

**CAUGHT IN CONFUCIUS' SHADOW
THE STRUGGLE FOR WOMEN'S LEGAL
EQUALITY IN SOUTH KOREA**

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The more perfect the law the greater will be the liberty. The law that makes it possible for a human being to do the best thing that he was made for, is the perfect law, and the human being who most perfectly obeys that law is the most nearly free. Freedom then, or liberty, is the perfect obedience to perfect law . . . Korea will never be free until she has good laws.

Sô Chae-pil
The Independent, October 7, 1897

INTRODUCTION

Historian Martina Deuchler has said that no other nation in the world was as transformed by Confucianism as Korea. When the Chosôn Dynasty (1392-1910) adopted Neo-Confucianism as its ruling ideology, Korean society came to consider "Confucianization" to be synonymous with civilization. By the late seventeenth century, Confucianism restructured family organization, marriage and kinship practices, and established strict gender roles between men and women. While Confucianism has not existed as a formal state ideology in Korea since 1910, people continue to adhere to Confucian norms in their daily lives. Arranged marriages, ancestor worship, respect for elders, filial piety, and the subordination of women remain deeply ingrained in the private

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personas of the Korean people.¹ The incorporation of Confucian patriarchal and patrilineal principles into the family law Korea adopted in 1958 reflects the resilience of Confucianism in shaping Korean social thought and behavior.

Yet the family law, which aims to preserve Korea's "beautiful and good customs" [*mip'ungyangsok*] by codifying Confucian ethics regarding the family, compromises the spirit of Korea's Constitution. Featuring characteristics of both American presidentialism and British parliamentarianism,² the Korean Constitution adopted by the National Assembly in 1948 embodies equality and democracy. Article 10 of the Korean Constitution stipulates: "All citizens shall be equal before the law, and there shall be no discrimination in political, economic, civic or cultural life on account of sex, religion or social status." And Article 34 states: "Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes." While the Constitution enables a woman to run for the presidency in public life, under the family law she is still ineligible to become the head of household in domestic life (except temporarily), as sons rather than daughters are to succeed to household headship. The family law's systematic discrimination of women has sparked a long protracted struggle to reform its contents. Largely under the vision of Korea's first woman lawyer, Dr. Lee Tai Young, leaders of the family law revision movement have argued that Korea's family law must be consistent with the principles of the Korean Constitution. Opponents of revision, however, have maintained that the traditional Korean ways of governing man-woman relationships must not be discarded for Western-style innovations.

The disparities between the constitutional rights granted to women and the provisions of the family law reflect the tension of blending tradition with the demands of modernity into a consistent system. Since its adoption in 1958, the family law has undergone two major revisions. The

1. Michael Robinson, *Perceptions of Confucianism in Twentieth Century Korea*, in *THE EAST ASIAN REGION: CONFUCIAN HERITAGE AND ITS MODERN ADAPTATION* 204, 217 (Gilbert Rozman ed., 1991).

2. The President's powers were extensive, but the National Assembly elected him. Though the Assembly did not have the power to pass a vote of non-confidence against the cabinet headed by a Prime Minister serving the President, it had the power to approve or disapprove the presidential nomination of a Prime Minister. The executive branch had no power to dissolve the National Assembly. Some features of the Weimar constitution were also incorporated into the document, particularly in its economic provisions. See UNTCOK Report, U.N. GAOR, 3d Session, Supp. No. 9, U.N. Doc. A/575/Add.4 (1948).

second revision in 1989, which, with the exception of two provisions,³ granted Korean women equality under the law, came after a forty year struggle in which reformers led by Dr. Lee persistently questioned the values of a society entrenched in Confucian tradition and fought to maintain the movement's survival through political strife and authoritarian rule.

Part One will trace the process of how Confucian gender role ideology became part of the Korean consciousness and consider the broader historical context under which Korea's family law was developed. Part Two then explores the women's struggle for legal equality. Dr. Lee's own life serves as a metaphor as it reveals many of the complexities that have made the attainment of women's equality in South Korea one of the longest ongoing civil rights movements in the world. Finally, in an attempt to grasp a deeper understanding as to why a nation which has boasted one of the world's largest economies still places so much importance on having sons and maintaining the paternal family line, Part Three addresses the issues and obstacles Korean women today must still overcome.

I. HISTORICAL FOUNDATIONS

A. *The Introduction of Confucianism into Korea: The Chosôn Dynasty (1392-1910)*

Korea's family law is deeply entrenched in Confucian traditions of hierarchy and authority that stem from the Chosôn Dynasty (1392-1910).⁴ Facing the formidable tasks of consolidating their rule over an entrenched aristocracy and ending the pervasive influence of Buddhist monasteries which held considerable tracts of arable land, Chosôn leaders adopted the

3. The first provision that was not revised is the prohibition of marriage between parties of the same surname and clan origin [*tongsông tongbon*], embodied in Article 809(1) of the Civil Code. The law is based on the cultural logic that all the paternal relatives descending from the same progenitor, however large in number or remote in relationship, form a unit of exogamy. The second unrevised provision is the family headship system [*hojujedo*]. Article 778 dictates that the primary successor to the legal household head is the male lineal descendant. See discussion *infra* Section III.

4. The Chosôn Dynasty was founded by a coup d'état carried out by Yi Sông-gye, a general who effectively took power in 1381 and overthrew the Koryô Dynasty in 1392. He became King T'aejo the first king of the Dynasty. Byong-Ho Park, *Traditional Korean Society and Law*, in INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA 149, 151 (Sang-Hyun Song ed., 1983).

particularly conservative principles of Neo-Confucianism⁵ as the foundation of their reorganization of society. Neo-Confucians “espoused, rather than attacked, inequality in all social relationships — between generations, between classes, and between sexes — as an expression of the cosmic order and as essential for peace and harmony in the social world.”⁶ Equality stood for chaos, inequality for organization.⁷ Knowing one’s “station and fulfilling its attendant obligations rather than seeking the fruition of one’s own aspirations,” was at the core of Neo-Confucian ethics.⁸ “Submission, not assertion, was the virtue most admired in a person who knew his or her place, for therein lay the key to the absence of discord or strife in society, and this stability was perceived as its overriding goal.”⁹ Thus, during the Chosôn Dynasty, regulations aimed at dividing society into sex-based spheres and restructuring the family to meet the requirements of patrilineality and patriarchy gradually replaced traditional Korean practices.¹⁰ The rules confined women to the domestic sphere, established males as the sole heads of lineages,¹¹ institutionalized patrilocal

5. While Confucians refused to accept the tenets of Buddhism and Taoism, they could not resist their attraction. Thus, some of the tenets of the two systems were incorporated into Confucianism and, in the process, Confucianism was made new. The new movement called Neo-Confucianism in the West, is called the School of *Li* [principle, reason] in Chinese and arose from the writings of Sung Dynasty thinkers Ch’eng I (1033-1107) and Chu-Hsi (1130-1200). Neo-Confucians provided the Confucian tenet that human nature is good with a metaphysical foundation. They further argued that Principle (*li*) is the Great Ultimate of existence, the form according to which all things have their being and the source of goodness and truth. Operating through the material force (*ch’i*), the Principle gives individual things their individual form and character through the interaction of *yin* and *yang*. Man is the greatest embodiment of the Principle; at its best, human nature is identical with Principle. EDWARD Y. J. CHUNG, *THE KOREAN NEO-CONFUCIANISM OF YI T’OEGYE AND YI YULGOK* (1995).

6. Vipin Chandra, *Korean Human-Rights Consciousness in an Era of Transition: A Survey of Late-Nineteenth Century Developments*, in *HUMAN RIGHTS IN KOREA: HISTORICAL AND POLICY PERSPECTIVES* 25, 29 (William Shaw ed., 1991).

7. *Id.*

8. *Id.*, at 29-30.

9. *Id.*, at 30.

10. An examination of group census register dating from 1391, the very end of the Koryô Dynasty, reveals a society strongly divergent from Neo-Confucian patrilineal norms, though certain Neo-Confucian reforms were already evident. These registers record a man and his wife, his four ancestors — father, grandfather, great grandfather, and maternal grandfather — his wife’s four ancestors, and anyone living with the couple. The registers depart from earlier Koryô practice, in which the wives of the four ancestors were also recorded. These registers do not list widowed women as heads of households, but rather list the oldest surviving male member of the family as head. This contrasts with registers dating from 1333 and 1372, which list women as heads. The 1391 method of recording became standard Chosôn practice and was required by law. See Haboush, *supra* note 5, at 99-100.

11. During Korea’s Silla Dynasty, evidence suggests that even among royal families there was no strict rule regarding the use of paternal surnames. Furthermore, succession, including the succession to the throne, was not only limited to sons, but it was also open to daughters, sons-in-law, and grandsons by both sons and daughters.

marriage customs, and entrenched an inheritance system based upon primogeniture.¹²

In order to force feminine behavior and mores to conform to Neo-Confucian norms, the first ruler of the Chosôn Dynasty, King T'aejo, who ruled from 1392-1398, promulgated the *ch'ilch'ul sampulgo*, "seven bases for divorce and three for retaining a wife."¹³ According to Confucian tenets, a woman could be divorced for any one of seven reasons: "failing to produce a son, gossiping, stealing, jealousy, loose conduct, disease, or unfiliality toward her parents-in-law."¹⁴ To win the affection of her new family and her husband, the wife must produce sons. Only in cases where the woman had no place to go, had faithfully passed the three year mourning period for her parents-in-law, and had improved her in-law's household, could the husband not expel his wife.

Among the customary laws compiled in the *Kyôngguk taejôn*¹⁵ [*the Great Code for Administering the Country*], were legal measures that were supposed to place women in the domestic sphere and enhance womanly virtues. *Yangban* [noble class] women were forbidden from associating with or conversing with men beyond a certain degree of kinship and prohibited from participating in outdoor games, feasts, and equestrian practice. These activities had been commonplace during the Koryô Dynasty.¹⁶ If a woman wanted to participate in any social activities, she was required to attain permission from either her husband or from the head of the family.¹⁷ Moreover, all women regardless of their social position were required to keep their faces covered if they went outside.¹⁸ The

Even during the early part of the Chosôn Dynasty a daughter or a daughter's son could inherit the line and act as the family's ritual heir. Adopting a male agnate when the daughter's line existed was unheard of until the seventeenth century. *Id.*, at 99, 104.

12. Most of what we know about the Chosôn regulations are from its dynastic histories and apply with any certainty only to royal and upper class women. The influence of Confucianism on the commoners can only be assumed.

13. YUNG-CHUNG KIM, *WOMEN OF KOREA: A HISTORY FROM ANCIENT TIMES TO 1945*, 52-53 (1977).

14. *Id.*

15. The compilation of this code began during the reign of King Sejo (1455-1468) and was completed during the reign of King Songjong (1469-1494). The basic code of the Chosôn Dynasty, the *Kyôngguk taejôn*, was a collection of indigenous laws and decrees promulgated between the founding of the dynasty and the date of its completion. It also incorporated the *Kyongje Yukjon*, Six-Division Code for Administration, the legal code promulgated by the Chosôn Dynasty's first king, T'aejo. The *Yukjon* included the laws and decrees of the previous Koryô Dynasty that T'aejo deemed worthy of continuing. Byong-Ho Park, *Traditional Korean Society and Law*, in *KOREAN LAW IN THE GLOBAL ECONOMY* 1, 3 (Sang-Hyun Song ed., 1996).

16. Kim, *supra* note 13, at 85.

17. *Id.*, at 85.

18. *Id.*

regulations were seen as necessary preconditions in the state's effort to establish a new family order based upon Confucian values.¹⁹

During the reign of King T'aejong (1400-1418),²⁰ a campaign arose to convert matrilocal marriage²¹ into the Chinese Confucian custom of receiving the bride into the bridegroom's home.²² According to ancient records, matrilocal marriage originated during the Three Kingdom Period (37 BC - AD 917),²³ prevailed through the Koryô Dynasty (918-1391),²⁴ and persisted during the Chosôn Dynasty until the 18th century. Under the custom, marital life was held in the wife's home years after the actual wedding.²⁵ Children were thus born, raised and educated in their mother's home and would address their maternal uncles, aunts, and grandparents in

19. *Id.*

20. T'aejong was T'aejo's fifth son. He took the throne by ordering the assassination of his father's designated heir, the youngest son and disposing of the rival claim of his next older brother. T'aejong abolished the private armed retinues and instituted centralized military control. He then changed the Privy Council into a State Council with greatly diminished authority, entrusting the overall conduct of government affairs to six ministries each authorized to approach the throne directly. CARTER J. ECKERT, *KOREA OLD AND NEW: A HISTORY* 107 (1990).

21. Marriage during the previous Koryô Dynasty was a rather loose institution, it was easily entered into and gotten out of. Relationships between men and women were open and informal, and marriage with close kin was common among the *yangban* class. Another marriage characteristic was that in wealthy households, men might marry three or four wives [*ch'ô*]. The wives were not ranked and apparently enjoyed equal status. The only way to reconcile plural marriage with the repeated assertions by Korean scholars that marriage among the upper and commoner classes was matrilocal is the theory of the "visiting husband." There is circumstantial evidence that a married woman could remain in her natal home and support her family herself. Receiving the same share of inheritance in the form of slaves and land as her brothers, she was economically independent from her husband and had absolute control over raising and educating her children. This system "placed heavy emphasis on the wife's family and accorded the woman an important social and economic role." See Martina Deuchler, *The Tradition: Women During the Yi Dynasty*, in *VIRTUES IN CONFLICT* 1, 7-8 (Sandra Mattielli ed., 1977).

22. The Confucian wedding ceremony is articulated in Chu-Hsi's *Chia-li*, which was based on two great Chinese works of ritual, the *Li Chi* [Book of Rites] and the *I Li* [Book of Etiquette and Ceremonial]. The climax of the wedding ceremony according to Chu-Hsi was the rite during which the bridegroom inducted the bride into his own home [*ch'in-yong*]. *Id.*, at 13-15.

23. The Period refers to the Kingdoms of Koguryô, Paekche, and Silla. Koguryô was secured in 53 B.C. and extended from the Liao River in the west to the Taedong River in the south. Paekche developed out of one of the walled-town states that comprised the Masan area, over which the ancient Chin state had ruled. It became a centralized, aristocratic state during the reign of King Kûn Ch'ogo in 346. By 371, Paekche stretched as far north as P'yôngyang and as far south as today's Chôlla province. The third kingdom, Silla, evolved out of the walled-town state of Saro in southeastern Korea. The Three Kingdom Period lasted until the 9th century with the emergence of the Koryô Dynasty. ECKERT, *supra* note 20, at 24-62.

24. After a long series of military battles, leaders of the Kingdom of Koguryô unified the peninsula in the early 10th century. Wang Kôn, who succeeded as king of Koguryô in 918, renamed his state Koryô, a shortened form of the same name. The Koryô Dynasty came to an end with the emergence of the Chosôn Dynasty in 1392. *Id.*, at 61.

25. Park, *supra* note 15, at 6. See also Deuchler, *supra* note 21, at 15-17.

the same way as their paternal relatives.²⁶ The son-in-law also regarded his wife's home and parents as his own.²⁷

Concerned that the Chinese would ridicule Korea for incorporating Chinese practices in all areas except for marriage, King T'aejong demanded that the Department of Rites study pure wedding forms as recorded in the Chinese classics and make recommendations to implement them in Korea.²⁸ According to Neo-Confucian tenets, "lineage as a patrilocal descent group as well as a ritual unit was of crucial importance. T'ae-jong, therefore, could not tolerate the custom by which *yang* wrongly followed *yin* as it abandoned the true meaning of husband and wife."²⁹ Yet his desire to compel change in Korea's marital custom received little support. The majority took a conservative attitude towards any change and opposition towards adopting patrilocal marriage customs continued even throughout the sixteenth century.³⁰ For instance in 1516, the 11th year of King Ch'ung-ch'ông's reign (1506-1544), a Minister by the name of Kim Ung-Ki declared:³¹

At a distance of 100 *ri* (40 km) the wind is not the same and at a distance of 1,000 *ri* (400 km) customs are not the same. The etiquette established by the former kings has been followed since it came to conform to human feelings and native customs. The institution of patrilocal marriage cannot be followed.

Dissension against patrilocal marriage continued for several decades. During the reign of King Myôngjong (1545-1567), his Office of the Inspector General announced the following position:³²

Since our country is situated far from China, our land and customs are different from those of China. Though there is no difference between the two in terms of the principles of human relations and the moral rules to govern the Five Human Relations, our institutions cannot help but be different from those of China. Though the noble class

26. Park, *supra* note 15, at 6.

27. *Id.*

28. Deuchler, *supra* note 21, at 14.

29. *Id.*

30. Park, *supra* note 15, at 7.

31. *Id.*

32. *Id.*

system exists in our country, it does not exist in China and, though we have a slave system, China does not. Then, would the noble class system be abolished? And, should the slave system be repealed? While there is no need of staying at and taking care of parents' tombs, we have a custom of staying at and taking care of parents' tombs for three years. Then should the custom of staying at parents' tombs be discarded, while the institution of receiving the bride is adopted? Because it is impossible to make a uniform decision on these matters, how can we follow the Chinese institutions in a uniform manner?

Even when the Office of the Censor General insisted on following the institution of patrilocal marriage in 1574, King Sônjo (1567-1608) ordered continuation of the traditional custom stating: "Since the native marriage custom is followed it is unnecessary to set up a new institution."³³ Many of the objections towards adopting the Confucian model not only stemmed from peoples' sentimental values, but also from their recognition of the potential practical problems it would raise, especially economic ones. Inheritance documents of the Dynasty clearly show that well into the seventeenth century daughters inherited the same share of property as their brothers regardless of whether they were married or not.³⁴ The only exception was that the eldest son would receive an additional 20 percent of his share conditional on his rendering religious services for the family's ancestors.³⁵ "If the daughter moved into her husband's house, she could not take land but would have to be apportioned her share of the inheritance

33. *Id.*, at 8.

34. The system of equal inheritance was considered an immutable institution because it was stipulated in several legal codes including the *Kyôngguk Tŕejôn*. "This fact is surprising, if not shocking, to the vast majority of contemporary Koreans who tend to assume that the late dynasty practice (and for the most part, the contemporary practice) in which inheritance is provided only for sons, with the lion's share going to the eldest son, primogeniture, originated in the earliest times." MARK A. PETERSON, KOREAN ADOPTION AND INHERITANCE: CASE STUDIES IN THE CREATION OF A CLASSIC CONFUCIAN SOCIETY (1996). For instance, see *Chônju Yi-ssi Korim-gunp'a Sônjo Yumunjip* [Documents Left by the Ancestors of the Korim-gun Branch of the Chônju Yi Lineage] (1975) wherein the authors register their surprise at finding a document of their ancestors which states that property is to be divided equally between seven sons and daughters. They conclude that their ancestors were truly exceptional to propose such a radical approach to property division. "In actuality, of course, it was common practice in those early days, and it is the surprised reaction of the recent commentators that is revealing." *Id.*, at 19 n. 2.

35. Dynastic records indicate that the father or grandfather could not dispose of the property in a way contrary to these provisions, even by will. If one of the children received a greater share, the other children could dispute the division through a lawsuit at any time without any time limitation. Park, *supra* note 15, at 8.

in the form of slaves, clothes, daily utensils or perhaps some income from her family's land."³⁶ If a bride's family were not able to provide her with her rightful inheritance, it would at times economically burden both sides of a marriage contract.³⁷ A poor groom's family would have difficulty accepting a bride without property of her own.³⁸ Acknowledging that the gap between native tradition and Confucian etiquette was unbridgeable, ritualists of the seventeenth century gave up their struggle to force the wedding custom into a Chinese framework and focused their discussions on inconsequential details and elaborate textual interpretations of wedding customs from relevant passages in the Chinese classics.³⁹

Scholars agree that the matrilocal marriage system and the system of the equal distribution of property between the male and female heirs were key factors that hampered the establishment of the patriarchal Confucian family system.⁴⁰ If the husband lived in his wife's home and received various favors from his wife's family, such as economic aid, the wife's "sense of humility would not become firm and the husband's position could not become powerful."⁴¹ Moreover, if the daughter of a wealthy family inherited an equal share of her parents' property, regardless of whether she was married or not, she would not be in an economically weak position when she moved into the home of her parents-in-law.⁴²

As time passed, however, the government's adoption of Confucianism brought about a gradual Confucianization of indigenous institutions. After studying the Confucian classics, scholars and bureaucrats belonging to the noble class endeavored to apply Confucian tenets to their lives.⁴³ Ancestor worship, the perpetuation of the paternal family line, the formation of clan villages and the closed, exclusive sense of fellowship of the paternal kinship group⁴⁴ assumed greater importance. Couples with only daughters felt the need to adopt sons and prolonged residence in the wife's home became incompatible with the new values. By the 18th century, proponents of the patrilocal marriage system had succeeded in replacing the matrilocal custom. The period of stay at the wife's home had been reduced to the so-called "three days' stay" after

36. Deuchler, *supra* note 21, at 15-17.

37. *Id.*

38. *Id.*

39. *Id.*

40. See e.g., Park, *supra* note 15; PETERSON, *supra* note 34; Deuchler, *supra* note 21.

41. Park, *supra* note 15, at 8.

42. *Id.*

43. Deuchler, *supra* note 21, at 17.

44. Park, *supra* note 15, at 12.

which the couple returned to the husband's home.⁴⁵ Furthermore, in order to assure inheritance of the paternal family lineage by the eldest son, the inheritance portion granted to eldest sons increased and the portion "earmarked for observance of religious services came to be regarded as the son's personal property."⁴⁶ The sense that a daughter's share should be equal subsided.⁴⁷

For women, the roles of "virtuous woman," "obedient daughter-in-law," and "chaste widow" became indelible images that required specific behavior.⁴⁸ For the *yangban* class, the strictest observance of these norms was regarded as a mark of their sophistication and nobility while commoners looked to the *yangban* women for model behavior. By granting political and economic prestige to men, the Confucian legislators allowed women to have status and authority only within their domestic spheres.⁴⁹ "The societal order was divided into sex based spheres legitimized by the cosmic duality of male and female elements. Cosmic connection gave the structure of the Confucians' model of the world an unassailable validity and objectivity."⁵⁰

B. *The Enlightenment Period (1876-1910)*

Alternative philosophical, religious and political traditions to Confucianism began to develop during Korea's Enlightenment Period [*Kaehwa-gi*] creating a momentum for the improvement of the position of women. The propagation of Catholicism and Protestant Christianity in Korea during the late 19th century was especially significant for women because of its idea of equality between men and women before God. The church attendance and Bible reading requirements gave new women believers excuses and opportunities to leave home, to become literate, to learn about the outside world, to work with men, and, finally, to become

45. *Id.*

46. *Id.*

47. See PETERSON, *supra* note 34, at 53-64 for a thorough discussion of the decline of inheritance for daughters. Peterson writes that the most visible aspect of the remarkable transformation of inheritance practices during the mid-Chosôn period was the disinheritance of daughters and the expansion of the role of the eldest son. Two things were happening: "one was the exclusion of daughters, the other the diminishing role of the other sons. In China, the common rule of inheritance was equality among sons and exclusion of daughters. But Korea did not go in that direction." Thus, although Neo-Confucianism was the driving intellectual force in both countries, the results were different. Peterson explains that the primary function of the organization of the lineage in Korea was to provide social status; whereas in China, the lineage controlled property

48. Deuchler, *supra* note 21, at 40.

49. *Id.*

50. Deuchler, *supra* note 21, at 3-5, 40.

involved in society.⁵¹ By opening mission schools for girls, Protestant missionaries made the first concrete step towards improving the position of Korean women.⁵² Future women leaders⁵³ benefited from being able to attend the new schools for girls and Ewha Women's University⁵⁴ in Seoul.

While Christianity, along with educational opportunity, empowered women with a strong sense of purpose and self-worth in the public sphere, Christianity by itself was not enough to transform traditional Confucian gender role attitudes within their private lives. Instead, it was often interpreted to uphold patriarchal values especially within the context of marriage. Some scholars theorize that Christianity's core doctrine of the Trinity (the Father, the Son, and the Holy Ghost) in the cultural context of a male-dominated society had the effect of sanctifying the father-son alignment of patrilineality, the backbone of Korean society.⁵⁵ The absence in Confucianism of any concern with salvation or a direct allegiance to any specific founder or savior enabled its moral teachings, emphasizing filial piety, primogeniture and patrimonial rights, to permeate Christian values and practices.⁵⁶

Nonetheless Christianity, propagated through American missionaries in Korea, did have a profound influence upon the leaders of

51. Bonnie B. Oh, *From Three Obediences to Patriotism and Nationalism: Women's Status in Korea up to 1945*, KOREA J. 37, 42 (Jul. 1982).

52. Korean feminist scholars consider the demand for education among women as the beginning of Korea's feminist movement. Chang Pil-wha, Director of Asian Center for Women's Studies of Ewha Women's University, Address at the Conference on *The Rise of Feminist Consciousness Against the Asian Patriarchy*, in Celebration of the 110th Anniversary of Ewha (May 10, 1996).

53. Anthropologist Chung Hee Sarah Soh analyzed the life histories of 29 women legislators in the National Assembly. More than half identified themselves as Christians and six of the seven elected women legislators claimed to be Christian. CHUNGHEE SARAH SOH, *WOMEN IN KOREAN POLITICS* 51-52 (1993).

54. Ewha [pear blossoms] Women's University is today the largest women's college in the world. W.T. Scranton, an American Protestant woman missionary serving in Korea, founded it in 1886.

55. See SOH, *supra* note 53, at 54.

56. Recent studies have shown that, while 25-30% of the South Korean population calls itself Christian, over 90% are estimated to adhere to Confucian notions of filial piety, primogeniture and patrimonial rights, and ancestral memorial ceremonies. According to one poll, statistically 90% of Catholics and 76.4% of Protestants in Korea could be regarded as at least marginal Confucians according to their convictions and practices confirming the statement of a well-known Christian Korean theologian who said, "Our Christians are Confucians dressed in Christian robes." Koh Byong-ik, *Confucianism in Contemporary Korea*, in *CONFUCIAN TRADITIONS IN EAST ASIAN MODERNITY* 191, 196-199 (Tu Wei-ming ed., 1996).

Korean scholar Carter Eckert also notes that the church in Korea has become deeply rooted and indigenous and has absorbed much of the Confucian tradition. Accordingly, it makes less sense to view it as outside the Confucian culture. Carter Eckert, *Confucian Ethics as a Common Discourse*, in *THE CONFUCIAN WORLD OBSERVED* 37 (Tu Wei-ming ed., 1992).

Korea's Enlightenment Movement.⁵⁷ For instance, the writings of Pak Yŏng Hyo, a scion of a noble family, reflect enthusiasm for Christianity. Though not a Christian himself, Pak had studied at Meiji Gakuin, a Protestant school. He was reported to have told an American:⁵⁸

Our people need education and Christianity. Your missionaries and mission schools can educate and improve our people . . . As the foundation of the existing religions is weak, the door is now wide open for the conversion of our people to Christianity . . . It is necessary for our people to receive education and convert to Christianity before legislative reform. Through this process alone will our people be able to establish a constitutional government and create as free and enlightened a country as yours in the future.

In 1888, Pak wrote a long memorial to the king emphasizing the need for the modernization of Korea's laws and customs concerning women.⁵⁹ Writing that all human beings are equal in the eyes of the Creator and all have the same inalienable rights to life, liberty, and the pursuit of prosperity, his petition included reforms such as prohibiting the mistreatment of women, allowing widows to remarry, and providing equal opportunities for girls.⁶⁰ While officials in power ignored his recommendations, some were reflected in the Kabo reform⁶¹ of 1894-95,

57. Korea's Enlightenment thinkers agreed that Korea's survival and prosperity were dependent upon urgent and fundamental changes in most aspects of life. Some opted for the violent overthrow of the government with foreign government support; others chose the peaceful, gradualist approach of working within the system. Some believed in the total rejection of Confucianism and the wholesale adoption of Christianity; others believed that the freedom of faith, leading to the interplay of various religious ideas and a cross-fertilization of secular values, would best benefit the nation. Among the noteworthy early leaders of the *Kaehwa* Movement were Pak Yŏng-hyo, Ō Yun-Jung, Kim Ok-kyun, Hong Yŏng-sik, Sŏ Kwang-bŏm, Yu Kil-chun, Yun Ch'i-ho, and Sŏ Chae-pil. Being the sons of influential government personages and of the *yangban* upper class they all were able to study abroad. They all spent time in Japan and Sŏ Chae-pil became the first Korean to attain a medical degree in the United States. Chandra, *supra* note 6, at 46-50.

58. *Id.*, at 50.

59. Oh, *supra* note 51, at 42.

60. *Id.*

61. Important changes pertinent to the status of women took place. Among them, child marriages were abolished, remarriage for widows was legalized, the official dress of the court was changed and bobbed hair was decreed. No attention, however, was paid to women's education. To the chagrin of the conservatives in society, people began to wear Western clothes. KIM *supra* note 13, at 215.

the controversial reform program initiated by Japanese officials in Korea before and during the Sino-Japanese War of 1894-95.

Sô Chae-pil continued Pak's efforts, calling for equal rights and educational opportunities for women.⁶² A convert to Protestant Christianity, Sô felt that Korea's salvation as a nation lay in throwing away Confucianism and adopting Christianity and Christian civilization as rapidly as possible.⁶³ Recognizing the absence of concepts like civil rights [*minkwon*] and human rights [*inkwon*] from the Confucian tradition, Sô believed that Korean society needed to be raised from its abject state of submission to government and be given a genuine feeling of autonomy and self respect.⁶⁴ In addition to disseminating the ideals of popular sovereignty, the rule of law, and inalienable individual rights, Sô called attention to the plight of Korean women in a newspaper he began to publish in both vernacular Korean and English in 1896, respectively called the *Tongnip Sinmun* and *The Independent*. During the three and a half years of the newspaper's existence, the newspaper regularly reported and publicized women's activities. In Sô's first editorial, published two weeks after the first issue of the paper, Sô lamented "the pitiable lot" and "barbarous treatment" of Korean women.⁶⁵ Sô wrote that, although there was nothing inferior about women, men mistreated them because men themselves were barbarous, unenlightened, and dependent entirely on their physical strength.⁶⁶ Sô predicted that when women became educated they would come to realize that they had the same rights as men and would find means to restrain men from committing abuses against them. Sô concluded with an urgent appeal to women:⁶⁷

62. Known as Philip Jaisohn in America, Sô had lived in the United States, married an American woman, and earned a medical degree after the failure of the Coup d'Etat of 1884 [*Kapsin Chôngbyôn*]. The Coup aimed to establish an independent and efficient modern state with an egalitarian social order, to replace the oligarchic, *yangban*-centered sociopolitical structure of the Chosôn Dynasty.

Sô was granted American citizenship after serving in the Spanish-American War, but returned to Korea after the Sino-Japanese War and started *The Independent* [*Tongnip Sinmun*], Korea's first modern newspaper, and the Independence Club [*Tongnip Hyôphoe*]. Sô ran the newspaper until May 1898 when his wife and child were executed simply by virtue of being related to him and he was permanently exiled to America by a pro-Japanese government under the influence of conservatives who hated him. For further discussion on Korea's Enlightenment period see Chandra, *supra* note 6; ECKERT, *supra* note 20; KIM, *supra* note 13; Oh, *supra* note 51, at 41-46.

63. Chandra, *supra* note 6, at 61.

64. *Id.*, at 62-63.

65. *The Independent*, April 21, 1896, quoted in VIPAN CHANDRA, *IMPERIALISM, RESISTANCE AND REFORM IN LATE-NINETEENTH CENTURY KOREA: ENLIGHTENMENT AND THE INDEPENDENCE CLUB* 176 (1988).

66. Oh, *supra* note 51, at 42-43.

67. *Id.*

So we are urging you, women of Korea, to strive for high education, conducting yourselves in an exemplary manner to become models for men. In this way not only will you gain rights properly due to you, but also guide ignorant men in the right direction.

Sô's appeal cannot be described as a modern-day feminist call to action as he did not propose any concrete plan for an immediate and radical restructuring of the social system, but only an intellectual and attitudinal change on the part of women themselves, as a way of winning, a recognition of their inherent rights from men.⁶⁸ The path to gaining equality with men was not through militancy and confrontation but through reasonableness and gradual reform including the provision of women's educational programs.⁶⁹

Sô's editorials, however, were the first publicly circulated statement that questioned the treatment of women. Under Sô's leadership, *The Independent* also carried out an editorial campaign against child marriage, matrimony through matchmakers, and concubinage. It also advocated for the Christian ethic of equal rights for both sexes. A few important points in the editorials on the status of women can be summarized as follows:⁷⁰

(1) The equality between men and women is a fundamental right endowed by God. Men do not realize it, thus they have an ignorant contempt for women. It is unfair to punish only women when they commit adultery, while this is much more frequently a man's offense. Rather, both should be punished equally. (2) It is unjust to keep women indoors bound to old customs of seclusion or to work them like slaves. (3) A widow as well as a widower should be permitted to remarry. In order to gain this right, women should be educated. (4) A married life should be based on mutual cooperation and love. . . .

The editorials reflect Sô's belief in the necessity of a fair and just legal system administered on the principles of equality, impartiality, and openness.⁷¹ The law must be universalistic, not particularistic, in content

68. For further discussion, see CHANDRA, *supra* note 65; see also Oh, *supra* note 51.

69. See Sô's final editorial in *The Independent*, September 7, 1899.

70. See KJM, *supra* note 13, at 247-248.

71. Chandra, *supra* note 65, at 177.

and application.⁷² Lamenting the capricious, callous and repressive rule of the Korean government, Sô wrote that Korea's foremost need was for courts where people can lay charges against any man including the adulterous, powerful magistrate who stole someone's wife.⁷³

In order for people to be able to bring public officials who violated the law to justice, Sô realized that it was crucial for the public to educate themselves of the law. In late March 1898, Sô instructed the leaders of his Independence Club to select sections of the Korean legal code at the Club's weekly gatherings and explain the "exact purpose and spirit" underlying each law.⁷⁴ Activities of this kind, Sô commented, would not only encourage people to take more interest in national affairs, but were also among the best means by which the people could be brought closer to the government.⁷⁵ He wrote:⁷⁶

Korea will never be free until she has good laws, laws that open up the way for every citizen to most readily earn his bread, educate himself, and his children and provide for the moral training of himself and his family.

In elevating both individual freedom and law, Sô was asking his associates in the Club and his readers at large to make the cleanest break yet from the Confucian political tradition.⁷⁷

The ideals of due process, freedom of expression, responsible government and the equality of all citizens were strongly opposed by those in power and the conservative Confucian faction which hated progressives like Sô and the ends toward which they worked. Though the Enlightenment thinkers were persecuted and many with their lives ending in tragedy,⁷⁸ their arguments marked the beginning of a century of modern Korean human-rights thought and advocacy. Furthermore, their rhetoric that Confucianism as the Chosôn Dynasty's formal state ideology hindered Korea from becoming a modern, progressive state endured throughout the

72. *Id.*

73. *The Independent*, June 23, 1896.

74. *The Independent*, March 26, 1898.

75. Chandra, *supra* note 65, at 179.

76. *The Independent*, October 7, 1897.

77. Chandra, *supra* note 65, at 170-179.

78. Most of the leaders of the Enlightenment movement fled, were exiled or killed. Sô Chae-pil's family was put to death and others such as Kim Ok-kyun were assassinated and had their dismembered bodies put on public display to warn others of the consequences of similar treason. Chandra, *supra* note 6, at 49.

twentieth century.⁷⁹ Finally, their feuds with tradition-bound Confucians foreshadowed the bitter opposition family law reformers would continue to face from Korea's Confucian society a century later.⁸⁰

C. *The Japanese Occupation of Korea (1910-1945)*

Overall, the social and legal positions of women were affected little by the new standards introduced into Korea by the Japanese.⁸¹ According to Ordinance No. 7 issued on March 18, 1912, in the matters of family and succession, Korean custom was to be generally followed unless specifically provided otherwise by law. The Ordinance, however, later underwent a series of revisions each successively widening the scope of the application of Japanese law. According to the perception of modern scholars, the Japanese left the family law largely intact because they saw in Confucian customs and regulations useful means with which to maintain control over the Korean population and further their own policies.⁸² The family headship system was perceived as helpful in exerting control in that it enabled them to attain accurate surveys of the population. The Japanese also manipulated the cultural sensibilities of their Korean subjects to

79. Robinson, *supra* note 1, at 207-209.

80. For instance, similarities can be drawn between the following comments. In 1896 Minister of Education Shin Ki-son presented a memorial to the throne in which he said:

To cut the hair and wear Western clothes is to become savages, and using the Korean alphabet instead of Chinese characters is not desirable... That is equivalent to making men beasts and destroying Confucian society. Under these circumstances, I plea to be relieved from my duty.

Minister Shin's position is similar to the position expressed by Shin Ki-Hoon a leader of Taejôn City's Confucian society a century later:

[family law revision] will bring total confusion to our clan system and bring us back to a primitive family society. In our effort to move forward and become an advanced nation, why should we step backwards towards barbarism in the area of ethics and morals?

Lee Tai Young, Kajokpop Kaejong Undong 37 Nyon [The 37 Year Movement to Revise Korea's Family Law] 121 (Erin K. Cho, trans., 1990) (unpublished manuscript) [hereinafter THE 37 YEAR MOVEMENT].

81. See generally Wi Jo Kang, *Japanese Rule and Korean Confucianism, in KOREA UNDER JAPANESE COLONIAL RULE* (Andrew Nahm ed., 1973).

82. Feminist scholar Yang Hyun Ah asserts that the Japanese chose to strongly implement Confucian rules and regulations upon Korean family life as a means to exercise control. She thus argues that there is a need to clarify and investigate the Korean family tradition as the Japanese legacy has continued effect upon Korea's family law. Yang Hyun Ah, *Han'guk Kajokpôpaesô Ilkun Se Kaji Munje* [Reading Three Problems from the Korean Family Law], in KAJOK KWA POPCHE [FAMILY AND LEGAL REGULATIONS OF SOCIETY] (1995). See also Chungmoo Choi, *Korean Women in a Culture of Inequality*, in KOREA BRIEFING 97, 105-108 (1992). Choi asserts that the Japanese used the household head system as a way to take control of the existing Confucian social patriarchy in Korea and the traditional land-based economy.

bolster the legitimacy of their rule. Emphasizing filial piety, loyalty and submissiveness, the Japanese instructed Koreans to see themselves as younger brothers in the greater imperial family.⁸³ The Japanese emperor was their father and Japanese citizens their elder brothers.⁸⁴ The following passage from *Rules for Teachers* published in 1916 illustrates how state loyalty and filial piety were intertwined:⁸⁵

The fostering of loyalty and filial piety shall be made the radical principle of education and the cultivation of moral sentiments shall be given special attention. It is only what may be expected of a loyal and dutiful man, who knows what is demanded of a subject and a son — that he should be faithful to his duties.

Furthermore, in order to co-opt various segments of Korean society into supporting the colonial state during the 1920s, Governor General Saito “patronized individual Confucian scholars and provided financial support for organizations devoted to the preservation and maintenance of Confucian values.”⁸⁶ The policy won over the conservative and upper class elements of Korean society while reinforcing the public educational doctrine of loyalty to the state.⁸⁷ The decision of these Confucian leaders to cooperate with the Japanese military regime and support the idea of a social order based on patriarchal government authority would be an important factor leading to the decline of Confucianism’s political influence during the post-colonial period.⁸⁸ Their silence in the face of human rights atrocities and social injustice, as opposed to the participation of liberals from the Christian and Buddhist communities in antigovernment movements, later made them the targets of criticism by intellectuals and students.⁸⁹

In the realm of the family, the Japanese did make some changes so Korea’s family law would conform to the Japanese Civil Code.⁹⁰ Certain

83. Robinson, *supra* note 1, at 216 -217.

84. *Id.*, at 216.

85. Government General of Korea, RULES FOR TEACHERS (1916) *cited in* Robinson, *supra* note 1, at 215.

86. Robinson, *supra* note 1, at 215.

87. *Id.*

88. Kim Kwang-ok, *The Reproduction of Confucian Culture in Contemporary Korea*, in CONFUCIAN TRADITIONS IN EAST ASIAN MODERNITY 202, 222-224 (Tu Wei-ming ed., 1996).

89. *Id.*

90. Korean legal scholar Jeong Jong-Hyu asserts that while all other areas of Korea’s modern Civil Code were more influenced by the German civil code than the Japanese, the family law alone remains greatly influenced by the Japanese civil code, not the German code (Conversation with

changes helped women. For example, the law fixed monogamy, required registration of marriage, and allowed women to petition for divorce either by mutual agreement or, under certain conditions, by trial. Yet several laws that were enacted oppressed women further. For instance, the exercise of parental authority by women on behalf of their children was considerably limited in that they were required to receive permission from the family council when they made decisions, especially with respect to financial matters. Also to make the property inheritance system closer to the Japanese system of primogeniture, the portion given to eldest sons was increased to 66% in families with two brothers and 50% in families with three or more brothers. The younger brothers' share was also conditioned on the eldest brother approving their establishment of a branch family.⁹¹ The Japanese also vastly increased the powers of the eldest son as *hoju* or household head. Under the Chosŏn Dynasty the greatest authority the household head possessed was that of official representative of the household, a title which implied civil, but not legal authority.⁹² But under the Japanese household head system, the eldest son possessed the *legal* authority to protect the family economically and socially and to determine the location of the family residence.⁹³ He also possessed the obligation to discipline family members, a practice that some scholars argue enabled the Japanese to gain greater ideological control of the colonial citizenry.⁹⁴

Japanese support of mild reforms proved to be the undoing of what little progress women had made up to that time. With Japanese efforts to obliterate Korea, not only as a political entity, but also as a cultural entity distinct from Japan,⁹⁵ many Koreans, especially in rural areas, reverted to old Confucian traditions as a symbol of resistance to the Japanese regime. Any new law that abolished traditional norms, regardless of how antiquated they may have been, became identified with the hated Japanese

91. Korea's preeminent family law scholar Professor Byong-Ho Park of Seoul National University Law School argues that under the coercion of the Japanese government throughout the colonial period, the Korean people came unconsciously to support this system and went so far as to believe that it was an indigenous system from the Chosŏn Dynasty. See Park, *supra* note 15; see also Yang Hyun Ah, *supra* note 82.

92. Kwak Tong-Hon, *Kajokpŏp Kaejŏngnonui Tangwisonggwa Hyonsilsong* [*The Mandatory and Practical Reasons for the Revision of the Family Law*] in YOSONG (Women) 30-34 (Nov. 1989).

93. Choi, *supra* note 82, at 107.

94. *Id.*

95. For example, to implement Japan's cultural assimilation policy any instructions in schools and any communications in print or in public lectures which indicated Korea was distinct from Japan historically, culturally, and racially were prohibited. Further Korean school children were taught that Japanese history was their own and were penalized for uttering Korean words while in school. All Koreans were forced to adopt Japanese-style names and were forced to adopt Shintoism. See generally Kang, *supra* note 81.

rule. For instance, when the marriage age was raised to a minimum of seventeen for a boy and fifteen for a girl, bringing it in conformity with the Japanese civil code, the number of youthful marriages, which had been decreasing since the Kabo reform of 1894, suddenly increased.⁹⁶ And although the remarriage of widows was legalized in 1894, remarriage became as difficult as during the time preceding the reform.⁹⁷ Thus, as the Chinese were abandoning Confucian norms in favor of modern principles of non-discrimination, Koreans viewed as suspect any laws challenging its orthodox, Chu-Hsi style, Neo-Confucian family system. Women's rights advocates became confronted with the task of convincing people that it was possible to reform certain Korean traditions without compromising their sense of patriotism. The time when Confucianism itself was once regarded as a suspect alien system whose required practices often conflicted sharply with native values had disappeared from the nation's memory.⁹⁸

II. THE MOVEMENT TO REVISE KOREA'S FAMILY LAW

A. *The First Stage: With the Creation of the Civil Code, The Family Law Revision Movement Begins (1948-1960)*

Despite the absence of any significant gains for Korean women during the Japanese occupation, had it not been for Korea's independence movement from Japan, the emergence of the participation of women in Korean politics may have been much more difficult and delayed. Under Japanese colonial rule, especially during the first decade when the political power of Korean men was obliterated, men and women were equal in their powerlessness in the political arena. In the common struggle for national liberation from the enemy, the Confucian ideology of male superiority was replaced by egalitarianism, at least until national independence was won.⁹⁹ Korean women were not only welcomed as participants, but some of them were entrusted with leadership positions in the March First Movement [*Samil Undong*] of 1919.

96. Oh, *supra* note 51, at 46.

97. *Id.*

98. After the Manchus replaced the Ming dynasty in 1644, Koreans considered civilization to have been lost in China and saw themselves as the last custodians of civilization. By the early eighteenth century, orthodox Neo-Confucianism became regarded as a sacrosanct Korean custom with Koreans perceiving themselves as more faithful to the Confucian tradition than the Chinese. See generally MARTINA DEUCHLER, *THE CONFUCIAN TRANSFORMATION OF KOREA* (1992); PETERSON, *supra* note 34; Haboush, *supra* note 5.

99. SOH, *supra* note 53, at 59-60.

After liberation, women who had fought for independence continued their active involvement in national politics. During Korea's first general election in 1948, the first opportunity for all of the Korean people to elect directly a national legislative body, the highest number of women candidates vied for an elective seat in the National Assembly. This record remains unbroken. Once the government of the Republic of Korea began to take root, however, the political climate discouraged female participation and pushed women back into the domain of traditional women's work. The Korean War further dampened women's activism. When national security and anticommunism justified the authoritarian rule of Syng Man Rhee's regime and the military emerged as the central path to political power, the participation of women in politics declined.

Yet while women came to be excluded from the legislative process, doors opened for them in the educational arena. When Seoul National University ("SNU"), Korea's most prestigious institution of higher education became coeducational in 1946, Lee Tai Young, a wife and mother of four children who always dreamed of studying law, took advantage of the opportunity. Believing that the SNU door had opened just for her, she took the entrance exam and, at the age of 32, became the first female student at SNU's College of Law.¹⁰⁰ After passing Korea's rigorous bar exam in 1952, she wrote a masters thesis and dissertation on the special characteristics of divorce in Korea, becoming the first woman to attain a doctor of laws in the nation's history.¹⁰¹ When her request for an appointment to the judiciary was refused, Lee opened her own law office.¹⁰²

Lee soon discovered that all those who sought counsel from her were women. She described the experience as "an endless queue of Korean women waiting for 5,000 years to find a woman lawyer who would listen to their stories and give them help."¹⁰³ Realizing painfully that women, more than men, were victims of discrimination under the law, she took it as a mandate ordained to her from God, that her lifetime goal in law was "to bring Korean women, one by one, from darkness into light."¹⁰⁴ With the help of Hwang Shin Duk, director of the Women's Issues Research Center, Lee established "The Women's Legal Counseling

100. SONIA REID STRAWN, *WHERE THERE IS NO PATH* 75 (1988). Sonia Reid Strawn, from New York, is a missionary of the United Methodist Church and has begun serving in Korea since 1967. Appointed in 1977 to assist in English-language related activities of the Korea Legal Aid Center for Family Relations, she worked and traveled extensively with Lee.

101. *Id.*, at 80-87.

102. *Id.*, at 88.

103. *Id.*

104. *Id.*, at 89.

Center" on August 25, 1956.¹⁰⁵ As more and more women came to the Center, Lee extended the information-giving service by writing question-and-answer articles about family legal problems in popular women's magazines.

Although most of her colleagues in the legal community were either uninterested in her work or ridiculed it as "the only thing a woman lawyer could do because no paying clients would come to her," Lee persevered. She began to realize that the provision of legal aid alone could not help any client as long as the family law discriminated against women and did not entitle them to the equality guaranteed by the Constitution. Between 1954-1957, she organized nine women's groups, including the YWCA and the Women's Issues Research Center to create a draft of the family law that they would submit for consideration to the Law Compilation Committee, the Ministry of Justice and National Assembly. Lee, Hwang, and a handful of other women leaders also visited National Assembly leaders and Chief Justice of the Supreme Court Kim Byong Noh to raise their consciousness of the need to adopt a family law that promoted the principles of individual dignity and gender equality.¹⁰⁶ While it was almost unthinkable to believe that by working together they could affect change, they vowed to do whatever would be required to bring the family law up to the standard of the nation's Constitution.¹⁰⁷

One of Lee's, Hwang's and others' earliest efforts was dedicated to the problem of adultery. According to the Criminal Code, only a wife's adultery was a crime and grounds for divorce. An adulterous wife was liable for conviction and punishment, usually imprisonment. This blatant

105. At the opening of the Center, Lee announced:

We are opening this our Women's Legal Counseling Center because there are people who are powerless and weak by virtue of the fact they are women. All who are suffering oppression and hardships will be welcomed as our clients. We will strive to make it possible for all women to enjoy their full rights as human beings by offering them legal counseling within our center and by doing all we can to make good laws in the society at large.

Speech reprinted in STRAWN, *supra* note 100, at 92. In 1966, at its tenth anniversary, the name was changed to The Korea Legal Aid Center for Family Relations as an indication of its availability for service to all persons caught in family difficulties.

106. Trying to explain to Chief Justice Kim their rationale for seeking changes in the family law, he suddenly stopped listening and scolded them: "As long as I am alive, not one jot or tittle of the law will be changed!" Turning to Lee he questioned why she had to be so impatient. "You are a newcomer to the legal profession and a woman at that. Just wait a while." To Lee, Justice Kim symbolized how entrenched in tradition the judiciary was and how formidable the task that faced them was. STRAWN, *supra* note 100, at 122.

107. See THE 37 YEAR MOVEMENT, *supra* note 80, at 5-23.

example of sexual discrimination was finally revised in 1953 to provide for equal punishment for any offender, regardless of the gender. The change was a direct result of efforts to reveal to the legislature the discrepancies between the Constitution and existing legal codes.¹⁰⁸

In 1957, Lee accepted an invitation from the U.S. State Department to study and observe legal work in the U.S. with other jurists from around the world. In August of that year, Lee's husband, National Assemblyman Chyung Yil Hyung introduced to the National Assembly for debate a version of the family law she had co-authored and hoped the Assembly would adopt. Appearing on "Voice of America," Lee spoke to her husband and the other Korean legislators back in Korea about the proposed bill. On the international airwaves she reminded her husband:¹⁰⁹

We voted for you. We believe you will stand firmly for humanity. By adopting a revised family law, you can repay your debts to the women who made your election possible. If you don't take this important stand, I cannot in good conscience campaign for you next time.

Speaking to the other legislators including the handful of women in the Assembly she declared: "The eyes of Korean women voters are upon you now. Do not forget that they comprise one-half of the population and thereby one-half of the voters."¹¹⁰

On February 22, 1958, after ten years of study and debate over which provisions of the preexisting Japanese and German civil codes to accept, the National Assembly officially announced the ratification of six basic legal codes collectively called *yukpôp*: Civil, Criminal, Commercial, Civil Procedure, Criminal Procedure, and the Constitution.¹¹¹ The Civil Code consists of five books; the first three contain general provisions, property rights, and obligations and the fourth and fifth books address the

108. From 1987, there was call to abolish the law prohibiting adultery. Proponents for repeal argued that adultery is a moral and personal problem in which the law should not interfere. Women's groups argued in favor of retaining the law, claiming that it helped curb adultery and protected victims who were mostly women. The Korean Ministry of Justice decided to retain the adultery law after the national debate, but it reduced the maximum jail sentence for adulterers from two years to one year. Keum Sook Choi, *Rise in the Legal Right of Korean Women*, in KOREAN LAW IN THE GLOBAL ECONOMY 1431, 1434-1435 (Sang-Hyun Song ed., 1996); *Adultery Law Retained in New Code*, KOREAN WOMEN TODAY 6 (Korean Women's Development Institute, Seoul, Korea, Summer 1992).

109. THE 37 YEAR MOVEMENT, *supra* note 80, at 23.

110. *Id.*

111. Chin Kim, Korean Law Study Guide 6-7 (1987).

family and succession.¹¹² While the first three books were modeled quite closely on French and German laws,¹¹³ the fourth and fifth books took particular account of Korean family traditions stemming from the Chosôn Dynasty.

Although the family law, which came into force on January 1, 1960, maintained the patrilineal and patriarchal family system, women leaders were encouraged by the inclusion in the law of some of their proposals.¹¹⁴ (The changes made to the existing legal regime are identified in the table that follows). Lee declared the adopted law, ten years after the establishment of the Korean government, "to be a first step toward the establishment of a democratic family system based upon individual dignity and sexual equality demanded by the Constitution and hungered by the nation."¹¹⁵ The family law revision movement had begun.

112. *Id.*, at 10. Books Four and Five of the Civil Code are generally known as the family law in that they are centered on the relationships within the family.

113. See Sang Hyun Song, *Special Problems in Studying Korean Law*, in *KOREAN LAW IN THE GLOBAL ECONOMY* (1996). See generally JEONG JONG-HYU, *YOKSA SOKUI MINPOP* [THE CIVIL LAW WITHIN HISTORY] (1994).

114. See THE 37 YEAR MOVEMENT, *supra* note 80, at 24-28.

115. *Id.*

***The Areas of Korea's Family Law that Departed
from Preexisting Law***¹¹⁶
(Adopted February 22, 1958; Effective January 1, 1960)

	Before Revision	Under the New Law
Permission for Marriage	Consent of the family heads and parents were required for a man and woman to marry.	Permission from the family head is not necessary. Marriage is permitted without parental consent for women of 23 years of age and men of 27 years of age.
Legal Incapacity of Married Women	To take any legal action, a married woman was required to have the approval of her husband regardless of her age.	This requirement was abolished based upon sexual equality and the equal rights of married partners guaranteed by the Constitution.
Joint Management of Assets	A husband freely administered, used and profited from his wife's assets.	A husband must recognize property owned by his wife and she may separately manage her own assets.
Divorce	Only adultery by a wife was a ground for divorce.	An unchaste act by either the husband or the wife is a ground for divorce.
Inheritance	Upon the death of a family head, the wife could not be the first in line to inherit property and married daughters could not inherit anything.	Both unmarried and married daughters receive the right to inherit their parents' property. Wives are granted the right to inherit property in place of their husbands. Equality between men and women in the amount of inheritance, however, was not achieved as women still received considerably less than men.

116. See THE 37 YEAR MOVEMENT, *supra* note 80, at 24-28.

	Before Revision	Under the New Law
Powers of the Family Head¹¹⁷	In order to marry, adopt or establish a family branch, the permission of the family head was required.	The power of the family head to give consent to his family members in the cases of marriage, adoption and establishing a family branch is abolished. The law maintains the family headship system, wherein family headship succeeds to the eldest son.
Establishing a Separate Family Branch	Members of the family had to receive the permission of the family head to establish a family branch regardless of their age.	Freedom to establish a branch family is granted to all, except for the eldest son, who are at least 20 years of age.
Succession	Succession to family headship through the maternal line was not recognized.	When there is no son, a daughter may continue the family line. In these cases, if she marries, her husband will be registered in her family register and their children will assume her family name and origin.
Adoption	In the early Chosŏn period both agnatic (a man related to a man through a man) and non-agnatic (maternal relatives, non-relatives, and daughters) adoptions were practiced. ¹ Since the concept of the patrilineage had not yet developed, an adopted child was not adopted for the sake of carrying on a line, but rather for carrying on ceremonies for the parents only. ² By the mid-Chosŏn Dynasty (sixteenth century), agnatic adoption increased dramatically. ³ By the late dynasty, under the system of	Anyone without regard to marital or parental status or sex may become an adoptive parent of an adopted child. The law also recognizes the adoption of daughters, the adoption of a child from a different family name, the adoption of a daughter's husband, the adoption of a son by a female, and prohibits, when a daughter exists, the adoption of a son by other individuals after the death of a family head.

117. For further discussion, see *infra* Section III.A.2.

	Before Revision	Under the New Law
	the patrilineal organization, it was common for every member of the aristocracy and the lower classes, who did not have a son to adopt an agnate, usually a nephew. ⁴ It was required that the agnate be a generation younger than the adoptive father and possess the same surname and family origin. The agnate inherited the majority of the property and was responsible for ancestral ceremonies for a long line of ancestors. ⁵	

B. The Second Stage of the Family Law Revision Movement (1960-1977)

In April 1960, a student revolution overthrew the government of President Syng Man Rhee and opened the door to a more democratic political process. Lee's husband, Chyung Yil-Hyung was asked to serve in the government of the Second Republic as elected President Yun Po Sun's Foreign Minister.¹¹⁸ The brief democratic political period came to an end one year later with the May 15, 1961 coup d'etat led by General Park Chung Hee leading to the birth of the Third Republic.

Lee continued to work at her Legal Aid Center and accepted an offer to serve as Dean of Ewha Women's Law College.¹¹⁹ She began to realize, however, that the courts system with its complicated procedures discouraged women from bringing their cases forward.¹²⁰ A closed family-relations court was needed so that family matters did not have to be heard publicly along with all other kinds of civil cases.¹²¹ After convincing her colleagues of the urgent need for a system that would better meet women's

118. STRAWN, *supra* note 100, at 98.

119. Lee saw the deanship as an opportunity to raise awareness among women students and to train new leaders for Korea's women's movement. She emphasized that law studies should not be primarily aimed at passing an exam or a "bus stop" to marriage, but rather "a step towards the humanization of persons" and learning how the benefits of law can be shared in society. Despite pressures she was wasting students' precious time, Lee established a clinical legal education program at Ewha believing it was essential to connect her students with actual situations they would encounter in the world. *Id.*, at 98.

120. *Id.*, at 96-97.

121. *Id.*

problems, Lee met with judicial officials and worked with them to draft a law that would establish the first family court in Korea's history.¹²² Passed in October 1963, the Family Court Procedure Act provided for a separate family court in Seoul and a separate family affairs section in the district courts throughout the country.¹²³ The family court would hear all cases involving matrimonial, juvenile, and other domestic matters.¹²⁴ Its proclaimed purpose was to promote harmony and cooperation in the family based on individual dignity and equality between the sexes as mandated by the Constitution.¹²⁵ As part of the procedure toward settling family disputes, a mandatory mediation process was enacted and Lee was made one of the first members of the mediation committee.¹²⁶

For the next ten years, however, the momentum for legal reform came to a halt as President Park dissolved all women's organizations.¹²⁷ Realizing that democracy had to be restored to Korea before family law revision could be accomplished, Lee resigned as Dean of Ewha and halted her law revision activities in order to devote herself full time to campaign for Kim Dae Jung,¹²⁸ the opposition candidate of the New Democratic Party in the upcoming 1972 presidential election.

In October, a few months after Kim lost the election by a small percentage, President Park declared martial law and dissolved the National Assembly. He introduced the government of his Fourth Republic by replacing the existing constitutional system with the so-called *Yusin* [Revitalization] Constitution.¹²⁹ On its face, the Constitution seemed to support basic human rights. The chapter on the Rights and Duties of Citizens opened with the declaration that "[a]ll citizens shall be assured

122. Although the South Korean Supreme Court had contemplated establishing a family court system earlier primarily as a result of the establishment of such a court system in Japan in 1949, the plans were not seriously discussed until after 1961. Woo Dong Park, *Kajong Pôpwon 20 Nyone Hwégowa Jonmang* [20 Years of Family Law Court in Retrospect and Prospect], in KAJONG POPWON SAHGONE MUNJEJOM [FAMILY COURT ISSUES] 6-34 (1983), cited in Kay C. Lee, *Confucian Ethics, Judges and Women: Divorce Under the Revised Korean Family Law*, in 4 PAC. RIM L. & POL'Y J. 479, 486 (1995).

123. Until today, Seoul is the only city with a special family court of its own; in other cities, the district courts handle such matters. The Family Court Procedure Act was amended in 1990 to serve as the primary source of law regulating domestic procedures. See SUPREME COURT OF KOREA, JUDICIAL SYSTEM OF KOREA 11-12 (1991).

124. Lee, *supra* note 127, at 487.

125. S. KOREA CONST. art. 36(1), (Constitution of the Republic of Korea of 1987 in CURRENT LAWS OF THE REPUBLIC OF KOREA) (Seoul, Korean Legislation Research Institute, 1994).

126. STRAWN, *supra* note 100, at 97.

127. THE 37 YEAR MOVEMENT, *supra* note 80, at 124.

128. After four decades in politics as an opposition leader, Kim Dae Jung was elected President of South Korea in December 1997 and took office on February 25, 1998.

129. THE 37 YEAR MOVEMENT, *supra* note 80, at 45.

dignity and value as human beings, and it shall be the duty of the State to guarantee such fundamental rights of the people to the utmost.”¹³⁰ There were also unqualified provisions that “[a]ll citizens shall enjoy personal liberty,” and “[n]o citizens shall be tortured or compelled to testify against himself in a criminal case.”¹³¹ Nevertheless, whenever the president merely “anticipated” a threat to national security or public safety and order, the new Constitution authorized him to take emergency measures to “temporarily suspend the freedom and rights of the people prescribed in this Constitution.”¹³² It also disallowed any judicial review of presidential actions.

Justifying the existence of a strong government as necessary to achieve national security and prosperity, Park demanded that the nation focus on economic development. Adopting the rhetoric of earlier twentieth century intellectuals who blamed Confucianism for the nepotism and conservatism that delayed Korea’s scientific and economic development, Park condemned Confucianism’s influence in the economic realm for encouraging a mentality of vassalage, lack of independent spirit, indolence, lack of enterprise, malicious selfishness and lack of sense of honor in the Korean people.¹³³ Park qualified his position when his criticisms provoked serious counterattacks by Confucians, especially those in Kyongbuk province, the base of his political support.¹³⁴ Park began to help preserve the symbolic and artistic legacy of Confucian ritual by paying special homage to Confucian sites, supporting the maintenance of Confucian relics, and directing governmental funds which enabled local lineages to open private museums honoring their scholar ancestors.¹³⁵ His efforts succeeded in appeasing Confucians who understood his actions as an expression of nationalism and respect for the nation’s culture and history molded by Confucian tradition.¹³⁶

The Pan Korea Women’s Group organized branches in all the major cities of the nation to raise consciousness of the need for family law reform.¹³⁷ Through cartoons, dramatic presentations, posters, pamphlets,

130. Jerome Alan Cohen and Edward J. Baker, *U.S. Foreign Policy and Human Rights in South Korea*, in *HUMAN RIGHTS IN KOREA: HISTORICAL AND POLICY PERSPECTIVES* 171, 187 (William Shaw ed., 1991).

131. *Id.*

132. *Id.*

133. PARK CHUNG HEE, *OUR NATION’S PATH: IDEOLOGY OF SOCIAL RECONSTRUCTION* 34-107 (1962).

134. Kim, *supra* note 88, at 217-218.

135. *Id.*

136. *Id.*

137. *Id.*, at 52-56.

and signature campaigns on the streets, the Group attempted to bring the message of the necessity of reform to both urban and rural women.¹³⁸ Although activity was temporarily suspended in the autumn of 1973 as women became busy during *kimjang* [the kimchee¹³⁹- making season] women's leaders met again in early 1974.¹⁴⁰

With President Park's prohibition of all discussions on constitutional reform¹⁴¹ and the Korean Central Intelligence Agency's (KCIA) declaration that the Pan Korea Women's Group's activities violated that prohibition, the Pan-Korea Women's Group decided to halt the further formation of local branch organizations and the holding of campaigns in public.¹⁴² Yet, the Group's leaders continued to meet with legal scholars to complete a draft of an amendment to the family law by September 20, 1974, the date the National Assembly was scheduled to reconvene.¹⁴³ Out of 345 articles, they chose 120 to include in the amendment and focused their efforts upon the two most controversial provisions — the family head system and the prohibition of marriage between parties of the same surname and clan origin.¹⁴⁴

Because the Pan Korea Women's Group did not have the power to introduce a law on the floor of the National Assembly, leaders of the Group met privately with Assembly members to garner their support. National Assemblywoman Lee Sook Jong urged the nine other Assemblywomen, the largest number in Korea's history, to support and involve themselves in family law revision activities.¹⁴⁵ Finally, on September 30, 1974, ten days after the 20th session of the National Assembly opened, Pan Korea Group's Chairperson and National Assemblywoman Lee Sook Jong introduced the revision proposal to the Assembly.¹⁴⁶

138. *Id.*

139. Kimchee is a spicy pickled cabbage. Eaten with rice, it is a staple of the Korean diet.

140. THE 37 YEAR MOVEMENT, *supra* note 80, at 55.

141. Park's Yusin government had passed the following Emergency Measures:

(1) Discussions on constitutional reform were forbidden; (2) A Committee on Martial Law was established; (3) Any individual convicted of breaking any law would be subject to the rule of the Military Court.

THE 37 YEAR MOVEMENT, *supra* note 80, at 57.

142. *Id.*, at 58.

143. *Id.*, at 60-64.

144. For discussion on the family head system and the prohibition of marriage between parties of the same surname and clan origin, see *infra* Section III.A.

145. *Id.*, at 63.

146. *Id.*, at 64.

Encouraged by the media's attention and increased public support,¹⁴⁷ the Group sent personal letters to President Park¹⁴⁸ and the YWCA declared 1975 as the "Year of Family Law Reform." Because of the repressive political atmosphere, however, the Judiciary and Legislative Committee of the National Assembly did not show any interest in family law revision. Lee herself was arrested in March of 1976 along with her husband for their pro-democracy activities and public criticism of the government.¹⁴⁹ Lee was given a three-year sentence, stripped of her civil rights, removed from the boards of directors of various organizations including the Korea Legal Aid Center, and disbarred from practicing law for 10 years.¹⁵⁰ When her husband suffered a debilitating stroke, their sentences were temporarily suspended.

Yet in December 1976, Park's government offered new hope to family law reformers. The government had concluded that because families without sons were continuing to have children in the hope of having a son, its efforts to control Korea's population growth through its two-child per family campaign was failing. Realizing that it needed to address the preference for sons, the government began to express interest in abolishing sexual discrimination against females and in supporting the revision of the family law which was still under consideration by the National Assembly.¹⁵¹ Using the government's population concerns as a tool to expedite family law reform, the Pan Korea Women's Group launched a campaign publicizing the message that unless the family law is reformed, the goal of two children per family will be impossible to achieve.

147. Pan Korea Women's Group members met with 25 new reporters and asked for their commitment to help increase public support and awareness about the movement and consistently report their activities. Following the meeting, some television and radio producers together with Pan Korea Women's Group members created a documentary on the family law revision movement. It was broadcast numerous times on television and radio.

148. The following is an example of a petition that was sent to President Park on April 10, 1975:

Dear President Park:

I am a woman who started a career after college. It is beyond my imagination that Korean women are still at such a disadvantage. It is unjust for men to treat women as servants or decorative objects. We are not only oppressed at home, but also in the workplace, we face discrimination in both wages and promotions. It depresses me to see the lives of my married friends and married sisters! I believe that the way to solve this problem depends on revising the family law. I petition you, Mr. President, and beg you to revise the family law this year.

THE 37 YEAR MOVEMENT, *supra* note 80.

149. STRAWN, *supra* note 100, at 132-138.

150. *Id.*

151. THE 37 YEAR MOVEMENT, *supra* note 80, at 74.

After months of grass roots education and consciousness-raising, on December 8, 1977, three years after the family law revision proposal had been submitted and nine days before the Assembly was to adjourn, Park's Democratic Republican Party announced its intention to partially revise the family law.¹⁵² The Party declared that while it would not revise the controversial family headship system and the prohibition of marriage between parties of the same name and origin, it would revise aspects of the inheritance law.

The Pan Korea Women's Group had mixed emotions. While they welcomed the news that the revision proposal would finally be given attention, the fact that core sexual discriminatory articles would be ignored was a heartbreaking disappointment. The Group realized, however, that because of the upcoming elections the National Assembly maintained a compromised position between proponents and opponents of reform. The revised bill was issued on December 31, 1977. (The changes brought by the bill are summarized in the following table).¹⁵³

Contents of the 1977 Revision of the Family Law
(Revised December 31, 1977; Effective January 1, 1979)

	Before Revision	Under the New Law
Marriageable Age	A man under age 27 and a woman under age 23 had to receive parental permission before marrying.	Both men and women at or above age 20 may marry without parental consent. A minor under the age of 20 is legally recognized after marriage as an adult and can conduct legal affairs without the approval of a legal guardian.
Divorce by agreement	A man could easily force his wife to agree to a divorce that he initiated since there was no oversight.	To provide women a safeguard, the Family Court must confirm a divorce by agreement. Both spouses must appear before a judge of the Family Court (or the Family Affairs Section of the District Court) to confirm their intent to divorce. The divorce may be registered.

152. *Id.*, at 90.

153. See SONIA STRAWN, *supra* note 100, at 206; see also THE 37 YEAR MOVEMENT, *supra* note 80, at 95-97.

	Before Revision	Under the New Law
Inheritance- Wives	A widow could claim only half the inheritance portion of her sons.	The inheritance share of a widow is equal to that of the eldest son who succeeds to the position of family head.
Inheritance- Daughters	Unmarried daughters received half the portion given to sons. Married daughters received one quarter of the portion.	An unmarried daughter is entitled to an equal share of inheritance as a son, except for the eldest son. The law did not make any changes regarding the amount married daughters received, i.e., one quarter of the portion of sons.
Property Distribution by Wills	An individual was able to distribute his property as he desired through a will.	The law provides that regardless of the provisions of a will, part of the property will be made available to surviving members of the deceased's family.
Ownership over Property with Unclear Title	Property acquired after marriage that did not clearly belong to one spouse was deemed to be the property of the husband.	Property acquired after marriage with an unclear title of ownership is considered to be jointly owned by the couple.
Parental Rights	In the exercise of parental authority over minors, the father assumed responsibility. Only in the absence of the father, did the mother assume responsibility.	Both parents are entitled to exercise parental authority over their minor children. When one parent is unable to exercise his or her parental rights, the other parent is entitled to do so. However, in cases when they differ in opinion, the final decision-making authority belongs to the father.

C. The Third Stage of the Family Law Revision Movement (1978-1989)

In October 1979, President Park Chung Hee was assassinated and, two months later through a violent coup d'état and the bloody suppression of a popular revolt in the city of Kwangju in May 1980, General Chun Doo Hwan rose to power.¹⁵⁴ With the collapse of the *Yusin* system and the birth of Chun's Fifth Republic, Lee and her husband were released from their sentences and were restored of their civil rights. The Minister of Justice also readmitted Lee to the bar.¹⁵⁵ Chun's Democratic Justice Party became the ruling party of the 11th National Assembly and assumed the responsibility of providing a plan for national growth and development.

In articulating his national program, Chun urged the nation to continue to focus upon economic development. Chun also adopted Park's line of argument by selectively condemning aspects of Confucianism that seemed responsible for Korea's delayed scientific and economic growth¹⁵⁶ while omitting from his criticisms any concern over Confucian gender role ideology or practices within the family. With no less a personage than the President weighing into the debate over Confucianism's legacy in modern Korea, Confucian family values continued to be perceived as integral aspects of the national identity that needed to be protected and preserved against the influx of Western influence.

Despite the absence of any support for family law reform in Chun's agenda, women's groups persevered. On July 18, 1984, 41 women's organizations met and formed the Women's Alliance for the Revision of the Family Law (W.A.). Lee was elected chairperson.¹⁵⁷ The group agreed to pursue the following: obtain one million signatures from men and women for the support of family law revision, build public support through educational programs and publicity, submit a petition to the National Assembly demanding full ratification of the U.N. Convention on the

154. For history of the period, see ECKERT, *supra* note 20, at 347-387; see also KI-BAIK LEE, *A NEW HISTORY OF KOREA* (1984).

155. STRAWN, *supra* note 100, at 141.

156. Examples of Confucian values that are typically labeled as detrimental to economic growth are idolization of the past and abstract unworldliness. Chun Doo Hwan's treatment of the Confucian tradition has been considered by some scholars to be more sophisticated than Park Chung Hee's. For instance, Chun identified "discipline" and "public interest" as positive aspects of Confucianism. He further asserted that the Confucian spirit was the basis of Korean culture; therefore, to not maintain discipline in the name of economic development and national security was a breach of traditional values. See Robinson, *supra* note 1, at 216-225.

157. THE 37 YEAR HISTORY, *supra* note 80, at 104.

Elimination of All Forms of Discrimination Against Women¹⁵⁸ and revision of the family law, send a letter to every Assembly member demanding family law reform,¹⁵⁹ conduct lobbying activities in the National Assembly

158. See *infra* Section III.B for information on issues that surround Korea's ratification of the U.N. Convention.

159. The following letter was sent to the National Assembly members:

Dear National Assembly members:

The women's organizations have maintained the struggle during the past 30 years for the revision of the family law. Since July, over 70 women's organizations have united and have campaigned to pass the revision proposal at this 123rd session of the National Assembly. As you know, the family law was revised by the National Assembly in 1958 and was made effective in 1960 under the Liberal Party's rule. In 1977, the law was substantially revised during the Republican Party's rule under the *Yusin* Constitution. The items which we would like this Assembly to revise are those that were not included in the first and second revisions. . . .

It is clear that the current family law violates the principle of universal human rights based upon individual dignity and sexual equality as guaranteed by our nation's Constitution. In addition, it is clear that the National Assembly will ratify the U.N. Convention on the Elimination of All Forms of Discrimination against Women that was endorsed by our government last year. It is regrettable, however, that the ratification was based upon reserving those areas that conflict with Korea's family law.

Logically, the current National Assembly should first revise the family law and then ratify the U.N. Convention without any reserved items. If you are reluctant to revise the family law at this session because of your impending reelections, we can only interpret this as a statement that you are ignoring women who constitute half the electorate. Please do not lightly consider women's roles as daughter, wife, and mother and as democratic citizen. For a revision of the family law to pass this session, we propose the following:

- (1) Become a proponent of family law revision and vote for the bill;
- (2) Hold public discussions on family law revision in the National Assembly;
- (3) Support the introduction of the family law revision petition to the floor of the Assembly;
- (4) After revising the family law, ratify the U.N. Convention on the Elimination of All Forms of Discrimination against Women without any reservations.

and strengthen their organization by inviting men's organizations as sponsors.¹⁶⁰ The W.A. sought revision of eight areas in the family law.¹⁶¹

(1) Abolition of the Family Headship System:¹⁶²

The revision would eliminate the ideological framework for maintaining male supremacy as the system requires the head of the household to be the eldest son or the eldest grandson, regardless of age or ability.

(2) Abolition of Sexual Discrimination within the Scope of Relatives:

The scope of who is considered to be a "relative" in terms of legal responsibilities should be equal for both men and women. Under the existing system, one's relatives included third cousins on the father's side, but only first cousins on the mother's side. While a wife had to consider third cousins on her father-in-law's side and first cousins on her mother-in-law's side as relatives, her husband only had to consider his wife's mother and father as relatives. In a Confucian family system, who is considered a relative is important for determining who should and should not wear mourning attire and the length of time the individual must wear the attire in the event of a death in a large family.

(3) Abolition of the Law Prohibiting Marriage between Parties of the Same Surname and Clan Origin:¹⁶³

The revision would eliminate this law which perpetuated the principle that only the paternal lineage counts in tracing one's roots. The Civil Code prohibited individuals who shared a paternal ancestor, no matter how far back in time, from marrying. On the maternal side, however, only those individuals sharing a common ancestor within four generations were prohibited from marrying.

160. By September 4, 1984, the W.A. consisted of a total of 83 organizations making its membership 13 million. *Id.*, at 105.

161. See *id.*, at 115-118; Rosa Kim, *The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law*, 14 B.C. THIRD WORLD L.J. 145, 150-153 (1994); Shin In-Ryong, *The Inequality of Women in the Korean Legal System*, KOREA JOURNAL (1987); STRAWN, *supra* note 100, at 208-209.

162. For further discussion and explanation, see *infra* Section III.A.2.

163. For further discussion and explanation see *infra* Section III.A.1.

(4) Revision of the Divorce System:¹⁶⁴

(a) The family law was to be revised to provide a provision ensuring that both spouses would be able to petition for the division of property upon divorce. Up to that point, the wife had no legal right to a portion of the marital assets upon divorce. Consequently, women enjoyed little freedom to seek divorce even when they were victims of their husbands' abuse because of concerns over their livelihood and reputation.

(b) The value of a wife's household work and her efforts in contributing to the entire fortune of the family were to be recognized in the division of marital assets at the time of divorce.

(c) The revision sought to abolish the provision that a woman who filed for divorce automatically lost custody of her children (even if the grounds were charges of physical or mental abuse), unless the man waived his right to custody through a special agreement. After revision, the couple's mutual agreement or the Family Court would determine custody of the children.

164. Kay C. Lee explains:

The Korean judicial divorce law is premised on the fault-based system of a contest between a wrong-doer and the "wronged." The courts reason that a guiltless spouse should not be forced into unwanted divorce. The fault-based system in Korea acknowledges six grounds for divorce: (1) infidelity; (2) malicious desertion; (3) extreme cruelty by the spouse or the spouse's lineal ascendants; (4) a spouse's extreme cruelty to lineal ascendants; (5) a spouse has been missing for three years; and (6) any other cogent reasons. (Article 840).

See Kay C. Lee, *supra* note 127, at 492-493. "Women seeking counseling at the Korea Legal Aid Center during 1991-1993 most frequently cited 'extreme cruelty,' 'other cogent reasons,' or 'malicious desertions' as grounds for divorce. However, judges seldom grant judicial divorce on grounds other than infidelity." *Id.*, at 492-493.

(5) Revision of the Parental Authority Law:

Parents would exercise parental power jointly under the revision. The existing law provided that if there was a difference of opinion between the father and mother, the father's opinion prevailed. In such an instance, after revision, the Family Court would decide which of the two parents was most suitable to exercise final decision-making authority.

(6) Revision of the Law Governing Relationships between an Illegitimate Child and His Father's Legitimate Wife, and between a Child and Stepmother:

Under the existing regime, a man could register any child of his as the legitimate child of his wife and himself without her consent. The revision would require a wife to give consent before her husband's illegitimate child is enrolled into the family register or before her husband's former wife deems her the mother of her child. Only through adoption procedures would the mother-child relationship be legally recognized and only if both parties consented.

(7) Revision of the Inheritance Law:

(a) The intestate succession laws providing that a married daughter is entitled to one quarter of a son's inheritance were to be revised. Daughters, whether married or unmarried, should be entitled to inherit the same proportion of property as sons.

(b) The existing law provided that a childless widower possessed the unique privilege of receiving the entirety of his wife's inheritance upon her death. Both childless widowers and widows should be entitled to half of their deceased spouse's inheritance with the other half going to the deceased spouse's parents.

(8) Revision of the Adoption Law:

The revision sought to abolish the system of agnatic adoption where upon the death of the head of the household, a male child in the proper generation level within the patrilineage was adopted to continue the family line.

Despite the collection of 300,000 signatures, a letter writing and lobbying campaign to government officials and National Assembly members, 43 lecture meetings, and a public relations campaign through the media, the family law revision proposal did not even reach the floor of the 11th National Assembly because it received the signatures of only seven members.¹⁶⁵ Five of the eight appointed Assemblywomen signed the bill. The others stated that working among men as equals was a more effective way to improve the status of women than joining or signing onto proposals drawn up by women's organizations.

The W.A. not only experienced the same disappointment the following year when the 12th National Assembly refused to consider a revision bill, but also found it difficult to maintain momentum as the systematic and unrelenting human rights abuses of Chun's military dictatorship made family law revision recede from national and international attention. Political murder, torture, repression and restraints upon freedoms of expression caused even Lee to temporarily divert her attention from women's issues and become entangled once more in the struggle for democracy.¹⁶⁶

Finally, in 1987, prompted by large-scale civil disobedience that saw millions of Koreans demand a transition to a more democratic political system,¹⁶⁷ President Chun's government came to an end. On June 29, Chun's successor Roh Tae Woo stunned the nation by announcing an eight-point program¹⁶⁸ of reform that began with an endorsement of a new

165. THE 37 YEAR MOVEMENT, *supra* note 80, at 142.

166. Over seventy at the time, participated and supported the pro-democracy demonstrations. At night, she visited students at their campuses offering them food and encouragement. During the day, she marched and pushed back riot police with opposition party members, students, and the mothers and wives of political prisoners. STRAWN, *supra* note 100, at 142.

167. James M. West and Dae-Kyu Yoon, *The Constitutional Court of the Republic of Korea: Transforming the Jurisprudence of the Vortex?*, 40 AM. J. COMP. L. 73, 73-74 (1992).

168. Roh also promised to: restore the civil rights of Kim Dae Jung and other political prisoners, protect human rights, lift restrictions on the media, encourage local and campus autonomy, promote diversity of political parties and call for bold social reforms. ECKERT, *supra* note 20, at 382.

constitution¹⁶⁹ calling for direct presidential elections. On December 16, 1987, with the opposition parties splitting the vote,¹⁷⁰ Roh was elected President and, in April 1988, the 13th National Assembly assumed power.

With the first peaceful transfer of power in Korea's modern history, the mood in the Assembly appeared conducive to law reform. After four decades of dictatorship, the establishment of a democratic government appeared to make politicians give increased weight to the women's vote. Women gained the Equal Employment Act in April 1987,¹⁷¹ prohibiting sexual discrimination in hiring and wages, and finally, in February 1989, the Judiciary and Legislative Committee began to consider reforming the family law. While law revision was pending before the Committee, women continued to lobby Assembly members, and sponsor public awareness and educational activities. They also conducted a peace march to the hall of the National Assembly.¹⁷² Lee herself sent a letter to President Roh reminding him of the promises he made before the election.¹⁷³ She also pointed out that, despite the authoritarian rule of the past administrations, the family law had been somewhat revised; however, his administration had yet to do anything. The next month, President Roh ordered the Judiciary and Legislative Committee to revise the family law.¹⁷⁴ The following table summarizes the revisions that were made to the family law.

169. The Constitution that was adopted includes revised articles important for women's human rights. Article 11 declares: "All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." And Article 36 states: "Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal." THE KOREAN CONSTITUTION OF 1987, Articles 11 & 36.

170. Roh Tae Woo received 36.6% of the vote while Kim Young Sam commanded 28.0%, Kim Dae Jung held 27.0%, and Kim Jong Pil had 8.1%. Dae-Kyu Yoon, *New Developments in Korean Constitutionalism: Changes and Prospects*, 4 PAC. RIM L. & POL'Y J. 395, 403 (1995).

171. The Equal Employment Act went into effect on April 1, 1988. The Act consisted of twenty-four articles and was partially revised one year later as a result of demands made by women's organizations and groups. The Act contains the principle of equal pay for equal work, maternity protection, and the concept of the right to continue employment after marriage and childbirth. See Roh Mihye, *Women Workers in a Changing Korean Society*, in WOMEN OF JAPAN AND KOREA: CONTINUITY & CHANGE (Joyce Gelb and Marian Lief Palley eds., 1994).

172. THE 37 YEAR MOVEMENT, *supra* note 80, at 143-154.

173. *Id.*, at 171.

174. YONHAP YONGAM [The United Yearbook] 250 (1993).

*The Contents of the 1989 Revision of the Family Law*¹⁷⁵
 (Revised December 19, 1989; Effective January 1, 1992)

	Before Revision	Under the New Law
Domicile of Married Couples	The domicile of a married couple was automatically presumed to be the husband's residence.	The domicile of a married couple is to be determined by mutual agreement. Although this provision seems minor on its face, it is symbolically significant in that a woman's ability to help determine the couple's domicile erodes the notion of a woman "entering" the husband's family as a matter of law and custom.
Settlement of Property	The wife had no legal right to a portion of the marital assets upon divorce. Consequently, women enjoyed little freedom to seek divorce even when they were victims of their husbands' abuse because of concerns over their livelihood and their reputation.	Women are entitled to seek a share of the marital assets upon divorce in proportion to her contribution to the accumulation of the assets.

175. THE 37 YEAR MOVEMENT, *supra* note 80, at 179; *see also* Rosa Kim, *supra* note 166, at 152-154; Mi-Kyung Cho, *Korea: The 1990 Family Law Reform and the Improvement of the Status of Women*, 33 U. LOUISVILLE J. FAM. L. 431 (1995).

	Before Revision	Under the New Law
Child Custody	A woman, who filed for divorce, even if the grounds were charges of physical or mental abuse, automatically lost custody of her children unless the man waived his custody right through a special custody agreement. This inequitable distribution of rights concerning child custody was particularly egregious in a society where women bear the sole burden of caring for children.	The father no longer enjoys automatic custody of his children upon divorce. Rather this right is determined either by the couples' mutual agreement or by the Family Court. Women now have a legal basis for participating in the decision-making over the custody of their children upon divorce. These changes aim to help alleviate a woman's inhibition to leave an abusive marriage for fear of losing custody of her children.
Inheritance	Married daughters received one quarter the portion of sons. A childless male widower enjoyed the unique privilege of receiving his wife's entire inheritance upon her death.	Inheritance rights are the same for all children, sons and daughters, whether married or unmarried. The widow receives the largest share, 1.5 times the portion of her children. Both men and women without children are entitled to half of their spouse's inheritance upon the death of the spouse, while the deceased spouse's parents are entitled to the other half.

	Before Revision	Under the New Law
Powers of the Family Head	Rights of the family head include the right to determine additions or deletions in the family register of a name, the obligation to support the family, the right to decide the family's place of residence, the right to apply for or cancel a declaration of incompetence or quasi-incompetence on behalf of his family members, the authority to become the guardian of any of his family members, and the right to summon a family meeting.	The power of the family head is further diminished as many of the rights and responsibilities were removed including the obligation to support the family, the power to decide the residence of members and the right to summon a family meeting. The law maintains the family headship system, however, where family headship succeeds to the eldest son.
Establishing a Separate Family Branch	The 1977 revision provided freedom to establish a separate family branch to all family members, with the exception of the eldest son, who have attained the age of majority, which is 20 years of age.	The eldest son is entitled to relinquish his position as family head and form his own separate family branch.
Adoption	Since the late Chosŏn Dynasty, most families who did not have a son adopted one for the purpose of continuing the family line.	The system of agnatic adoption to continue the family line after the death of the head of the household is abolished.
The Scope of Consanguineous Relatives	The scope of relatives was defined as including eighth degree relationships on the paternal side, fourth degree relationships on the maternal side, eighth degree relationships on the side of the father-in-law in the case of a married woman, fourth degree relationships on the side of the mother-in-law, and the wife's father and spouse in the case of a married man.	The scope of immediate relatives is equal for both the paternal and maternal sides of the family so that all persons who are third cousins or closer are considered relatives.

The story behind the family law revision movement reveals how Korea's political situation over the past fifty years has impacted the movement's visibility and strength. With the human rights abuses and political repression of the Park and Chun regimes, women's issues receded from national and international attention. The Park and Chun governments' occasional interest in the family law revision movement was not motivated by a genuine interest in women's equality, but rather by their concern that Korea's rapid population growth would lead to serious shortages of food and housing and increases in environmental pollution and unemployment.¹⁷⁶ Moreover, reformers themselves temporarily suspended their commitment to women's issues to participate in political activities. For instance, Lee became deeply involved in the election campaigns of opposition party leaders such as Kim Dae Jung and the pro-democracy demonstrations of the late 1980s, aptly recognizing that without a democratic government characterized by an independent legislature and judiciary,¹⁷⁷ social justice for women was an impossibility.

176. Over the past 25 years, beginning with Park Chung Hee's regime, the government sponsored population control program helped reduce South Korea's growth rate from 2.84% to 1.25% and to reduce the number of babies born to the average mother from 6 to 2.1. The campaign started with an appeal to "Have few children and bring them up well." In 1971, the slogan became "Let's stop at two," and in 1983, "Even two are too many." The government has backed up the rhetoric with tax incentives and increased access to inexpensive housing for couples with only one or two children. Information from the Korea Institute for Population and Health, *cited in* Sam Jameson, *Boys Preferred: South Korean Parents Tip Birth Ratio*, in *L.A. TIMES*, Jul. 11, 1986, at 1.

The Park regime's partial revision of the family law in 1977 resulted from its realization that its two-child movement would only be successful if it curbed the Korean family's preference for sons through the promotion of sexual equality. Similarly, both in December 1981 and March 1986, Chun's government of the 5th Republic again raised the possibility of revising the family law by 1990 not because of its interest in women's liberation, but rather because its family planning efforts to limit Korea's population growth to 1% by the year 2000 was failing. *THE 37 YEAR MOVEMENT*, *supra* note 80, at 90 & 143.

177. The legislature's complete subordination to the executive branch, has been an impediment to family law reform. The National Assembly in Korea has been a place of confrontation, not a forum for debate and dialogue as the ruling party has always enjoyed a majority control of the National Assembly and Korean political parties have operated as the personal power base of individual politicians.

The judiciary has also lacked independence from the executive branch and under the Park and Chun regimes, it maintained a policy of restraint. Park's regime actually removed the power of judicial review from the courts and the constitutionality of any particular law was never discussed during Chun's Fourth and Fifth Republics. Dae-Kyu Yoon, *supra* note 175, at 408. The Korean Bar Association's hesitancy to support for family law revision is reflected in the following statement it published in 1986:

Among the law articles submitted to the National Assembly for revision, adjusting the scope of consanguineous relationships and revising the laws prohibiting marriage between parties of the same name and origin, the family headship system, and the inheritance system will create enormous changes and may even create problems in our existing family system. Therefore, time

The National Assembly's willingness to reform the family law after the 1987 constitutional reforms illustrates that family law revision has been part of the development of constitutionalism in Korea, an element of the process of realizing the ideals and spirit of Korea's Constitution. The fact that the predominantly male legislature went ahead and made sweeping changes in the family law, despite pressure from Confucian groups, not only indicates a growing perception that many Confucian demands are out of date, but also that politicians are beginning to recognize the potential significance of the women vote.¹⁷⁸

Yet the perception that family law revision was simply inevitable after the 1987 reforms diminishes the challenges women leaders overcame and the contributions they made over the past fifty years. Their movement not only served as a powerful reminder that a democratic society could not have laws that compromised the principles of freedom and equality, but also helped liberate Korean women from the ignorance of their oppression. The movement's presence was also a source of hope for many mothers that their daughters would have easier lives.¹⁷⁹

should be taken and research should be completed before making any revisions.

Lee sent the following response:

We regret that the Korean Bar Association has expressed reservations concerning the revision bill. Your position has really surprised me. Just for the sake of maintaining tradition, I cannot agree with keeping a legal system that oppresses women. We are not trying to abolish all of our country's beautiful traditions. We believe that your Association among all others should most actively support the revision of the family law so long as you are in the pursuit of realizing human rights and social justice.

THE 37 YEAR MOVEMENT, *supra* note 80, at 151.

178. Women's suffrage was included in the 1948 constitution. Women's groups are currently trying to organize women to exercise their voting rights to press for change since they account for more than 51 percent of the vote. Women in general have been less inclined than men to exercise their voting rights. For instance, in 1992, right before the fourteenth general election, the number of eligible female voters was 14,707,355 (50.7 percent of total eligible voters), compared to 14,296,473 of eligible male voters. Thus women outnumbered men by 410,882. However, the women's turnout rate fell marginally short of the men's. In the past, the marginal difference between males and females varied between 1.3 percent at the minimum and 4.8 percent at the maximum. CENTRAL ELECTION MANAGEMENT COMMITTEE, YEARBOOK OF NATIONAL ASSEMBLY ELECTIONS (Seoul, 1988), *cited in* Song Bong Scuk, *Agenda for Social Reform: Women's Political Participation in South Korea*, in WOMEN OF JAPAN AND KOREA: CONTINUITY AND CHANGE, *supra* note 176.

179. The few National Assemblymen who have supported family law revision over the years often commented that law revision was necessary for the future of their daughters. More recently, the President of Korea's Hospital Association shared with the press that he often tells pregnant mothers not to spurn having daughters because marriage will be easier for girls in the future with the surplus of men and the family law will be reformed by the time their daughters grow up.

Lee's lifetime effort to achieve a democratic and just family law reflecting the spirit of Korea's constitution demonstrates the supreme importance she, like the Enlightenment thinkers of the late 19th century,¹⁸⁰ placed upon the role of law in society. With the law being used by politicians in post World War II Korea as a means to control or subdue the populace for personal or interest-based purposes,¹⁸¹ women leaders faced the challenge of convincing a skeptical public that a revised legal system could serve as a vehicle for achieving positive gains. Declaring that Korea needed laws living up to the spirit of its Constitution and an informed public able to detect violations of those laws by public officials, women leaders shared their vision of a society where the law could be a safeguard against tyranny and where legal change could accelerate political change.

Lee's social vision, however, has yet to be realized as Confucian gender role attitudes continue to frustrate the democratic intent of the revised law. Although women now have the right to inherit an equal share of their parents' property, they have no claim over that property if it is bestowed to their brothers as inter vivos gifts. And while women have the chance to gain custody of their children upon divorce, with property status serving as a determining criterion for custody, women are continuing to lose their children.¹⁸² Finally, with household headship still passing to the eldest son, the essence of the patriarchal and patrilineal family system has been preserved.

Outsiders have assumed that Confucian sexist tradition is entrenched in Korean culture, labeling Korea as "the most Confucian society in East Asia" and "one of the most male-dominated societies on the globe beyond the Islamic world."¹⁸³ Yet Confucianism's hold on Korean family values over the past three hundred years is deeply tied to Korea's past. The social injustice, political repression, economic exploitation, cultural contempt, and war brought by foreign influence and colonial rule have created a collective determination among Koreans to maintain what they perceive to be their national identity and cultural heritage. Korea's

Jameson, *See Boys Preferred: South Korean Parents Tip Birth Ratio*, *supra* note 181.

180. Between April 1896-December 1898, Sô published approximately 128 editorials on law or law-related subjects in the *Tongnip Sinmun* reflecting the supreme importance he attached to the role of law in society. *See* CHANDRA, *supra* note 65, at 178-179.

181. The Korean Constitution has been revised nine times since World War II, each time a new political figure came into power. *See* Dae-Kyu Yoon, *supra* note 175, at 400.

182. *See* Article 837(2) of the Civil Code. For further discussion on the implications of the family headship system on divorce, child custody, and communal property ownership, *see infra* Section III.A.1.

183. *See, e.g.,* Nicholas D. Kristoff, *Do Korean Men Still Beat Their Wives? Definitely*, N.Y. TIMES, Dec. 5, 1996, at A4; Sheryl WuDunn, *Korean Women Still Feel Demands to Bear a Son*, N.Y. TIMES, Jan. 14, 1997, at A3.

reluctance to submit to the pressures of international law and institutions, despite its desire for respect in the global arena commensurate with its economic power, illustrates this resolve. Moreover, the recent perception of ever-increasing Western influence has created a resurgence of cultural nationalism that can be characterized as a backlash against the process of modernization based on American-style pragmatism and economic wealth modeled on Western standards. This nationalistic sentiment has given disproportionate strength to the most vehement and vociferous opponent of family law reform, Korea's Confucian society. Forced to compete with Confucians for legislative votes, women leaders have had the difficult task of convincing a skeptical public that their reform models are not another cultural import or prescription based upon Western-style family values. These issues merit further discussion and attention.

III. THE CURRENT AGENDA

A. Korea's Confucian Society Prevents Full Legal Reform

Two laws were not included in the 1989 reforms, the prohibition of marriage between parties of the same name and clan origin and the family headship system. Because of the vehement protest of Korea's

Confucian society,¹⁸⁴ the National Assembly has been hesitant to reform these areas of the law.

Confucian groups began to organize against family law revision in 1975, shortly before the second revision of the family law, when they formed the Committee for the Protection of the Family System. Claiming the signatures of one million Confucians, the group submitted its own petition to the National Assembly. After the partial revision in 1977, Confucian groups organized a nationwide campaign to stop further reform. Using the verbiage of cultural superiority, they argued that Korea should not abandon its family system, the only remaining vestige of traditional Korean culture for Western-style innovations. Their appeal that Western influences have corrupted Korea's "beautiful and good customs" [*mip'ung yangsok*] and their call for a return to Korea's traditional moral and ethical system have resounded well with nationalistic sentiment that has soared

184. Those engaged in Confucianism in Korea today can be classified into four categories. First, there are the leaders who are active in institutional organizations such as the local Confucian temples, Confucian associations and Songkyunkwan University in Seoul. Founded in 992 under the Koryŏ Dynasty as the center of Confucian teaching for men preparing to enter into government services, Songkyunkwan has developed into a modern university with a college devoted exclusively to the study of Confucianism. Second, there are the local Confucian elites who, as members of the *yurim* (Confucian Forest), study and practice Confucian learning and traditions in their local societies. Participation in the local associations is voluntary and membership is said to be open to anyone. In reality, however, many members are allegedly descendants of the *yangban* class of the Chosŏn Dynasty. Possessing a strong sense of cultural and moral superiority over others, they have detailed knowledge about their ancestors and family histories. Third, there are common people who do not belong to any particular religion but who practice Confucian culture in their daily lives. And last, there are the academicians who specialize in the study of Confucian philosophy, regardless of their own religious affiliation.

Confucian temples are the basic formal institutions and considered sacred places as Confucius and his disciples are enshrined there for annual commemoration rituals. Today, there are 231 local Confucian temples or *hyankyo* and 261 Confucian associations called *yudohae* [Association for the Confucian Way] or *yurim* [Confucian Forest] throughout the country. In principle, each county has one Confucian temple and one Confucian association. If some counties have two organizations, it is because during the Chosŏn Dynasty they belonged to different administrative units or cultural areas." Most of the *hyankyo* survive as custodians of the relics and writings of the founder-scholars. In recent years, with the rise of cultural nationalism, a new trend has developed among the descendants of the founders of the local institutions to restore and maintain them, but not to enhance Confucian culture so much as to glorify their ancestry. See Kim Kwang-ok, *supra* note 88, at 203-213.

According to the government census published by Korea's Religious Affairs Office of the Ministry of Culture and Information, those who identified themselves as Confucians and were thus assumed to be active in local Confucian temples and associations amounted to less than 2 percent (800,000) of the Korean population. In comparison, 19% of respondents to the survey identified themselves as Buddhists (7.5 million) and 17.5% (7 million) as Christians. Yet the statistics are misleading in that more than 91.7% of those surveyed can be considered Confucian in that they observe the basic Confucian rituals and ceremonies and subscribe to Confucian family values regardless of the religious affiliation. See Koh Byong-ik, *supra* note 56, at 191-193; see also Kim Kwang-ok, *supra* note 88, at 204.

since the 1980s. With the ever-increasing influx of Western culture and the breathtaking change brought about by modernization based upon Western standards, many Koreans have been concerned over the issue of national identity and have thus supported the outcry for the preservation of Confucian culture. Korea's patterns of over-consumption, the rising importance of personal income as an indicator of status, the competitive pursuit of material and physical comfort, and most recently, the nation's severe economic problems, have also led many to call for a restoration of simple living and moral order.¹⁸⁵

Confucians have staged mass rallies, conducted signature campaigns, and have lobbied Assembly members to prevent further reform of the family law.¹⁸⁶ Through the aid of 231 local temples [*hyankyo*] and 261 branch organizations [*yurim*], they helped prevent the National Assembly from considering the revision bill in 1984 and 1986.¹⁸⁷ Agreeing to fight until the women's movement is dissolved, Confucians have focused their attention upon the prohibition of marriage between parties of the same name and origin, known as *tongsông tongbon*, and the family headship system [*hojujedo*]. Their efforts succeeded in preventing the two areas of the law from being included in the 1989 reforms.

185. Kim Kwang-ok, *supra* note 88, at 225.

186. The *Donga Daily* published the following report:

At the residence of Jang Kung Soon, Chairman of the Judiciary and Legislative Committee about 30 opponents and proponents demonstrated every day. Policemen mobilized at the scene and at the residence of Lee Sook Jong, a pioneer of the family law revision movement. Opponents of reform cried, "Family law revision is evil!" Assemblyman Yoo Seung Won who is up for reelection received the following threat: "If the family law revision proposal is passed, you will lose the election!"

Confucians also conducted a vicious letter writing campaign, sending threats to Lee's residence. Many letters demanded her husband, Chyung Yil Hyung, to divorce her. THE 37 YEAR MOVEMENT, *supra* note 80, at 119-134.

187. In 1986, upon hearing the news that Chun's government was expressing interest in family law revision because of its concerns over Korea's population problem, 5,000 members of the Confucian school from all over the nation demonstrated their opposition to family law revision in front of the National Assembly building. Dressed in traditional Korean garb, they carried placards reading, "We Oppose to Our Death the Revision of the Family Law!" *Id.*, at 148.

1. The Prohibition of Marriage between Parties of the Same Surname and Clan Origin

Under Article 809(1) of the Civil Code,¹⁸⁸ individuals sharing a common ancestor in their paternal lineage, no matter how far back in time, may not marry. In contrast, under Article 815, as long as a couple does not share a common ancestor in their maternal lineage within four generations, they may marry. Introduced into Korean society with Confucianism in the fifteenth century during the Chosŏn dynasty,¹⁸⁹ the principle was established during China's Han dynasty, and gradually weakened until it was abolished by China's Qing dynasty at the turn of the century. Given that there are only 274 Korean family names, 43% of which are Kim, Lee, or Park, the intra-clan marriage ban has been a serious problem.¹⁹⁰ Based upon statistics gathered by Lee's Korea Legal Aid Center for Family Relations, an estimated 300,000 couples have defied the ban.¹⁹¹

Confucian groups have claimed the prohibition is essential to preserve the high moral standard of Korean society and prevent the incidence of birth defects. Appealing to nationalistic sentiment that Korea's beautiful customs and mores should not be replaced with Western social norms, Confucians have sent letters of the following style and content to the National Assembly:¹⁹²

Each country has its own traditions and ethics. Under such customs the people prosper. We Koreans have lived by the law forbidding marriage between parties of the same name and origin and have lived prosperously without any problems. The fact that a few unintelligent women want to revise the law and permit marriage among individuals of the same name and origin is nothing but a preposterous demand. This law is our country's beautiful custom. If we permit such marriages, it will bring total confusion to our clan system and bring us back to a primitive family society. In our effort to move forward and become an

188. Article 809(1): No persons having the same surname and family origin may marry each other.

189. During the ancient and medieval ages of the Silla and Koryŏ dynasties marriage between persons within the same family, known as "internal marriage" [*Nehon*] was permitted.

190. *See South Korea Ends Ban on Same-Name Marriage*, N.Y. TIMES, Sept. 28, 1995, at A7.

191. THE 37 YEAR MOVEMENT, *supra* note 80, at 121-122.

192. This particular letter, dated September 17, 1984, was written and sent by a group of Confucianists who called themselves the Citizens of Taejon to Protect the Inter-clan Marriage Ban. Reprinted in THE 37 YEAR MOVEMENT, *supra* note 80, at 121-122.

advanced nation, why should we step backwards towards barbarism in the area of ethics and morals . . .

Since the ban perpetuates the notion that only the paternal lineage counts in tracing one's roots, their desire to preserve deference to the paternal line underlies their claims.

Through signature campaigns, staged dramas, and public forums, Lee and other advocates for legal reform, have pressured the National Assembly to abolish the provision. For decades, the National Assembly took a compromised position. Refusing to abolish the law, it quietly instituted one-year amnesties from the ban in 1978, 1988 and 1996.¹⁹³ Approximately 4,577 marriages in 1978 and 12,443 marriages in 1988 were legalized.¹⁹⁴

Yet in 1995, Cheju Island's district court asked Korea's Supreme Court if it should recognize the marriage of a couple who shared a paternal ancestor, but married in Japan.¹⁹⁵ This act reflected the public and media's general agreement that the law is devoid of scientific reasoning and that prohibiting marriages between individuals within 8 relational degrees [*chon*] of each other (third cousins) is consistent with the trend of other modern countries.¹⁹⁶ In a decision that received considerable international attention,¹⁹⁷ the Supreme Court held that such marriages must be recognized noting that it has become a common tendency for couples to either change their last names or circumvent the prohibition by marrying in Japan or America and returning to Korea with a marriage certificate.¹⁹⁸ Following this decision, in May 1995, Seoul's Family Court asked Korea's Constitutional Court to rule upon the legality of marriages between individuals who share a same paternal ancestor and marry within South Korea's borders.¹⁹⁹

193. *Id.*, at 121-122.

194. *Id.*, at 121-122. Statistics also reprinted in Sam Jameson, *Koreans Shake Family-tree Rules*, L.A. TIMES, Mar. 17, 1992, at A14.

195. Court Document Number 3202-80, Apr. 1, 1995, Cheju Island District Court.

196. See *Tongsông Tongbon Sasilsang Munôjyo* [*In Practice, the Law Prohibiting Marriage Between Parties of the Same Name and Origin Has Been Crumbled*], PÔPRYUL SINMUN [THE LAW TIMES], Sept. 28, 1995.

197. See e.g., *South Korea Ends Ban On Same-Name Marriage*, *supra* note 192; *The Honorable Estate*, N.Y. TIMES, Oct. 22, 1995, at 18; Ju-Yeon Kim, *Tens of Thousands of Same-name Koreans Trapped in Love Ancient Law Won't Let Them Marry*, S.F. EXAMINER, Dec. 3, 1995.

198. Judgment of June 23, 1995, Supreme Court (Korea).

199. Court Document Number 95-3029, May 17, 1995 (Park Hong Sun v. Park Mi Ja), Seoul Kajong Pôpwon [Seoul Family Court]. Court Document Number 333, *The Constitutionality of Article 809(1)*, May 30, 1995, Hônôp Chaepanso [Constitutional Court].

Over two years later, on July 16, 1997, the Constitutional Court declared the law unconstitutional. The Court explained that "the law impaired the fundamental right of individuals to pursue happiness."²⁰⁰ With "its exclusive emphasis upon maintaining the purity of the paternal line, the law violated the spirit of the nation's constitution which establishes that marriages are to be based upon mutual respect and equality."²⁰¹ The Court concluded that only marriages between individuals related to each other within eight degrees on either the maternal or paternal side (closer than third cousins) will be forbidden. With this decision it is estimated that 60,000 Korean couples are now able to legalize their marriages.²⁰² While Confucianists have angrily announced that "the purity of the Korean race has been destroyed" and "the future holds family chaos,"²⁰³ women's leaders view the decision as a "tremendous victory over uncompromising custom and tradition."²⁰⁴

2. The Family Headship System

A final major inequitable provision that remains in the family law is the *hoju* [family headship] system where the eldest son is given priority to succeed to the headship of the family.²⁰⁵ The 1989 revision of Article 778 did little to enhance the position of women. While it lessened the burden and authority of eldest sons, which may have been necessary given the increasing number of nuclear families living in small living units,²⁰⁶ the

200. *The Constitutional Court Decides that the Prohibition of Marriage between Parties of the Same Name and Clan Origin is Unconstitutional*, CHOSŌN DAILY NEWS, Jul. 16, 1997.

201. *Id.*

202. *The Fall of The Prohibition of Marriage Between Parties of the Same Name and Clan Origin*, CHOSŌN DAILY NEWS, Jul. 16, 1997; see also *Starting Today Marriage Applications Will Be Accepted Among Couples of the Same Name and Clan Origin*, CHOSŌN DAILY NEWS, Jul. 31, 1997.

203. *Mixed Reactions Regarding the Constitutional Court's Decision*, CHOSŌN DAILY NEWS, July 16, 1997.

204. *Id.*

205. Article 778 of the Civil Code provides that a person who inherits the family line, separates himself from the already existing family or establishes or revives a family for other reasons, shall be eligible to become *Hoju*, i.e., the head of the family.

206. Chungmoo Choi points out:

In a minor way, the liberation of the eldest son from the duties of household headship frees the would-be household head from potential problems in finding a spouse. Korean women today simply are not interested in the titular position of the eldest son's wife [*manmyonuri*]. Traditionally, the eldest son inherited the lion's share as the ceremonial head of the lineage and his wife was privileged over the wives of his younger brothers. With the gradual revision of the inheritance law, however, the eldest son eventually was left with filial obligations but no economic prerogatives, putting him at a disadvantage for

order of succession of household headship remained unchanged.²⁰⁷ To Westerners, the *hoju* system is an alien concept since it imposes the burden of maintaining a family on a single person. Koreans, however, have considered a family system under the leadership of the family patriarch a hallowed tradition.

Korean feminists have been fighting to abolish the concept since the *hoju* system substantially limits the legal power of women within the family structure and is the basis for the *hojók*, the family register system that forces a wife to abandon her own family register and join that of her husband's when she marries.²⁰⁸ Children born of the marriage are automatically registered under the father's family register. Similar to a birth certificate, the *hojók* is a system of recording personal identification according to one's male lineage, yet unlike a birth certificate, the family register carries great social significance because it reveals one's ancestral history, social class, and place of origin of the family clan.²⁰⁹ The *hojók* is the source for identification cards, passports, and official documents.

The family headship and registration systems continue to have profound implications for divorce, child custody, and communal property ownership. Judges remain hesitant to encourage the breakdown of the extended family system through divorce, prejudiced by their assumption that it is the woman's position in the family to shoulder responsibilities of fostering harmony in an extended family. The 1989 revisions did not

marriage. The 1989 revision of household headship sympathetically addressed his dilemma.

See Chungmoo Choi, *supra* note 82, at 108.

207. Chungmoo Choi writes:

The primary successor to the legal household head is the male lineal descendant. Second in line is the female lineal descendant, third is the wife, fourth is his lineal female ascendant (his mother), and fifth is the wife of his first male lineal descendant (daughter in law). In other words, the order of succession proceeds from the sons to the daughters, to the wife and the mother and finally to daughters in law. The family law reflects the practice of patrilineage, virilocal marriage. From the perspective of women, the order of succession parallels the progression of a woman's life and her changing status in the two families, the one she was born to and the one she married into.

Id., at 107.

208. "*Hojókpóp* [Family Registration Law] is a law that is separate from the Civil Code. Its eight part provisions govern the minute details of the registration and removal of individuals from their family upon birth, adoption, marriage, divorce and death. The law is premised on the single head of the household system as provided in the Family Law Article 781." *Hojókpóp* [Family Registration Law], reprinted in DAE PŎPCHŎN [GREAT LAW DICTIONARY] (1995), cited in Kay C. Lee, *supra* note 127, at 483 n.25.

209. *Id.*, at 483-484.

amend Article 830(1), which provides that special property acquired prior to marriage and during marriage in the husband or wife's name is not divisible as marital property. The provision is a source of inequity in Korea since under the family headship system men still represent the household in most business and property transactions.²¹⁰ Furthermore, with men as the family patriarchs controlling the economic means, women continue to lose custody of their children. Article 837(2) provides that judges are to consider the age of the child or children, the *property status* of the father and mother, and any other circumstances thereof.²¹¹ Reliance on property status as a criterion has led to judicial decisions eliminating mothers as custodians resulting in an egregious form of gender bias based on circular reasoning: expecting mothers to stay home and then taking away their children because of their weak economic base.²¹² In today's industrial Korean society, the ideology behind the headship system is becoming increasingly controversial. In the urban nuclear family of "a working couple, the husband continues to be the legal head of the family over and above his working wife, or in a single-mother family, the dependent son is the legal head over his mother, the female provider."²¹³ The headship system demands that the single mother of a dependent son provide for her son in order to perpetuate the patrilineage of her absent (whether estranged or deceased) husband.²¹⁴ The debate over maintaining the family headship system reflects the larger tension in Korean society between preserving cultural identity through tradition and adapting to the demands of an industrialized and increasingly democratic society.

B. Korea's Refusal to Comply Fully with International Law

In December 1979, the General Assembly of the United Nations unanimously adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The language of the Convention is strong and uncompromising, demanding the same rights, standards, and treatment for women as for men. It also subjects family relationships, an area previously left unregulated by international law, to international scrutiny. Defining "discrimination against women" as,

210. *Id.*, at 497.

211. *Id.*, at 501-502.

212. *Id.*

213. Chungmoo Choi, *supra* note 82, at 107-108.

214. *Id.*

any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, of human rights and fundamental freedoms,

the Convention addressed the political,²¹⁵ social,²¹⁶ economic,²¹⁷ civil and family rights²¹⁸ of women becoming the most comprehensive international instrument on women's rights to date.²¹⁹

Korea's Confucian society was vehemently opposed to Korea signing onto the Convention and launched an aggressive public campaign to prevent it from doing so. Their position can be summarized as follows:

In regard to the ratification of the U.N. Convention for the Elimination of All Forms of Discrimination against Women, we believe that each country's law and order should be respected. Therefore, it is proper to ignore the areas of the Convention that would destroy our customs and ethics. It is our pride that our laws and ethics are superior to that of other nations and that we are the nation of "Courteous People of the East."²²⁰

Similar culturally relativistic criticisms have been voiced by Islamic nations accusing CEDAW as anti-Islamic and as culturally insensitive. Islamic states have either refused to ratify CEDAW or have ratified it with reservations.²²¹ But since Confucianism today cannot claim to be a religion

215. See CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, G.A.Res. 180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. a/34/36 (1979) [hereinafter CONVENTION], at arts. 7-9.

216. See *id.*, at arts. 10-14.

217. *Id.*

218. See *id.* at arts. 15-16.

219. *Id.*, at art. 1.

220. THE 37 YEAR MOVEMENT, *supra* note 80, at 121-122.

221. No state of the Arabian peninsula except Yemen has become a party to CEDAW. Bangladesh, Egypt, Libya, the Maldives and Morocco all qualify their acceptance of the Covenant by subordinating it to Islamic law. Iraq, Jordan, Tunisia, and Turkey, while not referring to Islamic law in their reservations, nonetheless refuse to accept significant substantive elements of CEDAW, particularly provisions relating to gender equality in marriage. See Arthur M. Weisburd, *The Effect of Treaties and Other Formal International Acts on the Customary Law of Human Rights*, 25 GA. J. INT'L & COMP. L. 99, 126-128; see also, Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49, 79-82.

or a political/cultural prescriptive orthodoxy like Islam,²²² the complaints of Confucians can only be explained by their desire to preserve patriarchal traditions and customs. Such customs are squarely addressed by Article 5(a) of the Convention that requires government action to modify social and cultural patterns of conduct based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women.²²³

The Women's Alliance for the Revision of the Family Law countered such culturally relativistic arguments by asserting that Korea must sign onto the Convention if it wanted to attain international recognition and respect commensurate with the country's growing economic power. They argued that the Convention like the family law revision movement is not aimed at adopting Western standards of thinking and conduct or an instrument to promote Western imperialism, but rather aimed at allowing women to recover rights they already possessed under the 1948 Constitution.²²⁴

The National Assembly took a compromise position toward the Convention. Korea became the 90th signatory country when the government signed the Convention in 1983 and the National Assembly ratified it in December 1984 with the understanding that provisions that conflicted with Korea's domestic law would be ignored.²²⁵ Specifically, the Assembly set aside Article 9 which requires the signatory states to grant women equal rights to acquire, change or retain their nationality and the nationality of their children and Article 16(g) which grants women the right to choose a family name, profession and occupation because they contravened the importance Korean custom places on the paternal lineage to one's identity.²²⁶ The reservations the Assembly placed upon the two Articles is consistent with its refusal to abolish the family headship system and, until recently, the law prohibiting marriage between parties of the same surname and clan origin.

Korea's decision to ratify the Convention with reservations illustrates both the potential and the limitations of international law in affecting the progress of women's rights. The broad sweep of the Convention's wording has not only made it difficult to extract specific obligations, but has also led nations like Korea to ratify it with reservations

222. See, e.g., articles by Kim Kwang-ok, *supra* note 88, at 204, and Robinson, *supra* note 1, at 204-206, 224-225.

223. See CONVENTION, *supra* note 220, at art. 5.

224. See THE 37 YEAR MOVEMENT, *supra* note 80.

225. *Id.*, at 102.

226. *Id.*

compromising its integrity.²²⁷ The enforcement provisions of CEDAW are also weak and need to be strengthened. The only method of enforcement currently available is that signatory states are required to submit periodic reports to the Secretary-General on the legislative, judicial, administrative or other measures that they have adopted pursuant to the Convention.²²⁸ Since there is no mechanism for the filing and investigation of complaints, similar to the 1966 Convention against Racial Discrimination, countries have not taken these reporting procedures seriously.²²⁹ CEDAW's Committee can do little more than urge states to reconsider their reservations or policies. The Convention thus serves as an instrument of change more through reliance on good faith on the part of the states and less through structural and formal means.²³⁰

Overall, despite the problems associated with effectuating international law, the U.N. adoption of CEDAW in 1979 and its designation of 1975-1985 as "The Decade for Women," a period to press for the creation of worldwide sexual equality, helped women's problems reemerge as legitimate social issues in Korea during a period of severe social and political repression. The Korean National Assembly's refusal to ratify the U.N. Convention without reservations became a rallying point that united Korean women groups and renewed their determination to reform the family law.²³¹ The series of worldwide conferences held during "The Decade for Women" enabled Korean women leaders to gain solidarity with their counterparts in different cultures.²³² Most importantly, the 1989 revisions made in the family law in the areas of marriage and divorce, child custody and property inheritance were made in accordance with CEDAW's principles. Thus, in countries like Korea where women

227. See Nancy Kim, *supra* note 226, at 80.

228. See CONVENTION, *supra* note 220, at art. 28.

229. See Nancy Kim, *supra* note 226, at 80.

230. *Id.*

231. See THE 37 YEAR MOVEMENT, *supra* note 80, at 119-136.

232. For instance, in 1985, Lee shared her frustrations at the World Women's Conference in Nairobi, Kenya, which commemorated the tenth anniversary of the U.N.'s designation of 1975 as "the Year of Women":

500 years of systematized Confucian culture, which regards discrimination between men and women as natural, became fixed in the minds of not only men, but also women. This philosophy which came to be seen as a virtue is the stumbling block to the family law revision movement.

After her speech, every participating member showed their support for the Korean's women's movement by applauding and praying for its success. THE 37 YEAR MOVEMENT, *supra* note 80, at 141.

have possessed inadequate means to gain legal and social equality, the United Nations has played an important role in promoting gradual change.

IV. THE STRUGGLE CONTINUES

While Lee's efforts may have changed the law, Korea's new generation of feminists face the tremendous task of establishing a wider social consensus on women's rights and expanding awareness among women regarding their situation. Surveys conducted a few years after the 1989 family law revision reveal that only 1.5% of the women respondents knew about the specific content of the reforms.²³³ Change on a national scale will be impossible unless women are taught about their newly acquired rights and empowered to use those rights to their advantage. Activists also face the even greater challenge of altering attitudes about women and their appropriate roles in the family and in society.²³⁴ So long as Koreans continue to believe that a woman's proper role is limited to the domestic confines of the home, less than one-half of women university graduates can hope to find employment out of the home.²³⁵ And so long as it is believed that without a son the family will die with the father and that

233. A 1991 survey revealed that 29.9% of the female respondents were unaware that the family law had been reformed. 33.8% knew about the reformation but not about the specific content, 34.8% knew generally about the content, and only 1.5% knew about the specific content. As Rosa Kim points out women's lack of awareness of their legal rights contributes to the slowness of reform and impedes the formation of public opinion, which is vital for change on a national scale. See Rosa Kim, *supra* note 166.

234. In October 1991, a short essay by Suh Ji-moon, a well-known translator and English professor at Korea University, appeared in the social commentary column of the *Han'guk Ilbo* [Korea Daily]. Suh described an occasion in which Korea University refused to acknowledge the death of the father of one of its handful of women faculty members. Customarily, the University offers its faculty members in mourning a donation toward the funeral costs and collects contributions from other faculty members by posting a notice in the faculty lounge. For Suh's woman colleague, however, the University did neither. Suh learned from the University's personnel manual that it contributes toward the funerals of faculty women's fathers-in-law, not toward those of their own fathers. Suh reported that most of the women faculty were unaware of the discriminatory rule since their presence at the University was such a recent phenomena.

Reflecting the deeply rooted gender discrimination in Korean society, "the policy officially denies the woman professor's relationship with her natal family and confines her to her husband's lineage under the legally recognized household headship of her father-in-law." See Chungmoo Choi, *supra* note 82, at 105.

235. With Korea's modernization there has been an improvement in education and professional training for women. However, professional women often cannot find employment positions at all, or, if they do find jobs, they often are not commensurate with their skills and training. In Korea today it is easier for women high school graduates to find employment than it is for women with university degrees. See Marian Lief Palley, *Feminism in a Confucian Society, in WOMEN OF JAPAN AND KOREA: CONTINUITY & CHANGE*, *supra* note 176.

a daughter once married becomes a *ch'ulga oein* [one who left the household and became a stranger],²³⁶ daughters will always be devalued in comparison to sons. When family genealogy tables [*chokpo*; Chinese: *tsu-p'u*]²³⁷ are published today in Korea, "daughters are listed in the genealogy as having married out and into another lineage and wives are shown to have married in from another lineage."²³⁸ Unmarried daughters are usually not included at all.²³⁹ In essence, "women appear in the genealogy only in reluctant recognition of the fact that men cannot bear children by themselves."²⁴⁰

The overwhelming importance that Korean families continue to place upon having a son is having serious demographic effects. The success of Korea's population program, which has become a model for developing countries, is not only rooted in the rise in the use of contraception,²⁴¹ but also in the abortion of female fetuses. With one out of 12 female fetuses aborted each year because of its gender, it is estimated that by the year 2010, there will be 400,000 more men of marrying age than women in Korea or roughly two out of every 10 men will remain single.²⁴² While

236. Koreans need to be made aware of the discriminatory implications of certain terms within the Korean language. For example, in referring to a daughter's children, *sonja* [grandchild] could be used instead of *oesonja* [the outsider grandchild]. Similarly, *būin* [wife] could replace both *ansaram* [inside person] or *chipsaram* [houseperson] and *nampyun* [husband] could be used instead of *pakatsaram* [outside person].

237. The publication of clan genealogies was a flourishing enterprise during the Chosŏn Dynasty. "In Korea, the compilation, augmentation, and publication of clan genealogies is still prevalent today to an extent probably unparalleled in East Asia."

"The printed genealogy is a listing of all the members of the lineage, members who obtain their status through birth. There is no provision for including others." This makes the Korean lineage much stricter than its similar counterparts in China or Japan. In both the other East Asian countries influenced by Confucianism there were ways for non-agnates to get into the genealogy and the lineage, but not in Korea. PETERSON, *supra* note 34, at 3; see also Koh Byong-ik, *supra* note 56, at 196.

238. PETERSON, *supra* note 34, at 3-4.

239. *Id.*

240. *Id.*

241. According to a survey by the Korea Institute for Population and Health, birth control is practiced by 60% of the women of child-bearing age with two children, and by 26.4% of those with one child.

242. The imbalance of sex ratios at birth in Korea has drawn international media attention. For instance, *The New York Times* reported:

In this country of 45 million people, there are nearly 116 boys born for every 100 girls, one of the highest such ratios of any country in the world. The only comparable figure is in China, where 118.5 boys are born for every 100 girls, according to a nationwide survey by the Chinese government in 1992. In other countries of all races and income levels where data are reliable, the ratio is 105 or 106 boys born for every 100 girls. As boys tend to die earlier, that ratio becomes one to one when the boys and girls grow up. But in some regions of

abortions are illegal in Korea except for medical emergencies and in cases of rape or incest, doctors who perform sex-selective abortions are difficult to police. As population problems forced the Park and Chun governments to turn their attention to women's issues, demographic concerns are again motivating Korean government officials, including members of the Health and Social Affairs Ministry, to express concern over the overwhelming preference for sons and agree with women's leaders that the Family Law must be amended to allow a daughter to carry on the family name²⁴³ and to better assure women equal rights.

Women's rights advocates in Korea have been working to raise the consciousness levels of women on political and social issues by improving educational and professional training for women, implementing women's studies programs in schools,²⁴⁴ increasing women's participation in social activities and civic movements and by better organizing the women's vote. There are recent examples that show women's voices are being heard. The recent decision of a Seoul district court judge stunned the nation when he awarded a significant amount of \$34,000 to an office assistant who was fired when she resisted the embraces of a Seoul National University professor.²⁴⁵ Although the pay gap between women and men remains

South Korea the figure has soared to as high as 125.

See e.g., WuDunn, *supra* note 188.

Park and Cho's seminal work on the imbalance of the sex ratio at birth in Korea has drawn worldwide attention to the extent and consequences of son preference in Korea. Park and Cho show that as fertility declined, the sex ratio became more skewed, i.e. relatively more boys compared to girls were born, and the sex ratio in 1990 reached the level of 1.13. C.B. Park and N.H. Cho, *Consequences of Son Preference in a Low-Fertility Society: Imbalance of the Sex-ratio at Birth in Korea*, POPULATION & DEV. REV. (1995).

See also Ulla Larsen, Woojin Chung and Monica Das Gupta, *Low Fertility Despite Sex Preference in Korea: Often a First Girl Becomes a Sibling and a First Boy Completes the Family* (1997), (unpublished manuscript, on file with the Harvard School of Public Health and the Harvard Center for Population and Development Studies) whose research found that women who have a son in Korea are less likely to have another child, but if they do progress to have another child they take longer to conceive the subsequent child. About half of the women with a son compared to 70 percent of the women with a daughter conceived their second child within three years.

243. Allowing children to take their father's name has profound significance in a nation where voluminous ancestry records are kept and worship of prominent male ancestors continues for centuries.

244. In 1995, Ewha Women's University established the Asian Center for Women's Studies (ACWS) to train Asian feminist scholars and activists. ACWS plans to set up an Asian women's studies curriculum and sponsored a conference in May 1996 entitled "The Rise of Women's Education Against the Korean Patriarchy" in preparation of that project. See *Ewha University to Host Asian Feminist Forum*, KOREA HERALD, May 8, 1996 *avail. in* WESTLAW ALLNEWSPLUS Database.

245. See, e.g., Teresa Watanabe, *South Korean Women Stride Toward Equality*, L.A. TIMES, Jun. 21, 1994. However, the damages were later reversed on appeal.

wide²⁴⁶ and the 1987 Equal Employment Act has had little force,²⁴⁷ women have successfully persuaded courts to strike down requirements not germane to employment, such as having a military record, or such rules as mandatory retirement at age 35 for female telephone operators.²⁴⁸ The new national law on sexual violence that criminalizes obscene phone calls and fondling in crowded places and toughens the provisions on rape and incest is perceived by feminists as a first step in their efforts to create a legal system that will effectively address violence against women in Korea in its

246. An examination of the male and female wage differentials by occupation found that administrative and managerial occupations had the lowest, with a wage ratio of 83.0 percent, followed by service occupations (72.0 percent), and professional and technical jobs (67.1 percent). Among the occupations, clerical jobs showed the most serious wage differential, with a rate of 55.6 percent. Results of a study on wage differentials between the sexes in 1988 showed that only 37.8 percent of the male and female wage difference was nondiscriminatory, stemming from differences in worker's characteristics, and the remaining 62.3 percent was due to discrimination against women. Roh Mihye, *supra* note 176, at 250-251.

247. As reported in the quarterly magazine, YOSŌNG [WOMEN], published by the Korean National Council of Women, the EEA unfortunately has had little effect. Violations stem not only from the lack of legal enforcement, but also because the penalty for violations is trivial. As a result, predominantly male employers observe the letter of the law by employing women on a probationary basis and then release them after a year by simply not renewing their contracts. Even if the women are retained, they are often excluded from job training opportunities and then denied promotion for a lack of upgraded skills. Behind this effacement of women in the workplace lies the tenacious patriarchal logic that women are dependent and that the workplace, for them, is only a transition on the way to marriage.

Roh Mihye makes the following suggestions to remedy some of the EEA's problems: (1) publicize it to a wide public; (2) strengthen the activities of the Committee of Working Women under the Ministry of Labor, which was formed on December 6, 1990 as a result of the Act; (3) establish a concrete and clear standard for what constitutes equal work; (4) reorganize and reform the Employment Dispute Mediation Committee so it will function as a quasi-judicial organization with binding decisions; (5) impose heavier penalties in case the provisions on workers' rights are broken; (6) encourage women to report breaches of the law; (7) organize women's groups to carry out boycotts against the products of employers violating the Act. See Roh Mihye, *supra* note 176, at 253.

248. *Id.*

various forms — physical abuse,²⁴⁹ sexual violence,²⁵⁰ kidnapping²⁵¹ and forced prostitution.²⁵²

Recent developments have given women activists greater hope that the law in Korea will have the autonomy necessary for the protection of civil rights. The reinstatement of an active Constitutional Court in 1987 has been hailed as one of the most remarkable developments in Korean constitutional history.²⁵³ Under Article 68(1) of the Constitutional Court Act, the Court was given jurisdiction over constitutional petitions.²⁵⁴ This allows the Court to protect fundamental rights in the event that existing

249. According to a survey of 340 women conducted by the Korea Women's Hotline, one in ten Korean women are beaten by their husbands almost every day, and about three in ten women suffer violence at the hands of their spouses once a month on the average. Domestic violence is not yet considered to be a criminal act in Korea worthy of official sanction. Perhaps the mistreatment of women often finds rationalization in Confucian attitudes that women belong to men. The prevalence of spousal abuse in Korea has received a considerable amount of international attention. See, for e.g., Kristoff, *supra* note 188; *Wife Battering in S. Korea is Endemic, Says Poll*, Reuters NEWSFILE-FAR EAST, Apr. 3, 1994; see also Keum Sook Choi, *Rise in the Legal Right of Korean Women*, in KOREAN LAW IN THE GLOBAL ECONOMY 1431 (1996). Oh Ilson, *Wife Beating*, Reuters, May 17, 1984, cited in Rosa Kim, *supra* note 166, at 161 n.99.

250. Sexual violence is defined as rape, sexual assault, sex talk, exposure, sexual harassment, gang rape, and marital rape. The issue of sexual violence exploded on Korea's socio-political scene in 1991-1992 when the Sexual Violence Relief Center (KSVRC) began to make media presentations that addressed sexual violence as an issue. Established in 1991 by Ewha Woman's University graduates who had been women's studies students, SVRC lobbies for the passage of a sexual-violence law, provides counseling and maintains a shelter for victims of sexual violence.

Many responded to SVRC's campaign by declaring that it was a mistake to generate a problem where none existed. However, the campaign took off when the International Criminology Institute in 1992 issued data that showed South Korea had the third highest (after the United States and Sweden, respectively) rate of reported sex crimes against women in the world. While the results of the study were an embarrassment to South Korea, the fact that so many rapes are reported in Korea does indicate a growing trust and awareness among women in a system of redress. Furthermore, the fact that the government has not suppressed or protested against the publication of this information perhaps indicates an acknowledgment on its part that sexual violence in Korea is a genuine problem.

The Women's Hot Line is a single-issue group that was founded in Seoul in 1983 to address problems associated with spouse battering, rape, and prostitution. Its leaders express concern about AIDS, especially as it affects prostitutes who work around American military installations. The Hot Line runs Shelter House, a facility for battered wives, and also receives hundreds of phone calls each month asking for information and advice. Palley, *supra* note 240, at 286-288.

251. In 1989 for the first time, the government acknowledged that "white slavery," kidnapping women and selling them to brothel owners was a serious social problem. Some charge, that the police and other officials actually contribute to the problem by giving advance warning of raids to brothel owners or by simply ignoring the problem. Female kidnap victims complain that the police are uncooperative and unsympathetic to their efforts to escape from their abductors. "Whatever the explanation for the upsurge, the official response has been tentative at best." See Rosa Kim, *supra* note 166, at 161 n.99.

252. *Id.*

253. Dae-Kyu Yoon, *supra* note 175, at 409.

254. *Id.*

laws do not afford remedies through ordinary court proceedings. The Court's wide range of judicial decisions on issues, including adultery and the interclan marriage ban, is altering public attitudes toward the Constitution, towards constitutional discipline, and towards the law in general.²⁵⁵

While the 1987 reforms promise increased judicial review and a more independent legislature, more women are needed in those bodies to exert influence in decision-making and provide adequate representation of women. The Korean judiciary, which is overwhelmingly male, needs to examine its unquestioned authority and personal biases in legal and social contexts as their traditional assumptions about women and the family continue to frustrate the democratic intent of the revised law.²⁵⁶ Although more women are gradually entering the judiciary, as of the early 1990s, the percentage of women among licensed jurists was still less than two percent and out of more than five hundred public prosecutors in Korea, there reportedly were only one or two females.²⁵⁷ Korea also still possesses one of the lowest numbers of women politicians in the world, especially outside of the Islamic fundamentalist states.²⁵⁸ As Shin Nak Yun, Vice President of the National Congress for New Politics in Korea²⁵⁹ recently commented:

255. *Id.*

256. See Kay C. Lee, *supra* note 127. In an analysis of recent decisions on divorce cases in Korea, Kay C. Lee points out that the interpretation and application of the revised Korean law still privilege men.

257. Between 1951 and 1989 only 74 females passed the judicial examination. At year end in 1988 there were 23 women judges, mostly at junior levels (compared to 921 men at all levels), and 14 women attorneys (compared to 1,579 men). Out of about 29,500 students majoring in law 70 law faculties across Korea in 1988, less than 10% (2,604) were women, and the proportion of women among those attempting the judicial exam was still lower. Linda Lewis, *Her Honor the Judge: Women and the Legal Professions in Korea* (Harvard Korea Colloquium Paper, Apr. 10, 1990) cited in JAMES M. WEST, *EDUCATION OF THE LEGAL PROFESSION IN KOREA* 82 (1991).

258. A 1996 ranking of 125 countries by their female Government employees found that South Korea ranked 107th and North Korea 114th; those that ranked lower were almost all Arab countries or tiny island nations. Between 1948-1991, women comprised no more than 2% of the National Assembly. The worldwide average of women legislators was 10% during the same period. The Thirteenth National Assembly which convened in 1988 had 293 men and six women; all six women were appointed. In 1992, only three out of 299 members of the Fourteenth National Assembly were women, a dismal total of 1%; only one out of the three was elected. See YONHAP YONGAM [THE UNITED YEARBOOK] 250 (1993), cited in Kay C. Lee, *supra* note 127, at 480 n.4.

Out of the thousands of candidates running for office before the April 1996 election, only nine were women. Two women were elected to the National Assembly and seven women were appointed; women thus now comprise of 3% of the Assembly.

Of a total of 884,033 civil servants in 1993, 26.6% were women, of whom 54.3% were teachers and faculty members in public schools. The higher the rank, the smaller the number of positions held by women. Only 2.6% of civil servants of rank 5 and above were women in 1993. *Women and Politics in Korea*, available in www.iworld.net/korea/society/f261.html.

259. The head of this political party is longtime opposition leader and recently elected president, Kim Dae Jung.

"Realistically speaking, women in Korea cannot get elected because they cannot get the votes."²⁶⁰ Studies continue to reveal that the majority of Korean women voters today will still not support women candidates. One survey found that 84% of women respondents thought male candidates were more capable as politicians than female candidates, and 59% of women respondents stated that they would vote for a male candidate rather than a female candidate even when both were equally capable.²⁶¹ The view that it is not womanly to have an interest in and to participate actively in the political process prevails among the young generation. A study conducted a few years ago, published in the Los Angeles Edition of the *Korea Daily News*, found that 56.9% of Korean female college students believed in a male's possession of inherently superior leadership skills.²⁶² The pervasive dualistic gender role ideology of modern Korea continues to serve as an invisible but powerful instrument contributing to the status quo.

Contemporary feminist scholars point out that since a woman's position in the current family system can only be defined in terms of her relationships with her father, husband and son, simply replacing gender-

260. Shin Nak Yun offers an explanation as to why there are very few women in the Assembly: "First, very few women are interested in running and second, it takes money, power, and a brutal attitude to win. Women because they are women do not get the donations and the public backing from organizations that men do. Prejudice is prejudice. We cannot force change on the way people feel. Yet once women candidates are given the chance they will prove capable." See David Dae-Hyun Cho, *Parties Face Election Reality and Nominate Five Women*, KOREA HERALD, Mar. 17, 1996, at 2.

Korean political parties are organized around a few central political leaders. The party organizations are run mostly by men who have strong personal ties with the party leaders. Since connections in Korea are often based upon contacts made during high school, which until recently have always been segregated by gender, women have been greatly disadvantaged in forming the financial and political contacts they need to run an effective campaign.

The present small-constituency system further makes women candidates' success difficult. Because many candidates vie for only one seat in a district, campaigns become overheated. The electoral competition is fierce and the expense to maintain the district offices is far too high for women candidates. Running a campaign costs between 20 and 50 million won per month (\$25,000 to \$62,000). The funds are usually supplied by businessmen who want to advance their interests through politics. They are reluctant to invest in women politicians since they figure that the chance of a woman being elected is fairly slim. Song Bong Scuk, *supra* note 183, at 264-265.

261. *Kajong Sangdam*, Aug. 1989, at 1, cited in CHUNGHEE SARAH SOH, *supra* note 53, at 135.

262. *Han'guk Ilbo* [*Korea Daily News*] (Los Angeles ed.), May 8, 1993. Such polls indicate that through education and socialization women have come to accept gender biases as a matter of fact. They are brought up to believe that women should stay away from politics and that political women are unfeminine. The media also reinforces these stereotypical and traditional images. Sohn Bong Scuk theorizes that such massive social indoctrination to "feminize" women has led women to believe that they do not deserve to rule their own destiny, and even causes them to hesitate to vote for and support women candidates. See Song Bong Scuk, *supra* note 183, at 266.

based distinctions with gender neutral terminology²⁶³ is not enough to achieve equality. Only by abolishing the present family system and creating a system that offers different meanings and definitions is there any hope for equality to be achieved.²⁶⁴ Yet in the search for an alternative family system, women's advocates can look to history before the mid-Chosôn Dynasty when a daughter could be the heir, perform family ceremonies, and satisfy in all respects the requisites of succession.²⁶⁵ A valuable role model is also provided by Korea's earliest extant printed genealogy, the 1476 *Andong Kwon-ssi sebo*.²⁶⁶ Unlike contemporary lineages, it lists the posterity by *both* sons and daughters of the founder of the Kwon lineage.²⁶⁷ Scholars must teach and further publicize these findings as many contemporary Koreans are under the mistaken belief that patriarchal family traditions have existed in Korea for thousands of years.²⁶⁸

263. The purpose of a gender-neutral focus is to reject the concept of women as a separate class and emphasize the idea of equal treatment between men and women, rather than seeking to end existing separation or special treatment. Rosa Kim, *supra* note 166, at 156. For a critical view of gender neutral approaches in international law, see Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM.J. INT'L L. 613 (1991).

264. For instance, Yang Hyun Ah points out that in considering the paternal and maternal lines, Koreans must reevaluate what it means for a family line to continue. Yang also proposes that the modern Korean family system must provide that when a man and woman marry, they both leave their families and establish a new and separate family register. Korean family experts must continue to research, discuss and debate the type of relations this separate family would have with other relatives. See Yang Hyun Ah, *supra* note 82.

Similarly, American feminists have critiqued the traditional symmetrical models of sexual equality that require social institutions to find a single norm that works equally well for all gender characteristics. Feminist legal scholars such as UCLA Law School Professor Christina Littleton have called for the adoption of equality as acceptance model which would recognize women's biological and cultural differences from men. She argues that acceptance would reduce inequality not by eliminating women's differences, but by reassessing the value society accords to traditionally female occupations and lifestyles and revaluing so as to render such value no less than that accorded to equivalent male activities. See Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279 (1987).

265. PETERSON, *supra* note 34, at 212-213.

266. *Id.*

267. *Id.*

268. For instance, the *Korea Herald* recently published an essay written by a Korean college woman. Calling herself a moderate feminist, she writes that she is frustrated by the discriminatory mindset of the older generation. While she hopes that "this anachronistic thinking is disappearing" within her generation she concedes that "it is impossible for human thinking developed over millennia to completely disappear." Song Eun-ho, *Campus Vantage Point: Women Should Break from Self-Discrimination*, KOREA HERALD, Jun. 14, 1996. See also PETERSON, *supra* note 34.

During my ten month stay in Seoul, Korea on a Fulbright scholarship, the Koreans I spoke with about Korea's family system routinely expressed their belief that the Confucian patrilineal system has been practiced by Koreans for thousands of years when in reality it has been practiced for only 200-300 years.

The perpetual struggle between traditionalists and reformers reveals a strong reluctance among Koreans to abandon what they consider to be ancient traditions for new legal and socio-political standards. In coping with the breathtaking economic and political changes that Koreans have experienced in recent decades, Confucian family traditions have become a source of identity, security and stability. Korean society needs to realize that rejecting systematic inequality is not synonymous with rejecting its cultural heritage and that the preservation of Korean culture will be better achieved when the principles of democracy and equality are applied in all areas of society. The conflict between traditionalists and women's activists in contemporary Korea today cannot help but remind us of the social situation during the late Koryô and early Chosôn period when there were outcries that the adoption of Confucianism ran counter to indigenous egalitarian customs. Hence, perhaps the models which offer the best solutions to the problems created by Korea's contemporary family system lie not in western societies, but in its own past.

