

5-1-2010

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### Recommended Citation

Lee, Ilhyung (2010) "Legislating the Appearance of Equality in Korea: The Law and Politics of We-hwa-gahm," *Penn State International Law Review*: Vol. 28: No. 4, Article 2.

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## Essay

# Legislating the Appearance of Equality in Korea: The Law and Politics of We-hwa-gahm (위화감)

Ilhyung Lee\*

The jurisdiction that is Korea<sup>1</sup> offers quite a unique setting for comparative law commentators. Deeply-rooted Confucian norms planted in the Chosun dynasty (1392-1908) continue to impact interpersonal relations in the contemporary setting. After nearly four decades of Japanese colonial rule, Korea declared its independence at the close of the Second World War. The opening years of the republic saw a new

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\* Edward W. Hinton Professor of Law & Senior Fellow, Center for the Study of Dispute Resolution, University of Missouri. For their comments and suggestions on a previous version of this text, I thank Dean Kyong-Whan Ahn, Hannah Buxbaum, William Fisch, Tom Ginsburg, Chulwoo Lee, Mark Ramseyer, Mathias Reimann, and Alexander Tsesis. Special thanks to Minchung Lee, Esq., and Na Ra Lee, University of Missouri School of Law, Class of 2011, for their invaluable research assistance, and Robert Britt for his always expert reference support. This essay has its origins in a conversation that I had with my father several years ago. After a dinner at a well-known hotel in Seoul, we walked outside, and I commented on the traditional Korean architecture of the structure located next to the main hotel building. My father then volunteered that in Korea, by law, wedding ceremonies may not be held at first-class hotels. Since our conversation, I have always wondered, first, why my father chose to tell me of the law, and second, why such a law was enacted.

1. All references to “Korea” herein are to the Republic of Korea, popularly known as South Korea.

constitution (though not necessarily constitutionalism), corruption in the executive branch, and occasional amendment of the constitutional text to extend or enlarge executive power. After a coup in 1961, more of the same followed, in the reign of authoritarian rule by military dictators (1961-1987). After dissension and great civil unrest, the “year of the constitutional miracle” (1987) paved the way for a constitutional democracy, and popular election of the president. This point in Korean history saw the establishment of the Constitutional Court (in addition to the existing Supreme Court), along with the emergence of a middle class, a burgeoning sense of individual rights, and a more litigious society.<sup>2</sup> There is more, of course. From the devastation of the ruins of the Korean War that ended in 1953, the country, a largely agrarian society, quickly advanced to its oft-described standing as the eleventh largest economy in the world.<sup>3</sup> In addition, that Korea is in the “throes of a social transformation”<sup>4</sup> affecting every aspect of society, presents rich opportunities to examine the rule, role, impact, and perception of law in every day Korean life.

It is within this setting that certain provisions of the “Family Ritual Standards Act”<sup>5</sup> come into view. The stated purpose of this law was to “restrain extravagance and to stimulate sound social morale through driving off vanity and empty forms in family rituals and rationalizing the ritual procedures.”<sup>6</sup> Specific provisions of the law, in effect, prohibited wedding ceremonies from being held at “hotel[s] or [their] accessory facilities,”<sup>7</sup> a restriction popularly understood to mean first-class hotels.

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2. See Kyong Whan Ahn, *The Influence of American Constitutionalism on South Korea*, 22 S. ILL. U. L.J. 71, 84 (1997); see also Jeong-Oh Kim, *The Changing Landscape of Civil Litigation*, in RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY 321, 323 (Dae-Kyu Yoon ed., 2000).

3. See e.g., Bernard Black et al., *Final Report and Legal Reform Recommendations to the Ministry of Justice of the Republic of Korea: Introduction to the Report*, 26 J. CORP. L. 546, 550 (2001); Guy Brucculeri, *A Need to Refocus the Mandate of the International Monetary Fund and the World Bank*, 17 WINDSOR REV. LEGAL & SOC. ISSUES 53, 63 (2004); Andreas F. Lowenfeld, *The International Monetary System and the Erosion of Sovereignty: Essay in Honor of Cynthia Lichtenstein*, 25 B.C. INT'L & COMP. L. REV. 257, 267-68 (2002); John K. M. Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience*, 28 U. PA. J. INT'L ECON. L. 219, 228 (2007).

4. Norimitsu Onishi, *Divorce in South Korea: Striking a New Attitude*, N.Y. TIMES, Sept. 21, 2003, at 19.

5. The original statute was first enacted in 1969, Act No. 2079 (Jan. 16, 1969), and subsequently wholly amended, by Act No. 2604 (Mar. 13, 1973), Act No. 3319 (Dec. 31, 1980), and Act No. 4637 (Dec. 27, 1993), and also amended by Act No. 5453 (Dec. 13, 1997) and Act No. 5454 (Dec. 13, 1997). The provisions referenced herein are available in the English version of the 1993 whole amendment.

6. Family Ritual Standards Act, Act No. 5454, art. 1 (S. Korea).

7. By statute, the term “family rituals” included “weddings, mourning rites, religious services for ancestors, one’s 60th birthday anniversary, etc. which are

The provisions relating to locations of wedding ceremonies were first included in the 1980 amendment, and repealed nineteen years later.<sup>8</sup> It should be noted that the law appears to have been honored more in the breach than execution. Nevertheless, the question might arise—for commentators of cultural and legal anthropology, comparative law, or those in the law and society field—as to what might motivate government to implement such a prohibition. Presumably, where citizens choose to hold their wedding activities is a matter of individual liberty that should be free from governmental restriction, limitation, or oversight, save for situations where public health or safety is at issue.

Initially, the Korean law relating to the location of wedding ceremonies presents an opportunity to discuss the permitted restrictions on the general guarantee of individual freedoms and liberties in a given jurisdiction. For instance, the European Convention on Human Rights allows restrictions on individual rights that are “necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others.”<sup>9</sup> Likewise, the Canadian Charter of Rights subjects individual rights to “reasonable limit[s]” that “can be demonstrably justified in a free and democratic society.”<sup>10</sup> The Korean Constitution does not provide for equivalent language. But perhaps the public display of wealth, privilege, or pretentiousness is seen as an unnecessary vice that the Korean government should address. One explicitly stated goal of the Constitution, after all, is to “destroy all social vices.”<sup>11</sup>

More simply, the prior law prohibiting wedding ceremonies from being held in places of luxury and affluence should remind of the basic statement that law reflects the cultural norms of the society for which the

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performed as ritual within the family.” *Id.* art. 2. The law required any person desiring “to provide a place where a family ritual is held (hereinafter referred to as ‘ceremonial hall’)” to file a report to the local government office. *Id.* art. 5(1). Any person who operated a business without submitting the required report was subject to a penalty of imprisonment up to one year or a fine of up to 10,000,000 Won (approximately USD \$9,025, at the current exchange rate). *Id.* art. 14(1)(1). The operative language of the statute appeared in Article 7, which provided that the required report “may not be accepted . . . [w]hen the Presidential Decree considers the ceremonial hall business in the hotel or its accessory facilities as prescribed by the Public Health Act to be against the purpose of this Act owing to its vanity and empty forms and its waste.” *Id.* art. 7(1).

8. Act on Family Rite Establishment and Related Assistance, Act No. 5837, Feb. 8, 1999 (Addenda art. 2).

9. Eur. Conv. on H.R. art. 10, para. 2, Nov. 4, 1950.

10. Canada Charter of Rights and Freedoms, s. 1, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, ch. 11 (U.K.).

11. S. KOREA CONST. pmbl, available at [http://korea.assembly.go.kr/board/down.jsp?boarditemid=1000000155&dirname=/eng\\_data/1000000155E1.PDF](http://korea.assembly.go.kr/board/down.jsp?boarditemid=1000000155&dirname=/eng_data/1000000155E1.PDF).

law is implemented. This essay suggests that the wedding ceremony ban in Korea is one example of a formal measure in law and policy adopted with the local perception of *equality* in mind. As discussed herein, some measures, like the equal protection provision in the Constitution, demand equality before the law. Others, I maintain, legislate the outward *appearance* of equality. Within this group, there are measures, like the ban on wedding activities at certain locations, that seek to eliminate or reduce the number of situations where disparity or differences within members of society might lead to “a sense of incongruity [incompatibility]; social disharmony,”<sup>12</sup> or the Korean *we-hwa-gahm*.

The discussion herein includes a description of the positive law on equality in Korea, beginning with the equal protection provision of the Korean Constitution. This is followed by an examination of the National Human Rights Commission Act, the most comprehensive legislative effort to address equality in Korean society, in both public and private settings. With this necessary background in place, the next section examines the ban on wedding ceremonies at certain locations, an example of an unstated Korean policy to avoid *we-hwa-gahm*. Ultimately, law says much about the society from which it emanates, and in the Korean setting, the society’s developing perception of equality.

#### A. POSITIVE EQUALITY LAW: THE CONSTITUTION AND OMNIBUS EQUALITY STATUTE

By way of comparative reference, the Equal Protection Clause of the United States Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>13</sup> The counterpart in the Korean text reads: “All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.”<sup>14</sup> A leading commentator of Korean constitutional law has observed that equal protection is “the most paramount principle” of the Constitution, and that the right of equality is “the most fundamental” of

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12. MINJUNG ESSENCE KOREAN-ENGLISH DICTIONARY 1550 (2d ed. 1993).

13. U.S. CONST. amend. XIV, § 2.

14. S. KOREA CONST. art. 11, § 1. Comparativists will note: (i) legal equality is stated positively and more directly in the Korean version—“All citizens shall be equal before the law”—than the more roundabout “nor deny to any person . . . the equal protection of the laws” phrasing in the U.S. version; (ii) discrimination is explicitly referenced in the Korean text, whereas it is implicit in the Fourteenth Amendment; and (iii) the classifications based on which discrimination is specifically prohibited are enumerated in the Korean text, whereas the suspect classifications in U.S. law are left to case decisions.

all individual rights.<sup>15</sup> Yet it is a “relative equality” (versus absolute equality) that the Constitution provides.<sup>16</sup> Korea’s equal protection provision also applies only to state action,<sup>17</sup> and, like the equal protection clauses of other national constitutions, serves as the general anti-discrimination law of the land. Unlike the U.S. Constitution, whose Fourteenth Amendment contains the only reference to equality of persons, Korea’s equal protection provision in Article 11 is not the only reference to individual equality in the constitutional text. Equality’s first appearance in the Korean Constitution is in its preamble: “To afford equal opportunities to every person and provide for the fullest development of individual capabilities in all fields. . . .”<sup>18</sup> The main equal protection provision explicitly declaring equality before the law and prohibiting discrimination follows in Article 11.<sup>19</sup> Although this provision would appear to be applicable in a host of situations, references to equal treatment appear in five more provisions in the Constitution: one relating to education;<sup>20</sup> another to “marriage, family, mothers, health”;<sup>21</sup> and three devoted to the election setting (the election of members of the National Assembly<sup>22</sup> and the President<sup>23</sup> specifically, and election campaigns<sup>24</sup> generally). Those versed in U.S. constitutional jurisprudence may question why, given the apparent breadth of Article 11, it is necessary to provide for further enumeration of equality in other areas, or whether references to equality in the other provisions require a different meaning, so as to avoid redundancy. Perhaps some of the equality-based provisions reflect the complex culture and history of the Korean setting.<sup>25</sup> For example, given the consuming nature of education

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15. See YOUNG-SUNG KWON, HUN-BUB-HAHK-WON-ROHN [CONSTITUTIONAL LAW: A TEXTBOOK] 368 n. 1 (rev. ed. 2001) (citing 88 Hun-Hah 7, Jan. 25, 1989 (Korea Sup. Ct.)).

16. *Id.* at 369.

17. KWON, *supra* note 15, at 316-18.

18. S. KOREA CONST. pmb1, available at [http://korea.assembly.go.kr/board/down.jsp?boarditemid=1000000155&dirname=/eng\\_data/1000000155E1.PDF](http://korea.assembly.go.kr/board/down.jsp?boarditemid=1000000155&dirname=/eng_data/1000000155E1.PDF).

19. *Id.* art. 11.

20. “All citizens shall have an equal right to receive an education corresponding to their abilities.” *Id.* art. 31.

21. “Marriage and family life are entered into and sustained on the basis of individual dignity and equality of the sexes, and the State must do everything in its power to achieve that goal.” *Id.* art. 36.

22. “The National Assembly is composed of members elected by universal, equal, direct and secret ballot by the citizens.” *Id.* art. 41.

23. “The President is elected by universal, equal, direct and secret ballot by the people.” *Id.* art. 67.

24. “Election campaigns are conducted under the management of the Election Management Committees at each level within the limit set by law. Equal opportunity has to be guaranteed.” *Id.* art. 116.

25. Or perhaps the multiple references to equality merely highlight the various functions of a national constitution. See Walter F. Murphy, *Constitutions*,

for much of Korean society,<sup>26</sup> the provision on equal opportunity in education is understandable. Moreover, perhaps the decades of rule by military dictatorships, still fresh in the minds of many, required a separate provision on the direct election of the president and legislators, with equal voting rights for all individuals.

In 2001, the National Assembly enacted the National Human Rights Commission Act, whose stated purpose is to “contribute to the realization of the human dignity and worth and . . . to ensure the protection of the inviolable and fundamental human rights of all individuals.”<sup>27</sup> If the “human rights” phrasing is popularly understood to mean protection against the state’s arrest (often without charge), detention, or torture of political dissidents, a law providing for protection against such acts is entirely understandable in Korea, where such violations were seen during the years of authoritarian rule. Importantly, the Act also addresses equal treatment and nondiscrimination, which easily fits within the rubric of “human dignity and worth” and “inviolable and fundamental human rights of all individuals.”<sup>28</sup> Specifically, the law allows persons who allege a “discriminatory act violating the right to equality . . . committed without reasonable cause” to file a petition to the National Human Rights Commission of Korea (“Commission”), which the Act created.<sup>29</sup> Under the statute, a petition is allowed for any discriminatory act that is based on:

gender, religion, disability, age, social status, region of birth (including place of birth, first-registered domicile, one’s legal domicile, and major residential district where a minor lives until he/she becomes an adult), national origin, ethnic origin, appearance, marital status (i.e., married, single, separated, divorced, widowed, and de facto married), race, skin color, thoughts or political opinions, family type or family status, pregnancy or birth, criminal record of

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*Constitutionalism, and Democracy, in* CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 3 (Douglas Greenberg et al. eds., 1993). The equal protection provision in Article 11 could be an example of a constitution as guardian of fundamental and substantive rights free from interference by the legislature. *Id.* at 8-9. The preambular reference to equality and the others relating to education, marriage and family, and elections might reflect a constitution’s “binding statement of a people’s aspirations for themselves as a nation.” *Id.* at 10.

26. See Federal Research Division, Library of Congress, South Korea: A Country Study 98 (Andrea Matles Savada & William Shaw eds., 4th ed. 1992); Denise Potrzeba Lett, In Pursuit of Status: The Making of South Korea’s “New” Urban Middle Class 164 (1998).

27. See Nat’l Hum. Rts. Comm’n Act, No. 6481, art. 1 (2001), available at [http://www.humanrights.go.kr/english/information/legal\\_materials\\_02.jsp](http://www.humanrights.go.kr/english/information/legal_materials_02.jsp).

28. *Id.*

29. *Id.* art. 2(4).

which effective term of the punishment has expired, sexual orientation, academic background or medical history, etc.<sup>30</sup>

The equality component in the Act differs from the equal protection provision in the Constitution in a number of respects: (i) the Act allows both Korean citizens and foreigners living in Korea to advance a discrimination claim;<sup>31</sup> (ii) the Act applies to both private, as well as, state actors;<sup>32</sup> (iii) as seen above, the Act's text provides a list of *nineteen* classifications based on which alleged discriminatory activity may trigger a petition; and (iv) while a court of law may enter judgment on a plaintiff's constitutional claim alleging violation of the equal protection provision, the Commission does not have the authority to issue a decision or judgment that is binding on the parties.<sup>33</sup> In practice, however, the Commission's recommendations to the respondent are followed in 80% of the cases filed.<sup>34</sup>

The Act appears to be the most comprehensive equality legislation in Korea. Yet the law's provisions relating to equality could also be described alternatively as ambitious, progressive, peculiar, overarching, and ineffectual. That the Act allows foreigners, and not only "citizens" (as stipulated in Article 11 of the Constitution), to bring a discrimination petition indicates a universal approach to the equality question,<sup>35</sup> reflecting a focus on all discrimination within the country's borders,

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30. *Id.*

31. *Id.* art 4.

32. *Id.* art. 30(1)(2).

33. *See id.* arts. 19-50 (stating that upon filing of petition alleging discrimination, Commission has authority to conduct wide range of activities, but most chiefly, investigation of alleged discrimination, recommendations to respondent parties, and conciliation services).

34. Email from Soo Hee Choi, Special Assistant to the Chairperson, National Human Rights Commission, to author (Dec. 29, 2008, 12:37 CST) (on file with author). The Act does not separately permit a private cause of action for discriminatory activity. In practice, an action advancing a discrimination claim in a court of law must be brought under, not an anti-discrimination law, but a provision of the Civil Code relating to tort actions. Section 750 of the Civil Act provides: "Any person who causes losses to or inflicts injuries on another person by an unlawful act, willfully or negligently, shall be bound to make compensation for damages arising therefrom." *Statutes of the Republic of Korea*, Civil Act, art. 750.

35. Indeed, the Commission recognizes as part of its institutional history, events in 1993, when "[u]niversal principles"

in the status of national institutions (Paris Principles) were adopted by the UN General Assembly, and the World Conference on Human Rights held in Vienna made recommendations to establish national human rights institutions. A group of Korean human rights NGOs that participated in the Vienna Conference called for the establishment of a national human rights institution in the government.

National Human Rights Commission of Korea, *Introduction*, [http://www.humanrights.go.kr/english/about\\_nhrck/introduction\\_01.jsp](http://www.humanrights.go.kr/english/about_nhrck/introduction_01.jsp) (last visited Mar. 26, 2010).

without technical prerequisites of standing or citizenship. In a similar light, the inclusion of “sexual orientation” as a basis for an alleged discriminatory act that allows for a petition is quite progressive for a society with traditional Confucian attitudes regarding family, lineage, and assumptions of heterosexual reproduction. Several of the grounds that permit a petition—race, national origin, ethnic origin, disability, and age—are consistent with the constitutions or national laws of established constitutional democracies, especially the United States. Other grounds—e.g., “social status,” “family type or family status,” “academic background,” and “regional origin”—have significance in the Korean setting, given the status consciousness and regional factionalism in the country.<sup>36</sup> Yet the inclusion of the grounds of “appearance” and “academic background” raises questions (and in my opinion, might overdo a good thing).<sup>37</sup>

The questions are compounded given that the alleged discriminatory act may be by a private or a state actor. Further, the Act does not differentiate between private versus *personal* nature of the respondent’s alleged discriminatory act. It is one thing, for example, to allow a petition by one who alleges discrimination by a private company that refused to hire an applicant due to her gender, but what of the petition by a single woman who alleges that she was refused consideration for marriage by a man merely because of the regional origin of her ancestors, or her appearance?<sup>38</sup> One wonders if it was the intention of the National Assembly to have the Commission devote resources to such claims.<sup>39</sup>

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36. See Ihyung Lee, *Equivalence at Law (and Society): Social Status in Korea, Race in America*, 37 VAND. J. TRANSNAT’L L. 109, 115-22, 144 n.199 (2004).

37. For example, may a failed job applicant file a petition alleging discrimination on account of his academic background (*hahk-buhl*) if an employer hires instead a graduate of a top-tier school in Seoul, if the applicant is from a second-tier university? The question may not be absurd in the Korean setting, given that for many years, top positions in government and major corporations in Korea have been granted to graduates of the elite universities, with the college attended as the primary, if not the only, qualification for entry. Opposition to this practice even led to the formation of “Antihakbul, a civic group against the deep-rooted school ties system in Korea.” Kyung-hwa Shin, *Professors’ Group Objects to Deep-seated Academic Cartel*, KOREA HERALD, Apr. 2, 2001, available at 2001 WL 8117391 (copy on file with author).

38. I thank Professor Mark Ramseyer for raising this hypothetical. Presumably, the respondent may argue that if this is a discriminatory act, it was based on “reasonable cause,” namely, that the prospective bride’s regional origin would cause disruption within his family, or that his family would be opposed to the arrangement. In Korea, marriage is generally seen as a union of families as opposed to two individuals.

39. Questions have risen in the public commentary as to whether the Commission is empowered to effect the lofty goals of equality that the Act advances. See *In-gwon-we-gah ‘mah-dahng-bahl’-in i-yu* [The Reason Why the NHRC Became a ‘Nuisance’], HAN-GYU-REH, June 20, 2003, available at <http://www.hani.co.kr/section-001033000/2003/06/001033000200306201824212.html> (copy on file with author).

The broad scope of the Act, relating to the petitioners (everyone in Korea), the respondents (whose decision may be official, private, or personal in nature), and the number of grounds based on which alleged discriminatory activity may trigger a petition (from race to appearance to social status), coupled with a quasi-judicial entity authorized to address discrimination claims, reflects a Korean willingness to take equality seriously, and to give individual petitioners a vehicle to address their claims. All of this is understandable in the opening decades of a constitutional democracy in the midst of a social transformation, especially given the historically un-equal nature of Korean society from the Chosun dynasty to the present.<sup>40</sup> Yet, perhaps due to the very breadth of the Act's coverage, the Commission's lack of authority to issue a binding decision was intentional. This raises the question of whether the Act reflects more of an attempt to legislate the *appearance* of equality, rather than an elaboration of a general anti-discrimination law.

In sum, the positive law of equality in the relatively new constitutional democracy of Korea includes Article 11(1) of the Constitution, and provisions of the National Human Rights Commission Act.<sup>41</sup> The equal protection provision in the Constitution has not changed substantively since 1948 when the document was formally adopted, but without the democratization reforms beginning in 1987, the guarantee could mean little. The text of the National Human Rights Commission Act (particularly, the list of classifications based on which an alleged discriminatory act will allow a petition to the Commission), reflects a universal regard for protection of individual dignity and equality, while also contemplating situations more keenly seen in Korean society. The introduction of *we-hwa-gahm* will add another local dimension to the mix.

#### B. *WE-HWA-GAHM*-BASED EQUALITY?

An understanding of the *we-hwa-gahm* term begins with the dictionary definition: "a sense of incongruity [incompatibility]; social disharmony."<sup>42</sup> Each of the three characters in the phrase—*we*, *hwa*, and

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40. See Lee, *supra* note 36, at 115-22.

41. See Nat'l Hum. Rts. Comm'n Act, No. 6481(2001), available at [http://www.humanrights.go.kr/english/information/legal\\_materials\\_02.jsp](http://www.humanrights.go.kr/english/information/legal_materials_02.jsp); S. KOREA CONST. art. 11.

42. MINJUNG ESSENCE KOREAN-ENGLISH DICTIONARY, *supra* note 12, at 1550. One advisor explains that *we-hwa-gahm* literally means "alienation or . . . feeling [left] out of a certain group." Email from Hi-Won Yoon, Professor, Seoul National University, College of Education, Department of Korean Language Education, to author (Dec. 17, 2008, 10:44 CST) (on file with author).

*gahm*—has an originating Chinese character; the three Chinese characters collectively mean “disobey[ing],” “disregard[ing],” “oppos[ing],” or “offend[ing] against” (*we*), a “feeling” (*gahm*), of “harmony, peace” (*hwa*).<sup>43</sup> The phrase is almost always used for interpersonal settings, and two sets of participants emerge from the *we-hwa-gahm* dynamic: those whose presence, appearance, or action results in incongruity or the disruption of harmony, which is felt by others. Those in the first group are seen as creating or producing *we-hwa-gahm*;<sup>44</sup> those in the second feel *we-hwa-gahm*. In many situations, there is a difference in status between those who create and those who feel the incongruity, disharmony, or incompatibility.

Examples will be helpful. Professor of Korean Language Education Hi-Won Yoon offers a basic example: “One who wears an expensive suit to a casual party leaves colleagues in lesser wardrobe feeling [*we-hwa-gahm*].”<sup>45</sup> Professor Seungkwon Yoon (who also serves as an interpreter in his U.S. community) adds: “[W]hen a person who is less educated happens to be at a meeting where a group of college professors discuss . . . academic issues, he or she feels [*we-hwa-gahm*].”<sup>46</sup> Or “Korean scholars might feel [*we-hwa-gahm*] when some Koreans speak English very fluently because [the Korean scholars] do not.”<sup>47</sup>

The legal prohibition against wedding ceremonies held at first-class hotels (since repealed) is a rather extreme example of a law imposed to avoid societal *we-hwa-gahm*. The measure restricted public displays of disparity in wealth, status, and privilege, thereby removing from society, situations where those without means to host similar events at luxurious locations would feel discomfort, disharmony, or incongruity. As discussed above, a necessary element of the *we-hwa-gahm* dynamic is that the person feeling disharmony be present. In the wedding ceremony setting, there may well be guests who feel *we-hwa-gahm*, but it is more

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43. BRUCE K. GRANT, A GUIDE TO KOREAN CHARACTERS: READING AND WRITING HANGUL AND HANJA 250, 236, 101 (2d rev. ed. 1982).

44. The most commonly heard phrase is *we-hwa-gahm-eul joh-sung-hah-dah*. Email from Bomsinae Kim, to author (Dec. 19, 2008, 11:15 CST) (on file with author) (Kim is a former professional interpreter). The *joh-sung-hah-dah* term means “make up; produce; build up.” MINJUNG ESSENCE KOREAN-ENGLISH DICTIONARY, *supra* note 12, at 1812.

45. Email from Hi-Won Yoon, Professor, Seoul National University, College of Education, Department of Korean Language Education, to author (Dec. 17, 2008, 10:44 CST) (on file with author). Professor Yoon offers some background on the development of the phrase: “Before the boom in Korea’s economy in the late 1970s and 1980s, many in Korean society were of limited means and disparity in economic status was minimal. But economic growth brought on difference and disparity, and the disadvantaged began feeling alienated by the more advantaged class.” *Id.*

46. Email from Seungkwon You, Teaching Assistant Professor of Korean Education, University of Missouri, to author (Nov. 5, 2008, 10:52 CST) (on file with author).

47. *Id.*

likely that such individuals would not have been invited to attend. Presumably then, the *we-hwa-gahm* concept does not comport to technical rules of attendance and location. It is more of society-wide appearances. As I have previously noted, contemporary Korea is a setting where suggestions of inequality touch upon tender sensitivities, and where there appears an angry demand for social equality.<sup>48</sup> Perhaps some of the sensitivity, the anger, and the general angst is reflected in the *we-hwa-gahm* dynamic. The law relating to impermissible locations of wedding activities was repealed in 1999. One may speculate as to the reasons for the reversal. Perhaps the increased standard of living over the years since the original enactment allowed more persons to hold family events at locations of luxury, and the possibility of *we-hwa-gahm*, although still present, was less in degree. Or perhaps there was legislative concern that the ban would not withstand constitutional challenge, at a time when there was increasing popular awareness of the ability to challenge executive restrictions on individual rights.<sup>49</sup> Or even further, perhaps it was evident that the law was routinely ignored by those affected, and not effectively enforced. Or the ban was practically pointless, since those with the means to host wedding ceremonies at luxurious hotels could instead hold them at exclusive private clubs, with more ostentatious displays of wealth. In all events, there is a significant epilogue: In 2006, a National Assembly member announced that he would propose a bill that would again prohibit wedding ceremonies held at luxurious hotels.<sup>50</sup> A newspaper conducted a public survey, which revealed that 54.7% (943 out of 1,724 respondents) agreed with the idea of the re-enacted ban, with 44.7% (770 out of 1,724) opposed.<sup>51</sup> Interestingly, those in favor of the ban referred to the “*we-hwa-gahm joh-*

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48. Ilhyung Lee, *Korean Perception(s) of Equality and Equal Protection*, 31 B.C. INT'L & COMP. L. REV. 53, 54, 63 (2008).

49. Constitutional Court of Korea, Introduction: History, <http://english.ccourt.go.kr> (last visited Mar. 26, 2010) (Internet site of Constitutional Court, noting that “introduction of the constitutional complaint . . . , which allows a citizen to complain directly to the Court on violation of basic rights, is a symbol of the constitutional spirit that emphasizes the peoples’ basic rights, and is an important event in [the] history of Korean constitutionalism.”).

50. Net Research Q, *Teuk-geub-hotel gyul-hon-sik geum-ji-bub-choo-jin-eh deh-heh ‘we-hwa-gahm joh-sung yeh-bahng-we-heh’ 55% chahn-sung* [Net Research Q, *Regarding Promotion for Weddings at Five-Star Hotels Ban Act: ‘To Avoid Making Disharmony’, 55% Favor*], DIGITAL TIMES, Jan. 4, 2006, [http://www.dt.co.kr/contents.htm?article\\_no=2006010402012231727002](http://www.dt.co.kr/contents.htm?article_no=2006010402012231727002).

51. *Id.*

*sung*”<sup>52</sup> phrase; those opposed expressed their objection to governmental restriction on personal freedom.<sup>53</sup>

The relationship between law and culture—sometimes simple, other times more complex—has received attention from commentators of various fields.<sup>54</sup> The basic proposition that law reflects culture is occasionally seen in the literature.<sup>55</sup> Or as Professor Paul Schiff Berman writes: “[L]aw symbolically reflects and reinforces deep cultural attitudes, fears, or beliefs.”<sup>56</sup> The statement appears particularly apt for the Korean setting. The enactment of a law prohibiting wedding ceremonies from being held at first-class hotels might well appear curious to those observers new to Korea. The ban, followed by its repeal and discussion of a possible re-enactment of the ban, encourages more deliberation on how the evolving Korean culture shapes its law.<sup>57</sup>

52. The *joh-sung* term means “make up; produce; build up.” MINJUNG ESSENCE KOREAN-ENGLISH DICTIONARY, *supra* note 12, at 1812.

53. *Id.*

54. PAUL W. KAHN, THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP (1999); Symposium, *Mixed Reception: Culture, International Norms, and Legal Change in East Asia*, 27 MICH. J. INT’L L. 687 (2006) (providing discussion of culture and law in East Asia, by various authors).

55. *E.g.*, LEWIS C. LEE & J. SCOTT DAVIDSON, INTELLECTUAL PROPERTY FOR THE INTERNET 285 (Lewis C. Lee & J. Scott Davidson eds., 1997) (“Laws reflect the culture and social attitudes of the people governed by the laws.”); Stephen J. Bahr, *Social Science Research on Family Dissolution: What It Shows and How It Might Be of Interest to Family Law Reformers*, 4 J. L. & FAM. STUD. 5, 7 (2002) (“The norms of the broader culture are reflected in the law.”); Robert H. Bork, *Speeches From the Federalist Society Fifth Annual Lawyers Convention: Individual Responsibility and the Law* (Introduction), 77 CORNELL L. REV. 1021, 1021 (1992) (“[C]hanges in judge-made law may reflect strong currents in the culture. Law reflects those changes and tends to reinforce them.”); *Annotated Legal Bibliography on Gender*, 12 CARDOZO J.L. & GENDER 733, 766 (2006) (“Law reflects a society’s cultural and moral norms affected by political elements.”). The proposition is often stated without supporting authority.

56. Paul Schiff Berman, *The Cultural Life of Capital Punishment: Surveying the Benefits of a Cultural Analysis of Law*, 102 COLUM. L. REV. 1129, 1134 (2002) (reviewing AUSTIN SARAT, *WHEN THE STATE KILLS: CAPITAL PUNISHMENT AND THE AMERICAN CONDITION* (2001)).

57. Just as law reflects culture, law may also shape it. *E.g.*, José A. Cabranes, *History of the District Court of Puerto Rico*, 52-JAN FED. LAW. 16, 18 (2005) (attributing familiarity of this statement to Cuban anthropologist Fernando Ortiz); Edward J. Eberle & Bernhard Grossfeld, *Law and Poetry*, 11 ROGER WILLIAMS U. L. REV. 353, 401 (2006); Deborah A. Ellis, *Re-examining Gender Scrutiny: A Symposium Discussion: Protecting “Pregnant Persons”: Women’s Equality and Reproductive Freedom*, 6 SETON HALL CONST. L.J. 967, 968 (1996); Christopher Stone, *The Law as a Force in Shaping Cultural Norms Relating to War and the Environment*, in CULTURAL NORMS, WAR AND THE ENVIRONMENT 64, 65 (A. Westing ed. 1988). Sometimes, law is used to “revise,” “reshape,” “instantiate[]” and “establish[]” culture. Robert Post, *Law and Cultural Conflict*, 78 CHI.-KENT L. REV. 485, 488-89 (2003). Discussion of such examples in Korea will encourage more study of the jurisdiction and society.

## CONCLUSION

A country with a long social history and deeply embedded norms, Korea is also a relatively new constitutional democracy. A study of its equal protection jurisprudence and the developing constitutional culture must also take into consideration the popular perception and construction of equality. A description of the positive law relating to equal protection in Korea is a necessary first step. A further examination of the Korean setting reveals attempts to effect the appearance of equal opportunity. Egalitarian policies designed to level the playing field for all Koreans reflect the Korean desire to avoid “incongruity” or “disharmony” resulting from unequal positions. The study of the Korean perception of equality, and the jurisdiction’s law and measures to promote equal opportunity, I suggest, requires some appreciation of the Korean concept of *we-hwa-gahm*. A more comprehensive examination of Korean law will shed further light on the relationship between equality law and policy, and related societal norms.

