



NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION

Volume 37 | Number 1

Article 3

Fall 2011

Multicultural Families in South Korea: A Socio-Legal Approach

Hyunah Yang

Follow this and additional works at: <http://scholarship.law.unc.edu/ncilj>

Recommended Citation

Hyunah Yang, *Multicultural Families in South Korea: A Socio-Legal Approach*, 37 N.C. J. INT'L L. & COM. REG. 47 (2011).
Available at: <http://scholarship.law.unc.edu/ncilj/vol37/iss1/3>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Journal of International Law and Commercial Regulation by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Multicultural Families in South Korea: A Socio-Legal Approach

Cover Page Footnote

International Law; Commercial Law; Law

“Multicultural Families” in South Korea: A Socio-Legal Approach

Hyunah Yang[†]

I.	Introduction	47
II.	Statistical Trends	50
III.	Uniqueness of the “Multiculturalism” in Korea	55
IV.	Marriage Formation: The Law and Society.....	59
	A. Matchmaking Process by the Marriage Brokerage.....	60
	1. Inhumane Advertisements	61
	2. Incorrect Information.....	62
	3. Rapid Process of Matchmaking.....	63
	4. Inhumane Treatment of Women and Economic Imbalance.....	63
	B. Act on the Regulation of Marriage Brokerage.....	64
V.	During and After Marriage: The Law and Society.....	66
	A. Cases	66
	B. Nationality Law: Simplified Naturalization.....	68
	C. Family Law: Marriage and Divorce.....	71
	D. Special Procedural Law on Domestic Violence.....	75
	E. Multicultural Family Support Act.....	78
VI.	Concluding Remarks	79

I. Introduction

Starting in the late 1990s, South Korea (hereinafter “Korea”) has witnessed a rapid increase in its migrant population, mostly from Asian countries, including China, Vietnam, Cambodia, and the Philippines.¹ There have been two basic reasons for this

[†] Hyunah Yang is a Law Professor at Seoul National University where she teaches Feminist Jurisprudence and Sociology of Law. She received her Ph.D. in Sociology from the New School for Social Research, and her B.A. and M.A. from Seoul National University. Her main fields of interest are postcolonial feminist jurisprudence, family law and policy in Korea, and the testimony of victims of human rights violations and their relations with legal institutions.

¹ See Hye-Soon Kim, *Kyŭlhon iju yŏsŏng kwa hankuk ūi tamunhwa silhŏm* (Migrant Brides and Making of a Multicultural Society – Sociological Approach to Recent Discourse on Multicultural Society), 42-2 J. OF KOREAN SOC. 36, 44 (2008) (S. Kor.); Hye-Kyung Lee, *Honiniju wa honiniju gajŏng ūi munje wa daeŭng* [Marriage

growing migration into Korea: (1) getting a job and (2) constituting a family.² While the Korean government employs a policy of temporary stay for most of the foreign workers, permanent stay is allowed for those who choose to immigrate to Korea via marriage.³ After marriage, most couples are expected to maintain residency in Korea, as well as to have and raise children there.⁴ This is indeed an unprecedented phenomenon in Korea, whose self-portrait has historically borne the stamp of a “one-ethnic identity (*tanil minjok*)” nation.⁵ Although South and East Asia have been regions of incredible ethnic and cultural diversity,⁶ Korea retained its imagined community of having purely one and the same blood.⁷ Most Korean people undeniably identify themselves with this idealized homogeneity.⁸ Now, this new form of immigration via marriage, where foreign women, in most cases, marry Korean men, presents various new questions and challenges to Korean society, and perhaps even to those Asian countries where such brides originated.⁹

From the early 2000s on, the Korean government adopted the notion of the “multicultural family,” by which this new form of

Migration to South Korea: Issues, Problems, and Responses], 28-1 KOREAN J. OF DEMOGRAPHY 73, 83 (2005) (S. Kor.).

² See Seon-Taek Kim, *Tamunhwahyönsang kwa hönpöppök taewing* [Multicultural Society and the Constitution], 16-2 KOR. J. OF CONST. 1, 3-4 (2011) (S.Kor.).

³ *Id.*

⁴ Kim, *supra* note 1, at 37; see also Lee, *supra* note 1, at 93.

⁵ See Hyun-Mee Kim, *Kuchjegyölhon üi chönjikujök gender chöngch'ihak* [Global Gender Politics of Cross-Border Marriage: With a Focus on Marriages between Korean Men and Vietnamese Women] 70 ECON. & SOC'Y 10, 11 (2006) (S.Kor.); see also Kim *supra* note 1, at 38.

⁶ These regions are two of the most linguistically diverse regions of the world. Papua New Guinea alone, for instance, has 850 distinct language groups, fully fifteen percent of the world's total. Also, all of the world's major religions can be found in those regions. Will Kymlicka & Baogang He, MULTICULTURALISM IN ASIA 2 (2005).

⁷ See Lee, *supra* note 1, at 74.

⁸ See BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 99 (rev. ed. 2006); KI-BAIK LEE, *A NEW HISTORY OF KOREA* 298 (Edward W. Wagner & Edward J. Schultz trans. 1984); see Chungmoo Choi, *Nationalism and Construction of Gender in Korea, in DANGEROUS WOMEN- GENDER AND KOREAN NATIONALISM* 9, 14 (Elaine H. Kim & Chungmoo Choi eds. 1998).

⁹ See Kim, *supra* note 5, at 29-33; Kim, *supra* note 2, at 4; Lee, *supra* note 1, at 93-96.

marriage migration has been named.¹⁰ The main task of this article is to examine how the Korean legal system accommodates this form of migration. For this purpose, I try to investigate how this specific form of racial and sexualized immigration has been recognized and/or ignored by the law. The law does not passively accept these social phenomena; it entitles, selectively represents, and even actively constructs the mainstream way of recognition and behavior.¹¹ From this point of view, I will review Korea's immigration and naturalization policy by examining related statutes that implement the policy. Furthermore, the form of immigration raises a set of constitutional questions regarding the people, the tradition, the basic rights that the Korean Constitution protects, and eventually the notion of the nation itself. In other words, it raises questions as to how we should balance the migrants' human rights and the conventional nationhood in Korea where male- and ethnic-centered assumptions have been preserved.

Rather than taking a normative approach to the laws, this study employs a socio-legal approach, examining the dynamics of social practices and the positive law. This study will analyze the following statutes that seem critical to defining the legal and social status of a marriage-migrant in Korea: the Nationality Act,¹² the Marriage Brokerage Law, and the Family Law (Book 4 and 5 of the Civil Code).¹³ In another vein, this study will be an early

¹⁰ See Jon Stratton & Ien Ang, *Multicultural Imagined Communities: Cultural Difference and National Identity in the USA and Australia*, in *MULTICULTURAL STATES: RETHINKING DIFFERENCE AND IDENTITY* 135, 138 (Davic Bennett ed. 1998). Multiculturalism can be understood as "the recognition of co-existence of a plurality of cultures within the nation." *Id.* With regard to the genealogy of the term "multiculturalism," it became part of the rhetoric of the state; it is primarily a political term associated with governmental policy. *Id.*

¹¹ Perhaps the dynamics between the positive law and social behavior has been what most of the socio-legal studies are all about. See generally EUGEN EHRLICH, *FUNDAMENTAL PRINCIPLES OF THE SOCIOLOGY OF LAW* 399-411 (Walter L. Moll trans. 1936); SALLY FALK MORE, *SOCIAL FACTS & FABRICATIONS: CUSTOMARY LAW ON KILIMANJARO 1880-1980* (1986).

¹² See Nationality Act, Act No. 5431, Dec. 13, 1997 (S. Kor.), translated in 2 *STATUTES OF THE REPUBLIC OF KOREA* 261-69 (KOR. LEGISLATION RES. INST., 1997 & Supp. 51).

¹³ See Act on the Registration Etc. of Family Relationship, Act. 8435, May 17, 2007, art. 71-78 (S. Kor.), translated in 3 *STATUTES OF THE REPUBLIC OF KOREA* 940-41 (Korea Legislation Research Inst. 1997 & Supp. 41).

effort to discuss the notion of multiculturalism itself within Korean and perhaps other Asian contexts, as this marriage migration seems to be a product of the complex systems of economy, history (such as colonialism), and the war in the region.¹⁴ If this is so, then, with a notion of multiculturalism that is very much constructed from Western historical experiences, there would be a systemic gap to grasp this phenomenon. While not exhaustive, this study tries to redefine the steps to realizing multiculturalism, which is burgeoning within families and gender relationships.

II. Statistical Trends

In order to understand the marriage-migrant phenomenon, it is helpful to first review some related statistical trends. As seen in Table 1, international marriages have been steadily increasing since the 1990s and began to increase rapidly after 2003 in Korea.¹⁵ The proportion of international marriages in Korea was only 1.2% in 1990, but reached 3.5% in 2000, and then exceeded 10% in 2004.¹⁶ Since 2004, more than one out of every ten marriages has become international.¹⁷ Compared to the 1994 statistic—less than two decades before—the figure of 10% is hardly an expected phenomenon in this society.

¹⁴ See Kyung-Ku Han & Kun-Soo Han, *Hankukjök damunhwa sahöe üi isang kwa hyönsil: sunhöyljuüi wa munmyöngronjök ch'apyül ül nömö* [The Ideal and Reality of Multicultural Society in Korea—Beyond One-ethnic Ideology and Discrimination] 07-7 RESEARCH REPORT, 71, 95-102 (2007), available at http://dbpia.co.lcr/view/ar_view.asp?arid=913419.

¹⁵ *Marriage-Migrant Women by Nationality and Year: Population Survey Data*, KOR. STAT. INFO. SERVICES, available at <http://kosis.kr/wnsearch/totalSearch.jsp> (type “혼인”; then search for “시군구별 외국인과의 혼인”; then follow the hyperlink; then type “결혼”; then search for “인구동태건수 및 동태율 추이”; then follow the hyperlink) (last visited Oct. 23, 2011).

¹⁶ *Id.*

¹⁷ *Id.*

Table 1: International Marriages by Year and Foreign Wives/Husbands¹⁸

	Total Marriages	Int'l Marriages	Ratio of Total Marriages	Foreign Wives		Foreign Husbands	
				No. of Marriages	Ratio of Int'l Marriages	No. of Marriages	Ratio of Int'l Marriages
1994	393,121	6,616	1.7	3,072	46.4	3,544	53.6
1996	434,911	15,946	3.7	12,647	79.3	3,229	20.2
1998	375,616	12,188	3.2	8,054	66.1	4,134	33.9
2000 ¹⁾	332,090	11,605	3.5	6,945	59.8	4,660	40.2
2002	304,877	15,202	5.0	10,698	70.4	4,504	29.6
2004	308,598	34,640	11.2	25,105	72.5	9,535	27.5
2006	330,634	38,759	11.7	29,665	76.5	9,094	23.5
2008	327,715	36,204	11.0	28,163	77.8	8,041	22.2
2009	309,759	33,300	10.8	25,142	75.5	8,158	24.5

Another peculiarity can be found in its gender aspect. As we can see in Table 1, marriages between Korean men and foreign women are rapidly increasing.¹⁹ In the early 1990s, the majority of international marriages were between Korean women and foreign men.²⁰ However, since the mid-1990s, the majority of international marriages occurred between Korean men and foreign women.²¹ For example, in 1994, 46.4 percent of all international marriages in Korea were between a non-Korean wife and a Korean husband. The ratio of such marriages rapidly increased to 79.3

¹⁸ *International Marriages by Year and Foreign Wives/Husbands: Population Survey Data*, KOR. STAT. INFO. SERVICES, available at <http://kosis.kr/wnsearch/totalSearch.jsp> (type “국제결혼”; then search for “한국인 남편의 혼인종류/외국인 아내의 국적별 혼인”; then follow the hyperlink) (last visited Oct. 23, 2011).

¹⁹ *Id.*

²⁰ *Id.*; see also Lee, *supra* note 1, at 80.

²¹ See KOR. STAT. INFO. SERVICES, *supra* note 18.

percent in 1996, and steadily remained over 70 percent after 2002.²² From this data, we can tell that the typical mode of international marriages has rapidly shifted from a marriage of a foreign man and Korean woman to that of a foreign woman and Korean man. Since gender balance is approximately half and half in average human societies, the “natural state” of the ratio of foreign wives to Korean husbands ought to be around 50 percent. However, the skewed ratio indicates that social forces are significantly influencing the gender balance in international marriages.

Sociologists in Korea have tried to explain this trend in terms of the social system of class, gender, and locality.²³ Rapid growth of international marriages during the 2000s was mainly due to the need for the continuation of a family, particularly in rural areas.²⁴ Rural and urban lower class men had difficulty finding Korean brides who were willing to do daily hard labor in rural environments, including caring for elderly parents-in-law.²⁵ This social phenomenon is related to the widening income disparities between the urban middle and lower class, the urban working class, and the workers in the agricultural and fisheries sector, which have become more severe since 1998—the year of the IMF crisis in Korea.²⁶ It also has to do with restricted opportunities for women in the workplace, particularly in a society where married women are often not expected to work.²⁷ In the countries from

²² See Young-Hee Shim, *Globalization and Change of Migration-Related Law in Korea: Focusing on the Change of Marriage-Related Laws*, 9 J. OF KOR. L., 203-4 (2010) (S.Kor.).

²³ See Kim, *supra* note 1, at 43-4; Dong Hun Seol, *Tamunhwa kajokj öngch'eck üi hyönhwang kwa kwajae* [Marriage-Migrant Families in Korea: The Reality and Suggestions], 138 J. OF SOC. TREND 13, 13-7 (2010) (S. Kor.); Kim, *supra* note 5, at 10-37.

²⁴ See Kim, *supra* note 1, at 45.

²⁵ *Id.* at 47.

²⁶ *Id.*

²⁷ See Jaeseon Joo, *Statistical Handbook: Women in Korea*, 21-1 RESEARCH PAPER, 28 (2011). Note the gap between economic participation rates of married women and men in Korea, and single women and men. These were reported as 49.1 and 83.0 % and 50.5 and 51.3% , respectively. *Id.* The average monthly income difference between women and men in 2009 was 63.5%. *Id.* For non-regular workers in 2009, the economic participation rate was 52.75% for female workers and 31.6% for male workers. *Id.*

which these foreign wives originate, there are also systemic forces that cause women to choose to be married abroad.²⁸ In this marriage-migration, it is mostly women who are looking for better conditions for themselves and their families, and whose expected living conditions in their home countries are not very good.²⁹ This means that they chose to come to Korea because of its higher living standards and stronger currency relative to their native countries.³⁰ It is critical to understand that these gender and national effects (which often overlap with racial categories) are at play in seeking and creating international marriages. As seen in Table 2, from 2000 to 2009, the nationalities of foreign wives became more diverse.³¹ This is also due to the rapid globalization of the marriage market.³²

Table 2: Marriage-Migrant Women by Nationality and Year³³

Year	2000(% of entire marriages)	2002 (%)	2004 (%)	2006 (%)	2008 (%)	2009 (%)
Total Number of Marriage Migrant Women	6,945 (100)	10,698 (100)	25,105 (100)	29,665 (100)	28,163 (100)	25,142 (100)
China	3,566 (51.3)	7,023 (65.6)	18,489 (73.6)	14,566 (49.1)	13,203 (46.9)	11,364 (45.2)
Vietnam	77 (1.1)	474 (4.4)	2,461 (9.8)	10,128 (34.1)	8,282 (29.4)	7,249 (28.8)

²⁸ See Kim, *supra* note 1, at 42.

²⁹ See Kim, *supra* note 5, at 14-15 (discussing that the reason for having female marriage migrants is economic poverty).

³⁰ *Id.*

³¹ *Marriage-Migrant Women by Nationality and Year*, KOR. STAT. INFO. SERVICES: POPULATION SURVEY DATA, available at <http://kosis.kr/wnsearch/totalSearch.jsp> (type “국제결혼”; then search for “한국인 남편의 혼인종류/외국인 아내의 국적별 혼인”; then follow the hyperlink) (last visited Oct. 23, 2011).

³² See Shim, *supra* note 22, at 205.

³³ See KOR. STAT. INFO. SERVICES, *supra* note 31.

Philippines	1,174 (16.9)	838 (7.8)	947 (3.8)	1,117 (3.8)	1,857 (6.6)	1,643 (6.5)
Japan	819 (11.8)	690 (6.4)	809 (3.2)	1,045 (3.5)	1,162 (4.1)	1,140 (4.5)
Cambodia	0	0	72(0.3)	394(4.0)	659(2.3)	851(3.4)
Thailand	240(3.6)	327(3.0)	324(1.3)	271(0.9)	633(2.2)	496(2.0)
Mongolia	64 (0.9)	194(1.8)	504(2.0)	594(2.0)	521(1.8)	386(1.5)
Uzbekistan	43 (0.6)	183 (1.7)	247(1.0)	314(1.0)	492(1.7)	365(1.5)
U.S.A.	231 (3.3)	267(2.5)	341(1.4)	331(1.1)	344(1.2)	416(1.7)
Others or unknown	731(10.5)	702(6.6)	911(3.6)	905(3.1)	1,010 (3.6)	1,232 (5.0)

The proportion of Chinese wives has remained the largest group among the foreign wives in Korea, though it has recently been decreasing.³⁴ During the 2000s, international marriages between Vietnamese women and Korean men increased rapidly.³⁵ The proportion of Vietnamese wives was only 1.1% in 2000, but rapidly rose to 9.8% in 2004, and to 34.1% in 2006.³⁶ Vietnamese marriage-migrant women are the second largest ethnic group next to Chinese women.³⁷ The number of Filipino women has also increased due to the promotion by the Unification Church, although they have decreased in proportion, from 7.9% in 2002 to 3.8% in 2006.³⁸ Since 2000, the nationalities of foreign wives have become diversified to include women from Vietnam, Thailand, Mongolia, and Uzbekistan.³⁹ From this trend, we can tell that the commercial marriage brokerage could have been involved in matchmaking during this period.⁴⁰ Unlike China, where there are many Korean diaspora residences, there were no Korean personal connections in countries such as Vietnam and the

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See KOR. STAT. INFO. SERVICES, *supra* note 31.

³⁹ *Id.*

⁴⁰ See Kim, *supra* note 5, at 24-29.

Philippines.⁴¹ This is especially true in the case of Vietnam, where the number of marriages between Korean men and Vietnamese women grew surprisingly high, which was likely due to business interactions between the two nations.⁴² It is also notable that the majority of marriage-migrant women were Asian women whose skin tones were not very different from that of Korean men.⁴³ This kind of bio-politics, in the Foucaultian sense, is not at all accidental when we see the policy of Korean international marriages as discussed in the following chapters.

III. Uniqueness of the “Multiculturalism” in Korea

Based upon the data above, we can characterize the uniqueness of Korean “multiculturalism.” Although the number of immigrants are not as large as in other multicultural societies in North America, there exists a peculiar kind of multiculturalism in Korean society.⁴⁴

The types of multicultural societies can be classified into three categories.⁴⁵ The first type can be found in societies where the majority of citizens are immigrants or the descendants of immigrants, as seen in the United States, Canada, and Australia.⁴⁶

⁴¹ See Lee, *supra* note 1, at 80.

⁴² See Kim, *supra* note 5, at 20 (explaining how Vietnam opening its economic door to the world increased the number of international marriages involving Vietnamese women).

⁴³ See Kim, *supra* note 1, at 44.

⁴⁴ See Stratton & Ang, *supra* note 10, at 138. Since foreigners make up less than three percent of Korea’s population, Korean society is still regarded as an ethnically homogeneous one. *Id.* The foreign population in Korea was 0.81% in 1999, 1.20% in 2001, 1.42% in 2003, 1.55% in 2005, 2.2% in 2007, and 2.4% in 2009. *Id.* For this reason, the increase in international marriages in Korea to over ten percent is highly unexpected. *Id.* In this sense, it is correct that “multiculturalism” needs to be distinguished from the description of society as “multicultural.” *Id.* The latter can be described as *de facto* multiculturalism rather than a policy concept. *Id.*

⁴⁵ See WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 12-13 (Clarendon Press, 1995); Kim, *supra* note 5, at 4; Lee, *supra* note 1, at 80. Kymlicka classifies cultural pluralism largely into two forms: the first is found in the national minorities with preserved autonomy and local cultures that were integrated into nation-building; the other is made possible through individual and family immigration. KYMLICKA, *supra* note 43. Although the Korean case can be simply classified as individual immigration, its uniqueness lies in the fact that female-individual immigration has been predominantly through marital ties. *Id.*

⁴⁶ KYMLICKA, *supra* note 45, at 13-14.

In this classification, multiculturalism itself has been the basis of nation-building or the principle of citizenship.⁴⁷ The second type includes those societies created when various ethnic groups were integrated into a single modern state.⁴⁸ China and Brazil are examples of this classification.⁴⁹ In this category, the ethnic groups have discrete history based on a specific locality prior to the creation of the modern state.⁵⁰ In the third type, multiculturalism has been a necessary policy due to the increase of immigrants in a relatively ethnically homogeneous society, as in the case of Germany, France, or Switzerland.⁵¹ In this class, jobs and marriage are the primary reasons for immigration, but it is still common to form discrete ethnic communities such as Chinatowns.⁵²

Which class does Korea fall into? On the surface, it seems that Korea could be classified as the third type, but in substance, it is significantly different from that class. First, immigration in Germany, France, and Switzerland poses the issue of a clash of different civilizations such as Islam and Christianity. However, in the case of Korea, the civilization question seems submerged. Although Asian countries are far from being a single civilization, they are recognized in terms of "Asian cultures" rather than in terms of different civilizations. The idea of Orientalism is embedded in the misperception of a homogenous "Eastern Civilization."⁵³

Second, and more importantly, in Korea an individual bride or groom, but not her or his family, is the one who immigrates.⁵⁴ Thus, rather than forming a discrete ethnic community, the individual from the different culture, usually the woman, is simply

⁴⁷ See *id.* at 14.

⁴⁸ *Id.* at 10.

⁴⁹ See *id.*

⁵⁰ See *id.* at 11-12.

⁵¹ KYMLICKA, *supra* note 45, at 13-14.

⁵² See *id.*

⁵³ See EDWARD SAID, ORIENTALISM 1-31 (1979) (arguing how Orientalism of homogenizes the idea of an "Eastern culture").

⁵⁴ See Andrei Lankov, *Foreign Wives Stir Korean Melting Pot*, ASIA TIMES ONLINE (Nov. 16, 2010), <http://atimes.com/atimes/Korea/LK16Dg01.html> (last visited Oct. 23, 2011).

inserted into a specific family and its culture.⁵⁵ In other words, the clash, conflict, or accommodation between different cultures is a task largely to be resolved within a family. This is a peculiar kind of multiculturalism.

In spite of the slogan of “multiculturalism,” it is usually a foreign wife adapting to her Korean spouse and his family. It is foreign wives who must learn the Korean language and aspects of its culture, such as cooking, but not vice versa.⁵⁶ The assimilation model in Korean multiculturalism has been criticized by many authors.⁵⁷ What is concerning is that the assimilationist expectation could conceal the “injustices in the family.”⁵⁸ Feminist scholars have analyzed the public/private dichotomy in which the criteria of justice and fairness have seldom been applied in the private sphere.⁵⁹ Family, a central institution in the private sphere, has been characterized by intimacy, care, sexuality, and procreation.⁶⁰ Modern Western law has been criticized for its incapability to deal with the labor, human relations, property, and violence within the family.⁶¹ Even the international human rights

⁵⁵ *See id.*

⁵⁶ *Id.* *See also* Han Kyung-ku & Han Kun-soo, *supra* note 14.

⁵⁷ *See* Kim, *supra* note 1, at 49. According to a study that examined the “multicultural activities” performed by eight ministries in Korea—such as the Ministry of Justice, the Ministry of Gender Equality and Family, and the Ministry of Education and Science, and so on—central activities were intended for migrant-brides to adapt to Korean society. *Id.* Such activities included Korean language education, cooking and courtesy education, experiencing Korean culture, family camp, and family counseling. *Id.*

⁵⁸ *See* Kim, *supra* note 1, at 49.

⁵⁹ Feminist criticism about public and private dichotomy is rich. *See, e.g.,* Carole Pateman, *Feminist Critiques of Public/Private Dichotomy*, in *PUBLIC AND PRIVATE IN SOCIAL LIFE* 281 (S.I. Benn & G.F. Gaus eds. 1983).

⁶⁰ *See generally* SUSAN M. OKIN, *JUSTICE, GENDER, AND THE FAMILY* 110-133 (1989) (criticizing how the preexisting theorists of justice such as John Rawls and Michael Sandel employed the dichotomy that the justice question in the family is largely replaced by the issue of “virtue,” and how division of labor between sexes was not questioned).

⁶¹ *See* THE PUBLIC NATURE OF PRIVATE VIOLENCE: DISCOVERY OF DOMESTIC ABUSE (Martha A. Fineman & Roxanne Mykitiuk eds. 1994); Robin West, *Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment*, 42 *FLA. L. REV.* 45, 63-70 (1990) (criticizing the exemption of marital rape from criminal review as against equal protection under the law, based on the view that the marital rape issue is outside legal jurisdiction).

norms and statutes have not been exempt from the ignorance about the private sphere, and conventions such as the Declaration of Elimination of Violence Against Women were intended to remedy this deficiency.⁶²

Third, this multiculturalism characterized by being “inserted into” a foreign family is clearly gendered in nature.⁶³ As discussed earlier, women constitute the majority (over 70 percent) of foreigners who seek to marry Koreans, and those women usually come from countries that are economically poorer than Korea, such as China, Vietnam, and the Philippines.⁶⁴ On the other hand, the families that marriage-migrant women join are usually, but not exclusively, rural families where globalization and pluralism are very much unknown.⁶⁵

It is notable that international marriage in Korea was initiated in the 1990s not by marriage brokers, but rather by local governments.⁶⁶ Local governments, which were concerned about the decreasing rural population due to low fertility rates and the younger generation moving into cities, promoted campaigns with the support of the central government stating, “Let the rural bachelors get married!”⁶⁷ Assisting international marriage in rural communities became part of Korea’s policy agenda during the 1990s.⁶⁸ In this vein of state-initiated marriage policy, the focus was on the Korean male and his family rather than on the man and woman and their welfare.⁶⁹ For example, it did not seriously matter if a man had an unrecognizable physical or mental disease,

⁶² For a discussion of the bias in the International Human Rights Norms and Conventions, see Hilary Charlesworth et al., *Feminist Approach to International Law*, 85 AM. J. INT’L L. 613, 613-645 (1991) (arguing that the conventional international human rights laws that often focus on political and civil rights do not adequately protect women, especially their sexual and reproductive rights).

⁶³ See Timothy Lim, *Rethinking Belongingness in Korea: Transnational Migration, “Migrant Marriages” and the Politics of Multiculturalism*, 83 PACIFIC AFFAIRS 51, 65-67 (2010).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Kim, *supra* note 1, at 45.

⁶⁷ *Id.* at 47.

⁶⁸ See *id.* at 45-46.

⁶⁹ See Lankov, *supra* note 54.

an abnormal personality, or alcoholism.⁷⁰ In this project to continue the lineage of Korean families, the patriarchal image has remained intact where a similar-colored woman bears healthy Korean children, is subservient to the elderly and her husband, and provides sexual service to her husband.⁷¹

From this perspective, multiculturalism in Korea is quite different from the “clash of the civilizations” or the “clash within the civilizations,” as sociologist Dieter Senghass suggests.⁷² Rather, this conflict or clash would be submerged or suppressed within the family. This predicament is reminiscent of something Anthony Giddens has pointed out: that the private arena and intimacy have emerged as the nuclei for the twenty-first century’s social changes.⁷³ The private, sexual, and familial relations are the very places where the values of democracy, human rights, and diversity ought to be realized.

From a policy standpoint, this aspect of multiculturalism asks for serious attention to be paid to the protection of human rights of the foreign female spouses.⁷⁴ In this respect, not only is a strict legal interpretation of preexisting laws important, but it is also essential that the basic rights protected in the Constitution and the International Human Rights Convention be given priority in the application of laws related to family relations. In the following sections, I will give an overview to the social reality of international marriage and discuss if and how the law accommodates the demands I have discussed so far.

IV. Marriage Formation: The Law and Society

Because of the rapid increase of international marriages in

⁷⁰ See *id.*

⁷¹ See *id.*

⁷² See DIETER SENGHASS, *THE CLASH WITHIN CIVILIZATIONS: COMING TO TERMS WITH CULTURAL CONFLICTS* 1-10 (Routledge trans., 2002) (1998).

⁷³ See ANTHONY GIDDENS, *THE TRANSFORMATION OF INTIMACY: SEXUALITY, LOVE AND EROTICISM* 1-3 (1993).

⁷⁴ For a discussion on the issue of abuse of foreign brides in Korea, see Jason Strother, *New Law to Protect Foreign Brides in South Korea*, DEUTSCHE WELLE (Nov. 17, 2010), <http://www.dw-world.de/dw/article/0,,6239061,00.html> (last visited Oct. 23, 2011). See also Norimitsu Onishi, *Wed to Strangers, Vietnamese Wives Build Korean Lives*, N.Y. TIMES, Mar. 30, 2008, at A6, available at <http://www.nytimes.com/2008/03/30/world/asia/30brides.html>.

Korea, new regulations and policies were developed during the 1990s and 2000s. These policies included the revision of the Nationality Law in 1997 and the passing of the Act on the Regulation of Marriage Brokerage (hereinafter “Marriage Brokerage Act”) in 2006.⁷⁵ Table 3 illustrates recent legislative efforts for shaping the migration policy in Korea. For comparison, foreign workers-related laws are also illustrated in the table. Now, let us begin the discussion from the stage of marriage formation in terms of both reality and the Marriage Brokerage Act.

Table 3: Legislation of Migration-related Laws in Korea⁷⁶

Foreign Workers-Related Law	Marriage Migrants-Related Law
Industrial Technical Training Program (1991)	Nationality Law (revised in 1997)
Industrial Training Program (1993)	Marriage Brokerage as a Free Enterprise under Family Rite Law (1999)
Work after Training Program (1998)	Act on the Regulation of Marriage Brokerage Agencies (2007)
Employment Permit Program (2003)	Framework Act on Treatment of Foreigners Residing in the Republic of Korea (2007)
Act on Foreign Workers' Employment (2003)	Multicultural Family Support Act (2008)
	Governmental Instructions on Social Integration Program Courses (2008)

A. Matchmaking Process by the Marriage Brokerage

In 1993, the U.N. General Assembly adopted the Declaration on the Elimination of Violence Against Women, in which the idea

⁷⁵ See Letter from Fatimata-Binta Victoria Dah, Chairperson of the Committee for the Elimination of Racial Discrimination, to Sung-joo Lee, Ambassador of the Republic of Korea, U.N. High Comm'n for Human Rights (Mar. 13, 2009), available at http://www2.ohchr.org/english/bodies/cerd/docs/followup/Korea_signed.pdf.

⁷⁶ This is a modification of the table used by Young-Hee Shim, *supra* note 22, at 205.

of “gender-based violence” was defined.⁷⁷ Gender-based violence is the systematic violence against women that is the result of unequal power between men and women.⁷⁸ This violence is an expression of discrimination against women as well as a mechanism for perpetuating the inferior status of women.⁷⁹ Before the Marriage Brokerage Act was revised in 2007, many non-governmental organizations and women’s rights organizations disclosed that there were many human rights violations associated with international marriages in Korea, especially when a marriage brokerage was involved.⁸⁰ Although not every international marriage in Korea was organized by private marriage brokers,⁸¹ it is still useful to overview the types of human rights violations that are likely to occur in commercially-brokered international marriages as reported by NGOs familiar with the subject.⁸²

1. *Inhumane Advertisements*

The marriage brokerage business is solely dependent on the number of recruited Korean men, since they exclusively pay for

⁷⁷ Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. GAOR, 48th Sess., U.N. DOC. A/RES/48/104, at art. 1 (Dec. 20, 1993) (“For the purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”).

⁷⁸ See Nancy F. Russo & Angela Pirlott, *Gender-Based Violence: Concepts, Methods, and Findings*, 1087 ANNALS N.Y. ACAD. SCI. 178, 181 (2006).

⁷⁹ *Id.*

⁸⁰ See Strother, *supra* note 74.

⁸¹ See Myung-Sun Chang & Ok-Kyung Lee, *A Study on Multicultural Family and Support System in Seoul* (08-Policy Research-016, Seoul Foundation of Women and Family City of Seoul, 2008), at 121-22. In a 2008 study based upon 842 marriage-migrant women living in Seoul, South Korea, the following statistics were discovered: the ratio of marriage by brokers was 47.5% in 2005, which decreased to 31.2% in 2008. *Id.* The number of marriages by acquaintance-introduction has gradually been increasing and was the highest ranked method in 2008 at 62.3%. *Id.* While brokerage by religious organizations was most common in the years before 2000 (72.0 percent), the rate plummeted to 1.4% in 2008. *Id.*

⁸² For more information about these NGOs, see WOMEN MIGRANTS HUMAN RIGHTS CENTER IN KOREA (2009), <http://www.wmigrant.org/xe2/> (last visited Oct. 23, 2011). For the most active public lawyering group for the cause, see GONG-GAM KOREAN PUBLIC INTEREST LAWYERS’ GROUP (2008), <http://www.kpil.org/> (last visited Oct. 23, 2011).

the service.⁸³ Women's human rights are violated from the very beginning of the process, specifically through advertising slogans: "Marry [specific country] Woman. First, Second Marriage, and Disabled Men are All Welcome," "No Age Limit," "Only 7 days from Meeting to Wedding," "They Will Never Run Away."⁸⁴ Through these advertisements, foreign women are addressed as if they were commodities and their marriages were a convenience.⁸⁵ The male-centered desire of a woman's sexual purity and subservience is the underlying assumption.⁸⁶ Lines that indicate that "old and disabled" men are equally considered make it unlikely that the correct information on the potential husbands will be given to the brides.

2. *Incorrect Information*

The amount of information given to bridegrooms and brides is not only disproportionate, but often incorrect.⁸⁷ In many cases, however, it is difficult to place the responsibility for the misinformation on any specific party.⁸⁸ Such misinformation can be distressful for women.⁸⁹ One such case involved a Filipino woman, Anna (age 22), who married a Korean man. A Korean marriage broker in Manila introduced the bridegroom as an engineer in his thirties; however, the bridegroom was actually a vegetable vendor in his forties.⁹⁰

⁸³ See Rami So, Examination of the Law and Policy for Securing the Status of Marriage-Migrant Women, GONG-GAM KOREAN PUBLIC INTEREST LAWYERS' GROUP (2008), <http://www.kpil.org/opboard/list.php?code=actionData> (last visited Oct. 23, 2011).

⁸⁴ *Id.*

⁸⁵ *Id.* It has also been noted that remarriage rate in international marriages is much higher than in domestic marriages. See Chang & Lee, *supra* note 81, at 114. In 2004, the remarriage rate for the wives are foreigners was 45.3% , while the rate was around 10% in domestic marriages. *Id.* Also, the average age of Korean husbands was reported as 41.67% based upon 174 cases, while most brides were in their early twenties. *Id.*

⁸⁶ See So, *supra* note 83, at 2.

⁸⁷ See *id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

3. *Rapid Process of Matchmaking*

It is reported that the entire process, from the matchmaking to wedding, can take only four to seven days when mediated by marriage brokerages.⁹¹ With a broker, the process of selecting a “Ms. Beauty” involves several rounds, ending with a “winner” who seldom rejects the husband-to-be who chose her.⁹² Rather, she yields to the man’s decision.⁹³ The woman then receives an obstetrical and gynecological examination to check her health and chastity.⁹⁴ Soon after, the couple exchanges vows in front of a small number of family and friends.⁹⁵ Clearly, the bride and the bridegroom do not have a chance to get to know each other before the wedding.⁹⁶ This process takes the woman’s freedom of choice for granted.

4. *Inhumane Treatment of Women and Economic Imbalance*

During the period of matchmaking, the woman often stays at a place offered by the broker, who charges for housing, food, and the use of facilities.⁹⁷ The woman relies on the marriage to pay these costs and therefore seldom refuses the marriage proposal.⁹⁸ If the woman changes her mind after the marriage, she is required to repay a significant amount of money to the company, which is almost impossible for most poor families from the rural areas.⁹⁹

From the business perspective, the “customers” of the matchmaking service are generally the Korean bridegrooms, not the brides.¹⁰⁰ The economic disparity within the couple inherently

⁹¹ See So, *supra* note 83, at 2.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ So, *supra* note 83, at 3. It is reported that 58% of the foreign brides have difficulty speaking in Korean, and it is also reported that there are couples who do not speak to each other at all. *Id.* This lack of communication indicates serious problems. *Id.*

⁹⁷ See *id.* at 2.

⁹⁸ *Id.* at 2.

⁹⁹ See Kim, *supra* note 5, at 28-9.

¹⁰⁰ See *id.* at 25 (explaining what bridegrooms have to pay to meet their possible future wives); So, *supra* note 83, at 2 (explaining how the bridegrooms pay for having a

creates a situation of inhumane brokerage practices.¹⁰¹ A Korean bridegroom pays, on average, more than ten thousand dollars for the entire marriage process.¹⁰² Some of this money goes to the bride and her family, but most of it is paid to the broker.¹⁰³ The rapid speed of the marriage also contributes to the broker's high profit.¹⁰⁴ This process tends to shape the bridegroom's perception that "the bride was paid for with my money."¹⁰⁵ After a marriage is formed in this way, it is unlikely that the couple will establish an equal relationship.

B. Act on the Regulation of Marriage Brokerage

Although the 2007 revision on the Marriage Brokerage Act was intended to prevent the inhumane procedures of matchmaking, critics are skeptical that the new act addresses these issues.

First, the revised law clarified the agency's duty to sign and explain the contract between the bridegroom and the broker.¹⁰⁶ However, the scope, the method and the duty to offer correct information regarding the bridegroom are not clearly stated in the law. Similarly, Article 816 of the Korean Civil Code notes that there are reasons for the cancellation of matrimony but fails to clearly define the reasons.¹⁰⁷ With this in mind, it is difficult to expect the revised law to exert a strong regulatory requirement for marriage brokers to offer correct information to foreign brides. Even if deception occurs, the burden of proof is usually on the

chance to meet their future wives).

¹⁰¹ See Kim, *supra* note 5, at 31. One foreign wife expressed this disparity as follows: "whenever I fought with my husband, my mother-in-law wrote down the number '1300.' *Id.* Maybe it meant they spent a lot of money (13,000,000 Korean won, approximately 12,000 U.S. dollars) to bring me from Vietnam. She also said that I should pay this if I want to go back home. Otherwise, I cannot." *Id.*

¹⁰² See *id.* at 25.

¹⁰³ See So, *supra* note 83, at 3-4 (explaining how families of migrant women only receive 300 to 400 U.S. dollars, even though men pay about 10,000 U.S. dollars).

¹⁰⁴ See *id.* at 3 (explaining how men get to choose their future wives within a few hours, and how this speedy process gives brokerages more profit).

¹⁰⁵ See Kim, *supra* note 5, at 32.

¹⁰⁶ See Seonju Koh, Current Status of Multicultural Families and Related Policies in Korea, in IOM JAPAN WORKSHOP REPORT 148, 148-151 (2011), available at <http://www.iomjapan.org/archives/Feb2011WorkshopReport.pdf>.

¹⁰⁷ *Minpōp* [Korean Civil Code] art. 816 (S. Kor.) (effective Mar. 31, 2005).

customers, i.e., the bridegroom or bride, not the marriage broker. For foreign women who do not speak Korean, it would be nearly impossible to prove the brokers' wrongdoing after a brief meeting of two or three hours.

Second, the 2007 revision introduces a new part of legislation stating that the international marriage brokerage ought to comply with the law of the foreign country where it runs the business.¹⁰⁸ Indeed, the Philippines,¹⁰⁹ Cambodia,¹¹⁰ and Vietnam¹¹¹ have prohibited profit-oriented international marriage brokerages by law. Nonetheless, it is reported that brokers continued to manage their businesses by lying to individual bridegrooms or brides and by bribing the public servants.¹¹² The Marriage Brokerage Act only cites the Criminal Code as foreign law necessary for compliance.¹¹³ Again, only when the final decision in the foreign criminal court is made, should the case be reported to the Ministry of Health and Welfare in Korea.¹¹⁴ Thus, these cases would rarely arise. Indeed, the cases filed under this act for the last two years involve "not exhibiting proper register," "not filing the member list," "not documenting contracts," etc.¹¹⁵ None of the reported cases are concerned with abnormal business practices or with

¹⁰⁸ See Koh, *supra* note 106, at 150.

¹⁰⁹ An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail Order Basis and Other Similar Practices Including the Advertisement, Publication, Printing or Distribution of Brochures, Fliers, and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefore, Rep. Act No. 6955, § 4 (Jun. 13, 1990) (Phil.).

¹¹⁰ Sub-Decree No. 183 (RGC) of November 3, 2008 on Regulating Formalities and Procedures for Marriage between Cambodian Citizens and Foreigners (Ogs, Year 08, NO 83, Nov. 12, 2008).

¹¹¹ Decree No.68, Art.2 Paragraph 2, 2002.

¹¹² For a Cambodian case, see Jung-Sun Kim & Jae-Won Kim, *Kyölhonchungkaepöp üi kwalli ea kwanhan pöpnnyul, üimi öpchiman yuhyohan pöp* [The Act on Regulation of Marriage Brokerage Agency, a Meaningless but Valid Law – The Case of the Cambodian International Marriage Brokerage], 86 *Kyöngche wa sahoe* [Economy and Society], 305-383 (2010).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Kyung Sun Yu, *Kyölhonchungkaepöp üi kwalli ea kwanhan pöpnnyul kwa insinmaemae pangchi pöp* [Act on the Marriage Brokerage and Anti-Human Trafficking Law] (unpublished report Presented Report at the Conference on International Marriage Brokerage) (Feb. 17, 2010).

possible human rights violation as pointed out above.¹¹⁶

This illustrates the limited capacity of law because while the law declares the intention to change the social practices, it cannot intervene in the real practice.¹¹⁷ Although the success of marriages based on mutual understanding, respect, and coexistence of different cultures in the process of commercial matchmaking seems very low, the Korean government has not been involved in the “private sector” business very actively.¹¹⁸ However, the problems with requiring the brokerage only to comply with foreign criminal codes are not confined to the delusional faith in the autonomy of the private sector, but extends to the ethnocentric point of view.¹¹⁹

V. During and After Marriage: The Law and Society

Even after the couple successfully establishes a family in Korea, the foreign spouse’s legal status in Korea is largely dependent on their Korean spouses.¹²⁰ Let us take a look at some of the cases in relation to the pertinent statutes.

A. Cases

In July 2007, a nineteen-year-old marriage-migrant woman was found dead with eighteen broken ribs.¹²¹ After marrying a Korean man, the Vietnamese woman was abused by her husband and confined to a basement room.¹²² The husband claimed that he was very angry because the wife, for whom he paid a lot, kept threatening to go back home.¹²³

¹¹⁶ Witnessing these problems in the law regarding the international marriage brokerage, the revised bill was proposed. The Bill of “Prevention from Human Trafficking and Protection of the Victims” was drafted and is currently under deliberation at the National Assembly in Korea. See Kim & Kim, *supra* note 112, at 75.

¹¹⁷ *Id.* at 177.

¹¹⁸ See *id.* at 371-78.

¹¹⁹ Yu, *supra* note 115, at 371-78.

¹²⁰ *Id.*

¹²¹ See Eun-Ji Kim, *Chukōna chukikōna: ijuyōsōng chanhoksa* [To Kill or To Be Killed: The Cruel Reality of Migrant Women], SISA IN (Feb. 28, 2009), available at <http://www.sisainlive.com/news/articleView.html?idxno=3907> (last visited Oct. 23, 2011).

¹²² *Id.*

¹²³ *Id.*

Another case has come to be known as “a modern version of a surrogate mother.”¹²⁴ A 19-year-old Vietnamese woman married a Korean man, who divorced his first wife of 20 years because the previous wife was unable to have a child.¹²⁵ The Vietnamese wife became pregnant and delivered the child.¹²⁶ After delivery the Vietnamese wife found that the baby disappeared, and was told that the baby was being taken care of elsewhere.¹²⁷ After the delivery of the second baby, the husband demanded a divorce.¹²⁸ He told the Vietnamese wife that his ex-wife threatened to take the property owned by the husband if he did not get a divorce.¹²⁹ In turn, he promised to visit Vietnam with the two children and never to leave his new wife.¹³⁰ Just fifteen days after the young Vietnamese wife divorced her husband, he remarried his ex-wife.¹³¹

When the Vietnamese divorcée returned to Korea, the husband changed his phone number, address, and other personal information.¹³² When she sought legal advice, a public lawyering group stepped up to support her in filing a civil lawsuit against the ex-husband and his current wife for compensation.¹³³ She also brought another lawsuit to seek custody of her children.¹³⁴ The ex-husband claimed that the Vietnamese wife agreed to a divorce after having the children.¹³⁵ The husband said that he explained this with the help of a Korean-Vietnamese dictionary.¹³⁶

¹²⁴ See Rami So, *Hyõndaep'an ssipaji—Vietnam yõsõng eün soksumuch'aeck* [Modern Version of a Surrogate Mother—Vietnamese Mother Who Cannot Be Helped], PRESSIAN (May 22, 2008), available at http://www.pressian.com/article/article.asp?article_num=60080522110009&Section.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ So, *supra* note 124.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ So, *supra* note 124.

¹³⁵ *Id.*

¹³⁶ Kyung-Hwa Song *Hyõndaep'an ssipaji—Vietnam sinpu hangsosimsõ tto sũngso* [The Modern Surrogate Mother? Wins on Appeal], HANKYURAE (July 2, 2010),

In this case, the court ordered the defendants to pay the Vietnamese woman compensation for the mental damage inflicted upon her, but did not grant the mother custody of the children as it was not in the “best interest of the child[ren].”¹³⁷ The court considered the fact that the children had been raised by the husband’s current wife since birth and had grown familiar with the current environment.¹³⁸ Thus, the current parents (the ex-husband and his first wife) were judged as a more suitable party than the Vietnamese biological mother for the custody of the children.¹³⁹ In 2009, the Supreme Court in Korea bestowed a visitation right to the birth mother of once a month.¹⁴⁰

Although the aforementioned cases might be somewhat extreme, they represent the tip of the iceberg in the system of international marriage and the protection of human rights. Now, we will look at the related statutes that should prevent and regulate these kinds of tragedies.

B. Nationality Act: Simplified Naturalization

In 1997, the Nationality Law was amended significantly when the number of international marriages began to increase.¹⁴¹ Under previous law, a wife of a Korean man could automatically obtain Korean nationality upon their registration of marriage in Korea while a foreign husband could get Korean citizenship only after residing in Korea for more than three years.¹⁴² This discriminatory law, which treated foreign wives and foreign husbands differently, was revised to become “gender-neutral.”¹⁴³ The real reason for the

available at http://www.hani.co.kr/arti/society/society_general/428552.html (last visited Oct. 23, 2011).

¹³⁷ Family Court (Seoul) 2009bu16, April, 10, 2009 (regarding the custody); Family Court (Seoul) 2009na67124, June 25, 2010 (regarding the compensation).

¹³⁸ So, *supra* note 124.

¹³⁹ *Id.*

¹⁴⁰ Supreme Court [S. Ct.], 2009su56, June 29, 2009 (SCD) (S. Kor.).

¹⁴¹ See Nationality Act, *supra* note 75, at 261-69.

¹⁴² Nationality Act, Act. No. 2906, Dec. 22, 1976, art. 3 (S. Kor.), translated in STATUTES OF THE REPUBLIC OF KOREA (Kor. Legislation Res. Inst. 2009), available at <http://elaw.klri.re.kr/eng/main.do> (enter “Nationality Act” in search bar; then select “Nationality Act” on left; then select “Statutory History”; then select “8: 1976-12-22” on left).

¹⁴³ See Nationality Act, Act. No. 5431, Dec. 13, 1997, art. 6(2), amended by Act 8892, Mar. 14, 2008 (S. Kor.), translated in 2 STATUTES OF THE REPUBLIC OF KOREA

revision, however, lies in preventing paper marriages or fake marriages.¹⁴⁴

Article Six Paragraph Two of the current law, “the simplified naturalization to Korean,” states requirements a foreign spouse must fulfill in order to obtain Korean nationality, as follows:

1. A person who has sustained a domicile in the Republic of Korea for at least two consecutive years, being married to the said spouse;
2. A person for whom three years have lapsed, since he/she got married to the said spouse, sustaining a domicile in the Republic of Korea for at least one year consecutively;
3. A person who was unable to sustain marriage due to the death or disappearance of his/her spouse or other causes unattributable to him/her while sustaining a domicile in the Republic of Korea and being married to the said spouse, who failed to fulfill the requirements for period under subparagraph 1 or 2 but has fulfilled the requirements for the remaining period under subparagraph 1 or 2, and is considered reasonable by the Minister of Justice;
4. A person who failed to satisfy the requirements under subparagraph 1 or 2, but who is taking care of, or shall take care of, a minor born within the marriage relationship with the said spouse, and has met the domicile period requirements under subparagraph 1 or 2 and is considered reasonable by the Minister of Justice.¹⁴⁵

Because of the criteria of subparagraph 1 and 2, a foreign spouse’s status in Korea is dependent on her Korean spouse and his family.¹⁴⁶ This is due to the fact that it is the husband who guarantees the spouse’s identity with the state—her residence, continuation of marriage, etc.—when the visa for the spouse (F-2)

262-63 (Kor. Legislation Res. Inst. 1997 & Supp. 51) (requiring identical residency requirements for foreign husbands and foreign wives to obtain Korean citizenship).

¹⁴⁴ Hye-Kyung Lee, *International Marriage and the State in South Korea: Focusing on Governmental Policy*, 12 CITIZENSHIP STUDIES 107, 113 (2008).

¹⁴⁵ Nationality Act, *supra* note 143, at 262-63.

¹⁴⁶ Hyon-Mi Chong, *Kyŏlhon imin yŏsŏng kajŏng p’oknyŏk p’ihaehyŏnhwang kwa chiwon ch’eakye [Domestic Violence Against Immigrant Women and Its Preventing System]*, 1-1 EWHA J. GENDER & L. 71, 84-85 (2010).

is renewed each year and when the document of naturalization is applied for.¹⁴⁷ This design renders the spousal relationship even more unequal, making it easier for husbands to control their wives.¹⁴⁸ With regard to subparagraph 4, it is pointed out that for foreign spouses whose economic condition are often worse than their Korean spouses and whose citizenships are not secure, it is difficult for non-Korean spouses to get custody of the children.¹⁴⁹ When a foreign parent obtains visitation rights, however, he or she can also get a visa to stay in Korea, as in the case of the Vietnamese surrogate mother above.¹⁵⁰

When the marriage is dissolved in relation to subparagraph three, the non-Korean spouse needs to prove that he or she is not responsible for the dissolution in order to obtain Korean citizenship.¹⁵¹ In reality, it is very difficult for a foreign spouse who is unfamiliar with the Korean language and society to prove the other spouse's responsibility. In consideration of such difficulty, since 2007 the Ministry of Justice in Korea has accepted not only the court's decision and the doctor's prescription, but also "Publically Recognized Women's NGO's Confirmation" to determine the responsible party for the dissolution of the marriage.¹⁵² The divorce issue will be discussed later. The central issue with regard to the Nationality Law lies in the Korean spouse's extensive power to label the state of the spouse.¹⁵³ Rather than relying too much on their Korean spouse, who could be immature, indecent, or sometimes violent, the foreign wives need to have third parties such as professional counselors, women and human rights NGO activists, or other alternatives be involved in or

¹⁴⁷ *Id.*

¹⁴⁸ See Chang & Lee, *supra* note 81, at 57-58.

¹⁴⁹ Chong, *supra* note 146, at 88.

¹⁵⁰ Supreme Court [S. Ct.], 2009su56, June 29, 2009 (SCD) (S. Kor.).

¹⁵¹ "[S]ince 2007, in the case of divorce and legal separation, she has to prove that she is a victim of her husband's imputation first before any mitigation could [sic] be done." Lee, *supra* note 144, at 113.

¹⁵² It is encouraging to see that the Ministry listed 197 NGOs nationwide, but it is not always possible for NGO activists to prove which party is responsible for the dissolution of a marriage. *Id.* The Ministry of Justice "also mitigated the situation of foreign divorced brides, reducing the documentary evidence needed to prove that their Korean husband was responsible for their divorce." *Id.* at 115.

¹⁵³ *Id.*

to monitor the process of visa renewal and naturalization application.

C. Family Law: Marriage and Divorce

In the discussion about the Nationality Law above, family issues such as divorce, surrogate mother and custody have already begun. The Family Law in Korea usually refers to the Book IV Relatives and Book V Succession of the Civil Code.¹⁵⁴ Due to insecurity, the issues of marriage dissolution, nullification, cancellation, or divorce, for instance, are more often raised in international marriages relative to domestic marriages.¹⁵⁵ The divorce rate among international couples increased 46.8% between 2005 and 2006 while the rate in domestic marriage decreased in the same period.¹⁵⁶ Furthermore, the ratio of international divorces to international marriages increased 1.3% in 2002, 2.4% in 2004, and 5% in 2006.¹⁵⁷

Divorce has somewhat of a different meaning in international marriages than it does in domestic marriages. For a foreign spouse, divorce can be a way to part from the Korean spouse's maltreatment without losing the visa to stay in Korea, so long as the foreign spouse is not responsible for the divorce.¹⁵⁸ What is needed here is a way to interpret "not responsible for the dissolution of marriage" in a more flexible way. To prove that the spouse herself is not responsible might be easier than to prove that her spouse is responsible for the divorce.¹⁵⁹ The fact that non-

¹⁵⁴ See Act on the Registration Etc. of Family Relationship, Act. 8435, May 17, 2007, art. 71-78 (S. Kor.), translated in 3 STATUTES OF THE REPUBLIC OF KOREA 940-41 (Korea Legislation Research Inst. 1997 & Supp. 41).

¹⁵⁵ Bong-Kyung Choi, *Kukcheijuyösöng üi pöpjök munche ea kwanhan soko* [On Legal Problems Regarding the Marriage-Migrant Women in Korea,] 155 SEUL L.J. 131, 139, 143 (2010).

¹⁵⁶ See *id.*

¹⁵⁷ *Id.*

¹⁵⁸ Jung Hye Park, Searching for the Protection of Legal Security of Marriage-Migrant Women (unpublished presentation paper, Center for Public Interest & Human Right Law, the Law School, Seoul National University, Oct. 6, 2009), available at http://law.snu.ac.kr/introduce/09into_board_view.asp.

¹⁵⁹ The court also needs to take into consideration the unique reasons for divorce in international marriages such as difficulty in communicating caused by the language barrier, misunderstandings of the spouse's culture, and misinformation that the Korean spouse gives the foreign one. For more details, see Choi, *supra* note 155, at 143. In

Korean spouses bear the burden of proof for this purpose also deters the possibility of forming an equal spousal relationship, at least for the first two or three years of marriage. As we have seen in the Nationality Law, it is necessary for a non-Korean spouse to obtain his or her Korean spouse's approval for both visa extension and application for Korean citizenship.¹⁶⁰ There has been no proper measure developed to set a limit on the abuses of power given to the Korean spouses.¹⁶¹ Under such circumstances, it is plausible that non-Korean spouses would try not to provoke the other spouse, even when there are serious problems in their relationship.¹⁶² On the other hand, foreign wives could seek a judicial divorce with proof that they were not the responsible party for the divorce.¹⁶³ When a judicial divorce is in the process, a non-Korean spouse's legal status and rights to work need to be protected.¹⁶⁴ Since 2005, foreign spouses who have F-2 visas can obtain jobs due to the revision of the Immigration Control Act.¹⁶⁵

This indicates that the rate of divorce in international marriages can be lessened as alternative measures such as professional interviews or counseling, are adopted to find out about the foreign spouse's living conditions, instead of relying exclusively on the Korean spouse's testimony.¹⁶⁶ With such measures in place, the wrongdoings of the Korean spouse's

cases where the spouses mutually agree to get a divorce, there could be no spouse who is responsible for it. *See* Chong, *supra* note 146, at 86-87.

¹⁶⁰ Chong, *supra* note 146, at 84-85.

¹⁶¹ *See id.* at 85 (explaining how the requirement that wives accompany their husbands makes their relationship unequal and gives Korean husbands significant power).

¹⁶² *See generally* Seung-woo Lee, *Honinijuyösöng üi chiwi wa pöpjök munche* [The Social Status and Legal Problem of Female Marital Immigrants in Korea], 16-1 SEOUL J. L. 150, 150 (2008) (arguing that the two or three year residency requirement with the Korean spouse does not prevent fake marriage); *see also* So, *supra* note 83, at 7.

¹⁶³ *See* Chong, *supra* note 146, at 84-85.

¹⁶⁴ *Id.* at 86-87.

¹⁶⁵ *See id.* at 88. *See also* Lee, *supra* note 144, at 113 (discussing the difference between F-1 and F-2 visas). For the spouse seeking a divorce or custody of the children, he or she needs the right to stay and work in Korea regardless of who is responsible for the divorce. *Id.* As long as the foreign spouse provides a document proving that the lawsuit is pending, he or she can continue to hold a F-2 visa that allows the holder to work, although the F-2 visa also requires renewal every three months. *Id.*

¹⁶⁶ Choi, *supra* note 155, at 143.

family, conflicts among the family members, and even violence within the family could be monitored, and the couple could be professionally guided instead of jumping straight to divorce.

In relation to the foreign spouse's vulnerable status, it is reported that court documents, such as the order to be present in divorce court, often fail to be delivered to the foreign spouses who do not have a stable residence after leaving the Korean family.¹⁶⁷ Even when the Korean spouse's or family's ill behavior or abuse is the cause for the foreign spouse's leaving or being expelled from the family, the foreign spouse is often the one to lose the case.¹⁶⁸ This again indicates that treating foreign spouses who do not have proper social networks and economic resources as an "equal individual" in family court just is not enough. Before entering family court, foreign spouses must be given access to the support of NGOs and other agencies.¹⁶⁹ This will not only help them get a fair treatment in court, but it will also mitigate the risk of family crises in international marriages.

The other critical issue in the dissolution of international marriage is the issue of so-called "fake marriages."¹⁷⁰ The two or three year residency requirement found in the Nationality Law is intended to prevent sham marriages.¹⁷¹ However, it is inevitable for the Immigration Law and the Nationality Law to control illegal migrants, some of which could be "fake spouses."¹⁷² The problem is that the criteria for deciding whether a marriage is fake or not are even stricter when they are applied to international marriages. "Genuine will to marry" is a central criterion used by the Korean Supreme Court to determine whether a marriage is fake or not,¹⁷³

¹⁶⁷ Bong-Kyung Choi, *Tamunhwakajöng üi myötkachi pöppök munchechöm* [Issues in the Family Law Regarding the Multicultural Families] (unpublished presentation paper at Korean Association of Family Law Conference) (June 22, 2011).

¹⁶⁸ *Id.* at 13.

¹⁶⁹ *Id.*

¹⁷⁰ See Lee, *supra* note 144, at 114.

¹⁷¹ *Id.* at 113. See generally Nationality Act, *supra* note 143, at 262-63 (detailing a two or three year residency requirement to obtain citizenship).

¹⁷² Immigration Control Act, Act No. 4522, Dec. 8, 1992, amended by Act No. 10282, May 14, 2010 (S. Kor.), translated in STATUTES OF THE KOREAN REPUBLIC (Kor. Legislation Res. Inst. 2009), available at <http://elaw.klri.re.kr/eng/> (search "Immigration Control Act"); Nationality Act No. 5431, *supra* note 143, at 262-63.

¹⁷³ Supreme Court [S. Ct.], 2010mu574, Jun. 10, 2010 (SCD) (S. Kor.).

but there were lower court cases that employed other criteria, such as the substance of marital life or cohabitation at the moment in question, rather than the will to marry at the time of marriage.¹⁷⁴ There were also the cases of fake marriage in which a Korean married a foreigner in collusion with a commercial brokerage.¹⁷⁵ The broker's agenda was to charge fees against the foreign spouse upon the completion of marriage and divide the income with the Korean.¹⁷⁶ Even in these cases, the police and the court conveniently declared nullification of marriage, and the foreign spouses were promptly deported out of the country.¹⁷⁷ The latter issue in which the foreign spouses are the victims should be dealt with in relation to the Marriage Brokerage Act discussed above, and the brokers and the Korean spouses who committed marriage fraud should be punished in the criminal court before sending the case to the family court.

This, again, reveals that, in dealing with family matters, a stereotypical approach in terms of "relationship" within the family is adopted more often than the commitment to justice. In the Nationality Law, we see that justice in the private arena tends to remain in the hands of a patriarch.¹⁷⁸ Neither does family court seem to be able to set the specific standards for the cases of international marriage-family apart from the usual domestic marriage-family cases (including divorce and fake marriages). Thus, it does not correct the previous systematic problems in marriage formation and immigration.¹⁷⁹ Seen this way, the myth that family matters ought to be resolved "within the family" seems to continuously prevail in the legal treatment of the international

¹⁷⁴ See Choi, *supra* note 167; Park, *supra* note 158.

¹⁷⁵ See generally Lee, *supra* note 162, at 108 (discussing the mail-order bride phenomenon); see also Norimitsu Onishi, *Korean Men Use Brokers to Find Brides in Vietnam*, N.Y. TIMES, Feb. 22, 2007, available at <http://www.nytimes.com/2007/02/22/world/asia/22brides.html> (commenting on Korean men's growing use of marriage brokerages to find their wives).

¹⁷⁶ See Onishi, *supra* note 175, at 2.

¹⁷⁷ See Park, *supra* note 158.

¹⁷⁸ See Nationality Act, *supra* note 143, at 262-63.

¹⁷⁹ *But see* Support for Multicultural Families Act, Act. No. 8937, Mar. 21, 2008, translated in STATUTES OF THE REPUBLIC OF KOREA (Korea Legislation Res. Inst.). This Act provides for equal protection, domestic violence support, access to translators, etc. for foreign spouses but it does not specifically address issues of fraudulent marriage or economic violence. *Id.*

marriage-family.

D. Special Procedural Law on Domestic Violence

The Act on the Prevention of Domestic Violence and Protection Etc. of Victims Thereof was legislated on December 31, 1997, for the first time in Korea.¹⁸⁰ Afterward, it was revised several times as a special code in the Criminal Code of Korea.¹⁸¹ The statute is twofold: one is for the punishment of domestic violence offenders (hereinafter “Punishment Law of DV”), and the other for the support and rehabilitation of victims and their remaining family (hereinafter “Protection Law of DV”).¹⁸² Although the legislation is meaningful in itself, it still has many pitfalls.

First, the purpose of the law in Article 1 of the Punishment Law of DV is stated as “building a healthy family” and “protecting human rights of victims and family members,” paralleling different goals.¹⁸³ Thus, it is unclear which purpose precedes the other. Since domestic violence, including emotional, linguistic, and economic ones, could be used as a means to maintain the very normality of the family, it is ambiguous. The notion of “family” or “healthy family” needs to be reconsidered from the human rights point of view, especially in the context of international marriages—those marriages in which the foreign spouse’s living conditions are very much dependent on the Korean spouse and the Korean spouse’s family.

Second, there are sophisticated measures in the law developed to treat the offenders of domestic violence: criminal punishment, civil restitution, and various programs for correction and education.¹⁸⁴ In deciding the treatment, however, the prosecutors ought to respect the victim’s opinion as stated in Article 9 of the Punishment Law of DV.¹⁸⁵ Thus, it could be plausible to exempt

¹⁸⁰ Act on the Prevention of Domestic Violence and the Protection Etc. of Victims Thereof, Act. No. 5487, Dec. 31, 1997, *amended by* Act. No. 9668, May 8, 2009 (S.Kor.), *translated in* STATUTES OF THE REPUBLIC OF KOREA (Kor. Legislation Res. Inst. 2009) [hereinafter Prevention of Domestic Violence Act].

¹⁸¹ *Id.*

¹⁸² *See id.*

¹⁸³ *Id.* at art. 1.

¹⁸⁴ *See id.* at art. 9.

¹⁸⁵ Prevention of Domestic Violence Act, *supra* note 180, at art. 9.

the offender from criminal punishment if the victim wants to continue their marital relationship for whatever reason. In such cases, domestic violence victims seem to carry the burden of punishing family members, which is usually the responsibility of the prosecutor.

In an empirical study on domestic violence conducted by the Korean Institute for Health and Social Affairs and the Ministry of Gender Equality in 2007, domestic violence in international marriages was compared with that in domestic marriages.¹⁸⁶ The study reported that the rate of violence in international marriages is lower than that in domestic marriages.¹⁸⁷ Whereas 50.4 percent of domestic marriage families answered that they have domestic violence occurrences, only 43.2 percent of international marriage families answered as such.¹⁸⁸ The rate of reported domestic violence occurrences among domestic marriage families is higher than that of international marriage, except in economic violence cases.¹⁸⁹

Domestic violence is generally understood as the violence based on the inequality between men and women.¹⁹⁰ Marriage-migrant women, whose legal and social status is even lower than most Korean wives, are less likely to actively report the violence and seek help.¹⁹¹ Moreover, we could assume that for most spouses from foreign countries, the level of tolerance for violence could be even higher than that of domestic spouses because of their dependence on the Korean spouse and family. When those who had considered divorce were asked why they did not get a

¹⁸⁶ See Seung-Kwon Kim et al., 2007 *nyŏn chŏnkuk kajŏng p'oknyŏk silt'ae chosa* [NATIONAL SURVEY ON DOMESTIC VIOLENCE IN KOREA] 2 RESERARCH PAPER 186 (2007) (S. Kor.).

¹⁸⁷ *Id.* at 72.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*; see also Choi, *supra* note 155, at 144-46 (describing a 2010 survey on domestic violence in Korea in which 40.9 percent of migrant wives reported that they had been victims of domestic violence within the past year: 13.4% reporting physical violence, 21.5% reporting emotional abuse, 15.3% reporting economic abuse, 5.2% reporting sexual violence, and 22% reporting negligence).

¹⁹⁰ See Declaration on the Elimination of Violence Against Women, *supra* note 77 (describing the notion of "gender-based violence").

¹⁹¹ See generally Chang & Lee, *supra* note 81 (finding generally that marriage-migrant women are less likely to seek help for their situations, including physical and economic domestic violence).

divorce, 49.4 percent of them answered, “because of the children” and 12.9 percent of them answered, “because of inability for economic independence.”¹⁹² When a migrant woman, who does not have any other family in Korea, leaves her spouse’s home, her husband or other members of her family may report her to the police as an illegal foreigner.¹⁹³ Moreover, a husband could rescind his previous guarantee for his wife’s status, and she could simply become an illegal foreigner.¹⁹⁴ In this way, a husband and his family could take advantage of his wife’s unstable legal status.¹⁹⁵ It could be possible for migrant women to actively seek divorce and the proof of the existence of domestic violence committed by other family members as we discussed in the divorce issue.¹⁹⁶

In order to mitigate and prevent domestic violence in international marriages, a third party such as citizens’ organizations, professionals, welfare and religious groups need to support and monitor the families.¹⁹⁷ Providing institutional support for economic independence, i.e., getting a job, and helping foreign spouses obtain child custody or at least visitation rights, is also important.¹⁹⁸ With such support in place, migrant women will be able to freely report to the appropriate authority about the problems they have and protect themselves from domestic violence.¹⁹⁹ In other words, empowerment of women, along with proper punishment or correction of the offenders, is very important.²⁰⁰

¹⁹² *Id.* at 45 (reporting that the ratio of having at least one child has been rapidly growing among marriage migrant women). In a 2008 study with 842 women, 49.6% said that they gave birth in Korea; further, the number of children from international marriages in Korea increased by more than 30% between 2007 and 2008. *Id.*

¹⁹³ *Id.* at 79.

¹⁹⁴ *Id.*

¹⁹⁵ In order to prevent themselves from being “illegal foreigners,” the victim women need to report the situation to the police or to related centers and shelters so that institutions can support them. *See Chang & Lee, supra* note 81.

¹⁹⁶ Chong, *supra* note 146, at 86-87.

¹⁹⁷ *Id.* at 98-99.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 65-66.

²⁰⁰ *Id.* at 92.

E. Multicultural Family Support Act

The Multicultural Family Support Act was legislated in March 2008 and came into effect as of September 2008.²⁰¹ The purpose of the law is stated to provide support for the members of a multicultural family to have a secure family life and to promote social integration.²⁰² This kind of support includes: raising social awareness, providing support, orientation for newly-arrived foreign wives, support for equal family relationship, support for victims of domestic violence, pre- and post-natal health care, support for children at school, multi-language service for the foreign wives and establishing multicultural family support centers among others.²⁰³ Articles 8 and 11 clarify the central and local governments' duty to support marriage-migrant persons in communication and legal aspects.²⁰⁴

In addition, as of November 2006, the Emergency Call Support System 1577-1366 has been established.²⁰⁵ This "1366 Center" provides such various services as medical, legal, and police services in six languages.²⁰⁶ Korean central and local governments and related NGOs have put significant effort into welfare of multicultural families, and as a result, there are 515 centers and related projects that support multicultural families in Korea as of 2008.²⁰⁷

Although support for international marriage-families will surely be helpful, the intention of this statute seems to lie in the support of "the family," as the title of the law represents, rather than the support of individual human rights.²⁰⁸ As long as the systematic mechanism for discrimination against foreign spouses

²⁰¹ Support for Multicultural Families Act, Act. No. 8937, Mar. 21, 2008 (S. Kor.), translated in STATUTES OF THE REPUBLIC OF KOREA (Kor. Legislation Res. Inst. 2009).

²⁰² *Id.* at art. 1.

²⁰³ *See id.*

²⁰⁴ *Id.* at arts. 8 and 11.

²⁰⁵ Chong, *supra* note 146, at 97.

²⁰⁶ *Id.* at 98.

²⁰⁷ *Id.*

²⁰⁸ Most of the provisions in the statute relate to families as a whole and do not mention individual rights. The exception is Article 8, Protection of and Support for Victims of Domestic Violence. *See* Prevention of Domestic Violence Act, *supra* note 180.

and their children remains, the support that goes beyond the scope of paternalistic care is what they need. As we saw in this article, the family could be the very place where inhumane treatment, inequality and ethnocentrism exist.

VI. Concluding Remarks

If there is multiculturalism in Korea, this multiculturalism is a peculiar one. Unlike most multicultural societies where discrete ethnic communities and cultures coexist with the mainstream culture, different cultures are presumably carried by the individuals who enter into a family in Korean cases. This article thematizes the condition where “the family” is the very field where multicultural experiments are taking place, and the ideal of multiculturalism is realized through critical examination of the law and policy. In my view, this multicultural situation could be summed up in a slogan borrowed from the second generation of feminism in the United States, “[t]he personal is political: The familial is global.”²⁰⁹ In this respect, the concept of multiculturalism itself needs to be redefined within the Korean context and should have a special focus on the justice question in the “private sphere.”

As for law and policy, multicultural ideals and values should be implemented in the areas that have traditionally been associated with the private sphere. From a series of factors such as the inconsiderate “same” treatment for foreign spouses in family court, Korean and family-centered procedure of naturalization of foreign spouses, the ethnocentric assumption of marriage formation in the Marriage Brokerage Act, and the Korean government’s indifference towards the issue, one can tell that multiculturalism that promotes respect for different ethnicities and cultures as well as reciprocity for the different language uses has not taken root in Korea. Particularly, the fact that marriage-migrants are predominantly women raises the need for special policy on women and gender issues. This is made even more so because the family-related laws and the family institutions in

²⁰⁹ This phrase is commonly associated with feminism in America. See Carol Hanish, *The Personal is Political*, in NOTES FROM THE SECOND YEAR: WOMEN’S LIBERATION: MAJOR WRITINGS OF THE RADICAL FEMINISTS 152, 152-157 (Shulamith Firestone & Anne Koedt, eds. 1970).

Korea have been notoriously male-centered. As a conclusion, I lay out several suggestions for the related statutes and policies as follows.

First, the reasoning of human rights and justice in the “private sphere” needs to be further developed. As in the case of the Vietnamese surrogate mother, “the best interest of the child” is considered as a much more crucial criterion in making a decision for child custody in family court, while raising issues with problems within a family and punishing the offenders of marriage fraud are considered unimportant. The protection of a “family” may serve conservative causes unless it is grounded upon the firm notions of individual freedom and dignity, and of gender, ethnic and race equality. In relation, active and fair public interventions in family issues are necessary. While the Nationality Law bestows strong powers on Korean spouses, there is no clear alternative to prevent abuses of such powers, which also signals the law’s view on family as a closed system.²¹⁰ Although family court tries to deal with the issues of international marriages properly, it should not be content with nominal gender and ethnicity neutral treatment. The courts and legal scholars need to develop gender, race and ethnicity sensitive criteria in order to promote substantial equality.

Second, the central concepts in the Constitution need to be revised from the angle of multiculturalism. The interpretation of protecting human dignity (Article 10) and equality (Article 11) needs to be modified to include racial and ethnic diversity.²¹¹ Also, as in Article 9, protecting cultural heritage has been a duty of the Korean nation.²¹² However, in this era of global families, we need to rethink the proper definition of the Korean tradition and culture that tended to be built upon homogeneity of the Korean people.²¹³ If not, the assumption that the Korean tradition is homogeneous could soon become “unconstitutional” in a society where fourteen

²¹⁰ See discussion *supra* Part V.C. (discussing the law’s lack of treatment for matters considered “family matters”).

²¹¹ *Hōnpōp* [CONSTITUTION OF KOREA] arts. 10 and 11 (S. Kor.), translated in STATUTES OF THE REPUBLIC OF KOREA (Kor. Legislation Res. Inst. 2009).

²¹² See *id.* at art. 9 (addressing the importance of preserving cultural heritage).

²¹³ See Kim, *supra* note 5, at 10.

out of every one hundred marriages are international ones.²¹⁴

Third, the expansion of the “third sector” that is beyond the dichotomy of private and public seems urgent. The third sector includes NGOs, citizens’ movements, and religious and welfare organizations. They should not only support international families, but also closely monitor and provide them with assistance for visa renewal, naturalization applications, divorce, and domestic violence. Dense development of such networks will be a critical factor the success of multiculturalism in Korea as suggested in this article.

Fourth, substantial legal support is critical. The migration-related laws in Korea have changed incessantly over time.²¹⁵ In order to fulfill the purpose of the legislation, legal services for the people also need to be substantialized. Most of the legal cases involving human rights of marriage-migrant women have been litigated by public attorneys.²¹⁶ A special fund for legal aid to these women could be one solution to support these women and their families.

Last but not least, social ethics and values are also significant. For the first time in the history of Korea, rural families that tended to have the most conservative culture have been challenged to “globalize.”²¹⁷ In this sense, Korean citizens and communities need to be prepared to overcome ethnocentric and patriarchal notions of family. In this age of globalization and migration, the Korean experiment of “multiculturalism within the family” has already begun.

²¹⁴ See Ja-Young Yoon, *14 percent of Marriages International in 2005*, THE KOREA TIMES (Mar. 30, 2006), available at <http://www.koreatimes.co.kr> (citing a survey by the National Statistical Office of Korea).

²¹⁵ The Nationality Act has been amended six times in the last ten years, and was wholly amended from previous versions in 1997. See Nationality Act No. 5431, *supra* note 143, at 261-69.

²¹⁶ See discussion *supra* Part V.C. (discussing the difficulties that women in international marriages face, as well as an overview of sources).

²¹⁷ See discussion *supra* Part III. (explaining the higher rate of such marriages in rural areas).

