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## KOREAN ATTITUDES TOWARDS LAW<sup>†</sup>

Chan Jin Kim<sup>††</sup>

*Abstract:* Transformation is the key word to explain the Korean attitudes towards law. In the early 1950's, nation building gave impetus to economic growth and allowed Korea to quickly pass through the preliminary stages of development. Industrialization, urbanization and eventual emigration of the populace have, in many senses, displaced the traditional social value system based on Confucianism. However, a new value system has yet to take hold. The lack of such guidelines has left Koreans in a state of confusion in a world that continues to change. The Korean Constitution clearly mandates equal protection under the laws for all Koreans. However, such concepts as fundamental rights, human dignity, sovereign power, or election of officers were only introduced after 1948. As a result, Korean attitudes toward law have failed to keep pace with economic development. While attitudes are shifting, a lack of respect for the law is still a challenge that must be overcome before Korea joins the ranks of a truly industrialized nation.

### I. INTRODUCTION

Over thirty years ago, Professor P.C. Hahm first posed the question of whether the word 'law' has the same meaning to the average Korean as it does to the average Englishman.<sup>1</sup> At that time, in his view, the Western "Rule of Law" conflicted with the cultural values and historical traditions of Korea.<sup>2</sup> With its industrialization proceeding at a rapid pace, Korean society has changed significantly and Korea has sought to become an active participant in world affairs. In light of these developments, it is appropriate to reexamine Professor Hahm's question.

While it is true that Korea has not yet achieved the status of a full-fledged democracy, great progress has been made in improving Korean attitudes towards law. Though Professor Hahm may have been correct thirty years ago in identifying a discrepancy between traditional Korean values and the rule of law, rapid changes in Korean society during the second half of the twentieth century have brought about the dissolution of many of these traditional values. New values have now arisen to take the place of many of

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<sup>†</sup> This paper is based on an earlier version originally presented at the Centennial Celebration of the University of Washington School of Law in Seattle, Washington, May 3, 2000.

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<sup>1</sup> See generally PYONG-CHON HAHM, *THE KOREAN POLITICAL TRADITION AND LAW* 205-17 (1971).

<sup>2</sup> All uses of the word "Korea" in this paper refer to the Republic of Korea.

Korea's discarded traditions. Emerging values in modern Korean society are far more compatible with the rule of law.

Despite these changes, the current state of legal consciousness of the Korean people remains a major obstacle to overcome in the course of democratization. Lack of respect for the law presents an enormous barrier to social change and advancement in Korea and there must be a renewed determination among the Korean people to promote a law-abiding spirit.<sup>3</sup>

Exemplifying this lack of respect for the rule of law is the reality that the mere mention of the word "law" in Korea makes the average Korean apprehensive. While it may be argued that the idea of "law" would elicit the same kind of response from their Western counterparts, those who have spent time in Korea and the United States cannot help but notice an attitudinal difference towards the rule of law. Examples of this difference in attitude are prevalent in everyday life in Korea. It is not uncommon to encounter pedestrians disregarding a crosswalk sign or littering on the street. Traffic regulations are so commonly violated that many foreigners are reluctant to drive in Korea. When individuals are accused of violations of petty regulations, they may argue with the police and ask, "Why in the world do you pick me up, while leaving so many violators unpunished?"

Having been involved in Korea's nation-building process as well as the formulation of economic policies and having dedicated myself for a period of nearly forty years to the creation of a society ruled by law,<sup>4</sup> it is my personal obligation to revisit the subject of attitudes towards law in Korea and to present my own views on the issues involved.

This article examines the development of Korean legal consciousness from the Dynastic Period to the present, focusing particularly on the changes that have occurred in the past thirty years. The most influential factors in the modern development of Korean legal consciousness are economic development, the examples of political leaders, and the restructuring of the Constitutional Court. Each of these factors is discussed in detail.

Part II identifies the historical, cultural and religious reasons for societal attitudes towards law in Korea and other countries, and the differences that exist between countries despite a similarity in the structure

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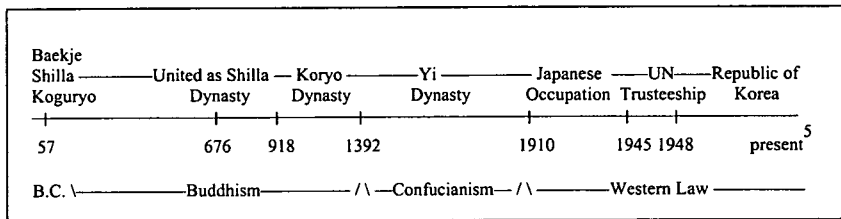
<sup>3</sup> President Kim Dae Jung has repeatedly called attention to the absence of the rule of law in Korea. See *Justice Ministry to Set Up Office to Promote Respect for the Law*, KOREA HERALD, Apr. 21, 2000, available in <<http://www.koreaherald.co.kr/archives>>.

<sup>4</sup> After graduating from the University of Washington Law School, I served in the President Park Chung Hee administration. I was formerly Assistant Minister for Economic Administration Coordination, Office of the Prime Minister (1980-1986), Secretary to the President for Economic Affairs (1978-80), Director-General, Office of Foreign Contract Review, Economic Planning Board (1973-78) and District Attorney, Ministry of Justice (1967-73).

and values espoused in their legal systems. Part III discusses Korea's economic development and industrialization, and concludes that although many social factors that tend to promote democracy have arisen, the pace of modernization has left a great imbalance within Korean society. Part IV identifies and discusses the social changes brought about by Korean economic growth. Part V examines the role of political leadership in fostering respect for the legal system, and identifies the effects, both positive and negative, on the rule of law in Korea during the Presidential administrations of Park Chung Hee, Chun Doo Hwan, Roh Tae Woo, Kim Young Sam, and Kim Dae Jung. Part VI looks at the creation of a new Constitutional Court in the 1987 Constitution and examines the ways in which this Court has brought about changes for the better in the Korean people's attitudes towards law.

## II. HISTORICAL, CULTURAL, AND RELIGIOUS ORIGINS OF THE CONCEPTION OF LAW IN KOREA

**Figure 1. Historical Outline**



Historically, a common sentiment throughout Korea was that to obey the law implied the forfeiture of a reward that could be reaped through lawless or quasi-lawless behavior. That sentiment continues today under a democratic form of government, where the violation of minor regulations for the sake of personal convenience is an aspect of everyday life in Korea. Such an attitude may have originated from Korean dynastic history, which was marked by the successive reigns of various authoritarian rulers. In modern history as well, leaders, even if originally elected by the direct votes of the people, often became dictatorial. This attitude might also have arisen due to the “gap” between the values embraced under the Confucian system of the East and the concepts of law, justice, and equality espoused by the

<sup>5</sup> The historical outline is not drawn to scale, due to a number of important events that have happened within the last fifty years.

West. After centuries of being a Confucian society of vertical human relations, the Korean people were suddenly forced to become citizens of an open society based on horizontal relations.<sup>6</sup> Because of this role conflict, it is difficult to reconcile the gap and the resulting confusion between their past and present.

Another aspect of this gap comes from different meanings of the word "law." Under the traditional legal system, which Korea inherited from China, compliance with "*li*" (propriety) was emphasized in the context of social life, and filial loyalty was highly praised. While "*li*" required strict adherence to morality and introduced the ideal of a person who could live without the assistance of the law, "*fa*" (law) emphasized law and order and compliance with statutory provisions.<sup>7</sup>

This ideological gap was compounded by the forced introduction of Western law during the Japanese colonial period, which reinforced the understanding that the law only served the powerful and relegated the citizenry to a secondary position as subjects without a voice.<sup>8</sup> An understanding of Korean attitudes towards law and legal consciousness thus requires a brief survey of history, culture, and religion. Included in this survey are external influences on law and the indigenous factors influencing legal consciousness prior to the transition to a Western legal system.

#### A. *Historical Overview of Legal Structures in Korea*

##### 1. *An Agricultural State with Confucian Roots (57 B.C.-1910)*

At the beginning of the dynastic period, the Korean peninsula was divided into three Kingdoms: "*Shilla*" in the Southeast, "*Baekje*" in the Southwest, and "*Koguryo*" in the North. In 676 A.D., these three regions were unified under the *Shilla* Dynasty. Buddhism was the national religion under the *Shilla* and *Koryo* Dynasties, which spanned some fourteen hundred years (57 B.C.-1392). Confucianism, however, replaced Buddhism as the supreme guideline for both government administration and civilian

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<sup>6</sup> The term "vertical human relations" refers to the traditional caste-like class system, wherein one's class determined their position in society. Under vertical relations, upward movement between classes was very restricted. Modern democratic societies generally have horizontally-based human relations, embracing the common principle of equality before the law. In a modern society, protection of human rights is viewed as one of the highest values, with individuals' standing in society determined by their ability and achievement.

<sup>7</sup> HAHM, *supra* note 1, at 21-22.

<sup>8</sup> *Id.* at 212.

life under the Yi Dynasty (1392-1910).<sup>9</sup> Explanation for such a change in basic values is possible upon a review of history.

The first king of the Yi Dynasty, Taejo, was formerly chief of staff of the Koryo army. On his way to Manchuria to conquer infiltrators from the North, he decided to withdraw his troops back to the capital city of Koryo to effectively take power and then established a new kingdom of his own in 1392. Until that time, Buddhism had prevailed in the government as well as among the people throughout the written history of the Korean peninsula. Successive kings heavily relied on the religious practices of Buddhism, which, in turn, fully supported the succession of the Kingdom. Thus, leaders among the Buddhist monks and the Royal family joined together in thoroughly exploiting poor farmers and lower class people while indulging in corrupt, spoiled, and extravagant life. It was quite natural that Taejo's sudden revolt was not praised by the Buddhist sectors, while the majority of people fully supported the new dynasty. To gain legitimacy, Taejo suppressed Buddhism and encouraged the adoption of Confucianism as the symbolic guidelines of his kingdom. Ever since that time, Confucian teachings and ideology have dominated traditional and agricultural societies in Korea.

Once the initial period of nation building was over, preference and privilege in the Yi Dynasty were commonly granted along class lines, with social and legal expectations differing according to one's rank in society. For example, scholar-officials were recruited to work in bureaucratic organizations exclusively from the sons of the *yangban* (the noble class) on the basis of their performance on royal examinations. The *yangban* received preferential legal treatment when compared to other social classes in terms of both privilege and obligation.<sup>10</sup> These differing standards extended into the criminal justice system, where the *yangban* received more favorable treatment overall and particularly in the application of different procedural rules.<sup>11</sup> In general, the whole political and social system was structured so

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<sup>9</sup> See HAHM, *supra* note 1, at 8-9.

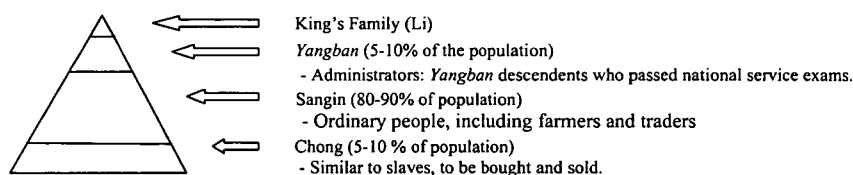
<sup>10</sup> The term "*yangban*" literally means "two classes" of high government officials, including those in civilian service as well as those in the military. Members of the *yangban* class followed a different moral code and were not subject to compulsory military service and labor, obligations that commonly were borne by members of the lower classes. *Yangban* members were required to abide by Buddhist rules against extravagance, corruption, immoral behavior, superstitions, etc. This may have been one of the reasons why the Yi Dynasty emphasized Confucianism.

<sup>11</sup> For a description of the criminal code of Ming and the criminal procedures during the Yi Dynasty, see Byoung-Ho Park, *Traditional Korean Society and Law*, in BUSINESS LAWS IN KOREA 59-60 (Chan Jin Kim ed., 1988).

that once one became a scholar-official, one had great power, prestige, and the benefit of lower legal standards of behavior.<sup>12</sup>

Upon passing a national examination administered by the king, sons of the *yangban* would be appointed as government officials, generally at a level equivalent to today's Section Chief of a division at a ministry in the national government. As time passed, they were dispatched to positions equivalent to mayor, county chief, or provincial governor throughout the country. Heads of each administrative unit performed the function of the three branches of government: legislative, executive, and judicial. The head of the administrative unit adjudicated civil and criminal cases and, naturally, the will of the administrator prevailed. In the eyes of the people, there was little predictability in the outcome of any proceeding and arbitrariness superseded a sense of justice or fairness.<sup>13</sup>

Figure 2. Hierarchy under the Yi Dynasty<sup>14</sup>



Throughout the six centuries of the Yi Dynasty, the legal system was used as “an instrument to chastise the vicious and the depraved.” Its function was essentially as a vehicle for punishment, and it was applied only to the ignorant masses.<sup>15</sup> Under the Yi Dynasty, Confucianism established the precedent of preferential legal treatment in accordance with one's social status. Society was vertically structured, with sovereign rights granted only to the King. For the majority of the citizenry, there was no sense of equality. Over the course of the Yi Dynasty, the ruling class and the lawmakers enjoyed their status of being above the law, while ordinary people suffered as the only subjects under the law. Thus, the vast majority of the people

<sup>12</sup> See Dai-Kwon Choi, *Western Law in a Traditional Society: Korea*, in BUSINESS LAWS IN KOREA, *supra* note 11, at 82, 92.

<sup>13</sup> See HAHM, *supra* note 1, at 41.

<sup>14</sup> This was the approximate distribution within society at the beginning of the Yi Dynasty, although the size of the *yangban* later increased immensely, primarily through corrupt methods of buying family registers. See Choi, *supra* note 12, at 90.

<sup>15</sup> HAHM, *supra* note 1, at 19.

viewed the law as a means of oppression, while the upper class saw the law as a convenient tool to perpetuate their status and privileges.

## 2. *Colonialism and the Introduction of Western Law (1910-1945)*

The introduction of Western law, based on the continental legal system, was accomplished during Korea's thirty-five years as a Japanese colony. During this period (1910-1945), the Japanese legal code was imposed on the Korean peninsula. This code was mostly derived from German law, with a limited French influence in the field of commercial law. Under colonial rule, law was merely an instrument of exploitation and was used to justify a systematic destruction of traditional Korean society. Once again, law was for *others*, and this time, it was even more odious since the "*other*" was a foreign master. For the majority of Koreans, the function of the legal system remained unchanged. Instead of privileges being granted to the royalty and the *yangban*, Japanese citizens enjoyed an exemption from legal constraints.<sup>16</sup> It remains today that the most harmful Japanese colonial legacy is in the area of politics and law.

In virtually every level of the government, ranging from the neighborhood police to the highest colonial administration, law itself came to symbolize the colonial rule. Korean people were forced to change their family names to sound "more Japanese" and were punished for speaking the Korean language in public. In every practical sense, law became synonymous with colonial oppression and reinforced the age-old conviction that the legal system served those who had the power to make the law. During this period, law came to be seen as the antithesis of equality, justice, and inalienable rights. Likewise, patriotism coincided with having the courage to commit treason or to show disrespect towards the colonial rulers. Breaking the law was regarded as a means for the people to express their discontent with colonial rule.

Hence, regardless of the impressive values espoused by Western law and the modernity of the system, the context in which the law was introduced and enforced played a critical role in the negative Korean attitudes towards law. The introduction of Western law came with a blatant disregard for the existing social infrastructure and an indigenous way of life in Korea. This disrespect for culture instilled a sense of disdain for law and

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<sup>16</sup> See Dae-Kyu Yoon, *New Developments in Korean Constitutionalism: Changes and Prospects*, 4 PAC. RIM L. & POL'Y J. 395, 397 (1995).



its officers, be they Japanese or Koreans who had aligned themselves with the Japanese.<sup>17</sup>

### 3. *U.S. Influence on the Republic of Korea After World War II (1945-present)*

When Korea was emancipated from Japanese colonial rule after World War II, it adopted a democratic political system with sovereign power vested with the people.<sup>18</sup> After over five hundred years of life under a Confucian-structured society and thirty-five years under a brutal colonial occupation, people were suddenly informed that they had control of their sovereign rights. People could not fully understand the meaning of sovereign rights during the initial years of the Republic because such concepts had never been introduced or matured within the indigenous Korean society.

As in many other post-World War II nations, initiation of a republican form of government was synonymous with the influence and acceptance of the American constitutional system. A civilian government was established in Korea with the adoption of a new constitution, enunciating in unequivocal terms the separation of powers among three branches of government, free elections, and the protection of fundamental rights.<sup>19</sup> The Constitution of the new Republic was drafted by the leading members of the National Assembly, who were mindful of the U.S. Constitution.<sup>20</sup> As soon as the Korean Constitution came into effect on July 17, 1948, the National Assembly was also drafting and enacting a number of laws, such as the Government Organization Act, the Court Organization Act, and other laws essential at the inauguration of the new Republic. Mindful that there must be a cognizable legal system in place at the birth of the Republic, the National Assembly passed the Incorporation Act, which made most of the statutes then in force effective under the new Constitution until such time as

<sup>17</sup> Park, *supra* note 11, at 57.

<sup>18</sup> DAE HAN MINGOOK HUN BUB [CONSTITUTION OF THE REPUBLIC OF KOREA] art. 1, § 2 (1987) translated in CURRENT LAWS OF THE REPUBLIC OF KOREA 1-26 (Korea Legislation Research Institute ed., 1997) [hereinafter KOREAN CONSTITUTION]. However, the roots of an independent Republic of Korea predate the 1948 Constitution. During the Japanese colonial rule, Korean independence leaders formed a provisional government in Shanghai which, following the independence movement of March 1, 1919, proclaimed Korea an independent state. The origin of the current Constitution derives the legality of the government from this movement. See KOREAN CONSTITUTION, *supra*, pmb1.

<sup>19</sup> Tscholsu Kim, *American Influence in the Constitutional History of Korea*, in THE INFLUENCE OF THE U.S. CONSTITUTION ON PACIFIC NATIONS 127 (F.E. Cameron ed., 1988).

<sup>20</sup> See Kyong Whan Ahn, *The Influence of American Constitutionalism on South Korea*, 22 S. ILL. U. L.J. 71, 72-74 (1997).

replacement statutes could be enacted. Thus, the new legal system was established by representatives of the people and laws in the new government emerged from their own free determination.

For the first time in Korean history, concepts such as democracy, sovereignty, and a constitution guaranteed equality before the law. One Western newspaper article from the 1950's stated that it would be better to wait for roses to grow from a garbage can than to expect democracy to take root in Korea. However, as with many social situations, time seems to have been the best cure. Things are improving and people are beginning to see that the legal system works. During their last fifty-two years as citizens of a new republic, Koreans have exercised their voting rights sixteen times to elect presidents and members of the National Assembly.<sup>21</sup> As Koreans have begun to realize the meaning of their power, there has been a greater demand for freedom, smaller government, and the equitable administration of justice. Through the repeated exercise of their voting rights in free and fair elections, Koreans are now beginning to realize that they are the direct source of the nation's power.

### B. *The Correlation between Religion and Social Order*

One factor that has influenced Korean attitudes towards law is the "gap" between Confucianism, the official ideology of the Yi Dynasty, and Christianity, which is the value basis for many American laws that influence modern Korean society.

In the West, justice is defined as a guarantee of each person's individual freedoms and private rights. These values are in accord with the basic teachings of Jesus Christ, wherein individuals are equal before God. The ideas of love, sacrifice, and forgiveness espoused in Christianity correlate with the principle that all people are equal and have inalienable rights.

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<sup>21</sup> Presidential election procedures were distorted at times by legislation that allowed the President to be elected by indirect voting. One example of this is the Citizens' Conference for Reunification (*Tongil Juche Kukmin Hoeui*) that re-elected President Park Chung Hee in 1972 and 1978. During the turmoil after the assassination of President Park on October 26, 1979, the same entity elected Choi Kyu Ha in December 1979 and Chun Doo Hwan in August 1980. See CENTRAL ELECTION MANAGEMENT COMMITTEE, DAHAN MINKUK SEONGEOSA [ELECTION HISTORY OF KOREA] II 295 (1973); CENTRAL ELECTION MANAGEMENT COMMITTEE, DAHAN MINKUK SEONGEOSA [ELECTION HISTORY OF KOREA] III 39-41 (1979); CHE 12 DAE DAETONGRYONG SEONGEO CHONGRAM [OVERVIEW OF THE 12TH PRESIDENTIAL ELECTION] 36 (1981); Sang-Don Lee, *The Influence of U.S. Constitutional Doctrines on the Development of Korea's Governmental Structure*, in BUSINESS LAWS IN KOREA, *supra* note 11, at 31, 46-49.

Koreans, however, are not historically familiar with a sense of abstract justice that includes the elements of freedom, equality, and fairness. Since the time of the Yi Dynasty, Koreans have experienced particularistic justice, which took into account an individual's relative position in society and circumstances. One result of a vertically structured society is a common belief that humane and equitable law should adjust to the circumstances at hand. Though social stratification was never as extreme as the Hindu caste system, Koreans have always had a very rigid sense of social hierarchy. Human relationships invariably contained elements of superordination and subordination, according to the social standing of the individuals and their relationship to one another.<sup>22</sup>

While an increasing number of Koreans claim to be Protestant or Catholic,<sup>23</sup> the roots of Korean values and society stem from Confucianism. Such concepts as "love your neighbor," "all people are equal before God," "forgiveness upon repentance," and "the sharing of possessions with your neighbors" had little meaning in the daily life of the Korean people.<sup>24</sup> Whereas the guiding principles of law coincide with Western ideology, there is a "gap" or lack of synchronism between the law and the minds of the people in Korea. A belief in these values and teachings is not necessary. Without adaptation to the terms we use to correlate similar values, it is doubtful that Western notions of law and justice can be effectively integrated into an Eastern society such as Korea. The establishment of guiding principles is imperative in order to resolve social problems and disparities and to establish the rule of law.

### C. *Contrasting the Conceptual Origins of Law in the United States with those of Korea*

In many senses, the United States can be called a "born-free"<sup>25</sup> society. Immigration to the New World was a revolt against the existing system in Europe and ignited the beginning of a new era. The U.S. economy was already in the midst of transformation at the time of the drafting of its

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<sup>22</sup> HAHM, *supra* note 1, at 36.

<sup>23</sup> According to statistical sources, approximately 19.7% of the Korean people are Protestant and about 8.7% are Catholic. See NATIONAL STATISTICAL OFFICE, REPUBLIC OF KOREA, 1995 POPULATION AND HOUSING CENSUS REPORT VOL. 1 342 (1995); Hankuk Chonjukyo Jukyo Hooeui [Catholic Bishops' Conference of Korea], Sinja Tonggye [Statistics on Believers] (visited Nov. 16, 2000) <<http://www.cbck.or.kr>>.

<sup>24</sup> These values will have to be the ideal ones for a post-industrialized society and Korean people will eventually benefit from adopting such values.

<sup>25</sup> W.W. ROSTOW, THE STAGES OF ECONOMIC GROWTH 17 (citing a term coined by Louis Hartz in THE LIBERAL TRADITION IN AMERICA (1955)).

Constitution. Since it was a desire for freedom and democracy that prompted the formation of the United States, the words describing these concepts are meaningful symbols to Americans.<sup>26</sup> The Constitution and statutes of the United States were drafted to reflect the values of a majority of American people.

At the time of liberation from Japanese rule, the United States and the United Nations essentially transplanted American values into Korea without adaptation or consideration for the context and views of the Korean people, and without regard for centuries of tradition and adherence to Confucian values.<sup>27</sup> As a result, despite the intent of the laws to bring rights and obligations based on equality and liberty to Korean society, such values have nevertheless failed to penetrate deeply into our present-day way of living. In other words, despite our professed belief in the political ideals of the West and our eagerness to adopt them as our own, we have not, to a great extent, succeeded in assimilating them into our system or in creating a new synthesis suitable to Korean society.

While Korean politicians and intellectuals frequently make references to such concepts as freedom, justice, equality, and democracy, these words have until recently been devoid of a cultural content. Since these terms are unfamiliar to Koreans, the concepts themselves have not been fully understood. For example, while the Korean Criminal Procedure Code requires that police inform a suspect of (1) the right to remain silent at the time of interrogation (§ 200-2) and (2) the right to retain a counsel at the time of arrest (§ 88, § 200-5), police officers tend to omit or abbreviate the reading of such rights at the time of arrest. On the other hand, criminal suspects often do not object to the violation of those rights. Nevertheless, as democracy begins to take a firmer root in Korea, more Koreans are likely to become familiar with these terms and are thereby expected to more actively enforce their rights.

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<sup>26</sup> HAHM, *supra* note 1, at 5-6.

<sup>27</sup> See Kim, *supra* note 19.

### III. COEXISTENCE OF TRADITION AND MODERN ECONOMY IN KOREAN SOCIETY

#### A. *The Different Paces of Economic Development in Korea and the United States*

The difference in the pace of economic development in Korea and the United States makes it difficult to view Korea's situation and the attitude of the Korean people towards law through American eyes. The United States has achieved its strong economic position as a result of more than 200 years of industrialization. In contrast, the bulk of Korea's industrial development has occurred during the past forty years.

While Korea's center of economic activity had shifted from agriculture to industry by 1985, people's thinking and behavior remained the same as they were in the traditional agrarian society. With such an abrupt change in the economy and a corresponding rapid urbanization as people moved to the new industrial centers, there was no time for Koreans to change their attitudes towards law to reflect their new environment.

##### 1. *Gradual Economic Development in the United States*

The United States' industrial revolution and resulting economic development took place over the course of more than 200 years, its inception predating the country's formation. The process of gradual industrialization allowed the American people to absorb the impact of the changes in material life and to integrate American values of law and justice into their social system. Americans have been able to adjust their attitudes in accordance with the gradual changes in law and the modernization of society. This allowed for a synchronism of law that correlated with the social and industrial evolution of society. A typical aspect of such a normal growth is that the values espoused by law better coincide with the values embraced by the people.

##### 2. *Rapid Economic Development in Korea*

In the early stages of economic development, the Korean government adopted the "unbalanced growth theory"<sup>28</sup> and concentrated on building up

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<sup>28</sup> Under the unbalanced growth theory, the development of certain sectors is allowed to proceed at a faster rate than the development of others. Rather than having all of the economic sectors grow in lockstep with one another, growth is communicated from the leading sectors of the economy to the followers, from

labor-intensive light industries. Such a policy choice was probably unavoidable given that Korea's only major resource at the time was a highly educated labor force. In 1962, Korea began to put into force the first five-year economic development plan, which was implemented in an effort to achieve rapid economic growth.<sup>29</sup> From 1974, Korean construction companies began to actively participate in civil works and official projects offered in Saudi Arabia, Kuwait, and other Arabic nations. Construction contracts alone generated \$10 billion in revenue annually by 1978. There were over 100,000 Korean workers in the Middle East by the late 1970s, providing Korea with sorely needed foreign currency. By 1978, investments in heavy industrial projects and other capital-intensive industries were extremely overlapping and needed government intervention to avoid excessive investment arising because of severe competition. Therefore, the government instituted an investment rationalization program to trim the number of firms in similar product lines and encourage mergers and acquisitions in order to realize economies of scale.

During the rapid growth period of 1962-1978, founders of the major *chaebol* (large industrial conglomerates), such as Hyundai, Samsung, LG, SK, and Daewoo, successfully participated in government-supported projects and grew under state and government support programs, which included tax exemptions and financial subsidies. During this period, the *chaebol* accumulated financial resources, industrial know-how, well-trained manpower and trade secrets in the world market. They continue to play leading roles in the construction of heavy industry and worldwide investment activities.

To put the rapid pace of Korean economic development in context, Korean per capita annual income was \$82 in 1961. Today, it is approximately \$10,000, over 120 times that of forty years ago.<sup>30</sup> In contrast with the gradual economic growth and industrialization that occurred in Western nations, Korea transformed from an underdeveloped country to a member of the Organization for Economic Cooperation and Development

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one industry to another, from one firm to another. See ALBERT O. HIRSCHMAN, *THE STRATEGY OF ECONOMIC DEVELOPMENT* 62-63 (1958).

<sup>29</sup> For the background of economic development planning, see Chan Jin Kim, *Foreign Investment in Korea: Law and Administration* (1972) (Ph.D. dissertation submitted to the University of Washington) (on file with author).

<sup>30</sup> Per capita income exceeded \$10,000 for the first time in 1995 and remained at that level for three years until the foreign exchange crisis erupted in Korea in November 1997, resulting in the policy intervention of the International Monetary Fund. Per capita income for 1998 fell to \$6742 but increased to \$8681 in 1999. See BANK OF KOREA, *NATIONAL ACCOUNTS* 59 (2000).

("OECD") and the twelfth largest exporter in the world<sup>31</sup> within only one generation.

### *B. Forces behind Rapid Development*

In this sub-section, the economic and social environment of Korea will be examined in the context of W.W. Rostow's five stages of economic growth: the traditional society, the preconditions for take-off, the take-off, the drive to maturity, and the age of high mass consumption.<sup>32</sup>

#### *1. Rostow's "Take-Off" Theory of Economic Growth*

In accordance with Rostow's theory of economic growth, in the first stage, a "traditional society" is often agrarian wherein production and the possibility of change from generation to generation is limited and political power in such societies is generally centered around landowners. Such societies existed in the dynasties in China and the civilization of the Middle East and medieval Europe. The second stage of growth embraces the concept of change and transition. In this stage, the "preconditions of take-off" are developed and an economy recognizes the benefits and necessity of economic progress. However, progress in this stage is notably slow as the impetus to develop is hampered by the old social structure, values and political institutions. The third stage, "take-off," is achieved when the barriers and institutions are overcome and modern technology is over the whole front of its economy. Growth in this stage becomes normal and the basic structure of society and economy is transformed in a way to allow sustainable steady growth. The fourth stage, the "drive to maturity," generally takes place as an economy finds its place in the international economy and takes place approximately sixty years after take-off begins. An economy is generally said to be mature when it demonstrates the capacity to move beyond its original industries and apply resources to modern technology. Lastly, the "age of high mass-consumption," wherein real income rises to a point where a large number of persons have their basic needs fulfilled and become increasingly anxious to acquire the goods of a mature economy. In addition, a society shifts their focus from the acquisition of modern technology to an allocation of resources for social welfare and security.

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<sup>31</sup> KOREA INTERNATIONAL TRADE ASSOCIATION, THE MAIN TRADE INDICATORS 11 (2000).

<sup>32</sup> ROSTOW, *supra* note 25, at 4.

In many respects, Korea had successfully passed Rostow's "take-off" stage during the years 1962-1967<sup>33</sup> and was getting nearly meeting the material and economic conditions of the fourth stage by 1996. However, Korea failed to fully satisfy the non-economic requirements, which included the emergence of a political, social, and institutional framework, a precondition to becoming an industrial nation.

Applying the economic terminology of W.W. Rostow's take-off theory, a nation is prepared for sustained growth when it has satisfied the following criteria:

1. A rise in the rate of productive investment (for example, from 5% or less to over 10% of national income or net national product);
2. The development of one or more substantial manufacturing sectors, with a high rate of growth;
3. The existence or quick emergence of a political, social, and institutional framework which exploits the impulses to expansion in the modern sector and the potential external economy effects of the take-off and gives growth an on-going character.<sup>34</sup>

As illustrated by the table below, Korea satisfied the first and second criteria by 1967, with the investment rate well over 10% of the Gross Domestic Product ("GDP") and several light manufacturing industries, such as textiles, wigs, garment and toy-making, rapidly expanding. With the continued rise in the total investment rate, industrial capacity expanded and the average annual increase in exports reached 40% during the period of 1962-1979.<sup>35</sup>

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<sup>33</sup> Hyung Yoon Byun, *Rostow Dayak Iron eui Hankuk Kyongje e Daehan Jokyong Munje* [Application of Rostow's Take-off Theory to Korean Economy] in HANKUK KYONGJE BALJON EUI IRON KWA HYONSIL [THEORY AND REALITY OF KOREAN ECONOMIC DEVELOPMENT] 35 (Prime Minister's Office ed., 1969).

<sup>34</sup> ROSTOW, *supra* note 25, at 39.

<sup>35</sup> SURVEY BUREAU OF THE BANK OF KOREA, STATISTICAL TRENDS (2000) (visited Oct. 11, 2000) <<http://kotis/kwstalo.html>>.



**Table 1. Korean Manufacturing Growth, Savings, and Investment**<sup>36</sup>

|                                   | 1957 | 1962 | 1967 | 1972 | 1977 | 1982 | 1987 |
|-----------------------------------|------|------|------|------|------|------|------|
| Share of Manufacturing Sector (%) | 11.2 | 14.4 | 19.1 | 22.2 | 26.8 | 28.1 | 31.4 |
| Manufacturing Growth Rate (%)     | 7.1  | 11.7 | 21.6 | 14.0 | 15.3 | 6.9  | 19.5 |
| Total Savings Rate (%)            | 13.9 | 11.0 | 15.4 | 17.3 | 27.5 | 24.4 | 37.3 |
| Total Investment Rate (%)         | 14.0 | 11.8 | 20.9 | 20.9 | 28.3 | 28.9 | 30.0 |

In terms of Rostow's third criterion, the emergence of military elites in the political arena in 1961 together with a group of technocrats gathered around the Economic Planning Board ("EPB") must have satisfied with quick emergence of institutional framework. Through their concerted efforts, the successful implementation of the national five-year economic development plans were made possible, which has been critical in forcing traditional Korean society to transform and move forward. The EPB was established in 1961 as the government body with the specific purpose of coordinating economic policies and implementing development projects under the leadership of EPB Minister who was appointed as Deputy Prime Minister *ex officio*.<sup>37</sup> The EPB was mainly responsible for the introduction of foreign capital in the form of public loans, direct investment, and the transfer of technology, and was accorded a great deal of pride and authority within the Korean government.

## 2. *The Saemaul Movement*

An important agent of Korea's rapid economic transformation was President Park's *Saemaul* ("New Village") movement. Emphasizing the value of diligence, self-reliance, and cooperation, the *Saemaul* movement successfully motivated people to work industriously and increase the rate of domestic savings as much as possible to finance industrial projects with

<sup>36</sup> BANK OF KOREA, 1999 NATIONAL ACCOUNTS: PRINCIPAL INDICATORS ON NATIONAL ACCOUNTS I 35-41 (1999).

<sup>37</sup> The EPB was conceived as a central organization for economic planning when it was established. The Government Organization Act (Law No. 660, July 22, 1961) (S. Korea). Two years later, EPB Minister was made Deputy Prime Minister to enable him to control and supervise the operations of other economic ministries. The Government Organization Act (Law No. 1506, Dec. 14, 1963) art. 15, para. 3 (S. Korea). For details, see Chan Jin Kim, *supra* note 29, at 51-52.

domestic sources. The *Saemaul* movement provided people with the common goal of nation-building, through a teaching that they could achieve economic growth and secure the prosperity of future generations through their sacrifices.

The *Saemaul* movement made use of Korea's only major resource at the time: its cheap labor force. It is likely that the movement was influenced by Ragnar Nurkse's theory of capital formation in underdeveloped countries by economically mobilizing "disguised unemployment" in the agricultural sectors. According to Professor Nurkse's theory, even if one member of a farming family leaves the family to assume a different position in the nation's labor force, the remaining members of the family could still manage to produce the same crop amount to support the entire family, including the member who was transferred to another job. Whatever the family member produces in their new job is considered a net contribution to the capital formation of the country. By rearranging the manpower in villages to harness this under-utilized labor, the productivity of the villages grew and new social capital was created.<sup>38</sup>

Additionally, the *Saemaul* movement displayed many of the features of a meritocracy, with additional resources being allocated only to those communities with a track record of using them productively.<sup>39</sup> This kind of environment, where achievement mattered more than group ties or social position, created conditions in which individuals could transcend previously rigid class boundaries to become successful in the nation's economic and social life. All of these institutional changes successfully encouraged Korean expansion into the industrial sectors.<sup>40</sup>

### C. *Human Inability to Keep Pace With Economic Development in Korea*

#### 1. *Excessive Consumption*

In November of 1997, Korea experienced a temporary shortage of foreign exchange reserves and asked the International Monetary Fund for relief measures. Although the Korean economic crisis was closely related to external factors in the international environment and Asian economies, it

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<sup>38</sup> See RAGNAR NURKSE, PROBLEMS OF CAPITAL FORMATION IN UNDERDEVELOPED COUNTRIES 32-47 (1953).

<sup>39</sup> JUNG RYUM KIM, HANKUK KYONGJE JONGCHAEEK SAMSHIPNYON SA [THIRTY YEARS OF KOREAN ECONOMIC POLICIES] 187-204 (1990).

<sup>40</sup> See W.W. ROSTOW, *Introduction and Epilogue to THE ECONOMICS OF TAKE-OFF INTO SUSTAINED GROWTH* xiii, xxv (W.W. Rostow ed., 1963).

was nonetheless a psychological blow to most of the Korean people. As a result, interest rates soared and the value of won currency fell down to less than half.

While there are many ways to interpret the causes of these events, economic analysis has shown that the savings rate had been declining since 1989,<sup>41</sup> and short-term offshore borrowing had been rapidly increasing to finance the necessary foreign exchange requirements.<sup>42</sup> Excessive consumption from the private sectors is partly responsible for such an abrupt change in economic indicators. The importation of luxury goods such as designer clothing, cosmetics, golf clubs, whiskey and wine sharply increased and the travel account deficit showed an unprecedented rise.<sup>43</sup> Quite simply, Koreans were spending money faster than they could earn it.

Given the complexity of environmental changes and interaction of psychological motivations, it is difficult to ascertain the factors that contributed to an increase in personal expenditures and corresponding decrease in savings rate. However, in light of the poor leadership and corrupt practices pervasive during the eighteen years that spanned the presidencies of Chun, Rho, and Y.S. Kim (1980-1997), it is conceivable that poor examples shown by present-oriented lifestyles of political leaders penetrated the values of Korean people. It is worth considering the influence of these leaders as Korean society is structured on Confucian ethics of hierarchy. In such an instance, individuals as well as corporations tend to do and act according to the kind of behavior that would be rewarded. When principles of fairness and equity are replaced with favoritism, a regard for community and fairness is likely to be traded for personal benefit. Uncertainty and a lack of faith in leadership over a long span of time may have given rise to an increased emphasis on the present and thus an increase in spending on goods and consumption.

## 2. *Social Connections Rather Than Merit*

A characteristic of an advanced nation is that people are valued in the society for their individual ability to perform specific, increasingly specialized functions and not for their connection with a particular clan or

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<sup>41</sup> See *Falling Savings Rate Takes a Toll on Korea's Current Account Surplus*, KOREA HERALD, Apr. 20, 2000, at 8.

<sup>42</sup> See Ministry of Finance and Economy, *The Road to Recovery in 1999*, KOREA'S ONGOING ECONOMIC REFORM, Feb. 1999, at 7-9.

<sup>43</sup> For complete statistics on tourism expenditures and receipts for 1961-1999, see Korean National Tourism Organization, *Visitor Arrivals, Korean Departures, Int'l Tourism Receipts & Expenditures (1961~)* (visited Nov. 11, 2000) <<http://www.knto.or.kr/english/index.html>>.

class, or even their guild.<sup>44</sup> However, in Korea, the traditional way of evaluating a person in society remains for the most part unchanged. In politics, for instance, the region where one was born and raised is more important than anything else.<sup>45</sup>

This was well exhibited in the results of the general election on April 13, 2000. From the Cholla Provinces, occupying the ancient "Baekje" territory, all of the government party candidates were elected, while in the Kyongsang Provinces, close to the "Shilla" territory, all of the opposition party candidates were elected with one exception.<sup>46</sup> The unique exception was established by Mr. Mong-Joon Chung, an independent and the son of Mr. Ju-Yung Chung, chairman of Hyundai Group.<sup>47</sup> Voters do not care too much about the qualifications, ability, or achievements of a candidate. They cast their votes for a candidate whose boss represents the region they call home, since high officials often favor those that live in their region.

#### IV. THE IMPACT OF INDUSTRIALIZATION ON KOREAN SOCIETY

There have been several byproducts of industrialization and economic development, which were unimaginable in the context of traditional Korean society. Examples of these newly emerging social forces include a growing middle class, frequent participation of university students in issues of social importance, the appearance of labor unions as an active political force, the growing power and prominence of religious groups, changing family structures, women's active participation in social affairs, and an increased number of women filling positions traditionally held by men.

##### A. *Emergence of a Middle Class*

One aspect of economic development that has brought about great changes in Korean attitudes toward law is the emergence of a middle class. In the past, Korean society was pyramidal, with a limited class of powerful land-owning elites (*yangban*) and large masses of barely subsistence-level tenant farmers. However, industrialization and economic development created a slowly but distinctly emerging middle class. This middle class is

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<sup>44</sup> ROSTOW, *supra* note 25, at 19.

<sup>45</sup> See *Renouncing Heaven's Mandate: If South Korea is to Sustain its Economic Reform, It Needs Political Reform Too*, ECONOMIST, July 10, 1999, at 1, 15.

<sup>46</sup> For an assessment of the April 2000 election, see *Political Regrouping Looms Large in Absence of Majority*, KOREA HERALD, Apr. 15, 2000 at 1, 15.

<sup>47</sup> See *Many Business People Elected to Parliament*, KOREA TIMES, Apr. 15, 2000, at 9.

made up of proprietors of small and medium size enterprises, distributors of imported products, agents of overseas suppliers, local partners in joint ventures, managers in multi-national corporations, and local business groups. A small upper middle class also emerged, composed of business executives, high-ranking managers of large conglomerates, and founders of venture corporations.

The emergence of these new groups has resulted in a more equitable distribution of wealth. The relative prosperity of this new middle class has provided its members a sense of elevated status, a feeling of increased independence in their social life, and a newfound desire to make their voices heard in the formation of the nation's economic and social policies. Additionally, the members of this new middle class have shown themselves to be politically conservative and strong advocates for law and order. With more people sharing in the nation's prosperity, they are finding that law is essential for protecting their interests. As they accumulate more assets, they are realizing that property can be meaningful under the umbrella of law. Thus, the legal system is now perceived as a valuable vehicle for protecting their economic position. Many Koreans in this newly emerging middle class believe that they are responsible for fulfilling the destiny of Korean society, viewing the legal system as a means of protecting and maintaining their status and wealth.

In essence, industrialization and economic development have expedited the democratization process by making the structure of human relationships more horizontal through the emergence of the new middle class. As this new middle class continues to grow, old values, such as those espoused by Buddhism and Confucianism, have deteriorated and new values that better reflect the way of life in an urban and democratic society are emerging to replace them. Most important among these changes in value prioritization is the growing visibility and significance of the rule of law in the daily life of the people.

### *B. Increased Labor Union Activism*

Increased labor union activism and a citizen's uprising against the Chun government in the spring of 1987 brought about democracy and led to the adoption of a new Constitution. In 1987, under the new Constitution, Mr. Roh Tae Woo was elected President by a slim margin because his opposition was split between two civilian leaders, Kim Young Sam and Kim Dae Jung. In 1992, Kim Young Sam was elected President and formally opened the civilian form of government.

One of the policy alternatives that the Kim Young Sam government faced was whether or not to allow flexibility in employment management through the revision of the Labor Standard Act. The opposition party led by Kim Dae Jung strenuously opposed such legislation to the extent that normal functioning of the National Assembly was disrupted. Around six o'clock in the morning of December 26, 1996, government party members of the National Assembly quietly gathered together in the Assembly Hall without giving proper notice to the opposition party and passed a bill restricting the rights of labor unions by amending labor laws, such as the Labor Union Act. It was natural that labor unrest followed and political turmoil erupted thereafter. Several petitions were filed before the Constitutional Court to confirm the unconstitutionality of such passage of legislative bills by an extremely unreasonable method. On March 13, 1997, two leading parties agreed to revise the Act.<sup>48</sup>

In addition to the long existing Korean Federation of Trade Unions (*Tangkuk Nochong*), the Korean Confederation of Trade Unions (*Minju Nochong*) was formed in 1995. Labor union activism has reached a point where the government can no longer disregard it. When Kim Dae Jung took power after 1997 presidential election, the government established an ad hoc tripartite commission composed of equal numbers of labor, employer and government representatives to seek solutions to many of the issues that the labor unions have brought into the public consciousness.<sup>49</sup> This commission now plays an advisory role to the President. Labor unions have never before enjoyed this kind of status and political influence, and their growing power is another indication of the evolution towards a more horizontal society.

### C. *Proliferation of Religious Groups*

Religious groups are also growing in prominence and influence within Korean society. The traditional religions, Buddhism and Confucianism, together with indigenous, shamanistic religions constitute the backbone of Korean culture and civilian life. Catholicism was established in Korea more

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<sup>48</sup> Article 5 of the Addendum to Trade Union and Labor Relations Adjustment Act provides for a transitional measure concerning formation of trade unions: "(1) When a trade union exists in a business or workplace, a new trade union which has the same organizational jurisdiction as the existing trade union shall not be formed until December 31, 2001," notwithstanding the provisions of Article 5. The multiple union system was adopted and will become effective on January 1, 2002. This has been the subject matter of a long confrontation between the parties and the business sectors vigorously objected to this legislation.

<sup>49</sup> This ad hoc tripartite commission (*nosajung*) was later supported by legislation as a formal organization. See *Nosajung Wiwonhoe eui Solchi e kwanhan Popryul* [The Act Concerning the Establishment and Operation of the *Nosajung* Committee] (Law No. 5990, May 24, 1999) (S. Korea).

than two hundred years ago and Protestant missionaries arrived about one hundred years ago. The influence of Christianity, however, has been growing very fast and may now be the most actively practiced religion in Korea. There is much conflict between these groups, the old and the new, which on occasion culminates in violence and property destruction.<sup>50</sup> It is not yet clear what further effect they might have on people's attitudes towards the law and the legal system, but it is indisputable that they have profoundly altered the social fabric of Korea.

#### D. *Emergence of Non-Governmental Organizations*

Another newly emerging social factor in Korea is the increased number of non-governmental organizations ("NGOs") seeking social, political, and economic reform. It is estimated that there are now as many as 4000 NGOs in Korea.<sup>51</sup> Some of these NGOs have had a direct influence on the attitudes towards law by providing legal aid to the indigent. Promoting more access to the legal system serves to improve people's perception of the law. These NGOs give traditionally disenfranchised members of society the ability to defend themselves and protect their rights through the legal system, thus helping to emphasize that the law exists for the benefit of all people, not just the rich and the powerful.

Women have taken on leading roles in much of the burgeoning NGO movement.<sup>52</sup> They have taken the lead not just in forming groups advocating women's rights, but they have been at the forefront of pressing for change in other areas as well. Korean National Council of Women (*yohyop*) and Korea Women's Associations United (*yoryon*) are two leading organizations of women NGOs, the first one embracing fifty-seven member NGOs and the latter consisting of twenty-eight member NGOs.<sup>53</sup> Particularly in the field of consumer advocacy and protection, the role of women has been enormous. For example, the Consumer's Union of Korea has been led by Ms. Kwang Mo Chung, who started her career as a news

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<sup>50</sup> Examples of such law breaking activities include vandalizing shamanistic idols and setting fire to Buddhist temples. See Kyong-hee Lee, *Commentary: Tangun's Place in History*, KOREA HERALD, Apr. 24, 2000, available in <<http://www.koreaherald.co.kr/archives/>>; *Can Korea's Founder Solve Today's Social Ills?*, KOREA TIMES, July 9, 1999, available in <<http://www.hankooki.com/times.htm>>.

<sup>51</sup> See Editorial: *NGOs Not Ready for Politics*, KOREA HERALD, Aug. 21, 1999, available in <<http://www.koreaherald.co.kr/archives/>>.

<sup>52</sup> See *Women Gain High Profile in NGOs*, DIGITAL CHOSUN ILBO: ENGLISH EDITION, Mar. 19, 1999, available in <<http://www.chosun.com/>>.

<sup>53</sup> Korea National Council of Women (*yosung danche hyobuihoe*) was formed in 1959 and Korea Women's Associations United (*yosung danche yonhabhoe*) appeared in 1987 to pursue more active and liberal causes.

reporter and switched to consumer protection activities some thirty years ago. Furthermore, Chairman of Citizen's Alliance for Consumer Protection of Korea is Ms. Bo-Kyong Song, a professor at Seoul Women's University. Thus, most of the active members of regional offices of consumer agencies are women.

These consumer rights groups were instrumental in securing the passage of the new Products Liability Act<sup>54</sup> despite the vehement opposition of powerful business groups.<sup>55</sup> Because this Act has only six Articles, one might ridicule it as rudimentary in scope. However, this small piece of legislation is historically important and its potential impact in the area of consumer protection is immense, as it makes it easier for consumers to get compensation for damage caused by defective products.<sup>56</sup>

Other NGOs promote the rule of law by policing the activities of government officials<sup>57</sup> and filing petitions for legislative action with the National Assembly.<sup>58</sup> These NGOs are affecting social and political change by working within the bounds of the law. In the recent National Assembly elections in Korea, more than 470 NGOs formed an alliance and affected the political parties' candidate selection process.<sup>59</sup> The NGOs blacklisted party nominees they considered unfit to hold public office based on grounds such as criminal records, dodging military service, poor records of tax payment, and incompetence. These NGOs then urged the public not to vote for the blacklisted candidates.<sup>60</sup> Almost 70% of the candidates on the NGOs'

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<sup>54</sup> Chejomul Chaekim Pop [Product Liability Act] (Law No. 6109, Jan. 12, 2000, effective July 1, 2002) (S. Korea).

<sup>55</sup> At the insistence of consumer protection advocacy groups, the government prepared the draft of the Products Liability Act, which was approved at a meeting of Vice Ministers in November 1999. This same bill was submitted to the National Assembly and introduced in the Committee on Finance and Economy. As I was the only lawyer among thirty members of that Committee, the Committee commissioned me to redraft the bill. I had to review product liability statutes of the E.U., Japan, and the United States and completely revised the bill, and newly incorporated the definition of "defect" in Article 2, item 2 of the Act. This revised bill was approved unanimously by the Committee and the National Assembly.

<sup>56</sup> See *Products Liability Law to Go into Effect in July 2002*, KOREA HERALD, Oct. 2, 1999, available in <<http://www.koreaherald.co.kr/archives>>.

<sup>57</sup> See, e.g., *Civic Groups Demand Government Expense Accounts Be Made Public*, JOONGANG ILBO, June 30, 2000, available in <<http://www.joins.com>>; *NGOs in Korea: Civic Group Leads Fight for Participatory Democratic Rights*, KOREA TIMES, Feb. 22, 2000, available in <<http://www.hankooki.com>>.

<sup>58</sup> While only 132 of these petitions were filed in the Twelfth Session of the National Assembly, the Thirteenth, and subsequent Sessions have each seen well over 500 petitions filed. See NATIONAL ASSEMBLY OF THE REPUBLIC OF KOREA, STATISTICAL RECORD OF PETITIONS FOR LEGISLATIVE ACTION (1996).

<sup>59</sup> See *NGOs Emerge as 'Third Political Force'*, KOREA TIMES, Jan. 23, 2000, available in <<http://www.hankooki.com>>.

<sup>60</sup> See *List of 66 'Unfit' Politicians Unveiled*, KOREA TIMES, Jan. 14, 2000, available in <<http://www.hankooki.com>>.



blacklist were defeated in the election.<sup>61</sup> The success of the NGOs' campaign may be a sign that the value judgments and efforts of special interest groups do affect change in the society at large.

### *E. Rapid Urbanization*

A major social transformation is the result of Korea's rapid economic growth and change from an agricultural to an industrial society accompanied by a corresponding rapid urbanization.<sup>62</sup> For example, in the agricultural society of traditional Korea, the village head would mediate disputes between neighbors. Strong interpersonal bonds and the required community efforts for survival made mediation and other alternative dispute resolution very attractive to disputants. However, increasing urbanization has made direct mediation nearly impossible. There is no village mediator in a modern high-rise apartment block and neighbors may remain for the most part strangers. The lack of personal relationships between disputants makes resolution via a formal legal proceeding more likely.

### *F. Changes in Family Structure*

The rapid economic growth and urbanization have also led to profound changes in the Korean family structure. In the traditional agricultural society, people lived together in large families composed of three or four generations. As the population has migrated in a massive degree to urban centers, this family system has almost disappeared. In the new urban centers, people live in apartment complexes not big enough to house the traditional extended family. Four generations living under one roof is now the exception rather than the rule, while the nuclear family is the norm.

Today, three-generation households account for less than 10% of all households in Korea, while two-generation families make up two-thirds of the total.<sup>63</sup> This enormous change in family structure has made people more independent, competitive, and individualistic. It has increased both economic growth and an emphasis on rights and equality. In addition to

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<sup>61</sup> Fifty-nine out of eighty-six candidates targeted for defeat by the Citizens' Alliance for the 2000 General Elections failed in the election. See Civic Group's Rejection Drive Changes the Face of Campaigns, KOREA HERALD, Apr. 15, 2000, available in <<http://www.koreaherald.co.kr/archives>>.

<sup>62</sup> The level of urbanization in Korea was only 28.5% in 1960. See BYUNG-NAK SONG, THE RISE OF THE KOREAN ECONOMY 151 (1990). By 1995, however, this number had increased to 78.5%. See Korea Infogate (visited Oct. 18, 2000) <<http://www.koreainfogate.com/aboutkorea/society/population.html>>.

<sup>63</sup> See NATIONAL STATISTICAL OFFICE, *supra* note 23, at 726.

changes in the composition of family groups, the Korean family unit has also evolved from a patriarchal system, which was originally strengthened by the influence of Confucianism. Under this system, there is a hierarchic order of control and obedience, centering on the patriarchal head, which discriminates between high and low, elder and younger, and male and female.<sup>64</sup>

### G. *New Roles of Women in Society*

In the past, the roles of women were limited to the management of household affairs, having and raising children, and the protection of family traditions. Names of daughters could not be engraved on their parents' tombstones and women were not allowed to work outside of the home during the Yi Dynasty.<sup>65</sup> Gender discrimination clearly existed—formal education was unavailable to female students until approximately 1920.

Social discrimination still exists today, although it is less tolerated. Changes in family law, the imposition of criminal sanctions for gender discrimination in employment, and an increased social stigma against sexual discrimination in the workplace are leading to a reduction in gender discrimination.<sup>66</sup> In terms of proliferating the notion of non-discrimination on the basis of gender in Korea, there is still much room for improvement. However, it seems fair to say that Korean society has recorded substantial improvements in upgrading the status of women and in providing better environments for social and economic participation of women.

#### 1. *An Example from Inheritance Laws*

One example of the improved status of women is the change in laws governing inheritance. Inheritance laws favoring male over female heirs continued until fairly recently. Under the 1960 Civil Code, the proportion of assets to be inherited upon the death of the family patriarch differed significantly between son, daughter and mother. A son's share of the estate was twice the share of his mother or sister, and four times larger than that of

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<sup>64</sup> Park, *supra* note 11, at 63.

<sup>65</sup> For more on the status of women during the Yi Dynasty, see generally MARTINA DEUCHLER, *THE CONFUCIAN TRANSFORMATION OF KOREA* (1992); Erin Cho, *Caught in Confucius' Shadow: The Struggle for Women's Legal Equality in South Korea*, 12 COLUM. J. ASIAN L. 125 (1998).

<sup>66</sup> See, e.g., Namnyo Koyong Pyondeungpop [The Sexual Equality in Employment Act] (Law No. 3989 promulgated on Dec. 4, 1987, as revised by Law No. 5933 on Feb. 8, 1999) (S. Korea); Namnyo Chabyol Keumji mit Kuje e Kwanhan Popryul [Act on Prohibition and Remedy for Sexual Discrimination] (Law No. 5934, promulgated on Feb. 8, 1999) (S. Korea).

his sister if she was married (though the son's share remained the same whether he was married or not). It had long been thought that a son was entitled to a greater share of his family's wealth because he was the one who would carry on the family line. A daughter did not have this responsibility, and a married daughter was thought to have already received a share of her inheritance in the form of a dowry. Also, under the reasoning that a widow might remarry, she would not need as large a share of the assets as her son would.

The law was revised in 1979 to grant unmarried daughters and sons equal shares of the inheritance, though the married daughter still received only a quarter of that inherited by her brother. In 1991, pressure from family law reform groups brought about further revision of the law so that now married daughters also receive an equal share of the inheritance. Additionally, mothers now receive an even greater share of the inheritance than their children.

These changes reflect how law is finally catching up with changes in society. While the disproportionate inheritance structure made sense in the context of the highly Confucianized Yi Dynasty, gender discrimination in inheritance laws is an anachronism in modern society.

## 2. *Expanded Vocational Opportunities*

As the economy developed, women were able to supply cheap labor demanded by labor-intensive industries. As time went on, the role of women in social capacities expanded, and their status was upgraded. Women were promoted to positions with higher responsibility and diversified activity. Prior to 1945, Korean women worked primarily in the home, the agricultural sector, or as nurses or midwives. Since that time, however, employment opportunities for women have grown to include business management, teaching, police and military service, journalism, government service, medicine, law, and politics.

Women now make up over a quarter of the nation's medical doctors, as many as 66.4% of primary school teachers, 57.6% of junior high school teachers, and 29.7% of senior high school teachers.<sup>67</sup> Women have also served as cabinet-level ministers, diplomats,<sup>68</sup> and as officials in local and

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<sup>67</sup> For detailed statistics on the gender ratios of teachers at various levels in Korea, see MINISTRY OF EDUCATION AND KOREA EDUCATIONAL DEVELOPMENT INSTITUTE, *SELECTED STATISTICS ON EDUCATION*, at 21.

<sup>68</sup> See *Women Power in Diplomacy: 30 Percent of New Diplomats Women in '99*, KOREA TIMES, May 30, 2000, available in <<http://www.hankooki.com/times.htm>>.

provincial government administrations. Additionally, women have been successful in entertainment business and athletics such as golf, table tennis, and archery, pharmacy (approximately one third of the pharmacists in Korea are women), the military,<sup>69</sup> banking, law enforcement,<sup>70</sup> surgery, and air traffic control.<sup>71</sup> Hopefully, this trend will continue.<sup>72</sup>

The legal profession, long almost exclusively the realm of men,<sup>73</sup> is slowly opening up to women (see Table 2). In 1970, there were only three female lawyers in Korea. In 1971, Young A. Lee passed the bar examination with the highest grade of those who took the exam. She is currently serving as a Senior Judge in Seoul Court of Appeals, the highest position a woman judge has ever reached. In Korea, the bar passage rate has remained only 1 to 2% of all examinees. While women account for just under 5.7% of all lawyers, their bar passage rates and attendance at the Judicial Research and Training Institute (*sapop yonsuwon*) have been rising.<sup>74</sup> This means that the proportion female judges, prosecutors, and attorneys who are female will continue to increase.

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<sup>69</sup> See *Women Power*, KOREA TIMES, Mar. 8, 2000, available in <<http://www.hankooki.com>>; *Female Cadet to Head Air Force Academy Battalion*, KOREA HERALD, Jan. 14, 2000, available in <<http://www.koreaherald.co.kr/archives>>; *High School Girl Tops List at Naval Academy*, KOREA HERALD, Dec. 21, 1999, available in <<http://www.koreaherald.co.kr/archives>>.

<sup>70</sup> See *Role of Women Growing in Police*, KOREA TIMES, Apr. 3, 2000, available in <<http://www.hankooki.com>>.

<sup>71</sup> See *Women are Coming*, DIGITAL CHOSUN ILBO: ENGLISH EDITION, Mar. 10, 2000, available in <<http://www.chosun.com>>.

<sup>72</sup> For detailed statistics on women's participation in the labor force and women's roles in society, see NATIONAL STATISTICAL OFFICE, TONGGYE RO BONEUN YOSUNG EUI SALM [WOMEN'S LIFE SEEN THROUGH STATISTICS] 21 (2000).

<sup>73</sup> See David I. Steinberg, *On Lee Tai-Young and the Status of Women*, KOREA TIMES, Jan. 3, 1999, available in <<http://www.hankooki.com/times.htm>>.

<sup>74</sup> Nearly 16% of people who passed the bar in 1999 were women. Judicial Research and Training Institute, *Sapop Yonsusaeng Hyonhwang*, [Current Status of Judicial Trainees] (visited Nov. 17, 2000) <<http://203.240.67.17/jrti>>.

**Table 2. Percentage of Korean Lawyers Who Are Female**<sup>75</sup>

|               | Judges           | Prosecutors      | Attorneys      | Trainees       | Total            |
|---------------|------------------|------------------|----------------|----------------|------------------|
| <b>Male</b>   | 1,530<br>(92.7%) | 1,167<br>(97.6%) | 4,044<br>(97%) | 1,200<br>(85%) | 7,941<br>(94.3%) |
| <b>Female</b> | 120<br>(7.3%)    | 29<br>(2.4%)     | 123<br>(3.0%)  | 211<br>(15.0%) | 483<br>(5.7%)    |
| <b>Total</b>  | 1,650            | 1,196            | 4,167          | 1,411          | 8,424            |

A consequence of women's expanded roles is that their importance to society and the economy has begun to be recognized more fully. This realization of what women can achieve has even prompted calls for frequent legislative or administrative actions to gradually implement affirmative action for women in the form of a quota. Promotion of female government employees has been emphasized by the government and such appointment of woman for the first time as a chief of police station, general manager of bank branches and other various function are often reported in the newspapers.

Another example is found in the attempt to increase women's participation in the legislative body. There were eleven female members of the National Assembly in its last term and currently sixteen female members out of 273 members or 5.8% of the total. In an effort to correct the situation, the Political Party Act was revised in February, 2000 to provide that each party must recommend female candidates for at least 30% of candidates to be elected by proportional representation.<sup>76</sup> However, this statutory declaration has not been fully enforced. Currently, out of the 227 members of the National Assembly directly chosen by the voters, only five are women. Out of the forty-one National Assembly members chosen by political parties, only six members are women. An additional significant victory for women was the recent decision to upgrade the Presidential Commission for Women's Affairs to a cabinet-level ministry and expansion its personnel from forty-nine to 150 employees.<sup>77</sup>

<sup>75</sup> Confirmed by this author from the Supreme Court, Ministry of Justice and the Korean Bar Association respectively as of the end of July, 2000.

<sup>76</sup> Chungdangpop [The Political Party Act] art. 31, para. 4 (Law No. 6269, promulgated on Feb. 16, 2000) (S.Korea).

<sup>77</sup> See *Ministry of Women's Affairs Ready for Launch*, JOONGANG ILBO [JOONGANG DAILY], June 22, 2000.

### 3. *Women's Attitudes Towards Law*

Changing roles of women have also brought about a change in women's attitudes towards law. In 1980, just 5.8% of all marriages ended in divorce. However, by 1994, that number had almost tripled, rising to 15.8%. Perhaps more importantly, 10,591 out of 19,974, or 64.2%, of all actions for divorce filed in 1999 were initiated by women.<sup>78</sup> The fact that more and more women are seeking divorce shows that they are beginning to expect more from the law and realize that it can work to their benefit. This attitudinal change has also been institutionalized via a revision of the Korean family law giving women a legal right to claim for a portion of family assets in divorce proceedings.<sup>79</sup> The revision also gives women a greater voice in child custody decisions at dissolution.<sup>80</sup> These changes further reflect the transition from a vertical society to a horizontal one, where women would be treated as equals under the law.

The emergence of the social forces described above is a major reason that the traditional class system has begun to break down. With society evolving from a vertical to a more horizontal structure, people are growing more litigious, as the taboo against challenging a person from a higher class is no longer in place. This stands in stark contrast to the "particularistic" justice of the Yi Dynasty and the corresponding lack of equality under the law at that time. Under the rigid class structure of traditional Korea, a suit between members of different classes would have been impossible, since the adversarial system of litigation implies a contest between two parties who are on an equal footing.<sup>81</sup> In fact, the legal codes of the time even listed bringing a lawsuit against one's parents or grandparents as a crime punishable by death.<sup>82</sup> Thus, the settlement of disputes was usually conducted through mediation or conciliation rather than by bringing a case before an open court. It is these social changes that are contributing in large part to the wider acceptance of the rule of law in Korea.

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<sup>78</sup> See COURT ADMINISTRATION OFFICE, ANNUAL REPORT ON JUDICIARY 2000 [SAPOP NYONKAM 2000], at 427.

<sup>79</sup> MINBOP [CIVIL CODE] art. 839-2 (Law No. 471, amended Jan. 13, 1990) (S. Korea) *translated in* CURRENT LAWS OF THE REPUBLIC OF KOREA 509 (Korea Legislation Research Institute ed., 1998)

<sup>80</sup> MINBOP, *supra* note 79, art. 837, paras. 1, 2. On the legal status of women in Korea see generally Cho, *supra* note 65; Mi-Kyung Cho, *Korea: The 1990 Family Law Reform and the Improvement of the Status of Women*, 33 U. LOUISVILLE J. FAM. L. 431 (1995); Kay C. Lee, *Confucian Ethics, Judges, and Women: Divorce under the Revised Korean Family Law*, 4 PAC. RIM L. & POL'Y J. 395 (1995).

<sup>81</sup> HAHM, *supra* note 1, at 38-39.

<sup>82</sup> See Choi, *supra* note 12, at 92.

## V. THE ROLE OF POLITICAL LEADERSHIP IN ESTABLISHING RESPECT FOR THE LAW

The role of a nation's political leadership in ensuring that the people have respect for the law and the legal system cannot be underestimated. Leaders bear an unlimited obligation to set good examples in every facet of life as reinforcement that they are worthy of being leaders. This is dramatically illustrated by the case of Korea, where a succession of leaders in the last twenty years has brought about a rapid decline in the rule of law and greatly eroded the people's respect for the legal system. This respect had been cultivated for decades, so the damage these leaders inflicted was immense and will take an enormous amount of time and effort to undo.

A history of frequent constitutional amendments has also taken its toll on the people's attitude towards law. Many of these amendments came about despite the will of the people and were often used to perpetuate the rule of an unpopular leader. These frequent changes in the fundamental law of the nation further reinforced the notion that the government worked not to establish the rule of law but rather to rationalize acts of political power.<sup>83</sup> This was merely a reversion to the pattern of "particularistic justice" common in centuries past, with the people being held subject to the law while their leaders remained free to break it at will.

People must be able to conceive of the law as something that is fair and uniformly applicable to all members of society. If the law is applied in a fair and uniform manner, the people will realize that it is to their own benefit to abide by it. Fair and uniform application of the law will assure people that the law is on their side and serves as the protector of their rights, thus giving them an incentive to seek resolution of disputes within the legal system rather than resorting to self-help. Positive experiences with the judicial process will yield a greater respect for the legal system.

### A. *Examples of Recent Presidents*

Before people make the initial effort to rely on the law for their own protection, they must have some belief that the law actually works as a tool for justice. There must be a proof that the law is no longer a tool for the oppression of the masses or the enrichment of the elite. It is the job of the nation's political leadership to provide the examples that will transform Korean attitudes towards law. Once this kind of positive leadership emerges

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<sup>83</sup> See Dae-Kyu Yoon, *Constitutional Amendment in Korea*, 16 KOREAN J. COMP. L. 1, 10-12 (1988).

consistently, people will unite for the betterment of the nation. We have an example of this in President Park Chung Hee's administration.

### 1. *The Contribution of President Park*

President Park, who served as head of the state from 1963-1979 is widely regarded as the one individual in Korean history who dramatically improved the lives of ordinary Korean people. Through the implementation of a series of five-year economic development plans, President Park established an industrial base for the Korean economy and was able to improve the standard of living from the subsistence level of a typical underdeveloped country to the middle class level of a developed nation with a strong economic foundation. His government simultaneously improved the economic climate of Korea as well as provided Koreans with a sense of hope and aspiration for the future.

One of the salient features of President Park's policies and administration was the profound influence he had on the Korean consciousness, which had at the time been affected by the hardship of subsistence level living and marred by a number of unfortunate historical events, including colonialism. During his eighteen-year tenure, President Park instilled a sense of confidence and provided Koreans with a positive vision for the future. Western media at the time often coined such efforts as providing Korean people with a "Can Do Spirit." Through the *Saemaul* Movement launched in 1973, President Park united the nation with the common goal of economic growth by providing an example of diligence, cooperation, and self-reliance that the people could follow. Devoting much of his administrative time and resources to social and economic development, Korea experienced 40% annual increases in exports and an average economic growth rate of 10% annually.<sup>84</sup> However, these figures cannot reveal President Park's true contribution to Korean society.

President Park's work was not only instrumental in launching the Korean economy and in providing the foundation for further growth, but also in helping Korea to break through the barriers of traditional vertical society and providing many of the environmental preconditions conducive for a modern and horizontal society to take root and prosper. For example, despite serious opposition from minority parties, President Park put forth a plan to develop the highway infrastructure of Korea. In carrying out this plan, he hired many high officials and did so on the basis of ability and

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<sup>84</sup> SURVEY BUREAU OF THE BANK OF KOREA, *supra* note 35.



performance rather than via traditional nontransparent means based on clan, school, or regional ties. He also exercised good judgment in organizing groups of elite officials and young scholars who were trained and educated overseas. In addition to the EPB as the main tool for economic development, President Park inaugurated the Korea Development Institute (“KDI”) where young Ph.D.s from advanced countries gathered and provided him with policy recommendations and economic analysis. President Park visited the EPB on a monthly basis for briefing on the status of the economy including major economic indicators such as import and export statistics, balances of international payments, capital transactions, production figures, price indexes and various other factors relevant to the economy. KDI’s primary role was to provide the EPB with detailed analysis and special reports on subjects of interest to the President. Tragically, President Park was assassinated on October 26, 1979. The acting President was Kyu Ha Choi, who was ousted as a result of a coup d’etat by Chun Doo Hwan and Roh Tae Woo on May 17, 1980.<sup>85</sup>

## 2. *A Step Backwards With Presidents Chun and Roh*

Unfortunately, the positive improvements of President Park’s policies were soon overshadowed by the presidencies of Chun Doo Hwan and Roh Tae Woo. They were of the same school year attending different high schools located in Taegu City and met as classmates at the Korean Military Academy. While serving as army officers, they formed a secret clique, called *Hanahoe* (the one mind society), which provided crucial support as they sought to increase their power.<sup>86</sup> In 1996, Chun and Roh were found guilty of treason, murder, bribery, and other crimes and sentenced to death and life imprisonment respectively. Their sentences were later reduced by the Supreme Court to life imprisonment and seventeen years of imprisonment respectively.<sup>87</sup>

According to the Supreme Court judgment upholding the guilty verdict against them, Chun and Roh abused their positions in the government to fill their own pockets and enrich their family members and cronies.<sup>88</sup> They took bribes, forced people to make political contributions

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<sup>85</sup> For a description of the events of this period, see CARTER J. ECKERT ET AL., *KOREA OLD AND NEW: A HISTORY* 347-84 (1990); James M. West, *Martial Lawlessness: The Legal Aftermath of Kwangju*, 6 PAC. RIM L. & POL’Y J. 85, 90-92 (1997).

<sup>86</sup> See David M. Waters, *Korean Constitutionalism and the ‘Special Act’ to Prosecute Former Presidents Chun Doo-Hwan and Roh Tae Woo*, 10 COLUM. J. ASIAN L. 461, 463 (1996).

<sup>87</sup> Judgment of Apr. 17, 1997, 96 Do 3376 (S. Korea).

<sup>88</sup> *Id.* Chun and Roh were finally pardoned by President Kim Young Sam in 1997.

and threatened companies with tax audits if they did not contribute to their political slush funds.<sup>89</sup> The personal slush fund Chun amassed while in office totaled over \$650,000,000 while Roh's slush fund was approximately \$900,000,000.<sup>90</sup> The actual size of illegally solicited funds is likely to exceed this amount as the actual figures were calculated based on evidence verified in a court of law. Though heavy fines were later levied against both leaders and they were ordered to forfeit much of their illegally accumulated wealth, Roh has relinquished only two-thirds of the penalty money while Chun has paid an even smaller fraction.<sup>91</sup> In other words, the two have refused to follow a court order to pay fines and failed to satisfy judgments of forfeiture. Both are believed to have significant wealth in secret bank accounts or in the hands of relatives. Given these facts, it is not surprising that respect for the law greatly diminished during their terms in office.

According to Professor Lee Hahn Been, who once served as a senior specialist at the East-West Center, the exploitative tendencies of Chun and Roh can be explained by a "time-orientation" theory. In making the assessments and classifications of types of leaders, Professor Lee aptly notes that exploitation oriented leaders often arise from those who have suffered and regretted the past yet simultaneously also have uncertainty and anguish towards the future. Such leaders thus seek maximum gratification in the present.

As young people beginning their education under colonial rule, Chun and Roh could be deemed to fall into Professor Lee's "exploitationist" category, since their objectives in office were hedonistic and consumption-oriented.<sup>92</sup> Chun and Roh's amassing of personal fortunes clearly fits into the pattern of the "exploitationist" time orientation and is in sharp contrast to President Park, who would likely be categorized as possessing a "developmentalist" time orientation. As a developmentalist, President Park was future-oriented and willing to reject short-term rewards in order to achieve long-term objectives.<sup>93</sup> The *Saemaul* Movement is the prime

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<sup>89</sup> See *Korean Presidential Families Rarely Free from Record of Irregularities*, KOREA HERALD, July 31, 1999, available in <<http://www.koreaherald.co.kr/archives>>.

<sup>90</sup> See Waters, *supra* note 86, at 461.

<sup>91</sup> As of May 12, 2000, Roh had paid 174.4 billion won (\$160,000,000) out of his 262.8 billion won (approximately \$240,000,000) in fines. Chun, however, as of June 12, 2000, had only paid 31.3 billion won (\$28,000,000) out of 225.5 billion won (\$200,000,000) in fines. See *Chun Benz Over*, DIGITAL CHOSUN ILBO: ENGLISH EDITION, June 12, 2000 available in <<http://www.chosun.com/w21data/html/news/200006/200006120318.html>>; *W28.5 Bil. Slush Fund of Roh in Nara Ordered Confiscated*, THE KOREA TIMES, May 23, 2000, available in <<http://www.hankooki.com/times.htm>>.

<sup>92</sup> HAHN BEEN LEE, KOREA: TIME, CHANGE, AND ADMINISTRATION 6-23 (1968).

<sup>93</sup> *Id.* at 13.

example of this appreciation of long-term goals. Chun and Roh on the other hand, as exploitationists, sought maximum gratification in the present.<sup>94</sup>

One characteristic that pervades the developed world is the way in which the citizenry of the respective countries abide by and respect the rule of law. A particularly relevant example in the context of Korea is Japan, given the close proximity and similarities in culture, heritage and the written law itself. Visitors to Japan, for example, generally describe the cities and towns as neatly kept, clean with general abidance of simple rules such as traffic regulations. One can say that such simple actions have an underpinning of unwritten respect for law, culture and the rules of society. As a citizen of a neighboring state, I often wonder at the origin of such Japanese attitudes towards law, and if there was indeed a turning point within Japanese society. One particular event in Japanese history that may have had contributed to the development of the Japanese attitude was a five-year long campaign in preparation for the 1964 Tokyo Olympics involving massive efforts on the part of the Japanese Government to instill a respect and basic compliance towards the rule of law.

In light of Japan's precedent, the 1988 Seoul Olympics seemed to have presented a historic opportunity for Koreans to establish a more civilized, law-abiding society. In an attempt to follow Japan's footsteps, a number of years prior to the commencing of the Olympics in Seoul, a nation-wide civilian organization was launched to heighten awareness and respect for law and order. In order to carry out this mission, Dr. Duck-Woo Nam, former Prime Minister and Professor of Economics at Sogang University was appointed as Chairman of the Civilian Olympic Preparation Committee. At the time of the announcement of the committee and Dr. Nam's role as Chairman thereof, Korean people generally supported the new emphasis and had high hope for the activities of the organization. However, unfortunately and perhaps tragically, this opportunity was squandered when President Chun's younger brother, Kyung Hwan Chun, was appointed as the Secretary-General of the organization, to lead the campaign to foster a more orderly, civic-minded society before the Olympiad. The appointment was a failure and only underscored the reality that the government had no real intention to foster such ideals and as such, along with compromised expectations, the campaign's importance was almost immediately diminished.

From the beginning, the campaign represented a chance to teach people the necessity of obeying the law and an opportunity to show the

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<sup>94</sup> See generally *id.* at 12-20.

world that Korea had developed economically, as well as socially and culturally. However, instead of concentrating on an effort to live up to the social norms of the developed nations, the focus was on winning medals and constructing impressive athletic facilities. The government emphasized the superficial things that would make Korea look good to the rest of the world, however, failed to capitalize on the opportunity to make fundamental improvements in Korean society.

What was needed at that time was a campaign on the order of the Chinese government's efforts to foster civic-minded behavior. Instead of concealing our mistakes, we should have openly acknowledged the areas in which our attitudes needed improvement and sought to change them. In China, these kinds of problems are dealt with directly and openly. Examples of this are the huge billboards in Beijing and other big cities in China that remind people not to spit on the sidewalk. The Korean government should have launched similar types of public campaigns to foster behavior that is in keeping with the standards of developed nations. Even today, people do not seem to have a second thought when spitting and discarding cigarette butts on the street, and violating traffic signs. Only by bringing these problems out into the open can we begin to seek solutions.

### 3. *Further Bad Examples Under Democratic Leaders*

It is ironic that political leaders who have successfully led civilian resistance against a military dictatorship do not necessarily make good heads of state. The administration of President Kim Young Sam, though a vast improvement over the two previous presidential administrations of Chun and Roh, nonetheless provides abundant examples of corruption at the highest levels. Though President Kim probably made good on his promise not to accept even a penny from illegal sources,<sup>95</sup> some of his political close attendants, political allies, and family members certainly benefited from his administration. In particular, his son Hyun Chul Kim gained personal wealth by exercising substantial power, enough that he was sometimes referred to as the "small president." He was ultimately convicted of bribery and tax evasion and sentenced to two-years of imprisonment and a fine of 1,050 million Korean Won.<sup>96</sup> His conviction was linked to his association with his father's status and influence.

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<sup>95</sup> See Soon-Hoom Kil, *Political Reforms of the Kim Young Sam Government*, 17 KOREA AND WORLD AFFAIRS 419, 421-26 (1993).

<sup>96</sup> *Editorial: Justice Denied*, KOREA HERALD, Aug. 16, 1999, available in <<http://www.koreaherald.co.kr/archives>>.

Kim Dae-Jung, the current President of the Republic, may prove to be a better example, and, in fact, was awarded the Nobel Peace Prize in December, 2000.<sup>97</sup> However, President Kim and his life-long attendants, all of who suffered from suppression and persecution during the prior military regimes, have been the subject of much public speculation regarding bribery and other corrupt practices.

*B. Effects on Korean Society of Presidential Examples*

The corruption that occurred over a period of twenty years (1980-2000) tainted the nation's sense of justice, and the people's respect for the law diminished. As the situation worsened, people followed their leaders' example, flouting the law for the sake of their own personal enrichment and acting as though the ends justified the means. They no longer cared about the ideals of a civilized society, like morality, community, and law and order. The state of rampant corruption created an enormous problem: as the society became more lawless, people had less of an incentive to obey the law because they fell behind all those who broke it. Even in criminal justice the people began to tease "with money, not guilty" and "with no money, always guilty." The whole administration of justice became tarnished and the people lost confidence in the judicial system, so they sought other means to resolve their disputes, often resorting to making contributions to politicians or political parties as a way of obtaining favorable treatment and as a kind of insurance policy against future trouble with the government.<sup>98</sup> Thus, the corruption under Presidents Chun, Roh, and Kim corroded the very foundation of society and the economy that had been built up painstakingly through the *Saemaul* Movement. The people followed the examples set by their leaders and abandoned their previously held values of diligence and thrift, and instead sought to maximize their own personal wealth and pleasure. This fundamental change in values to some degree precipitated the so-called "IMF Crisis" of 1997.

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<sup>97</sup> See, e.g., *Norway Interview with President Kim Dae-Jung*, JOONGANG ILBO, Oct. 14, 2000, available in <<http://www.joins.com>>.

<sup>98</sup> According to the report made by the Central Election Management Committee, political contributions made to the government party recorded 47.4 billion won, about seven times larger than opposing Grand National Party which received 6.9 billion won during the first four months of the year 2000. See HANGYORE NEWSPAPER, Nov. 6, 2000, at 4.

### C. *Getting Back on the Right Course*

To be a truly democratic nation that fosters respect for the law, it is essential for the Korean people to realize that the power of the government originates from their own sovereign will. The most important element in the context of rebuilding a sense of justice and improving Korean attitudes towards law is improving the credibility of the legal system. This requires a fundamental change in the attitudes of the President and other influential political leaders to prove they are law-abiding and will not abuse their positions for their own personal enrichment. It also requires an independent judiciary that is not swayed by the political considerations of the day.<sup>99</sup> At the same time, government officials must learn to cooperate and act as public servants worthy of the people's respect. All of this may take time, but the people must be convinced by example that law is the best remedy for social injustice.

In an effort to achieve this goal, in February 1998, I personally initiated the formation of the Citizen Education Promotion Society in the National Assembly, consisting of thirty-four members.<sup>100</sup> The purpose of this Society was to heighten awareness within the government and to assess ways in which legislation, the private sector and NGOs can work together to increase a sense of community and instill a fundamental respect for the law. The Society worked closely with leaders in eleven NGOs as well as a group of professors to assess ways in which programs can eventually assist in a change in behavior. In addition, on January 3, 2000, I introduced a bill to the Assembly entitled the Citizen Education Promotion Act (draft). The goal of the proposed legislation was to find ways to foster a more positive attitude towards the law by educating adults as to the basic rules of democratic society and the importance of law-abiding behavior. Citizenship education is a crucial element in promoting a more positive attitude about the legal system. We need to make the people aware of their rights and obligations as members of a democratic society.

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<sup>99</sup> See Frank Ching, *Law of the Jungle: The Return to Civilian Rule has Deepened Democratic Institutions But Not the Rule of Law*, FAR E. ECON. REV. (Mar. 30, 2000).

<sup>100</sup> The term "citizen education" derives its origin from the German "*politische Bildung*."

## VI. THE ROLE OF THE CONSTITUTIONAL COURT IN ENHANCING RESPECT FOR THE LEGAL SYSTEM

Established in September 1988, the new Constitutional Court has played an instrumental role in bringing about positive changes in people's attitudes about law.<sup>101</sup> Through its rulings, the Court has proven itself to be largely independent and fair, giving the people the incentive they need to place greater trust in the legal system. While there is still room for improvement, the existence of judicial review is a vast improvement in that it did not exist in the first four decades of Korea's history as an independent republic.

### A. *Problems With Previous Versions of the Constitutional Court*

Though Constitutional Courts or Constitutional Committees with the ultimatum to perform the function of judicial review have existed in Korea since 1948, they reviewed only a small number of cases and found statutes unconstitutional only with reluctance, and these were mostly exceptional, non-political cases.<sup>102</sup> Though at times the various incarnations of the Court had sweeping powers to review the constitutionality of statutes, decrees and lower court decisions, many of these powers were seldom exercised due to the frequent interference of the executive branch. Since most of the Court members were appointed by the President, they were reluctant to hold statutes or governmental actions invalid for fear that it would be construed by the President as an act of disloyalty. Even when the public at large was looking for the Supreme Court to take a leading role, the members of the Supreme Court often refrained from exercising their constitutional obligation for fear of who would attach a bell around the cat's neck. Thus, for much of this time, the Constitutional institution commissioned with judicial review was merely an ad hoc, existed only by name and was nominally active.<sup>103</sup>

To some degree, the rather weak power vested in the previous Constitutional Committee during the initial period of the Republic reflects an attitude of distrust towards law and the legal system. During the First

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<sup>101</sup> Honpop chaepansopop [Constitutional Court Act] (Law No. 4017, Aug. 5, 1988) (S. Korea).

<sup>102</sup> By way of contrast, the present incarnation of the Constitutional Court has made over 300 rulings of unconstitutionality or limited constitutionality in a little over a decade. See The Constitutional Court website (visited Nov. 8, 2000) <<http://www.ccourt.go.kr>> .

<sup>103</sup> See Dae-Kyu Yoon, *Judicial Review in the Korean Political Context*, 17 KOREAN J. COMP. L. 133 (1989).

Republic (1948-1960), President Syng Man Rhee served for twelve years. As a leader in the independence movement overseas, Dr. Rhee was elected as President from the first year of the Republic and enjoyed the image of national father. During his reign, the Constitutional Committee had merely a nominal existence. Additionally, the minimal power granted to the Supreme Court for judicial review and excessive deference of the Justices to the executive branch reflect a society based on relationships rather than ideals, with allegiance pledged to strong personalities rather than to abstract concepts like separation of powers, checks and balances, and judicial review. Such a trend of self-restraint by the Supreme Court was not necessarily imputable to the insufficient delegation of power in the provisions of relevant clauses of the Constitution. According to Professor Tscholsu Kim of Seoul National University Law School, the judicial review clause in President Park's Third Republic's Constitution could have resulted in the increased power for the judiciary if it had been faithfully followed.<sup>104</sup> However, the premature state of democracy and lack of profound legal philosophical foundation left this constitutional mandate unfulfilled. For instance, lower courts declared Articles 2, 3, and 9 of the National Compensation Act (Kukka Baesangpop), Article 16 of the Grain Management Act (Yangkok Kwallipop), and Article 47 of the Military Criminal Act (Kun Hyongpop) unconstitutional. Nevertheless, with only a few exceptions, the Supreme Court reversed and remanded the lower courts' decisions.<sup>105</sup>

The limited powers vested in the previous Supreme Court, Constitutional Courts and Committees and their persistent deference to the heads of state brought about the people's distrust of the law and judicial institutions. The people had no reason to seek judicial remedies to resolve their problems when they perceived the Constitutional Court or Supreme Court to be such a weak and ineffectual institution. Thus, in order to improve the people's attitudes towards law, it was important not just to create a stronger Constitutional Court, but also to maintain a political climate where the Court could fulfill its mandate independent of undue interference.

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<sup>104</sup> TSCHOLSU KIM, HANKUK HONPOPSA [KOREAN CONSTITUTIONAL HISTORY] 110 (1990).

<sup>105</sup> Heon Hwan Lee, Jongchi Kwajong e issosocui Sapopkwon e kwanhan Yonku [Research into the Judicial Power in Political Process], at 156 (1996) (Ph.D. dissertation submitted to Seoul National University) (on file with author).



## B. *The New Constitutional Court*

While imperfect, the Constitutional Court has become a strong advocate for the rule of law in Korea and has made judicial review a reality as opposed to a mere theoretical possibility. Much of the success of the new Constitutional Court can be attributed to the innovative leading role played by its first President, Justice Kyu-Kwang Cho.<sup>106</sup> Justice Cho was one of the instrumental factors in assuring that the Court lived up to its potential rather than being a mere rubber stamp for governmental action. Admirable record of creative rulings under Justice Cho's leadership was carried forth by the subsequent Constitutional Court presidents, including his successor, Justice Yong-Joon Kim, the second president. The Constitutional Court has issued rulings that have been instrumental in supporting many of the fundamental democratic rights of the people and has thus earned widespread respect. The Court has greatly enhanced the people's confidence in the law, making them more comfortable with the idea of seeking resolution of a dispute through the legal system.

### 1. *Providing Greater Access*

One important way in which the Constitutional Court was viewed readily accessible to the people was through the opening up of additional avenues to refer constitutional questions to the Court. Previously, only the Supreme Court had been able to refer such questions to the Constitutional Court, but now Article 41 of the Constitutional Court Act gives the referral power to the lower courts as well. Judges of any courts may, while handling a specific case, refer a constitutional question arising out of the case under consideration to the Constitutional Court at his own motion or at the request made by a party. Individuals can thereby have ready access to the Constitutional Court through the court hearing their case.

Perhaps more important is the institution of a system of direct citizen petitions to the Constitutional Court.<sup>107</sup> Previously, the Court had been a passive body, waiting for issues to be referred to it by other courts, but now

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<sup>106</sup> Justice Cho was born in 1926 and attended high school in both Korea and Japan. In 1948, he graduated from Seoul National University College of Arts and Sciences with a major in Political Science and was then admitted to the bar in 1949. From 1951 until 1966, he served as a judge in various courts. When he stepped down from the bench in 1966, his last position was as Senior Presiding Judge of the Seoul Civil District Court. In September 1988, after twenty-two years in private practice, he was appointed by the President to a six-year term on the Constitutional Court. He served as President of the Court until the end of his term in 1994.

<sup>107</sup> Honpop chaepansopop, *supra* note 101, art. 68(2).

an entirely new route has been opened up for constitutional review, independent of governmental control. The vast majority of the cases before the Court in the last twelve years have come to it by way of these direct petitions, illustrating the people's growing confidence that they can now obtain fair and effective remedies to their problems through the Constitutional Court.<sup>108</sup>

## 2. *A Good Record of Decision-Making*

These changes in people's attitudes came about partially because the Court has a fairly impressive track record in making impartial and well-reasoned judgments in cases affecting the everyday lives of people. The Court has been a particularly strong advocate for the rights of women, thus increasing the trend of society towards a less hierarchical structure. In a landmark decision, the Court ruled in *Heung Sun Park v. State* that the prohibition against marriage between people of the same surname with the same ancestral line was unconstitutional.<sup>109</sup> The Court ruled that the prohibition was unconstitutional because it infringed upon the freedom to pursue happiness and did not fall under the permissible category of restricting individual human rights to maintain "social order" or "public welfare." The Court also noted that the continuance of the prohibition would be absurd and anachronistic given that the number of people with the same surname and ancestral line in some cases had grown to astronomical numbers.<sup>110</sup> Moreover, the Court found that the prohibition violated the equal protection clause of the Constitution by discriminating on the basis of gender, since it applied only to surnames from the same patrilineal line. The marriage prohibition had long been an issue of contention between feminist and conservative groups.<sup>111</sup> This decision was important in showing that the Court was willing to wrestle with difficult and controversial issues, not just limit itself to politically neutral cases.

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<sup>108</sup> Of the 5,795 cases filed with the Constitutional Court as of May 31, 2000, 5400 were constitutional complaints. See The Constitutional Court website, *supra* note 102.

<sup>109</sup> Judgment of July 16, 1997, 95 HunKa 6, 9-2 KCCR 1 (S. Korea). For abstracts of this and a selection of other Constitutional Court decisions, see The Constitutional Court website, *supra* note 102. This prohibition, contained in Article 809(1) of the Civil Code, had existed in some form since at least the middle of the Yi Dynasty. See DEUHLER, *supra* note 65; Cho, *supra* note 65. Though some couples had married despite the ban, they were frequently ostracized by their families and suffered from public scorn.

<sup>110</sup> For example, there are about four million people with the family name Kim of the Kimhae clan; this figure represents approximately 10% of the population of Korea. See *Editorial: Saving the Marriage Ban?*, THE KOREA HERALD, Nov. 11, 1999, available in <<http://www.koreaherald.co.kr/archives>>.

<sup>111</sup> Rosa Kim, The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law, 14 B.C. THIRD WORLD L.J. 145, at 154-55 (1994).

The Constitutional Court has also been active in the area of civil liberties, placing strict limits on the government's censorship of the media. In *Hun Kang v. State*, the Court held in 1996 that the Articles 12(1), 12(2), and 13(1) of the Motion Picture Act, which provide for the pre-inspection of movies by a board of government censors, were unconstitutional.<sup>112</sup> The Court pointed out that free expression in film was protected by Articles 21(1) and 22(1) of the Constitution, which respectively provide for freedom of speech and freedom of learning as follows:

Art. 21 (1) All citizens shall enjoy freedom of speech and the press,  
and freedom of assembly and association.

Art. 22 (1) All citizens shall enjoy freedom of learning and the arts.

Additionally, in *Jung Nam Son v. State*, the Court ruled that the provisions of Article 5-2 of the Registration of Publishing Companies and Printing Offices Act pertaining to indecency were unconstitutional.<sup>113</sup> According to the statute above cited, the registration authority may revoke the registration of a publishing company when the company is proved to have published obscene material or indecent cartoons and other books harmful to children and thereby have impaired public customs or social ethics. The Court declared that, while the definition of obscenity has well been established, the concept of the term "indecency" (*chsok*) had not yet been adequately defined by society. One who intends to publish may not know to what extent one may have to adjust the contents of one's expression and, thus, contravenes the principle of clarity and of excessive broadness. The Constitutional Court declared that there was a danger that might arbitrarily limit the freedom of expression.

Another important decision issued by the Constitutional Court concerned a charge based on the Act Limiting the Maximum Size of Residential Land Ownership,<sup>114</sup> which authorizes city governments to impose on people who owned residential land in excess of 660 square meters, or 200 *pyong* in the Korean metric system.<sup>115</sup> This tax, established

<sup>112</sup> Judgment of Oct. 4, 1996, 93 HunKa 13, 8-2 KCCR 212 (S. Korea).

<sup>113</sup> Judgment of Apr. 30, 1998, 95 HunKa 16, 10-1 KCCR 327 (S. Korea).

<sup>114</sup> This Act does not use the term "tax" and instead adopted a term "budamkeum" meaning a charge or share. But, from the viewpoint of tax payers, it is worse than a tax because a citizen owning more than 660 square meters of resident area is practically punished without any gain or income from the ownership. The Act Limiting the Maximum Sale of Residential Land Ownership (Law No. 4174, repealed on Sep. 19, 1998 by Law No. 5571).

<sup>115</sup> Judgment of Apr. 29, 1999, 96 Hun Ba 37 (S. Korea). See also *Taekjisoyusanghanop uihon kyoljong huyujung*, [The Aftermath of the Ruling that the Act Limiting the Maximum Size of Residential Land Ownership is Unconstitutional], BOPRYULSHINMUN [THE LAW TIMES], May 4, 2000.

by legislation in 1989, was ruled “unconstitutional in certain respects” in 1999. The Court ruled that the statute was unconstitutional and therefore void, on the basis of the following reasons: considering the fact that residential land provides shelter for an individual with human dignity and value and serves as a place where an individual enjoys his rights to pursue happiness and to maintain comfortable dwelling, to fix the ownership limit at an excessively low level shall be viewed as unreasonably limiting the scope of individual’s realization of freedom. The statutory provision prohibiting the ownership of residential land in excess of 200 pyong under any circumstances and without any exception by uniformly limiting the maximum limit of residential land at 200 pyong without allowing some exceptions depending on the purpose of ownership or the function of the residential land concerned shall be viewed as an excessive limitation exceeding the degree necessary to achieve the legislative purpose of appropriate supply of residential land and, thus, is an unconstitutional provision that excessively encroaches on the property rights protected by the Constitution.<sup>116</sup>

The Constitutional Court made its decision of invalidating the Act effective only prospectively, not retrospectively. The rationale for such a reasoning was based on the procedural requirement; i.e., exhaustion of available administrative remedies under the existing laws. As a result, people who filed suits against the state prior to the Court’s decision could get a refund of the tax they had paid, but people who had not challenged the tax in court could not have the tax they had already paid refunded. The decision was widely considered as a political compromise. If the government had been forced to refund all of the taxes paid, the figure would have been enormous. This decision, while a step in the right direction, nevertheless illustrates the Court’s limitations.

### 3. *Justice Cho Kyu-Kwang’s Influence on the Independence of the Constitutional Court*

The record of the Constitutional Court has proven to be a much stronger and more independent institution than anyone would have predicted, especially in light of the previous ineffectual systems of constitutional review. How did this relatively sudden change come to pass?

Justice Cho’s willingness to contradict the interests of the executive branch was immediately apparent to Koreans. This kind of independent and

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<sup>116</sup> This Act was repealed on September 19, 1998, by Law No. 5571.

activist spirit had long been absent from the Supreme Court, which traditionally had shown great deference to the President.<sup>117</sup>

Justice Cho's strong, independent reasoning was illustrated in a case concerning the licensing procedures for judicial scriveners.<sup>118</sup> Despite the promulgation of the Judicial Scriveners Act, which called for qualifying examinations for judicial scriveners to be held at regular intervals, no such examinations had ever been conducted. Instead, licensing was done by allowing clerks with extensive experience in the courts or in public prosecutors' offices to become judicial scriveners without taking a qualifying examination. Ruling for the plaintiffs, the Court reasoned that non-compliance with the Judicial Scriveners Act violated the Constitution's guarantee of freedom to choose an occupation.

Significantly, the Court's ruling in this case was heavily influenced by German legal precedent, particularly the "Drug Store Case."<sup>119</sup> In this case, a statutory provision which provides that no drug store could be established within 100 meters of an existing drug store was ruled unconstitutional because it was found to violate the right to freely choose one's profession (*Berufswahlfreiheit*). This reliance on German case law, particularly in the area of the scope of governmental restrictions on the fundamental rights of the citizens, is a practice established by Justice Cho that has continued to be a hallmark of the Court.<sup>120</sup>

## VI. CONCLUSION

In this article, I have tried to describe the attitudes of the Korean people towards law and identify some of the contributing causes to those attitudes. I have emphasized the interaction between economic development

<sup>117</sup> However, there are a few exceptions to the Supreme Court's general pattern of deference to the executive. One of these exceptions is in the area of criminal law and the admissibility of evidence, where the Supreme Court has provided a needed check on overzealous prosecutors. Another well-known exception was the Supreme Court's ruling that provisions of the Government Tort Liability Act and the Judiciary Organization Act were unconstitutional. See Dae-Kyu Yoon, LAW AND POLITICAL AUTHORITY IN SOUTH KOREA, at 408 (1990); Heon Hwan Lee, *supra* note 105, at 156-60; Lee, *supra* note 21, at 42-44; Kun Yang, *Judicial Review and Social Change in the Korean Democratization Process*, 41 AM. J. COMP. L. 1, 1-2 (1993).

<sup>118</sup> Judgment of Oct. 15, 1990, 89 HunMa 178, 2 KCCR 365 (S. Korea). A judicial scrivener (*sabopsosa*) is somewhat similar to a civil law notary.

<sup>119</sup> Entscheidungen des Bundesverfassungsgerichts [BverfGE] (federal constitutional court) 7, 377 (F.R.G.).

<sup>120</sup> The German legal principles of Proportionality (*das Prinzip der Verhältnismäßigkeit*) and Excessive Prohibition (*das Prinzip des Uebermaßverbots*) have been especially influential in Korea. German law was a natural source of persuasive reasoning for the Court since much of Korean law is based on the German Civil Code. Another factor, which pushed the Constitutional Court to rely heavily on German precedents, was the inability to find relevant case law from Japan.

and our changing attitudes towards law, as well as the role lawyers and political leaders could play in the course of industrialization.

Traditional Korean society was based on agriculture, with people staying in the vicinity of their hometowns for the majority of their lives. Consequently, one knew and was often related to the majority of the people living in the neighborhood. In many respects, Confucian teachings emphasizing duty and one's respective role within society were a good fit and appropriate. However, industrialization forced the people to relocate, and with this change the traditional family structure is gradually breaking down. It is important to understand that in addition to improving the standard of living, industrialization and economic development have fundamentally changed the way of life and relations among people. Unfortunately, while many of the Confucian values have lost ground in society, the urbanized life based on law, morality, and ethics has yet to fully take root. Sweeping societal changes have created an environment where people can hardly survive without relying on the legal system. Although people still have a tendency to disregard the law, there is a growing awareness of the law's pivotal role in maintaining a safe, orderly, and free society. Institutional changes have helped to foster this awareness. The establishment of the new Constitutional Court brought the law to the people in a much more direct and concrete way than ever before. The people, through filing direct petitions to the Constitutional Court and the National Assembly, electing local officials and being active in labor unions and NGOs, are gradually coming to the realization that law is not just something they are subject to, but also something that they can benefit from.

The curriculum of all schools must be changed to reflect the need for a massive nationwide campaign for a better understanding of democratic principles and the fundamental benefits that a free society can offer. Additionally, much of this can be done by teaching through example. In this regard, politicians have an obligation to uphold the rule of law so that the citizenry will have a model to live by.<sup>121</sup>

In its short history as a republic, Korea has witnessed first hand the influence that political leaders have over the fate and future of its society. In light of its prior models, Korea needs future leaders to be honest, to display consistency in words, and transparency in behavior, and to respect the law and its fair application. Future leaders must be free from corrupt practices: setting good examples that model fairness for other members of society.

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<sup>121</sup> Choi, *supra* note 12, at 98.

Once the people themselves feel that the law is for them, they will develop a new appreciation for the law.

Let me conclude by reviewing one interesting observation of Professor Hahm, who noted a close relationship between the rule of law and democracy.<sup>122</sup> According to him, the rule of law is essential for a workable democracy and, in turn, there can be no rule of law where there is no democracy. Despite of the constraints the Confucian influence and traditional culture of Korea have imposed upon democratic development of the Korean society, the Korean culture has made significant strides towards a universal appreciation and abidance of law while there is still room for advancement.

Building on the above statement, Professor Hahm emphasized the greater role lawyers must play in the political life of the nation. Judging from my personal experience, however, lawyers participating in politics have not met that need because they have simply been outnumbered by other politicians who find the rule of law inconvenient and contrary to their interests. In order for the rule of law to have a better chance of success, a greater number of lawyers must participate in the political life of the country.

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<sup>122</sup> HAHM, *supra* note 1, at 214-15.