

Post-colonial Democracy and Women's Rights in Post-Liberation South Korea*

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Abstract

This article argues that the process of institutionalizing democracy in South Korea included ambivalent legal bases for women's rights by analyzing the family law codification process. Amidst the haste that accompanied the beginning of the Cold War, through division, war, and the occupation of the U.S. military government, the South Korean government began the process of institutionalizing democracy before it could complete the process of decolonization. In the historical context of post-coloniality and the establishment of a democratic republic, women became the symbol of democracy with the new Civil Code that remade them into citizens with rights of the nation-state. Yet, women were also treated as the last bulwark of tradition, repositories of a "national tradition," in the legislative discussions that led to the promulgation of the new Civil Code, and their rights were eventually significantly compromised. This duality demonstrates key tensions in the conceptualization of equal rights in a post-colonial democracy.

Key words

women's rights, post-colonial democracy, patriarchy and democracy, Korean family law

Introduction

The spread of sexual assault and harassment accusations arising from South Korea's #MeToo movement in 2018 offered opportunities for many to reflect on the position of women's rights in Korean democracy. In March 2018, the chief secretary to Hee-jung An, who was the governor of South Chung-cheong Province

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at the time and an aspiring presidential candidate, divulged that she had been a victim of sexual power abuse (JTBC, 2018). Around the same time, accusations emerged against a Seoul mayoral candidate, Bong-joo Chung (Seo, 2018). Similar allegations rocked the entertainment industry and the worlds of literature, higher education, and sport. The incidents involving the governor and mayoral candidate especially shocked Korean society because both were prominent progressive politicians who had been part of the student movement resisting the dictatorial government in the 1980s. These episodes suggested that gender inequality remained entrenched even among progressive sectors of South Korean society.

The #MeToo Movement has inspired many to look back on the very foundation of the democratization process in South Korea. Cases of sexual violence perpetrated by male elites in progressive groups shattered the long-held belief that democratization in Korea was led by leaders who fully embodied the democratic spirit. Many felt betrayed by these male perpetrators and their supporters. But in the history of democratization, there have been many similar cases where democracy was promoted by a not-so-democratic leadership. For example, it was the U.S. occupation government that led the process of postwar reforms for democratization and the expansion of women's rights in Japan. In the newly established Republic of Korea, the "democratic reform of family law" was initiated by a politician who had been a Japanese collaborator and was a supporter of Syngman Rhee's increasingly authoritarian government.¹ Such cases challenge previous attitudes that put democracy on a pedestal, believing that democracy in and of itself will dispel inequality and promote liberty for all. While democracy may seem incompatible with gender discrimination, feminist studies have contended that the former was established on the basis of the latter and reproduced systemic gender inequality. As Pateman (1988/2001, 1990/2018) argues, modern democracy was institutionalized by "consent and contract" with built-in discrimination against minority groups, including women. Inspired by Pateman's theory of "sexual contract," Keating (2011) has argued that the institutionalization of de-

¹ According to General MacArthur's memoir, he presented the following directives to the Japanese Prime Minister Shidehara Kijūrō about the reforms concerning women's issues, urging a speedy implementation of reform measures in Japan: "The emancipation of the women of Japan through their enfranchisement—that, being members of the body politic, they may bring to Japan a new concept of government directly subservient to the well-being of the home" (MacArthur, 1964, p. 336). Yoneyama (2016) has argued that the U.S. made Japanese women victims of male militarism and patriarchy to produce and disseminate the narrative of "America's Cold War gender justice" and promote American democracy (p. 106).

mocracy in post-colonial India was founded on racial and sexual discrimination. She focused on the ambivalent aspects of post-colonial reforms in India. On the one hand, the reforms had a liberalizing effect, by lifting restrictions on women's participation in the public sphere and by explicitly stating gender equality rights in statutes. On the other hand, they reaffirmed women's legal subjugation in property ownership, inheritance, marriage, and divorce. This analysis of the Indian case is illuminating for understanding the relationship between democracy and the principle of gender equality in post-colonial Korea.

Building on such scholarship, this study returns to the founding decade of Korean democracy from 1948 to 1958 to investigate the roots of women's unequal rights. I argue that post-colonial democracy in South Korea established women's rights but also institutionalized gender discrimination, especially in the 1958 Civil Code. In particular, this demonstrates that South Korean family law, which was believed to have been based on a liberal democratic foundation, did not provide equal rights to women. Yang (2011), a prominent scholar of Korean family law, has attributed gender inequality in family law to the colonial remnant that remained after 1945 in the form of the household head system (*bojije*).² However, I argue that the process of democratization equally contributed to the gender inequality written into the family law portions of the 1958 Civil Code. In other words, post-coloniality and the ideal of democracy in the family law were intertwined in ways that had interesting implications for women's rights. Post-colonial democracy released women from colonial constraints such as wives' legal incompetence, but continued to limit the scope of their liberty by curtailing their rights in the private sphere. This ambivalence reflected the contested position of women's rights in the democratic project of establishing the Republic of Korea.

To understand this divergence in rights recognition, this study explores the following three questions: First, who were the subjects of rights in the 1948

² The household head system was a patriarchal family system, transplanted from the Japanese household system created during Japan's own nation-state building after the 1868 Meiji Restoration. Japanese colonial rulers of Korea considered Joseon's family system as premodern and old-fashioned because it was based on patriarchal kinship groups around the head family. Japanese reforms, which were considered as modernizing, shrank Joseon's extended family groupings to be led by a household head. Under the new structure, household heads became sole inheritors of family property and ancestral rites and had strong powers to control family members. When the household head died, the first son became the next household head, and the younger son became the household head of his own family when he got married (Hong, 2005, pp. 188–195).

Constitution and the 1958 Civil Code? Second, what perceptions did male lawmakers have and what strategies did they employ on issues of gender and women's rights in family law? Third, how were women's rights defined in the new family law, and what relationship did they have to Korea's broader post-colonial democracy? Answering these questions, I demonstrate that through this historical process women formally gained equal rights, but since these were only for "nation-building," they fell short of abolishing the discrimination and constraints that women were experiencing in everyday life.³

Women's Rights from the 1948 Constitution to the 1958 Civil Code

On August 15, 1945, Korea was released from Japanese colonial rule, but this did not mean the nation was fully independent. The victors of World War II had divided the Korean peninsula at the 38th Parallel, which hardened into the actual border because the leaders of both Koreas and their patrons failed to reach a compromise. On August 15, 1948, the southern part of Korea established its own government as the Republic of Korea, and a committee was then created to draft a constitution and new laws (Hahm & Kim, 2015). The first Section of Article 1 of the 1948 Constitution declared that "The sovereignty of the Republic of Korea shall reside in the people, and all state authority shall emanate from the people." Koreans, who used to be the imperial subjects of the Japanese empire, now became citizens with sovereign rights. Article 8 specified the protection of equal rights for all citizens, stating "All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status."

However, full equal rights between men and women were already challenged in the process of creating the constitution. Jin-o Yu, who participated in drafting the 1948 Constitution, interpreted "the people" to be all individuals whose liberty and equality were guaranteed by the Constitution (National Assembly Secretariat, 1948, p. 12). According to Yu's interpretation, the Constitution guaranteed democracy and protected the rights of all individuals without discrimination. Yu (1953) especially praised the progressive achievement of the new Constitution in promoting

³ There is a need to critically interrogate the concept of sovereignty as rights for all citizens and re-examine the concept of rights. We can take into consideration Suzy Kim's work (2018), which has historically examined the concept of human rights as something that was established within the order of liberalism.

gender equality. “Considering that even countries with advanced democracy like France and Belgium only granted women’s voting rights after World War II,” Yu noted, “our constitution [that provides not only women’s voting rights but also abolishes all discriminatory treatment of women as unconstitutional] is groundbreaking.” However, in his analysis of equality in Article 8, Yu added, “but gender equality means equality between the sexes before the law; it does not abolish the distinction between men and women based on biological differences, or all rules that are needed to protect family life” (pp. 65–66).

He thus implied that biological differences could be a basis for discrimination between the sexes, and that the adoption of full equality could be postponed in order to protect the family. This impoverished sense of equal rights was echoed in a statement from another constitutional committee member, Seung-ryeol Gwon, during a session of the National Assembly in 1948. While he acknowledged that the gender equality clause in the Constitution meant equality of all citizens before the law, he also emphasized that everyone had different rights depending on one’s position as a citizen or a family member. When questioned whether the existence of concubinage contradicted Article 8’s equality clause in the Constitution, Gwon answered that the gender equality guaranteed in the Constitution was only about legal equality between citizens equality between family members, such as with the practice of concubinage, was beyond the parameters of the Constitution. Gwon assured National Assembly members that family matters like concubinage issues could be addressed later when writing the Civil Code (National Assembly Secretariat, 1948, pp. 13–14).

Both Yu and Gwon seemed to advocate for the basic principle of equality in the Constitution while also opening the possibility of applying different principles to women’s rights via the family law. Their bifurcated understanding of “equality” strategically utilized the ideology of separate spheres, which justified gender discrimination based on physiological differences between women and men (Heo, 1996; Pateman, 2001; 2018). By granting different rights to men and women in the public and private spheres, Yu and Gwon paved the road for legal discrimination based on biological differences. In other words, while “the people” of the 1948 Constitution seemed like a gender-impartial term on the surface, in practice, the concept left room for discrimination based on sexual difference.

Contestation over women’s rights continued as Korea’s first Civil Code was crafted over the next decade. The new Civil Code had to meet two goals: on the one hand, it had to realize the ideals of freedom and equality as basic principles of democracy; on the other hand, it had to build a modern family as the foundation

of the modern nation-state and the family order that would contribute to the rebuilding of the nation.⁴ In line with the first goal, the 1958 Civil Code declared that “All persons shall be subjects of rights and duties throughout their lives” (Article 3). This statement declared that the natural person is the rights bearer, and it fundamentally revised the rights bearer concept of the old Japanese Civil Code. The second goal, however, was more contested when it came to reformulating women’s legal status from what it had been under Japanese colonial rule, especially that of married women.

In colonial Korea, married women had been rendered legally incompetent, with some exceptions. In other words, a married woman could not purchase, lease, or transfer her own property, and could not take legal action without her husband’s permission. Also, she had no right to bind herself by a labor contract. Even after Korea’s independence, married women did not formally become legally independent because the U.S. Military Government maintained laws from the colonial period (U.S. Military Government Ordinance No. 21, 1945, November 2 (as cited in Korean Association of Legislation Research, 1971, p. 139)). Due to these transitional provisions, despite widespread eagerness to shed the legal yoke of Japanese colonial rule, the process of securing equal rights for women, especially married women, was complicated.

During this transitional period, however, women’s rights in Korea’s nascent democracy did see some progress. For example, just before the establishment of the Republic of Korea, the Supreme Court under the U.S. Military Government recognized the legal capacity of married women without formally abolishing any existing restrictions on women’s status in Korea. In 1947, a woman named Bo-nam Jeong demanded that her tenant, Jeong-ja Yi, give up her residence. When Yi rejected her claim, Jeong filed a lawsuit in the Jeonju District Court to request the delivery of her real property and won. In response to her defeat, the defendant, Yi, appealed to the Supreme Court, citing Article 14 of the Japanese Civil Code (maintained un-

⁴ Given the fact that South Korea was in conflict with North Korea, the need for a new Civil Code was even more urgent. The Household Registration Law, which was a sub-set of the Civil Code, was the basis of South Korea’s identification system and was used to keep track of the whereabouts of the citizenry. The following statement by Mun-gi Min (1953), the Head of the Supreme Court Administration Legal Affairs, illustrates this well: “The family registry (*hojeok*) is an official document that proves the status of the nationals, and all nationals have to have a family registry. Therefore, all personal status becomes clear by looking up the family registry at their original address (*bonjeok*) [...] distinguishing a proper national from a non-national is only possible through the family registry.”

der the U.S. Military Government) to assert that the original court had not considered the legal competence of the litigant; Jeong had filed the lawsuit without her husband's permission. Yet, the Supreme Court turned down Yi's appeal, noting that denying a married woman's legal competence was "absolutely inconceivable when the establishment of a new democratic nation is just around the corner" (Supreme Court Decision, 4280 Minsang 88 Kaokmyengto, September 2, 1947 (as cited in Pak, 1975, p. 529)).

Yet married women's legal capacity was contested from the very beginning of the new republic. In early 1949, members of the Law Code Compilation Committee, the committee that was convened to prepare and review the new Civil Code, agreed on the principle that married women were no longer legally incompetent but at the same time postponed clarifying the parameters of women's legal capacity until the Civil Code was finalized (Bureau of Public Information, 1948, p. 1; Yang, 1994, p. 307). Married women's legal incompetence disappeared with the 1958 Civil Code, which granted full legal capacity to married women in Article 3. With this change, married women officially became bearers of full rights. However, if one traces the debates over defining women's rights in the decade-long process of crafting the Civil Code, it becomes clear that the legislators, who were mostly male, only agreed to abolish married women's legal incompetence because they believed that other provisions in the Civil Code could sufficiently limit female spouses' legal capacity when needed (Kim, 2016, pp. 286–288). Granting women some rights and legal capacity in the 1958 Civil Code could be realized because there were the detailed clauses that opened up the possibility of limiting women's rights in certain cases. The discrepancy between the ostensible acceptance of gender equality and these exception clauses that permitted gender discrimination produced a legal basis for justifying discriminatory practices.

Influential Lawmakers' Conceptions of Rights under Family Law

The main architects of the 1958 Civil Code were the Law Code Compilation Committee and the National Assembly. Those who played major roles in the process were Byeong-ro Kim, the chairperson of the Compilation Committee, and Gyeong-geun Jang, the head of the Civil Law Draft Review Division in the Legislative and Judiciary Committee. Women's voices were largely ignored in the Civil Code drafting process. In fact, the Committee members and the members of the National Assembly who participated in codification were all male. Only one fe-

male National Assembly member, Cheol-an Kim, reviewed the draft but she seemed indifferent to the issue of women's rights. After the first draft of the Civil Code was released, a women's group led by the first female lawyer, Tae-yeong Yi, sent a "Declaration of Humanity Signed by 15 Million Women" to the National Assembly. They objected to the draft Civil Code and demanded a new one that guaranteed gender equality befitting the spirit of equality written into the Constitution, but their protest was set aside (Yi, 1992, pp. 395–404). In contrast, Kim and Jang not only designed the initial draft of the Civil Code but also greatly influenced the voting process in the National Assembly. While Kim utilized nationalistic rhetoric emphasizing national identity, Jang emphasized the gradual reform of customs in order to progress toward "civilized society." Yet their arguments also overlapped in the sense that both advocated separating (and thus compromising) gender equality in the family sphere from political and social equality for women.

First, Kim's argument framed both family and women as the bastion of traditional values. Kim grew up studying the Chinese classics and upholding Confucian values, but eventually became a legal expert educated in Tokyo. He was also a prominent nationalist and had been a lawyer during the colonial period, representing independence fighters in the courts. This national leader maintained his conservative attitude while codifying family law in the 1950s. For example, Kim stated:

Family law regarding succession should not imitate the laws of other countries [...] The family law must be legislated according to our own national characteristics and historical and cultural traditions [...] (National Assembly Secretariat, 1957, p. 7)

All people of our country descended from Dangun. The blood of Dangun has flowed down to posterity through the paternal succession of blood, great-grandfather to grandfather, and to father [...] Man is made of the spirit of his fathers (National Assembly Secretariat, 1957, p. 10).⁵

For Kim, the "national characteristics and historical and cultural traditions" were important elements to consider in the legislative process. Without mention-

⁵ Dangun is a legendary founding father of Old Joseon (*Gojoseon*).

ing any principles of the Constitution, he focused on bequeathed traditions. His ideas about equality revealed his conception of women's rights:

Many people seem to misunderstand the concept of gender equality in the Constitution. Gender equality means granting equal opportunities without discrimination between men and women in politics, social status, and culture, things like that. Confused people apply gender equality to old ethics of the family, kinship, or social and moral culture, which is useless to us (National Assembly Secretariat, 1957, p. 11).

The first official draft designed by Kim thus emphasized the preservation of patrilineage and the importance of Korean "tradition" (though what this consisted of was rather obscurely defined). His emphasis on tradition was welcomed by conservatives such as the Confucian Association (*yurim*) and its supporters. He considered the democratic principles of the Constitution as something foreign and Western. Gender equality or women's rights, likewise, were foreign concepts that threatened the patrilineal consanguinity that was the essence of national tradition. Ironically, his zeal for national tradition led to his embracing of the colonial legacy. The family system he embraced as a Korean tradition was no different from the family system transplanted by the Japanese during the colonial period. In a similar vein, Chatterjee (1986, 1990) has found that nationalists who were exposed to colonial rule tended to develop an exaggerated pride in cultural traditions in order to mitigate a sense of inferiority. Yang (2011) analyzed the nationalist discourses of the male elites like Byeong-ro Kim and revealed how the colonial household-head system ended up being accepted as national tradition in the post-liberation era.

However, Kim's position was a product of more than a simple reaction to the experience of colonialism. Instead, what was more important was Korea's postwar conditions as well as democratic and capitalist nation-building objectives. The inferiority complex of male elites produced by their experience of colonialism was exacerbated by the subsequent experiences of U.S. occupation and the Korean War. After the U.S. occupation and the Korean War, many male nationalists perceived the rapid spread of American culture and western ideas as threats to society's traditional values.⁶ From their point of view, Korean women having rela-

⁶ For example, the philosopher and son of an independence movement activist, Il-cheol Sin (1957), criticized the rapid spread of American culture in the 1950s and lamented, "Our capital, Seoul, is filled with the scent of butter and American scents [...] To us who slurp *doenjang*-soup

tionships with Americans—as lovers, wives, or prostitutes—and the mixed-race children that ensued particularly threatened the homogeneity of the Korean nation and its paternal blood lines. They tried to resist Americanization by strengthening traditional values. In this context, Kim criticized women who permed their hair or went dancing as blindly following American culture and emphasized Korean traditional values when he explained the legislative intent of the first official draft of the Civil Code in the plenary session of the National Assembly (National Assembly Secretariat, 1957, p. 9).⁷

One might consider Kim's embracing of the household head system—an apparent colonial remnant—as ironic. However, the household head system (*bojuje*) in the 1958 Civil Code was not simply retained from the colonial period but was rather a reconceived amalgam influenced by the complex post-colonial context of American occupation and the division between the two Koreas. First of all, the new *bojuje* under the 1958 Civil Code massively shrank the authority of the household head to make it more “democratic.” But retaining the *bojuje* was clearly a choice made by lawmakers faced with the particular post-colonial conditions of South Korea. The lawmakers believed that there was utility in retaining a “national tradition” like *bojuje* to bolster the family as a way to build a national identity to confront the hegemonic American culture. In more practical terms, the *bojuje*-based family registration system was also useful as a population tracking method under the anti-communist regime (Kim, 2007, pp. 296–315; Min, 1953).

Alongside Byeong-ro Kim, it was Gyeong-geun Jang, a judge during both the colonial and American military government periods, who had a major influence over the final draft of the new Civil Code and its implications for women's rights. Jang had visited the United States to study its judicial system for four months in 1947 and advocated that Korea learn from the American system with its

in ramshackle straw-thatched houses, ‘Americanism’ is a tragedy.” He also expressed anxiety about changing customs and values by noting that “our old life of frugality is being killed by American culture as an old and evil Confucian custom” (pp. 49–51).

⁷ “Madam Freedom,” the novel serialized in *Seoul Sinmun* by Bi-seok Jeong in 1954 and its film version distributed in 1956, were very popular but also the subject of much controversy. The story was about a wife of a college professor, who enjoys her freedom by dancing and dating other men. She eventually gets caught by her husband and returns home after a tearful display of contrition. With the popularity of the movie, women who wore western clothes and enjoyed dancing were called “madam freedom,” and were criticized for emulating Western culture and being sexually promiscuous. Western clothes and dancing became the symbols of “madam freedoms” who were liberated from patriarchal control. Byeong-ro Kim's critical remark about dancing and perms was related to these social situations.

“democratic spirit and its practice” (Jang, 1948a, pp. 20–28). His stance is ironic considering the fact that he later became a leading supporter of President Syngman Rhee’s increasingly repressive rule, for example by dissolving the Special Investigation Committee for Anti-State Activities in 1949 as Vice-Minister of the Interior, and was later charged with interfering in the 1960 election after the April 19 protests that ended Rhee’s rule (Kim, 2017, p. 260). Jang was an interesting figure who could be seen as embodying the tensions inherent in post-colonial democracy; his attitude and conduct were not necessarily democratic, but he nevertheless mapped out a democratic and liberal future for the nation. From the beginning, he claimed that Korea’s Civil Code must be modernized by eliminating old-fashioned feudalistic elements. In his private draft of the Civil Code, he argued that:

While codifying the family and inheritance law, it is imperative for us to consider maintaining beautiful customs only if they are not harmful, rejecting outmoded conventions, and promoting the national development and fortune through this legislation. The development of our nation depends not on the collective and communal group of the family but on the growth of each individual, which is compatible with the ideals of individualism, liberalism, and democracy (Jang, 1948b, p. 14).

Jang espoused a “gradual advancement theory,” advocating for the modernization of family structures based on capitalism and liberal democracy and a balance between tradition and reform. Jang argued that families must accept a transition from ritual communities of ancestor worship to economic communities centered on the nuclear family in order to achieve a capitalistic system. He emphasized many times that the nuclear family was the core unit of a capitalistic society because it could adjust to the market more flexibly (House of Representatives, 1957, p. 101). This was not his idea alone; his ideas were similar to those of lawmakers and legal scholars from the colonial period, like the Japanese judge, Chōtarō Nomura (Lim, 2019, pp. 68–73). Such similarities show the colonial continuity of the so-called “democratic reforms” of the new Civil Code. Jang may have been tainted by the colonial legacy, but he was also progressive in that he embraced the core principles of the Constitution: “individualism, liberalism, and democracy.” Through his arguments, Jang emphasized the importance of building a democratic republic.

Jang's belief that Korean family law should promote a "gradual advance" toward individualism led him to promote a more egalitarian family system that could also accommodate women's rights within the family. He believed that the center of the family structure should be horizontal and egalitarian spousal relations, not a vertical relationship that stressed the rights of the household head. Jang thus tried to steer family law toward undermining the household head's authority and weakening the line of patrilineal succession. He argued that in order to promote individualism, the new family law should protect the individual from the oppression of the household head or parents. He also argued that "it is the growth of the individual that leads to the development of society and the state." Women could be this individual. Since "democracy is based on individualism" he noted, "there cannot be discrimination based on sex" (House of Representatives, 1957, p. 101).

Why did Gyeong-geun Jang emphasize democracy and try to protect women's rights while supporting increasingly despotic rule by Rhee? We can find the answer in his commitment to "national development." He saw the colonial period as feudal and the post-colonial period as modern, and he believed that democracy and individualism were two hallmarks of a modern civilized nation. In order to become a modern democratic society, from his perspective, it was necessary to undermine the patriarchal rights of the household head and improve the subordinate status of women. To him, the expansion of women's rights and democracy were signs of progress toward "civilized society."

At the same time, Jang thought that Korean cultural traditions could still be useful in promoting a sense of national unity. This led him to exhibit a duality of being both a "traditionalist" and a "modernist" on family law and women's rights issues. In explaining the purpose of the Civil Code to the Legislation and Judiciary Committee at the 1957 public hearing, he stated that, "it is our obvious legislating principle that, on the basis of the spirit of our Constitution—the ideology of democracy, liberalism, and individualism—we need to lead our country toward progress, beyond current customs." (House of Representatives, 1957, p. 101) Yet he also revealed a somewhat contradictory attitude toward gender equality by stating that "the complete application of gender equality might cause the destruction of the traditional family system" (p. 101). This shows that Jang was not very different from Kim in his belief in the need to protect the traditional patrilineal family system. Jang seems to have been less interested in the actual expansion of women's rights than in abolishing "the symbol of feudalism" (i.e., the low status of women that does not befit democratic citizens) that prevented Korea from developing into a "civilized country." For him, women's rights and gender equality were

not immutable principles of democracy, but something that could be compromised at any time. Such attitudes on the part of male lawmakers demonstrates the peculiarity of post-colonial democracy: they were not fully free of coloniality and they treated the Constitution's equality clause as secondary to what they considered more important—national development. This is how women in the post-colonial Korea were made into what could be described as “equal second-class citizens.”

Women's Rights in Family Law: Rights amid Patriarchal Submission

Korea's Civil Code was promulgated on February 22, 1958 and went into effect on January 1, 1960.⁸ The Code was the product of compromises between the constitutional principles of equality and liberty and those lawmakers who feared that these principles could undermine Korean traditional values. As a result, full protection of women's rights and equal status between men and women were postponed. Still, the status of women in Korea undeniably improved with the new family law, relative to the colonial period, through the significant reduction of the rights of the household head.⁹ Women's subordination was a symptom of backwardness and did not benefit Korea's new national identity as a democratic republic. Accordingly, Korean women obtained a new status and rights as citizens of the new nation (*gungmin*).¹⁰

Some compromises regarding women's rights were to be expected, considering the cultural anxieties expressed by male lawmakers like Byeong-ro Kim. Most of

⁸ The Family Law describes the fourth and fifth parts of the Civil Code of 1958, which is subdivided as follows: I. General Provisions, II. Real Rights, III. Claims, IV. Relatives, and V. Inheritance.

⁹ The 1958 Civil Code abolished the household head's rights to consent to family member's separation of household registers, marriage, and the registration of the husband's children born out of wedlock, thereby de facto abolishing the household head's right to designate family members' residence and maintenance. Furthermore, it divided inheritance of household headship from property inheritance, thereby weakening the economic base of the household head.

¹⁰ After the Republic of Korea's establishment, the people with rights and obligations referenced in the Constitution, official documents, and school textbooks were “*gungmin*.” In one sense, the term was an inherited concept from the colonial period that connoted (Japanese) imperial subjects. At the same time, it was also an ideological and political construct devised to contrast with the concept of the DPRK's notion of “people” (*inmin*) (Park, 2009, pp. 97–121). The male lawmakers who wrote the ROK's Civil Code considered women's rights as a minimal qualification to be considered a proper nation, rather than as a matter of guaranteeing universal rights to members of a democratic society.

the compromises regarding women's rights in the family law stemmed from the maintenance of the household head system, i.e., the family structure that was organized under the authority of the household head. Even though the new Civil Code diminished the rights of the household head, the remaining rights were still significant. Because the household head controlled entrance into the family registry, women's rights could easily be compromised. For instance, if a woman remarried and sought to have her children added to her new husband's family registry, she would have to obtain consent from the household heads of both families, her ex-husband's and current husband's (Article 784). In contrast, a male spouse would not need the consent of the household head—his father or grandfather—or his wife if he wanted to add his offspring to the family registry, including those born out of wedlock (Article 782, Sec. 1). Such laws highlighted the disparities between the rights of men and women (Kim, 2018, pp. 348–350).

The family law of 1958 failed to fully remove the yoke of the patriarchal family system, but it nonetheless provided significant improvements in women's rights. The most notable change in the new Civil Code was the explicit protection of the wife's separate property rights. These were acknowledged by stating "Property that was owned separately by either spouse before marriage or acquired during the duration of marriage by either spouse in their own name is considered separate property" (Article 830, Sec. 1). There was an unequal provision to this law, because the second clause of that law stated that "property the ownership of which is unclear is assumed to be owned by the husband" (Article 830, Sec. 2), but the first clause codified the separate property rights of the wife, thereby supporting the principle of private property in the spirit of the modern Civil Code.

Another economically meaningful area where the new Civil Code expanded women's rights was in the wife's inheritance rights. During the colonial period, a female spouse could not inherit any property if there were lineal descendants. In contrast, the new Civil Code designated the wife's share of an inheritance even when she had lineal descendants, stating "If there were either a lineal ascendant or a linear descendant, the female spouse of the deceased becomes a co-heir [...] If there exists no inheritor, the spouse becomes the sole heir(ess)" (Article 1003, Sec. 1). With these expansions in the inheritance rights of wives, married women were no longer ghosts without rights. There was a drawback, however: the wife's share of the inheritance was half that of the male lineal descendants and the same as those of the male lineal ascendants (Article 1009, Sec. 3). Moreover, an unmarried daughter's share was half that of a son's, and daughters who were married were only entitled to a quarter of their brother's share (Article 1009, Sec. 1, 2).

In sum, women's rights saw meaningful expansion in the new Civil Code of 1958, but the improvements had limitations. These compromises were due to various anxieties among male lawmakers in the immediate post-colonial period. The particular post-colonial conditions created by the U.S. occupation led them to adhere more strongly to what they perceived as Korean tradition and the last bulwark against the dangerous invasion of American culture and the breakdown of "beautiful customs." Yet, despite these anxieties, they allowed improvements in significant areas of women's rights. The reason for this was the lawmakers' commitment to national improvement and development, particularly for the new liberal capitalist nation that they were building. Therefore, women's rights were improved in precisely those areas that guaranteed individual economic rights.

Conclusion: The Legacy of Post-Colonial Democracy and Women's Civil Rights

By analyzing family law codification, this article argued that the process of institutionalizing democracy in South Korea entailed legal bases for both expanding and curtailing women's rights. Amidst the haste that accompanied the beginning of the Cold War, with division, war, and the occupation by the U.S. military government, South Korea began the process of institutionalizing democracy before it could complete the process of decolonization. In the historical context of post-coloniality and the establishment of a democratic republic, women's rights became a symbol of democracy; the new Civil Code that remade them into full legal citizens made them a crucial component of the new sovereign state. Yet women were also treated as repositories of "national tradition" in the legislative discussions that led to the promulgation of the new Civil Code, and their rights were consequently compromised. This duality demonstrates key tensions in the conceptualization of equal rights in post-colonial democracy.

In spite of this compromised character in terms of gender equality and the colonial remnants that the legislators maintained, the 1958 Civil Code was an important part of the institutionalization of democracy in Korea, especially in the ways in which it diminished the rights of household head and made women full rights bearers and part of the new model of national citizenship. Male lawmakers, in order to make women into citizens had to democratize the family law, however minimally. Just as was the case in Japan during the postwar "democratization" process, in Korea the "democratization" of the family law failed to dismantle the patriarchal order.¹¹ Thus, women's rights shrank to wives' and daughters' rights

within the domestic sphere, and the abolition of the household head system and other family law reform issues became core goals of the South Korean feminist movement. It is quite telling how it was only after the 2005 abolition of the household head system that the issues pursued by the feminist movement in South Korea diversified (Choi, 2005).

Citizenship refers not only to political and legal rights but also economic, social, and cultural rights of inclusion, and it is also not limited to the rights conferred by the state from above, but also those that people can achieve through a dynamic process of demand from below (Jang, 2001). Recent gender conflict and social debate provoked by the #MeToo movement can be considered as a process of reconceptualizing women's citizenship in Korea. In order to bring such efforts to fruition, we need to fundamentally re-examine the initial processes of institutionalizing democracy in South Korea. As I have shown above, this initial process created nominally "equal" people, but ultimately also institutionalized gender inequality.

¹¹ Japan abolished its old family system with a new Civil Code promulgated on December 22, 1947. This feat is attributed to the "Democratizing Project" of the GHQ in Japan. GHQ/SCAP contended that the old family system had facilitated fascism (Kim, 2017, pp. 264–271).

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