

Women Judges in a Masculine Court: How Judicial Authority, Legal Area and the Image of the Ideal Judge are Gendered in the Taiwanese Judiciary

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The Taiwanese judiciary has reached gender parity in number in the 2020s, so that women judges now occupy more than fifty percent of positions at all three levels of the court. However, the internal gender dynamics are complex. This Article uses two sets of conceptual tools to analyze and identify the male-centered and masculine features of the Taiwanese judiciary: the gendered organization by Joan Acker and hegemonic masculinities by R.W. Connell. Specifically, this Article first identifies a mainstream power relationship, which I term *authority-conforming*, and shows how it is gendered to benefit a masculine authority. Second, the ways in which legal area is valued are also gendered. Legal areas involving domestic affairs are marginalized and looked down upon in the profession despite their complexity. The juvenile and family divisions lack resources and manpower, and judges serving in this area are deemed less capable. Third, women judges in Taiwan face another version of the double bind: if she fully commits to her career, she is restrained from a balanced life; but if she accentuates her family role as a supportive parent, spouse or caregiver, she reinforces the traditional stereotype in the Taiwanese legal sector that women shall choose judgeship, a stable desk job, to accommodate their domestic duties. Next, a separate section presents preliminary evidence on the qualitative change brought about by female judges. Diversification of leadership style, the ideal image, and normative qualities of a good judge, are positive developments. Data used in this Article includes archival documents, field observations, and in-depth interviews with fourteen judges (twelve female and two male judges) and one female prosecutor from six jurisdictions at all three levels of the Taiwanese court.

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Introduction

Gender equality and diversity in Taiwan is commendable in many regards, particularly, the ways in which the law is mobilized and institutionalized to protect women and gender minorities. Taiwan was the first country in Asia to legalize same-sex marriage, mandated by a Taiwanese Constitutional Court decision (J.Y. Interpretation No. 748).¹ The parliament has passed three acts, the Act of Gender Equity in Employment, the Gender Equity Education Act, and the Sexual Harassment Prevention Act, to facilitate gender equality in the workplace, school, and in other settings.² Taiwan also has strong female leadership in politics: the first female president, Tsai Ing-wen, has no prior political capital through male family members and holds the record of the highest vote in her re-election in 2020.³ Turning to parliament, the most recent national election in January 2024 placed women in 41.59% of the total seats,⁴ a percentage similar to Switzerland, Norway, and Belgium, and topping all Asian countries.⁵ The judiciary, as the third branch of the government, also performs well in reaching a fifty-fifty gender parity in number (Figure 1). As of 2020, all three court levels consist of more than fifty percent female judges.⁶ At the lowest district court level, the percentage of female judges exceeded fifty percent as early as 2010 and female judges have remained the majority since.⁷ At the intermediate level, the high courts, women also passed the fifty percent threshold in 2019, while the supreme court reached the fifty percent line at last in 2020.⁸

However, any feminist or concerned observer of gender in the legal profession would not be so naïve as to assert that the judiciary achieves gender equality by the mere equal number of male and female judges. A critical step is to investigate the gender power relations within the judiciary and identify the features and mechanisms that disadvantage gender minorities, specifically,

1. Sifayuan Dafaguan Huiyi No. 748, 2017 DAFAGUAN HUIYI JIESHI HUIBIAN (Council of Grand Justices, Judicial Yuan) (Taiwan) <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&rid=310929> [<https://perma.cc/XN7V-25MY>] (last visited March 4, 2024).

2. HSINGPIEH PINGTENG KUNGUO FA (Gender Equity in Employment Act) (2002) (Taiwan), HSINGPIEH PINGTENG CHIAOYU FA (Gender Equity Education Act) (2004) (Taiwan), and HSINGSAOJAO FANGCHIH FA (Sexual Harassment Prevention Act) (2005) (Taiwan). These three acts constitute a legal regime that systematically protects gender equality in different spaces, including school and the workplace.

3. OFFICE OF THE PRESIDENT, TAIWAN, PRESIDENT TSAI (2024), <https://english.president.gov.tw/Page/40> [<https://perma.cc/TEF2-KKRN>] (last visited March 4, 2024).

4. *Taiwan's 11th Legislative Yuan at a Glance*, FOCUS TAIWAN (CNA ENGLISH NEWS) (February 1, 2024, 12:18PM), <https://focustaiwan.tw/politics/202402010005> [<https://perma.cc/7RZW-6DSS>].

5. *Monthly ranking of women in national parliaments*, INTER-PARLIAMENT UNION, <https://data.ipu.org/women-ranking?month=12&year=2020> [<https://perma.cc/S3G4-SUG6>] (last visited July 4, 2023).

6. In the year of 2020, there were 1058 male judges (49.3%, including grand justices of the Constitutional Court) and 1087 female judges (50.7%, also including the grand justices of the Constitutional Court) in the Taiwanese judiciary. The number of female judges has been on a slow decline since 2021, and in the year of 2023, there were 1115 male judges (54.7%) and 925 female judges (45.3%). Please see the official gender statistics from the Taiwanese Judicial Yuan website. <https://www.judicial.gov.tw/tw/lp-2378-1.html>

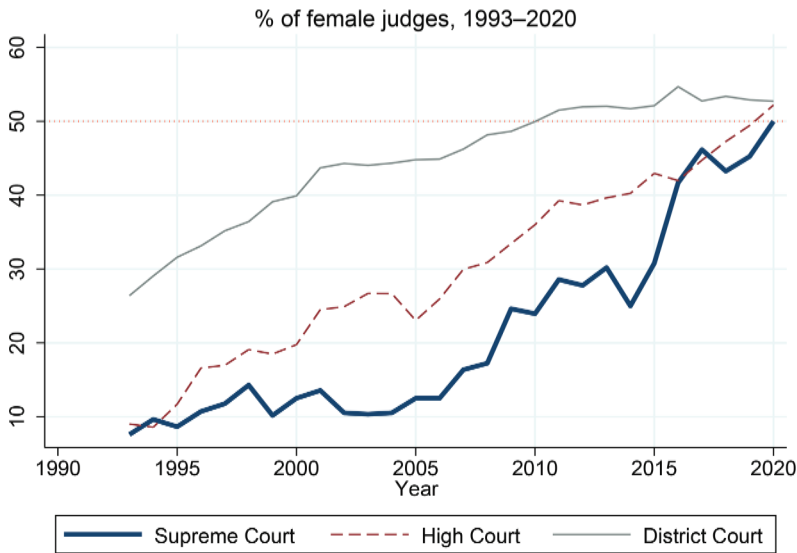
7. See *infra* Figure 1.

8. *Id.*

women. That is, while we celebrate the judiciary’s milestone of gender parity in number, we need to look closer at the interpersonal level, including judges’ interactions and perceptions, to capture the gender dynamics that might persist to disadvantage women.

This Article provides a gender analysis of the Taiwanese judiciary, focusing on the internal dynamics among judges. I rely on conceptual tools from gender studies to analyze and identify the male-centered and masculine features of the Taiwanese court. Specifically, I make three statements. First, I identify a mainstream power relationship, termed *authority-conforming*, and show how it is gendered to benefit a masculine authority. Second, I turn to the ways in which legal expertise is valued. Legal areas involving domestic affairs are marginalized and perceived as less professional, despite their complexity. That is, the juvenile and family divisions lack resources and manpower, and judges serving in this area are deemed less capable. Third, the image of the ideal worker in the judiciary is also highly gendered. Men are still the norm and women judges in Taiwan face another version of the double bind: if she fully commits to her career, she is restrained from a balanced life; but if she accentuates her family role as a supportive parent, spouse or caregiver, she reinforces the traditional stereotype in the Taiwanese legal sector that women shall choose judgeship, a stable desk job, to accommodate their domestic duties. Finally, I dedicate a separate section to present preliminary evidence on qualitative change following the feminization of the court. Diversification of leadership style, the ideal image, and normative qualities of a good judge, are positive developments. The conclusion summarizes and discusses the Article’s contribution.

Figure 1 Percentage of Women Judges at Different Levels of Courts, 1993-2020



I. Conceptual Tools for a Gender Analysis of the Court

This Article incorporates three sets of scholarship to identify the male-centered and masculine features of the Taiwanese judiciary.⁹ The first and second are conceptual tools from gender studies, the gendered organization by Joan Acker,¹⁰ and hegemonic masculinities by R.W. Connell.¹¹ Both are powerful, well-debated and widely applied concepts that help us understand the operation of patriarchy in business,¹² education,¹³ military,¹⁴ art¹⁵ and academic disciplines,¹⁶ as well as many other settings in modern society. The third set of literature, women in the legal profession, encompasses a large volume of empirical research that extensively studies the disadvantages women lawyers and judges experience worldwide.¹⁷ In the following literature review, I situate

9. I also consult Allen Johnson's definition on patriarchy to identify the male-centered, male-identified and masculine qualities of a system. ALLAN JOHNSON, *THE GENDER KNOT: UNRAVELING OUR PATRIARCHAL LEGACY* 5–8 (3rd ed. 1997).

10. Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC'Y 139, 139 (1990) (arguing that organizational structure is not gender neutral and abstract jobs and hierarchies, common concepts in organizational thinking all assume a man as the norm) [hereinafter *Hierarchies, Jobs, Bodies*]; Joan Acker, *Gendering Organizational Theory*, in GENDERING ORGANIZATIONAL ANALYSIS 248, 248 (Albert J. Mills & Peta Tancred eds., 1992).

11. R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829, 832 (2005) (reviewing and revising the concept of hegemonic masculinity, which is defined as “the pattern of practice that allowed men's dominance over women to continue”); see R.W. Connell, *The Social Organization of Masculinity*, in UNMASKING MASCULINITIES: MEN & SOCIETY 5, 5 (Edward W. Morris & Freedren Blume Oeur eds., 2018) [hereinafter *The Social Organization*].

12. See, e.g., R.W. Connell, *Masculinities and Globalization*, 1 MEN & MASCULINITIES 3, 3 (1998) (proposing the concept of transnational business masculinity); Philip N. Cohen & Matt L. Huffman, *Individuals, Jobs, and Labor Markets: The Devaluation of Women's Work*, 68 AM. SOCIO. REV. 443, 443 (2003) (a macro analysis on the role of labor market composition in determining the wage gap).

13. See e.g., Richard Light & David Kirk, *High School Rugby, the Body and the Reproduction of Hegemonic Masculinity*, 5 SPORT, EDUC. & SOC'Y 163, 163 (2000) (finding that a clear structure of masculinities existed at an Australian school, in which a specific hegemonic form was shaped through the embodied practice of rugby football, centering on domination, aggression and ruthless competitiveness); Christine L. Williams, *The Glass Escalator: Hidden Advantages for Men in the “Female” Professions*, 39 SOC. PROBS. 253, 253 (1992) (finding that, in elementary school teaching, men in fact benefited from their status of token minority in ways that women in male-dominated occupations did not, riding a ‘glass escalator’ to success).

14. See Frank J. Barrett, *The Organizational Construction of Hegemonic Masculinity: The Case of the US Navy*, 3 GENDER, WORK & ORG. 129, 129 (1996) (finding that, in the U.S. navy, definitions of masculinity are relationally constructed through associations of difference: aviators tend to draw upon themes of autonomy and risk taking; surface warfare officers draw upon themes of perseverance and endurance; and supply officers draw upon themes of technical rationality).

15. ROBERT JAMES BELTON, *THE BERIBBONED BOMB: THE IMAGE OF WOMAN IN MALE SURREALIST ART XXIX* (1995).

16. See e.g. Lawrence D. Berg, *Masculinity, Place and a Binary Discourse of ‘Theory’ and ‘Empirical Investigation’ in the Human Geography of Aotearoa/New Zealand*, 1 GENDER, PLACE & CULTURE 245 (1994) (identifying a binary understanding of theory and empirical investigation, which gives rise to at least three problems in the discipline of geography: a gendered and hierarchical structuring of geographic thought, a devaluation of the feminized term in the binary, and unworkable ‘mobile positioning’ of the researcher).

17. See, e.g., Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 299 (2008) (a comprehensive review on the theoretical explanations of

related empirical findings in the introduction of the two analytical concepts, so that the later analysis of the Taiwanese judiciary stays focused and engaged with current literature.

As a professional organization, the judiciary is *gendered*, as are most other organizations. To say that an organization is gendered does not mean it is primarily populated by men. Rather, it means that the organization is conceptualized and structured in ways that do not treat women's experience as the norm. Acker defines a gendered organization as one where "advantage and disadvantage, exploitation and control, action and emotion, meaning and identity, are patterned through in terms of a distinction between male and female, masculine[,] and feminine."¹⁸ Three interfaces are of particular interest in the discussion of women in the legal profession. First, the interpersonal relationship. The interaction between women and men, women and women, and men and men, may be patterned in a way that enacts dominance and submission.¹⁹ Second, individual identity may be constructed with gendered components, such as "choices of appropriate work, language use, clothing,"²⁰ or how one presents oneself as a member of an organization. Third, and perhaps most powerfully, Acker points out that the gender-neutral status of a job and a worker is fundamentally problematic and unreal.²¹ The assumption that a worker is an abstract, rational, and "disembodied" unit erases sexuality, emotions, and procreation in the workplace.²² This puts an extra burden on women, particularly negating women's bodies as unfit to work, and produces a gendered relation that sets women as irregular workers.²³

Consistent with this gender perspective on organization and workplace, studies on women lawyers in North America also find that the ideal worker in law assumes men as the norm. Specifically, the ideal type of a successful lawyer is an "all-or-nothing employee,"²⁴ who is available to work very long hours, free from domestic responsibilities, and is of masculine character.²⁵ In the

gender inequalities that persist across legal education, hiring, remuneration, promotions, and other professional opportunities in law); Joyce S. Sterling & Nancy Reichman, *Overlooked and Undervalued: Women in Private Law Practice*, 12 ANN. REV. L. & SOC. SCI. 373, 373 (2016) [hereinafter *Overlooked and Undervalued*] (focusing on women lawyers in the private sector, looking at organizational mechanisms and strategies that systematically overlook and undervalue women's contributions); WOMEN IN THE WORLD'S LEGAL PROFESSIONS XXV (Ulrike Schultz & Gisela Shaw eds. 2003) [hereinafter *Schultz & Shaw*].

18. Hierarchies, Jobs, Bodies, *supra* note 10, at 146.

19. *Id.* at 146-47.

20. *Id.* at 147. A note on women legal professionals' clothing: research on Taiwanese prosecutors noted that women prosecutors are asked to wear collared shirts inside their robes in court proceedings. Many forms of women's formal clothing do not have a collar. This requirement comes from an assumption that treats men's official clothing as the standard. In fact, given Taiwan's weather in summertime, a collared shirt under a black robe might not be comfortable for any gender. This also reveals the image of an ideal worker in the organization is a disembodied, abstract employee. Ling-Ju Chuang & Ling-Fang Cheng, *Managing Gender: Female Prosecutors in Masculinized Organizations*, 30 J. WOMEN & GENDER STUD. 153-55, 137 (2012) (in Chinese).

21. Acker, *supra* note 10, at 149.

22. *Id.* at 151-52.

23. *Id.* at 152-53.

24. *Overlooked and Undervalued*, *supra* note 18, at 385.

25. See, e.g., Christine Percheski, *Opting out? Cohort Differences in Professional Women's*

U.S., data from the national census,²⁶ consulting firms,²⁷ and bar foundations,²⁸ consistently find women lawyers earn less than men, in all legal areas and in most positions. Strikingly, as time goes by, the gap grows.²⁹ Experimental data further confirm that women's work is devalued in comparison to that of men.³⁰ Disparities in promotion and compensation are linked to the bureaucratic structures of legal organizations and masculine culture.³¹ Women in the legal profession, hence, face double standards and a double bind:³² when

Employment Rates from 1960 to 2005, 73 AM. SOCIO. REV. 497, 497 (2008) (a cohort analysis of working-age women born between 1906 and 1975, finding that employment levels among college-educated women in professional and managerial occupations have increased across cohorts, but labor force participation rates have stalled, with less than 8 percent of professional women born since 1956 out of the labor force for a year or more during their prime childbearing years, and importantly, the "child penalty" is shrinking across cohorts); John Hagan & Fiona M. Kay, *The Masculine Mystique: Living Large from Law School to Later Life*, 25(2) CANADIAN J. L. & SOC'Y 195, 197 (2010) (a 20-year longitudinal study of Toronto lawyers, focusing on male lawyers' life experiences, and analyzing the relationship between having children and cultivating corporate clients).

26. Debra Cassens Weiss, *Full-time female lawyers earn 77 percent of male lawyer pay*, ABA J. (Mar. 17, 2016, 8:10 AM), https://www.abajournal.com/news/article/pay_gap_is_greatest_in_legal_occupations [<https://perma.cc/382D-E948>].

27. Since 2010, the consulting firm, Major, Lindsey & Africa, conducts survey periodically. Here I cite their 2014 report, but the most recent report of 2022 is also very valuable. See JEFFREY A. LOWE, 2014 PARTNER COMPENSATION SURVEY 7, <https://www.mlaglobal.com/en/insights/research/compensation-survey-2014> [<https://perma.cc/SAK2-V34T>] (last visited July 5, 2023).

28. Joan C. Williams & Veta Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS L. J. 597, 597 (2011) (based on a survey of 694 law firm partners, mostly women, showing considerable dissatisfaction among women partners with respect to their firms' partner compensation systems; notably, about a quarter of majority equity women partners, and a third of majority income and minority women partners reported feeling 'bullied, threatened or intimidated' in disputes over origination credit).

29. In the U.S., the After the JD project finds that, among lawyers admitted to the bar in 2000, women earned 5% less than men after only three years of practice on average. After seven years of practice, the gender gap in salaries increased to 13%, and to 20% after 12 years of practice. See, e.g., RONIT DINOVITZER ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (2004) 58 (Janet E. Smith, et al. eds., 2004); RONIT DINOVITZER ET AL., AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 67 (2014); Nancy Reichman & Joyce Sterling, *Parenthood Status and Compensation in Law Practice*, 20 INDIANA J. GLOB. LEGAL STUD. 1203, 1203 (2013) (Using data from After the JD project, finding that gender matters more than parenthood status in compensation, particularly, parenthood is not found to have a significant effect on credentials, orientation to work, or practice setting).

30. See Madeline E. Heilman & Tyler G. Okimoto, *Why Are Women Penalized for Success at Male Tasks?: The Implied Communality Deficit*, 92 J. APPLIED PSYCHOL. 81, 81 (2007) (three experiments finding support of penalties for women's success in male domains result from the perceived violation of gender-stereotypic prescriptions).

31. See, e.g., Sharon C. Bolton & Daniel Muzio, *Can't Live with 'Em; Can't Live without 'Em: Gendered Segmentation in the Legal Profession*, 41 SOCIO. 47, 47 (2007) (providing a typology of gendered segmentation in the legal profession, which has become a defense mechanism to ensure the elites' status and a pool of legal labor with lesser terms and conditions); Lisa Webley & Liz Duff, *Women Solicitors as a Barometer for Problems within the Legal Profession: Time to Put Values before Profits?*, 34 J. L. & SOC'Y 374, 402 (2007) (focusing on women solicitors in the U.K. who leave practice, and noting the lack of a successful work/life balance, the institutionalization of the long-hours culture, and the de-professionalization of their work had an impact on women's retreat); HILARY SOMMERLAD & PETER SANDERSON, GENDER, CHOICE AND COMMITMENT: WOMEN SOLICITORS IN ENGLAND AND WALES AND THE STRUGGLE FOR EQUAL STATUS 6-7 (2019).

32. See Deborah Rhode, *Diversity and Gender Equity in Legal Practice*, 82 UNIV. CINCINNATI

women commit fully to long hours of legal work and adopt a masculine profile, they are thought to be disagreeable, unwelcoming, and unfit mothers, but when they take time to balance family and work, they are perceived as not committed. That is, “both sides produce a stereotype of women as incompatible with the practice of law.”³³

This association of the legal profession and masculinity brings us to the second analytical concept of hegemonic masculinities. Hegemonic masculinity refers to a configuration of gender practice that is deemed as ideal and legitimate for men (in the dominant position) and women (in subordination) to follow.³⁴ The hegemonic status of certain forms of masculinity emphasizes femininity and is supported by at least two sets of masculinity: complicity and subordination.³⁵ A simple metaphor helps explain these concepts: a powerful businessman has a trophy wife and a loyal and capable manager who laughs at his sexist jokes making fun of the working single mother, and he dismisses full-time fathers who take parental leave. The masculinity the businessman presents is supported by his wife, who performs a particular form of femininity to serve as “the woman behind a great man.” His manager is complicit in reinforcing discrimination against women. And altogether, they suppress a caring father, whose parenting practice is deemed unconventional to a subordinate position. Put differently, multiple masculinities and femininities exist in any given society, and they are configured in a power relation to suppress women and elevate certain forms of masculinities to hegemonic status.

The conceptual framework of multiple masculinities, femininities, and their relational position in power is a useful tool in studying the legal profession. As previously discussed, scholars have identified an association between masculinity and law through rationality and disembodiment.³⁶ Both law and masculinity are represented as rational, authoritative, and objective.³⁷ This conceptual correlation extends to an empirical correlation, making men the suitable practitioners in law:

[L]aw is constituted as rational as are men, and men as the subjects of the discourse of masculinity come to experience themselves as rational—hence suited to a career in law.³⁸

Margaret Thornton powerfully posits a socially constructed “fictive feminine,” portraying women as passive, dependent, docile, and disordered.³⁹ She further investigates the ways in which this conceptualization of women is evoked

L. REV. 871, 877–879 (2018) (discussing how different identities—gender, race, and ethnicity—intersect to structure the professional experience and arguing for a reconceptualization of performance measures).

33. Overlooked and Undervalued, *supra* note 17, at 385.

34. The Social Organization, *supra* note 11, at 9–10.

35. See, e.g., Connell & Messerschmidt, *supra* note 11, at 832–33; R.W. CONNELL, GENDER AND POWER: SOCIETY, THE PERSON, AND SEXUAL POLITICS 187–88 (1987) [hereinafter *Gender and Power*].

36. Hierarchies, Jobs, Bodies, *supra* note 10, at 149, 151–53.

37. See MARGARET THORNTON, DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION 8 (Lucy Davidson ed., 1996).

38. Carol Smart, *Feminism and the Power of Law*, in *SOCIOLOGY OF LAW AND CRIME* 87 (Maureen Cain et al. eds., 1989).

39. THORNTON, *supra* note 38, at 16–20.

to deny them authority in the public sphere.⁴⁰ She cautiously evaluates the feminization of the legal profession in which women may not be easily accepted as “legal knowers” but rather as “fringe dwellers of the jurisprudential community,” taking up lower positions, facing constraints, and being undervalued.⁴¹ Scholars have also identified other masculine practices at work to marginalize women lawyers. The Australian bar, for example, creates and persists traditions that exclude women, such as fraternal bonds at the club and informal pupillage circles.⁴²

To recap, the concept of hegemonic masculinity helps to analyze gender practices in the Taiwanese judiciary in two ways: to identify multiple gender practices of legal authority by men and women judges and to identify the mechanisms that produce or reinforce a gendered power relationship. The concept of the gendered organization specifically points to the places to look for these gender dynamics: interpersonal interaction, the construction of identity, and the image of the ideal worker. The following analyses will, then, focus on these processes.

II. Data and Method

Interviews and fieldwork observations were collected between 2016 and 2019 for the author's doctoral dissertation on judicial reform in Taiwan. During this period, I conducted 168 interviews of thirty-five judges, fourteen prosecutors, and 113 lawyers, in addition to policy makers, NGO workers, and other legally trained personnel. For judges, I sought to develop a sample characterized by variations of gender, seniority, and position, including levels of court, case area, and managerial experience (See Appendix A for all interviewees' demographic information). I assembled my first round of respondents through the alumni network of National Taiwan University, starting from the class of 2009 and the class of 2000, and subsequently developed the sample through a respondent-driven process. This process is appropriate for two reasons, one analytical, the other practical. Analytically, this approach is known to enable access to specialized and closed groups.⁴³ Judges in Taiwan, as in most civil law systems, are professional career judges, who are highly selected and socially reclusive. Practically, the professional ethics and daily workload critically limit judges' availability to be interviewed by outsiders. A respondent-driven process allowed me to establish credibility and trust through personal connections and professional networks.⁴⁴

40. THORNTON, *supra* note 38, at 20-28.

41. THORNTON, *supra* note 38, at 291.

42. Rosemary Hunter, *Women Barristers and Gender Difference in Australia*, in *WOMEN IN THE WORLD'S LEGAL PROFESSIONS* 103, 108-09, 113 (Ulrike Schultz & Gisela Shaw eds., 2003).

43. See Douglas Heckathorn, *Respondent-Driven Sampling II: Deriving Valid Population Estimates from Chain-Referral Samples of Hidden Populations*, 49 *SOC. PROBS.* 11, 29 (2002) (arguing the sampling process can be redesigned to permit the derivation of indicators that are not biased and have known levels of precision). However, I should note that I do not claim my interviews are representative; rather, what I hope to establish is hypothesis building through qualitative research.

44. Judges in Taiwan refrain themselves from socializing with outsiders to avoid any

In this Article, I directly analyze twelve female judges and further include two male judges' and one female prosecutor's interview quotes. These judges come from six jurisdictions across the country and all three levels of the judiciary. All interviews were semi-structured, open-ended conversations, ranging from one to four hours. I started by obtaining basic information on the judges' educational and professional backgrounds, work routines and interactions with superiors and colleagues. Then, I moved to their insights on critical policies and events in the judiciary. The records were later coded and triangulated: I first manually coded for emergent keywords and narratives, and then wrote short memos on how they related to each other and data from other sources.⁴⁵ For example, many judges discussed how they interact with the chief judge of their division. I identified many interactions demonstrating conformity to authority, or showing how exactly judicial administration is done to support judges. So, I labeled "conformity" or "authority," or "administrative support" to the related section. With these keywords and patterns in mind, I then developed analytical memos, in which I put pieces of facts and trends together. Interviews with the other twenty-one judges are not directly quoted in the Article, but their experiences of authority, interpersonal power relations, perception on legal expertise, and qualities constituting a good judge, all contribute to my understanding of the internal gender dynamics. That is, all thirty-five interviews with judges constitute the knowledge foundation from which I developed my analysis.

III. Findings

A. Conformity and Marginalization: How Gendered Power Relations Operate in the Judicial Hierarchy

Taiwanese judges, just as any judge in a judicial hierarchy, defer to a higher court's decision, and conformity is prevalent in their interpersonal relations. This mainstream pattern of interpersonal relations, which I term *authority-conforming*, is itself a power relationship and contributes to a *gendered* power relationship where conforming women are rewarded, and non-conforming men and women are marginalized, even penalized. In the following analysis, I will first describe the *authority-conforming* pattern by elaborating on its two mechanisms, *coercion* and *consent*. Then, I will use an incident of a woman judge being marginalized to reveal the masculine features of authority that benefit from judges' conformity.

inappropriate contact with interested parties of their cases. I sensed this during fieldwork and did feel my credibility was sometimes tested. A senior judge (TWJ2017-11) once asked about my law school experience and noted that one of his young colleagues, a junior judge in the same district court, was in my class. When the young judge walked by the meeting room, the interviewee got up and invited her in. It can be understood as a friendly gesture, but I also sensed that the interviewee wanted to make sure I actually knew the young judge from school.

45. This coding process is consistent with conventions in the law and society genre. See LYNETTE J. CHUA, *MOBILIZING GAY SINGAPORE: RIGHTS AND RESISTANCE IN AN AUTHORITARIAN STATE* 177–78 (2014).

For judges, conforming to authority is not only an institutional mandate. It extends to affecting how judges interact with each other, and such an authority-conforming pattern takes up a hegemonic status. Analytically, I borrow the concept of hegemonic masculinities to argue that this pervasive interpersonal pattern is not imposed, but developed through *coercion* and *consent*, as Gramsci insightfully pointed out in his classic work on hegemony.⁴⁶ The judicial hierarchy, with three stances and three court levels, clearly designates an authority system where lower courts' decisions are reviewed, and potentially denied, by higher courts. Even for those decisions supported by upper courts, the finality comes from the recognition of upper courts. Either way justifies the authority of upper courts. The normative hierarchy creates a pattern of conformity that all judges from lower courts pay close attention to the opinions and preferences of upper courts, particularly precedents officially selected by the Supreme Court.⁴⁷ This pattern is then reinforced by actual power in that senior judges from upper courts may punish rebellious junior judges who deviate from precedents through a promotion review. Coercion through legal opinion, hence, not only allows senior judges in upper courts to command doctrinal conformity from junior judges in lower courts, but also develops an interactive pattern in which judges actively search for and voluntarily conform to authority.⁴⁸

To elaborate on the mechanism of coercion, I turn to a well-documented case in the Taiwanese judiciary, in which a junior judge faced a serious risk of losing his job because he criticized a Supreme Court precedent.⁴⁹ As civil servants, Taiwanese judges are assigned to district courts after two years of training in the Judge Academy, and sit on cases as an expectant judge (*houbu faguan*) for four years. They file for the first round of review and become a candidate judge (*shishu faguan*). Then, after one year of candidacy and a second round of review, they become a full judge with lifetime tenure. In both rounds of review, the Review Committee of Judgment Documentation examines twenty decisions made by the junior judge. The Committee selects ten judgments while the judiciary's database randomly selects another ten. In November 2005, expectant

46. ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 164 (1971). For elaboration, see Ying-Chao Kao, *New Perspective of Masculinities Studies (Part 1): 'The Pink Mask Consensus' and Hegemonic Masculinity*, 91 M.O.E. GENDER EQUITY EDUC. Q. 30, 32 (2020) (a review on the theory development of hegemonic masculinities, and its application in Taiwan) (in Chinese).

47. For an extensive discussion on the methodologies of precedents in Taiwan, see Yi-chen Lo, (Re-)formulating Case-law Methodology in Civil Law: The Example of Taiwan 159 (2020) (S.J.D. dissertation, Harvard University).

48. The normative deficit that comes from this interactive pattern is not just gender inequality. The judiciary might not be able to fulfill its commitment of human rights protection. See LISA HILBINK, JUDGES BEYOND POLITICS IN DEMOCRACY AND DICTATORSHIP 224–25 (2007).

49. This junior judge Chien-jung Chien later told his story in an application for constitutional interpretation, in which he again challenged another Supreme Court precedent. He told the Constitutional Court that he had to wait until he became a tenured judge to file for this interpretation, because he could not risk losing his job again. The Constitutional Court accepted his application and later issued J.Y. Interpretation No. 687. One of the Constitutional Justices cited and retold Judge Chien's story in his dissenting opinion. Justice Hsing-Ming Chen, *Dissenting Opinion*, in J.Y. INTERPRETATION No. 687, 28 (2004) http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=582 [https://perma.cc/4ZNS-LWUB] (last visited July 6, 2023).

judge Chien Chien-Jung received his review report, in which he failed,⁵⁰ and was given the following comment:

The Supreme Court precedents are essential and important selections from the court's decisions, through legal procedures and published as precedents. . . . as a first instance of the court system, the district court shall focus on the specific facts and apply the law to make an appropriate decision. . . . a court judgment is different from legal scholarship. It is exceptionally inappropriate of this judgment to criticize Supreme Court precedents recklessly.⁵¹

The comment reveals the judiciary's internal mechanism of coercion, using the career review process to command lower courts' doctrinal conformity. Deviation from established legal doctrine leads to failure in career advancement, job insecurity, and possibly a permanent dismissal from the judiciary, which may further lead to disadvantages in practicing law in the private sector. It is a clear punishment supported by real coercion that compels junior judges to conform to upper courts.

Consent, on the other hand, is a less visible but equally critical mechanism that supports the hegemonic status of *authority-conforming*. As Gramsci originally analyzed, consent is produced through various political and social institutions, including family, religion, and education, to induce people to voluntarily accept dominance and sustain the governing hegemony.⁵² Similarly, the voluntary conformity of Taiwanese judges is cultivated through the aforementioned promotion review process. The two-stage review examines junior judges' decisions closely, and incentivizes them to (a) voluntarily adopt, even copy, upper courts' legal opinions, and (b) follow the format and writing style of upper courts' judgments.⁵³ Impact on these two aspects can be vividly observed from junior judges' experience in the Report on Judges and Prosecutors' Caseload and Work Quality Affected,⁵⁴ an internal survey conducted by a district court judge in Taichung:

Control from the Review Committee of Judgment Documentation is still very strong.

. . . expectant and candidate judges who have not yet passed documentation reviews do not dare to try [to simplify their judgment], even if they try, their chief judge of the division may not allow them (because the chief judges are used to the traditional style). Serious chief judges also spend a lot of time helping junior

50. Failing the review, Chien, as an expectant judge, has a second chance in six months, but the second failure would lead to permanent dismissal.

51. Hung-ru Wei, *The Precedent and its Discipline in Judicial Practice* 85 (2013) (LL.M. thesis, National Cheng-chi University) (on file with National Cheng-chi University Library) (in Chinese).

52. GRAMSCI, *supra* note 47, at 170.

53. Ching-fang Hsu, *Mobilizing Judicial Independence: The Dynamic Development and Impact of Internal Mechanisms in Taiwan*, 35(2) J. SOC. SCI. & PHIL. 1, 29 (2023) (analyzing the internal mobilization process in which Taiwanese judges acquire judicial independence) (in Chinese).

54. Wei-chen Shih, *Report on Judges and Prosecutors' Caseload and Work Quality Affected*, MEDIUM, <https://medium.com/@weichenshih/heavycaseloadtw-89e547faf6a4> [https://perma.cc/QDR9-ZNCA] (last visited July 6, 2023) (in Chinese).

judges to revise [judgments], which limits their own time working on cases. In reality, a lot of judges waste their lives on wording that the defendant and ordinary citizens do not care and cannot put their energy to legal issues or actual factors of crimes. Judging becomes a copy-paste exercise, because this is safer, avoiding innovative thinking of our own.

Judges are aware of the hierarchical power that disciplines their everyday judging. However, they adhere to such discipline of both doctrine (*copying*) and format (*wording and “not simplifying”*). Of particular interest is the role of those chief judges working closely with ordinary judges, who devote substantial energy to practicing such discipline *against* their interest (limiting their time working on cases). Their active participation in the commanding chain reveals how conformity is collectively cultivated in judges’ everyday practice.

Voluntary identification of the judicial hierarchy is another element of consent that I observed, as the two following interviews demonstrate. First, the term *staff member* is frequently used by some judges to refer to themselves (TWJ2016-08; TWP2017-01), which reveals a construction from *personal* identity to *professional* identity.

I’m a staff member, this is a strong personality of me, I’d do whatever others tell me to . . . I’m not outstanding, I’m someone who does as told. (TWJ2016-08)

In her experience, conformity is not externally imposed by the hierarchy but actively accepted by the individual judge.⁵⁵ She identifies with a series of *personal* traits, such as doing what she is told and not trying to stand out, which connects to her *professional* identity as a staff member in the judiciary. In fact, her professional identity and personal identity are inseparable, which explains why she used the professional membership, *staff member*, to define her own personality. Second, voluntarily seeking authority is another feature. An expectant judge shows how she allows authority to lead when there is space for her to make a judgment:

I would study the high court’s opinion. When I don’t know how to make a decision, I would see what stance the high court takes. On the one hand, [my decision] wouldn’t be revoked or reversed; on the other hand, I myself don’t have any idea. (TWJ2016-03)

When I asked her if she would use a controversial but influential precedent by the Supreme Court, the young judge, again, indicated a process of searching for authority in the judicial hierarchy:

I would definitely check what others do. And then, I would check what high court does. Then see if others use it. If a lot of people don’t use it, I probably

55. By emphasizing and re-conceptualizing the active feature of acceptance, I am also redefining the presumed passivity of acceptance, which is a classic construction of patriarchy to paint femininity as passive, non-productive, and hence secondary. For a further discussion on the gendered qualities, see JOHNSON, *supra* note 10, at 62–64. For more discussion on receptivity, see Emily Martin, *The Egg and the Sperm: How Science Has Constructed a Romance Based on Stereotypical Male-Female Roles*, 16 SIGNS: J. OF WOMAN IN CULTURE AND SOC’Y 485, 489 (1991); Ann Cvetkovich, *Recasting Receptivity: Femme Sexualities*, in *LESBIAN EROTICS* 125, 125 (Karla Jay ed., 1995).

wouldn't use it. If everyone uses it, I feel a headache. And I'll go to my chief judge and see what s/he would do in the case. If s/he says use it, I would still use it. (TWJ2016-03)

When there is an opportunity to take a stand of her own, the judge searches for authority to guide her, moving from the mainstream of the profession to higher courts, and to a direct superior in her daily practice. This voluntary identification from ordinary judges, I observe, is an indispensable part of the authority-conforming pattern. To reiterate, conformity is not simply made by coercion; rather, conformity is supported by followers' consent.

As this authority-conforming pattern denotes a power relationship in the judiciary, a logical question is who benefits from such conformity? The authority sitting on the top of the judicial hierarchy, I argue, is a male figure who is inclined to sustain an unequal interpersonal relationship and reproduces powerholders of similar traits.⁵⁶ That is, only male and senior judges are the typical authority figures, and female, young judges are conforming figures. Women may be equally capable of legal knowledge and rationality but are still the "other" gender in the operation of hegemonic masculinity.⁵⁷ The following incident of a female judge being marginalized in a high court vividly demonstrates how homo-sociality operates to sideline atypical judges in a professional setting.

At the time of my interview, this female judge was already promoted to the Supreme Court, but she recalled her encounter with two senior male judges at a high court, who refused to recognize her professional station by not sending her case documents and excluding her from deliberation:

[at the time,] that trial panel was the most senior and experienced, and I was the most junior and inexperienced judge in the whole court. . . . God, those two [judges] were old enough to be my grandpa, how do I join them in deliberation? My strategy was easy, and interesting, what did I do? For example, if there are three cases in the coming week, I asked the clerk to collect all documents and materials, the indictment, judgment from the first instance, and the second instance, and if there's a reversal, everything, everything related to the case, and send me the whole stack. I would read them, so I kind of knew what's going on in the case, but I didn't really have the official documents, right? I went to the presiding judge, if he had proceedings on Thursday, I'd go bother him on Tuesday and Wednesday, I'd act cute, I'd say, "*xue zhang*,"⁵⁸ I don't know what to do, I just came here, *xue zhang*, you have to teach me, I just read the judgment, is there an issue here, here, and here? I can't really follow, please do show me." I did this to him on every case. (TWJ2017-05)

The female judge was later invited to the deliberation. But within a month, she was transferred to another panel without her consent and was notified by the court building's custodian, which was an unusual and disrespectful

56. Large organizations are structured in ways that afford power to men in an unapparent way. See ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* 183-83, 199-200 (1977).

57. Hunter, *supra* note 43, at 108-12.

58. *Xue Zhang* refers to senior males who attend the same school. It's originally used in a school context but extends to academic or professional settings as a way to respectfully address others.

move. She directly confronted the president of the court about the transfer, but the president responded casually⁵⁹ and avoided her protest regarding the disrespectful method of notification.

The authority figure hidden in the authority-conforming pattern is not just a senior judge, but a *male* judge accompanied by more male judges with decision-making power. When a female judge is senior and professional enough to move to higher echelons of the hierarchy, her female identity is not easily accepted by the traditional powerholders. In this incident, the two senior male judges first sidelined the female judge through informal measures, and then, upon her resistance, they resorted to a formal removal supported by another senior male judge, the president of the court. In the whole process, the female judge's responses also reveal important gender features of this power relation: she chose to perform a particular form of femininity, *play cute*, to strategize her position at the decision-making table. As emphasized femininity is instrumental to the hegemonic status of the male supremacy⁶⁰—the judge performed her inexperience (“I just came here, I don’t know what to do”) to call the authority figure to come forward and to assume the responsibility (“you have to teach me”). And the two senior judges did respond, inviting her into the official deliberation. Critically, it is her response that uncovers the gender dynamics underlying the authority-conforming relationship in the judiciary. The hegemonic authority is not gender-neutral, but masculine. It operates to marginalize judges without typical gender traits, but at the same time, it also needs validation from particular forms of emphasized femininity, similarly to how other patriarchal systems operate.⁶¹

B. Legal Area: Male-Centered and Masculine Features of the Court

Another gender feature of the Taiwanese judiciary hides in the ways in which legal expertise is valued. The judiciary, consistent with how patriarchal systems treat male as the norm and value masculine qualities,⁶² also treats the competitive adversarial system as the norm. Other forms of dispute resolution that incorporate mediation, social welfare resources, and community or other government agencies, are labeled as *alternative*. The internal division of the court also reflects such a gendered bias, in that legal expertise involving domestic affairs is deemed secondary, even marginal. Specifically, the juvenile and family courts are less resourced and lack manpower: in Taiwan, they don’t have an independent budget for trial operation, but rely on the civil

59. The following quote shows how the president avoided her request, but this part of analysis already deviates from the original argument, so it is not included in the text: “I went into the president’s office and said to him, ‘what did I do wrong? Why didn’t you even notice me when transferring me? I was notified by the janitor, it’s very disrespectful.’ And the president responded, ‘ah, let me explain, the chief judge of your division said he’s getting old, and he has to look after you of all your cases, he’s not physically able to take care of you, he can only do one-third or half. . . so I had to move you away.’ But he didn’t explain why he didn’t notify me.”

60. Connell & Messerschmidt, *supra* note 11, at 832-33; see Gender and Power, *supra* note 35, at 187-88.

61. Gender and Power, *supra* note 35, at 187-88.

62. See JOHNSON, *supra* note 10, at 6-7.

and criminal divisions to support their expenses.⁶³ Judges in the juvenile and family division are the minority in number in every court, and thus cannot win the vote to hire more judges in the Judge Meeting whenever a new position arises. Paradoxically, the legal area of juvenile and family matters is not simple or unprofessional. It requires interdisciplinary knowledge and management capacity, as the Family Act recently legislated,⁶⁴ requesting the judge to act like a case manager, incorporating social workers and investigators, and applying a different set of procedures to ensure the best interests of children and minors. The complexity is reflected in the time length to close a juvenile and family case. In 2022, it took 191 days to close a juvenile and family case, about twice the amount of time to close a criminal case (ninety-nine days), and 5 times longer than a civil case (thirty-two days).⁶⁵

Turning to the actual experiences of Taiwanese judges, the paradox persists. Judges recognize the complexity of juvenile and family cases, but still treat them as marginal areas. An investigative news report gives a vivid portrait of family court judges:

Many judges are “squeezed” to the family division because they couldn’t get a spot in other divisions. . . before transferring to the family division. Judge Tang Kuo-Jay had been sitting criminal cases for six years. He said, he realized he knew nothing when he started working on the family case. It only required legal expertise in traditional civil and criminal cases, but expertise involved in a family matter extends to medicine, psychology, and education. The judge also needs to incorporate resources. He felt like in a different trade and wanted to run away in a year.⁶⁶

The marginality becomes a real barrier for those committed judges. My interviewee, a male judge from a suburban court, explained how juvenile and family cases are belittled in the profession:

For the internal system of the judiciary, juvenile and family courts are a disadvantaged division. . . judges’ migration and transfer between different instances of the court is to indicate one’s capacity and, in nature, a promotion. If you work on juvenile and family cases. . . from the perspective of traditional criminal and civil law areas, juvenile cases are simple criminal cases, you’re not able to take the responsibility of the second instance of the court. Family cases, clearly, only deal with non-contentious disputes between plaintiffs. So it goes, judges who are assigned to the juvenile and family division, the message is clear, you’re the old and weak soldiers. . . senior judges treasure their feathers. . . if someone wants to

63. SHAONIEN CHI CHIASHIH FAYUAN TSUCHIH FA (The Juvenile and Family Court Organization Act) §52 (2010) (Taiwan).

64. For a full discussion on the conceptualization, institutional design, procedures and agencies involved in the Taiwanese family law, please see Ching-hui Hsieh, *Theoretical Function and Practices of Family Mediations: Focusing on the Children’s Best Interests and Court’s Role in Family Matters* (2020) (Ph.D. dissertation, National Chung-cheng University) (on file with National Digital Library of Thesis and Dissertations in Taiwan) (in Chinese).

65. Chin-hsuan Hung, *Can the Overload Family Courts Work with the Community, Listen and Catch the Voiceless Children in the Divorce Cases?* THE REPORTER (May 11, 2023), <https://www.twreporter.org/a/divorce-family-court-how-to-catch-children> [https://perma.cc/3P5B-DTYW] (in Chinese).

66. *Id.*

practice in high courts, he or she would not go to the juvenile and family division, because once you go there, you might not be able to go up. (TWJ2016-17)

Not only judges but also prosecutors experience this marginalization of cases involving family matters. A female prosecutor I interviewed also witnessed the same paradox, that the women and children's division in the district prosecutors' office requires comprehensive knowledge and additional training, but is similarly a marginal group in the profession:

Honestly, I think women and children's cases are the most difficult of all. . . compulsory sexual intercourse and sexual assault, they have very limited evidence, so they mainly rely on the prosecutors' interrogation, and usually it is very difficult to ask these victims questions. . . also there are so, so many complicated legal regulations to keep in mind, for example you need to notify [related agencies], apply for a restraining order, confirm her identity, and avoid leading questions. And when you interrogate, what kind of questions are not ok, you also need to confirm her comprehension, all these skills require training. So, the Women and Children's Protection Division actually needs to attend a lot of meetings and training sessions. . . but there is no halo hanging over this kind of case. (TWP2017-01)

Then, the prosecutor identified a similar pattern of bias in promotion. These cases are undervalued in the profession, because experience in women and children's cases does not contribute to a prosecutor's core capacity to be a leader:

I mean, you would know someone working on some case and gets noticed, then gets a chance, but you would never hear someone getting a chance because of a sexual assault case. We might work on a case for a long time but cannot prosecute, yeah, because it is just so difficult. Seeing this from the promotion culture in the community, some head prosecutor never worked on a women and children's case, and he gets to be a head, he *can* be a head. (TWP2017-01)

Both the judiciary and the prosecutors' offices demonstrate the same perception and pattern, a *gendered* differentiation of legal specialty. The contrast between core and peripheral legal areas reveals a categorization that deprecates femininity: when a legal area requires advanced skills and special knowledge, those involving domestic affairs are perceived as "old and weak," less professional, and unfit for responsibilities, while those which emphasize competition and contention are perceived as real litigation and truly professional.

Finally, the male-centered feature of the court is that a *male* judge still persists as the default authority, when in reality, female judges have already become half of the judiciary.⁶⁷ Two sets of information in female judges' everyday judging reveal this bias. Firstly, a recurring pattern is that young, female judges feel disrespected by court participants. Plaintiffs in civil cases may vent emotionally and argue with them. A young female judge felt she was looked down on by older men in court sessions:

67. See *supra* Figure 1.

As a woman, I think the plaintiffs trust women less, especially young women. This is what I felt. . . . Just my experience in civil courts. . . there was a defendant, male, middle-age man. This kind of middle-age men, they think he's always right on everything, you don't have any experience, you're just a small strawberry. (TWJ2016-08)

Secondly and relatedly, many young female judges share an experience of regaining authority when sitting on criminal cases: the association between masculinity and criminal law, and the fact that judges represent state power in criminal trials, give them authority and respect from defendants. A female judge said, "I regained my dignity as a judge in criminal trials," after several years of excessive emotional labor in civil courts (TWJ2017-04). However, the fact that these female judges are not male brings another shared experience: their authority is bounded when they try to deter criminal defendants. More than one female judge noted that their conceding rate in criminal trials, an indicator that evaluates their case performance, was low (TWJ2016-08; TWJ2017-12). This frustrated them. One of them told me she noticed a differentiated treatment: when urging the defendant to consider to plead guilty, she would use similar skills that other judges use, "if *Xue Zhang* urges, he can make it work," (TWJ2016-03) but she could not make it work.

All the aforementioned details may seem subtle, but altogether they constitute a consistent image of authority: a *male* authority in court. Women judges may be experts in legal knowledge, receive practical training, and make decisions on the bench but, they cannot be identified as male, and the estrangement follows. The conflicting experiences are an intricate indication of the male-centered features of the court.

C. Ideal Worker: Another Version of the "Double Bind" for Women Judges in Taiwan

Just like in other professional organizations, the image of an ideal worker in the Taiwanese judiciary is also an "all-or-nothing employee," who is able to commit excessively long hours to work and subordinate family to work.⁶⁸ As discussed above, this image actually assumes a caretaker at home, who manages the domestic sphere and supports the working professional to focus and commit only to work. According to the Judicial Yuan's official survey in 2007:

On average, the weekly working hour for judges is 58.9 hours. If a judge works five days a week, the average daily working hour is 11.8 hours. Further, including the official and personal leave, the average daily working hour increases to 12.8 hours. Survey also shows that about seventy percent of judges work seven to eleven hours daily on a working day (not including taking leaves), and on weekends and holidays, judges work two to eight hours.⁶⁹

68. Overlooked and Undervalued, *supra* note 18, at 385.

69. *Survey Report on Judges' Working Hours Is Published*, 1327 JUDICIAL WEEKLY (Mar. 1, 2007) at 1 (in Chinese). After 16 years, without an official survey, it is difficult to estimate if Taiwanese judges work more or less. Some numbers might help to gauge: 1,666 judges in Taiwan and closed 3,364,886 cases in the year of 2007; in the year of 2021, 2140 judges closed 3,226,259 cases. But Taiwan just began a new proceeding of involving citizen judges to certain criminal cases, which increases working hours substantially.

Putting the numbers into context, on average, Taiwanese laborers work 50.4 hours per week,⁷⁰ and American lawyers in large firms work sixty-six hours per week, or forty-two to fifty-four hours for those in medium and small firms.⁷¹ Taiwanese judges work 8.5 hours more than an average Taiwanese laborer and work five to seventeen hours more than American lawyers in medium and small firms. With such long hours at work, having a personal life is an issue, and balancing family and work becomes a challenge.

While long working hours creates a challenge for all judges in the Taiwanese judiciary, another set of information shows that female judges take more leave to respond to caring duties. The Judicial Yuan issued its first official report on family/elder care and parental leave in 2022.⁷² In all Taiwanese jurisdictions, seventeen judges were on parental leave, all of whom were women; 154 judges (without administrative duties) once took family-care leave, including fifty-one male judges and 103 female judges. At the management level, however, the gender distribution is more balanced. Among the twenty-eight chief judges who took family-care leave, fifteen were male and thirteen were female.

Turning to qualitative evidence, the ideal worker's image for women judges in Taiwan becomes more complicated. Many in the legal sector shared an understanding that women in law should choose judgeship as their legal practice because the steady schedule allows women to take care of family. In 1997, the *Taiwan Panorama Magazine*, an official publication by the Government Information Office, covered a story on women prosecutors' success in major crime investigation, and compared them with women judges:

For women who will shoulder the family responsibilities, judges enjoy a desk job, reading case documents, writing judgments in the office, and leading court sessions two to three days a week. Although judges usually have to bring case files back home to work overnight, they have a steady work schedule.⁷³

This conventional gender role is prevalent in the Taiwanese judiciary. Another unwritten practice in the court system, documented by interviews with retired women judges, is that when both spouses are judges, the husband would be promoted first so that the wife would not outrank the husband, and so that she may take care of the family.⁷⁴ Among my interviewees, women

70. Ming-Chang Tsai et al., *Working Overtime in East Asia: Convergence or Divergence?* 46 J. CONTEMPORARY ASIA 700, 700 (2016) (analyzing working overtime and its determinants in Japan, South Korea, Taiwan, and China, finding convergence that employers and self-employed people work longer hours than hired workers across this region, and divergence that in Japan, overtime is positively associated with occupational prestige, while a reverse pattern operates in China, where low-skilled workers work more overtime).

71. Kamron Sanders, *Unveiling the Truth about Lawyer Working Hours*, XIII THE NATIONAL L. REV. 1, 2 (2023), <https://www.natlawreview.com/article/unveiling-truth-about-lawyer-working-hours> [<https://perma.cc/U2U7-E5N3>].

72. *Statistics of Number and Gender of Employees on Parental Leave, Family/Elder Care Leave, Judicial Yuan and Affiliated Agencies*, JUDICIAL YUAN, <https://www.judicial.gov.tw/tw/dl-175833-a1cea066216d4bc192bfa44f481686.html> [<https://perma.cc/QX5V-K6AD>].

73. Laura Li, *Women Warriors of Justice*, SINORAMA MAG., Feb. 1997, at 33. (in Chinese)

74. INTERNATIONAL FEDERATION OF WOMEN LAWYERS IN THE REPUBLIC OF CHINA (TAIWAN), *BRAVO! FEMALE LEGAL PROFESSIONISTS AND THEIR LIVES* 97-98, (2010) (in Chinese).

judges also show different ways in which their work was affected by their husband, children, or intimate relationships, including transferring to a rural area to accommodate their husband's job (TWJ2016-15), bringing their child to court sessions (TWJ2017-12), or in turn, not having a relationship because of the heavy workload (TWJ2016-08). I also personally witnessed this gender stereotype when I was in law school (2005-2009), where my civil law professor⁷⁵ publicly advised female students to aim for judgeship for the same reason. In other words, a gender stereotype was built into the ideal worker's image for female judges in Taiwan, who were no less committed, responsible for the same (over)workload, and still expected to take a "second shift"⁷⁶ of family care after work.

Women judges in Taiwan face another version of the "double bind." In the U.S. literature, successful women lawyers in the private sector who are competitive, ambitious and build a masculine profile "are thought to be abrasive and not feminine enough."⁷⁷ But when they try to balance family life and work, they are perceived as not committed.⁷⁸ Women are held to two sets of standards that bounce back and forth and suffer from stereotypes on both sides. In Taiwan, women judges face another version of the double bind: if she fully commits to her career, working overtime on weekdays and weekends, either she is restrained from having time for partnership and/or family life, or she is working double shifts for both work and family. On the other hand, if she accentuates her family role as a supportive parent, spouse or caregiver, she reinforces the convention in the Taiwanese legal sector that designates women to the domestic sphere and patronizes women judges as secondary professionals on the "mommy track."⁷⁹ Neither image of the ideal worker treats women judges as equal.

IV. Quantitative Change Leads to Qualitative Change: Preliminary Evidence on Transformation in Leadership Style and Identity

The analyses above attempt to identify the male-centered, male-identified, and masculine features of the Taiwanese judiciary. I have sought to offer sufficient evidence to construct a gendered portrait showing that, although Taiwan has reached gender equity in the number of female judges, the interpersonal relations, the recognition of legal expertise, the image of the

75. A male professor, not surprisingly.

76. See ARLIE RUSSELL HOCHSCHILD & ANNE MACHUNG, *THE SECOND SHIFT: WORKING FAMILIES AND THE REVOLUTION AT HOME* (2012).

77. Overlooked and Undervalued, *supra* note 18, at 385.

78. See generally Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceiling in Legal Careers*, 14 TEX. J. WOMEN & L. 27 (2004).

79. See Rebecca Korzec, *Working on the 'Mommy-Track': Motherhood and Women Lawyers*, 8 HASTINGS WOMEN'S L. J. 117, 119 (2009) (examining the effects of motherhood on the careers of women lawyers and the efficacy of the 'mommy-track' as a means of ameliorating these effects); Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 THE ANNALS OF THE AM. ACADEMY POL. & SOC. SCI. 130, 130 (2004) (examining sex differences in promotion to partnership in three steps, the decision to attrite early, the attainment of partnership among those who do not attrite, and determinants of partners' earnings).

ideal worker, and default authority, are still modeled around male identities and value competition, adversarial contention, and conformity to masculine power. To take the analysis a step further, this section presents preliminary evidence on the qualitative change brought about by the quantitative feminization of the Taiwanese judiciary. Specifically, the style of leadership and identities of a good judge have diversified as more women judges have joined the senior peerage.

First, in the judiciary, an all-women environment is possible, and hence a female authority figure *can* be the norm. A young female judge, when asked if she noticed any gender issues in her daily work, said she did not notice anything “because everyone is female, from my chief judge to my fellow judges, and the clerks are all women” (TWJ2016-08). Or, put differently, because gender is held consistent in an all-women environment, any issue relating to authority becomes an individual case. That is, when a young woman judge is bothered by her chief judge, for example, “being so picky,” (TWJ2016-08) she would attribute this to the chief’s personal character. In other words, it is an issue about “interpersonal relations” (TWJ2016-08), which would not single out the female identity of the authority figure. Second, while the image of an authority figure diversifies, leadership style diversifies accordingly. By taking up senior positions, women judges have access to administrative power and to influence legal doctrine, and hence may have space to adopt innovative ways to lead. Among my interviewees, I observe at least one possibility that values two-way communication rather than authority-conforming leadership. A female chief judge explained how she led her court divisions with senior, male judges:

In fact, in my court, I have senior *xue zhang* there, it’s unlikely to lead everyone in an authoritative way. I think they’re very experienced in practice, so many years with a lot of ideas. . . they can even give me a lot of advice on administration. So, I think we’re more like a model of discussion and cooperation, and a model of me serving everyone. Unless there is some official policy I need to run, and I need their help, in which case, it’s still not really possible for me to command everyone to follow, I would explain the situation and see how everyone could collaborate with me (TWJ2016-15).

These keywords for her leadership, including cooperation, discussion, and service, demonstrate a more equal work relationship. Just as she repeatedly noted, “the authoritative way is not possible,” and a female authority might face constraints in the feminization process, but she is making a critical contribution by her mere presence and a different model of running the court.

Another aspect of diversification concerns identification. Judges now identify with more sophisticated qualities as their ideal. Specifically, the ideal image of a judge moves from one singular model of an objective and impartial official to a sympathetic and responsive professional who can handle complex reality. The conventional understanding of a good judge puts much emphasis on morality. According to Kuo’s studies on the Training Institute for Judges and Prosecutors, the professional training aims to ensure that future judicial officers be “incorruptible, honest, objective, and impartial when they are executing their duties,” and that “we hope they will realize how important the

legal ethic is.”⁸⁰ This is consistent with my interviews. A senior, male judge serving on the bench for over two decades first specified the traditional expectation of incorruptibility and work ethics, but then noted the concern that this ideal image may lack sympathy and respect for the litigants, which appears to be core in the present day:

When I was first out on the bench,⁸¹ what the society expected of us was don't take a bribe. What lawyers expected of us was hard work. . .but how the system evaluates a good judge, it asked not whether your attitudes were kind in sessions, you respected the litigants, not even how well you handled and lead the proceedings. You just needed to be ethical and hardworking, you're considered a good judge, even if you're a cruel official. . . .two types of bad judges were produced: one, a cruel person who took no bribes, and two, because bribery associated with acquittal or probation, very few judges dared to acquit a defendant. . . .times are different now, but these judges are still well-respected in our circle. When we entered the profession, we learned from these judges; but if our generation does not feel the change, new judges would not learn to respect (the litigants). (TWJ2016-04)

Another equally senior female judge gave a succinct definition:

To be a judge, I think it's the sense, you have to sense what exactly this society needs from a judge, and how you play the role. (TWJ2017-08)

Again, the ideal image of a judge has moved away from a commanding authority to a respectful professional. A good judge was defined through a single dimension of morality, but now, more diverse qualities of a good judge are accepted in the judiciary, emphasizing responsiveness to court users and the capacity to recognize the complexity of a case. A female chief judge elaborated her expectation of a good judge, which is not standardized but lively with details:

To develop a judge, what you expect of a good judge, is a good judgment, the flesh and blood of the case. They [young judges] have the basics, the structure has no problem at all. . .but some cases can be really thoughtful, sometimes their writing is too flat, like too standardized and safe, but without the flesh and blood, it's really a pity, right? (TWJ2016-15)

Another female judge, who once served as chief judge of her division, similarly emphasized a judge's ability to navigate the contradictory evidence in handling a case:

80. Shu-chin Grace Kuo, *Rethinking the Masculine Character of the Legal Profession: A Case Study of Female Legal Professionals and their Gendered Life in Taiwan*, 13 AM. UNIV. J. GENDER, SOC. POL'Y & L. 25, 44 (2005).

81. In the interview, the judge also gave a story to illustrate how common bribery was. "I entered the training institute in 1992, and I once met a judge ten years senior than me. He said when he was at the high court, he would not sign the deliberation record because his fellow judges took bribery. He would sign the judgment but not the deliberation record. In those days, criminal courts, especially the second instance, things were really bad. People would respect you a lot if you can keep clean."

The evidence. . .exhibits contradiction among themselves, so how do you make a judgment of your own? Some people have a clear logic and incorporate things comprehensively. . . . When I read it, I feel I get it. . .I really appreciate this. (TWJ2017-01)

To recap, the new key words of good judging now include responsiveness, sympathy, and incorporating complexity. The evaluation framework is no longer a yardstick of morality, but a set of expectations that a professional may and should independently “sense” and choose to respond to. The diversification of the ideal image, good qualities, and leadership style are a critical gendered transformation to counter the male-centered, male-identified and masculine features of the Taiwanese judiciary. That is, the mere fact that *multiple* leadership styles are presented in the profession, and different qualities are appreciated as an ideal judge, challenges the standard-searching and authority-conforming power relation that sets men at the center, and treats men as the norm.

Conclusion

Women in the legal profession often face a paradox between assimilation to men, or exclusion as the other. Catherine Branson, a renowned Australian jurist, once noted that women barristers are offered “the freedom to be an honorary man, or alternatively, an outsider.”⁸² To populate the judiciary is clearly a critical first step to create space and possibilities for women (and any gender minority), but to challenge the persistent power dynamics and collective patterns that directly or subtly normalize men is another long journey. In this Article, I have argued that the Taiwanese judiciary, despite reaching its commendable milestone of gender parity in the number of male and female judges, still operates with strong masculine features in that the judicial authority, legal expertise, and the “ideal worker” are male-centered and male-identified. However, this is not to say the feminization of the judiciary is fruitless. I observed positive developments in the diversification of leadership and the qualities recognized as a good judge.

Many important questions remain. Empirically and conceptually, to investigate if and how women judges are positioned in lower echelons of the judiciary, in less powerful jobs in the administrative system, or enjoy less resources or compensation in any way, is the next critical step. Also, how women, or judges identify with the LGBTQ+ community, experience their professional duties on bench and in real life, or are perceived and valued by their colleagues and court users: all these will provide significant information about the changing dynamics within the Taiwanese judiciary. As regards Taiwan being a progressive model for gender equality in East Asia, the legal sector should hold a high expectation of itself and keep the momentum for change within the legal profession.

82. Hunter, *supra* note 43, at 120. Also, the same speech by Justice Branson was quoted in *Women in the Law: The Past, the Present and the Future*, 77th Annual Janet Irwin Women’s Dinner (Nov. 4 1999), <https://archive.sclqld.org.au/judgepub/mcmurdo041199.htm> [<https://perma.cc/NGG4-DR84>].

Appendix (in the order of appearance in the Article)

ID	Vocation	Gender	Year of admission	Notes
TWJ2016-08	Judge	Female	Class of 2012 (the year entering Academy for Judges and Prosecutors in 2012)	Expectant judge in district court (north, suburban area)
TWJ2016-03	Judge	Female	Class of 2014	Expectant judge in district court (north, cosmopolitan area)
TWJ2017-05	Judge	female	Class of 1990	Judge at the Supreme Court
TWJ2016-17	Judge	male	Class of 2005	Judge in district court (north, suburban area)
TWP2017-01	Prosecutor	Female	Class of 2012	Expectant prosecutor in district prosecutor's office (south, suburban area)
TWJ2016-15	Judge	female	Class of 1996	Judge in district court (east, rural area), chief judge at the time of interview
TWJ2016-04	Judge	Male	Class of 1992	Judge in district court (south, suburban area), used to serve on high court and once a chief judge of his division
TWJ2017-12	Judge	female	Class of 2007	Expectant or candidate judge in district court (north, cosmopolitan area).
TWJ2017-04	Judge	Female	Class of 2002	Judge in district court (south, cosmopolitan area)
TWJ2017-08	Judge	Female	Class of 1990	Judge in high court
TWJ2017-01	Judge	Female	Class of 2003	Judge in district court (south, suburban area), once a chief judge of her division