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An Incomplete Justice: A Framework of Assessing the Female Spouse Immigration Policies in Taiwan.

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An Incomplete Justice: a Framework of Assessing the Female Spouse Immigration Policies in Taiwan

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Abstract

Taiwan manifests one of the immigration receiving country except Thailand in Asia. The 5th ASEAN Summit in 1995 has identified immigration as the arena where cooperation could be further strengthened. The related actions remain hindered by the powerful pro-growth of economic interest. ASEAN-China Free Trade Area (ACFTA) celebrates its significant advance of economic cooperation in January 2010, but the issue of female immigration which is most attached to the marriage gains the weightlessness in the male political platform. This article attempts to investigate the possible institutional arrangements on female immigration in Taiwan especially upon the developing implementation intra-ASEAN and ACFTA. The key theoretical and definitional highlights on the transitional justice of immigration will be first reviewed. Based on the Treaty of Amsterdam (1997) and the immigration policy of European Union (EU), the inadequateness of Taiwan domestic immigration policies as well as the intra-ASEAN countries, cross the Taiwan Strait will be investigated in the second section. Whether Taiwan could play an active role to facilitate the female immigration policy in Asian cultural context will be analyzed in the third section. Finally the critical dynamics of the institutional arrangements on female immigration blended with the feminist perspective will be illustrated at the level of international political scenario.

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摘要

除了泰國以外，台灣是亞洲主要移民的輸入國之一。東協曾於 1995 年將移民列入重要的合作議題，然而相關的合作行動卻受制於偏向經濟成長的政策失衡。2010 年 1 月中國正式加入東協自由貿易區(ACFTA)，多依附於婚姻的女性配偶移民問題，卻在以男性為主導的政治環境中毫無份量。本文嘗試探討台灣女性移民在制度上的可能發展空間，特別在東協與中國經濟合作的新影響下。首先，將進行轉型正義的理論與文獻回顧。其次，在歐盟(EU)於 1997 年所簽訂的阿姆斯特丹條約的基礎上，檢視台灣國內、中國與東協之間女性移民政策不足的問題。第三部份將討論台灣能否在亞洲文化脈絡中，扮演積極的角色以促進女性移民政策的良性發展。最後，在國際政治的層面，以女性主義觀點動態地批判與綜合分析這個議題。

關鍵字：女性移民、轉型正義、東協、ACFTA、歐盟、阿姆斯特丹條約

1. Introduction

The issue of *female immigration* is usually viewed as the normal part of migration which is discussed few within the *public sphere*. Female immigration issues dismantle the role of state, the patriarchal family and the making of male dominated politics. Feminist literatures would tend to provide the major context of the public/private divide though it has been argued that such understandings are more based on the essential assumption about women and their experiences of oppression than on engaging in local, contingent and historical analysis. This article would raise questions about the migration policies of nationality and citizenship of women who migrate from Southeast Asia and Mainland China to Taiwan. The related regulations and problems about the academic entries, commercial travels, political asylum seekers, trafficking population, illegal migrants and skillful immigrations would not discuss in this article. The nationality or citizenship is the domestic and home affairs for each country but while confronted with the *transnational marriage* or *cross border immigrants*, legally or illegally, some problems become internationalized which the struggle between the international law and state sovereignty compete.

This article aims to assess whether the female immigration policies in Taiwan could contribute any benefits to the development of **ASEAN-China Free Trade Area (ACFTA)**. Furthermore, based on the experience of European Union (EU),

especially the **Treaty of Amsterda**m (1997) to analyze the concept of policies through the context of **Immigration Law** (移民法) and **Nationality Law** (國籍法) in Taiwan. The most important achievement of protection the transition justice of female immigrants in the cross border marriage is the regulation reform in **Immigration Act** in 2009. Especially the regulation of 'The transnational marriage match shall not be an operating item. The transnational marriage agencies *shall not demand remunerations* or *contractual remunerations*. Furthermore no person shall disseminate, broadcast or publish advertisements of transnational marriage agencies through advertising, publication, broadcast, television, electronic signaling, internet or other means that can make the advertisements publicly known **(Article 58)'**. The **Article 61** marks a new period that the companies or films which were legally established and before September 26, 2006 and that marriage matching businesses were operating items shall not engage in transnational marriage match from the first day of the expiration of the implementation period – one (1)-year period – of the amended texts dated November 30, 2007. (中華民國九十五年九月二十六日前合法設立且營業項目有婚姻媒合業登記之公司或商號，自中華民國九十六年十一月三十日修正之條文施行屆滿一年之日起，不得再從事跨國（境）婚姻媒合。)

Though the argument of nationality and citizenship has lacked the clear distinction in the literature of modern nation-state, these two modern political subjects mixed and twisted with each other within the past two centuries. The main two juridical principles to determine the acquisition of nationality for newborn are: '*jus sanguinis*' (血統主義) and '*jus soli*'(出生地主義). The former refers to the acquisition of nationality by descent and the latter refers to the territory of the state where the mother gives birth. Scholars investigate that numbers of countries adopt to combine both systems into mixed one (Weis,1997). The nationality of immigrant mothers or wives are categorized in the realm of '*nationalization*' (歸化) which has developed more complicated. The problems of the nationality for married women have been diversified especially while the principles of sex equality, same sex orientation, and globalization have been prevailing.

The criteria of nationality become more difficult to use the legal principle of *jus sanguinis* and *jus soli* as indicators in the ethnic or non-ethnic modes in this more diversified modern world. Furthermore, what's the legitimacy does the state held to carry out the global justice, especially when the public international institutions and international laws are more connected? The transitional dilemma has been presented in the domain of transitional jurisprudence which raises the issue of the relation of the rule of law in transitions to that in ordinary period and the validity of law and the

nature of the law have been argued. The rule of law can not only be framed in terms of procedural vein, instead, the substantive ideas of justice need to be more weighted. However, the continuity of justice lies in the center of the debates (Teitel, 2000). The justice remains its universal value even when the individual transfers from one place to another place, from one county to another country. The feminists have articulated the transition refers to the time sequence and civil society is defined as a space for people's actions where may NGOs actions take place (Fowler, 1993; Foley and Edwards, 1996). The movement of judicial reform on criticizing the dichotomy of public/private sphere for women had identified that the politics was defined as the masculine. And Peggy Watson indicated the fundamental demands on the 'change in laws and rules' the juridical reform was the basic element of institutional arrangement. Those voices authentically correspond to the concept of transition justice.

In Taiwan the numbers of female immigrants in marriage from Southeast Asia are about 128,071 in 2009, which are 29.8% in total female immigrants; there are about 274,022 from mainland China, which are 63.8% in total female immigrants. The rest are from Japan, Korea, and other countries. It is corresponding to the research result that there are about *two-third* of the immigrants are from mainland China (Wang and Michael Hsiao, 2009). The numbers of children of female immigrants have increased from 46,000 to 150,500 who enroll the elementary school in 2009. The native born children have decreased about 40,000 last year. The '**New Taiwan Children**' from the trans-nation marriage have reached *one-eighth* in the same age of children of elementary school. The total numbers of the female immigrants are about 429,495 according to the statistical report (Dept. Household Registration Affairs, MOI, 2009). The **National Immigration Agency** of **Republic of China (PRC)** takes charge of the immigration affairs. Those female foreigners undergo the process of naturalization and the basic requirements are 'to reside more than 183 days in Taiwan and continues to reside more than five years'.

Compared to other modern countries, Taiwan has undergone the juridical reform in immigration policy, adopting the dual system of *jus sanguinis* and *jus soli*. The principles of nationality and citizenship have set to the direction of the demand of Human Rights (**HRA**) which was ratified in 1998. In addition, beside the **Immigration Law** (移民法) and **Nationality Law** (國籍法) have been enacted, the **Household Registration Law** (戶籍法) has much longer historical tradition. The household has officially become the basic unit since Han Dynasty (漢朝). Actually, before Han Dynasty, the systematic administration of household had been organized by the reform of Shan Yan (商鞅), the typical reformer of ancient Chinese jurisdiction

(法家). The more accurate time is before the establishment of Chin Dynasty (秦朝), which refers to the ancient Chinese feudal period(春秋戰國時代) around four or three centuries B.C. The related historical facts were recorded in the **Records of Historian** (史記) by Sima Qian (司馬遷). Along with the whole historical recorders throughout Ching Dynasty (清朝). The concept of **Household Registration Law** (戶籍法) assists the **Immigration Law** (移民法) and **Nationality Law** (國籍法) keeps the dynamic harmony. **Immigration Law** (移民法) was reformed in 2009 and **Nationality Law** (國籍法) was reformed in 2006.

Treaty on European Union was signed in 2 February 1992, which was known as the **Treaty of Maastricht** further the institutionalized cooperation with the three pillars of *foreign policy*, *defence*, *police* and *justice* together under one umbrella. **The Treaty of Amsterdam** which has signed in 2 October 1997 precedes a series of conventional reforms. The **Treaty of Amsterdam** presumed to increase the powers of the Union by creating a Community subject to intergovernmental cooperation in the fields of justice and home affairs, introducing measures aimed enhanced cooperation at bringing the Union closer to its citizens and enabling closer cooperation between certain Member States. If we examine the development of **ACFTA,** there is a space to reflect their similarity. With the emergence of the ASEAN-China FTA which remains a regional trading arrangement of some global significance, given the magnitude of trade between the two sides, which accounted for 13.7% of global trade or almost half of Asia's total trade in 2007. The interaction between ASEAN and China has been fostered since 2001 when ASEAN and China agreed a negotiation for Free Trade Agreement. ASEAN-China now seems the largest FTA in population size and includes 1.9 billion total people. It is the third largest FTA in economic size, with a cumulative GDP of US $5.8 trillion. And after the EU and the North American Free Trade Agreement, it is the third largest FTA in terms of total trade transacted. In 2008, ASEAN-China accounted for a combined US $4.3 trillion, or 13 percent of global trade. The establishment of **European Union (EU)** is based on *three communities*:1) **European Coal and Steel community (ECSC)**; 2)**European Economic Community (EEC); 3) European Atomic Energy Community (EURATOM).** The unification of **EU** was aimed to establish a ***Common Market.*** Is the **ACFTA** entering in to the common market and facilitating the transition justice based on the three pillars: 1) *foreign policy*, 2) *defence*, and 3) *police* and *justice?*

2. The Experience of European Union

The Labor force becomes the engine of economic growth in the developed countries and the research on the impact of immigration on social institutions is also rarely discussed. The immigration policies of the most industrialized countries, for example, the United States, Canada, Australia, Great Britain, France, and Germany had been accounted for the receiving influxes of immigrants except Japan which is more homogenous county to develop its modernization and industrialization (Lynch and Simon, 2003). The experience of European Union calls for the oldest trans-nationalism example to examine its institutional arrangement of new political entity which served as the mirror of **ACFTA.**

The establishment of **European Union (EU)** is based on three communities:1) **European Coal and Steel community (ECSC)**; 2)**European Economic Community (EEC); 3) European Atomic Energy Community (EURATOM).** The unification of **EU** which was aimed to establish a ***Common Market*** has experienced several processes. The **Single European Act (SEA)** was enacted in 1 July 1987; **Treaty on European Union** was signed in 2 February 1992, which was known as the **Treaty of Maastricht** and took into force in 1 November 1993 to further the institutionalized cooperation in the fields of foreign policy, defence, police and justice together under one umbrella. **The Treaty of Amsterdam** which has signed in 2 October 1997 precedes a series of conventional reforms. The **Treaty of Amsterdam** presumed to increase the powers of the Union by creating a Community employment policy, transferring to the Communities. Some of the areas which were previously subject to intergovernmental cooperation in the fields of justice and home affairs, introducing measures aimed enhanced cooperation at bringing the Union closer to its citizens and enabling closer cooperation between certain Member States. It also extended the co-decision procedure and qualified majority voting and renumbered the articles of the previous Treaties.

Coal and steel are the basis of industry. After the World War II, the treaty of **European Coal and Steel community (ECSC)** was signed in Paris in 1951 and expired in 2002, which aimed of organizing free access to equal coal and steel source of production and distribution. The establishment of **ECSC** is the first step towards a supranational Europe. Beside of the economic provision, the six founding countries: France, German, Belgium, Italy, Luxembourg, and Netherland also ensured the equal access to social provisions which mainly referred to the abnormally low wages and wage reductions. **ECSC** is a supranational body with power of decision. When the coal and steel industries went into deep crisis in the 1970s and 1980s, the **ECSC** was

able to carry out the industrial restructuring and conversion while placing particular emphasis on the protection of workers' rights, in keeping with the European social model. Single European Act was the first major reform of the Treaties. It extended the areas of qualified majority voting in the Council, increased the role of the **European Parliament** that is to establish cooperation procedure, and widened Community powers. It set the objective of achieving the *internal market* by 1992.

The **European Economic Community (EEC)** Treaty was signed in Rome in 1957, aimed to achieve integration via trade. The treaty of the establishment of **EEC** was known as **Treaty of Rome**. It is the second former community of **EU**. The concept of common market was provisioned and founded by the famous 'four freedom', namely the free movement of persons, goods, service, and capitals, consisting of France, Germany, Italy, and Benelux, etc.

At the beginning of the 1990s, following the extensive debate, which was considered the best solution as opposed to renewing the Treaty or a compromise solution. The Commission proposed a gradual transition of these two sectors into the Treaty establishing the **European Community**. **Single Market programme** in 1993, at least 2.5 million extra jobs had ever created as a result of the removal of barriers. The increase in wealth attributable to the *Internal Market* in those 10 years is nearly € 900 billion; on average about € 6000 per family in the **EU**.

In general, the major purpose of **Treaty of Amsterdam** is designed to amend, renumber the **EU** and European council (**EC)** treaties and to promote the diversity of **EU** cultures. It was signed on 2 October 1997 and entered into force on 1 May 1999. Furthermore, it consolidates the versions of EU and EC treaties. In Chapter 1 of Treaty of Amsterdam announces the 'fundamental rights' and the principle of 'non-discrimination' which refers to the fundamental social rights as defined in the **European Social Charter** signed at Turin on 18 October 1961 and in the 1989 **Community Charter of the Fundamental Social Rights of Workers**. And in particular, the principles and clauses of combating 'discrimination' based on sex, racial or ethnic origin, religion or belief, dis-ability, age or sexual orientation is entrenched. It also declares the abolition of death penalty and voluntary service activities and organizations.

Related to the immigration, the European Council would be functioned under the obligation to achieve the given result on 'free movement of persons, asylum, and immigration' which is the new title of the TEC in Chapter 2 of Treaty of Amsterdam. The five-years-time-limit is laid down for the adoption on the abolition of controls at

internal borders and for the introduction of controls at external borders among the Member States. No time-limit is laid down for Member States to share the burdens due to receiving refugees, for the conditions of entry and stay applicable to immigrants or for the rights of legally-resident nationals of non-Member States. The minimum standard for giving temporary protection for refugees and the provision of the condition of entry stay for immigrants are also defined in Article G of the new title. How's the jurisdiction of the Court of Justice extended that will be interesting to research in another later research.

Actually one of major mission of **The Treaty of Amsterdam** is to renumber the articles of the previous which refers to the **Treaty of Rome (1957)**. The main spirit of moving of person regulated in **Treaty of Rome** which worth the detail examining.

On 25th March 1957, two treaties were signed in Rome that gave birth to the European Economic Community (EEC) and to European Atomic Energy Community (Euratom): the Treaties of Rome. In fact, the brand new institution was a customs union. As a consequence, the EEC was colloquially known as "Common Market". The member countries agreed to dismantle all tariff barriers over a 12-year transitional period. As a matter of fact, the common market meant exclusively free circulation of goods. Free movement of persons, capitals and services continued to be subject to numerous limitations. It was necessary to wait until the Single European Act, in 1987, when a definitive boost was given to establish a genuine unified market. This brought about the European Union Treaty in 1992.

The content of **Treaty of Rome** in Part Three: Community Policies deals with the free movement of persons, services, and capital. In article 48, 'the freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.' Furthermore, 'Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.' And the right which is subject to limitations justified on grounds of public policy, public security or public health as:

(a) to accept offers of employment actually made;
(b) to move freely within the territory of Member States for this purpose;
(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

But the provisions of this Article shall not apply to employment in the public service.

Treaty of Rome has been prevailed the interconnectedness of European countries to facilitate by flows of goods, services, capital, and people across borders which is more convenient than ever. The Treaty of Rome is a comprehensive document that covers many fields of policy and areas of cooperation. In Article 49 indicates that as soon as this Treaty enters into force, the Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about, by progressive stages, freedom of movement for workers, as defined in Article 48, in particular:

- (a) by ensuring close co-operation between national employment services;
- (b) by systematically and progressively abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalization of the movement of workers;
- (c) by systematically and progressively abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as impose on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

In Article 50. Member States shall, within the framework of a joint programme, encourage the exchange of young workers. Article 51. The Council is regulated to act unanimously on a proposal from the Commission, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

Article 60. Services shall be considered to be 'services' within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. And here the 'Services' shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

In the Article 1of 'AGREEMENT ON SOCIAL POLICY', the Community and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labor, the development of human resources with a view to lasting high employment and the combating of exclusion. To this end the Community and Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy. The improvements in particular of the working environment to protect workers' health and safety are also required. The integration of persons excluded from the labor market, without prejudice to Article 127 of the Treaty establishing the European Community. The social security, social protection of workers, and the protection of workers their employment contracts are also terminated.

Labor and immigration are the new issue in modern global world which need more concern. The scholar Massey (1999) researches the history of world immigration by dividing into four periods:1) the Merchantile period (1500-1800); 2) the Industrial period (1800-1925); 3) the Limited period (1930-1960); 4) Post-Industrial immigration (1960-1990). After the abolition of slavery around the nineteenth century the world immigration enters into the new economic pattern of labor force. Based on the cheap labor supply, the low wages labor moves from the poor countries to the demand of rich countries. It is estimated that there are about 200 million immigrants outside their countries for more than one year by Global Commission on International Migration (GCIM) in 2006. The voluntary international immigrants

are about 158 million, 20.8 million are 'of concern', which refers to 9.9 million are refugees, fleeing for the political persecution and threatening, 5.8 million are stateless people; 2.6 million are returned refugees and internationally displaced people (UNHCR, 2008). Furthermore, the rich countries have a per capita GDP 66 times greater than poor countries (GCIM, 2005). The remittance to the home country is important (Nyame & Grant, 2007).

Table: Global Migration Pattern and Trends 2000-2005

Region	Net Migration rate per 1,000 people
North America	+ 4.2
Oceania	+ 3.2
Europe	+1.5
Latin America and Caribean	—1.5
Africa	—0.5
Asia	—0.3

Source: Adapted from United Nations (2006)

In addition, population aging is rapid (UN, 2005). Immigration may considers to be the provision of new opportunities for individuals and families, easing the effect of unemployment in economies that send migrants, the receipts of remittances, technological transfer, and investment with increased trade (UN, 2004). Labor supply and demand is the focus of neo-classical economics approaches. It's argued that the macroeconomic level the labor will move from a country with a plentiful labor supply and therefore low wages, to a country with a low labor supply and high wages. Massey takes the micro-economical approach (1999). The new economics approach moves away from income as a measurement and focuses on relative deprivation (Kubursi, 2006). Socio-economic structure aims to analyze how the labor deprivation exists in the society. Segmented labor market theory moves to a more structural explanation of human migration (Vilata-Bufi, 2007).

3. The development of ACFTA

The **Association of Southeast Asian Nations (ASEAN)-China Free Trade Agreement (ACFTA)** has been expected a win-win policy for both sides. ASEAN has been the fourth largest trade partner with China since 2008, in spite that European

Union, United States, and Japan are still the first largest, second, and the third partner with China. The total trade between **ASEAN** and China reached US$ 192.5 billion in 2008. This growth puts China as ASEAN's third largest trading partner in 2009, accounting for 11.3% of ASEAN's total trade. The practice of free trade has been referred to a post-Asian economic crisis era as well as 'a general shift from a neo-mercantilist to a neo-liberal approach to trade policy amongst East Asian states' to pursue the regional trade agreement (Dent, 2001) since the emergence of the economic crisis of 1997. The 5th ASEAN Summit in 1995 has identified immigration as the arena where cooperation could be further strengthened. The related actions remain hindered by the powerful pro-growth of economic interest. ASEAN-China Free Trade Area (ACFTA) celebrates its significant advance of economic cooperation in January 2010, but the issue of female immigration which is most attached to the marriage gains the weightlessness in the male political platform.

The **ACFTA** contained the modality for tariff reduction and elimination for tariff lines both in the normal track and the sensitive track. In the normal track there are three sets of schedules. The first applies to ASEAN-6 and China. The implementation will begin on 1 July 2005, when applied MFN tariff rates will be brought down to 20%, 15%, 10% and 5% for tariffs still above 5%. By 2007 they will be reduced to 12%, 8% and 5%, and by 2009 to 5% and 0%, and finally by 2010 all rates will become zero. The second schedule applies only to Vietnam, where all tariffs will be brought down to 0% in 2015. The third schedule applies to Cambodia, Laos and Myanmar, where some tariffs will still be higher than in Vietnam's schedule, but from 2011 onwards they will be the same.

There are four main objectives of the **ASEAN-China Free Trade Agreement (ACFTA)** set (1) to strengthen and enhance economic, trade and investment cooperation between the ASEAN and china; (2) progressively to liberalize and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime; (3) to explore new areas and to develop appropriate measures for closer economic cooperation between the Parties; and (4) facilitate the more effective economic integration of the newer ASEAN member States and bridge the development gap among the Parties. The objectives may be considered as diplomatic utterances and the 'development gap among the parties' may be even widened.

3.1 The Painful Experience of Female Immigration in the West

The Peace of Westphalia represents the birth of modern nation-state which is identified as her sovereignty over the land, citizen and judicial authority from 1648. The sovereignty-base system is also viewed as the new international relations (IR) from Westphalia Peace in spite that some opponents claim the opposite perspectives. The authority of church is restricted. The legitimacy of marriage is much more handed to the hand of common law (民法) than to the Cannon law (教會法) though inside the church the sublime sacredness of marriage remained. In the secular world the states have the concretely administrative authority on marriage. Some scholars argued that the modern nation-state has not officially functioned until the Napoleonic War. The more significant concerns put more on the identity between the self and the nation-state (Giddens, 1991). Furthermore, the global labor flows are mobilizing to substitute the need of economic growth after the abolition of slavery around the nineteenth century in the British Kingdom. In the last two centuries the colonial evasion, global economy, industrial evolution, and modernity are all fundamental elements of current institutional forms to influence the cheap labor mobilization at the large scale. In the world system, therefore, the *difference*, *exclusion*, and *marginalization* are produced due to the modernity. In term of Wallerstein, world is there developed by the core, semi-peripheral, peripheral, and marginal/external nations (Wallerstein, 1976).

According to the section 301 the **Immigration and Nationalization Act** of 1868 from the United States, any State shall not make any law which harms the privileges or immunities of those naturalized citizens of the United States. Their life, liberty, or properties are also protected without due process of law and share the equal jurisdiction and protection of the laws. However, the opponents call it 'a magnet that draws illegal immigrants' like the Senator of Arizona, Russell Pearce, where floods in thousands of illegal immigrants from Mexico. The citizenship of the 'anchor babies', meant the babies of illegal aliens, raises the questions from opponents and indicates that they are unable to find convincing constitutional evidence that so-called anchor babies can legitimately and automatically acquire U.S. citizenship. The opponents provide the amendment **HR1868** (**Birthright Citizenship Act of 2009**) '*To amend section 301 of the Immigration and Nationality Act to clarify those classes of individuals born in the United States who are nationals and citizens of the United States at birth.*'.

The Select Committee on the Nationality of Married Women with the appointed to join the Committee of the House Commons in 1923 and the voice of 'Nationality of

Married Women' changed the political provision. The British Nationality Act of 1948, Immigration and Nationality Act of 1952, the Codification of French Nationality of 1945, the nationality provisions of the Treaty of Peace with Italy in 1947, the Code of the All Russian Soviet Socialist Republic on Marriage, Family and Guardianship of 1926 and the Soviet Union Citizenship Law of 1938 had influenced the provision of the nationality of the married women.

In the States the alien women by marriage would automatically acquired the nationality from her husband. But if the women married foreigner they would have to abandon their native nationality before 1958. The efforts of feminists changed the situation that American women wed aliens would not affect her to loose her native nationality, even in the dissolution of marriage due to the ratification of convention on the Nationality of Married Women which was ratified by 52 states in 1978.

Recently the debate on the section 301 of the **Immigration and Nationalization Act** (1868) in the States challenge the 14th Amendment that '*all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside*'. The 'birthright citizenship' for the new born babies trigger such stormy political debates, the immigrants mothers or wives face more even crucial hatred over the past two centuries.

People are familiar with the intervening role of government or state which is the significant discourse of Keynesian economists during the post war period. It's estimated that the average growth rate was 5 per cent per annum for world output during 1950-1973, sometimes at even more at the rate of 8 per cent per annum which is much more rapid than the 'golden age' of capitalism, meant during the 1890-1913 (Kelkar, 1984). Some scholars define the *public sphere* as 'those services, supports and regulations which are established by governments and the *private spheres* are referring to what is not done by government.' (Pat Armstrong, 1997) The issues of female immigrants authentically cover both the fields of public and private sphere. The term of *public sphere* mainly contributes to Habermas that he accepts the tripartite divisions of *the state*, *civil society* and *family* from Hegel. Furthermore, he adds the '*public sphere*' as the realm between the state and civil society where 'individuals engage in disinterested rational-critical debate that transcends personal or classical interest or status claims' (Charles Armstrong, 2002).

3.2 The Efforts of Taiwan

3.2.1 Acquisition of Nationality in Taiwan

Adopting both the principles of *jus sanguinis* and *jus soli,* the citizen could acquire his or her nationality when he or she was born in Taiwan (Article 2(1)). If one of the parents is native of Republic of China, even they died before the baby's birth, he or she is legally to acquire Taiwan's nationality (Article 2(2)). At the time of birth, he or she is born in the territory of ROC, even when his or her mother or father was stateless (Article 2(3)). The article 2(4) refers to any foreigners the process of naturalization. The article 3 described five requirements to fulfill the application of naturalization: 1) the residence of 183 days in total and continuing to reside more than 5 years; 2) at least of the age of 20 or older and having the capacity to act in accordance with both laws and his/ her own counties; 3) to behave decently and have no records of crime; 4) to have enough property or professional skills for his/her self-support living, that is, to ensure his /her living ability; 5) to possess the basic language ability of learning knowledge of nationals demands of rights and obligations. The requirements regarding Article 3(5), the preceding standard of determination, testing, exempting from testing, charging will be set by the Ministry of the Interior.

Table: Migration from January to March in 2010 Republic of China

Region	Gender	Immigration	Emigration	Net Migrants
	Total	19,123	13,747	+5,376
	Male	6,337	6,278	+59
	Female	12,786	7,469	+5,317
Taiwan Province	Total	12,932	7,834	+5,098
	Male	3,892	3,654	+238
	Female	9,040	4,180	+4,860
Taipei city	Total	4,866	4,872	−6
	Male	1,984	2,132	−148
	Female	2,882	2,740	+142
Kaohsiung City	Total	1,258	1.098	+240
	Male	445	478	−33
	Female	813	540	+273

Source: Journal of Demographic Statistics of Republic of China Vol. 36. No. 1.

The most important regulation in the reform of immigration is that transnational marriage match shall not be an operating item. The transnational marriage agencies shall not demand remunerations or contractual remunerations. Furthermore no

person shall disseminate, broadcast or publish advertisements of transnational marriage agencies through advertising, publication, broadcast, television, electronic signaling, internet or other means that can make the advertisements publicly known (Article 58). The operation of profit making transnational marriage agencies and of non-profit transnational marriage agencies shall be permitted by National Immigration Agency and they shall submit their business conditions to the Agency regularly. The agencies mentioned in the preceding Paragraph shall keep the information on their businesses for five (5) years respectively. They shall not avoid, obstruct or refuse inspections conducted by National Immigration Agency (Article 59).

The article 60 regulates the transnational marriage agency shall be obliged to accomplish inspecting and proving the content of the information provided by both parties who are to be matched and to keep confidential of the information. After both parties reach a written agreement, they are to provide information to each other integrally and reciprocally.

The Article 61 marks a new period that the companies or films which were legally established and before September 26, 2006 and that marriage matching businesses were operating items shall not engage in transnational marriage match from the first day of the expiration of the implementation period – one (1)-year period – of the amended texts dated November 30, 2007. (中華民國九十五年九月二十六日前合法設立且營業項目有婚姻媒合業登記之公司或商號，自中華民國九十六年十一月三十日修正之條文施行屆滿一年之日起，不得再從事跨國（境）婚姻媒合。)

The Article 62 emphasizes the principle of 'no discrimination'. Any person shall not discriminate against people residing in the Taiwan Area on the basis of nationality, race, color, class and place of birth. Any person whose rights are trespassed due to the discrimination mentioned in the preceding Paragraph can file a complaint to he competent authorities on the basis of the situations of the trespass, unless the matter is regulated by other laws otherwise. The competent authorities shall enact regulations that govern items, requirements for filing a complaint mentioned in the preceding Paragraph, complaint procedures and the composition of a review committee.

Except the residence reduced to three years, the female or male spouse of the immigrants, as well as for those born in the territory Taiwan, one of the parents being native Taiwan, and adopted child will fit from the Article 4 to 7, the qualification of applying naturalization.

3.2.2 Exclusion of Nationality

Firstly, in Article 8, any foreign national who applies for nationalization according to Article 3 to Article 7 shall provide the certification of his/her *loss of previous nationality*. The nationality policy of Taiwan tends to adopt *single nationality*, but in the same article written if he/she alleges he/she can' t obtain the certification for causes not attributable to him/her and foreign affairs authorities investigate and determine that this is true, then he/she needs not to provide the certification. In Article 20, the principle of single nationality has been reclaimed again and those who acquires the nationality of another country that would have no right to hold government offices of the Republic of China. If he/she has held a government office, the relevant authority shall discharge his/her government office. That is a legislator shall be discharged by the Legislative Yuan, government service personnel elected by the people of a directly governed city, county(city), township(township, city) shall be discharged by the Executive Yuan, the Ministry of the Interior, or a county government respectively, a village(li) chief shall be discharged by the township(township, city, district) office. But some experts or having would not be subject to this restriction. It need to provide by the competent authorities, for example: 1) Presidents of public universities, teachers who concurrently serve as administrative governors of public school of all levels, principals, vice principals or researchers (including researchers who concurrently serve as governors of academic research) of research organs (bodies) and principals, vice principals and contracted professionals (including part-time governors) of social education or culture bodies established with the approval of the competent administrative authority of education or culture authorities; 2) Personnel in public-operated utilities other than the persons who take primary decision-making responsibility for the operational policy; 3) Non-governor positions focusing on technology research and design regularly engaged through contract by various authorities; 4) Commissioners without position engaged through selection for consultation only according to the organizational law by the competent authority of overseas Chinese affairs; 5) Otherwise provided by other acts.

Secondly, in Article 9, the Nationalized foreign nationals or stateless persons have no right to hold the government offices, such as: 1) President, vice president; 2) Legislator; 3) Premier, vice premier or minister without portfolio of the Executive Yuan; president, vice president or Grand Justices of the Judicial Yuan; president, vice president or members of the Examination Yuan; president, vice president, members or auditor-general of the Control Yuan; 4) Personnel specially appointed or designated; 5)

Deputy Minister of each Ministry; 6) Ambassador extraordinary and plenipotentiary, minister extraordinary and plenipotentiary; 7) Vice minister or commissioner of the Mongolian and Tibetan Affairs Commission; vice minister of the Overseas Chinese Affairs Commission; 8) Other government offices shall be compared with personnel holding selected ranks above the thirteenth grade; 9) General officer of the land, navy or air force; 10) Local government office position elected by the people. The foregoing restrictions shall be lifted after 10 years from the date of nationalization, but if otherwise provided by any other act, the provisions of that act shall prevail.

3.2.3 The Loss of Nationality

Except the regulation about military requirement (Article 12), his or her natural father being a foreigner, or acknowledged by his/her natural father, his or her father failed to be ascertained or he/she being not acknowledged by his/her natural father, and his/her mother being a foreigner, adopted child of a foreigner, and etc. the loss of nationality mainly refers to any criminal conditions, for example, 1) a criminal defendant under investigation or trial; 2) being sentenced to fixed-term imprisonment and the sentence has not been completely served; 3) a civil defendant; 4) subject to a court judgment or administrative order and the judgment or order; 5) being pronounced bankrupt and his/her rights having not restored; 6) obligated to pay overdue tax or arrears of tax penalty.

3.2.4 Immigration Act of Taiwan

In general, the Immigration Act aims to regulate the immigration affairs and serves as the implement immigration guidance based on the basic principle of ‘entry and exit control’, ‘national security’, ‘protection of human rights’ presented in Chapter 1 (Article 1-4): General Provisions; Chapter 2 (Article 5-7): Nationals’ Entry and Exit, and Chapter 12 Supplementary Provisions. Except the Chapter 6 (Article 36-39) ascribed to the regulation of deportation (驅逐出國) and detention (收容), which violets the Article previous article regarding some criminal conditions, Chapter 7 (Article 40-46) referred to the prevention of Trafficking and protection of victim, Chapter 8 (Article 47-50) stated the responsibility of the captain of an aircraft, vessel, and transport service proprietors, the main concept of the immigration Law of ROC focuses on the regulations of ‘entry’, ‘exit’, or ‘management’ of citizen, alien, foreigner, and immigration, even the arrival and departure of airports and seaports. The direct guidelines regarding to the immigration are in Chapter 3(Article 8-17): Visit, Residence, and Registered Permanent Residence of Nationals without

Registered Permanent Residence in the Taiwan Area; Chapter 4 (Article 18-21): Entry of Aliens and Exit of Aliens; Chapter 5 (Article 22-35): Alien Visits, Residence, and Permanent Residence; Chapter 9 (Article 51-62): Immigration Guidance and Administration of Immigration; Chapter 10(Article 63-72): Interview and Investigation; Chapter 11 (Article88-97): Penalties.

3.2.5 the Freedom of Transfer, Entry, and Exit

Without doubt, that any naturalized person, who is the 'nationals' (國民) and has the rights to apply the exit, entry or moving from his/her native country to other countries. In the Article 9 (3) of the Immigration Act of Taiwan, not only the person who has been naturalized has the rights to apply residence, but also to move from one county to another county, and also to apply the exit, entry from the National Immigration Agent of ROC. In addition, the rights to extend the residency are also written in the Article 9. Other similar regulations are in accordance with the Nationality Act of ROC. The Article 9 (15) refers to the migrant workers that would be regulated according to the Employment Services Act. The Article 11-14 refers to the violation of entry or exit. For example, those who has been strongly suspected, on the basis of sufficient factual evidence, to endanger national security or social stability; who has been sentenced to punishment of imprisonment or greater; who has entered the State without permission, using another person's identity, or has applied with illegally acquired, counterfeited, or altered documents his/her entry application would be denied. In Chapter 4 (Article 18-21) the regulation on the foreigners would follow the requirements of the legal and valid passports and visa. The criminal behaviors such as: 1) carried contraband; 2) made a false statement or hidden important facts about his/her purposes to apply for entry into the State; 3) having a criminal record in the State or foreign countries; 4) having suffered from a contagious disease, a mental disease, or other diseases that may jeopardize public health or social peace; 5) having overstayed his/her visit or the period of his/her residence or has worked illegally would be prohibited from entering the state.

The immigration guidance and administration of immigration are regulated in Chapter 9 (Article 51-62). The government shall provide protection, care, assistance, planning, and guidance to immigrants. The competent authority shall coordinate with other government bodies (institutions) or private organizations to provide to immigrants services such as consultation, lectures language and skills training. The operation of immigration services is exclusively reserved for corporate organizations which shall apply for an establishment permit from National Immigration Agency,

register themselves as corporations in accordance with laws, and receive licenses from the Agency respectively before they can begin immigration services. Where the central authorities in charge of labor affairs permit private employment service institutions to engage in transnational human resources Agency businesses, the institutions shall handle businesses concerning residence on behalf of the aliens employed the institutions respectively. The Immigration service organization may offer various immigration services such as: 1) acting as an agent to handle matters concerning applications for residence, registered permanent residence, permanent residence, or naturalization; 2) acting as an agent to handle matters concerning applications for non-tourist visitor visas; 3) conducting immigration funds counseling related to investment and brokerage, which are exclusively needed for the protection of immigrants' rights; 4) providing counseling on other matters concerning immigration.

4. The Incomplete Justice: From the Perspective of Feminism

The radical feminists remind women to become more aware about how they even learn from their oppressors. They believed that 'Without a political movement it is barley possible for women to describe even how they experience their own sexuality'. They call 'the oppressed' by man inside family and public political life as 'cultural colonization' which needed to break it. 'The first stage in this discovery is the recognition by the oppressed of a general situation of dominance'. Women work like a 'domestic worker' but without 'wages for housework' (Ehrenreich, 1984).

When the world enters into modern stage, the *liberty* plays as the sword to pierce the heart of faith, to seek the autonomy of human dignity and build a secular world instead of the sacred one. Is the *individual liberty* violate *transition justice?* The *freedom of conscience* in the domain of *individual liberty* has first derived from the concept of *human reason*, which related to the *moral order* and *obligation* in the context of Kantian. John Milton (1608-1674), a Calvinist and a citizen of The British Empire of England, witnessed the Act (1649) declared England to be a Commonwealth (1649-1660).

Instead of '*liberty of the Will*', which meant the moral doctrine in Kantian, J. S. Mill(1806-1873) defined liberty as '*civil*' or '*social*' dimension, referring '*the nature and limits of the power which can be legitimately exercised by society over the individual*' (Mill,). Civil liberty is the weapon to go against the external oppressive power. Mill reflected that the individual need the protection but '*The nation did not*

need to be protected against its own will.' The rulers must be responsible to its governing. Mill articulated such notes linked with 'the last generation of European liberalism' the 'the political thinker of the Continent' which may implied Rousseau (1712-1778) Mill insisted that 'the people have no need to limit their power over themselves.' It would follow 'self-government'. In the last part of his article, Mill emphasized that 'individual liberty is not involved in the doctrine of Free Trade'. He took '*drunkenness*' as example to illustrate how to apply the principle of individual liberty which '*is not a fit subject for legislative interference; but I should deem it perfectly legitimated that person, who had once convinced of any act of violence to others under the influence of drink, should place under a special legal restriction, personal to himself; that if he were afterward found drunk, he should be liable to a penalty, and that if when in that state he committed another offence, the punishment to which he would be liable for that other offence should be increased in severity.*' In general '*No harm to others*' is the highest applicable principle for individual.

4.1 The First pillars of the Assessing Framework: the Respect of Human Rights

The rights for those who lawfully enter ROC according to Immigration Act of Taiwan are safeguarded. Furthermore, for those who: 1) has been pregnant for more than seven months, has given birth, or has had a miscarriage for less than two months; 2) been hospitalized for diseases or pregnant, and may endanger his/her own life if going abroad is also permitted to stay longer until the expired time that could be interpreted ROC is willing to act based on the principle of the Human Rights Act **(HRA)**.

When the Human Rights Act (**HRA**) was ratified in 1998 and the higher courts of European Union (**EU**) have been grapping with the meaning of the European Convention on Human Rights (**ECHR**). Though there has been no ordered linear development the enhancement of human rights of the immigrants among EU is still sensitive, since the Article 1 of the **ECHR** requires the states parties to 'secure to everyone within their jurisdiction the rights and freedoms' (Blake, Nicholas & Husain, Raza 2003). The rights for those who lawfully enter any member states in **EU** are safeguarded. Based on the **HRA** or **ECHR**, the immigration of statues of a person would be affected by a decision of a public official may highly relevant in deciding whether the action violates the **ECHR** right or not (Berrehab v Netherland, 1988 11 **ECHR** 322).

4.2 The Second pillars of the Assessing Framework: Jurisdiction Reform

The *immigration control* has been highly sensitive to each country for centuries. The modern nation-state secures her territory as the basic duty. The state's duties under s. 6 of **ECHR** 1998 require all pubic authorities to open their restriction and there is no territorial limitation. Meanwhile, when the state exercises its lawful authority abroad its officials will be accountable under the **ECHR** (Loizidou v Turkey, 1995,20 **ECHR** 90).

If the country is pronounced of the death penalty, execution, torture or exposure to inhuman or degrading treatment (Article 3), slavery (article 4(1)) or other consequence prohibited by the core value of the **ECHR**, the public authority may be liable for its act (Chahal v Secretary of State for the Home Department, 1996. 23 **ECHR** 413). The content of s. 6 and s. 65 of **ECHR** 1998 requires all public authorities to act compatibly with **ECHR** within their jurisdiction. The immigration policies are functioned according to the Immigration Asylum Act (**IAA**) 1999, which has been designed to provide an independent right of appeal on human rights ground in the Unite Kingdom except the case need to appellate to the Special Immigration Appeal Commission (Berrehab v Netherland, 1988 11 **ECHR** 322).

The respect for the family and private life are required to be protected by Article 8. Any interference of the public authorities is only permitted under **ECHR** must be in accordance with law, which includes both domestic law and the autonomous **ECHR** concept of law. Article 9, 10, and 11 are also engaged in the concept of respect of family and private life though the greatest criticism falls into the vague distinction between the 'legitimate' and 'illegitimate' family. In the immigration context, questions of private life are engaged where the individual whether he or she is facing the expulsion where he or she resides in the expelling state (Berrehab v Netherland, 1988 11 **ECHR** 322). In the case of Bensaid v UK (2001) 33 **ECHR** 10, the European Court stated that: 'Private life is a broad term not susceptive to exhaustive definition. The Court has already held that elements such as gender identification, name, and sexual orientation are important elements of the personal sphere protected by Article 8…Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity.' (Blake, Nicholas & Husain, Raza 2003, 175)

According to the Harvard Law Research, most countries adopted *jus sanguinis*

principle before 1929. Countries are obliged to choose between the *jus sanguinis* and *jus soli* in the **Article 3** of **Draft Convention**. The mutual exclusive characters are widely accepted in the meaning of **Article 1** of **Draft Convention** at the international law level in the 1950s.

4.3 The Third pillars of the Assessing Framework: the Integrity of Public and Private Sphere

In the *public sphere* the nationality of the female immigrants usually binds with marriage and husband both refer to the '*identity politics*' in modern political science. The identifying of immigrants may adopt the method of historiography as Swift has done the research on Irish identity in Victorian British (Swift, 2009). The diasporic studies are also the new trends of studying ethnic immigrants (O'Day, 2009). Marriage is a normative form of human institutionalization which mainly presents the important parts of *public sphere* within the discourse of Habermas grounded in the roots of Max Weber and Hegelian-Marxists traditions. The Weberian tradition traces its roots back to the Kantian's discourse where the Western rationality prevails. The debates on the *public sphere* whether lies only in *democratic polity* remains implicit in this article. The quality of discourse and quantity of political participation critically demand some basic elements of democracy in political science.

For centuries, the nationality of female immigrants depends on their husbands. Women would loose their native born nationality if they marry foreigners in many countries. The *marital expatriation* has been common consequence of citizenship while women marry to aliens. Why does the transnational marriage result of abandoning the nationality? Is it an authentic outcome from male dominated both in political and social jurisdiction? Let's take American as an example. She is one of the old democratic regimes. Even early in 1904 of the States, the *Woman's Journal* carried the titles of 'Warning to American Heiresses' to think of the result of abandoning the freedom, citizenship and some other important values of democratic social and political life if wed to foreigners. The **Expatriation Act of 1907** in the States blocked the efforts from some feminist movements, such as the members of The Daughters of the American Revolution, in protecting the restoration of women's nationality rights to fight against the regulation of native-born American women marring to aliens. However, the awareness of equal nationalities both to native-born women who married foreigners and foreign women married American men was raised by Ellen Spencer Mussey, the founder of the Washington College of

Law and the writer of the Rankin bill. Some countries those who were expatriated citizen women because of their foreign marriages, including Great Britain, Canada, Sweden, Switzerland, the Netherland, New Zealand, South Africa and France, were considering legislative action similar to the Rankin bill.

The assimilation and discrimination have been hypothesized and observed by social psychologist to understand if the ethnicity serves as the factors or bias in the process for the individuals or groups adjusting their behaviors to suit the lager society (Foroutan, 2008). That is a rocky road to adapt into the immigrant society for any ethnic groups (Kolig, 2008). Modernity could be understood on the institutional level.For Habermas is an essentially bourgeois entity, the concept of his public sphere is based on 1) the notion of *public good* as distinct from *private interest*; 2) *social institutions*, like private property, to empower individuals to participate independently in political and social affairs; 3) the forms of private life that prepares individuals to act as autonomous, rational-critical subject (Calhoun, 1992).

Besides the gender, the race, culture, class, and disability are the primary cause of women's oppression. For example, white women have higher social statue than the black women. The women in upper class have more opportunity than the women in lower class. Aboriginal women may receive less social resources than the women in the metropolitan. Women's strength not only varies with economic conditions but also with the re-structuring of public and private spheres and sectors and with their own organizing strategies. Antonio Gramsci is careful not to reduce civil society to the economy and to distinguish between civil society and the state. However, he ultimately sees the civil society as a bastion of class hegemony which is ultimately supportive of the state. Taiwan has a female population of 11.17 million, out of a June 2005 total of 22.72 million. Roles of both genders have been redefined over recent decades as more and more of Taiwan's women pursue higher education, join the workforce, gain financial independence, and compete with men in all walks of life. Almost half of the country's adult women are now regular wage earners. Women's educational opportunities continue to improve. There were 595,903 female college and university graduates in 2002, up from 314,331 in 1997; and 71,595 earning master's degrees, up from 21,656. Prior to female immigration's naturalization policy, the country's court generally recognized a married women's ability to pursue naturalization or to maintain her premarital citizenship while they married foreign people in United States in 1930s. J. Stanley Lemons first rescued the subject of women's nationality right from three decades of obscurity with the exploration of the events leading to the passage of the Married women Independent citizenship Act

(Cable Act) in 1922 (Bredbenner, 1998,3). The States adopted the dual citizenship as a national affliction. The country would treat the non-resident woman who married to an American as an alien if her country of origin still claimed her as a citizen, but if her country mandated her expatriation for an alien marriage the United States adopted her as an American, saving her from statelessness.

The case of Elisabeth Abeldt-Fricker would highlight the confusion of nationality of transnational marriage. Elisabeth Abeldt-Fricker had married an American citizen in 1892 and divorced him in 1905. She returned to her native country Switzerland lived in a Swiss insane asylum. Her medical care fee became critical between two countries. The Swiss government declared that she was an American citizen despite her divorce and called on U. S. officials to assume the costs. The government of United States informed Swiss authorities that Elisabeth Abeldt-Fricker had forfeited her American citizenship and assumed her former nationality when she left the States to resettle in her native country and refused to pay her treatment.

Another case was about Louisa Lassonne. She was also a native Swiss and married a naturalized American in Russia in 1874 but she and her deceased husband had never returned to the United States successfully, since the government of the States refused to renew her passport. She wrote that: 'I thought that I had the right to the aid and protection from country I become a citizen by legal rights, and instead of that I am refused a passport.' The government of the United States refused her request because she still had her original nationality.

Why the immigration of women is controversial in the history of female immigration? In the juridical development of the United States may reveal some biased opinions. The Bureau of Immigration and Naturalization asserted that marriage might be the channel of fraudulent marriage between Americans and foreign countries. The immigrant prostitute is another problem. According to the famous Dillingham Commission report that the immigration officials generally assumed Chinese women immigrating as the wives of citizens were commodities in the international prostitute trade market in the nineteenth century. The import of prostitute had been excluded in the in the Immigration Act as 'imported for the purpose of prostitution' is unlawful which is another debated issue. The Dillingham Commission contributed to the discussion with an investigation of immigrant women who married American either to gain permanent entry into the country or to beat deportation orders. The Dillingham Commission provided some documentation of white women's resort to fraudulent marriage to avoid deportation in New York City.

In the case of Mary Doe, she was arrested for prostitution and she was convicted to serve the witness in another prostitution case. She confessed that: 'Don't you know what he wanted from me, that fellow Reo? Don't you know that he had another girl in his house at---street, and when we got there he introduce me to her (an old prostitute named Laura) and told me she was her wife, but that I would stay with them and that we both make good money by both hustling from his house?...I now make $5 or $6 a day, which I keep for self and Reo stays with his affinity, Laura. Of course, you know, John, that if I married that fellow Reo, it was only to beat deportation and be safe forever, as I am now an American citizen.' (Bredbenner, 1998,32)

The restriction of immigration from 'sexually immoral classes' may challenge some radical the feminists now and if the husband claims that his wife's citizenship and the immigration officials would not interfere it though the immigration officials usually cast a jaundiced eye on some immigration women's marital arrangement before the American male and foreign women got marriage to citizen. The female immigration policy remained strongly male-oriented in the Naturalization Act of the States in the nineteenth century and early twentieth century.

It was another problem that women naturalized by marriage to an American did not receive a certificate of citizenship from the federal government to her was one of the administrative inadequacies. The true substance of legislator's commitment to marital naturalization became apparent after ratification of the woman suffrage amendment in the Nineteenth Amendment around the 1920s.

The citizenship of female immigrants which is binding to her husband's country is a kind of derivative naturalization. Ironically, the suffragists of suffrage movement had warned American the fear of the aliens which referred to the foreign born or foreign women when American men left for war and the aliens of dubious character would rush in to fill the political voice. They claimed that if citizen women had the power to vote, they could guard against aliens assaults on American's government. The president of the National American women Suffrage Association (NAWSA) Carrie Chagman Catt indicated that 'Not only a burning patriotism has aroused the women of these States as never before to work for their rights to voice their own principles of government, but a real desire to protect the interest of their sons and husbands at the front from possible domination by a hostile spirit at home' (Bredbenner, 1998,49). Yet some suffragists steadfastly withheld the concept of aliens. J. Maud Campbell, who lecturing to the Boston chapter of NAWSA on the

competence of the foreign born women as voters and assured her listeners that the foreign-born woman was more reliable than her male counterpart. She argued that as a mother and voter, and endorsed the immigrants women would support the child welfare legislation of NAWSA (Bredbenner, 1998,50).

From the view of assimilationists the immigrant women not only devoted to her family but also wished her-selves to a larger world where American customs prevailed. Those un-assimilated foreign mothers would loose the power of participating the school of her children and the society of her husband. Then the immigrant mother would become the last member in her family and that family would be also far reached by the American influence. For example, if the foreign mother is not familiar with the language of the immigration country would be harder to participate both the school and social life of her children and husband. How to enable the foreign mother to be educated is fundamental for her to take the full responsibility both in home and in community. The civic training of immigrant women initiated the program of citizenship classes. The Citizenship Training Division of the Bureau of Immigration and Naturalization made efforts to encourage immigrant women of the naturalization petitioners to attend the citizenship classes with her spouses. From the formal letter of the Bureau of Immigration and Naturalization claimed the respect from the country 'the United States government is especially interested in you….American is to be your home, and the government knows you desire to be an American in every respect'. It was over five million immigrant women at around twenty one years old or older living in the United States according to the 1910 census. The Naturalization Act of 1855 guaranteed that the great majority of these immigrant women could be naturalized immediately if they married American citizens.

The linkage of commercialization of women and female labor has been long concerned in the course of New Marxist. 'The more that capital and the theories of its operation become delocalized, the more that local regimes are held accountable for their places within the global organization of capital…the chains of events by which economic crisis is said to spread…'(Scott and Keats, 2004). Mellisa W. Wright used the term of 'Asia on the Water' (AOTW) to call for the attention of women working in the factories of the global firms in the Third World, their lives are disposable under both the economic growth from the nation state and managerial demands. The catastrophy of capitalist is spread from one country to another, though some scholars oppose this fact (Acker, 1987).

Basically, the transition refers to the time sequence. Civil society is defined as a

space for people's actions where may NGOs actions take place (Fowler, 1993; Foley and Edwards, 1996). The movement of judicial reform on criticizing the dichotomy of public/private sphere for women had identified that the politics was defined as the masculine. The key paper of this important discourse was the famous feminist Peggy Watson. She strongly criticized the male-dominated politics and indicated it in the paper of 'The Rise of Masculinism in Eastern Europe' published in the journal of *New Left Review* in 1993. While criticizing the globalism, gender and class and attempting to rethought the possible transition for the provision of the development in feminism Peggy Watson indicated the fundamental demands on the 'change in laws and rules' which was the basic element of institutional arrangement.

Though the political space has the positional quality but if the transition carries the invocation of 'freedom' space extends and constructs as an 'extra-political process' which gained the energy of 'space of creation' or 'political space'. During the pre-World War II the phrase *independent citizenship* held meanings both referred to equal citizenship right for women and as well as focused on the reform objects of the abolition marital expatriation and naturalization by the female activists from the 1920s to 1930s (Bredbenner, 1998). But compared to the suffrage campaign, J. Stanley Lemons acknowledged the result of *independent citizenship* was 'an unambiguous feminist issue' and remained in ideological level though the crusade for *equal nationality right* began in the spring of 1907 in the States while the Congress had declared that 'any American women who married a foreigner shall take the nationality of her husband' and the federal government denationalized thousands of American women for marring foreign citizens. This law based on the distrust of aliens which was also endorsed the restriction of voting privilege and tended to adopt to the native born called Expatriation Act of 1907. Before the Expatriation Act, the Naturalization Act in 1855 removed the so called ambiguity of 'parents' in an 1802 statue and with eliminating any claim by mothers to control over the 'legitimate' children's citizenship. Together with this patriarch concept of mid-nineteenth century, the common and statutory law also denied many foreign-born women and children independent civil rights and political identities in the United States. Thus any non-citizen, or immigrant woman would have been barred by common law tradition from owning, transferring title, or inherit land, property in the States as one federal agent explained from the case of Elise Lebret, 'the United States statue stands upon the ground of *public policy, not* on the ground of the *wife's consen*t…She may object to this naturalization and protest ever so formally that she would not become an American citizen;…it makes no difference. The law, founded on a wise public policy, requires her nationality to be the same as her husband's, and she becomes by

operation of law an American citizen.' (Bredbenner, 1998, 21)
'Marital naturalization was not about empowering immigrant wives through citizenship, it was about reaffirming the privileges of their citizen husbands.' (Bredbenner, 1998, 21)

The campaign against dependent citizenship had launched by some organized women groups in spite of facing the strong resistance from the congress of the States. Not all agencies of federal governments agreed the concept of Naturalization Act the Supreme Court declared that the only persons who could not be naturalized upon marriage to American men were women racially ineligible for naturalization. In the case of *Kelly v. Owen et al*, (1865), a women's country of residence, time of marriage and other factors could plausibly affect a foreign wife's claim of U.S. citizenship. The expansion of Kelly's case both as precedent and as the resource on interpretational conflicts between federal judges and the Bureau of Immigration and Naturalization has developed. Many legal experts interpreted the door was open to women of racially eligible for naturalization (Bredbenner, 1998).

While discussing the feminist theory in the international law, Western feminists are not only able to move beyond their own limited experience to explore the experience of other Third World women, but also focused their inquiry on 'cross cultural' validity. The women in the Third world are subject to greater oppression due to the colonialism and capitalism but their lives should not be conformed to the Western model. They argued that 'feminist analysis which attempts to cross national, racial, and ethnic boundaries produce and reproduce difference' through the 'naturalization of analytic categories which are supposed to have cross cultural validity' (Mohanty, 1992).

Inherited the liberal theory and liberal doctrines, gender becomes the central category of oppression and women's experiences are predetermined, ahistoric, and denuded of racialized. The concept of international human rights helps to reconstruct the equality of women and the state sovereignty attempt to move beyond the rigid distinction between public and private spheres in the international law level. Feminist international law scholars challenge the objectivity and neutrality of international law, arguing the ignorance of international laws which are structured on and represented the interest of man as the 'embodied subordinators of women' (Olsen, 1993). They also reflect the ideological division of public and private sphere based on the framework of the different state regulations of the 'civic' and 'home' arenas, consequently, the different lives of men and women.

5. Conclusion

Transitional justice is not a political ideology, it's an effort to judge and explain the legitimacy not only when the regime is changing but also the governmental action is functioning. Any various groups, including the parties, regimes, and any public/ private organizations while they are in transferring the basic respect of human rights are mattered in the course of transactional justice. The preference is easily aroused in the course of common social experience. The notions of objectivity are not the privilege for the lawyer. Not out of merely barebones liberalism or socialism, the issue of female immigration invites more intellectual efforts in this investigation. In a free society which is the one that people are allowed to make their own effective choice among a variety of alternatives. The modern immigration law needs to enact within the openness that people have the basic rights to move from one country to another and the receiving country may embrace, support, and protect those foreign neighbors looking for a new better life there.

In the nineteenth century Chinese immigrants had been cruelly excluded and expelled. The States Congress passed the **Chinese Exclusion Act of 1882** and was amended to cover all subjects of Chinese who resided in any foreign countries two years later. In early twentieth century the system of quota was usually confined to 3 per cent of immigrants to the country's population throughout world not only in the United States but also in the north and western Europe. The reason of the immigration quota law in 1922 had been reported as 'The obvious purpose of this discrimination is the adoption of an unfounded anthropological theory that the nations which are favored the progeny fictitious and hitherto unsuspected Nordic ancestors, while those discriminated against are not classified as belonging to that mythical ancestral stock.…'(Boswell, 2000, 14).

When we concern that 'legal' or 'illegal' entrance or transnational marriage, 'legalism' is not only a matter of rules. For Judith N. Shkla legalism referred to the code of conduct of individual, common social ethos, and the standard of institution. It is also concretely identified as the system of law from where people to define their duties and rights. The spirit of legalism is the not only morality in generally legalistic society. Judith N. Shklar attempted to resolve the ethical conflicts by psychological understanding to interpret the social and political reality. She adopted the liberal political stand and suspected the constitutionalism. Yet, she fleshed out her liberalism and took an egalitarian direction to ground her research on empirical

investigations. She believed that democracy is the best form of government based on the liberalism and defined it as the term of '*liberalism of fear*' to distinguish it from those philosophical, historical and economical discourses. She represented the decline of political faith and invited the liberal theories to rebuild the 'spirit of optimism' in her work of *After Utopia*. She drew the line between the 'injustice' and 'misfortune' to identify the 'lack of concern' and 'conscious will' of public actors which caused the public injustice in the work of The Faces of Injustice.

For many feminist international law scholars, the principle embodiment of the gendered public /private destination is state sovereignty doctrine that mandates against external interference in the internal affairs of individual states. The formal notion of state sovereignty doctrine with which feminist scholars take issue is described by David Kennedy: 'Sovereignty establishes states as public subjects, concentrating public will in a single voice, absolute within its delimited sphere and formally equal in its relations with other sovereignty. This is the sovereignty which divides international from national competence and public from private action'. State sovereignty doctrine, therefore, is seen as the arbiter between the public world of international activity and the private world of state/ domestic affairs. Some feminists have argued that by upholding the sanctity of domestic state affairs, state sovereignty doctrine supports structural relationships of power and domination of men over women (Charlesworth, 1994); it reinforces 'oppression against women through its complicity in systemic male oppression and violence' (Charlesworth, 1994). State are 'patriarchal structure' excluding 'women from elite position' and concentrating 'power in, and control by, an elite' (Charlesworth, Chinkin and Wright, 1991).

Elizabeth Cady Stanton and Susan B. Anthony, a temperance and antislavery advocate, formed the National Woman Suffrage Association (NWSA) in New York. Lucy Stone organized the American Woman Suffrage Association (AWSA) in Boston. In 1890, the two groups united as the National American Woman Suffrage Association (NAWSA). The Socialist Labor party, in 1892, was one of the first national political parties in the United States to include woman suffrage as a plank in its platform. The myth of the natural inferiority of women greatly influenced the status of women in law. Under the common law of England, an unmarried woman could own property, make a contract, or sue and be sued. But a married woman, defined as being one with her husband, gave up her name, and virtually all her property came under her husband's control.

The mainstream economists results in a failure to account for women's generally

unpaid labor in both household and community, including the child caring (Marilyn Waring, 1988; Armstrong and Armstrong 1994). Women's lives and women's issues have tended to be relegated to a separate, 'private' sphere that is considered immune from regulation (O' Donovan, 1985; Olsen, 1985). The law reforms related to family life have taken account for the work that women traditionally have done in home (Mossman, 1994). Does women's reproductive labor recognize as the benefits for the public policies?

While most feminists theorize on the public /private divide focuses on local or national laws and policies, recent scholarship has considered the public /private distinction made within international law (Charlesworth, Chinkin and Wright, 1991). International law constructs a public world of interstate activity that is said to be separate from the 'private' world of domestic state affairs, a distinction analogous to that between state and family. At the international level, only relations between states, or issues that states have agreed to submit to regulation through international treaty or contract, are legitimate subjects for 'public' international legal regulation. In the period of growth connected with the postwar Keynesian welfare state, when regulation by the state was taken more for granted, it was also possible for feminists to argue, in many cases successfully, for state funding of women's groups and battered women's shelters (Findlay, 1987; Ng, 1988; Walker, 1990). Despite the fact that the twentieth-century welfare state in Canada and other Western countries was based on many patriarchal assumptions (Andrew, 1984; Chunn, 1995; Ursel, 1992), it provided openings for realignment of the public / private divide that could be fair to women. Similarly, the post Second World War system of international human rights, while problematic in many ways, provided an avenue for some women to pursue claims that challenged notions of public / private at the international level (Cook, 1992). The inequality payment of women while compared with men in various spheres has been the discriminated for century even in Canada (Iyre, 1993, 1994).

The struggle for custody laws of divorced women is much more complicated than the struggle for the participation of labor force. Women in the labor force market face the similar problem. Women's participation in the labor forces are not suited to some certain jobs and less paid have challenge the concept of equality employment for the last three decades. Four elements to analyze the international migration: 'a satisfactory theoretical account of international migration at least four elements: a treatment of the structural forces that promote emigration from developing countries; a characterization of the structural forces that attract migrants into the developed countries; a consideration of motives, goals and aspiration of the people who

correspond to these structural forces by becoming international migrants; and a treatment of the social and economic structures that arise to connect of out-and-in migration (Massey, 1999, 50). And we need to ask more micro-economic studies on nation-state level to complement the first category 'Policy centric' case studies to illustrate and clarify many theoretical mechanisms and to advance the understanding of the impact of female migrant policies. I would like go back to reflect the nature of public rights and private rights all follow the nature of law, in term of Kant the universal value. In the work of *The Philosophy of Law: An Exposition of the Fundamental Principle of Jurisprudence as Science of Right* Kant articulated the continuity of private marriage gained the value of public rights.

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