hagan and Kay’s study of Canadian women lawyers, they also demonstrate the similar result that women lawyers leave the legal field earlier, as shown in Reichman and Sterling’s Denver study.¹⁰⁹

The Taiwanese female legal professionals’ “choices” are made in light of the dilemma between domestic work and career. Unlike women lawyers in the studies of Reichman and Hagan, who often chose to leave the legal field, the female legal professionals in Taiwan are gaining influence in how the legal field is being gendered. The choice of entering the legal field might be problematic, because such choices are influenced by the power of gender stereotypes. Yet, as I have demonstrated, the power of gender stereotypes functions in each different stage along the women’s path toward becoming a legal professional. These functions can be positive or negative, depending on the situation. In some instances, the power of gender stereotypes functions to assist women, even when that power has problematic origins.

CONCLUSION: WHEN THE BOUNDARIES OF LABOR’S GENDER DIVISION BECOME BLURRED

I have argued not only that the proposition of a gender dichotomy lacks vital rhetoric in the discourse of women in law, but that this strategy also reinforces the strict gender role stereotype. Drawing on the mundane details of the experiences of female legal aspirants, I propose to employ “gender fluidity,” which recognizes the possibility of multiple gender roles occurring among varied social contexts, and further re-characterizes the so-called masculine legal culture. My suggestion, in the case of Taiwan, is for the occupational gender segregation, based on the rigid gendered division of labor, to be

107. Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U.L. REV. 923, 961 (2002).

108. *Id.* at 928.

109. See HAGAN & KAY, *supra* note 12, at 163 (enumerating the reasons why women tend to leave legal practice, including “the nature of legal work, long hours, low pay, child care commitments, loss of employment, poor prospects for advancement, spouse’s career, stress, and sometimes alternative opportunities”).

reconsidered. This recommendation is due to the fact that the examination is a vital mechanism sustaining the entire legal pyramid, and that this mechanism is employed at the moment that the elite nature of law persons emerges.

The motivation for female legal aspirants to participate in the legal field probably remains problematic, because they are influenced by the power of the gender stereotype. In some instances, the power of gender stereotype functions positively for women, even though that power may have had a problematic origin. I do not intend to develop a set of universal generalizations or propositions under which the classical discourse on the gendered division of labor in the legal profession would be entirely repudiated by, instead, adopting a strict examination and supervision system to assure women's equality. I would rather point out that the gendered division of labor and related propositions, which are hidden within the power of gender stereotype, lead to a masculine legal culture.

The gendered division of labor comes into play for female legal professionals in Taiwan when they choose among the three major occupations: lawyers, judges, and prosecutors. In other words, these three major legal occupations have become gendered, on the content and the time constraints of their respective responsibilities. While the qualification examination entitles female legal professionals to equal protection in the legal field, their dilemma of balancing between the public sphere (i.e., their careers) and the private sphere (i.e., their families) affects their consideration of which legal occupation is feminine and less likely to conflict with their family lives. Therefore, the original masculine character of the legal professions (e.g., the *Rambo* lawyer image in Jennifer Pierce's research on the contemporary American law firm)¹¹⁰ has been subverted in Taiwan.

Thus, for future discussions on the gendered division of labor and the occupation-gender segregation, the focus should be on the following: as long as women broaden their interests to include a wider array of occupations that have been dominated by men, how does the power of the gender stereotype apply to each stage in particular? Which stage remains vulnerable to the manipulation of traditional gender roles, and which parts of the organizational culture are becoming gendered? Vicki Schultz notes that:

If workplace structures are open to revision, legal discourse also permits some room to maneuver. . . . Legal doctrine assumes that women's work interests are fixed in advance of organizational or legal action; yet, in response to legal intervention, women have

110. PIERCE, *supra* note 33, at 1.

developed new vocational interests and pursued nontraditional work in unprecedented numbers.¹¹¹

She further suggests,

The meaning of [“feminine identity[”] is never fixed but always fluid, and so we need not represent women as ungendered in order to recognize them as authentic workers. Indeed, it is only by recognizing the complexities and contradictions in gender identity that it can ultimately be subverted . . . [Then], we must elaborate upon and demand deeper judicial scrutiny of the internal culture-producing aspects of work organization. . . . [T]he legal system is itself inevitably implicated in creating women’s work preferences.¹¹²

Indeed, the split of gender-neutrality and its failure to remain consistent creates a space in which women might utilize the power of gender stereotypes, pro and con, to consciously and unconsciously affect the different stages of becoming a legal professional in Taiwan. I do not naively suggest that women have transcended the power of gender stereotypes and solved the conflict between female gender roles and a masculine-orientated legal culture. Rather, I go beyond the fixed and static conceptions embodied in the female gender stereotype and in the concept of a masculine legal culture, to recognize the diversity and complexity of women’s gendered lives as they influence the gendered division of labor for the legal profession. At the same time, women’s identity and gender consciousness are reconstructed within the dynamics of the legal professional continuum.

111. Vicki Schultz, *Women “Before” the Law: Judicial Stories About Women, Work, and Sex Segregation on the Job*, in FEMINISTS THEORIZE THE POLITICAL 297, 322 (Judith Butler & Joan W. Scott eds., 1992).

112. *Id.* at 323.

Figure 1: The Passing Rate on the National Judicial Examination (1970-2000)

(Unit: person)

Year	Enrolling	Attending	Passing	Passing Rate
1970	1712	1503	67	4.46%
1971	1511	1304	52	3.99%
1972	1510	1278	44	3.44%
1973	1334	1131	50	4.42%
1974	1343	1199	46	3.84%
1976	1546	1493	32	2.14%
1977	1516	1456	41	2.82%
1978	2192	2031	150	7.39%
1979	2537	2342	108	4.61%
1980	2047	1759	118	6.71%
1981	2376	2071	134	6.47%
1982	2717	2343	96	4.10%
1983	2407	2097	81	3.86%
1984	2424	2119	70	3.30%
1985	2607	2304	70	3.03%
1986	2561	2298	62	2.69%
1987	2981	2589	113	4.36%
1988	2557	2286	80	3.51%
1989-I	2264	1837	95	5.17%
1989-II	2514	2150	92	4.04%
1990	2966	2574	120	4.67%
1991	3562	3018	123	4.08%
1992	3624	3085	99	3.21%
1993	3662	3094	141	4.56%
1994	3720	3023	120	3.97
1995	4327	3510	150	4.27%
1996-I	3532	2615	74	2.84%
1996-II	4506	3596	100	2.78%
1997	N/A	3732	173	4.64%
1998	5170	4185	125	2.99%
1999	5220	3991	185	4.64%
2000-I	4703	3156	91	2.88%
2000-II	4524	3606	98	2.71%

Source: Statistics of Examination Yuan, Taiwan. For brief introduction of Examination Yuan of Taiwan, see <http://www.exam.gov.tw/>. The National Judicial Examination takes place every year under the supervision of the Examination Yuan of Taiwan. In Figure 1, there were two National Judicial Examinations held in 1989, 1996 and 2000 in order to supplement the shortage of judges and prosecutors. There was no National Judicial Examination held in 1975.

Figure 2: The Passing Rate on the Bar Examination (1985-2000)

(Unit: person)

Year	Enrolling	Actually Attending	Passing	Passing Rate
1980	1203	970	27	2.73%
1981	1419	1182	50	4.13%
1982	2086	1786	6	0.34%
1983	2088	1676	44	2.63%
1984	2143	1773	50	2.82%
1985	2208	1675	24	1.43%
1986	2201	1742	29	1.66%
1987	2292	1842	100	5.43%
1988	2644	2142	16	0.75%
1989	2698	2048	288	14.06%
1990	3472	2801	290	10.35%
1991	3977	3258	363	11.14%
1992	4223	3296	349	10.59%
1993	4695	3700	563	15.22%
1994	5108	3803	215	5.65%
1995	5173	3758	287	7.64%
1996	5202	4151	293	7.06%
1997	5440	3915	265	6.77%
1998	5714	4129	231	5.59%
1999	6009	4064	564	13.88%
2000	6565	4395	264	6.01%

Source: Statistics Report of Examination Yuan, Taiwan.