Japan enacted German-style inheritance laws in its Asian colonies of Taiwan, Korea, and Micronesia after it colonized these areas. Before colonization, the areas had different inheritance laws. Land had been passed from a father to a son in Taiwan and Korea. In Micronesia, land had been passed from a father to a daughter (subject to the father's revocation). In principle, the newly adopted law allowed a spouse, sons, and daughters to receive a relatively fair inheritance. Facing the conflicts between traditional customs and newly introduced law, locals circumvented the law. This paper investigates how the new inheritance law impacted female property rights that were different from customary practice. In order to distinguish “customary rights of the oldest son as a clan leader” from “gender discrimination,” this paper studies the “difference in differences” in inheritance between “the oldest son and the youngest son” and “the oldest son and the oldest daughter.” A comparative analysis of the differences suggests that the new inheritance law is fair and that it improves female property rights even though gender discrimination remains substantial.

**Key Words:** Female property rights, Fair inheritance

**JEL Classification:** K11, N25.

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I. Introduction

John Locke, an English philosopher, used the two words ‘property’ and ‘liberty’ interchangeably in his seminal work, Two Treatises of Governments. According to Locke, property (that incurs stable income) was the only sound basis for individual liberty. One can still observe a similar phenomenon today, especially for females. Recent economic studies show that pensions to grandmothers or housewives’ access to micro-finance significantly improve the female’s status in her household (Duflo (2003)).

However, the distribution of property has not been even between males and females in most societies. One of the causes of uneven distribution might be the custom of inheritance favoring males. Land was the most important property in agricultural societies and it was inherited from a father to a son in many societies. Although there have been many efforts to improve female property rights, inheritance laws - which are based on customs - still not completely fair to females in many aspects (Craig (2011)).

The problem is generally worse in developing countries where females have less economic opportunities. Many developing countries introduced European laws to develop their economies more efficiently. However, most attempts failed partly because different local customs related to property ownership, contract enforcement, and inheritance made European laws inapplicable. Consequently, European property laws which are relatively fair to females declined in practice in many countries if it was not successfully transferred.

This paper aims to investigate how the relatively fair property law impacts female property rights against unfair customs in Korea and some former Japanese colonies. Japan colonized Taiwan in 1895, Korea in 1910, and Micronesia in 1914. After colonization, Japan introduced German-style property law to its colonies very successfully in Taiwan, Korea and some part of Micronesia such as Palau and the Northern Mariana Islands. Customs of inheritance were very different in those countries. In general, land was passed from father to son in Taiwan and Korea. Land was passed from father to daughter (subject to the
father’s revocation) in large part of Micronesia. In principle, the German law did not have any discrimination in property ownership against females and opened a possibility of relatively fair inheritance between a spouse, sons, and daughters. In sum, the former Japanese colonies provide an excellent setting for studying how the females’ rights evolve in various circumstances.

In traditional Taiwan and Korea, it was practically impossible for females to own land, and daughters had few inheritance rights. Married women were placed under the authority of their husbands and were considered incapable of managing property properly. The discrimination on inheritance was justified as the customary rights of the oldest son as a clan leader. Dowry for daughters considered to be the counterpart of inheritance although dowry was generally smaller than the inheritance to sons.

This paper studies how widows’ property rights evolved by analyzing property laws and court cases in Korea and Taiwan. Furthermore, the paper investigates if gender discrimination existed after controlling the rights of oldest son. In order to distinguish the customary rights of the oldest son from gender discrimination, this paper estimates difference in differences in inheritance between the oldest son and other sons and the oldest son and the oldest daughter. Comparative analysis suggests that the fair inheritance law improves female property rights, but gender discrimination remains substantial. Finally, the paper analyzes conflicts in inheritance through a simple game theory model and provides a policy recommendation to mitigate the conflicts within family members.

II. The Impact of Modern Property Law in Korea and some Japanese Colonies.

A review of property law history suggests that female property rights first improved as a byproduct of strengthening general property rights. In other words, strengthened property rights in general remove customary limitations on
female property ownership. The introduction of well-defined legal ownership of land enabled females to own land legally and secured their status. Moreover, the modern property law removed customary practices on ownership revocation which was very unfavorable to females.

The cases from Taiwan illustrate how the introduction of modern property law improved female’s status. In traditional Taiwan, arguably, concubines had the weakest social protection when their husbands died. Many of them were sold as slaves or prostitutes by wives. The introduction of modern property law made possible for females to own property securely. Then, transferred property by the husband did provide safeguards. Concubines owning property were not sold as slaves or prostitutes, and used the property to start their own business.

In traditional Korea and Taiwan, custom required females to register the property for her business under her husband’s name. Thus, after the husband’s death, the wife or the concubine had difficulty in defending her de facto property. Female ownership was unusual and females were considered to be incapable of managing property properly. Consequently, the property was open to challenge of seizure by males members of the clan. However, after the introduction of modern property law, the court clearly holds that the acquired property from the wife’s or concubine’s business becomes the property of the wife or concubine (Korea: 1917 Civil Commercial Action No. 254, Taiwan: Olds (2011)).

Introduction of modern property law also removed many customs with unfavorable impacts on females. Under the traditional Korean law, if there was no children, then the widows attained ‘the right to use’ her husband’s properties. However, she did not attain ‘the right to sell.’ Legally, the core of land ownership is ‘the right to sell.’ ‘The right to use’ is subject to ‘the right to sell’ and if ‘the right to sell’ is passed to another person, the right to use is open to challenge. Because widows did not have the right to sell, the husband’s properties (more specifically ‘the right to sell’) were passed to an adopted son after death, the husband’s father, the husband’s brother, or the
male clan member. A similar situation is also observed in Taiwan. A widow could inherit her dead husband’s share of the family property if her husband was childless. However, the woman’s control of the family property was limited by her male relatives and open to challenge.

However, modern property laws do not favor division of ownership (Hansmann and Kraakman (2002)) because the division of ownership generates many disputes and inefficient use of properties. Consequently, Japanese judges did not distinguish ‘the right to use’ and ‘the right to sell’ for widows and combined ‘the right to use’ with ‘the right to sell’ for widows in Korea. In other words, the widow’s temporary ownership was changed into permanent ownership. Court cases clearly confirmed that the widows had priority over her husband’s clan member (Korea 1917 Civil Commercial Action No. 277), the husband’s brother (Korea 1917 Civil Commercial Action No. 278), the entire clan (Korea 1917 Civil Commercial Action No. 93), the adopted son after death (Korea 1927 Civil Commercial Action No. 333), the husband’s father (Korea 1929 Civil Commercial Action No. 300), even over daughters under certain circumstances (Korea 1913 Civil Commercial Action No. 201). The court also concludes that a step mother has a priority over the clan (Korea 1918 Civil Commercial Action No. 24). A similar situation is also observed in Taiwan (Olds (2010)).

However, the introduction of German-style law created some problems in Micronesia. Before Japanese colonization, Germany controlled Micronesia from 1899 to 1914. Under the German law for colonies, females can own property in theory, but the inheritance law was still in favor of sons in practice. In Micronesia, however, traditionally land was passed from father to daughter as a return for taking care of her old father. If the daughter neglected her duty, the father could revoke the inheritance and was able to pass the land to another daughter after reporting the first daughter’s negligence at the clan meeting and getting an approval from the clan. When Germany introduced their new land tenure system in Ponape (currently the Federated States of Micronesia), Germans enforced their inheritance law. Facing the conflicts
between traditional customs and newly introduced law, locals circumvented the law. Legally, the land was passed to sons, but in practice locals did not respect the legal ownership. This caused many legal conflicts later when Japan (1914 - 1944) and the U.S. (1945 - 1981) introduced new land laws in Micronesia. When the Japanese occupied Micronesia, they solved the problem by respecting the inheritance customs.

Although the introduction of German-style property law generated problems in property ownership, they removed customary limitations on female property ownership. In Palau where Japan successfully introduced property laws, American judges consistently conclude that the clans or lineages did not have any authority over private land. This suggests that revocation of inherited land by the clan’s agreement becomes impossible.

### III. Rights of the oldest son or Gender discrimination

There are two possible hypotheses in explaining the inheritance difference between sons and daughters. The first hypothesis based on the importance of the oldest son’s rights as a clan leader. The second one is a gender discrimination hypothesis. The first hypothesis assumes that the difference originates from the fact that the oldest son as a clan leader is entitled to more than others. Traditionally in Korea, the oldest son inherited the right to manage spiritual ceremonies for ancestors. Holding the ceremony required substantial costs and the parents inherited more to the oldest son as compensation. The second hypothesis assumes that gender discrimination is the major reason of the difference. Especially in the modern society where the oldest son’s role is not as important as in the pre-modern society, the difference remains substantial due to gender discrimination. However, it should be noted that defining gender discrimination is a very sensitive task. In a perspective of feminism, the existence of the oldest son’s rights as a clan leader is simply regarded as gender discrimination. This paper, however,
analyzes gender discrimination through a relatively neutral perspective. Especially, this paper accepts the oldest son’s rights as the rights of clan leader and attempts to find the existence of gender discrimination. In other words, the existence of gender discrimination after controlling the oldest son’s rights can be considered as more robust evidence of gender discrimination.

A history of Korea suggests that the discrimination in inheritance occurred in the 1700s. The Chosun dynasty established in 1492 established its legal codes for inheritance. The law provided for fair inheritance between sons and daughters, but the person who inherits the right to hold spiritual ceremonies for ancestors (usually the oldest son) could receive 20% more than other siblings. The introduction of fair inheritance was motivated by political reasons. The political elites of new Chosun dynasty wanted to weaken former local political elites’ power. Because most of former local political elites held large amounts of land, the law enforced even inheritance between sons and daughters in order to divide large sections of land. This policy was also enforced strictly for political reasons. Historical records show that the government ordered even inheritance between sons and daughters when a son or daughter claimed the division of property was not even (Moon 2004).

However, after 200 years of even inheritance, the size of land decreased significantly and the even inheritance of land decreased the economic value of lands. The government also lost political incentives to enforce even inheritance. In the 1700s, the oldest son began to inherit all properties. This practice continued until the Japanese colonization. In 1910, Japan introduced new property law in Korea, but accepted the inheritance custom rather than applying Japanese inheritance law based on Japanese customs. A Japanese survey of Korean customs concluded that Koreans have two types of inheritance - spiritual ceremony inheritance and a head of household inheritance. However, modern property laws are in favor of single inheritance rather than divided inheritance. Consequently, Japan integrated the spiritual inheritance into the head of household inheritance. However, in practice, Japan allowed to inherit all properties to the oldest son.
After independence, in 1958, the inheritance law in Korea changed as follows. <Table 1>.

(Table 1) Inheritance ratio, general cases

<table>
<thead>
<tr>
<th>Date</th>
<th>Wife</th>
<th>The oldest son</th>
<th>Other sons</th>
<th>Daughters (not married)</th>
<th>Daughters (married)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1492-1700s</td>
<td></td>
<td>1.2</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>1700s-1960</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1960-1978</td>
<td>0.5</td>
<td>1.5</td>
<td>1</td>
<td>0.5</td>
<td>0.25</td>
</tr>
<tr>
<td>1978-1990</td>
<td>1.5</td>
<td>1.5</td>
<td>1</td>
<td>1</td>
<td>0.25</td>
</tr>
<tr>
<td>1990-present</td>
<td>1.5</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Gyungguk Daejun, Korea Civil Codes

In order to distinguish the customary rights of the oldest son from gender discrimination, this paper estimates difference in differences in inheritance between the oldest son and other sons and the oldest son and the oldest (married) daughter.

The traditional Korean law shows that 1) the proportion of the oldest son’s rights is 0.2: 1.2 (the oldest son) - 1 (other sons). 2) there was no gender discrimination: 1.2 (the oldest son) - 1 (other sons) = 1.2 (the oldest son) - 1 (daughters, married).

From the 1700s to 1960, it is difficult to test if there was gender discrimination. The rights of the oldest son increase from 0.2 to 1, but the difference between the oldest son and other sons is the same as the difference between the oldest son and daughters. This implies that more inheritance to the oldest son can be considered as a reward for holding a ceremony for ancestors and supporting the old parents.

From 1960 to 1978, gender discrimination is clearly observed. The difference between the oldest son and other sons is 0.5, but the difference between the oldest son and married daughter is 1.25. The difference in differences is 0.75.
The marriage disadvantage is 0.25 (0.5 - 0.25). Thus, the gender discrimination after controlling marriage disadvantage is 0.5 (1.25 - 0.5 - 0.25).

From 1978 to 1990, the wife’s right increases significantly. Gender discrimination appears to decrease. However, holding the marriage disadvantage constant at 1960 - 1978 level (0.25), the gender discrimination remains at the same level 0.5 = [1.5 - 0.25; difference between the oldest son and married daughter] - [1.5 - 1.0; difference between the oldest son and other sons] - [0.5 - 0.25; marriage disadvantage 1960 - 1978].

<table>
<thead>
<tr>
<th>Year</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Donee</td>
<td>Value of Gift Property</td>
</tr>
<tr>
<td>2009</td>
<td>56387</td>
<td>8809737</td>
</tr>
<tr>
<td>2010</td>
<td>43160</td>
<td>5980758</td>
</tr>
<tr>
<td>2011</td>
<td>51309</td>
<td>7549115</td>
</tr>
</tbody>
</table>

Source: Annual National Tax Statistics. 2011. Korea National Tax Service
Note. Data by gender is not available before 2009.

After 1990, one can observe that the right of the oldest son and gender discrimination both disappears at least legally. However, in practice, some statistics suggest that gender discrimination prevails. A survey on inheritance in Jeju-island shows that about 2/3 of parents reported that there was gender discrimination in inheritance (Han and Kim (2011)). Tax records in gift inheritance (before the donor’s death) show that males receive more than females <Table 3>. In many cases, once inheritance was determined by parents unfairly, then it could be remedied only though suing family members. Traditional culture, however, made suing family members extremely difficult. Court cases in Korea show that legal inheritance disputes between family members were very rare and began to increase only recently.
Finally, the analysis of difference in differences in legal inheritance ratio should be interpreted with a caution. To conclude the existence of gender discrimination, it requires some assumptions such as 1) the amounts of gift inheritance between sons and daughters are identical, 2) the contributions of supporting old parents between sons and daughters are identical, 3) the abilities of increasing family assets are identical between sons and daughters. <Table 3> weakly suggests that it is unlikely that gift inheritance was larger for daughters, but it is difficult to confirm the fact due to the tendency of not reporting gift inheritance for tax evasion. To control the contributions of supporting old parents, the paper classifies the oldest son’s rights as rewards rather than gender discrimination, but the level of contributions between sons and daughters likely to be different even after the control in a family. However, it may be assumed that the levels of contribution between sons (except the oldest son) and daughters are similar on average. Similarly, it can be assumed that the abilities of increasing family assets are similar between siblings on average.

Ⅳ. Policy Recommendation: Game Theoretical Approach

In this section, the paper employs a game theoretical approach to analyze the inheritance problem and provides some policy recommendations. For a simple analysis, the model assumes two players: a son and a daughter (the main conclusion holds with many siblings). When a parent inherits properties unfairly between the son and the daughter, the son has two strategies: maintain unfair inheritance or choose fair inheritance defined by the law. The daughter also has two strategies: sue or not sue. If the daughter does not sue, then the daughter receives no property but keeps some utility from maintaining good family relationship (The utility is denotes as $F$). In that case, the son also keeps $F$ and all property after paying tax at the rate of $T$. If the daughter sues the son, a legal dispute occurs at the cost of $C$ for the son and the daughter
and both also lose F. If the daughter wins the dispute, the daughter and the son divide the inheritance, I, equally. If the daughter loses due to some problems such as lack of evidence, then the son keeps all I. The son’s probability of winning the legal dispute is W which is assumed to be small. 

<Table 4> shows a payoff structure of the son and the daughter.

<table>
<thead>
<tr>
<th>Table 3</th>
<th>Payoffs structure for the son and the daughter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Son</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Daughter</td>
<td>Sue</td>
</tr>
<tr>
<td></td>
<td>Not sue</td>
</tr>
</tbody>
</table>

Note. The first number denotes the daughter’s payoff. The second number denotes the son’s payoff.

In this inheritance game, the son’s dominant strategy is maintaining unfair inheritance. If the daughter does not sue, the son will maintain unfair inheritance (determined by the parents) because the payoff from unfair inheritance, F+I(1-T), is larger than the payoff from choosing fair inheritance, F+0.5I(1-T). Even if the daughter does sue, the son still chooses unfair inheritance because the small probability that he will win means that the expected payoff of unfair inheritance, [0.5I(1-T)](1-W)+[I(1-T)]W-C, is larger than the payoff from fair inheritance, 0.5I(1-T)-C. Because the disputes can only be solved by legal procedures and the son has small chance of winning, maintaining unfair inheritance becomes the son’s dominant strategy.

The payoff structure suggests that the daughter’s strategy depends on the size of F and I. Given that the son will maintain unfair inheritance, the daughter will sue, if the payoff from suing, 0.5I(1-T)(1-W)-C, is larger than the payoff from not suing, F. In this case, the daughter is more likely to sue if I is high, C is low, W is low and F is low. Given that the son will choose fair inheritance, the daughter will not sue because the payoff from suing,
0.5I(1-T)-C, is smaller than that of not suing, F+0.5I(1-T).

The payoff structure of this game explains why the number of legal disputes on inheritance increased very recently in Korea. Korea experienced industrialization after the 1970s and the value of maintaining good family relationship has decreased since the 1970s. The decreased F (and increased I) makes the daughter more likely to sue when she faces unfair inheritance.

However, a socially optimal outcome is clearly the son chooses fair inheritance and the daughter chooses not sue. In the above game, the daughter’s strategy is sue if the payoff from suing, 0.5I(1-T)(1-W)-C, is larger than the value of family integrity, F. Given this daughter’s strategy, the son’s expected payoff is

\[
\text{Prob}(F \geq 0.5I(1-T)(1-W)-C)[F+I(1-T)] + \text{Prob}(F < 0.5I(1-T)(1-W)-C)\{(0.5I(1-T))(1-W)+[I(1-T)]W-C\}.
\]

In order to change the son’s dominant strategy from maintaining unfair inheritance to choosing fair inheritance, the payoff from choosing fair inheritance must be larger than the expected payoff of maintaining unfair inheritance. A simplified calculation suggests that if the government give tax benefits for fair inheritance (i.e. $T_{low} < T$), then choosing fair inheritance can be the son’s dominant strategy. For example, if we assume that F=C=0.1I, W=0.3 and Prob(F< 0.5I(1-T)(1-W) - C)=0.5, then by setting $T_{low}=0.2$ and $T=0.4$, the government can change the son’s dominant strategy from maintaining unfair to choosing fair. Moreover, it should be noted that the gap between $T_{low}$ and T decreases as probability of suing increases and the probability of winning decreases.

Experiences from introducing inheritance tax exemption for spouses in South Korean suggest that tax benefits for fair inheritance may be able to change the son’s dominant strategy. South Korean government introduced inheritance tax exemption for spouses in mid 1990s and <Table 4> shows that spousal inheritance deductions works very effectively. The proportion of spousal
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inheritance deduction increased from 0.136 to 0.254. As a matter of fact, tax consultants recommend inheriting the husband property to the widow and children generally follow the recommendation to reduce inheritance tax. This suggests that the son may change his dominant strategy if the government provides tax benefits for fair inheritance.

However, the policy implication should be interpreted with a caution. Tax exemption may be only used for reducing tax rates and redistribution of inherited wealth may occur after the completion of legal inheritance. Moreover, it should be noted that the legal changes can be a result of behavioral changes of economic agents. For example, the legal changes in spousal inheritance may be the result of the increased contribution of spouse in the family asset formation. Similarly, the changes in inheritance may reflects the weakened network among spouses and children in the modern society compared to the traditional society. In other words, the relationship ‘between parents and children’ became less important than the relationship ‘between a husband and a wife’; thus it may change the inheritance ratio. Future research in these topics will enhance the understanding of inheritance patterns.

(Table 4) Spousal Inheritance Deduction in South Korea

<table>
<thead>
<tr>
<th>Year</th>
<th>Value of assets inherited</th>
<th>Basic Deduction</th>
<th>Spousal Inheritance Deduction</th>
<th>Other Personal Deductions</th>
<th>Other Deductions</th>
<th>Spousal Inheritance Deduction / Value of assets inherited</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>3300717</td>
<td>198344</td>
<td>449374</td>
<td>118383</td>
<td>475919</td>
<td>0.136</td>
</tr>
<tr>
<td>1996</td>
<td>3086530</td>
<td>180420</td>
<td>494160</td>
<td>86291</td>
<td>446126</td>
<td>0.160</td>
</tr>
<tr>
<td>1997</td>
<td>3651648</td>
<td>216291</td>
<td>630771</td>
<td>96617</td>
<td>565785</td>
<td>0.172</td>
</tr>
<tr>
<td>1998</td>
<td>4555897</td>
<td>297151</td>
<td>873410</td>
<td>120538</td>
<td>948108</td>
<td>0.191</td>
</tr>
<tr>
<td>1999</td>
<td>3826440</td>
<td>486857</td>
<td>653825</td>
<td>68830</td>
<td>544685</td>
<td>0.170</td>
</tr>
<tr>
<td>2000</td>
<td>3413441</td>
<td>33298</td>
<td>616344</td>
<td>27629</td>
<td>870888</td>
<td>0.180</td>
</tr>
<tr>
<td>2001</td>
<td>3081159</td>
<td>77504</td>
<td>706592</td>
<td>34070</td>
<td>829010</td>
<td>0.229</td>
</tr>
</tbody>
</table>
V. Conclusion

A review of property law history suggests that female property rights first improved as a byproduct of strengthening general property rights. Although the customs of inheritance were different across Korea and other former Japanese colonies, modern property law removed unfavorable limitations on female property ownership. Difference in differences suggests that gender discrimination hypothesis explains the inheritance difference better than the oldest son’s rights as a clan leader in Korea. Gender discrimination was legally implemented though unfair inheritance to married daughters. It should be noted that a similar phenomenon was observed in France where as is noted by Craig (2011), “married women fell under their husband’s authority meant they were retrograded to the status of a minor child.” A game theoretical approach predicts that economic development and weakening family relationship will increase the legal disputes on inheritance. It also suggests that
giving tax benefits to fair inheritance may facilitate to solve gender discrimination in inheritance.

References


