

WOMEN, WORK AND PROTECTIVE LABOR LEGISLATION
IN TAIWAN

A THESIS
SUBMITTED TO THE STANFORD PROGRAM IN INTERNATIONAL LEGAL
STUDIES
AT
STANFORD LAW SCHOOL,
STAFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
JUDICIAL SCIENCE MASTER

By

Helen I-chun Chou

May, 1998

Abstract

Protective labor legislation is legislation that imposes restrictions on women's employment for the purpose of protecting them. In this thesis, I explore the relationship among Taiwanese protective labor legislation, industrialization development and working-class women's status, and analyze the merits of such legislation.

I argue that protective labor legislation is fundamentally flawed as it serves to keep Taiwanese working-class women out of mainstream labor market, define them as a special social category, and reinforce gender stereotypes. Thus, protective labor legislation should be significantly revised. However, given that Taiwanese working-class women have been socialized in the norms of hard work, responsibility, compliance and subordination, I argue that protective labor legislation should be altered to be a non-gender oriented health and safety program that can encompass individuals' reproductive needs and take individuals' relationship with others into consideration.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. THE EMERGENCE OF WORKING - CLASS WOMEN IN TAIWAN'S POLITICAL AND ECONOMIC ARENAS	3
A. EVOLUTION OF THE HISTORICAL FORMATION OF WOMEN'S STATUS IN THE WORKPLACE	3
i. <i>Women and Work during the period of Japanese Colonization (1895 – 1945)</i>	4
ii. <i>Women and Work in Industrializing Taiwan (The Postwar Period)</i>	6
iii. <i>Patriarchy and the Formation of Factory Women as a New Social Group</i>	11
B. WOMEN AND WORK IN INDUSTRIALIZED TAIWAN	15
i. <i>Women and Work in Modern Taiwan</i>	15
ii. <i>Women's Status in Low-Level Labor Sector</i>	20
1. <i>Women's Status in Harmful Workplaces</i>	20
2. <i>The Story of Working Women in Gas Stations</i>	23
3. <i>The Story of Highway Toll Collectors</i>	25
4. <i>Working Hour Restrictions on Female Workers</i>	27
5. <i>The Impact of Protective Measures on Taiwanese Female Workers</i>	29
C. STATE INTERVENTION IN WOMEN'S WORK AND WELFARE CAPITALISM IN TAIWAN.....	33
i. <i>State Intervention in Women's Work</i>	33
1. <i>Reasons for State Intervention</i>	33
2. <i>State Intervention and Protective Labor Legislation</i>	35
3. <i>The Effect of State Intervention in Women's Employment</i>	38
ii. <i>The Welfare State Ideology in Protective Labor Legislation and the Proposed Occupational Equality Law</i>	40
1. <i>The welfare state ideology in the protective labor legislation and the proposed occupational equality law</i>	40
2. <i>The Implications of the Welfare State Ideology in Protective Labor Legislation and the Proposed Occupational Equality Law</i>	41
D. DIFFERENTIAL TREATMENT, GENDER EQUALITY AND POWER STRUCTURE	42
III. COMPARATIVE LEGAL EXPERIENCES	49
A. US SOLUTIONS.....	49
i. <i>American Legal History of Protective Labor Laws and Fetal Protection</i>	49
1. <i>Working-hours Legislation for Women</i>	49
2. <i>Minimum Wage Laws</i>	51
ii. <i>Title VII and Protective Labor Legislation</i>	52
iii. <i>Johnson Controls – Discrimination Against Potentially Pregnant Workers</i>	53
B. JAPANESE SOLUTIONS	54
i. <i>Historical Background of Protective Labor Legislation</i>	54
ii. <i>Current Protective Labor Legislation in Japan</i>	56
1. <i>Limitation on Women Workers' Overtime and Rest-day Work</i>	56
2. <i>The Ban on Night Work</i>	58
3. <i>The Ban on Underground Work</i>	59
4. <i>Pre-Childbirth and Post-Childbirth Protections</i>	60
C. REMARKS ON LEGAL EXPERIENCES OF THE UNITED STATES AND JAPAN.....	61
i. <i>A Comparison of Protective Labor Legislation in Japan and Taiwan- Is Japanese Model Suitable for Taiwan?</i>	61
ii. <i>Remarks on US Solutions – Comparing with Taiwan's Legal Experiences</i>	64
IV. A BETTER STRATEGY TO REVISE THE LAW REGARDING PROTECTIVE LABOR LEGISLATION	70
A. SOCIOCULTURAL CONSTRUCTION OF TAIWANESE WOMEN	70
B. WOMEN'S VOICE – WOMEN'S SELF PERCEPTION OF THEIR WORK AND LIVES.....	79

C.	HOW SHOULD THE LAW BE?	84
i.	<i>Alter Sex-based Protectionism to Safety and Health Regulation</i>	87
1.	From Gender-specific Protectionism to a Non-gender Approach	87
2.	Why are Safety and Health Regulations Needed? – Market Rhetoric versus Government Regulation.....	89
3.	Democratic Solution -- A joint labor-manager health-and safety committee	95
4.	Collective Bargaining Power of Women.....	97
D.	PROPOSAL FOR THE OCCUPATIONAL EQUALITY LAW	98
i.	<i>The Need of an Occupational Equality Law</i>	98
ii.	<i>How Should the Occupational Equality Law Respond to the Revision of Protective Labor Legislation</i>	99
V.	CONCLUSION	100