Regulating Pregnancy
-An Analysis from an Asian Legal Feminist with Feminist Legal Theories
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If first and second wave feminism tried to fight for women as a group, third wave feminism embraces multiple cultures and experiences of women. Unlike first wave feminists asking for equal treatment and second wave feminists taking personal as political, third wave feminists try to avoid a universal female identity and analyze gender issues with various theories instead of one single approach. The deconstruction of women as a group, however, creates the tension between feminism and law. Law is power which needs standpoints. Some critics thus attack that third wave feminism which seeks recognition for individuals barely provides practical legal action to change the subordination of women in reality. What value of third wave feminism, how to incorporate it into legal analysis, and what it can contribute to women’s legal action are the questions this paper asks. Being a legal feminist in an Asian country, on the one hand, I argue that third wave feminism helps to deepen the discourse of the reproductive rights and the regulation of pregnancy in Taiwan; on the other hand, to propose a concrete legal advocate, I argue that finding the common among women is also necessary in strategy.

Taiwan's population structure has undergone a great change recently. Due to the advanced social and economical status, many well-educated and middle-class Taiwanese women are reluctant to enter the traditional, gender-stereotyped marriage model. Many Taiwanese men thus build their families with “imported brides” who mostly come from South Asian or China. To save the falling population caused by the low rate of “local marriage” and to “ensure” the quality of newborns from those “foreign-spouse families,” Taiwan government has exercised several new policies to regulate pregnancy. By claiming “fetal rights”, the new legislation applies administrative sanctions against women’s bad prenatal behaviors such as smoking. To prevent the fetus from HIV-effected diseases, all women are required to receive HIV test during pregnancy. Applying criminal sanction to drug addicted pregnant women might be the next step to ensure the health of the fetus. If a feminist wants to criticize the legislation, she cannot ignore the complex dynamics of social and historical backgrounds of the issues. However, if a feminist wants to propose an alternative model, she also cannot ignore that it is “women” whose bodies and autonomies have been targeted and regulated. Feminist legal theory, therefore, should consider both perspectives in theories and practice to enrich and empower different women in subordination. It is not a compromise. It is what feminist legal theories live and exist for.