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Parent-child relationship in Korea: Legal status and social implications seen through family law changes 1958–2005

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Contents

I . Introduction

II . First Korean family law and its major revisions

Shortcomings of the First Korean family law

Major revisions of the Korean family law

III. Parent-child relationships in the Korean family law

The meaning of having a child in a Korean family

Patriarchal-patrilineal tradition and *Hoju-je*

Family lineage, surname, and the origin of surname

Mothers: biological, legal, and others

IV. Revisions of Adoption Law and new parent-child relationships

Changes in adoption, on whose behalf?

The full adoption law (*Chin-yangja-beop*)

V . Changing family behavior

Rapid socioeconomic changes

Changes in family attitudes

Changes in family building behavior

VI. Concluding remarks

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I. Introduction

Ideally, a child is born within a family setting involving a mother and a father who are married to each other. Thus, childbirth is a three-person event and parent-child relationships are clear. But in reality there are many diverse forms of childbearing and parent-child relationships. For example, a child may be born out of wedlock, and only one parent is recognized. Children who are adopted may have two different sets of parents, biological parents and adopting parents. Children who are adopted or born through a surrogate mother for a same sex relationship may have two mothers or two fathers. In this paper, we examine diverse aspects of parent-child relationships as socially and legally recognized and accepted in Korea. Much of our discussions focus on the *Hoju-je*, the unique Korean Household Headship System, gender inequality in the parent-child relationships, and the changes in the gender inequality through revisions of the family law. We end with discussions on how these changes have affected changes in family attitudes and behavior and prospects of further changes in family behavior

II. First Korean family law and its major revisions

The first modern Korean family law was established in 1958, ten years after the birth of the Republic of Korea, as a part of the Civil Code and has undergone numerous revisions until 2008 when the *Hoju-je* was abolished. We briefly review these revisions of the Korean family law, focusing on two most important revisions of 1990 and 2005.

We begin with a brief review of the traditional Korean Family System and its influence in the first modern family law. Early rulers and leaders of Joseon (Yi) Dynasty (1592-1910) embraced Neo Confucianism as the guiding principles for governance and social order. Norms generated from these principles, modeled after the Great Ming Code (*Da Ming Leu*) of China, include many regulations related to family life such as gender roles, inter-generational relations, filial duties, marriage, parenthood, kin relationships, and inheritance (Choi, Jai-Seuk 1970; Deuchler 1992). The traditional Korean family system was strictly patrilineal and patriarchal with importance placed on the family line continuation through sons. Family behavior was characterized by early and nearly universal marriage and childbearing and strict gender division of roles.

The traditional patrilineal/patriarchal principles are imbedded in *Hoju-je*. According to *Hoju-je*, the citizens are registered as members of households headed by a *Hoju*. The records of individuals as members of a household, *Hojeok*, is used as the basic government document of citizenship and individual identity. In *Hojeok*, the head of household is identified as *Hoju*, and other members in the household are identified by his/her relationship to the head, as well as sex, date of birth, date of registration, and other personal information. Only men could hold the position of *Hoju*, and the information on *Hoju* include how the headship was attained together with the family lineage such as the identification of clan³. Under the *Hoju-je* system, *Hoju* had power to exercise legal, economic, and social rights on behalf of the members of the household. When a *Hoju* dies, the eldest surviving son inherits the headship. Thus, the *Hoju-je* system institutionalized the traditional patrilineal/patriarchal system, gender inequality in civil rights, and importance of childbearing, especially of sons.

The turbulent history of Korea during the first half of 20th century complicated the process of transforming the traditional family system to modern family law. During the Japanese occupation of Korea (1910-1945), the colonial government introduced Civil Code. It borrowed ideas from traditional Joseon Confucianism and the Japanese Civil Code but ended up with internally inconsistent set of codes. Naturally, Korean people did not follow the colonial Civil Code fully. At the end of the Japanese colonial control of Korea, the brief reign of the U.S. military government of Korea (1945-1948) let most parts of family law based on the colonial Civil Code to be continued as specified in Bill no. 21 of November 2, 1945 (Yang Hyeon-Ah, 2011: 230).

The new independent democratic government of The Republic of Korea was founded on August 15 in 1948 and the work of writing the Constitution and laws including the Family Law began to take place in the National Assembly. But the Korean War (1950-1953) that broke out in 1950 disrupted the process. Discussions over the revision of the Civil Code resumed in 1953 when the Korean War ended in a truce, and the final version of the family law, including Part IV (Relatives) and Part V (Inheritance) of the Civil Code, was enacted as Bill No. 471, on February

³ Identification of clan which include surname and the origin (place) of surname is the key information for identification of patrilineal family line.

22, 1958. But it had serious shortcomings and did not effectively reflect the reality of Korean family system practiced by people at the time (Eun, Moon, and Choe, 2015: 51).

Shortcomings of the first Korean Family Law

A draft of the family law was first written in 1949 and submitted to the National Assembly on September 30, 1955. The proposed Civil Code (to be implemented in 1958) included many sections of the old Japanese colonial Civil Code (Gwak, Bae-hi, 2009: 35) without any changes, as well as traditional customary laws of Joseon which were not consistent with each other. For example, it maintained the old Japanese colonial Civil Code in the part on Property and the customary laws of the Joseon era in the part on Inheritance. The inconsistencies were most notable on the issues related to the role and status of women and children within and outside family setting.

Noting these shortcomings, many women's rights groups including feminist legal experts demanded better revisions of the proposed family law submitted to the National Assembly from the beginning in 1949 when the family law proposal was drafted (Lee, Namhee, 2002: 180-181). The issues raised by the women's rights groups are centered around the argument that the proposed draft was based on the pre-modern patrilineal/patriarchal family system with serious gender inequality problems. With the continuous endeavors of feminist legal experts and the women's rights groups, the family law was finalized with some modifications as a part of new Civil Code in 1958 but it still had many shortcomings. And the women's movements demanding more revisions of Civil Code towards gender equality continued.

Major revisions of the family law

The Korean family law has undergone five major revisions. We will examine a few important issues related to parent-child relationship including parental authority, adoption, and gender inequality or differences in fatherhood and motherhood. The first revision was made in 1958 reflecting some issues raised by the women's movement groups. One of important points of this first revision is the recognition of common-law marriage as a form of legitimate marriage. The women's rights group demanded an addition of a clause on Article 806 'on engagement' to stipulated that 'when a marriage is declared, the marriage is thought to be established on the date when cohabitation began.' In the end, the final version of 1958 did not include the clause, but changed Article 812 on 'the establishment of marriage' and defined 'marriage' as 'effected by

reporting under the Family Registration Act' legalizing marriage with only legal document and not cohabitation, although cohabitation without legal registration as a form of marriage was customary at the time. We will come back to this point in a later section.

Regarding the parent-child relationship, Article 909 on 'Custodian' reveals the patriarchal principle. Article 909-1 defines the parental custody right only for father with the statement 'a minor shall obey the parental custody rights of the father in the family'. Moreover, in Article 909-2 it is said that 'when there is no father, or in situations where other parental rights cannot be exercised, then the mother in the family can exercise her parental rights.' In effect, it implies that mother's parental rights were considered only as secondary compared to the father's parental rights.

In 1977, during the second revision, Article 909 was revised towards gender equality regarding parental authority within family. Article 909-1 was revised to 'A minor shall obey the parental custody rights of his/her parents' recognizing for the first time that parental rights can be exercised not only by father, but also by mother. Moreover, Article 909-2 was revised to 'Parents commonly exercise parental custody rights while married, but in the case that one parent cannot exercise his or her parental custody rights, the other parent shall exercise his or her parental custody rights alone.' Except this, the focus of the 1977 revision was on the part of guaranteeing women's rights for inheritance. Only in 1990 the first step towards major gender equal revision is made.

One of the main characteristics of the third revision of 1990 is in Article 909 that provides fully equal parental custody rights for mother and father. Although Article 909-1 remained unchanged, the revision provides more firm ground making parental rights exercised not mainly by the father but by both mother and father. Article 909-5 says: 'an adopted children shall obey the parental rights of their parents'. This means that in 1990, the law clarifies the role of both parents in exercising custody rights equally.

In the 1958 family law, in case when 'the parents fail to reach an agreement,' there was a guideline that the father remains the preferential person who can exercise the guardian rights. This guideline was deleted in the 1990 revision, ensuring mother's parental rights as being equal to father's right.

Another important gender inequality concerns regulations on registering children born outside current marriage as specified in Articles 773 and 774. The *Hoju-je* system allowed a husband to bring children born to him and a woman outside the current marriage into his

HojeokHojeok at will. But for a woman to bring children born outside the current marriage, she had to secure agreement from *Hoju*, namely her husband. This regulation was deleted in the 1990 revision, admitting that the patrilineal or patriarchal relationship needs to be reformed towards gender equality. However, it is unfortunate that the family law simply deleted the clauses deemed problematic without mentioning further details at a time when family composition is diversifying, and new and delicate situations are arising. New problems were arising due to the lack of proper regulation explaining how to make proper lawful relationship between re-married couples and their children from previous marriages through family registration system.

In addition, two related Articles 782 and 784 on adoption of children born out of wedlock remained without revision. Thus, father's adoption right of his illegitimate children was retained but mother's adoption right of her illegitimate children found no legal basis for registration. We will discuss the details of these two Articles in the following section. Lastly, revised Article 909 still maintains the traditional parent-centered family relationships as it stipulates that child shall 'obey' their parents.

As mentioned above, with the fourth revision of the family law in 2005, the *Hoju-je* was finally abolished. To emphasize the significance of the abolishment of the *Hoju-je*, we quote part of the Civil Code Revision Bill submitted to the National Assembly on August 11, 2003 (Eun, Moon, and Choe, 2015: 141-144, Source 11).

"[...] The rights of the heads of households have been deleted for the most part during the past three legislative revision, yet the household headship system is still in place, functioning as a tool to sustain the social preference for boys. [...] Abolishing the household headship system that grants preferred status to male heads of households and abolishing the provision that defines a family as only those people entered in a family register are included this initiative, the purpose of which are to recognize diverse forms of and from more equal families. [...] The revision bill first eliminates all provisions related to the household headship system in the Civil Code and other laws. Second, it eliminates the family system built around the head of a household by abolishing the household headship system. Third, it eliminates the family register registration system that oversees children or spouses being entered into the family registry or branching out of the family registry by abolishing the family system. Fourth, it eliminates the current provision mandating that children take their father's surname and

family origin in principle, and replaces it with the provision that a child's surname and family origin may be decided by an agreement between the parents either to take on the mother's or the father's. Fifth, for the benefit of a child, it allows that a surname and family origin may be changed per a claim made by the child or either parent with consent from the Family Court. [...] The system allowing adopted children to take their adoptive parents' surname, which was mentioned previously, is being discussed, and the government initiative will also take the household headship system into consideration. [...]"

Of course, this revision is not perfect, but it opened a new way to transform the family relationships towards better gender equality and children's rights. With this revision, above mentioned Article 782 and Article 784 were finally removed from the law. Article 909 on the parental custody rights was also revised from 'A minor shall obey the parental custody rights of his/her parents' to 'Parents shall have the parental authority over their minor child. As for an adopted child, the adoptive parents shall have the parental authority'. The term 'obey' was deleted and the nuance of the sentence changed to imply that parent-children relationship is not based on 'obey' and 'control', but rather is based on protection and focused on children's rights.

Furthermore, a new article on 'Exercise of Parental Authority and Standards for Designation of Persons of Parental Authority' (Article 912) was introduced. Article 912-1 clarifies the focus as 'in exercising parental authority, a priority shall be given to the welfare of a child'. As a confirmation of this change, the Full-Adoption System was newly established under Article 908 Clauses 2 through 8. This Full-Adoption System will be explained in detail later, with focus on the relationship between the adopted parents and children to be equal to that of original or 'natural' parents and children. As Article 909-1 confirms, "in case of an adopted child, the adoptive parents shall have the parental authority." Through these several major revisions, the foundation of the Korean Family Law has changed the perception of parental rights and parents-centered relationships with their children, to that ensuring children's welfare.

III. Parent-child relationships in the Korean family law

In this section, we review some specific issues that can be used to explain the link between the parent-child relationship and childbearing behavior. First, we explain how a child born within legal marriage and a child born out of wedlock were treated in the first new Civil Code (1958), in

the 1990 revision, and then in the 2005 revision. This issue is associated with the question of “what is family?” Or put it differently, “how has the law defined so-called ‘illegitimate (legally unrecognized)’ family and how was the ‘illegitimate’ family socially discriminated?”

The meaning of having a child in a Korean family

In Korea, where patrilineal family system has been a strong norm supported by *Hoju-je* and the new Civil Code of 1958, marriage and childbearing behavior have been linked very closely. Children were rarely born outside marriage and they were not socially or legally recognized unless some special arrangements (adoption, for example) were made. And it was considered that after marriage, having children were necessary for the family to ensure continuation of family line. In short, having children in a family was highly valued and the value of having children was mostly for the sake of parents and family line.

But not all children are born within legal marriages and some marriages are not followed by childbearing. Recognizing this reality, the first Korean family law included provisions about bringing children born out of wedlock to a *Hojeok*. It is important that a child is registered as a member in a *Hojeok* because the registration record in a *Hojeok* is used as the basic government document on personal identity. The family law also has provisions for married couples without children in the form of adoption for the purpose of continuing family line.

We first review how *Hoju-je* allows inclusion of children of the *Hoju* and his wife who were born outside the current marriage. Article 782 of the Civil Code deals with the registration of a child born out of wedlock. Article 782-1 stipulates that ‘when a child birth occurs out of wedlock, the child can be registered in the household,’ implying that if a man acquires a child from a woman who is not his current wife, he is allowed to register the child as his own and he does not need his wife’s consent. Article 782-2 further mandates that ‘when a child born out of wedlock cannot be registered to the father’s household, then the child can be registered to the mother’s household. If both are not possible, the child shall create a new household.’ On the surface, this Article seems to make it easy to include a child born out of wedlock into the existing marriage relationship. However, the *Hoju-je* mentioned above is centered around father making it nearly impossible for the mother’s household to exist. It is nothing more than a fictitious expression. One of the biggest criticisms against the *Hoju-je* was the fact that under the *Hoju-je* a woman cannot establish a household because a woman cannot be the head of a household on her own. Thus, Article 782 of the First Civil Code clearly documents gender inequality in parenthood.

Article 782 protects the man or the father's direct descendants and never includes the mother's extramarital children.

Gender inequality in parenthood appears in Article 784 titled 'Registration of a direct descendant of the wife who are not of the father's blood relative' as well. This title clearly shows that it intends to provide legal basis for women's extramarital children. But Article 784 has clear gender bias as well. Article 784-1, for example, defines that the consent of the husband is required when a woman wants to bring children born with her ex-husband into the *Hojeok* she now belongs after the remarriage. Compared to Article 782 regarding a man's children born out of wedlock, this is clearly gender discriminatory. In short, Articles 782 and 784 together mean that when a man produces a child outside of marriage, he can register the child in his family registration. However, when a woman has a child outside the current marriage, she needs the approval of her husband who is the *Hoju* to register the child in the family registration. As such, before the 2005 revision of the family law, the legal definition of 'child or children' was a child born of legal marriage or a man's child brought into the family after being born out of wedlock. Children of a woman whose father is not the current husband were not recognized in the family registry. These children were concealed, were adopted out, or disappeared. Not infrequently, these children were registered as the younger brother of the mother in her maiden family registration.

Patriarchal-patrilineal tradition and *Hoju-je*

Here we discuss how one of the key institutions of the patrilineal and patriarchal family system *Hoju-je* views parent-child relationship. According to *Hoju-je* legal marriage (registration of marriage) was the legal basis for starting a new family. And it is expected that children are born within legal marriages. This is the first and most important characteristic of the parent-child relationship under *Hoju-je*. Thus, a child's rights or obligations as a 'child' were recognized only when the child was born under the premise of a legal marriage. Until the landmark revision was made in 2005, this *Hoju-je* provided basis for discrimination of the children born outside legal marriage.

Second, as Article 909-2 mandates, until 1977, fathers monopolized the parental rights to have an important relationship with children, and mothers were secondary. Third, as shown in Article 909-1 which was revised in 2005, having a child was mainly for the sake of family lineage. That means children's rights and welfare were barely recognized under *Hoju-je*.

But we are aware that not all children are born within legal marriages. According to Korean family law, children born within marriage are included in the family by registration in fathers' *Hojeok*. But what happens to children born outside of marriage? We need to read Article 909-1 of the 1958 Civil Code carefully. It is written that 'a minor shall obey father's parental rights within household.' This means that when a child is born, the first thing to do is the identification of 'father.' If 'father' is identified, the child has the right and obligation to obey father. Article 909-2 considers the situation when 'father' is not identified or absent. Article 909-2 says that 'in the absence of a 'father' or if father is unable to exercise parental rights, mother in the household exercises parental rights'. It means, the mother can become the next available candidate to exercise parental rights if and only if there is no father who can do it. These regulations reflect strong patriarchal paternal custody right backed up by *Hoju-je* based family law.

Furthermore, Article 909-3 says 'if there is no one to exercise parental authority under the provision of the preceding paragraph for a person born outside this current marriage, the birth mother shall become a parental authority.' It means, for a child born to a man outside the current marriage, *Hoju-je* based family law considers that the child has 'two' mothers; father's wife in *Hojeok* and the birth mother. We will discuss this point further in the next section. So, children in this family system are recognized through their relationships with one father but not with one mother. In addition, Article 909-5 writes 'when a parent is divorced or a mother is reinstated to her original family or is remarried after the father (husband) is deceased, the mother shall not have the parental authority of the child born during her previous marriage.' It means that if a mother is getting a divorce and remarries and leaves the household, she will not be able to hold the parental authority of her children born and registered in the household. It is important to emphasize that even before considering remarriage, 'divorce' alone is an enough reason to renounce the parental rights of a mother to the child whom she gave birth to. When mother's registration is changed to another household, mother loses her parental rights in the previous household. Article 909-5 was revised as Article 909-4 in 1990 saying 'in case of parents getting divorce, custody rights will be arranged through negotiation among the parents. In case an agreement cannot be made or possible, the family court will decide upon the request from the parties involved.'

These provisions were maintained until 1990. Importantly, Article 909-5 acted as a strong obstacle against women considering a divorce. Understanding this family law change, it may not be that much of a surprise to see the divorce rate of Korea increasing slowly before 1990

followed by rapid increase after 1990 reaching its peak around 2005.

With regard to Article 909, we need to examine another important Article 779, which defines the scope of family members as ‘a spouse of *Hoju*, blood relatives and their spouses who have been registered as the family member by the provisions of this law’ before the 2005 revision. According to this, family members consist of people who are registered based on *Hoju*’s decision. If we relate Article 779 before 2005 with Article 909 on the agenda of a child born out of wedlock, the child can be registered when the adopting parents agree. However, if *Hoju* disagrees, then it means the child cannot be registered as a family member. This results from the lack of an article or clause referring properly on adoption of a child.

Judging from this, before 2005, the legal recognition of children was father centered. In other words, father’s acknowledgement is of primary importance and the marital status was secondary. However, if we consider a family from mother’s position or mother’s perspective, children can be accepted or admitted only within a marital relationship, and moreover, that is the case only for the first marriage. When a woman divorces, she no longer has a right to consider her children as part of her family. Therefore, before the 2005 revision of the Civil Code, for a woman to have a child from outside of her marriage had truly difficult consequences within the family law framework.

Family lineage, surname, and the origin of surname

In traditional Korean family system, surname and the origin of surname which identifies the clan membership has been an important part of personal identification. The traditional patrilineal family system is supported by family law. For example, Article 781-1 of the Civil Code was originally written as ‘a child shall succeed his father’s surname and the origin of surname, as registered in the father’s family *Hojeok*.’ It had been practiced except when father of the child cannot be identified. In Article 781-2, ‘a child whose father cannot be identified shall be registered to the mother’s maiden *Hojeok* with her surname and the origin of surname.’ Thus, the mother’s clan identification is considered in the law only as secondary to the father’s clan.

The 2005 revision of the family law includes change of this article as ‘when the parents agree to have a child assume mother’s surname and the origin of surname at the time of registering their marriage, the child shall succeed the mother’s surname and the origin of surname.’ However, this phrase is still in the process of amendment due to the decision of incompatibility with the Constitution which was made clear by the Constitutional Court on December 22, 2005.

It means that following the surname of mother as 'optional' or 'secondary' is considered unconstitutional due to its gender inequality.

This problem of 'the abolition of paternal preference' hindering gender equal relationship in the family was also included in a 'Policy Roadmap of December 2018' by the Presidential Committee on Low Fertility and Ageing Society. Currently a committee under the Ministry of Justice created in 2020 is strongly advising the government on deleting or completely rewriting Article 781-1. (<https://www.womennews.co.kr/news/articleView.html?idxno=198902>). It means that even after the 2005 revision and the subsequent abolition of *Hoju-je*, gender equality in parent-child relationship is yet to be fully realized in Korean family law.

We note here that unlike most western countries and Japan, in Korea, the women keep their last name unchanged after marriage.⁴ We also note that until quite recently, married Korean women were rarely identified by their first names. Keeping last name was necessary for identification of married women. So, a typical Korean family has mother and father with different family names.

In recent years, with some improvements in gender equality in parent-child relationships, keeping the tradition of using father's last name as their children's surname is being reviewed and debated by the public. For example, a series of surveys on university students' perception on the issue of choosing surname for children (Kim and Kang, 2011) show changing attitudes among young people in Korea. The surveys asked the students the question of 'how should a child's surname and the origin of surname (clan identification) be decided?' In 1990, 84.0% of the respondents agreed to the father centered principle, but only 53.1% agreed to this principle in 2004. In 2004, 38.2% of the respondents agreed that 'parents should consult and decide', and this tendency became more than half (55.34%) in 2009, and the answer of 'should follow the father's' decreased (39.55%). The results of these surveys suggest that young people's attitude is rapidly responding to the changes in the revisions of family law. On the other hand, the framework of father-centered parent-child relationship is still maintained. It can be said that the identity of mother is still regarded as secondary compared to the identity of father in terms of family law in Korea. This phenomenon is more pronounced in relationships other than

⁴ It is difficult to simply understand that unchanged wife's last name is more equal than changing wife's last name. This is because women's last name is not an individual based last name in the Korean context. Rather the last name is a symbol of the patriarchal family to which individuals belong.

remarriage or marriage, as the following examples in the next section show.

Mothers: biological, legal, and others

In this section, in addition to the discussion of the legal status of children, the legal status of mothers will be examined. Generally, most children are born to married couples and registered in the same *Hojeok* with their fathers and mothers. For these children, their legal mothers are their biological mothers. For a child whose mother was not married or was married to a man who is not his/her father, the situation is complicated.

Here, we will consider the mother's position in relation to marriage and we will discuss issues on single mothers in the following section with adoption. The focus is the relationship between a stepmother and children with three different women involved. First is the relationship between legal mother and illegitimate child (*Jeongmo-seoja*). Second is the stepmother and stepchild relationship (*Gyemo-ja*). Third is the mother of illegitimate child, who could be a single mother and/or a biological mother who could not make any relationship with her children within the family law frame.

First, we look at the mother-child relationship specified as a legal mother (meaning that they are registered in the same *Hojeok*) and illegitimate child. As mentioned above, due to Article 782-1, a child can be registered as a child of *Hoju*, if the child is acknowledged by *Hoju*. In this case whether the child is from legal marriage or from illegitimate relationship or out of wedlock does not matter. And the rule is, following Article 781-1, the child only needs to be registered to the father's family registration (*Hojeok*) and follow the father's surname and the origin of surname. This means that the husband/father can register his illegitimate children without the legal wife's consent. After registration, wife of *Hoju* becomes legally recognized mother of the child. Thus, if the father's child was born out of wedlock and registered in *Hojeok*, then the wife must accept the child as her child even if she is not the child's biological mother. It means that the wife's opinion or decision on whether to accept the child as her own was of no concern to the family law until the 1990 law revision. Therefore, in this *Hoju-je* system, a woman only exists within the frame that she serves her husband as *Hoju*, who has sole legal power to decide who can be his family member (Park, Byeong-Ho, 1971; Ko, Jong-Myung, 1982). This Article denies legal rights of two women involved with the child. On the one side, the biological mother or illegitimate mother is denied her mother's parental custodial right, and on the other side, the

legal mother has no say in acknowledging the relationship with a child whom she never knew of before.

In addition, Article 909-2 mandates that the legal mother can 'acquire a parental right in case when her husband cannot exercise his parental right' to the child who were born out of wedlock by her husband. In this case, the mother who biologically bore the child is denied her parental rights, only because the child was born outside of marriage, and the other woman, who is a legal wife of the father must accept the child as hers without any opinion or without getting any chance to refuse.

However, the birth mother is able to exercise parental rights over the child if and only if the father is not surviving or not able to perform his parental rights or the legal wife cannot exercise her parental rights according to Article 909-3. This article was revised in 1990 to 'when one parent is unable to exercise the parental rights, the other shall exercise them.' But revised phrase is still tacitly referring to the situation when the husband brings his child born out of wedlock, but never referring to the situation when the child born out of wedlock was brought in by the mother. Specifically, when the child was born before the mother's marriage, there was no stipulation on any parental right for the mother until the special law on adoption was introduced in 2005.

Thus, Korean family law until 2005 reflects the strong denial of the right of a mother who gave birth to a child out of wedlock and also the reality reflecting that a child can only be viewed as a being who must submit to and obey only the father but never the mother. This absurd article was abolished only in 2005. During the period between 1958 and 2005 children born out of wedlock can only be recognized by the father and after recognition, these children can be registered as children in the family registry regardless of marriage. In contrast, the children born to mothers out of wedlock were not recognized by law and society.

Second, the stepmother-stepchild relationship is firmly defined by Articles 773 and 774. While the first situation is about a child from a nonmarital relationship, this situation involves remarriage. Articles 773 and 774 mention that when a woman marries a man who had been married before and registered as the lawful wife, she automatically becomes legal mother of children of her husband from his previous marriage(s). She becomes a stepmother and the children become stepchildren. However, there is no mention or definition in these articles about the relationship between children of a woman from her previous marriage and her new husband. In other words, stepfather-stepchildren relationships are not created when a woman

remarries with children. Before 1977, as in Article 909-5, when a woman is divorced ‘the mother shall not have the parental authority of the children born during her previous marriage.’ Divorced mother could not bring her children under her custodial right, making the stepfather-stepchildren relationship almost impossible to occur. These Articles are deleted in 2005 without replacing or revising the relationship between stepfather and mother side stepchildren. This relationship remains ambiguous and outside the legal framework. Thus, there still is no clear guideline for remarried husband and wife how to exercise ‘parental rights for their children born of their previous marriages.’

Third, the problem concerns children of single women. The core of the single mother’s problem is related to the issue of adoption, which will be discussed in detail in the next section. In 1996, among the total adopted children (3,309) in Korea, more than 85% are from single mothers (2,822) suggesting that adoption occurred mainly with children from single mothers (Nho and Kim, 2004: 53; Kim Sang-Yong, 1999: 470). This is because most of single mothers are not granted to exercise their parental rights. This explains why there are so many K-dramas dealing with the issue of adoption or single mothers leaving her child and the child finding the mother later in the theme of ‘the birth secret’. Among the adopted children, 93.2% of the domestic adoption and 92.2% of the international adoption were children born to single mothers (Lee Eun-Jeong, 2014: 14). This is a sign that in Korean society single women’s pregnancy, especially the pregnancy ‘not in relationship with a married partner’ is one of the strongest social taboos in Korea (Shin Philsik, 2017: 324).

Since 2005 revision of family law, children and parents are recognized as a ‘normal’ family and in that family system parents can jointly exercise their parental rights. After the abolition of *Hoju-je*, it became clear that children’s relationship within the family is with both mother and father, not with *Hoju* alone. Thus, with the abolition of *Hoju-je*, woman’s role in the family as a wife or a mother became more equal to man’s role as a husband or a father, eliminating previous father (husband) centered inequality. In this context, we can conclude that women’s full reproductive rights, even within legal marriage system, became respected only recently.

IV. Revisions of Adoption Law and new parent-child relationships

The 2005 revision of family law deals with adoption. The sub-section of the Full Adoption Article was included in the family law for the first time in the 2005 revision. Before that, the law

on adoption dealt only with international adoption and not with domestic adoption. According to the new law, adopted children have parental relationship equivalent to biological children. Before the 2005, the purpose of domestic adoption has been only for the purpose of family line continuance. With the 2005 revision, the purpose of adoption was expanded to the adoption for the sake of children. Adoption for the sake of children to provide parental protection, welfare and well-being. The revised law allows stepchildren to be adopted and become legitimate members of a family. Before that, in most cases, stepchildren were considered as 'half legitimate' or 'illegitimate' family members, thus prone to social stigma and legal exclusion on most of family related rights or duties.

Changes in adoption, on whose behalf?

Adoption as an institution is a legal kinship system artificially making a parent-child relationship between people who are not biologically related (Lee Byung-Hwa, 2003: 136). According to Kadushin, in the U.S. after the 1920s, adoption was introduced as a service of any consequence in the child welfare system (Kadushin, 1976: 52). Not only in the U.S. but in many countries in the West including the USSR around the 1920s the adoption law was reformed from the family centered adoption to the children centered adoption (Jung Kwang-hyun, 1967: 52). In addition, the scope or the function of adoption expands also to adults who are not able to give birth or who wish to make parent-child relationships without going through childbirth. In this context, adoption as a system can be included in the social welfare system from the perspective of child welfare and family welfare (Yoon Eun-Young, 2013: 193).

In Korea, however, until 1958, under the strict patrilineal-patriarchal tradition, adoption was used mainly to support patrilineal family system. Adoption for the sake of children's welfare or their rights to be raised securely and safely (Yoon, Eun-Young, 2013: 210) was not of much concern. Under the traditional patrilineal family system, only men could inherit family headship as a *Hoju* to carry on the family line and perform important family functions such as funeral services and memorial ceremonies for the ancestors. Before 1958, the old adoption law provided legal system that allowed an adoption only for the purpose of assuring family lineage. For such adoptions, only married men with no linear male descendants were eligible to become adoptive parents. Under this law, a man who is eligible to adopt a son for the purpose of family lineage could adopt a male from the prospective adoptive parent's paternally related relatives with the same surname and the origin of surname who belong to a younger generation. But the new law

of 1958 allows that any adult, whether a man or a woman, married or not, childless or not, can become an adoptive parent (Article 866 'Anyone who has attained adulthood may adopt another person as his/her child'). However, this revision fails to address the gender inequality in parenthood and concerns for children's welfare and rights.

In the 1977 revision of the Civil Code, Article 909 relating to 'Holders of Parental Custody Rights' mandates 'a minor shall obey the parental custody rights of the parents.' However, considering that there was an additional clause "in the event of a parent's disagreement, the father exercises the custody right," gender inequality of parenthood is maintained in the revision. In other words, the 1977 revision of the family law maintained the framework of father centered parental rights in adoption and guardianship.

Adoption on behalf of children's welfare began to rise after 1950. During Korean war (1950-1953) many children were lost from their parents and many children were put up for adoption or abandoned due to extreme poverty or other difficult family situations. Some children were born as results of rape, not infrequently by foreign military personnel. A large portion of adoption of these children occurred at international level. After the Korean War, the priority candidate for adoption to the U.S. was children of so called 'mixed blood.' The international adoption was based on the narrative of sending inter-racial children to their father's country in accordance with the patrilineal bloodline principle (Kwon Hee-Jeong, 2019: 74; Kim Dong Soo, 2007: 8). This so-called 'pure blood-ism' aggregated with values emphasizing blood ties in family making was deeply rooted in the Korean people's mindset on how to make a family. Only recently, from 2007, the number of domestic adoption (1,388, 52.3%) exceeded that of international adoption (1,264, 47.7%) (Lee Eun-Jeung, 2014: 14).

The special law on adoption was introduced in 1961. But this law was specifically focusing on international adoption, and there is no mention of domestic adoption. Contemporary legal process of adoption in Korea is regulated by two main laws: the Korean family law and the Special Adoption Assistance Act (Lee Bong Joo, 2007: 77). Although related to adoption, these two laws failed to organically connect with each other as adoption was only addressing international adoption. It was only through the 2005 revision that domestic adoption addressing the parent-child relationship was discussed.

In the 1958 Family Law, Article 909-4 mandates that "the biological parents of the adopted children do not bear the parental right on the children who are adopted to another family." This means that biological parents no longer have their parental rights once their children have been

adopted to another family. In other words, until the 1990s family law revision, the relationship between biological parents and children was never fully recognized nor considered as an important aspect in making and understanding what family is about and for. Rather, families were defined on the basis of the family registration records (*Hojeok*) and the relationship of the members of *Hojeok* to the head, *Hoju*. Strictly speaking, the adoption system before the 1990s was utilized only for the continuity of the family line. Moreover, there is additional condition limiting adoption of children. Before 1990, Article 877-2 stipulated that “an adopted child, if the child does not share the same surnames and the origin of surname, will not be allowed to inherit the adopted family’s *Hoju*”. In other words, only “the adoption for the sake of the family” to ensure the patrilineal succession of the family and ancestral ritual was recognized (Eun, Moon, and Choe, 2015: 76, Source 7). Article 877-2 was deleted in the 1990 revision. Thus, the focus of adoption system until 1977 was still the adoption for family lineage rather than the adoption for the sake of children’s welfare. (Kim Seong Sook, 2009: 571; Cha Seon-Ja, 2012: 845). This part of adoption is revised in 1990 as Article 909-5 defines that ‘an adopted child must obey parental authority’ emphasizing the adopted parental right as legitimate. However, these rights were legitimized only from parent’s perspective and not from that of children. With the new subsection introduced in 2005, adopted children’s welfare was beginning to be considered seriously in the family law.

Accordingly, the adoption law set its course to change from adoption for family lineage to adoption for children’s welfare. The Special Adoption Law of Orphan, originally introduced in 1961, changed its title to include not only orphans but also to include children who were in needs of social support. As a result, the ‘Special Adoption Act’ was legislated in 1976. But we have to wait until 2005 to see the current version of the special law titled as the ‘Special Act on Promotion and Procedure of Adoption’ that formally recognized the need to protect and encourage welfare of adopted children.

Before the 2005 revision, the adoption system was not considered as a matter of governmental jurisdiction. It was considered as a personal or private contract, matters only between two parties involved in the adoption process. Moreover, when a child was adopted, the child was registered with a differentiation from parent’s original children. In addition, the child’s biological parent’s name was also written in the *Hojeok* registration document differentiating clearly the child as ‘adopted’ (Lee Byung-Hwa, 2003: 156). Moreover, before the ‘Special Adoption Act’ revised in 2005, the dissolution of adoption was relatively easy within one

year of adoption resulting in children with health issues and/or children with disabilities being returned (Park Yeong-Ok, 1993; 11) frequently.

The full adoption law (*Chin-yangja-beop*)

In the 2005 family law revision, the new sub-section for 'Full Adoption' was integrated in Section 4 Article 908-2 (*Chin-yangja-beop*) and enacted in 2008. Writing of this sub-section was motivated by problems in the 'Special Adoption Act' and related articles in the family law. We will focus on two main issues. One is treating a child of unwed or single mother. The other issue is the change of surname of children of re-married couples or when the child is adopted.

Starting with the first, it was again due to *Hoju-je* which made the recognition of the child born to a single mother very difficult. *Hoju-je* only recognized the surname of the father's and paternal side. When the child of an unwed mother is adopted and registered to the *Hojeok* where the father is *Hoju*, the child is no longer considered to be part of the mother's family and the birth mother can no longer exercise her parental rights. Only after the 2005 revision, with the abolition of *Hoju-je* registration system and designating the scope of family (article 779-1) members as 'the spouse, lineal blood relatives, and brothers and sisters,' single mother's child can be recognized as one of her family member. However, it was only legally legitimized and supported fully by the introduction of the Framework Act on Healthy Homes in 2016 where Article 3 revised the definition of a family to include adoption. In Article 3 the definitions of a 'family' is written as 'the fundamental group unit of society formed by marriage, blood or adoption'. Nevertheless, a single mother's child is still not recognized. Since the birth was not based on a legal marriage, there is disapproval, even social stigma and discrimination against the child as 'having no proper father' (Sung and Kim, 2016; 46-47).

Regarding change of surname, a problem is related to the age limit of children to be adopted. According to Article 908-2, 1-2 of the 2005 revision, a child who is eligible to be adopted must be under fifteen years old. This was a problem because this full adoption system prohibits remarried couples' children over age 15 of their previous marriages to be accepted as 'child' through adoption. These children will maintain his/her birth father's surname leading to the children's confusion and even harm to children's welfare (Lee Byung-Hwa, 2002: 237). In the 2012 revision, Article 908-2, 1-2 was revised to 'a child to be fully adopted shall be a minor.'

According to the new law, adopted children would enjoy the parental relationship equivalent to biological children. The adoption only for the purpose of family lineage changed to adoption

for the parenthood and now are going to be changed to adoption for children's welfare and well-being. The revised law allows stepchildren to be adopted and become legitimate members of the family. Before that, in most cases, stepchildren were considered as 'half legitimate' or 'illegitimate' family members, thus prone to social discrimination and legal exclusion in most of family related rights or duties. Here, 'fully' adopted means as defined in Article 908-3 Effect of Full Adoption that 'a child adopted through full adoption shall be deemed to be born during the marriage of the adoptive parents.' This means that children's previous kinship relationship ends with the adoption and only the kinship relationship between fully adopted child and parents is recognized (Jeong Joo-Soo, 2008: 62). When declared as a 'full' adoption, the dissolution of adoption by the adopted parents was no longer permitted, proving the child the 'full' rights to secure his/her children's status in the adopted family.

With this change of the law, people's perception on adoption also changed quickly. Around the time of the revision, there was already a social mood toward social recognition of adoption. One of Korean major broadcast services Munhwa Broadcasting Corporation (MBC) conducted a survey in 2004 and showed an emergence of 'a New Familyism'. According to the survey, young generation's approval of adoption was 50.4%, relatively higher than their parental generation (34%) or grand-parental generation's (23.9%) (MBC, 2004: 86).

As such Korean society is moving toward an understanding that a new family can be created through adoption and moving away from family relationship centered only on blood line and birth. Nevertheless, the fact that the 2005 revision went into effect in 2008 goes to show that creating a new family through adoption is still an unfamiliar and unpopular institution and social practice in Korean society. In this regard, social discrimination and stigmatization of children born out of wedlock, of divorce and remarriage, and of single mother or single parent can be understood as byproducts of the family law institution.

V. Changing family behavior

In addition to the changes in family law, the second half of 20th century brought rapid changes in socioeconomic conditions in Korea. And the attitudes on various aspects of family as well as some family behavior began to change rapidly. In this section, we highlight some of these changes and discuss how they may be associated with the changes in family law. We also discuss how some aspects of family attitude and family behavior are associated strongly with the

tradition and is changing slowly.

Rapid socioeconomic changes

As the table below shows, mostly rural and poor country in the mid-1900s transformed to highly urbanized with high income by year 2000 and beyond. Most notably, proportions of women with higher education and the proportion of young women in payed employment increased greatly. These trends are associated with the trend of increasing age at first childbirth caused by the trend of later age at marriage in the society where non-martial birth is at negligible level (Choe and Kim 2014; Lee and Choi, 2015)

Table 1. Selected economic, social, and demographic indicators of Korea, 1970 - 2015

Year	Percent of population living in urban areas	GDP per capita in current US dollars	Percent of women senior high school graduates advancing to higher education	Percent of women ages 25-29 who are in labor force	Mean age of mother at first childbirth
1970	41	292	25	31	--
1975	48	646	20	29	--
1980	57	1,858	22	32	--
1985	65	2,542	34	36	24.8
1990	74	6,642	32	43	25.9
1995	78	12,404	50	48	26.5
2000	80	11,948	65	56	27.7
2005	81	18,658	81	66	29.1
2010	82	22,151	81	70	30.1
2015	82	27,222	75	73	31.2

Note: '--' indicates data not available.

Sources:

GDP per capita is from Word Bank. (2016). *World Development Indicators*. <http://data.worldbank.org/>

Others are from Statistics Korea. (2019). *2018 Social Indicators in Korea*. Daejeon, Korea: Statistics Korea.

Changes in family attitudes

Before the second revision of the Civil Code, there was a survey of nationally representative

sample of married women aged between 15-49 in 1,830 household in September 1976 (Jo et al., 1977: 56-57, <table 3-4>). This survey asked the reasons having a child. According to the survey, the most frequently cited reason (26.30%) was 'to ensure the family lineage'. The second frequently cited reason (26.10%) was having a child because 'So that I can depend on the child when I get old.' The other answers listed are quite interesting from today's perspective. For example, answers include 'I can be happy when raising a child', 'A child can be helpful in domestic chores or farming work', 'a person must have a child after getting married', 'If the child succeeds, I will be respected', and 'Having a child improves marital love relationship'. What is clear is that children were seen valuable only from parental points of view during this period.

Another way of looking at the change in the value of children is to look at how women responded to the question of whether it is necessary for married women to have children from national surveys. The table below shows that in 1991 more than 90 percent of married women thought that having a child is 'necessary or good' (Kim, Mi-Sook, 2006: 12) but the percentage was reduced to less than two thirds (65.2%) by year 2005.

Table 2. Percent distribution of the response to question "Do you think it is necessary to have children?" from National Fertility Surveys in South Korea, 1991-2005 ever-married women age 15-49.

Year of survey	Necessary to have children	Better to have children	Alright not to have children	Not sure	Number of respondents
1991	90.3		8.5	1.2	7,448
1997	73.7	16.6	9.4	0.3	5,409
2000	58.1	31.5	10.0	0.5	6,363
2003	54.5	32.3	12.6	0.6	6,593
2005	23.4	41.8	34.9	0.0	3,417

Source: Kim, Mi-Sook, 2006: 12

The results of the survey suggest that the abolition of *Hoju-je*, was consistent with the attitudes of Koreans with less than a quarter of population viewing that a family must have children born within marriage.

Changes in attitudes on marriage can be seen in surveys that include views on cohabitation. Attitudes on cohabitation have been collected in the General Social Survey. The survey in 2006 reports that 21.67% of the respondents agreed with the statement "It is fine for a couple to live

together without intending to get married” and 65.12% disagreed, while 13.21% responded “no opinion” (Eun, Moon, and Choe, 2015:184. Table 3.29. Q 67-5: It is fine for a couple to live together without intending to get married. (Source: Korean General Social Survey, 2006).

When we compare different age groups, the total percentage of agreement increases to 31.85% for the age group in the 30s and to 35.36% for the age group in the 20s. Whereas, for the age group of the 50s, the total percentage of agreement is 13.33% and in the 60s only 11.52%. In other words, the age groups in the 50s and 60s are the generation who still maintain the traditional understanding of family before the 2005 revision of the family law while the age groups in the 20s and 30s are the new generation with the understanding of new family shaped by the 2005 revision.

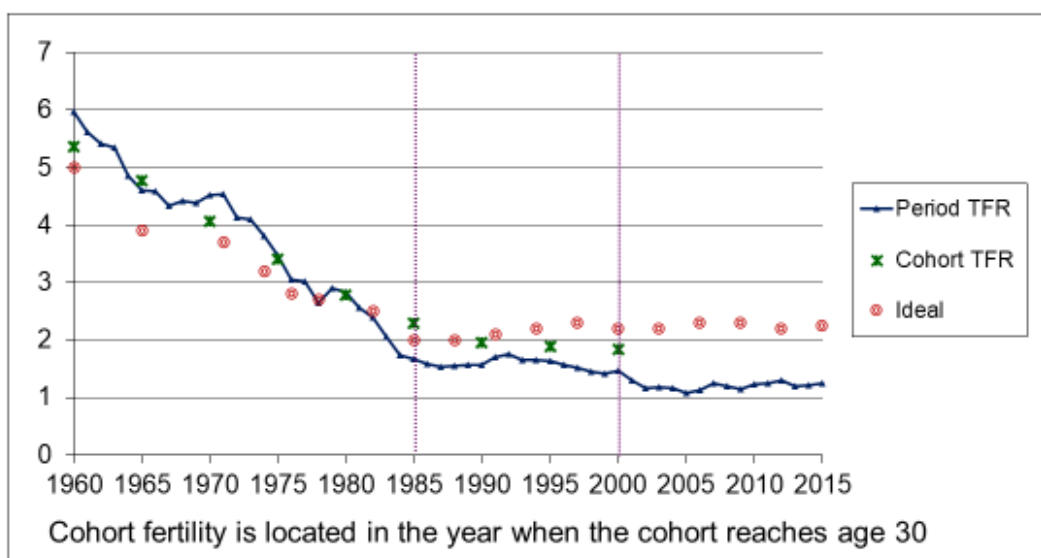
Related to this we also see the changes of attitudes on the association of marriage and childbirth. According to the Korean General Social Survey conducted in 2003, the proportions of respondents agreeing with the statement “People who want to have children should get married” amounted to 66 percent with variation by age. Among the respondents in the 60s, the proportion was high at 89 percent but among the respondents in the 20s less than half (43%) agreed with the statement (Eun, Moon, and Choe, 2015:166. Table 3.12). We can trace the changes in attitudes. Younger generations are more open to having children without being married.

Changes in family building behavior

The most notable change in family behavior in Korea since 1960 has been the rapid decline of fertility rate to extremely low level followed by continuing extremely low level since 2000. The total fertility rate (TFR), a commonly used measure of fertility, is a hypothetical average total number of children a woman would have in lifetime estimated from the current levels of age-specific rates. Figure 1 below shows how total fertility rate in Korea declined from about six children in 1960 to two children in 1985. The total fertility level has been barely above one child since 2000. Figure 2 below compares trends of total fertility rates of 27 economically developed countries for the period 1980-2015. The figure shows how the decline of TFR in Korea during the period compares with other economically developed countries and how the TFR since 2015 has been among the lowest of these countries. Studies of fertility behavior in Korea document that the main reason for continuing extremely low level of total fertility has been postponement of marriage among women combined with negligible level of non-marital births. These studies

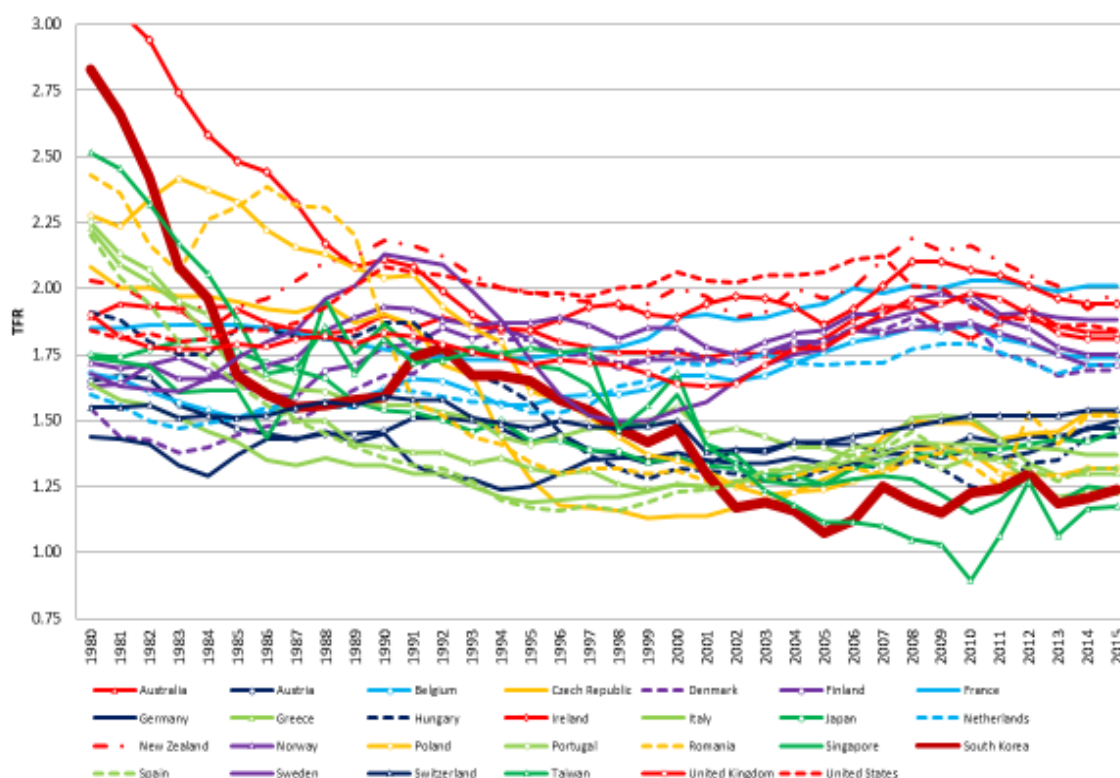
document that if we adjust the TFR by eliminating the impact of postponement of marriage, the total fertility rate would be much higher, between 1.5 and 2.0 (Jun, Kwang-Hee 2004; Choe and Park 2006; Kim, Doo-Sub, 2004; Lee, Samsik 2009, Yoo, Sam Hyun 2014).

Figure 1. Trends in period TFR, cohort TFR, and mean ideal number of children, South Korea 1960 - 2014



Sources: Statistics Korea. KOSIS. <http://kosis.kr/statisticsList>, accessed 11/09/2016 for period PFR; Yoo (2014) for cohort TFR; Hong et al. (1994), Kim et al. (2012), and Lee et al. (2015) for mean ideal.

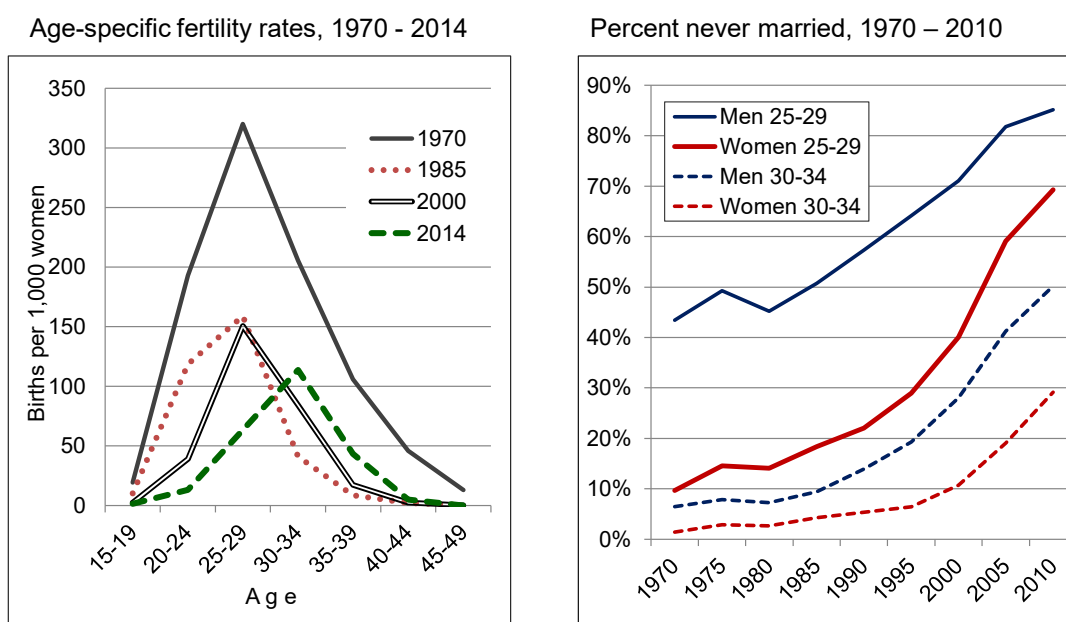
Figure 2. Trends in TFR: 1980 – 2015, Economically Advanced Countries



Source: World Bank (retrieved Sep 14, 2017) and National Statistics of Republic of China (retrieved Sep 14, 2017)

Young Korean women are not rushing to marriage for various reasons. For those under 30, the most frequently cited reason is that they are not ready yet. The idea of “being ready” for marriage is based on their view of the “proper” role of married women as wife, daughter-in-law, mother, and household manager and difficulty associated with these roles and their desire to continue to work (McDonald 2006, Choe and Kim 2014, Lee and Choi 2015, Rindfuss, Choe, and Brauner-Otto 2016).

Figure 3. Trends in age-specific fertility rates (1970 -2014) and percent never married for selected ages (1970 – 2010)



Source: Statistics Korea. KOSIS.
<http://kosis.kr/statisticsList> accessed 3/28/2016

Source: Statistics Korea. KOSIS.
<http://kosis.kr/statisticsList> accessed 3/28/2016

2

As a consequence of prolonged period of very low fertility in Korea, the population in Korea is changing its age structure towards increase in old age and reduction in working age population with implications of increasing economic and social cost of providing care for the elderly. Thus, discussion on how to raise fertility rate to a reasonable level has become a major concern among population experts and the policy makers.

Changes in family formation behavior can raise fertility. For example, family formation behavior that depends less on childbearing within marriage can raise fertility to some extent. Currently, we understand that a family starts upon marriage. But contemporary society observes many diverse family formulations and a marriage is only one formulation in making a family. Therefore, marriage can no longer be equated with family (Cho, Eun Hee, 2009: 108-109). Based on this understanding, we consider making a parent-child relationship to be an important component of making of a new family, in addition to marriage.

We have documented that with changes in family law including the abolition of *Hoju-je* and

introduction of full adoption law, a new family can be created through adoption and moving away from family relationship centered only on blood line and birth. Nevertheless, the fact that the 2005 revision went into effect only in 2008 suggests that creating a new family through adoption is still an unfamiliar and unpopular social practice in Korea. But there are evidences that public awareness is increasing.

In 2019, the former Minister of Gender Equality and Family said during an interview with one of Korea's major daily newspapers (*Chosunilbo*, 14 February 2019) that the protective environment should be provided to the cohabiting couples, who are outside of the legal marriage system to raise children without discrimination. She pointed out that the children born out of wedlock are being discriminated even in the current situation of ultra-low fertility. Her comment suggests that the Korean government considers relaxing the strong marriage-fertility link may result in increase in fertility in ways similar to countries in Northern and Western Europe where more than one-half of all births occur outside marriage.

On the other hand, a research on low fertility in most of economically advanced countries concluded that fertility is higher in countries where the social and economic cost of marriage is affordable and where women's role as mothers and workers are compatible (Rindfuss and Choe 2015). In Korea, difficulty in balancing work and family life has been one of the major causes of low fertility and policies and programs making it easier for women to balance work and family life would result in higher fertility (Baek, Kelly, and Jang 2012; Baek and Park 2013; Lee, Duvander, and Zarit 2016)

Coontz (2005: 313) writes that most effective support systems for married couples, such as subsidized parental leaves, flexible work schedules, high-quality childcare, and access to counseling when a relationship is troubled, would also make things easy for those people who are constructing relationships outside marriage. Clearly, family building behavior includes marriage behavior as well as childbearing and adoption within and outside marriage.

VI. Concluding remarks

We have demonstrated that the strong marriage-fertility link in Korea was created partly by the family law. Changes in family law provide the basis for new norms that children should be independent of parental control, free from the patrilineal blood line principle, and respected regardless of marriage status. Continuing discussions on the legal and social statuses of the

linkage between parents and children may lead to the weakening of the strong marriage-fertility link and may change the ultra-low fertility situation in Korea.

Changes in family law also improved the gender equality of parenthood, the rights and responsibilities of mothers being equal to those of fathers. But persisting gender inequality in balancing work and family life remains to be barrier towards raising fertility. On this regard, family law needs to be revised further to bring changes in institutional barriers making parent roles and worker roles easier to combine.

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