Bridging Cultures and Traditions in the Reconceptualisation of the Value of Non-financial Contributions to the Marriage Relationship

Submitted by Chung-Yang Chen to the University of Exeter as a thesis for the degree of Doctor of Philosophy in Law

In February 2011

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ABSTRACT

In the first part of this century, the traditional common law jurisdiction of England and Wales and the civil law jurisdiction of Taiwan simultaneously gave increased legal recognition of the homemaker’s non-financial contributions to the marriage relationship, albeit using quite different mechanisms to achieve this.

Family law in both jurisdictions has faced the issue of whether it should adapt to changed social norms by better reflecting the equal partnership discourse of marriage in the value that should be given to non-financial contributions typically made by women, such as housework and childcare, both during the marriage and on divorce. Yet, whether and how to do this has been the subject of much debate in both jurisdictions.

This thesis therefore considers how the laws in these jurisdictions assess the value of non-financial contributions, before, during and after marriage (i.e. on divorce). It explores the extent to which they meet the aim of achieving substantive gender equality by weighing their achievements against the principles of gender mainstreaming. In order to evaluate this in the context of Taiwan where a gender mainstreaming approach was employed to frame the recent legislative reforms, a qualitative empirical research study was undertaken.

The study also considers how social and cultural norms operate alongside or in opposition to the intended effects of legal developments in this field and argues that at the very least, stronger legal provisions going beyond gender neutral laws are needed to remove the traditional gendered assumptions about the low value of non-financial contributions.

Therefore, this study intends to explore the problems which result from these socio-legal phenomena and, drawing on the strengths and weaknesses identified in the comparative study of Taiwan and England and Wales, put forward possible legal solutions. These, it is argued, involve a reconceptualisation of the value of non-financial contributions to marriage.
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ACKNOWLEDGEMENT

First, I am very grateful to my supervisor, Professor Anne Barlow, whose encouragement, academic guidance and support from the initial to the final level enabled me to develop an understanding of the subject.

Second, it is an honour for me to present this thesis to my parents and sister who have provided the financial support to make my dream to study in UK come true.

Third, I owe my deepest gratitude to my dearest wife Melanie and little baby Becky for giving me a wonderful family life. This thesis would not have been possible without their love and support during the completion of this thesis.

Lastly, I offer my regards and blessings to all of those who supported me in any respect during the completion of the project.

Chung-Yang CHEN