

Gender and the Law: Legal Literacy in South Korea

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This study focuses on gender and the law or more formally, gender and legal literacy in South Korea. It is a study of gender and its relation to how women develop knowledge related to legal rights awareness and action. Legal literacy is assumed to work as an efficient strategy to challenge and change the South Korean system of patriarchy. The article assumes that the legal system in South Korea draws heavily upon the principle of patrilineality and patriarchy as the “final structure.” Within the system of patriarchy, it is generally acknowledged that law is a vital part of culture. Yet, invocation of challenges to formal law is taken by the Korean society as stigmatized contravention of established cultural norms (Rhee, 1994). Interviews conducted in various parts of Korea from the early 1990s are presented as case examples.

An inquiry related to legal literacy focuses particularly on to what extent people in Korea have knowledge of information regarding family laws and its economic functions. It is assumed that economic issues become especially critical in situations of crisis, such as death or divorce. Economic relations become highlighted with regards to property and support. The issue of property and support is more salient in a marriage form where the union primarily involves the woman entering into the husband’s household.

I. Legal literacy and knowledge

Just as “cultural literacy” can serve as the best opportunity for economically disadvantaged children to break the cycle of failures at schools (Hirsh, 1987), legal literacy can provide a major avenue of opportunity for individuals to learn “the process of acquiring critical awareness about rights and the law” (Schuler and Kadiragana-Rajasingham, 1992, 2). If legal literacy is neglected or ignored, how do people actually learn to manage contradictory situations? Are there prevalent means of mediation and conciliation? This study examines several cases of ongoing marriages to analyze how married women in Korea learn about current family law and how they adopt legal reasoning within their daily lives.

At the 1997 International Council on Women, promotion of legal literacy was raised as a core objective. The council’s main agenda focused on the leverage of women’s status worldwide through promoting legal literacy accompanied by economic rights and political participation. Legal literacy thus can be an educational process to promote capacity by developing knowledge and skills about the critical

meaning of rights (Schuler and Kadirgamar-Rajasingham, 1992).

Legal literacy is a process of learning necessary knowledge about laws related to women. The aim of legal literacy is to gain self-consciousness, to become aware of vulnerability, enhance ability to challenge, and cultivate the sense of justice. The goal of promoting legal literacy is to help women ultimately become able to organize political action that will influence policy implementations. A program in Zimbabwe, the Legal Age of Majority Act, was designed to help women to promote their legal understanding. The Act included educational programs for women in rural communities take charge of their own lives and enhance the skills needed to participate in defining their legal capabilities (Bond-Stewart, 1992).

Law is considered as an area where ignorance or innocence is defeated. However, if law provides a structure that cannot be challenged, limits of legal literacy are anticipated. The idea of law as patriarchy assumes the structure of male-domination, which has the character of “pervasive maleness.” Approaches against the law of patriarchy are suggested for rejection of sexualization and hierarchization which question the accuracy of the assertion that law is rational, objective, and principled (Polan, 1993). This approach points out ways in which law fails to live up to the aspiration when it deals with women. The approach rejects the dualistic opposition between men and women and intends to disrupt conventionalized sex roles. More specifically, the theory of law as patriarchy closely examines how domination and oppression are manifested in paid work where a wage gap is conspicuously evident, with different gender-specific types of jobs, domestic spheres, sexuality, cultural institutions, and male violence of wife-beating (Walby, 1990). Despite these theoretical accusations against the patriarchal nature of law, neglected is how women negotiate or contest in “the lived” daily life as actual agents of society.

II. Change and persistence of the “final structure”: Patriarchy in law

The notion of gender functions within the principles of patriarchy in the South Korean legal frame. Patriarchy as the “final structure”¹⁾ functions as a frame that is constructed in the people’s knowledge with regard to gender. In South Korea, patriarchy as the final structure functions as cultural specifics. It is the paradigm of patrilineality that is reinforced and upheld. Below are the items that represent the final structure centered on patrilineality in South Korean family law which remained in effect until major legal reforms were enacted in the early 1990s.

- i. The succession of the family system according to male lineage (Articles 778–799)
- ii. The husband-centered family boundary (Article 777)
- iii. The legal recognition of father-centered decisions (Article 781)
- iv. The marriage law (Article 826)
- v. Inequality in the case of dissolution of marriage (Article 834)
- vi. Inequality in property division between genders (Article 1000)

In Japan, the first wave of laws with regard to gender focused on the issue of female labor force participation and the search for equal employment opportunity which emerged in the 1970s. New employment articles included recruitment and promotion of women for managerial positions, and the employment discrimination against non-Japanese ethnic groups, such as the ethnic Koreans (Upham, 1987). Following from these labor law reforms, family law under civil law is now undergoing structural change. One of the most recent issues involves the abolition of the law requiring the wife to adopt the husband's family name.

In South Korea, family law was extensively revised in the 1990s. New laws transformed the "final structure" from husband-centered rights to common rights in marriage. The rules of primogeniture have changed piecemeal. The revolutionary revision of the legal codes has improved the position of women in the legal structure. This itself signifies accompanying concepts of independence and challenges against the family structure.

The major changes in the family law include the following (Pořmubu, 1991).

- i. Adjustment of the boundary of the family lineage degree: Equal boundary applied to paternal and maternal direct and indirect lineage degree (Article 777), Deletion of step-siblings as family lineage members (Article 769), The death of a spouse or remarriage annuls the blood relationship (Article 775)
- ii. Inheritance based on the head of household has changed to the succession principle and deletion of rights as a head of household and items related to gender inequality (Article 938)
- iii. Abolition of adoption of a male from outside of the family for head of household in the absence of a male heir, and compulsory succession to the head of household position (Article 788)
- iv. Qualification given to women to be a successor to the head of household (Article 984), Abolition of the adoption of non-blood males (Article 867)
- v. Abolition of prohibition of marriage between people of the same family name (Article 809)
- vi. Adoption of community or marital property (Article 829)
- vii. Adoption of an agreement clause in the case of dissolution of marriage (Article 834)
- viii. Partial revision of dissolution of engagement (Article 804)
- ix. Acknowledge a couple's decision on the places of residence (Article 970)
- x. Sharing of the household expenses by both spouses (Article 833)
- xi. Establishment of visitation right of non-custodial parent in the case of dissolution of marriage (Article 837)
- xii. A new article on the property division at the dissolution of marriage (Article 839)
- xiii. Adjustment of the adoption system (Article 871)
- xiv. Adjustment of the parental rights (Article 909)

- xv. Adjustment of the order of heirs (Article 993)
- xvi. Changes to various articles related to inheritance (Article 1000)

One of the new clauses in the 1991 revision of family law is child custody. Prior to the revision, child custody was usually given to the father rather than to the mother (Article 837). In contrast to the changes manifested in the “final structure,” the persistence of practice in daily lives presides over the contents changed in the family law. Subsequently, piecemeal shifts in family law gradually led to changes in other areas of law. The mother-child welfare policy was improved in 1989, and the abolition of the sex industry was proposed in the early 1990s. The law of adopting the husband’s nationality was changed in 1997. Changes in the nationality law and the tax law gave more equal footing to women. Korean citizenship is now given to a child of a cross-national marriage even if the mother or the wife is a Korean national.

After several years of establishing an equal employment law that was initially introduced in 1987, the quota system applied in 1993 to the employment of female workers marked a turning point. The employment law has extended the equality principle to recruitment, wage, and promotion. The salary scale for women employers usually is one or two ranks lower than their male counterparts. The new provisional remedy system came into force in the determination procedure in 1991.

One of the highlights of the most recent legal reform in family law is the establishment of a new article regarding the implementation of the equality principle in financial aspects of a marriage. It is now both the husband and the wife’s responsibility to maintain the economy of the household (Article 833). Another new article is the request for property division in the case of dissolution of marriage. A spouse, usually the wife, can request for remuneration for her domestic chores and time contributed to the family (Article 839.2.1). If the property division cannot be settled between the spouses, the Family Court will intervene (Article 839.2.2).

Generally, economic relations in ongoing marriages or the dissolution of marriage situations have not been explored critically. The economic issue is often taken as a private matter, and often taken lightly and without systematic consideration of who pays the bills or how much is being shared when the spouses are dual income earners. When newlywed couples begin to manage their domestic expenses, how much is contributed to whose account or what type of account becomes a silent issue until a crisis occurs.

The revised articles relating women and property have improved unbalanced concerns for the rights of married women and the conception of marriage as a union of the financial interests of two people. The patriarchal structure leaves very little room for matrimonial property for the wife, or reduces her participation in control. Although the Korean family law presents equality and difference, in reality, the economic aspects of law serves only for a nominal purpose. Moreover, changing societal dynamics, such as an increase in the number of women professionals and their willingness to seek financial independence is creating a new concept of marriage. At the same time,

clashes between traditional role expectations toward women and new societal dynamics in which women participate are creating limits and contradictions in the economic relations within ongoing marriage and dissolution of marriage situations. The following examples present cases that demonstrate how married women accommodate to the legal system and how they confront the limits and contradictions embedded in their daily “lived” life.

III. Women and property in South Korea

1. Property and ongoing marriage

Case 1: Marital property to the husband’s family

The husband and the wife have been married for fifteen years and have two children. The husband is not employed full-time, however, the wife is a successful hairdresser and is the primary earner. Although the family is a nuclear family, the traditional Korean concept of the large family exists. The couple has been supporting the husband’s widowed mother and his unmarried brother for his graduate school studies. From the outset of their marriage, regardless of the amount of the couple’s income, they have been supporting the husband’s family members. In contrast to the couple’s support to the husband’s family members, no financial support has been offered to the wife’s family side. The couple’s primary financial responsibility thus falls on the husband’s side. The wife has been highly discontent with the arrangement that their joint property is not considered as marital and community. Conflict between the couple arose when the husband’s mother converted her residential property that was purchased for her by the couple to her unmarried son’s name.

Property acquired during marriage is considered as marital, or community property. The law holds that each spouse owns equally the income earned and property acquired during a marriage. The husband’s family members are considered to place a claim on assets of the couple’s marriage. From this case, it is clear that the spouses’ property relationships are privately arranged in conformity with the presiding patriarchal structure.

This case demonstrates a basic feature of South Korean law. Marriage for a woman means entering into the husband’s family household. The family registry system shows that the wife by law has legally entered into that husband’s household. She has left her natal family and is a member of the husband’s family. The structure of the family registry system displays the *de facto* status as a member of the husband’s family.

The *de jure* status of the head of household is the husband and the principle applies to the economic relations. Regardless of the discrepancy in income earning, the wife’s earnings are to be contributed to the husband’s family rather than to her natal family. After all, the wife will not be a successor to the family lineage, thus, her legal status is as an appendage to the husband’s household.

The issue of property is more salient in a marriage form where the husband and wife do not meet the traditional obligation of financial support to the husband’s fam-

ily. Even if the wife becomes the breadwinner, the husband or the head of household-centered principle rules the inter-family economic relationships. The boundary of economic matters are much broader, for a couple's economic affairs involve financial obligations to the husband's siblings and their families, as well. Since marriage involves a wife's obligation to the husband's family, financial factors go beyond the couple's household. A male member of the family financially assisting less prominent siblings is thought of as a common expectation.

Case 2: Marriage and joint ownership

Both the husband and wife have been married for fifteen years. The wife is a full-time homemaker and mother of two children. The husband's salary is directly deposited into the couple's joint account. The wife manages financial matters such as paying the monthly mortgage, utilities, and the children's tuition. The wife has certain control over their joint account, and is generally content with the husband's income. The husband's income other than his regular salary is used for his own purposes.

It has been common practice that regardless of the community fund, co-ownership would be in the husband's name. Although the property may belong to the couple, the

Table 1 presents the announcement of the death of a head of household who was the widow. The deceased Pak, from the Pannam lineage, is identified as the mother of her first son, and thus her identity is partially subsumed within both her late husband and the successor to the head of household. The order in which the names of the family members are written conforms to patrilineality, as the first son and new head of household was not the first child (Chosŏn Ilbo, 1998).

From right to left: (1) the first and the second son; (2) the first daughter, the second daughter, and the third daughter; (3) the first daughter-in-law, and the second daughter-in-law; (4) the first son-in-law and the second son-in-law; (5) first grandson (son of the first son), the second grandson, the third grandson, and the fourth grandson; (6) the first grandson (the son of the first daughter), the second grandson (the son of the second daughter), the third grandson (the elder son of the third daughter) and the fourth grandson (the second son of the third daughter); (7) the first granddaughter; (the daughter of the second daughter) and the second granddaughter (the daughter of the third daughter).

訃 告

金洹夫人潘南朴氏 用實以
老患一九九八年十一月十
五日 午前〇時五分 於自宅
別世 茲以告訃

發訃日時：一九九八年十月十七日 午前九時
發訃場所：삼성서병원 葬禮式場
葬 地：묘산公園墓地(묘소)

(個別訃告省略)	連絡處：三四二〇一九四(病院)	外孫女	外孫	孫	婿	子	女	嗣子
	李李李李李鞠			金李李李李		李李李李		金
	智麻字字雅賢東大仁亨秀昌淑惠京美美							
	鉉芝正鉉善理成成圭圭永雨仁卿子子理一洹							

registration is under the husband's name. The husband remains as the sole manager of the community property. Transactions of major importance involving the community property would be in the husband's name. There is no assumption regarding the estimation of the value of a housewife's work. Also, the wife was not granted ownership of the community property. The legal power of the wife is to obtain "necessities" upon the credit of her husband. The wife's right to acquire "the keys of the house" translates as managing the husband's earnings for household maintenance and the education of the children. The legal assumption is the wife's financial inability and dependence.

The revised family law in 1991 did away with this assumption, and gave the wife full legal capacity, stating that both spouses are responsible for the support of the family and for contributing to household expenses according to their respective abilities (Article 833). In reality, the husband holds primary responsibility for the support of the family, and subsequently, ownership is credited to the husband. The influence of the abstract idea of equality, which favors the individual liberty of each spouse and which presents *de facto* equality is isolated from the daily practice of management of community property. South Korean law still holds to the community system in which the husband is head of the family and the wife is obliged to render services.

Case 3: Support for the husband's higher education

Assumption of the wife's financial inability and dependency is extended to other related laws, such as social welfare, tax, and nationality. The following case presents an example of self-imposed assumption of the wife's financial inability. This case shows how the savings from the wife's family was used for the husband's advanced graduate school education. The wife's family had been supporting the husband while he was attending college to become a public certified accountant. The wife's family supported the monthly living expenses including the house loan, utilities, children's tuition and medical expenses. Investment in the husband's schooling is seen as more prospective than further schooling for the wife. The wife's family believed that the chance for a man to be successful in his career is higher and would make the family more financially independent and secure than having the wife, who is the daughter of their family, receive a college education.²⁾ The wife admitted the foreseen hardship such as possible neglect of domestic work and the care of two children to other members of the family, and thus, gave up her college education. Voluntary support from the wife's family assumed that the husband's earning will lead to a more financially secure life.

A similar case also was observed. A couple in their late fifties has been married for twenty-seven years. For the wife, it was her second marriage. The wife left her daughter born out of wedlock with one of her relatives and had the illegitimate daughter identify her as a maternal aunt. The wife financially supported her husband who was studying for the bar examination by running a coffee shop. The husband passed, and became a judge, which is considered one of the most prestigious positions in Korea.

The wife believes that she has managed their financial arrangements and performed ideal, proper conduct to acquire social status as the wife of a judge. The wife has obliged herself to support her husband expecting that the working capacity of the husband and the income from being a judge would suffice more effectively for the well-being of the family.

From these two cases, the wife's effort and support of the husband's education occurs from internalization of the potential rights of a wife to have "power of the keys" as the wife of a future judge who will in turn bring financial security and high social standing. A wife's acquisition of "power of the keys" is one interpretation of joint ownership. The wife's financial support also presumes that the husband is the sole responsible person for the support. Then, what if a husband neglects to provide substantial support to his wife and children? In so far as legal enforcement of family economic obligation is concerned, the husband's neglect itself cannot be subjected to court intervention.

Case 4: Joint ownership in the husband's name

This case shows how the wife managed property she accumulated through her own initiative under her husband's name. After the husband's business went bankrupt, the wife started a women's apparel business. Going into business was not what the thirty-seven year-old woman had planned at the outset of her marriage. She stated that her husband is supportive compared to husbands of her contemporaries. However, a married woman's financial independence is not sometimes legally recognized. Tax officers issued her a notice of an investigation of her business since the business entity was in a woman's name. After the tax officers' visit, the wife changed all business documentation to her husband's name and placed ownership under her husband's name.

The housewife-breadwinner marriage is yet too novel for South Korean society to accept without doubts. The autonomy of the wife has been ignored. The wife authorized herself to deal with business assets in the ordinary course of management without the husband's consent. According to old family law (Article 826), a marriage became validated when the wife registered her name in the husband's family. The wife was then legally within the husband's household. Thus, it was only the husband who had obligation to support the family. The revised law did away with such assumptions. The new family support clause states that "unless two parties particularly arrange the support, family support obligation falls upon both husband and wife" (Article 833).

Prior to the most recent family law revision in 1991, a woman was not entitled to own property separately from her husband while married. Exceptions were the death of the husband or of women who never married. Even under the revised articles regarding ownership and women, a single woman with a professional career and owning real estate property would be susceptible to tax investigation. A professional woman in her early forties stated that she had to explain her business to the district office for verification of ownership. She stated that the internal revenue office would

separate property ownership documents according to gender to scrutinize for earnings. A wife owning her own business or a separate piece of property while married is not taken positively. Words such as “over-zealous women,” “over-powered women,” and “strong-willed women” imply women who have crossed the traditional boundary of the female role as mother and wife.

IV. Dissolution of marriage and property

Divorce in the 1970s in the United States came as a radical act, but quickly and insistently became a fashioned narrative. The divorce culture in the United States is moving toward an ordinary alternative life style. Domestic ruptures are no longer seen as stigmatic in some Western industrialized societies, but as a cure for high-conflict marriage situations. In South Korea, divorce can be accomplished by a simple registration of an agreement between spouses. However, divorce means the end of the family as a unit. The requirement of a court judgment is a necessary procedure, though most divorce cases are settled prior to going to Family Court. Thus, a substantial majority of divorces are settled by the husband and wife without need of a judge to decide property and other related issues, such as child custody, amount of child support, division of matrimonial property, and retirement savings (Yun, 1989).

The procedure for obtaining a divorce in South Korea is not as complicated as in the United States. As long as two individuals agree, couples can divorce. This is because divorces are thought of as the end of the family as a unit, thus there is little if any concern for the continuation of any type of relationship, such as the parent-child relationship. Thus, a child or children usually are placed under single-parent custody. Divorce also means the dissolution of two families, the husband's and the wife's families. Divorce is also generally interpreted as one spouse being deficient in successfully carrying out his or her duty as a parent. Joint custody, which assumes equal responsibility of the two parents for the children, is a new concept which was introduced in the 1991 family law along with articles focused on the welfare of children, which was absent in previous law. Dissolution of marriage did not legally recognize the wife's contribution during the marriage; in short, no shared parenting and no joint custody. Under pre-1991 family law, upon the husband's approval and authorization the wife would be able to request divorce. Upon divorce, in the husband's family registry, the former wife's name is marked over in red ink with an “X” sign. At a personal level, identity as a divorced woman creates emotional trauma due to an unsupportive institutional and often familial setting. The societal expectation toward a married women was to stress the virtue of giving priority to the child and tolerating conflicts within the marriage over divorce as a means of resolving conflict. The following cases show how women manage or define their property in situations where ongoing marriage is disrupted by the husband's desertion, death, or dissolution by divorce.

Case 1: Desertion

Two high school graduates married through an arranged marriage. From the outset

of the marriage, the husband demanded that the wife should be more obedient to him and his family. During their years of official marriage, the husband deliberately did not provide his earnings to the wife, but constantly demanded money from the wife's family. The husband established another relationship and left his wife and two daughters without notice.

Although the law indicates that after three years of disappearance of a spouse, one spouse can claim for a termination of the marriage (Article 840), according to cultural convention, desertion is considered as one of the husband's rights. The wife and child, thus, are legally vulnerable in the case of desertion. Due to the influence of Confucian values, the belief in women's seven wrong-doings has functioned as a form of law of matrimonial conduct based on fault principles. The seven wrong-doings or "evil conducts" (*Ch'ilkojiaek*) included a woman's disobedient behavior to parents-in-law, inability to have male children, adulterous behavior, jealousy, suffering from illness, talkativeness, and stealing behavior. If the wife defaults in her duties so as to jeopardize the maintenance of the family, this can be grounds for the husband's desertion. One of the seven wrong-doings, that a woman was obligated to procreate a male heir, applied to all married women as solid grounds for a husband's desertion.

In the case of desertion, divorce may be effected. However, consolation money, support, and distribution of matrimonial property would not ensue. There is no foundation for the jurisdiction over protection of deserted children. Provision for post-divorce contact between the non-custodial parent and child is also absent in South Korea. Neither desertion nor neglect to perform the obligation as the head of household results in enforcement. No law protects neglected parental support, either. The woman left with children lived first with her parents and tried different part-time jobs. Eventually, she opened a bar and continues to manage it. The woman stated that "this (working in a bar) is the only job which would provide enough money to support my children."

Case 2: The Death of a spouse: Patrimony

A sixty-five year old man remarried after the death of his wife to a woman thirty years his junior. The husband and second wife had one son from their marriage, and four children from the man's previous marriage. The man died at the age of seventy-five, leaving an eight-year old son and the surviving wife from his second marriage. The man left a will appointing that his eight-year old boy as heir. Thus, the death of the man effected the succession of the family lineage.

Prior to the revision in the 1970s, a widow was not given the right to inherit a part of the property of the deceased's estate. The rank order of inheritance was: first son; second son; remaining sons; male heirs from another relationship; and wife. If there was no will left, partition of a decedent's estate followed a codified rank order: the first born male heir of the family; the second son; male heir from another relationship; and the wife. Under the new law, a head of household can discharge succession and property according to his legally authorized will. In this case, the elderly man named

the surviving minor son from his second marriage and his second wife as the legal inheritors of his property.

According to family law instituted in the 1960s, the eldest son inherited all family property. The younger sons and daughters had no rights to the estate. The head of household is the person of a special succession, which meant principally that the eldest son of the head of the family succeeded. This succession was monopolized by a single legitimate heir upon whom devolved all the property, and other members of the family could not participate. Brothers and sisters of the legitimate heir had to await the head's favor for a share in the succession. This system may have had the advantage of preventing the excessive subdivision of rural land. But, the basic principle of this family-based organization fell out of use in the highly industrialized South Korean society. Under the 1991 revised law, the estate may now be distributed to the spouse as well as to younger sons and daughters.

Succession to the head of household was patrilineal, and was passed to the first son. The wife had the fourth rank in the order of recipients. In the case above, which occurred after this law was revised in 1991, the man's sudden death made the eight-year old son the head of household. Under the new law, if there is a will, then the estate is distributed accordingly. Thus, the first rank recipient of his estate is the eight-year old boy and the surviving wife. The sons and daughters from his first marriage thus were not legally entitled to any inheritance. Thus, the eight-year old son is by law entitled to receive half of the inheritance from his father and becomes the successor to the family lineage.

The children from the man's first marriage, then in their fifties, have been trying to bring their case to the Family Court. The sons from the first marriage appealed that the surviving wife deliberately married the man expecting her son to become a prospective heir and that she urged disinheritance of the prospective heirs from the first marriage. Also, their appeal included the statement that the marriage was a fraudulent act. The children from the first marriage claimed that the eight-year old boy should be disqualified as a heir. At stake was the deceased's property valued at 10 billion Won, or about US\$1 million. In this way, the issue of property division surfaced. The negotiation was not settled, and the court ruled that the man's will be executed one year after his death.

The first recipient: The eight year old son from the second marriage ($1/2$)

The second recipient: The second wife ($1/2$)

The new family law abolished the parent-child relationship between the step-mother and the children from the husband's former marriage. The legal relationship between the step-mother who is the surviving wife and the children of the husband's former marriage are left as non-blood relationships. The legal status of a non-blood relationship excludes the children from the husband's former marriage from the inheritance rank order. Thus, two sons and daughters from the man's former marriage

are not eligible to receive inheritance.

Not only would the eight-year old son be placed first in receiving the inheritance, he is entitled to be the successor of the family lineage (Article 987). The inheritance order also corresponds with the lineage succession which would accompany the status as the head of household. Although a woman can be the successor of the household, this is only in the situation in which there is no male member of the family present. This example suggest that the persistence of the priority given to male members of the family is generally being criticized.

Case 3: Physical violence

In this case, the dissolution of marriage was requested by the wife due to the husband's infliction upon her of physical as well as emotional violence. The man and wife were seen as a perfect couple from ideal families in a local town. The husband is a college graduate and has successfully maintained his small manufacturing business. The marriage ceremony was a local event. Their marriage was also seen as an alliance between two small companies. Four years later, the marriage began to fall apart as the husband continuously demanded unreasonable amounts of money from his wife's family. The wife had complied with his requests and asked her family to expand her husband's business. The husband perceived that his act was not violent and believed that there was nothing wrong with beating his wife. His reasons were the wife had not performed her duties well, including not preparing dinner on time or with sufficient attention. Even her mother-in-law admitted that the wife deserved to be beaten, for her "disrespectful attitude" and not being able to have a son. The husband spread unfounded rumors about his wife seeing another man. The couple divorced after four years of separation. The dissolution of their marriage was not a final solution, for there remain business alliances by marriage that have formed with different corporations. The termination of the couple's marriage eventually resulted in loss of profits for the wife's family's business.

The husband believed that as long as he paid a lump sum compensation for divorce, the financial matters between the two would be solved. In South Korea, alimony is considered to be given to the wife as a pay-off compensation. Alimony is analogous to post-divorce support to the wife to help her get on her feet after the divorce. There was no legal procedures or effective means for enforcing the husband to make child support payments or a system of filing procedures for child support (Kim, 1991). One could ignore the court order and nothing could be done about the situation.

Divorce is considered as a complete dissolution of the family and the continuing right to financial support for the spouse or children. If the wife is financially incompetent and has no history of employment, she will have to seek help from her natal family or relatives. Further, child support is not clearly defined by law. No decision regarding child support is necessary to effect a divorce by mutual agreement, and one spouse retains custody in exchange for no future requests for child support. The idea of joint custody has recently been introduced based on the revision of single custody

usually given to the husband (Article 909). However, this is unlikely to become either a legal or practical option in the near future. The parental role is inextricably linked to the spousal role. The old clauses placed the husband as the sole responsible person for child support and welfare. Along with the introduction of joint custody, shared parental responsibility is introduced (Article 847). Sharing responsibility for children after divorce is not a possible solution to the problem of custody.

Although law states that a spouse or a wife can request communal property division, property division is not sought. Since most communal property was acquired in the husband's name, the wife's domestic contribution neither warranted any reward nor was reflected as a part of the calculation leading to a financial award. In the division of marital property, alimony functions to help the wife's post-divorce financial adjustment that does not have the character for long-term continual support. In most divorces in Korea, alimony is given as a one-time lump sum payment and does not hold the form of support.

In this case, only one lump sum payment was made to the wife, and no discussion of matrimonial property has been settled. The joint business projects that were created by the marriage were nullified, and consequently affected the wife's family's business. Usually, a woman's birth family and not her former husband legally holds responsibility for her post-divorce financial survival. Although it is generally accepted that the party which was responsible for the breakdown of the marriage is liable for compensation based on tort law, no legal ground for enforcement has been established. The divorce in this case resulted in no distribution of property. The case was not taken to Family Court, for the wife had neither financial nor information resources to contest her case.

V. The efficiency of legal literacy: Contested or negotiated?

In this study, the financial aspects of marriages have been observed in both ongoing marriages and dissolved marriages. The cases presented here suggest that women in both ongoing and dissolved marriages negotiated rather than contested their economic situation within the patriarchal frame. Unlike as in industrially less developed societies where legal literacy means primarily understanding one's legal status and circumstances, in South Korea, the issue centers on the negotiation strategies women themselves have shaped out of the internalized "final structure" of patriarchal family laws. In the case of the woman who registered her business in her husband's name, she simply wanted to avoid unnecessary investigation from tax authorities. Although the structure of patriarchy is being challenged and slowly revised, the politics of meanings contradict with people's legal reasoning. Patriarchy as a "final structure" rules and is guided by custom.

There are few divorces that are contested in court in Korea. A recent contestation involved a seventy-year old wife who requested dissolution of marriage to her husband on the grounds of emotional abuse (Hanguk yoŏnŋ tanch'ae hyoŏuihoe, 1998). The court encouraged rehabilitation of the matrimonial relationship between the eld-

erly couple. Although the court's decision was to have the couple reconcile, the wife appealed again for a divorce. Immediately after the wife filed her second appeal, the husband declared that he would donate all his property, including the community property, to a private university in Korea. This is a typical example of legal illiteracy in which a wife assumes that she can receive matrimonial property distribution based upon her belief that the marriage would dissolve. The court was reluctant to grant a divorce against the protest of one spouse. The court considered their marriage as still viable. Further, the court did not rule in her favor.

Though a judicial divorce may be sought in Korea under an action, the proceedings start from the Family Court. A type of mediation takes place in the form of conciliation proceedings to eliminate difficulties or to reconcile the parties to agree on an equitable termination of the matrimonial estate. Contested divorce would require both time and financial resources.

In the case where the woman presented her business in her husband's name was to conform to the general perception of society. Any shift of the final structure will be difficult and would not meet changing lifestyles of women. Although the growing numbers of women professionals suggests more opportunities open to women, the revision of family law has been resisted by conservative Confucian associations that strongly protest promoting legal rights for women. The aim of promoting legal literacy in South Korea is to recognize international agreements related to women's rights with accountability and to review judicial interpretations of old language in family law. Female-headed single mother households or the housewife-breadwinner marriages are among many models of marriages that have not been admitted to legal provisions. Yet, the current piecemeal amendments are significant in terms of improving women's legal capacity in family law.

Notes

- 1) "Final vocabulary" is a concept devised by Richard Rorty (1989). For Rorty, a "final vocabulary" is words or even concepts that are taken for granted in a culture as common sense knowledge in which no further doubts are questioned. Words used regularly, such as "beautiful," "good," "truth," "progressive," or "revolution," are narrowly defined in a given cultural context. I adopt this notion of "final vocabulary" in which certain words are imprinted in the people's consciousness with corresponding images that are associated with the words.
- 2) South Korea has a rigid system for university entrance. Most colleges offer entrance examinations once a year, in January. If a student is not admitted to a preferred university, then he or she may study for another year. Also, the college curriculum is designed for each class year, thus a cross-school year curriculum is not prevalent.

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