

**IS RECOGNIZING THE MONETARY VALUE OF HOUSEWORK  
SUFFICIENT IN ACHIEVING GENDER EQUALITY:  
ASSESSING TAIWAN'S §1003-1 AND §1018-1'S POTENTIAL  
IMPACT ON TAIWAN'S ROAD TOWARD GENDER EQUALITY**

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## I. INTRODUCTION

The switch to no-fault divorce has toppled the traditional notion that marriage is a lifelong commitment and a permanent financial assurance for the economically dependent providers of housework (hereinafter called caretakers).<sup>1</sup> Caretakers, mainly housewives and mothers, began to view marriage as a partnership between the couple,<sup>2</sup> slowly moved out of the private sphere and started to demand equal treatment both at home and at work.<sup>3</sup> After decades of the women's rights movement, however, the reality of gender equality at home paints an imperfect picture: fulltime caretakers are viewed as being unproductive, working mothers are often judged against fulltime caretakers regarding their housework contribution, and working fathers are generally complimented for performing the most minimal housework yet unhappy about being discriminated against in the workplace for participating in caretaking more than the norm would allow.<sup>4</sup> To address this persistent gender inequality at home, the U.S. feminist movement has debated the effectiveness of recognizing the economic value of housework, and their work has greatly influenced Taiwan's feminist movement.

The Taiwanese feminist movement began merely fifteen years ago, but has achieved great strides in ensuring women's rights.<sup>5</sup> Taiwanese family law has long been criticized as being discriminatory towards women and has been used to reinforce

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<sup>1</sup> Martha Albertson Fineman, *Contract and Care*, 76 CHI.-KENT L. REV. 1403, 1429 (2001).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Barbara Stark, *Marriage Proposals: From One-Size-Fits-All to Postmodern Marriage Law*, 89 Cal. L. Rev. 1479, 1498-99 (2001).

<sup>5</sup> See Tsao-Dang Wang, *Let Life Converses with the World*, 4-7, 2006 (listing that Taiwan passed laws that protect victims of sexual assault in 1997, laws that protect victims of domestic violence in 1998, laws that ensure gender equality in 2001, and laws that prohibit sexual harassment in 2005.)

patriarchal traditions.<sup>6</sup> In effect, a woman's assigned role in her family disadvantages her both at home and at work.<sup>7</sup> Nevertheless, to promote gender equality, on June 26, 2002 Taiwan passed two important pieces of legislation, §1003-1 and §1018-1, which recognized the economic value of housework within the family.

Section 1003-1 mandates that a married couple divide household expenses according to each individual's financial, physical, and other capabilities, unless law or contracts between the married couple indicate otherwise,<sup>8</sup> whereas §1018-1 mandates that in addition to household expenses, the couple shall negotiate a specific amount of money, which the husband or the wife has the right to dispose of at his or her will.<sup>9</sup> These two amendments aim to remedy the gender inequities in Taiwan's traditionally paternalistic culture and legal system that have long subordinated women as second-class citizens both at home and at work.

Unlike many of the U.S. gender equality statutes that aim to achieve procedural equality, §1003-1 and §1018-1 focus on achieving an equitable result. Section 1003-1 recognizes the economic contribution of housework and §1018-1 ensures financial stability to the provider of housework. On one hand, the amendments seem to achieve one main aspect that U.S. feminists have been working toward for many years – mandating gender equality in the context of both genders' work and housework. On the other hand, a deeper look into the codes' language and related judicial interpretation suggests otherwise.

In this paper, I will critically assess the legal and social significance of §1003-1

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<sup>6</sup> Li-Ju Lee, *Law and Social Norms in a Changing Society: A Case Study of Taiwanese Family Law*, 8 S. CAL. REV. L. & WOMEN'S STUD. 413, 413 (1999).

<sup>7</sup> Fineman at 1031-32 (2001).

<sup>8</sup> Taiwanese Civil Code, §1003-1.

<sup>9</sup> Taiwanese Civil Code, §1018-1.

and §1018-1 to see if the two amendments could effectively eliminate gender bias within the Taiwanese family. I will argue that although the two amendments are significant steps toward rebalancing gender family roles in Taiwanese society, alone they are insufficient to achieve gender equality at home. The Taiwanese government needs to impose mandatory institutional changes to fundamentally alter gender bias at home. Institutional changes must ensure that employers would recognize the economic contribution of housework and stop penalizing caretakers who provide them to ensure gender equality at home.

I will describe the impact of the long-existing gender bias that Taiwan inherited from traditional Chinese culture, the drafters' intent behind the amendments and the related judicial decisions that interpreted the amendments. I will then discuss various theories from U.S. and Taiwanese feminist scholars regarding Taiwan's commodification of housework. I will examine the short-term and long-term effect of the amendments in respect to redefining women's and men's work and whether the amendments alone are sufficient to achieve equity at home. When applying U.S. feminists' theories, I will also consider the differences between U.S. and Taiwan legal culture. Lastly I will explain why §1003-1 and §1018-1 alone would be insufficient to combat such gender bias and that the Taiwanese government needs to implement institutional changes to achieve gender equality at home.

## II. SECTION 1003-1 CIVIL CODE AMENDMENT AND ITS BACKGROUND ASSUMPTIONS

### A. The Cultural Background of Taiwan's Family Law

*The personal is political.*<sup>10</sup>

Catharine A. MacKinnon (1982)

As Catharine MacKinnon has explained, “The personal is political . . . to know the politics of woman’s situation is to know women’s personal lives.”<sup>11</sup> To adequately assess the effectiveness of §1003-1 and its effect on a Taiwanese woman’s position within her family, we must first understand the cultural background of Taiwanese women’s private sphere and the historical legal development of Taiwan’s family law. Taiwan has its cultural roots in China’s traditional Confucian values. Thus to understand the cultural and historical background of Taiwan’s gender bias, one has to understand how Confucius valued women and saw women’s societal role.

#### a. Taiwan’s Legal Culture Regarding Gender Roles

Confucius’ patriarchal family structure believes that men are responsible for the “outside sphere” and women are responsible for the “inside sphere.”<sup>12</sup> Man is the default breadwinner and the head of the entire family, whereas women play the supportive and secondary role to the male members of the family.<sup>13</sup> Traditional doctrine mandates that a woman follow her father prior to her marriage, follow her husband during her marriage, follow her son after her husband’s death, and follow her brother after her son’s death.<sup>14</sup> It was rare for a woman to be either mentally or economically independent. Similar to

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<sup>10</sup> Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: an Agenda for Theory*, 7 *Signs: J. WOMEN CULTURE & SOC’Y* 515, 535 (1982).

<sup>11</sup> *Id.*

<sup>12</sup> Li-Ju Lee, *supra* note 6, 429 (1999).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

English Common Law prior to the feminist movement of the Nineteenth Century, a Taiwanese woman marries into her husband's family and all her property belongs to her husband and her husband's family, including herself and her labor.<sup>15</sup> Thus, not only did a wife have no grounds for initiating a divorce, but when a husband wanted a divorce, she also had no grounds to refuse.<sup>16</sup>

Although the West began its contact with China at the beginning of the 1800s with the introduction of Western missionaries and increased international trade, the West did not begin to influence traditional Chinese legal culture until the late Qing Dynasty around the 1900s.<sup>17</sup> When Sun Yat-Sen overthrew the Qing Dynasty and established the Republic of China, he and his Kuomintang declared Confucian family values to be outdated.<sup>18</sup> Interestingly, they chose to adopt the majority of Qing's marriage and divorce law in the 1930 Civil Code to enforce women's inferior position within both her family and society.<sup>19</sup>

To be fair, the 1930 Civil Code did contain certain progressive elements. For example, it abandoned the Confucian belief that only a male heir could inherit the family's property, gave women the right to choose their husbands, the right to own property, and the right to a fault-based divorce.<sup>20</sup> But, the Code also mandated that the wife had to reside in her husband's residence and that she and her children must assume her husband's family name.<sup>21</sup> Furthermore, the law mandated that the father was the

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Yin-Ching Chen, Civil Law Development: China and Taiwan, *STANFORD JOURNAL OF EAST ASIAN AFFAIRS*, Vol 2, 8-9 (Spring 2002).

<sup>18</sup> Yat-Sen SUN, *SAN MIN CHU I: THE THREE PRINCIPLES OF THE PEOPLE*, 280, 290-91 (1943).

<sup>19</sup> Janice A. Lee, *Family Law of the Two Chinas: a comparative look at the rights of married women in the People's Republic of China and the Republic of China*, 5 *CARDOZO J. INT'L & COMP. L.* 217, 229 (1997).

<sup>20</sup> Id. at 231.

<sup>21</sup> Id. at 231-323.

head of the family, who was the owner and the manager of all marital property, including those brought in by his wife, and retained custody of the children upon a divorce.<sup>22</sup>

### **b. Development of Taiwan's Family Law**

Kuomintang brought the 1930 Civil Code to Taiwan after its defeat by China's Communist Party in 1949.<sup>23</sup> The government amended the Civil Code in 1937, permitting women the right to vote, run for public office, inherit property, obtain an education, and enjoy the freedom to contract.<sup>24</sup> Most importantly, the 1937 Amendment allowed women to initiate divorce.<sup>25</sup> However, the 1937 Amendment lacked the legislative language that mandated equal treatment between males and females, and during divorce procedures, the courts generally favor men over women.<sup>26</sup> It was not until 1995 that a mother first won custody of her child in a divorce proceeding,<sup>27</sup> and not until 1998 that the law mandated that the father and mother share equal parental rights.<sup>28</sup>

Today, Taiwan's family law follows a community property structure.<sup>29</sup> Upon divorce, a wife has the right to maintain ownership of her property, while sharing half of jointly acquired property with her ex-husband.<sup>30</sup> The married couple may adopt a contractual agreement that would supersede the Civil Code and waive such rights.<sup>31</sup> The

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<sup>22</sup> Id. (explaining that the right to a divorce was not guaranteed, for the women must prove that she either suffer from a severe and prolonged domestic physical abuse. Not only was the standard of proof high, but the wife must also show that her conduct within the marriage was that of an ideal wife, of which that could not give the husband any reason to abuse her.)

<sup>23</sup> Chen, *supra* note 17, at 8.

<sup>24</sup> Janice A Lee, *supra* note 6, at 233.

<sup>25</sup> Id.

<sup>26</sup> Wang, *supra* note 5, 8, 2006

<sup>27</sup> Janice A Lee at 245.

<sup>28</sup> Li-Ju Lee, *supra* note 6, at 414 (Under the newly amended law, when parents could not agree upon the custody of their children, the court may decide for the children based on the principle of the best interest of the child.)

<sup>29</sup> Pitman B. Potter, *Doctrinal Norms and Popular Attitudes Concerning Civil Law Relationships in Taiwan*, 13 UCLA PAC. BASIN L.J. 265, 277 (1995).

<sup>30</sup> Id.

<sup>31</sup> Id.



new amendments purport to further ensure gender equality at home. I shall discuss §1003-1's and §1018-1's language and legislative intent separately below.

**B. §1003-1's and §1018-1's Language and Its Legislative Intent**

**a. §1003-1's Language and Its Legislative Intent**

Section 1003-1 states:

A married couple will divide household expenses according to each individual's economic capability, housework contribution, and other capabilities, unless law or contracts between the married couple indicated otherwise. The married couple also shares debts as a result of the household expenses division.<sup>32</sup>

The language of §1003-1 is only applicable to the household expense during marriage and is gender-neutral.<sup>33</sup> The drafter intended to use §1003-1 to abolish gender inequality within a marriage by providing caretakers with more financial securities during marriage and upon a divorce, without increasing the burden to society.<sup>34</sup> The Code recognizes the economic value of the physical labor that a caretaker puts into providing housework by likening physical labor with a party's financial contribution to the household maintenance.<sup>35</sup>

**b. §1018-1's Language and Its Legislative Intent**

Section 1018-1 mandates that, "other than household expenses, the couple must negotiate a specific amount of money, of which the husband or the wife has the right to

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<sup>32</sup> Civil Code, §1003-1. *See* Taiwan Highest Court, case # 2737, (1961), referring to case #18 (1949) (explaining that §1003-1 abolished §1026, which states,

"If the husband is not capable of paying part of or total amount of the household expenses, then the wife is responsible to supplement the household expenses to the best of her financial capability. If the wife has proper reason to be separated from the husband, the husband is still responsible for the wife's household expenses . . . . The court may use its discretion in deciding the maximum amount of the household expenses allowance.")

<sup>33</sup> Taiwan Highest Court, case # 855 (April 27, 2006).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

dispose of at his or her will.”<sup>36</sup> Section 1018-1 is based on the theory that because a marriage is a partnership - without the caretaker’s effort to maintain the household, the wage-earning party could not devote all his time to wage earning activities, thus the caretaker is entitled to her share of the earnings.<sup>37</sup> Thus, the caretaker is entitled to receive the fruit of the partnership, which the wage-earning party is earning.<sup>38</sup> Furthermore, because the caretaker has to devote the majority of her time to housework thus having less time available to develop her human capital, it is only just for the wage-earning party to compensate the caretaker for her potential lost wages.<sup>39</sup>

The legislative history also indicates that §1018-1 is different from salary or payment of household expenses.<sup>40</sup> The money within the meaning of §1018-1 is not a salary because it is an entitlement from the caretaker’s partnership with the wage earner.<sup>41</sup> It is also not part of the household expenses payment because the receiver can dispose of the money at her will.<sup>42</sup> There is no penalty, however, if the wage earner refuses to negotiate with the caretaker.<sup>43</sup> The legislative debate only indicates that when the couple fails to reach an agreement, they may ask the court for assistance and the court may use its discretion to decide on an amount on a case-by-case basis.<sup>44</sup>

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<sup>36</sup> Chin-Ming Quo, *Discussing §1018-1*, 1 (2006) (explaining that §1018-1 is based on Article 164 of the Swiss Civil Code (as revised by the law of October 5, 1984), “L’epoux qui vous est soins au ménage ou au enfants ou qui aide l’autre dans sa profession ou son enterprise a le droit de recevoir regulierment de son conjoint un mountain equitable don’t il puisse disposer librement.”)

<sup>37</sup> Ru-Shuang Wong, *Overview of marital estate law amendments*, (July 20, 2002), find in <http://www.fida.org.tw/data/word09.htm>.

<sup>38</sup> Wang, *supra* note 5, at 7.

<sup>39</sup> *Id.*

<sup>40</sup> Ru-Shuang Wong, *Overview of marital estate law amendments*, (July 20, 2002), find in <http://www.fida.org.tw/data/word09.htm>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

### **C. Judicial Application of §1003-1 and §1018-1**

Section 1003-1 and §1018-1 have been widely used, especially in divorce proceedings. Overall, the courts seem to acknowledge the legislative debate and recognize the economic value of housework. In terms of §1003-1, the courts generally apply the amendment fairly and equitably. For example, a court denied an ex-husband's request to have his ex-wife reimburse his increased household expenses during their separation, explaining that it was the ex-husband's acts of domestic violence that forced him out of the house, plus the fact that the ex-husband failed to provide any additional evidence that he lacked the financial resources to support himself during the separation.<sup>45</sup> Similarly, a court denied a wife's request to have her husband reimburse her living expenses during their separation, explaining that the husband had sufficiently proved that it was due to his unprofitable business that he was unable to pay for the household expenses, and later when he had the ability to pay the wife refused his payment.<sup>46</sup> In another case, a court ruled in favor of the mentally-ill wife, stating that it was the husband's responsibility to pay for his wife's household expenses, regardless of the fact that they were now separated and that the wife's mother was paying for the wife's household expenses.<sup>47</sup>

Furthermore, in a recent decision, the Taiwan Highest Court explained that §1003-1 should be read together with §1016-1 which mandates that married couples are responsible for each other's living expenses. Section 1016-1 states that prior to the official divorce decree, the party who is financially capable has the responsibility for paying the household expenses, and the party who lacks the financial capability has the

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<sup>45</sup> Taiwan Shi-Lin District Court, Case # 632, (October 29, 2004).

<sup>46</sup> Taiwan Highest Court, Case # 145, (January, 25, 2006).

<sup>47</sup> Taiwan Highest Court, case # 855 (April 27, 2006).

right to demand that the financially capable party pay for his or her household expenses.<sup>48</sup>

In terms of applying §1018-1, the courts recognize the verbal agreement between the couple regarding the agreed amount, but does require the couple to differentiate the fund for the household expenses from the fund under §1018-1. Please note that so far there have been no cases in Taiwan that involve a contract regarding payment of housework. However, the courts fail to provide a clear formula on how to calculate the value of one's physical labor. In most cases, when calculating the household expenses under §1003-1, the courts usually base it on either the average household expenses of the divorced parties' resident area or an amount provided by the parties.

As for §1018-1, the courts mainly base the calculation on the verbal agreement between the couple. So far, there has been no ruling that involved a calculation of a person's physical labor, such as the number of hours invested, the intensity of the labor, or the combination of both.

### **III. ANALYSIS**

One aspect of achieving gender equality within a family is to recognize the economic value of housework. Section 1003-1 and §1018-1 are the first steps in recognizing the economic value of housework, yet they face many criticisms from both opponents and supporters.

#### **A. The U.S. And Taiwan's Feminist Legal Scholars' Criticisms Regarding Commodifying Housework**

##### **1) Commodifying Housework is Morally Inappropriate and Degrades Women**

Both the U.S. and Taiwanese opponents of commodifying housework argue that

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<sup>48</sup> Id.

certain human activities, such as caring for one's dependents, should not be subjected to commercial exchanges and negotiation.<sup>49</sup> The argument states that commodifying housework would prohibit development of personhood and degrade the women who perform housework.<sup>50</sup> The Western critics believe that by commodifying housework, the law would "do violence to our deepest understanding of what it is to be human,"<sup>51</sup> and "degrade the wife by making her a menial and servant in the home where she should discharge marital duties in loving and devoted ministrations."<sup>52</sup> Similar, the Taiwanese critics believe that the traditional family value mandates that housework is an act of altruism and obligation.<sup>53</sup> Such acts are the foundation of the Chinese culture and should be above the law.<sup>54</sup> They further object to the intrusive nature of the language, stating that divisions of household expenses should be a private matter, in which the courts should not interfere.<sup>55</sup>

Some Western critics went as far as to argue that talk of commodifying housework should be prohibited because by speaking about applying market norms to women's labor at home, the non-market conception of women's domestic unpaid labor would be damaged.<sup>56</sup> Assuming housework is a product of women's altruistic love toward the family and her dependents, by treating women's housework as a fungible

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<sup>49</sup> Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEMINISM 81, 84-5 (1997) (explaining that commodification is the process of which the society applies the appropriate norms of the markets to regulate certain production, exchange, and enjoyment. The constant debate is to use which norms to regulate which activities. On the other hand, to value something that cannot be view as commodity, such as love, honor, and appreciation, is to value that activity or item's "special intrinsic worth.") See Ching-Ming Kuo, *supra* note 37, at 13.

<sup>50</sup> Silbaugh, *Commodification and Women's Household Labor* at 84. See Mary Guo, *§1018-1's Household's Labor Value and Application in Families*, 50 (May 21, 2003).

<sup>51</sup> Silbaugh, *Commodification and Women's Household Labor* at 84 (1997) (quoting Margaret Jane Radin, *Market-Inalienability*, 100 Harv. L. Rev. 1849, 1905-06 (1987)).

<sup>52</sup> *Brooks v. Brooks*, 199 P.2d 970, 972 (Cal. Dist. Ct. App. 1941).

<sup>53</sup> Mary Guo, *§1018-1's Household's Labor Value and Application in Families*, 50 (May 21, 2003).

<sup>54</sup> *Id.*

<sup>55</sup> *Brooks* at 972.

<sup>56</sup> Silbaugh, *Commodification and Women's Household Labor* at 85.

good, one has degraded housework's intrinsic worth and encouraged women to interject self-interest into their labor.<sup>57</sup> They argue that maintaining one's own house is fundamentally different from acting like a servant in maintaining another's house.<sup>58</sup>

## **2) Economic theory is an Inappropriate Method to Value Housework**

Opponents also distrust the application of economic analysis to valuing housework.<sup>59</sup> The Western critics have two main objections: they do not trust the current practice of "injecting essentialism" among today's economists and they cannot accept the fungibility of housework implied by the economic analysis.<sup>60</sup> The Taiwanese critics question the fairness of valuing housework, the practicality of an average price for housework and the potential tax concern.<sup>61</sup>

Western opponents protest that economists often inject essentialism, integrating various cultural, historical, and economical assumptions when developing their economic theories, and force the reader to accept or reject the proposed theory as a whole.<sup>62</sup> Critics fear that this approach would trivialize or even complicate the housework issue due to its complex context of emotional and moral values.<sup>63</sup> Furthermore, "an economic model is only as good as its assumption,"<sup>64</sup> and the opponents distrust the assumptions within many of the economic analyses, such as that women desire children more than men do, that men are worth more as they get older, or that it is logical to treat a married couple as

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<sup>57</sup> Huai-Fen Lin, *The Economic Value of Housework vs. Payment of Housework*, 42 (May 16, 2002), Silbaugh, *Commodification and Women's Household Labor* at 86.

<sup>58</sup> Silbaugh, *Commodification and Women's Household Labor* at 86.

<sup>59</sup> *Id.* at 90.

<sup>60</sup> *Id.*

<sup>61</sup> Guo at 50.

<sup>62</sup> Silbaugh, *Commodification and Women's Household Labor* at 91.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

a unit because the majority of the couples share perfect trust between them.<sup>65</sup> As

Professor Silbaugh has written:

Much of the most prominent economic analysis of family and gender relations . . . relies on very questionable assumptions that appear to come right out of the pages of *The Total Woman* and from there they help to build economic rationalizations for very conventional mid-twentieth century middle class suburban gender relations.<sup>66</sup>

One of the assumptions that the Western opponents of commodifying housework reject the most is the assumed fungibility of housework and other aspects of family life.<sup>67</sup> They argue that housework and family labor are uniquely emotional, and such attributes cannot be easily replaced by similar services provided by a different person or products.<sup>68</sup> Furthermore, the opponents argue that there is no similar product in the market. For example, using the cost of a generalist, such as a housekeeper, assumes that all housework is performed by an unskilled laborer and may undervaluing the housework.<sup>69</sup> On the other hand, using the cost of professionals such as chefs, nurses, and hotel housekeepers assumes that the provider of housework is as productive as the professionals and may overvalue the housework.<sup>70</sup>

On the other hand, Taiwanese critics question the fairness of §1018-1 to the breadwinner, arguing that the new amendments provide double compensation to the caretakers.<sup>71</sup> They claim that because the law already mandates that the caretaker be entitled to receive half of the marital estate upon the termination of the marital

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<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Id. at 93 (defining fungibility as the belief that goods, services, or attributes can be placed on a single metric of value and then traded off against one another on that metric.”).

<sup>68</sup> Id. at 94.

<sup>69</sup> Silbaugh, *Turning Labor Into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 80, (1996).

<sup>70</sup> Id.

<sup>71</sup> Record of Legislative Debate on The Family & Relative Chapter – the Marital Estate Section, First Volume, 214-26.

relationship, compensating the caretaker for performing housework before the termination of marital relationship would doubly compensate the caretaker.<sup>72</sup> The critics also question the practicality of an average price for housework, stating that an average price for housework would not satisfy the complicated and case-by-case nature of domestic affairs.<sup>73</sup> Furthermore, the critics point out that the law does not address how to tax the compensation that the caretaker receives for performing the housework.<sup>74</sup>

The arguments against commodifying housework are unpersuasive. In the following section, I will argue why commodifying housework is not only appropriate but also essential to achieving gender equality at home. By not recognizing the monetary value of housework and its economic contributions to the marital estate, the end result may financially disempower women, leaving them without financial support in the name of honoring traditional values and glorifying caretakers' altruistic contributions.<sup>75</sup>

## **B. The U.S. and Taiwan's Feminist Legal Scholars' Support Regarding Commodifying Housework**

### **1) Similarity Between Housework and Wage Labor**

Western supporters of commodifying housework argue that housework and wage labor are similar in terms of the content of the work as well as its characteristics of including both personal and economical motivation.<sup>76</sup> Both wage labor and housework are multi-faceted and therefore cannot be analyzed by a sole tool, such as economics.<sup>77</sup> Such argument is applicable to §1003-1 and §1018-1.

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<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Id.

<sup>75</sup> Silbaugh, *Commodification and Women's Household Labor*, at 95.

<sup>76</sup> Id. (there is a market for almost every activity related to housework).

<sup>77</sup> Id. at 96.



First of all, both wage labor and housework endure sex-discrimination and gender classification. Taiwanese society still believes that for women, the workplace is simply an extension of home; thus women's work is merely an extension of housework.<sup>78</sup> At the workplace, the male is generally assigned the aggressive function such as sales whereas the female is generally assigned supportive functions such as office assistance. At home, the male is not expected to participate in housework but to be served by the female.<sup>79</sup>

Even when the male and female share the housework, the housework is divided by gender. Arlie Hochschild's research indicates that in the U.S., women do two-thirds of the routine housework at home, such as daily cooking and diaper changing, whereas men do periodic housework, such as changing the oil every six months and fixing an appliance every other quarter.<sup>80</sup> Professor Hochschild explains that this gender division of housework indirectly provides men with more control in deciding when they contribute to housework, whereas women do not have a choice.<sup>81</sup> After all, one cannot wait until she has time to feed the baby two days later. As a result, one cannot assume that there is discrimination at the workplace but there is no discrimination at home in regards to housework, and thus there it is not necessary to protect caretakers.

Secondly, using economic analysis would not eliminate other aspects of housework, such as the emotional accounting of housework and family care.<sup>82</sup> Professor Silbaugh gives an example from the life insurance industry to illustrate such a point. In the nineteenth century, life insurance companies faced great public outcry because the

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<sup>78</sup> Guo, *supra* note 54, at 13.

<sup>79</sup> *Id.* at 11.

<sup>80</sup> Arlie Hochschild & Ann Machung, *The Second Shift*, (1989), *reprinted in* FEMINIST FRONTIERS IV at 267 (Laurel Richardson, Verta Taylor, Nancy Whittier ed., McGraw-Hill Press, 1997).

<sup>81</sup> *Id.*

<sup>82</sup> Silbaugh, *Commodification and Women's Household Labor*, at 96

public was offended at the suggestion that one could place a monetary value on life.<sup>83</sup>

However, after the life insurance industry explained that they were not attempting to limit the monetary value of life, for life itself is priceless, but to help care for widows after the death of a spouse, people's resistance subsided.<sup>84</sup> Hence, placing a monetary value on an activity does not necessarily eliminate the pricelessness of such activity.<sup>85</sup> Additionally, human activities such as housework and wage-labor are multi-faceted and it is possible to know that an activity is priceless yet also know the value of such activity.<sup>86</sup>

Furthermore, practice makes everything perfect! No legislation is without fault. It is true that §1003-1 fails to address the situation of how a couple should divide the house expenses when the family hires house help<sup>87</sup> and §1018-1 does not have specific guidelines for calculating reasonable earning shares in a dual income situation.<sup>88</sup> But, as long as the courts continue their attempt to reasonably value housework, eventually the court system and the society as a whole will get better at it.<sup>89</sup> With time and practice, assigning monetary value to housework is akin to valuing life insurance, tort damage, and other professional services.

## 2) Domesticity: The Ideal Worker vs. The Ideal Woman

Another principal reason to commodify housework is to correct years of suppression as a result of domesticity toward caretakers. To conceptualize the work-family axis of gender, one must understand “the sex-gender system that organizes the

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<sup>83</sup> Id. at 97.

<sup>84</sup> Id. at 97.

<sup>85</sup> Id. at 97.

<sup>86</sup> Id. at 96-8 (giving examples of wrongful death or tort suit, where the plaintiffs instinctively understand that a life or pain cannot be fully compensated with money, yet they can also derive an acceptable amount to quantify their loss or pain.)

<sup>87</sup> Record of Legislative Debate on The Family & Relative Chapter – the Marital Estate Section, First Volume, 226.

<sup>88</sup> Id.

<sup>89</sup> Silbaugh, *Turning Labor Into Love: Housework and the Law* at 80-81.

relationship of market work and family work, a system that [Prof. Joan Williams] calls domesticity.”<sup>90</sup> Domesticity refers to how society’s norms and the traditional notions of masculinity and femininity support the gender divide between breadwinners and caretakers.<sup>91</sup> It describes how popular attitudes and institutional norms push men to perform according to the increasingly demanding ideal worker image while professionally and economically marginalize women.<sup>92</sup> In the section below I will discuss how domesticity impacts gender equality at home, and why commodifying housework is only the first step toward reversing the negative effects of domesticity.

**a. The Ideal Worker Image’s Impact on Gender Equality at Home**

There is a need to recognize the economic contribution of housework because the current capital market continues to penalize working parents who split time between professional and housework obligations.<sup>93</sup> Today’s workplace conflicts with the nature of housework because the workplace is structured around an ideal worker:<sup>94</sup> one who believes in work first and family second, is on call 24 hours a day and does not need flexibility to deal with the inconveniences of family care.<sup>95</sup> After decades of the feminist movement, the emergence of dual-income families and anti-sex discrimination prohibitions, the workplace continues to assign working mothers marginal positions with lower wages.<sup>96</sup> In effect, the ideal worker phenomenon allows the workplace to assume that employers are entitled to ideal workers, that the ideal workers are men who are

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<sup>90</sup> Joan Williams, *From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition*, 76 CHI.-KENT L. REV. 1441, 1442 (2001).

<sup>91</sup> Id.

<sup>92</sup> Kathryn Abrams, *Cross-Dressing in the Master’s Clothes*, 109 YALE L.J. 745, 746 (2000), Joan Williams, UNBENDING GENDER, 1-4 (2000).

<sup>93</sup> Maxine Eichner, *Dependency and the Liberal Polity: on Martha Fineman’s The Autonomy Myth*, 93 Cal. L. Rev. 1285, 1297 (2005).

<sup>94</sup> Id.

<sup>95</sup> Williams, *From Difference to Dominance to Domesticity* at 1474-75.

<sup>96</sup> Eichner at 1297.

assumed to not have caretaker responsibilities; and society as a whole assumes that caretakers, who are mainly women, have an unlimited amount of time and affection to give to their families.<sup>97</sup> As society continues to link a person's dignity with his or her achievement at work,<sup>98</sup> the ideal worker stereotype would continue to devalue caretakers' economic contributions and hinder the elimination of gender inequality at home.<sup>99</sup>

Ironically, although the ideal worker stereotype can only exist because of caretakers' contributions at home,<sup>100</sup> society does not value caretakers' contributions, believing that caretakers are not even workers because they are not paid and the work does not require high education or extensive training.<sup>101</sup> Additionally, family members who benefit from caretakers' work often take caretakers' contributions for granted, thus rarely showing their appreciation.<sup>102</sup> One Taiwanese feminist bemoaned that caretakers' work is that which neither working women nor house help are willing to undertake.<sup>103</sup> Although today's men also feel pressure to participate in caretaking activities, they mainly perform "spiritual housework," such as spending quality time with their children by taking them to fun outings, but leave menial tasks such as cleaning and shuttling to women.<sup>104</sup>

The argument that only the breadwinner is entitled to economic compensation but not the caretaker would only ensure social injustice, poverty and downward mobility to

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<sup>97</sup> Abrams at 750, Joan Williams, *UNBENDING GENDER*, 30 (2000).

<sup>98</sup> Williams, *From Difference to Dominance to Domesticity* at 1445.

<sup>99</sup> Id. at 1445. See also Mary Guo, *§1018-1's Housework's Labor Value and Application in Families*, 13 (May 21, 2003) (explaining that because of the society's traditional refusal to recognize the economic contribution of housework, the societal norm still perceives the breadwinners' work and contribution to the marital estate is more valuable than their caretakers), Eichner at 1302 (pointing out that both U.S. and Taiwan's women's legal history proves that the society generally perceive women's works to be less valuable and significant until men starts assume the same works)

<sup>100</sup> Laura T. Kessler, *Transgressive Caregiving*, 33 FLA. ST. U.L. REV. 1, 59-60 (2005).

<sup>101</sup> Guo, *supra* note 54, at 30.

<sup>102</sup> Id.

<sup>103</sup> Id. at 29.

<sup>104</sup> Williams, *From Difference to Dominance to Domesticity* at 1452.

many caretakers.<sup>105</sup> To counter the existing ideal worker image, recognizing the economic value of housework is only the first step. Commodifying housework and legislation such as §1003-1 and §1018-1 will provide immediate and sustainable financial independence to caretakers. In the long run, commodifying housework could gradually change society's perception of caretakers' social hierarchy by re-categorizing housework as "work" and not just a mere intangible altruistic gesture that society and families have taken for granted. The social norm, however, will not change itself. To fundamentally topple the ideal worker image, the government needs to compel institutional changes upon society.

**b. The Ideal Woman: Taiwanese Women's Second Shift Phenomenon**

*Many women end up as they do [as a caretaker] not because they, from the beginning, shared an ethic of care. Maybe they were just making the best of a bad deal.*<sup>106</sup>

*Where there is care there is no work.*<sup>107</sup>

Joan Williams, 2000

Although Taiwan has now transformed from an agricultural into an industrialized society and a single income family is now a rare occurrence, cognitive bias against women is still rampant in Taiwanese society today. While society now tolerates married women working and providing a second income to her family, women still assume the role as the primary caretaker and the sole provider of housework.<sup>108</sup>

Similar to the rise of dual income families in the West, the emergence of Taiwan's dual income family does not eliminate gender inequality at home or at work.

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<sup>105</sup> Abrams at 762.

<sup>106</sup> Williams, UNBENDING GENDER, 188-89 (2000).

<sup>107</sup> Williams, *From Difference to Dominance to Domesticity* at 1461.

<sup>108</sup> Guo at 11 (explaining that Taiwanese society now assumes that women are free to choose her career and lifestyle that the gender inequality has been successfully banished. Some even went as far as concluding that Taiwanese women no longer need legal protection to ensure gender equality.)

Like the U.S. in the 1950's, Taiwan's dual income family phenomenon started as a result of increased living expenses and the fact that the government encouraged women to join the labor force to fuel economic growth.<sup>109</sup> The increase in dual-income families combined with the shrinking support of the extended family greatly challenged the traditional assumption of a father's role as the sole breadwinner and a mother's role as the sole caretaker and provider of housework.<sup>110</sup> This challenge, sadly, did not topple the women's submissive and supportive role within the family.

For instance, because the society mandates that women's self-interest is secondary to the family's interests and needs,<sup>111</sup> many corporations, family members, and even women themselves still expect women to quit or switch to part-time after they marry or become pregnant, whichever comes first.<sup>112</sup> As a result, although women seem free to choose between family and work, societal pressure to be the "ideal mother" or the "ideal wife" often forces working women to take two work shifts, one at work and one at home.<sup>113</sup>

With the increase of dual-income families, today's women are torn between market work and family work.<sup>114</sup> On average, Taiwanese women provide two to five times more housework than their husband.<sup>115</sup> But as women's workloads increased, their

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<sup>109</sup> According to the survey conducted by Taiwan Provincial Institute of Family Planning, from 1965 to 1985, Taiwan's percentage of nuclear family has increased from 35% to 56%, while the percentage of extended family has dropped from 26% to 7%. Furthermore, according to the census, the average family size has decreased from 5.8 persons in 1965 to 3.9 persons in 1991.

<sup>110</sup> Li-Ju Lee, *supra* note 6, 435.

<sup>111</sup> *Id.* 437.

<sup>112</sup> *Id.* 438.

<sup>113</sup> Hochschild, *supra* note 81 (indicating that her research shows that only 20% of men shares housework equally, 70% did less than half but more than a third, and 10% did less than a third.)

<sup>114</sup> Abrams, *supra* note 93, at 746.

<sup>115</sup> *Id.*

labor at home ceased to be understood as “work.”<sup>116</sup> By masking housework as the “labor of love,” society successfully detached the economic entitlement from women’s work at home.<sup>117</sup> Studies indicate that even in a dual-income family, the wife is still the main provider of housework.<sup>118</sup> In certain cases, even when the husband is unemployed and stays at home, the wife is still the default caretaker.<sup>119</sup>

Therefore, insisting that women’s caretaking activities are priceless and therefore non-commodifiable is in fact subconsciously exploiting women for the benefit of their families.<sup>120</sup> Whichever argument the anti-commodification camp may take, the end result is the same – providing justification for the fact that women are often left financially disadvantaged and disempowered in marriage, especially upon divorce.<sup>121</sup> In many ways, caretakers are virtually “house slaves” under the name of altruism and affection.<sup>122</sup> In conclusion, to eliminate “the little pink bow, and the sacralizing heritage” related to housework, society must learn how to reclassify “care” as “work.”<sup>123</sup> Together, institutions and society must recognize that caretakers are victims of gender oppression, and learn to recognize caretakers’ valuable economic contribution to families and society.<sup>124</sup>

### **3) Fighting Against the Legal Culture**

Recognizing the economic value of housework is essential to achieving gender equality at home because not only do Taiwanese women need to battle against

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<sup>116</sup> Williams, *From Difference to Dominance to Domesticity* at 1446.

<sup>117</sup> Id.

<sup>118</sup> Hochschild, Guo at 11.

<sup>119</sup> Guo at 11.

<sup>120</sup> Id. at 25. See also Stark at 1519 (explaining that women’s tendency to put family’s interest prior their own interest usually benefits the family and the husband, but not necessary the women themselves.)

<sup>121</sup> Silbaugh, *Commodification and Women’s Household Labor*, at 106.

<sup>122</sup> Guo at 25.

<sup>123</sup> Williams, *From Difference to Dominance to Domesticity* at 1462-66.

<sup>124</sup> Kessler, *Transgressive Caregiving* at 56.

domesticity, they also have to fight against Chinese legal culture<sup>125</sup> where the belief is that the law should follow, not change, the social norm. In the following section, I will describe the difference between traditional Chinese and Western legal culture, and the historical struggle in using legal reforms to alter social norms in Taiwan.

#### **a. The Difference Between Traditional Chinese and Western Legal Culture**

Unlike Western legal culture where there is an assumption that law would and should lead the social norm, traditional Chinese legal culture assumes that the law should follow the social norm.<sup>126</sup> In terms of describing the relationship between law and the state, one could describe Western legal culture as “prescriptive, normative, and political.”<sup>127</sup> In other words, Western legal culture believes in lawmaking’s ability to change, mold, and eventually control human behavior.<sup>128</sup> After all, Aristotle stated that the ability to follow the Rule of Law is what differentiates the human from the beast.<sup>129</sup>

On the other hand, one can describe traditional Chinese legal culture’s view

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<sup>125</sup> Traditional Chinese scholars have based the Chinese legal institution on a combination of both Confucius’ rule of men and Legalism’ rule by law. More than developing legal principles, these scholars were developing political theory for efficient governing that evolved with the changes in the Chinese culture. However, the two schools of legal principles are building on different assumptions. Confucius’ rule of men believes that human nature is fundamentally good or at least capable of good, thus a society should be governed by examples and guidance of a leader with Confucian or socialist virtue. Thus, Confucian scholars established a social hierarchy to designate duties to each individual to encourage harmony within a society. On the other hand, the Legalism’s rule by law principle believes that human nature is fundamentally bad and incapable of self-discipline, thus a society should be governed by clear-cut rules and punishment. Both schools of thought shape the traditional and current Chinese legal system. See Teemu Ruskola, *Law, Sexual Morality, and Gender Equality in Qing and Communist China*, 103 YALE L.J. 2531-33, 2531 (1994), Ruskola, *Law Without Law*, supra note 16, at 656.

<sup>126</sup> Li-Ju Lee, *Law and Social Norms* at 425-26. (defining social norms as informal rules that imply duties, obligations, and various forms and degrees of sanctions that the majority of the society would agree and follow. For example, in ancient China, to accommodate the Confucius patriarchal structure, the Imperial legal system treated the male elder as the head of the family, and family as a unit. When any one within the family disobeyed the emperor’s order, the entire family received punishment.)

<sup>127</sup> *Id.* at 94 (describing a constitutional structure in which the government itself is subject to legal constraints).

<sup>128</sup> Teemu Ruskola, *Law Without Law, Or Is “Chinese Law” An Oxymoron*, 11 WM & MARY BILL RTS. J. 655, 658 (2003).

<sup>129</sup> ARISTOTLE, *POLITICS: BOOK THREE, PART XVI* (350 B.C.E) (Translated by Benjamin Jowett), <http://classics.mit.edu/Aristotle/politics.3.three.html> (last visited May 01, 2006).



toward the relationship between law and the state as “descriptive, positive, and instrumental.”<sup>130</sup> Unlike the Western assumption that law is a monitoring and controlling tool of both government and citizens,<sup>131</sup> Chinese legal culture views law as a guideline for aspirational human behavior and as an administrative tool to enforce morality.<sup>132</sup> Historically it has been difficult for Chinese society to accept a change in legislation if the change is against popularly accepted societal norms.<sup>133</sup> In fact, the law in traditional Chinese society helps legitimize existing social norms by holding the same position as social norms.<sup>134</sup> As a result, law also often reflects the society’s moral assumptions, such as gender inequality at home.

#### **b. Historical Account on How Legal Reforms Change Society’s Norms**

As Taiwan has transformed from a third-world country to a thriving economic powerhouse, traditional Confucian family values and social norms still persist. The Taiwanese government has attempted many times to modify social norms by introducing new legislation or eliminating old ones. The result, however, is mixed.

A recent example of how Taiwanese society sidestepped legislation that attempted to change social norms is the 1945 amendment of the inheritance law.<sup>135</sup> According to traditional Chinese culture, only sons should inherit family property, but the 1945

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<sup>130</sup> Eric W. Orts, *The Rule of Law in China*, 34 VAND. J. TRANSNAT’L. 43, 93-94 (2001) (describing the method of using regulations and methods of enforcing them in the practice of government.)

<sup>131</sup> RANDALL P. PEERENBOOM, *ASIAN DISCOURSES OF RULE OF LAW: THEORIES AND IMPLEMENTATION OF THE RULE OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S.* 2, (Randall P. Peerenboom ed., 2004) (defining the rule of law as a system that, “[a]t its most basic [level, is] . . . able to impose meaningful restraints on the state and individual members of the ruling elite . . . [through] a government of laws, the supremacy of the law and equality of all before the law.”).

<sup>132</sup> Teemu Ruskola, *Law, Sexual Morality, and Gender Equality in Qing and Communist China*, 103 YALE L.J. 2531, 2532 (1994).

<sup>133</sup> *Id.*

<sup>134</sup> Li-Ju Lee, *supra* note 6, at 425 (explaining that the law in a traditional Chinese society is a cost-effective administrative tool that not only controls the society but also upholds the government’s legitimacy by agreeing with the social norms.)

<sup>135</sup> *Id.* at 429.

amendment entitled both married and single daughters to an equal share of the inheritance as their brothers.<sup>136</sup> Taiwanese society, however, ignored the new amendment for a decade after its enactment.<sup>137</sup> It was not until the late 1950's when women began to bring lawsuits based on the new inheritance amendment that society started to address the substance of the new law. To counter the fact that daughters continued to win court cases, society sidestepped the new amendment by persuading daughters to contract away their inheritance rights.<sup>138</sup> The practice is still prevalent today.

The fact that the 1945 amendment of the inheritance law only challenges one aspect of the gender-biased culture could explain this blatant disregard of the new law. Because the 1945 amendment as well as many of the following amendments selectively implement gender-equal principles into a generally patriarchal and patrilineal culture, the overall gender-bias imbedded in Chinese culture remains intact.<sup>139</sup> In other words, when the law refuses to challenge the overall gender-bias, the law in fact supports such bias. From the vague language of §1003-1 and §1018-1, they too are falling into the same trap as the 1945 amendment of the inheritance law.

### **C. The Inadequacy of §1003-1 and §1018-1 to Impose Gender Equality at Home**

Section 1003-1 and §1018-1 are important first steps toward achieving gender equality at home, but the amendments by themselves are insufficient to reach such an objective. Both amendments assume that the caretaker has equal bargaining power as the

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<sup>136</sup> Id.

<sup>137</sup> Id. (explaining the parents continued to assign all the inheritance to brothers and the daughters whose rights were violated did not sue the parents or the brothers.)

<sup>138</sup> Id. at 430.

<sup>139</sup> Id. at 431.

breadwinner and both lack clear guideline in defining a “reasonable amount” of either household expenses or the §1018-1 entitlement. Furthermore, the legislative language and the judicial interpretation still refuse to recognize housework’s contribution to the marital estate. Also, the amendments do not impose any penalty for the wage earner’s refusal to provide reasonable payment for household expenses or the §1018-1 entitlement. Most importantly, the amendments do not impose institutional changes that would fundamentally alter gender bias at home and work.

**1) The Assumption That the Parties Have Equal Bargaining Power and the Lack of Clear Guidelines in Calculating the Value of Housework**

Both §1003-1 and §1018-1 share one fundamental flaw – the assumption that the caretaker and breadwinner share equal bargaining power and are able to reach an arm’s length financial agreement. Because of this assumption, neither the amendments nor any legislative debate mention plausible guidelines or methods of calculating the reasonable economic value of housework.<sup>140</sup>

Also, there are no clear guidelines in deciding what constitutes reasonable household expenses and §1018-1 entitlement. For example, when applying §1003-1, judicial opinions based the calculation on the assumption that housework equals household expenses.<sup>141</sup> Opinions often support a finding with either the specific costs of children’s educational expenses or general living expenses such as grocery costs, gas and rent.<sup>142</sup> If one side could not provide such data, then the courts would often refer to the related city’s average cost of living.<sup>143</sup> When applying §1018-1, the courts merely

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<sup>140</sup> This is the author’s conclusion after surveying related legislations and relevant judicial opinions.

<sup>141</sup> Taiwan Highest Court, case # 855 (April 27, 2006).

<sup>142</sup> Id., Taiwan Shi-Lin District Court, Case # 632, (October 29, 2004).

<sup>143</sup> Taiwan Highest Court, case # 855 (April 27, 2006).

validate both parties' agreed amount, but never determine what a reasonable §1018-1 entitlement might be.

**2) Lack of Legislative and Judicial Recognition of Housework's Economic Contribution to the Marital Estate**

Both the legislative debates and judicial interpretations relating to §1003-1 and §1018-1 fail to officially recognize housework's economic contribution to the marriage and marital estate. Although the language of §1003-1 mandates courts to "value" the housework performed during marriage, courts limit it to household expenses only and refuse to recognize housework's economic contribution to the overall accumulation of the marital estate or as a source of wealth. In effect, courts do not value the time and labor that caretakers spend in taking care of children and performing housework that allows breadwinners to spend time at wage-earning activities. Without legislation that would mandate the courts to consider not only the breadwinner's contributions but also the homemaker's contribution to the acquired marital estate and wealth, §1003-1 remains only partially effective in providing financial security for the homemakers in Taiwan.

Worse than §1003-1, §1018-1 even lacks the literal recognition of housework's contribution to the marital estate. Although legislative history indicates that the drafters of §1018-1 intended to recognize the economic contribution of housework to the overall marital estate, because the Taiwanese legal system mainly follows the continental system, the legislative intent is only a secondary source, not a persuasive source, when interpreting a piece of legislation.<sup>144</sup> Also, as previously mentioned, the few judicial interpretations of §1018-1 limit themselves to the agreed amount and refuse to expand

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<sup>144</sup> Record of Legislative Debate on The Family & Relative Chapter – the Marital Estate Section, First Volume, 214-26.

upon the literal language.<sup>145</sup> As a result, both §1003-1 and §1018-1 lack the legislative and judicial recognition that housework does contribute economically to the marital estate.

### **3) Lack of Effective Enforcement**

Neither §1003-1 nor §1018-1 imposes penalties when a party fails to pay household expense or §1018-1 entitlement money. Additionally, §1018-1's language does not even require the couple to agree on a sum or grant a party to unilaterally request the court's interference when the couple fails to reach an agreement.<sup>146</sup> As a result, without judicial decisions to enforce §1018-1, the amendment is merely a declaratory statement that only pays lip service to ensuring gender equality at home.

### **4) Lack of Fundamental Institutional Changes**

Furthermore, §1003-1 and §1018-1 are insufficient because mere gender-neutral language is inadequate to change the deeply rooted bias. The Taiwanese government must also mandate institutional changes to impose gender equality at home. Institutional changes are essential because individual families and family members are still the ones responsible for monitoring and implementing equality, and so far a modern, gender-neutral, and fully egalitarian family remains a fiction.<sup>147</sup>

Today's society does not recognize that women and men have different experiences, social expectations, and institutionally imposed responsibilities.<sup>148</sup> The traditional family builds around the model that requires the caretaker to complement the

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<sup>145</sup> Taiwan Highest Court, case # 855 (April 27, 2006).

<sup>146</sup> Ru-Shuang Wong, *Overview of marital estate law amendments*, (July 20, 2002), find in <http://www.fida.org.tw/data/word09.htm>.

<sup>147</sup> Fineman, *supra* note 1, at 1033.

<sup>148</sup> *See id.* at 1032-33 (2001) (arguing that it would require unequal treatment to achieve gender equality in the end.).

breadwinner.<sup>149</sup> To remove the burden from caretakers and ensure caretakers' right to work, "her right to earn and not sacrifice the well-being of her children or other dependants by doing so," the government must enforce legislation in both public and private spheres that would encourage "the duly responsible worker."<sup>150</sup>

The government must propose and enforce legislation that would reduce the burden of caretakers and afford them equal treatment at work by redistributing the burden to institutions and employers.<sup>151</sup> The current structure of marketplace disadvantages not just the working mother but also all working parents.<sup>152</sup> Legislation should aim to create a working environment where men would actually feel comfortable, thus more likely, in stepping away from their career to share the housework and caretaking responsibilities with women.<sup>153</sup> Professor Fineman explains that the reason why men still do not feel comfortable taking more time and energy away from work is because society as a whole still values economic contributions more than housework and caretaking activities.<sup>154</sup> As a result, "families bear the burdens of dependency while market institutions are free to operate as though domestic tasks that reproduce the society were some other institution's responsibility."<sup>155</sup>

The government must mandate that institutions and employers modify their ideal worker image and structure the workplace around a working parent. At a minimum, they should provide high-quality subsidized childcare, implement flextime or a telecommuting program, and eliminate face-time requirements. Through time and perseverance, the

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<sup>149</sup> Id. at 1048.

<sup>150</sup> Id.

<sup>151</sup> Id. 1347.

<sup>152</sup> Abrams, *supra* note 93, at 754 (2000).

<sup>153</sup> Fineman, *supra* note 1, at 1048.

<sup>154</sup> Id. at 1049.

<sup>155</sup> Id.

social norm would follow suit. The workplace and social norm will not be able to implement these fundamental changes on their own, for if they were capable of doing so then they would have done so long ago. It is the government's role to institute policies and legislation that would enforce these institutional changes to compel employers and society to recognize the economic contribution of housework. Only then would society be able to change the ideal worker image from a single minded workaholic to a work/life balanced working parent, to allow working fathers to take time off to perform housework and caretaking duties, and finally, to eliminate the gender inequality at home.

Furthermore, regardless how comprehensive and effective the legislative intent may be, the objective of the law cannot be realized without women's comprehension and application of the law.<sup>156</sup> The government has to work with civil societies to create a movement that educates women about their rights within the family and as an individual.<sup>157</sup> To fundamentally topple the idea that "hers is his, but his is still his," and to achieve gender equality at home, the Taiwanese government must implement institutional changes to challenge the traditional patriarchal structure.<sup>158</sup>

#### IV. CONCLUSION

There is a cost to not recognizing the economic value of housework, and such costs falls upon caretakers, who are primarily women.<sup>159</sup> After fifteen years of the feminist movement, Taiwanese society now finally accepts the idea of a working mother but still mandates women as the default providers of housework.<sup>160</sup> If the law could help

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<sup>156</sup> Wang, *supra* note 5, at 5.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 4-6.

<sup>159</sup> Silbaugh, *Turning Labor Into Love: Housework and the Law* at 79. *See also* Stark at 1518. (arguing that is an economic cost for women's non-economic activities imposed by the society)

<sup>160</sup> Fineman at 1049. *See also* Hochschild and Machung, *supra* note 81.

women meet the conflicting demands of both a worker and a caretaker, society as a whole would benefit.<sup>161</sup>

The belief that “law shall not enter through the family door” would only justify male dominance over housewives.<sup>162</sup> Until men start participating equally in performing housework, society in general will continue to see housework and caretaking as “low status women’s work.”<sup>163</sup> Additionally, equal sharing of housework also allows women the same amount of time as men have to devote to leisure or other activities to develop their human capital.<sup>164</sup>

Section 1003-1 and §1018-1 are the first steps towards remedying gender inequities in Taiwan’s traditionally paternalistic home for the amendments recognize the economic value and contribution of housework. Nevertheless, the effect of §1003-1 and §1018-1 would either be marginalized or short-lived if the Taiwanese government does not mandate that institutions recognize the economic contribution of housework, encourage men to participate equally in caretaking, and allow women true equal opportunity to develop their human capital.

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<sup>161</sup> Fineman at 1049.

<sup>162</sup> Wang, at 3.

<sup>163</sup> Eichner, *supra* note 94, at 1302.

<sup>164</sup> *Id.* 1302-03.