


## Justice, Emotion, and Belonging: Legal Consciousness in a Taiwanese Family Conflict

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This case study of a family conflict in Taiwan explores how legal consciousness is emotionally driven, intersubjective, and dependent on relational factors that are deeply connected to an individual's perception of the self–other relationship and affinity therein. As the members of the Lee family negotiated emotionally on issues involving elder care and inheritance, their adoption of law was at times absent, at others influential, but always shaped by certain Chinese concepts such as *zìjǐ rén* (自己人), which constitute the emotional complex of belonging in Taiwan. This cultural patterning identifies a person as included, accepted, and respected by the group and when in conflict, is the driving force behind a disputants' pursuit of an identity that places them on moral high ground as a form of justice. Rather than depending on rational decision making or legal norms, their legal consciousness was determined by the sense of self, rectitude, emotion, and subjectivity.

Being wronged by a member of a group to which we belong and feel connected is an occurrence that happens often in our everyday lives. When we experience a wrong at the hands of colleagues, friends, or family members, how do we define, contest, and respond to what seems unfair? Under what circumstances might we view the law as relevant in such situations, and when might we invoke it? To answer these questions, scholars have increasingly turned to the concept of legal consciousness, a research paradigm focusing on the degree to which the concepts and reasoning of law in everyday interactions are understood, related to, interpreted, or implemented within an individual or collective consciousness (Chua and Engel 2019; Ewick and Silbey 1998; Engel and Munger 2003; McCann 1994). However, it is often the case that individuals find themselves in unstable and confusing conflict situations, where the law is not always cognitively present and may or may not be invoked (Engel 2005; Engel and Engel 2010; Liu 2018). This article highlights the role of emotions in the development or nondevelopment of disputes, and it suggests that they can largely determine how, when, and why the law becomes relevant in our lives.

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The type of dispute discussed herein—a family conflict over elder care and inheritance—has received increased attention among law and society researchers who have aimed to contribute to the analysis of how one’s desire, intent, and everyday actions affect legal consciousness within the private and hard-to-reach realm of personal relationships (Friedman 2009; Hartog 2012). In such disputes among intimates feelings are particularly salient; however, in the context of Taiwan, they manifest themselves in relation to key Chinese concepts relating to the cultural interpretation of solidarity, identity, respect, and familial obligation, resulting in the emotionally driven transformation of conflict. Taiwanese law does not consider the distribution of family property, the provision of elder care, and the matter of inheritance as related to one another, despite the emergence of cases that deal with the issue of individuals having obligations to support their relatives but receiving no compensation.

Through the detailed exploration of a particularly complex Taiwanese family conflict, this case study aims to contribute to the growing body of literature regarding sociolegal theory on the relational and affective factors involved in the construction of legal consciousness.

## **Exploring Legal Consciousness**

The development of legal consciousness research has evolved substantially since the 1980s when the first attempts were made to bridge the gap between law on the books and law in action (see Silbey 2005). Most scholars today would agree that the meaning-making process—which evolves throughout a lifetime of social experiences and practices, the disputes or conflicts one encounters, and one’s culturally influenced perception of what is “reasonable” or acceptable—is central to the development of legal consciousness (Engel and Munger 2003; Ewick and Silbey 1998; McCann 1994; Merry 1992).

To reach a better understanding of how the meaning of legality is constituted through everyday practices, or rather the “cultural production” of hegemonic law (Silbey 2005: 355–357), Silbey stresses the need to focus on the “middle level between citizen and the transcendent rule of law”; this space is embodied by social institutions such as the family unit, schools, corporations, or churches where the formation of cultural meaning, social hierarchy, and ultimately legal consciousness can be empirically observed (Miller 2014). However, although scholars agree that the focus should be on this middle level, not as much weight is placed on legal hegemony (Chua and Engel 2019; Liu 2015). When

addressing the issue of law as a form of knowledge that serves as justification for what goes on in social transactions (Silbey and Sarat 1987), they rather suggest that more attention be put on the mutually constituted effect of law and identity that is connected to an individual's sense of self (Abrego 2008, 2018; Chua and Engel 2019; Engel and Munger 2003; Hartog 1995; Tungnirun 2018), or how other norms, customary practices, or social positions influence the way individuals decide to mobilize their rights (Abrego 2011; Albiston 2010; Boittin 2013; Gallagher 2006; Marshall 2005).

This emphasis on the role of identity in legal consciousness is magnified by Chua and Engel's (2019) reasoning that an identity is inherently required for the law to be perceived and therefore plays a distinct role in determining how relevant the law is to an individual when faced with a conflict. Case studies carried out in North America (Engel and Munger 2003) and Thailand (Engel and Engel 2010) found that the formation of identity shapes legal consciousness, and vice versa, in a process that is not fixed but transformed throughout the course of one's life. According to Chua and Engel, this is "a fully collaborative phenomenon" in which our legal consciousness is shaped by the relationships or affinity shared by individuals, and exists more than likely "among and between individual minds rather than within them" (2019). These subjective and culturally influenced dimensions of identity formation imply that the role of law may take different forms throughout the course of a conflict in which an individual's identity (or sense of self), the nature of their relationships, and the emotions experienced are the driving forces in their legal consciousness.

### **Emotion in Legal Consciousness**

Emotions, in simplified terms, are the "bodily sensations or feelings, of greater or lesser intensity" (Gould 2013) that arise in response to a situation, events, or experiences (Damasio 2004). A growing trend in legal consciousness research has begun to view the role of one's emotions in relation to the culturally embedded sense of self, giving them more weight in the development of legal consciousness than previously assumed and presenting an entirely different concept of how and when the law may become active in the thoughts and actions of individuals (Abrego 2011; Engel 2005; Engel 2016a, 2016b; Engel and Engel 2010; He et al. 2013; Kim 2015; Liu 2018; Tungnirun 2018).

In their research on emotion and its relationship with the law, Bandes & Blumenthal (2012: 163–164) describe a provisional and extended working definition based on current research from several disciplines:

Emotions are a set of evaluative and motivational processes, distributed throughout the brain, that assist us in appraising and reacting to stimuli and that are formed, interpreted, and communicated in social and cultural context. They influence the way we screen, categorize, and interpret information; influence our evaluations of the intentions or credibility of others; and help us decide what is important or valuable. Perhaps most important, they drive us to care about the outcome of our decision making and motivate us to take action, or refrain from taking action, on the situations we evaluate.

This “motivational process” is evident in social movements, where emotions or feelings serve as “an important means by which [we] human beings come to know and understand ourselves and our contexts, our interests and commitments, our needs and our options in securing those needs” (Gould 2013: 401). Several other law and emotion scholars also concur that affective factors are not only closely tied to our evaluations or moral judgments but when expressed and acted upon have the power to transform the reality of the parties involved (Nussbaum 2001; Reddy 2001; Solomon 1995). Although these dynamic processes are considered to be vital to decision making (LaDoux 1996), the effect—whether it is a positive or negative one—is still being debated (Bandes and Blumenthal 2012).

In legal situations, emotions have typically been characterized by legal consciousness scholars as disruptive to rational discourses and the orderly functioning of legal actors and institutions (Conley and O’Barr 1998; Merry 1992; Sarat and Felstiner 1986; Yngvesson 1994). Sociolegal researchers, too, have often focused their analysis of legal consciousness on deliberate, conscious thought processes and behaviors rather than the role of emotions and nonconscious cognition in shaping perceptions and decision making (Maroney 2016). Bandes (2012), however, discusses a body of research that explores how in institutional settings, such as formal courts with judges and jurors, the effect of emotion on legal decision making, as well as the effect of legal decision making on one’s emotions, can be observed. If law and emotion are indeed intertwined at the formal judicial level where emotionality is discouraged, then it can be inferred that emotions also play a distinct role—and maybe even a more robust one—at the individual and interpersonal level (i.e., the family unit or one’s culture) where emotionality is inherent (Bandes & Blumenthal 2012).

It follows, then, that legal consciousness is more than likely shaped and revised in accordance with an intersubjective and relational “emotional complex”—an aggregation of emotions,

memories, perceptions, and wishes (Atwood and Stolorow 1984). This affects one's cognition, understanding of reality, and subsequent reactions to events (Clore and Huntsinger 2007; Strohminger et al. 2011), and when in conflict, modulates the intensity of a given dispute. It leads disputants to place primary importance on moral self-perfection rather than legal vindication (Li 2001; Li and Fischer 2004; Watkins and Biggs 1996), and it is the force that drives individuals to strive to become someone who is respected and accepted by others (Cohen et al. 2006; Hsueh et al. 2005; Li and Fischer 2007).

### **Family Law and Emotion: Elder Care and Inheritance**

Emotions such as love, hate, and jealousy are intrinsic to close relationships such as the family. Due to the ambiguity of feelings and the private, intimate nature of family life, it is a challenge to analyze the effect of emotions when trying to make sense of a dispute that might potentially involve legal action; positive and negative emotions may not be so sharply separated in this social domain (Abrams 2009; Maldonado 2008). Thus, the call has been raised for the investigation of legal consciousness in family conflict to take a more complex and holistic approach to understanding the power of emotions other than love (i.e., fear, humiliation, insecurity, guilt, and anger) in relationships that are based on affinity or attachments (Huntington 2008, 2016; Shaver et al. 2009). Although law and emotion scholars have answered that call, observing that disputes that deal with family law, such as divorces, is indeed typified by emotion, they have largely overlooked affective factors in the analysis of family disputes involving elder care and inheritance law (Abrams 2009; Conway 2016; Huntington 2008, 2016; Maldonado 2008).

Hartog's North American case studies (2012) provide some insight into these types of conflicts. Through the analysis of several individual legal cases, the difficulty in restoring order to families experiencing such issues was revealed as he observed the disputants entangled in a dynamic circle of intimacy in which a promise implied love and inclusion and breaking a promise implied hatred and exclusion. The contingency and ambiguity of family relationships, Hartog argues, is deeply complicated by not only the multiplicity and contradictory nature of each individual's identity but also the law's ambivalence and "messy" approach to an unclear question of intent; do family members act out of their rational self-interest or do they act based on the emotional connections they have with their relatives? Arriving at an answer to this question is challenging in that it is often impossible to

transform familial relationships into rationally calculated transactions due to the myriad of feelings experienced by the disputants.

In the context of Taiwan, the above question of intent has traditionally been unnecessary to pose due to a cultural understanding that family members have reciprocal obligations to one another, especially in terms of filial piety (Ikels 2004). As in any Confucian society, *family* is still the basic unit of social and economic order in Taiwan, and it is common to use family organization as a strategy for social and economic mobility. As a result, parental provision of financial assistance to their children continues as they enter into adulthood, particularly for those who wish to pursue higher education as it is seen as a way to honor one's family and ancestors (Fricke et al. 1994: 24–28; Thornton et al. 1984). However, this assistance does not come without an unspoken “price,” as it is also customary for adult children to support their parents financially as they grow older (Lee et al. 1994).

This traditional view of the economic unit being secured by family bonds alone has been challenged by the socioeconomic transition in the past few decades toward individualism (Harrell and Huang 1994). In this article, this concept is understood as the “belief in the primary importance of the individual and in the virtues of self-reliance and personal independence” (Johnson and Johnson 2010: 811) and is usually contrasted with collectivism, or the principle that priority to in-group goals be given over personal goals with an emphasis on preserving in-group integrity, interdependence of members, and harmonious relationships (Schwartz 1990). Although people from East Asian societies such as the Chinese are historically collectivist in nature, they are increasingly prioritizing individualism in assessments of their own happiness and life satisfaction (Steele and Lynch 2013). Several studies have further substantiated the description of Chinese society as becoming increasingly individualistic (Moore 2005; Steele and Lynch 2013; Yan 2010), which is also the case in Taiwan (Harrell and Huang 1994), where family members from younger generations have become more independent and often elect to separate from their traditional duties (Kuo 2014; Shee 2009).

A result of this is that aging parents are often left wondering about their elderly life, and in some cases, this prompts them to help their adult children inconspicuously in order to guarantee their own future well-being and elder care. As the traditional expectation that parents in their old age will live with or be constantly visited by their adult children (Chu and Yu 2004) is not as obligatory or capitulated to as it once was, this informal negotiation process means that the emotional nature of inheritance disputes usually starts long before the death of a parent as family members debate over the issue of who will provide the caretaking.

Evidence of these types of situations can be found in the recent emergence of legal cases in Taiwan concerning a variety of disputes that rarely made it to court in the past, such as the legal guardianship of parents with dementia, lawsuits against adult children (for living expenses or to force them to move out of the family home), and inheritance rights between brothers and sisters (Chen 2017). The filing of these cases shows that the notion of keeping such conflicts within the private domain no longer prevails in Taiwanese society, implicating a shift in legal consciousness.

Despite sociolegal research on Taiwanese inheritance law and elder care gaining interest as of late, the focus has been more on the restructuring of black-letter law (Chen 2017; Huang 2015) as opposed to exploring the issues that ordinary people actually struggle with when trying to resolve a conflict. This is the first study to date that attempts to fill this gap in the scholarship by aiming to analyze the broader sociolegal environment in which legal consciousness is formed and shaped, while investigating the role of emotion in a Taiwanese family conflict involving the issues of elder care and inheritance.

## Methodology

This research followed a qualitative case study design, the preferred method for answering questions of *how*, *what*, or *why* in social or cultural contexts that require a deeper, more thorough interpretation of participant interactions and interpretations over a period of time (Andrade 2009; Creswell and Poth 2007; Fusch et al. 2017; Yin 2009). Case studies have shown to be useful in exposing the subjective and emotional aspects of an individual's legal consciousness (Engel and Engel 2010) and have helped to reveal the cultural context of law through individual strategies and choices (Gluckman 1961) or an unconscious "system of dispositions" to understand law and culture (Yngvesson 2018). This approach has also made possible a "thick description" of how people actually behave and can yield insights into concepts, symbols, and norms that are familiar to a wider section of society (Geertz 1973; Prus 1996; Richards 1982; Woodside and Wilson 2003) and has illuminated inconsistencies in the dispute process that might not be visible in larger, aggregate studies (Andrade 2009; Burawoy 1991, 1998).

While working as a family court mediator in Taiwan, participating in two cases per week over 3 years, I mediated 10 similar, but distinct cases involving the issue of family resource distribution and elderly support. Due to unmistakable similarities with my

court observations, the *Lee*<sup>1</sup> family conflict—which never was mediated in court—stood out as a potential subject of research. It could contribute to describing how ordinary people—in this case, members of a family—actually behave and relate to law in an ongoing dispute. Through the use of personal and participant observations, as well as a continuous series of private interviews<sup>2</sup>, this longitudinal case study presents a triangulated interpretation of the development of the conflict (Creswell and Poth 2007; Yin 2009). To gain a deeper understanding of their experiences, each of the three main participants, “Mother Lee,” the eldest son, and the second son, were asked about their and the other party’s motives for demonstrating such attitudes and behaviors. By encouraging the participants to frame their interpretations themselves, it was possible to see how their narratives unfolded and transformed through the continual addition of new elements (Creswell and Poth 2007) in the retelling of not only events but also dialogues had with other disputants. To avoid bias, they were not asked directly about the legal implications of the event, although issues of family property and inheritance rights were evident from the outset.

### **The Lee Family Conflict: Am I Your *Zìjǐrén*?**

In Taiwan, consciousness is subject to the concept of *zìjǐrén* (自己人, “one of us” or insiders), a culturally embedded emotional complex of belonging that refers to a psychological classification schema of one’s level of relational inclusivity or exclusivity within a given group (Gabrenya and Hwang 1996; Gao et al. 1996; Goodwin and Tang 1996; Yang 2000). To be *zìjǐrén* is a ubiquitous life goal in which great efforts are made to be identified by others as a person who deserves respect and acceptance, which are ambitions found in many other cultures that place a high value on affiliation (Cohen 1966) or interpersonal relationships (Chua and Engel 2019).

It is argued in this article that the manipulation of *zìjǐrén* results in adjustments to the various party’s legal consciousness due to contrasting yet shared interpretations of a given situation. The sense of self, the affinity shared with others, and how disputants react when involved in conflict are all factors in a dynamic interplay that affects one’s sense of justice and ultimately

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<sup>1</sup> The family name has been changed for anonymity.

<sup>2</sup> After obtaining informed consent to begin the data collection process, interviews were conducted periodically from 2011 to 2013 and then again in the summer of 2015 and 2016. The interviews were audio recorded and fully transcribed in Chinese by the author.



determines whether the role of the law is relevant and useful or irrelevant and dissociative. In this view, the *self* is conceptualized through one's experiences within significant relationships and the memories they yield (Chen et al. 2006), offering a wider epistemological net into which the concept of self can expand. The story presented hereafter discusses this phenomena by demonstrating how the cultural sense of belonging affects cognition in Taiwan and in turn, constructs how reality and justice is perceived and acted upon.

### Questioning Belonging

In the mid-1990s, Mother Lee was a homemaker, Mr. Lee was retired, and their three adult children were embarking on their respective academic careers. At the time, the two sons lived independently, whereas the daughter still resided in the family home. When the eldest son expressed his desire to complete a doctorate program abroad, Mother Lee offered financial assistance which required Mr. Lee to take out a mortgage on the family home. The eldest son had always been the family's pride and was seen as having a promising future ahead of him that would honor his parents, and this assistance was likewise extended to his wife when she expressed interest in a PhD. The expenses certainly added up, and when the second son went to study abroad for a master's degree, he was not met with the same level of support that his elder brother had received.

The result of this heavy financial burden forced Mother Lee to work as a housekeeper during the day and engage in piecework in the evening. As this was not sufficient for living expenses, she asked her daughter<sup>3</sup> and second son (once he came back from overseas) to help her monetarily, to which they both agreed. Every month for about 2 years, the second son gave Mother Lee two-thirds of his monthly salary (20,000/34,000  *yuan*; \$733 USD), with which he also had to support himself. By contrast, the eldest son and his wife had been enjoying a luxurious lifestyle above their means in the host country, where they also welcomed their first child. When both sons had finally returned to Taiwan, and the younger son was married, the financial contributions to Mother Lee decreased but did not disappear completely. Regardless, the family regularly attended monthly dinners where the issue of financial resources was never mentioned.

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<sup>3</sup> Although the daughter had already provided a substantial part of her income during her brothers' time abroad, when she went to study abroad years later, she experienced the same lack of funding for her degree. Upon graduation, however, she decided to stay in the host country and therefore, played a minor role in the family conflict that unfolded.

At these dinners, Mother Lee often requested that the eldest son pay, which in the second son's mind was her way of trying to deny the favoritism she had shown and acted as a symbolic form of repayment for the help the eldest had received. The second son felt that his mother hoped he would feel favored by this action and that by leaving financial matters vague, his doubts would be eased in regards to who was the most *zìjǐrén*. However, the younger son's interpretation was quite different from this and he only became more suspicious as he silently dealt with the dilemma of whether to challenge or accept the serious economic disadvantage imposed on the family by his mother and older brother. He wondered whether he should make a claim for repayment in the name of equality or instead simply accept the unequal distribution of resources to preserve familial bonds, showing his good intent to be *zìjǐrén*.

Out of fear of disrupting harmony, and in order to maintain mutual affinity, the members of the Lee family chose to live with the anxiety of the unstable conflict event. This failure to arrive at a true understanding of the situation led to a refusal of negative feelings, normalization of unjust treatment, and breakdowns in communication. Instead of considering the law as a tool that could have improved a situation, individuals—be they marginalized or not (Engel and Munger 2003; Levine and Mellema 2001; Macaulay 1963; Nielsen 2000; Sarat 2000)—often choose the locally accepted, informal mechanism (Rosen 2006: 14–67), or the implicit and pragmatic standards (Colson 1995) for social order that are specific to a certain culture or group; in the case of the Lee family, this meant ignoring the tension and avoiding discussing the issue at all costs, in order to maintain the feeling of *zìjǐrén*. The decision to accept a situation such as this is seemingly born out of the fear of exacerbating an already difficult experience, which has been shown to prevent many from claiming their rights and reporting injustices (Abrego 2011). As demonstrated by both Mother Lee and her second son, it appeared that the uncertainty of how the conflict would proceed, and the fear of the possible repercussions of taking action, profoundly affected their shared legal consciousness.

### **Breaking Belonging**

Upon returning to Taiwan in the early 2000s, the eldest son and his wife took well-paying university jobs but failed to change their spending habits which worried the younger son as he was still being asked to provide financial assistance to his parents, as previously mentioned. To avoid guilt, Mother Lee persuaded herself that the younger son could easily afford to provide such

assistance because he had support from his wife and her family, a statement that she explicitly made but was far from true. Eventually, once the first mortgage was declared as paid off, the second son periodically suggested to his mother in private that she not take out another mortgage on their house, to which she always agreed.

However, during this time, the elder son found himself deeply in debt and he secretly convinced his mother to take out a second mortgage to help pay off what he owed and to buy an apartment. When the second son discovered this arrangement, he was shocked by the deceit and his interpretation of the situation changed dramatically. The anxiety caused by possibly having to give more to his brother in the future, combined with the anger of already having given so much and having been lied to for so long, drove the second son to claim his right to oppose the situation by expressing his feelings directly to his mother. He suddenly considered his previous monetary contributions to his brother's time abroad as a loan, or at least something he was entitled to be compensated for. When he went to Mother Lee to discuss the matter, he had hoped to elucidate the potential risks that his brother's financial habits could cause his parents in the future.

As the home was valued at approximately 5 million yuan (\$168,120 USD) and the major source of income was the father's monthly pension of 20,000 yuan (\$673 USD), he intended to establish a fairer financial plan for his parents' security. Moreover, given that his father was in his 80s and had difficulty climbing the stairs, he also wanted to suggest that his parents would need to find a more comfortable place to live. Unfortunately, his anger at the time made him approach the situation in a hostile manner and he said, "I hope elder brother can come up with a plan about ways to make monthly payments on the loans. It would be better if he could provide some evidence when he has done so." To his shock, Mother Lee responded, "When we are older, your elder brother will take responsibility for us. You do not need to worry about us. All you have to do is have dinner with us sometimes." Despite emphasizing the disproportionate financial contributions he made to the family compared to those of his eldest brother, he unintentionally angered Mother Lee by accusing her of unfairness (in her mind). She seemed to think that her second son was trying to shirk his familial duties, and so she released him from any future responsibilities, which ultimately affected the *zìjīn* between them.

The second son later revealed in private that his decision to confront the matter was based on the idea that whoever took more money from them in the past should contribute more in the future, but instead of arriving at a mutually satisfying agreement,

the anger they felt made interpretations change and the overall situation worsened. The second son openly expressed the painful struggle of trying to understand the different ways to interpret the event and the feelings that surfaced from being excluded by his mother and elder brother. He stopped attending the family dinners where his elder brother would be present and instead began taking his parents out to dinner alone. He made many subtle attempts to get his mother to tell the truth, but he never succeeded.

Several months later, the second son decided to confront his mother again to discuss the favoritism he felt had always been shown to his elder brother since they were children, a topic that he tried to bring to light when he was 14 years old but had since been ignored. This time, Mother Lee addressed these claims but, while using a positive tone, rejected what she perceived as accusations by telling him, “I love all three of my children and have treated you all with fairness since you were young.” To further support this, she falsely insisted that “elder brother and his wife did not spend any of the family’s money when they went abroad to study. They earned the money to study abroad by themselves.” Mother Lee’s full denial sent the second son a message that he would have to accept the fabrication in order to be her *zìjǐrén*.

Her narratives deemed the eldest as an innocent and devoted son, whereas indirectly denoting the younger son’s arguments as illegitimate. This encounter painted him as the guilty party in questioning his mother’s action and firmly positioned him as an outsider. With every failure to elicit the truth from his mother, the second son became increasingly frustrated as she adamantly clung to her version of reality. This only exacerbated the situation, as he perceived her actions as a violation of the roles of mother and son. Heightened emotional tension can drive people to take action, not always in the legal sense but often in the form of disruptive tactics that escalate the conflict further (He et al. 2013). Such was the case when the second son broke the taboo by confronting the issue of favoritism and discussing the unequal resource distribution on many different occasions.

As Mother Lee and her second son expressed their anger in different ways, the bonds of *zìjǐrén* were being tested; their behavior acted as a means of relationally confirming the boundaries—or lack thereof—between them. In accepting the other’s version of reality, *zìjǐrén* would have been strengthened, boundaries would have been blurred, and emotional closeness would have been heightened; but in refusing, *zìjǐrén* was lost, boundaries were set, and emotional distance was established. Although such emotional eruptions can be a means of arriving at a mutually satisfying solution, they can also cause harm to the other party (Johnson and

Roloff 2000), leading to a new interpretation that includes some level of damage to one's self esteem or identity (Fitzgibbons 1998), which can lead to a disconnection with or alienation from the situation or the people involved.

### **No Longer Belonging**

The two brothers had not made any real effort to discuss the issue during the development of the dispute. The elder brother's silence on the matter was interpreted as a denial of the existence of the conflict, a denial that was facilitated by distancing himself from his younger brother on a personal level. The second son's choice to remain silent was an emotional response to this distance; when asked why he never explicitly sought an explanation from his older brother, the second son replied: "If I talked to him directly, it would be detrimental to the already bad relationship." Later, out of frustration, the second son's wife called her brother-in-law to address the issue in the hopes of opening a discussion between them but was met with resistance.

According to the younger brother, when his wife called the eldest, he refused to speak with her and instead asked for his younger brother. During their conversation, there was no mention of the money that the younger brother had contributed, the benefits that the elder brother had enjoyed, or the issue of future elder care for their parents. Instead, feeling accused of being irresponsible, the elder brother insisted that it was all a misunderstanding and gave excuses for their lifestyle abroad, such as the need for a large house at the time to accommodate his pregnant wife. He concluded by adding, "It is all about my relationship with Mother." This definition of the matter, as based on his connection with their mother, further alienated the younger brother as he detached from his illusion of being *zìjǐrén*. This detachment was the second son's response to the emotional distance created by the boundaries his mother and elder brother had put in place. His subjective understanding of what was just and unjust was more related to the law as he now believed there to be a hidden contractual relationship between him and his brother, which was a confirmation of his growing awareness of his personal rights.

When Father Lee got to the point where he could not climb stairs, the parents moved into the eldest son's apartment, a process from which the younger son was completely excluded. In doing this, Mother and Father Lee were informally guaranteeing that their elder care would be provided mainly by the eldest, which in their minds was a fair exchange as they had contributed at least half of the price of the eldest son's new apartment. The aggregation of these experiences compelled the second son to

accept this version of reality and separate himself from the family. In doing so, he positioned himself as less responsible—both by tradition and in the moral sense—than his brother for their parents' future support; only time would tell as to whether or not the responsibility would be solely that of the elder brother or shared by both sons.

About a year later, Father Lee passed away, leaving behind a substantial amount of money to which Mother Lee and both sons were entitled to inherit<sup>4</sup>. Despite this, no one ever mentioned the division of the inheritance directly because all intimate communication had broken down and they were completely alienated from one another. Instead of assertively claiming the inheritance that the second son knew he was rightfully entitled to, this mutual silence made him finally realize his position as an outsider in relation to his family members. He ultimately decided not to take legal action and focused on himself and his own family, his *zìjīn*. This type of avoidance is not uncommon and is used in dispute processing as a means of preventing any further interaction that may cause awkward or painful experiences (Felstiner 1975). Although Mother Lee and her second son did not raise the issue again, hoping to try to restore some level of harmony to their relationship when they were in one another's presence, resentment may still have existed.

### Interpreting the Lee Family Conflict

In family conflicts, the power of affective factors such as love and kinship have moved disputants to disregard any contractual-like exchange, that is, an inheritance (Hartog 2012), and simply accept the matter in order to preserve affinity despite continued resentment or lack of a mutually satisfying resolution. For the Lee family, the dispute was more or less laid to rest when a silent understanding was finally achieved: the property wealth and future elder care of Mother Lee was informally but clearly assigned to the elder son, with whom she would live, leaving the second son no further need to debate the issue. He may not have accomplished what he had hoped to, but in the end, the second son was at least temporarily absolved of any further financial obligations that could arise. The expectation that he was going to be granted the repayment was shattered and his interpretation of the situation was altered as his legal consciousness developed gradually from an absence of law to a presence of personal rights.

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<sup>4</sup> According to the law, adult female children have equal rights to their inheritance (Article 1145 of the Civil Code), but in practice, daughters in Taiwan are often not treated equally.

When Mother Lee told her second son that he only had to have dinner with them sometimes and falsely claimed that the eldest son did not take any money, she was implying that she was unhappy about not being identified as a good mother. At this point, she was clinging to her impression of the bonds she shared with the first son, and thus, took the second son's complaint about his brother as an attack on her. If the second son had accepted her version of reality, he would have sent her the message that he respected her as a good mother, bringing them both emotional balance while creating more affinity between them. However, his reaction in refusing to accept her version of reality meant that he was not identifiable as a good son; this only estranged him further from his mother, and in turn, the family. For Mother Lee, the alienation of her second son in this manner was a sacrifice that she was making for her first son, which ultimately put more pressure on him to comply with his filial duties in the future. The second son, however, was forced to capitulate and retreat, leaving his relationships with his mother and brother "shrunk or terminated" (Felstiner 1975: 695) and his sense of self greatly transformed.

Rather than Mother Lee's fear of aging inspiring her to explicitly communicate her feelings to her children about her future needs, she constructed a version of the facts that favored her first son as the most *zījǐrén*. In making use of the family resources to pursue a psychologically friendly and responsive relationship with her eldest son, she simultaneously secured elder care and most importantly living arrangements for her and her husband in their older years. She may have been acting in the interests of reducing the risk of embarrassment or the "loss of face" (Hwang 2007; Zhang et al. 2011) that would be caused by eventually taking this issue to the public courts to claim her legal right to elderly maintenance (Article 1117 of the Civil Code), but she was aware that the laws in place did not necessarily serve her and her specific goal of not living alone. Indeed, it may seem as if this was a rational or calculated process but, for Mother Lee, it was more an attempt to bring balance to her emotional sense of self as a form of justice which depended on her intuitive sense that others identified her as morally good with regard to her social roles.

After Mother and Father Lee finally moved into their eldest son's apartment, the second son's interpretation of the event changed as he applied individualistic contractual logic to frame what he finally understood as an economic exchange between his mother and brother. He also recognized that his mother had used him as leverage to bring about a form of justice that served her so that the eldest son would be indebted to her in exchange for her sacrifices. In the end, his final interpretation of the event, his legal

consciousness, even provided a position of agency for his mother in her struggle to find her best approach to aging. Not claiming his inheritance rights and avoiding the law after Father Lee passed away afforded him a greater opportunity to keep up minimum contact with his mother in the years that followed. Mother Lee's legal consciousness had also transformed; her identity had shifted to be more individualistic and independent which better served her. Her words explicitly implied that she came to believe it to be her personal right to do as she pleased within the family and insist on the deference she was owed as a mother and as *zǐjīrén*.

### **Negotiating beyond the Law on Elder Care and Inheritance**

In the context across East Asia, filial piety and family bonds continue to play a strong role in the arranging of responsibilities for elder care, functioning emotionally through intergenerational obligation and inheritance norms (Ikels 2004). The perception of the family unit has led to a more individualistic thinking (Harrell and Huang 1994) that has resulted in familial relationships being more ambiguous in nature than before, affecting the practice of inheritance and ultimately the formation of legal consciousness. This ambiguity is exemplified by the matter of family property distribution and elder care in the Lee family conflict in which there was an unspoken consensus that everyone would work with the family unit's best interests in mind. However, this was not upheld by the family's actions as perceived by the individuals involved, and therefore the idea of exchange within the unit was tested and readjusted.

Taiwanese law explicitly states that elderly parents have the right to claim financial maintenance from their child or children when they cannot provide for themselves (Article 1117 of the Civil Code). According to this law, if Mother Lee and Father Lee had needed more financial support for living (such as elder care service) in the future, then the second son and the eldest son would have been equally responsible for the maintenance despite the unequal distribution of the family's wealth to the eldest son. In contrast to other countries like the United States and Japan (Huang 2018), in Taiwan, there is in fact no law in place that helps an adult child who is acting as a caregiver to claim any compensation for providing this maintenance. Despite knowing that they would have no legal grounds to stand upon in seeking reparation, it is still difficult for adult children, due to the guilt they feel, to refuse to accommodate their parents when they are no longer self-sufficient.



This is exacerbated by the fact that the law refuses to consider the issues of inheritance, filial obligation, and distribution among siblings as related to each other or having an influence on one another. The only law in Taiwan to deal with inheritance states that in the event that a parent does not use all of their money before dying, their children have equal rights to the inheritance after their death (Article 1145 of the Civil Code). But what does the law do when elder care and the use of family resources is not fairly distributed between siblings when their parents are alive, as was the case with the Lee family? When an adult child inherits part or all of their parent's estate, but was not the sole caretaker while they are alive (Tsai 2004), how does the law serve those adult children who may have had to share in the financial burden and caretaking, but were not rewarded anything after their parents' death?

It seems that the picture of elderly life in Taiwan as provided by the law does not necessarily match the needs and desires of the people themselves. Because local courts still consider the caring for elderly relatives as an act of love and make no direct reference to interfamily economic exchange or reparation for anyone who makes sacrifices (Huang 2018), people are forced to go beyond the law and negotiate emotionally. This is complicated by the fact that elder care involves not one but two main factors: monetary compensation, as family law would prescribe, as well as an expectation of some level of intimate "warm care," as provided by relatives rather than institutionally (Mol et al. 2010). For those individuals with some amount of expendable wealth (i.e., the Lee family), financial support (enforceable by law) may not be the foremost issue as they age, and thus they may make use of their money to establish and nurture emotional closeness (not enforceable by law) with their future caregiver as based on their past experiences with one another (Buch 2015). This negotiation in dispute processing is ever-changing, emotionally driven, and reciprocal in communicating one's version of an "ideal" or "good life," particularly when there is no consensus on the terms of responsibility (Mol 2008; Thelen 2015; Tronto 1993).

### **Adoption of Law Driven by Emotion and Cultural Concepts**

The Lee Family case study described in this article shows that a conflict develops and transforms not just through what other people say and do (Conley and O'Barr 1998) but also through the implications of what is said and done in response. This second-order layer (Young 2014) comprised the Lee family's interactions

on three different levels, that is, how they responded to past events, how they perceived each other, and how they perceived the nature of the issue at stake. To better understand the goals they pursued and the form of consciousness that accompanied their quest, it is necessary to consider the influence of the culturally embedded concepts that are dominant in a given society.

Sociolegal scholars have become increasingly drawn to the analysis of nonrational or preconscious cultural categories through which ordinary people comprehend their world, some of which are indirectly constituted by the law itself (Abrego 2011; Chua and Engel 2015; Engel 2005; Engel 2016a; Engel and Engel 2010; Kim 2015; Liu 2018). The adoption of law does not depend solely on the categories and concepts of law nor is always based on conscious, rational thought. Rather, regardless of whether it is the Lee family or any other disputants, what people experience emotionally, both independently and collectively, what they pursue in life, and how successful they are at achieving it gauges how relevant the law is to each individual in the situation at a given time. Often, as the disputants emotionally expressed and evolved their relational self toward achieving positive mutual identification, their legal consciousness seemed to be deeply rooted in their sense of self, as well as their social networks and belief systems (Engel and Engel 2010).

Cultural beliefs and practices may seem to be fragmented, but they are still intertwined with one another as a whole to form an interpretive framework for legal consciousness. In Northern Thai society, Engel (2005) and Engel and Engel (2010) observed that when individuals are trying to construct an understanding of justice, they are staunchly guided by the powerful yet unseen force of *karma*, a spiritual principle of cause and effect, instead of utilizing the official legal system. Although customary and religious village practices for resolving disputes have nearly disappeared, the globalization of rights thinking and availability of courts in Thailand has not necessarily led to a more activated form of legal consciousness. Rather it has resulted in a collective feeling of increasing remoteness from and resistance to the adoption of law in everyday practices.

In Chinese culture, and in Taiwan, the predominant unseen force at work in people's minds is *qíng* (情), that is, "feeling/emotion" and "fact/situation," a complex principle that has been best described by Hansen (1995) as "reality-reactions." *Qíng*-related concepts include a vast lexical bank of emotionally as well as normatively connotative words, broadly encompassing feelings, one's sense of self, subjectivity as well as how individuals perceive realities, relational obligation, and reasoning. According to

the ancient Chinese bamboo manuscript *XìngZìMìngChū* (性自命出; c. 300 BC), the word *xìng* (性, “human nature”) gave birth to the word *qíng* (the concept of interest in this article) which then yielded the word *dào* (道, “the way of life”). From this, an ethical connotation emerges which links human nature to one’s way of life, thereby establishing a critical connection among emotions or feelings, one’s sense of self, and the right way to live one’s life.

The only study to date regarding the ways in which *qíng* relates to modern law in the daily lives of ordinary people was conducted by Liu (2018) in Putian, a city in Southeastern China. Although the ethical connotation mentioned above is not directly addressed, the paper demonstrates how a Putian individual’s legal consciousness greatly depends on the relationship between *qíng* and the laws themselves; Putians choose to apply the law when *qíng* is in accordance with it and choose not to when they perceive any discord or disagreement. For instance, single motherhood is considered unethical according to *qíng*, and as a result, state law restricts childbearing to marriage; this is more or less accepted by citizens who consider it a type of protection from abandonment. Contrarily, in cases involving the marriages of daughters who are the sole offspring, due to the one-child policy that was recently in place, the same law is less relevant. Putian women can get married as they wish, especially when having children, however, many instead choose to uphold the custom of *Lianggu* (兩顧, taking care of both sides), that is, male fiancés may marry a daughter only if they agree to a set of demands made by the daughter’s family. This agreement is not often accepted by the man’s family and instead of being legally married, as is their right under the law, couples choose to live and raise children out of wedlock in order to avoid disrupting the emotional connections and collective *qíng* between family members.

Liu’s unique work has indeed opened the discussion about the effect that *qíng* has on the formation of legal consciousness; however, the effect of identity or one’s relational perception of others is not emphasized, and the true degree of power that *qíng* has over people’s thoughts and actions is not described. The Lee family conflict puts a spotlight on this by identifying *qíng* as much more than a norm and suggesting that it is actually a catalyst for one’s perception of reality, and subsequently for one’s reactions to situations. The ubiquitous practice of *qíng* is constituted through the plural, dynamic, and complex process of interpersonal interactions between people who are striving for an identity as “belonging” emotionally to a family or other social group rather than standing apart from others. In everyday Taiwanese life, the bonds of *zìjǐrén* are provided by the establishment of mutual identification or *rèntóng* (認同), a term connoted with personhood

(i.e., identity, identification, or identify). Although this promotes affection and self-worth, these bonds are constantly tested, shaped, and reformed as a result of power and negotiation (Weng 2004; Chan and Chan 2011: 11–27). Chua and Engel argue that “individual personhood is subsumed within other social relationships, [and that] there is a possibility that these relationships are unequal and maintain existing social hierarchies” (2019).

It follows then that the role of identity—one’s own self-perception (personal identity) and the perceptions of others (social identity) (Ellemers et al. 2002; Sollberger 2013)—involves the acknowledgement and setting of conceptual boundaries that shift and change throughout a lifetime as an individual’s *self* has experiences with *others* in society. Within the context of local Taiwanese practices and traditions, the sense of self or self-other relationship is characterized by a constant interplay between *rèntóng* and *zìjǐrén*, a combination of personhood and relational self-positioning and positioning by others (Duveen 1993; Kraus 2006). This implies that the sense of self in Taiwan is not based on what sets individuals apart but rather on the similarities that place them within a group and the exchanges that happen therein. As Chua and Engel’s “relational model” suggests, the understanding of and decision to adopt the law or not may emerge within “the porosity of boundaries between individual cognition and relationships with others” (2019). This article shows that legal consciousness is more than likely be highly dependent on one’s connections with varying social groups, how one feels they are identified by the members of these groups, and the interactions that take place within them.

Embodied subjectivity, relational affinity, and culturally embedded life course patterns and practices intensify or shift broader forms of hierarchy and inequality (Drotbohm and Alber 2015; Locke et al. 2013), which has the power to reshape identity and reorient the boundaries between inclusion and exclusion. Justice in this broader sense is usually presented through the perception of reality and thereafter reactions toward each other. Emotion (*qíng*) in Taiwanese contexts does not merely refer to personal emotion such as anxiety, anger, and alienation, but also encompasses the sense of belonging that one pursues as a life goal or a way of life. To feel included (*zìjǐrén*) or identified with (*rèntóng*) can bring one a sense of balance that determines the relevance of law in everyday thoughts and actions. When wronged by loved ones, the feeling of closeness and remoteness can bring to light the many variations in how one perceives and interacts with others. Legal consciousness in this context may be transformed along with the fluid boundary of inclusion and exclusion while one strives to gain acceptance and be respected by a perceived group.

## Conclusion

Given the intense emotions that are inherent in family conflicts, one's perception of reality and sense of self within the scope of one's most intimate relationships can be altered through the strengthening or threatening of social bonds (Scheff 2000). As the second son's relationships with the rest of his family were weakened, his conscious or unconscious denial of his emotions, and of events in general, had led to his isolation from the family. This unacknowledged alienation and shame, as Retzinger and Scheff (2000) suggest, are the primary causes of intractable conflicts that result in an impasse in which no real resolution of the issues can be achieved.

The case study of the Lee family conflict presented in this article demonstrates that legal consciousness is dependent on emotions that are deeply connected to one's perception of the self-other relationship, the level of affinity shared with others, and the life objectives of all those involved. As the conflict heightened, the Lee family had different and contrasting interpretations of the situation; while emotionally contesting the boundaries of belonging in their daily social practices, they tended to avoid, fabricate, or selectively utilize underlying facts, at times with references to law as an interpretive framework to assess their relationships with one another. As the disputants emotionally negotiated for mutually satisfying arrangements regarding the issues of filial piety, the distribution of resources, future elder care, and ultimately inheritance, they also constructed their identities as based on whether they felt included or excluded, or accepted and respected, by the group.

Their adoption of law was at times absent, at others influential, but always shaped by Chinese concepts like *zijǐrén*, which constitute the emotional complex of belonging in Taiwan and serve as the major determinants of how reality, justice, and belonging are perceived. When in conflict, this cultural patterning is the driving force behind a disputants' pursuit of an identity that places them on moral high ground as a form of justice. In this approach to the study of legal consciousness, an understanding of the culture or social group to which one relates can potentially foster accurate predictions of how disputants are going to react to certain situations. However, such predictions have a limited half-life because as an individual's position within a group changes, so do their feelings toward the situation, those involved, and thereby the law. Comparative studies in other cultural and social contexts are needed, in and outside of Taiwan, in order to contribute further to our understanding of how emotion and the need for relational affinity shape legal consciousness.

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