I. Introduction

Spring of 2005 opens a new era for the Family Law in Korea, as the Constitutional Court decided the core articles of family-head system incompatible with the Constitution, and the National Assembly passed the alternative Bill for the Civil Code that eliminates the family-head system. Family-Head system is a family institution inscribed in the Family Law, book 4 and 5 of the Civil Code in Korea. This has an enormous significance since the system regulates virtually every legal relation within the family through its bestowal every family member on ‘the status’ in the family. Based upon this status, the family register, the identification system of people in Korea has been made.

This change is an outcome of the long history of revision movement of the statute initiated by lawyers, legal scholars and activists, often adorned with feminist orientation. The Confucians who cherish ancestors, family genealogy, and the kinship mainly through the male-centered reckoning of the ‘family’ such as patri-lineage and patrilocal–marriage have been the main constituents who wish to preserve the system under the name of ‘tradition.’ Seen this way, gender equality and tradition are the two main values, perhaps incommensurable with each other, that guided the Family Law in modern Korea. The Constitutional Court also scrutinized the articles in the family-head system from the criteria of gender equality and the tradition, as both to be protected by the Korean Constitution in the Article 36(1) and Article 9 each.

Thus, the central legal issues in this constitutional Case were to determine whether the system of family-head (hoju) institutionalized in the family law violate the principle of gender equality and that of tradition, and the priority in two principles when the two collides with each other. In order to do so, relevant precedents and theories on the legal effects of tradition and custom need to be sought and examined. To determine what has been the tradition, however, has been also critical issue for this Case. How have we known the tradition of Korean family? If there has been the tradition as such in the past, is this tradition relevant to the contemporary Korean family? For these questions, sociology of law approach that locates and interprets the law in the context of history and society using the various analytic tools of social science will be useful.
This presentation intends to locate the tradition and customary law in the context of history, particularly that of colonial rule under Japan (1910-1945). Since modern legal system was introduced in this period and ‘the custom’ was entitled to have legal effects in the area of family (relatives and succession), examination of the legal practices in the colonial period seems critical to overcome the often de-historicized notion of the tradition in Korea.

The other inquiry in this presentation is the Constitutional principles of the gender equality and ‘tradition’ from the light of the contemporary changes in family life in Korea. Since family-head system contains article that systematically discriminates the woman against man, mother against father, daughter against son, the system was particularly detrimental to women. However, the changes in contemporary Korea such as increase in divorce, remarriage, and single motherhood, for example, make it difficult to accommodate the family-head system that is built upon the patrilineage, particularly male descendants of the lineage. Male-centeredness seems the main reason why this family-head system has been purported as the beautiful tradition and thus its colonialism in the system has less been under scrutiny. In this way, two logics –male-centeredness and colonialism-embedded in the system have been intertwined with each other.

II. The Constitutional Case about Family-head System

In September 2000, the 113 women's organizations in Korea founded an organization, entitled <The Citizens' Alliance for the Abolishment of the Family-head (hoju) System, hereafter, the Alliance>. By the supports of <The Alliance> and the lawyers those who are the members of <The Lawyers for a Democratic Society>, several lawsuits to appeal to scrutinize the pertinent articles within family-head system in Civil Code from the light of their compatibility with Constitution were filed. Two local courts in Seoul accepted these appeals in March 2001, and forwarded the case to the Constitutional Court in Korea. In February 2005 after almost 4 year's deliberation, the Constitutional Court made a decision as described in the Introduction (http://no-hoju.women21.or.kr; http://antihoju.jinbo.net).

Let me begin by the overview of the litigation. Two appeals have been accepted at the local courts in Seoul. One is filed by a married woman who wants to have a family register (hojok; ) which does not have any family-head (hoju; ). The responsible family register office (Kangso district office) rejected such a demand based upon the Civil Code. The woman did not accept the office's decision and filed a lawsuit. A local court in Seoul (the Northern) examined the appeal and decided the following article needed to be examined its compatibility with the Constitution (case no. 2000 hopa 1673).

**Civil Code Article 778** A person who has succeeded to the family lineage or set up a branch family, or who has established a new family or has restored a family for any other reasons, shall become

---

DRAFT PAPER: The author retains full legal copyright and ownership of the intellectual property rights of this draft paper; this paper may not be used or copied without express permission of the author.
This article institutionalizes the indispensability of the family-head in every family, i.e., a family register. The court found this article unconstitutional on the constitutional grounds of Article 10 (human dignity and value, the pursuit of happiness), Article 11 paragraph 1 and Article 36 paragraph 1 (freedom of family and marital life based upon individual autonomy and gender equality), and Article 37 paragraph 2 (prohibition from the over-restriction of the fundamental rights) of the constitution. Although the legal representatives of the claimant also claim the unconstitutionality of the Article 826, paragraph 3 (main part), the court’s opinion was that "the unconstitutionality of the Article is irrelevant to this case, even if the article is unconstitutional."

**Article 826 paragraph 3 The wife shall her name entered in husband's family register.**

Although this article sounds very plain, it has been regarded as very critical code for all the apparatuses of the patriarchy, through the institutionalization of the patri-local marriage in which wives' familial identity belongs to the husbands.' The Constitutional Court, however, included this Article in the scope of deliberation.

Another accepted appeal was raised by a divorced woman who is a mother of a five-year-old child. When the woman, main caretaker of the child, demanded the transfer of the child's name into her family register from his father's, the family register office (Eunpyong district office) did not accept the demand on the ground of Civil Code Article 781 paragraph 1.

**Article 781(1) A child shall assume its father's surname and origin of surname and shall have its name entered in its father's family register.**

Local court in Seoul (Western) decided the latter part of this article has a potential to violate Constitution, particularly Article 11 paragraph 1 and article 36 paragraph 1, the articles to protect the fundamental rights of equality between men and women (2000hopa 988). The court's opinion was that the former part of the article concerning the child's surname and the origin of surname is not relevant to this case. The latter part, however, perpetuates the violation of the fundamental rights of the mother and child, a real family unit.

Accordingly, the Constitutional Court has examined the constitutionality of the three articles above: Article 778; Article 781 paragraph 1 (latter part of the first sentence); Article 826 paragraph 3. The majority opinion of six justices held these three provisions unconstitutional and incompatible with the Constitution. The majority reasoned that the examined articles were unconstitutional and incompatible with the Constitution mainly based upon...
Article 36 paragraph 1 of the Constitution that that protects human dignity and gender equality in marriage and family life. In this reasoning, clarification of the relations between Article 9 of the Constitution, that emphasizes the respect for tradition, and Article 36 paragraph 2 was one of the central tasks. According to majority, tradition in the Constitution should be understood as a history and time-bound concept, meaning that tradition should be interpreted in the context of Constitution. Thus, in the realm of family, tradition and traditional culture should not be contrary to the dignity of the individual and gender equality. Accordingly, if a certain tradition contravenes the dignity of the individual and gender equality, it cannot be justified on the ground of Article 9 (refer to Yune, 2005).

Although, this reasoning is based upon the notion of fundamental rights that every Koreans must enjoy on which I also agree, there are some unclear aspects in this decision. In the reasoning above, the question if the family-head system is indeed tradition was not well answered. Or, the question about how will the notion of tradition in the context of Constitution be understood does not seem to be dealt with in depth. Does family-head system is incompatible with the Constitution mainly because of its gender discrimination, although it is indeed the age-old tradition of Korea? Perhaps Constitutional Court’s decision would not depend on these questioning about tradition. The socio-cultural realm and family policy area, however, they will have great importance. In this way, clarification of the nature of tradition and its legal effects will eventually become a very critical legal question as well.

III. Dubious 'Tradition' and Colonial Stamps

1. ‘Tradition’ in Legislation of the Family Law

Since the family-head system was legislated in Korean family law in 1957, the system has incessantly been criticized for the revision and abolition. Throughout 1960s, 70s, and 80s, progressive scholars of the family law, women lawyers such as Tae Young Lee, and feminist activists had put enormous energy for the revision of the family law including the family-head system. Nonetheless, family-head system has been the most vehemently defended institution in the family law, the system remains in the law (Lee 1992; Kim 1994). How do we understand the resilience of this system? What does this vehement resistance against the revision of the law often fueled by intense sentiments signify?

The Confucians (Yulim; ) have been regarded as a main opponent bodies against the changes of the family-head system, which are not very socially salient group otherwise. Under the name of 'tradition,' they defended the system in terms of 'good and beautiful custom (' ) for decades. The 'tradition' of Korea has indeed been the central concept, spirit, and jurisprudence for the conservation of the family law throughout the history of Korean family law until today. In comparison to their loud voice about the importance of the tradition, however, the reasons why, by which criteria, a specific institution such as family-head system could be said as
our i.e., Korean, tradition are only provided through dubious rationale. Moreover, the reason why a 'tradition' ought to be inscribed in the contemporary family law has remained unexplained at all, even though a practice is proved to be a traditional. The 'nationalist patriarchy' or 'patriarchal nationalism' as its essence, the belief in the 'tradition' is a curiously twisted terrain of the signification (Yang 2000).

The following is a narrative delineated by Chief Justice Kim Byung-Ro at the Korean national assembly as a Chair of Law Compilation Committee (LCC), which reveals a typical logic of the doctrine. It was June 1957 more than three years after submitting his-own-drafting, governmental bill of the Civil Code.

"It was very difficult to draft the bill of Korean family law. This is because we cannot employ foreign law for the family law. Family law has to be based only upon one's own history, cultural tradition (National Assembly Records, NAR, 1957, 26-30:7)."

Neither the reason why "the family law has to be based upon one's own history and cultural tradition," nor who can tell the truthful tradition, by which criteria was not presented throughout the speech. Instead, strong sentiment about the superiority of Korean tradition and culture was repeatedly expressed. And under the sign of 'nation' as the form, rigid patriarchal family as the content was affirmed. Chair Kim continued:

"The family (or house, jip) is the one which succeeds the root of our nation. Korean family institution is the one which succeeds the patri-lineage, which precisely corresponds to the human physiology.... since the kernel of kernel of human body is coming from the father (National Assembly Records, NAR 1957, 26-30:11)."

Following his opinion, family is the root of the nation, as the father's seed is the root of the family. The most interesting feature of the patriarchal discourses in Korea lies in the logic in which patriarchy has not revealed itself. In this logic, the patriarchy becomes legitimized, naturalized, and hidden under the name of 'the nation (  ),' 'tradition,' and 'Korean-ness.' As seen in the lawsuits delineated above reveals the fact that the multi-layered patriarchal apparatuses are still vibrant in Korean family law: patrilineage constituted by the system of surname/origin of the surname and family register (esp. Art.781), patrilocal marriage naturalized by the married woman's entry into the husband's family register, (Art. 826 paragraph 3), patriarchy in the sense of the male family-headship in every family (Art. 984). According to this 'national' logic, however, the category of gender in affirming the patriarchal family has been securely blocked from the view. Thus, specific gender allocation in, for, and by the lineage is not even acknowledged in the discourse. Thus, claim about gender equality in this discursive context becomes anti-national and Korean family tradition has been the area outside history, a trans-historical 'culture' of Korea.

2. Colonial Invention of Korean ‘Custom’
The family-head system is known as the institution transplanted in the colonial Korea, which originated in Japan, the Japanese old civil code and family registration codes (Chung 1967; Chung 1978; Park 1992). The institutions of family-head ( ), succession of family-headship ( ), family register( ) in Korea were imposed by the Japanese colonial government, based upon her own family institution, the Ie ( ) institution. As Ie was not just a patriarchal family, but extends to specific constellation of the relationships between the state, family and the people, it also had political meanings. The Meiji imperial state, which itself was modeled as a family form, the Ie family could be said as a living cell of the state, and the state, an extended form of the Ie. The family-head in this model was located as a link between the Emperor and family members (the people), a kind of relations of parent and children (Watanabe 1963; Smith 1996). In this light, imposition of the family system in Korea, esp. family register system and family-head system, was politically indispensable for the integration of Korea into the Imperial Japan. The imposition of Japanese family name in 1939 through the third revision of the Ordinance concerning Civil Affairs in Korea ( ) Article 11 was an instance to homogenize the family system in Korean soil with the Japanese (see more, Chung 1967; Yi, 1977; Kim 1996).

If this is such a clear fact, why and how the Confucians and other Koreans think the family-head system 'traditional'? It is an irony to notice such a strong belief in national authenticity of the system, yet not identifying colonial influences and traces in it. The family-head system remained the law after decolonization without much serious discussion.

The irony of the colonial influences seems to be embedded in the colonial policy on family law itself. As the Article 11 of the Civil Ordinance, tantamount to the civil code in colonial Korea, stipulates the central principle of "following the Korean custom" in the field of relatives and succession, the 'custom' in Korea was a very area to which the colonial government had deeply intervened. For the purpose of knowing and ruling Koreans, the Japanese legal scholars and related committees investigated, interpreted, and 'determined' the Korean customs. The items and organization to investigate the Korean custom exactly followed those of Japanese civil code, and 'custom' of Korea was framed by the framework of the Japanese law, as the standard of the customs (refer to Chung 1992). The colonial bureaucrats made decisions regarding Korean customs, incessantly rewritten in the colonial rule. It was a curious principle that seemed to respect the autonomy of the Korean culture and family life, and yet it was the Japanese officials and scholars who filled the content of the 'custom'. In the process of definition of the 'custom', political arbitrariness and Japan-centeredness were profound and serious. Almost every court decision, the phrase such as 'it is the Korean custom' became a cliche (Chung 1967; Yang 2000).

As there were no appropriate 'custom' in Korea, however, specific Articles in the Japanese Civil Code were applied( ), and the scope of the application had expanded throughout the colonialism. The interaction between the applied Japanese codes and Korean custom was another phase of the custom's coloniality. The family-head system in Korea was the case. As the 'custom' as the central principle of the colonial family law, Korean
family institution including the family-headship(oxic) was studied in the process of the legal imposition. In the process of the imposition, Korean family-headship was interpreted from the view of, tailored by, and even mutated with the Japanese family-headship. As a result, Korean family-headship became even more rigidly patrilineal than that of the original inventors in Japan based upon the 'customs' in Korea. As the 'customs' in Chosun dynasty were renewed in the colonial imagining, the male-centered, noble class(oxic)-centered customs were universalized in the colonially 'modern' legal systems (refer to Yang 1999; 2000). It is interesting to see in this context that postcolonial theorists uncover the process of the legalization of 'customs' during the English colonial period, and see how the customs became more rigid and even more feudalistic when they were translated within the system of 'modern' law than the customs remain in the state of informal and local practices (Spivak 1988; Mani 1989).

As every small household became a pseudo-lineage to be continued, the necessity of a son has been indispensable to be 'a family' in Korea. In which space and time, Korean family has resided? As family-head system in Korea has been defended as 'tradition,' the colonialism embedded in the system could have silently continued. In order to save the dignity of national patriarchal subjectivity, the 'traditionalists' have not faced the colonialism. The production of 'customs' indicates us that colonial influences on the 'tradition' would not just the one from outside (oppression of the tradition), but the one from inside (production of the tradition).

IV. 'Woman Question' Revealing Discrepancy between Law and Society

The frequent issues regarding the family-head system are as follows (Park, 1999; http://no-hoju. women21.or.kr).

(i) The impossibility and difficulty of transfer children's family register and surname/place of origin when their parents divorce and remarry
(ii) The pressure to have a son in every household
(iii) The issues about unmarried adult women's or the widow's family register who often belong to the parents' or male siblings' register
(iv) The issues about married woman' family register who automatically belongs to her husband's, or husband’s father’s register.

Interestingly, most of the issues above have been expressed as the problem of 'woman'. As the patri-lineage is an expression of the negation to recognize any kind of matri-lineage, the 'woman's problem' reveals the deficiency of the system that is unable to accommodate the women in just way. Moreover, this problem in the system becomes aggravated by the changes in family style, people’s choice in the family life in Korea that have taken place last several decades. In the following, the discussion will focus on the 'problems' of (i) and (ii) above.

1. Divorced and remarried mothers and children
The children automatically assume to succeed father's surname/place of origin and to belong to father's family register (Art. 781 paragraph 1), unless the children were borne in the matri-local marriage( ) that was a very rare choice. This institution remains latent in the 'normal' marital relations until it becomes a 'problem' upon the couple's divorce or actual marital relations ( ). As this allocation defines almost every Korean child as 'the father's child' in a legal sense, it virtually threatens the mothers’ (and the children’s) right within and without the (parent’s) marriage.

The following aspects notified how this father-centered institution is distanced from actual family lives in Korea as well.

(a) Divorce rate
In spite of the severe disadvantages that women and children will have, the number of divorce in Korea has increased rapidly: 45,694 divorces/362,673 marriages (1990); 68,279 divorces/398,484 marriages (1995); 119,982/333,975 marriages (2000). During the period of 1990s the number of the divorces has increased 145%. In 2000 alone, 329 couples divorced while 915 couples married a day. In average, one among three couples will end up with divorce. The children of the divorced parents amount to 98,498 in 1998.

(b) Single parent's family
Between 1990 and 1995, the number of the single-parent family households increases 148% (from 50,000 to 124,000 households).

(c) Divorced mother as a main care-taker
An analysis of the 200 divorce cases in 1999 at the family court in Seoul illustrates that the cases in which mother became the main care taker of the children numbered 132 cases (66%), while only 64 fathers (34%) became the one (refer to Kim 2000:46). In general, 2/3 children of the divorced parents would live with and receive care mainly from their mothers in Seoul area.

(d) Remarriage Rate
Rate and numbers of remarriages also increased throughout 1990. 18,850 cases of remarriages (1990) – 22,779 cases (1995) – 33,607 cases (1999). During the period, remarriage cases have increased 68%. Both women’s and men’s remarriage has increased in a steady manner (refer to Korean Statistics Information System, http://www.nso.go.kr/koesisdb).

In spite of these general and clear trends, the family law is very firm about the ‘normal’ family, which naturalizes the monogamous relations, the husband and wife, and their children. Upon the parental divorce, the children do not have much choice to move or to leave the father's family, not to mention to select family identity and family relations that are more meaningful to them. As Article 784 stipulates, when a wife transfers the family register of the child of the previous marriage into her current husband's (not her own), the wife must, not may, need a consent both of the current family-head of the child as well as her husband.
Article 784 (1) If a wife has lineal descendants who are not her husband's blood relatives, she may, upon the consent of her husband, have their names entered in her husband's family register. (2) If, in the cases mentioned in paragraph (1), the wife's lineal descendants are members of another family, their entry into her husband's register shall be subject to the consent of the head of such family.

Once the children earn two consents, the child still has a problem. That is, the problem of inconsistency between the surname between their own and the stepfather's. The phenomena above illustrates the degree if the difficulties the children and divorced would have suffered due to this strict father-centered family institution. Father-centeredness also means extremely unbalanced parental rights. See the following articles

Article 782 (1) if a member of a family gives birth to a child out of wedlock, he may have his child's name entered in his family register. Article 785 The head of a family may have the names of his own lineal ascendants or descendents who as not the head of another family register, entered into his own family register.

Articles 782 and 785 indicate that a father, often a family-head, does not need consent of the child's current family-head or mother. This also violates the right of the 'real' mother who does not want to have her child's name into the father's family register, and the stepmother who does not want to have a child out of the current marital relations in her family’s register. The institution of fatherhood would provide the men in Korea freedom to have extramarital relationship. Compare the skewed treatment even between the father's child 'out of wedlock' and mother’s child from 'the previous marriage.' The institutions of fatherhood, family name and family register are all included in the system of the family-head

2. Indispensability of a son in a family

Now let us move to see how the family-head system defines a son more precious than a daughter. The following article is at the point:

4 The following stories show the tips of the iceberg, the phenomena of the family-head system: (i) Miss Park gave up marriage after serious fights with her fiancé, even though she was in her last stage of pregnancy with him. Although the man who menaced and threatened miss park for aborting the baby, he took the two months old baby by saying, "the baby is my child. The child's name is listed at his family register and succeeds his father's surname (Hankyore Newspaper, 2000.5.16: 33).

(ii) "I remarried when the children were very young, and thus they have known my husband a natural father. Since we are afraid of causing our children pain to find out the truth, and receiving doubtful eyes from the society, we brought the children in foreign country. They are now 15 and 17 years old. (http://no-hoju.women21.or.kr The Victim Cases)"
Article 984 With respect to succession to the family headship, persons become successors in the following order:
1. A male person who is a lineal descendant of the inheritee;
2. A female lineal descendant who is a member of the family of the inheritee;
3. A wife of the inheritee;
4. A female lineal ascendants who is a member of the family of the inheritee;
5. A wife of a lineal ascendant who is a member of the family of the inheritee.

Although the female descendants is given second priority in the succession and that four of the five candidates are women, second in the priority is a status very far from the first, because there are several types of male successors who have absolute priority. The eldest son, the second son, or adopted son and a stepson are all prior to the older, female, biological descendants of the family-head. Even the son out of wedlock has priority to older daughters in the succession of the headship. The specification attached to women, that they must be a "member of the family" of the family-head is also significant, since the women automatically change their family register upon the marriage. Thus, the headship that is rarely bestowed upon women is also a temporary one. Thus, it is a system that makes a son indispensable in every family register. Kim Sangyong sums up the system as "the institution to secure the male succession of the family." Probably this precisely marks the point where the traditionalists claim the system as the 'tradition.' The statistics below indicate how this tradition actually works in women and men in Korea.

(a) The ratio of the gender in Korea
- Male: Female 115.4:100 (1993)
- Male: Female 113.2:100 (average during the period of 1989 and 1998)

The ratio becomes more unbalanced in the cases of third and fourth children.
- Third children 205.9:100 (1994)
- Fourth children 237.7:100 (1994)

The ratio illustrates how desperately the people in Korea, esp. women, put their effort to have a son. Without artificial intervention, such numbers would not have been possible. A doctor of the Oriental medicine, Dr. Kwangsoon, Ko-Eun testified that there are many women who came to the Oriental medicine in order to get the "a medicine to bear a son." A survey in 1995 of 200 doctors of the Oriental medicine reports that 90% of the doctors have been asked for the prescription for having a male child, and 60% of them responded such a demand. The reasons why the women wanted to have a son were said to be "the demand of the elderly in the family(60%)," "continuation of the family lineage (tae) (http://antihoju.jinbo.net.free exchanges of opinion, no.26)." It is estimated that thirty thousand female fetuses have been aborted yearly after the inspection during the period
between 1988 and 1996 on average.\(^5\)

While Chizuko Ueno (1995) describes the system as "an extended family living in a nuclear household," as a 'modern' invention of the Japanese 'traditional' family, I would like to characterize the Korean family-head system as 'patrilineal-nuclear family.' It seems fair to say that women in Korea as a daughter are discriminated from the birth, and they need to bear a son when they become an adult, and they are destined to disappear in the patrilineage when they have passed away. The family-headship indeed is nothing but a common status that every male adult in Korea would once have, it is a 'gender status' in Korea, within which gender is figured in a very binary code. The influences of the family-headship are both symbolic and very real.

### 3. Other Family Changes

There were other family changes by which the logic of family-head becomes out of date. Most of all, the system presupposed the male descendant at least one or two. Lower birth rate and small size of a family which become the undeniable reality in Korean society, however, are unable to realize the logic of the system.

(a) **Size of the family**

The decreasing number of family members in a household: \(5.56 \text{ (1960)} \rightarrow 3.34 \text{ (1995)}\)

The ratio of the household more than seven family members: \(32.9\% \rightarrow 3.6\% \) (same period)

(b) **Type of the family by Generation:**

(b-1) **Generations:**

The ratio of the household in terms of the numbers of the generation:

- One-generation household: \(10.2\%(1990) \rightarrow 12.7\%(1995)\)
- Two-generations household: \(66.3\% \text{ (1990)} \rightarrow 63.3\% \text{ (1995)}\)
- Three-generations household: \(12.2\% \text{ (1990)} \rightarrow 9.8\% \text{ (1995)}\)
- More than four-generations household: \(0.3\% \text{ (1990)} - 0.2\% \text{ (1995)}\)

With the industrialization and urbanization of the country, the size, function, and the meaning of the family have been rapidly changed. The

---

\(^5\) The followings are the stories of women's pains attributed to the system addicted to the son.

"I am married for 18 years. Without having a son, I have two daughters. My husband began to have extra-marital relationship, wanting a son. Since my mother-in-law eagerly wants to have a (grand) son, my husband is influenced. I have suffered from the enormous stress ((http://no-hoju.women21.or.kr The Victim Cases )."

"I am married for 10 years and have a daughter. My husband wants a son. I felt sorry for him and my husband does not want to go to the meetings where all of his friends brought their sons. Sometimes, I would like to leave this country. It is beyond my description how miserable I feel (same site)"
social changes made the family-head system divergent from the social reality and people's needs. The family in this era becomes more the unit of 'intimacy' than of lineage and genealogical origins. The various family life, and forms and the values have been oppressed by a unifying normalizing family system. As all these 'problems' have tended to be expressed through the women, the women and their sufferings can be read as symptoms of the patriarchal structure.

**V. Concluding Remarks**

From the discussion of the family-head system within the context of colonialism and the contemporary changes in the family, the meaning of Constitutional Court and abolition of the family-head system seems fundamental. It will lead reorganization of the society through the change in the notion of family, relationship between gender, and eventually identity of individual in the society.

This change is invaluable fruit of the long history of revision movement of the law initiated by feminist lawyers, legal scholars and activists. The history of family law in Korea is indeed a history of revisionist and women’s movements for fifty years. As a result, the most resilient institution in the Korean family is now destined to disappear under the Constitutional principle of gender equality.

The interesting aspect here is that the feminist historical analysis of family–head system initiated the analysis of the colonialism embedded in the law, rather than the criticism of the colonialism initiates the problem of the family-head system. In other words, the public awareness of the coloniality in the family-head system came from the gender analysis of the system, not vice versa. Seen this way, it is difficult to deny that feminist criticism of law has provided the source for energy and the spirit of the revision movement.

The present moment, however, seems to me is an interim period in which the old has finally been abolished, yet the new is still obscure. Particularly we need to create new registration system for recording and certifying each one’s status such as birth, marriage, divorce, giving a birth, adoption, death, etc.

Invention of tradition based upon the present time seems another important task. 'Tradition' regarding ancestor veneration, the definition of ancestor, ancestor commemoration group( ), and the places of women in it, to name a few, need to be reinvented from the standards of the contemporary needs that is not against the gender equality.

Family welfare policy, especially policy for supporting and redistributing the care work is now to be planned and implemented. Family-head system as a 'symbolic' family institution that regulates the family based upon each one’s status, the issues of substantive familial needs and conflicts such as child rearing, elderly care, issues of intimacy, violence, life after divorce, etc have been treated as marginal ones. Without family-head system, there is no roof to hide all those issues in the family, and it is time to establish to accommodate such needs into the family policy.

The other task, however, lies in 'deconstruction,' deconstruction of
family-head system, the 'status', and invisible habits and tastes produced by the system. Eventually it is the distorted modernity in conjunction with colonialism that needs to be deconstructed. More specifically, gender discriminatory framework of the family not in the level of law but in the level of everyday practice needs be abolished. The state's support of the 'normal' family that is with heterosexual couple who are in their first marriage, with their biological children is no more effective way to govern the country. Stereotypical image of 'normal' family as a unit for family policy needs to be replaced by accepting the diversity in family and individual life style.

This presentation tries to convey the view to overcome often unhistorical and unscientific notion of 'tradition,' and thus the binary code of tradition versus gender equality and tradition versus modernity. By looking at the law in the context of the history and society, it is discovered that the meaning of law does not merely lie in being as a medium for the rule of law, but it itself being what constitutes the society. The law becomes a map of a society through which we read and lead the society.

References (to be noticed)