



Korean Family Law Revisited: *Focusing on the Revisions Related to Gender Equality*

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Abstract

This article aims to analyze significant changes in family law and their relationship to gender equality, which has emerged as one of several factors contributing to low fertility in Korea from a socio-legal perspective. Fertility changes in Korea can be categorized into two distinct periods. The first period, spanning from 1960 to the late-1990s, saw a rapid decline in the fertility rate from approximately six children per woman to slightly below the replacement level. The second period began around the early 2000s, and is characterized by a further decline in the fertility rate to an extremely low level that continues until recent times. During the first phase of low fertility, several revisions were made to the family law, including major revisions related to hojuje, along with subsequent changes. This paper analyzes the implications of some of these family law revisions, specifically, examining provisions related to son preference and gender discrimination in inheritance and the parent-child relationship in family law and their impact on fertility. Through this analysis, this study aims to establish a connection between the revisions of family law and changes in fertility, ultimately shedding light on the complex relationship between law and society in modern Korea.

Keywords: family law, *hojuje*, son-preference, low fertility, gender equality

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Introduction

South Korea (hereafter, Korea) has experienced a rapid decline in its fertility rate since 1960, reaching an extremely low level since 2000. One may view this decline as simply one continuous decrease. However, a careful examination of age and parity distributions of annual fertility reveals two distinct periods of fertility change in Korea. During the first phase from 1960 to the late-1990s, the fertility rate experienced a rapid decline from a high level of around six children per woman to slightly below the replacement level. This decline was primarily driven by a decrease in higher parity births among women in the 35–39 age group, who were considered relatively old for childbearing during this period. For instance, the number of children born per 1,000 women in the 35–39 age group was 96 in 1960, which dropped to 74 in 1974, and reached a record low of 7 in 1990 (M. Hong et al. 1994, 65; Seung-Kwon Kim et al. 2006, 176). In the early 1960s, women reported an average ideal number of four children, while the total fertility rate (TFR) exceeded six children per woman. This indicates that the desired family size was high, and women were, on average, having more children than they considered ideal (Choe and Park 2006). The total fertility rate based on period parity progression ratios (PPPR) provides a hypothetical indication of the number of children women would have if they followed the observed pattern of parity progression throughout their reproductive years (Choe and Kim 2014). In the mid-1990s, there was a significant decline in the progression to first birth, indicating substantial changes in fertility behavior (Choe and Park 2006). Furthermore, according to the TFR (PPPR) data, the implied proportion of women having “three or more children” was 84 percent in 1960. This implied a proportion declined to 55 percent in 1980 and experienced a significant drop to only 13 percent in 1990 (Choe and Park 2006, 18). Additionally, the proportion of women who “would not have any child” throughout their reproductive lifespan was only 4 percent in 1980, but increased to 10 percent in 1995 and to 16 percent by 2000 (Choe and Park 2006, 18).

Previous studies have explained the reason behind this birth rate decline in Korean society during the first phase to increasing modernization,

including industrialization and urbanization (Chung and Das Gupta 2007; Choe and Park 2006), and successful family-planning programs (Choe and Park 2006; Eun 2007). Some studies have suggested that Confucianism or traditional values and patriarchal ideals may have had an impact, although the explanations in this regard remained somewhat ambiguous (Larson et al. 1998; Ma 2013; Raymo et al. 2015). It has been observed that strong Confucianism did not hinder the decline in fertility rates, or at most, only “slowed down the fertility decline” (Larson et al. 1998, 317).

The beginning of the second phase from the early 2000s is characterized by a further decline in the fertility rate to an extremely low level of fewer than 1.5 children per woman. This decline was primarily attributed to delayed marriage and childbearing (Jones 2007; Sam-Sik Lee 2009; Ma 2013; Jun 2004; Choe et al. 1995). Additionally, the rise of women’s educational attainments and their desire for participation in the labor force have emerged as new explanatory factors (Choe and Park 2006; Eun 2007). Studies have shown the limited involvement of fathers in childcare (Yoon 2016; Kim and Luke 2020; E. Kim 2017; Rindfuss and Choe 2015), and the incomplete implementation of work-family balance policies (Kim and Luke 2020; Ma 2013; Rindfuss et al. 2016) have also contributed to the continued decline in fertility in Korea.

The proposal to divide the analysis of the low fertility trend into two distinct periods before the early 2000s is supported by various scholars. Firstly, prior to the introduction of the Framework Act on Low Birth Rate in an Aging Society around 2003, low fertility was not recognized as a societal issue (Bae 2012; C. Hong 2013). During this time, the population increase remained at around 1 percent and the productive population ratio steadily increased from the mid-1980s to the 2000s, resulting in minimal attention given to low fertility by the media or academia (C. Hong 2013). Additionally, the termination of the family-planning program aimed at controlling population growth in 1996 marks a notable distinction between the period before and after that time. Secondly, it was only after the early 2000s that the concept of family policy, particularly focusing on children, began to address the urgent issue of demographic change due to low fertility (Chin et al. 2012; Choe and Park 2018). Thirdly, it is crucial to consider the timing of Korea’s

imposition of the International Monetary Fund (IMF) structural adjustment program in 1997, which marked the beginning of the implementation of comprehensive neoliberal policies. This program was forced upon Korea, leading to significant changes in its economic landscape. The decrease in birth rate accompanying the advent of neoliberalism is attributed to new factors, notably the postponement or delay of marriage. This distinguishes it from previous periods, where the decline was primarily understood as a decrease in the number of children within the marriage institution. Consequently, while fertility decline before the early 1990s was primarily due to lower fertility within marriage, since the late-1990s, delayed marriage has become the primary driver of very low fertility (Jones 2007; Sam-Sik Lee 2009; Ma 2013; Jun 2004; Choe et al. 1995; Eun 2007). Taken together, these arguments convincingly support the need to differentiate between the two time periods. Accordingly, it is worth exploring whether the factors or background that led to the decline of fertility have remained constant over the past decades, particularly given Korea's position in the discussions of two waves or branching patterns of low fertility starting around the early 2000s (Rindfuss et al. 2016; McDonald 2006).

The reason for distinguishing the two phases here is to acknowledge the potential variation in the elements contributing to low fertility across different time periods. It is essential to focus on the first phase and its connection to the revision of family law, particularly the articles related to "son preference." Within this framework, it is important to highlight an explanation of fertility change that specifically addresses the period since the mid-1990s (Chung and Das Gupta 2007; Choe and Park 2006). Analyzing the decline of Korean fertility and its link to patriarchy's son preference, Larson et al. concluded that pervasive son preference has not impeded the transition to low fertility (Larson et al. 1998). Son preference serves as one of the significant indicators of fertility change, and Korea stands out as the only Asian country where the sex ratio at birth (SRB)¹ has decreased from a very

1. The sex ratio at birth (SRB) is defined as the ratio of number of male births per 100 female births. It serves as a crucial indicator of the prevalence of son preference. A SRB of 105 is considered normal, indicating no significant son preference.

high level to a normal level (den Boer and Hudson 2017; Yoo et al. 2017; Choe et al. 1995; Chung and Das Gupta 2007; Kye 2014). Den Boer and Hudson (2017) attribute this shift in the SRB to the elimination of the roots of male privileges, briefly mentioning the family law in Korea as an important point of reference, but without emphasizing or matching this periodic characteristic with the main content of the family law revision concerning son preference.

Furthermore, previous studies have highlighted the significance of *hojuje* (household head system) and its impact (Yang 2002). However, these studies have not thoroughly explored the specific articles of family law and their implications, especially in relation to low fertility. The *hojuje* was a unique household registration system in Korea that documented family relationships from the perspective of the *hoju*, or head of household. Under the *hojuje*, individuals were registered as members of households headed by the *hoju*. These registration records served as essential government documents for citizenship and individual identification. Consequently, the *hojuje* was characterized by its emphasis on the lineage continuity through male descendants, promoting son preference and contributing to gender inequalities. The initial modern Korean family law was based on the framework provided by the *hojuje*. Thus, the abolition of the *hojuje* became a rallying point for women's organizations.

In this article, we have selected several Korean family law articles related to gender inequalities from a socio-legal perspective that considers legal changes in connection with general social trends and attempts to unravel and interpret the social context and significance of legal code changes (Harris 1983). By focusing on the revisions of the articles related to son preference and gender discrimination in inheritance and the parent-child relationship, mainly around the 3rd revision in 1990, we will discuss a slow but effective dismantlement of the *hojuje* and its consequences. In doing so, we aim to shed light on the connection between legal changes and gender equality that have emerged as one of several factors contributing to Korea's transition to low fertility between 1960 and the late 1990s and to extremely low fertility since 2000.

Brief Introduction to the Korean Family Law and its Revisions

The first modern Korean family law was enacted on February 22, 1958, a decade after the establishment of the Republic of Korea, as components of Part IV (Relatives) and Part V (Inheritance) of the Civil Code. Since then, it has undergone several revisions, resulting in the abolition of the *hojuje* in 2008. The National Assembly passed a Civil Code revision law in 2005, which officially abolished the *hojuje* three years later. Finally, in 2008, after the passage of a civil law amendment bill, the *hojuje* was abolished, bringing an end to its discriminatory and patriarchal practices within Korean family law.

Major Revisions of the Family Law

The transformation of the traditional family system into modern family law was a complex process influenced by the country's turbulent history during the first half of the 20th century. The Japanese occupation of Korea from 1910 to 1945 played a significant role in shaping the country's family law. During this colonial period, the Japanese government introduced a Civil Code that merged traditional Confucianism from the Joseon period with the Japanese Civil Code. As a result, an internally inconsistent set of codes emerged, which did not fully align with Korean values and practices.

In traditional Korean society, the clan ruling system known as the *jongbeopje* emphasized the importance of the paternal lineage. However, during the Japanese colonial period, the introduced *hojuje* distorted the traditional *jongbeopje*, which was a patrilineal ancestral and lineage system with the *hojeokje*, a household registration system. It combined elements of the Japanese emperor-centered household registration structure, creating a distorted version of the *hojuje* that granted the *hoju* a feudal and patriarchal authority known as *hojugwon*. This clashed with the democratic maintenance of family institutions, which were considered fundamental to basic human rights and gender equality under the Constitution. In response, a *traditional* Korean *hojuje* was established, firmly rooted in a patrilineal and patriarchal structure, with a focus on the continuation of the family line through the

eldest son.

The proposed family law based on the *hojuje*, which claimed to uphold traditional Joseon customs, was not a genuine portrayal of traditional Confucianism. Instead, it was a combination of Japanese interpretations of Korean family characteristics and Joseon customs (Yang 2011). Despite calls for revisions to the family law aimed at promoting gender equality and eliminating discrimination against women, which were guaranteed by the Constitution, the final version of family law enacted in 1958 remained firmly based on the *hojuje*. While some minor revisions were made to the Korean family law in 1958 compared to the 1954 draft, it still suffered from serious inadequacies and failed to effectively reflect the actual circumstances of Korean families at the time (Eun et al. 2015).

Significant gender discriminatory provisions inherent in the *hojuje* persisted, making further revisions inevitable. In 1973, women's organizations and the Korean Legal Aid Center for Family Relations formed the National Association for the Promotion of Family Law Revision and submitted an amendment bill to the National Assembly in 1974, signaling the beginning of the second round of revision. Meanwhile, conservative forces established the Committee for Nationwide Struggle Against the Family Law Revision in 1975 to oppose it. In 1977, an alternative bill that largely deleted key contents of the amendment was passed in the National Assembly, resulting in only minor revisions to the family law. However, the second revision did introduce gender equality to Article 909 regarding parental authority within the family and partially guaranteeing women's inheritance rights. Despite persistent demands for revision and the complete abolition of the *hojuje* in 2008, conservative forces, particularly Confucian scholars advocating for ideal living based on Confucianism, resisted, resulting in only gradual and partial changes to related provisions.

Subsequently, in 1984, the Women's Federation for Family Law Amendment was formed, and in response, conservative forces established the National Council for the Protection of Family Law. In 1985, a family law amendment was proposed but was automatically discarded due to the expiration of the National Assembly's term. It was reintroduced in 1988 and underwent major revisions in 1990, including significant deletions of rights

and obligations related to the *hoju* and a reduction of *hojugwon* (Ahn 2014). The third round of revision in 1990 marked a watershed moment in making a significant step toward gender-equal family law, as it revised many provisions related to the *hojuje*, although the framework of *hojuje* remained.

After undergoing another minor revision during the fourth round in 1997, the Citizen's Group for the Abolition of the *hojuje* was established in 1998. In 1999, a special subcommittee for civil law amendment proposed the abolition of the *hojuje*. The Group submitted a petition to the National Assembly, and a constitutional lawsuit against the *hojuje* was filed in 2000. In 2003, the National Human Rights Commission declared the regulations related to the *hojuje* unconstitutional, stating that the *hojuje* constituted a violation of human rights. Although the Ministry of Justice submitted a civil law amendment bill, it expired again due to the end of the parliamentary term. In February 2005, the bill to abolish the *hojuje* was passed in the interim National Assembly, and in December, the unconstitutionality of the *hojuje* was confirmed.

As such, the five rounds of family law revisions can be understood as a power struggle between advocates for gender equality and those who adhered to the patriarchal power of the *hoju*. Feminist legal scholars argue that these revisions primarily aimed to uphold gender equality against *tradition*, rather than striking a balance between equality and inequality (Yang 2011; T. Lee 1992). From a socio-legal perspective, the revisions of the family law represent a series of efforts to gradually dismantle the patriarchal power embedded in the traditional family system, despite the significant resistance from conservative forces. The revisions aimed to align Korean family law with modern values and principles of gender equality, but the process has been gradual, accompanied by numerous challenges. One of the unintended consequences of the family law revisions that undermined gender inequalities, notably son preference, is low fertility.

Important Provisions Related to Gender Inequalities

This study adopts a socio-legal framework that incorporates a historical

perspective to analyze modern Korean family law. Harris (1983) emphasized the importance of considering legal changes in connection with general social trends, and this study follows that approach. By examining the revision processes of family law and identifying significant provisions related to gender inequalities, the study aims to unravel and interpret the social context and significance of changes in the legal code.

To achieve this, this study will analyze additional materials related to the timing and significance of revised, added, and deleted provisions of the family law, including qualitative interview findings (Cha et al. 1975), historical accounts of family law revision movements (T. Lee 1992), and legal counseling casebooks compiled during the revisions of family law (T. Lee 1983; Hanguk gajeong beomnyul sangdamso 2008). Through this comprehensive analysis, this study aims to establish a connection between the revision of family law and changes in fertility, ultimately shedding light on the complex relationship between law and society in modern Korea.

Provisions Stipulating Gender Inequalities

The primary source material analyzed in this paper are the family law provisions, specifically Section 4 Kinship (Article 761–983) and Section 5 Inheritance (Article 984–1118) of the Korean Civil Code, which comprise a total of 1,150 provisions, consisting of 1,118 main provisions and 32 provisions in an addendum. To focus on the provisions related to gender inequalities, we indexed and recategorized them. Korean legal scholars have acknowledged that son preference is a prevalent social norm represented in the Civil Code (Cha et al. 1975). Park (1973) identified 27 gender-discriminatory provisions related to son preference, which Cha et al. (1975) reduced to 18 provisions. After examining their relevance to the family law revisions, we have narrowed our focus to nine themes, each with corresponding provisions:

1. Men have priority over women in *hoju* succession (Article 984).
2. A woman can succeed only when there are no male heirs in the family.
If an adopted son is recognized as the legal child of the family then the

woman will soon transfer the succession to the adopted male child (Articles 792 and 980).

3. When the *hoju* dies without having a son, one of his daughters succeeds to the authority of the *hoju* (Article 984). However, the descendants of that female *hoju* cannot succeed to the authority of the *hoju* because they are not direct descendants of her paternal family (Articles 984 and 993). In such a family, if the female heir dies before adopting a son as a legal child, that family lineage will discontinue.
4. If there are two or more sons who are joint heirs of an estate, the property is typically divided equally among them. However, the son who inherits the authority of the *hoju* is entitled to an additional 50 percent share of the inheritance, in addition to his equal share. If there are daughters, each daughter inherits half of the equal share of the inheritance received by each son (Article 1009).
5. When the wife dies without any descendants, the husband inherits all of the wife's property. However, if the husband dies and there are no descendants between the spouses, but the husband's parents are still alive, the wife shares the inheritance of the property with the husband's parents (Articles 1002 and 1003).
6. The share of inheritance for a married daughter is one-fourth of the share of inheritance of a son (Article 1009). The share of inheritance for an unmarried daughter is one-half of the share of inheritance of a son (Article 1009).
7. A husband can enroll an illegitimate child as his own direct relative without his wife's consent (Article 782), and the *hoju* can enroll any direct relatives as family members at their discretion (Article 785). On the other hand, without the consent of the *hoju* and her current spouse, a wife cannot enroll anyone who is not related by blood to her husband (Article 784).
8. Children born between a woman and her ex-husband have no legal parent-child relationship with her current husband. However, children born between a man and his ex-wife have a legal parent-child relationship with his current wife (Article 773). Furthermore, a wife and her husband's children born of wedlock have a legal parent-child relationship (Article 774).
9. Children are subject to parental authority (Article 909). The Civil Code

gives priority to fathers in terms of parental authority. However, if a child has no father, or if the father is unable to exercise parental authority, only then will the mother inevitably succeed to the parental authority (Article 909).

To provide a more coherent explanation, we can organize the nine themes aforementioned into three parts. The first part includes themes 1, 2, and 3, which pertain to son preference and the *hoju* status. The second part consists of themes 4, 5, and 6, which are related to inheritance. Finally, the third part encompasses themes 7, 8, and 9, which focus on the parent-child relationship.

Revisions to the Family Law Provisions

Son Preference and the Hoju Status

Prior to its deletion in the 2005 revision, Article 984 outlined the order of the *hoju* succession, which prioritized direct male descendants as the first heirs. Following them are direct female descendants who are family members, followed by the wife of the *hoju*. Direct female ancestors who are family members came next, and the last in line was the wife of direct male descendants. The order of the succession of the *hoju* warrants attention not only for the differing weights assigned to men and women but also for the position of the *wife*. The primary aspect to consider in the *hojuje* is not only the position of the father but also the position of the wife (mother). It is worth noting that the status of the mother in the *hojuje* is inferior to that of the son. Thus, the order of priority within the family hierarchy starts with the father, followed by the son, daughter, and finally the mother. While the father takes precedence over the son in the case of men, the daughter is given priority over the mother in the case of women.

There is a case that verifies this situation on who succeeds as *hoju* as presented in the counseling casebook.

[Case 8-5] “My husband passed away. We have no son, only two daughters. They are reaching the age of marriage. In this case, will I become *hoju*?”

[Answer] When a deceased person has no sons, the eldest daughter takes priority to become *hoju*, not the surviving wife. If she [the first daughter] marries and leaves, the second daughter becomes *hoju*, and if she also leaves, you will become *hoju* as the surviving wife for the succession of the *hoju* status. (T. Lee 1983, 108)²

Although Article 984 remained unchanged, the 1990 revision of the family law removed a provision that dealt with the uncertain status of female *hoju*. Specifically, Article 792, which was linked to Article 980 (4), stipulated that the succession rights of a female *hoju* could be stripped if a male member was newly admitted into the family, even if she had already succeeded the family line. While a comprehensive deletion of many *hojuje*-related provisions was only possible in 2005, the removal of this specific provision can be seen as a legal measure aimed at eliminating factors that primarily undermined the stability of a female *hoju*'s status.

When considering these provisions together, the context of son preference can be examined from two aspects. Firstly, sons hold significance in terms of *hoju* succession. However, it should be noted that it is also possible for daughters to become *hoju*, thereby potentially weakening the necessity for a son. Specifically, the deletion of a legal provision that posed a threat to the stability of the female *hoju*'s status, as it allowed a new male member of the family to succeed to the *hoju* position, guarantees the possibility of securing the stability of a female *hoju*'s position. Secondly, this provision grants daughters the opportunity to continue the family line. It is crucial to note that while this provision was officially deleted in 1990, the shift in people's attitudes towards it had already begun before its removal. Interviews conducted in 1975 with couples who did not have a son provide insights into this evolving mindset, predating the official repeal in 1990.

2. Here and elsewhere, unless otherwise noted, all translations are the authors'.

“Sons have been deemed necessary to carry on the family line and perform ancestral rituals, but I believe this notion is outdated. Nowadays, people say women can do it just as well. ... It’s not like the old days when people thought only sons could do those things.” [Sample 1, wife, age 31, high-school graduate, has three daughters] (Cha et al. 1975, 118)

The male interviewee expressed a slightly different viewpoint, yet he also appeared to have accepted and tried to adapt to a life with only daughters.

“But what’s the point of continuing the family line? It’s not like we’re going to live forever.” [Sample 2, husband, age 38, college graduate, has three daughters] (Cha et al. 1975, 119)

The narrative provided by the woman in Sample 1 is inconsistent with the prevailing law of her era. During that time, women did not hold priority over male descendants for succeeding as *hoju*, and although they technically had the potential to become *hoju*, their status remained uncertain if there were any male descendants in the family line, as previously discussed. Nonetheless, her perspective gained some support in the 1990s when relevant provisions were revised, and it was ultimately realized in 2005. Unfortunately, until then, women like the one in Sample 1 had to endure criticism from their spouses and in-laws for not bearing a son (Cha et al. 1975).

Ironically, the government’s policy regarding family law reform was aligned with the predicament faced by women. In 1976, the government proposed a plan to eliminate gender discrimination in the Civil Code, aiming to address the population issue by recognizing that “son preference was a barrier to population control” (T. Lee 1992, 182). Furthermore, in 1986, “the government decided to revise provisions in the Civil Code that were rooted in patrilineality, including the *hojuje* and inheritance rules, to promote gender equality” (*Dong-A Ilbo*, March 27, 1986).

Although we lack sufficient data to determine the effectiveness of these government plans, it is clear that they were aligned with the desires of the general population at the time. In 1989, a petition to amend the family law

revision garnered more than 480,000 signatures, and major political parties expressed their support for revising the family law (T. Lee 1992). Building on the above accounts, the percentage of individuals who believed that ‘having a son was a necessity’ gradually declined from 1985 to 1991 (40.6%), and then dropped significantly to 26.3 percent in 1994, almost disappearing completely by 2010 (4.1% in 2003) (Chung and Das Gupta 2007, 769–770; Choe and Park 2018).³ This trend corresponds to a decline in the SRB, which reached its peak at 116 in 1990 (Choi and Hwang 2020; den Boer and Hudson 2017), decreased to 110.1 in 2000, and further dropped to 106.9 in 2010.⁴ These statistics suggest a potential link between revisions of the family law and son preference.

In addition to the aforementioned deletion, the 1990 revision made another noteworthy change regarding *hoju* succession. Article 991, which previously prohibited the waiver of *hoju* succession rights, was amended to allow for renunciation. Also, with the deletion of the provision clause in Article 788, the eldest son was permitted to establish a separate household, contributing to the decline of co-residence, which accounted for about three-quarters of marriages before 1960 but decreased to one-third after 1980 (Choe et al. 1991, 71). Based on a survey conducted using the 1989 National Survey of Fertility, Family Health, and Welfare (hereafter, National Survey), the rate of co-residence among couples where the husband is the first son varied depending on the marriage cohorts. For cohorts before 1960, the rate was 91 percent. For the cohorts between 1960–1970, the rate was 70 percent. Finally, for the cohorts in the 1980s and later, the rate dropped to 47 percent (Choe et al. 1991, 72). This legal revision in 1990 enabled the eldest son to establish a separate household, which led to a decreasing trend in

3. Also, Korean Statistical Information Service (KOSIS), “15–44-se yubaeubuin-ui adeul piryoseong-ui byeonhwa” (Changes in the Desire for Sons Among Married Women Aged 15–44), https://kosis.kr/statHtml/statHtml.do?orgId=331&tblId=TX_33101_A104 (accessed March 5, 2023).

4. Korean Statistical Information Service (KOSIS), “Sido/chulsansunwi-byeol chulsaeng seongbi” (Analysis of Sex Ratio at Birth by Birth Order in [City and Province]), https://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_1B81A19&conn_path=I2 (accessed March 23, 2023).

later marriage cohorts of women co-residing with their parents-in-law.

According to the 1994 National Survey, only 12.7 percent of married women were co-residing with their parents and parents-in-law (Kang et al. 1996). This shift reflects the weakening of social and cultural norms that previously prevented the eldest son from establishing a separate household. However, it is worth noting that married women, particularly those who are employed, benefited from co-residing with their parents-in-law. Kang et al. (1996) conclude that working mothers were able to reduce the burden of childcare with the help of their parents-in-law, who provided support by taking care of their grandchildren and assisting with household chores.

Considering that national policies for childcare were inadequate before 2003 (Chin et al. 2012), the role of grandparents in providing care should be considered. Thus, the unintended consequence of the deletion of Article 788 was that first-son couples lost their opportunity to have their parents-in-law as a support system for childcare. While the separation from the co-residence with the parents' household provides daughters-in-law with some freedom from the control of their mothers-in-law, it can also have a negative impact on childcare support. This indirectly contributed to the cultural and social conditions associated with women's decision to have children.

Gender Discrimination in Inheritance

In 1975, a public hearing was held to discuss the proposed revision of the family law, where participants expressed both support and opposition. One panel participant, a male lawyer who opposed the revision, made a comment that deserves attention:

“Under the current law, the eldest son inherits 1.5, while the second and third sons inherit 1 each. The daughter inherits .5, the wife inherits .5, and the daughter who has married inherits .25. The reason for this discrimination is because the essence of the first-born inheritance is the continuation of the family lineage, and in order to fulfill this responsibility, the eldest son must inherit most of the property.” (T. Lee 1992, 173)

His claim was soon rebutted by the related provisions in Article 1009 that were revised in 1977. As a result of this revision, the wife's portion of inheritance was equalized with the first son's portion, both receiving 1.5, while the daughters' portion was raised to be equal with the sons' portion, both receiving 1. However, the portion allocated to a daughter who has married remained unchanged. In 1990, the principle of equal distribution in the inheritance of property was firmly established, with the deletion of any discriminatory practices based on children's gender or the marital status of daughters. The following counseling case illustrates the change:

[Case 8-24] "In January 1999, my father suddenly passed away. He left behind a property which is a house, but he did not leave a will before he passed away. The remaining family members are my mother, my older brother, and one married younger sister. We have agreed to dispose of the house, but how much should each of us receive from the proceeds?"

[Answer] The heirs should divide the inherited property according to the legal inheritance share defined in the Civil Code. Article 1009 of the Civil Code specifies that the inheritance share is generally divided equally among the heirs. Therefore, the property should be divided among the mother (1.5), the eldest son (1), the questioner, the second son (1), and the younger sister (1), according to their respective ratios. (Hanguk gajeong beomnyul sangdamso 2008, 227)

The changing status of the wife relative to that of sons, particularly the eldest son within the *hoju* hierarchy is noticeable. The subordinate position of the wife to sons was reflected not only in abstract values but also in measurable domains such as property rights. In other words, although the wife's position as a member of the *hoju* lineage remained subordinate to that of the sons, her position in terms of property inheritance became superior to that of the sons. Prior to 1977, the eldest son and sons were valued higher than the wife in terms of property inheritance, and only in 1977 was the wife's position equalized to that of the first son. The preference for son(s) was not only about the imbalance between daughters and sons but also reflected a profound problem in the wife's status. Finally, in 1990, the position of the

wife was elevated above that of the first son through the equal treatment of sons and daughters, at least in property inheritance.

In order to examine the position of women in relation to property, particularly within the context of Korean family law, it is important to consider related articles, such as Articles 1002, 1003, and 839. As discussed above, the main pillars holding the principle of *hojuje* can be expressed as “by the *hoju*, of the *hoju*, and for the *hoju*,” which extends to inheritance as well. It is worth emphasizing that the revision of family law in 1990 signaled a shift towards gender equality as evidenced by the deletion of Article 1002, which previously specified the situation when the wife dies. The article itself represented a discrepancy in inheritance rights between when the wife dies and when the husband—the *hoju*—dies. Additionally, Article 1003 changed the term “wife” to “spouse,” ensuring that the content applied to men and women equally.

The deletion of these articles suggests a growing awareness of women’s rights in relation to property. This is further demonstrated by the introduction of Article 839, which specifies the “right of claim for division of property in a divorce.” A counseling case illustrates the significance of this article, as it clarifies its meaning in practice.

[Case 5-76] “After 15 years of marriage, I am divorcing my husband due to his cheating and assault. He has agreed to the divorce but refuses to give me a penny for our shared property—our home. He says that it is under his name and that I have been doing nothing but maintaining the home all these years. Despite contributing to our savings and maintaining our home through unpaid domestic work, it seems my lack of formal employment is being used against me. Shouldn’t my contribution to our home and savings be recognized when dividing the property?”

[Answer] In the case of a full-time housewife, her contributions to household work, home management, and child rearing are recognized, thus it allows you to file a property division claim against your husband [emphasis added]. (Hanguk gajeong beomnyul sangdamso 2008, 125–126)

The case cited above indicates that prior to 1990, the law did not specify a woman's right to claim property in marriage. The Korean Civil Code has a legal property system that is based on a pure separation of property. Although the separation of property system may seem equal and fair at first glance, it is worth reconsidering the complexity of determining property ownership within the family, especially given the changes made to Article 796 in the 1990 revision. The provision that previously presumed uncertain property to be the *hoju*'s has been changed to a "family share." However, in cases where the woman is not economically active and is a stay-at-home mother, such as the one mentioned above, it was commonly understood in society that there was no separate property to be assessed, and that the joint property was considered the *hoju*'s.

This point is related to the underlying reason for why son preference exists in the first place. Within this *hojuje*, daughters, and later when they become wives, are treated as less than the *hoju*, who is the father, and before whom were sons. The fact that women were only able to claim their property rights starting in 1990 raises an important consideration: having a son and preferring a son does not stop at determining the desired number of children, but rather extends to a larger question of how society treats sons and daughters as equals. Furthermore, the lack of recognition for women's domestic work as contributing to the economy has had a negative impact, as evidenced by the extremely low fertility rates in Korea that persisted even after the 2000s. Korean women began to weigh the costs, benefits, burdens, and rewards of having a child, whether male or female.

It is important to note that until the 1990s, domestic work and child rearing were considered to be solely the responsibility of women, not men. Although the issue of equal property rights between husband and wife began to be considered by the Korean public at that time, gender equality was not yet linked to men's participation in the domestic division of labor or childcare. As a result, the foundations of gender inequalities in family dynamics began to be undermined, but connecting this process to the equal sharing of domestic work in the family remains an unfinished task.

Parent-Child Relationship

This section focuses on unresolved matters regarding the revision of family law, particularly concerning the parent-child relationship. The first topic under consideration is the fact that the parent-child relationship is only recognized within the context of legal marriage. During the initial revision process, the recognition of common-law marriage as a legitimate form of union was left out. Women's rights groups campaigned to have a clause added to Article 806 regarding engagement, which would recognize the start of cohabitation as the establishment of marriage. However, the final version of the law enacted in 1959 failed to include this clause. Instead, Article 812 on the establishment of marriage was amended to define marriage as being effective by registration under the *hojuje*. Although cohabitation, or de-facto marriage, without legal registration was common at the time, it failed to gain legitimacy as a form of marriage with the introduction of modern family law.

The Korean General Social Survey conducted in 2003, found that approximately 65–66 percent of respondents agreed with the question, “People who want to have children should get married,” while around 16.55 percent of men and 19.4 percent of women disagreed (Eun et al. 2015, 166). When analyzing the respondents by age, we observed a growing trend toward the separation of the decision to have children from the institution of marriage. For instance, when examining the data by age group, the percentage of respondents who disagreed with the idea of having children within the institution of marriage, for those in their 40s was 14.48 percent, 19.94 percent for those in their 30s, and 31.67 percent for those in their 20s (Eun et al. 2015, 166).

More recently in 2018, unmarried men and women aged 20–44 were asked a question with a slightly different nuance: “Is it acceptable to have children without getting married?” The trend of agreement continued, but only at a low rate, with 25 percent of men and 23.8 percent of women agreeing (So-Young Lee et al. 2018, 370). It is possible that the initial family law's omission regarding cohabitation may have played a role in these survey results, leading to the association of the relatively low levels of non-marital

fertility in Korea (Rindfuss and Choe 2015). This provision was not revised until 2008 and remains unchanged.

Articles 782 and 784 stipulate the conditions for determining a child's affiliation when born outside of marriage. Typically, according to family law, a child's affiliation is presumed to be with the married couple. However, the male *hoju*'s power or authority transcends this basic law. When a man produces a child outside of marriage, he can register the child in his family registration (Article 782) without the need for his wife's consent. In contrast, when a woman has a child outside her current marriage, she requires the approval of her husband, who is the *hoju*, to register the child as a family member (Article 784). This means that the *hoju* possesses the sole legal power to decide who can be his family member (Park 1971; Ko 1982), creating a family lineage under strong patrilineality. This provision remained intact until 2005, legally establishing a relationship between a father and his children born out of wedlock, while the relationship between a mother and her children born out of wedlock was considered unnatural and/or illegal.

The power to decide who could be a family member rested solely with the *hoju* (Article 773, 774), which resulted in the wife's opinion or decision on whether to accept the child as her own not being considered. Moreover, the biological mother of the child immediately had her parental custodial right denied. This meant that when a child was born before the mother's marriage or outside of marriage, the mother would have no parental rights. Furthermore, this *hoju*-centered patrilineal parent-child relationship made step-relationships complex. For instance, if a woman marries a man who was previously married, she automatically becomes the legal mother of her husband's children from his previous marriage(s), and the children become stepchildren. However, there is no provision in family law that specifies the relationship between the children from a woman's previous marriage and her new husband. In other words, if a woman (re)marries and brings her own children into the (new) marriage, a stepfather-stepchildren relationship is not automatically established.

Following the deletion of these two provisions in 1990, a slight shift has been observed in regard to a biological mother's denial of her parental custodial right. Prior to 2005, there were very limited options for registering

a child born to a mother who was not married to a *hoju*. This situation is reflected in the adoption trends in Korea, where in 1996, out of the total adopted children (3,309), more than 85 percent were from single mothers (2,822), suggesting that adoption occurred mainly with children born to single mothers who could not find or do not have a proper *hoju* under whom to register (Nho and Kim 2004; Sang-Yong Kim 1999).

The contents are once again connected to Article 909. Prior to 1977, Article 909-2 mandated that fathers had exclusive control over parental rights, which were necessary for maintaining a significant relationship with children, while mothers were considered secondary. This meant that the mother could exercise parental rights only when no father was available. However, this provision was changed in the 1990 revision to allow both mothers and fathers to jointly exercise parental authority and make decisions regarding their children.

While securing maternal custody as part of exercising parental rights reflects gender equality, the guaranteed authority is limited to their control over children. It is important to remember that while sharing equal rights in terms of control or guardianship over children is essential, it does not necessarily guarantee equal rights and responsibilities in raising and caring for children between couples. In this regard, the provisions of Korean family law solely address parental rights over their children, without specifying how they should equally care for and assume responsibility for them in terms of gender equality.

Conclusion

The aspiration for gender equality within families in Korean society emerged in the mid-1950s and was realized after nearly 60 years of struggle through the abolition of the *hojuje*. This article traced the roots of patrilineal familism based on the *hojuje* and its gradual weakening, especially during the 1990s, which eventually led to its abolition in 2008. Upon examining the revision of family law in the 1990s, it is evident that significant changes were made then towards achieving gender equality, resulting in the

dismantlement of son preference.

The focus has been on examining the crucial aspects of gender inequalities—son preference, gender discrimination in inheritance, and parent-child relationships—in family law. As a result of the revisions of several key articles in the family law that previously underpinned son preference, prioritizing sons in household succession, gender equality has been achieved and daughters are now included. This progress toward the abolition of the *hojuje* may have contributed to the normalization of the SRB in Korea. With the overall abolition of the *hojuje*, people began to set aside the social pressure associated with continuing the family line, particularly through the patrilineal bloodline, and became relatively free from the social mandate to have a son. Consequently, it became increasingly difficult to justify the idea that male figures must dominate the family. While this has transformed an essential aspect of gender inequality within family dynamics, we cannot claim that the revision of family law has completely resolved the widespread gender inequality or discrimination against women at the societal level. Moreover, there are still hidden aspects of gender inequality within families, particularly the issue of extremely low fertility and women's choices on childbearing, that require further study. In this article, we examined the relationship between the key aspects of family law revisions and fertility trends up until the time of the abolition of the *hojuje*. The current trend of extremely low fertility in the 21st century needs to be analyzed in the context of other remaining gender inequalities within families and social settings that persist after the abolition of the *hojuje*.

In the context of the relatively scarce studies analyzing the low fertility issue in relation to family law, this paper could be viewed as an important first step. However, we would also acknowledge that there will be challenges and limitations associated with choosing a path that has not been previously taken. While these limitations are regrettable, it is hoped that they will spark new research questions, and therefore, the significance of this first step is not without merit.

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