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ABANDONED BABIES: THE BACKLASH OF SOUTH KOREA'S SPECIAL ADOPTION ACT

Sook K. Kim[†]

Abstract: South Korea amended its adoption law to reduce the number of foreign adoptions and to keep children with their biological families. However, since the amendment took effect in August 2012, more babies have been abandoned. The amendment (hereinafter the “Special Adoption Act”) created three conditions on birthparents who wish to place their child up for adoption. First, birthparents must wait at least seven days after their child is born before they may consent to placing their child up for adoption.¹ Second, birthparents must receive counseling on the various resources that would be available to them if they choose to raise the child themselves.² Finally, birthparents must go through family court to place their child up for adoption, meaning that the adoption would be a part of government records.³ The legislative intent behind the Special Adoption Act was to keep children with their biological families, reduce the number of foreign adoptions, and encourage more domestic adoptions.⁴ The legislature intended to accomplish these goals by making the adoption process more transparent and by making available information deemed “necessary to promote domestic adoption.”⁵ However, after the Special Adoption Act took effect, an unexpected problem emerged: more infants are being abandoned, particularly those born to unwed mothers. This comment examines South Korea’s Special Adoption Act in the context of the Korean culture and history. It proposes that the biggest weakness of the Act is that it attempts to keep children with their biological families by making the adoption process more burdensome on the birthparents. This comment further suggests that the Act should instead resort to more effective and permanent means of encouraging birthparents to raise their children, such as fighting the social stigma surrounding adoptions, children born out of wedlock, and single mothers. In fact, even though South Korea overhauled its constitution to guarantee gender equality in the mid-1980s, a legacy remains of decades of discrimination against women, and women today still struggle to raise children born out of wedlock.

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¹ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, art. 13, cl. 1 (S. Kor.).

² *Id.* at art. 13, cl. 3-4.

³ *Id.* at art. 11.

⁴ *Id.* at arts. 3, 5, 7, 8.

⁵ *Id.* at art. 6, cl. 1.

I. INTRODUCTION

In South Korea, international adoption began in 1953 after the Korean War. Since then, the country has led the world in the number of children it sent abroad to be adopted.⁶ Between 1953 and 2009, a total of 235,630 South Korean children were adopted, and a staggering 69 percent of these children were adopted abroad.⁷ The overwhelming number of overseas adoptions has attracted both international and domestic criticism.⁸ Many South Korean citizens and government officials regret that—despite their country’s strong economic standing—South Korea continues to lead the world in foreign adoptions.⁹ Mr. Kim Dong-Won from the South Korean Ministry of Health and Wellness shared his embarrassment over the fact that “South Korea is the world’s 12th largest economy . . . we would like to rid ourselves of the international stigma or disgrace of being a baby-exporting country.”¹⁰

South Korea amended its adoption law in 2011, perhaps as a response to the growing criticism. The Special Adoption Act was drafted with two primary purposes. First, the Act intends to keep children with their birth families¹¹ as recommended by The Hague Convention on Intercountry Adoption.¹² South Korea signed this convention in May of 2013 and is working toward its ratification.¹³ Second, the Act intends to reduce the number of foreign adoptions and to prioritize domestic adoptions in

⁶ The terms “international adoption” and “foreign adoption” are used interchangeably throughout this comment.

⁷ *Support for Children in Need of Care*, KOREAN MINISTRY OF HEALTH & WELFARE, available at http://english.mw.go.kr/front_eng/jc/sjc0107mn.jsp?PAR_MENU_ID=100306&MENU_ID=1003060101 (last visited Mar. 12, 2015).

⁸ See POV, *History of Adoption from Korea*, PUB. BROAD. SERV. (PBS), available at http://www-tpbs.org/pov/docs/Korean%20Adoption_One-Sheet_07.pdf (last visited Mar. 12, 2015).

⁹ See Norimitsu Onishi, *Korea Aims to End Stigma of Adoption and Stop ‘Exporting’ Babies*, N.Y. TIMES (Oct. 9, 2008), available at http://www.nytimes.com/2008/10/09/world/asia/09adopt.html?page=wanted=print&_r=0; see also Jennifer Kwon Dobbs, *Ending South Korea’s Child Export Shame*, FOREIGN POLICY IN FOCUS (June 23, 2011), available at http://fpif.org/ending_south_koreas_child_export_shame/.

¹⁰ *Id.*

¹¹ See Ibyang Teukrye Beob Gaejug Iyu [Legislative History of the Special Adoption Act] (S. Kor.), translated into English (stating that amendment was designed around “the basic paradigm that the best protection of a child is for the child to be raised by his birth family and in his or her birth country”).

¹² Hague Conference on Private International Law, *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, 29 May 1993, 33, available at http://www.hcch.net/index_en.php?act=conventions.text&cid=69.

¹³ *Adoption Notice: The Republic of Korea Signs the Hague Adoption Convention*, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, available at <http://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notice/south-korea-2.html> (last visited May 11, 2015).

situations where the child cannot remain with their birth family.¹⁴ To achieve this goal, the Act makes the adoption process more transparent and makes available information that is deemed “necessary to promote domestic adoption.”¹⁵

The Special Adoption Act created three additional requirements in the adoption process that birthparents must abide by before they can consent to placing their child up for adoption. First, birthparents must wait seven days after the birth of the child before committing to adoption.¹⁶ Second, birthparents must receive information and counseling on the various resources that would be available to them if they decide against the adoption and commit to raising the child themselves.¹⁷ Third, birthparents must go through family court in order to formally consent to placing their child up for adoption.¹⁸

While the goals of the Special Adoption Act were noble, more babies have been abandoned following its enactment. This comment suggests that the Act may be a contributing factor. Part II of this comment places the Special Adoption Act into context by describing the history of adoption in South Korea and the Confucian influence on the Korean legal system, which systematically discriminated against women until the beginning of the twenty-first century. Part II describes how Confucian ideals, such as its emphasis on the male bloodline, created a culture that continues to stigmatize adoptions, children born out of wedlock, and single mothers. Part III of this comment describes the Special Adoption Act in detail and examines the possible effects of the Act. Part IV of this comment discusses the weaknesses of the Act and suggests why the Act may be failing. Finally, Part V concludes this comment.

II. SOUTH KOREA'S HISTORY OF ADOPTION AND ITS CONFUCIAN INFLUENCE

To better understand the purpose of the Special Adoption Act, one must examine South Korea's history of adoption, its experience with international adoptions, and its previous attempts to promote domestic adoption. Further, one must understand the country's Confucian roots and how the Confucian influenced legal system systematically discriminated

¹⁴ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, arts. 3, 5, 7, 8 (S. Kor.).

¹⁵ *Id.* at art. 6, cl. 1.

¹⁶ *Id.* at art. 13, cl. 1.

¹⁷ *See id.* at art. 13, cl. 3-4.

¹⁸ *Id.* at art. 11.

against women for decades. Finally, one must examine how Confucian ideals generated a culture that, to this day, stigmatizes adoptions, children born out of wedlock, and single mothers.

A. *History of Adoption in South Korea*

South Korea has the longest-running foreign adoption program in the world.¹⁹ The concept of adoption did not exist in South Korea until after the Korean War (1950-1953),²⁰ when the country found itself with thousands of orphaned and abandoned children. Among these children were those known as “G.I. babies,” who had Korean birthmothers and foreign military fathers.²¹ In fact, the first generation of Korean adoptees to the United States and Europe were mostly G.I. babies.²² One year after the war, a presidential decree created the Children Placement Services (now the Social Welfare Society), which marked the official start to Korean adoptions,²³ even though G.I. babies had already been adopted abroad prior to this date.²⁴

By the 1970s the population of adoptable children shifted to mostly orphans and children born out of wedlock.²⁵ In fact, during the 1970s, “only half of the children placed for adoption were orphans, with most of the remaining children born out of wedlock.”²⁶ During this time, many unwed women who gave birth out of wedlock placed their children up for adoption if they did not have a married family member or blood relative who could raise the child as their own.²⁷ This was likely because of the stigma that surrounded children born out of wedlock and single mothers,²⁸ as well as the country’s “societal values emphasizing the importance of bloodline.”²⁹

¹⁹ *South Korea*, CONG. COAL. ON ADOPTION INST., available at http://www.ccaainstitute.org/index.php?option=com_content&view=article&id=120:country-update-south-korea&catid=41:countries&Itemid=2 (last visited Mar. 12, 2015).

²⁰ Madelyn Freundlich & Joy Kim Lieberthal, *The Gathering of the First Generation of Adult Korean Adoptees: Adoptees’ Perceptions of International Adoption*, THE EVAN B. DONALDSON ADOPTION INST. (2000), available at <http://www.holtintl.org/pdfs/Survey2.pdf>.

²¹ Arissa Oh, *A New Kind of Missionary Work: Christians, Christian Americanists, and The Adoption of Korean GI Babies, 1955-1961*, 33 WOMEN STUD. Q. 161, 161, 163 (2005).

²² Eleana Kim, *The Origins of Korean Adoption: Cold War Geopolitics and Intimate Diplomacy*, US KOREA INST. AT SAIS 7 (2009), available at http://uskoreainstitute.org/wp-content/uploads/2010/02/USKI_WP0909_KimAdoptee.pdf.

²³ Freundlich & Lieberthal, *supra* note 20, at 2.

²⁴ Eleana Kim, *supra* note 22, at 7.

²⁵ Freundlich & Lieberthal, *supra* note 20, at 2-3.

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ *Id.*; *see infra* Part II.B.

²⁹ *See infra* Part II.C; Freundlich & Lieberthal, *supra* note 20, at 3.

As international adoptions increased in number, South Korea enacted the Five Year Plan for Adoption and Foster Care in 1976.³⁰ This plan focused on encouraging domestic adoption.³¹ “However, many Korean families remained reluctant to adopt children who were not family due to a traditional emphasis on family bloodlines.”³² As a result, overseas adoptions rose to a high of 8837 adoptions in 1985.³³ During the 1988 Olympic Games in Seoul, the country attracted increasing international criticism of its adoption policies.³⁴ In response, the government enacted a new policy in 1989, which had the long-term goal of terminating all international adoption and the short-term goal of limiting overseas adoptions to just children of mixed-races and children with disabilities.³⁵ While the number of international adoptions did indeed decrease from 1986 to 2007, domestic adoptions did not rise to the level that would allow South Korea to cease international adoptions altogether.³⁶

More recently, the South Korean government introduced a domestic adoption priority system in 2007 that prohibits a child from being adopted abroad for the first five months after the child becomes eligible for adoption.³⁷ In other words, a child may only be adopted domestically for the first five months of his or her eligibility. This system seems to have been successful. In 2006, South Korea sent 1899 adopted children abroad, but the number decreased to 1264 children in 2007 and to 1250 children in 2008.³⁸ Furthermore, from 1953 through 2006, there were a total 227,983 Korean children adopted, with a staggering 69.8 percent (159,044 children) of the adoptions being international,³⁹ however, since the 2007 introduction of the domestic adoption priority system, international adoptions decreased to 47.6 percent from 2007 through 2009.⁴⁰

In 2011, South Korea continued its fight to reduce the number of international adoptions by amending its adoption law, known as the Special Adoption Act. The legislature designed the Special Adoption Act with the goal of encouraging more birthparents to raise their children rather than

³⁰ Freundlich & Lieberthal, *supra* note 20, at 3.

³¹ *Id.*

³² *History of Adoption from Korea*, *supra* note 8.

³³ *Id.*

³⁴ Freundlich & Lieberthal, *supra* note 20, at 3.

³⁵ *Id.*

³⁶ POV, *A Brief Overview of International Adoption*, PUBLIC BROADCASTING SERVICE (PBS), available at <http://www.pbs.org/pov/adoption/background.php> (last visited Mar. 12, 2015).

³⁷ *Support for Children in Need of Care*, *supra* note 7.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

placing them up for adoption,⁴¹ and of encouraging more domestic adoptions.⁴²

B. Confucianism and Its Legal Impact on Women

In addition to the history of adoption in South Korea, the Special Adoption Act must be understood and examined in the context of the Korean culture and society. Confucian ideology from the fourteenth century still influences Korean culture. Confucianism became the ruling ideology in South Korea during the Choson Dynasty (1392–1910),⁴³ and it dramatically changed the organization and functions of Korean society. Confucianism dictated Korean familial roles and marriage practices, and it established strict gender roles.⁴⁴ The Confucian family structure is male-dominated, and a Confucian principle allowed a man to divorce his wife for any of the following reasons: the wife’s “fail[ure] to produce a son, gossiping, stealing, jealousy, loose conduct, disease, or unfiliality toward her parents-in-law.”⁴⁵ Such patriarchal Confucian ideals were integrated into South Korean customary and codified laws.⁴⁶

Confucianism stopped being the formal ideology of South Korea after the demise of the Choson Dynasty in 1910, but its deeply rooted principles shaped the Korean legal system.⁴⁷ During the mid-1980s, the Korean Constitution was significantly revised to grant equality for men and women;⁴⁸ however, despite this new Constitutional guarantee, Korean family laws continued to systematically discriminate against women for almost

⁴¹ See Ibyang Teukrye Beob Gaejug Iyu [Legislative History of the Special Adoption Act] (S. Kor.), translated into English (amendment was designed around “the basic paradigm that the best protection of a child is for the child to be raised by his birth family and in his or her birth country”).

⁴² Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, arts. 3, 5, 7 (S. Kor.).

⁴³ Youngjoon Kwon, *Korea: Bridging the Gap between Korean Substance and Western Form*, in LAW AND LEGAL INSTITUTIONS OF ASIA 151, 153 (E. Ann Black & Gary F. Bells, eds., 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1877843.

⁴⁴ Erin Cho, *Caught in Confucius’ Shadow: The Struggle for Women’s Legal Equality in South Korea*, 12 COLUM. J. ASIAN. L. 125, 125 (1998).

⁴⁵ Jacqueline Putnam Epstein, *The Role of Women in Korean Divorce Law*, 62 J. KOR. L. 248, 250 (2007), available at <http://s-space.snu.ac.kr/bitstream/10371/85114/1/6.%20The%20Role%20of%20Women%20in%20Korean%20Divorce%20Law.pdf>.

⁴⁶ Youngjoon Kwon, *supra* note 43, at 176-77.

⁴⁷ *Id.* at 125-26.

⁴⁸ See DAEHAN MINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 11, cl. 1 (S. Kor.), available at <http://www.moleg.go.kr/english/korLawEng?pstSeq=54794&rctPstCnt=3&searchCondition=AllButCsfCd&searchKeyword=constitution> (“All citizens shall be equal before the law, and there shall be no discrimination in political, economic civic or cultural life on account of sex, religion or social status.”).

another thirty years.⁴⁹ The tremendous impact of Confucianism in Korean society is evident in old Korean laws.

Until 2005, South Korean family law recognized only the men as heads of the household and the headship could pass only to the oldest son or grandson.⁵⁰ This meant that in a situation where the father died, an infant son would become the head of the household before his mother (assuming that the infant was the first-born son).⁵¹ Even to this day, much weight is given to the oldest son and grandson. When someone dies, the first-born son of the deceased becomes the *sangju*, which means he is the master of the funeral ceremonies and the chief mourner.⁵² The funeral ceremonies traditionally last three days, which the *sangju* arranges.⁵³ After the three days, the deceased is placed into the casket and the *sangju's* eldest son (the grandson of the deceased) carries a photo of the deceased and leads the casket and the rest of the family members to the burial grounds.

Other examples of discriminatory laws abound. Until 2005, women could not remarry for a period of six months following the dissolution of their previous marriage.⁵⁴ Men were not subject to such restrictions. Until 1990,⁵⁵ women could receive only a quarter of the inheritance that their brothers received.⁵⁶ Also, women were required “to abandon their own family register upon marriage and enter into the husband’s family register.”⁵⁷ In the case of divorce, Korean family courts automatically granted custody and guardianship of the children to the fathers.⁵⁸

South Korea underwent significant social and legal changes in the mid-1980s when the Korean Constitution was revised to guarantee gender equality.⁵⁹ However, despite this constitutional assurance, many Korean

⁴⁹ See Erin Cho, *supra* note 44.

⁵⁰ Rosa Kim, *The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law*, 14 B.C. THIRD WORLD L.J. 145, 155 (1994) (referring to Minbeob [Civil Code], arts. 778-96, (S. Kor.)).

⁵¹ See Constitutional Court [Const. Ct.], 2001Hun-Ga9 & 10 & 11 & 12 & 13 & 14 & 15 & 2004Hun-Ga5 (consol.), Feb. 3, 2005 (17-1 KCCR 1) (S. Kor.) (repealed Article 778 and parts of Article 781(1) and Article 826(3) of the Korean Civil Code as being unconstitutional).

⁵² Gibon sangrye yejeol [Basic Funeral Traditions], SAMSUNG MED. CTR., http://www.samsunghospital.com/funerals/contents/view.do?VIEW_CODE=E21 (last visited Mar. 25, 2015).

⁵³ *Id.*

⁵⁴ Hyunah Yang, *A Journey of Family Law Reform in Korea: Tradition, Equality, and Social Change*, 8.1 J. KOR. L. 77, 88 (2008) (referring to Minbeob [Civil Code], art. 811 (S. Kor.)).

⁵⁵ Minbeob [Civil Code], art. 1009 (S. Kor.).

⁵⁶ Erin Cho, *supra* note 44, at 164 (referring to Minbeob [Civil Code], art. 1009 (S. Kor.)).

⁵⁷ Kay C. Lee, *Confucian Ethics, Judges, and Women: Divorce Under the Revised Korean Family Law*, 4 PAC. RIM. L. & POL'Y J. 479, 484 (1995) (referring to Minbeob [Civil Code], art. 826(3) (S. Kor.) prior to revision).

⁵⁸ Epstein, *supra* note 45, at 4 (referring to Minbeob [Civil Code], art. 837 (S. Kor.)).

⁵⁹ See DAEHAN MINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 11, cl. 1 (S. Kor.), available at <http://www.moleg.go.kr/english/korLawEng?pstSeq=54794&rctPstCnt=3&searchCondition=AllButCsfCd>

laws continued to discriminate against women for some time, as demonstrated by the aforementioned laws. While the current state of South Korean laws finally appear to be gender neutral, many aspects of Korean culture and society remain male-centered. “The norms and values that guide gender relations in Korean daily life continue to be based on Confucian ideals of male superiority.”⁶⁰ As a result, when it comes to the Special Adoption Act, the legislature seems to have failed in achieving its goal of reducing foreign adoptions, encouraging domestic adoptions, and keeping more children with their birth families. This apparent failure may be because the Act ignores the social and cultural context that surrounds adoption and children born out of wedlock in Korea today.

III. THE CULTURAL CONTEXT SURROUNDING ADOPTION AND CHILDREN BORN OUT OF WEDLOCK, AND THE SOCIAL EMPHASIS ON BLOODLINE AND THE FAMILY REGISTRY.

Many aspects of the Korean culture and society remain male-centered because Confucianism “long pervaded the morals of the Korean people” and shaped the Korean legal system.⁶¹ Confucian values “strongly disapprove[] [of] promiscuous sexual relationships,”⁶² and in South Korea it is still difficult for women to raise children born out of wedlock. Raising a child born out of wedlock sometimes means that the mother is forced to sever ties with her family and friends.⁶³ There have even been reports of pregnant teenagers being kicked out school, out of fear that the girls would negatively influence the other students.⁶⁴

These days, “[c]hildren placed internationally for adoption typically have single mothers, either widows or unwed women . . . [and] [t]he stigma associated with single motherhood remains strong.”⁶⁵ This trend continues to grow. In 1986, 75 percent of South Korean children adopted abroad were born to unwed mothers.⁶⁶ In 2008, nearly 90 percent of the 1250 South

&searchKeyword=constitution (“All citizens shall be equal before the law, and there shall be no discrimination in political, economic civic or cultural life on account of sex, religion or social status”).

⁶⁰ Rosa Kim, *supra* note 50, at 145.

⁶¹ Chin Kim & Timothy G. Carroll, *Intercountry Adoption of South Korean Orphans: A Lawyer's Guide*, 14 J. FAM. L. 223, 224 (1975).

⁶² *Id.*

⁶³ See *The Drop Box* (Pine Creek Entertainment 2015).

⁶⁴ See *id.*; Jinseok Kim, *Silent Cry: Adolescent Pregnancy in South Korea*, in INT'L HANDBOOK OF ADOLESCENT PREGNANCY 563, 563 (Andrew Cherry & Mary Dillon eds., 2014).

⁶⁵ Freundlich & Lieberthal, *supra* note 20, at 3.

⁶⁶ *Id.*

Korean children adopted abroad were born to unwed mothers.⁶⁷ In 2012, 92.8 percent of the 1880 children adopted were born to unwed mothers.⁶⁸

Lasting Confucian ideals in the Korean culture may also account for the relatively low percentage of domestic adoptions in South Korea. Confucianism places great importance on the male bloodline, and such “Confucian values make many families reluctant to raise a child from outside their bloodline.”⁶⁹ This explains South Korea’s “conservative cultural approach to adoption.”⁷⁰ It may also explain why international adoptions outnumbered domestic adoptions for South Korean children for over fifty years, from 1953 to 2007.⁷¹ It was not until 2007 when, for the first time in the country’s history, domestic adoptions outnumbered international adoptions with 52 percent of all adoptions taking place that year being domestic.⁷²

The Confucian emphasis on bloodline may also explain why many adoptive families in South Korea choose to conceal their child’s adoption. It is estimated that more than 70 percent of domestic adoptions in Korea are kept secret, even from the adopted child.⁷³ Some adoptive parents have gone as far as to fake their pregnancies to convince others that their children are biologically theirs.⁷⁴ Other adoptive parents have moved towns in order to conceal the adoption, in fear that their child would otherwise be ostracized.⁷⁵ Moreover, the cultural emphasis on lineage and bloodline may also explain why the Korean society gives so much weight and importance to the family register.

The family register is the Korean equivalent to a birth certificate in the United States.⁷⁶ The registration process is established under the Civil Code,

⁶⁷ Choe Sang-Hun, *Group Resists Korean Stigma for Unwed Mothers*, N.Y. TIMES (Oct. 7, 2009), available at <http://www.nytimes.com/2009/10/08/world/asia/08mothers.html>.

⁶⁸ Kyeong Sook Jeon, *Gaejeong Ibyang Teukrye Beob Sihaeng Inyun, Hyeonanmunjewa hyanghugwaje* [One Year After the Special Adoption Act Has Been in Effect, Current Issues And Future Challenges], GYEONGGIDO FAMILY & WOMEN’S RESEARCH INST. (Oct. 4, 2013), available at https://www.gfwri.kr/2013/issue_analysis/issue01/issue_analysis.pdf.

⁶⁹ Steven Borowiec, *Change in Korean Adoption Law Followed by More Abandoned Babies*, WALL ST. J. (Oct. 7, 2013), available at <http://www.wsj.com/articles/SB10001424052702303442004579121030310275014>.

⁷⁰ Catherine M. Bitzan, *Our Most Precious Resource: How South Korea is Poised to Change the Landscape of International Adoption*, 17 MINN. J. INT’L L. 121, 126 (2008).

⁷¹ *Support for Children in Need of Care*, *supra* note 7.

⁷² *Id.*

⁷³ Bae Ji-sook, *Adoption Law Revision Draws Fire*, THE KOREA HERALD (Mar. 18, 2012), available at <http://www.koreaherald.com/view.php?ud=20120318000381>.

⁷⁴ Steve Haruch, *In Korea, Adoptees Fight to Change Culture That Sent Them Overseas*, NPR (Sept. 9, 2014), available at <http://www.npr.org/blogs/codeswitch/2014/09/09/346851939/in-korea-adoptees-fight-to-change-culture-that-sent-them-overseas>.

⁷⁵ *Id.*

⁷⁶ Kim & Carroll, *supra* note 61, at 225.

and it requires that “a father shall enter the name of a child born in wedlock in the father’s family registry.”⁷⁷ If a child is born out of wedlock, the mother may register the child in her own family register (a relatively new right given to women in 1958).⁷⁸ But “[m]any Korean mothers of illegitimates . . . still do not register their children, apparently because by registration the mother would inscribe the fact of her indiscretion in the public records.”⁷⁹ Birthmothers fear that registering the child would be legal proof of the child’s illegitimacy.⁸⁰

IV. THE SPECIAL ADOPTION ACT

In response to these problems, the Korean legislature amended its adoption law on August 4, 2011.⁸¹ The purpose of the Special Adoption Act is to “establish a healthy adoption culture and to promote domestic adoption.”⁸² The Act creates a national Adoption Day,⁸³ prioritizes domestic adoptions,⁸⁴ establishes and calls for the operation of an information system,⁸⁵ and makes eight major revisions to country’s prior adoption law.⁸⁶ The Special Adoption Act went into effect on August 5, 2012, but since then more children have been abandoned⁸⁷ and fewer children have been adopted, both domestically and internationally.⁸⁸

A. Major Changes to the Adoption Law

The legislature made eight major revisions to its adoption law with the Special Adoption Act. First, the Act requires the national and local governments to implement measures focused on seeking adoptive families domestically.⁸⁹ Second, adoptive parents must not have a history of child abuse, domestic violence, crimes such as drug or alcohol abuse, or drug

⁷⁷ *Id.*

⁷⁸ *Id.* at 226.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, (S. Kor.).

⁸² *Id.* at art. 5.

⁸³ *Id.*

⁸⁴ *Id.* at arts. 3, 5, 7.

⁸⁵ *Id.* at art. 6.

⁸⁶ *See supra* Part II.A.

⁸⁷ *See supra* Part II.B.

⁸⁸ *Id.*

⁸⁹ Ibyang Teukrye Beob Gaejeong Iyu [Legislative History of the Special Adoption Act], Main Content, Part A (S. Kor.), *translated in English*.

addictions.⁹⁰ Third, all adoptions must now be approved and granted by the Family Court.⁹¹ This means that the birthparents are required to report the birth of the child to the government.⁹² Once the adoption is finalized, the child will have the same legal status as a biological child to the adoptive parents.⁹³ If an adoption agency takes a child into custody without a government registration of a birth and family, the head of the adoption agency is required to undertake the registration procedures for that child.⁹⁴

Fourth, birthparents are required to wait seven days after the birth of the child before consenting to the adoption.⁹⁵ Fifth, adoptions may be revoked under certain circumstances, such as if the adoptive parents engage in conduct that severely jeopardizes the child's well-being.⁹⁶ Sixth, a Central Adoption Agency was created to operate an integrated database for the purposes of assisting adopted children in finding their birth families and to provide them with information about themselves and their birth families.⁹⁷ Seventh, when adopted children request information regarding their adoption, the Central Adoption Agency is required disclose all information other than the personal information of the birthparents (unless the birthparents have so consented).⁹⁸ Lastly, regardless of whether the birthparents have consented to the disclosure of certain information, if the information is necessary for a medical purpose or other special reason, then the Central Adoption Agency is required to provide such information to the adopted children.⁹⁹

B. *The Aftermath: Statistics on Abandoned Babies and Domestic Adoptions*

The legislative intent behind the Special Adoption Act was to keep children with their biological families and to encourage more domestic adoptions.¹⁰⁰ However, the effectiveness of the Act is in doubt. When comparing the statistics of abandoned children and adoptions between 2011 and 2013, the years before and after the Act was enacted, the Act seems to

⁹⁰ *Id.* at Main Content, Part B (referring to Special Adoption Act, art. 10, cl. 3).

⁹¹ *Id.* at Main Content, Part C (referring to Special Adoption Act, art. 11).

⁹² See Kyeong Sook Jeon, *supra* note 68.

⁹³ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, art. 14 (S. Kor.).

⁹⁴ *Id.* at art. 23.

⁹⁵ *Id.* at art. 13, cl. 1.

⁹⁶ *Id.* at art. 16, 17.

⁹⁷ *Id.* at art. 26.

⁹⁸ *Id.* at art. 36, cl. 1-2.

⁹⁹ *Id.* at art. 36, cl. 3.

¹⁰⁰ See *id.* at art. 8.

have failed at encouraging more domestic adoptions. Instead, it seems as though the Act has unintentionally led to a rise in abandoned babies.

Between 2011 and 2013, the number of domestic adoptions decreased. In 2011, a total of 1548 children were adopted domestically, but in 2013 the number dropped to just 686.¹⁰¹ While the percentage of domestic adoptions to international adoptions improved (62.8 percent of all adoptions were domestic in 2011, and 74.4 percent of all adoptions were domestic in 2013),¹⁰² the Act failed to increase the actual number of domestic adoptions. This means that fewer children were adopted altogether, whether domestically or internationally, thereby creating the concern that there are now more children in Korea who are in need of families.¹⁰³

Another problem that arised since the Special Adoption Act took effect is the rise in abandoned babies. The Act took effect on August 5, 2012.¹⁰⁴ During the seven months prior to its enactment, 62 children were abandoned in South Korea.¹⁰⁵ During that same period of time in 2013, after the enactment of the Act, 152 children were abandoned.¹⁰⁶ In 2010 and 2011 respectively, 191 and 218 children were abandoned,¹⁰⁷ in 2012 and 2013, a total of 235 and 285 children were abandoned respectively,¹⁰⁸ showing a steady incline in the number of abandoned babies.¹⁰⁹ The rise in the number of abandoned babies and the drop in domestic adoptions suggest that the Special Adoption Act has been unsuccessful.

The rise in abandoned babies has also garnered both domestic and international attention regarding a “baby box” (or “drop box”) that a South Korean pastor created in response to the rise in abandoned babies. The

¹⁰¹ See 2013 Nyun Guknaeoe Ibyang Hyeonhwang [2013 Tracking Domestic and International Adoptions], KOREA ADOPTION SERVICES, available at https://www.kadoption.or.kr/board/board_view.jsp?no=147&listSize=10&pageNo=1&bcode=06_1&category=%ED%86%B5%EA%B3%84 (last visited Mar. 25, 2015).

¹⁰² See *id.*

¹⁰³ See Stephen Evans, *Taking on South Korea's Adoption Taboo*, BBC NEWS (Jan. 6, 2015), available at <http://www.bbc.com/news/world-asia-30692127>.

¹⁰⁴ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011 (S. Kor.).

¹⁰⁵ Steven Borowiec, *Change in Korean Adoption Law Followed by More Abandoned Babies*, WALL ST. J. (Oct. 7, 2013), available at <http://www.wsj.com/articles/SB10001424052702303442004579121030310275014>.

¹⁰⁶ *Id.*

¹⁰⁷ Mihonmoe ‘Juhong Geulssi’ ... Yeonga Yugi Naemoneun Ibyang [‘Branding the Scarlet Letter’ on Unwed Mothers ... Adoption Forces Abandonment of Babies], HERALD CORP. NEWS (May 11, 2015), available at <http://biz.heraldcorp.com/view.php?ud=20150511000557>.

¹⁰⁸ *Id.*

¹⁰⁹ See Ibyang Teukrye Beob Gaejeong ‘Yoboho Adong’ Julgo Ibyang Jeolcha Kkadarowoiyeo ... Guknae Ibyang Adong Sootja Bantomak [Revision Of The Special Adoption Act, “Children In Need Of Protection’ Lessons, Adoptions Procedures Become More Strict, Number Of Domestic Adoption Cut In Half], NEWSIS (May 11, 2014), available at http://www.newsis.com/ar_detail/view.html?ar_id=NISX20140511_0012909353&cID=10201&pID=10200.

attention has even inspired an American documentary on the new baby box phenomenon.¹¹⁰ South Korean pastor Lee Jong-Rak created the “baby box,” which is a heated drop box built on the side of his home.¹¹¹ The box faces the street, allowing parents to leave their unwanted infants in the safety of the drop box.¹¹² Once a baby is placed inside, a doorbell alarm goes off, alerting the pastor and his church staff of the child.¹¹³ Before the Special Adoption came into effect, Pastor Lee Jong-Rak had an average of five babies abandoned each month in his baby box.¹¹⁴ However, the number jumped to ten babies in August 2012 and fourteen babies in September 2012.¹¹⁵

V. WEAKNESSES OF THE SPECIAL ADOPTION ACT

The statistics suggest that the Special Adoption Act is failing to achieve its purpose of keeping children with their biological families and encouraging more domestic adoptions.¹¹⁶ In fact, the Act may have caused more children to be abandoned.¹¹⁷ This comment argues the Special Adoption Act makes the adoption process too burdensome on the birthparents, fails to address the societal and cultural factors that make it difficult for single mothers to raise their children born out of wedlock, and is simply premature.

A. *The Special Adoption Act Makes the Adoption Process Too Burdensome on the Birthparents*

One of the greatest weaknesses of the Special Adoption Act is that it makes it too difficult for the birthparents to lawfully place their child up for adoption and safely hand the child over to adoption agencies. Requiring the birthparents to stay with the child for a minimum of seven days and to

¹¹⁰ See *The Drop Box*, *supra* note 63.

¹¹¹ Natalie Brumfield, *South Korea Pastor's "Drop Box" Saves Abandoned Babies from Infanticide*, LIFENEWS.COM (May 28, 2013), <http://www.lifenews.com/2013/05/28/south-korea-pastors-drop-box-saves-abandoned-babies-from-infanticide/>.

¹¹² See *The Drop Box*, *supra* note 63.

¹¹³ Genevieve Plaster, *The Drop Box: Rescuing Hundreds of Babies in South Korea*, CHARLOTTE LOZIER INST. (May 13, 2015), available at <https://www.lozierinstitute.org/the-drop-box-rescuing-hundreds-of-babies-in-south-korea/>.

¹¹⁴ Daum Kim, *South Korea "Baby Box" Pastor Says New Law Brings More Babies*, REUTERS (Oct. 7, 2012), available at <http://www.reuters.com/article/2012/10/07/us-korea-babies-idUSBRE89602U20121007>.

¹¹⁵ *Id.*

¹¹⁶ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, art. 8 (S. Kor).

¹¹⁷ See *supra* Part III.B.

receive various counseling and information services during those seven days are rare and uncommon forms of shaming and pressuring the birthparents into reconsidering the adoption.¹¹⁸ Such tactics have the foreseeable danger of leading to poor childrearing by unfit parents and the abandonment of children on the streets. Furthermore, these requirements may simply delay the process by which children are placed up for adoption, rather than avoiding it altogether.

Also, the Special Adoption Act makes the adoption process too burdensome on the birthparents by requiring all adoptions to go through family court.¹¹⁹ This requirement makes birthparents fear that they will not be able to keep the birth of their child or the adoption a secret.¹²⁰ This in turn discourages birthparents from safely handing the child to adoption agencies, and it leaves some birthparents to feel as though they have no choice but to abandon the child on the streets. In February 2015, a twenty-eight year old unwed woman abandoned her newborn child with a note explaining that she had no choice but to abandon her child because she was told that the baby would be recorded in her family register if she chose the adoption route.¹²¹ The Special Adoption Act requires that the child be removed from the birthmother's family register once the child is adopted into his or her adoptive family.¹²² However, "face-saving is very important" in Korean culture, and "[m]others are afraid the birth record will later show up, and that husbands will not marry them later."¹²³ Furthermore, if the child is not subsequently adopted, then the child would remain in the birthmother's register.¹²⁴

VI. THE SPECIAL ADOPTION ACT IGNORES OTHER FACTORS CONTRIBUTING TO SOUTH KOREA'S ADOPTION PROBLEM

The Special Adoption Act also fails to address other contributing factors as to why so many unwed South Korean mothers resort to adoption

¹¹⁸ See Bae Ji-sook, *Adoption Law Revision Draws Fire*, THE KOREA HERALD (Mar. 18, 2012), available at <http://www.koreaherald.com/view.php?ud=20120318000381>.

¹¹⁹ Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, art. 11 (S. Kor.).

¹²⁰ *Agiga Beoryeojinda* [A Child is Being Abandoned], NEWS 1 (Jan. 26, 2013), <http://news1.kr/articles/?985979>.

¹²¹ Steven Morrison, *An Unwed Mother's Letter*, MISSION TO PROMOTE ADOPTION IN KOREA (Feb. 18, 2015), available at <http://mpakusa.blogspot.com/2015/02/an-unwed-mothers-letter.html>.

¹²² Ibyang Teukrye Beob [Special Adoption Act], Act. No. 11007, Aug. 4, 2011, arts. 14, 15 (S. Kor.).

¹²³ Wilfred Chan, *Raised in America, Activists Lead Fight to End S. Korean Adoptions*, CNN WORLD (Sept. 16, 2013), available at <http://www.cnn.com/2013/09/16/world/international-adoption-korea-adoptee-advocates/>.

¹²⁴ See *Agiga Beoryeojinda*, *supra* note 120.

instead of raising the child themselves. In 2013, 641 of the 971 adopted children in South Korea were born to unwed mothers.¹²⁵ Addressing the social, economic, and cultural factors behind the reasons for why so many unwed mothers choose to place their child up for adoption may be a more effective and permanent solution to South Korea's adoption problem.

South Korea's economic structure contributes to the country's adoption problem. More specifically, the large gaps in income within the population as a whole and between men and women in particular make it difficult for certain groups, especially unwed single mothers, to feel as though they are financially able to raise the child themselves. Although South Korea's unemployment rate is relatively low compared to the United States,¹²⁶ there is a great economic gap within the population. In 2012, the top 10 percent of earners in South Korea earned nearly 45 percent of the nation's total income.¹²⁷ This gap may be attributed to the fact that South Korea's economy is dominated by a small number of big employers,¹²⁸ such as Hyundai, Samsung, and LG, and these big employers are not generating enough jobs. Furthermore, South Korea's gender pay gap is the largest among the eleven Organization for Economic Cooperation and Development (OECD) member countries.¹²⁹ In 2012, it was reported that women in South Korea were paid an average of 39 percent lower of their male counterparts.¹³⁰ These gaps in income make it particularly difficult for unwed mothers to raise a child on their own, especially when considering the enormous costs associated with child rearing and education.

South Korea's education system and associated expenses may also explain why so many unwed mothers choose to place their child up for adoption. In Korea, academic performance is crucial to securing a stable job, and big companies such as Hyundai and Samsung "tend to hire people straight from the best universities, with little chance of entry later in life."¹³¹ As a result, there is immense competition and pressure on students to get

¹²⁵ 2013 Nyun Guknaeoe Ibyang Hyeonhwang, *supra* note 101.

¹²⁶ *Compare South Korea Unemployment Rate*, TRADING ECON., <http://www.tradingeconomics.com/south-korea/unemployment-rate> (last visited Mar. 20, 2015) with *United States Unemployment Rate*, TRADING ECON., available at <http://www.tradingeconomics.com/united-states/unemployment-rate>.

¹²⁷ Steven Denney, *Piketty in Seoul: Rising Income Inequality in South Korea*, THE DIPLOMAT (Nov. 4, 2014), available at <http://thediplomat.com/2014/11/south-koreas-shocking-inequality/>.

¹²⁸ *South Korea's Education System: The Great Decompression*, ECONOMIST (Oct. 26, 2013), available at <http://www.economist.com/news/leaders/21588373-there-are-perils-country-having-all-your-children-working-too-hard-one-big-exam>.

¹²⁹ *Korea's Gender Wage Gap Widest in OECD*, KOREA HERALD (Aug. 4, 2014), available at <http://www.koreaherald.com/view.php?ud=20140804000462>.

¹³⁰ Park Min-young, *Korea's Gender Pay Gap Biggest in OECD*, KOREA HERALD (Jan. 12, 2012), available at <http://www.asianewsnet.net/news-39655.html>.

¹³¹ *South Korea's Education System: The Great Decompression*, *supra* note 128.

into one of the top universities. In 2013, eighteen billion U.S. dollars were spent on private education and tutoring in South Korea for high school students preparing for the national college entrance exam.¹³²

The enormous educational expenses in South Korea are often blamed for South Korea's low birth rate,¹³³ which is so low that at the current rate the population is projected to be completely extinct by the year 2750.¹³⁴ Families choose not to have any children or to have only one child because of the substantial costs associated with child rearing and education. Of course, these costs are even more burdensome to single parents, unwed mothers, and parents who are underage or students themselves. Birthparents in such situations may feel pressured to give up their parental rights and place their child up for adoption in the hope of securing a more promising future for the child. Furthermore, if families choose not to have children because of the educational expenses associated with child rearing, then understandably these costs would deter families from adopting as well.

Another contributing factor to South Korea's adoption problem is the social stigma surrounding adoptions, children born out of wedlock, and single mothers.¹³⁵ While the legislature resorted to legal means in its attempt to encourage birthparents to keep their children and to encourage more domestic adoptions where adoption is inevitable, perhaps the more effective and permanent solution would be to move for cultural acceptance and social change instead. The government could invest more of its efforts to bring about social acceptance of adoption by supporting organizations such as Mission to Promote Adoption in Korea (MPAK), which is an organization founded by a Korean adoptee and works towards erasing the Korean stigma on adoption.¹³⁶ Also, adoption agencies could hold open forums that candidly discuss the topic of adoption, raising children as a single parent, and raising children with disabilities. The more the Korean community becomes comfortable with discussing these topics, the more accepting the society will become of single mothers, children born out of wedlock, adopted children, and their adoptive families.

¹³² Jeyup S. Kwaak, *South Korea's \$18 Billion Education Problem* (Aug. 28, 2014), WALL ST. J., available at <http://blogs.wsj.com/korearealtime/2014/08/28/south-koreas-18-billion-education-problem/>.

¹³³ See, e.g., *South Korea's Education System: The Great Decompression*, *supra* note 128.

¹³⁴ Lakshmi Gandhi, *Could South Korea's Low Birth Rate Really Mean Extinction?*, NBC NEWS (Aug. 27, 2014), available at <http://www.nbcnews.com/news/asian-america/could-south-koreas-low-birth-rate-really-mean-extinction-n190151>.

¹³⁵ See *supra* Part II.C.

¹³⁶ Stephan Evans, *supra* note 103.

VII. TIMING IS PREMATURE

Another weakness of the Special Adoption Act may not be with the actual text of the law and instead with its timing. Lawmakers must keep in mind the rapid economic and political growth that Korea has made in the past few decades. Immediately following the Korean War (1950-1953), Korea was one of the poorest countries in the world.¹³⁷ Between 1962 and 1994, Korea's real GDP grew an annual average of 10 percent,¹³⁸ and in the forty-nine years since the end of the Korean War, Korea became the twelfth largest economy in the world in 2004.¹³⁹ In 2015, Korea was the fifteenth largest economy in the world.¹⁴⁰ When considering the dramatic economic growth that Korea has made in a relatively short amount of time, it is not surprising that social progress and cultural changes may be lagging. With the influence of Confucianism from the Chosun Dynasty still alive in Korean society today, perhaps the country is not ready to address the adoption problem through legal means. Rather, the country may first need to wait for the culture and social ideologies surrounding adoption and children born out of wedlock to catch up to modern times.

VIII. CONCLUSION

It has not been proven that the Special Adoption Act has caused the increasing number of abandoned babies in South Korea. However, there is a clear correlation, and an examination of the Korean history and culture provides great insight into the shortcomings of the Act. While the intentions of the Act are noble, the Act is currently designed to discourage birthparents from placing their children up for adoption by making the adoption process more burdensome and guilt-ridden. A more effective and permanent solution would be to help birthparents feel as though they are able to raise their child if they so desire. The majority of Korean children who are adopted today are born to unwed mothers. Rather than making the adoption route more difficult on the birthparents, the legislature should focus on making the parental route easier, particularly for unwed mothers.

¹³⁷ Youngjoon Kwon, *supra* note 43, at 151.

¹³⁸ *Republic of Korea Overview*, WORLD BANK, available at www.worldbank.org/en/country/korea/overview (last visited on Dec. 11, 2014).

¹³⁹ *South Korea*, CENTRAL INTELLIGENCE AGENCY, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ks.html> (last visited May 11, 2015).

¹⁴⁰ *Republic of Korea Overview*, *supra* note 138.