

行政院國家科學委員會專題研究計畫 期末報告

單身女性與女同志伴侶之生育自由：近用人工助孕科技之
權利基礎

計畫類別：個別型

計畫編號：NSC 101-2629-H-007-002-

執行期間：101年08月01日至102年07月31日

執行單位：國立清華大學科技法律研究所

計畫主持人：林昀嫻

公開資訊：本計畫可公開查詢

中華民國 102年10月23日

中文摘要：有關人工生殖的科學知識與技術皆已逐漸發展成熟，運用此些技術、藉以成孕得子的案例在我國社會之中也越來越普遍。不過，由於我國現行《人工生殖法》規定中僅限已婚夫妻方可申請接受施行人工生殖技術、再加上代孕生殖在我國亦尚不合法，因此，唯有已婚者能夠近用人工助孕技術，而未婚者與不婚者即使希望生兒育女，亦不能使用此類科技。例如，不願或是尚未結婚的單身女性、在現行制度之下無法與所欲伴侶合法成婚的女同志都被排除在近用人工助孕科技的範圍之外，然而，雖然藉著科學技術成孕的機會受到限縮，並不代表此些人就不具有生育子女並與其建立合法親子關係的希望或需求。

如欲依據我國現行規範申請為己施行人工生殖技術，則申請者不只應是一對已婚夫妻，在此婚姻狀態之外，尚且需要申請者其一或雙方皆有不孕症狀、抑或重大遺傳疾患，除此之外，妻之一方更需要擁有健全的子宮，擔負起懷胎生產人工生殖子女的「職責」。然而生育並非一套專屬女性的「責任」，毋寧說生育子女是不分性別之人，基於其身體自主權以及人格發展自由，而所應享有的一種自由。只不過，囿於目前的生殖科技，胎兒孕產仍只能藉著女性子宮完成，使得生育自由和女性身分之間有著格外緊密且特殊的連結。由於個人生育與否的決定在其認同、尊嚴、以及生命的意義中佔有中心地位，屬於人民權利自由極為核心的部份，因此，國家唯在意圖避免對於其他法益造成實質損害時，方得限制人民生育自由，並且亦不應對人民的生育自由造成不當或是過當的限縮。

由於觀察到單身女性以及女同志伴侶在我國現行法的脈絡之下，全然無法援借人工助孕科技實現其生育決定，本研究計畫希望以人民的生育自由以及近年來在我國身分法上益發佔有重要地位的子女最佳利益原則作為研究重心，並以平等權作為探討分析的切入點，研究單身女性與女同志伴侶是否應享有近用人工助孕科技的權利，現行的人工生殖法對於上述二類非婚者的生育自由之限制有無正當基礎。另外，來自於子女的最佳利益的挑戰亦為探討與回應的重點。

本研究計畫將分析的人工助孕科技主要有二：接受捐精之人工受精與試管嬰兒技術。雖然由科技層面觀之，二者無論是可行性、安全性俱臻於成熟，然而我國人工生殖法卻將此些醫療科技之應用限制於異性戀婚姻的特定情境之中。只有異性戀婚姻關係中的「無子問題」——不孕，才足以調動人工生殖的醫療與社會資源處理，而其它脈絡下的「無子問題」卻被邊緣化與去議題化。

由於美國法在性別平等與性傾向平等兩大面向上均有豐富的

司法審查經驗，而子女最佳利益原則亦為美國家庭法重要原則之一，均得做為我國之借鏡。因此，本計畫除了將採取文獻分析、法釋義方法兩種研究方式以外，亦將對美國法與我國法進行比較法學分析，盼能據此對於性別與醫療科技之發展研究有所貢獻。

中文關鍵詞： 性別平等、性傾向、人工助孕科技、生育自由、子女最佳利益

英文摘要： This project emphasizes on two issues: procreative liberty and the best interest of the child, especially how these two issues are presented in the cases considering the access to assisted reproductive technologies for single women and lesbian couples. Since whether to bear or beget a child has a strong implication on one 's autonomy and integrity, it is the State 's obligation to elaborate that, on what ground should it be legitimate to restrict or even take away the liberty of procreation from certain people. Therefore, the project would examine the following at length: if the access to assisted reproductive technology for single women and lesbian couples is within the compass of their liberty of procreation, and if the restriction in Artificial Reproduction Act is with proper legal grounds. Two specific kinds of assisted reproductive technologies would be explored here: artificial insemination by donors and in-vitro fertilization. Both technologies are matured and safe enough in clinic application and widely recognized in Taiwan. However, when the Artificial Reproductive Act excludes single women and lesbian couples from accessing to such technologies, it makes ' longing to have a child' an issue only within heterosexual marriages. The same issue in other social contexts are marginalized and become invisible in the eye of the law. Therefore, the project would take the constitutional principle of gender equality as its approach to analyze the above issues. The US courts are experienced in judicial review of cases involving gender and sexual orientation, and the children' s best interest, all of which will

serve as great references to Taiwan. It is hoped that the project will develop fresh points of reasoning and make contribution to future study of gender and medical technologies.

英文關鍵詞： Gender Equality, Sexual Orientation, Assisted Reproductive Technologies,

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中文摘要

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如欲依據我國現行規範申請為己施行人工生殖技術，則申請者不只應是一對已婚夫妻，在此婚姻狀態之外，尚且需要申請者其一或雙方皆有不孕症狀、抑或重大遺傳疾患，除此之外，妻之一方更需要擁有健全的子宮，擔負起懷胎生產人工生殖子女的「職責」。然而生育並非一套專屬女性的「責任」，毋寧說生育子女是不分性別之人，基於其身體自主權以及人格發展自由，而所應享有的一種自由。只不過，囿於目前的生殖科技，胎兒孕產仍只能藉著女性子宮完成，使得生育自由和女性身分之間有著格外緊密且特殊的連結。由於個人生育與否的決定在其認同、尊嚴、以及生命的意義中佔有中心地位，屬於人民權利自由極為核心的部份，因此，國家唯在意圖避免對於其他法益造成實質損害時，方得限制人民生育自由，並且亦不應對人民的生育自由造成不當或是過當的限縮。

由於觀察到單身女性以及女同志伴侶在我國現行法的脈絡之下，全然無法援借人工助孕科技實現其生育決定，本研究計畫希望以人民的生育自由以及近年來在我國身分法上益發佔有重要地位的子女最佳利益原則作為研究重心，並以平等權作為探討分析的切入點，研究單身女性與女同志伴侶是否應享有近用人工助孕科技的權利，現行的人工生殖法對於上述二類非婚者的生育自由之限制有無正當基礎。另外，來自於子女的最佳利益的挑戰亦為探討與回應的重點。

本研究計畫將分析的人工助孕科技主要有二：接受捐精之人工受精與試管嬰兒技術。雖然由科技層面觀之，二者無論是可行性、安全性俱臻於成熟，然而我國人工生殖法卻將此些醫療科技之應用限制於異性戀婚姻的特定情境之中。只有異性戀婚姻關係中的「無子問題」——不孕，才足以調動人工生殖的醫療與社會資源處理，而其它脈絡下的「無子問題」卻被邊緣化與去議題化。

由於美國法在性別平等與性傾向平等兩大面向上均有豐富的司法審查經驗，而子女最佳利益原則亦為美國家庭法重要原則之一，均得做為我國之借鏡。因此，本計畫除了將採取文獻分析、法釋義方法兩種研究方式以外，亦將對美國法與我國法進行比較法學分析，盼能據此對於性別與醫療科技之發展研究有所貢獻。

中文關鍵詞

性別平等、性傾向、人工助孕科技、生育自由、子女最佳利益

Abstract

As the development of assisted reproductive technologies has been steadily secured by now, the application of such technologies has been also more accepted in the Taiwan society. However, the access to legal application of reproductive technology is not open to too many people. Under the Artificial Reproduction Act, only a married couple could be the recipient of assisted reproduction technology. In addition to the marital status, the couple should pass some more strict restrictions to be an eligible couple to receive the treatment. Yet on the other hand, those who do not or do not want to get married have been excluded from any possibility to use assisted reproductive technology, at the very beginning.

The project emphasizes on two issues: procreative liberty and the best interest of the child, especially how these two issues are presented in the cases considering the access to assisted reproductive technologies for single women and lesbian couples. Since whether to bear or beget a child has a strong implication on one's autonomy and integrity, it is the State's obligation to elaborate that, on what ground should it be legitimate to restrict or even take away the liberty of procreation from certain people. Therefore, the project would examine the following at length: if the access to assisted reproductive technology for single women and lesbian couples is within the compass of their liberty of procreation, and if the restriction in Artificial Reproduction Act is with proper legal grounds.

Two specific kinds of assisted reproductive technologies would be explored here: artificial insemination by donors and in-vitro fertilization. Both technologies are matured and safe enough in clinic application and widely recognized in Taiwan. However, when the Artificial Reproductive Act excludes single women and lesbian couples from accessing to such technologies, it makes "longing to have a child" an issue only within heterosexual marriages. The same issue in other social contexts are marginalized and become invisible in the eye of the law. Therefore, the project would take the constitutional principle of gender equality as its approach to analyze the above issues.

The US courts are experienced in judicial review of cases involving gender and sexual orientation, and the children's best interest, all of which will serve as great references to Taiwan. It is hoped that the project will develop fresh points of reasoning and make contribution to future study of gender and medical technologies.

Key Terms

Gender Equality, Sexual Orientation, Assisted Reproductive Technologies, Procreative Liberty, the Best Interests of the Child

一、前言

計畫主持人希望能夠藉著本次研究計畫延續並延伸計畫主持人近年來有關「生育自由」的研究成果。本研究計畫不僅將深入分析單身女性與女同志伴侶的生育自由在人工助孕科技、我國法律體系雙重脈絡交錯之下的意義與地位，更將在如此探索人民基本權利自由與尖端醫療科技的交互作用之後，對我國的人工生殖法與其他相關法制提出建議。

生育自由具有雙重意涵：首先，是不生育的自由，例如使用避孕器材與藥品、以及在特定情形下中止懷孕的自由；與其相對，生育自由的另一意涵則是生育的自由，例如不孕者使用人工助孕科技（assisted reproductive technologies）以產生下一代、有家族遺傳疾病者求助於基因體醫學與人工生殖科技，以防免生出遺傳重症兒等。另外，特別針對後者「生育的自由」，女性主義生命倫理學者 Rosemary Tong 認為尚可進一步將其區分為強、弱兩個面向。生育自由的弱面向係指人民對抗國家干預個人生育決定的消極自由，而自育自由的強面向則是賦予人民要求國家提供資源、協助個人達成生育決策的積極自由（Tong 1997）。

在現行科技發展基礎上，人類生殖過程必需的生物基礎有三：精子、卵與孕育胎兒之孕母。由於技術發展與生理構造之限制，孕育並產下胎兒的過程目前仍然需要透過子宮進行，也因此，唯有生理女性可能擔當此一「孕母」的角色。女性身體在生育過程之中扮演的重要角色，使得女性的生育自由需要格外細膩的探討和保障。而本研究計畫正是希望能夠從個人生育自由與子女最佳利益原則出發，深入探討單身女性與女同志伴侶（lesbian couples）在人工助孕科技的脈絡下如何實踐其生育的自由，其自由的強弱面向又如何在我國現行人工生殖法制內呈現或受限，以據此瞭解，單身女性與女同志究竟是否應享有近用（access）人工助孕科技以生育下一代的法律上權利。

本研究計畫聚焦於單身女性與女同志伴侶的主要理由，除了計畫主持人長期以來對於女性生育自由的研究關懷以外，也由於主張生育自由的女性本身即有可能提供卵、並以自身子宮懷孕，必然需要對外動員者僅為捐贈者之精子，以及人工助孕科技的施行，所涉之法律關係較為單純。相反的，若是單身男性或男同志伴侶希望透過人工助孕科技踐行其生育自由，則需要動員他人協助的不只是捐贈之卵，尚有自願為其懷孕的代孕者，而代孕所牽涉之法律關係與生命倫理議題複雜度遠較其他人工生殖技術為高，需要投入更多研究資源與時間，故本計畫將先由助孕科技中與代孕無涉的部份開始探討，將目前研究聚焦於單身女性與女同志的生育自由。至於單身男性與男同志進行人工生殖的法律面向，以及代孕所涉及之法律與生命倫理議題，將留待未來再進一步探討。

另外，性別社會學學者吳嘉苓曾在比較 1950 年至 2000 年間我國的各種人工生殖科技施行狀況後發現，無論是受術伴侶中的男性不孕或女性不孕，最終接受人工生殖「治療」者皆為女性，而所有治療過程中的身體不適與不便、以及因接受刺激排卵藥物與麻醉取卵的健康上風險，也一概係由女性來承擔。¹本計畫

¹ 參看吳嘉苓，台灣的新生殖科技與性別政治 1950-2000，台灣社會研究季刊，45 期，頁 14 以

既然著眼於近用人工生殖科技的權利，自然也應以該科技風險的主要承擔者—女性為研究之對象。

最後，由於不同的人工生殖科技在身體侵入性、健康風險、法律與社會影響的層面均有所不同，本計畫將集中探討的人工助孕科技主要有二：藉捐贈者精子進行的人工受精（Artificial Insemination by Donor, AID）以及試管嬰兒術（In vitro Fertilization, IVF）。上述兩種方式雖然仍然需要借助捐贈者精子方可施術，但在考量現有的技術發展、施作安全性及穩定程度等因素以後，仍然是單身女性與女同志伴侶最可能近用之人工助孕科技：前者係以性行為以外的方式，將捐贈者之精子注入婦女的子宮頸，使其受孕；後者則是以手術方式取出卵，放在培養皿中並注入少量精液使其受精，發育為胚胎後再行植入婦女的子宮。然而，我國人工生殖法卻將這些醫療科技之應用限制於異性戀婚姻之中，而將單身女性與女同志伴侶排除在外，本研究計畫認為，此處的立法正當性須要進一步檢驗。

二、 研究目的

有關生育的決定不僅涉及了生育者個人的身體自主，此一決定若置於社會和法律脈絡之下，亦將產生道德上或／與法律上的責任，與生育者的意志和人格關聯至深，因此不能不謂生育自由中不具有重大的人格權色彩。正因如此，支持將近用人工生殖科技視為生育自由實踐方式、並且認為此是人民基本權利自由的法學與生命倫理學者 John A. Robertson 主張，個人生育與否的決定在其認同、尊嚴、以及生命的意義中都佔有中心的地位，而拒絕個人生殖的選擇則是從最根本的層面否決了個人的尊嚴。根據 Robertson 的論述，當生育自由與其他權利產生衝突時，應推定生育自由享有優先性，其並主張國家限制人民生育自由時，應說明限制該自由係為了避免何種實質損害（substantial harm）。

另外，1948 年《世界人權宣言》第十二條與《公民政治權利公約》第 17 條即透過保障個人有關家庭生活的選擇，使得被包含於家庭生活選擇範圍之內的生育自由也因此成為國際人權法體系所保護的一環。本研究計畫的目的之一，正是希望對於越來越受重視、保障層級也逐漸提高的生育自由進行更為深入的思考分析，並且配合計畫主持人在我國人工生殖科技和相關法制此一主題上所累積的研究經驗和研究發現，對於生育自由的內涵在助孕科技蓬勃發展的今日應當被如何詮釋、法律規範又應如何對應作出結論與建議。

全國第一位試管嬰兒於 1985 年 4 月 16 日出生以後，台灣的人工助孕科技開始正式進入高度技術水準的實驗室操作階段，穩定的技術發展速度也促成了助孕科技的臨床施行越來越普及。但是由於人工生殖技術施用時將觸及包含醫學、法學、倫理等層面的議題，相較於一般孕產醫療技術對於母體的侵入性與風險也較高，因此，為了確保仍在快速發展中的人工生殖科技能被妥適運用、並避免產生社會及法律問題，我國衛生署（現改制為衛生與福利部）於 1986 年七月，在欠缺法律授權基礎之情形下，先行制定「人工生殖技術倫理指導綱領」作為醫療機

下（2002 年 3 月）。

構施行人工生殖時的準則。該份指導綱領的位階屬於行政規則，其所列出的管理原則包含：施行對象必須以不孕夫妻為限、配子與胚胎須無償移轉、其捐贈者與受贈者均須經配偶的同意、以及負責施術之醫療機構有權使用與保管配子與胚胎等。隨後，衛生署有鑑於醫療科技進步快速、相關規範亟須更新，而於 1994 年發布「人工協助生殖技術管理辦法」，規範內容涵括實施人工生殖之醫療機構條件、說明義務、受術者條件、生殖細胞及胚胎之捐贈與保存、人工生殖資料之保存與管理等。

然而有鑑於該上述的指導綱領與管理辦法之法律位階皆僅只是法規命令，我國法律體系之中卻並無其上位母法作為授權基礎，衛生署遂在 1996 年委請學者研擬「人工生殖法」草案，但因社會、學界、利益團體對於是否開放代理孕母的議題遲遲無法達成共識，該草案遲遲未能順利通過立法。為了加速「人工生殖法」的立法進程，衛生署於 2003 年決定將爭議所在的代孕議題與其他人工生殖方式脫鉤處理，重新擬定新的人工生殖法草案，代孕生殖則朝向另立專法的方向發展。2007 年「人工生殖法」終於頒布施行，該法也就此與「代孕生殖法」走向不同的立法進程。

我國人工生殖法的重點之一，在於該法對於近用人工生殖技術的適用主體加以民格的限制，亦即「『誰』可以主張何種生育自由」。人工生殖法第 11 條明文將人工生殖科技的合法使用者限於婚姻關係存續中之「夫妻」，換言之，本條將單身女性與女同志伴侶排除在外，而單身男性與男同志伴侶則由於需要代理孕母的協力，在我國仍不允許代孕生殖的情境之中，他們自始便完全不在人工生殖法的討論範疇內。此種差別立法的形式，依稀反映了立法者獨厚異性戀已婚者的價值觀與價值取捨。

首先，「人工生殖法草案總說明」中說明了以此種差別立法的「理由」：「人工生殖技術應以治療不孕為目的，而非作為創造生命之方法。」學者邱文聰認為此限制應係援引「正常物種機能 (normal species functioning)」之概念，將人工助孕科技的用途限制於協助個人克服其生理性缺陷 (impairment)，而不及於達成正常物種機能本身所無法達成之任務。²此種限制原則不僅將不孕視為應獲「治療」或「矯正」的疾病或是缺陷，人工生殖法只將異性戀婚姻中的「無子」情形——不孕——納入應當運用人工生殖科技加以「解決」的問題，也顯然將生育和異性戀關係、婚姻關係緊密網綁，至於其他關係脈絡之下的「無子」則被邊緣化、被無視，既非「問題」也無需討論是否能夠因此近用人工助孕科技完全被討論在規範與政策邊疇之外。

然而立法者眼中的人工助孕科技既然是為了解決「無子」的「問題」，根據「等者等之，不等者不等之」的憲法上平等權基本原則，異性戀已婚者得以藉助人工助孕科技產生下一代，而單身者與女同志伴侶卻無法近用該技術，便產生此項規範是否合於平等權原則的疑問，值得深入討論。據此，本計畫希望以平等權

² 邱文聰，從「人工生殖法」的適用主體談生育自由的雙面性格，法令月刊，58 卷 8 期，148-149 (2007 年 8 月)。

觀點檢視禁止單身女性與女同志伴侶近用人工生殖技術的正當性。然而，我國法院在與性傾向（sexual orientation）有關的平等權案件中，尚未發展出具有可操作性或可預測性的實務標準，本計畫預計借鏡平等權審查經驗較豐富的美國法，探尋是否存在我國可以借用或參考之判準。

另外，人工生殖法中對於異性戀已婚配偶、單身女性與女同志伴侶之間的差別待遇展現出立法者對於異性戀婚姻的偏好。為此種價值判斷辯護的主要邏輯通常以維護子女最佳利益作為立論基礎，認為若是子女出生在父母未成婚的環境，恐怕對其法律地位和人格發展產生不利影響。然而本研究認為，但我國民法原就為非婚生子女的法律地位設計了準正、認領等制度作為補強，以此理由禁止單身者使用人工助孕科技過於牽強；另外，此種邏輯推論指稱子女在單親家庭或同志家庭成長，對於其人格發展有不利影響，惟扶養者的婚姻狀態與／或性傾向如何對子女造成影響，並不能僅以想當然耳的推論為基礎，而需實證研究加以證明。最後，尚未出生子女之「最佳利益」究竟應以何種標準加以判斷？此一原則又是否能夠提供足夠的基礎來推翻或限制個人的生育自由？此一問題將成為得否近用人工助孕科技的關鍵。為了回應社會對於同志伴侶扶養子女、是否將對子女性傾向、性別認同、或是其他人格面向造成負面影響，本計畫亦將分析國內外實證研究加以說明。

事實上，人工生殖法第7條雖然規定應在施術前對於受術夫妻評估其身心狀況及有無遺傳疾病，實務上評估內容並不包含對於受術夫妻是否為適任父母進行實質調查或評量。更已有實證研究顯示，許多對於多元家庭的負面印象其實來自低收入、社會邊緣、高風險家庭等多重因素，照顧者的婚姻狀態實非決定性因素。我國多元家庭型態既已日益增加，與其就「是否已婚」做為禁止實施人工生殖的標準，本研究計畫認為不如加強對於受術者及其支援系統的評估，並使人工生殖心理諮詢發揮功能，才能真正達到保護未成年子女的目標。

三、 研究方法暨文獻探討

本研究計畫將研究目的聚焦於在人工生殖脈絡下的單身女性與女同志伴侶之生育自由，並且特別分析探索生育自由中所含蘊的人格權特質，以及對於人工生殖子女人格利益與法律地位之影響。整體而言，本計畫的研究方法主要將採取文獻分析、法釋義方法、與比較法研究等方式。

在研究結構方面，首先，本研究計畫自然需要探討位處研究核心的生育自由如何在人工助孕科技脈絡下發展與作用。往昔有關生育自由的討論，起初集中於避孕用品和中止懷孕等等和不生育的自由相關的層面上，但近年在人工生殖技術疾速發展之下，多種突破傳統的生育方式成為可能，運用這些尖端科技懷孕生產、培育後代是否屬於生育自由的範圍，也引起爭論，本研究計畫則將爬梳並評析不同立場的論述。

針對研究主軸——「單身女性與女同志伴侶的生育自由是否可作為其近用人工助孕科技之權利基礎」，本研究係以平等權角度論證單身女性與女同志和異性

戀夫妻近用人工助孕科技的正當性並無二異，並再進一步從子女最佳利益之角度檢視我國法將助孕科技的近用限制於異性戀婚姻，是否有其正當性。由於在美國法上有關性別與性傾向的平等權分析，不管是案例或文獻皆頗豐富，而子女最佳利益原則亦為美國家庭法（family law）長久以來的重要原則之一，研究和實務紀錄皆多，因此本研究計畫主要以美國法作為分析我國法制之參考。

另外，有關人工生殖子女若係由單身者或同志伴侶扶養成人，是否會影響其身心發展與社會適應狀況，鑑於該問題的解答將需要大規模且長期的實證研究，須投入大量人力與資源，受限於一年期計畫之執行時間與申請人之專業，本計畫並未規畫進行此類實證研究，然仍將援引國內外實證研究資料並加以分析。

在美國法學研究中對於生育自由的權利性質有較多的討論，但觀諸我國學界，則對於生育自由詳加論述的文獻並不算多。畢竟美國法上的生育自由概念係從避孕知識、技術、和器材逐漸普及以後即隨之發展，從 1965 年的 *Griswold v. Connecticut* (381 U.S. 485) 一案以降，生育與不生育的自由即在最高法院中透過許多起個案而逐漸堆疊出堅實的憲法上高度，也引起學術上的廣泛研討，相對於此，生育自由在我國法律體系中的地位則相對不明確，然而仍有學者將其視為「家庭權」的部份³或是一項獨立且重要的個人自由⁴進行探討和分析。

而當人工助孕科技亦正式進入臨床孕產醫療技術的範圍，「生育」一事不再僅有異性性交受精、懷孕生產者必和所生子女血緣相連的一種單維可能，而有了更多更複雜的不同態樣，不僅挑戰著醫事人員的執業倫理與社會大眾的道德情感，也使得法律研究者需要對於人工助孕科技脈絡內的生育自由進行更加縝密且深入的重新思考。如前所述，人工助孕科技與女性的身體自主與生育自由關聯至深，因此本計畫主持人所專長的女性主義法學學者在此一領域內有著豐富且深刻的研究，計畫主持人亦對其詳加探討。

對於本研究最為重要的，主要是分別來自於自由女性主義（liberal feminism）法學與基進女性主義（radical feminism）法學的幾種對於人工助孕科技與女性生育自由的觀點。

自由女性主義學說強調以自由選擇來實現生育自主，只要生育方式與過程不會在本質上對他人有害，則國家不應擅自以家父長式（patriarchal）的思維介入女性對各種生育方式的選擇（Purdy 1989）。也因此，自由女性主義法學學者通常將人工助孕科技之近用視為可供女性自主選擇的生育自由實現管道之一，應當採取原則開放的管理方式。

至於基進女性主義的觀點則傾向於認為女性可能因為生理上能懷孕生產，反而受到來自醫療科技、婚姻與家庭的壓迫，亦即，「生殖」本身亦是性別壓迫的來源之一（Tong 1997）。在這樣的前提下，有基進女性主義學者將人工助孕科技視為可以「將女性從生育的枷鎖解放出來」、並將生產及育兒的責任由男性與女性共同承擔的有效工具（Firestone 2003）。但除了此些少數贊同人工助孕科技者

³ 例如李震山，憲法意義下之「家庭權」，國立中正大學法學集刊，16 期，頁 67。

⁴ 邱文聰，前揭註 2 文，頁 147-148。

外，大多數的基進女性主義學者其實對人工助孕科技存有疑慮，認為它的發展和施行可能反而引發對於「母職」與「胎兒」的物化，也使得女性對於生育的掌控力降低、生殖地位被矮化（Callahan 1995）。

本研究計畫較傾向於將人工助孕科技視為女性自主實踐其生育自由的管道之一，然而在研究過程中亦不忘基進女性主義學者所指出「生殖（可能）反而為身為生育者的女性帶來壓迫」的概念，時時在研究中反思人工生殖科技的性別面向；並且也引入平等權以及子女最佳利益原則作為分析基礎，探索在生育自由之外與其相互斡旋平衡的其他人民基本權利。

在計畫主持人於「Asian-Pacific Law & Policy Journal（亞太法律與政策研究期刊）」發表的《Lesbian Parenting in Taiwan: Legal Issues and the Latest Developments（台灣女同志母職實踐：法律議題及最新發展）》一文中，計畫主持人則透過憲法上平等權之分析，對於女同志伴侶和異性已婚夫妻之間近用人工生殖技術的法律限制進行研究，而發現性傾向、伴侶性別組合和婚姻狀態對於人工生殖技術之近用並非必要或有效的差別，而我國現行人工生殖法將女同志伴侶排除於人工助孕科技的合法使用者範外之外，則有違反平等原則而不當限制女同志伴侶生育自由之虞。

另外，由於我國人工生殖法對於「不孕」的判定乃是以「關係」而非「個人」作為判斷標準，只要該對伴侶無法在伴侶關係中自然成孕，即是屬於人工生殖法中的「不孕」者，此一判準在遇上單身者應當如何詮釋，則對單身女性的生育自由有著重大的影響。選擇不締結伴侶關係、或尚不在伴侶關係中的的單身女性，究竟應被視為「個人」而獨立評估有無生理上不孕的徵狀，或是應被視為「不在一段『可孕』（相對於『不孕』）關係中」的個人？雖然宥於題目範圍和篇幅，計畫主持人未能於該篇期刊論文中詳細處理此一問題，然而仍然為人工生殖法與單身女性的生育自由找到了理論上的交錯點與切入點，有利未來針對此一議題進行更深入的探討。

四、 結論與建議

性別平等的概念並非僅止於男性與女性的平等，而可能擴張到不同性傾向的平等、甚至跨性別認同與表述（transgender identity or expression）之平等。如前所述，本研究計畫係自平等權與子女最佳利益原則的兩方面，論證單身女性與女同志伴侶基於其生育自由而近用人工助孕科技的權利基礎。

研究計畫主持人在進行《Lesbian Parenting in Taiwan: Legal Issues and the Latest Developments（台灣女同志母職實踐：法律議題及最新發展）》的研究與探討時發現，女同志伴侶如欲透過前段異性關係或是自行授精（self-insemination）生育子女並非不可能，然而卻宥於法規限制，而不可能使得伴侶雙方皆與所生子女產生法律上親子關係，甚且可能產生其他法律糾紛，種種限制與風險使得女同志伴侶無法真正完整實踐其生育自由，和異性戀伴侶之間也因此生育自由的面向上受到不平等的待遇。本研究計畫提出，唯有修正人工生殖法制與身分法相關

部份，方可能使得女同志伴侶與異性戀伴侶之間的生育自由能在人工助孕科技的脈絡下實質平等。也只有在修法或立法的途徑中，能夠使得單身女性與女同志的生育自由在人工生殖科技的面向上一起獲得完整保障。

然而，本研究計畫在對 2007 年桃園地方法院裁定的一起女同志伴侶收養子女案件加以分析時，卻也發現，若是司法人員未能擁有足夠的性別意識，子女最佳利益原則反而容易成為限制同志伴侶甚或單身者生育自由的「藉口」。而此種深植於司法人員意識之中的偏見，並非立法或修法改革即能祛除。在進行法律規範的改革之外，如何能夠增進法律體系內人員、甚至施行人工助孕科技技術的醫療人員之性別意識，將是最重要的一關。

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六、 自評

在本研究計劃執行過程中，計劃主持人曾赴澳洲雪梨參加 2013 年第六屆全球家庭法與兒童權利論壇（the 6th World Congress on Family Law and Children's Rights）並發表論文，並與其他同樣進行家庭法、人工生殖、性別研究、女性主義法學等研究項目的研究者交流意見，對他國有關人工助孕科技及女性生育自由的法律規範、政策方針、未來發展方向都增進了瞭解。

計劃主持人也在與來自不同國家的研究者討論以後，獲得許多寶貴意見，並對已於該會議中發表的論文進行反思和修正，並在論文全文完成以後，選擇適合該文主題之國外著名法學期刊投稿。

目前本計劃投稿之論文已有《Lesbian Parenting in Taiwan: Legal Issues and the Latest Developments（台灣女同志母職實踐：法律議題及最新發展）》一文獲得 Asian-Pacific Law & Policy Journal（亞太法律與政策研究期刊，由美國 University of Hawaii School of Law 發行，列入 Westlaw 資料庫，並於 W&L Law Journal Ranking System 之「美國法學院亞洲法期刊評比」排名第 2）刊登。研究成果本身獲得肯定以外，有關人工助孕科技實現生育自由、同志伴侶與人工生殖科技的議題皆有未來發展的計畫及可能性，執行成果堪稱豐碩。

七、 **附錄：Lesbian Parenting in Taiwan**

Asian-Pacific Law and Policy Journal
2013

Article

***1 LESBIAN PARENTING IN TAIWAN: LEGAL ISSUES AND THE LATEST DEVELOPMENTS**

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*2 INTRODUCTION

Article 7 of the Constitution of the Republic of China (Taiwan) states that, “all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.” [\[FN1\]](#) The Grand Justices of the Judicial Yuan elaborate that, “[t]he principle of equality prescribed by Article 7 of the Constitution does not mean a formal equality in an absolute and mechanical sense. Rather, it aims to guarantee the substantive equality among the people in the sense of equal protection under law.” [\[FN2\]](#) Whether the term “substantive equality” has been properly interpreted and enforced by the courts has long been questioned. [\[FN3\]](#) This paper will use the example of lesbian parenting [\[FN4\]](#) in Taiwan to further critique the court's interpretation and enforcement of “substantive equality” for “all citizens of the Republic of China.”

According to a recent survey of over 1,523 lesbians in Taiwan, 66.5 percent said that they wish to have a child or that they would seriously consider the possibility. [\[FN5\]](#) Since gestational surrogacy is not allowed, [\[FN6\]](#) the only feasible ways for Taiwanese lesbians to have children *3 are through birth or adoption. However, same-sex marriage is not yet legal in Taiwan. [\[FN7\]](#) Marriage is currently defined as “a legal and permanent union of a man and a woman,” [\[FN8\]](#) and this restriction

influences every aspect relating to lesbian parenting, including adoption and assisted reproduction.

This article will analyze three options for lesbian parenting in Taiwan and the laws regarding each. Part I will discuss having children through former heterosexual relationships. Part II will focus on lesbian parenting through adoption. Part III, will elaborate on issues of lesbian access to assisted reproductive medicine. Part IV will introduce the latest developments in legal reform that may help to overcome the legal barriers to lesbian parenting described in the preceding sections. This will be followed by a call to action in the Conclusion.

I. LESBIAN PARENTING THROUGH FORMER HETEROSEXUAL RELATIONSHIPS

In many cases of lesbian parenting, children living with same-sex couples are the biological offspring of one member of the couple through an earlier marriage or relationship; however, the Taiwanese legal system rarely recognizes this child-parent relationship for both lesbian partners. [\[FN9\]](#) This section will analyze the definition of “parents” under Taiwanese law to show that lesbian mothers still face clear legal barriers to “substantive equality.”

**4 A. The Definition of “Parents” in the Eyes of the Law*

Who is the parent in the eyes of the law? According to the Taiwan Civil Code, the legal mother is officially defined as the person “who gives birth to the child,” [\[FN10\]](#) instead of the one “who is genetically connected to the child.” [\[FN11\]](#) The reason is that in 1930, when the Civil Code was enacted, it was simply unthinkable that the gestational and the genetic mother of one child could be different people. Additionally, for the convenience of proof, pregnancy and labor were apparent facts that rendered it easy and certain to establish the identity of the mother. [\[FN12\]](#)

Similarly, legal fatherhood is established through something more apparent than biological connection: the mother's marital status. The mother's legal spouse at the time the child is conceived is presumed to be the father by law. [\[FN13\]](#) In cases where the mother's husband is not the biological father of her child, the presumption of marriage in the law nevertheless provides the child with legitimacy and a legal father who is required by law to provide care and support. [\[FN14\]](#)

Currently, the husband, the wife, or even the child may bring an action to disavow the father-child legal connection. [\[FN15\]](#) Once the disavowal petition is granted by the court, the child would be rendered legally fatherless. Then, the mother or child may file a paternity suit to establish legal parentage between the child and the biological father. [\[FN16\]](#) If the biological father is willing to assume legal paternity, he can do so simply through an oral acknowledgement, by providing child support, or through the action of registering the child into his household. [\[FN17\]](#) The Taiwan Civil Code is extremely lenient to biological fathers who wish to assume legal fatherhood, compared to many other international jurisdictions, which require a paternity suit rather than mere oral acknowledgement of the biological father. [\[FN18\]](#) The roots of these paternity laws may be traced back to *5 the patriarchal traditions of Taiwanese society. [\[FN19\]](#) The influence of Taiwanese paternity laws on lesbian parenting are especially noticeable in cases involving acquaintance sperm donors, [\[FN20\]](#) as discussed in detail in Part III of this article.

B. The Disadvantaged Lesbian Parent

Under the definition of father and mother in the current Taiwan Civil Code, lesbian mothers in Taiwan face difficult situations. For instance, assume that mother A and father B were married when mother A gave birth to her daughter D. After a few years, mother A divorced father B and moved in with lesbian partner C. Mother A's legal parentage will not change, but her visitation and custody rights could be affected because some courts in Taiwan consider a parent's homosexuality a sufficient reason to restrict visitation and custody rights, even without a showing of adverse effect on the child. [\[FN21\]](#) In other words, mother A could lose her visitation and custody rights with daughter D due to her sexual orientation and identity.

Assume further that partner C became attached to daughter D and told everyone that daughter D was her daughter. Several years later mother A and partner C have separated and partner C petitions the court for liberal visitation rights with daughter D. According to the Taiwan Civil Code, only the legal mother and father have standing to petition for visitation or *6 custody rights with a child. [\[FN22\]](#) Partner C's requests for visitation would most likely be denied because partner C is considered neither a legal mother nor a birth mother in the eyes of the law. [\[FN23\]](#)

To avoid the previous scenario, partner C may wish to become a legal parent and adopt daughter D during her cohabitation with mother A. However, according to the Taiwan Civil Code, “second parent adoption” allows an individual to legally adopt a

spouse's child only when there is consent from both parents of the child, or simply from one parent if the other is not available. [FN24] Unfortunately, this adoption provision only applies to married couples, not to cohabitated partners. [FN25] Since same-sex marriage is not legally recognized in Taiwan, it is not permissible for partner C to adopt daughter D, even with mother A and father B's consent. [FN26] As a result, even if partner C has long performed parenting functions, and performed them well, she cannot be deemed a legal parent, and therefore has no substantive rights toward daughter D.

II. LESBIAN PARENTING THROUGH ADOPTION

Although adoption by a same-sex couple is infeasible, adoption by a single member of a same-sex couple is possible. In accordance with the Taiwan Civil Code, a single person is not prohibited from adopting children and creating a single-parent family. [FN27] Therefore, when it comes to same-sex couples in Taiwan, who are still not entitled to marriage, adoption is a theoretically appropriate way for them to acquire legitimate parenthood if one member of the couple files for adoption as an individual. [FN28] To clarify the situation faced by lesbian adopters in Taiwan, the following section will introduce the procedures for adoption and *7 analyze a recent court case in order to infer the attitudes of Taiwan's judicial system toward lesbian adopters.

A. The Taiwan Civil Code and Adoption Practices in Taiwan

To adopt a child in Taiwan, the prospective adoptive parent(s) must first meet certain statutory conditions. First, the adopter must be at least twenty years older than the adoptee. [FN29] Second, two people cannot adopt either a child or an adult together, unless the two people comprise a married couple. [FN30] Once the above criteria are fulfilled, a written adoption agreement must be executed [FN31] and the biological parents or the guardian must provide written consent. [FN32] The adoption agreement must then be filed with the court for approval. [FN33] When the adoptee is younger than eighteen-years-old, a court will usually permit the adopter to live with the adoptee for a period of time to help the court determine whether the adoption should be granted. [FN34] The court may even order child and adolescent welfare institutions to conduct home interviews in order to provide the court with further evaluations and suggestions. [FN35]

Utilizing the home visit reports, the court will make its final decision after

considering the personalities, financials, and family conditions of the adopter, to ensure that the adoption is in the best interests of the minor adoptee. [FN36] If a petition for adoption is granted, the adoptive parent obtains full legal parental rights and the adoptee is entitled to all of the rights enjoyed by a biological child, including child support and the rights to an inheritance. [FN37]

**8 B. The Taoyuan Case of Lesbian Adoption*

In 2007, the Taiwan Taoyuan District Court rejected a petition filed by a lesbian to adopt the daughter of her sister. [FN38] This is the first and the only case of adoption in Taiwan in which the adopter was openly homosexual. [FN39] This decision is important because it will likely have a lasting affect the future holdings in similar cases.

1. The Facts of the Taoyuan Case of Lesbian Adoption

Ms. Lin [FN40] was the petitioning adopter in this case. She was twenty-seven-years-old and had been in a relationship for over eight years with her partner, Ms. Wu, when she filed her petition for adoption. Both Lin and Wu had come out as lesbians to their families, and both families had accepted their sexual identities and their relationship with each other. Though they did not have a legal marital status, Lin and Wu had lived together and represented themselves as a married couple. [FN41] To them, the only missing piece for a happy family life was a child of their own. [FN42]

In April 2007, Ms. Lin's younger sister gave birth to a baby girl. It appears that the sister and her husband did not have sufficient financial resources to parent the newborn child. Meanwhile Lin and Wu were not able to have a child of their own under Taiwanese regulations. After *9 discussions in family meetings, the household decided to let Lin adopt her niece. Lin's partner Wu promised to substantially help Lin raise the child, despite the fact that she could not obtain legitimate parenthood status. Following the family's decision, Lin and her sister, who was the birth mother and the legal representative of her baby girl, [FN43] executed an adoption agreement on April 12, 2007, [FN44] and filed a petition in the Taiwan Taoyuan District Court for approval.

In adherence to the law, [FN45] the court requested that the Taoyuan Branch of the Taiwan Fund for Children and Families (“TFCF”, a nongovernmental

organization for children's welfare) assign social workers to perform home visits and evaluations. [\[FN46\]](#) The social workers from TFCF filed their report on May 18, 2007, including an assessment of the following four aspects and resulting recommendations.

First, the social workers assessed the aspect of Lin's financial condition. The TFCF found that the petitioning adopter, Lin, worked as a night-shift operator with an income of more than 30,000 New Taiwan (“NT”) dollars per month. [\[FN47\]](#) The adopter's partner and father also held jobs and did not require financial support from Lin. [\[FN48\]](#) Lin was not in any debt and had savings. The visiting social workers considered Lin able to offer the adoptee a financially stable life if she could sustain her current position at work. [\[FN49\]](#)

Second, the social workers reviewed Lin's physical and psychological conditions. The company Lin worked for required its employees to receive a health examination every six months, and Lin had been in good health. [\[FN50\]](#) However, the social workers noted that Lin had a *10 masculine appearance, which could make her easily mistaken for a man. Due to -this appearance and the fact that Lin is a lesbian, the TFCF concluded that the child's gender identity and expression could be a concern in the future, if the petitioner was allowed to adopt the child. [\[FN51\]](#)

Third, the social workers reviewed the support from family, friends, and others. [\[FN52\]](#) According to the social workers, Lin's mother, who was aware of Lin's lesbian identity and had a good relationship with Wu, was a strong source of family support. The mother explained to the social workers that she would be willing to take care of the child when Lin was at work. Wu also declared that she wanted to adopt the child as her own daughter. [\[FN53\]](#) As a result, the social workers recognized that Lin had sufficient support to raise the child. [\[FN54\]](#)

Finally, the social workers reviewed Lin's incentives for adoption. Lin wanted to provide the child with a loving home, which is considered an acceptable incentive. However, according to the social workers, Lin and the child were aunt and niece, and to transfer them into a parent-child relationship might confuse the child. [\[FN55\]](#) In addition, the biological mother would remain present in the child's life. This could lead to issues in parenting and produce other potentially negative effects on the child. [\[FN56\]](#)

The social workers concluded that, although Lin qualified in some aspects, there remained issues regarding the impact her sexual identity might have on the child. The

social workers were concerned that Lin's lesbian identity might confuse the child, leading to future harm. [\[FN57\]](#) The final decision to grant or deny the adoption belonged to the court, in accordance with the best interest doctrine. [\[FN58\]](#)

2. The Best Interest Doctrine and Adoption Cases

The best interest doctrine, which is applied to family law cases, has been integrated into the Taiwan Civil Code since the 1996 Amendment. [\[FN59\]](#) Before the 1996 Amendment, the father's rights were the first priority in *11 post-divorce arrangements. [\[FN60\]](#) Divorced fathers automatically received custody unless they willingly gave up the child. [\[FN61\]](#) But after the amendment, the gender equal principle and the best interest doctrine replaced the father-centered practice in the Taiwan Civil Code. [\[FN62\]](#) Specifically, Article 1055 of the Taiwan Civil Code requires mutual agreement between the divorcing parties on custody issues. [\[FN63\]](#) When failing to reach agreement, courts will make the decision in line with the best interests of the child. [\[FN64\]](#) Article 1055-1 of the Taiwan Civil Code provides the standards for the best interest doctrine by identifying the following aspects for the judge to consider: the intent and age, sex, number of the children, and health conditions of the child; the intent and age, occupation, character, health, economic conditions, and life style of the parents; and the bond between family members. [\[FN65\]](#) *12 The courts did not apply the best interest doctrine to adoption cases until after the 2007 Amendment of the Taiwan Civil Code. [\[FN66\]](#) Since 2007, the courts have decided cases of adoption based upon the child's best interests, [\[FN67\]](#) considering all of the criteria mentioned in Article 1055-1 for this purpose. [\[FN68\]](#)

3. The Results of the Taoyuan Case of Lesbian Adoption

Despite the best interest doctrine's requirement that a court evaluate all of the factors in Article 1055-1 of the Taiwan Civil Code to determine what is in a child's best interest, it seems that the court in the Taoyuan case denied the petition for adoption based primarily on Lin's sexual orientation. The court acknowledged that the personality of a child is established through imitating and learning from her caretakers. [\[FN69\]](#) Since parents are the closest people to a child, they are likely to be viewed as role models for gender identity, gender performance, role definition, and interpersonal relationships. [\[FN70\]](#) The court then proclaimed itself to hold a positive and open attitude toward homosexual relationships, recognizing them as a personal freedom where two same-sex adults with mature personalities choose to enter into a romantic relationship with each other. [\[FN71\]](#) However, the court, after considering social and

cultural factors, found that homosexual people do bear a stigma and social pressure within Taiwan, and that there is still a long way to go before Taiwanese society accepts homosexual people. [\[FN72\]](#)

The court acknowledged that adoption was a legal, available method for homosexuals to fulfill their wish of parenting, but also *13 considered it “foreseeable” [\[FN73\]](#) that the child would be under a lot of pressure in school and among peers. The court presumed that a child adopted by homosexuals would be mocked by classmates due to his or her gender identity, gender expression, or role definition, which could be different from the majority of the society. [\[FN74\]](#) The court reasoned that because all of this pressure would be placed on the child, adoption by Lin could not be in the best interest for the child. [\[FN75\]](#)

Since the birth parents of the child might not be able to provide her with financially stable conditions, the court suggested that Lin and the family help to financially support the biological parents and the child to lessen the burden. [\[FN76\]](#) The court concluded that it was in the best interest of the child to stay with her biological parents, and denied the adoption. [\[FN77\]](#) Although financial difficulties have no bearing on a legal parent's right to parent their child, the court did not take into account the financial difficulties of the biological parents in determining the best interest of the child. [\[FN78\]](#)

No further appeal was made by Lin or her family after the judicial decision. Yet, according to the biological mother, the whole family decided to let Lin and her partner assume parental roles in caring for the child, even without legal recognition. [\[FN79\]](#)

C. Reflections on the Taoyuan Case and Lesbian Adoption

According to the Taiwan Civil Code, approval of an adoption should be based on the best interests of the minor adoptee. [\[FN80\]](#) However, it is doubtful that the court's decision in the Taoyuan case was actually based upon the best interest doctrine.

In this case, the court assumed that the child will likely adopt her sexual orientation and gender identity from her parents; [\[FN81\]](#) thus being raised *14 by lesbian parents would confuse the child's understanding of gender. [\[FN82\]](#) The court did not refer to any theoretical grounds for such concerns; instead, it based its rationale on speculation and prejudices. The concept that children obtain their sexual

orientation and gender identity from their parents is groundless and unreasonable. The majority of lesbian, gay, bisexual, transgender (“LGBT”) individuals are raised by heterosexual parents. [\[FN83\]](#) In fact, empirical research shows the irrelevance of a parent's sexual orientation to the sexual orientation of their children. [\[FN84\]](#) To look at it another way, would a child's understanding of “gender” be confused if he or she were raised by homosexual parents? No, in fact, children raised by homosexual parents seem to be generally well-educated in gender issues. [\[FN85\]](#) Studies suggest that children who grow up in families with same-sex parents would be more likely to be taught by their parents to respect other people and to value diversity. [\[FN86\]](#)

In the Taoyuan case, the court made the decision based on gender stereotypes rather than on the best interest doctrine. The court had a picture of heterosexual normativity in mind when it made its decision, but it tried to ““call it something else” [\[FN87\]](#) to conceal the fact that heterosexual hegemony is haunting the courtroom. The court disregarded all of the other aspects of the social worker's evaluation, and made its decision based solely on the sexual orientation of the petitioning adopter. Ironically, the court rejected the adoption petition simply because of the adopter's lesbian identity, while simultaneously declaring that it had no prejudice against homosexuals. In its verdict, the court proclaimed that its disapproval of the adoption would prevent the child from foreseeable discrimination in society. This widespread discrimination against LGBT people in Taiwan might be a fact, but as one commentator responded to the ruling, the right thing to do is to change such a bitter fact, rather than yield to it. [\[FN88\]](#)

***15** In an attempt to protect the child's best interests, the court failed to follow the principle established by the Constitution of the Republic of China-- that all citizens, irrespective of sex, shall be equal before the law. The court also failed to perform its duty in expressing the State's distaste of sex-based discrimination. [\[FN89\]](#) It is true that the standards and criteria regarding a child's “best interests” are far from clear and often shaped by the judge's personal values and biases. However, in deciding petitions for adoption, the courts should apply all of the standards provided by Taiwan Civil Code Article 1055-1 with respect to the child's best interest. The petitioner's sexual orientation, gender identity, and gender expression should only be regarded as one of many factors, not the sole deciding factor.

III. LESBIAN PARENTING THROUGH REPRODUCTIVE TECHNOLOGIES

This section will discuss current regulations on assisted reproduction faced by

lesbians in Taiwan. According to the Taiwan Artificial Reproduction Act, single women and lesbian couples are not allowed to receive treatments for assisted reproductive technologies (“ART”) because the Taiwan Artificial Reproduction Act reserves that right to married couples. [\[FN90\]](#) Despite this substantive legal obstacle, lesbians in Taiwan continue to try various ways to give birth to children of their own.

A. The Legal Recognition of Parenthood Through Assisted Reproductive Technologies

Even though ARTs are available for married couples in Taiwan, other requirements must also be fulfilled. For example, at least one party must have healthy reproductive cells, [\[FN91\]](#) and the wife must be able to carry a child to term because no services for gestational surrogacy are allowed. [\[FN92\]](#) Assuming that the recipient couple has healthy gametes, they may undergo *16 the treatment for artificial insemination or in vitro fertilization (“IVF”) to achieve fertilization. [\[FN93\]](#) The husband and wife are deemed legal parents of the resulting child. [\[FN94\]](#) In cases where one parent is diagnosed with a major hereditary disease, or is unable to produce healthy gametes, parents can use donated gametes [\[FN95\]](#) to create embryos through IVF. The resulting embryos are then implanted into the wife's womb, and one or more children are delivered. [\[FN96\]](#) Although the child is not biologically related to one parent, he or she will be legally recognized as the marital child of the couple, provided that both parents consented to the use of ART. [\[FN97\]](#)

As previously discussed, if the legally presumed father, usually the birth mother's husband, is in fact not biologically connected to the child, a lawsuit of disavowal may be brought by the husband, the wife, or the child. [\[FN98\]](#) Once the disavowal petition is granted, the legal father-child relationship is severed. This means the husband is not legally responsible for providing the child with support and the child is disinherited on the paternal side. [\[FN99\]](#) Only at this point can the biological father legally acknowledge the child as his own and assume legal fatherhood with all of the attendant responsibilities and rights. If the biological father refuses to proceed with legal recognition, either the mother or the child may bring a paternity suit against him. [\[FN100\]](#) There must be sufficient evidence to prove the genetic connection. [\[FN101\]](#)

However, in the context of ART, when a sperm donor is used, the recipient husband would naturally have no biological connection with the resulting child. The husband's parental right is established through his express consent for his wife to use donated sperm. [\[FN102\]](#) If the recipient husband can prove that his consent was

acquired through fraud or *17 coercion, he may petition to disavow his parental rights and be freed from parental responsibilities. [FN103] Unlike biological fathers who are entitled to legally acknowledge non-marital children, sperm donors in Taiwan are not allowed such rights. [FN104] Even when the ART child is rendered fatherless, after the recipient husband successfully disavows his parentage, neither the recipient wife, the resulting child, nor the sperm donor may file a petition to establish legal parentage between the donor and the child. [FN105]

In Taiwanese family law, the birth mother is deemed the legal mother. [FN106] Since traditional motherhood is the combination of genetic connection, gestation, and rearing, mothers have no right to disavow motherhood of the child she gives birth to. [FN107] However, in ART cases where donor eggs are used, the Taiwan Artificial Reproduction Act follows the traditional notion of motherhood and uses gestation as the key element in deciding legal motherhood. [FN108] Consequently, egg donors are not deemed legal mothers, even though egg donation is a much more medically intrusive procedure with a substantially higher risk to the donor's health than the risks associated with sperm donations. [FN109] To protect the birth mother's autonomy in reproduction, her consent to carry a child to term by using ART procedures with donor eggs is emphasized by the law. [FN110] As a result, the law allows her to petition for disavowal of her parental rights *18 toward the child only if convincing evidence is shown that her consent was obtained through fraud or coercions. [FN111]

Since same-sex marriage is not yet legalized in Taiwan, lesbian couples are prohibited from accessing ART. [FN112] Lesbians wishing to become parents through ART are finding ways to circumvent the legal barriers, though these are far from perfect solutions.

B. Circumvention of the Barriers to Legal Parentage Through ART

Due to the prohibition of performing ART on unmarried persons, most licensed institutions and doctors will not risk sanctions for serving lesbian couples. [FN113] In addition to the risk of breaking the law, some doctors refuse to perform ART treatment on lesbians due to personal bias or religious conflicts about LGBT issues. [FN114] Some lesbians in Taiwan have found doctors willing to perform ART, [FN115] but the procedures often cost ten times more than the regular price because the doctor risks legal punishment. [FN116]

The high costs and legal consequences of official medical ART procedures have

lead many lesbians in Taiwan to practice self-***19** insemination. [\[FN117\]](#) This “do-it-yourself” insemination is mostly performed with a Pasteur pipette containing sperm [\[FN118\]](#) that is often donated by a male friend. [\[FN119\]](#) As mentioned in part I-A of this article, for birth fathers willing to assume fatherhood, mere oral acknowledgement is all that is required to establish paternity with a non-marital child whenever he sees fit. [\[FN120\]](#) Lesbian couples that would prefer to keep the family simple may try to avoid the expected risk of custody lawsuits from an acquainted sperm donor, in case of a change of mind. After all, according to Taiwan Artificial Reproduction Act, Articles 23 and 24, only married couples who use anonymous donor's gametes via infertility clinics are deemed legal parents of the resulting child. In all other circumstances, such as receiving sperm from a friend, recipients are not protected by the said Act and the donor can sue for custody any time he wishes. Yet, because the commercialization of human gamete is prohibited in Taiwan, chances are slim that a lesbian can acquire sperm through a clinic or sperm bank. [\[FN121\]](#)

The possibility of conception through self-insemination is not very high, and this adds to the impetus for lesbians who are able to afford the treatment to seek the assistance of ART in licensed hospitals. [\[FN122\]](#) Lesbian couples with sufficient financial resources can even choose to fly to other countries for ART procedures. [\[FN123\]](#) Although legal and safe, this method costs more and requires more effort on the lesbian couple's side due to ***20** having to make arrangements for travel and lodging, and having to find suitable doctors in a foreign country. [\[FN124\]](#) However, having ART procedures conducted abroad entails the same problems for lesbian mothers as other approaches: while the birth mother would be recognized as the legal mother under Taiwanese law, her lesbian partner would still not be deemed a parent, even if she is actually the egg donor. [\[FN125\]](#) Hence a common picture of planned lesbian motherhood in Taiwan shows two mothers sharing the responsibilities of parenting the same child, even though the non-birth mother is merely a stranger to the child in the eyes of the law. [\[FN126\]](#)

Another option lesbians in Taiwan pursue in order to be legally entitled to receive ART procedures by a licensed hospital or clinic is that one partner enters into a sham marriage with either a gay man [\[FN127\]](#) or a heterosexual man. [\[FN128\]](#) Both approaches usually involve a male acquaintance, and may be expected to cause complicated interpersonal and legal issues regarding custody.

With grassroots groups advocating for same-sex marriages in Taiwan, there may yet be a silver lining that allows lesbian couples to receive ART procedures legally in

the future. Countries around the world are legalizing same-sex marriage and partnerships at a steady pace. [\[FN129\]](#) Activists in Taiwan are working to promote family rights for LGBT individuals and advocate for change. [\[FN130\]](#) In 2005, an MSN [\[FN131\]](#) group named *21 “the Alliance of Lesbian Mothers,” comprised of members ranging from ages twenty to sixty, was founded in Taiwan with the goal of helping lesbian mothers and those who wished to become lesbian mothers. [\[FN132\]](#) The Alliance of Lesbian Mothers issues an online newsletter, titled “LaMaNews” (short for “Newsletter for Lesbian Mothers” in Mandarin), which shares information about adoption, assisted reproduction, and parenting skills with its members. [\[FN133\]](#) The Alliance of Lesbian Mothers renamed themselves the “Taiwan LGBT Family Rights Advocacy” in 2007 and registered as a civil association with the goal of promoting equal rights for established families. [\[FN134\]](#)

If same-sex marriage is legalized, whether lesbian couples could receive IVF or artificial insemination depends on the courts' interpretation of the definition of infertility in Article 1 of the Taiwan Artificial Reproduction Act. [\[FN135\]](#) It seems that this act focuses on the infertility of the *couple*, rather than the *individual*. Such a “relational diagnosis” could result in two people being considered fertile apart and infertile together. [\[FN136\]](#) Thus, if a lesbian couple is viewed by the courts as “relationally infertile,” there is the possibility that the Artificial Reproduction Act could be read to allow lesbians to receive ART legally. [\[FN137\]](#) The legalization of same-sex marriage, [\[FN138\]](#) and amending the law to adopt a broader definition of infertility could open the gate for lesbian couples to acquire legal parenthood through ART in the future.

IV. THE LATEST LAW-MAKING ACTIVITIES IN TAIWAN

The call for improving human and reproductive rights for LGBT people in Taiwan is growing stronger, and the right to form a legally recognized family is one of the most frequently discussed issues. [\[FN139\]](#) Two *22 important legislative efforts are especially noteworthy: (1) the drafting of the Basic Law for Gender Equality (“Basic Law”) and (2) the drafting of an amendment to the Taiwan Civil Code proposed by the Taiwan Alliance to Promote Civil Partnership Rights (“TAPCPR”)

A. *The Basic Law for Gender Equality*

Although gender mainstreaming and gender equality have been advocated for

years in Taiwan, there has been no department at the central government level charged exclusively with designing, carrying out, and assessing gender policies. [\[FN140\]](#) Instead, policies that concern gender issues are handled by scattered government departments with no comprehensive framework to guide their decisions. [\[FN141\]](#) For instance, there are already various gender related laws in place such as the Sexual Harassment Prevention Act, Gender Equity Education Act, Domestic Violence Prevention Act, and Gender Equality in Employment Act. These laws, and others like them, may have enhanced the awareness of gender issues in Taiwanese society, but there is currently no overarching gender policy to reconcile these laws and policies when they conflict with each other or leave unintentional gaps. [\[FN142\]](#)

In response to this lack of an overarching policy, the Taiwan L Legislative Yuan (“Congress”) demanded that the Basic Law [\[FN143\]](#) be drafted to establish the Gender Equality Bureau of Taiwan Executive Yuan (“Cabinet”), a new department in the central government responsible for gender policies. [\[FN144\]](#) After a year of research, using the methodologies of comparative law, interviews with various advocates and scholars, and focus group interviews, the author, as the project investigator, and Professor Li-Li Huang of National Tsing Hua University, [\[FN145\]](#) as the associate investigator, completed the draft of the Basic Law. [\[FN146\]](#)

***23** The Basic Law is based on Article 7 of the Constitution of the Republic of China and the general ideas contained within the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”). [\[FN147\]](#) The Basic Law has two primary goals. The first goal is to establish the Gender Equality Bureau and equip it to become the highest authority in Taiwan in charge of gender related issues. [\[FN148\]](#) To this end, the Basic Law requires local governments to set up departments to collaborate with the Gender Equality Bureau and to carry out its policies. [\[FN149\]](#) The Basic Law also requires that the Gender Equality Bureau work to enhance gender awareness among government employees, [\[FN150\]](#) cultivate tools for gender mainstreaming, [\[FN151\]](#) and perform gender assessments before enforcing major policies. [\[FN152\]](#)

The second goal of the Basic Law is to set principles for gender equality in various aspects of civil life, such as political participation, employment, family relations, education, safety, media and culture, health care, social and economic benefits, technological developments, and in the judiciary and police. [\[FN153\]](#) Regarding LGBT equal rights, the Basic Law explicitly broadens the definition of “sex discrimination” to include different treatment, exclusion, or limitation based on

gender, sexual orientation, or gender identity that would deny equal rights in any sphere of life. [\[FN154\]](#)

***24** Article 18 of the Basic Law would specifically protect equal rights for same-sex couples who wish to create their own family. According to Article 18, alternative families shall be afforded the same rights as traditional families, and measures shall be taken to support alternative families and ensure that they function well. [\[FN155\]](#) With a broadened concept of gender equality, which includes sexual orientation and gender identity, the Basic Law sets the foundation and opens the possibilities for future legislation on gender issues. [\[FN156\]](#) Resonating with the draft of the Basic Law is a proposed amendment to the Taiwan Civil Code on issues concerning same-sex families, which will be introduced in the following section. [\[FN157\]](#)

B. The Proposed Amendment to the Taiwan Civil Code

Founded in 2009, TAPCPR is composed of several organizations advocating for LGBT rights. The primary goal of TAPCPR is to promote same-sex marriages and partnerships, and to make both institutions equally available to heterosexual and homosexual couples. [\[FN158\]](#) To achieve this goal, TAPCPR proposed an amendment to the Division of Domestic Relations of the Taiwan Civil Code. A preliminary draft was released in September 2011 that included thirteen provisions pertaining to legal partnerships on adoption and legal parenthood. [\[FN159\]](#) After further comparative investigation with domestic and foreign laws, the final draft was delivered on July 31, 2012, [\[FN160\]](#) and is currently scheduled to be sent to Congress in September 2013.

***25** According to the preamble, TAPCPR's proposed amendment to the Taiwan Civil Code focuses on the specific aspects. First, the draft proposes to change any terms used in the Taiwan Civil Code to gender neutral terms. [\[FN161\]](#) For example, the amendment changes the legal terms “husband” and “wife” to “spouse” and the terms for “father” and “mother” to “parent.” Using gender neutral phraseology in the Taiwan Civil Code would allow the term “marriage” to be interpreted by the courts as a legal status available to both homosexual and heterosexual people. [\[FN162\]](#)

Second, the amendment proposes a broader definition of family members to include those who become family dependents through mutual consent. [\[FN163\]](#) The traditional elements of a family--such as marriage and genetic connection-- are not

required by the amendment. [\[FN164\]](#)

Third, the draft proposes the addition of a chapter for civil partnerships to the Taiwan Civil Code. [\[FN165\]](#) The thirteen provisions in the new chapter about civil partnerships make clear who may form such a partnership, what the requirements and procedures are, which rights and obligations are involved, and the property issues. [\[FN166\]](#) Furthermore, the proposed amendment explicitly extends the right to adopt children to same-sex couples, whether in same-sex marriages or in civil partnerships. [\[FN167\]](#)

According to TAPCPR's proposed amendment, in cases of same-sex marriage, legal parenthood is presumed as long as the child is conceived during the marriage. [\[FN168\]](#) When it comes to civil partnerships, a child conceived during the partnership would not automatically become *26 the legitimate child of the non-birth parent [\[FN169\]](#) until the non-birth parent chooses to adopt the child [\[FN170\]](#)--this is similar to the law allowing second-parent adoption in a marriage. [\[FN171\]](#) Additionally, while married couples are required to adopt a child jointly, [\[FN172\]](#) a lesbian couple in a civil partnership may choose to adopt a child either jointly or independently under the TAPCPR draft amendment. [\[FN173\]](#) Should a partner decide to adopt a child, her partner's consent for the adoption is not required. [\[FN174\]](#)

To eliminate sex-based discriminations, TAPCPR also proposes that an anti-discrimination clause be added to the Taiwan Civil Code [\[FN175\]](#) that would explicitly prohibit judges from making decisions based on prejudices towards sex, sexual orientation, gender identity, or gender expressions. [\[FN176\]](#) The anti-discrimination clause will make adoptions by lesbians objective and fair, free from judges' homophobia. [\[FN177\]](#) Unlike the draft Basic Law for Gender Equality, whose primary goal is to set out general principles, TAPCPR has proposed detailed legislation that would give substantive rights to same-sex couples who wish to create a family.

CONCLUSION

Since the obstacles that lesbians who wish to parent their own children face are mainly constructed by the law, the most efficient way for a country with a civil law tradition to change is through legislation. This article has discussed the three current scenarios for the possibility of lesbian becoming parents in Taiwan: obtaining children through former heterosexual relationships, obtaining children through

adoption, and obtaining children through the Artificial Reproduction Act. Existing laws were discussed in-depth to provide background about the legal barriers *27 faced by lesbian individuals and couples in Taiwan who wish to become parents.

Against this background, this article detailed two recent law-making activities introduced as possible solutions to lesbian's hardships in becoming parents. First, the draft of the Basic Law for Gender Equality broadens the definition of sex-based discrimination to include sexual orientation, gender identity, and gender expression. It declares a general policy of non-discrimination toward alternative families. Second, TAPCPR's proposed amendment to the Taiwan Civil Code, as a substantive law, would clearly define the rights of lesbian parents and provide ways for those rights to be validated. Both of these proposed legislative actions have clear potential to counter the current legal barriers to lesbian parenting.

However, family law in Taiwan has long been entangled with the traditional notion that some family types are superior to others and with the traditional ideas for what constitute a child's best interests. As seen in the Taoyuan case, it is clear that merely changing the terms and content of the law may not be sufficient to guarantee that a judge's decision is unprejudiced toward alternative families when interpreting and enforcing the law. As a result of this prejudice, any proposed legal reform in family law is destined to confront deeply entrenched cultural and social norms.

In Taiwan, LGBT people are still invisible in the legal framework of family relations. Their human and reproductive rights and their need to establish and maintain their own families are ignored. However, there is hope--the latest law-making activities may finally loosen and begin to change Taiwan's long standing ideas about the heterosexual nuclear family. These legal reforms would afford lesbian couples the right to enter marriages or civil partnerships, the right to adopt children, and the right to access ART. These legal reforms may help to achieve broader social change towards a more open-minded and tolerant society. Yet, rewriting the law is only the beginning of change; the process of reform must go beyond the legal system.

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Rainbow Rising: Community, Solidarity, and Scholarship, which was a Symposium on Sexuality and Gender Expression in Asian-Pacific Law and Policy, held by the University of Hawai'i, William S. Richardson School of Law, Honolulu, Hawai'i. The author would like to express appreciation to Professor Mark Levin of the William S. Richardson School of Law, University of Hawai'i, Associate Justice Sabrina McKenna of the Supreme Court of the State of Hawai'i, and all the participants of the Symposium for thought-stimulating discussion. The author would also like to thank her research assistant, Ms. Wan-Shu Lin, for detailed work in data collection and Bluebooking. All sources in Chinese are translated by the author unless otherwise noted.

[FN1]. ZHONGHUA MINGUO XIANFA [Constitution of the Republic of China] art. 7 (1947) (Taiwan). The official translation adopted here is by Judicial Yuan, *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p07_2.asp?lawno=36 (last visited Oct. 8, 2012).

[FN2]. Dafaguan Jieshi [Grand Justices Interpretations] No. 485 (JIESHI May 28, 1995). Official translation of this Grand Justices Interpretation is provided by Judicial Yuan, *available at* http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=485 (last visited Dec. 8, 2012)

[FN3]. Dafaguan Jieshi [Grand Justices Interpretations] No. 571, Concurring Opinion from Grand Justice Lin Tzuyi (JIESHI Jan. 2, 2004). *See also* Chen Chaoju, *Jiaochalukou yu Loushang Louxia--Fanqishifa Zhong de Jiaocuo Wenti [Crossroads and Upstairs/Downstairs--Intersectionality in Anti-Discrimination Laws]*, YUEDAN FAXUE ZAZHI [THE TAIWAN LAW REVIEW] 51, 52 (Feb. 2011).

[FN4]. For the purposes of this article, “lesbian parenting” will refer to both the process of becoming a parent and the process of parenting a child through life.

[FN5]. *Nütongzhi Jiankangxingwei Diaochabaogao Fabiao [Press Release of Lesbian Health Conducts Survey]*, TAIBEISHI NÜXING QUANYI CUJINHUI [TAIPEI ASSOCIATION FOR THE PROMOTION OF WOMEN'S RIGHTS], *available at* http://www.tapwr.org.tw/research_artical.asp?artid=77&artcatid=4&artcat2id=10&nouse=2137 (last visited Jul. 12, 2012) [hereinafter “Survey”].

[FN6]. Surrogacy reproduction was explicitly banned by Article 7 of the RENGONG XIEZHUSHENGZHI JISHU GUANLIBANFA [REGULATIONS OF TECHNOLOGIES OF ASSISTED REPRODUCTION] (repealed on Sep. 10, 2007), which states, “no medical institute shall practice assisted reproduction technologies under the following situations ... as when surrogacy reproduction is involved.” RENGONG SHENGZHIFA [TAIWAN ARTIFICIAL REPRODUCTION ACT]] (effective since Mar. 21, 2007) art. 2, ¶ 1(3) defines recipients of assisted reproduction technologies as “husband and wife ..., where the wife's uterus can carry a fetus and give birth to a child.” The translations of TAIWAN ARTIFICIAL REPRODUCTION ACT adopted in this article is provided by the Ministry of Justice, *available at* [http:// law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0070024](http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0070024) (last visited Dec. 9, 2012)

[FN7]. “An agreement to marry shall be made by the male and the female parties in their own [con]cord.” MINFA [TAIWAN CIVIL CODE] art. 972. All translations of TAIWAN CIVIL CODE in this paper are adopted from the official translation provided by the Ministry of Justice, *available at*: [http:// law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001](http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001) (last visited Dec. 7, 2012)

[FN8]. *Id.*

[FN9]. Lin Shihfang, Banianduidui, Zhihen Kanbujian: Taiwan Falüjiafengxia de Nünü Qinmiguangxi [The Legal and Historical Denial of Female Same-sex Intimate Relationship in Taiwan History] 208 (2008) (Unpublished Master Thesis, Department of Law, National Taiwan University) (copy on file with the Department of Law, National Taiwan University). The original author provided an English title for the thesis, but all the other parts of this thesis are written in Chinese.

[FN10]. DAI YANHUI ET AL., QINSHUFA [FAMILY LAW] 294 (14th ed. 2007).

[FN11]. *Id.*

[FN12]. TAIWAN CIVIL CODE art. 1063, ¶ 1 (“Where the wife conceives during the continuance of a marriage relationship, a child so born is presumed to be legitimate.”). Article 1063, along with Article 1062 of TAIWAN CIVIL CODE, which defines the way to determine the period of conception, establish that the recognition of legal motherhood should be established through the fact of conception

and bearing of the child. *See* also DAI ET AL., *supra* note 10, at 295-6.

[FN13]. TAIWAN CIVIL CODE art. 1063, ¶ 1.

[FN14]. *Id.* art. 1061.

[FN15]. *Id.* art. 1063, ¶ 2.

[FN16]. *Id.* art. 1067, ¶ 1.

[FN17]. *Id.* art. 1065, ¶ 1.

[FN18]. DAI ET AL., *supra* note 10, at 308-09.

[FN19]. For example, the establishment of legal parent-child relationship between a child born out of wedlock and the natural father was merely and deliberately decided by the natural father's will: “a child born out of wedlock has no legal parent-child relationship with the natural father, unless the child has been acknowledged by the father, or has been presumably acknowledged.” Zuigao Fayuan 43 Niandu Taishangzi di 1180 hao Panli [Sup. Ct., Dec. 24, 1954], MINSHI HUIBIAN 486, 1195. Also, the Grand Justices decided that “the law which disqualifies a natural father from bringing an action for disavowal from his child presumed to be born in wedlock is intended to prevent damage to marital stability, family harmony, and the right of a child to education and nurture, and is thus not contrary to the Constitution,” and this could be deemed as a way that the patriarchal family structure weighs in the Grand Justices' view. Dafaguan Jieshi [Grand Justices Interpretations] No. 587 (JIESHI Dec. 30, 2004). Official translation of this Grand Justices Interpretation is provided by Judicial Yuan, *available at* http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=587 (last visited Dec. 9, 2012)

[FN20]. If a lesbian, who is not in a legal marriage with any man, received sperm from an acquaintance donor and conceived with it without any artificial reproductive technology by a medical care institution, the donor could claim legal paternity of the child through TAIWAN CIVIL CODE art. 1067, ¶ 1, because the child was born out of wedlock.

[FN21]. Yemeigui de Chuntian [Spring Bloom of a Wild Rose], LAMABAO [THE

LAMANNEWS] (Sep. 30, 2006), http://blog.yam.com/la_ma_news/article/6505237 (last visited Aug. 3, 2012).

[FN22]. TAIWAN CIVIL CODE art. 1055, ¶ 5.

[FN23]. Visitation is phrased as “huimian jiaowang” [meeting and communicating] in Article 1055, ¶ 5 of the TAIWAN CIVIL CODE. It is deemed part of the rights of legal parents awarded by the court as a post-divorce arrangement. *Id.*

[FN24]. *Id.* art. 1076-1, ¶ 1 (“When the child is adopted, the consent of the parents shall be obtained except when one of the following conditions is met: (1) where one or both of the parents, who shall but can not exercise the rights and assume the duties in regard to the child or did not protect the interests of the child, refuses to consent; or (2) where one or both of the parents in fact cannot make the declaration of intention and accept the declaration of intention.”).

[FN25]. A married couple should always adopt a child jointly, except where one member of the couple adopts the other party's child. *Id.* art. 1074. One child shall not be simultaneously adopted by two people, except when the two persons are a married couple. *Id.* art. 1075.

[FN26]. *Id.* art. 1074, ¶ 1(1).

[FN27]. *Id.* art. 1074 (law requiring joint adoption where the adopter is married, but does not prohibit single persons from adoption).

[FN28]. *Id.* art. 1072.

[FN29]. *Id.* art. 1073.

[FN30]. *Id.* art. 1075.

[FN31]. *Id.* art. 1079, ¶ 1.

[FN32]. *Id.* arts. 1076-1, ¶ 2, 1076-2.

[FN33]. *Id.* art. 1079, ¶ 1. ERTONG JI SHAONIAN FULI YU QUANYI BAOZHANGFA [THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS

WELFARE AND RIGHTS ACT] art. 19. All translations of articles from THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT are adopted from the official translation provided by Ministry of Justice, available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=D0050001> (last visited Dec. 8, 2012)

[FN34]. THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT, *supra* note 33, art. 14, ¶ 3.

[FN35]. *Id.* art. 14, ¶ 4.

[FN36]. TAIWAN CIVIL CODE art. 1079-1; THE PROTECTION OF TAIWAN CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT, *supra* note 33, art. 14, ¶ 1.

[FN37]. TAIWAN CIVIL CODE art. 1077, ¶ 1.

[FN38]. Taoyuan Difang Fayuan 96 Niandu Yangshengzi di 81 hao Caiding [Taoyuan Dist. Ct., Aug. 27, 2007]; *See also* Chen, *supra* note 3, at 66.

[FN39]. After searching with the keywords “Tongzhi (LGBTQ people)” and ““Tongxinglian (homosexual)” in the database of the Judicial Yuan and collecting case documents dating back to 2000, there is no other adoption case in which the adopter has come out as a homosexual. This case is reported by the media as the first case of adoption by homosexuals in Taiwan. *See, e.g.*, Tongjiahui Huiying Taoyuan Diyuan Shijian Shengminggao [Statement from Taiwan LGBT Family Rights Advocacy], LAMABAO [THE LAMANNEWS] (Nov. 6, 2007), available at http://blog.yam.com/la_ma_news/article/12457792 (last visited Oct. 9, 2012). For further reference, the first case of a transsexual adopter had been decided years before the Taoyuan case. *See* Jiayi Difang Fayuan 90 Niandu Yangshengzi di 111 hao Caiding [Jiayi Dist. Ct., Oct. 17, 2001].

[FN40]. In the author's experience, family law cases in Taiwan are not public information. Only the family names of the parties involved are shown in the files of judicial databases and news coverage.

[FN41]. “A lesbian couple, who recognize themselves as husband and wife, wishes to adopt a baby girl and fulfill their dream of having a happy family.” Nütongzhi

Shouyang Xiaohai, Fayuan Buzhun [The Court Rejected Lesbian Adoption], LIANHEBAO [UDN NEWSPAPER], Sep. 07, 2007, at A14.

[FN42]. *Id.* (stating that “Ms. Lin testified to the Court that she and Ms. Wu have been in love for over eight years and are living together now, the senior members in their family have embraced the couple's homosexual identity, and the couple wishes to complete their life through the adoption of this baby.”).

[FN43]. TAIWAN CIVIL CODE arts. 1076-2, ¶ 1, 1086.

[FN44]. Taoyuan Dist. Ct., *supra* note 38, at ¶ 1.

[FN45]. ERTONG JI SHAONIAN FULIFA [Children and Youth Welfare Act] art. 14, ¶ 4. (May 12, 2010) (amended and renamed “THE PROTECTION OF CHILDREN AND YOUTHS WELFARE AND RIGHTS ACT” after Nov. 30, 2011) (“Before recognizing the adoption of children or teenagers, a court should require a proper authority or children welfare institutions to conduct home visits and investigation in order to file reports with recommendations. The adopter or an interested party may also provide relevant information or evidence to the court for the discretion.”).

[FN46]. Fuwu Dashiji [Chronicle of Services Provided by T. F. C. F.], TAIWAN ERTONG JI JIATING FUZHU JIJINHUI [TAIWAN FUND FOR CHILDREN AND FAMILIES], <http://www.ccf.org.tw/02service/01-9.htm> (last visited Jul. 17, 2012).

[FN47]. Taoyuan Dist. Ct., *supra* note 38, ¶ 3, lines 6-7.

[FN48]. Judging from the judicial documents, it is the author's opinion that it can be reasonably assumed that Lin and Wu lived with Lin's parents.

[FN49]. Taoyuan Dist. Ct., *supra* note 38, ¶ 3, lines 5-9.

[FN50]. *Id.* ¶ 3, lines 11-12.

[FN51]. *Id.* ¶ 3, lines 9-14.

[FN52]. *Id.* ¶ 3, line 14.

[FN53]. *Id.* ¶ 3, lines 16-17.

[FN54]. *Id.* ¶ 3, lines 14-20.

[FN55]. *Id.* ¶ 3, line 26.

[FN56]. *Id.* ¶ 3, lines 20-26.

[FN57]. *Id.* ¶ 3, lines 26-29.

[FN58]. *Id.* ¶ 3, lines 29-30.

[FN59]. LIFAYUAN GONGBAO [COMMUNIQUÉ FROM LEGISLATIVE YUAN] COL. 85 VOL. 40 NO. 2862 YUANHUI JILU [CONGRESS MINUTES] 256 (Sep. 6, 1996).

[FN60]. *Id.* at 277.

[FN61]. TAIWAN CIVIL CODE art. 1051 (Dec. 3, 1930) (repealed on Sep. 6, 1996) (“The husband will have the custody of the children after a mutual consent divorce unless both divorce parties agree to assign the custody otherwise.”).

[FN62]. LIFAYUAN GONGBAO, *supra* note 59, at 265.

[FN63]. TAIWAN CIVIL CODE art. 1055, ¶ 1 (“After the husband and the wife effect a divorce, one party or both parties of the parents will exercise the rights or assume the duties in regard to the minor child by mutual agreement. If the mutual agreement did not or could not be done, the court may decide by the applications of the husband or the wife, the authorities concerned, the social welfare institution or any other interested person, or may decide by its authority.”).

[FN64]. TAIWAN CIVIL CODE art. 1055, ¶ 2 (“If the mutual agreement is unfavorable to the child, the court may change the agreement upon the applications of the authority concerned, the social welfare institution or any other interested person or by its authority in regard to the interests of the minor child.”).

[FN65]. *Id.*

When the court makes the jurisdiction in the Article of 1055, it should be decided in accordance with the best interests of the minor child, considering all the

conditions and the visiting reports of the social workers, especially check the following contents:

(1) The age, sex, numbers and healthy condition of the minor child.

(2) The willing of the minor child and the need of personality development.

(3) The age, occupation, character, health condition, economical ability and the life style of the parents.

(4) The parent's willing and attitude of protecting and educating the minor child.

(5) The emotional feelings between the parents and the minor child or between the other persons living together and the minor child. *Id.*

[FN66]. Since the 1996 Amendment to Taiwan Civil Code, the best interest doctrine had been explicitly required in custody cases. *See* LIFAYUAN GONGBAO COL. 85 VOL. 40 NO. 2862 YUANHUI JILU 255-56 (Sep. 6, 1996), *supra note 59*. When it comes to adoption cases, however, the Taiwan Civil Code only required that, “the court should not grant an adoption case if facts shown that adoption would be against the children's interests.” *See* Taiwan Civil Code art. 1079, ¶ 5(2). (May 24, 1985). But after the 2007 Amendment, Article 1079-1 of Taiwan Civil Code explicitly states that, “when considering a proposed adoption, the court shall base the judgment on the adopted minor's best interest” and thereafter requires application of the best interest doctrine to adoption cases. *See* LIFAYUAN GONGBAO [COMMUNIQUÉ FROM LEGISLATIVE YUAN] COL. 96 VOL. 38 NO. 3561 YUANHUI JILU [CONGRESS MINUTES] 179 (May 4, 2007).

[FN67]. TAIWAN CIVIL CODE art. 1079-1.

[FN68]. TAIWAN CIVIL CODE art. 1083-1 (“The court may apply *mutatis mutandis* to the Article 1055-1 when the court rules pursuant to ... the Article 1079-1”).

[FN69]. Taoyuan Dist. Ct. *supra note 38*, ¶ 3, lines 32-33.

[FN70]. *Id.* ¶ 3, lines 33-36.

[FN71]. *Id.* ¶ 3, lines 36-39.

[FN72]. *Id.* ¶ 3, lines 39-41.

[FN73]. *Id.* ¶ 3, lines 47-48.

[FN74]. *Id.* ¶ 3, lines 46-49.

[FN75]. *Id.* ¶ 3, lines 50-53.

[FN76]. *Id.* ¶ 3, lines 53-56.

[FN77]. *Id.* ¶ 3, lines 57-58.

[FN78]. The financial condition of the adopter is one criterion for the court to take into consideration when deciding an adoption case. *See* CHILDREN AND YOUTH WELFARE ACT art. 14, ¶ 1 (May 12, 2010).

[FN79]. *See supra* note 41 (“The birth mother of the baby girl, who is also a younger sister of Ms. Lin, claims that ... she would not appeal. And despite the decision made by the court, the family already reached their consensus that, the baby girl would be raised by her sister [Ms. Lin in this case].”).

[FN80]. TAIWAN CIVIL CODE art. 1079-1.

[FN81]. Taoyuan Dist. Ct., *supra* note 38, ¶ 3.

[FN82]. *Id.* ¶ 3, lines 27-28.

[FN83]. *See Zhaobudao Weizhi de Jia [HOME WHERE NOWHERE I CAN FIT IN]*, in Qinai de Bama, Wo Shi Tongzhi [Parents of Lesbians and Gays Talk About Their Experiences] 185, 192-93. (Zheng Zhiwei eds., 2003). This book is published in Chinese, but an English title is provided by the editor.

[FN84]. JEFFREY WEEKS, BRIAN HEAPHY, AND CATHERINE DONOVAN, SAME SEX INTIMACIES: FAMILIES OF CHOICE AND OTHER LIFE EXPERIMENTS 178-79 (2001).

[FN85]. SUZANNE M. JOHNSON & ELIZABETH O'CONNOR, THE GAY BABY BOOM: THE PSYCHOLOGY OF GAY PARENTHOOD 81-82 (New York University 2002).

[FN86]. *Id.*

[FN87]. ALLEN G. JOHNSON, PRIVILEGE, POWER, AND DIFFERENCE 21 (2006). *See also* Chen, *supra* note 3, at 67-68.

[FN88]. Tongjiahui Zhendui Taoyuandiyuan Panjue Tongzhi Buzhun Shouyang Xiaohai de Huiying [Response to the Rejection on Lesbian Adoption], TAIWAN TONGZHI JIATING QUANYI CUJINHUI [TAIWAN LGBT FAMILY RIGHTS ADVOCACY] (Aug. 9, 2007), *available at* http://www.lgbtfamily.org.tw/events_content.php?id=23&page=1 (last visited Jul. 20, 2012).

[FN89]. Dafaguan Jieshi [Grand Justices Interpretations] No. 694, Concurring Opinion from Grand Justice Ye Baixm at 14, n. 31 (Jieshi Dec, 30, 2011).

[FN90]. “Recipient couple: refers to a husband and wife receiving artificial reproduction, where the wife's uterus can carry a fetus and give birth to a child.” TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(3) (“Recipient couple: refers to a husband and wife receiving artificial reproduction, where the wife's uterus can carry a fetus and give birth to a child.”). The definition of “artificial reproduction (mentioned as “ART” in this article)” in this statute and in context of Taiwan laws is “the use of artificial means not involving sexual intercourse to achieve conception and birth with assistance from reproductive medicine.” TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(1).

[FN91]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 11.

[FN92]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(3).

[FN93]. In vitro fertilization (“IVF”) is the joining of a woman's egg and a man's sperm in a laboratory dish. In vitro means “outside the body.” Fertilization means the sperm has attached to and entered the egg. Medline Plus, A Service of the US National Library of Medicine, NIH National Institutes of Health (Sep, 27 2012), *available at* <http://www.nlm.nih.gov/medlineplus/ency/article/007279.htm> (last

visited Oct. 14, 2012).

[FN94]. TAIWAN CIVIL CODE art. 1061.

[FN95]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 23, ¶ 1.

[FN96]. *Id.* art. 16, ¶ 1(6). According to the law, implantation of five or more embryos at time is prohibited. *Id.*

[FN97]. *Id.* art. 23.

[FN98]. TAIWAN CIVIL CODE art. 1063, ¶ 2.

[FN99]. *See* DAI ET AL., *supra* note 10, at 300 & 306. Since the legal parent-child relationship is severed, the husband and the child become unrelated under the law. Thus no rights or responsibilities emerge from the legal parent-child relationship. *Id.*

[FN100]. TAIWAN CIVIL CODE art. 1067, ¶ 1.

[FN101]. *Id.* art. 1067, ¶ 1.

[FN102]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 23, ¶ 1.

[FN103]. *Id.* art. 23, ¶ 2.

[FN104]. *Id.* art. 23, ¶ 3.

[FN105]. *Id.*

[FN106]. *See supra* note 12.

[FN107]. TAIWAN CIVIL CODE art. 1063, ¶ 2. Birth mothers may disavow legal fatherhood but not motherhood. *Id.*

[FN108]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 24, ¶ 1.

[FN109]. To donate oocytes, a woman has to take more invasive procedures than a male sperm donor. She has to take ovulation drugs and follistim injections, and when

the ovulation is due, vaginal ultrasound and laparoscopy are used to retrieve the oocytes. *See* Wu Jialing, Taiwan de Xin Shengzhrkeji yu Xingbie Zhengzhi, 1950-2000 [New Reproductive Technology and Gender Politics in Taiwan, from 1950 to 2000], TAIWAN SHEHUI YANJIU JIKAN [TAIWAN: A RADICAL QUARTERLY IN SOCIAL STUDIES], No. 45 March 2002. (The original author provided an English title for the paper, but all the other parts of this paper are written in Chinese.) Furthermore, due to the treatment in the donation process, “about 1-10 [percent] of oocyte donors may have ovarian hyper-stimulation syndrome (“OHSS”), ascites, chest effusion, or anesthesia complications, infection, and bleeding.” Xmgzhengyuan Weishengshu Xmwengao [Press Release from Department of Health, Executive Yuan] (Jun. 24, 2005), *available at* http://www.doh.govtw/CHT2006/DM/DM2_p01.aspx?class_no=25&now_fod_list_no=7369&level_no=2&doc_no=41537 (last visited Oct. 14, 2012).

[FN110]. *See supra* note 108.

[FN111]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 24, ¶ 2.

[FN112]. *Id.* art. 2, ¶ 1(3).

[FN113]. Yishi Pabeifa, Niltongzhi Qmzimeng Nanyuan [Doctors Won't Risk Breaking the Law, Lesbians Fail to Have a Baby], LIANHEBAO [UDN NEWSPAPER], Feb. 20, 2003, at B4. Article 35 of the Taiwan Artificial Reproduction Act demands that a doctor who performs artificial reproduction technologies on recipients other than infertile married couples be subject to disciplinary sanctions by the Medical Association and Department of Health, in accordance with Article 25 of the TAIWAN PHYSICIAN ACT. In addition to the sanctions, the recipients and the doctor will be fined between 100,000 New Taiwan (“NT”) dollars and 500,000 NT dollars, according to Article 33 of the TAIWAN ARTIFICIAL REPRODUCTION ACT.

[FN114]. Li Huishan, Niltongzhi Jiating Qinziguanxi Fazhi zhi Yanjiu [Study on the Laws of Parent-Child Relationship in Lesbian Family] 18 (2008) (Master Thesis, Institute of Law for Science, Technology, National Tsinghua University, 2008) (copy on file with Main Library, National Tsinghua University). The original author provided an English title for the thesis, but all the other parts of this thesis are written in Chinese.

[FN115]. Xingfu Lantuxia de Xishengpin [Sacrifices for a Blueprint of Happiness], LAMABAO [THE LAMANNEWS] (Jul. 2006), *available at* http://blog.yam.com/la_ma_news/article/6282342 (last visited Jul. 14, 2012).

[FN116]. Li, *supra* note 114, at 18. The cost of one cycle of artificial reproduction treatment might cost about 170,000 NT dollars. *See* Rengongshengzhi Lmcheng ji Jiage [Process and Price of Artificial Reproduction], Taida Yiyuan [National Taiwan University Hospital] (Oct. 8, 2012), *available at* <http://www.ntuh.govtw/IMSC/services/items/%E4%BA%CE5%CB7%CA5%CE7%C94%C9F%CE6%CAE%C96%CE6%CB5%C81%CE7%CA8%C8B%CE5%C8F%C8A%CE5%C83%CB9%CE6%CA0% %B C.aspx> (last visited Oct. 9, 2012).

[FN117]. For instance, a lesbian mother, who had her first child through artificial reproduction and her second child through self-insemination, said that “in comparison to artificial reproduction, using self-insemination doesn't require the pulling of a string to find a doctor abroad to help you with the technology, and doesn't cost me hundreds of thousands [of NT dollars]. It's more inexpensive and convenient.” *See* Guocheng Zhong de Diandi [Trivia in the Process (of Having Children)], LAMABAO [THELAMANEWS](Oct. 1, 2008), http://blog.yam.com/la_ma_news/article/18174744 (last visited Oct. 9, 2012).

[FN118]. Lazi Shouyun DIY, Xiangyao Baobao Zijilai [Lesbian DIY conception, Make the Baby by Yourself], LAMABAO [THELAMANEWS] (Jan.2007),*available at* http://blog.yam.com/la_ma_news/article/7864689 (last visited Jul. 20, 2012).

[FN119]. Diguan Qujmgshouyun, Niltongzhi Shengwa [Self-Inseminated by Pipette, Lesbian Got Her Child], LIANHEWANBAO [UDN EVENING NEWSPAPER], Oct. 9, 2006, at A11.

[FN120]. TAIWAN CIVIL CODE art. 1065, ¶ 1.

[FN121]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 13.

[FN122]. Julien S. Murphy, *Should Lesbians Count as Infertile Couples? Antilesbian Discrimination*, in ASSISTED REPRODUCTION IN QUEER FAMILIES, QUEER POLITICS 182, 184 (Mary Bernstein & Renate Reimann eds., 2001).

[FN123]. Yige Nilsheng, Shengxiaohai [One Girl Only, to Bear a Child], LAMABAO [THE LAMANNEWS] (Mar. 2006), *available at* http://blog.yam.com/la_ma_news/article/5807088 (last visited Jul. 20, 2012).

[FN124]. *Id.* It normally costs lesbian mothers hundreds of thousands of NT dollars to go abroad to receive treatments of artificial reproduction technologies.

[FN125]. Murphy, *supra* note 122, at 185-6.

[FN126]. Rengongshengzhi Dixiahua, Tongzhijiating Meibaozhang [Illegal Artificial Reproduction, LGBT Families Without Protection], TAIWAN TONGZHI JIATING QUANYI CUJINHUI [TAIWAN LGBT FAMILY RIGHTS ADVOCACY] (May 10, 2009), *available at* http://www.lgbtfamily.org.tw/events_content.php?id=26&page=1 (last visited Jul. 20, 2012).

[FN127]. Li, *supra* note 114, at 18.

[FN128]. TAIWAN ARTIFICIAL REPRODUCTION ACT art. 2, ¶ 1(8).

[FN129]. Same-sex Marriage Around the World, CBC NEWS (Feb. 07, 2012), *available at* <http://www.cbc.ca/news/world/story/2009/05/26/f-same-sex-timeline.html> (last visited June 29, 2012).

[FN130]. These activists are the Taiwan LGBT Family Rights Advocacy (formerly the Alliance of Lesbian Mothers) and Taiwan Alliance to Promote Civil Partnership Rights (“TAPCPR”). For an introduction of the former institute, *see infra* note 126; for the latter institute, *see infra* note 153.

[FN131]. “MSN Messenger Service is an instant messaging program that tells you when your friends are online so that you can send an instant message to a friend or “talk” with several friends at once.” *See* Description and Availability of MSN Messenger Service, Microsoft, *available at* <http://support.microsoft.com/kb/240063/en-us> (last visited Dec. 25, 2012).

[FN132]. *About Us*, Taiwan Tongzhi Jiating Quanyi Cujinhui [Taiwan LGBT Family Rights Advocacy], *available at* http://www.lgbtfamily.org.tw/index_en.php (last visited Jul. 11, 2012).

[FN133]. The LaMaNews was published from 2006 to 2011, and all issues are collected in a blog, *available at* http://blog.yam.com/la_ma_news (last visited Oct. 7, 2012).

[FN134]. *About Us*, *supra* note 132.

[FN135]. Article 1 of Taiwan Reproduction Act states that “This Act is enacted for the purpose of ... protecting the rights and interests of infertile couples ...” TAIWAN REPRODUCTION ACT art. 1. When same-sex marriage is legalized in Taiwan, married lesbian couples will have the chance to be included in the Taiwan Reproduction Act.

[FN136]. Murphy, *supra* note 122, at 190.

[FN137]. *Id.* at 182.

[FN138]. Although same-sex marriage is not recognized by the law, the advocacy of same-sex marriage legalization in Taiwan is steadily moving forward. *See infra* Part IVB.

[FN139]. *See* Survey, *supra* note 5.

[FN140]. LIN YUNHSIEN & HUANG LILI, XINGBIEPINGDENG JIBENFA WEITUOYANJIUAN QIMOBAGAO FINAL REPORT OF COMMISSIONED RESEARCH PROJECT ON THE BASIC LAW FOR GENDER EQUALITY] 137 (2012).

[FN141]. *Id.* at 135-6.

[FN142]. *Id.* at 135.

[FN143]. *Id.* at 1.

[FN144]. Xmgzhengyuan Xingbiepingdengchu Yibailingyinian Yiyueyin Chengli [The Gender Equality Bureau of Executive Yuan Has Been Established since Jan. 1, 2012], XINGZHENGYUAN XINGBIEPINGDENGHUI [THE GENDER EQUALITY COMMITTEE OF EXECUTIVE YUAN], *available at*

[http://www.gec.ey.gov.tw/NewsContent.aspx?
n=4F80950EF52341B3&sms=4ABB9A64AF5D421F&s=590BDAB7F2102F32](http://www.gec.ey.gov.tw/NewsContent.aspx?n=4F80950EF52341B3&sms=4ABB9A64AF5D421F&s=590BDAB7F2102F32) (last
visited Aug. 04, 2012).

[FN145]. Professor Li-Li Huang is currently the Director of the Institute of Learning Science, National Tsing Hua University, Taiwan. Professor Huang mainly publishes in the fields of Chinese psychology, social psychology, and gender and psychology. She has received numerous awards for academic achievements and has been the editor of many academic journals in Taiwan and internationally. *See* Huang Lili, Institute of Learning Science, National Tsing Hua University, *available at* <http://ils.nthu.edu.tw/files/14-1082-12095,r1368-l.php> (last visited: Dec. 26, 2012)

[FN146]. LIN & HUANG, *supra* note 140, at 2.

[FN147]. *Id.* at 195.

[FN148]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 5 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 198.

[FN149]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 10 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 199.

[FN150]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 11 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 199.

[FN151]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 12 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 199-200.

[FN152]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 13 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 200.

[FN153]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 15 - art. 26 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 200-03.

[FN154]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 2, ¶ 1, subparagraph 3 (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra*

note 140, at 197.

[FN155]. The Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY art. 18 (copy on file with Ministry of Interior). “The Government should promote gender equality within families, protect the rights of alternative families and strengthen their functions, and build a social support system for such families.” LIN & HUANG, *supra* note 140, at 201-02.

[FN156]. The Preamble of Draft of TAIWAN BASIC LAW FOR GENDER EQUALITY (copy on file with Ministry of Interior). *See* LIN & HUANG, *supra* note 140, at 195.

[FN157]. For example, the Draft of the Amendment to TAIWAN CIVIL CODE arts. 972, 1122, 1058-1 to 1058-13. *See infra* Part IV.B The Proposed Amendment to the Taiwan Civil Code.

[FN158]. About TAPCPR, TAIWAN BANLÜQUANYI TUIDONGLIANMENG [TAIWAN ALLIANCE TO PROMOTE CIVIL PARTNERSHIP RIGHTS], <http://tapcpr.wordpress.com/%E9%97%C9C%CE6%C96%CBC%CE4%CBC%CB4%CE4%CB6%CE7%C9B%/> (last visited Jul. 20, 2012).

[FN159]. Taiwan Banlūquanyi Tuidonglianmeng Banlilzhidu, Shouyang, Duorenjiashu Caoan [Draft for Partnership, Adoption, Alternative Family Dependents (Sep. 30, 2011)], TAIWAN BANLÜQUANYI TUIDONGLIANMENG [TAIWAN ALLIANCE TO PROMOTE CIVIL PARTNERSHIP RIGHTS], <http://tapcpr.files.wordpress.com/2011/11/e58fb0e781a3e4bcb4e4beb6e6ac8ae79b8ae68e> (last visited Jul. 15, 2012) [hereinafter *Taiwan Alliance September Draft*].

[FN160]. Taiwan Banlūquanyi Tuidonglianmeng Banlilzhidu, Shouyang, Duorenjiashu Caoan [Draft for Partnership, Adoption, Alternative Family Dependents (Jul. 31, 2012)], TAIWAN BANLÜQUANYI TUIDONGLIANMENG [TAIWAN ALLIANCE TO PROMOTE CIVIL PARTNERSHIP RIGHTS], <http://tapcpr.files.wordpress.com/2012/07/20120731e4bcb4e4beb6e79b9fe6b091e6b395e4> (last visited Aug. 01, 2012) [hereinafter *Taiwan Alliance July Draft*].

[FN161]. *Id.* at 9.

[FN162]. The Draft of the Amendment to TAIWAN CIVIL CODE art. 972 (copy on

file with author). *See Taiwan Alliance July Draft, supra* note 160, at 10.

[\[FN163\]](#). TAIWAN CIVIL CODE art. 1022-8.

[\[FN164\]](#). The Draft of the Amendment to TAIWAN CIVIL CODE art. 1122 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 70.

[\[FN165\]](#). Draft of the Amendment to TAIWAN CIVIL CODE arts. 1058-1 to 1058-13 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 32-46.

[\[FN166\]](#). *Id.*

[\[FN167\]](#). *Taiwan Alliance July Draft, supra* note 160, at 8.

[\[FN168\]](#). TAIWAN CIVIL CODE art. 1061.

[\[FN169\]](#). The Draft of the Amendment to TAIWAN CIVIL CODE art. 1058-7 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 39-40.

[\[FN170\]](#). The Draft of the Amendment to TAIWAN CIVIL CODE art. 1058-8 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 40.

[\[FN171\]](#). TAIWAN CIVIL CODE art. 1074.

[\[FN172\]](#). *Id.*

[\[FN173\]](#). The Draft of the Amendment to TAIWAN CIVIL CODE art. 1058-8, ¶ 1 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 40.

[\[FN174\]](#). *Id.*

[\[FN175\]](#). The Draft of the Amendment to TAIWAN CIVIL CODE art. 1079-1, ¶ 2 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 52-53.

[\[FN176\]](#). The Draft of the Amendment to TAIWAN CIVIL CODE art. 1079-1, ¶ 21 (copy on file with author). *See Taiwan Alliance July Draft, supra* note 160, at 53-54.

[\[FN177\]](#). The anti-discrimination clause would benefit all lesbian, gay, bisexual, transgender, intersex, queer (“LGBTQ”) people who wish to adopt, but the phrasing here is intended to keep the theme of this article focused on lesbian mothers.

國科會補助計畫衍生研發成果推廣資料表

日期:2013/10/23

國科會補助計畫	計畫名稱: 單身女性與女同志伴侶之生育自由: 近用人工助孕科技之權利基礎
	計畫主持人: 林昀嫻
	計畫編號: 101-2629-H-007-002- 學門領域: 基礎法學
無研發成果推廣資料	

101 年度專題研究計畫研究成果彙整表

計畫主持人：林昀嫻		計畫編號：101-2629-H-007-002-					
計畫名稱：單身女性與女同志伴侶之生育自由：近用人工助孕科技之權利基礎							
成果項目		量化			單位	備註（質化說明：如數個計畫共同成果、成果列為該期刊之封面故事...等）	
		實際已達成數（被接受或已發表）	預期總達成數（含實際已達成數）	本計畫實際貢獻百分比			
國內	論文著作	期刊論文	0	0	100%	篇	
		研究報告/技術報告	0	0	100%		
		研討會論文	0	0	100%		
		專書	0	0	100%		
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
	參與計畫人力（本國籍）	碩士生	2	2	100%	人次	
		博士生	0	0	100%		
		博士後研究員	0	0	100%		
		專任助理	0	0	100%		
國外	論文著作	期刊論文	1	1	100%	篇	
		研究報告/技術報告	0	0	100%		
		研討會論文	1	1	100%		
		專書	0	0	100%	章/本	
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
	參與計畫人力（外國籍）	碩士生	2	2	100%	人次	
		博士生	0	0	100%		
		博士後研究員	0	0	100%		
		專任助理	0	0	100%		

<p style="text-align: center;">其他成果</p> <p>(無法以量化表達之成果如辦理學術活動、獲得獎項、重要國際合作、研究成果國際影響力及其他協助產業技術發展之具體效益事項等，請以文字敘述填列。)</p>	<p style="text-align: center;">無</p>
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	成果項目	量化	名稱或內容性質簡述
科 教 處 計 畫 加 填 項 目	測驗工具(含質性與量性)	0	
	課程/模組	0	
	電腦及網路系統或工具	0	
	教材	0	
	舉辦之活動/競賽	0	
	研討會/工作坊	0	
	電子報、網站	0	
	計畫成果推廣之參與(閱聽)人數	0	

國科會補助專題研究計畫成果報告自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估

達成目標

未達成目標（請說明，以 100 字為限）

實驗失敗

因故實驗中斷

其他原因

說明：

2. 研究成果在學術期刊發表或申請專利等情形：

論文： 已發表 未發表之文稿 撰寫中 無

專利： 已獲得 申請中 無

技轉： 已技轉 洽談中 無

其他：（以 100 字為限）

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以 500 字為限）

在本研究計畫執行過程中，計畫主持人曾赴澳洲雪梨參加 2013 年第六屆全球家庭法與兒童權利論壇（the 6th World Congress on Family Law and Children's Rights）並發表論文，並與其他同樣進行家庭法、人工生殖、性別研究、女性主義法學等研究項目的研究者交流意見，對他國有關人工助孕科技及女性生育自由的法律規範、政策方針、未來發展方向都增進了瞭解。

計畫主持人也在與來自不同國家的研究者討論以後，獲得許多寶貴意見，並對已於該會議中發表的論文進行反思和修正，並在論文全文完成以後，選擇適合該文主題之國外著名法學期刊投稿。

目前本計畫投稿之論文已有《Lesbian Parenting in Taiwan: Legal Issues and the Latest Developments(台灣女同志母職實踐：法律議題及最新發展)》一文獲得 Asian-Pacific Law & Policy Journal（亞太法律與政策研究期刊，由美國 University of Hawaii School of Law 發行，列入 Westlaw 資料庫，並於 W&L Law Journal Ranking System 之「美國法學院亞洲法期刊評比」排名第 2）刊登。研究成果本身獲得肯定以外，有關人工助孕科技實現生育自由、同志伴侶與人工生殖科技的議題皆有未來發展的計畫及可能性，執行成果堪稱豐碩。