

# Introduction to Gender Equality in the Legal Profession in East Asia: Empirical Perspectives

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## Introduction

This issue of the Cornell International Law Journal publishes six articles presented at the *Symposium on Gender Equality in the Legal Profession in East Asia: Empirical Perspectives*. The symposium was co-sponsored by the Clarke Program in East Asian Law & Culture at Cornell Law School (which I direct since I became the Clarke Professor of East Asian Law on January 1, 2023) and the Cornell International Law Journal. The symposium was held on April 10-11, 2023 at Cornell Law School in Ithaca, NY.

All six presenters of the draft articles at the symposium are female (though a co-author of one article is male), which may not be surprising, given that, empirically speaking, gender issues have been predominantly addressed by female scholars. At that April conference, I also presented a paper regarding a gender issue, but it will be published in a later issue because my co-authored article concerns the son preference in testators' distributions of estates through wills,<sup>1</sup> unrelated to the legal profession, the theme of the symposium. Notably, the other two co-authors of this article are also female.

The six articles in this symposium study China, Japan, South Korea, Taiwan, and Singapore, which face somewhat common difficulties, yet they are also somewhat different. Common to almost all of these jurisdictions is the concern that, while more than half of the law school graduates are female, in all three main legal professions—judges, prosecutors, and attorneys—women are underrepresented (see Table 1; with the judge community in Taiwan as an exception). In leadership positions, such as chief judges and law firm partners, female jurists are even more underrepresented.<sup>2</sup>

The same underrepresentation phenomenon can be interpreted differently. The glass ceiling<sup>3</sup> and “hegemonic masculinities”<sup>4</sup> are the usual suspect

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1. See Yun-chien Chang, Sieh-chuen Huang & Su-Li Her, *Son Preference: An Empirical Study of Estate Distribution in Wills*, 57 CORNELL INT'L L.J. (2024 forthcoming).

2. See *infra*, Gao, Ishida, Park, and Hsu articles, starting at pp. 149, 197, 223, and 173, respectively.

3. See *infra*, Ishida article, starting at pp. 197.

4. See *infra*, Hsu article, starting at pp. 173.

and the accounts call for breaking the ceiling and de-masculinizing the judiciary. By contrast, Wei Gao’s article in this symposium offers a surprising story of female judges in China: promotions to leadership positions and making the judge “quota” come at a price that female judges rather not pay.<sup>5</sup> More specifically, judges in China who climb up the hierarchical ladder have to serve in far-away provinces or handle onerous enforcement actions. Gao’s message appears to be that the legal system and law enforcement, after all, *are* masculine. Female underrepresentation is thus an equilibrium resulting from female jurists’ shying away from undesirable work. No doubt that this equilibrium is at least partly caused by the fact that today’s female professionals still handle most, if not all, of childcare. Hence, while male jurists strive to strike the right work-life balance, female jurists struggle to strike the right “work-work” balance between being a professional and being a wife/mother/daughter-in-law. This is then perhaps not surprising that, as Table 1 below shows, the percentage of women on the bench tends to be higher than that in the prosecutor role and in law firms, as judges are more autonomous and with tenure, while the prosecutor office, handling only criminal matters, is conceived as more “masculine” and young attorneys working in law firms have the least command of their schedules.

Table 1: Percentage of Female Jurists in East Asia

	% of female (data year)		
	Judges	Prosecutors	Lawyers
China	35% (2019)	40% (2023)	37% (2019)
Japan	27% (2020)	26% (2020)	19% (2020)
South Korea	34% (2022)	34% (2022)	31% (2022)
Taiwan	52% (2022)	41% (2022)	37% (2021)
Singapore	45% (2015)	–	43% (2020)

Notes: Most of the summary statistics are reported in the articles in this symposium. Sources for my additional data are as follows: The 2019 China lawyer data are from this government report, available at <http://www.zgtjnj.org/navipage-n3021022001000244.html> (Table 9.3). The 2022 Taiwan judge data are available at the Judicial Yuan website <https://www.judicial.gov.tw/tw/dl-184116-23bd0d0171154b138a03b1ab5c13bcd2.html>. The 2022 Taiwan prosecutor data are available at the Ministry of Justice website [https://www.rjsd.moj.gov.tw/RJSDWeb/common/WebList3\\_Report.aspx?menu=GEN\\_PROSECUTION&list\\_id=746](https://www.rjsd.moj.gov.tw/RJSDWeb/common/WebList3_Report.aspx?menu=GEN_PROSECUTION&list_id=746). The 2021 Taiwan attorney mean is calculated using information available at the Ministry of Justice website <https://lawyerbc.moj.gov.tw/>. The 2015 Singapore judge data are cited from this article: Malathi Das, *Gender in Justice – Women in the Law in Singapore*, available at <https://v1.lawgazette.com.sg/2015-10/1407.htm#:~:text=A%20large%20percentage%20of%20district,71%20per%20cent%20in%202015>

5. See *infra*, Gao article, starting at pp. 149.

## I. Diverse Methods and Highlighted Findings

The six articles use diverse empirical methods. Hai Jin Park uses a web-based experiment with South Korean subjects to examine whether ordinary people tend to avoid retaining female attorneys and find that user reviews drive the hiring decision—male or female does not matter. Still, when things go sour, female lawyers take a harder blow than male lawyers. Her experimental design can easily be implemented in other East Asian jurisdictions to tease out gender effects in the legal service market.

Wei Gao, Ching-fang Hsu and Helena Whalen-Bridge utilize qualitative interviews as their main data sources. Gao's interviewed judges and judge assistants to provide unconventional accounts of seemingly biased measures. For instance, in some Chinese courts, some positions are explicitly reserved for men, an unthinkable move in the U.S. In Gao's division-of-labor account, most of such positions are for the enforcement divisions that routinely require night shifts and business travels to remote locations, a thankless job for anyone, in particular for female judges.

Ching-fang Hsu, from her large corpus of jurist interviews, utilizes in her symposium contribution conversations with 14 judges and one prosecutor to highlight the male-centered structure of the Taiwanese judicial system. What is remarkable is that more than half of the sitting judges in Taiwan now are female. This is the case even in the Supreme Court, to which it takes judges at least two decades to climb. Still, the judiciary is still "modeled around male and value competition, adversarial contention and conformity to masculine power." Helena Whalen-Bridge, by contrast, turns to practicing lawyers—perhaps *non-practicing* lawyers—by asking why female attorneys leave the profession. Her twelve in-depth interviews with Singaporean legal professionals reveal that the work environment at law firms, including, but not limited to, the use of billable hours as a measure of contribution, proves difficult to manage by female attorneys with family duties. This, again, partly explains why the percentage of female attorneys is lower than that of female judges and prosecutors in the studied jurisdictions.

Kyoko Ishida takes advantage of longitudinal summary statistics across multiple decades and a 2020 survey conducted by the Japan Federation of Bar Association to confirm that the general impression of gender inequality in Japan, even in the legal profession, is still very much accurate. Japan has gone a long way from having only 6 female attorneys in 1950 to more than 8,000 in 2020 (put differently, 19% of the lawyers in Japan were female; see Table 1), but other neighboring jurisdictions, perhaps with very similar low starting points decades ago, have achieved higher female lawyer/judge/prosecutor percentages. "Hope in Despair?", Kyoko Ishida's article title, captures this complicated anxiety.

Unlike others, Xiaohong Yu & Zhaoyang Sun's article does not offer a bird's eye view of the legal professions in China (as Wei Gao's contribution has done so); rather, they examine the presence and effects of gender biases, providing an explanation anchored in Confucian norms and the norms' significant shift caused by revolutionary disruptions. More specifically, they zoom in on 40,000 plus criminal cases decided between 2014 and 2020 to

ascertain whether female defendants are treated the same as male defendants and whether a panel of (more) female judges and a panel of (more) male judges treat defendants differently. Using these court decisions in regression frameworks—with creative proxy variables such as the number of Confucian temples in a city, the number of “chaste women arches” in a city, and the revolutionary base areas—Yu & Sun find pronounced and complicated gender effects.

## Conclusion

Cornell Law School publishes the peer-review *Journal of Empirical Legal Studies*, the leading journal on quantitative and qualitative legal research. The Clarke Program in East Asian Law & Culture, since its inception, explore various aspects of urgent legal issues in the Far East. This symposium combines two focuses together in a stimulating symposium that reflects on the current status of gender equality in the world's most populous region. Through the efforts of many over decades, women jurists have a stronger presence than before, and hopefully, their influence could continue to grow in a setting without the glass ceiling and hostile social norms.