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ABSTRACT

THE HISTORICAL DEVELOPMENT OF THE KOREAN SOCIO-FAMILY SYSTEM SINCE 1392 -- A LEGALISTIC INTERPRETATION

by Dae Hong Chang

The purpose of this study is to examine the structural and functional aspects of the Korean socio-family system past and present. Legal aspects of the family system as a whole are explored since 1392, the beginning of the Yi dynasty.

According to this study, there are indications that a matriarchal family system prevailed up to the Koguryo dynasty (37 B.C. - 668 A.D.) and gradually evolved into a patriarchal family system. During the Yi dynasty and thereafter, Korean society recognized, by law and practice, only the patrilineal and patrilocal family system.

The development of the traditional family under this study is shown to be the result of (1) agriculture, (2) Confucian concepts of "human relations," and (3) influence of the Chinese culture, prior to 1910. The modern family system is, in the broadest historical sense,

initiated by the Japanese -- 1910-1945. Since 1945, the family structure and membership has become much smaller as defined in the Civil Law primarily as a result of Western influence.

Social control mechanism has been maintained on an informal or personal basis according to the natural organic differentiations such as age, sex and status during the Yi dynasty. However, since 1910 an increasing number of individuals formerly belonging to mutually exclusive social groups have come into contact with one another as a result of industrialization and social mobility; this transition has required impersonal legislation and the formulation of laws to facilitate mass control.

Within a historical context, Korean society has undergone three major stages of transformation since 1392. Each of these periods witnesses profound changes in the structure and function of the family and social system. The first, called "period of clan recognition" by the author, covers the years between 1392-1910. During this period, the family is recognized only through clan; the family is not legally recognized as a unit of the State. The second period, designated the "period of family recognition," comes about under the Japanese occupation

in Korea from 1910 to 1945. It is the first time in Korean history that the family is distinguished as a unit of the State, by law and practice. The (third) stage, "period of individual recognition," is the current social development in Korea. As is evident in the Constitution and other laws, an increasing emphasis is being placed upon individual rights, freedom, and equality regardless of sex, religion, or social status.

The aforementioned three stages of social transformation signify that the government has gradually acquired more and more control power in social matters as evidenced by the increasing rigidity of the legislation system. As a result, the power which was formerly exercised by the parents and the clan council is reduced or abolished and some of the family functions have been taken over by the State. It is the author's opinion that such trends may well continue in the future and ultimately, the family functions will become much weaker as time elapses. However, the control and regulation of individual behavior will not pass completely to the government or any other social institutions. It is concluded that the family, among other institutions, will perform equally important functions of social control.

The Korean family system is a result of, and is perhaps best suited to, an agrarian environment. Although the contemporary Korean family still retains some traditional characteristics, it displays numerous meritorious features, e.g., the best agency for child socialization and care of the aged, and the prevention of juvenile delinquency, crime, mental illness, poverty, etc. However, this study suggests that some modifications are still necessary in order to meet the rapidly changing social conditions in Korea.

Among other factors which have been traditionally overemphasized are "family continuity" and "mutual dependency;" the entire family often discourages individual initiative and creativeness. Early marriage, large family, little education, complex ceremonial procedures, and other formalities virtually prevent an ambitious and energetic young man from undertaking new enterprises. As a result, great industrial development is practically unknown in Korean society until the Japanese occupation, beginning in 1910.

In terms of a broad social point of view, among others, the study reveals that a critical reexamination of "chokbo" or family registry is necessary. The

existence of the family registry not only unnecessarily drains the nation's capital and manpower, but is also the source of undemocratic practices, and class and individual discrimination. It is suggested that further studies on specific aspects of the family structure and function, both urban and rural communities, are necessary in order to meet the ever challenging internal as well as external forces of the time.

THE HISTORICAL DEVELOPMENT OF THE KOREAN
SOCIO-FAMILY SYSTEM SINCE 1392
-- A LEGALISTIC INTERPRETATION

By

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INTRODUCTION

Section I: Purpose of Study and Methodology

The purpose of this study is to explore the socio-family system of Korea, its past and present. Comparatively speaking, a good number of studies on the socio-family systems in China and Japan have been written; however, there have been few studies on that of Korea and almost none written in English.

Korea is considered as one of the less developed areas of the world in terms of industrialization, the ability to feed and support her own population, and the ability to exploit her natural resources and potential power for the benefit of her people. The nations of the West, especially the United States, have attempted to support the Korean government. Western capital has been invested in Korean industrial development. Western physicians have laid the foundations of modern medical facilities in Korea, and Western educators have made significant contributions to Korean colleges and universities. All these have brought about social changes in Korea.

Today, Korea is changing at an ever accelerating pace in many respects. The family institution of Korea which took thousands of years to form the inseparable basis of Korean society is now undergoing marked transformation. It is partly due to the influence of Western democratic ideology, the resultant of the combined action of a great number of impersonal and historical forces. The greatest changes are due, however, primarily to the conscious realization on the part of Koreans of the necessity of technological, scientific and material well-being and of readjustments of the social environment.

Koreans have become fully aware that the society which has the most inventions, discoveries, new ideas and knowledge, and utilization of natural resources is the one that possesses the greatest economic security and highest living standards. The degree of exploitation of nature or amount of natural free energy put to work for the benefit of human beings is the key to measure how much one society has achieved in terms of economic, military, scientific, and other institutions, including family.

Throughout Korean history, many political, economic and social changes have been taking place, including the family institution. However, to a certain extent, some traditional¹ elements still prevail in the Korean peninsula. Predominantly, the Korean family is organized on the basis of agriculture, and that is the reason the system did work effectively. Today, however, the family components and its mechanism do not seem to run as smoothly as they did a century ago.

Especially in recent years, considerable attention has been paid to family reformation in Korea for the purpose of the modernization of the country. Many thoughtful scholars have voiced that social and economic developments cannot be expected until resolute measures

¹The term "traditional" has been used to signify the family, society, or state which existed before 1910, or more broadly, prior to modernization movements which have been taken place from 1945. In many respects, still traditional traits are prevailing in many parts of Korea, particularly in the rural communities. However, since 1948, when the Constitution of the Republic of Korea was officially proclaimed by the National Assembly, the whole concepts of the individual, family and society began to undergo rapid change. For information on the Constitution, see Office of Public Information, The Constitution of the Republic of Korea (Seoul, Korea: 1956).

be taken to substitute for the old system of family registration the small and independent family system.²

Effective social reform may hinge on the success of a reform in the family system. Never before has there been greater need and awareness for a concise understanding of the family, its structure, its function and its impact within the broader social context.

The accumulative increase of population, for example, poses a serious problem to the future development of a stable society. According to the latest information, among some 100 countries, Korea is 13th in population density -- 236 per square kilometer.³ Indeed, the population increase without collateral industrial development is a direct cause for social and economic dislocation. Unabated population growth -- approximately 750,000 a year⁴ -- and concurrent improvement in medical

²Korea: Its Land, People and Culture of All Ages (Hakwon-sa, Ltd., Seoul, Korea: 1960), p. 301.

³The Korean Republic, December 28, 1961. One kilometer is equivalent to 0.62138 mile.

⁴"Experts predict South Korea's population will be doubled in 23 Years, a shockingly gloomy prospect for the economic existence of this country" [Korea], The Korea Times, April 24, 1962.

technology, will create unemployment, and a mounting shortage of housing, hospitals, schools and food supply, and an increase in criminal cases, juvenile delinquency, keen competitions among people, and others, will inevitably follow.

It is this writer's hope to explore and examine the nature and function of the Korean family system in its historical context. The study does not pretend to be exhaustive or definitive. Rather, the study aims to present a comprehensive and objective view of the Korean family system as it functioned in the past and as it does now, within the context of the Korean society at large.

The thesis consists of five chapters. Chapter I deals with the concept of the Confucian socio-familism, the family system prior to the Yi dynasty, and the social stratification system of Korea. The Confucian philosophy and classics became particularly important immediately after the establishment of the Yi dynasty (1392-1910). Throughout the five-hundred years of the Yi dynasty, as well as up to the present, the teaching of Confucianism with respect to human relations in its socio-familial

milieu has been important, and is perhaps the single most important element which moulded the political, economic and social life of Korean people.

For this reason, Confucius' views on nature, universe, government, family and individual are presented in this chapter. The main emphasis is placed on fundamental human relations and various theories pertaining to the family structure and the functions within the context of the society. As far as available information allows, the writer also examines the gradual evolution of the Korean family up to the Yi dynasty. The social stratification system is also briefly examined to convey to readers some knowledge of the social system.

Chapter II is largely concerned with the traditional family structure and functions from 1392 up to 1910. For the purpose of accuracy and simplicity, the chapter is further divided into a series of subtitles such as the definition of the traditional family, components of the family, the parental authority and child socialization process, children's duties toward their parents, relations among the junior members of the family, functions of the family registry, clan village structure and function, etc. A large portion of the chapter involves laws

and their legal interpretations. For the sake of clarification of the structure and function of the family, the writer provides models, diagrams and tables.

Chapter III of this thesis mainly deals with the customs, rules and regulations pertaining to the marriage system during the Yi dynasty. Since marriage is a prerequisite for the establishment of a new family, and marriage marks the change in individual status within the family and extends to the clan and society, a separate chapter is provided to include important functions of the marriage system. The source materials are, in a large part, derived from the king's court orders to give greater validity to this chapter. An examination of the laws is particularly important when we view the fact that the laws, like the modes of life, are a reflection of the socio-cultural patterns of a given time.

Chapter IV concerns itself with the family system from 1910 to the present. The chapter is largely divided into two periods; from 1910 to 1945 and from 1945 to the present. The first period is marked by the Japanese occupation of Korea. During the 35 years of Japanese occupation in Korea, all Japanese laws, including Civil Law, were applied in Korea. Some brief background

information is provided regarding the initial stages of Japanese power control and resultant changes in the social structure including the family system. The pattern of the presentation roughly follows that of Chapter II except for the marriage system. The family system after 1945 is the second period under consideration. In the year 1948, Korea became an independent State and resumed the functions of self-government. The Constitution of the Republic of Korea was promulgated on the basis of democratic principles. To a great degree, the new Constitution has very much influenced, in theory if not in practice, the socio-familial concepts of the family. Although the Korean government resumed governmental operations, much of Japanese laws remained unchanged with the exception of a few. The focal point here is on those legal provisions which have changed from previous Japanese law.

The Chapter V is the conclusion of the thesis. A summary of the study is made on the basis of the facts presented in the previous chapters. Some comparisons are made to emphasize the particular subjects which are deemed important in this study. The writer's evaluation of the material in this study represents his individual judgement and naturally, prejudice. Vertically,

the writer has traced the historical development of three separate periods, namely, the Yi dynasty (1392-1910), the period of Japanese occupation (1910-1945), and the Republic of Korea from 1945 to the present. Horizontally, the writer has analyzed the various ramifications of the socio-family system within the broad context of the society and has made some suggestions for further study.

For this study, the writer has consulted the Far Eastern division of the following libraries: The Library of Congress, the University of Michigan, Harvard University, the University of California, the University of Chicago and Columbia University.

The research materials are largely derived from the following three sources. First are the primary documental materials such as Chosun Wangjo Sillok [Annals of the Imperial Court of Korea] which is being published under the auspices of the Kuksa Pyongchan Wiwon-hwe [Committee for the Compilation of the National History] of the Ministry of Education, Republic of Korea.

Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collection], Sinjung Tongkuk Hungji Sungram [Enlarged Edition: Eastern Korean Geographical Survey], Richo Jitsuroku: Konin-ko [Yi Dynasty's Marriage Customs],

Minji Kanshu Kaito Ishu [Collection of Customary Replies in Civil Litigation] and others are also used as the primary source material. All these materials were either published during the Yi dynasty or studied and compiled by Japanese scholars, assisted by Korean scholars, and subsequently published under the name of the Japanese Overseas Government.

Secondly, the sources are gathered from the university textbooks and scholarly research journals in Eastern languages: Chinese, Korean and Japanese such as Kuksa Taikwan [The Korean History], Chosen no Seishi to Dozoku Buraku [Korean's Surnames and Clan Village], Chosun Kajok Jaedo Yonggu [A Study of the Korean Family], Nihon Noson Shakaigaku Genri [The Principle of Rural Sociology in Japan], Shina Kazoku no Kosei [The Composition of the Chinese Family], and others.

The third sources are selected from Western literature, including government publications of Korea and Japan and other works of various Western authors on different phases of this subject and allied subjects. The writer also used relevant materials to present the Republic of Korea's civil and criminal laws, Constitutional provisions and other related laws.

In translating the documents, the romanizations are based on the McCune-Reischauer system for Korean and Kenkyusha's English Japanese Dictionary for the Japanese. Diacritical and other marks provided under the system to differentiate the Korean pronunciation of identical letters have been dispensed with. A few exceptional cases should be mentioned. The word "Seoul" is used, although it is spelled contrary to the system of McCune-Reischauer, because this is considered the established spelling.

An attempt is also made to respect the personal preferences. For instance, some spellings of personal names, such as Syngman Rhee, John Chang, Chi Kwun Chyung, which have been familiar to the Western writer, but which, according to the McCune-Reischauer's system should be spelled Sung Man Lee or Yi, Myung Chang, Chi Kwun Chung, etc., are retained in this thesis. For the institutional names, whenever there is an established form, it is also used here.

It should also be understood that whenever an age is mentioned, it has been computed on the basis of Korean usage. Koreans are accorded the age of one at birth and become a year older each New Year's day. Hence a

child born on the last day of the year is two years old within twenty-four hours of his birth. The reader must remember that given dates in the historical period, i.e., before the year 1910, follow the lunar calendar.⁵ The Chronology of the Yi dynasty - names of kings and years of reign - is to be found on the following page.

⁵The lunar calendar is explained in the Appendix.

Table I: Chronology of the Yi Dynasty⁶

Category	Names of Kings		Years of Reign
Name of Kings	in Chinese		
Taejo	太	祖	1392 - 1398
Chungjong	定	宗	1399 - 1400
Taejong	世	宗	1401 - 1418
Saejong	文	宗	1419 - 1450
Moonjong	端	宗	1451 - 1452
Tanjong	世	宗	1453 - 1454
Saejo	睿	祖	1455 - 1468
Aejong	成	宗	1469 --
Sungjong	成	宗	1470 - 1494
Yunsankun	燕	山君	1495 - 1505
Chungjong	中	宗	1506 - 1544
Injong	仁	宗	1545 --
Myungjong	明	宗	1546 - 1567
Sunjo	宣	祖	1568 - 1608
Kwanghaegun	光	海君	1609 - 1622
Injo	仁	祖	1623 - 1649
Hyojong	孝	宗	1650 - 1659
Hyunjong	顯	宗	1660 - 1674
Sukjong	肅	宗	1675 - 1720
Kyungjong	景	宗	1721 - 1724
Youngjo	英	祖	1725 - 1776
Chunjong	正	宗	1777 - 1800
Soonjo	純	祖	1801 - 1834
Hyonjong	憲	宗	1835 - 1849
Chuljong	哲	宗	1850 - 1863
Kojong	高	宗	1864 - 1907
Sunjong	高	宗	1908 - 1910

⁶ 27 Kings and 518 years

SOURCE: Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collections] in Japanese (Chosun Sotoku-fu Publisher, Keijo [Present Seoul], Chosen Insatsu Kabushikigaisha, 1936). The dominating character in the titles of all the kings is always Jo (祖) or Jong (宗). Jo means founder or progenitor and is given to those kings who have successfully surmounted difficulties or obstacles in their reign. Jong has the meaning of "exemplar" and is given to those kings whose reigns were peaceful and undisturbed.

CHAPTER I

A HISTORICAL BACKGROUND OF THE TRADITIONAL FAMILY SYSTEM PRIOR TO THE YI DYNASTY

1. Cultural Intercourse Between Korea, China and Japan

Before examining the various areas pertaining to the Korean socio-family system, it is necessary to establish common basic variables regarding the social systems of China, Korea and Japan. Inasmuch as China and Japan, at one time or another, have been directly or indirectly involved in the Korean socio-political sphere, the cultural diffusions between these three countries should not be overlooked. An examination of the common features among these three countries will give readers some ideas upon which to evaluate socio-cultural development in a systematic and sequential order. Therefore, we shall first examine briefly the cultural influences between China, Korea and Japan. Failure to comprehend these influences would make it difficult to relate historical forces because each chapter involves to some degree a discussion of Chinese and Japanese socio-cultural systems.

China, one of the oldest of civilizations in the world, with a history reaching back to 2205 B.C., exerted

a considerable cultural influence on her neighbors and the world. Throughout Korean history, China was regarded as the cultural center of the Far East; and for considerable periods in the past, the Korean and Japanese courts paid appropriate respect.

Because of Korea's geographical¹ proximity with China and the early Chinese immigration into the Korean peninsula,² Chinese cultural diffusion has been intense during Korea's 4000-year history. In addition, the Korean peninsula has historically served as a communication route transmitting Chinese culture to Japan. Japan, on the other hand, with 2600 years of history, was influenced to

¹For information on geographical characteristics and its related factors, see Shannon McCune, Korea's Heritage: A Regional and Social Geography (Charles E. Tuttle Co., Rutland, Vermont, 1956), Kyung Cho Chung, Korea Tomorrow: Land of the Morning Calm (The Macmillan and Co., New York, 1956), p. 5, Carl Berger, The Korea Knot: A Military-Political History (University of Pennsylvania Press, Philadelphia, 1957), p. 15, and George M. McCune, and Arthur L. Grey, Jr., Korea Today (Harvard University Press, Cambridge, Mass., 1950), p. 8.

²Shinjung Tongkuk Hungi Shungram [Enlarged Edition: Eastern Geographical Survey], in Korean and Chinese (Keijo [present Seoul], Korea, 1930), and Chosen Sotokufu, Chosen Buraku Shiryo Chosa Hokoku: Dai Ittsatsu [Report of the Korean Village Investigation Materials, Vol. 1], in Japanese (publication place unlisted, 1924), pp. 35-64.

a large extent by the Chinese culture and to a lesser extent by the Korean, until the close of the 19th century.

Because of the geographical locations, Chinese, Korean and Japanese social structures, particularly that of the family, are in many respects identical.³ Strong Chinese influence in this regard has evidently been possible when we learn that the Chinese written language came to Korea as early as Ki-ja dynasty (1122 - 193 B.C.). The Chinese written language, in turn, was transmitted to Japan as early as 285 A.D., including a copy of Confucius' Analects and a Primer on One Thousand Characters, called

³ For the sake of comparison, see Doo Hyun Kim, Chosun Kajok Jaedo Yonggu [Study of the Korean Family], in Korean (Ulyoo Munhwa-sa, Seoul, Korea, 1949), Chin Tae Son, Chosun Minjok Munhwa Ui Yonggu [Study of the Korean Culture], in Korean (Ulyoo Munhwa-sa, Seoul, Korea, 1948), Morimitsu Shimizu, Shina Shakai no Kenkyu [A Study of Chinese Society], in Japanese, (Iwanami Shoten, Tokyo, Japan, 1939), Daniel H. Kulp II, Country Life in South China: The Sociology Familism (Bureau of Publication, Columbia University Press, New York, 1925), Francis L. K. Hsu, Under the Ancestors' Shadow (Columbia University Press, New York, 1948), Olga Lang, Chinese Family and Society (Yale University Press, New Haven, 1946), Tadashi Fukutake, Nihon Noson no Shakaiteki Seikaku [Social Character of Japanese Agricultural Village], in Japanese, (Tokyo, Japan, Daigaku Shippan-sha, 1952), Ryusaku Tsunoda and others, ed., Sources of Japanese Tradition (Columbia University Press, New York, 1958), and Tien-Hsi Cheng, China Moulded by Confucius (Stevens and Sons, Ltd., London, England, 1947).

"Chunja-mun" (千字文) in Korean and "Senji-bun" in Japanese. These were delivered by Wang In of Korea, a scholar, who was the first of a group of other scholars sent to Japan from Korea, "in order to introduce the Confucian classics to the island kingdom."⁴

Ever since Korea adopted the Chinese written language, the Chinese cultural influence was further intensified. It was also the case in Japan, when the Chinese One Thousand and Characters were introduced in Japan, via Korea. For Japan, "which up to that time -- 285 A.D. -- had no system of writing, acquisition of Chinese characters was quite an epoch-making event, in which Japan first found a means to express its language."⁵

⁴ Korea: Its Land, People and Culture of All Ages, op. cit., p. 324. An above quotation is apparently confirmed by the Japanese publication entitled, Japan: Its Land, People and Culture (Compiled by Japanese National Commission for UNESCO, Printing Bureau, Ministry of Finance, Japan, 1958), pp. 498-9. Another book stated that "the first official communication with China took place in the latter part of the third century when a Korean envoy brought with him a copy of the Analects of Confucius." Inazo Nitobe, The Japanese Nation: Its Land, Its People and Its Life (The Japanese Society of New York, G. P. Putnam's Sons, New York, 1912), p. 55. See also Cornelius Osgood, The Koreans and Their Culture (Charles E. Tuttle Co., Tokyo, Japan, 1954), p. 217.

⁵ Japan: Its Land, People and Culture, op. cit., pp. 498-9. It should be pointed out that even today, both Korea and Japan use Chinese characters mixed with their

According to the Japanese anthropological survey reports, "Japanese physical characteristics, i.e., height, weight, human skeleton, etc., are close to the Korean,"⁶ because of "earlier Chinese and Korean immigration into the Japanese islands."⁷ After studies in Korea, the Japanese archaeologists concluded that their findings in Korea

own alphabets. The Chinese written language, non-alphabetical, consisting of many distinct characters each representing a particular thing or concept, had been used to develop and preserve common literature and a broad community of ideas, ideals, and culture. Chinese, Korean and Japanese cannot communicate with each other by spoken language, but one can communicate in writing, if one learns to master the One Thousand Characters. The adoption of the Chinese written language by the Korean and Japanese is very important because it was the single but most important vehicle by which cultural assimilation has taken place.

⁶ Tokyo Jinruigaku Kai [Tokyo Anthropological Society], Jokichi Ueda, "Chosenjin to Nihonjin tono Taisitsu Hikaku," [A Comparative Study of Physiological Characteristics of Korean and Japanese], Nihon Minzoku, [The Japanese Race], in Japanese (Iwanami Shoten, Tokyo, Japan, 4th ed., 1940), p. 139.

⁷ Shinji Nishimura, Nihon Kaigai Hattenshi [History of Japanese Overseas Development], in Japanese (Tokyodo, Tokyo, Japan, 1942), p. 11. See also Chosen Buraku Shiryo Chosa Hokoku, op. cit., pp. 35-64.

indicated largely an influence by China; and Japan in turn was influenced by both China and Korea in the arts, architectural designs, graves, stone and metal sculpture, etc.⁸ The same may be observed concerning religious belief⁹ (i.e., ancestor worship), rice farming,¹⁰ clan village development and its organization,¹¹ social class,¹² and the family system.¹³

As we shall observe later in this thesis, Japan, too, like Korea, was tremendously influenced by the Confucian teachings. In fact, during the era of Tokugawa administration (1600-1868) and during the era of Emperor Meiji (1868-1911) the Confucian doctrine was used as a state

⁸Kyo Hamada, "Chosen ni Okeru Kokogaku teki Chosa Kenkyu to Nihon Kokogaku," [Investigation of the Korean and Japanese Archaeological Studies], Nihon Minzoku, op. cit., pp. 441-461.

⁹Maruzora Ujino, "Noko Bunka no Shukyo teki Tokucho," [The Religious Characteristics of Agriculture Civilization], Ibid., pp. 243-256.

¹⁰Nishimura, op. cit., p. 11.

¹¹Fukutake, op. cit., Chapter II.

¹²Yoshitaro Hirano, Nihon Shihon Shugi no Kiko [Structure of Capitalistic Society of Japan], in Japanese (Tokyo, Tokyo, Japan, 1934), Chapter II and III.

¹³Nitobe, op. cit., p. 54.

ideology. Emperor Meiji, assisted by the scholars and followers of Confucianism, on October 30, 1890, adopted the Confucian doctrine, and issued the Imperial Rescript on Education, which specified the five fundamental human relations.¹⁴

The above are only a few examples which may be cited to convey similarities between these three countries. It does not necessarily mean that Korea and Japan have copied their entire socio-cultural environment from China. Each society must develop certain unique traits to meet its peculiar needs for survival, perpetuation of the species, and the ordering of social experience. Both the unique features, which have been developed by the Korean society, and those which have been adopted from foreign countries -- mainly from China up to 1910; Japan from 1910 to 1945 and from the West since 1945 -- are systematically presented.

¹⁴Tsunoda, op. cit., Chapter IV, and Chapter I, Sec. 2, of this thesis for information pertaining to "Five Fundamental Human Relations."

2. Concept of Confucian Socio-Familism

In China, Confucianism first became a state cult in the Former Han dynasty (206 B.C. - 9 A.D.) and became extremely influential after the rise of the T'ang dynasty (618 A.D.). However, it was not until the period of the Sung dynasty, particularly after the eleventh century, that Confucianism attained a position of permanent influence upon the mores of the people.¹⁵ Consequently, Korea as well as Japan had assimilated the Confucian influence.

Although chronologically vague, it is believed that Confucian classics were not introduced to the Korean peninsula until the third century.¹⁶ During the period of the Three Kingdoms (57 - 1392) Buddhism was the State cult; however, when the Yi dynasty (1392-1910) was established in Korea, for the purpose of teaching Confucianism,

¹⁵Tien-Hsi Cheng, China Moulded by Confucius (Stevens & Sons, Ltd., London, 1947), and J. K. Shryock, The Origin and Development of the State Cult of Confucius (Century Co., New York, 1932).

¹⁶Korea: Its Land, People and Culture of All Ages (Compiled by College Professors, Hakwon-sa, Ltd., Seoul, Korea, 1960), p. 324. Hereafter, the publication is referred to as Korea: ILP&COAA.

Songgye Yi established a Confucian institute, the Songgyungwan, in the east sector of the capital city of Seoul. Next he established four further schools north, south, east and west of the city. Finally, he had schools built throughout the provincial districts to inculcate respect for Confucius and Mencius among the populace. Confucianism really came into its own, exerting influences not only in political life but also on such important popular ceremonies as coming of age, marriage, funeral services, and ancestor-worship rites, as well as on the system of moral self-discipline.¹⁷

Indeed, Confucianism, moulded the national character; it touched every corner of human activity; it permeated life in all aspects, moral, political and social. It also gave continuity to a remarkable old civilization which, far from becoming extinct or stunted in its growth, showed rather a wonderful vitality in its struggle for survival

¹⁷ For further information on Confucian teaching in Korea, see The Taejong Factual Records, Vol. 16, December, 1409, p. 42, Government-General of Chosen, Annual Report on Reforms and Progress in Chosen, 1921-1922, (Keijo [present Seoul], Korea, 1923), Chapter 22, Angus Hamilton, Korea (Charles Scribner's Sons, New York, 1904), pp. 238-40, Byung Do Lee, Kuksa Taikwan [The Korean History], in Korean (Chinmunkwan, Seoul, Korea, 1955), pp. 248-259, Young Ha Kim, Kuksa Ui Yonggu [Study of the Korean History], in Korean (Pekyoo-sa, 2nd series, no publication place listed, Korea, 1959), p. 278.

and supremacy. For one thing, the greatness of Confucius' philosophy is due to its power of adaptation. It has been, as we shall see, constantly reborn and reoriented.

In order to clarify the subject under consideration, it is necessary to examine Confucius himself briefly and his theory regarding the family as related to society at large. Failure to comprehend Confucian theory makes evaluation of the traditional Korean family and social system difficult as Confucius conceived the society as a mere continuation of the family.

Confucius' original Chinese family name was K'ung (孔), his given name was Ch'iu (丘), and his cognomen was Chung-Ni (仲尼). However, he was always referred to by his title of honor of K'ung Fu Tzu (孔夫子), or Master K'ung which, when Latinized, becomes Confucius.¹⁸ He was

¹⁸ Joseph Needham and Wang Ling, Science and Civilization in China (The Cambridge University Press, Cambridge, England, 1956, Vol. II), pp. 3-4. An excellent short article on Confucius' life is in Lionel Giles, The Sayings of Confucius (Grove Press, Inc., New York, 1961), pp. 1-26. It should be pointed out here that Confucius was founder of the Ju school. For an article regarding the Ju school, see Cheng, op. cit., Chapter IV.

born in 511 B.C., in the small State of Lu in modern Shantung and he died in 479 B.C.¹⁹

According to Confucian theory, the entire universe, Heaven and Earth, is governed by a natural order, termed "Nature."²⁰ "By Heaven was meant Nature, especially in its astronomical phenomena, the season, the weather, etc. By Earth was meant Nature as the producing and sustaining power, especially as shown in the growth of plants.²¹ Through the combination of Heaven and Earth, the Ten-Thousand Things were born, by which are meant everything between Heaven and Earth, especially living and movable object."²²

¹⁹ As a matter of fact, in each year, in Korea, the anniversary of Confucius is celebrated. The celebration is held at the Kyonghakwon temple in Seoul, a temple at Songgyungkwan University which was founded in 1398. For information regarding Confucius' anniversary celebration, see Korean Survey (The Washington Bureau, The Korean Pacific Press, Vol. 4, No. 2, February, 1955), pp. 3-4.

²⁰ Homer H. Dubs, trans. Hsuntze, The Moulder of Ancient Confucianism (Arthur Probsthain, London, 1927), pp. 62-3, and Alfred Forke, The World Conception of the Chinese (Arthur Probsthain, London, 1925), pp. 144 and 147. The word "nature" is equivalent to the cosmological symbolism of Yin and Yang. Yin was the attribute of all things female, dark, weak, and passive while Yang symbolized things male, light, active and strong.

²¹ But this growth required the assistance of Heaven, rain, etc.

²² Homer H. Dubs, trans., The Works of Hsuntze (Arthur Probsthain, London, 1928), p. 17.

The universe is a single unit and is organized according to the natural order. Within it, all things are inter-related and hierarchically ordered from the lowest man up to Heaven. Therefore, heaven is viewed as the source of all and the ancestor of all things and there are definite relations existent between them. All men are, therefore, according to Confucius, subject to heaven, and even emperors must conform to its natural ordering. Heaven was regarded as a ruling or presiding spirit, or principle which was fundamentally moral and ethical in its nature.²³

According to Confucius, the entire human existence is covered by the five fundamental socio-familial relationships, called "Oryun," (五倫). The first relation, which is by far the most important and corresponding to the principle of Heaven and Earth, is that of male and female or husband and wife. The second relation, which is derived from the first, is that of father and son. The third specifies the relation between elder brother and younger brother. The fourth concerns relations of friend and friend and finally, the relationship between sovereign and subject.²⁴

²³ Ibid., pp. 17 and 175.

²⁴ Ibid., p. 135, and Yu-lan Fung, Derk Bodde, ed., A Short History of Chinese Philosophy (The Macmillan

Of these five relations three pertain to family relationships and even the other two -- sovereign and subject and friend and friend -- are interpreted in familial terms.²⁵ True peace, harmony and order exist automatically when the husband is truly a husband, the wife truly a wife, the sovereign is truly a sovereign, and so forth. To be more specific, between father and son there should be affection; between sovereign and subject, righteousness; between husband and wife, attention to their separate functions; between old and young, a proper order;

Co., New York, 1960), p. 21. The original concept of the five relationships are derived from the following "three basic human relationships," which is called "Samkwan," (三綱). The three basic human relationships are to be found in the following quotation: "Before there were things, there must have been the universe; before there were husbands and wives, there must have been simply people living upon the earth; before there were fathers and sons, there must have been husbands and wives; before there were brothers and sisters, there must have been parents and children. These relations -- between husband and wife, between parents and child are one's principal family relationship." Doo Hyun Kim, Chosun Kajok Jaedo Yonggu [Study of the Korean Family], in Korean (Ulyoo Munwhasa, Seoul, Korea, 1949), p. 517.

²⁵ Thus, the country or nation is described as Kuk-ka (國家), which literally means, nation-family. The emperor is called Kuk-bu (國父) and regarded as the head of the nation-family and his subjects respect and obey him in the same manner that members of the individual family respect and obey the family head, the father. For further information, see Chang-tu Hu, in collaboration with four other authors, China: Its People Its Society Its Culture (Hraf Press, New Haven, 1960), p. 156.

and between friends, fidelity.²⁶ As Confucius conceived them, these five relations are held to be as permanent as the universe.²⁷

The second most important principle is practical ethics in the form of loyalty, by which Confucius meant the primary instinct of being true to oneself. It was called "Li," (禮) which is generally translated as "propriety" and is what the people are taught from childhood to observe and what largely shapes their conduct.²⁸ "Li means reason, marking the line between near and distant relations, settling questions of propriety, distinguishing what is the same from what is not, and clarifying the distinction between right and wrong. Sages made Li for the instruction of men, so that they may realize that they differ from lower animals."²⁹

²⁶ Morimitsu Shimizu, Shina Shakai no Kenkyu [A Study of Chinese Society], in Japanese (Iwanami Shoten, Tokyo, Japan, 1939), p. 406.

²⁷ Dubs, The Works of Hsuntze, op. cit., p. 135.

²⁸ Kim, Chosun Kajok Jaedo Yonggu, op. cit., Chapter VI, Sec. 1, pp. 461-469.

²⁹ Book of Li, Bk. I, and Bk. XXXVII, as quoted in Cheng, op. cit., pp. 34-35.

Li has long been proved to be the substratum of the State. The sovereign issues orders, and ministers carry them out; fathers are tender and sons are obedient; elder brothers are affectionate and younger brothers are respectful; husbands and wives are harmonious; mothers-in-law are tender and daughters-in-law are dutiful; these constitute Li.³⁰

By conforming to the duties specified by each of these five relationships in which man in his familial and social existence might find himself, he would be following heaven's will and receive heaven's blessing. Any person who violates the natural order, heaven punishes. Accordingly, any person who conforms to heaven with reasonable activities in conjunction with heaven is productive of additional happiness.³¹

Confucius himself never regards human beings to be equal in familial and social life. In fact, the entire

³⁰Tso Chuan, History of Spring and Autumn, 722-481 B.C., Bk. VI, Title Yen Tze Discusses Li, as appeared in Ibid., p. 35.

³¹James Legge, trans., The Sacred Books of the East (Clarendon Press, Oxford, 1885) XVI, Appendix IV, p. 417, and Dubs, The Works of Hsuntze, op. cit., p. 138.

system of Confucian thought centers around the concept of human inequality:

As soon as there was heaven and earth, there was the distinction of above and below -- superior and inferior, or ruler and ruled; when the first wise king arose, the country he occupied had the division of classes. For two nobles cannot serve each other; two commoners cannot employ each other -- this is a law of nature. Were people's power and position equal, and their likes and dislikes the same, there would not be sufficient goods to satisfy everybody, and hence there would inevitably be strike. If there were strife, there would inevitably result general disorder; if general disorder, then general poverty. The ancient kings established the rules of proper conduct. . . to divide the people, to cause them to have classes of poor and rich, of noble and inferior, so that everyone would be under someone's control.³²

The above quotation illustrates the hierarchical nature of the Confucian concept of basic human relationships within the socio-familial milieu. Every individual and everything should be under someone's or something else's control and direction. The responsibility and benevolence descends from above and obedience, submissiveness and respect ascends from below. Therefore, "to banish inequality would be to turn to a state of barbarism and chaos wherein men's desires have no limits."³³

³²Dubs, The Works of Hsuntze, op. cit., p. 124.

³³James Legge, trans., The Chinese Classics (Trubner & Co., London, Vols. 5 in 8, 1861-1872), II.

The Confucian concepts of human relations are further expanded and carried into the diplomatic arena with its basic principle of inequality. The Chinese empire, often termed as the "Celestial Empire," was regarded as senior brother and Korea was regarded as "younger brother." Therefore, it was a duty of a lesser nation (Korea) to visit the Chinese emperor periodically.³⁴ In addition, when the senior nation had decided on a military expedition for the purpose of "correction," the junior nation could be required to furnish both men and supplies.³⁵

The familial relation in its interchange of envoys is particularly well illustrated in the commentary of Tso-ch'iu Ming (左邱明), a Confucian scholar:

When a great state goes to a small one it [the smaller] rears a high structure [for the large state's reception]. When a small state goes to a great one it [the great one] should construct a booth. . . . When a great state visits a small one it should do five good things; be indulgent to its offenses, pardon its errors and failures, relieve its calamities, reward it for its virtues and laws, and teach it where it is deficient. There is thus no pressure on the small state. It cherishes [the great] state's virtue, and submits to it, fondly as one goes home. On this account a high structure is reared, to display the merit [of the great state],

³⁴ Lee, op. cit., p. 375.

³⁵ Pan Ku, Homer H. Dubs, trans., The History of the Former Han Dynasty (Waverly Press, Baltimore, 1938), 2 Vols., II, Introduction to Chapter VIII.

and to make it known to posterity, that they may not be idle in the cultivation of virtue. When a small state goes to a great one, it has five bad things to do. It must explain its trespasses, beg forgiveness for its deficiencies, perform governmental services, and contribute its proper dues and attend to its seasonal commands. . . it has to double its various offerings, to felicitate [the great state] on its happiness, and show condolence with it in its misfortunes.³⁶

Once Confucius said: "The people can be made to follow a certain path, but they cannot be made to know the reason why."³⁷ He meant, then, that men must play their proper assigned roles in the structure of authority. Similarly, "he who holds no rank in a State does not discuss politics,"³⁸ and "let the ruler be a ruler and the subject a subject; let the father be a father and the son a son."³⁹ Confucius preached the inequality of the masses, but he did not mean necessarily that men are unequal in their original capacities. This aristocracy is a moral one, based on equality in capacity, but not in development.⁴⁰

³⁶Above quotation appeared in F. M. Russell, Theories of International Relations (D. Appleton-Century Co., Inc., New York, 1936), p. 23.

³⁷Giles, op. cit., p. 30.

³⁸Arthur Waley, trans., The Analects of Confucius (Random House, New York, 1938), p. 135.

³⁹Dubs, The Works of Hsuntze, op. cit., p. 136.

⁴⁰Dubs, Hsuntze, The Moulder of Ancient Confucianism, op. cit., pp. 250-251.

Confucius felt that disunity, disfunction and disharmony within family and society are largely caused by men constantly seeking satisfaction. Because of the natural scarcity of the means for satisfaction, men seeking for desire and satisfaction may disregard the Five Relations and distinction of superior and inferior. If man acts according to his desire without imposing limitation upon himself, and without conforming to the will of heaven,⁴¹ disastrous consequences result. "If men are to live, they cannot get along without forming a social organization [family]. If they form a social organization, but have no social distinctions [higher and lower], then they will quarrel; if they quarrel, there will be disorder; if there is disorder, people will fail to cooperate, then they will be weak. . . . Hence they could not have places or houses for habitation."⁴²

In order to prevent disorder and confusion among people, within the family and society, and to harmonize various levels of people, great emphasis was placed upon individual

⁴¹Needham, op. cit., p. 435.

⁴²Dubs, The Works of Hsuntze, op. cit., pp. 136-7.

virtue, proper conduct, and education through government:

. . .the true aim of government ought to be the welfare and happiness of the whole people, and that this would be brought about not by rigid adherence to enacted arbitrary law, but by subtle administration of customs generally accepted as good and having the sanction of natural law. Since men of real intelligence, sympathy and learning were necessary for such administration, they would have to be sought for far afield. Capacity to govern had no necessary connection with birth, wealth or position; it depended solely on character and knowledge, i.e., upon qualities generated only by right education.⁴³

Government is then, according to the Confucian theory, the organ with which to indoctrinate and educate the inferiors by the superiors with the rules of proper conduct. It is the downward flow from heaven and those proprieties which will preserve the natural order in society. "Just as the seasons are natural to heaven, and wealth is natural to the earth, so government is natural to man."⁴⁴ Government is thus, not an artificial creation based on the fiat of law, but is the entire ethics of society.

Therefore, the Confucian theory on government differs widely from the modern sense of the term. The Master's

⁴³ Needham, op. cit., p. 8.

⁴⁴ Dubs, The Works of Hsuntze, op. cit., p. 174.

interpretation of government is far more complicated; complicated in a sense that the family too, was interpreted as government. For example, when someone asks Confucius, saying, "Why, sir, do you take no part in the government?" The Master replied, "What does the Book of History say about filial piety? Do your duty as a son and as a brother, and these qualities will make themselves felt in the government. This, then, really amounts to taking part in the government. Holding office need not be considered essential."⁴⁵

If a family is disrupted, the parents are lacking in sufficient virtue and knowledge of the rules of proper conduct. If the empire is in disorder, the emperor is at fault in that he has failed to cultivate Virtue within himself. The man who governs the family or government must, therefore, first rectify himself with heaven's way:

Things being investigated, knowledge became complete. Their knowledge being complete, their thoughts were sincere. Their thoughts being sincere, their hearts were then rectified. Their hearts being rectified, their persons were cultivated. Their persons being

⁴⁵ Giles, op. cit., p. 30.

cultivated, their families were regulated. Their families being regulated, their States were rightly governed. Their States being rightly governed, the whole empire was made tranquil and happy. Therefore, the ruler without going beyond his family completes his lessons for the state. There is filial piety; -- therewith the sovereign should be served. There is fraternal submission; -- therewith elders and superiors should be served. There is kindness; -- therewith the multitude should be treated.⁴⁶

Just as the existence of the government is the preservation of the natural proper order of people by paternal monarch whose heaven-bestowed authority rests upon his virtue and ability to enforce upon men to follow rules of "Li," the existence of the family is also preservation of the natural proper order of family-members by vesting authority upon the father to enforce his subordinate to follow rules of filial piety.⁴⁷

Each inferior, both within the government and family, views his superiors, i.e., emperor, the father, etc., as a model for proper conduct, because when "the prince was virtuous the people would also be virtuous."⁴⁸

⁴⁶ Legge, The Chinese Classics, op. cit. (The Great Learning -- Ta Hsueh), pp. 223 and 234, and by the same author, The Life and Teachings of Confucius, op. cit., p. 266.

⁴⁷ For information on filial piety, see Chapter II, Sec. 3 of this thesis.

⁴⁸ Dubs, The Works of Hsuntze, op. cit., p. 73. Once Mencius said: "If a ruler can truly practice these five things [relations]. . . such a ruler will not have an

Accordingly, superiors by age should set the standard for the inferior; superior by status, i.e., parents, elder brothers, etc., should establish the proper example for the inferiors. As long as the emperor deserves to be emperor and remains virtuous and in accord with heaven's rule and natural order, the emperor, too should set the moral standards with which to guide his subjects.⁴⁹

Those ". . . who wish to illustrate illustrious virtue throughout the empire, first ordered well their own States. Wishing to order well their States, they first regulated their families. Wishing to regulate their families, they first cultivate their persons."⁵⁰

Therefore, the emperor is the apex of the total social system because "all men are his children, and to protect them and prevent them from straying from the natural way is the purpose of his existence."⁵¹ Within the family,

enemy in all the empire, and he who has no enemy in the empire is the Minister of Heaven." James Legge, trans., The Four Books (no place of publication, nor date of publication is listed), p. 547.

⁴⁹Dubs, The Works of Hsuntze, op. cit., p. 84.

⁵⁰Legge, The Life and Teachings of Confucius, op. cit., p. 266.

⁵¹Legge, The Chinese Classics, op. cit., III (Book of History -- Shu-ching), "The Great Declaration," pp. 281-297.

the father being a transmitter of the family tradition,
 "subordinates must respect the father."⁵²

Since society is comprised of a large number of social units, ranging from the family to state, each of which consists in turn of individuals varying greatly in their intellectual and physical capabilities, the superiors, [both the emperor and the father] must not become extremists:

The superior man, when poor, has a profound purpose; when rich or honourable, he is respectful; when retired, he does not become lazy; when working hard or fatigued, his bearing is not careless. When angry, he does not go to the extreme and snatch things away; when happy, he does not go to the extreme and give things away.⁵³

And also, the society, or the universe, is a harmoniously functioning organism consisting of an orderly hierarchy of interrelated parts and forces, which, though unequal in their status, are all equally essential for the total process; the functions of the family, too, are guided by this basic principle.

⁵² Shimizu, op. cit., p. 406.

⁵³ Dubs, The Works of Hsuntze, op. cit., p. 53.

The function of the father within the family corresponds to the emperor's function in society.⁵⁴ All the subjects are subordinate to the emperor, as the individuals within the family are subordinate to the father. The emperor conducts annual sacrificial rites for Heaven, as a part of his filial accomplishment,⁵⁵ thus, each family performs ancestor worship.⁵⁶

Society is comprised of old and young; the same may be found in the family group.⁵⁷ Social solidarity is equally

⁵⁴ Shimizu, op. cit., p. 405.

⁵⁵ For information on imperial ancestor worship in Korea, see Chosen Sotokufu, Chusuin, Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collections], in Japanese (Chosen Insatsu Kabushikigaisha, Keijo [present Seoul], Korea, 1939), pp. 134-5.

⁵⁶ In every home there is an altar for the worship of ancestors, who are represented, if near, by tablets with their names engraved on them, and, if remote, by a general tablet engraved with the words "Ancestors of all generations," while in every village there are ancestral chapels for worship on certain days of the year. Ancestral worship is not due to superstition or meant to immortalize the ancestors, but is, in its essence, to foster filial affection, whereby other virtues may be attained; for filial affection being itself a virtue, its cultivation cannot fail to breed other virtues. "Perform thy last duties to thy parents with devotion, and commemorate them with reverence, even when they have long departed: [in this way] the virtue of the people will be heightened." Confucius: Lun Yu, Pt. I, Ch. 9, as quoted in Cheng, op. cit., pp. 52-3.

⁵⁷ Fung, op. cit., p. 72.

demanded on the family level; society is regulated by the ethical moral code of laws and the family is regulated by the customs, under the name of filial piety. As stated in the foregone paragraph, whether in the family or in the society, the responsibility descends from above and obedience and respect ascends from below for "orderly functions" and "permanent harmony."⁵⁸

The survival of the nation-family hinges upon the survival of the family and vice versa. Therefore, paramount emphasis is, in fact, placed upon total survival. Accordingly, as we have observed, every individual's behavior is thoroughly specified in the code of Five Relations. The father is the apex within the family circle, and an individual's position, or status and responsibility depended upon birth, age, sex and generation order.⁵⁹ "Upright, honest, obedient, and reverent to elders -- as such an one can be said to be a good young man. . . and the qualities of being dissolute, overbearing,

⁵⁸ Legge, The Chinese Classics, 5 Vols. in 8, op. cit., pp. 318-9.

⁵⁹ Morimitsu Shimizu, Shina Kazokuno Kosei [The Composition of the Chinese Family], in Japanese (Iwanami Shoten, Tokyo, Japan, 1943), Pt. I, Sec. 1.

disobedient, dangerous, injurious, and disrespectful -- such an one can be called an unfortunate young men, who, when led into wrong, may suffer capital punishment."⁶⁰

Duties and responsibilities are all prescribed collectively under filial piety and each individual is required to observe them, including ancestor worship. The gradations of kinship are well defined and a complex terminology has differentiated paternal and maternal kinship lines.⁶¹ Every rule, including virtues, filial piety, respectful devotion and proper conduct is, in short, a basic mechanism which is to control the vast family members. As Confucius himself preached, the family's harmony, nation-family's internal stability and extension to world peace was only possible by following the five relations in terms of mutual affection, respect for authority, following and obeying orders, and cooperation of all members. "Death and life have their determined appointment; riches and honors depend upon Heaven," and

⁶⁰ Dubs, The Works of Hsuntze, op. cit., p. 52.

⁶¹ Chosen Sotokufu, Chusuin, Minji Kanshu Kaito Ishu [Collection of Customary Replies in Civil Litigation], in Japanese, (Keijo [present Seoul], Korea, 1933), Appendix.

"Let the superior man never fail reverentially to order his own conduct, and let him be respectful to others and observant of propriety: -- then all within the four seas will be his brothers."⁶²

3. The Chongbop System

The adoption of the Confucian concept of socio-familism into the social organizations in Korea is that of the chongbop (宗法) system itself. The chongbop system is divided into two main categories. The first one is ancestor worship and the other, patrilineal family system. Therefore, ancestor worship and the patrilineal family system are the two indispensable functions of the chongbop system of traditional Korean society.

Strictly speaking, the word chongbop is comprised of two words. The word "chong" refers to, literally, ancestor, main-root, or sometimes referred to as religion. "Bop" represents the laws, rules and customs. The former connotes ancestor worship, or religion. The latter indicates various laws, rules and customs such as the

⁶² Legge, The Four Books, op. cit., p. 160.

law of parental authority, laws of property and headship succession, codes or rules of filial piety, various ceremonies, marriage rules, and others pertaining to family perpetuation through the male line.

Based on this chongbop system, the family, clan and society were, and are, structured and functioning. Since family perpetuation is traced through only the father⁶³ (patrilineal or male line), and descendant generations must perform necessary ancestor worship⁶⁴ (religion), it was necessary to compile the chokbo,⁶⁵ or the family registry so as to be able to trace and identify the ancestors as well as numerous kinsmen. Indeed, ancestor worship, laws of property and family headship succession, filial piety, parental authority, marriage rules and other regulations are, in fact, all intended to harmonize the whole family and extended to clan and society concurrently with the rules of Five Relations.

⁶³ Korea: ILP&COAA, op. cit., p. 299.

⁶⁴ Baron Nobushige Hozumi, Ancestor Worship and Japanese Law (6th ed., The Hokuseido Press, Tokyo, Japan, 1940), p. 109, and Daniel H. Kulp II, Country Life in South China: The Sociology Familism (Bureau of Publication, Columbia University Press, New York, 1925), p. 147. See also Kim, Chosun Kajok Jaedo Yonggu, op. cit., P. 103.

⁶⁵ Kim, Ibid., Chapter I, Sec. 2.

The study and teaching of Confucius and his classics occurred long before the Yi dynasty. As early as the Silla period (57-935), for example, Korean scholars were sent to the T'ang kingdom to learn and bring back a number of volumes on ceremonies and literature. The higher educational institutes of Silla taught Confucian classics and mathematics, the Analects, and the Book of Filial Piety.⁶⁶ In 717, King Songdok sent a high-ranking official, named Kim Sujong, to the T'ang kingdom and the scholar returned to Silla with images of Confucius and ten of his disciples. King Hyegong (765-779) went so far as to attend the classes where Confucianism was studied. Confucius was not only respected but idolized and venerated.

The founder of the next dynasty of Korea, Koryo (918-1392), attributed his success to Buddha's favor. The Koryo monarchs, therefore, encouraged Buddhism. But this did not mean the decline of Confucianism. Rather, Confucianism made great strides. According to Li, a Chinese historian, Confucian influence was evident in Korean culture, particularly in the last part of the

⁶⁶ Korea: ILP&COAA, op. cit., p. 324.

Koryo dynasty. In 1218, for example, a great-great-grandson of Chu Hsi came to settle down in Korea from China and introduced Chu Hsi's teachings. Later, some Korean scholars who had gone to China to study the learning of neo-Confucianism, came back to Korea with books and writings of neo-Confucian scholars. During the reigning period of King Kongmin (1352-1374), a second son of the 53rd generation and direct descendant of Confucius came to Korea with his family and there he erected an ancestral hall for the worship of Confucius and this started the worship of Confucius in Korea.⁶⁷

Before proceeding to the structure and function of the traditional Korean family system during the Yi dynasty, we shall examine the family system prior to the Yi dynasty. In addition, we shall also examine briefly social stratification system prior to and during the Yi dynasty.

⁶⁷ Nai-yang Li, Han Kuo Tung-shih [A General History of Korea], in Chinese (Taipei, 1956), p. 108.

4. The Family System Prior to the Yi Dynasty

Much speculation has been made of the subject of the nature of early societal organizations, especially the family.⁶⁸ A plethora of terms indicating the primitive, original human group have been coined, such as gens, phratry, tribe, class, sib, clan, family and horde. Although it is difficult to ascertain what the family was like before culture reached this state of evolution, this much is certain: (1) the tie that bound the original human group, the family, was primarily organic. The bond, namely, between mother and child was a definite and obvious relationship founded securely on physical urge and compulsion. The idea of common blood, or pure organic nature, as the basis of kinships, is thus the typical organizing thread of most primitive societies. The fact of the organic dependence of the child upon the mother -- matrilineal family -- lays the groundwork

⁶⁸ For an argument pertaining to the origin and the earlier societal family organization, see Olga Lang, Chinese Family and Society (Yale University Press, New Haven, 1946), p. 20, Korea: ILP&COAA, op. cit., p. 299, Kim, Chosun Kajok Jaedo Yonggu, op. cit., pp. 13-85, Mabel Cook Cole, Savage Gentlemen (Van Nostrand, New York, 1940) and Nung Hwa Lee, Chosun Yosokko [Study of the Women's Custom], in Korean (Tongyang Sowon, Seoul, Korea, 1927), Chapter I.

for all the complex divisions and categories of societal experiences that have followed.⁶⁹ (2) There is every reason to believe that the family is the oldest of human social institutions and that it will survive, in one form or another, as long as our species exists.

A prerequisite for the establishment of the family is that of marriage, whether the form of marriage is promiscuous, communal, or monogamy. The problem of the origin of marriage has been another subject of speculation from

⁶⁹ Nonetheless, since social institutions are among the most perishable of human artifacts, we have no direct evidence regarding any of the types of family organization which existed prior to the beginning of written records. The great variety of familial institutions found among existing "primitives" serves to show the range of possibilities but provides few clues as to what may have been developmental sequences. At most, we can say that certain forms of family are quite unsuited to particular environmental-cultural configurations. For example, no group which lives by hunting and food gathering could seclude its women in harem fashion. Nor would a group in which there was a persistent surplus of women over men be likely to practice polyandry. Beyond such simple generalizations it is impossible to go. All statements about the origin and evolution of family types must be classed as suppositions. Some of these suppositions appear much more probable than others, but none of them is susceptible of scientific proof. For further discussion on this subject, see Ralph Linton, "The Natural History of the Family," Ruth Nanda Anshen, ed., The Family: Its Function and Destiny (Harper and Brothers, New York, 1959), pp. 18-38.

time immemorial, and practically every culture has embodied its own peculiar theory in some myth or tradition.⁷⁰ We shall not, however, extend our discussions on racial origin, nor on the creation myth, but our examination will largely be confined to the logical and/or realistic aspect of family structure and function within the context of the Korean society prior to 1392.

According to an authority on the Korean family, Dr. Kim, the "union of the two opposite sexes is the beginning of all. The family institution is unique compared

⁷⁰ Jews and Christians, for example, at least until recently, drew upon the common tradition of the Creation myth enshrined in the opening chapters of the book of Genesis, and assumed that marriage was instituted by God himself at the time of the creation of the first human pair, Adam and Eve. For further discussion, see Rev. John A. O'Brien, Understanding the Catholic Faith (Ave Maria Press, The University of Notre Dame, Notre Dame, Ind., Baltimore Catechism No. 3), pp. 72-3. Chinese Creation myth, see C. A. S. Williams, Outlines of Chinese Symbolism and Art Motives (Shanghai, Kelly & Washburn, Ltd., 1941), p. 314, was quoted in Walter A. Fairservis, Jr., The Origins of Oriental Civilization (The New American Library of World Literature, Inc., New York, 1959), p. 78. See Japanese version, B. H. Chamberlain, trans. Kojiki, Part I, Sacred Books and Early Literature of the East (New York, Parke, Austin & Lipscombe, Vol. XIII, 1932). The Korean myth on marriage and family, see Cornelius Osgood, The Koreans and Their Culture (Charles E. Tuttle Co., Publisher, Toyko, Japan, 1954), p. 160, Byung Do Lee, Kuksa Taikwan [Korean History], in Korean (Chinmun Kwan Publishing Co., Seoul, Korea, 1955), Chapter I, and Nung Hwa Lee, Chosun Yosokko [Study of the Women's Custom], in Korean (Tongyang Sowon, Seoul, 1927), pp. 1-12.

with others because it is the only institution where two opposite sexes are united by affection and blood."⁷¹ The united sexes, namely husband and wife, during the course of time, elevate to father and mother upon producing children. Therefore, "the original family organization is assumed to be the nucleus. The nucleus family, then, may be designated by different terms such as biological family on one hand, and historical family, natural family and cultural family on the other."⁷²

Dr. Kim argues that our ancestors organized their family as a nucleus -- comprised of a single male, female and their offspring. The nucleus family is the fountain-spring of all; the extended-family, clan, tribe and the society at large.⁷³ This view is particularly supportable when we examine the definition of

⁷¹Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 394.

⁷²Ibid., p. 382.

⁷³In considering the elements of a system of consanguinity the existence of marriage between single pairs must be assumed. Marriage forms the basis of relationships. A system of consanguinity, which is founded upon a community of blood, is but the formal expression and recognition of these relationships. Around every person there is a circle or group of kindred of which such person is the centre, the Ego,

society: "A society is a group of human beings living in a co-operative effort to win subsistence and to perpetuate the species,"⁷⁴ or "every kinship system is a structural subsystem of a total society,"⁷⁵ or society is an extension of the families.

from whom the degree of the relationship is reckoned, and to whom the relationship itself returns. Above him are his father and his mother and their ascendants, below him are his children and their descendants; while upon either side are his brothers and sisters and their descendants, and the brothers and sisters of his father and of his mother and their descendants, as well as a much greater number of collateral relatives descended from common ancestors still more remote. To him they are nearer in degree than other individuals of the nation at large. A formal arrangement of the more immediate blood kindred into lines of descent, with the adoption of some method to distinguish one relative from mother, and to express the value of the relationship, would be one of the earliest acts of human intelligence. For further information, see Lewis Henry Morgan, Systems of Consanguinity and Affinity of the Human Family (Smithsonian Institution, Smithsonian Contributions to Knowledge No. 218, 1871, Washington, D.C.), pp. 10-15 as reprinted in Morton H. Fried, Readings in Anthropology, Vol. II (Thomas Y. Crowell Co., New York, 1959), pp. 229-236.

⁷⁴W. G. Sumner and A. G. Keller, The Science of Society, Vol. I (New Haven, 1926), pp. 6-7.

⁷⁵Harry M. Johnson, Sociology: A Systematic Introduction (Harcourt, Brace and Co., New York, 1960), p. 198.

It is significant, first of all, that there is not one scholar in Korea who denies the existence of the matrilineal family during the earliest stages of development. There are, in fact, "a few scholars who hold that the primitive marriage was communal and promiscuous." Dr. Kim assumes that the gradual evolution of the primitive family is classifiable in two large periods of transformation; matrilineal and patrilineal.⁷⁶

Some scholars support the thesis that the original human marriage was communal, still others support promiscuity. There is no common ground upon which to prove either one or both. In any case, if we grant that our ancestors lived in a period of unorganized gregarious life, then, just how did our original ancestors manage to unite the family members? To put it in a different way, what was the bond which originally united men into a homogeneous social life? We are now living in a society in various organizations and communities with the object of attaining common ends, collectively. It is well conceived that our primitive ancestors were ignorant of the advantages resulting from combination; and

⁷⁶Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 24.

furthermore, knowledge to form the family was not yet developed, because of the "nomadic life which used to prevail."⁷⁷

Therefore, the initial bond of union among our ancestors must be based on conscious realization of the sex-drive, promiscuous or communal. Granting that the primitive Korean family system was matrilineal with the promiscuous or communal marriage as its basis, it was most natural that children born of and reared by the same mother should have lived together. The natural basis for the beginning of man's social group is, then, the unity of blood -- between mother and children -- that is, matrilineal.

A review of existing literature reveals that our primitive people conceived child bearing as something other than of sexual relationship. In fact, our human ancestors thought that the child was caused by the work of, and influenced by, the supernatural. The most common ideas about pregnancies, in Korea, were that the new life

⁷⁷ Ibid. p. 21.

was given by demon, lightning, big rocks, falling stars, old trees, moon, wild animals and spirit of ancestors, etc.⁷⁸

By our standards, it can be said that our ancestors' view on child bearing is essentially unscientific. However, those entries briefly aforementioned, which may be read only as a fairy or folk tale, were not only serious belief to them, but also were their guiding principles which lasted for centuries, and some such traits are still found in Korea even today. In short, our ancestors believed that the processes of reproduction did not require the male, due to the lack of physiological, or biological understanding of the nature of child bearing. Moreover, the child was exclusively delivered and reared by the mother; consequently, the child took the mother's name, and genealogy was matrilineal.⁷⁹

⁷⁸ Nung Hwa Lee, Chosun Yosokko [Study of the Women's Custom], in Korean, (Tongyang Sowon, Seoul, 1927), pp. 1-12, Tae Hung Ha, Folk Tales of Old Korea, (The Korean Information Service, Inc., Seoul, Korea, 1959), James S. Gale, Korean Sketches, (Fleming H. Revell Co., New York, 1898), and William E. Griffis, Corea: The Hermit Nation, (Charles Scribner's Sons, New York, 1897).

⁷⁹ Aside from above, some scholars describe the agriculture and economic value of the woman was the basic cause that brought about the development of matrilineal

As has been stated, it is clear that the matrilineal family system apparently existed in Korea prior to the Yi dynasty. According to Dr. Lee, the following observation is noted:

It was common practice of that time (during the Koguryo dynasty 37 B.C.) that the matrilineal system prevailed. [An abundance of evidence indicates that], after engagement is completed, wife-to-be's parents customarily built a small hut behind the house. The son-in-law-to-be call on the house, kneel down on the ground, calling wife-to-be's name, asking if he could stay with her. Parents granted the request. When children were born, and grew up to a certain age, the husband took the wife and children back to his home.⁸⁰

In interpreting the above article, we can assume that it was the transitional period from matrilineal to patrilineal family system. Whether or not the Koguryo dynastic era was the transitional period from matrilineal to patrilineal family system is also a matter of speculation.⁸¹ Since there are no conclusive studies made on the natural development of the family in the prehistoric times, it is difficult to ascertain its validity.

family system. See for example, Willystine Goodsell, Problem of the Family (The Century Co., New York, 1928), and E.C. Parsons, The Family (G. P. Putnam's Sons, New York, 1906).

⁸⁰ Lee, op. cit., p. 48. The same article appears in Chin Tae Son, Chosun Minjok Munhwa Ui Yonggu [Study of the Korean Culture], in Korean, (Ulyoo Munhwa-sa, Seoul, Korea, 1948), p. 90.

⁸¹ Because, Dr. Kim remarks that "patrilineal family organization already existed in 190 B.C." Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 32.

Questions as to how the matrilineal family system developed into the patrilineal family system, and what were the basic causes for such change are equally uncertain.

Although there is no evidence to support any argument on Korean development, Western scholars mention various factors as the causes for change, e.g., "marriage by capture," "marriage by purchase," "surplus of women over men," and as a result of "difference of male and female in physical construction," i.e., male is more active, aggressive, etc.⁸²

As we observed, the natural basis for the first man's social group was the unity of blood, the matrilineal family. The first generation, comprised of mother and children, would be a very compact body with a strong feeling of fraternal and sisterly affection. The social group in the second and third stage consisting of cousins and grandchildren would be a looser body compared with the first primary group. The fourth generation would be still

⁸² John F. McLennan, Studies in Ancient History, 2nd series, (Macmillan and Co., Ltd., London, England, 1896), Bronislaw Malinowski, Sex and Repression in Savage Society (Harcourt, Brace and Co., New York, 1927), J. G. Frazer, Totemism and Exogamy, Vol. IV (The Macmillan and Co., Ltd., London, 1910), and Edward Westermarck, A Short History of Marriage (The Macmillan Co., New York, 1926). See also Linton, op. cit., pp. 208-9.

looser and the feeling of kinship becomes continually weakened as degree accelerates.

Without doubt, therefore, there must have been some consolidating factors by which to bind numerous kinsmen beyond the primary group. The main factor is that of chongbop itself -- development of religion⁸³ or ancestor worship, development of communication, particularly that of written, in the form of chokbo or family registry, and custom, rule and laws, commonly called as norm, sociologically. Which one of these factors developed first is beyond present treatment; however, one way or the other, these three factors solidified the system of homogeneity.

The following quotation may illustrate briefly the integrative function of the ancestor worship:

. . .the worship of common ancestors, and the ceremonies connected therewith, kept alive the memory of a common descent amongst a large number of widely scattered kinsmen, who were so far removed from one another that they would without this link (ancestor worship) have fallen away from family intercourse.⁸⁴

⁸³As experts on religion declared: "The origin of religion can be speculated upon; they never be discovered," however, "it has important integrative functions for group and for individual personalities." William A. Lessa and Evon Z. Vogt, Reader in Comparative Religion: Anthropological Approach (Row, Peterson and Co., Evanston, Ill., 1958), p. 1 and p. 9.

⁸⁴Hozumi, op. cit., p. 23.

With regard to the development of communication, the written form of family registry, above all, served a very important function along with ancestor worship. Since the family registry's main objective or function is to identify the blood relations among the numerous kinsmen both dead or living for the purpose of solidifying near and remote family members, the family registry has always been connected with ancestor worship to promote homogeneity.⁸⁵

Another way to solidify the numerous family members extended to the clan, later to become a society, is that of custom, rules and laws. Since laws are accompanied by the threat of punishment, law is the single but most direct influence upon the individual's behavior, if properly enforced.

One of the oldest laws which existed in Korea during the era of Ki-ja (1122 B.C.) to regulate people is known as the "Doctrine of Ki-ja." It originally contained eight itemized laws. However, there are only three items remaining today. Professor Lee quoted Dr. Shimura as saying in his Toyo Shiron (東洋史論), [Theory on Oriental History]:

⁸⁵ Shimizu, Shina Shakai no Kenkyu, op. cit., pp. 336-7.

1. If any person kill a man, the offender shall be sentenced to death immediately.
2. If any person injures others, the offender shall be sentenced to compensate by food crops.
3. If any person steals the property, the violator shall be sentenced to become a slave of the owner of the property.⁸⁶

Professor Lee maintains that such a stiff imposition of laws is largely derived from the Han dynasty of China, and that such a practice commonly prevailed in primitive tribal society at that time. It is also learned that, during the Ki-ja era, society valued the woman's "virginity." Again, Dr. Lee excerpts from Hansu Chiliji (漢書地理誌), [Book of Geography], that promiscuous sexual relations were prohibited.⁸⁷ It should also be pointed out that during the period of Puyo dynasty, an offender guilty of adultery was sentenced to death penalty and later, during the Paekche dynasty, an adultery offender was ordered to become

⁸⁶ Lee, op. cit., pp. 34-5. Osgood remarks that: "when criminals were apprehended by the government, they were not only killed but also deprived of the privilege of burial, and their families were enslaved as well. During the Ki-ja era, murder was to be punished in the manner by which it had been inflicted, and those who had committed theft or adultery were to be enslaved." Osgood, op. cit., p. 216.

⁸⁷ Lee, op. cit., p. 35.

a slave.⁸⁸ Based upon the above article, the primitive laws, like the modern ones, regulated the individual's life, bodily injury, property and virginity.

Since the Puyo period, agriculture was the predominant occupation of the family; the family was organized into community (village); there were religion, recreation, some tool making knowledge and customs. These are to be found in the following quotation:

Puyo, as described by a Chinese writer of the Eastern Han (25 B.C. - 190 A.D.) dynasty was a land of fertile soil, in which "the five cereals" -- wheat, rice, millet, beans, and sorghum -- could be raised. The men were tall, muscular, and brave, and withal generous and courteous to each other. Their arms were bows and arrows, swords, and lances. They were skillful horsemen. Their ornaments were large pearls, and cut jewels of red jade. They made spirits from grain, and were fond of drinking bouts, feasting, dancing, and singing. With many drinkers there were few cups. The latter were rinsed in a bowl of water, and with great ceremony passed from one to another. They ate with chopsticks, out of bowls, helping themselves out of large dishes.⁸⁹

Since the Three Kingdoms period, within the family, the husband was the symbolic as well as authoritative figure and greater power was exercised to regulate family

⁸⁸ Ibid., p. 36.

⁸⁹ Griffis, op. cit., p. 21. A description regarding agriculture in primitive Korean social development, see Korea: ILP&COAA, op. cit., p. 111, and Osgood, op. cit., p. 229.

members including his wife. In fact, the father's authority was extended to sell, deposit and exchange his children and treat them as a piece of property.⁹⁰ During the period of Silla, the emphasis was placed on the eldest male of the family and family properties were succeeded by him.⁹¹ Marriage ceremony took place at the bride's home, moving to her husband's family residence only after the birth of her first child.⁹² In order to consummate the marriage, the husband has to pay a bride price.⁹³ If her husband died, she became the wife of her husband's brother.⁹⁴

During the period of Koryo dynasty (918 - 1392 A.D.) written records showed that the kings were intermarried amongst their own blood-relatives. But among the people, it was ordered that members of the same clan, or persons bearing the same surname, were not allowed to intermarry.⁹⁵

⁹⁰ Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 403.

⁹¹ Ibid., p. 103.

⁹² Osgood, op. cit., p. 221.

⁹³ Ibid., p. 223.

⁹⁴ Ibid., p. 221. This practice was forbidden by the King Taejong in the year 1415. The Taejong Factual Records, Vol. 29, March, 1415, p. 4.

⁹⁵ Lee, Chosun Yosokko, op. cit., pp. 20a and 22b.

"The ancient marriage institution of our Korea which can be corroborated in history as in the case of Puyo, Koguryo, Paekche, Silla and Koryo, did not avoid the marriages among members of blood-relations, or among members of the same clan name. It was not far from the marriage practice recorded in the chapter on the Hsung-nu in the Shih-chi [Historical Records]. This is a fact and cannot be denied" ⁹⁶

There are considerable indications of parental authority over children.⁹⁷ The parents demanded that the child should be obedient, and submissive to the parents as well as to the elder members of the family during the Koryo era. In other words, filial piety was emphasized. During this same period, the government (or emperor) encouraged the family members to participate in society with the healthy cooperative spirit. The teachings were largely derived from China, particularly that of Chu Hsi school. An encouragement and teaching of a cooperative spirit is to be found in the following items: (1) mutual love and

⁹⁶ Ibid., p. 14a.

⁹⁷ Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 403.

support between the parents and children; (2) mutual affection between husband and wife; (3) realization and practice of separate function of old and young; (4) respect and honor in the ancestor-hall and funeral ceremony; (5) respect and cooperation with the neighboring villagers; (6) respect for age and love for the young; and (7) in time of marriage, cooperation with each other.⁹⁸

Thus far, the writer briefly presented the scattered evidences on family structure and its function as appeared in various articles. Since our attempt is to examine the family system from 1392, whatever the inadequacies and discrepancies that may have been found in this chapter must be explained by the data in the following chapters.

Before we examine the family structure and function of the traditional Korean family from 1392, it is necessary to present the social stratification system prior to and during the Yi dynasty. An examination of the class system is necessary, for various social regulations were, to a large extent, promulgated according to the social class.

⁹⁸Ibid., p. 153.

5. Social Stratification System Prior to and During the Yi Dynasty

As already observed, at first, the family was comprised of a simple but nevertheless compact organization, but this grew and developed into a large group, sometimes occupying a whole village and later, some groups migrated to different localities. With the passing of history, due to population increase, family members grew looser by wider margins, and finally differentiations between members of the horde came to the fore.

The first differentiation was wholly organic or "natural." There are three main types of organic differences between human beings. These are:

1. Differentiations according to age -- old or young.
2. Differentiations according to sex -- male or female.
3. Differentiations according to individual capacity or faculty, both physical and mental.

As we shall examine later in this thesis, traditionally, Korean society was largely governed by the first two items; by age and by sex -- domination of young by aged person and female subordination to the male. The differentiation according to the individual's capacity

and faculty is perhaps the latest achievement of gradual human evolution in Korea.

These, together with size of family and clan, their intellectual capacity, economic strength and occupational divisions gradually formed into the different classes.

There are, strictly, three ways to distinguish the different classes based upon the following criteria:

1. Economic -- formed into trade and occupational classes.
2. Social -- formed into higher and lower classes.
3. Political -- formed into governing and subject classes.

Ever since the Silla period (57 B.C.) there were four large divisions or four classes which existed and ultimately carried into the Yi dynasty with minor modifications. The following articles, a translated version of the Koryo dynasty's social stratification, may serve to illustrate the class system of Korea:

Social classification may be divided into four grades; upper, middle, lower and lowest. Upper and middle classes are ruler (educated classes) and lower and lowest classes are follower (non-educated classes). Upper class is comprised of royal family, semi-royal family (king's relatives), high ranking government officials (civil and military officials) and their descendants. . . . These upper class members

are education-oriented, and privileged by special preferential treatments such as estate ownership, schooling, eligible for national examinations and granted other privileges.

Middle class is composed of those lower grade officials, palace officials and other mixed occupations (such as technicians) whose privileges are lower than those of the upper class, but compared with the lower classes, they enjoyed more privileges. The lower class consists of soldiers, farmers (farm-slave), businessmen, etc., which include all other commoners. This class is obligated to render services in time of war, their labor power to supply the food, and for other national reconstructions.

Finally, the lowest class. This class is comprised of wicker trunk maker, butcher, black-smith, public performers and slaves. This class is largely discriminated against by other classes. The members are often owned by other classes and they are subject to sell, exchange, capture, give-away and deposit as a property. This class also include naturalized foreign citizens. The laws specify that the persons who belong to the lowest class are deprived of their rights to take national examinations. Sometimes, however, the lowest class may be able to climb up one or two classes by distinguishing his service to national welfare. On the other hand, upper and middle class members could be reduced in their rank to the lowest when they commit a crime.⁹⁹

During the Yi dynasty, however, the four classes remained the same except in the lowest rungs where one more

⁹⁹ Lee, op. cit., pp. 216-8. See also Chin Woo Yoo, ed., Kukyak Taejun Hwaetong [Translated Edition: Law Manual], in Korean, (Koryo University Press, 1960), p. 552, and Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 401.

intermediate-class in between nobility and the commoner class was added. During the Yi dynasty, the lowest class was called "chunin" (賤人) and was further subdivided into two separate classes; "pekjung class," (白丁)¹⁰⁰ and "yain class" (野人).¹⁰¹

A history of "chunin" is indeed long, and perhaps it is impossible to date its origin. During the Yi dynasty, the following categories were added to Koryo's lowest

¹⁰⁰The Taejong Factual Records, Vol. 22, October, 1411, p. 31. "In Korea today there are several tens of thousands of people who are called pekjung. They are, it is clear from the historical materials, the descendants, or perhaps the remnants, of the outcaste groups of Yi dynasty of Korea. There is strong evidence that some kinds of organized outcaste groups existed even before the 10th century in Korea, but certainly by the 13th and 14th centuries they had taken on the form in which they have developed to modern times. Until the breakdown of Korea's traditional social order at the end of the 19th century, they were, like the untouchables of India or the eta of Japan, forced to live in segregated quarters isolated from the common people, and confined to despised and menial occupations, which were considered polluted, such as basket-making, butchering, executing punishment on criminals, leatherworking, sandalmaking, dog-catching, and removing animal carcasses. They were forbidden to associate with, much less marry, members of the common-people class. They were required to show extreme servility at all times, in dress, public deportment, ceremonial activities, housing, and social intercourse." For further information, see Herbert Passin, "The Paekchong of Korea: A Brief Social History," Monumenta Nipponica (Sophia University, Tokyo, Japan, 1956), Vol. XII, Nos. 3-4, p. 29.

¹⁰¹The Saejong Factual Records, Vol. 16, April, 1422, p. 21.

classes: concubine's children, or illegitimate children, war captives, ex-prisoners, people of no specific occupation, wandering tribesmen who cannot identify their ancestry, imported laborers, outcasts of the kin group, clan or family whose filial and religious duties were neglected or unjustifiably misconducted, smugglers, etc.¹⁰²

The word "chunin" is often simultaneously used to identify a specific chunin class such as "pekjung" which is similar to the Japanese "eta."¹⁰³ This pekjung class, as indicated above, has been traditionally segregated by the government to certain isolated areas and they have been bound to their menial occupation such as butchering.¹⁰⁴ In addition to the pekjung class, the word "yain" was used by the court to distinguish the "barbarian" class.

¹⁰²Griffis, op. cit., pp. 238-43, Lee, op. cit., pp. 362-66.

¹⁰³"Eta" problems in modern Japan, see Larence Olson, Mrs. Masuda and the Buraku People, American Universities Field Staff, Inc., New York, L-6-'58 series, pp. 1-10.

¹⁰⁴Chosen Sotokufu, Chusuin, Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collection], in Japanese, (Chosen Insatsu Kabushikigaisha, Keijo [present Seoul], Korea, 1939), p. 401. According to another report, the chunin class existed prior to Yi dynasty. Chosen Sotokufu, Chusuin, Korai Izen no Fuzoku Kankei Shiryo Satsuyo [Custom Collections Prior to Koryo Dynasty], in Japanese, (Chosen Insatsu Kabushikigaisha, Keijo [present Seoul], Korea, 1941), p. 434. See also Taejong Factual Record, Vol. 22, October, 1411, p. 31.

During the early part of the Yi dynasty, yain or barbarian who lived nearby the Yalu and Tumen rivers were not classified as Korean but treated as uncivilized and immoral tribesmen.¹⁰⁵

Another modification during the Yi dynasty was that "science officials" were added to the existing four classes. Therefore, there were generally considered to be specifically four but roughly five classes existed. The four classes specifically, and five roughly, are as follows:

The first class: The highest class was that of the imperial household and their immediate relatives.

The second class: It was considered the "elite" class or nobility class which was subdivided into two classes such as civil (文官) and military (武官) officials appointed by the king, and their families and relatives. These civil and military officials are even today known as "yang-ban" (兩班). Between the yang-ban and commoner class, there existed "science officials," (科學官) who

¹⁰⁵ Richo Fuzoku Kankei Shiryo Satsuyo, op. cit.,
Appendix section.

specifically did not classify as yang-ban but often they acted as yang-ban.¹⁰⁶

The third class: It was the commoner or in Korean called "pyungmin," (平民) which comprised the majority of the population of the country. The commoner class was exclusively engaged in agriculture and small business.

The fourth class: The lowest class known as the "chunin" which has been observed.

In passing we shall briefly note the illegitimate children and their social position. Although, the illegitimate children, even after they became adults, did not

¹⁰⁶To introduce briefly the organization of government during the Yi dynasty; obviously the King is the supreme person by whom general policy will be promulgated. After the King, and the three prime ministers, come the six ministers or boards of government, the heads of which rank next to the three chong or ministers forming the Supreme Council. The six boards, or departments of the government are; 1) Office of Public Employ; 2) Finance; 3) Ceremonies; 4) War; 5) Justice; 6) Public Works. The heads of these tribunals make a daily report of all affairs within their province, but refer all matters of importance to the Supreme Council. There are also three chamberlains, each having his assistant, who record every day the acts and words of the King. Each of the eight provinces is under the direction of kam-sa, or governor. The cities are divided into six classes and are governed by officers of corresponding rank. The towns are given in the charge of the petty magistrates, there being twelve ranks or dignitaries in the officials' class. For more information, see Griffis, op. cit., pp. 230-2, Lee, op. cit., pp. 346-56, Kim, Kuksa Ui Yonggu, op. cit., pp. 299-302.

form a social class; nevertheless the illegitimate son born of a concubine or a mistress had to suffer public contempt during the Yi dynasty.¹⁰⁷ So underprivileged were the illegitimate sons that both at home and in society, they had to suffer humiliation.

At home, for instance, they were not allowed to call their father and legitimate brothers as such but had to refer to them by some other honorary titles, confirming the belief that the illegitimate sons could not be members of the family even by inference. Neither were they entitled to participate in the memorial services for the ancestors, nor share in the inheritance of property.

Once born illegitimate, they had no choice but to endure all handicaps and humiliations society imposed upon them. An illegitimate son could not marry a legitimate daughter,¹⁰⁸ and the court blocked the way to the advancement of an illegitimate son to a high government post however outstanding his talent.¹⁰⁹

¹⁰⁷ The Saejong Factual Records, Vol. 35, January, 1466, p. 8.

¹⁰⁸ The Taejong Factual Records, Vol. 10, May, 1405, p. 17, and The Saejong Factual Records, Vol. 21, September, 1423, p. 18.

¹⁰⁹ Korea: ILP&COAA, op. cit., p. 624.

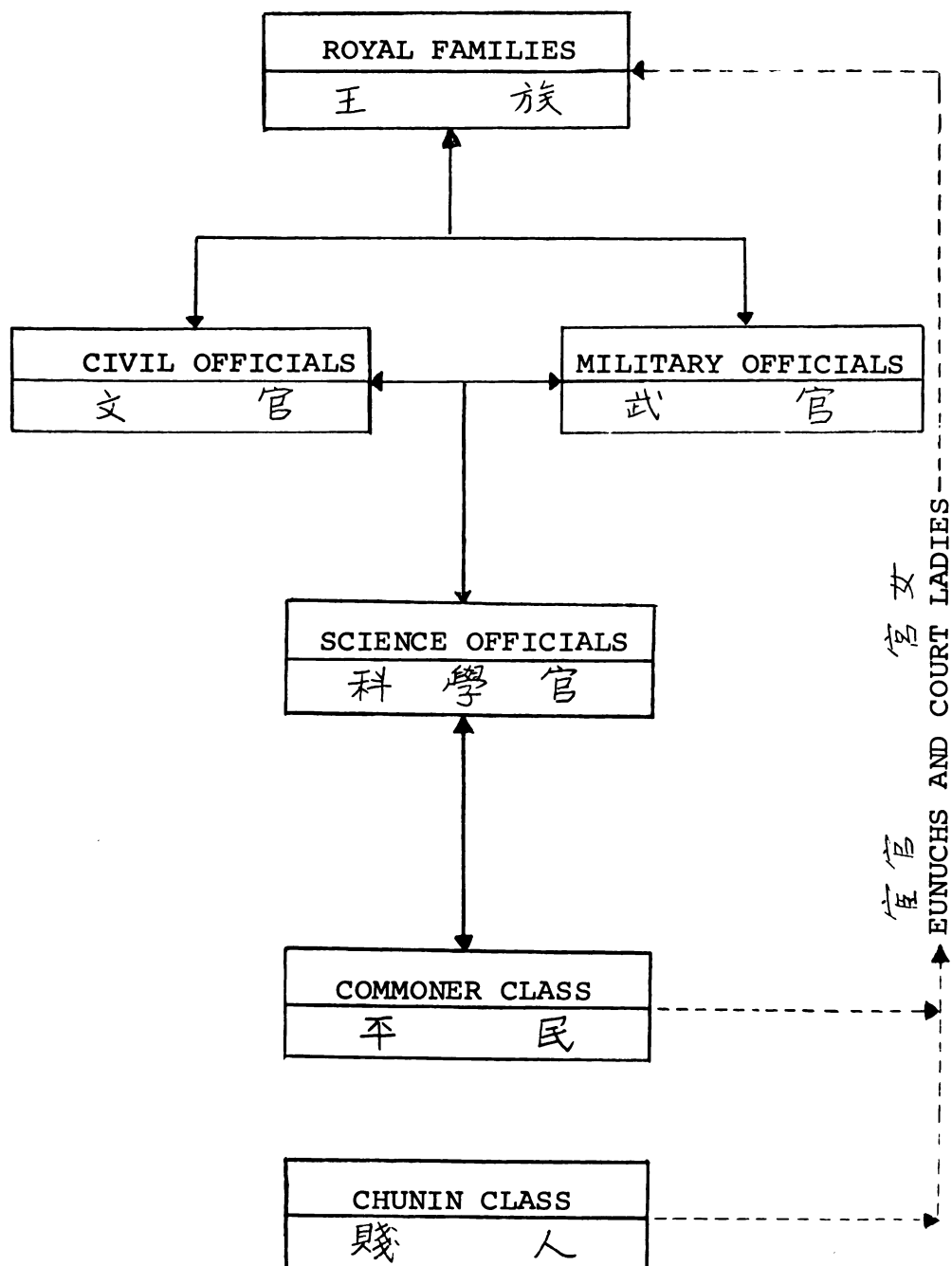
Since the introduction of Japanese Civil Law and the current promulgation of the Constitution of the Republic of Korea, however, such prejudice against illegitimate children has lost much of its power. Presently no discrimination is directed against them, at least, at all official functions.

As indicated in a preceding paragraph, the aforementioned social classes led mutually exclusive social lives, and a marriage between members of different classes was strictly forbidden. Nor could one advance from a lower class to a higher one because of the hereditary requirement. There are, however, some exceptions to the above rule. These are, first, by merit, i.e., distinguished service to national welfare; and second, marriage with the royal family.¹¹⁰

Thus far, the writer briefly examined the three areas: Confucian theory on socio-familism, the chongbop system including primitive family organization and underlying factors, and finally, social stratification system prior to and during the Yi dynasty. It is appropriate, therefore, to examine the structure and function of the family system during the Yi dynasty.

¹¹⁰ Lee, op. cit., p. 218, and Korea: ILP&COAA, Ibid. p. 31.

Table II: THE SOCIAL STRATIFICATION SYSTEM OF KOREA DURING THE YI DYNASTY: CRITERIA BASED ON PRESTIGE AND MARRIAGE FLOW



CHAPTER II

THE FAMILY SYSTEM DURING THE YI DYNASTY

1. The Structure and Function of the Traditional Korean Family

To define the different types of family, the contemporary writers often distinguish these as the "biological" family, the "economic" family, the "legal" family, or the "social" family. However, these are too abstract and meaningless as far as the family functions are concerned. In any given society, the family is responsible for the biological aspects of life, economic production and division of labor for material well-being, legal limitations and obligations among the members of the family, and its relationship to society and other social institutions as well. In addition to the above, the family provides education for their offspring, religious guidance and recreation. All these manifest family functions are, as we shall examine them hereafter, welded together in the case of the traditional Korean family.

The traditional Korean family may be defined as two or more nuclear or conjugal families, either related by blood, marriage or adoption, living under one roof: grandparents,

parents, sons, their spouses (including or excluding the second or third married sons, their spouses and their children), their children and unmarried daughters. The family jointly owns properties -- house, land, pond, etc., which are passed on to the eldest male member of the family for the purpose of maintaining the livelihood of the family, observing the practice of ancestor worship, and safeguarding the ancestors' graveyards. The family inherits the "chokbo" (族譜)¹ or family registry. The administration of the family is usually exercised exclusively by the patriarch or the father, and the family line is traced through the male line. Therefore, the Korean family is classified as "patrilineal."²

¹The explanation of family registry, the "chokbo," is to be found in section 5 of this chapter.

²The family can be organized either on a consanguine basis or a conjugal basis. The consanguine family is composed of blood relatives of several or more generations where the relationship is traced either through the male line (patrilineal) or through the female line (matrilineal), and where such relationships are emphasized as the basis for family organization while the husband-wife (conjugal) relationship is minimized. A married couple lives either with the wife's (matrilocal) consanguine family or with the husband's (patrilocal). Their children will belong either to the wife's family or to the husband's. The conjugal family makes the husband-wife relationship the basis on which the family is organized, and various relatives are members of the family only in their relationship to the husband or wife.

Traditionally, in Korea, a married son rarely establishes a new residence but continues to live with his bride in the parent's, or grandparent's house. Therefore, it is not uncommon to find a family with three or even four generations living under one roof.³ Such a family is known as "consanguineal family," or an "extended family," by Western terminology, and the "greater family," or "Tai-ka-jok" by Korean terminology.

In order to introduce the complex structure and function of the traditional Korean family, it may be helpful to illustrate the gradual development of the Korean family through the use of a diagram. If one fails to comprehend the following explanations, it is likely that he may not understand the more complex structure and function of the clan village.

The children belong neither to the husband's family nor to the wife's, but only to the immediate, conjugal family consisting of their parents and themselves and such other relatives as happen to be considered a part of it. While a consanguine family maintains its continuity through many generations, a conjugal family is formed anew with every marriage. The United States has the conjugal type, while the traditional Korean family is a patrilineal, patrilocal and consanguine family.

³Doo Hyun Kim, Chosun Kajok Jaedo Yunggu [Study of the Korean Family], in Korean, (Ulyoo Munwha-sa, Seoul, Korea, 1949, p. 458).

Let us, for the sake of clarification, assume that a family is composed only of parents (A), two unmarried sons, (B) and (C), and one unmarried daughter (D), disregarding all earlier ancestors and tracing the gradual development of the extended family, or consanguineal family from this segment of the trunk. To illustrate with a diagram, the first stage, termed "conjugal" family, is composed of parents and their unmarried children:

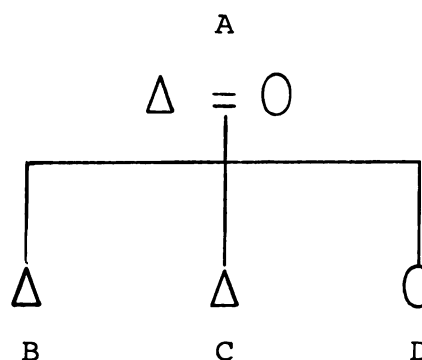
First Stage of Development

Remarks

△ - Male

○ - Female

= - Married



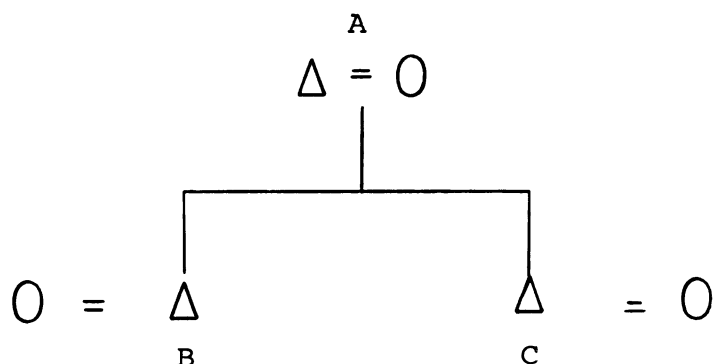
At this stage of development, the father is called "kajang," or family head. As long as the father lives, he is the central figure within the family. With the cooperation of his wife, he administers such family affairs as

property management, maintenance of ancestors' grave yards, children's education and discipline, and marriages for the children. Throughout the lifetime of the parents, children are subordinate to them even after the children's marriage, except for the married daughter.

Respect and obedience are two essential duties of the children toward their parents; violators are punished either by the parents, by the clan council, or by the government. At this level of development, it may be said that, because of the compactness of the family, intimate relationships among the family members are most likely to prevail in comparison with the second and third stage of family development.

The essential characteristic of the traditional family is the fact that the sons continue to reside with the parents after marriage. For instance, after the two sons' (B and C) marriages, their wives will move into the house of their parents-in-law and all live together under the same roof. Since Korea recognizes only the patrilineal and patrilocal family system, after the daughter's (D) marriage, she becomes a member of her husband's family. Therefore, after the children's marriage, the diagram would show the following relationship:

Second Stage of Development

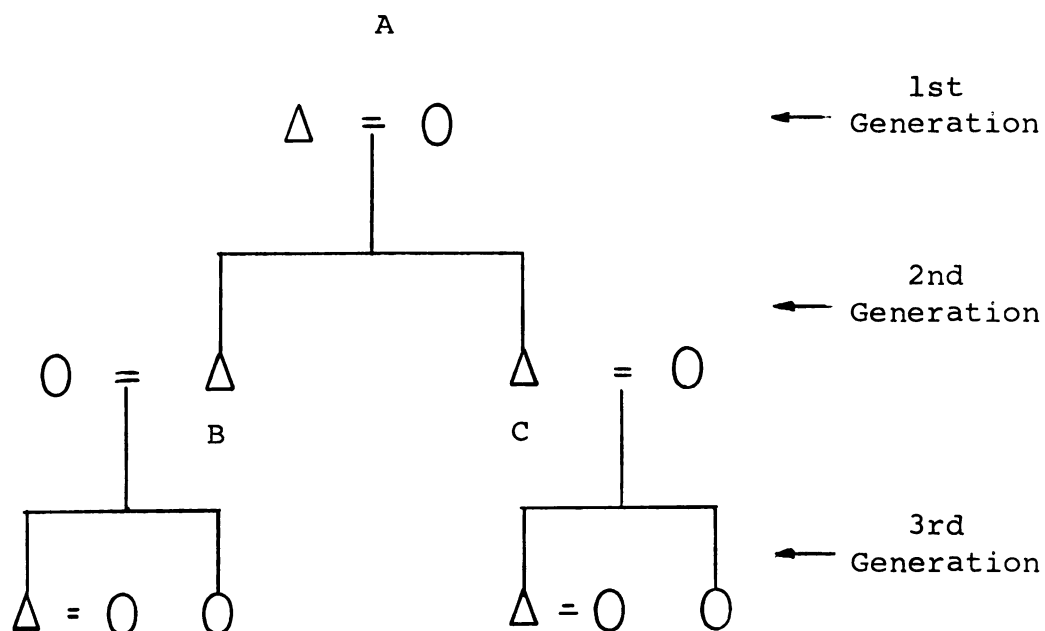


When the father dies, the eldest son assumes the kajang, or headship of the family. Unless otherwise specified by law, the eldest son is the only legal heir to continue the family line. Accordingly, B's wife is higher than C's wife in status regardless of age. Upon the death of the mother, the eldest son's wife assumes the responsibilities which formerly belonged to the mother-in-law. Later the married sons, B and C, may have their own children (Grandchildren of A). Upon reaching a certain age, their children will get married; the males bringing their wives into the family while the females will be married out. These grandchildren will still live with their parents, their grandparents, their uncles and their aunts.

At this stage, a single family consists of three generations and still all the members live under one roof.

Diagrammatically, the development of the family may be depicted as follows:

Third Stage of Development



As we have observed, at first, there is a simple family composed of only parents and children, as in diagram 1. This gradually grows and reaches the second stage and then develops into a large group. Such families sometimes spread themselves and occupy a whole village, which then is termed a "clan village."⁴ Because of the patrilineal

⁴Kim, op. cit., pp. 22-3.

family system, all the clan members carry the same surname except for the married-in females.

When the family has grown into a very large group, it is difficult for one house to hold or accommodate all the family members. Therefore, the second or third son and their wives often establish separate households nearby, with the permission of the parents. As time goes on, however, even a village is not large enough to retain all the members and thus a few households of the extended family, with the arrangement of the clan council, would emigrate into a different locality. There they grow and develop in the same way as the original family from which they came.⁵

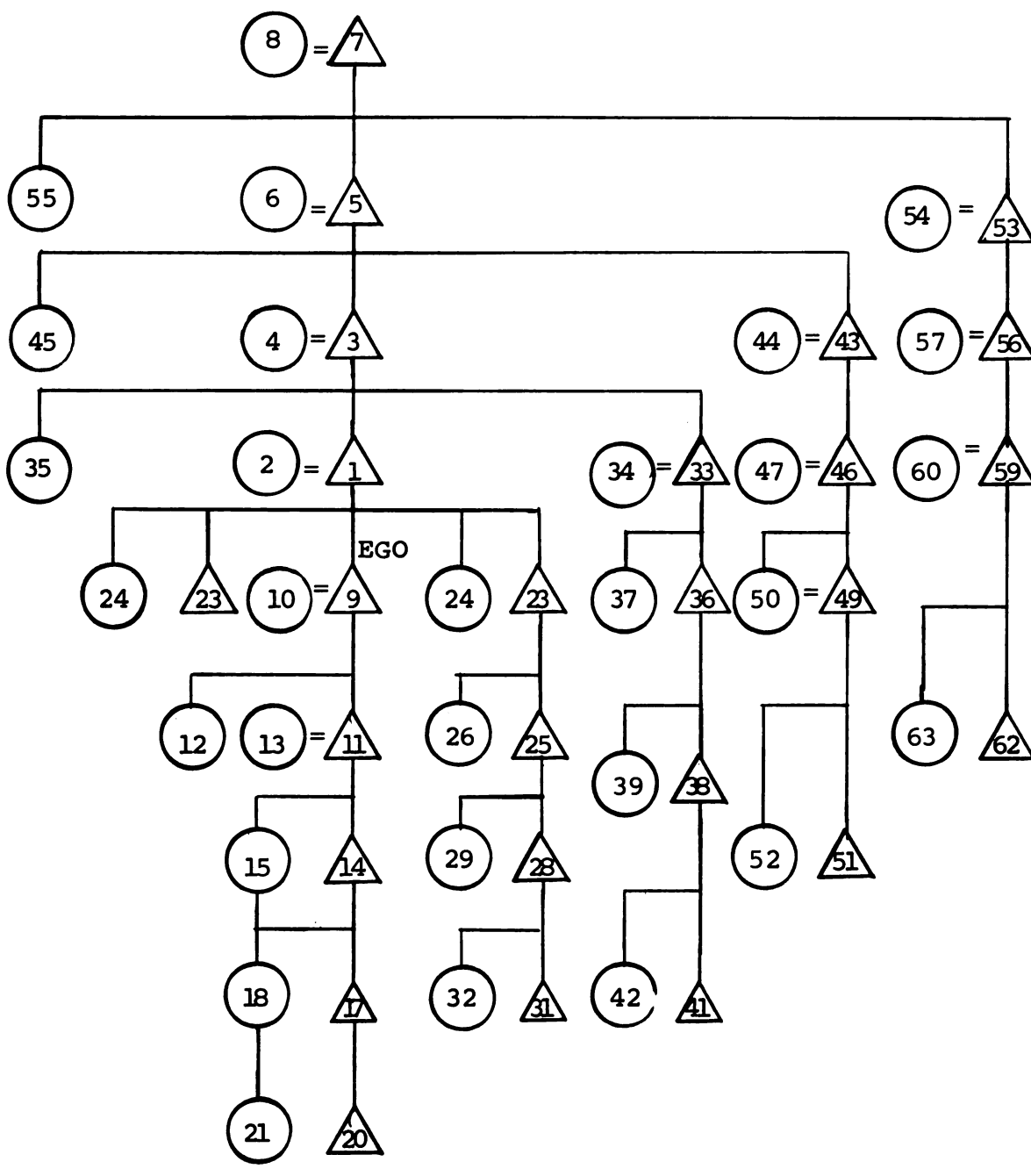
⁵ All the families descended from the "first family" (Stage 1) continue to hold together, they would in time form a very large group--clan and tribe. These would begin to be formed as soon as some principle of succession or election to the chieftainship preserved families from dissolving on every death of a chief. Or they might arise through the families of the tribe by a name indicative of such descent and of a special connection between them. As there would be the nucleus of a new tribe whenever a man descended from the "first family" separated, with his wife and children, from the main body of his kindred, and settled in a new district, in the course of generations--after many such separations had taken place--the descendants of the "first family" might constitute many tribes and be the population of a large country. The tribes, being united by ties of blood, would readily act together for common purposes. By-and-by they would establish some form of central government to facilitate such action. Then they would have become a nations. Donald McLennan, The Patriarchal Theory (Macmillan and Co., London, 1885), p. 2.

In short, the composition of the traditional family usually includes two or more of the following fourteen types of conjugal families or households.

1. Husband and wife
2. Husband, wife and children
3. Husband, wife and relatives
4. Husband, wife, children and relatives
5. Widower alone
6. Widower and children
7. Widower and relatives
8. Widower, children and relatives
9. Widow alone
10. Widow and children
11. Widow and relatives
12. Widow, children and relatives
13. Widower and unrelated persons such as slaves, house servants, boarders, etc.*
14. Widow and unrelated persons such as slaves, house servants, boarders, etc.*

In Table III on the following page, the extended family with its blood relatives is described and one can follow the relationships step by step, by starting at step No. 9, Ego. The numbers are provided to convey relationships among the family members. For each family member a specific name and status are assigned. Table IV provides a nomenclature in which the writer presents the complete terminology ranging from 1 to 81 in both Korean and in English. For the sake of clarification, in Table IV, an explanation column is provided. The numbers are so arranged in Table III

*Traditionally, unrelated persons are not included in the family.

Table III. A Chart of Extended Family and Blood Relatives⁶

⁶ Positions of blood relative members are indicated in the following pages according to the number. This chart does not include maternal relatives. Remarks: = husband and wife; ○ female; △ male.

and IV, that they will fit into either table without any conflict.

Table IV

Kinship Terminology of the Extended Family
and Blood Relatives⁷

<u>No.</u>	<u>Chin.Char.</u>	<u>Kinship Terms</u>	<u>Explanation</u>
1.	父	Father	or step father
2.	母	Mother	or step mother

⁷Source: Chosen Sotokufu, Chusuin, Minji Kanshu Kaito Ishi [Collection of Customary Replies in Civil Litigation], in Japanese, (Keijo [present Seoul], Korea, 1933), Appendix Section, pp. 1-6. Intermarriage between these persons is, by law, strictly tabooed.

The 81 kinship terminologies which are delineated in Table III may be classified into seven principal categories. These are (1) The difference between persons of the same and of separate generations, i.e., the distinctions between father and grandfather, between uncle and cousin, between a person and his father, etc. (2) The difference between lineal and collateral relationship, i.e., distinction between the father and the father's brother. (3) Difference of age within one generation, i.e., the older and the younger brother, etc. (4) The sex of the relative, i.e., grandfather, grandmother, brother-in-law, sister-in-law, son, daughter, etc. (5) The sex of the speaker, i.e., the father, mother, brother, sister, etc. (6) The sex of the person through whom relationship exists, i.e., necessary to explain whether an uncle is a father's or mother's brother, whether a grandmother is paternal or maternal, etc. (7) The distinction of blood relatives from connection by marriage, i.e., the father-in-law, sister-in-law, etc. For further information on classification of the kinship terminology, see George P. Murdock, Social Structure, (The Macmillan Co., New York, 1949), and Alfred L. Kroeber, "Classificatory Systems of Relationship," as appeared in Morton H. Fried, Readings in Anthropology, Vol. II, (Thomas Y. Crowell Co., New York, 1959), Chapter 16.

3.	祖 父	Grandfather	
4.	祖 母	Grandmother	
5.	曾 祖 父	Great grandfather	
6.	曾 祖 母	Great grandmother	
7.	高 祖 父	Great great grandfather	
8.	高 祖 母	Great great grandmother	
9.	夫	Husband	Ego or I
10.	妻	Wife	
11.	子	Son	or adopted son
12.	女	Daughter	or adopted daughter
13.	子 婦	Daughter-in-law	
14.	孫	Grandson	
15.	孫 女	Granddaughter	
16.	孫 婦	Granddaughter-in-law	
17.	曾 孫	Great grandson	
18.	曾 孫 女	Great granddaughter	
19.	長曾孫婦	Wife of 1st great grandson	
20.	玄 孫	Great great grandson	
21.	玄 孫 女	Great great granddaughter	
22.	長玄孫婦	1st great great grandson's wife	
23.	兄 弟	Brothers	
24.	姊 妹	Sisters	
25.	姪	Nephew	
26.	姪 女	Niece	
27.	姪 婦	Nephew's wife	
28.	從 孫	Nephew's son	
29.	從 孫 女	Nephew's daughter	
30.	從 孫 婦	Nephew's son's wife	

31.	從曾孫	Great grandson's cousin	25's grandson
32.	從曾孫女	Great granddaughter's cousin	25's granddaughter
33.	伯叔父	Uncle	1's brother
34.	伯叔母	Aunt	1's brother's wife
35.	姑	Father's sister	1's sister
36.	從兄弟	Male cousin	33's son
37.	從姊妹	Female cousin	33's daughter
38.	從姪	Male cousin's son	33's grandson
39.	從姪女	Male cousin's daughter	33's granddaughter
40.	從姪婦	Male cousin's son's wife	38's wife
41.	再從孫	Male cousin's grandson	33's great grandson
42.	再從孫女	Male cousin's granddaughter	33's great granddaughter
43.	從祖父	Grandfather's brother	
44.	從祖母	Grandfather's brother's wife	43's wife
45.	父姑	Grandfather's sister	
46.	從伯叔父	Grandfather's brother's son	43's son
47.	從伯叔母	Grandson's nephew's wife	46's wife
48.	從祖母	Grandfather's brother's daughter	
49.	再從兄弟	Grandfather's brother's son's son	46's son
50.	再從姊妹	Grandfather's brother's son's daughter	46's daughter
51.	再從姪	Grandfather's nephew's son's son	49's son

52.	再從姪女	Grandfather's nephew's daughter	49's daughter
53.	從曾祖父	Great grandfather's brother	5's brother
54.	從曾祖母	Great grandfather's brother's wife	5's brother's wife
55.	曾大姑	Great grandfather's sister	5's sister
56.	再從祖父	Great grandfather's nephew	53's son
57.	再從祖母	Great grandfather's nephew's wife	56's wife
58.	再從大姑	Great grandfather's brother's daughter	53's daughter
59.	再從伯叔父	Great grandfather's nephew's son	56's son
60.	再從伯叔母	Great grandfather's nephew's son's wife	59's wife
61.	再從姑	Great grandfather's nephew's daughter	56's daughter
62.	三從兄弟	Great grandfather's nephew's son's son	59's son
63.	三從姊妹	Great grandfather's nephew's son's daughter	59's daughter
64.	外祖父	Mother's father	
65.	外祖母	Mother's mother	
66.	外叔父	Mother's brother	
67.	外叔母	Mother's brother's wife	
68.	姨母	Mother's sister	
69.	外從兄弟	Mother's brother's son	
70.	外從姊妹	Mother's brother's daughter	

71.	姨從兄弟	Mother's sister's son
72.	姨從姊妹	Mother's sister's daughter
73.	女婿	Son-in-law
74.	外孫	Daughter's son
75.	外孫女	Daughter's daughter
76.	外孫婦	Daughter's son's wife
77.	甥姪	Sister's son
78.	甥姪女	Sister's daughter
79.	甥姪婦	Sister's son's wife
80.	父從兄弟	Father's sister's son
81.	父從姊妹	Father's sister's daughter

2. Parental Authority and Socialization of the Young

As has been observed, the traditional Korean family was governed by the system of chongbop--ancestor worship and patrilineal family system. Thus, some scholars prefer to call the chongbop a "religious family,"⁸ and others call it "father-controlled-family."⁹ In either family,

⁸ Daniel H. Kulp II, Country Life in South China: The Sociology Familism, Bureau of Publication (Columbia University Press, New York, 1925), p. 147. Agricultural communities in Japan had similar practices, and this information appears in Eitaro Suzuki, Nihon Noson Shakaigaku Genri [The Principle of Rural Sociology in Japan], in Japanese (Shichosha, Tokyo, Japan, 1943).

⁹ Morimitsu Shimizu, Shina Shakai no Kenkyu [A Study of Chinese Society], in Japanese (Iwanami Shoten, Tokyo, Japan, 1939), p. 324.

one of the principal elements that governed the traditional Korean family was that of parental authority over their children and family property under the name of ancestor worship and family continuity. Therefore, in this section, the term chongbop has been used to designate parental authority.

Under the chongbop system, by law, the father has the right to assume the following responsibilities with regard to his children:

1. Education.
2. Protection, providing for food, clothing, shelter, medical care, supervision of behavior, etc.
3. Disciplinary action or punishment.
4. Determining place of residence prior to and after the marriage.
5. Occupation.
6. Management of finance.
7. Marriage and divorce.¹⁰

The mother may express her opinions only with regard to items 2, 3 and 7.¹¹ When the son marries and establishes a separate household, with the consent of the father, neither the father nor the mother will assume items 5 and 6 as their responsibilities.

¹⁰ Chosen Sotokufu, Chusuin, Minji Kanshu Kaito Ishu [Collection of Customary Replies in Civil Litigation], in Japanese (Keijo [present Seoul], Korea, 1933), pp. 38-9.

¹¹ Ibid., p. 39.

If the father dies, all these responsibilities would be carried out by the mother, with the guidance of a paternal uncle. When both the father and mother die, all the matters would be transferred to the eldest son. At the time of the father's death, if the eldest son is too young to administer complex family affairs, the paternal uncle would assist him; the uncle's responsibilities are then the same as the father's.

The father has the right to manage the family property and the son's income, administer the son's and daughter's marriage and divorce affairs, punish and reward the junior members for their behavior, and control all family affairs as specified in the chongbop system. The father with the cooperation of his wife also cares for the offspring and always has in mind family prosperity and preservation of the family name.

The responsibilities which are cited before are by no means a simple matter to be administered. It requires time, effort, affection, and above all, wealth. While a child is in infancy, both father and mother train the child. Later, however, the father assumes more responsibilities in training his son. When a new life is born, the parents

assume the responsibility to see that relatives and guests will be invited to the occasion of "naming the child," which usually occurs 100 days after the birth.

While a child is in the infant stage, the mother usually sits near the baby to sing softly until the infant falls asleep. There are a number of lullabies ranging from simple words, "sleep, sleep baby," to complicated poetic songs, repeated over and over again, accompanied by a variant rhythm.¹² When a child is able to take its first step across the floor, "the rug was ready to ease its possible fall."¹³

At the age of one, the first birthday, a more elaborate party is given and the baby is clothed in a special

¹²For information on Korean poems and songs, see Homer B. Hulbert, The Passing of Korea (Doubleday, Page and Co., New York, 1909), Chapter XXV, pp. 314-329. There are a number of folk tales in Korea. All the stories are directed toward honesty, virtue and faithfulness. The folk tales are often told by the grandmother or grandfather to their grandchildren. For Korean tales, see Tae Hung Ha, Folk Tales of Old Korea (Seoul, Korea: Korean Information Service, Korean Cultural Series, Vol. VI, 1958). Korean parents like to use proverbs frequently for promoting a child's reasoning power. See Korean proverbs, Chong Hyun Pang and Sa Hyup Kim, Soktam Sachun [Dictionary of Proverbs], in Korean, (Munsung-kak, Seoul, Korea, 1958).

¹³William E. Griffis, Corea: The Hermit Nation (Charles Scribner's & Sons, New York, 1897), p. 257.

costume. At this time he will be introduced formally to the relatives and invited guests. The function of the parties for the infant is to "rejoice in the continuation of the family."¹⁴

When able to talk, a girl speaks submissively and low, a boy is taught to respond boldly but never to involve in physical fighting or verbal argument. On the occasion of the new year season, the father makes a kite for his son to join a contest. This is the occasion by which the child will learn to compete with others to promote a healthy cooperative spirit. The Rev. Gale, who was in Korea during the 1880's as an American Presbyterian Missionary, made the following remarks on the new year season:

Each New Year season there are contests in kite flying, the object being to cut the enemy's string and let his kite go . . . These contests are quite as exciting as anything seen on an American baseball field . . . Little boys in red jackets and white pantaloons are everywhere on tiptoe of expectation for fallen string or stray kite. . . A little lad with radiant face and red coat caught the string and, in his haste, took a grip of it and ran toward home, forgetful of the glass filings and glue. Someone caught the other end and drew it through his hand. At once he dropped it and looked, and there a line oozed out of his chubby fingers and as red as his New Year's jacket. His features suddenly reversed, and in bitterness and

¹⁴ Cornelius Osgood, The Koreans and Their Culture (Charles E. Tuttle Co., Tokyo, Japan, 1954), p. 95.

woe he went home to tell his mother of the sorrows and defeats of New Year's day. But over in the other ward there was feasting and music, and the mothers there said there never had been such kite-flying since the founding of the Yi Dynasty.¹⁵

Although the father loves his son with utmost affection, the father always keeps in mind the importance of the child's future function in the family, particularly that of the eldest son. "The behavior which is learned from his superiors at the age of three shall be remembered throughout the son's lifetime,"¹⁶ and the distinction between the father's love and the son's duties toward his father should not be mixed. Though the father has affection for his son, at the same time, he is a disciplinarian. The father is sometimes called "byorak," or lightening thunder. On the other hand, the mother is termed as "yang" or sheep, because she "yields to her boy's caprices and laughs at the child's faults and vices without rebuke."¹⁷

With regard to the children's diet and health, parents during the Yi dynasty apparently learned and/or conformed to,

¹⁵Rev. James S. Gale, Korean Sketches (Fleming H. Revell Co., New York, 1899), pp. 162-164.

¹⁶Korean Survey (The Washington Bureau, The Korean Press, December, 1954, Vol. 3, No. 10), p. 11.

¹⁷Griffis, op. cit., p. 257.

certain teachings that appeared in various books. For example, a book entitled Chong-chang-kwan-chon-so (靑莊館全書), written by Dok Mu Yi, makes the following statement:

A child is fond of running and likes to eat salty foods, which will cause his temperature to rise high, thus forcing him to drink much water. As a result, he will frequently become ill. Therefore, a child can show obedience to his parents by resting when it is necessary and by being cautious about the food he eats. . . .¹⁸

It is the parents' responsibility to see that his son's and daughter's manners and behavior are properly learned.

It is the prevailing unwritten social code during the Yi dynasty that "male and female should not sit close after the age of seven."¹⁹ The boy is taught by the father to respect elders as well as the parents.²⁰ The woman is taught by the parents "not to be jealous about things and not to be cruel."²¹ Whenever a son meets his father in the street, the son "must make a profound salute on his knees When writing to his father, the son must make free use of the most honorific terms."²²

¹⁸As quoted in Young Ha Choo, The Education in the Yi Dynasty (Soodo Women's Teachers College Publication, Seoul, Korea, 1961). The quotation is slightly modified. P. 120.

¹⁹Korea: ILP&COAA, op. cit., p. 623.

²⁰Gale, op. cit., p. 190

²¹Osgood, op. cit., p. 100.

²²Griffis, op. cit., p. 259.

The son, especially the eldest one, is sent to the Confucian village school which is called the "sotang,"²³ to learn how to read and write Chinese characters and above all, master proper manners and family rules. At home, the son learns the "ku-ku," [nine times nine] or multiplication tables and fractions from the father.²⁴

The son, around the age of eight, is asked to observe how the elders perform ancestor worship and other connected rites. The son will learn filial piety: "You grew after some three years of feeding in your mother's arms. Even if you do the utmost in your mature life to please your parents, you cannot possibly repay more than a small fraction of what your parents have done for you."²⁵ Therefore, after you are older, "one should not neglect to support one's parents."²⁶

²³Young Ha Kim, Kuksa Ui Yonggu [Study of the Korean History], in Korean (2nd Series, Pakyoo-sa, Place publication unlisted, Korea, 1959), p. 298. According to the written historical records, the "sotang" existed in various communities in Korea up to 1923 when the Japanese Educational Bureau of the Government-General formally abolished it. Governor-General of Chosen, Annual Report on Reforms and Progress in Chosen: 1921-1922 (Keijo [present Seoul], Korea, 1923), pp. 84-5.

²⁴Griffis, op. cit., p. 258.

²⁵The quotation is slightly modified and is taken from Hui-Chen Wang Liu, The Traditional Chinese Clan Rules (J.J. Augustin Inc., Publisher, Series No. VII, New York, 1959), p. 50.

²⁶Shimizu, Shina Shakai no Kenkyu, op.cit., p. 346.

"Since your life is delivered from the principles of heaven and earth as embodied in your parents, you should be forever grateful to your parents for having brought you into life, as you should be grateful to heaven and earth."²⁷ Therefore, one must follow the Five Relations²⁸ and master proper forms of behavior.²⁹

All human beings alike have the seven feelings, namely, pleasure, anger, grief, fear, love, hate, and desire. Real happiness consists not in the possession of things or gratification of desires, which know no bound, but in the pacification of the mind. When the father finds his child complaining over a certain matter, he usually would say to his son: "If you compare yourself with those above [i.e., those who are more unfortunate], you may find that you have not enough; but if you compare yourself with those below [i.e., those who are less fortunate], you will find that you have more than sufficient."³⁰

²⁷ Liu, op. cit., p. 50.

²⁸ See Chapter I, Section 2 of this thesis for information on Five Relations.

²⁹ Shimizu, op. cit., p. 409.

³⁰ Tien-Hsi Cheng, China Moulded by Confucius (Stevens and Sons, Ltd., London, 1947), p. 26.

Girls up to ten enjoy considerable freedom, and can play in the yard and see anyone that comes, "but the time arrives when she must never be seen without 'changot' or sleeved apron, over her head held close about her face. From that time she remains mostly indoors, and is familiarly seen only by the members of the household and the immediate family."³¹

A son must not play nor smoke in his father's presence, nor assume a free or easy posture before him, and the children, "as soon as they get up in the morning, [must pay] respect to the 'superiors' with the morning bow. At the table the superiors have to pick up the spoon first before others can start eating."³² If the father is old and sick, "the son sleeps near him and does not leave his side day or night."³³

When a son reaches about thirteen, it is the custom during the Yi dynasty for the father to allow his son to follow wherever the father visits, at which occasion the son

³¹Hulbert, op. cit., p. 351, see also Choo, op. cit., p. 127.

³²Korea: ILP&COAA, op. cit., p. 622.

³³Griffis, op. cit., p. 259.

may be able to learn social manners and observe various familial ceremonies such as weddings, funeral rites and other customs. In the broader context of social manners, the father instructs his son:

When you are in company with your teacher, do not go aside of the road to speak to others. When you meet your teacher on the road, run forward, and stand properly to salute him by raising both hands grasped together. If the teacher speaks to you, answer him respectfully. If he does not speak, retire. When you are a guest, do not ask for things to which you may be accustomed [at home]. When you are about to enter the hall, you should make some noise [in order not to cause a surprise to the people inside] . . . When there are two pairs of shoes outside the door of a room,³⁴ enter only when talking is heard. If no talking is heard, do not enter.³⁵

The father always reminds his son of "human immortality."³⁶ An instruction is given to the son that even if the father is "accused and condemned to exile, the son must at least accompany his father to the end of the journey, and if necessary, the son should share banishment with the father."³⁷

³⁴As a rule, in the house, people sat on mats, and so they took off their shoes and left them at the doorway when they entered a room.

³⁵Cheng, op. cit., pp. 31-2.

³⁶Hulbert, op. cit., p. 134.

³⁷Griffis, op. cit., p. 259.

The father instructs him that misbehavior on the part of the descendant generations may erase the long built "family name."

When the son comes of age, the father arranges a marriage. When a son marries, he and his wife, without exception, live in the same house with their parents or grandparents. During the Yi dynasty, because people marry at a very young age,³⁸ they are not capable of self-support. As a result, even after the son's marriage, parents assume the responsibility to support him, his wife and his children, if any.

So long as the parents live, the son's entire earnings, including his wife's, if any, goes into the family budget. When the parents become older, the eldest son assumes more and more of his father's roles, and his wife takes over the mother-in-law's household affairs and thus, the family tradition is maintained.

These responsibilities together with other related family problems such as succession of property and headship

³⁸ During the reign of King Saejong, the legal marriage age was set for the male at 16 and for the female at 14. The Saejong Factual Records, Vol. 88, March, 1440, p. 27.

of the family, all come under the chongbop system. The responsibilities carried on by family heads during the Yi dynasty were by no means a simple task, but rather, the parents of those days tried their utmost to train their children for the important functions and duties of manhood and womanhood.

Family properties are for family consumption, and hence jointly owned. Every child, married or not, with the exception of married and unmarried daughters, has a claim, but the family property cannot be divided. All the properties, including the house, are transferred automatically to the eldest son. Under extenuating circumstances, however, the parents may appoint one of the younger sons to manage the affairs of the family property, and by law then, the appointed member shall assume the responsibility.³⁹

³⁹Hidekichi Kondo, Shin Hogaku Zenshu, Sosokuho [Collection of the New Law: Law of Succession], Vol. 15, in Japanese (Nippon Hyoron-sha, Tokyo, Japan, 1941), pp. 11-14. Under extenuating circumstances means, if the eldest son is (1) blind, (2) mental patient, (3) mute, and that the eldest son cannot assume his full responsibilities as the head of the family. Ibid., p. 288. For detailed information, see Supreme Court decision, Taisho 7-3-15: Minroku No. 25, p. 414. See also Minji Kanshu Kaito Ishu, op. cit., p. 170.

The major division and disposal of property is possible only under these two specific conditions: (1) When a married son is legally approved by the father and the clan council to separate from his father's house, and (2) When the entire family migrates from the original locality and properties are immovable. In either case, unanimous consent of the clan council is necessary.⁴⁰

Under the Korean chongbop system, clan rules together with social regulations vest power in the father to discipline, administer, and direct almost everything regarding family matters. Nevertheless, there are no records to substantiate any committal of brutal acts against the children even though there is considerable evidence which indicates that criminal acts ranging from burglary to murder were prevalent in the population.⁴¹ There is no indication of parental infanticide in Korea, while there are many such practices in the Far East as well as many other parts of the world.⁴²

⁴⁰ Kim, Chosen Kajok Jaedo Yonggu, op. cit., Chapter IV.

⁴¹ Annual Report on Reforms and Progress in Chosen, op. cit., p. 216.

⁴² For information on infanticide, see Edward Westermarck, The Future of Marriage in Western Civilization (The Macmillan Co., New York, 1936), Olga Lang, Chinese Family and Society (Yale University Press, New Haven, 1946), pp. 46-7, and Robert H. Lowie, Primitive Society (Harpers & Brothers, New York, 1961), pp. 46-48.

The father has extraordinary authority over his children with regard to marriage. The father, with the cooperation of his wife, his relatives, and friends, eventually determines the child's marriage. However, the father always has in mind family prosperity and family happiness. But the parents' authority over their children would legally terminate under the following conditions: (1) If the father is criminally convicted and is in prison; (2) If the father leaves home without giving any indication of his new location and has been completely absent from the home for over a half a year; (3) If the parents' authority has been suspended by the clan council because of a) Mental illness, b) Insanity or c) Incapacitation of some kind; (4) In case the mother has been legally divorced and then remarried into another family; (5) After the daughter's marriage; (6) Death of the parents; (7) Death of the children.⁴³

⁴³ The information is obtained from the following sources: Minji Kaito Ishu, op. cit., sec. on Shinken [parental authority], Atsushi Kurumada, "Chosen ni Okeru Kazoku Seido ni Kansuru Ichi ni no Kenkyu," [The Study of One or Two Facts about the Korean Family System], Chosen, in Japanese, Series 268:56-78, 1937, Kiroshi Yomokata, "Chosen ni Okeru Daikazoku to Dozoku Buraku," [The Greater Family and Clan Village of Korea], in Japanese, Chosen, Series 270:26-42, 1937. See also Chapter IV of this thesis for more information on "parental authority."

Thus far the writer has presented the parental responsibilities regarding the junior members of the family. It is, therefore, appropriate to examine the junior members' duties toward their parents.

3. Junior Members' Duties Toward Their Parents

The junior members' duties toward their parents are variously described and differ somewhat, depending upon the clan rules and the family tradition. The junior member's obedience, respect, and devotion to his parents is termed "Hyo-sun," which means "filial piety."

It is difficult to present a precise definition of the word "filial piety," or what makes a "dutiful person." Let us examine this from the Confucian tradition. It is said in a Confucian classic that:

While a man's father is alive, look at the bent of his will; when his father is dead, look at his conduct. If for three years he does not alter from the way of his father, he may be called filial.⁴⁴

⁴⁴ James Legge, trans., The Chinese Classics: Part I, Confucius, Part II, Mencius (Houghton, Mifflin and Co., Boston, 1882), p. 15. See also Rysaku Tsunoda and others, ed., Sources of Japanese Tradition (Columbia University Press, New York, 1959), p. 384, for Japanese version of "filial piety."

In serving his parents, a son may remonstrate with them, but gently; when he sees that they do not incline to follow his advice, he shows an increased degree of reverence, but does not abandon his purpose; and should they punish him, he does not allow himself to murmur. If the son for three years does not alter from the way of his father, he may be called filial.⁴⁵

If for the whole three years of mourning a son manages to carry on the household exactly as in his father's day, then he is a good son indeed. Filial sons nowadays are people who see to it that their parents get enough to eat.⁴⁶

Mencius, who had a profound knowledge of human nature, said:

When a man is young, he turns his thoughts to his father and mother. When he begins to feel the attraction of beauty, he turns his thoughts to the young and beautiful. When he is married and has children, he turns his thoughts to his wife and children. A man of great filial piety turns his thoughts to his father and mother for life.⁴⁷

In other words, a man would naturally cleave to his wife, whereas the parents, as they advance in age and gradually in time become dependent, are in danger of being neglected, unless there are doctrines or customs to maintain a

⁴⁵ Legge, Ibid., p. 26.

⁴⁶ Arthur Waley, trans., The Analects of Confucius (Random House, New York, 1938), pp. 89 and 106.

⁴⁷ Mencius, Book V, Pt. I, Ch. 1, Sec. 5, as appeared in Cheng, op. cit., p. 183.

just balance, not to mention that the days with the wife are long, while those with the parents, from the day when one is married, may be short.

A more specific definition of filial piety in medieval Chinese practice is given in the Family Instructions and New Family Regulations which says:

Filial piety consists of providing for and attending to the needs of parents every day. A son should obey their commands, relieve their anger, and remove their worries. When parents are in error, he should give them proper advice, but only with a pleasing countenance. When parents become ill, he should give utmost care and personal attention. A son who does not distinguish himself socially should work hard enough in farming so as to assure his parents of adequate livelihood. A son in an official career should earn a good reputation so as to bring his parents public glory. When his parents die, a son should not be miserly in arranging a proper funeral with good clothing and a coffin for burial. Burial should follow without undue delay at a well chosen site. He should visit the grave of his parents at regular intervals and remember them through memorial service.⁴⁸

An examination of actual written records showed that the king annually rewarded those persons who performed distinguished filial duties toward their parents. In the year 1431, King Saejong (1419-1450) ordered several of his scholars to record the most illustrious deeds, in picture form,⁴⁹

⁴⁸ New Family Regulations, p. 12, as quoted in Liu, op. cit., pp. 53-4.

⁴⁹ See Appendix II of this thesis.

explained both in Korean and Chinese, so the populace would be able to read and follow. The compilation was initiated in 1431 and finally produced in two volumes three years later. According to the records, among others, the following cases were honored by the king:

(1) Upon one occasion, a man was attacked and killed by a tiger. His 15-year old son, in order to avenge his father's death and get back the body, pursued and chopped the animal to death. The Father's remains were thus recovered and buried. The son's mettle and his sense of devotion were acknowledged by the king's presentation of a special piety award.⁵⁰

(2) A filial piety award was also presented to an adolescent boy who chopped off sections of his buttocks, boiled them, and offered them for his ailing mother's consumption. She ate them and subsequently recovered.⁵¹

(3) A son dreamed that a monk advised him to cut off his fingers, grind the bone to a powder, and serve it to his

⁵⁰ Ja Hyon Ki, ed., Tongkuk Shinsok Samkwang Haengsil [Revised Edition: Illustrated Deeds of Three Constant Relations], in Korean and Chinese, Vol. I (National Library of Korea, Seoul, Korea, 1960), Reproduced form, p. 2. See also Appendix II, cut 1.

⁵¹ Ibid., p. 118. See Appendix II, cut 2.

convalescing father. He followed his dream's directive and his father recovered; the boy's attitude prompted the granting of a similar award.⁵²

(4) During the time that a boy was observing a three-year mourning period for his father's death, his home caught fire. He carried his mother to safety, but she nevertheless succumbed from injuries. Of course, the observation of an additional three years mourning for his mother's death brought the total continuous mourning period to six years. This diligent exhibition of filial piety was rewarded by the king's special award.⁵³

An observation of the above statements reveals that filial piety requires junior members of the family to perform three basic duties toward their superiors and parents. These are: First, while the parents are living, junior members should provide material goods, i.e., food, clothing, medical care in time of illness, and money for travel, etc. Second, provide parents psychological comfort, i.e., relieve anger, tensions, worries, etc., by showing respect

⁵² Ibid., p. 137. See Appendix II, cut 3.

⁵³ Ibid., p. 396. See Appendix II, cut 4.

and obedience. Third, after the death of parents, junior members must continue to perform ancestor worship. If he fails to perform any of these duties, the son cannot be a filial person.

Junior members must show respect to and treat the deceased parents just as if they were still living. If there are any unfinished tasks which his parents leave behind, it is the son's duty to accomplish them. Junior members of the family, especially the eldest son, must not, under any circumstances, ignore the duty of filial piety. The eldest son must, as long as the parents live, support them.⁵⁴ The son and his wife perform services for the parents without showing signs that they are tired of doing so and junior members of the family should make their parents feel at ease by providing goods and psychological needs.

During the Yi dynasty, kings decreed that a child should be reverent and obedient to his superiors.⁵⁵ There were cases wherein a son was convicted as a criminal and

⁵⁴Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 153.

⁵⁵The Taejo Factual Records, Vol. 8, July, 1906, p. 1.

was freed from punishment by virtue of a "tuksa"⁵⁶ so that he could continue to support his aged parents, who had no one else to support them.⁵⁷

According to Dr. Kim, the unfilial is defined as (1) being disobedient to one's parents, (2) mistreatment of a wife, (3) unbrotherly conduct between brothers, (4) unfriendly conduct toward a neighboring villager or stranger, (5) false pretense in marriage issue or refusal to help a person in solving a marriage issue problem, (6) misbehavior during the funeral ceremony and ancestor-worship, and (7) obtaining a concubine from public entertainers.⁵⁸

⁵⁶"Tuksa" means "Special amnesty." In Chinese it is written (特赦) and pronounced as "Teh-she." Both Korea and Japan use the same Chinese character even to date. Chin Woo Yoo, ed., Kukyak Taejun Hwaetong [Translated Edition: Comprehensive Compilation of National Statutes], in Korean, (Koryo University Press, Seoul, Korea, 1960), p. 508.

⁵⁷Kim, Chosun Kajok Jaedo Yonggu, *op. cit.*, p. 406. Furthermore, when the king found sons and daughters whose filial piety was well known to the community, he personally invited them to the palace and awards were given. Chosen Sotokufu, Chusuin, Richo Fuzoku Kankei Shiryo Saiyo [Yi dynasty's Custom Collections], in Japanese (Keijo [present Seoul], Korea, 1939), p. 229. In passing, we should note here that even when court orders the execution of a convict on a given date, special consideration will be given if the situation demands. "The murderer was taken for trial . . . and faced his death sentence. . . . As he was engaged at the time in writing a poem, the authorities postponed his execution for ten days in order that he might have time to finish it." E.G. Kemp, "The Face of Korea," The Face of Manchuria, Korea, Russian Turkestan (Chatto & Windus, London, 1910), p. 106.

⁵⁸Kim, Chosun Kajok Jaedo Yonggu, *op. cit.*, p. 153.

A violation of filial piety is considered as "violation against the moral code," and deserves punishment. As a rule, the punishment is performed by the parents, by the clan officials and/or by the government authorities. At the family level, when children violate the rules of filial piety as specified in the "chokbo," such as misbehavior, lying to the parents, fighting with brothers, sisters and friends, etc., parental punishment will follow. The punishment is comprised of either bowing before the ancestral hall, kneeling down on the floor until he becomes aware of his misbehavior, spanking, confinement and withdrawal of meals, or in minor cases, verbal warning.

Some behavior is considered to be not only a violation of social norms but also a violation of filial piety. For example, if the acts of violation seem to attract, or call the neighbor's attention to the deed, such as taking someone's property without permission, selling properties without the parents' consent, etc., as a rule, the case will be handled by the clan officials comprised of elderly male persons. If an offender is single, the matter will be handled by the parents with the cooperation of the paternal uncle. The married son's punishment will be administered by the clan council.

If the offense is considered to be very severe, for example, rape, beating senior members or parents, forgery, murder, disrupting the peace of the village, etc., the matter will be reported to government authorities for punishment.⁵⁹ Among others, during the Yi dynasty, when "a child purposely avoid from mourning rites, after the death of the parents, he will be sentenced to one year imprisonment,"⁶⁰ and "a child gets married while grandparents and/or parents are being confined in the prison, will be punished by 100 blows."⁶¹

⁵⁹The types of punishment varies. At the home and clan level, with exception of an unmarried man, physical punishment, i.e., spanking or hard labor, will be given. According to the existing literature regarding Yi dynasty's government actions, the following methods are taken: (1) Physical punishment, i.e., confinement and hard labor, exile to an island and flogging. (2) Material punishment, i.e., fines by money or by goods, confiscation of house, land and properties, etc. Annual Report on Reforms and Progress in Chosen, op. cit., Sec. 69, Korea, ILP & COAA, op. cit., pp. 140-2; Angus Hamilton, Korea (Scribner's Sons, New York, 1904), p. 112. In addition to above, an information regarding the Yi dynasty's criminal interrogation methods, see Richo Gohyakunen Shi, op. cit., pp. 30 and 109, and Yoo, Kukyak Taejun Hwaetong, op. cit., pp. 548 and 600-601.

⁶⁰Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 403.

⁶¹Ibid., pp. 403-4.

Once a person is punished by the government, as a result of concerted action of the council members, the violator's name will be erased from the chokbo and he will ultimately be expelled from the clan village, thus becoming a "chunin," the lowest social class in Korea. The expelled member finds it difficult to integrate into society or into any groups. He is forced into the chunin class and discriminated against by the people in regard to marriage, place of residence and occupation.⁶²

As we have seen, filial piety is regarded as one of the most important instruments by which the family members are controlled. In fact, filial piety and its rules are aimed at binding all the members of a family, clan and society by means of legal and social forces. The children are required to devote their entire energy and attention to please and support parents. There are, in fact, numerous cases where the children sacrifice their entire lives to support parents: some males even sell themselves as slaves and females as prostitutes. While a son serves in a government post, he will be excused from the official duties, by

⁶²For information on class systems during the Yi Dynasty, see Chapter I, sec. 5 of this thesis.

law, to observe funeral and mourning rites for three years. In some instances, when a king learned the parents had an only son, the king personally ordered the son not to join the military service but to remain with the parents and support them until they die.⁶³

As long as the individual follows the rules of filial piety and remains in proper relation with his parents, relatives and his friends, he is regarded as a man of virtue and therefore, a filial and successful man. Sons must support their parents until their parents' death; married children cannot establish a separate household without permission of their father; neither son nor daughter can contract or dissolve a marriage without the permission of parents; and sons are not allowed to leave without the consent of their father. These rules are all specified in the clan rule, *chokbo*, under the *chongbop* system in Korea.

The parental authority over their children and the demand for the children to be obedient toward their parents are understandable when we observe the following facts. When

⁶³ Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 406, Richo Gohyakunen Shi, op. cit., p. 29, and Yoo, Kukyak Taejun Hwaetong, op. cit., p. 508.

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a son, married or unmarried, commits a crime and the government cannot locate him, the government would force the father to arrest him. Even after the government's arrest, when the government convicts him for the violation of the law, the father would also be held responsible for a child's criminal behavior and punished. When a son's offense is a severe one, the King's court may have all the members of the family punished: sometimes all the members of the family would become public slaves, and sometimes all the family properties would be confiscated by the government.⁶⁴ This being the case, the father, in order to preserve the family unity and to avoid the family catastrophe, demands that his children be obedient to the parents, to respect government authority, to be cordial to the brothers and sisters, and to be friendly to other people.

4. Relationships Among the Junior Members of the Family

Now let us turn to the relationships among the junior members of the family, brothers and sisters. All the family

⁶⁴For detailed information on laws, see: The Taejong Factual Records, Vol. 22, November, 1412, p. 39.

members, as a rule, recognize that the daughters will sooner or later marry into another family; thus the main stress is placed upon the relationships of the brothers. There are few provisions which specify what should be the sisters' relationships with the brothers.

To a large extent, little or no formal education (so-tang) is possible for the daughters under the chongbop system. Daughters are, however, able to learn from their mothers such things as housekeeping, floral arts, some music, methods of child-rearing, sewing, cooking and other duties pertaining to the female in general. Along with the daughter's mental and physical growth, the mother's instructions are mainly concentrated on the subject of the women's duties toward her future husband and his family.⁶⁵ Sisters are subject to segregation from male affairs and severe seclusion prevails during the Yi dynasty.

Under the chongbop system, in fact, a daughter has no status whatsoever within the family circle. However, after the daughter's marriage, status will be granted her by the

⁶⁵ For further information on female life in Korea, see Korea: ILP & COAA, op. cit., Chapter XXII, Kyung Cho Chung, Korea Tomorrow: Land of the Morning Calm (The Macmillan and Co., New York, 1956), pp. 35-8, and Choo, op. cit., p. 127.

husband's family--as a wife, as a daughter-in-law, as a mother and as grandmother. An unmarried daughter is, according to an unwritten social-ethical code required to be submissive to her parents and elder brothers, and kind to her younger brothers and sisters. Even after the marriage, and throughout her married life, she will be subordinate to the men and her superiors--husband, father and mother-in-law and other elder members of her husband's family.

It is different with the brothers. Under the chongbop system, the law provides that all the brothers are on an equal level except in family succession--the family headship or kajang, the right to a place in the ancestral hall, and property succession.⁶⁶ In spite of the fact that the law provides that all the brothers are to be treated on an equal basis, customs demand that the younger brothers should render reverence, respect, and obedience to their elder brothers. Inasmuch as the eldest brother is the direct propagator of his father's line, the eldest son has the right to advise and command the younger brothers regarding family matters including family property.

⁶⁶Kim, Chosun Kajok Jaedo Yonggu, op. cit., pp. 268-271. Kondo, Law of Succession, op. cit., p. 27. See also Yoo and Ko, op. cit., p. 576.

Younger brothers are not, under any circumstances, allowed to contract matters with other individuals and families regarding business negotiations and marriage without the permission first from his parents, if living, or elder brother. Under no condition, unless an extraordinary situation develops within the family, may younger brothers marry until all senior brothers marry first. If for some reason the elder brother's marriage is delayed, younger sisters may get married before the elder brother's marriage,⁶⁷ but only after the permission of the father, the elder brother and the clan council is secured. The authorities and responsibilities of the wives of brothers living in the same house are, in many respects, the same as that of their husbands. However, in the event of the death of their mother-in-law, her place in the household will be taken by the eldest son's wife.

Punishment for unbrotherly conduct generally follows the same pattern as that for filial impiety. According to

⁶⁷ According to the court records, King Younsankun (1470-1494), ordered appropriation of government funds to support older females who cannot get married because of lack of money. Richo Fuzoku Kankei Shiryo Satsuyo, op. cit., p. 420.

Liu's investigation of some 97 clan rules, the following items are considered causes of unbrotherly conduct.⁶⁸

	No. of clans
Craving for family property or inheritance . . .	56
Influence of a selfish wife	56
Friction between the brothers' wives	19
Jealously caused by a brother's obtaining wealth from sources outside the family	9
Favoritism of parents in not treating sons equally, especially between sons of a wife and sons of a concubine	4
Gossip of domestic servants	3
Difference in temperament of brothers	2
Refusal to let a son be the heir of a brother. .	1

As we have observed, the chongbop system vests authority in the parents and especially in the father for the management of family affairs. At the same time, since the chongbop recognizes only the patrilineal family organization as the basis to perpetuate the family, the status of the mother and other females is quite low. Elder brothers are considered superior to those younger, because the elder son will assume his father's role and maintain family affairs.

⁶⁸ In addition to "causes of unbrotherly conduct," the following items are considered brotherly love: (1) Affection from the elder brother and respect from the younger brother. (2) Sharing property in common with one's brother. (3) Taking care of the widow and orphans of one's deceased brother. (4) Harboring no grievances and resentment against one's brother. For further information on the relationship between brothers, see Liu, *op. cit.*, pp. 60-70.

The conduct of the individuals is checked and balanced according to the sex, order of generation or birth, and age. The family members are further controlled by family customs, clan rules, and social regulations which are based on Confucian philosophies and ethics. By far the most important element which molds and restricts the behavior of individuals is that of "filial piety" specified in the chokbo. The filial person, man or woman, is regarded as a person of virtue, and the king often decreed a memorial gateway, column, or temple for him.⁶⁹

5. Family Registry or Chokbo

Closely allied with the chongbop system is the family registry, chokbo. In order to distinguish and regulate the members of a large family or clan, each clan group preserves family records or a registry which is called a "chokbo" in Korea.⁷⁰ The family registry or chokbo is similar to the

⁶⁹ Richo Fuzoku Kankei Shiryo Satsuyo, op. cit., p.229. See also Chosen Sotokufu, Chusuin, Korei Izen no Fuzoku Kankei Shiryo Satsuyo [Custom Collections Prior to Koryo Dynasty], in Japanese (Keijo [present Seoul], Korea, 1941), pp. 299 and 418.

⁷⁰ The laws provide that the chokbo, as well as graveyards and things pertaining to it, should not be confiscated by any authority under any circumstances because "it is the family property," and does not belong to an individual. Civil law, 897: Civil Suit, Case No. 570 I, xi of Republic of Korea, Yoo and Ko, op. cit., p. 626.

records of a modern city or county office. The only difference would be that, in Korea the scale is smaller because of the size of villages. In addition, the modern city or county office is more specialized in terms of (1) Issuing birth and death certificates, (2) Issuing marriage licenses, (3) Maintaining court records on divorce, punishment, etc., (4) Property registration and records on transactions, etc. The modern city or county office is dealing largely with a heterogeneous population, while in Korea, the record system is based on a homogeneous population.

The maintenance of a chokbo is quite important throughout the Yi dynasty and the chokbo is still considered as a family treasure. According to one authority on China, the chokbo "did not come into wide use in China until the Chou period (1122-256 B.C.)." ⁷¹ An authority on the Korean family states that the chokbo system was introduced from China but when it reached the Korean peninsula is uncertain. ⁷² Among others, one of the most significant purposes of having such a chokbo is, unlike modern registration, devoted

⁷¹ Shimizu, op. cit., p. 215.

⁷² Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 75.

"explicitly to social control and guidance of the members in their attitudes and behavior."⁷³ Professor Kim remarks that the chokbo was intended to unite family members, regardless of how remote the connections were among them, as long as these members bore the same surname. Thus they were considered as members of a big-family for survival purposes.⁷⁴

The chokbo is primarily designed to achieve the following objectives: (1) Regulation of marriage,⁷⁵ --persons whose names appear in the chokbo should not intermarry. (2) Identification of the individual's position within the family so as to regulate (A) Property succession,⁷⁶ (B) Marriage order, (C) Family status and (D) Duties and responsibilities,⁷⁷ (3) Ancestral-worship--identification of ancestors and location of graveyards so that rigid ceremonies may be carried out by specified persons.⁷⁸ (4) Identification

⁷³Liu, op. cit., p. 9.

⁷⁴Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 71.

⁷⁵See Chapter III of this thesis.

⁷⁶Ibid., pp. 268-9. Kondo, op. cit., Sec. 3.

⁷⁷Yoo and Ko, op. cit., p. 719. See also Eisuke Zen-sho, Chosen no Zuraku [Korean Village], in Japanese (Chosen Sotokufu Investigation Material Series, 38-29:41, 1933-1935).

⁷⁸Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 71. Hozumi, op. cit., pp. 104-8.

of adopted children and illegitimate children so as to facilitate the above items (1), (2), and (3) in their behalf. (5) Identification of offshoot clan members--those who are separated from what family and where and how they became established clan village. (6) Identification of criminals--any person who is convicted by the clan council or by the government is subject to supervision at all times by clan council members so as to prevent further criminal acts.

There are largely two different types of family registry. The one is the chokbo itself and the other is termed the kachop (家牒) of family note, which is on a smaller scale and secondary to the chokbo.⁷⁹ To be more specific, the chokbo is required to specify all the clan members' personal history such as generation or birth order, sex, birth hour, date and year, original name and nickname, if any, and later to gradually add or modify items as personal status changes. The specifications should include three major lines, (1) Paternal relatives, (2) Maternal relatives,

⁷⁹In addition to chokbo and kachop, there are numbers of names given to signify different types of records, i.e., geneology records, house records, name records, etc. For more information, see Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 72.

and (3) The relatives of the wife, so as to be able to distinguish and trace who became married to what family or clan, their family status, how many children are born, medical history or serious disease--especially leprosy--punishment, awards presented by the king and honorable positions secured in government through national examinations, and all other related matters of the members of the clan. When a person dies, the registry must specify hour, date, and year of the death and location of the grave.⁸⁰ Such information is very important because it is related to ancestor worship.

On the other hand, the "kachop" simply specifies the history of the nuclear family, its connection with other nuclear families within the clan group, and records on marriage relations with other clan members and other relationships in general. It is, therefore, a unilateral family record and is limited in scope.

For both the chokbo and kachop, a complete nomenclature is gradually created for the complicated, yet well-defined family relationships which we have observed in the

⁸⁰Ibid., p. 76.

previous section. In the chokbo, the terms are used to identify each member according to the age, sex and generation order. Senior members are distinguished from junior members, elder uncles from those younger than the father of the given nephew, direct female ancestors from male, and junior sisters from senior sisters. These distinctions are extended to the most detailed of family relations; from great-great-grandparents to their sixth generation descendants, including all collaterals.

Each chokbo, as a rule, specifies clan-rules and elaborate philosophies as well as practical aspects of duties and responsibilities of clan members. To illustrate the objectives and characteristics of clan rules, the following remarks may be made.⁸¹

The clan rules in whatever form share many, if not all, of the following characteristics. First, these clan rules represent Confucianism in application. They uphold the moral concepts and principles and often seek to translate them into conduct befitting concrete social situations. They furnish the formalized details of status-ethics and ritual-ethics and define what the proper social relations should be between individuals under given circumstances . . . Second, these clan rules fulfill an important functional necessity in closely knit group life. The third characteristic of the clan rules is their intended flexibility rather than rigid application. Their stipulations on punishment are intended more often for preventive warnings

⁸¹Liu, op. cit., pp. 21-5.

than for actual enforcement, unless the latter becomes necessary. . . In sum, the clan rules combine moral teachings with human understanding and integrate social ethics with religious belief.

The clan council is responsible for seeing to it that members, events, and clan history are precisely recorded and filed. The overall revision of the chokbo does not occur annually; ordinarily a revision is made every 15-30 years, depending upon the size of the clan membership and the location of their subclan villages and wealth of the clan.⁸²

6. The Greater Family and Clan Village

The word "family" is sometimes interpreted as "kajok" (家 族) in Korea. In the strict sense, it has two distinct meanings. "Ka" means family itself, and "jok" signifies the "clan." Unquestionably, the family is the basic institution within which individual members have contacts each day and

⁸² In order to revise the chokbo, the clan council made an announcement each year through various media, asking each family head to attend the meeting. Since the Korean war, many families have left their original clan village, thus mobilization of the family heads is not an easy task. Despite such difficulties, each day the newspapers carry a number of advertisements devoted to the chokbo. For example, see Seoul Shimnun [The Seoul Daily News], in Korean, December 5, 1956, p. 1.

it is therefore a compact primary group. The greater-family, or the clan group is, without exception, composed of the numerous families occupying a whole or part of a village, and is therefore a somewhat loose body.

Since the clan is known as "the consolidating group organized by numerous component families which traced their patrilineal descent from a common ancestor,"⁸³ and "extends to the as yet unborn generations and to the long-deceased ones,"⁸⁴ the structures and the functions of the greater-family are indeed complicated.

Within the greater-family or clan group it is rather difficult to maintain personal intimacy because of its size of membership. If we are to regard a society or a nation as the "great-great-family," the body itself is still more loose than such institutions as nuclear, extended and greater-family groups. Nevertheless, the clan council often provides the intimate relationships among the clan members by offering various activities such as joint ancestor worship, festivals, marriage and funeral ceremonies.

⁸³Liu, op. cit., p. 1.

⁸⁴Martin C. Yang, Chinese Villave: Taitou, Shantung Province (Columbia University Press, New York, 1945), p. 45.

Like the extended family, the greater-family too owns and operates properties--mostly land--for the purpose of village defense, education, care for the aged, upkeep of the ancestral halls, repair of ancestral graveyards, and other matters pertaining to the clan welfare.

Before we examine the functions and other related areas of the clan villages, let us say a few words on the development of the clan villages in Korea.

In Korea, agriculture has been the main productive means of livelihood since the foundation of Korea, which dates back almost 2,000 years.⁸⁵ The clan group occupies the total or part of the villages throughout the nation with the exception of the city. The agricultural communities or clan villages are called "burak" (部落) in Korean⁸⁶ since the early part of the Three-Kingdoms Period around the first century A.D.⁸⁷ and can be roughly divided into two distinctive groups: clan group and mixed-clan group.

⁸⁵ Korea: ILP & COAA, op. cit., p. 111, Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 22, Griffis, op. cit., p. 21 and Osgood, op. cit., p. 229.

⁸⁶ Burak is equivalent to the Japanese "buraku" and is known in the West as either "burak" or village community.

⁸⁷ Eisuke Zensho, Chosen No Seishi to Dozoku Buraku [Koreans' Surnames and Clan Village], in Japanese (Kamie Shoin, Tokyo, Japan, 1952).

The former is almost exclusively dependent upon agriculture as a main source for survival, comprising the blood relatives and their sub-families' relatives. The latter is a mixed-clan group consisting of communities whose basis of livelihood is agriculture as well as trading, comprising two or more family groups carrying different surnames. In addition the mixed-clan group includes fishing communities as well.

The basic reason for the multiplication of the burak is the rapid increase of population itself. However, the development of burak communities is further quickened by the following reasons during the Yi dynasty.⁸⁸

1. Influential Government officials established the "additional liveable place" and in the meantime, their families or relatives occupied free lands and gradually formed a burak.
2. Government officials who received lands as retirement gifts from the government established buraks with their families and relatives.
3. Because of high population density in the southern part of Korea, some of the families were forced to find suitable places where establishment of a burak was possible (immigration of tribes).

⁸⁸ Summarized from Kim, Chosun Kajok Jaedo Yonggu, op. cit., pp. 136-137.

4. Political defection or exile of those who escaped or hide in the mountains and later settled down in a certain locality.
5. Those who escaped from their own village to avoid: (A) military service, (B) punishment, (C) government interference, etc., and later established a burak.
6. In order to protect the graveyards of the ancestor, some families moved nearby as a guard and later they gradually developed a burak.

In 1933, when the Japanese government (Government-General of Korea) undertook a nation-wide survey in north and south Korea, it was reported that there was a total of 14,622 clan villages. The breakdown of clan villages by number of families is seen on the following page.⁸⁹

Such clan villages are generally assumed to have existed long before the Yi dynasty. However, on the basis of the government's survey reports conducted in 1933 throughout both north and south Korea, it is revealed that with the exception of 458 clan villages which were listed as unknown,

⁸⁹Originally reported in the Japanese publication entitled Chosen Sotokufu-hen, Chosa Shiryo No. 41, Seikatsu Jotai Chosa No. 8, 1933 [A Study of the Korean Livelihood Compiled by the Japanese Government, Government-General of Korea, Series 41, Investigation No. 8], in Japanese, was quoted in Kim, Chosun Kajok Jaedo Yonggu, op. cit., pp. 126-127. The percentages were added by the writer. It was learned in China that 40 to 70 families usually occupy an entire village. Lang, op. cit., p. 174.

Clan village occupied by the families between	Number of villages	Percent
Less than 30	6,803	46.40
30 - 50	4,936	33.67
50 - 70	1,705	11.63
70 - 100	820	5.59
100 - 150	283	1.93
150 - 200	79	0.54
Over 200	36	0.24
Total	14,662	100.00

there were 207 clan villages which were over 500 years old; 646 villages 300-500 years old; 351 less than 300 but over 100 years old; and only 23 villages which were reported being less than 100 years old.

Viewed from the above data, it can be assumed that such clan villages might have been developed gradually from the 1400's and the peak years may be considered to be the middle period of the Yi dynasty, or about 1700. Of 665 clan villages which were listed either as unknown or over 500 years old, and which comprise approximately 39 percent of the total clan villages in Korea, we should assume that a good part of them have existed long before the 1400's.

Under normal conditions, the clan group is self-sufficient in terms of food supplies. The size of its population is large enough to achieve economic sufficiency

by virtue of mutual cooperation and division of labor among its members. The clan group often occupies the best lands. For the mixed-clan groups, which suffered from insufficient production and lack of labor force to make it self-sufficient, trading is required as the primary means of survival.

During the Yi dynasty, there are largely two types of trading: public and private trading. The former is "exclusively performed by the government, in the form of tribute to foreign countries," and the latter is "exchange of goods between private members of different communities."⁹⁰

In either case, the clan group or the mixed-clan group has an administrative council of its own, called "chin-jok-hwae" (親族會). The council is represented by the heads of the families and the oldest members of the clan.⁹¹ The clan council normally excludes all the females and unmarried males. The council head is, as a rule, elected from the paternal oldest member, yet capability and leadership are required.

Within the clan council a judicial section is established. The judicial officers can recommend to the clan

⁹⁰ Lee, op. cit., p. 108.

⁹¹ Yoo and Ko, op. cit., p. 719.

council amendment of the clan rules and propose new rules. Whenever a controversial issue arises, the judicial officers will study the matter and recommend to the clan council the appropriate decision.

Another section is the so-called administrative section within the clan council. Since the clan village owns and operates rice land and wooded land in addition to various properties such as shrines, guest halls, etc., the administrative section has the responsibility to keep all the records pertaining to the properties and their transactions. Of course, the "chokbo" is to be kept up to date. At the same time, since the clan village owns an ancestral shrine, a Confucian village school, and an entertainment hall for the guests, the administrative officers are responsible for the upkeep of these places.

Village defense, arbitration of controversial issues between neighboring clan villages, entertainment of the village visitors, clan children's education and other matters all cost money. There are largely two main sources of income. The one is the interest from loaning village funds, or properties such as rice-paddies or wooded land to other clan villages. The second source is the village tax which is called "burak-bi" (部落費). Each family is to pay the

village operational tax as requested by the administrative section of the clan council. The forms of the tax vary. As a rule three forms of payment are used: (1) currency, (2) food crops, and (3) cotton cloth, labor power and other materials if demanded.

In October or November each year, after all the rice harvests are over, the clan council members will get together and examine the financial standing. If there are ample funds in the treasury, money will be spent for village festivals, games and other recreations. As a rule, village defense, funeral and marriage ceremonies, and aid for the aged have first priority on the clan treasury.

One of the most important functions of the clan council is the responsibility to control clan members. The clan council is expected to assume the roles of making the clan rules and meting out punishment to members if necessary. There are three ways to take necessary punitive action against violators: by the family or the parents, by clan council, and lastly, by the government authorities.

The clan rules, as appearing in the chokbo, vary because they depend upon the individual clan. The following are considered to be the serious offenses and are

handled by the clan council: (1) Battery--against parents, senior members of the clan, brothers, sisters, etc.; (2) Inadequate support of parents and neglect of ancestor worship; (3) Mistreatment of village guests and disgraceful acts of any kind during the ceremonies; (4) Physical fights against neighboring villages; (5) Stealing and purposely destroying properties that belong to the clan or other families; (6) Spreading disgraceful rumors to contaminate someone's prestige, and other misbehavior which the clan council considers serious.

The punitive measures against the misbehaving clan members are varied according to the nature of the acts. When one is judged guilty from evidence or one's confession, an appropriate punishment will be ordered. If the violation is considered not too serious, the violator will be sent back home after verbal warning at the clan council and the ancestral hall, and his parents will be notified to supervise the guilty party more strictly. The most common methods of punishment are that of confinement at the ancestral hall until the subject expresses himself as rehabilitated. Sometimes, flogging and blows are meted out.⁹²

⁹²According to the official reports, "Flogging was removed from the list of penalties at the end of March, 1920." Annual Report on Reforms and Progress in Chosen, 1921-1922, op. cit., p. 212.

If the subject is proved to have been obedient in the past, to have made extraordinary contribution toward village welfare, or to have been filial to his parents, upon recommendation of any clan members, some consideration will be given. On the other hand, if the guilty party has repeatedly violated the clan rules and clan council members feel "there is little room for improvement," he will be severely punished.

As a rule, serious cases will be reported to the government to handle the punishment. According to the official Yi dynasty's court records, it was revealed that the following cases were handled by the government authority exclusively.⁹³

1. Murder.⁹⁴
2. Attempts to overthrow the government.⁹⁵
3. Violation of marriage rules, i.e., marriage between those persons who carry the same surname, and commission of adultery, rape, etc.⁹⁶

⁹³ Often King's court referred some cases back to the clan council for them to handle the matter.

⁹⁴ The Taejong Factual Records, Vol. 9, May, 1406, p.17; The Saejong Factual Records, Vol. 83, Oct., 1439, p. 7; and The Saejong Factual Records, Vol. 83, Nov., 1439, p. 9.

⁹⁵ The Taejong Factual Records, Vol. 22, Nov., 1412, p. 39, Vol. 30, Dec., 1415, p. 43, and Vol. 31, Jan., 1416, p.6.

⁹⁶ The Taejong Factual Records, Vol. 34, Nov., 1417, p. 28, and The Saejong Factual Records, Vol. 45, Sept., 1429, p. 19.

4. Violation of other government regulations such as contamination of national prestige, gross insult to the king, avoidance of military service or taxes, and forgery of any kind, etc.⁹⁷
5. Appeals either by individual or by the clan council.⁹⁸

The government punishment includes the death sentence, confinement, exile to an island, segregation in a designated place, hard labor, deprivation of privileges such as official title, honor, etc., an order to become a public slave, a fine (by currency, food crops or other materials), and confiscation of the house, agricultural tools, etc. One of the most common punishments was that of flogging.⁹⁹ A person who is punished by the government will have his name removed from the chokbo and he will be ultimately expelled from the clan council.¹⁰⁰

⁹⁷ The Taejong Factual Records, Vol. 22, Nov., 1412, p. 39, and Vol. 8, July, 1396, p. 1; and The Saejong Factual Records, Vol. 19, March, 1423, p. 26.

⁹⁸ The Taejong Factual Records, Vol. 7, April, 1404, p. 13, Vol. 19, Jan., 1410, p. 2, and The Saejong Factual Records, Vol. 13, April, 1459, p. 31.

⁹⁹ The Saejong Factual Records, Vol. 28, August, 1463, p. 31, The Taejong Factual Records, Vol. 9, May, 1406, p. 17, Vol. 21, Sept., 1423, p. 18, Vol. 22, Nov., 1412, p. 39. See also Chosen Sotokufu, Chusuin, Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collections], in Japanese (Chosen Insatsu Kabushkikigaisha, Keijo [present Seoul], Korea, 1939), pp. 135, 194, 312, 315 and 741.

¹⁰⁰ There is no record to prove capital punishment has been ordered at the clan council level. It is safely assumed

Another function of the clan council is the responsibility to provide education to the children of the clan village. A village school is collectively established by the clan families. It is called "sotang" (書堂). The sotang's main objective is to produce Confucian scholars and government officials.

At the sotang level, the children are able only to read and write "One Thousand Chinese Characters" which is called "chun-ja-mun" (千字文), and to recite some Chinese and Korean classics. There, along with the Chinese and Korean classic literature, teachers explain the general principles of ceremonial rites and regulations on family, the clan and society. The eligible age for entrance to sotang varies; however, the age between six and eight years is most common.

After the children master the preliminary education at the sotang, upon the recommendations of the teacher, they are able to enter the district Confucian school, called "hyanggyo" (學校). Successful "hyanggyo" graduates are further recommended and promoted to the advance level of education at Songgyungkwan in Seoul, the highest learning institution during the Yi dynasty, which was opened in the

that the death penalty is ordered by the government organ exclusively.

seventh year of King Taejo, 1398. The Songgyungkwan, the highest learning institution, accommodated "about 200 students of 15 or more years of age."¹⁰¹

As to the woman's education during the Yi dynasty, one writer describes the situation as follows:¹⁰²

The feudal societies of Korea, on the whole, had no institutional education for women, and in the Yi dynasty, too, no exception from this tradition was found. Women were confined to their houses, cooking, fixing clothes, and engaging in handwork. . . As the old saying goes: "when a baby girl is born, even passing salt-sellers feel sorry for it," the women were openly looked down upon. Even after marriage, they were despised as meanly as if they had been slaves owing to the unjust family system. Only upper class families taught their girls how to read and write some easy letters.

Thus far, the writer has presented the structural and functional aspects of the family system during the Yi dynasty, with the exception of the marriage system. Since marriage is a prerequisite for the establishment of a new family, and marriage marks the change in an individual's status and role within the family, the clan, and society,

¹⁰¹ Korea: ILP & COAA, op. cit., p. 365. Annual Report of Reforms and Progress in Chosen, 1921, 22, op. cit. Chapter 22 on "Education System." For Types of Courses that are offered at the highest level, see The Taejong Factual Records, Vol. 22, Nov., 1412, p. 39, and Kim, Kuksa Ui Konggu, op. cit., pp. 249-257.

¹⁰² Choo, op. cit., p. 127.

particular emphasis is focused upon various ramifications of the marriage procedures, from its initial stage to the end, in the next chapter.

CHAPTER III

MARRIAGE RULES DURING THE YI DYNASTY

In this chapter, we shall mainly examine areas such as marriage concept, marriage procedure, legal age for marriage, limitation for marriage, legality and effectiveness of marriage, dissolution of marriage, and the "Paktal" or marriage by capture, and intraclan marriage.

In order to study the marriage system as it existed during the Yi dynasty (1392-1910), it is essential to examine first the concept of marriage which affected the lives of Koreans during this dynastic rule of five hundred years. The marriage system and its concept deserve a careful consideration for it was, to a large extent, carried into the present generation.

The following statement may be cited to convey the basic concept of the objectives of marriage. "Marriage is the affectionate union of two persons bearing different clan-names [surnames] for the purpose of attending upon the ancestral temple on the one hand, and of continuing the geneological line on the other."¹ Marriage,

1 婚禮者將合二姓之好上以事宗廟而下以繼後世也。儀

The Chinese version of above concept is excerpt from the Li Chi (禮記) or The Book of Rituals, as quoted in Baron

then, was regarded chiefly as an agency through which to perpetuate the family tree and to render a service in the institution of ancestor worship. Therefore, marriage was, it would appear, a means to an end, and that end was the continuity of the family and its tradition.²

✓ The word "affectionate" represents the marriage itself and is a prerequisite for obtaining the newer generation. Ancestor worship is also included within the meaning of "affectionate." Like the ancients of most other races, Koreans are imbued with the idea that the departed spirits of human beings never cease to exist, and that departed ancestors are to be treated as living beings.³

Nobushige Hozumi, Ancestor-Worship and Japanese Law (6th ed., The Hokuseido Press, Tokyo, Japan, 1940), p. 124.

²The review of the literatures indicates that the concept of the Korean marriage system is largely derived from China. For the sake of comparison, see Chin Tae Son, Chosun Minjok Munhwa Ui Yonggu [Study of the Korean Culture], in Korean (Ulyoo Munhwa-sa, Seoul, Korea, 1948), Young Ha Kim, Kuksa Ui Yonggu [Study of the Korean History], in Korean (Pakyoo-sa, 2nd ed., no place of publication is listed, Korea, 1959), Olga Lang, Chinese Family and Society (Yale University Press, New Haven, 1946) and Chosen Sotokufu, Chosen no Zuraku, Zenpen, Chosa Shiryo Dai 38 Hen [The Korean Village, Vol. I, Source Material for Investigation No. 38], in Japanese (Keijo [present Seoul], Korea, 1933).

³A Chinese philosopher, Chu-hsi (朱熹) made clear the origin of ancestor worship when he says in his Book of House Ceremonies (家禮) that "the object of worship

It was considered the duty of the living to maintain communication with the spirits through prayer. Thus they conceived the lineage of the family link may be continuous everlastingly.⁴

At the time of Yi dynasty, the people were taught particularly that family continuity was the basic objective of marriage. "By the united action of heaven and earth all things originate; the ceremony of marriage is the beginning of a line that shall last for a myriad of ages."⁵ The family continuity for "myriads of ages," is only possible through marriage and then the securing of a successor.

is nothing else than performing all that is dictated by a feeling of true love and respect." Confucius is represented by his disciples as having made offering to the soul of his ancestors just as if they were living. "It is the highest filial piety for offspring to serve the dead as they would serve the living, and to serve the departed as they would serve the present." (中庸) The Doctrine of the Mean. 事死如事生之如事存考之至也。

⁴ Morimitsu Simizu, Shina Shakai no Kenkyu [A Study of Chinese Society], in Japanese (Iwanami Shoten, Tokyo, Japan, 1939), pp. 330-331.

⁵ Sing Ging Su, The Chinese Family System (International Press, New York, 1922), p. 56.

Failing to produce offspring means not only the end of the family line but also of the ancestors. "There are three things which are unfilial, and to have no posterity is the greatest of them."⁶ Therefore, under the traditional family system, if a man died without leaving a son to perpetuate the generations, it was considered the greatest misfortune that one could have on earth. "There are three thousand acts punished by the Five Punishments, but no crime is greater than filial impiety."⁷ If we consider that impiety is the greatest crime, then there can be no greater crime than to remain single.⁸

The word "successor" refers to the male line only. In order to perpetuate the family line, each family was responsible for producing at least one boy. When it was physically impossible to obtain a male descendant, the

⁶ Hozumi, op. cit., p. 125. 不孝有三無後為大。孟子

⁷ Ibid., p. 126. 五刑之屬三千而罪莫大於不孝。孔子

⁸ Yutang Lin, The Importance of Living (The John Day and Co., New York, 1940), p. 168. See also Daniel H. Kulp II, Country Life in South China: The Sociology Familyism (Bureau of Publication, Columbia University Press, New York, 1925), p. 180.

intense desire for a male offspring to continue the family line and to perform the necessary rites for the ancestors might also be fulfilled by adoption, as prescribed in the laws.⁹ Traditionally, however, adoption was not favored, but under the circumstances, closest relatives were under the moral obligation to provide a child.

Anticipating the importance of children, it was a common practice to get married at a young age so that the "successor" may be safely obtained. As we shall see from the laws regarding Yi dynasty's marriage age, it was necessary for the parents to arrange their children's marriage because the marrying persons were not mature enough to arrange marriage effectively themselves. Consequently, marriage was considered the affair of the whole family or clan and the individual's opinion was largely ignored.

Traditionally, the marriage was not designed to achieve or attain husband and wife's happiness (affection) alone but with family interests in view. Thus, the

⁹ Chosen Sotokufu, Chusuin, Minji Kanshu Kaito Ishu [Collection of Customary Replies in Civil Litigation], in Japanese (Keijo [present Seoul], Korea, 1933), Appendix, Sec. 1, p. 3. See also Chosen Sotokufu, Chusuin, Richo no Zaisan Sozoku Ho [The Yi Dynasty's Property Succession Law], in Japanese (Keijo [present Seoul], Korea, 1936).

traditional Korean marriage was "basically an affair between the heads of the two families concerned, who arranged the matrimony. Romantic love between the man and woman never entered into the parents' consideration. The man and the woman were not allowed any candid exhibition of affection for each other, nor was such a thing possible in most cases because of the system of early marriage which used to prevail."¹⁰ Even in recent years, as an American anthropologist observed of the situation in Korea, "the parents of a son or of a daughter may initiate an engagement, but the most essential case is that of a father arranging for the marriage of his eldest son."¹¹

Another concept of marriage which affected the Koreans should be mentioned. Unlike modern times, the traditional Korean social status was largely based on

¹⁰ Korea: Its Land, People and Culture of All Ages (Compiled by College Professors, Hakwon Sa Ltd., Seoul, Korea, 1960), p. 617. Hereafter, the publication is referred to only as Korea: ILP&COAA.

¹¹ Cornelius Osgood, The Koreans and Their Culture (Charles E. Tuttle Co., Tokyo, Japan, 1954), p. 104. Chinese version of parental authority with regard to son's and daughter's marriage issue, see Francis L. K. Hsu, Under the Ancestors' Shadow (Columbia University Press, New York, 1948), p. 265, and Kulp II, op. cit., p. 171.

marital status regardless of age. The demarcation line between the boy and the adult was determined by the marital status. An unmarried man of thirty was treated as a boy socially and a married man of sixteen was regarded as an adult, and status and responsibility were granted accordingly. This is true to a lesser extent even today in the remote village communities.

Marital status represented a very important function within the family and society during the Yi dynasty. An unmarried man was not permitted to represent the family in any social matters, he had no right to own and operate farms of his own, he was unqualified to participate in the family, clan or village council meeting, and he was expected to obey and receive all instructions from his parents.¹²

On the other hand, the status of a married man was totally different from that of a single man, i.e., his "child-name" was no longer used. He was called brother, uncle and house-master according to the relationship of the person addressing him. Parents asked him to

¹²Minji Kaito Ishu, op. cit., Section on Parental Authority.

represent the family and assume certain responsibilities at family and public affairs. He was now allowed to own land, establish his own business, dispose of property and he was free to make decisions within his domain.¹³ Thus, a successful life career was indeed dependent upon marital status.

When a single man died, he was buried without any ceremony. The reason behind this custom was that the unmarried man always remained as a child. Hence he was not admitted to the ancestral hall because there was no descendant who performed ancestral worship and he was a child and thus he had no spirit to enter the ancestral hall and Heaven. Socially, an unmarried aged person was discriminated against in many respects. Even after his death, he was often called "Mongdal kushin."¹⁴

¹³Yoo and Ko, op. cit., p. 719. See also section 2, Chapter II of this thesis.

¹⁴"Mongdal kushin" is an abusive term which connotes "man disqualified to be an adult," or egg demon who does not possess a mate. It has been stressed among Koreans that if a man dies without a successor, or without marriage, he has no place "in that world, Heaven." There is no record to show how and when such a word originated. Chong Hyun Pang and Sha Hyup Kim, Soktam Sachun [The Dictionary of Proverbs], in Korean (Munsung-kak, Seoul, 1958).

Conversely, when a married man died, the family performed an elaborate ceremony. An announcement was delivered to relatives near and far for prayers; his name was inscribed on a grave tablet and on the ancestral hall. Before death, a married man was able to adopt a son from his closest relative if he had no son of his own.

In short, the whole concept of marriage was centered around family continuity and ancestral worship. The Koreans regarded the marriage as the "highest virtue" and the beginning of true "harmony." The highest virtue and harmony were attainable only when whole families cooperated toward such a goal. ✓

Because of the importance and solemnity of marriage, there were stiff marriage regulations established by the consecutive kings during the Yi dynasty. An examination of the Yi dynasty's marriage rules is our main concern in this chapter.

1. Marriage Procedure

There were a number of rules specified for legal marriage and the establishing of households during the Yi dynasty. In most instances, the consent of parents

was required for every marriage.¹⁵ According to the modern Republic of Korea's Civil Codes, the requirement for the parent's consent is still in effect.¹⁶

Although the laws specified that both the son's or daughter's consent were necessary for the marriage,¹⁷ it was the customary procedure that consent was ignored and marriage was arranged by the parents from the initial stage through the engagement, wedding ceremony, and married life.¹⁸ In case the father had died, the head of the clan or the closest paternal relative assumed the responsibility of the marriage of the son or

¹⁵Minji Kanshu Kaito Ishu, op. cit., Section on Parental Authority.

¹⁶Civil Law, Article 750. However, "if man has completed his thirtieth year or woman her twenty-fifth year, no parental consent to marriage may be necessary." Civil Law, Article 772. See also Yoo and Ko, op. cit., p. 805.

¹⁷The Saejong Factual Records, Vol. 68, April, 1435, p. 4.

¹⁸Yozo Watanabe, Hoshakaigaku to Hokaishakugaku [The Sociology Laws and the Interpretation of the Laws], in Japanese [Iwanami Shoten, Tokyo, Japan], pp. 399-400.

daughter. Within the family, after the father's death, the eldest brother, if married, arranged the marriage, with the consultation of the clan head, for his younger brothers and sisters.¹⁹

Since Korean society placed a great deal of value on the continuity of the family and family interests, rather than the individual's will, taste and desire, the development of parental arrangements of marriage of the junior members of the family was perhaps inevitable. Moreover, a great deal of authority was placed in the hands of the father and senior members of the family. Also, the practice of early marriage which prevailed necessitated the arranged marriage.

There was one exception to parental consent.²⁰ If a son or daughter was under the general supervision of step-parents, he or she could marry without the step-parent's consent, or if the clan council approved it,

¹⁹ Minji Kanshu Kaito Ishu, op. cit., Appendix sec., p. 18.

²⁰ Yoo and Ko, op. cit., pp. 54 and 718.

or if the step-parents were proven to be willfully refusing to grant their consent to a legal marriage contract.²¹

The reasons for the requirement of parental consent are that "marriage is one of the most important matters in one's life," and that "it must be considered with great care before the contract of marriage is entered into. Young people, owing to their lack of experience and their consequent incapability of appreciating and weighing the importance of their own actions, cannot be trusted to make reasonable or desirable choices. Therefore, the consent of parents based upon experience and love, is necessary."²²

The parental consent was customarily accompanied by the duty of selecting either the son's or daughter's mate. The selection of a mate and the marriage proposal could come to the parents' attention from almost any direction; their friends, close or distant relatives, and the so-called go-between or "Chungmae in," (仲媒人). Since

²¹Article regarding step-mother's mistreatment of a child, see Byung Hak Chang, "Lihon kwa Kaemo Ui Ryulli," [The Ethics of Divorce and Step Mother], Sasang Kae (Sasan Kae-sa, Seoul, Korea, April, 1956), pp. 37-47.

²²Su, op. cit., p. 56.

marriage rules specified that no one was permitted to marry one who carries the same surnames,²³ mates could not be selected from within the clan group.

One of the most popular forms of arranged marriage was that the go-between provided the necessary information pertaining to the parties involved. When both parties find the go-between's recommendation and information satisfactory, each side tries to learn more about the prospect concerned -- his or her personality or ability, the history of his or her family, etc.²⁴

When the parents found a potential bride for their son, the custom was that the mother discussed the following things with her son alone; the identity of the prospect,

²³The Taejong Factual Records, Vol. 36, November, 1418, p. 28. See also Osgood, op. cit., p. 105.

²⁴Unmarried girls never appeared in public, nor walked on the street where strangers gathered. It was, therefore, extremely difficult to find out about a female candidate's personality. Often the boy's family, even in recent years, under the guise of selling needles, thread, bride's face powder, or such things, would take the opportunity to learn what they could. Even nuns liked to put their hand in when the opportunity suggested itself. For information concerning the detection methods of marriage candidates, see Osgood, op. cit., p. 106. See also William E. Griffis, Corea: The Hermit Nation (Charles Scribner's Son, New York, 1897), Chapter XXVII, and Office of Public Information, Korean Lore (Seoul, Korea, 1953), p. 49.

her health condition, her appearance, her behavior, her temperament, her level of education, her family status, her reputation, where she lived, etc. In other words, the mother, or the married elder sister, if any, served as intermediary between the father and son.

If a son refused to consider marriage to the woman in question for personal reasons, this news was transmitted to the father, and the go-between,²⁵ if there was one. If these reasons were found to be justifiable, some consideration was given to him. However, since the son had never even met the woman, it was unlikely that there could be any really sound justifications as to why he chose to refuse the offer.²⁶

It should be noted, however, that during the reign of King Taejong (1401-1418) the individual's consent was

²⁵ According to Dr. Su, in his thesis, it was reported that in China, by law, go-betweens (if a man, he was called mei-jen; if a woman, pei-p'o) were required for legal marriage proposals. Su, op. cit., p. 58. However, there is no evidence nor record to support this rule in Korea.

²⁶ During the Yi dynasty, however, pre-marital acquaintance prior to engagement or marriage is strictly prohibited. As has been stated in Chapter II, when the boy and the girl reach their seventh years, parents did not even allow them to sit in the same room. For more information on Korean social life and custom, see Kyung

necessary before the parents could make the decision for their son to marry into another family, especially in the case of remarriage.²⁷

When parents of two parties, or a go-between, found families who agreed in a preliminary way to test out a betrothal, there was an exchange between the two families of the red card on which was inscribed the horoscopic data and the names of the children involved. The horoscopic data was necessary for the determination of the compatibility of the boy and girl in marital union. The card was taken by either the father of the boy or the go-between to a fortune-teller to study or examine the horoscopes of the two parties. When the father found both childrens' horoscopic data to be harmonious, the first step toward marriage was completed.

When both parties found horoscopic data suitable for the marital union, generally the bride-to-be's family

Cho Chung, Korea Tomorrow: Land of the Morning Calm (The Macmillan Co., New York, 1956), pp. 36-7.

²⁷ The Taejong Factual Records, Vol. 22, December, 1411, p. 50, The Taejong Factual Records, Vol. 29, January, 1418, p. 4, and The Saejong Factual Records, Vol. 17, April, 1422, p. 5.

selected the good day for the wedding ceremony. However, in cases "when a common date is not found after protracted effort, the boy's father may be expected to have the predominant role in the final decision."²⁸

On the day before the wedding, the bridegroom's family sent a special messenger to the family of the bride with a black lacquered gift box wrapped in red cloth. Inside the box were three things; a blue silken skirt bound with a red ribbon, a red skirt tied in blue, and the marriage contract tied in a long envelope. Sometimes gold or silver rings with pins were added.²⁹

When such a procedure was followed, the woman could not be classified as a concubine, even though the man had already been married.³⁰ During the Yi dynasty, the engagement itself was equivalent to the marriage.³¹ Therefore, if the engaged man suddenly died, the bride-to-be was not allowed to marry into another family but

²⁸Osgood, op. cit., p. 106.

²⁹Korean Lore, op. cit., p. 50.

³⁰The Saejong Factual Records, Vol. 39, January, 1428, p. 10.

³¹The Saejong Factual Records, Vol. 3, February, 1419, p. 15.

lived with her parents-in-law.³² In other words, when the gift, including the card was properly exchanged, the woman was classified as a legal wife and was entitled to secure her appropriate position within the new family, the family property,³³ and other privileges pertaining to her.

The next procedure, during the Yi dynasty, required witnesses to certify that the marriage had been completed. In other words, the wedding ceremony had to be performed before the witnesses; otherwise, "the married woman, regardless of reasons, could not be classified as a legal wife."³⁴ The law also specified that the witnesses could not be members of either of the families involved but must be from outside the family. Failing to observe such a rule, a female would be classified as concubine.

³²The Chungjong Factual Records, Vol. 1, January, 1399, p. 3.

³³Hidekichi Kondo, Shin Hogaku Zenshu, Sosokuho [Collections of the New Laws: Law of Succession], in Japanese (Vol. 15, Nippon Hyoronsha, Tokyo, Japan, 1941), p. 118.

³⁴The Saejong Factual Records, Vol. 39, January, 1428, p. 10, and The Saejong Factual Records, Vol. 95, February, 1432, p. 25.

During the Yi dynasty, "wedding presents" or the "bride price" were required. The rules specified that the wedding should be accompanied by the giving of wedding presents, which were called "Nap chae." (納采)³⁵ It was a custom that either goods or money should be delivered from the groom's family to the bride's. To be more specific, "wedding presents should be sent from the groom's side to the bride's side so that marriage could be completed."³⁶

Wedding presents, or the bride-price, varied according to the localities; however, they usually were given to the bride, the bride's parents, the head of the clan, and "important relatives," and were composed of cloth, cakes, wedding ring, face powder and other daily necessities. If the groom was wealthy, money was often given in addition to goods to the bride's family. Heavy emphasis was placed on parents and the bride. The presents to other people were secondary in nature. In

³⁵ The Munjong Factual Records, Vol. 1, March, 1451, p. 22, and Nung Ha Lee, Chosun Yosokko [Study of the Women's Custom], in Korean (Tongyang Sowon, Seoul, Korea, 1927), pp. 53-54.

³⁶ The Saejong Factual Records, Vol. 110, October, 1445, p. 2. See also Son, op. cit., p. 88.

either case, the amount and kind of goods delivered and the amount of money sent to the bride's family were the primary criteria by which to evaluate the worth of the groom's family.³⁷

This does not mean the bride's side did not provide anything. They, too, tried their utmost to please the groom and his family so that the daughter would be well treated. If the son's or daughter's marriage was the first one, for the sake of future successes for their second or third son's or daughter's marriage, the parents often gave a great amount of goods or expensive presents and sent whatever amount of money they could afford.³⁸

³⁷ The striking similarities between China and Korea, see Kulp II, op. cit., p. 169.

³⁸ Once the engagement was effected with acceptance of the gifts, on the part of the prospective bride, it was considered also binding. For Korean marriage ceremony and general customs, see Korea Lore, op. cit., pp. 48-55, Son, op. cit., pp. 88-93, Osgood, op. cit., pp. 103-112, Chinese aspects, see Y. K. Leong and L. K. Tao, Village and Town Life in China (George Allen and Unwin Ltd., London, 1932), and Martin C. Yang, A Chinese Village: Taitou, Shantung Province (Columbia University Press, New York, 1945), Chapter 9. Lang reported that The New History of the T'ang Dynasty, frankly uses the expression Mai Hun, "Marriage by Purchase." Lang, op. cit., p. 37. For further information on wedding presents, see S. Wells Williams, The Middle Kingdom: A Survey of the Geography, Government, Literature, Social Life, Arts, and History of the Chinese Empire and Its Inhabitants (Vol. I, Charles Scribner's Sons, New York, 1904), p. 786.

In summary, there were altogether five steps to be carefully followed in order to legalize the marriage.

These were:

- (1) The parents or a go-between selected prospect and inquired concerning the girl prospect's name and date of birth.
- (2) These horoscopic data of the two were examined by a fortune-teller, or a diviner, in order to ascertain whether the proposed alliance would be a happy one.
- (3) The groom-to-be's family sent the girl's parents the wedding presents of various kinds, including the bride's wedding dress.
- (4) The parents or go-between requested the bride-to-be's family to select a lucky day for the wedding.³⁹
- (5) The wedding ceremony took place mostly at the bride's house,⁴⁰ in the presence of a witness, or witnesses. The witness must be outside of the involved families.

³⁹Lee, Chosun Yosokko, op. cit., p. 38.

⁴⁰Professor Son reports that performance of the wedding ceremony which took place in Korea was contrary

2. Legal Age for Marriage

A review of the records of the Yi dynasty, particularly of the earlier period, indicates that age limitations were set by the King's court. During the reign of King Saejong (1419-1450), the age limit was set for women to marry between the age of 14 and 20.⁴¹ Effective since 1440, "men over 16 years of age shall be considered as having attained the legal age for marriage."⁴² However, "within the family of the King, the man, or prince shall marry at the age of 15."⁴³ Thus, legal marriage age was over 16 for the male and over 14 for the female.

There was, however, an exception to the above rule. "When the parents become more than 50 years of age, the

to the Chinese practice and he states that "it is the unique development of the Korean custom." Son, op. cit., p. 89.

⁴¹The Saejong Factual Records, Vol. 32, April, 1426, p. 3.

⁴²The Saejong Factual Records, Vol. 88, March, 1440, p. 28.

⁴³The Saejong Factual Records, Vol. 32, April, 1426, p. 29. It was reported that the King Kojong married at the age of 15 to the Princess Min. Angus Hamilton, Korea (Charles Scribner's Sons, New York, 1904), p. 62.

son, with the approval of the proper authority, may be permitted to get married at the age of 12."⁴⁴

Other records indicate that "engagement" was legally recognized as a part of the marriage procedure and therefore widely prevailed. According to court precedents, it was shown that at the age of 15 one became engaged and then waited until the age of 16 when the marriage ceremony took place.⁴⁵

3. Limitation for Marriage

The laws provided that "during the three years following the death of a parent, no person shall be

⁴⁴The Saejong Factual Records, Vol. 88, March, 1440, p. 28, and The Munjong Factual Records, Vol. 13, April, 1452, p. 19.

⁴⁵The Saejong Factual Records, Vol. 108, December, 1447, p. 12. It should be pointed out here that prior to the Yi dynasty, and to some extent during the Yi dynasty, 10 years of age was considered as the normal age for the marriage and this was customarily practiced. For further information, see Minji Kanshu Kaito Ishu, op. cit., Appendix sec., p. 12. See also, Munjong Factual Records, Vol. 4, November, 1451, p. 53. Moreover, in Korea as well as in China, the betrothal of unborn children has prevailed. Thus, "the practice of betrothing unborn children, which is done by cutting off and exchanging a piece of the garment, is declared illegal." Dr. Su quoted from Chinese Civil Provisional Code, Article 1332. Su, op. cit., p. 60.

permitted to marry."⁴⁶ When violators of this provision were arrested by the authorities, the marriage was dissolved and both parties punished. A great deal of emphasis was placed upon ancestor worship and the son was required to observe an ethical rule of filial piety during the life of his parents and the three year mourning period after the death of his parents.⁴⁷

Moreover, since the King was regarded as the father of the "nation-family," when a king's parents died, all subjects were "not allowed to marry, sing or slaughter animals for 10 days in the capital city and 5 days outside the capital city."⁴⁸ Despite the order and strict enforcement, there were violators; and when they were caught, they would be given a sentence of 100 blows and

⁴⁶The Chunjong Factual Records, Vol. 1, January, 1399, p. 3.

⁴⁷The three-year mourning not only applies to the common people alone. According to the records, King Sungjong himself observed the three-year mourning obligation. Tsunataro Aoyagi, Richo Gohyakunen Shi [The Five Hundred Years of Yi Dynasty], in Japanese (Chosen Kenkyu Kai, Keijo [present Seoul], Korea, 1912), p. 87.

⁴⁸The Saejong Factual Records, Vol. 17, April, 1422, p. 29.

their house and wives would be confiscated by the authorities. Imperial funeral rites were considered to be important national events, and in most cases heavy penalties were imposed upon violators.

Another regulation of marriage was that "no person shall marry within three years of his wife's death. However, in case parents asked their son to marry, or when a person at the age of 40 still had no sons, one was authorized to marry one year after the date of his wife's death."⁴⁹ A similar provision indicated that "during the three years from the date of the parents' death, no one could divorce."⁵⁰

These provisions meant that during the period of three years⁵¹ from the date of the parents' death, neither marriage, nor remarriage, nor divorce was possible with a few exceptions which have been cited above.

⁴⁹The Saejong Factual Records, Vol. 88, January, 1440, p. 3.

⁵⁰The Saejo Factual Records, Vol. 13, April, 1459, p. 31.

⁵¹The customs of a long mourning period dated back to the Three Kingdoms period (57-1397), but the time had to be shortened to one hundred days during the Koryo period. The Yi dynasty, however, revived the ancient system of staying in mourning for three years. Reason for such change is unknown. See detail information on mourning, Korea: ILP&COAA, op. cit., p. 620.

The following quotation may serve to illustrate the importance of Korean funeral and mourning requirements:

The most important custom next to the wedding is that of the funeral, for the ancient Korean philosophy hinges on the success in marriage by the number of sons, and the upholding of the family tradition by ancestor worship. . . .The length of the mourning period is usually three full years for each parent. However, if the mother dies before the father, she is honored with only one year of mourning. During these years, eleven of the immediate family of the deceased are required to wear the traditional white mourning dress. . . .A great deal of emphasis is placed upon the deeds of one's ancestors, and each person must strive to uphold the honored position of the family.⁵²

⁵² Korean Lore, op. cit., pp. 56-61. The practices of ancestor worship and rigid mourning rites have the "integrating function." People of all classes, including the royal family, made offers to their ancestors. In each year two elaborate festivals -- on the New Year eve and September, the Thanksgiving day -- were performed throughout the country. Upon the occasion, all the descendants of a common ancestor gathered together before the ancestral temple, or shrine. Like the Christmas season for the Westerner, Korean ancestral festivals were considered as "big-family-reunions" at which the living met, ate and drank together in the presence of the spirits of the dead and appreciated their ancestors. Therefore, ancestor worship and their effect upon marriage, family solidarity and social stability should not be overlooked. For information on functional explanation of religion, see William A. Lessa and Evon Z. Vogt, Reader in Comparative Religion: An Anthropological Approach (Row, Peterson and Co., Evanston, Ill., 1958), pp. 1-11. See also Shimizu, op. cit., p. 322.

The precedents set by the King's court pertaining to the limitations of marriage show that "no chunin class should marry into the commoner class."⁵³ During the reign of King Taejong (1401-1418) special provisions were promulgated to regulate intermarriage between the different classes. When violators were arrested, they were subject to the imposition of heavy punishment, and "forced to separate or dissolve their marriage."⁵⁴

An examination of the records indicates that many married outside of their classes, despite the King's court order. Actual cases showed that among the commoners, the violators were arrested and "sentenced to three years of imprisonment," and the court stipulated specifically that "when such a child is born, it will be an illegitimate child and that one shall not become a commoner but be reduced to chunin class."⁵⁵

⁵³The Taejong Factual Records, Vol. 2, July, 1401, p. 6. The class system during the Yi dynasty is to be found in Chapter I, Section 5 of this thesis.

⁵⁴Ibid. See also, Kim, Chosun Kajok Jaedo Yonggu, op. cit., p. 417.

⁵⁵The Saejong Factual Records, Vol. 17, April, 1422, p. 21.

During the Saejong era (1419-1450) a citizen of Korea requested government authority for permission to marry an Okinawan and permission was granted.⁵⁶ However, another record showed that "no Koreans are permitted to marry Manchurian and Yain or barbarian."⁵⁷

Prohibition of interclass marriage included in the provisions that "no cabinet members are permitted to marry discharged 'court-ladies.' " (宮女)⁵⁸ The court-ladies were provided by the two classes; commoner and chunin classes, and the qualifications for the court-lady were that she "should be single, neat, clean and virgin."⁵⁹ When a new ruler was sworn in, the old

⁵⁶The Saejong Factual Records, Vol. 61, August, 1433, p. 42. During the reign of King Myungjong (1546-1567), Korean fishermen drifted to the island of Ryuku, or Okinawa; upon their return, King Myungjong personally invited these men and inquired about the customs and livelihood of the inhabitants. Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collections], in Japanese (Chosen Insatsu Kabushikigaisha, 1939, Keijo [present Seoul], Korea), p. 500, and Richo Gohyakunen Shi, op. cit., p.10.

⁵⁷The Saejong Factual Records, Vol. 28, July, 1438, p. 2.

⁵⁸The Taejong Factual Records, Vol. 30, December, 1415, p. 43.

⁵⁹Hamilton, op. cit., p. 53, and Griffis, op. cit., Chapters, XXIV and XXVII.

court-ladies were discharged. The number of court-ladies was varied, dependent upon the desires of the King. During the period of King Kojong, the court-ladies were limited to a total of 280.⁶⁰

While court-ladies were retained in the palace they were protected and guarded by the "whangkwan," (宦官) or eunuchs.⁶¹ The court-ladies were not only trained and educated to be artists, dancers and talented women, but also they were clean and virgin. The reasons for the prohibition of marriage between discharged court-ladies and cabinet members are believed to have been: (1) cabinet members, first of all, belonged to the nobility while court-ladies did not, and (2) if allowed to marry, such persons might have revealed the government's secrets outside the palace to the public.

⁶⁰ Richo Fuzoku Shiryo Satsuyo, op. cit., p. 841. King Youngsankun (1495-1505) mobilized 300 court-ladies. Richo Gohyakunen Shi, op. cit., p. 97.

⁶¹ A word "eunuch" as called "whangkwan" in Korean, is said to have originated from the Greek word "eunouchos," its meaning being "a castrated male of the human species." Since eunuchs did not have reproductive power, it was safe to employ them in palaces as guards and domestic servants. The definition, see Franklin J. Meine, Consolidated-Webster Encyclopedic Dictionary (Consolidated Book Publishers, Div., of Book Production Industries, Inc., Chicago, 1958), p. 260.

In addition to prohibition of marriage between the cabinet members and discharged court-ladies, the law further provided that "the court-ladies shall not become one's concubine."⁶² Marriage limitations were not only imposed on those discharged court-ladies and government officials alone. Anti-government elements or those persons who attempted to overthrow the government, were not allowed to permit their daughters to marry commoners. It is stated that, upon arrests, "heavy penalties would be imposed."⁶³

During the King Saejong era, the law prohibited the monks -- Buddhist monks that is -- from marrying. If arrested for marriage, the monk became a chunin and all the privileges pertaining to him were totally denied.⁶⁴

⁶²The Taejong Factual Records, Vol. 23, June, 1412, p. 38, The Taejong Factual Records, Vol. 25, June, 1413, p. 25.

⁶³The Taejong Factual Records, Vol. 30, December, 1415, p. 43. The Taejong Factual Records, Vol. 31, January, 1416, p. 6. The Taejong Factual Records, Vol. 32, December, 1416, p. 32.

⁶⁴The Saejong Factual Records, Vol. 36, June, 1427, p. 22. The Saejong Factual Records, Vol. 43, February, 1429, p. 17, The Saejong Factual Records, Vol. 47, July, 1429, p. 1, and The Saejong Factual Records, Vol. 49, August, 1430, p. 28.

4. Legality and Effectiveness of Marriage

Illegal marriage, according to court decisions, consists of violation of marriage age, lack of consent by either one or both parties to the marriage, the groom and bride living together without having a wedding ceremony or witness, court employees or public servants taking advantage of official power to marry, remarriage taking place within the three years from the date on which either parent or one's spouse died, fraudulent documents, and above all, marriage into different classes other than those specified by law as suitable.

If the marriage took place between either chunin or yain classes, the married couple were forced to separate and their marriage was recognized as not legal. Violators were usually sentenced to 80 to 100 blows, and fined by 200 pil⁶⁵ of cotton cloth, in addition to separation. The government often rewarded informers who reported such violators.⁶⁶

⁶⁵ One pil is equivalent to 40 yards.

⁶⁶ The Saejong Factual Records, Vol. 21, September, 1423, p. 18. The Taejong Factual Records, Vol. 2, July, 1401, p. 6. The Taejong Factual Records, Vol. 10, September, 1405, p. 17.

Speaking of "effectiveness of marriage," the following case study may be made. There is the case wherein a husband left home for the capital city. He did not return home for sometime and did not send any word of his whereabouts. The first, or legal husband returned home from his long journey and found his wife was remarried. He appealed and the King punished the man who had influenced a married woman to marry without the benefit of legal procedures.⁶⁷

It was the interpretation of the court that "judgment or interpretation of condition" without any acceptable evidence was illegal, and therefore the marriage was null and void. Also it meant that the effectiveness of the original marriage should continue unless the marriage was dissolved by legal court process.

The records also showed that married couples were subject to certain duties that affected the relationship between husband and wife. For example, some legally married men lived with concubines and neglected their legal wives. The court ordered that, when

⁶⁷The Taejong Factual Records, Vol. 7, April, 1404, p. 13.

apprehended, such violators be punished on the ground that doing so was unjust.⁶⁸ In other words, the court's decision was primarily based on morality and the mutual obligation of wives and husbands.⁶⁹

In addition, it was reported that married men who regularly spent the night with public entertainers were punished upon arrest.⁷⁰ The common penalties for such violations were 100 blows or sometimes life imprisonment.⁷¹

⁶⁸The Saejong Factual Records, Vol. 27, May, 1414, p. 16, and The Saejong Factual Records, Vol. 28, April, 1425, p. 7. See also Republic of Korea's Civil Law, Articles 788, 789 and 790.

⁶⁹Minji Kanshu Kaito Ishu, op. cit., Appendix sec., pp. 18-9. There is, in fact, considerable information regarding the Korean practices of polygamy. Although the King punished husbands on the ground that doing so was unjust, polygamy prevailed in the wealthy families. For further information on Korean polygamy, see Tomoe Imamura, "Chosen ni Okeru Ichifu Tasai no Zonsaiki ni Tsuite," [The Existence of the Korean Polygamy], in Man Sen Shiron Gyo [Manchurian and Korean Historical Theories], in Japanese (the publication dedicated to late Dr. Inaba, Keijodo Kinenkan, Korea, 1938). See also Byung Do Lee, Kuksa Taikwan [The Korean History], in Korean (Chinmun Kwan, Seoul, Korea, 1955), p. 45.

⁷⁰The Saejong Factual Records, Vol. 33, August, 1426, p. 9.

⁷¹The Taejong Factual Records, Vol. 36, November, 1418, p. 28.

In addition to the above provisions, the following lists of illegal marriages may be noted:

- (1) Marriage between persons who carry the same surnames, descended from common ancestors, i.e., those persons who worshipped the same ancestor, no matter how remote. To be more specific, "no one shall be permitted to intermarry within the same clan; nor if both parties are from different clans but are related by blood or through marriage alliances and adoption."⁷² Thus, the Korean marriage system may be classified as "exogamy."⁷³

⁷²The Taejong Factual Records, Vol. 36, November, 1418, p. 28.

⁷³The term exogamy refers to a rule of marriage which forbids an individual to take a spouse from within the local kin, or status group to which he himself belongs. The complementary term "endogamy" refers to a rule which requires him to marry within his own group. Endogamy has been strictly tabooed in Korea, and "endogamy has been looked upon with so much distaste that marriage between persons with the same surnames came to be forbidden during the Yi dynasty." Korea:ILP&COAA, op. cit., p. 617. See also Son, op. cit., pp. 117-8. There was, however, interclan marriage (or endogamy) which existed during the Yi dynasty in one locality. The information is to be found in Section 6 of this chapter.

- (2) A marriage must be registered properly at the local magistrate office, otherwise the marriage is not legal.⁷⁴ It is called "honin shingo," (婚姻申告) and the document must include both parties -- husband, wife, husband's father's and wife's father's -- seals, if not, thumb prints.
- (3) Rules of marriage extended to apply to divorced women and their families. In other words, the law specified that "one shall not marry or remarry with widowed sister-in-law, nor take her as a wife or concubine."⁷⁵ In other words, no one was allowed to marry his brother's wife even after the death of the brother.
- (4) Any marriage contracted by fraudulent, e.g., misinformation or misrepresentation on personal status, physical condition, family

⁷⁴ Minji Kanshu Kaito Ishu, op. cit., Appendix section and Korean Civil Law, Article 11, II, (Chosun Minsa Ryung).

⁷⁵ The Taejong Factual Records, Vol. 29, March, 1415, p. 11 and The Saejong Factual Records, Vol. 85, May, 1439, p. 31.

wealth, etc., is illegal. In addition, any person, husband or wife, who commits adultery is forbidden to remarry even after a legal divorce.⁷⁶

5. Dissolution of Marriage

When a marriage is contracted under the legal procedure recognized by society, there is also the legal recognition of divorce, or the dissolution of a marriage. Hence, divorce is defined as a legal action terminating the marriage.

The marriage duration has varied considerably from one society to another -- in some cases marital unions do not endure long enough to deserve to be called marriage, still there are other marriages which are dissolved only by death. In some societies the dissolution of marriage is easily attainable; on the other hand, in other societies it is exceedingly difficult.

A review of the available official records reveals that Korean divorces occurred rarely, although the Korean

⁷⁶Chosun Minsa Ryung, Articles 902 and 909. For more information, see Yoo and Ko, op. cit., pp. 804-5. The Taejong Factual Records, Vol. 34, November, 1417, p. 28.

philosophers and law makers of Yi dynasty did not hold that marriage was indissoluble. As a Chinese philosopher described: "If husband and wife live according to righteousness, they remain together; if righteousness is no more, they should separate," says Ssu Ma-Kuang, a noted philosopher and historian of the Sung dynasty.⁷⁷

The records showed that the reasons for divorce varied. In some cases, when the parents disliked their son's wife, although they arranged the marriage, they had the power to bring about a legal separation or a divorce between their son and his wife.⁷⁸ In some instances, a wife's disobedience toward her husband, her husband's parents, or members of his family such as her brother-in-law or sister-in-law, or even mistreatment of relatives were sufficient grounds for the dissolution of the marriage.

On the other hand, there are no records which indicate that the wife was allowed to initiate the divorce

⁷⁷ Lang, op. cit., p. 40 and Chang, op. cit., pp. 37-47.

⁷⁸ The Saejong Factual Records, Vol. 30, April, 1464, p. 22.

or separation.⁷⁹ It would appear that the marriage dissolution was initiated by either the husband or the husband's parents.⁸⁰ However, before the divorce, either the husband or his parents had to submit to the wife "a written letter of notification," called "Kobyul-mun." (告别文)⁸¹ Verbal statements were not sufficient to initiate a legal divorce, but rather the divorce had to be accompanied by the written document.

Among others, the common reason for divorce was that of adultery,⁸² on the ground that "the apprehended danger of the confusion of blood, whereby a person not in

⁷⁹Not only during the Yi dynasty alone; it was reported by Chung that even today, "a wife seldom divorces her husband, for any reason." Chung, op. cit., p. 37. See also Lang, op. cit., p. 40.

⁸⁰The Saejo Factual Records, Vol. 30, April, 1464, p. 24.

⁸¹The Saejo Factual Records, Vol. 30, April, 1464, p. 24.

⁸²The Taejong Factual Records, Vol. 34, November, 1417, p. 28.

reality related to the ancestor might succeed to the worship,"⁸³ as interpreted by the Japanese philosopher.

Next to adultery were communicable and incurable diseases, and mental illness was also sufficient ground for divorce.⁸⁴ When we observe the Korean family system, these reasons are understandable since the importance of childbearing was stressed. Without doubt, communicable and incurable diseases are basic causes preventing the man or woman from having healthy children.⁸⁵

A failure of the wife to support the family was another ground for divorce. This was particularly the case if the father-in-law died and the son's wife could not or failed to furnish a sufficient amount of money to provide the necessary things for the funeral ceremony. Under these circumstances, the mother-in-law exercised her power to dissolve the marriage.⁸⁶

⁸³ Hozumi, op. cit., p. 139.

⁸⁴ The Saejong Factual Records, Vol. 60, June, 1433, p. 40.

⁸⁵ There is no indication of the names of "communicable and incurable diseases."

⁸⁶ The Saejong Factual Records, Vol. 85, May, 1439, p. 31.

A wife's failure to produce children, especially a man child or children, was the most common ground for divorce.⁸⁷ Misbehavior and cruelty were also reasons to effect legal divorce.⁸⁸ The conditions listed above were legalized reasons for dissolving a marriage.

Before we proceed to inadequate reasons for divorce, we shall review and compare the reasons for the dissolution of marriage in Korea with the reasons in China. One of the most striking common features among the two countries is indeed significant. This common feature is explained by the words known as "Chil-chul-ji-chang."⁸⁹ As Lang states the seven grounds for divorce:

⁸⁷The Munjong Factual Records, Vol. 9, December, 1451, p. 34.

⁸⁸The Saejo Factual Records, Vol. 8, August, 1458, p. 29.

⁸⁹The word "Chil-chul-ji-chang" means "seven-grounds-for-divorce." In China these seven reasons contained in Li Chi and Confucius' Family Conversations. After the T'ang dynasty, these seven reasons for divorce were incorporated in the legal code. See also Yang, op. cit., pp. 115-122.

A wife could be repudiated by her husband on the following grounds: (1) If she disobeyed her husband's parents; (2) failed to bear children; (3) committed adultery; (4) exhibited jealousy; (5) had some repulsive disease; (6) was garrulous; (7) stole. . .Husbands could not repudiate their wives for reasons other than the seven mentioned above; moreover, the ancient s~~t~~ages formulated "three reasons for not repudiating wives." These "three reasons" breath a spirit of justice unsurpassed in the divorce laws of any country up to the most modern times. The wife could not be sent away (1) if she had mourned her husband's parents for three years; (2) if her husband's family had become wealthy ("The time of poverty should not be forgotten. The wife of the time when we ate chaff should not be dismissed," says an old adage); (3) if she had no family to take her in.⁹⁰

As we have seen, it is clear that Korea adopted the Chinese legal code as a basis for court procedures and decisions during the Yi dynasty.

It is also learned that inadequate reasons were not accepted by the authorities as grounds for divorce. For example, there was a case of a legally established married man with children who took a concubine whose husband had died only recently -- within one hundred days -- and the court's decision was that remarriage

⁹⁰ Lang, op. cit., pp. 40-41. In Japan, during the Tokugawa period (1600-1868) which corresponds to the Korean Yi dynasty, these seven reasons for divorce and other Chinese legal code as a guide for administering divorce. Identical articles are to be found in Hozumi, op. cit., p. 138.

was illegal under such circumstances. Then the court forced them to separate on the grounds that no woman "shall be allowed to marry or to become concubine within one hundred days from the date of husband's death."⁹¹ For this violation of the law, the concubine was punished by 60 blows and the man was to live with his legal wife.

Barrenness was one of the sufficient grounds for divorce. However, if a divorce took place within three years of the death of the husband's parents, it was not recognized as legal, according to the Saejong Factual Records. The court customarily would order the couple to live together until familial and filial duties -- mourning period in this case -- were completed.⁹²

Another case showed the following reasons and decisions. After the wedding ceremony had taken place and the couple had lived together for some time, the husband attempted to divorce his wife on the grounds that she had not been a virgin at the time of the

⁹¹ The Taejong Factual Records, Vol. 26, July, 1413, p. 4.

⁹² The Saejong Factual Records, Vol. 29, July, 1425, p. 3.

marriage. The appeal was overruled and the court forced him to return to his wife, but only after "60 blows and one year imprisonment."⁹³ The records specified that the husband's appeal was "not conclusive evidence," and at the same time "unjustifiable grounds for divorce."

Since jealousy and loquacity are recognized reasons for a divorce, the case study showed that a husband purposely made up and then spread a bad rumor about his wife for the purpose of obtaining a divorce. The King ordered 80 blows and forced him to live with his legal wife.⁹⁴

Similarly, the husband who tried to get a divorce on the grounds that his wife's family was poor was punished with 60 blows and one year imprisonment, and he was ordered to live with his legal wife.⁹⁵

During the period of King Sungjong (1470-1494), emphasis was placed on the husband's consent to the divorce instead of on the consent of his parents or

⁹³The Saejong Factual Records, Vol. 106, December, 1444, p. 37.

⁹⁴The Saejong Factual Records, Vol. 106, December, 1444, p. 37.

⁹⁵The Saejong Factual Records, Vol. 110, October, 1445, p. 2.

other relatives. For example, "no divorce shall be effected unless the husband express his willingness and consent," and "willingness and consent shall be supported by sufficient reason or reasons, otherwise, no divorce shall be effected."⁹⁶

Communicable, incurable disease and mental illness were sufficient grounds for a divorce, as has been shown. However, curable or minor diseases were not accepted as sufficient reason. A decision showed in one case that the court doctors noted that the wife was already recovered from the illness and the divorce was not granted.⁹⁷

Even in those days, some kind of medical diagnosis was demanded by the King's court before decisions were made. During the period of King Chuljong (1399-1400) it was indicated that the King urged the cabinet members to train the woman medical doctors extensively. The specified reason was "because so many women patients

⁹⁶ The Sungjong Factual Records, Vol. 7, August, 1470, p. 1.

⁹⁷ The Taejong Factual Records, Vol. 22, December, 1411, p. 53.

who did not want to show their bodies to men doctors consequently committed suicide at an increased rate."⁹⁸

When a husband divorced his wife for purely economic reasons without due process of law, and remarried or obtained a concubine from a wealthy family, the "Sahyun-bu" (司憲部) or the Executive Law Agency, enforced strict laws for violators. The penalties were varied but most frequently consisted of "Life imprisonment."⁹⁹

In addition, any man who divorced his wife because of the wife's initiation of the case, or because of the wife's hatred toward her husband could be punished by 80 blows. When a wife had a child or several children, the husband "could not obtain a divorce,"¹⁰⁰ unless specified by authority.

⁹⁸ Richo Fuzoku Kankei Shiryo Satsuyo, op. cit., p. 26.

⁹⁹ The Taejong Factual Records, Vol. 30, July, 1415, p. 9.

¹⁰⁰ The Taejong Factual Records, Vol. 12, September 1454, p. 10.

6. Marriage by Capture and Intraclan Marriage

A. Marriage by Capture

According to Professor Westermarck, there are modes of contracting marriage which fall into two major classifications; those with and those without the consent or will of the involved parties individually or collectively.¹⁰¹ In this section, we shall discuss first the modes of contracting a marriage without the consent or will of the parties involved; that is, "marriage by capture."

In Korea, it is called "paktal hon."¹⁰² The "paktal hon" may be accomplished in the following way:
A marriage consummated by force both without the

¹⁰¹Edward Westermarck, The History of Human Marriage (The Macmillan Co., London, 1903), pp. 354-431.

¹⁰²Hereafter, "marriage by capture" is termed as "paktal" on the basis of the following reason. The word, "paktal" is difficult to translate into English to give its full meaning. The closest words that we can use in English, according to the dictionary, are "arrest" or "spoiler." However, these words often mean to distinguish either criminal, war or politics, not the marriage system itself. Consequently, the writer used the original Korean word to distinguish its characteristics and significance.

woman's consent and without the consent of her kindred by either one or more men, single, married or a widower, who enters the widow's house and forcefully captures the widow and puts her into a bag, and carries her back to his house to make her his wife.

In Korea proper, various names are given to indicate such a practice, and such practices were historically viewed as inevitable and unique developments during the Yi dynasty. The development and origin of such a practice was primarily designed to "balance the man and woman consumption,"¹⁰³ because of the social imbalance of the sexes in marriage which was caused by such factors as the wealthy man's monopoly of women, the increasing number of economically poor bachelors who did not have the opportunity to marry and the prohibition of remarriage of widows.¹⁰⁴

¹⁰³ Son, op. cit., p. 108.

¹⁰⁴ According to the court records, in fact, many widows were permitted to remarry. The Taejong Factual Records, Vol. 22, November, 1411, p. 50, The Taejong Factual Records, Vol. 29, January, 1418, p. 4, and The Saejong Factual Records, Vol. 17, April, 1422, p. 5. However, since the reign of King Sungjong (1470-1494), remarriage was prohibited. Question as to whether this law effected continuously after the death of King Sungjong or amended by his successor, is unknown. In any case, traditionally, a widow's remarriage was not encouraged socially. Richo Gohyakunen Shi, op. cit., p. 82.

Development of such practice is understandable when we observe that it was far more economical to "capture" a wife directly because one needed no payment for a go-between to arrange for the marriage nor did he need to pay for wedding presents, parties, and ceremonies. One only needed a little money to buy some cloth and wine for friends who assisted him in securing a wife.

In the course of time such practice was widely accepted by the lower classes and poorer people and during the mid-16th century it further spread throughout the country. Often villagers showed sympathy and urged widowers or unmarried men to marry through the "paktal" methods. According to Professor Son's words, such a development is "not peculiar but essential."¹⁰⁵

A characteristic of the paktal marriage was that the woman had to be a widow. On the other hand, the man did not need to be a widower. Predominantly it was practiced by old and poor single men, but occasionally it was practiced by a married man.

¹⁰⁵ Son, op. cit., p. 106.

Thus far, the writer has presented the advantageous aspects of the paktal marriage; however, it created some social disadvantages. An impractical aspect of the paktal marriage system was that there was a complete lack of mutual understanding and agreement. When a widow was brought to the man's house by force, some lived happily, but some committed suicide and some escaped to their original homes.

Though the capturing methods varied, nevertheless there were great similarities throughout Korea. First, the captured widow had to be carried back to the man's house in a bag, and she was wrapped in a blanket during the winter season. Second, the captured widow's back had to be attached to the carrier's back so as to avoid the widow's bite or violence. Third, when captured, the widow's hands and legs were tied down and sometimes she was gagged.

There was almost a ritual or set of rules to be followed when the capturer entered the widow's house and attempted to capture her. As long as the widow was inside the house, her family might violently resist the capturer; however, once the widow's body was

carried through the outside gate in front of her house, no one, including her relatives, would try to capture her back.

If the captured widow was a member of a noble family, she was often set free by the local officials in the local courts and the capturers were arrested and punished. Despite some resistance among the noble classes, lower class people practiced it and "8 or 9 out of 10 have lived together whether they liked it or not."¹⁰⁶

In Korea, during the Yi dynasty, numerous records showed that the kings one after the other ordered their subjects to simplify the wedding ceremonies because the noble families' marriage ceremonies were too extravagant.¹⁰⁷ Yet the poor or slave classes had no opportunity to attain the most basic and universal demand for sexual satisfaction.

The deprivation of the widow's right to marry by customs and by laws, the rise of capitalists and noble

¹⁰⁶ Son, op. cit., p. 108.

¹⁰⁷ Richo Fuzoku Kankei Shiryo Satsuyo, op. cit., p. 392.

families who moved from political affairs to economic domination of the country, together with absolute obedience toward the ruling house made it more difficult for the economically poor and lower status people of the country to fulfill the biological urge. These factors finally created the "paktal" marriage which persisted until the early twentieth century.

B. Intraclan Marriage

The primary objectives of marriage, as we observed elsewhere in this chapter, are to perpetuate family cult, tradition, and generations. In order to fulfill the marriage objective, marriage regulations should not go too far, if human races are to be maintained. It does not mean necessarily that incestuous union¹⁰⁸ should be permitted. The basic criteria, the writer believes, is only the degree to which such matrimonial union is "allowable within the society."

The isolated tribesmen with no potential mates outside their community were forced to mate within the

¹⁰⁸ Incest taboo is defined as a prohibition of sexual relations or prohibition of marriage, between father and daughter, mother and son, and brother and sister; that is, between all cross-sex relatives in the immediate, or

tribe, or even within the family, if the tribe was to survive. Even today, for example, royal families allow their members to marry "close-relatives," when such marriages are normally taboo for commoners.

It should be asserted here that society should regulate and control the sex-expressions so that an individual as well as the society can be maintained without disunity among members of society. If there were too rigid control, however, population declination and personality maladjustments would result.¹⁰⁹

"nuclear," family except husband and wife. The incest taboo is always extended to relatives outside the nuclear family, but these extensions are not universally the same. For theories pertaining to incest taboo, see Sigmund Freud, Totem and Taboo (Dodd Mead Co., New York, 1927), and by the same author, trans. by A. A. Brill, Leonardo Da Vinci: A Study in Psychosexuality (Random House, New York, 1947), Robert H. Lowie, Primitive Society (Boni and Liveright, New York, 1920), Bronislaw Malinowski, Sex and Repression in Savage Society (Harcourt, Brace and Co., New York, 1927), and by the same author, The Sexual Life of Savages in North-Western Melanesia (Eugenics Publishing Co., New York, 1929), John F. McLennan, Studies in Ancient History, 2d series, (The Macmillan Co., Ltd., New York, 1896), W. Robertson-Smith, Kinship in Ancient Arabia (London, 1903), Jeremy Bentham, The Theory of Legislation (Trubner and Co., London, 1871), and Westermarck, op. cit., 1926.

¹⁰⁹ Robert W. White, The Abnormal Personality, 2nd ed., (The Ronald Press, New York, 1956), pp. 129-131.

From the early period of the Yi dynasty, along with the importation of Chinese classic literature and customs into Korea, the Koreans were not allowed to marry within the same clan or kinship group. The restrictions included a prohibition of marriage between people who carry the same surname. Despite the fact stated above, an exceptional case occurred in the southern part of Korea.

Professor Son of the Seoul National University who has been a frequent contributor to Korean, Chinese and Japanese scholastic periodicals, had an actual interview with a 69 year-old person who witnessed an intraclan marriage in Taegu city during the summer of 1932.

The following article¹¹⁰ is the story behind the intraclan marriage which is very rare and which is not popularly known even among the Koreans:

Today's Korean marriage is strictly an out-clan (exogamy) marriage and an interblood-clan-marriage is prohibited. However, in the village called "Tusil," located in the Yongchon county, Kyung-sang North Province, they practiced intraclan marriages and the origin of such a practice is said to have some religious implications.

¹¹⁰ Son, op. cit., pp. 117-8.

Once upon a time, a villager picked up a wooden box flowing on the river and opened the box by curiosity. He discovered in the box many face-masks and brought them back to the village, and because of fear he kept them in his home. This resulted in good agricultural harvests. Disasters such as poor agricultural production, calamity and disease occurred when the face-masks were mishandled. Consequently the villagers made a shrine, and kept face-masks in it to which monthly prayers were offered. Neighbor villagers heard of this and cut off all their relations with that village, especially marriage; [and so that village was forced to practise interclan marriages in order to survive.]

In the preceding paragraphs, the writer has shown how the ancestors of the Yi dynasty viewed marriage and their observances. Our next topic will be the examination of the legalistic aspects of the socio-family system from 1910 to the present. For the sake of systematic presentation of the subject, the writer has divided the next chapter into two periods; from 1910 to 1945 and 1945 to the present. The former is characterized by the Japanese occupation of the Korean peninsula with an application of the Japanese laws, and the latter period is marked by the application of Korean laws. Attention is directed to those systems which changed from the previous system. First, we shall proceed with an examination of the Japanese Civil law which affected the lives of the Korean people.

CHAPTER IV

LEGAL INTERPRETATION OF THE KOREAN FAMILY SYSTEM

FROM 1910-1945 AND 1945 TO THE PRESENT

Section I. Under Japanese Occupation - 1910-1945

In order to determine how the Korean socio-family system was affected by the Japanese during the 35-year-period from 1910, it is necessary to introduce background information regarding the initial stages of Japanese official policy in Korea -- administrative, judicial and other matters -- so as to be able to clarify the subject under discussion.

Although formal annexation of Korea did not come into effect until 1910, the Japanese initiated their protectorate regime as early as 1905.¹ Under the Imperial

¹ For events leading up to Japanese seizure of Korean administration and related information during the Japanese occupation in Korea, see Byung Do Lee, Kuksa Taikwan [Korean History], in Korean (Chinmun Kwan, Seoul, Korea, 1955), Young Ha Kim, Kuksa Ui Yonggu [Study of the Korean History], in Korean (2nd series, Pakyoo-sa, place of publication unlisted, Korea, 1959), Kyung Cho Chung, Korea Tomorrow: Land of the Morning Calm (The Macmillan Co., New York, 1955), William F. Sands, Undiplomatic Memories (McGraw-Hill, New York, 1930), Frederick M. Nelson, Korea and the Old Orders in Eastern Asia (Louisiana State University Press, Baton

Ordinances, numbers 267, 268 and 273, of December 20, 1905, the Tokan-fu, which literally means Supervisory Office or Office of the Resident-General, was set up under the control of the Tokan or Resident-General. Though the Resident-General was subordinate to the Japanese Emperor, he could not communicate directly with the Emperor; rather he was restricted to representation through the Japanese Foreign Minister in foreign affairs and the Premier in all other matters.²

At the time of the establishment of the Japanese protectorate regime in 1905, the agreements were largely based on the principle of having Japanese advisors in every sphere of Korean administration, whereas the agreement of July 24, 1907, made the Japanese the actual holders of power. In fact, no Koreans,

Rouge, 1946), F. A. McKenzie, Korea's Fight for Freedom (Fleming H. Revell, New York, 1920), George M. McCune, Korea Today (Harvard University Press, Cambridge, Mass., 1950), Hong Kee Karl, Korea: Her History and Culture (Office of Public Information, Seoul, Korea, 1954), and Sadakichi Kida, Kankoku no Heigo to Kokushi [The Annexation of Korea and its History], in Japanese (Sanshodo, Tokyo, Japan, 1910).

²Papers Relating to the Foreign Relations of the United States (Government Printing Office, Washington D.C., 1906), p. 1025-6.

including the emperor, were allowed to enact or amend a law, an ordinance, or an important administrative act without the prior full approval of the Resident-General.³ With this agreement, the former Korean government machinery ceased to function, and this marked the beginning of Japanese supremacy in controlling socio-cultural spheres until Korea was liberated from Japan in 1945.

Among others, the first tasks of the Japanese Overseas Government-General in 1910 were the "stabilization of peace and order" in Korea and "simplification of laws and regulations."⁴ The Civil Law for Korea,

³ These facts are to be found in the following agreements: (1) The government of Korea shall act under the guidance of the Resident-General in respect to reforms in administration. (2) The government of Korea is prohibited to enact any laws, ordinances or regulations, or to take any important measures of administration without the previous assent of the Resident-General. (3) The judicial affairs in Korea shall be set apart from the affairs of ordinary administration. (4) The appointment and dismissal of all high officials in Korea shall be made upon the concurrence of the Resident-General. (5) The government of Korea shall appoint as Korean officials the Japanese subjects recommended by the Resident-General. (6) The government of Korea shall not engage any foreigner without the concurrence of the Resident-General. (7) Article I of the Protocol between Japan and Korea signed on the 22nd of August, 1905, shall hereafter cease to be binding. Government-General of Chosen, Annual Report on Reforms and Progress in Chosen, 1907 (Keijo [present Seoul], Korea, 1908), Appendix G.

⁴ Annual Report on Reforms and Progress in Chosen, 1921-1922, op. cit., p. 7.

based mainly on the one for Japan, was instituted in March, 1912; afterwards, regulations of matters relative to marriage, adoption, relationship, inheritance, etc., were also completed and put into effect, under the name of "Chosun Minsa Ryung," or "Korean Civil Decree."⁵

Accordingly, the Army Department of Korea, which was formerly abolished by Imperial Edict No. 68 issued in July, 1910,⁶ and Korean police forces were to come under the general supervision of the district governors.⁷ With regard to Government officials and employees, "Japanese were principally employed in those responsible places or positions requiring technical knowledge, while Koreans were employed as assistants or subordinates."⁸

When Japanese government organizations were successfully established,⁹ district reformati^ons were initiated

⁵Ibid., p. 215.

⁶Annual Report on Reforms and Progress in Chosen, 1915-1916, op. cit., p. 25.

⁷Ibid., 1921-1922, p. 255.

⁸Ibid., 1915-1916, p. 8. See also George M. McCune and Arthur L. Grey, Jr., Korea Today (Harvard University Press, Cambridge, Mass., 1950), pp. 24-25.

⁹Ibid., 1915-1916, pp. 8-9.

in the year 1915. The administrative divisions of the peninsula were comprised of 13 provinces, 12 urban prefectures, 218 rural districts, 2 island districts, and 2,519 villages.¹⁰ Village was the lowest in the administrative divisions and village headmen were made directly responsible to the provincial governor.¹¹ As we already observed, the village headmen were selected from among members of the clan and governed the clan villages during the Yi dynasty.

In addition, the government officially abolished the clan village school, the "sotang," and introduced the new educational system,¹² which was similar to the educational

¹⁰ Ibid., 1915-1916, pp. 15-16.

¹¹ Ibid., 1915-1916, pp. 15-16 and 21.

¹² Ibid., 1921-1922, Chapter 22. The report further stated that "With regard to educational reforms in Korea since 1906, modern Common Schools, in accordance with the advice of the Resident-General, were established in important places throughout the country as models by the Government; and a Normal School, a High School and a Foreign Language School poorly conducted, were re-organized after a better system. The second stage of the educational reforms was commenced in 1908 with the supervision and control of numerous private schools and of textbooks of a seditious nature indiscriminately used by private schools. In order to encourage female education, a Girls High School was established by the Government to serve as a model, and a system of separate classes for girls was also provided in Common Schools

system of Japan proper, in order to Japanize Korea. All the Korean pupils in the Japanese controlled schools learned to speak, read, and write the Japanese language. All the Koreans were required to change their original Korean names into Japanese, and all the Koreans were required to obey and respect the Japanese laws and Constitution.¹³

With respect to the laws, all the laws of Japan proper automatically applied to Korea after the annexation. But since the state of affairs in the peninsula was somewhat different from that in Japan, the Governor-General found it necessary to frame special laws suitable to conditions in Korea, with the exceptions of laws concerning the post and telegraph service, rights in

without radically introducing co-education which is contrary to popular prejudices. In 1909, reform measures entered the third stage, being directed towards encouraging and stimulating industrial and technical ideas in order to meet the existing condition of the country." Ibid., 1915-1916, p. 144.

¹³ Ibid., 1915-1916, p. 149. For information pertaining to Japanese Constitution, see Kinjiro Sato, Teikoku Kenpo Kogi [A Lecture on the Imperial Constitution], in Japanese (Yugaikaku, Tokyo, Japan, 1938).

industrial properties, copyright, accounts, and certain other matters to which the laws of Japan proper were made to apply in whole or in part.¹⁴

Furthermore, as it was not possible in Korea to enact laws as in Japan proper, where laws are enacted by the approval of the Diet, "Imperial Ordinance No. 324 was promulgated in 1910 and Law No. 30 enacted in 1911, empowering the Governor-General in Chosen (Korea) to issue 'Decrees' by his discretionary authority after receiving Imperial Sanction through the Prime Minister, and in case of emergency to issue them without Imperial Sanction; but in such case he must ask for Imperial Sanction after their issue, and, if not granted, must announce officially that the decree concerned is henceforth invalid."¹⁵

¹⁴Ibid., 1915-1916, p. 32. In addition, with regard to official census regulations, the following observations may be made: "Matters concerning the census registration have hitherto been conducted by police offices under the control of the Police Affairs Department. The Census Regulations being modified in March, 1915, such matters were transferred to the village offices and prefectural magistrates under the control of the Judicial Department of the Governor-General. Births and deaths, change in the head of the family, marriages and divorces, creation or abolition of a family, change of residence, etc., should be reported to village offices where census registration books are provided." Ibid., p. 32.

¹⁵Ibid., 1921-1922, p. 25.

In November, 1921, the Governor's Decree about Civil Matters was revised and the Japanese Civil Code made to apply in full in Korea with respect to individual capacity, parental power, and guardianship, irrespective of old Korean custom.¹⁶ In July, 1921, the inter-marriage law of Japanese and Koreans was adjusted and its procedures simplified.¹⁷

Unlike Anglo-American laws, which are referred to as "Common Law,"¹⁸ the Japanese laws are known as

¹⁶Ibid., p. 28.

¹⁷Ibid., p. 28. The report further stated that: "According to Dispatch No. 240 of the Civil Governor, issued on August 7, 1915, Korean women were recognized as marriageable to Japanese and Japanese women to Koreans. The registration of concubines as members of a family, hitherto practised among Koreans, was prohibited. While the legal form of marriage among Japanese according to Japanese law is constituted by the report of the marriage to the village or town office, that of marriage among Koreans is effected by the marriage ceremony or report to such. Marriage among foreigners is also recognized by a report to local offices, as is the case in Japan." Ibid., 1915-1916, p. 32.

¹⁸Anglo-American law had its origins not so much in statutes enacted by legislative bodies as in customs, in church teachings and practices, and in decisions rendered by judges. In England during the centuries after the Norman Conquest judges were called upon to referee disputes that arose between individuals in their daily lives. In doing so they rendered decisions, based in part upon customary usages and in part upon their own personal wisdom, common sense, or prejudices

"Statute Law or Written Law" and all provisions are carefully defined and prescribed in the law book, called Yukbop Chunso in Korean and Rokuho Zenshu in Japanese.¹⁹

The main areas of investigation in this chapter extend, however, to the marriage rules and property succession. The emphasis is placed upon cultural traits viewed from the legal standpoint, which have changed from those systems existing prior to 1910.

concerning the problems of life. In this way there came into being a body of judicial rulings, said to be derived from "the common custom of the realm," which became known as common law. For further information, see Robert K. Carr and four other co-authors, American Democracy in Theory and Practices (Revised ed., Rinehart and Co., Inc., New York, 1955), p. 233.

¹⁹It should be pointed out here that although Korea was liberated from Japan in 1945, the major portion of present Civil Law is based on the Japanese Civil Law. Since 1948, some aspects of the laws have been amended, however, little has been changed. Yukbop Chunso or Rokuho Zenshu may be translated as A Complete Collection of Six Laws. The six laws referred to are (1) Constitutional Law, (2) Civil Law, (3) Criminal Law, (4) Commercial Law, (5) Civil Procedure Law, (6) Criminal Procedure Law. The translations of Civil and Criminal Law articles in this chapter are made from Yukbop Chunso, in Korean (Munshung-dang, place of publication unlisted, Korea, 1955).

1. Components and Definition of the Family

According to the Civil Law sections on "The Family and Relatives," the family is restricted to a small compact size.²⁰ The family is comprised of "family-head, the spouse, relatives,²¹ and their own or adopted children."²² The stepfather and stepmother are also classified as legal family members.²³ Thus, the family is restricted to married couples and relatives only,

²⁰"The small compact size" is referred to as "conjugal." The Japanese Civil Law definition is similar to the United States Census Bureau's definition of the family. For example, the United States Census Bureau define the family as "a group of two or more persons who live together and who are related by blood, marriage, or adoption." Paul C. Glick, American Family (John Wiley and Sons, Inc., New York, 1957), p. 210. Murdock defines the family as "a social group characterized by common residence, economic cooperation, and reproduction. It includes adults of both sexes, at least two of whom maintain a socially approved sexual relationship, and one or more children, own or adopted, of the sexual cohabiting adults." George P. Murdock, Social Structure (The Macmillan and Co., New York, 1949), p. 1.

²¹The term "relatives" refers to parents, grandparents, brothers, sisters, sons and daughters of one's brothers and sisters, and parents of the wife. Civil Law, Article 725.

²²Civil Law, Articles 732 and 733.

²³Civil Law, Articles 727 and 731.

with or without their own or adopted children. All other members, whether they are living under the same roof or not, are regarded as the distant-relatives and are not included in the family.²⁴

During the Yi dynasty, as we have already observed, regardless of the size of the family, large or small, the family contained only one family or house-head, called "kajang." However, according to the Japanese Civil Law, there could be several family heads, called "hoju."²⁵

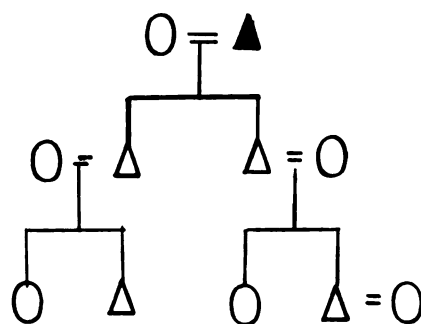
To be specific, during the Yi dynasty, if one family contained more than two generations, the eldest male member was the only head of the family, whether the sons were married or not. But Japanese Civil Law broke it down to more than one family-head, because a married son automatically becomes the family-head of his own family regardless of the place of residence.

The diagrams on the following page illustrate this difference:²⁶

²⁴ Civil Law, Articles 729 and 730.

²⁵ Civil Law, Article 732.

²⁶ These diagrams were drawn under the assumption that all the members are living under the one roof.

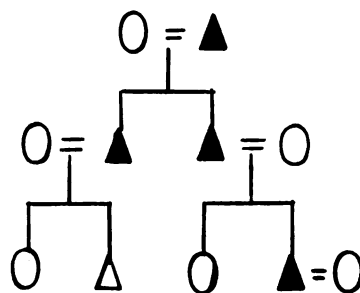
During the Yi dynastyRemarks

Δ ---- Male

O ---- Female

= ---- Married

▲ ---- Family-head

During the Japanese era

Formerly married sons and their wives lived in the parents' house and without the consent of father, elder brother and clan council, no one was allowed to branch out from the main house. According to the Civil Law,

any married family member could establish a new branch family of his own.²⁷

The fact that any married family member could establish a new branch family, nevertheless, did not viti-
tiate one of the basic concepts of the family -- that
the family shall last forever. In order to prevent
family extinction, the law further provided that: "A
person who has become the head of a house by succession
cannot abolish such a house, except where permission to
do so has been obtained from a court of law for the pur-
pose of succession to, or the reestablishment of, the
main house,"²⁸ or for any other just cause."²⁹

²⁷ Civil Law, Articles 743 and 744.

²⁸ To explain the "main house" the following obser-
vation may be made. Take for instance, first, a family
with 3 sons. When the children grow up, the first son,
after his marriage, will succeed the father as the per-
petuator of the family, and the second and third sons
will establish their own branch house after marriage. At
this stage of development, either the parent's or eld-
est son's house is referred to as the "main house" be-
cause the parent's or eldest son is the only legal per-
petuator of the family. For detailed information, see
Chin Woo Yoo and Byung Kuk Ko, Pupryulhak Sachun [Ency-
clopaedia of Laws], in Korean (Chunku Munhwa-sa, Seoul,
Korea, 1954), p. 318.

²⁹ Civil Law, Article 762.

In addition, "the legal presumptive heir to the headship of a house is not permitted to enter another house, or establish a new one, except where the necessity arises for succeeding to the headship of the main house."³⁰ In other words, a legal presumptive heir, by law, could not become a member of another house by marriage, adoption, or by any other cause, nor found a house of his own.

In short, the Civil Law provided the means to reduce the size of the family and gave greater freedom to the individual; however, the original thought behind the family concept was still incorporated in the law. As we shall observe in detail in the section immediately following, a number of the laws took particular precautions to save the family from extinction.

2. Parental Authority

During the Yi dynasty, the parental responsibility and authority over the children concerned (1) education, (2) behavior of the children and protection of their lives, (3) disciplinary action or punishment, (4) place

³⁰ Civil Law, Article 744.

of residence prior to and after the marriage, (5) occupation, (6) management of finance, and (7) marriage and divorce. In addition, greater power was exercised by the father, and the mother could voice her opinion concerning items 2, 3, and 7. Upon the child's marriage and establishment of a separate household, neither the father nor the mother assumed the child's occupation (5) and management of finance (6) as their responsibility.³¹

In accordance with the Civil Law, all seven items specified above remained the same except that the father had no right over his children after their marriage, and after they established separate households and became legal adults.³² After the death of the father, all the responsibilities "shall be assumed by the mother."³³

³¹ Chosen Sotokufu, Chusuin, Minji Kanshu Kaito Ishu [Collection of Customary Replies in Civil Litigation], in Japanese (Keijo [present Seoul], Korea, 1933), pp. 38-9. For further information, see Chapter II, Section 2 of this thesis.

³² Civil Law, Article 877. During the Yi dynasty, the legal ages have been changed frequently; however, according to the Civil Law, the legal age is set for twenty (20) regardless of the sex. See Civil Law, Article 3.

³³ Civil Law, Article 877.

There was no specification on the involvement of the paternal uncle in assisting, managing and controlling the family affairs. The said provision was equally applicable to the stepfather and stepmother.³⁴ The termination of the parental authority was possible only by death,³⁵ divorce,³⁶ or adoption by another family³⁷ after due process of law.

Children under the age of twenty-one were under the parents' strict supervision, as stated above. Children must live in the place which the parents provided;³⁸ children could not volunteer for military service unless they first obtained permission from their parents;³⁹ children could not establish a business unless the parents granted permission;⁴⁰ and they could not contract marriage without prior consent from the

³⁴ Civil Law, Article 878.

³⁵ Civil Law, Article 729.

³⁶ Civil Law, Article 729.

³⁷ Civil Law, Article 730.

³⁸ Civil Law, Article 880.

³⁹ Civil Law, Article 881.

⁴⁰ Civil Law, Article 883.

parents.⁴¹ The said laws were equally applicable to the adopted children.⁴²

Under the Civil Law, as was the case during the Yi dynasty, there is no indication of what types or methods of punishment the parents should apply to the children. It is safely assumed, however, that death and bodily injuries caused by severe parental punishment may fall under the general classification of the Criminal Law, i.e., "Any person who kills his own or his spouse's family member shall be sentenced to the maximum of death and minimum of five years imprisonment."⁴³ In a section on "Injury," the law specifies that "Any person who committed bodily injury shall be sentenced to less than seven years of imprisonment or less than twenty-five thousand hwan of fine."⁴⁴

⁴¹Civil Law, Article 772.

⁴²Civil Law, Article 727.

⁴³Criminal Law, Article 250.

⁴⁴Criminal Law, Article 257. A word "hwan" is an unit of the Korean currency. It is impossible to cite the legal exchange rate at the time of the enactment of the laws.

One of the unique features which was developed by the government to assist parents was the system of "Chingkae-jang,"⁴⁵ whereby parents could take necessary disciplinary measures against a violent child, under the age of 16, with the assistance of the court judges. The Chingkae-jang is the place where the parents and judges jointly rehabilitate the juvenile delinquents or unfilial children. Any parent may request of the court permission to use this facility. The court is empowered to order a maximum of six months' confinement. The period of confinement may be ended within six months, and the parents may request to shorten the confinement period if it is deemed necessary.⁴⁶

3. The Laws of Succession and Adoption

During the Yi dynasty, as we have already observed, greater emphasis was placed upon the eldest male heir

⁴⁵ Chingkae-jang is erected by the government and as a rule, attached to the district courts. The Chingkae-jang's purpose is to allow parents to take necessary disciplinary measures against their child with the general supervision of the judges. The Chingkae-jang is under the legal court management and is used for the confinement. Whether the children get psychiatric help at the Chingkae-jang is not known.

⁴⁶ Civil Law, Article 882.

of the family. The eldest male was made the legal family perpetuator of the ancestral cult, and exclusive power was awarded to the family head to regulate, manage and control both the family members and the family property.

The family head's authority over both the family members and the family property is termed "Ka-tok," (家督). As time went on, with the improvement of the economic condition of the family, more stress was laid on the family head's authority over property, and finally it reached the point where continuity of the family depended upon the preservation of the family property.⁴⁷

Accordingly, the Civil Law recognized the two types of succession; succession to family headship,⁴⁸ and

⁴⁷Civil Law, Articles 964 and 991. For further information regarding headship and property succession, see Chin Tai Son, Chosun Minjok Munhwa Ui Yonggu [Study of the Korean Culture], in Korean (Ulyoo Munhwa-sa, Seoul, Korea, 1948), p. 96, Morimitsu Shimizu, Shina Shakai no Kenkyo [A Study of Chinese Society], in Japanese (Iwanami Shoten, Tokyo, Japan, 1939), Chapter IV, Chosen Sotokufu, Chusuin, Minji Kanshu Kaito Ishu, *op. cit.*, Appendix, Chosen Sotokufu, Chusuin, Richo no Zaisan Sozoku Ho [Yi Dynasty's Property Succession Law], in Japanese (Keijo [present Seoul], Korea, 1936), and Hidekichi Kondo, Shin Hogaku Zenshu, Sozokuho [Collection of the New Laws: Law of Succession], Vol. 15, in Japanese (Nippon Hyoron-sha, Tokyo, Japan, 1941).

⁴⁸Civil Law, Article 964 through 991.

succession to property.⁴⁹ Since the property succession is largely determined by the succession of the headship of the family, we shall first proceed to examine the well defined succession of the family headship. There are, in fact, four kinds of heir to family headship; the legal heir, the appointed heir, the chosen heir, and the ascendant heir. Each kind is described as follows:

1. The Legal Heir: The legal heir, who comes first in the order of succession, is the lineal descendant of a family head, who is at the same time a member of his house. Among lineal descendants, the nearest kinsman is preferred to the remote, the male to the female, and the legitimate child to the illegitimate, seniors in age being always accorded priority when they are equal in other respects.⁵⁰

2. The Appointed Heir: In case there is no legal presumptive heir to a family head, the latter may "appoint" an heir, either in his lifetime

⁴⁹ Civil Law, Article 992 through 1016.

⁵⁰ Civil Law, Article 994.

or by his will. However, this appointment will not be effective, if he obtains a child in the course of nature or by adoption, for the latter will become his legal presumptive heir.⁵¹

3. The Chosen Heir: If at the time of the death of a family head, there is neither a legal nor an appointed heir, the father of the deceased, or, if there is not father, or, if he is unable to express his intention, the mother, or, if there are no parents or both are unable to express their intention, the family council "chooses" an heir from among the members of the house according to the following order: (1) the surviving wife, if she is a house-daughter;⁵² (2) the brothers; (3) the sisters; (4) the surviving wife, who is not a house-daughter; and (5) the lineal descendants of brothers and sisters.⁵³

⁵¹Civil Law, Article 970.

⁵²A house-daughter is the surviving wife who lives in the house of the deceased family-head.

⁵³Civil Law, Article 982.

4. The Ascendant Heir: If there is neither a legal, nor an appointed, nor a chosen, heir, then the nearest lineal ascendant⁵⁴ of the last family head succeeds, the male being always preferred to the female in the case of persons standing in the same degree of relationship.⁵⁵

Once a person has succeeded to the family headship, he should not neglect the matters pertaining to the family. Laws are further established to prevent family discontinuation by the following provision: "The family head cannot bequeath away from him more than one half of the property, nor can he disinherit him, [his heir] unless there exists one of the grounds mentioned in the Civil Law, Article 975."⁵⁶

Article 975 specifies the reasons as: (1) Ill-treatment or gross insult to the family head, (2) Unfitness for family headship on account of bodily or mental infirmities, (3) Being or having been sentenced

⁵⁴A word ascendant, or lineal ascendant refers to those persons who are directly related by blood, i.e., father, mother, grandfather, grandmother, etc.

⁵⁵Civil Law, Article 984 and 985.

⁵⁶Civil Law, Article 1130.

to punishment for an offense of such a nature as to defile the name of the house; and (4) Interdiction of the court as a spendthrift.⁵⁷

For these and any other just causes, a family head may, with the consent of the family council, bring an action against his legal presumptive heir with a view to depriving him of the right of succession.

Furthermore, the emphasis is also placed on male heirs and on the order of birth. A male, particularly the eldest son, has the priority in receiving the total family property. This provision distinguishes Japanese Civil Law from that of the Yi dynasty. Under the Civil Law, the second, third and fourth younger brothers or sisters, in effect, have no equal share in the property.

The reasons behind this legislation, as interpreted by Japanese rural sociologists, are that all younger brothers are attached to the elder brother, or younger brothers are subordinate to elder brother, or the main family, and that the younger brothers are

⁵⁷Civil Law, Article 975.

expected to render their labor services for the sake of sustaining and perpetuating the main family line.⁵⁸

Under both laws of succession, during the Yi dynasty and the Japanese era, it is apparent that every precaution was taken to prevent family discontinuation. The foundations of the law may be viewed as follows: the former period dealt exclusively with the clan or the greater-family as its basis for the perpetuation of the ancestral cult; the latter period emphasized the "nuclear family" and the individual as the foundation for family continuity.

Therefore, an application of the Civil Law in Korean society was the first time in Korea's history that the individual began to form the unit of the state. Prior to 1910, an individual was merely the unit of the greater-family or clan, and the clan was actually the unit of the state. Indeed, disintegration of the clan was, therefore, initiated after 1910.⁵⁹

⁵⁸Tadashi Fukutake, Nihon Noson no Shakaiteki Seikaku [Social Character of Japanese Agricultural Village], in Japanese (Tokyo University Shuppan-bu, Tokyo, Japan, 1951), p. 23.

⁵⁹For further information, see Annual Report on Reforms and Progress in Chosen, 1915-1916, op. cit., pp. 14 and 21.

The law of adoption needs further explanation. According to the Civil Law, "any person who has attained the legal age (21) may adopt a child;"⁶⁰ however, "a person having a male child who is the legal presumptive heir to the headship of a family is not allowed to adopt a son. But this rule does not apply to the case of adopting a son for the purpose of making him the husband of a daughter of the adopter."⁶¹

There is another form of adoption, termed "Suyangja" or "adoption of son-in-law."⁶² The adoption of a son-in-law is possible when the parents are not childless, but when they have only a daughter. Those persons who have only daughters are obliged to adopt a son. In such a case, a family head could adopt his daughter's husband as his adopted son. When adoption and marriage take place "at the same time," the practice is called "Suyangja."

⁶⁰Civil Law, Article 837.

⁶¹Civil Law, Article 839.

⁶²Civil Law, Articles 970 and 858.

When the adoption is legally completed, as specified in the adoption law, the adopted son is treated as a natural-born legitimate child,⁶³ and he takes the name of the adoptive father.⁶⁴ In other words, upon completion of the adoption procedure, the adopted son becomes the legal presumptive heir to the headship of the family; and, therefore, the adopted son is the legal continuator of the family.

In most cases, a person who has a daughter can adopt a son under the assumption that the adopted son, sooner or later, will marry his daughter when they grow up. If the adoptive father finds that both involved parties -- the adopted son and his own daughter -- and the adoptive parents disagree on the marriage issue, court action can be taken regarding dissolution of the adoption. The action could be taken because, (1) the son is adopted on the basis of marriage between himself and the daughter; and (2) the adopted son feels it is his obligation to leave the adoptive father's family.

⁶³Civil Law, Article 860.

⁶⁴Civil Law, Articles 860 and 861.

The main reasons for the dissolution of adoption are described in the Civil Law as follows: (1) Mistreatment or gross insult, (2) Being sentenced to a punishment for an offence of such nature as to defile the name of the family, (3) Disappearance of the adopted son for over three years, (4) Uncertainty about whether the adopted son may be dead or still living, and (5) Suyangja's dissolution of marriage.⁶⁵

The transference of the family property to the son was possible any time after the first son's marriage during the Yi dynasty; however, Japanese Civil Law specifies that the property transference can legally begin only after the death of the family-head, the family-head's retirement, or the revocation of family-head's citizenship, the cancellation of adoption, and the female house-head's remarriage.⁶⁶

Section II. Marriage System During the Japanese Era

1. Marriage Age

During the Yi dynasty, the legal marriage age was over 16 for the male and over 14 for the female.

⁶⁵ Civil Law, Article 866.

⁶⁶ Civil Law, Article 964.

According to the Civil Law, the legal marriage age is seventeen (17) or over for the male and fifteen (15) or over for the female.⁶⁷ Formerly -- during the Yi dynasty -- when the parents became more than 50 years of age, upon their request to the proper authority, the son could be permitted to get married at the age of 12,⁶⁸ and "within the emperor's family, the man, or princes, shall marry at the age of 15."⁶⁹ There are no such exceptional rules in the Civil Law.

2. Parental Consent to Marriage

The Civil Law provides that the parental consent to marriage remains unchanged except "if the man has completed his thirtieth year, or the woman her twenty-fifth year, no parental consent to marriage may be necessary."⁷⁰ If a member of a house married without the consent of the head of the family, the latter may, within one year from the day of the marriage, exclude

⁶⁷Civil Law, Article 765.

⁶⁸The Saejong Factual Records, Vol. 88, March, 1440, p. 28.

⁶⁹The Saejong Factual Records, Vol. 32, April, 1426, p. 29.

⁷⁰Civil Law, Article 772.

him or her from the household, or, if he or she has entered another house by marriage, forbid his or her return to the original house in case of dissolution of marriage.⁷¹

The consequences of a marriage without the consent of the parents are that the parents can make application to a court of law for the annulment of the marriage within a period of six months from the time when they first become acquainted with the fact of the marriage, or within two years from the date of its registration.⁷²

3. Limitations for the Marriage

In accordance with the Civil Law, Article 769, "no one is permitted to marry amongst the third-degree blood relatives."⁷³ The third-degree blood relatives

⁷¹ Civil Law, Article 750.

⁷² Civil Law, Article 784, Sec. 3.

⁷³ Civil Law, Article 769.

include (1) parents, (2) grandparents, (3) brothers, (4) sisters, and (5) sons and daughters of one's brothers and sisters.⁷⁴

It means then that a marriage contract is legal even if the bride-to-be carries the same surname as the groom. During the Yi dynasty, "no one shall be permitted to intermarry within the same clan, or even if the parties are from different clans but are related by blood or through marriage alliances and adoption."⁷⁵

Another rule specifies that no female is permitted to remarry within six months after the date her divorce becomes effective.⁷⁶ There is no time limitation concerning when a divorced male may remarry.

⁷⁴ Sakae Azuma, Shinzoku ho-Sozoku ho [Laws of Domestic Relations and Inheritance], in Japanese (Nihon Hyoron-sha, Tokyo, Japan, 1954), p. 31.

⁷⁵ Kim, Chosun Kajok Jaedo Yonggu, *op. cit.* Kim quoted from the Yi dynasty's Criminal Code, Articles 572, 573 and 574.

⁷⁶ Civil Law, Article 767.

During the Yi dynasty, "during the three years following the death of a parent, no person shall be permitted to marry."⁷⁷ However, there is no such restriction in the Civil Law. In addition, there are no restrictions on marriage between the different classes. Any persons who desire to marry outside of Korea, are permitted to marry by reporting to the foreign diplomatic channels, i.e., the Consulate General or the embassy.⁷⁸ During the Yi dynasty, however, government authorization was necessary before the wedding ceremony could be performed. A basic difference between the Japanese Civil Law and the Yi dynasty is that the former merely requires reporting, while the latter requires permission from the government before the wedding can take place.

⁷⁷ The Saejong Factual Records, Vol. 16, May, 1422, p. 11, The Chuljong Factual Records, Vol. 1, January, 1399, p. 3.

⁷⁸ Civil Law, Article 777. See also Annual Report on Reforms and Progress in Chosen, 1921-1922, op. cit., p. 25 and 28.

4. Cancellation of a Marriage

The cancellation of a marriage is possible under the following conditions: (1) The marriage is contracted when one or both parties disagree with the marriage, or lack the will or willingness for the marriage contract.⁷⁹ (2) The marriage negotiations are fraudulent,⁸⁰ and (3) The marriage is contracted by force.⁸¹ These are the legal reasons for the cancellation of the marriage.

5. Effectiveness of Marriage and Duties of the Husband and Wife

An effective marriage is only possible when the marrying parties fulfill the previously stated legal requirements, i.e., age, parental consent, contracting parties not being third-degree blood relative, etc. The fulfillment of the above provisions do not necessarily mean the marriage is lawfully effective, unless

⁷⁹ Civil Law, Article 778, Sec. 1.

⁸⁰ Civil Law, Article 785.

⁸¹ Civil Law, Article 785.

"the marriage registration should be submitted to the city or county hall, and the documents should be accompanied by two or more witnesses from each side of the marrying parties including the signature of the bride and groom."⁸² During the Yi dynasty, the witnesses cannot be members of either of the families involved but must be from outside the family.⁸³ However, there are no such specifications in the Civil Law.

Certain provisions are made to define the responsibilities of a married couple. The husband's responsibilities and wife's duties include: (1) they support each other;⁸⁴ (2) they stay together;⁸⁵ (3) after the marriage the wife shall move into the husband's house;⁸⁶ and (4) if the wife is under twenty-one years of age, the husband shall become the legal guardian.⁸⁷ The above laws mean then, that as husband and wife, the

⁸² Civil Law, Article 775.

⁸³ See Chapter III of this thesis for more information on this subject.

⁸⁴ Civil Law, Article 775.

⁸⁵ Civil Law, Article 789.

⁸⁶ Civil Law, Article 788.

⁸⁷ Civil Law, Article 791.

couple should cooperate for survival, i.e., divide the labor, assume the biological functions of the male and female, and if the wife is not old enough to be a legal adult, the husband should render whatever guidance and protection necessary to perpetuate the family lineage.

6. Prohibition of Concubinage

During the Yi dynasty, there was no law to legitimize the plural marriage of either polygyny or polyandry.⁸⁸ However, it was evident that rich, noble and ruling classes had an opportunity to possess many women as wives. And at the same time, the possession of plural wives often implied courage and wisdom, wealth or noble descent and plurality of wives was regarded as a mark of social distinction.

⁸⁸The marriage of one male and one female is called monogamy. Polygamy is referred to as many wives, or husbands. Where the marriage is between one male and several or more females, it is called polygyny. Where it is between one female and several males it is called polyandry. In Korea, there is no evidence to support the existence of polyandry. Therefore, a word concubine is strictly referred to as one male with several or more wives.

Although during the Yi dynasty there was no law to permit concubinage, however, on the basis of the King's court orders, the concubine system prevailed.⁸⁹ With the application of the Japanese civil law and criminal law in the Korean peninsula, monogamy became the established rule. Therefore, no one would be permitted to marry twice without due process of law.⁹⁰ In other words, no one was permitted to have a concubine or two or more wives at the same time. "The violator shall be sentenced to minimum of two years of imprisonment."⁹¹

Since 1910, monogamy has become the established legal law in Korea. Nevertheless, plurality of marriage continued to be practiced among the privileged

⁸⁹The Taejong Factual Records, Vol. 23, June, 1412, p. 38, Ibid., Vol. 25, June, 1413, p. 13, Ibid., Vol. 29, March, 1415, p. 4, The Saejong Factual Records, Vol. 85, May, 1430, p. 31, and The Saejong Factual Records, Vol. 95, February, 1432, p. 25.

⁹⁰Civil Law, Article 766.

⁹¹Criminal Law, Article 184. For further information on Criminal Law and its interpretation, see Masakichi Yasuhira, Shin Keiho Gairon [Outline of the New Penal Code], in Japanese (Hobunsha, 1952, Tokyo, Japan) and Seiichiro Ono, Shintei Keiho Kogi [Lectures on Penal Code], in Japanese (Yugaikaku, Tokyo, Japan, 1954).

people as was the implication of a newspaper editorial during the 1920's which advocated a five-point social reformation, particularly with regard to the promotion of the woman's status within the family and society. Among others, the first item urged the "Abolition of concubinage and establishment of sound monogamy."⁹² This quotation is an indication of the existence of concubinage during the Japanese era. Since we do not have the official statistic to support the married-population v.s., concubinage either during the Yi dynasty or Japanese era, it is impossible to present a quantitative analysis here.

7. Dissolution of the Marriage

During the Yi dynasty, a wife could be repudiated by her husband on one of the following "Seven Grounds of Divorce," known as Chilchul-ji-chang": (1) Disobedience to her husband's parents; (2) Barrenness; (3)

⁹²"A Statement on the New Moral and Establishment of the New Society," Toa Nippo [Eastern Times], Vol. 107, No. 8, July, 1920), appeared in Kim, Chosun Kajok Jaedo Yunggu, op. cit., p. 757.

Adultery; (4) Jealousy; (5) Repulsive disease; (6) Talkativeness; and (7) Larceny.⁹³

An examination of the Civil Law reveals that the majority of the above Seven-Grounds-of-Divorce rules have disappeared except items (1), (3) and (7). Under the Yi dynasty's law, the divorce was either brought to the court by the husband or by the husband's parents; however, the Civil Law recognizes that "either parties, husband or wife, may initiate the divorce."⁹⁴

The Civil Law recognizes the two kinds of legal procedures with which to terminate the legal marriage. The first one is called "Consensual" and the second is termed as "judicial."⁹⁵ The former is effected by the arrangement of the parties concerned, while the latter is awarded by the court of law on the grounds specified in the Civil Law, Article 813.

⁹³ See Chapter III, Section 5 of this thesis for more information.

⁹⁴ Civil Law, Article 808.

⁹⁵ Civil Law, Articles 808 through 812 and 813 through 819.

Under the judicial divorce provisions, well specified items are provided in Article 813 which affect the marriage. Either side of the married couple may initiate the divorce suit on the basis of one or more of the following grounds: (1) Being married twice or more without due process of the law -- bigamy; (2) Adultery committed by the wife; (3) Adultery committed by the husband; (4) Condemnation to punishments for such offenses as forgery, bribery, corruption, theft, robbery, obtaining property under false pretences, embezzlement, receiving stolen goods and sexual immorality; (5) Cruelty or gross insult against other spouse and spouse's immediate family; (6) Desertion of spouse or spouse's immediate family; (7) Uncertainty of the spouse's existence, or whereabouts, for a period of over three years.⁹⁶

In addition to the above rules, special provision is made under the judicial divorce to regulate son-in-laws' marriages and their dissolution or dissolution of adoption, as mentioned above.⁹⁷

⁹⁶ Civil Law, Article 813. See also Wagazuma, op. cit., Chapter 4, pp. 118-168.

⁹⁷ Civil Law, Article 813.

While the court is to determine the above listed item No. 7, if the disappeared spouse is located, the divorce suit will be cancelled.⁹⁸ The court of law is empowered to make appropriate decisions concerning the children involved, or the children's care.⁹⁹

Consensual divorce is rather simply administered if both parties agree to terminate their marriage. However, if either side of the married couple insists upon the divorce, while the other party disagrees, the matter then is to be handled by the court of law. Thus, other than consensual divorce, all cases must conform to, be disputed by, the court of law as specified in the Civil Law.

Even if both parties, husband and wife, agree to terminate the legal marriage, the said parties must first obtain consent from the legal guardian, i.e., the parents, in order to effect the divorce,¹⁰⁰ if the parties

⁹⁸ Civil Law, Article 817.

⁹⁹ Civil Law, Article 819.

¹⁰⁰ Civil Law, Article 809.

-- either one or both -- are under twenty-five years of age. In addition, if both parties agree to terminate the marriage, but do not decide which party should care for the child, or children, the responsibilities regarding the child, or children, are under the supervision of the father. In case the father separates from his own house, the child comes under the mother's responsibilities. In either case, the parents could not escape from supporting the child.¹⁰¹

Section III. Korean Family System since 1945

The Republic of Korea was not formally established until August 15, 1948. Korea was liberated from the Japanese Empire on August 15, 1945 and for three years thereafter, American Military Government occupied the area south of the 38th parallel. Under the auspices of the United States and the United Nations, the first election was held in south Korea on May 10, 1948. Later in May, 1948, 198 representatives chosen in the free election came to Seoul to begin the task of organizing a new, democratic government.

¹⁰¹Civil Law, Article 812.

The Constitution of the Republic of Korea was promulgated on July 17, 1948.¹⁰² The Constitution is based upon democratic principles; the government does not follow a particular established pattern of organization but draws upon a combination of American, European and Oriental political systems designed to meet most effectively administrative problems peculiar to the Republic of Korea.

The Constitution with great emphasis stresses individual freedom, liberty and equality regardless of sex, social status and religion. These provisions which bear upon the family system are to be found in the following articles:¹⁰³

Preamble:

Now at this time we are engaged in the re-establishment of a democratic and independent State and are determined;

To consolidate national unity through justice, humanity and fraternity,

¹⁰² Amendments were made for the first time in the National Assembly which convened at Pusan on July 4, 1952; the amended Constitution was promulgated July 7, 1952. The Constitution was amended again in the National Assembly at Seoul on November 27, 1954, and the present Constitution as amended was promulgated November 29, 1954.

¹⁰³ Office of Public Information, The Constitution of the Republic of Korea (Seoul, Korea, 1956), pp. 1-8.

To afford equal opportunities to every person and to provide for the fullest development of the capacity of each individual in all the fields of political, economic, social and cultural life.

Article 8:

All citizens shall be equal before the law. No discrimination as to political, economic or social life, based upon sex, religion or social position shall exist. No privileged castes shall be recognized, nor be ever established hereafter.

Article 9:

All citizens shall enjoy personal liberty. No citizen shall be arrested, detained, searched, tried, punished, or subject to compulsory labor except as provided by law. In any case of arrest, detention or search, a warrant therefor shall be necessary; except that in any case of flagrante delicto or in any case where there is danger that the criminal may escape or that the evidence of the crime may be destroyed, the detecting authorities may request an ex post facto conformity with provisions prescribed by law. To all persons who may be arrested or detained, the right to have the prompt assistance of counsel and the right to request the court for a review of the legality of the arrest or detention, shall be guaranteed.

Article 13:

Citizens shall not, except as specified by law, be subjected to any restrictions on the freedom of speech, press, assembly and association.

Article 16:

All citizens shall be entitled to equal opportunities of education. The attainment of at least an elementary education shall be compulsory and free of cost. All educational institutions shall be administered under the supervision of the State and the organization of the educational system shall be determined by law.

Article 20:

Marriage shall be based on the equality of men and women. The purity of marriage and the health of the family shall receive the special protection of the State.

An examination of these Constitutional provisions reveals a number of concepts which have an important bearing upon the relations of liberty and authority in modern society.

With the adoption of the new democratic Constitution, the outlook of the society began change. Although a new Constitution was adopted, all the laws including the Civil Law, which were enacted by the Japanese Diet and applied in the Korean peninsula since 1910, remained effective.

On February 22, 1958, the new Korean Civil Law was enacted for the first time in her history by the National Assembly; however, in general, most of the provisions of the Japanese Civil Law remained the same with minor revisions. To a large extent, the revisions involved those provisions which are contrary to the Korean Constitution and/or the new Korean ideology, democracy.

The enactment of the Korean Civil Law automatically abolished Japanese Civil Law by replacing the new article as enacted. The newly enacted Civil Law became effective on January 1, 1961. The main purpose of this enactment of the new Civil Law was to introduce a

contemporary democratic idea into the law by eliminating traditional elements from the Japanese Civil Law and placing greater emphasis on the individual, thereby modernizing the newly independent Korea.

According to the new Korean Civil Law, the family is defined as "family head, his spouse, his parents and his own or adopted children."¹⁰⁴ An examination of the above article reveals that the family is further restricted to a small and compact size compared with the Japanese Civil Law. In terms of adoption, "a married man over 30 years of age can adopt a child."¹⁰⁵ There is no provision regarding "Suyangja" or adoption of son-in-law.

With regard to marriage, individual rights in the choice of a mate are fully respected by the new law as compared to the former Civil Law. As to the legal marriage age, the new provision provides that "the male should be 18 or over and female should be 16 or over to be of legal marriage age."¹⁰⁶ During the Japanese era,

¹⁰⁴ Korean Civil Law, Article 773. Hereafter, the new Civil Law, which was enacted by the Korean National Assembly is termed Korean Civil Law, and the former one is termed as Japanese Civil Law in order to distinguish the two.

¹⁰⁵ Korean Civil Law, Article 860.

¹⁰⁶ Korean Civil Law, Article 801.

the legal marriage age was 17 for the male and 15 for the female,¹⁰⁷ while during the Yi dynasty, the legal marriage age was over 16 for the male and over 14 for the female.¹⁰⁸

During the Japanese occupation and the Yi dynasty, very often people of marriage age were not mature enough to arrange a marriage effectively themselves so it was necessary for the parents to arrange their children's marriage.¹⁰⁹ At the same time, parental consent to the marriage was necessary under the age of 30 for the male and 25 for female.¹¹⁰

Although the new law raises the legal marriage age to 18 for males and 16 for the females, the provisions restrict the parental authority in the marriage on one hand and show respect for individual desires in selecting his or her own mate, on the other. There is no provision which requires parental consent to the

¹⁰⁷ Japanese Civil Law, Article 765.

¹⁰⁸ The Saejong Factual Records, Vol. 88, March, 1440, p. 27.

¹⁰⁹ For information on marriage during the Yi dynasty, see Chapter III of this thesis.

¹¹⁰ Japanese Civil Law, Article 772.

marriage of adult persons. Parental consent is only required when the marrying child is under 20 (legal adult) for both male and female. No one is permitted to marry if the marrying child is under 18 for the male and 16 for the female. On the other hand, no parental consent is required when the marrying party is over 20 years of age, for both the male and female. To be specific, "any person who becomes a legal adult at the age of 20, either male or female, may freely marry."¹¹¹

Furthermore, the new Civil Law stresses that marriage can be allowed only on the basis of agreement between the male and female. The provision specifically states that "A marriage without agreement between the male and female is legally invalid."¹¹² It means, then, whether a marriage is arranged by the parents, go-between, friends, or by one's own will, mutual agreement by both the marrying male and female is necessary in order to legalize the marriage.

The limitations of marriage generally remained the same as in Japanese Civil Law except for one specific

¹¹¹ Korean Civil Law, Article 800.

¹¹² Korean Civil Law, Article 808, Sec. I.

provision in the new Civil Law which states: "Persons who carry the same surname, or belong to the same clan, i.e., blood relatives, related by marriage, shall not intermarry."¹¹³ Under the Japanese Civil Law, marriage was prohibited among peoples who had intimate blood relationship such as between parents, grandparents, brothers, sisters, and sons and daughters of one's brothers and sisters.¹¹⁴ It means then that the new Korean Civil Law is apparently patterned after the Yi dynasty's law, which states: "No one shall be permitted to intermarry within members of the same clan; nor if both parties are from different clans but are related by blood or through marriage alliances and adoption."¹¹⁵

Unlike the provisions of the Japanese Civil Law which permit marriage registration by both oral and documental reports, the new law provides that only documental report may serve as a legal registration

¹¹³Korean Civil Law, Article 802.

¹¹⁴Japanese Civil Law, Article 769.

¹¹⁵The Taejong Factual Records, Vol. 36, November, 1418, p. 28. For further information, see Chapter III of this thesis.

procedure.¹¹⁶ This provision is not only designed to simplify the administrative procedures, but also to emphasize the significance of the status of marriage in human relations.

Concerning the dissolution of marriage, there are no critical changes in the new law. However, the individual rights of both parties involved are extended. Parental consent to the divorce is required only if the "child is under twenty years of age, either male or female."¹¹⁷ Under the Japanese Civil Law, if either party -- male or female -- is under twenty-five years of age, they should obtain consent from the legal guardian or the parents in order to effect a divorce.¹¹⁸

In interpreting the new Civil Law, both marriage and divorce may be fulfilled without the parents' consent when persons reach their legal age of 20 - adult. As described in the foregoing paragraph, the Constitution of the Republic of Korea and the new Civil Law

¹¹⁶Korean Civil Law, Article 805.

¹¹⁷Korean Civil Law, Article 828.

¹¹⁸Japanese Civil Law, Article 809.

incorporated the idea of "democracy" by respecting the individual's capability and desire. In this sense, when a person reaches the age of twenty, the parents' authority over their child ceases automatically, by law. The violation of the Civil Law provisions, therefore, would be handled by the government authorities as specified in the Criminal Law.

This study has clearly shown that both the Japanese and the Korean laws took precautionary measures to prevent extinction of the family. In other words, the basic philosophy underlying social legislation was to safeguard family continuity and family harmony.

Thus far, the writer presented the structural and functional aspects of the Korean family system since 1392; from 1392 to 1910 (during the Yi dynasty), 1910 to 1945 (during the Japanese era), and 1945 to the present (modern period). In the next chapter, we shall summarize and conclude the total scope of this study.

CHAPTER V

SUMMARY AND CONCLUSION

Part I.

According to this study, the matriarchal family system apparently prevailed until the Koguryo period (37 B.C.-668 A.D.) and then gradually transformed itself into the patriarchal family system. The patrilineal and patrilocal family system was well established during the Yi dynasty, and is still in practice.

As has been observed, at first the nuclear family settled down in a certain locality and gradually formed a clan village. Since the clan village formed an economic unit, produced goods for its own consumption, and created various rules to regulate the village clan members, the clan village in turn acted as the political sub-unit of the State during the Yi dynasty.

The family was organized strictly according to patrilineal principles and the position of women gradually fell. Polygamy was a common practice and women depended on and were subject to men. Social differentiations

were largely based on, or according to, the status of the individual, sex, and order of birth. And later, sharper differentiations were characterized by economic status which formed the classes into rich and poor, and by political status which formed the ruling and the ruled.

The traditional Korean family structure as well as its functions, i.e., law of headship and property successions, kinship terminology, procedures in marriage, ceremonies connected with funerals and ancestor worship, clan rules, and elaborate customs pertaining to the individual family members' conduct, manners and behavior, etc., were indeed complex.

The reasons for such a complex family system were (1) the average clan village population was somewhere near 200, and the village size and membership was small enough to permit such an elaborate family system because of the intimate personal relationships that could be maintained; (2) the system of "chongbop," particularly the Confucius concept of elaborate human relations, or "Oryun;" and (3) an adaptation of the Chinese cultural traits. In summary, for the purpose of clarification of the traditional Korean family system, we shall list the following characteristics:

Under the traditional family system, the status of the individual is predestined, according to birth order and sex. Special privileges were exclusively handed down particularly to the oldest son, including property, authority and headship of the family.

The traditional family under this study does not require establishment of a new house in each marriage. Married sons brought their wives and lived together with their parents and grandparents. When the family has grown into a very large group, younger sons and their wives often established separate households nearby, with the permission of the parents.

At least theoretically, the family never ceased to exist because it was insured to have newer generations. When a family found it impossible to have a male child of its own, it was permissible by law to adopt a male child from the closest in line, related by blood, in order to continue on the family line.

The traditional family was only a fraction of each clan, and to a large extent, the clan council was responsible for providing for intraclan arrangements such as recreation, religion, education, welfare, rehabilitation

of criminals, marriage arrangements, funeral services and village security on one hand, and interclan affairs as controversial disputes with other clan groups, etc., on the other. Because of the nature of the clan functions, no political campaign or election was necessary due to the fact that eldest family members automatically became a clan council official until they died.

Since the objective of marriage was to continue the family line, marriage was arranged by the parents on the basis of family interest. Individual opinion was largely ignored in the marriage issue. A divorce was considered as disgraceful and was not commonly practiced. Those of wealthy or noble descent possessed a plurality of wives. In many cases, the husband was a young child, whereas the bride was a "woman." By the time the husband came of age, the wife was too old to be physically attractive to the husband. This dilemma was solved by the institution of concubinage.

Inasmuch as agriculture maintained the livelihood, or agriculture as its primary means of living, the village was regarded as a productive economic unit on one hand, and a consumption unit on the other. On the level of

family, as well as clan village, handicraft was the main source of goods providing for the daily necessities, viz., cotton clothes, silk materials and others.

Under the traditional family system, the family was also a religious unit. Each family worshipped its immediate ancestors, while on the clan village level, the ancestors were worshipped collectively. Because of the Confucian concept of filial piety, the family members celebrated the anniversaries of their ancestors, and paid tribute to their memory, visiting annually the ancestors' graves to offer flowers, food, and wine, while incense purified the occasion and invited the souls to partake of the offerings.

Child training was indeed rigid. Children were taught to respect the parents as well as authority from an early age. The parents were responsible for the support of the children, and in turn, when the parents got old and unable to work, the children were required to support the parents until they died. When aged parents were ill, the children and their wives were expected to take care of them. In the traditional family system, where status-roles are pre-determined and precisely described, the care of the aged was easily

maintained without controversy. In other words, the care of the aged was done entirely by the family, or by the clan, if the former were unable to do so.

Just how many of these traditional traits remain in Korea today is the subject for another study. However, it is the writer's impression that the complex family traits still remain in the rural communities in Korea, despite Korea's adoption of a modern democratic Constitution and laws. A time-honored custom cannot be changed overnight. It will take some time before transformation of such a traditional system is realized to the fullest extent.

Part II.

On the basis of this study, Korean society passed through at least three major stages of transformation since the Yi dynasty. These are, first, what the writer terms "period of clan recognition," second, "period of family recognition," and lastly, "period of individual recognition." The first period of recognition covers the five hundred years of the Yi dynasty -- 1392-1910. The period between 1910 and 1945 is designated by the term

"period of family recognition," and 1945 to the present may be referred to as the "period of individual recognition."

As stated in the foregoing chapters, prior to 1910 the clan groups acted as political sub-unit of the State and greater powers were exercised by them. To a large extent, clan groups were self-sufficient economically. Each clan group compiled the chokbo, or family registry in which various rules were prescribed to regulate the clan members. The clan had a school (called sotang) of its own.¹ The clan council, usually comprised of the oldest paternal members, administered such complex affairs as village defense, arbitration of controversial issues between neighboring clan villages, entertainment of village visitors, clan members' discipline, and other matters pertaining to the clan village welfare.

As a rule, every member within the clan group carried the same surname, except for the married-in females.

¹Young Ha Choo, The Education in the Yi Dynasty (Sodo Women's Teachers College Publication, Seoul, Korea, 1961), p. 52, and Government-General of Chosen, Annual Report on Reforms and Progress in Chosen, 1921-1922 (Keijo [present Seoul], Korea, 1923), Chapter 22.

Exogamy was the established rule during the Yi dynasty and marriage was usually contracted between different clan-names² of equal standing. Different clan groups were further classified into higher and lower according to the clan accomplishment³ and a marriage between members of different classes was strictly forbidden. Although the government had enforcement agencies,⁴ its activities were limited in scope, largely because the

² Nung Hwa Lee, Chosun Yosokko [Study of the Women's Custom], in Korean (Tongyang Sowon, Seoul, Korea, 1927), pp. 24 and 29. See also The Taejong Factual Records, Vol. 36, November, 1418, p. 28.

³ Criteria with which to evaluate higher or lower clan were largely based upon (1) number of government officials produced from clan group, (2) how many awards were received from king or from provincial governor, (3) how many criminals were arrested by the government, (4) how well clan village maintained their peace without the help of others, (5) how many unfilial children were punished by the clan council, (6) literal accomplishment, e.g., published classical writings, etc., (7) wealth of clan village, (8) membership of clan group, etc. If, for some reason, any clan group happens to provide a bride to the royal family, this group might be elevated one or several steps up the ladder of clan rank. For further information, see Byung Do Lee, Kuksa Taikwan [The Korean History], in Korean (Chinmunkwan, Seoul, Korea, 1955), pp. 216-8, and Korea: Its Land, People and Culture of All Ages (Hakwon-sa, Ltd., Seoul, Korea, 1960), p. 31.

⁴ For information on law enforcement agencies, see Chin Woo Yoo, ed., Kukyak Taejun Hwaetong [Translated Edition: Comprehensive Compilation of National Statutes], in Korean (Koryo University Press, Seoul, Korea, 1960).

the clan council discharged administrative and judicial power over its own clan members.

Revenue was needed to run the governmental machinery. But tax was not paid to the government. Since the form of tax was often not in currency but paid in kind, i.e., food crops and cloth, the clan council upon receiving the government tax quota, in turn requested the individual family to submit a fixed amount of tax.⁵

Census data were provided by the clan council, not by the individual family. The clan groups were required to present the chokbo, or the family registry to the government.⁶ Privileges such as waiver of military service, tax and national labor service were awarded according to the social classifications.⁷ The functions of the clan council were, therefore, indeed broad and extensive. All in all, government policies and orders were directed to the clan council rather than to the family. It was the clan, not the family, that was

⁵Ibid., p. 155.

⁶The Saejong Factual Records, Vol. 94, October, 1441, p. 4.

⁷Lee, Kuksa Taikwan, op. cit., pp. 216-8.

recognized by the laws of the Yi dynasty, as the unit of society. Hence, the writer terms the years between 1392-1910 as the "period of clan recognition."

But the situation changed. When the Japanese initiated their protectorate regime in Korea in 1905 and annexed Korea in 1910, the family became the unit recognized by the State. To a large part, the changes are due to the structure and function of the Japanese government in Korea, by the application and enforcement of Japanese laws in Korea. The clan, a political sub-unit of the State, was deprived of power by the Japanese centrally controlled government machinery.

Census data were reported in compliance with government regulations via local, district and provincial government agencies. Tax was paid to local government agencies directly by the family, not through the clan council. All the family properties were reported and registered to the local magistrate. The Japanese Resident-General formally abolished the clan village school, and introduced the new educational system.⁸

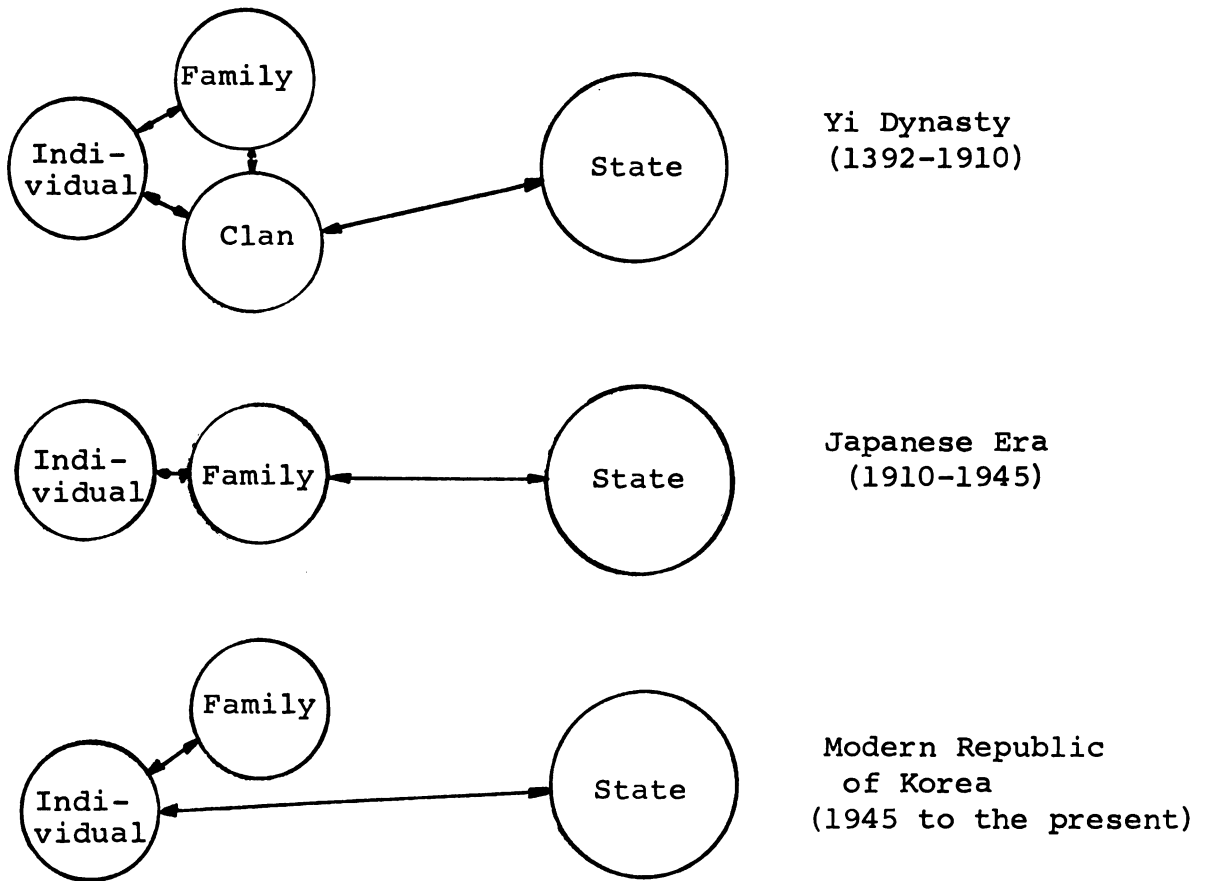
⁸See Chapter IV for more information on these subjects.

An application of the Japanese Civil Law to Korean society was more than just Japanese political expansion in Korea. It was the period when the family, instead of the clan, began to form the unit of the State. As observed in Chapter IV of this thesis, well-defined laws were established and the government directed the family to conform to the local, district and central government agencies. Since the family became the unit of the State, during the years between 1910 and 1945, the writer designates this as a period of family recognition.

The third period falls in the latest social development in Korea. The term "the period of individual recognition," does not necessarily mean that all government policies are directed toward the individual and disregard the family existence. The term is used to signify the present as well as future trends as evidenced in social legislation. Since 1945, particularly after 1948, more emphasis has been placed on the individual in all aspects of his social life. The Constitution of the Republic of Korea incorporates democratic principle by guaranteeing the maximum individual freedom, equality and right regardless of sex, religion and social status.

The structure of the family and its components has become much smaller when compared with that of the previous two periods. Any person reaching the legal age of twenty may contract marriage without parents' consent. Dissolution of marriage, and adoption, for instance, follow the same pattern. Social recognition of individual abilities is increasing irrespective of sex and age. As long as the individual is successful and capable in his assigned role in society, he may be able to advance regardless of social class. Adoption of democratic principles and establishment of modern laws are indeed a significant turning point of the modern phase of Korean social development. Just how much individualism will be stressed in society is beyond the present treatment; however, the trend may continue for some years to come. Diagrammatically, the observation on the following page may be made to convey the points under consideration:

Table V. Chart of Interaction Between the Individual and the State According to the Three Periods of Recognition.*



* The above diagram does not intend to portray exact channels of interaction between individual and state. Rather, the diagram is drawn under the assumption that these were, and are historical transformations marked by the change in governmental structure and social registration laws which ultimately signifies the modern and pre-modern registration requirements. Furthermore, the above diagram permits a quick observation of social transformation since 1392.

Characteristically, in evaluating the aforementioned three stages of social transformation, the government has gradually acquired more and more control power as evidenced by the increasing rigidity of the registration system. When government functions, particularly that of social control mechanism (law and enforcement power) become more powerful and efficient, the family functions are minimized. On the other hand, individual freedom, liberty and equality regardless of age, sex, occupation and status may be maximized because "everyone is equal before the law."

Under a static society, like the Yi dynasty, the controlling mechanism of the individual was confined by the requirements of the family, or by those of the clan; and therefore, it was natural that parents, the males and those advanced in years acquired more controlling power. In other words, in a strict sense, the governing body was either parents, the male, or old members of the family or clan council. When the Japanese annexed the Korean peninsula in 1910, standard laws were applied throughout Korea, and strong centralized government

was established along with powerful military and police forces.⁹

As a result, the power, which was formerly exercised by the parents and clan council, was reduced or abolished and some of the family as well as clan functions were taken over by the State. It is the current phenomenon in Korean society that the government has focused their attention more and more on the individual. Therefore, the strong centralized government means not only the reduction of the power structure of the family, but also family functions as well. The aforementioned statements may be illustrated diagrammatically on the following page:

⁹ For example, in July, 1910, Viscount Sone, successor to Ito, was replaced by Count Terauchi, an avowed exponent of a more thorough policy in Korea. Count Terauchi, as a soldier, formerly a member of the Japanese General Staff and Minister of War during the Russo-Japanese War, regarded the Koreans as a people to be absorbed or to be decimated. As the Japanese controlled Seoul Press made the following remarks with regard to enforcement of the Japanese policies in Korean peninsula: "Japan is in this country with the object of promoting the happiness of the masses. She has not come to Korea to please a few hundred silly youngsters or to feed a few hundred titled loafers She must be prepared to sacrifice anybody who offers obstacles to her work. Japan has learned from experience gained during the past five years that there are some persons who cannot be converted by conciliatory methods. There is but one way to deal with these people, and that is by stern and relentless methods." F. A. McKenzie, Korea's Fight for Freedom (Fleming H. Revell Co., New York, 1928), pp. 174-5.

Table 6

Extended Family or Traditional Family (pre-1910)	Conjugal Family (Modern)
Clan council —————→	State
Ancestor worship —————→	Church
Handicraft —————→	Industry or factory
Clan rules and punishment —————→	Legislation, court and prison
Sotang or clan village school —————→	Public and privately supported or govern- ment recognized schools
Village defense —————→	Police and military
Care of sick —————→	Hospital
Aged care and clan welfare —————→	Various social wel- fare agencies inclu- ding Red Cross, Home for the aged and others
Chokbo or family registry —————→	Government recording agencies such as city or county hall, court and others
Clan festivals and recreation —————→	Mass communication; TV, radio, movie, show and national holidays, etc.

As illustrated above, the government and the social or public institution, e.g., church, factory, hospital, social welfare agencies, etc., have continually taken over the family functions. Still Korea is undergoing a marked transformation from the traditional to the modern family; some of the social as well as the family functions are, in many respects, overlapping. It is the writer's present opinion that such trends may well be continued in the future, and ultimately, the family functions will become much weaker as time elapses.

As was certainly the case during the period of the Yi dynasty, the social control mechanism was more or less on the informal or personal basis according to the natural organic differentiations such as age, sex and status. As science, technology, and social control become more acute for the Korean society, and more and more individuals come into contact with each other as the diversity of interests and types of groups multiply, more formal, or impersonal machinery, e.g., rules, regulations, laws, etc., for control will develop.

Increasingly, the control function may gravitate more and more to institutionalized government.¹⁰ However, the control and regulation of behavior does not pass completely to government or any other social institutions. For other formal and informal relationships continue to influence and control behavior; the family, among others, will perform equally important functions of social control.

¹⁰ To a large extent, the children's education was a matter of the family during the Yi dynasty. Now the education is made compulsory up to the 6th grade and government is directly involved. The so-called "family-plan," or "birth control" was the affair of the husband and wife, but now government has to say about the matter. According to the Ministry of Health and Social Affairs, the ministry issued teaching materials for conducting a nation-wide birth control campaign. Ministry spokesman said it has been decided to sponsor a series of lectures in nine major cities to train a total of 1,250 physicians and maternity nurses for the family planning. For more information, see "Government Moves to Control Birth Rate," Korean Republic, October 15, 1961, p. 8. In addition to the government involvement in the family affair, the questions of marriage, divorce, settlement of the individual as well as the family dispute, occupational guidance and others are, to a large part, taken over by the special agencies such as Marriage Guidance Center, professional lawyers, Occupational Guidance Bureau and others. In short, the current trends in the Korean society are focused more upon the individual as the basis for the social control, rather than the family.

Thus far, the writer has presented the summary and the historical transformation of the Korean family according to the three periods. We shall hereafter proceed to examine the merits and demerits of the family system.

Part III.

The social evolution in Korea witnessed in the past six centuries is indeed significant. In its broader historical context, the family system underwent marked transformation; from conjugal to consanguine (or extended family system), consanguine to the clan, then back to a consanguine, and now to a compact family system, as viewed from the legal standpoint.

The family institution of Korea, which is believed to have been created much earlier than any other institution such as the church, or economic and political institutions, has undergone more critical changes than all other existing institutions. In spite of these critical changes, it is admitted that some of the primordial traits still linger in rural communities. Viewed from the standpoint of functional efficiency, the Korean family system is perhaps detrimental to the general progress of the Korean society.

Before we discuss and examine the impractical aspects of the Korean family system; first, we shall list the positive, or meritorious features.

In terms of human relations, the Korean family system has contributed more toward general social stability and maintenance of peace than any other social institution. The Korean family system is, from the standpoint of the society, the best agency for child socialization. From very early childhood, children were taught to respect others, to obey, to serve, to love, to cooperate and assist one's own family members as well as others. Consequently, juvenile delinquency was practically unknown to Korean society until recent decades. Moreover, the Korean family system is so constructed to control family members that it ultimately prevents the family members from committing crimes. Thus, it may be said that the Korean family is a moral unit on the one hand, and a controlling unit on the other.

The parent's authority over their children is not a life or death matter in any sense of the word as some observers might suspect. The doctrine of filial piety, for example, has never been an instrument of parental

tyranny. The father considers the individual status of the other family members and their collective interests. As mentioned in the foregoing chapters, it is not hatred that commanded the young, rather, the love and affection that is inherent in the minds of the parents ultimately led them to instruct the child rigidly.

Children respect and follow the teaching of the parents, not because of any punishment that controls their behavior, but rather, because they recognize the fact that the experiences of the parents and their wisdom bring them mutual benefits in the long run. In other words, family relationships are reciprocal; whether ³ the relations are between husband and wife, between parents and children, or between elder and younger brothers.

If we are to agree on these points mentioned above, then the family is the unit which produces useful citizens. Since all family members cooperate with each other and work toward a common goal -- family glory, family solidarity and family continuity -- the family not only preserves and transmits its own family tradition but also transmits national heritage and culture as well.

One of the unique features of the Korean family system is the division of labor among members. The father is responsible for providing material needs for his family. The mother renders whatever service is necessary for the comfort of the entire family. After the sons' marriage, the sons and their wives work at assigned duties. Whatever earnings the sons and their wives bring, the money will be added to the family income. Young or old, male or female, every member works for the mutual benefit of the whole family, not for any individual's sake.

Accumulated family savings are expended according to family needs. Should anyone become maimed or otherwise permanently helpless, every member helps support him. If any family member is called upon by the government to serve his nation, everything possible is done to render the aid necessary. Should a son happen to be selected for any higher learning institute, financial aid is provided to encourage learning for the sake of his future, his family, and his nation.

If, for some reason, any one member of the family receives aid from outsiders, i.e., maternal relatives,

wife's family, etc., it is regarded as a "disgrace to the ancestors," thus every member cooperates to prevent such happenings. At the family level, care of the aged is well taken care of, and much energy is expended to provide both physical and psychological needs. As a result, the family rarely becomes a public responsibility. On the other hand, because of mutual dependency and the sense of dependability, in addition to material comfort, the family system gives greater psychological stability to the individual. This situation results in a very low rate of mental illness.

Despite these meritorious features of the Korean family system, there are still some traditional traits to be found. The family system which we have heretofore examined is so complicated and naturally clumsy that unavoidable defects exist; this complexity is often the source of unnecessary confusion. Without removal of certain defects from the family, the modernization of Korea within a short span of time is perhaps a difficult task.

The structure and functioning of the Korean family is a result of, and perhaps best suited to, an agrarian

environment. Social conditions have changed markedly since the ending of the World War II. Current views on the universe and human nature have changed and are still in process of changing at an ever accelerated rate.

Some three decades ago, it was surmised that ". . . the Indian studies nature in order to be able to escape it, the West investiaged nature in order to control it, while the Chinese studies nature in order to adapt themselves to her ways."¹¹ Even a creature with man's inventiveness does not have the choice of accepting or not accepting the new and modifying his way of life. He must either control or adopt the new or be overwhelmed by it. He cannot, in an age of rapid cultural change, stand idly by and ignore the new; he must adapt to it or be lost.

One observer describes the contemporary overall condition of the Korean people in the following manner:¹²

We Koreans have been called "the moralistic, peace-loving people of the Orient" of which we are quite

¹¹Lewis Hodous, Folkways in China (Hartford Seminary Foundation, Hartford, Connecticut, 1929), p. 1.

¹²Jang Hyun Lee, "Modern Technology and Korean Problems," The Korean Builder, 3d issue, February, 1958, p. 8.

proud. But what does it really mean? Let us think it over. I believe it means two, and only two things. In the first place, an unique spiritual quality of Korean people is clearly noticeable in their inner fidelity to peace and meditation. That is why we have been often called "peace-loving people." This salient quality of the Korean spirit must intelligibly be translated with new stress, vision and prophecy into current national and international situation in order to fulfill the historical mission of Korean people -- peace. In the second place, it means that we are seriously lacking in the spirit of change or adventure; that is, the absence of positive resolution to discard the habitual thoughts and behaviors and those cultural values which might be tainted with antiquity or regionality. This is perhaps the primary reason why Korean culture has been beset with backward, conservative, static sentiment which precludes the rapid Westernization of Korean life.

Korea is still classified as an agrarian backward society compared to the West. However, current emphasis on "science" and "technology" which aims at "modernization of Korea," is indeed significant. The government's five-year modernization plan is in effect; more and more students, scholars, scientists and government officials are being sent to foreign countries to acquire the latest advanced features in order to adopt new elements into the Korean environment.

Yet, it is apparent that, in spite of all these efforts, there are still some elements, particularly within

the family, which often block social progress in general. The most serious defect which is unjustifiable in a modern progressive society is "waste of time and individual talent." An efficient utilization of time and individual talent is indispensable in achieving total social development, particularly in modern times.

Waste of time and individual talent is largely due to the complex, clumsy structure and function of the Korean family, viewed from the standpoint of functional efficiency.

First, the family structure is so bulky and complex that the entire family often discourages any one family member from undertaking adventurous enterprise. Everyone is mutually dependent. From the time of one's birth to his death, he is confined within the family and village community. Because of the social values of "family continuity and family solidarity," both young and old are physically tied to the family, the result of which is to virtually discourage individual initiative.

Since family property is transmitted from remote ancestors, and this family property is held in common by

all family members, no one person really attempts to take the risk of disposing of all or part of it. An ambitious member, with the cooperation of the entire family, may dispose of some of the property to undertake a new enterprise and the profit would be enjoyed by all, but his failure will likewise bring tragedy to the entire family. As a result, great industrial development was practically unknown in Korean society until the Japanese occupation, beginning in 1910.

/ Secondly, consideration should be given to the role of Confucian teachings and its implications. Characteristically, because too great an emphasis is placed upon human relations, individuals are hardly able to acquire personal distinctiveness. / Every one behaves identically according to age, sex and status. The criterion of individual success is not dependent on income nor on individual creativeness, but largely depends on his relations to others, i.e., the parents, the brothers, the sisters, the relatives, the friends and other social members. As long as the individual is kind to everyone, he is regarded as a man of virtue and a moralist.

In order to accomplish filial piety, one must stay with the parents and support them.⁷ Even after the death of parents, a three-year mourning is required together with extended care of graveyards. ^PMinds are always preoccupied by human relations, proper manner, formality and various ceremonies.⁷ If some energetic man dares to undertake a new adventure, no matter what the end result, he is looked down upon as a "dangerous" subservice man. All social forces, in effect, discourage individual initiative and creativeness.

It does not necessarily mean that every Confucian teaching is wrong. But rather, too rigid domestication and discouragement of the individual at the price of age, sex and status requirements is not a healthy practice in terms of family and broad social progress. Nothing is better than human happiness and mutual understanding. Yet it is apparent that too great an emphasis on this one aspect virtually made Korea sterile of any great crusaders. [Encouragement of individual initiative and creative thinking equipped with a sense of humanity, and the ability to adapt to the ever-changing social conditions will be necessary to improve the social conditon of Korea.]

Thirdly, too extravagant ceremonies should be avoided. Under the traditional family system, a three-year mourning period is required. What is worse, sons, daughters, and other relatives, upon the death of one "superior," are virtually required to go through a series of ceremonies connected with the funeral and perform periodic rites during the next three years. Although it is granted that religion has an important "integrative function for groups [the family] and for individual personalities,"¹³ the demand for a three-year mourning period and its effect on society should not be overlooked.

The marriage ceremony is another area to be re-examined. As indicated in the previous chapters, marriage procedures are indeed complicated and expensive.¹⁴

¹³William A. Lessa and Evon Z. Vogt, Reader in Comparative Religion: An Anthropological Approach (Row, Peterson and Co., Evanston, Illinois, 1958), p. 1.

¹⁴For example, King Saejong (1419-1450) warned his subjects time after time not to arrange such ostentatious wedding ceremonies. Chosen Sotokufu, Chusuin, Richo Fuzoku Kankei Shiryo Satsuyo [Yi Dynasty's Custom Collections], in Japanese (Keijo [present Seoul], Korea, 1939), pp. 99 and 118-9.

An old proverb read: "If a man has three daughters, his fortune is doomed." Personal invitations are sent to the relatives, friends and neighbors and the wedding party lasts at least three days and nights. The time and money needed for a wedding ceremony is so great that, in most cases, money must be borrowed in order to "save face." Thus, if parents have three or four sons and daughters, one must have a fortune to sponsor these ceremonies. Because of the over-emphasis on the wedding ceremony, although it is an important part of the family function, the family fortune is drained and consequently the children's education and other areas of family improvement are minimized.

All the formalities, virtuous "face-saving" policies and other impractical aspects of family practice should be studied both intensively and extensively. For the sake of social progress, the marriage ceremony should be simple and performed reasonably. An extravagant wedding does not guarantee happiness. Dr. Liu, in reviewing the Confucian doctrine of human morality, etiquette, ceremony, and other teachings pertaining to

the family as it relates to society, makes the following remarks:¹⁵

Times have changed, and so has the basic structure of Chinese society, especially the family system, on which the K'ung (Confucius) doctrine is based. Moreover, the gap between the Ch'in and Han and the subsequent ages was not so wide as that between the Manchu monarchy and the young China of 1954; nor were the changes then as radical and thoroughgoing as they are now. But, most important of all, there is today a phenomenal transformation in Chinese mentality that is revolutionary in both its scope and intensity. Whereas the Han people readily returned to Master K'ung's kindly concepts of etiquette and morality in their reaction against the tyranny of Ch'in, the Chinese people of these modern times, who have been newly liberated from the fetters of tradition and, furthermore, baptized in the liberal ideas of the West, would never willingly go back to any enslaving orthodoxy of the past, not even an enlightened K'ung dogma stripped of its undesirable elements. No longer isolated and self-contained, China will look audaciously ahead into the future, instead of returning to the past. The past, of course, will be studied, examined, and even treasured, but not to be upheld as an unerring criterion for all future efforts. Chances indeed are slight of the revival of the K'ung doctrine as a dominant influence on Chinese life.

The basic tenet of marriage and family -- to perpetuate the family forever -- has sustained two undesirable elements in modern Korea. The first is early

¹⁵Liu Wu-chi, A Short History of Confucian Philosophy (Penguin Books, Inc., Baltimore, Md., 1955), pp. 191-2.

marriage and the second is the "baby boom." Although the current legislation raises the marriage age of males to 18 or over, and females 16 or over, it is assumed that marriage is taking place much earlier than the age stated above, particularly in the rural villages.¹⁶ Early marriage means early children. Both the young father and the mother are restricted by the family and attention is focused on child rearing. Otherwise, the younger generation might seek better opportunities by attending school, pursuing better occupations, and improving themselves in the society. The socially inexperienced young father and mother cannot earn enough to support even themselves and their own children. Consequently they must be dependent upon their father and their grandfather for support.

Because of early marriages, education is seriously interrupted. Lack of education not only causes the

¹⁶Viewed from a legal standpoint, the current marriage age for male, 18 or over, and female, 16 or over as legal marriage age, there is no way to enforce it, nor may punishment be imposed because there is no single article prescribed in the Criminal Law. Unlike common law, no one is subject to punishment when no provision is prescribed in the law book, called Yukbop Chunso, or A Complete Collection of Six Laws. Likewise, a "married couple" is not recognized by the government as legally married if either is under the prescribed minimal age.

individual to be inefficient economically, but he is also most likely to be a poor family planner, let alone practice birth control. The increasing size of the family, together with the lack of education, less income and poor planning, causes the young parents' burden in administering the family to become more and more complex. As a result, there is no time to obtain new revenue to facilitate advancement. In short, early marriage and lack of education is perhaps one of the detrimental elements which hampers gradual social betterment.

Traditionally, education has been de-emphasized, particularly the education of women and second, third and fourth sons.¹⁷ Attention is focused upon the subjects of philosophy and literature such as The Thousand Character Classic, The Confucian Analects, The Great Learning, The Doctrine of the Mean, and the works of Mencius. Examples of other classics are the Poetical Classic, The Book of History, The Book of Changes and

¹⁷ Young Ha Choo, The Education in the Yi Dynasty (Sodo Women's Teachers' College Publication, Seoul, Korea, 1961), p. 127.

The Spring and Autumn Annals, etc. Practically no education is offered in the natural sciences.

What is worse, the entire education is centered around the memorization of the Chinese characters with imperfect understanding of their meanings. It is often said that even if one devotes his lifetime to mastering Chinese characters and their meaning, it is difficult to comprehend them all. In short, because of the emphasis on literature and philosophy with a corresponding de-emphasis in the areas of science, industrial development is further hampered.

In spite of the current stress upon and encouragement in the field of natural science, there is still a preponderance of liberal arts majors in the Korean student body, particularly in the college circles of Korea¹⁸ and the United States.¹⁹ The family's attitude has been, and to a certain degree continues to be, a

¹⁸Ministry of Education, Kyoyuk Kikwan Tongke (Statistics of the Educational Institutions], in Korean, (Seoul, Korea, 1954), pp. 353-480.

¹⁹The New Koreana, December, 1957, p. 1.

major factor in forcing a young man to choose his major subject, instead of choosing on the basis of individual and social interest. Educational choice and its relationship to the family and society should be studied further in order to maximize individual talent.

Lastly, the system of chokbo or family registry should be considered. The existence of chokbo was important when the government's administrative functions did not include recording all matters pertaining to the clan, family and individual. Present Korea is different from the Yi dynasty, structurally and functionally. Since 1910, along with government improvement and efficient utilization of communications and recording systems, most of the government offices, both municipal and local, are equipped with up-to-date recording facilities.

In spite of all the governmental facilities which provide official and accurate records of individual status, property, and other legal aspects of family records, clan groups still get together annually to study and revise the chokbo. The chokbo has been, according to Dr. Kim, "not only a huge demand on labor, hours and money

necessary to print it, but is also undependable due largely to the inaccuracy in recording all clan members from remote ancestry to the present generations."²⁰

The existence of chokbo not only duplicates official documents, and also drains valuable social capital, but in addition require time and effort for revision. For practical purposes, it does not serve any constructive functions other than to identify ancestors, to distinguish social class or prestige, and to serve as a historical record. The point that is emphasized here is that as long as the chokbo remains intact with the family or clan, the effective formation of democratic society is rather difficult.

The chokbo is the source of class distinction and therefore, the practice of discrimination will linger on. Furthermore, because no one is permitted to marry amongst those persons whose name appears in the chokbo, marriages are usually arranged between clans of equal

²⁰ Doo Hyun Kim, Chosun Kajok Jaedo Yongqqu [Study of the Korean Family], in Korean (Ulyoo Munhwa-sa, Seoul, Korea, 1949), p. 89.

standing. Consequently, the bride and groom are selected from limited clan groups.

As a result, a majority of the people must be content with a few selected clan groups for marriage and therefore, blood ties are always confined to a certain group only, which is not in the best interest of eugenics. Such a practice is quite unfavorable under the rapidly changing social atmosphere. Both the male and female should select their mates from the widest range possible according to their desire and ambition. Although increasing emphasis is being placed upon individual selection of partners, and couples are able to get married, by law, with or without the parents consent, sons and daughters are still under the influence of traditional concepts and practice, for which the chokbo is largely responsible. It is the writer's contention that as long as the chokbo exists to sustain traditional concepts and practices, i.e., class distinction, democratization of Korea is rather difficult. Rigid examination of the chokbo and its implications should be studied in order to formulate a better social policy for the future.

In light of the review of the total scope of this study, though some traditional traits are still retained, there are numbers of good features which are worthy of further development. It was the opinion of the legislature, at the time of legislation with regard to the Civil Law, that some modification in the family system was necessary in order to improve and/or adjust to, contemporary social conditions. Some radical advocates, however, condemn the present social system and would destroy the entire traditional family system by replacing it with the new Western model of a conjugal or small family.

Radical and unplanned social policy is always the cause of social instability. Thoughts, habits and customs cannot change overnight. The transformation of a basic social institution, the family, is fraught with dangerous elements. Never before has there been a greater awareness of the needs for a concise understanding of the family, its structure, its function, and its impact within the broader social context. The question as to how the Korean family system can be adequately adjusted to currently changing social conditions in Korea is another subject for study.

However, it is manifest in tradition that good traits should be honored and treasured as a part of our national long retained heritage, and the seemingly unworthy elements be modified or rejected if obsolete. Just how well Koreans can adjust themselves and reconstruct the basic social institutions to meet the ever challenging internal as well as external forces of time lies in the hands of Koreans. Indeed, it is the Koreans' own ability, knowledge, skill and above all cooperative spirit which will chart the course and mold the future society of Korea.

C

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APPENDIX I. THE SEASONAL DAYS OF THE LUNAR CALENDAR*

Season	Month	Days of season	Celestial latitude of the sun	Approximate day by solar calendar	Meaning of the day of season
Spring	1st	Ipchun 立春 Usu 雨水	315° 330°	Feb. 3 Feb. 18	First day of spring Rain begins
	2nd	Kyongchip 驚蟄 Chunbun 春分	345° 0°	Mar. 5 Mar. 20	Hibernation ends Mid-spring
	3rd	Chongmyong 清明 Kogu 穀雨	15° 30°	Apr. 4 Apr. 20	Sky clears Rain falls, grains grow
Summer	4th	Ipha 立夏 Soman 小滿	45° 60°	May 5 May 20	First day of summer Summer grains begin to ripen
	5th	Mangjong 芒種	75°	June 5	Barley harvested, rice seedlings planted
	6th	Haji 夏至 Soso 小夏 Taeso 大夏	90° 105° 120°	June 21 June 6 July 22	Mid-summer Weather becomes hotter Hotter weather
Autumn	7th	Ipchu 立秋 Choso 處暑	135° 150°	Aug. 7 Aug. 22	First day of autumn Hot weather ends
	8th	Paengno 白露 Chubun 秋分	165° 180°	Sept. 7 Sept. 22	Dew falls Mid-autumn
	9th	Hanno 寒露 Sanghang 霜降	195° 210°	Oct. 7 Oct. 23	Cold dew falls Frost begins to fall
Winter	10th	Iptong 立冬 Sosol 小雪	225° 240°	Nov. 7 Nov. 22	First day of winter Snow begins to fall
	11th	Taesol 大雪 Tongji 冬至	225° 270°	Dec. 6 Dec. 21	Heavy snow Mid-winter
	12th	Sohan 小寒 Taehan 大寒	285° 300°	Jan 5 Jan. 20	Colder weather begins Colder weather

* For an explanation of the above chart, see following page.

THE LUNAR CALENDAR

The Korean government has adopted the Western calendar, but the people still follow the old style according to which the year begins with the first new moon after the sun has left the sign of Capricorn. This brings the first day of the year between 21st January and 19th February. There are twelve months in the year, being designated as the first, second, etc. Each month begins with the new moon and the fifteenth day of the month corresponds to the full moon. The months have twenty-nine and thirty days. Inasmuch as the lunar year is shorter than the solar year, the days which gradually accumulate are put into an intercalary month which is announced beforehand in the almanac. The first three months are spring, the second three summer, the third autumn, and the fourth winter. The vernal equinox occurs in the second month of spring and the autumnal equinox in the second month of autumn. The solstices come in the second month of summer and winter. The first day of the year is regarded not only as the beginning of the year, but as the root out of which the day, the month, and the year and the events of the future grow.

Cut 1



Cut 2



Cut 3



Cut 4



*An explanation is to be found in Chapter II, Section 3 of this thesis.

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