

Introduction

In 1912 a lawsuit was waged over a woman's right to own and bequeath property on her own accord. The woman, who was now dead, had remarried in her widowhood with a three-year-old son. To her new marriage she brought 200 *wŏn*, with which she purchased nine parcels (*majigi*) of rice paddy. It was this land she bequeathed to her two sons: four parcels to the son from her previous marriage and the rest to the son of her second marriage. The plaintiff, who seems to have been a creditor of the second son, sued the first son, demanding that he hand over his parcels. He denied the first son's claim to the land, arguing that the widow did not have the right to leave property to her son from a previous marriage: "According to Korean custom, it is a certain fact that a wife does not have any legal capacity; she cannot meddle at all with matters of property while the husband is living and must absolutely submit herself to the husband."¹

Many aspects of this case are surprising to the modern reader. The life choices of this deceased woman defy contemporary notions about what was possible for a common Korean woman at the turn of the twentieth century. She chose to remarry instead of remaining single in chaste widowhood, and she was able to bring her son into her second marriage. She also exercised a significant degree of property rights, buying land with her own money and gifting it on her own accord. The Japanese judges of the High Court of Colonial Korea (Chōsen kōtō hōin), against the expectations of modern readers accustomed to assumptions about the abject status of women in premodern Korea and their even worse status under Japanese colonial rule, surprisingly defended the property rights of the woman. The judges' statement read, "There is no law or Korean custom that bans a woman with a living husband from buying property with her money and bequeathing it to her

children.” Comments that were most severely damaging to women’s property rights came not from the colonial judges but from the Korean plaintiff, with his confident claim that “Korean custom” categorically denied any property rights to women and prescribed “absolute submission” of wives to husbands.

This 1912 case exposes a gap between what we have come to believe about women’s legal status under Japanese colonial rule and how women were dealt with in practice. In the following pages I explore the transformation of women’s legal rights in the creation of the small patriarchal family that emerged out of Japanese imposition of the household system during the Japanese colonial period. This transformation is visible to us in records of women’s active participation in civil lawsuits.

THE DEBATE OVER *HOJUJE* ABOLITION

Many of the assumptions about women under Japanese colonial rule that have become conventional knowledge in South Korea were created in the late 1990s, finding wide currency in the heated public debate to abolish the household-head system (*hojuje*) installed by the Japanese, beginning with the implementation of their version of the household-registration system (K: *hojök*; J: *koseki*) in 1909.² The debate in South Korea that culminated in the 2003 National Assembly decision to abolish the old registry system homed in on the colonial origin of that system, which had been obfuscated during the postwar years in South Korea. Formulated in the Japanese metropole, the household system was disseminated throughout Japan’s colonies as the administrative foundation of the Japanese Empire and its family-state ideology. It met diverging fates in different territories as the empire was dismembered after Japan’s defeat in World War II: it was abolished in the Japanese homeland under U.S. occupation as a culprit in wartime mobilization and dismantled in North Korea as a vestige of feudalism, but it was embraced in South Korea as “Korean tradition,” against strong opposition from women’s groups for its discriminatory orientation.³

The debate that emerged in the late 1990s and early 2000s framed the household-head system anew, as not simply an issue of gender discrimination but also an issue of colonial legacy. The colonial origin of the registry came as a surprise to many Koreans, and this new angle of discourse provoked an explosive response during the time of heightened anti-Japanese sentiment in South Korea in the 2000s.⁴ Pundits began pitting the registry’s colonial legacy squarely against the claim to “tradition” that was the core of the argument of the system’s proponents. “Many think that *hojuje* is our Confucian tradition,” one critic pointed out, “but in fact it was a product of Japanese “spiritual invasion [*sasang ch'im'nyak*].”⁵ The sex-discrimination aspect of the registry, they argued, also was a colonial imposition rather than Korean tradition. Revisionist histories of family culture in the Chosön dynasty and scholarship on the family-state ideology of wartime Japan

added academic support to the argument that misogynistic family culture was not Korean tradition but a product of Japanese colonial rule.

After the abolition of the household-head system, the old registry was replaced with a new registry (*kajok kwan'gye tūngnokpu*) in 2008 that was based on the individual but still fell short of solving all problems. One issue highlighted in the public debate over the old registry was the suffering that it imposed on the fast-growing number of nonnormative families in ever-changing Korean society. The tribulations of divorced mothers, in particular, struck a chord in Korean society: under the old system, a divorced mother, even if she had full custody of her child, could not exercise full parental rights because of the restrictions of the registry, with its basis in patrilineal principles that never severed the parental rights of the father. For any official business such as school registration, a mother had to produce the family register of her child's birth father, where the child was registered as his child. Similar problems continued even after the old registries were abolished, since the residential registry (*chumin tūngnokpu*) continued to register family members under their relationship to the "head of the household" (*sedaeju*). As residential registries are routinely required for all official business, from school registrations to job applications, nonnormative families have been particularly concerned with the exposure of their private family lives through these registries. "I remarried so that I could give my children a proper family, but my children are stigmatized on the registry as 'coresident [*tong'gō'in*],' as if they are not part of the family," lamented one woman in a 2015 article about the new family-relations registry.⁶

The continued struggles of families in South Korea with the idiosyncratic features of the family registry aptly illustrate the long legacy of a household system that even abolishment could not undo. Although the new system aimed to overhaul the patriarchal hierarchy and the patrilineal principles of the old system, it could not shake fully free of some of the major features of the old family registry: the privileging of familial relationships in defining one's personal identity and the primacy of the patriarchal nuclear family unit as the underlying organizing (albeit now hidden) principle of official registration.

Even more significant for contemporary Korea than the Japanese imposition of a household-registry system was the larger realm of practice of which that system was a part, for it is there that the enduring legacy of Japanese colonial rule truly lies. The Japanese made the small patriarchal family the official administrative unit in Korea and the basis of their family-law regime. The Japanese imposed a new boundary around the household and exercised exclusive power in administering the newly defined family unit. This, rather than the strengthening of patriarchal power, was the significant innovation in the Japanese colonial household system. That Korea was strongly patriarchal before the onset of colonialism is no secret. As we have seen earlier and as will be repeatedly evident, it was Korean men who pushed to strengthen patriarchal customs when the colonial household system

threatened to weaken their position by dissolving the traditional lineage system, or the traditional patrilineal descent group.⁷ A quantitative gauge of patriarchal power therefore would be the wrong means to assess change in the family system in this period: the impact of the Japanese household system becomes pronounced only when we look at it as a contest between two family systems that were both patriarchal.

This contest between two patriarchal family systems produced particular gender dynamics in the colonial legal system. Koreans were not passive receptors of these colonial family policies. Korean men, as noted, actively pushed back against the colonial household system. Nor were Korean women passive victims of the colonial legal policies; they actively participated in the colonial legal system in an effort to claim their rights and to protect those rights through official channels. Furthermore, to expand their rights in Korea, they at times pushed to expand the application of Japanese laws to Korea. The colonial state, in turn, eagerly mobilized women's—and other reform-minded Koreans'—desire for legal integration to promote the colonial goal of assimilation.

FAMILY LAW AND JAPANESE ASSIMILATION POLICY

The reason why colonial family laws were accepted as tradition in post-1945 South Korea was that the Japanese legal system fundamentally relied on Korean customs to adjudicate family matters between Koreans. While most of the Japanese Civil Code was transposed through the Civil Ordinances in Korea (*chōsen minjirei*, 1912), a small but significant exception was the rules governing family matters. To the family affairs of Koreans and cases between Koreans the courts applied “Korean custom” (*chōsen kanshū*), a noncodified and loosely defined set of family customs produced through surveys of customs and inquiries conducted by the Office of the Governor General (also known as the Government General [Sōtokufu]).⁸ The Japanese, in other words, operated a hybrid legal system in Korea, where a single legal system applied different laws depending on the litigants involved: Japanese litigants were subject to Japanese laws, and Koreans to Korean customs. This process, intended to lead to the ultimate goal of a legally integrated Japanese Empire, was premised on the concept that the various legal spheres would be integrated as the “level of the peoples” (*mindō*) was raised.⁹ Following this logic, the exemptions to the Japanese Civil Code were incrementally diminished over the period of colonial rule. The exception for family matters, which followed precedents in European colonies, seems to have been devised to serve other objectives as well. For one, relying on Korean customary laws was useful for maintaining stability in the colony as well as for appeasing the local elite, to whom continuity (however deceptive and fleeting) was appealing.

Applying different laws to different nationals in Korea required maintaining a division between those who belonged to the Japanese metropole, that is, were

citizens of Japan, and Koreans, who were colonial subjects. This was one of the key roles of the household registers.¹⁰ The household-registry system, thus, was more than just an administrative system of identity registry; it also was a system for the verification of national belonging within the expanding empire and, thereby, a critical part of the colonial legal system.¹¹ The “original place of registry” (*honseki*) in the registry functioned as a de facto marker of nationality, as moving the *honseki* was not allowed until the end of Japanese rule—despite demands for change as practical needs mounted for both Koreans and Japanese.¹²

The organization of civil laws through the utilization of family customs also, significantly, helped the colonial government manage the tension created by its goal of assimilation (*dōka*) and the continuing reality of discrimination. This tension was most intensely felt by the Japanese on the colonial ground.¹³ Following the example of European empires, the Japanese presented their colonial rule as designed to “civilize” the colonized population. At the same time, according to the Japanese ideology of assimilation, the gap between the colonizers and the colonized was to be bridged by imperial benevolence, as subjects in the colony received the same benevolent rule as those in the metropole. The maintenance of separate legal spheres in Korea therefore served a dual purpose. On the one hand, it preserved the myth of colonial difference, which posited that the colony was backward and needed to emulate the progressive metropole that was always ahead. On the other hand, the distance between the family laws of the colony and the metropole furnished reasons for the project of assimilation with its premise of the potential for the colony to be integrated with the metropole, thereby realizing the ideal of integration in the Japanese Empire at large.

This tension between the need for separation and the ideal of integration often was palpable in the course of colonial administration, as illustrated by the following disagreement between two Japanese colonial officials in Korea. Both Oda Mikijirō and Tateishi Shūichi were engaged in legal preparations for a reform of Civil Ordinances in advance of the 1918 Common Law (*Kyōtsūhō*) and the 1922 Household-Registration Law (*Kosekihō*).¹⁴ Oda sought to include as many of the local family customs as possible, while Tateishi pushed to extend the Japanese Civil Code to Korean family matters:

One day, Mr. Oda asked me, “Do you know why the British Empire was so successful in its colonial policy? It was because it respected the natives’ customs and mores. In order to retain Korea as an eternal colony, we should respect their customs and retain their mores as they exist today.” To that, I replied, “If we are content to keep Korea as an eternal colony, I agree. But I don’t think Korea should be left a mere colony; I think that it should be ‘made into Japan [*naichika*]’ as soon as possible.”¹⁵

Tateishi’s position aptly illustrates the logic behind Japanese assimilation policies: extending Japanese family law to Korea was equivalent to making Koreans become Japanese, thereby making Korea an inseparable part of Japan. In contrast, if

colonized Korea were to retain its own family customs, it would remain a Japanese “colony,” an entity separate from the Japanese family state.

Since the separation of legal spheres in civil matters was predicated on the differences in family customs between Korea and Japan, attempts at reform of these family customs naturally had implications for the colony’s status within the empire vis-à-vis the metropole. The process of legal assimilation was to be realized through a gradual expansion of the matters to which the Japanese Civil Code applied and a concomitant shrinking of exemptions where Korean customs applied. The first of these assimilatory reforms was a series of reforms in 1921–22, when numerous family-law matters, such as the legal age of marriage, divorce, parental rights and sponsorship, and regulations on family councils (*shinzokukai*) became subject to the Japanese Civil Code. The second occurred in 1939 (implemented in 1940), when adoption and family names were made subject to the Japanese Civil Code, a reform widely known for the Name-Change Policy (*Sōshi Kaimei*).

The process of incrementally expanding the application of Japanese legal codes to replace Korean customs is a process that I call *legal assimilation*. Specifically, legal assimilation meant incrementally extending Japanese legal codes in a carefully orchestrated process, whereby local customs were manipulated to slowly accommodate the laws from the metropole. I thus am expanding the definition of assimilation from the more conventional usage that refers to a unilateral erasure of the colonized’s culture by the colonizer, encapsulated in terms such as “national annihilation policy” (*minjok malsal chōngch’aek*), which has been treated as synonymous with “assimilation policy” (K: *tonghwa chōngch’aek*; J: *dōka seisaku*).¹⁶ This more strident definition of assimilation dominated the earliest scholarship on colonial family laws, wherein these laws were understood to be a product of Japanese “distortion” of Korean family customs.¹⁷ By my definition assimilation was a process whereby the systems of colonized territories were integrated into the larger system of the empire. Although the system of the metropole became the template for such accommodations, the process did not result in a unilateral erasure of one culture by another; the end result, rather, was a restructuring of the metropole as well as the colonies. Much recent scholarship on the Japanese Empire in fact redefines assimilation in a similar fashion: Takashi Fujitani’s recent work has reconsidered the “forced assimilation policy” as a radical process of inclusion of the colonial populations, which meant a fundamental reshaping of the Japanese Empire as a whole.¹⁸ Janet Poole also has depicted the later wartime period as involving a radical reimagining by Korean intellectuals of the Japanese Empire as a whole, including a redefinition of the relationship between Korea and the Japanese metropole.¹⁹

Structural integration of the colonial legal sphere into that of the metropole through civil- and customary-law reforms led to the structural transformation of Korean families themselves, as the structure of society changed from lineage-based to one based on small families. This, I argue, was the most enduring effect of

colonial assimilation efforts on the Korean family. Through legal assimilation and the implementation of the Japanese family system, traditional lineage groups in Korea that privileged kinship ties lost legal recognition in favor of the household, the new unit of family. In the traditional lineage system, defined by kinship ties, the rights of each lineage member varied relationally. Degrees of kinship ties as well as their pertinent rights followed traditional lineage laws (*chongpöp*) rather than the status laws defined by the new colonial state.²⁰ In contrast, the colonial state emphasized the boundary of the family and clearly distinguished the family members inside of the household from those outside. With the household system, the colonial state tried to redefine the relationship between the family and the state, by claiming the exclusive right to define family boundaries and personal status.²¹

The scholarship on colonial family laws has in fact moved in the direction of acknowledging the local accommodations made by the colonial institution in the process of producing the customary laws. Hong Yang-hŭi has argued that rather than a straightforward distortion of Korean customs, the customary laws were derived through a more complex mechanism whereby the Japanese family system (*ie-seido*) was transplanted (*isik*) in Korea in the name of “Korean custom.”²² In the process the Japanese actively utilized existing Confucian family culture to accommodate the patriarchal Japanese family system. Yi Sŭng-il, on the other hand, has further emphasized the fluid interaction of the colonial legal system and practices on the ground, arguing that the shifting customary laws in Korea reflected not just the unilateral expansion of Japanese laws but also the changing practices among Koreans.²³ Most recently, Marie Seong-Hak Kim has argued that, unlike the European counterparts that the Japanese customary laws were modeled after, the customary laws in colonial Korea (and Japan) were “bureaucratically invented” in the legal system. The invention process was directed by individual judges’ pragmatic decisions to “accommodate evolving practices” rather than a premeditated colonial policy to distort and control.²⁴ Building on this trend to emphasize the power of the colonial society in shaping colonial laws, I show how the Koreans who litigated at the colonial courts understood and utilized the laws. As a result, rather than focusing on the colonial legalists, I concentrate more on the evolving legal consciousness of the colonized Koreans, which left a lasting legacy in the postcolonial years in family law.

Considering the Japanese colonizers’ efforts to utilize Korean customs requires, of course, understanding the sources of those customary laws in the Chosŏn dynasty, but I also consider the transition from the Chosŏn dynasty to Japanese colonial rule as a significant enough break to warrant a serious investigation of the colonial legal system on its own. The Japanese colonial legal system not only left a significant legacy, the full extent of which is yet to be fully explored, but also provided a unique space where continuing patterns of familial conflict played out.²⁵ Unlike Chŏng Kŭng-sik, who has challenged the colonial distortion thesis

by pointing to existing precedents of patrilineal succession practices before the colonial period, I agree with Yang and Hong that the colonial legal system had a significant and lasting role in rigidifying the existing patriarchal biases from “cultural norms” into “legal norms.”²⁶ Emphasizing the break, however, does not mean that I read this transition as a quantifiable trajectory toward modernity or a gain or loss of women’s rights, as some have implied.²⁷ Rather, my focus is to see how women’s rights were redefined from one patriarchal system to another.

The civil disputes that are the central source for this book are a direct product of the reconfiguration of the family and the redistribution of family property under Japanese colonial rule. As the lineage system was weakened, exclusive property rights of the household head were strengthened in its stead. This in turn strengthened the property rights of certain women in opposition to the rights of lineage elders, leading to a heightened number of civil disputes. The gendered conflicts over family property were byproducts of colonial legal policy.

CUSTOMARY LAWS AND TRADITION

Scholars of colonial law in other areas of the world, interrogating the ways in which the colonial propaganda of legal modernization intersected with local customs, also similarly highlight the particular articulation of the modern and the traditional in colonial legal regimes. In some cases, the colonized people embraced certain customs deemed backward by the colonial state as a tactic of resistance; in other cases, colonized people seemingly usurped modern measures to bolster traditional existing power relations. As Martin Chanock has elucidated, battles over customary laws in colonial courts often masked an underlying struggle over socioeconomic issues recently reconfigured by colonial economic conditions.²⁸ Tamara Lynn Loos, in her examination of the Siamese case, notes how the enforcement of monogamy at the turn of the twentieth century inspired some individuals to embrace polygyny, not only as part of their tradition but also as a critical component of an alternative modernity.²⁹ Mytheli Sreenivas, in her examination of colonial India, examines how the argument for expanding women’s property rights was hijacked by men who wanted to expand their own rights as heads of nuclear families.³⁰ Within the Japanese Empire, Chen Chao-ju has examined how the Taiwanese marriage custom of *simpua* (little daughter-in-law) was subject to multiple reconceptualizations under Japanese colonial legal discourse.³¹ These studies illuminate the deeper socioeconomic context of legal struggles fought over old customs—often hidden behind the rhetoric of modernity.

For the case of Korea, I propose that assimilation, rather than being perceived as a cultural assault of the colonizer on the colonized, was to a significant degree disseminated and accepted as the universal direction of progress. The particular family laws imported in the process, in other words, were perceived not only

as Japanese customs but as laws of the empire with a universal value: the Civil Code of Japan became the Civil Code of the Japanese Empire. Whether or not it indeed really promoted universal values in the colony is beside the point. What is important is that to Koreans, the universal values written into the Japanese Civil Code, albeit limited, were as much as they could achieve in terms of legal progress under Japanese colonial rule. From this perspective I seek to show how assimilation could be desirable for some colonized people, as assimilation often meant the dissemination of progressive legal rights in the colony. The colonial legal system was an important arena in which the colonized people's desire for civilization and the colonial state's desire for assimilation met. These legal changes, I argue, unfolded not necessarily through coercion but through affective mobilization of Koreans, who responded to reforms with proactive consent motivated by a yearning for progress. The colonial legal system became a forum for Korean women to pursue their desires for an ideal family: from a widow's desire to have her rights strengthened to a daughter's desire to have a share in inheritance to a New Woman's desire for a love marriage.³² Through adjudication of these mundane familial conflicts, the colonial state intimately impacted the family life of colonized Koreans. In other words, separate legal spheres maintained in the Korean colony ended up producing a strong desire among some sectors of Koreans for legal assimilation.

Instead of political rights such as suffrage that were denied to the colony, women's demands for rights often were articulated within the framework provided by efforts for legal assimilation. It was thus that the desires of some Koreans provided a useful and effective basis for the Japanese colonial state to mobilize its imperial subjects to implement the colonial household system. Yet legal assimilation and its mechanisms also were identified with modernization and progress. After the liberation in 1945, the processes of modernization—formerly directed toward assimilation—quickly shed their colonial origins to form the basic foundation of family law in Korea.

Much previous scholarship has focused on detecting whether Japanese colonial laws were accurate or distorted representations of Korean customs, begging the question of how to define Korean customs when in fact there was not a uniform set of customs across local and class boundaries before the colonial use of customary laws. I argue that there was no pure form of Korean customs to be rescued from alleged colonial distortions and, instead, read the laws and the legal discourse as dynamically changing throughout the colonial period, serving as sites where the evolution of the mutual understanding and identities of Koreans and Japanese are recorded. The resulting customary laws had the power to influence not only how Japanese understood Koreans but also how Koreans understood themselves. The legal definition of Korean customs was not necessarily a true reflection of the customs in practice, but it still had the power to affect their practice.

WOMEN IN THE COLONIAL LEGAL SYSTEM

The colonial legal archive contains numerous examples of proactive and ingenious uses of the legal system by Korean women. Through examination of women's roles in domestic disputes in the colonial courts, I highlight the complex gender dynamics manifest under the colonial regime. Contrary to what their doubly victimized position under Korean patriarchal Confucian culture and Japanese patriarchal modernity would lead us to believe, Korean women under Japanese colonial rule actively participated in the colonial legal system to claim and defend their rights. The majority of the cases that directly involved hammering out the specifics of Korean customary laws had women involved as litigants: among the 156 cases collected in the *Chōsen kōtō hōin hanketsuroku* (Records of verdicts in the High Court of Colonial Korea), which directly concerned Korean family customs, 93 had women as the litigating party. Cases with female litigants concerned a wide range of issues, from marriage, divorce, adoption, and inheritance to disputes over property transactions. The dominant presence of women in these civil cases challenges us to think about women's position in the legal system during the colonial period. These records show not only how active colonized Korean women were in the colonial courts but also how women's legal rights were central in the civil disputes that concerned Korean family customs.

The high visibility of women in the colonial courts does not necessarily prove that women enjoyed a high level of legal rights. What it does prove—beyond the fact that they had sufficient rights to bring lawsuits to court—is that women's legal rights were heatedly contested in the colonial courts. This also suggests that many women found the colonial courts to be their main recourse. The evidence challenges the dominant notion about Korean women under colonial rule: that they were helpless and passive victims.³³ Their prominence in colonial civil courts had more to do with the changing dynamics of gender relations under the new colonial legal regime than with preexisting “evil customs” of misogyny among Koreans or the patriarchal nature of the Japanese legal system. If anything, the heightened visibility of women at the courts represented a certain strengthening of particular legal rights for women. While the household system under the Japanese strengthened the rights of the household head, it did so even where the household head was a woman. The colonial legal system also provided official backing for certain rights that had previously been relegated to private and customary handling, presumably to the detriment of certain women. Such women and their volatile position reminds us of the widows of British India and the rite of sati. Gayatri Spivak, in her examination of these sacrificial, or rather sacrificed widows, suggests that more widows may have burned on the pyre in Bengal because widows in that region had inheritance rights.³⁴ The familial anxiety wrought by a changing colonial legal regime is hidden in the imperialist and colonial reading of the sacrificed women, who are made illegible by both the imperialists, who read them only as victims of

customs, and the male Indian nationalists, who read them as admirable and willing practitioners of Indian tradition. The widows in the Korean colonial civil case records are subject to a similar fate: they are constantly viewed as helpless victims of backward Korean customs (to be saved by the modern Japanese laws) or victims of the colonial laws that deprived of them of the rights they allegedly enjoyed in the precolonial era. Korean women in the colonial civil courts thus also need to be examined as subjects on an “ideological battleground” of interpretation.

The civil disputes that I analyze in *Rules of the House* often show how gendered conflict over family property unfolded at odds with the Japanese colonial laws, a perspective previous scholarship privileging the Korea-Japan dichotomy has downplayed. Often Korean men and their patriarchal interests, rather than Japanese laws, were the opponents of Korean women’s struggle to have their customary rights acknowledged. Challenging previous scholarship that emphasized patriarchal biases of the Japanese colonial laws over the existing patriarchal biases of Korean customs, what I present in *Rules of the House* makes clear that the issues of women’s rights were in a complex, and often complicit, relationship with the colonial power. Colonial law, armed with the state’s power as well as the discourse of civilization, effectively wedged itself between colonized men and women: oftentimes colonial law benefited Korean women’s rights in unexpected ways, and Korean men struck back strongly for patriarchal interests.

The antagonistic relationship between Korean men and women is prominent in close readings of the litigants’ arguments. Rather than following the decisions and the judges’ explanations for making those decisions, on which previous scholarship has predominantly focused, I consider the litigants and the arguments they presented in court. Through close readings of their arguments, I expose the patriarchal biases of the male litigants, as well as the legal world of the female litigants who tried to disrupt such patriarchal jurisprudence. Through the variety of arguments—and the world views that informed them—that created and recreated notions about Korean customs and Korean women’s place in them, I show that colonized Koreans were active participants in the discursive production of colonial knowledge about Koreans and their family customs. The case records are part of the colonial archive along with other forms of information, such as customs-survey reports, newspaper and journal articles on Korean customs and mores, and novels that deal with Korean family matters. Korean litigants—in addition to the Japanese or the Korean collaborators powerful enough to control the customs-survey process—also were among the producers who shaped the contours of the colonial perception of Korean family customs. In this sense, I agree with the notion that “colonial texts are not ‘reflections’ of colonial relations but are ‘constructive’ of them, and . . . therefore require us to attend to the ‘configurations’ of the archive itself.”³⁵

In *Rules of the House* I also seek to break new ground in the study of women and gender in Korean history by illuminating an underrepresented group of women in

the field of women's history. In doing so I hope not merely to expand our understanding of a new group of women but also to suggest a more radical view of how modernity impacted colonial Korean society. With a few exceptions, previous studies of women in colonial Korea have focused predominantly on either the educated and privileged class of New Women or the working-class "factory girls."³⁶ This artificial separation of certain groups of women from others has resulted in discussions of the impact of modernity as a contained phenomenon within a certain stratum of society or strictly within the cultural realm. The court cases that I examine here reveal that previously underrepresented groups of women, such as widows and concubines, in fact can be found at the forefront of colonial legal transformations, participating in the modern legal system side by side with the more typical New Women and thus also at the forefront of the experience of colonial modernity.

OVERVIEW OF THE BOOK

The following chapters trace the trajectory of the household system as it was established in Korea under Japanese colonial rule. The account necessarily begins by considering the traditional customs on which that system was based, in particular the lineage system that emerged during the late Chosŏn dynasty. The story that then follows is of the process by which the lineage system was replaced by the colonial household system and the different legal issues that contributed to that system's articulation.

In chapter 1 I examine how the late Chosŏn emergence of the patriarchal family system in the form of the lineage system reconfigured women's inheritance rights. In the seventeenth and the eighteenth centuries, as families abandoned partible inheritance in favor of primogeniture, daughters' inheritance rights were replaced by those of mothers, and the rights and status of widows without heirs became increasingly precarious.

Chapter 2 brings us to the beginning of colonial rule and examines widows' lawsuits over inheritance rights against in-law family members in the colonial courts. Contrary to the conventional notion that Korean women lost many legal rights under the colonial legal system, widows' rights were largely protected in the colonial civil courts. This was a coincidental result of the colonial legal system: as the Japanese were trying to implement the new family unit of the household, the widows who embodied its boundary received legal protection. The customary rights of widows to inherit the family headship worked hand in hand with the colonial household system and functioned to weaken the ties of the traditional lineage system. Under the colonial legal system, widows gained official backing for their customary rights against the abusive extortion efforts of their in-law family members. The victory of widows was not without its limitations, since the inheritance rights recognized for widows proved only temporary.

Chapters 3 and 4 deal with the 1920s and 1930s, when various reform discourses on family law emerged and fiercely contended with one another. Popularly referred to as the Cultural Rule (Bunka Seiji) period and widely seen as a period of relaxed colonial policies, this period was also a time of incomplete assimilation, flanked on either side by the two major assimilatory reforms in the Civil Ordinances in 1921–22 and in 1939. The era saw intense contention between two contradictory forces: the need for separation and the desire for assimilation. In chapter 3 I examine the reform discourses over inheritance rights that emerged in the 1920s and the 1930s “age of progress,” as the colonial state’s goal of dissolving the lineage and clarifying the boundary of the household was advanced through manipulating discourses that equated assimilation with progress. The debate over inheritance reforms focused around expanding women’s rights through granting daughters the right to inherit. Couching this in the language of progress, the Government General tried to implement son-in-law adoption in Korea, a measure that drew widely divided responses from the colonized Koreans. While many Korean women enthusiastically supported the measure, the backlash from the conservative elite was significant enough to cause postponement of the measure until 1940. When son-in-law adoption eventually was implemented in 1940, it was with a significant compromise with the principles of Korean lineage and, as a result, denied daughters the right to become female household heads independently of husbands. The compromise with the Korean lineage laws continued into the postcolonial period, marginalizing daughters in inheritance and failing to check the power of household heads.

In chapter 4 I examine reform discourses about the conjugal relationship in the 1920s and 1930s and show how the universal ideal of conjugal love, which was gaining increasing popularity at the time, converged with the colonial state’s goal of legal assimilation. Through a wide range of divorce and inheritance cases that hinged on the definition of a conjugal relationship, I show that the legal definition of a female spouse in this period came to be defined increasingly by affective companionship. While some wives demanded expanded rights to divorce when their marriages did not fulfill the ideal of affective marriage, some concubines demanded inheritance rights on the ground that they had fulfilled the role of an affective spouse. Making affective companionship a primary and necessary definition of a female spouse ended up stripping both wives and concubines of their rights to economic independence and incorporated the conjugal relationship into the colonial household system. The ideal of affective marriage, therefore, eventually served the assimilation of the Korean family into the Japanese family system.

Chapter 5 examines the reform discourse in the 1940s following the Civil Ordinances Reform of 1939 (implemented in 1940) and the persistence of its influence in postcolonial reforms. The new Civil Ordinances, notorious particularly for the Name-Change Policy, aimed at completing the assimilation of Koreans to Japanese under wartime exigencies yet ended up maintaining and fossilizing

what had been deemed unique features of Korean family customs, spawning a continuing production of scholarly discussion of Korean family customs and how to reform them. These discourses left an important legacy, which was to naturalize the direction of assimilatory reforms as a rational and progressive solution to the inevitable worldwide trend toward family dissolution. Despite strong anti-Japanese sentiments in the immediate wake of liberation, legacies of the discourses on the 1940s reforms exerted a strong influence on the new Civil Code of South Korea in 1960. Hiding behind the facade of recapturing Korean tradition, much of the direction of colonial-era reforms toward strengthening the patriarchal small family and instating son-in-law adoption as a way to expand daughters' inheritance rights made its way into the new Civil Code.

I close the book with a conclusion, where I summarize my key points and consider the ramifications of the long life of the household system in South Korea until the recent abolition of the household-head system (*hojuje*) in 2005.

A NOTE ON SOURCES

Rules of the House makes use of a wide range of primary sources written in Japanese and Korean. The largest number of primary sources are drawn from the collection of civil cases in *Chōsen kōtō hōin hanketsuroku*. These cases provide a privileged window not only into everyday life struggles over family matters during the colonial period but also into the active participation of colonized Korean women in the colonial courts. The thirty-volume collection has records of around 2,000 civil cases, 156 cases among which are categorized under “Korean Civil Ordinances,” indicating that they dealt with Korean family matters to be adjudicated according to Korean family customs and not the Japanese Civil Code. The number of these cases may not seem high, and they certainly were a very limited portion of all family-related cases decided in the local and appellate courts, but these cases had influential power in the colonial legal system. Unlike local and appellate court cases, some of which received media attention in sensational newspaper articles, reports of these cases were distributed through official routes, monthly through the *Shihō Kyōkai Zasshi* (Journal of the Judicial Association), as well as in other government notices and circulars. The cases concerning the Civil Ordinances were especially important because Korean customary laws were uncodified and the High Court's decisions functioned as important precedents. The court system in the Korean colony was a direct import of the metropolitan counterpart, consisting of tertiary court levels, the local courts, the appellate courts, and the High Court (Chōsen Kōtō Hōin). Judges were drawn from among both Japanese and Koreans, with Koreans being assigned mostly to the local court-level and civil cases. There were about 250 Korean judges and 50 Korean prosecutors during the Japanese colonial period.³⁷ Korean judges were allowed to rule on cases only in which both plaintiff and defendant were Korean and were excluded from the High

Court bench, indicating the importance that the Japanese Government General placed on the decisions of the High Court and their potential impact.³⁸ Indeed, the only cases cited as precedents and related reference in High Court decisions were previous decisions of the High Court of Korea and the Supreme Court of Japan (Daishin'in).

In addition to the High Court records, *Rules of the House* makes use of a variety of related material, including journals, newspapers, and novels, written in both Japanese and Korean. The legal journal *Shihō Kyōkai Zasshi* was published by the Judicial Association (1921–45), the official organization for colonial judicial officials and specialists, including judges, prosecutors, and lawyers; it published, for their reference, official notices, administrative inquiries, all legal decisions from the Chōsen High Court, and academic essays on various legal matters. The association also had the right to issue formal agreements (*ketsu'i*) on inquiries from the courts on matters of Korean customs: their official agreements were acknowledged as customary laws.³⁹ The picture that emerges from these sources is much messier than the collected statements of judges on civil-case decisions would lead us to believe.

Korean-language newspapers and journals of the time also reflect high public interest in legal matters. Newspapers carried copious accounts of legal events, ranging from dry reports on pending legal reforms, in both Korea and the Japanese metropole, to sensational reportage on civil disputes over matters such as divorce, concubinage, and parental rights. Novels also provide a valuable source of insight into popular understanding. These novels, commonly serialized in Korean-language newspapers, are a repository of the common-sense legal knowledge that was easily available to the reading public and show what their authors imagined, at least, to be the popular level of legal knowledge at the time.