

Gender Equality vs. 'Tradition' in Korean Family Law: Toward a Postcolonial Feminist Jurisprudence¹

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This article reviews the three times of the family law revision in 1962, 1977, and 1989 from a feminist point of view. It particularly focuses on the women's movements to change the law and discourses employed in the movements. Since the history of family law has been tantamount to the history of feminist legal movements and the feminist legal movements for family law marks the longest history in the legal feminism in Korea, the movements provides rich meanings and insights for legal feminism in Korea.

In reviewing the process of revision, the study reflects what legal feminism in Korea could be. The feminist viewpoint in this essay is not assumed as the one pre-given or complete criterion from which the issues of family law revision can be evaluated. Rather, it is a very viewpoint that needs to be reconstructed within the specific historical conditions. In relation, the primary concern of this essay is a discursive impasse in which gender equality has been posited as the opponent of 'tradition' in Korea. What kind of feminist legal reasoning or the vision could lead to achieve gender equality in the family without being trapped into the binary logic? What does this discursive terrain mean to the legal feminism and cultural predicaments in South Korea? In its concluding part, it discusses the viewpoint of 'postcolonial feminism' as the multiple engagements with the patriarchy and with the colonial legacy. The article is an early effort to pave the road for the viewpoint of postcolonial feminist jurisprudence in Korea that combines the effort to overcome the male-centeredness with the projects to deconstruct the colonial heritage in law and society.

Keywords: Family Law, Women's Movements, Legal Feminism, Tradition, Patriarchy, Colonialism, Postcolonialism

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1. This is an essay based upon a chapter of my unpublished Ph.D. dissertation (Yang 1998).

1. Introduction

The history of family law in Korea is a history of women's movements. Even before the bill was passed in December 1957, women lawyers and feminists have proposed their own bill after reading the original governmental bill (Lee Tae Young 1992). The Korean family law enacted on January 1, 1960 soon elicited calls for revision. Throughout the 1970s and 1980s, the efforts for revising the law never ceased. The fourth amendment bill has been submitted to the National Assembly in November 1998 that has waited for the approval of the legislature. As another bill was proposed in September 2003 that deleted the family-head system (*hoju jedo*) in the law, it elicited strong support as well as fiery opposition. The revision of the law is a history well alive until this moment.

The social movement for revision of the law during the last five decades has been a critical site for legal feminism in Korea, whereas most legal changes to improve women's life in Korea mainly took place during the 1990s(see Yi Eun-young 1999). This essay will examine three periods of revision with emphasis on the last major changes in 1989, the third revision, from a legal feminist point of view. The feminist viewpoint in this essay, however, is not assumed as the one pre-given or complete criterion from which the process of family law revision can be evaluated. Rather, it is a very viewpoint that needs to be reconstructed within the specific historical conditions.

Korean society witnessed tenacious feminist legal reform efforts, which came to fruition in the first revision in 1962, the second revision in 1977 and the third revision in 1989. Confucian groups, faithful to the beautiful tradition vehemently resisted revision of the law. Many scholars, lawyers, representatives, and others aligned themselves with each of these two opinions. Meanwhile, the Korean state, which monitored the social movements, made a final decision about the revision (see Moon 1994; Oh 1993). 'Tradition' continued to be the most persistent theme in the process of revision, while the ideals of legal modernity such as democracy, individualism, and gender equality were increasingly called upon to legitimize the revisions. The primary concern of this essay is a discursive impasse or dilemma in which gender equality has been posited as the opponent of 'tradition' in Korea. Rather than aligning myself with one position, I would like to problematize this framework itself. Firstly, this essay is devoted to the description of the process within a socio-political context and major contents of legal changes.² Secondly, it will discuss such process from an angle of

feminist viewpoint. The feminist viewpoint in this essay, however, is not assumed as the one pre-given or complete criterion from which the process of family law revision can be evaluated. Rather, it is a very viewpoint that needs to be reconstructed within the specific historical conditions. What kind of feminist legal reasoning or the vision could lead to achieve gender equality in the family without being trapped into the binary logic? What does this discursive terrain mean to the legal feminism and cultural predicaments in South Korea. With these questions in mind, this essay introduces the viewpoint of 'postcolonialism' especially in its concluding part. Even though this essay will be far from sufficient to discuss this view, it is an early effort to pave the road for the viewpoint of postcolonial feminist jurisprudence in Korea that combines the effort to overcome the male-centeredness and the effort to deconstruct the colonial heritage inscribed in law and society.³

2. First Revision, 1962

In April of 1960, student-led demonstrations resulted in the sudden end of the First Republic of Korea led by President Rhee Seung-man. The opposition Democratic Party succeeded the regime in August 1960. The Second Republic of Korea, however, existed for only a short period of time before it was overthrown in May 1961 by a military coup led by a Major General, Park Chung-hee. After two years and seven months of military rule by the Supreme Council for National Reconstruction, General Park was elected as President in October 1963.⁴ The first revision of family law in 1962 took place in this tumultuous

2. Within limited space, this essay focuses more on the process of the revision and social aspects than the content of the revision itself.
3. According to Ashcroft and Griffiths(2000:187), post-colonialism can be defined as 'the study and analysis of European territorial conquests, the various institutions of European colonialism, the discursive operations of empire, the subtleties of subject construction in colonial discourse and the resistance of those subjects and differing responses to such incursions and their contemporary colonial legacies in both pre- and post-independent nations and communities.' In the field of legal feminism, however, 'postcolonial feminist jurisprudence' viewpoints are difficult to find. The study of the abolition of the Sati during colonial India by Lata Mani (1988) and other postcolonial feminists' writings certainly gave me the inspiration for this direction of research. Recent volume edited by Wing (2000) presents one of the few efforts to locate legal feminism within the non-Western social conditions.
4. The Third Republic continued until 1972, when President Park himself imposed extraordinary martial law on the country.

political environment.

In July of 1962, the leaders of six women's organizations—believing the timing was favorable to legal reform because of “the transitional chaos”—assembled for a meeting that initiated the first revision (Lee Tae Young 1992:133).⁵ Under the military rule that suspended political activities from May 16, 1961 to January 1, 1963, however, no documentation of the procedures for the first revision of family law is available. On December 31, 1962, the first revision was proclaimed, in which Article 789 stipulated the following.

Article 789 (Legal division of family, Mandatory division of family):

- (1) A member of a family shall establish rightly a branch family when he gets married.
- (2) The family-head shall permit a male adult family member to establish his own family when he can support it.⁶

Paragraph (1) was created in this revision. Even though the revision made only this change, its effect was not trivial (Kim Yong-han 1988:440; Han 1993:732).⁷ This revision represented the state's effort to streamline family life for efficient administration by making every husband in every household the head of a family (*hoju*). With the dawn of rapid industrialization and mobility among the population in the early 1960s, the family-head system needed to be modified without transforming its basic frame, even at the cost of undermining the authority of the former family-head.⁸

5. The meeting included representatives of the Association of Korean Women, Korean Women's Christian Society, Society of Korean Women Bachelors, Union of Korean Mothers, Women's Issues Study Center and YWCA (Oh 1993).
6. Throughout this essay, English translation of Korean family law is the one by the Korean Legislation Research institute. Since translation of the current statute is the only one available, the translation of the article in the prior statute is my own, yet based upon the translation of the current statute.
7. The reasons for the revision presented by the Supreme Council for National Reconstruction were as follows. (1) a changing life-style in which the extended family system shifted to the couple-centered small family system (2) more correspondence between the conceptual family in the family register and the real family (3) the public's lack of attention to the voluntary division of family [in Article 788] (4) simplification of the administration of the family register (*hojeok*) (5) relief from local prejudice that had been enforced through the permanence of the original family register (*bonjeok*) (Kim Yong-han 1988:441; Han 1993:732).
8. Without this provision for the mandatory division of the family concomitant with a man's marriage, the family-head could represent the extended family for the families of married siblings or married sons who were not going to succeed the family-headship.

With this revision, the system of family-head underwent a more thorough synthesis with the modern nuclear family. Article 788, for example, which sutured the Korean primogeniture system onto the Japanese framework, continued to prohibit the eldest son from setting up his own branch family. "A member of the family may set up a branch family except in the case when he is the eldest son of the head of a family [*sic*]."

The first revision of family law initiated the revision of subsidiary laws such as the Family Registration Act on December 29, 1962, legislation of another subsidiary law, the Family Court Procedure Act on October 1, 1963, and the establishment of the Family Court on October 10, 1963.⁹ Changes were brought about by feminist effort, even though most propositions regarding the revision of family law presented to General Park in July 1962 were not adopted (Kim Yong-han 1988:441; Lee Tae Young 1992 135-139). By the Family Court Procedure Act, changes occurred in the matrimonial area. As to divorce, a family court now needed to investigate divorces made by agreement.¹⁰ As to marriage, the revised Family Registration Act opened the way to admitting a *de facto* marriage as a legal marriage through an appeal to the Family Court (Han 1993:733; Lee Tae Young 1992:138).

However, these legal changes were a compromise on the part of the state that signaled the expedient operation of law in society. The fact that the significant changes in the legal relationships within the family took place not by revising family law, but through subsidiary laws, created many problems. It is fair to say that in the first revision of family law the scope of changes through revising the subsidiary laws was far greater than the revision of family law itself (Kim Yong-han 1988:441; Lee Tae-Young 1992:138).

3. Second Revision, 1977

In June 1973, the sixty-two women's organizations founded a federation, the Pan-Women's Group for the Revision of Family Law (PGR). At the founding

9. Followed by the legislation of the new law, the family court was established on October 10, 1963 and the Family Registration Act was revised a second time (Kim Yong-han 1988: 441; Lee Tae Young 1992:135-139).

10. Before the revision, a divorce was granted simply by mutual agreement, which could sometimes be a result of the husband threatening his wife to obtain a divorce (Han 1993:733; Oh 1993:126).

meeting, Lee Sook-jong, the president of the Association of Korean Women's Organizations and a representative, was elected as the president of PGR.¹¹ Scholars of family law such as Kim Ju-soo, Kim Yong-han, Pak Byung-ho, Han Bong-hee, Yi Kun-sik, and Lee Tae Young contributed to the drafting of the ten principles that were to underlay the revision and the amendment bill.

This was during the Fourth Republic of Korea (1972-1980) under the *Yusin* constitution, meaning, "revitalizing reforms," which in fact permitted blatant military authoritarian rule. During that period, political power was highly centralized under the control of President Park Chung-hee. For example, one-third of the members of the National Assembly were elected at the National Conference for Unification, not by national ballot, and all of the candidates for indirect election were chosen by President Park. Owing to this electoral procedure, twelve women, including two women who were elected on the national ballot, entered the National Assembly as representatives in March 1973. This was the largest number of women legislators that the National Assembly had ever seen. And the presence of this number of women in the National Assembly was regarded as a good opportunity for pushing for revision of family law (Lee Tae Young 1992:143).

The year of 1974 was declared by the United Nations as the Year of World Population, which was translated in South Korea as the year of family planning. The revision movement took this opportunity provided by the United Nations to claim that the succession of patrilineage in the family had been the major obstacle to family planning.¹² The U.N.'s proclamation of the following year as International Women's Year also provided a favorable environment for the legal feminist movement.

Voices of Revisionists and Opponents

The founding meeting of the PGR on June 28, 1973 endorsed a Declaration that expressed the principal goals of the organization.¹³

11. Prior to this meeting, a lecture calling for the revision of family law sponsored by the Korean YWCA and Legal Aid Center for the Family on April 27, 1973 created heated discussion that led to formation of the PGR (see Lee Tae Young 1992:145-150).
12. The feminists' utilization of the state-sponsored family planning signaled their position vis-à-vis the state. The feminist revisionists needed to rely on the state in order to upgrade women's legal status, and this did not allow having the radical criticism on the state's policy agenda such as the family planning that often built upon the male-centered notions of the family and society (see Moon 1994).

First, the current family law that privileges [the person] according to gender and order of birth violates the Universal Declaration of Human Rights and our Constitution. The law is unjust from a humanist viewpoint.

Second, whereas women have suffered from the fetters of age-old traditions and customs institutional reform is indispensable in order for women to regain their human nature and to create genuine human relationships. Any institutions that separate women from their humanity must be abolished.

Third, the people and nation need power in order to continue to prosper. The most important source of power is undoubtedly the human beings of society. It is time to enlist women's capabilities, which are not inferior, by nature for the development of the society. Give them opportunities and rights!

Fourth, in accordance with our Constitution that proclaims the democratization of the family, the family as a community of all family members needs to be democratized.

Fifth, only justice within the law, a social justice to which everyone aspires is possible. Revision of family law that evidently violates justice will become the touchstone of social justice (cited in Lee Tae Young 1992:150-151).

Human rights, humanism, democracy, national strength, social development, and justice were presented as the grounds for the revision. Most of all, humanism seemed to be the foundational ideal for the revision, but the feminist revisionists' philosophical and historical intervention in its support was unheeded.¹⁴ In addition, it was questionable whether women ought to play a part in strengthening the nation under an authoritarian dictatorship. In terms of the "reality prin-

13. All citations in this essay are my translation.

14. Historically, the humanist agenda of feminism for thriving women's full citizenship amounted to the negation of women's 'differences'. Through this negation, women could become universal humans who are neither male nor female. For the criticism of humanism and the accompanying gender neutrality that often reconfirm the maleness embedded in the law, see generally Weisberg (1993) and Bartlett (2002).

ciple” within which the revision was constricted, the feminist agenda might have had to accommodate to the established political norms and channels. Another note can be made of their reference to tradition and custom as with regard to women’s “fetters,” since it signals feminist understanding of the tradition as the opposition to their goal. This binary code became more pronounced in its later stage.

With this declaration, ten goals for the revision of family law were also published.¹⁵ Based upon them, the amendment bill was drafted in September 1973 by the legal scholars listed above (Lee Tae Young 1992:160). This bill continued to be a comprehensive bill effective until the third revision. Along with drafting the bill, the PGR put effort into various activities such as collecting signatures from supporters, setting up branch organizations on a national scale, publicizing their cause through pamphlets, cartoons, other publications and lectures, and appealing for the cause to the representatives (ibid.:155-160). After one year of effort, the PGR completed writing the amendment bill on July 14, 1974,¹⁶ and held a meeting in which they presented it to the twelve women legislators and asked for their support of the amendment bill (ibid.:162).

Meanwhile, strong opposition from anti-revisionists appeared, especially after the revisionists’ presentation of the amendment bill to the legislature. On August 25, 1974, a nation-wide Confucian organization (*Yudo hoe*) voted in their national conference to oppose revision of the family law,¹⁷ On October 5,

15. These included the following: (1) Abolition of the system of family-head (2) gender equality in the general scope of close kin (*chinjok*) (3) abolition of the ban of marriage between parties whose surname and place of ancestral seat are common (4) shared ownership by a married couple when the ownership of the property is not certain (5) a spouse’s right to require division of the other spouse’s property upon divorce (6) rationalization of divorce by agreement (7) sharing of parental authority between mother and father (8) changing the relationship between mother and stepchildren [from the legal blood relatives into the relatives by affinity] (9) rationalization of the succession of property (10) establishment of the reserve in the succession of property (*yuryubun*).
16. There remain some questions about the respective roles of feminist activists and the legal scholars in this revision. The amendment bill was composed of a detailed correction of the provisions within the framework of the pre-existing terminologies and structure, and the feminists did not seem to intervene much in the drafting itself. Lee Tae Young was the only legal expert who was also in the feminist movement.
17. The *Yudo hoe* is the national organization of Confucianism in Korea founded in 1946. The organization curiously overlaps with that of public administration — the *dong-li* is branch under the eup-myon branch, with the latter being under the *si-gun* branch, which is under the central office in Seoul. The membership of the organization in 1991 ran between ten million, as the organization calculated (counting those who observed the ancestor veneration), and five

1974, it submitted the collected signatures of 34,000 opponents to the Business Bureau of the National Assembly,¹⁸ and ten days later also submitted a document explaining the reasons for its opposition. In September 1975, Confucians and other opponents organized the Committee for the Preservation of the Korean Family Institution, chaired by businessman Chung Chu-young. This organization criticized the amendment bill as an evil law that would ruin Korean tradition.

In this heated atmosphere, the Chungang daily newspaper organized a public hearing at which both sides were invited to speak. One of the opponents, lawyer Ki Se-hun, defended the family-head system as what he termed as the individual-family-system (*gebyeol gajok jedo*).

While the nuclear family is the family completely separate [from the parents' family] and its members become unrelated people (*nam*) [with the parents' family], the individual-family-system is consolidated with the parents' family through the spirit of filial piety and loyalty, even though they do not live together... The succession of family lineage is accompanied by responsibility. In order to fulfill his responsibility, the eldest son needs to inherit the family property. [He] must succeed to the property of the family-lineage, keep the ancestor veneration and burial sites, treat guests of the family well, and take care of his parents (cited in Lee Tae Young 1992:174-175).

The lawyer did not explain, however, why abolishing the family-head system would destroy the connection between parents and children, nor did he recognize that the revised family law not only reallocated rights but also responsibilities. Yi Byung-il, from the Confucian organization, more straightforwardly argued the value of the family-head system.

When we consider today's reality, which is better, western material hap-

thousand actual members of the organization. In spite of its national scale and systematic organization, it has had serious difficulty in securing financial and philosophical support (See Yang 1991:80-86; Yudohoe chong bonbu 1983:50).

18. During the one year of 1975, seventy-thousand-signatures were collected by the oppositionists, more than the signatures collected by the revisionists in the decade from 1974 to 1983. In spite of the reactionary nature of the anti-revisionist movement, the difference in the number of signatures indicates the power of the Confucian organizations (Yeoseong pyeongu hoe 1984:75; Kim Yong-han 1988:447).

piness or the spiritual happiness of the Korean family?... Four of the ten principles of the revision of family law are about dividing money... Is the family for the calculation of interests? Or is it not the better purpose of marriage for a woman to become the shining mother and wife who work for the glory of her family-in-law and its ancestors? Yes, sons are important and daughters can be neglected. They can be respected after they married (quoted in *ibid.*:178)!

Note that he deployed the binary opposition between West and East (Korea), the material and the spiritual, yet man and woman were not explicitly presented in the setting of the legislation, and employed was the notion of tradition even more nominally than before, without any precedents, explanations, or statements needed. While he criticizes the materialist calculation of the interests in the family, patriarchal interests are assumed as the “spiritual.” He did make it explicit that the Korean family’s solemn spiritual happiness is attainable only through women’s un-calculating and un-calculated services for the glory of “family-in-law.” This was perhaps the nucleus of the ‘tradition’ in the Korean family that the speaker was proud of. The following discussion will illustrate the state’s support of this dogma.

State’s Indifference and Silence

The PGR amendment bill was submitted to the National Assembly on September 30, 1974 by the president of the PGR, Lee Sook-jong, and nineteen other representatives. PGR members were shocked, however, to find that the submitted bill was different from the PGR’s original bill. Representative Lee, with the help of Professor Kim Ju-soo, secretly changed the amendment bill because the Representative viewed the amendment bill as too radical to be passed.¹⁹ She therefore omitted the nucleus of the bill, abolition of the family-head system and the prohibition of marriage between parties whose surname and place of ancestral seat were in common. The repercussions for the PGR were very grave. At the very verge of disintegration, the members agreed to resubmit the original PGR bill, which was submitted on April 9, 1975 (Lee Tae Young 1992:165-168).

With both revisionists and oppositionists fully activated, the issue was vigor-

19. This scandal revealed the ambivalence of Representative Lee Sook-jong, who was caught between the PGR and her role as a representative appointed by the President.

ously discussed and debated in newspapers, broadcasts, and public lectures (ibid.:171-172). But the National Assembly as an apparatus of the state remained silent. The Judiciary Committee only listened to Representative Lee Sook-jong's brief explanation of the proposal for the PGR bill without any discussion. After this, a subcommittee was set up to review the amendment bill, but was not activated until the end of 1976. The prevailing mood among the legislators and the state bureaucrats simply did not reveal any clear opinion about the revision (ibid.:168 & 182; Kim Yong-han 1988:446-447). As we will see, the state's indifference was very political—it unmade the issue as an issue. This politics, then, served to consolidate the status quo without any efforts for legitimatization.

The oil for the almost-extinguished candle of hope in revision was again found with population policy, publicized by the government in December 1976 as it was in 1974. According to this policy, the government planned to revise the family law, because "the preference for male children is the main obstacle to population control," and the preference was inevitable within the patriarchal family institution (Lee Tae Young 1992:182). The family law subcommittee of the Judiciary Committee, which did not begin its activities for more than a year and a half, quickly held a public discussion on December 8, 1976. After this discussion, the Judiciary Committee again sank into silence for almost a year, until November 7, 1977, when a second public discussion was held. At that time, the oppositionist point of view was listened to. Then, one month later, on December 8, 1977, the ruling party suddenly announced that the family law would be partially revised during the current 98th Assembly Session, which was only two weeks ahead of its close.²⁰

The government at that time outlined three principles for this 'partial' revision. (1) The most controversial provisions—those of the family-head system and the prohibition of marriage between the same surname (*dongseong dongbon*)—would not be revised. (2) The division of property upon divorce and the wife's and daughter's portion in the succession of property would be partially revised. (3) Through special provisions, the children of parents who shared the same surname and ancestral seat (that had been prohibited) could be registered in the family register only for a specific period of time (Lee Tae Young 1992:197). Guided by these principles, and with reference to the PGR amend-

20. Facing a general election in 1978, this sudden decision was a political one to please constituents, both the older conservative and the progressive population.

ment bill and the published opinion of the opposition, an alternative amendment bill was drafted in the subcommittee in only one week, mainly by Representative Cho Byung-wan (Kim Yong-han 1988:449).²¹ On December 15, 1977, the subcommittee voted on the provisions of its own amendment bill in addition to the special law for marriages of the same surname, which became effective only for the year of 1978.

The next day, December 16, the amendment bill proposed by the subcommittee was discussed in the Judiciary Committee. The Judiciary Committee Records of the Deliberation (hereafter, JCR) record the general explanation of the amendment bill given by the chair of the subcommittee, Yi To-hwan. The intention of the revision was expressed as improving women's rights without harming Korean family tradition. Since the Korean family tradition had its substance in the patriarchal apparatuses in family, the position above was impossible to fulfill. In this discursive context, the equal relationship in the family was narrowly interpreted as the principle only for the women, but not a fundamental right for the entire population. This reasoning of the Judiciary amendment bill well preserved the doctrines of gradual reform and respect of tradition that originated in the legislation of family law during the 1950s.

An opposing voice to the revision came from the minority party, the New Democratic Party, which wanted to postpone the revision until the next session and thus opposed the subcommittee's proposed bill (Lee Tae-Young 1992:208). Representative Han Byung-ch'e made the following criticism.

What differentiates family law from other laws is its standing on custom. If family law does not correspond to custom, it becomes meaningless. When does the law become influential [upon the family]? This law exercises its effects only when the family reaches its final stage [the stage of breakup] (JCR 98-28:9).

Representative Han quickly appropriated the familiar narrative of 'custom' as a reason to postpone decision-making that revealed the accepted notion of the

21. In this situation, the activities of both supporters and opponents of revision were at their highest level. Supporters of both positions gathered and demonstrated every day around the residence of Chang Young-soon, the chair of the Judiciary Committee. Many representatives received letters and phone calls ranging from support to warnings and threats (Lee Tae Young 1992:200-202).

family and family law in the society. The subcommittee's bill passed the Committee on a nine to five vote.

The following day, December 17, 1977, the Judiciary Committee amendment bill passed on the legislature's last day of session. The voting that day dramatized the 'politics' of the revision. While the women representatives in the minority party who indeed supported the revision of the law chose to abstain from voting, the representatives in the majority party, and those elected from the National Conference for Unification who had opposed the revision, voted for the amendment bill (Kim Yong-han 1988:455; Lee Tae Young 1992: 209). Utilization of the issues of the family law reform for political ends thus determined the finals of the second revision, which was put into effect in January 1979. It included the following provisions.

- (1) The legal portion of the succession of property for women increased: A spouse's portion increased three times. An unmarried daughter's portion became the same as that of the son's, which used to be half. A married daughter's portion remained constant at one-quarter of the son's (Article 1009).
- (2) In the succession of property, a system of reserve [legally secured portion] was introduced.²² Half of the legal portion was to be ensured for the lineal descendants and the spouse [of the deceased]. One third of the legal portion was to be ensured for the lineal ascendants and siblings (Articles 1112 -1118).
- (3) Legal adults (over twenty years old) no longer needed their parents' consent for marriage. Men under twenty seven and women under twenty three years of age formerly were required to ask for consent (Article 808).
- (4) When a person under the legal adult age marries, the person was to be treated legally as an adult (Article 826 paragraph 2).
- (5) The father and mother were to share parental authority over the children, but when the father and mother's opinions were not in accord, the author-

22. Through the system of reserve, the legal inheritors could inherit at least the legally secured portion in spite of the deceased's Will.

ity was to be granted to the father (Article 909).

- (6) When the ownership of property was disputed (such ownership was formerly assumed to be the husband's property), property was to be commonly owned by husband and wife (Article 830).
- (7) For divorce by consent, the parties were to receive the recognition of the Family Court in order to report the divorce to the Office of the Family Register. No such procedure previously existed (Article 836).

The special provision of marriage proclaimed in December 31, 1977 was another expedient law. The provision was abnormal for it permitted the legally prohibited marriage of the same surname (*dongseong dongbon*) to be registered until the end of 1978. It should be noted that suspending the effect of Civil Law—Articles 809 and 815—during a given period by a subsidiary law alone (Kim Yong-han 1988:458).

The tragic irony of the second revision was that despite the feminist reformers' almost twenty-year effort,²³ the National Assembly's open discussion of the revision took several hours in the very last days of the session. Another was in the twisted alignment with the agenda of revision. The ruling party of the authoritarian state appeared more sympathetic with women's issues than the opposition party, and feminists had no choice but to rely on the ruling party. Third, the revision prescribed an untenable formula that was intended to fulfill the demands of revisionists and oppositionists, a peculiar feature even more salient in the third revision.

4. Third Revision, 1989

On July 18, 1984, forty-one women's organizations again organized themselves for the cause of revision, this time as the Women's Union for Revision of Family Law (hereafter, WUR). National and international conditions did not permit further silence (Lee Tae Young 1992:219-222). The government, under

23. The feminist reformers held more than three hundred lectures and published more than two hundred articles in newspapers and journals. The PGR virtually dissolved in 1977 (Lee Tae Young 1992:215).

the rule of President Chun Doo-hwan (1981-1987), founded the Committee for the Correction of the Obstacles to Growth and Development in 1981, whose plan included the revision of family law to the extent that it obstructed what it defined as social development. Such a revision was one of President Chun's promises during the election campaign. When the government's plan provoked the anti-revisionists, however, officials promptly announced that the government would not allow marriages of the same surname (*dongseong dongbon*), the most controversial provision, because "it is the time for national security and harmony, not for provoking discord (Lee Tae Young 1992:219-220; Han 1993:741-742).²⁴

The U.N. Convention on the 'Elimination of All Forms of Discrimination Against Women' also catalyzed the feminists' mobilization. Although the Korean government signed the Convention in May 1983, it was with reservations regarding the section for the "equality in marriage and family relations," which concerned precisely that area of family law (Lee Tae Young 1992: 220-221).

A Game of Power Rather than Logic

Under the leadership of Lee Tae Young as its President, the WUR first put its efforts into strengthening the organization, which resulted in eighty-three local organizations, nine cooperative organizations, and the Federation of Korean Women's Organizations as a sponsor organization in September 1984.²⁵ The WUR's initial effort was to have a dialogue with the Confucian organization, which signaled the WUR's confidence and aggressiveness in this round of revision. The meeting between the representatives of the two organizations took place on August 1, 1984 without any substantial exchange. When the WUR proposed a public meeting, the Confucians refused it (*ibid.*:229-232).

The WUR set a goal of collecting signatures of one million supporters to publicize their cause to the general public as well as to increase pressure on rep-

24. This kind of discourse was largely a heritage of President Park Chung-hee's regime, in which any sign of "disharmony" in the society or the slightest defiance against the regime was criticized as giving North Korea an opportunity to attack. In this way, partition of the nation was repeatedly utilized to justify the dictatorship.

25. Within this broad coalition, the WUR included organizations that did not have a feminist orientation. In spite of the member's heterogeneity, however, the WUR retained its alliance until the revision in 1989 (Kim Yu-mee 1994:75). For the list of member organizations, see Lee Tae Young (1992:225-226).

representatives and officials. The WUR also prepared an amendment bill drafted by family law scholars such as Pak Byung-ho, Kim Yong-han, Han Bong-hee, Bae Kyung-sook, Kwak Dong-hun and Kim Ju-soo (as their representatives). All but Bae Kyung-sook and Kwak Dong-hun had participated in the drafting of the 1974 amendment bill, which served as the basis for drafting the 1984 bill. This took less than two months, from September 15 to October 31 (Lee Tae Young 1992:248).

Without losing a moment, on November 2, 1984, the WUR sent the amendment bill to all representatives and asked them to propose the bill to the National Assembly. Although the amendment should have been proposed by at least twenty representatives, only 7 out of 276 representatives agreed to propose the bill, including only one out of the nine women representatives.²⁶ Some representatives confessed that they had received pressure from their rural constituency or kin associations (*jongchin hoe*). Two representatives among the seven who agreed even asked for the cancellation of the agreement. The situation was chaotic, with the representatives' political concerns about the next election and the WUR's tenacious lobbying and petitioning mixed (ibid.:285-290). In the end, their supporters only numbered five and the WUR was not able to submit the bill (ibid.:271-296).²⁷

With the signatures of sixty-one representatives and 30,000 supporters, the WUR submitted an amendment bill on November 18, 1986. On March 27, 1986 the government announced they were abolishing discrimination against women in Civil Law until 1990 under the sixth five-year plan for the control of population, which again ignited the movement of reform.²⁸ However, without providing any specific reason, the bill was not even submitted to the Judiciary Committee for review, and was automatically repealed by the closing of the 12th Session in 1987. Only at the end of 1987, did the government proclaim that the 1977 spe-

26. The fact that all but one woman representative (in the 11th Session) were indirectly elected by the party explains their vulnerability to party policy. It took time for the feminists to realize that female representatives were not necessarily sympathetic with women's cause (see Kim Yu-mee 1994:42-43).
27. After this failure, Lee Tae-Young addressed the Commemoration of the Tenth Year of International Women's Year in Nairobi in July 1985 in tears: "I must confess that eighty-three women's organizations and scholars of family law did everything we could for the revision of family law, the task of my whole life, but it was not fulfilled" (cited in Kim Yu-mee 1994:53).
28. Throughout the 1970s and 1980s, population control was the site where the state became involved with the revision of family law. This instrumental use of the revision of family law shadowed the state's final decision making about the revision.

cial provision for same surname marriages would again be in effect between December 19, 1987 and December 30, 1988. It also made public that the amendment bill was not reviewed by the legislature due to "the lack of people's sympathy" (cited in Kim Yu-mee 1992:45). Abandoning the issue of reform itself was the state's typical policy throughout the history of revision. When a question session with government officials took place at the National Assembly on October 15, 1984, the Prime Minister and Minister of Justice repeated that the revision of family law needed "discretion."²⁹

When revisionists became active, so did the anti-revisionists. On August 31, 1984, when members of the WUR were sweating to collect their one million signatures, the Confucians held a national convention entitled Convention for the Preservation of the Law of Prohibition of Marriage of *Dongseong Dongbon* and the Family-head System. This convention inspired many more Confucians conventions and lectures nation-wide. The spirit of the convention was well expressed by Shin Ki-hun, chair of one held in Taejon on September 16, 1984.

After liberation [from Japan], Western material-oriented civilization flowed [into our country]. We accepted this civilization uncritically without incorporating it with our tradition. Thus, the morality of adolescents has become loosened, ethics between men and women are in chaos, our lives insecure. To make matters worse, there is a demand for the revision of family law that tries to separate pure companionship between man and woman based upon our country's beautiful tradition, the restraint of marriage between the parties of *dongseong dongbon*. By abolishing the family-head, the revised law recognizes only the status of parents or couples, and negates the ancestors as well as the succession of the family. This is nothing but ignoring our country and people (cited in Lee Tae Young 1992:593-594)!

In the discourse, 'Western civilization' was depicted as the cause of the deteriorating morality in Korea, and revision of family law was defined as an extension of such chaos. In contrast, family law was the last keeper of the core of

29. One observer's description of the meeting was to the point: "The revision of family law seems an issue subject to the unanimity of *hwabaek jedo* (the system of decision making through unanimity during the *Silla* period). There are always evasive answers, as if one was skillfully driving on a rocky road" (cited in Lee Tae Young 1992:275-277).

Korean morality, preserving the remembrance of ancestors and the succession of family-lineage. Thus, revision of family law was only a project to disrupt this morality. Drawing on a common political motif, the revision movement was criticized as “an evil fomenting social disorder dividing the people” (ibid.:256).³⁰

After the WUR managed to submit the amendment bill in November 1986, at the front door of the National Assembly five thousand Confucians demonstrated their “opposition to the revision of family law at the risk of life” on December 1, 1986 (ibid.:324). The police and military, which had gained expertise at suppressing demonstrations through their experience of violently suppressing student and labor movements, were reluctant to dispel the vociferous Confucians (Moon 1993:210). In fact, similarities between the discourses of Confucians and that of governmental officials could hardly be missed. In 1984, the Minister of Justice stated the reason why family law could not be promptly revised saying, “the family law is the stipulation of the age-old tradition and custom” (cited in Han 1988:71). This was repeated in the narratives of the subsequent Minister of Justice. “Theoretically, the revision of family law must follow the principle of equality between men and women. But it needs to be done gradually with consideration for the unique traditions, customs, and ethics of the society” (cited in ibid.:72). When the Association of Korean Lawyers was requested by the National Assembly to present an opinion about the revision, it replied that the amendment bill should be considered with discretion, and thus postponed. This greatly influenced the representatives not to review the amendment bill in 1986 (Kim Yu-mee 1994:44-45). The state, representatives, and lawyers embodied the hegemony of a status quo in which there was no longer a historical trace of tradition and custom. They had become adamant patriarchal signifiers after a thousand rebirths.³¹

The Turning Point of 1987

It was evident that the revisionists always initiated and shaped the reform movement throughout its history, and their opponents reacted to them. The activities of Confucian groups were much simpler in quality and less active in

30. In a patriarchal society, animosity toward feminists, as expressed in many letters addressed to the WUR’s activists, would not be surprising. For instance, the feminists received the message like this: “revision of family law? Don’t kid us, you, group of widows and old maids (cited in Lee Tae Young 1992:257)!”

31. In the history of revision, the notions of tradition and custom have had less and less substantial meaning other than the arrangements for patrilineage, although this has seldom been admitted.

quantity, yet the voices of the WUR remained marginal under the authoritarian regime until 1987.

In 1987, a new political situation emerged in South Korea. A serious crisis flared up and continued after the government announced on April 13 its decision not to revise the Constitution. For the month of June, people in the nation-wide student and labor movements clashed with riot police. When middle class citizens began participating in these movements, the government was unable to suppress them. On June 29, it declared its willingness to revise the Constitution for the direct election of the president. The WUR gained momentum in this milieu of democratization (Oh 1993:175-177). On October 12, 1987, the ninth and genuinely reform-oriented revision of Constitution was passed.³² While Roh Tae-woo of the ruling Democratic Justice Party was elected as President of the Sixth Republic (1988-1992), his party became a minority party in the National Assembly for the first time.³³ This was the political atmosphere in which the WUR submitted what they hoped would be their last amendment bill, only slightly changed from their previous one, to the National Assembly on November 7, 1988 (Lee Tae Young 1992:340-341). 153 representatives endorsed the bill this time. The Judiciary Committee began to examine the bill on December 16, 1988, when Representatives Kim Chang-sook and Park Young-sook proposed the bill to the Committee.³⁴

During 1989, the WUR concentrated all its energy on passing the bill, and the signatures of supporters numbered over 480,000 at that time. In this social milieu, the debate was framed as being between a complete revision as proposed by the WUR amendment and a partial revision, rather than between revision and preservation. During 1988 and 1989, even the Confucians admitted the imminence of revision and concentrated on two issues, preventing the abolition of the family-head system and the prohibition of marriage between the same surnames

32. Regarding gender and family, two articles were added in the ninth revision [the clauses inside the quotation marks were the clauses created]: Article 34 (3) stating that "The state shall endeavor to promote the welfare and rights of women"; Article 36 stating that (1) 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" (Translated by Korean Legislation Research Institute 1992).

33. At the opening of the 13th session of the National Assembly, 125 seats were held by the Democratic Justice Party, 174 seats by opposing parties.

34. Women representatives such as Kim Chang-sook, Yi Yoon-ja, Park Young-sook, Do Young-sim, Shin Young-soon, and Yang Kyung-ja presented the bill to the National Assembly and were actively involved in the process of revision in this round.

(Kim Yu-mee 1994:67-68). It was February 28, 1989 when the Judiciary Committee held its first question-and-answer session on the amendment bill and decided to relegate its review to a subcommittee.³⁵ On December 8, 1989 the Judiciary Committee held its hearing in which six people presented their opinions, including revisionists, oppositionists, a lawyer, and a doctor. As the representatives of the revisionists, Professor Kim Ju-soo and Professor Kim Sook-ja argued the necessity for the revision as follows.

Kim Ju-soo: Why has the patriarchal institution of family been abolished in other countries? First, the institution collides with *democratic ideals* that respect individual free will and rights. Second, it does not correspond to the lifestyle of *industrial society*. The purpose of the amendment bill is the abolition of the patriarchal institution of family and the establishment of the *democratic institution of family* (JCR 1989, 147-13:35, emphasis added).

Kim Sook-ja: I think that the revision of family law is the first task for *democracy* in our society. In order to establish a genuine democracy that realizes *freedom* and *equality*, freedom and equality should be realized in the family and family relations, the first place of living and a basic unit of the society (JCR 1989, 147-13:45, emphasis added).

The revisionists—feminists, legal scholars, and supportive legislators — seemed in agreement that democracy, human rights, equality, and industrial society necessitated the revision. Although these are the ideals of modern law, the question of how to translate, substantiate, and thus make them effective within the context of Korean family law as it evolved around the trajectories of history remained wide open.

Emptiness and Substance of the Family-head System

In this context of the imminent revision of family law, the family-head system was the most controversial issue, as demonstrated in the question and

35. There was no further discussion in the Judiciary Committee or subcommittee, however, until the subcommittee requested a hearing to be held in December 1989. In order to prevent pressure from outside, the in-depth review of the subcommittee was closed and did not leave records. Thus, subcommittee review could have been used as a way to abandon or to postpone the agenda without its being reviewed by outsiders (Kim Yu-mee 1994:66).

answer session in the Judiciary Committee in February and in the hearing on December 8 of 1989. The abolition of the system was the most critical issue for revisionists and oppositionists alike, and was the point on which most concentrated their energies.³⁶

The major roadblock in abolishing the system was twofold: the system as a basis for the succession of the family-lineage; and as that for the records of the entire population. In the question and answer session, Representative Park Sang-cheon was persistent in arguing for the preservation of the system.

I am not against the equality of men and women. Rather, what I am asking is that we think deeply about the meaning of the abolition of the family-headship, which amounts to the abolition of the current institution of family-lineage (JCR 1989, 145-5:20).

His fear was correct that abolishing the system of family-head at minimum weakened the succession of family-lineage. He was not right, however, in making a simple connection between this succession and the care of old parents in his further remarks (ibid.:16). Based upon such concerns about the lineage, i.e. the patrilineage, members of the Committee such as Representative Chang Sok-hwa raised the question of what alternative system would replace the system of family-head (ibid.:21). This question should have been raised forty years ago at the passage of the law, or at least much earlier than a mere ten months before the potential elimination of the system.

Yet, the issue seems much more complicated than merely deleting the status of family-head in the family register(*hojeok*). The system of the family register is organized by the rule of succeeding or creating the family-headship. Indeed,

36. Prohibition of same surname marriage was the other site of contestation in the revision. This was a provision that prohibited the marriage between the man and woman with the same surname and place of origin (i.e. believing their origin from the same male ancestors) no matter how distant the actual blood relationship. This institution has been criticized mainly for its male centered way of reckoning the relationships of 'blood' and for its too broad scope of 'the endogamy.' The group of Gimhae(place of origin) Kim(surname) were counted more than three and half million in 1985 (National Bureau of Statistics, 1988). This institution was not only about the marriage, but, more importantly, about the institution of parilineal surname in Korea. The Constitutional Court in Korea made a decision on July 16, 1997 that the provision of marriage ban of *dongseong dongbon* violated the constitution (on this decision of the Constitutional Court, see Yune 2001). The family-head system has also been scrutinized according to constitutional standards. The lawsuit about the unconstitutionality of the family-head system was filed in 2000 and a final decision in the Constitutional Court is now pending.

the family-head system was and is the framework within which virtually every family relationship—spouse, parent, child, and the kin—is defined in family law. Again, those family relationships are legalized only through the family records. The two are in fact intertwined.

For instance, deleting the wife's entrance into the husband's family (meaning the wife's registration of her name in the husband's family register), as proposed in Article 826 paragraph 3 in the amendment bill, presented an issue about the new way of family registration. Representative Chang Sok-hwa raised this question and was answered by Professor Kim Ju-soo.

Representative Chang: Given the amendment bill, the couple's entrance into the family register is going to be canceled. Why is this canceled while the system of family register is going to remain? I would like to hear about whether the husband and wife are going to have separate family registers (JCR 1989, 147-13:46).

Professor Kim: According to the current statute, the family register has to be organized by the existence of a family-head. When the system of family-head is abolished, the son, whether or not he is the eldest, needs to be separated from his parents' family register after his marriage. The wife is also separated from her parents' family... Rather than a division of family (*bunga*), thus, a division of the family register (*bunjeok*), meaning division from the parental family register, occurs. Through this division, the married couple will set up a separate family register. Thus, there is no action of entrance into [either parents' or husband's] family register (*ipjeok*). Who will be the first person in the [new] family register depends on the couple's decision (JCR 1989, 147-13:47).

As the most fundamental element of the revision, abolishing the family-headship would eliminate the succession of the patrilineage system by allowing the eldest son's separation from his parents' family (i.e. family register). In this case, the family register could become the transparent recording of family without containing the preordained relationship of 'status' within the family. It also made clear a statement that without the family-head, there would be no patrilocal marriage,³⁷ because there would no longer be preexisting registers such as her father-in-law's or her husband's to await a wife's 'entrance.' This would substantially weaken the patriarchal family of which patrilocal marriage has been

the initial step for the patrilineage.

However, there also seem to be some pitfalls in the revisionist's explanation although they were not his own. Professor Kim's new model of family seems too optimistic about the democracy of the couple-centered family, although such a change was intended to discontinue the patrilineage system. Without mechanisms for empowering married women, there is no reason to believe that discontinuing the family-head would be sufficient to eliminate the privileges of husbands over wives in the nuclear family setting.³⁷ Also questionable is the historicity of the family-head system. The family-head system has undergone a complex process of fusion between the Japanese and Korean 'traditional' families, adapted once again after decolonization to fit the needs of modern capitalist society. The main reason for historical tracking of the system is that the system had already been melded with other systems of family and the people's mind and culture (Yang 1999).

Neither the family-head system nor the wife's entrance to the husband's family as stipulated in Article 826 paragraph 3 were abolished in the third revision, however. From the state's position, a change in the system of the family register would mean a comprehensive reorganization of the registration system for the entire population, and it would entail not only the weakening of the social order—i.e. the patriarchal family—but an important fiscal burden as well. Seen this way, resistance to abolishing family-headship came from many directions, while proposals for alternatives remained rudimentary. What benefit would result from the state paying the enormous cost for the abolition of the established system in which each and every individual in Korea was and is recorded and organized into families? The patriarchal order does not itself speak. It has been translated into other neutral terms.

To my eyes, what we have seen in the debates around the family-head system speak the features of postcoloniality in South Korea, where the colonial

37. Patrilocal marriage is an institutional aspect of marriage in which married couple's physical residence ought to be the husband's place. This also designates where the wife's social identity should belong as well. To see how this marriage institution had deepened its root during Joseon dynasty in spite of the inconsistency with the ordinary practices, see Deuchler (1992).

38. The empowering mechanism for (married) women should include a change in the surname system in which the mother's surname is recognized, and a change in the property system in marriage that appreciates the value of housework and care-giving that most married women perform. Having no representative in the new family register is preferable to having one by the family's choice in order not to have another "status" marker in the family.

framework has been deeply rooted in the administration of the state. In late 1980s South Korea, the abolition of the family-head system had to solve the twofold burden of the post-colonial patriarchal family and the post-colonial state administration. Thus, this was not the burden of ‘tradition’ as such, but the burden of a historical past that has gone unrecognized and, thus, disentanglement of its heritage has long been postponed.

Substantive Interests versus Symbolic Interests

The system of family-head was well preserved in the third revision of family law, although it was weakened.³⁹ Most political parties had already decided their policy regarding the latest revision of family law before the hearing, however (Kim Yu-Mee 1994:68).⁴⁰ An alternative amendment bill to the WUR’s bill was drafted, reviewed in the subcommittee of the Judiciary Committee and sent to the Judiciary Committee on December 18, 1989. The amendment bill was passed by the Judiciary Committee and submitted to the full National Assembly meeting the next day (JCR 1989, 147-162:49).

The alternative bill was a comprehensive revision of the law that largely reflected the WUR’s bill with the deletion of two the most crucial provisions, the family head system and marriage prohibition between the parties with the same surname and place of origin. As characterized by the Representative Cho Seung-hyung, who presented the bill at the National Assembly, the alternative bill was intended to “satisfy both Confucians, since they maintain symbolic justification (*daeui myeongbun*), and the women’s groups, since they earn substantive interests,” proudly noting that neither group disagreed with the alternative amendment bill (NAR 1989, 147-18 1989:6). The alternative amendment bill was passed without change.⁴¹

39. The status of family-head under the law has often been evaluated as “merely symbolic.” When the two major functions of family-head — succession of the patrilineage system and the head of the family register — lie precisely in the level of the symbolic, the symbolic is substantive. It is interesting to see ‘the symbolic’ implies the very world of linguistic order and social institutions in Jacques Lacan’s psychoanalytic theory.

40. The Democratic Justice Party, the ruling party, had adopted the principle that it would revise the family law without abolishing the system of family-head and marriage prohibition of the same surname/place of origin. The hearing was a formal ritual rather than a meaningful process of decision making. A seeming repetition of the history of 1957 occurred in which the public hearing was held after the Judiciary Principles were completed.

41. After representative Cho’s presentation, the chairperson of the National Assembly, Kim Jae-sun, moved the issue as follows: “The Judiciary Committee has fulfilled a very difficult task.

Whereas the symbolic interests of the Confucians designated the preservation of the basic framework of the family in 'status' relationships, the substantive interests of the women were pronounced, especially in the area of property relations such as the inheritance of property and the division of property in divorce. Child custody and the divorced parent's right to visit the children after the parent's was also introduced in this revision. However, was there no WUR disagreement with the alternative bill? When the process of revision was delayed in 1989, another feminist revisionist organization emerged. The progressive Federation of Korean Women's Organizations was re-founded nation-wide in February 1987 and set up a Special Committee for the Revision of Family Law on October 13, 1989. While the WUR's view was that the system of family-head and marriage prohibition that did not concur with the Constitution were the very object of this revision,⁴² the activists in the Special Committee (a generation younger than those in the WUR) suggested pursuing women's real interests, such as property and inheritance rights, and the democratization of the family rather than being stuck on the two provisions, which they saw as dead or 'symbolic' interests.⁴³ It was not clear how the WUR accommodated the Special Committee's suggestions, but at least it is clear that the discourse of the women's substantive and symbolic interests were circulated in feminist circles at the last stage of the revision.

The provisions amended in this revision were marked by egalitarian adjustments, and the bill went into effect January 1, 1991. The major areas of revision were as follows.

- (1) The scope of relatives (*chinjok*) was rationalized, equalizing the scope of maternal and paternal relatives, and of the wife's and husband's relatives (Articles 768, 769, 775 [2], and 777).

Is there any dissent from the alternative amendment bill of Judiciary Committee? (Many representatives replied, 'No dissent.') It is now declared that the amendment bill is passed" (NAR 1989, 147-18:6).

42. In April 1989, the WUR's president, Lee, announced that the organization would sue in the Constitutional Court if the legislature did not promptly revise the unconstitutional provisions of the family law (Kim Yu-mee 1994:65).
43. Also, the agenda of revision in the area of property relations elicited less resistance from the Confucians and the state than the agenda of re-locating women's position in the 'status' relations (Kim Yu-mee 1994).

- (2) The system of family was revised without abolishing the system itself.
- (3) The mandatory legal relationship between mother and stepchildren (*jeokmo-seoja* and *gyeomo-seoja*) was abolished (deleted Articles 773 and 774).⁴⁴
- (4) The acceptable reasons for dissolution of matrimonial engagement were revised (Article 804 [3,6]).
- (5) The married couple's place of living was to be determined by mutual consent (Article 826 [2]).
- (6) Living expenses of the family were to become the joint responsibility of husband and wife (Article 833).
- (7) Child custody upon parent's divorce was introduced and the parental right to visit the children was granted to the parent who does not have custody (Articles 837 and 837-2).
- (8) The spouse had the right for to claim for the division of property that belonged to the other spouse upon divorce (Article 839-2).
- (9) The system of adoption was revised and adoption for the continuation of family lineage abolished (Articles 871, 872, 874; deleted Articles 867, 875, 876 and 880).
- (10) Parental authority over the children was to be determined by mutual consent of the parents in case of divorce or when a child born out of wedlock is recognized (Article 909 [4]).

44. The former relationship (*jeokmo-seoja*) indicated the relationship between the father's current wife and the husband's out of wedlock children. The latter relationship (*gyeomo-seoja*) was that of the father's current wife and children whose biological mother is the father's previous wife. These relationships have been defined as the legal relationship of parent-children by law, the same as the biological one, without having consent of the mothers (biological and legal mothers) or the children (no mandatory relationship existed between the father and his step-children). These relationships have changed into relatives by affinity through the revision.

- (11) The order in guardianship over a married person who is declared incompetent or as quasi-incompetent was revised (Article 934).⁴⁵
- (12) The succession of property was revised by abolishing inequality among descendants and a special portion for the successor of the family-head, and by introducing a contributory portion (Articles 1000 [1], 1003 [1], 1009 [1, 2], 1008-2 [1] and 1057-2 [1]).

On the day the amendment bill was passed, President Lee of the WUR publicly stated, "Today, thirty-seven years of tenacious women's struggles have abolished the long and high barriers of human discrimination! [Nonetheless] I regret very much that the heritage of the marriage ban of *dongseong dongbon* and system of family-head remain" (Lee Tae-Young 1992:379).

5. Concluding Remarks: Toward a Postcolonial Feminist Jurisprudence

The revision of Korean family law counts for the forty-year history. In this history, the areas applied to the principle of gender equality have been expanded and the principle becomes more rigorous. Especially, it is notable in the third revision that the portion of the legal inheritance within the family became equal between daughters and sons, married daughters and non-married daughters, eldest sons and non-eldest sons. Thus, the portion of the legal inheritance becomes equal between a married daughter and an eldest son. The ratio was 1/6 in the previous statute. Introduction of property division upon divorce was another achievement in the third revision. In the prior provision, the issue of property for divorced woman was only calculated in terms of the alimony, basically compensation for the damages. Although it would be very late, establishment of the right to visitation of the children by the divorced parent who does

45. Previously when the husband was declared as incompetent or as quasi-incompetent, a guardian was appointed in this order: spouse, then blood relatives within the third degree of relationship and collateral blood relationship. When the wife was declared incompetent, the husband's blood relatives instead of her own blood relatives were included in the order for guardianship (previous Articles 934, 934). The revision corrected this inequality, which is more concerned with issues of blood relatives and close relatives (*chinjok*) for married women than simply the issue of guardianship.

not have custody was also a critical change. There also were important changes regarding the area of 'status' relations. The mandatory legal parent-children relationship between a mother and the stepchildren was eliminated. For the scope of close relatives (*chinjok*), both the scope of maternal and paternal relatives, and the relatives through the wife and the one through husband became equal. The rights of the family-head have been shrunk and rationalized.

Despite these significant changes in Korean family law, two of the most controversial areas for both revisionists and the anti-revisionists—the family-head system and the marriage prohibition between the same surname/place of origin—remain in the law. The changes in the provisions related with 'the status' faced more confrontation than the ones for property. The former, however, contains the key elements for the women's position, since it institutionalizes the patriarchy in family such as the patrilineal rule of surname/place of origin, patrilocal marriage institution, and the patriarchal membership of in the family register. In this respect, the statute after the third revision presents a peculiar position. For the law regulating status, the notion of 'tradition' still clearly remains, while the law regulating property made a visible advance toward individuality and equality. It is more difficult to apply the international standard from the comparative perspectives to the former area than to the latter. Based upon the lessons and the achievements of the history of revision, I will point out the questions and limits revealed in the legal feminist movements as concluding remarks.

Tradition and Modernity in a Binary Code

From the 1960s to the 1980s, tradition and modernity as the two bases of Korean family law operated as a binary code. To the traditionalists, tradition meant virtuous morality and a good lifestyle, while the modern meant the forces degrading such morality. To the revisionists, modernity was associated with democracy and rationality, while tradition signified patriarchy and backward culture. Throughout the history of legislation and the revision of law, the doctrine of tradition held essentially the same meaning to the different groups. By this fundamental declaration, tradition is defined as something authentic, that is, as the preservation of rules and practices from the past as purely as possible, although the substance of such an authentic tradition has never been clearly defined, debated, or studied. In spite of its vagueness, and perhaps because of it, even the revisionists were unable to make strong claims against the notion of tradition. In comparison, the doctrine of modernity has been interpreted and defined diversely by the specific groups and periods, despite of some consis-

cies. The relationship between tradition and modernity thus has been somewhat different over time, leading to the rigid and incommensurable opposition between them. Thus, it is fair to say that the main obstacle to building a bridge between the two islands is more the doctrine of tradition than that of modernity, as the doctrine of tradition became stuck in its movement toward the future. However, I'd like to raise some questions to the revisionists' *modernist* viewpoints as well.

For the revisionists, democracy, equality, and change with time have been the most persistent grounds for revision, but they did not seem to take seriously the gap between such ideals and the social specifics within which Korean family law was located. The revisionists' frequent repudiation of tradition as the shackle of the society exposes another example of their modernist stance toward the direction of Korean family law. The discourse of tradition that equated with the backwardness does not seem to be very different from the essentialization of the 'tradition.' In this aspect, both traditionalists and modernists share, rather than oppose, with their understanding of the tradition that is a-historical, out of context of the time. Both groups did not seem to put serious effort to historicize the notion of 'tradition.' Only through such an effort, the tradition as we know can be seen as the historical product, ceaselessly reformulated within the complex political, economic, and cultural situation, rather than the unchangeable traits of the nation. The analysis of the colonial legacy left on the modernity in Korea seems to me one of the keys for overcoming frozen notion of the tradition.

Forgotten Traces of Colonialism

During colonial rule, the binary opposition between tradition and the modern did not yet exist. It was under Japanese colonialism that the 'customs' before and during colonial Korea were established as the unwritten source of family rules, as stipulated in the Article 11 of the Civil Ordinance. The Article itself was an encounter between Korean custom and modern law, the statute through which Japanese law, styled upon the Western legal system, was to be borrowed. This 'modern' law of custom had an immense effect on the destiny of the law. It was this principle through which the modern Japanese law was borrowed, and the existing family practices were cast as custom. At the same time, provisions in the old Japanese Civil Code such as the system of family register and family-head were introduced and blended with the customs of Korea, a synthesis again legitimized by 'custom.' The important issue here is that the living practices, with variation according to status and locality, and often, fluid rules of life had

been declared as the ‘custom’ in Korea as such. In this process, the ‘custom’ during and before colonial Korea were investigated, classified, and endorsed as such through the lens of the Japanese colonial officials. The sense of history had gradually faded away in the establishment of the ‘custom’ as the law (Yang 2000). For example, customs in Korea could be declared based upon the legal compilation written in 15th century and could also mean the new practices emerged during colonial Korea.⁴⁶ The principle of Korean custom as the sources for family rule was fatal to the destiny of Korean women since neither Japanese officials nor the Korean local leaders, often Confucians, had no reason to oppose or even to cast suspicion on the re-inscription of the noble (yangban) class’s patriarchal rules and practices during the Joseon dynasty as the ‘custom’ in Korea. At the very moment of establishment of the custom, the patriarchal family institutions in the past (Joseon dynasty) and the present (colonial Korea) became the unchangeable basis of the family law.

After decolonization in 1945, the customs of family underwent even more complex discursive terrain. The legislators whose orientation was predominantly nationalist, would like to repudiate any traces of Japanese influence on Korean family law on the one hand, but the sources and knowledge of authentic Korean culture were already influenced by the Japanese legal grammar on the other. The grammar employed at the court after decolonization that declared Korean custom as the rationale for judgment was the heritage of colonial courts. Korean state official discourse especially sounded like a repetition of colonial officials’ claims such as “family law ought be based on tradition and custom.” At that moment the family issue in question was homogenized with, and frozen into, ‘the custom.’ It was through this practice that the rules for Korea’s present were confused with those for the nobility in the Joseon dynasty and its five hundred years of dynamic history. More importantly, it was the amnesia and apathy of colonial legacies that allowed colonialism to continue in claiming the timeless notion of the tradition and Korean custom. The connection between the customs established as such during colonialism and the glorious national tradition needs to be unlocked. The postcolonial feminist jurisprudence in Korea will contribute to this.

46. The tradition embodied in family law has moved toward the realm of mores or beliefs, which did not necessarily correspond to living practice. Chatterjee’s discussion of the relationship between tradition and colonialism is insightful (1989:233-253). As he observed in the Indian colonial context, the more tradition was emphasized the more it, as the essentialized code of life, came to be de-linked from material reality. For more on the question of ‘custom’ established during the colonialism especially through the notion of ‘time,’ see Yang (2000).

Who Are the Conservatives?

Based on the discussions above, the general idea that the conservative group against the revision of law has been the 'Confucians' needs to be rethought. The group seems to 'embody' rather than 'initiate' the postcolonial social condition. The stronger agency in declaring the custom and tradition belongs to state officials than to Confucians. As reviewed in the history of revision, the revision was very much dependant on political expediency. Both the second and third revisions occurred during the last day of the session at the National Assembly, just before an election. The legislators voted according to the direction of the party rather than their own free will, although this would not exclusively true in the area of family law.

The state's parameters of revision were shaped by a couple of factors—international pressure such as the U.N. Convention and the national prosperity. For the latter, family planning, imbalance in sex ratio, and economic development were referred to. The patriarchy and gender inequality itself were seldom considered for the cause to revise the law by the Korean state and state officials. Outside of these parameters, the state's politics regarding family law can be one of disinterest and silence, thus, allowing the current order to continue. The typical form of state intervention in the family could be one of the 'the absence of intervention.' Their belief in tradition was not very different from the Confucians. Even more, the family head-system, for example, had functioned as a useful tool for social order and national security under militarism and dictatorship. When I examine the discourses of 'tradition,' 'disharmony,' and the national prosperity, etc., I found that the political situation of dictatorship such as the regimes of President Park (1962-1979) and President Chun (1980-1987) had been the most critical condition within which the colonial patriarchal family legacy could persist without fundamental confrontation. The turning point made in 1987 illustrated the importance of the politics in changing the family law often regarded as the 'private' area. In this respect, Lynn Hunt's discovery that the French revolution took place at the level of family romance as well, i.e. cutting the head of 'father,' as the condition of the birth of the individual citizen is insightful (Hunt 1992).

The Anachronism Embodied in the 'Women' in Korea

For some legislators, the revised law in 1989 was evaluated as the one that fulfilled the demands of both revisionists and conservatives. Could it be true? If the Korean family law has been framed in the dualism of tradition and moderni-

ty as discussed thus far, a third perspective is needed in order to fulfill both groups. In continuation of questions about revisionists, the viewpoints of feminist reformers also need to be rethought. The discourse of the symbolic interests and the substantive interests, for example, illustrate the difference among feminist revisionists. The first generation (Lee TaeYoung's) was persistent in emphasizing the revision of 'status,' while the younger generation affirmed the urgent material needs of women. The resulting law was the one that made progress in property division and custody, but largely maintained the same structure in status relations. From a feminist point of view, the final revision introduced many articles for gender-equality but without eliminating the 'structure' of male supremacy over the women that was expressed in the system of surname, family-headship, marriage, fatherhood, and etc. Would this area of family be merely 'symbolic' to women's life? In the family law regarding status relations, Korean women are still identified as the wife, mother, and daughter, but seem to become 'individuals' in the law regarding property relations who can claim equal rights. This contradictory subjectivity of women inscribed in the law embodies their everyday life as well - the 'modern-traditional' women whose heads belong to current Korea, but whose legs belong to the Joseon dynasty, for instance. This image of women, however, embodies the modern historical conditions of Korea in which colonial legacies continued and were reformulated within the context of rapid economic development and military confrontation. The postcolonial feminist jurisprudence emerges within this historical condition. It will be a legal and social theory that will enlighten and overcome the postcolonial conditions permeated in the women's reality. The 'woman' inscribed or hidden in the Korean family law is a sign as well as a reality from which the fundamental social change can be envisioned.

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