

12-1-2008

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Recommended Citation

Ilhyung Lee, *Korean Perception(s) of Equality and Equal Protection*, 31 B.C. Int'l & Comp. L. Rev. 53 (2008),
<https://lawdigitalcommons.bc.edu/iclr/vol31/iss1/3>

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KOREAN PERCEPTION(S) OF EQUALITY AND EQUAL PROTECTION

ILHYUNG LEE*

Abstract: Korea has been a constitutional democracy for just twenty years after decades of authoritarian rule. Thus, “equality” is a relatively new concept to average Koreans. Perceptions of equality and equal protection are often shaped by societal culture. Two competing forces affect the Korean situation. First, Korea has deeply embedded Confucian norms that guide contemporary attitudes and practices. Second, Korea has recently undergone a radical social transformation, resulting in changing norms. Toward a more informed understanding of how Koreans perceive equality and equality rights, this Article reports the results of a survey of Korean reactions to a hypothetical suggesting disparate treatment by a commercial airline. The survey assesses whether participants view the airline’s action as (i) discriminatory and/or (ii) unlawful, and (iii) what actions they would take. The vast majority saw the action as discriminatory; a significantly smaller majority viewed it as illegal. Respondents offered many actions they would take in response. In explaining the results, this Article takes account of cultural norms attributed to Korea, the society in transformation, and changes in Korea’s legal institutions during democratization.

INTRODUCTION

A frequent refrain heard in the Korean¹ self-description is that it is a society with a 5000 year history.² Yet Korea has been a constitutional

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

² The Korean Constitution, for example, refers to “a resplendent history and traditions dating from time immemorial.” S. KOREA CONST. preamble. The March 1 Independence Movement of 1919 produced a declaration explicitly referring to the nation’s fifty-century history. See TAE HUNG HA, KOREA: FORTY-THREE CENTURIES 242 (1962). Korea’s contemporary judiciary has also adopted the description. See Constitutional Ct. of Korea, History, <http://www.court.go.kr/home/english/introduction/history.jsp> (last visited Jan.

democracy for just twenty years, beginning with the momentous reforms of 1987, after decades of tumultuous authoritarian rule. It is against this backdrop that one commentator (and former member of the Korean National Assembly) noted at the turn of the century that terms like “freedom” and “equality” are “unfamiliar” to average Koreans.³ Such an observation presumes that these terms have understood meanings in other societies, and also might encourage a comparative study. This Article attempts to shed light on the Korean setting, with an examination of how Koreans perceive *equality* and *equality rights*.

Two competing forces shape Korean perceptions of individual legal rights, indeed, virtually every aspect of the contemporary Korean scene. First, as alluded to above, Korea is a national society with a long history, and deeply-rooted norms that continue to shape contemporary practices. The second is almost diametrically opposite: in recent years, Korea has undergone a radical social transformation, leading to changes in attitudes. Briefly, regarding the former, the legally segregated classes of the dynasty centuries might explain the acute status consciousness prevalent in current society. With respect to the latter, perhaps changing attitudes might fuel an angry demand for social equality, and a willingness to assert legal rights in court, over the traditional preference for harmonious conciliation. All of these realities impact on the contemporary views towards equality in Korea.

The discussion herein begins with a brief history of Korea’s constitutional development and description of the jurisdiction’s approach to equal protection analysis. This legal summary is followed by an ethnographic discussion, elaborating on Korean societal and cultural norms that might shape perceptions of equality and the resolution of disputes. As discussed below, the sensitive subject of equality has risen in a number of situations in contemporary Korean society, forcing policy makers to consider public attitudes (occasionally bitter), the legal framework, and traditional norms.

With this background, the Article takes a more focused turn. Toward a further understanding of how Koreans perceive equality and equal protection under law, this Article reports the results of a survey

17, 2008) (“Korea’s more than 5000-year-long history of loving peace, overcoming difficulties and preserving the peculiar oriental spiritual traditions continues to be embodied in the active functioning of the Constitutional Court.”); Sup. Ct. of Korea, Ancient, http://www.scourt.go.kr/scourt_en/history/ancient/index.html (last visited Jan. 17, 2008) (“The judicial tradition of Korea has evolved tremendously, during its 5000 year history.”).

³ See Chan Jin Kim, *Korean Attitudes Towards Law*, 10 PAC. RIM L. & POL’Y J. 1, 11 (2000).

relating to a hypothetical event that suggests disparate treatment of passengers by a commercial carrier. Specifically, the survey is designed to ascertain Korean participants' reactions to, and perceptions of, discriminatory activity and illegality and what action they would take in response. In brief, the survey results reflect participants' keen awareness of equality and discriminatory treatment and an aggressive willingness to seek a remedy.

I. EQUALITY AT LAW

After years of authoritarian rule, public outrage and protest led to the ouster of the Doo-Hwan Chun regime, and ushered in profound democratization reforms. Commentators have described 1987 as the "year of the constitutional miracle."⁴ A constitutional text was not new to Korean society, of course. Korea had adopted its original Constitution in 1948, after liberation from Japanese rule. Yet the document was revised periodically to maintain and continue the power of the chief executive, beginning with Syng-Mahn Rhee, followed by military generals. The suppression of dissent was brutal and often violent, and the constitutional provision of civil liberties meant little.

Reforms in the post-Chun era included the implementation of the Constitutional Court, modeled after the German Federal Constitutional Court, the final arbiter of questions relating to constitutional law. With the memory of authoritarian rule still fresh, the Constitutional Court apparently sees itself with a mandate to check executive power.⁵ Court observers note that the relatively new tribunal has taken

⁴ Tscholsu Kim & Sang Don Lee, *The Influence of U.S. Constitutional Law Doctrines in Korea*, in CONSTITUTIONAL SYSTEMS IN LATE TWENTIETH CENTURY ASIA 303, 322 (Lawrence W. Beer ed., 1992); see James M. West & Edward J. Baker, *The 1987 Constitutional Reforms in South Korea: Electoral Processes and Judicial Independence*, in HUMAN RIGHTS IN KOREA 221 (William Shaw ed., 1991).

⁵ The Court's Internet site is unambiguous with respect to this function:

The Constitutional Court was established in September 1988 by the current Constitution, which followed after the people's successful movement for democracy in 1987. The Framers of the Constitution adopted, in addition to the Supreme Court, a new independently specialized court, based on the European Model, in order *to fully protect the people's fundamental rights and effectively check governmental powers.*

Constitutional Ct. of Korea, <http://english.www.ccourt.go.kr> (emphasis added) (last visited Jan. 17, 2008).

on an active role in Korean politics and the legal process.⁶ Indeed, the Constitutional Court took center stage in 2004 when it decided the fate of President Moo-Hyun Roh in the first ever impeachment of a Korean president.⁷

It is in this setting, a jurisdiction with a relatively new constitutional democracy and an increasingly visible judiciary, that this Article examines the notion of equal protection. Article 11(1) of the Constitution provides: "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."⁸ Comparativists will note that the Korean article provides for legal equality and proscribes discriminatory action more affirmatively and positively than does the Fourteenth Amendment of the U.S. counterpart ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.")⁹ The Korean version also explicitly lists "suspect classes" (in the parlance of U.S. constitutional commentary); whereas, equivalent classifications on the U.S. side must be uncovered from the case law.

The positivist phrasing and explicit enumeration of prohibited classifications in the Constitution aside, equal protection jurisprudence in Korea (indeed constitutional law generally) is far from the U.S. version in development or sophistication.¹⁰ The case law is limited, and those versed in U.S. constitutional precepts will not find easy equivalents in the Korean model. An example relates to the standard of review to be applied for particular constitutional claims. In 1999, the Constitutional Court specifically declared that one of two standards of

⁶ See TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES 206, 207 (2003); Jibong Lim, *The Korean Constitutional Court, Judicial Activism, and Social Change*, in LEGAL REFORM IN KOREA 19, 19 (Tom Ginsburg ed., 2004).

⁷ The Constitutional Court set aside the impeachment and restored the president's full powers. For a discussion of the impeachment, see Youngjae Lee, *Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective*, 53 AM. J. COMP. L. 403 (2005).

⁸ S. KOREA CONST. art. 11(1). East Asianists will note the striking similarity of this text with the counterpart in the Japanese Constitution: "All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin." JAPAN CONST. art. 14. For a discussion of the social status classification under Korean law, see Ilhyung Lee, *Equivalence at Law (and Society): Social Status in Korea, Race in America*, 37 VAND. J. TRANSNAT'L L. 109 (2004).

⁹ U.S. CONST. amend. XIV, § 1.

¹⁰ This is with good reason. To date, the Korean judiciary has had barely twenty years of jurisprudence under a constitutional democracy. See Constitutional Court of Korea, *supra* note 5. The comparative point stateside would place the U.S. Supreme Court in the second half of the Jefferson Administration.

review is to be applied, depending on the nature of the case.¹¹ The “reasonable test”¹² would be applied in a large number of cases, but the more heightened “balancing test”¹³ would be applied in cases that allege violations of fundamental rights provided for in the Constitution or discrimination based on grounds explicitly stated in the Constitution.¹⁴ Yet the Constitutional Court has not applied the balancing test evenly, leading to inconsistent results. As one commentator notes, it is not always clear what standard the court is applying or why it is doing so.¹⁵

¹¹ 98 Hum-Mah 363, Dec. 23, 1999. The Constitutional Court had referred to the two tests in previous cases, but had not previously indicated which test should be applied in what circumstances. *Id.*

¹² The Korean term for this test is *jeh-eui-geum-ji won-chik*, meaning roughly, “anti-arbitrary principle,” which requires “treating the like equally, and the unlike unequally.” Kyong Whan Ahn, *The Influence of American Constitutionalism on South Korea*, 22 S. ILL. U. L.J. 71, 101 & n.168 (1997); see also CONSTITUTIONAL COURT OF KOREA, THE FIRST TEN YEARS OF THE KOREAN CONSTITUTIONAL COURT (1988–1998), at 126 (2001) (providing discussion of equal protection).

¹³ Roughly meaning “proportionality principle” (*bib-nel-won-chik*), the balancing test would require consideration of: (1) the legitimacy of government purpose; (2) the propriety of the government measure; (3) the degree of infringement on the individual or the degree of restriction of the measure; and (4) the balancing of the government interests and individual rights. See YOUNG-SUNG KWON, HUN-BUB-HAHE-WON-ROHN [CONSTITUTIONAL LAW: A TEXTBOOK] 338–40 (4th rev. ed. 2001).

¹⁴ See S. KOREA CONST. arts. 11(1), 15, 17, 18, 19, 20, & 21. Thus, presumably, the heightened standard would be applied in cases involving classifications based on sex, social status and religion; those alleging violation of the freedom of occupation; freedom of privacy; freedom of conscience; freedom of speech and of the press; and freedom of assembly and association. See *id.*

¹⁵ Hong-Suhk Cho, *Guk-gah-in-gwon-we-won-hwe-buhb jeh-30-joh jeh-2- hahng-eui sah-hwe-juhk shin-boon-eui buhm-we* [The Scope of Social Status Provided in Section 2 Article 30 of the National Human Rights Commission Act], in NAT’L HUMAN RIGHTS COMM’N, GUK-GAH-IN-GWON-WE-WON-HWE JUHN-MOON-GAH TOH-ROHN-HWE [NATIONAL HUMAN RIGHTS COMMISSION SPECIALISTS SEMINAR] 3, 13 (2002). Court observers have expressed a general frustration with the lack of clarity in opinions. Professor Ahn laments:

[T]he judicial tradition of not elaborating the *ratio decidendi* of decisions. In many opinions the reasoning is based on a foregone conclusion. A typical ending may go something like this: “The discrimination here is not unconstitutional because it is not unreasonable.” By American standards, opinions of Korean courts fall short of full discussion on the legal arguments and issues raised and sometimes jump to hasty conclusions. Further ambiguities arise from the new judicial fashion of incorporating several constitutional provisions without sorting out the core ingredients of each provision.

Ahn, *supra* note 12, at 102.

As with the Fourteenth Amendment, Korea's article 11(1) applies only to governmental, not private, action.¹⁶ Thus, the guarantee of equality and the prohibition of discrimination explicitly stated in the Constitution do not apply to private actors, unless a specific statute so provides. In this regard, the leading anti-discrimination law in Korea appears to be the 2001 National Human Rights Commission Act.¹⁷ The Act covers both governmental and private actors.¹⁸ Its 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."¹⁹ The law establishes the National Human Rights Commission (Commission), a "quasi-judicial"²⁰ entity that has authority to address alleged incidents of discrimination. Citizens or foreigners residing in Korea alleging discrimination may file a petition to the Commission.²¹ Under the statute, discriminatory action is generally described as any act "committed without reasonable cause" based on a lengthy list of classifications, including: gender, religion, social status (repeating the proscribed classifications in article 11 of the Constitution); regional origin (of interest, given the intense regional factionalism in the country); and race, national origin, and ethnic origin (akin to suspect classes in the U.S. setting that give rise to the highest level of scrutiny).²²

When a petition alleging discrimination is filed, the Commission has authority to conduct a wide range of activities, but most chiefly,

¹⁶ S. KOREA CONST. art. 11(1). This is implicit in the decisions of the Constitutional Court and is the majority view of commentators. *See, e.g.* KWON, *supra* note 13, at 316–18.

¹⁷ *See* National Human Rights Commission Act, No. 6481, art. 1 (2001), *available at* <http://humanrights.go.kr/eng/information/img/HumanrightsAct.pdf>.

¹⁸ *Id.* art. 30.

¹⁹ *See id.*

²⁰ Nat'l Human Rights Comm'n of Korea, Authority of the Commission, http://www.humanrights.go.kr/eng/nhrc/intro/nhrc01_03.htm (last visited Jan. 17, 2008).

²¹ National Human Rights Commission Act art. 4.

²² The full language, including the list of grounds, reads as follows:

The term "discriminatory act violating the right to equality" means any of the following acts committed without reasonable cause based on gender, religion, disability, age, social status, region of birth (including place of birth, domicile of origin, 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 which effective term of the punishment has expired, sexual orientation, academic background or medical history, etc.

See id. art. 2(4).

investigation of alleged discrimination, recommendations to respondent parties, and conciliation services.²³ Importantly, the Commission does *not* have the authority to issue a decision or judgment that is binding on the parties. An unsatisfied petitioner may bring an action in court, and the Act allows the Commission to submit “opinions on *de facto* and *de jure* matters” at the court’s request.²⁴ It is not clear what effect the Commission’s submissions have in a court action.

Although the Commission has reported significant activity in recent years,²⁵ there is still some doubt in the public mind as to whether the Act or the Commission can, in reality, facilitate the lofty goal of achieving equality rights.²⁶ Nor does the law specifically permit a private cause of action for alleged discriminatory activity. Practitioners and commentators advise that, 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.”²⁷ Thus, in the judicial arena, a discrimination claim must be presented under this framework.²⁸

The above discussion provides an introductory description of the legal framework of equality rights in the Korean jurisdiction, namely: a constitutional equal protection clause; the jurisdiction’s most comprehensive anti-discrimination law that has broad scope, but that contemplates no binding result; and the practical particularities of a discrimination claim in a court of law. Yet understanding the notion of legal equality in the Korean setting requires more than reiteration of

²³ See *id.* arts. 19–50.

²⁴ See *id.* art. 28.

²⁵ The Commission’s Internet site provides useful information about the Commission’s authority, functions, and organization. Nat’l Human Rights Comm’n of Korea, <http://www.humanrights.go.kr/eng/index.jsp> (last visited Jan. 17, 2008) (providing links to press releases of recent cases).

²⁶ See IN-GWON-WE-AH ‘MAH-DAHNG-BAHL’-IN I-YU [THE REASON WHY THE NHRC BECAME A ‘NUISANCE’], HAN-GYU-REH, June 20, 2003 (copy on file with author). Perhaps the lengthy list of grounds on which discriminatory acts can give rise to a petition raises public doubt as to whether the Commission truly has the power to upset traditional practices for the purpose of effecting lofty goals. *Id.*

²⁷ Statutes of the Republic of Korea, Civil Act, art. 750, available at <http://www.hani.co.kr/section-001033000/2003/06/001033000200306201824212.html> (last visited Jan. 17, 2008).

²⁸ To date, there is no reported case of a party who has brought a discrimination claim in court following an unsatisfactory result in the Commission.

the legal text and practice. Given that notions of equality (along with those of “fairness,” “justice,” and “due process”) might be a matter of societal construction that impacts on legal conclusions, the next part discusses relevant cultural norms that may shape the Korean perception.

II. THE SOCIETAL CULTURE

Although the basic meaning of human equality may be universal, perceptions as to its implementation may differ from society to society. For the Korean setting, the discussion that follows is in two parts. The first part describes the deeply-rooted Confucian norms and hierarchical society seen in the dynasty era; Confucian attitudes arguably still have influence in the contemporary scene. This iteration also notes, however, that the trend toward democratization has made equality a thorny subject, as seen in occasional media reports. The second part identifies Korean cultural norms and attitudes as presented in social science empirical research, giving Korea observers more concrete measures by which to assess the societal mindset.

A. *Impact of Confucian Culture on Contemporary Korea*

Any appreciation of the societal culture in Korea inevitably requires a return to a portion of the 5000 year history when the deeply-rooted traditions were planted. An examination of Korea during the Chosun dynasty (1392–1910) reveals a pervasive presence of Confucian ideology, and as a result, a truly unequal society. An integral part of Confucianism²⁹ is that it provides for a “means of ordering society.”³⁰ Confucianism, or perhaps more aptly “neo-Confucianism,”³¹ that is, a brand of Confucianism adapted by the founders of the Chosun dynasty, “[S]erved as a blueprint for ordering and integrating Korea’s political

²⁹ As Professor Chaihark Hahm notes, Confucianism is multi-faceted and may mean different things to different audiences. Chaihark Hahm, *Law, Culture, and the Politics of Confucianism*, 16 COLUM. J. ASIAN L. 253, 268, 276 (2003).

³⁰ DENISE POTRZEBA LETT, IN PURSUIT OF STATUS: THE MAKING OF SOUTH KOREA’S “NEW” URBAN MIDDLE CLASS 14 (1998).

³¹ See THE RISE OF NEO-CONFUCIANISM IN KOREA 1–53 (William Theodore de Bary & JaHyun Kim Haboush eds., 1983); see also FED. RESEARCH DIV., LIBRARY OF CONG., SOUTH KOREA: A COUNTRY STUDY 88–89 (Andrea Matles Savada & William Shaw eds., 4th ed. 1992) (discussing Confucian norms in Korean society) [hereinafter COUNTRY STUDY]. Commentators have noted that Korean Confucianism was even more Confucian than the original Confucianism. See DONALD STONE MACDONALD, THE KOREANS: CONTEMPORARY POLITICS AND SOCIETY 32 (Donald N. Clark ed., 3d ed. 1996).

and social life.”³² When this blueprint was followed closely (at least in the early centuries of the dynasty), the Confucian tradition demanded hierarchy and adherence to respective roles in all aspects of human relations.³³ Within the hierarchical society, social status was “rigid and dominant”³⁴ and legally defined. Beneath the king and the royal family, Korean society was formalized and stratified into discrete classes, with the *yangban*, representing the ruling class and the societal elite at the very top, followed by, in descending order, *joong-in* (literally, “middle people”), *sang-in* (the commoner class), and *chun-min* (literally, the “low-born” or “inferior people”).³⁵ “Membership in all these status groups was ascribed by birth rather than acquired by achievement, and the law as well as social custom guarded against infringement of social boundaries.”³⁶ Thus, ancestry and birth to a particular class determined one’s social status, role in society, and all aspects of everyday life.³⁷

³² LETT, *supra* note 30, at 13.

³³ Tae-Rim Yoon, *The Koreans, Their Culture and Personality*, in *THE PSYCHOLOGY OF THE KOREAN PEOPLE: COLLECTIVISM AND INDIVIDUALISM* 18–19 (Gene Yoon & Sang-Chin Choi eds., 1994). “Acknowledging the authority of the nation and family, and obedience of the common people to the king, children to parents, wives to husbands, and the young to the elderly were considered the cardinal rules in maintaining social order.” *Id.*

³⁴ *Id.* at 19.

³⁵ The *joong-in* consisted of central and local functionaries, and medical, scientific, and foreign language professionals; *sang-in* was composed of “farmers, craftsmen, fishermen and merchants;” and *chun-min* included slaves, domestic servants, sorcerers, butchers, basket-makers, and public entertainers. See ANDREW C. NAHM, INTRODUCTION TO KOREAN HISTORY AND CULTURE 105–06 (1993); see also PYONG-CHOON HAHM, THE KOREAN POLITICAL TRADITION AND LAW 110 n.4 (1971) (describing multiple classes in dynasty society); Pyong-Choon Hahm, *The Traditional Patterns of Authoritative Symbols and the Judicial Process in Korea*, in PYONG-CHOON HAHM, KOREAN JURISPRUDENCE, POLITICS AND CULTURE 33–42 (1986) (adding another class of “outcasts” below *chun-min*). Hierarchy reigned supreme, as there was hierarchy within almost every class, including and perhaps especially, the *yangban*. See CARTER J. ECKERT ET AL., KOREA OLD AND NEW 109 (1990).

³⁶ MARTINA DEUHLER, THE CONFUCIAN TRANSFORMATION OF KOREA 13 (1992).

³⁷ LETT, *supra* note 30, at 14–16; see ECKERT, *supra* note 35, at 114; GREGORY HENDERSON, KOREA: THE POLITICS OF THE VORTEXT 37 (1968). Initially, *yangban* status was achieved by competitive civil service exams, which required mastery of philosophy and ethics in Chinese; thus, education afforded opportunities for social mobility. Eventually, however, “[m]embers of established ruling elite had effectively placed a hereditary requirement on future exam takers,” and only descendants of a former successful candidate were eligible for the exams. LETT, *supra* note 30, at 14–16; see ECKERT, *supra* note 35, at 114; HENDERSON, *supra*, at 37. It should be noted that the social status system described above lost much of its rigid and strict character long before the Chosun dynasty came to an end in 1910. The four-class description is the “official one of the dynasty,” but, especially in the latter centuries, class distinctions were not as sharp or rigid as presumed. HENDERSON, *supra*, at 36–37. One author confirms that the formal class system was legally abolished and the *yangban*-dominated status structure eliminated during the Chosun dynasty itself, in the “sweeping” and “momentous” social re-

Most relevant to the discussion herein is to what extent Confucian norms, especially those of hierarchy and division are present in contemporary Korean society. The views are somewhat scattered. Korea specialist William Shaw challenges the “notion of static, timeless characteristics” of a “Korean social order” and questions the lasting effects of Confucianism on Korea’s institutions.³⁸ Another commentator notes that “Confucian culture [still] provides the tools with which Koreans interpret and give order to the world around them.”³⁹ Even Shaw acknowledges “the residual strength” of Confucianism in “interpersonal relations”;⁴⁰ such relations are a constant in the development of every society. Korea observers indicate that the residue has proved quite potent,⁴¹ and that the continuing influence of Confucianism on contemporary Korea is palpable.⁴² Despite critical commentary of

forms of 1894, nearly two decades before Japanese colonial rule began. ECKERT, *supra* note 35, at 227.

³⁸ William Shaw, *Rights, Culture, and Policy: The Prevailing Model*, in HUMAN RIGHTS IN KOREA 1, 4 (William Shaw ed., 1991). Shaw relies on developments on the peninsula beginning from the end of the nineteenth century; the decline of Confucianism as a “living political philosophy . . . that began in the 1880s and sharply accelerated after the loss of Korean independence in 1910;” the growth during the same period of “alternative philosophical, religious, or political traditions and forms of organization, including . . . Christianity [and] Western liberalism;” the “militarized government and social control” by the Japanese from 1910 to 1945; and the “large, often politically significant military establishment[]” since 1945. *Id.* Regarding the effect of Japanese colonial rule (1910–1945) on the traditional class structure, Lett asserts that “[t]here is no major ‘leap’ between yangban society and contemporary South Korean middle-class society, even with the intrusion of the Japanese colonization.” LETT, *supra* note 30, at 226. Another author acknowledges the possibility of the elimination of such Korean traditions, but adds: “[I]t may also be argued that the Japanese system reinforced more abstracted concepts of hierarchy and allowed at least some of the yangban to retain their traditional roles vis-à-vis other Koreans, if not the Japanese themselves.” DAVID I. STEINBERG, THE REPUBLIC OF KOREA: ECONOMIC TRANSFORMATION AND SOCIAL CHANGE 94 (1989).

³⁹ Hahm, *supra* note 29, at 257; *see also id.* at 271–72 (“[Confucianism] provides the people with the signs, symbols, and strategies—the tools with which to negotiate the world around them.”).

⁴⁰ Shaw, *supra* note 38, at 4.

⁴¹ *See, e.g.*, MARK L. CLIFFORD, TROUBLED TIGER: BUSINESSMEN, BUREAUCRATS, AND GENERALS IN SOUTH KOREA 10 (rev. ed. 1998) (“The glue for this system comes in the form of a rigid hierarchy, a residue of Confucianism.”); Sang-Hun Choe, *Marked Men in South Korea*, CHI. TRIB., June 29, 2003, at C5 (referring to Confucianism as “the centuries-old primer on social behavior”).

⁴² CLIFFORD, *supra* note 41, at 10; Choe, *supra* note 41. One way to explain the influence of Confucianism on contemporary Korea is that Korean society appears to be one that “values tradition and continuity with the past,” and is still connected to “a nostalgic past to which everything attempted in the present must appeal.” Ilhyung Lee, *Culturally-Based Copyright Systems? The U.S. and Korea in Conflict*, 79 WASH. U. L.Q. 1103, 1155 (2001) (quoting Mark Withers, *Leveraging Cultural Differences to Improve Performance*, 7 INT’L HUM. RESOURCES J. 5, 7 (1998)) [hereinafter *Culturally-Based Copyright Systems?*]; *see* FONS TROM-

Confucianism seen in more recent years,⁴³ many of the Confucian norms prevalent in the Chosun dynasty are stitched tightly into the Korean social fabric.⁴⁴

On the one hand, the Korea of today may indeed be the most Confucian society in the world⁴⁵ and still deeply influenced by Confucian traditions. On the other hand, it is also a society in the midst of a social transformation,⁴⁶ spurred by democratization reforms and the emergence of a middle class, which might mark the beginnings of a quiet egalitarian revolution. Perhaps the deeply-rooted Confucian regard for hierarchy profoundly shapes ordinary Koreans in their interactions with others. Or perhaps the long-held expectation of certain conduct has led to chafing in a setting where the contemporary climate is that of citizens demanding their equal lot. Especially in the bearing of burdens and receiving of benefits, the public demands equal treatment, and suggestions of inequality touch upon tender sensitivities, and occasionally, simmering anger. Three brief examples will illustrate the contemporary angst regarding the equality demand.

1. Compulsory Military Service

One of the most significant burdens for Koreans, indeed, members of any society, is that of military service. Korean law requires all males to serve in its military for up to two years and four months, with

PENAARS & CHARLES HAMPDEN-TURNER, RIDING THE WAVES OF CULTURE 126 (2d ed. 1998). "In contrast, the United States is oriented more to the present and future." *Culturally-Based Copyright Systems?*, *supra*, at 1155. This would explain why even with the demise of the Chosun dynasty, "[i]ts long rule of 518 years had left a deep impression upon national attitudes and behavior that is still important." MACDONALD, *supra* note 31, at 35.

⁴³ Confucianism has been the target of blame for some of Korea's societal woes and ills, including the loss of Korean sovereignty to Japanese colonial powers, crony capitalism, corruption, and authoritarianism. See Hahm, *supra* note 29, at 266. Confucianism is also frequently blamed for the unequal status of women in Korea. See generally Erin Cho, *Caught in Confucius' Shadow: The Struggle for Women's Legal Equality in South Korea*, 12 COLUM. J. ASIAN L. 125 (1998).

⁴⁴ CLIFFORD, *supra* note 41, at 10; Choe, *supra* note 41. This is not to suggest that traditional cultural norms can explain everything in today's Korea. There is danger in relying on culture globally to explain, for example, the alleged piracy of U.S. intellectual property products in Korea. See Lee, *supra* note 42, at 1129. "When traditional culture meets the industrial age, it is not clear when culture applies and when it does not. Some cultural forces become more dominant than others, and the meeting of culture and modernization unearths inconsistencies and questions." *Id.*

⁴⁵ Amir N. Licht, *Legal Plug-Ins: Cultural Distance, Cross-Listing, and Corporate Governance Reform*, 22 BERKELEY J. INT'L L. 195, 215 (2004).

⁴⁶ See *infra* text accompanying notes 87-88.

limited exceptions.⁴⁷ Yet media reports of able-bodied males who receive exemptions for questionable reasons have become sufficiently routine as to be predictable.⁴⁸ Those who are exposed as having obtained exemptions through family connections or bribes must endure the most critical and public scrutiny.⁴⁹ Most Koreans see military service as “a sacred duty of manhood” borne of patriotic responsibility.⁵⁰ Individuals evading the duty or those securing exemptions for their sons through patronage or payment strike a sensitive chord in the Korean mindset.

2. Legal Education Reform

Claims of discriminatory and elitist attitudes also surfaced in the ongoing debate over reforms in legal education. As necessary background, after years of discussion, planning, and some stiff opposition, the National Assembly in July 2007 enacted legislation authorizing the creation of graduate-level law schools similar to those seen in the United States, scheduled to begin operations in 2009.⁵¹ When implemented, the new law school will represent a major overhaul of legal education and training in Korea. Under the current system, there are no requirements of formal education for those who wish to take the national judicial examination, Korea’s equivalent to the bar examination stateside. The exam is open to virtually anyone, but has a passing

⁴⁷ Statutes of the Republic of Korea, Enforcement Decree of the Military Service Act (2007); Statutes of the Republic of Korea, Military Service Act, arts. 3(1) & 18(2) (2006).

⁴⁸ See Choe, *supra* note 41.

⁴⁹ See *id.* (reporting “repeated scandals showed many of the country’s rich and powerful pay bribes or help their sons get U.S. citizenship to keep them out of the military”).

⁵⁰ *Id.*

⁵¹ See Kim Tac-jong, *Law School to Open in 2009*, KOREA TIMES, July 4, 2007, available at http://www.koreatimes.co.kr/www/news/nation/nation_view.asp?newsIdx=5931&categoryCode=117. Many practical details and challenges must be addressed before the law school in Korea becomes a reality. See *id.*; Editorial, *Law School Bill Is Just the Start*, CHOSUN ILBO (Korea), July 5, 2007, available at <http://english.chosun.com/w21data/html/news/200707/200707050026.html>; *Law School Bill ups Pressure on Universities*, CHOSUN ILBO (Korea), July 5, 2007, available at <http://english.chosun.com/w21data/html/news/200707/200707060011.html>. For a summary of the developments leading to the establishment of the law school, including the groups who opposed it, see Park Se-il, *The Value of American-Style Law Schools*, CHOSUN ILBO (Korea), July 5, 2007, available at <http://english.chosun.com/w21data/html/news/200707/200707090009.html>; Editorial, *Still a Long Way to Go in Legal Education*, CHOSUN ILBO (Korea), Jan. 31, 2008, available at <http://english.chosun.com/w21stata/html/news/200801/200801310023.html>; *Universities Cry Foul over Law School Selection*, CHOSUN ILBO, Jan. 31, 2008, available at <http://www.english.chosun.com/w21data/html/news/200801/200801310027.html>.

rate more draconian than American—approximately five percent.⁵² Those who are successful must then complete a two-year program at the Judicial Research and Training Institute, under the supervision of the Supreme Court. Critics have long argued that the system, originally designed to train career prosecutors and judges, is ill-equipped to prepare a practicing bar that will be called on to guide the needs of a more litigious society and to engage in an increasingly specialized, international practice. Reformists proposed that an undergraduate degree be a prerequisite to admission to graduate-level professional legal education.⁵³ Opposition was seen from various quarters,⁵⁴ including, most relevant here, those who argued that the proposed format would be unfair and unconstitutional (as violative of article 11), in that it would discriminate against those who do not have the financial means to obtain a legal education, thus effectively denying them the opportunity to be a member of the bar. The popular sentiment is that the current bar exam is “a symbol of fairness, *equality*, and most of all, a decisive opportunity to achieve a Korean dream.”⁵⁵

3. Korean Affirmative Action

Commentators have emphasized that Korea is a homogenous society,⁵⁶ one that does not suffer from the difficulties relating to race seen

⁵² See Ministry of Justice, <http://www.moj.go.kr/barexam>; see also Ilhyung Lee, Setsuo Miyazawa, & Kay-Wah Chan, ANNUAL R. L. & SOC. SCI (forthcoming 2008) (discussing legal education reform in Korea, Japan, and China, and influence of U.S. methods thereon).

⁵³ Indeed, the vast majority of those successful in passing the bar examination are graduates of four year colleges. See 2007 Yeon-jeh-2-cha- Sah-buhb-si-uhm Deh-hahk-buhl Boon-poh [The Results of the Second Part of the Korean Bar Examination in 2007 Analyzed by School], MAE-II BUSINESS, Oct. 18, 2007, available at <http://news.mk.co.kr/outside/view.php?year2007&no=564867>; see also 2005–2002 Yeon-doh-byul Sah-bub-si-uhm Choi-jonh-hahb-yuk-jah Myung-dahn [Korean Bar Exam Statistics by School from 2002 to 2005], http://cafe.navar.com/gugrade.cafe?iframe_url=ArticleRead.nhn%3Farticleid=624_69 (last visited Jan. 17, 2008).

⁵⁴ Among them are: the practicing bar, which has been critical and mistrusting of university law faculty members (many of whom are not admitted to the bar); and the Supreme Court, which resists losing, to an agency in the executive branch, control of the only institution for formal legal education and training. Lee et al., *supra* note 52.

⁵⁵ Kyong-Whan Ahn, *Law Reform in Korea and the Agenda of “Graduate Law School,”* 24 WIS. INT’L L. J. 223, 227 (2006) (emphasis added).

⁵⁶ See Ahn, *supra* note 12, at 102; Dae-Kyu Yoon, *New Developments in Korean Constitutionalism: Changes and Prospects*, 4 PAC. RIM L. & POL’Y J. 395, 396–97 (1995); see also Alex Y. Seita, *The Intractable State of United States-Japan Relations*, 32 COLUM. J. TRANSNAT’L L. 467, 492 n.72 (1995) (referring to “99.9% ethnic Korean” population in Korea).

in the United States.⁵⁷ Yet others have noted that the society is far from monolithic, and that deep divisions are present, based on a number of factors, including regional origin.⁵⁸ Most pronounced in politics, partisan regionalism was hardened in the early 1960s with the authoritarian rule of Chung-Hee Park. Park's rule began a thirty-six year reign of chief executives from the Gyung-sang Provinces who favored their native southeastern regions at the expense of others, especially the Juhl-lah Provinces.⁵⁹ This period saw heightened regional consciousness in politics, civil service, employment, and even marriage selection.⁶⁰ Those from the disfavored regions were said to have faced discrimination, both subtle and overt.⁶¹ Partisan regionalism continues to be a source of internal tension and division in Korean society.⁶²

Recent years have seen an open discussion of the possible implementation of U.S.-style affirmative action programs in education and civil service that would provide for preferential treatment of those from traditionally disfavored regions.⁶³ Those who support such programs point to the disparity in economic standing between the Gyung-sang and Juhl-lah regions, resulting from "the legacy of political power and patronage."⁶⁴ Those opposed to such programs reject the notion of quotas, and urge the virtues of individual hard work and open competition. Cries of "reverse discrimination" are also heard.⁶⁵ In short, the

⁵⁷ See KOREAN OVERSEAS INFO. SERV., A HANDBOOK OF KOREA 14 (9th ed. 1993) ("There are no significant racial minorities in Korea."); see also Ahn, *supra* note 12, at 102 ("No race or place of origin issue has ever bothered the Korean judiciary."); Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1, 28 n.134 (1998) ("In . . . Korea, ethnic minorities are not merely economically disadvantaged, but practically nonexistent."); James Robinson, *Social Status and Academic Success in South Korea*, 38 COMP. EDUC. REV. 506, 509 (1994) ("[R]acial, ethnic, and linguistic difference are absent in South Korea.").

⁵⁸ See Michael Baker, *S. Korea Looks for Mr. Right*, CHRISTIAN SCI. MONITOR, July 23, 1997, at 6; Howard W. French, *South Koreans Seek Affirmative Action to End Regional Bias*, N.Y. TIMES, Apr. 27, 2003, at 14; *GNP Defections Put New Party in Motion*, KOREA TIMES, July 8, 2003, available at 2003 WLNR 9152255 [hereinafter *GNP Defections*].

⁵⁹ Sung Chul Yang, *South Korea's Top Bureaucratic Elites, 1948-1993: Their Recruitment Patterns and Modal Characteristics*, 34 KOREA J. 5, 5 (1994); Baker, *supra* note 58; French, *supra* note 58; *GNP Defections*, *supra* note 58.

⁶⁰ See Yang, *supra* note 59.

⁶¹ See French, *supra* note 58.

⁶² See ROK's *Yonhap*: *Roh Asked to Bring National Unity, Economic Stability*, WORLD NEWS CONNECTION, Dec. 19, 2002 (quoting Seoul National University professor: "The country is in a crisis from three different confrontations—between regions, social classes and between South and North Korea").

⁶³ See French, *supra* note 58.

⁶⁴ *Id.*

⁶⁵ *Id.*

rhetoric heard in Korea relating to region-based affirmative action programs has a similar ring to the debate over race-based affirmative action programs in the United States. References to legal equality are heard from both sides of the Pacific and on both sides of the argument.

B. *From the Cultural Database*

With the nature of the survey in mind—a hypothetical situation that results in negative action due to apparent disparate treatment—it is necessary to first outline the cultural norms that might affect Korean reactions to such an event. In order to better appreciate the Korean mindset, four different cultural characteristics are discussed herein. Three of these cultural dimensions have been advanced by social scientists who note differences between and among national societies (including Korea); the remaining dimension pertains to changing Korean attitudes regarding resort to courts for the resolution of disputes.

1. Universalism/Particularism

In an insightful work, Charles M. Hampden-Turner and Fons Trompenaars report a “discovery” of six dichotomous cultural dimensions that vary between national societies.⁶⁶ Of special interest here is the universalism/particularism distinction. “Universalism emphasizes rules that apply to a universe of people, while Particularism emphasizes exceptions and particular cases.”⁶⁷ At the core of universalism is “rules, codes, laws, and generalizations,” while particularism prefers “exceptions, special circumstances, [and] unique relations.”⁶⁸

In rankings based on survey data taken of 46,000 managers from more than forty countries, the two authors note that while the most universalist countries tend to be “Protestant and stable democracies” (including the United States),⁶⁹ “Buddhist, Confucian, Hindu, and Shinto countries” (including Korea), are notably more particularist.⁷⁰ Indeed, Korea emerges as one of the most particularist countries in the rankings, second only to Yugoslavia.⁷¹ Many of the negative conse-

⁶⁶ CHARLES M. HAMPDEN-TURNER & FONS TROMPENAARS, BUILDING CROSS-CULTURAL COMPETENCE: HOW TO CREATE WEALTH FROM CONFLICTING VALUES I (2000).

⁶⁷ *Id.* at 2.

⁶⁸ *Id.* at 11, 13.

⁶⁹ *Id.* at 16.

⁷⁰ *Id.*

⁷¹ HAMPDEN-TURNER & FONS TROMPENAARS, *supra* note 66, at 16.

quences of particularism “taken too far” have been seen in the contemporary Korean experience. That is:

- Particularism “resorts to power and coercion, using intimidation,” and “[t]here is no way of resolving rival particularities, in the absence of law, save through force.”⁷² This was evident in the authoritarian rule of Korea’s army generals who occupied the Blue House, the official residence of the President.
- “Nationalism . . . super-patriotism, and appeals to ethnic identity are . . . particularistic.”⁷³ This is patent in the Korean setting.
- “Particularism . . . is a protest against rules imposed from the outside by cultures seen as foreign,”⁷⁴ as indicated by long-held attitudes in Korea that laws and rules were seen as an instrument of oppression by the Japanese, and to a lesser extent, the United States, in an effort to preserve imperial interests during their respective occupation of the Korean peninsula.⁷⁵
- Particularism is “prone to favoritism and special privileges,”⁷⁶ as Korea is a society notorious for reliance on personal connections and special treatment.

Hampden-Turner and Trompenaars note explicitly that “trust in the legal system”—another variable in the analysis of universalist-particularist countries—“is known to be low” among various particularist countries, including Korea.⁷⁷

2. Individualism/Collectivism

The individualism/collectivism dichotomy is one of the most widely researched constructs that explains behaviors in different countries. Professor Harry C. Triandis offers a beginning definition of individualism:

a social pattern that consists of loosely linked individuals who view themselves as independent of collectives; are primarily motivated by their own preferences, needs, rights, and the contracts they have established with others; give priority to their personal goals over the goals of others; and emphasize

⁷² *Id.* at 24.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Kim, *supra* note 3, at 7, 8.

⁷⁶ HAMPDEN-TURNER & TROMPENAARS, *supra* note 66, at 25 fig.1.6.

⁷⁷ *Id.* at 16.

rational analyses of the advantages and disadvantages to associating with others.⁷⁸

In contrast, collectivism is:

a social pattern consisting of closely linked individuals who see themselves as parts of one or more collectives (family, co-workers, tribe, nation); are primarily motivated by the norms of, and duties imposed by, those collectives; are willing to give priority to the goals of these collectives over their own personal goals; and emphasize their connectedness to members of these collectives.⁷⁹

Triandis's well-cited text isolates the United States as the model individualist culture on the one hand, and Japan (as well as China) as a classic case of collectivist culture on the other.⁸⁰ Triandis also comments on the collectivist leanings in Korean culture.⁸¹

The individualism/collectivism cultural dimension is also included in widely-known works by Geert Hofstede,⁸² who has been described as "the 'father' of cross-cultural data bases."⁸³ In Hofstede's survey and rankings of seventy-four countries, the United States emerges as the most individualist society, thus confirming Triandis; Japan is significantly more collectivist, in a tie for forty-sixth.⁸⁴ Yet in Hofstede's study,

⁷⁸ HARRY C. TRIANDIS, *INDIVIDUALISM & COLLECTIVISM* 2 (1995).

⁷⁹ *Id.*

⁸⁰ *Id.* at 89, 97.

⁸¹ *See id.* at 3.

⁸² GEERT HOFSTEDÉ & GERT JAN HOFSTEDÉ, *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND* 76 (2d ed. 2005) [hereinafter *CULTURES AND ORGANIZATIONS* 2005]; *see* GEERT H. HOFSTEDÉ, *CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS* (2d ed. 2001); GEERT HOFSTEDÉ, *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND* (1997); GEERT H. HOFSTEDÉ, *CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES* (1980). *But see* Brendan McSweeney, *Hofstede's Model of National Cultural Differences and Their Consequences: A Triumph of Faith—A Failure of Analysis*, 55 *HUM. REL.* 89 (2002) (sharply criticizing Hofstede's studies).

⁸³ HAMPDEN-TURNER & TROMPENAARS, *supra* note 66, at x.

⁸⁴ *CULTURES AND ORGANIZATIONS* 2005, *supra* note 82, at 78 tbl.3.1 (2005). Hofstede defines the terms similarly:

Individualism pertains to societies in which the ties between individuals are loose: everyone is expected to look after himself or herself and his or her immediate family. Collectivism as its opposite pertains to societies in which people from birth onward are integrated into strong, cohesive in-groups, which throughout people's lifetimes continue to protect them in exchange for unquestioning loyalty.

Id. at 76 (emphasis omitted).

Korea emerges in sixty-third place, even more collectivist than Japan, the classic case of collectivist culture.⁸⁵

The significance of the individualism/collectivism dimension to perceptions of equality is strong. Hofstede draws a stark contrast between the two (and also draws a parallel to the universalism/particularism dichotomy): “[l]aws and rights differ by group” in collectivist societies like Korea; whereas, in individualist cultures like the United States, “Laws and rights are supposed to be the same for all.”⁸⁶

But any discussion of the purportedly collectivist nature of the Korean setting must consider reports of changes in social attitudes and norms there in recent years. A *New York Times* report in 2003 captured a Korea in transition, and underscored the weight of its past and the directions of the present society: “[s]till anchored in Confucian values of family and patriarchy, South Korea is fast becoming an open, Westernized society—with the world’s highest concentration of Internet broadband users, a pop culture that has recently been breaking taboos left and right, and living patterns increasingly focusing on *individual* satisfaction.”⁸⁷ Korea may be in “the throes of a social transformation,”⁸⁸ and its place in Hofstede’s rankings notwithstanding, the society appears headed toward a more comparatively individualistic orientation.

3. Power Distance

Power distance, another of Hofstede’s cultural dimensions, is defined as “the extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally.”⁸⁹ A low power distance culture posits that “[i]nequalities among people should be minimized,” while high power distance coun-

⁸⁵ *Id.* at 79 tbl.3.1. This author notes that Korean acquaintances in academia have expressed strong and vocal objection to the characterization of Korea as a collectivist society, the writings of Hofstede, Triandis, and others notwithstanding. This author, also without supporting research, would posit that although Korean culture demands and expects an outward collectivist appearance, deeply individualist tendencies motivate many Koreans.

⁸⁶ *Id.* at 109 tbl.3.5. Individualist cultures tend to be universalist; collectivist cultures, particularist. *Id.* at 104 tbl.3.4.

⁸⁷ Norimitsu Onishi, *Divorce in South Korea: Striking a New Attitude*, N.Y. TIMES, Sept. 21, 2003, at 19 (emphasis added).

⁸⁸ *Id.*

⁸⁹ CULTURES AND ORGANIZATIONS 2005, *supra* note 82, at 46 (emphasis omitted). Hofstede adds: “Institutions are the basic elements of society, such as the family, the school, and the community; organizations are the places where people work.” *Id.* (emphasis omitted).

tries subscribe to the view that “[i]nequalities among people are expected and desired.”⁹⁰ Privileges and symbols of status are “frowned upon” in low power distance cultures, but are “normal and popular” in high power distance cultures.⁹¹ Given the deeply hierarchical nature of Korean society, the country appears surprisingly (to this author) on the lower end of Hofstede’s power distance rankings of seventy-four countries, tied for forty-first (with Greece).⁹² Still, Korea is a higher power distance culture in contrast to the United States, which occupies a three-way tie for fifty-seventh (with Estonia and Luxembourg).⁹³ Some of the contrasting characteristics that Hofstede attributes to lower and higher power distance cultures could be offered as key cultural differences between U.S. and Korean societies, respectively, especially in the educational setting:

Characteristics of Low & High Power Distance Cultures

Low power distance/United States	High power distance/Korea
“Parents treat children as equals”	“Parents teach children obedience”
“Children treat parents and older relatives as equals”	“Respect for parents and older relatives is a basic and lifelong virtue”
“Students treat teachers as equals”	“Students give teachers respect, even outside of class”
SOURCE: CULTURES AND ORGANIZATIONS 2005, <i>supra</i> note 82, at 57 tbl.2.3.	

Most informative for this discussion, Hofstede notes that in low power distance societies, it is the view that “[a]ll should have equal rights;” whereas, in high power distance countries, “The powerful should have privileges.”⁹⁴

4. Korean Attitudes Toward Resort to Court Adjudication

Traditionally, Korea has been described as a society profoundly shaped by deeply-embedded Confucian virtues that emphasize harmony and avoiding dispute and litigation. Professor Pyong-Choon Hahm wrote in 1969:

Koreans have abhorred the black-and-white designation of one party to a dispute as right and his opponent as wrong. Assigning all blame to one for the sake of rendering a judg-

⁹⁰ *Id.* at 57 tbl.2.3.

⁹¹ *Id.* at 59 tbl.2.4.

⁹² *See id.* at 43 tbl.2.1.

⁹³ *Id.*

⁹⁴ *Id.* at 67 tbl.2.5.

ment has been repugnant to the fundamental valuation of harmony, because such a judgment has retarded swift restoration of broken harmony. The ultimate ideal has been a complete absence of dispute and conflict. But if discord could not be avoided, society demanded the quickest restoration of broken concord.⁹⁵

Professor Hahm also explained:

A litigious man is a warlike man to the Koreans. He threatens harmony and peace. He is a man to be detested. If a man cannot achieve reconciliation through mediation and compromise, he cannot be considered an acceptable member of the collectivity.⁹⁶

Such observations might reflect the traditional Korean view, but may well be outdated for a significant portion of the current population. Although some Koreans still adhere to the traditional preference for non-legal settlement over court adjudication, there has been a “dramatic change in the attitudes of the Korean people toward litigation.”⁹⁷ Koreans are becoming more litigious, more willing to advance legal claims, and more willing to resort to the courts.⁹⁸ In the late 1960s, “The vast majority of the population . . . ha[d] never been to a courthouse . . . [and] were proud of that fact.”⁹⁹ Yet a survey taken in the 1990s shows that nearly thirty percent of respondents had “been to court for legal problems” and almost half “regard[ed] filing a suit for a money matter as a means of achieving justice or as a method of exercising their rights.”¹⁰⁰ The commentary’s references to skyrocket-

⁹⁵ Pyong-Choon Hahm, *The Decision Process in Korea*, in *COMPARATIVE JUDICIAL BEHAVIOR* 19, 19–20 (Glendon Schubert & David J. Danelski eds., 1969) (footnote and citation omitted), *reprinted in* HAHM, *supra* note 35, at 95–96.

⁹⁶ Pyong-Choon Hahm, *Religion and Law in Korea*, in 41 *KROEBER ANTHROPOLOGICAL SOCIETY PAPERS* 8 (1969), *reprinted in* HAHM, *supra* note 35, at 152, 177.

⁹⁷ Ahn, *supra* note 12, at 84.

⁹⁸ *Id.*; see Jeong-Oh Kim, *The Changing Landscape of Civil Litigation*, in *RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY* 321, 323 (Dae-Kyu Yoon ed., 2000); Chang Soo Yang, *The Judiciary in Contemporary Society: Korea*, 25 *CASE W. RES. J. INT’L L.* 303, 303 (1993).

⁹⁹ Hahm, *supra* note 95, at 22.

¹⁰⁰ Korea Legislation Research Inst., *A Survey on the Korean People’s Attitude Towards Law*, in *KOREAN LAW IN THE GLOBAL ECONOMY* 128, 146 (Sang-Hyun Song ed. and trans., 1996). Commentators offer a host of reasons for the change in attitudes toward achieving results through the courts. In addition to the democratization movement that began with reforms in 1987, other factors include industrialization, globalization, and profound economic growth that Korea saw in the 1980s, which by their very nature exposed Koreans to international legal standards and judicial methods to resolve commercial disputes. Related to

ing lawsuits¹⁰¹ and an emerging “litigious zeitgeist”¹⁰² are evidence of change and a departure from traditional norms.

The background discussion to this point—first, the law on equal protection, and second, the cultural characteristics attributed to the population—is offered with the goal of better understanding Korea and the societal mindset. Importantly, the description of Korean cultural norms is not offered to suggest any particular result in the survey. Nor was the survey designed necessarily to *test* the presence of any of the cultural attributes. The discussion of the law and societal culture, as well as the survey results, is designed to inform about Korean perceptions on equal treatment.

III. THE SURVEY

The survey was conducted from December 2006 to March 2007, and was available only on the Internet.¹⁰³ All of the survey was in Korean text. Participants could provide answers to open-ended questions in Korean as well. An initial test survey was conducted for Koreans in Columbia, Missouri (involving three dozen participants), followed by the main survey for those in the Seoul metropolitan area in Korea (which numbered nearly 300 participants). The content of the survey was identical for both the test and main surveys, save for a few questions, as explained herein.

A. *The Hypothetical*

The survey asks participants to place themselves in a hypothetical situation occurring at an airport. Participants live in Korea, and are going on a business trip to Chicago. At the Incheon airport, they are to board a flight for Narita airport in Japan, from where they will take a connecting flight to O’Hare. While they stand in line to check in for

economic prosperity is the emergence of the Korean middle class, which enjoyed more material gains, and therefore, a desire to protect proprietary interests, by court adjudication if necessary. One may argue that such democratization reforms provided the impetus for a contemporary equality movement. *Id.*

¹⁰¹ Ahn, *supra* note 12, at 84 (citing Kyong Whan Ahn, *The Growth of the Bar and Changes in the Lawyer’s Role*, in *TECHNOLOGY AND LAW IN THE PACIFIC COMMUNITY* 119, 133 (C. Lewis ed., 1994)).

¹⁰² Kyu Ho Youm, *Libel Law and the Press: U.S. and South Korea Compared*, 13 *UCLA PAC. BASIN L.J.* 231, 260 (1995).

¹⁰³ The survey project received prior approval by the University of Missouri Institutional Review Board. Ilhyung Lee, Survey, Korean Perception(s) of Equality (Dec. 2006–Mar. 2007) (on file with author) [hereinafter Korean Perception(s) of Equality Survey].

the flight to Narita, an airline employee tells them, first in Korean and then in English, that the morning flight to Narita is canceled, and that those who have a connecting flight to Narita are to go to the counter for another airline—Gah-Nah-Dah Airline—to see if there are seats on its flight to Narita that will allow enough time to make the connecting flight to O’Hare. A few persons standing in line make their way to the counter for Gah-Nah-Dah Airline as instructed.

An employee at the Gah-Nah-Dah counter tells the participant that he or she must wait until all passengers with confirmed seats are processed before stand-by passengers can be considered. The employee refuses to take the name of the participant for a waiting list, and instead advises the participant to have a seat in the waiting area. The participant stands nearby, and observes four other passengers whose scheduled flight to Narita was also canceled, and who, like the participant, attempt to obtain a seat on the Gah-Nah-Dah flight.

The resulting situation is that of the five passengers—the participant plus the four other passengers—two received boarding passes and checked in luggage, while three others were told to step aside and wait until all confirmed passengers were processed, without being able to leave their names for a waiting list. The participant confirms this by approaching and asking the four passengers directly. The two passengers who received boarding passes—one male and one female—are American. The three passengers who did not—one male, one female, and the survey participant—are Korean. The hypothetical concludes with the participant approaching the Gah-Nah-Dah employee to again ask about getting a seat on the Gah-Nah-Dah flight to Narita. The employee tells the participant that the flight is completely booked. The participant asks the employee why he or she was not able to leave his or her name for stand-by when other people who came from the other airline received boarding passes. The employee tells the participant that there are no more seats on the flight and turns away.

Survey participants are asked to assume that the hypothetical described occurred to them, and then to answer the questions that follow.¹⁰⁴

¹⁰⁴ *Id.* As an aside, the hypothetical was created to place each participant in a realistic situation where a strong suggestion of discriminatory treatment (in the view of this author) is present. There are anecdotal accounts of Korean patrons receiving poor or at least differing treatment from Korean employees at business establishments that cater to a significant number of foreigners. The realistic nature of the hypothetical was confirmed by the comments of some of the participants, who volunteered: “This could happen;” “These

B. Questions

Participants were asked whether they believed the actions of Gah-Nah-Dah were (i) discriminatory and (ii) illegal or unlawful, and to provide respective reasons for their views. They were also asked what action, if any, they would take. The survey seeks to assess the degree of the participants' reactions to the allegedly discriminatory and illegal nature of the airline's actions. That is, survey participants were asked whether they "strongly agree," "somewhat agree," "neither agree nor disagree," "somewhat disagree," or "strongly disagree" with the statement: "[w]hat Gah-Nah-Dah Airline did to me is discriminatory." In a separate question, participants were asked to provide reasons for their responses in open-ended form. Similarly, participants were asked to express their agreement or disagreement—with the five options given above—to another statement: "[w]hat Gah-Nah-Dah Airline did to me is illegal or unlawful," and were also asked to provide their reasons thereof.

Regarding the question of what if any action participants would take in response to the incident, the test survey asked the question in a completely open-ended form, soliciting responses without suggestion. For the main survey, participants were asked to assume that they returned from the business trip and filed a complaint with Gah-Nah-Dah management, but received an unsatisfactory or unresponsive answer. Then participants were asked what action they would take, and were provided with the following list of options, from which they could choose one or more:

- Contact airport management about the incident.
- Contact a government agency about the incident. [Participants choosing this option were asked to specify which government agency.]
- Contact the participant's representative in the National Assembly.
- Contact an attorney for possible legal action.
- Other [Participants choosing this option were asked to specify what other action.]
- Nothing [Participants choosing this option were reminded that they could not also choose any of the above options.]

situations may arise between a Korean airline and Korean people;" and "It happens quite often when you are traveling with domestic airlines." *Id.*

C. Participation

In all, 329 persons completed the survey, thirty-six for the test survey conducted in Columbia, Missouri and 293 for those in the Seoul area.¹⁰⁵ The pool of participants in Missouri was primarily Korean graduate students and visiting scholars at the University of Missouri. Participants in the main survey for those in the Seoul area were company professionals, government employees, and university faculty, staff, and students.¹⁰⁶

D. Results and Analysis

As discussed above, Korea emerged in the studies of some researchers as a particularist, collectivist, and high power distance society, comparatively speaking. A society with such characteristics, researchers say, is less likely to demand equal rights for all, and more likely to allow for different treatment based on the circumstances, group membership, or relative power position. In contrast, a universalist, individualist, and low power distance would be the opposite, demanding equal treatment for all regardless of the same factors stated above.

In this survey, over ninety percent (298/329) of all participants strongly agreed or somewhat agreed that the airline's action was discriminatory.¹⁰⁷ This result suggests an orientation more universalist than particularist, individualist than collectivist, and lower rather than higher power distance. Perhaps Korean society is becoming a more universalist and lower power distance setting in recent years, just as it is reportedly becoming more individualist; or perhaps, one must be quick to note, the hypothetical in the survey presents such a strong case of discriminatory activity that it transcends all or some of the cultural dichotomous distinctions. (Caution is necessary to avoid hasty conclusions.) In all events, most of the participants who agreed that the airline was discriminatory separately emphasized the disparate

¹⁰⁵ *Id.* In an effort to increase participation, this author initially proposed the random selection of two participants in the survey to receive a shopping gift certificate. But because virtually all of the participants in the survey were Korean citizens and without U.S. permanent resident status, university personnel advised that a significant tax and complicated reporting requirements would be involved. The financial incentive was eliminated. *Id.*

¹⁰⁶ *Id.* This author acknowledges that one limitation of the survey is that the pool of respondents, although not monolithic, does not represent a cross-section of Korean society.

¹⁰⁷ *Id.* Just over fifty-eight percent of the participants strongly agreed that the airline action was discriminatory; over thirty-two percent somewhat agreed. *Id.*

treatment of similarly situated Korean and American passengers.¹⁰⁸ The predominant agreement with the discrimination description and supporting explanations do sound of the “search[] for sameness and similarity” and attempt “to impose on all members of a class or universe the laws of their commonality.”¹⁰⁹

Although a large majority of the participants agreed that the airline’s action was discriminatory, about seven percent (23/329) neither agreed nor disagreed with the statement, and just over two percent (8/329) strongly disagreed or somewhat disagreed. In the explanations for these responses, the most frequently seen comment was that the limited facts did not allow the conclusion that discrimination was present. Some participants responded that there could be a rational or legitimate reason for the airline’s action, with a few offering the possibility that the American passengers who received boarding passes had “expensive” or “privileged” seats or “premium membership.” There is, in this author’s view, a suggestion of a particularist orientation here. If indeed there was a simple reason why only the American passengers received boarding passes, the airline employee presumably could have said so when confronted, instead of turning away, or the airline, in response to a formal complaint, could have explained the reason, instead of giving an unresponsive or unsatisfactory answer, as the hypothetical explicitly states. Nevertheless, some of the participants engaged in a proactive search for a justifying reason.¹¹⁰

Without any exposition of the applicable law, statutes, or regulations, participants were asked whether they viewed the airline’s action as illegal or unlawful. This question was not an attempt to test participants’ knowledge of the law,¹¹¹ but rather to solicit their intuitive reaction based on their individual perception of the law and its application.¹¹² Whereas over ninety percent (298/329) of the participants saw

¹⁰⁸ Korean Perception(s) of Equality Survey, *supra* note 103. Some of the respondents explained that boarding passes were not distributed on a first come, first serve basis. *Id.*

¹⁰⁹ HAMPDEN-TURNER & TROMPENAARS, *supra* note 66, at 14.

¹¹⁰ Korean Perception(s) of Equality Survey, *supra* note 103. In all events, perhaps the comment most reflecting a particularist mindset is the explanation by one participant that “the American may have had an urgent reason—family emergency, etc.—for Gah-Nah-Dah Airline to distribute a boarding pass.” *Id.*

¹¹¹ *Id.* To be clear, the participants were not asked whether the airline action *should be* illegal or unlawful. *Id.*

¹¹² *Id.* For example, lay persons are likely able to give a reaction as to whether legal liability or responsibility attaches when they witness one person making physical contact with another, based on the totality of the circumstances they witnessed and their perception of law, even if they may not know the rules on assault and battery.

discriminatory activity by the airline, a significantly smaller portion, fifty-two percent (170/327), agreed with the statement that the airline action was illegal or unlawful.¹¹³ Those who viewed the action as illegal emphasized separately the differing and discriminatory treatment, with some specifically referring to race- or nationality-based treatment. Several others made some reference to equal (*pyung-deung*) or unequal treatment. A small number referred to rights (*gwon*).

Nearly three in ten of all responding participants (twenty-nine percent or 95/327) neither agreed nor disagreed with the view that the airline's action was illegal or unlawful. Most of these indicated that they were uncertain as to the law, while a few explained that the situation did not present sufficient information to indicate unlawful conduct. In addition, just under nineteen percent of the participants (62/327) disagreed, strongly or somewhat, that the airline's action was illegal or unlawful. Their explanations are informative.¹¹⁴ Some of these respondents described the airline action as "unethical," "immoral," "improper," "inappropriate," or "unfair," but *not* illegal or unlawful.¹¹⁵ A few participants explicitly distinguished between discriminatory and illegal conduct. Others flatly dismissed a violation of law:

- "It is not illegal" [*multiple*].
- "There is no law regarding such matters."
- "It is not against the law."
- "Legally, there is no problem."
- "The airline did not violate the law."
- "I don't think the company has violated any laws by serving its customers poorly."¹¹⁶

Similarly, some comments declared the irrelevance of law to the situation presented:

¹¹³ *Id.* A few points of explanation are in order. Two of the participants did not provide responses to the question regarding the (il)legality of the airline action; thus, the total number of persons responding to this question is adjusted from 329 to 327. Also, in the raw numerical results, 190 out of 327 (about fifty-eight percent) selected the "strongly agree" (about twenty-four percent) or "somewhat agree" (about thirty-four percent) options, but the separate comments of twenty of these participants actually indicate disagreement with the statement that the airline's action was illegal or unlawful. *Id.*

¹¹⁴ *Id.* These include participants who selected the option that they "neither agree nor disagree" with the statement that the airline's action was illegal, but whose comments indicate disagreement. *Id.*

¹¹⁵ Korean Perception(s) of Equality Survey, *supra* note 103.

¹¹⁶ *Id.* A few respondents expressed that "if it was illegal, Gah-Nah-Dah would probably not have acted as such." *Id.*

- “I believe law has nothing to do with this situation.”
- “It is not a matter of whether it is illegal or not.”
- “I don’t think we could govern these kinds of situations through laws.”
- “Being discriminated is not a good feeling but I don’t think you could regulate such action legally. An airline can be prejudiced against something for the benefit of the company.”¹¹⁷

For a few of the participants who saw no illegality in the airline’s action, the fact that the airline may have had a “policy” of giving preference to foreigners was apparently significant, as they emphasized this point in their comments.

The comments of some survey respondents who disagreed that the airline action was illegal might evoke recollections of the debate over (and especially the opposition to) civil rights legislation affecting common carriers in the United States during the 1960s. For example, a few participants specifically stated that the airline’s action was not illegal because it involved a *private* company. Also consider the following comments:

- “Service provider has the right to refuse to provide service to the customers. Regardless of the reason for not giving a boarding pass to me, it is not unlawful, if there was no direct money damage to me.”
- “The airline has discretion.”
- “The airline has ultimate decision for boarding.”

If the situation in the hypothetical would give rise to a dispute (as is suggested by the majority of the participants’ reactions), the survey also sheds light on what action the participants would seek to resolve the dispute. Would respondents seek compromise and conciliation (under the traditional Confucian construct) or more quickly resort to legal methods (as part of the so-called “litigious zeitgeist”)? The test survey, involving a small number of participants in Columbia, Missouri, posed the question of what the participants would do, soliciting

¹¹⁷ Participants’ comments on the role of law in the hypothetical situation touch on the broader concept of a developing legal culture or legal consciousness in contemporary Korean society. The subject is beginning to receive more attention by commentators. *E.g.*, JEONGOH KIM, HAN-GOOG-EUI BUHB-MOON-WHA: IN-SHIK, GOOH-JOH, BYUN-HWA [KOREAN LEGAL CULTURE: UNDERSTANDING, STRUCTURE, AND CHANGE] (2006) (discussing Korean perception of law and its effect on individual conduct); Chulwoo Lee, *Talking About Korean Legal Culture: A Critical Review of the Discursive Production of Legal Culture in Korea*, 38 KOREA J. 45 (1998).

open-ended responses. A majority of the respondents (21/36) included in their answers the action of contacting the airline with a complaint. Others offered that they would: post a message on the airline website (one); contact the Consumer Protection Board (four); and take no direct action with respect to the airline (two). Significantly, however, in this open-ended format, with no leading questions or suggestive options, seven of the thirty-six participants referred to resort to some activity of a legal nature.¹¹⁸

In the main survey, for those in the Seoul area, participants were asked to assume that they contacted the airline management with a formal complaint, but did not receive a satisfactory or responsive answer, and were then given a list of options from which they could choose one or more of their preferred actions. The results:¹¹⁹

- Contact airport management about the incident: 69% (201/291)
- Contact a government agency about the incident: 12% (35/291)¹²⁰
- Contact one's representative in the National Assembly: 0.3% (1/291)
- Contact an attorney for legal advice and possible legal action: 21% (62/291)¹²¹
- Nothing: 9.6% (28/291)
- Other: 20% (59/291)

The responses invite comment and analysis. First, nearly one in ten of the participants indicated that they would do nothing. It is of interest that of the twenty-eight persons who chose this option, twenty-one answered that the airline action was discriminatory, and eleven agreed that its action was illegal or unlawful.¹²² Second, the responses

¹¹⁸ Korean Perception(s) of Equality Survey, *supra* note 103. Of the seven in the test survey, three respondents stated that they would file a lawsuit or take legal action. Another offered, "I could sue." Others indicated: possibly filing a lawsuit (while noting the costs and obstacles); pursuing legal action if evidence is present; and finding out about the governing laws. *Id.*

¹¹⁹ *Id.* Because participants were permitted to choose more than one option, the total number of options selected will exceed the number of persons in the main survey, and the total percentage will exceed a hundred percent.

¹²⁰ *Id.* The numerical results indicate that twenty-eight participants chose this option, but an additional seven others referred to a government agency in their separate comments. *Id.*

¹²¹ *Id.* This is roughly equivalent in proportion to the respondents in the test survey (7/36) for the same action. *Id.*

¹²² Korean Perception(s) of Equality Survey, *supra* note 103. One person, who strongly agreed that the airline action was discriminatory but neither agreed nor disagreed with the statement that the action was illegal, selected the "Nothing" option under the question of what, if any, action that person would take. In separate comments, this respondent wrote,

indicate participants' (and perhaps societal) recognition and awareness of a grievance procedure, which includes petition to a governmental agency, as well as resort to adversarial legal action, in order to seek corrective measures or a compensating remedy. This is in contrast with further attempts to resolve the conflict directly with the other party. Specifically, nearly one in eight participants indicated that they would contact a government agency. Of these, the Consumer Protection Board¹²³ received the most mention, identified by eighteen persons, followed by the Ministry of Construction and Transportation (six), and the Ministry of Foreign Affairs (three). Interestingly, only two of the respondents mentioned by name the National Human Rights Commission Act or the Commission, the organization established to address discrimination matters in Korea.¹²⁴

Although the above figures indicate a societal awareness and willingness to contact a third party to seek a remedy, especially a government office, the survey reveals that only one out of the two-hundred ninety-one participants in the main survey selected the option of contacting one's representative in the National Assembly.¹²⁵ Participants were far more likely to resort to legal advice or legal action, as over twenty percent of the participants indicated that they would contact a lawyer, suggesting that Korean society is indeed more willing to resort to the legal process. This figure also supports previous researchers' conclusions that the traditional method of resolving a dispute by seeking harmonious compromise and conciliation (without reliance on, or intervention by, an arm of the government) is no longer the predomi-

"If the employee's discriminatory action is illegal, it is exaggerating this whole situation (taking the situation too seriously)." *Id.*

¹²³ The Korean Consumer Protection Board, created under the Consumer Protection Act, Act No. 3921 (1986), is a "government-funded public agency that enforces consumer protection policies . . . and strives to protect consumer rights and interests." See Korea Consumer Prot. Bd., President Message, <http://english.cpb.or.kr/president.htm> (last visited Jan. 17, 2008). The board has authority to investigate alleged unfair business practices. See Korea Consumer Prot. Bd., Function, <http://english.cpb.or.kr/function.htm> (last visited Jan. 17, 2008).

¹²⁴ Korean Perception(s) of Equality Survey, *supra* note 103. Two respondents explained that they would contact the complaint office at the Blue House. One respondent identified the Fair Trade Commission. The rest of the respondents did not identify the specific government agency or office. *Id.*

¹²⁵ *Id.* Korean colleagues have indicated to this author that Koreans are far more likely to contact an acquaintance who might personally know *any* member of the National Assembly rather than their *own* representative in the National Assembly whom they do not know personally. In all events, the survey results show that as many participants would consider holding a "nude demonstration" at the airport protesting the airline's action as would contact one's representative in the National Assembly: one each. *Id.*

nant method.¹²⁶ It should be noted here that changes in the public's accessibility to the legal institutions accompanied the increasing willingness to resort to court adjudication to preserve individual legal rights. Until 1996, only 300 persons per year could pass the bar examination that would allow them to begin the two-year program at the Judicial Research and Training Institute, followed by law practice. But "*as demand for legal services has increased*, the number has gradually risen to 500 in 1997, 700 in 1998, 800 in 2000, and 1000 a year since 2002."¹²⁷

The other options—contacting airport management and “other”—present an opportunity to elaborate on the inherent challenges in survey design. The selection of options following the question of what, if any, action the participants would take if the hypothetical situation occurred to them reflects the speculation and prediction of this individual author. The option of contacting airport management seemed to this author as a rational, and altogether predictable, option of several. Indeed, nearly seven out of ten participants chose this very option. Nevertheless, this author was of the view that practically no result of significance would obtain if a passenger facing the situation presented in the hypothetical actually contacted airport management and filed a complaint. (This was confirmed by an exchange of e-mail messages between this author's assistant and a manager at the Incheon International Airport.¹²⁸) While contacting airport management was a predict-

¹²⁶ See *supra* text accompanying note 97–98.

¹²⁷ See Judicial Research & Training Inst. Curriculum, http://jrti.scourt.go.kr/english/curriculum_01.asp?flag=1 (last visited Jan. 17, 2008) (increasing number of new lawyers per year was seen as compromise in long-running debate over implementation of proposed law school format).

¹²⁸ E-mail from Suhn Hee Yoon to Min-Chung Lee (copy on file with author). At this author's direction, the assistant submitted, on the Internet site of the airport, a message inquiring (in Korean):

If a passenger was racially discriminated from an airline company at the Incheon Airport, and the passenger wants to file a complaint about this incident to the Incheon Airport, what steps do you take to solve this complaint? First, I want to know if there is a division that deals with customer's complaint, and secondly, what kind of response or solutions do you provide if a passenger raises this sort of complaint? Thank you.

The assistant received an individualized response by e-mail, from someone identifying herself as “manager of the on-line customer service at Incheon Airport,” stating in relevant part (in Korean):

[I]f you, the customer, were mistreated from a certain airline company, then the manager of the customer service would directly transfer this complaint to the airline company that has provided the cause for the complaint.

If you tell me how you were mistreated, the time it occurred, and circumstances of the incident once again, then I would transfer this complaint to

able if not an ineffectual option (again, in this author's view), this survey did not contemplate the option of Internet-related activity in response to the airline action. Of the fifty-nine participants (out of 291) who selected "other" as an option, thirty-four—or over ten percent of all respondents—stated separately that they would post a complaint on the Internet (with a few specifying that they would attempt to gather more information through that vehicle).¹²⁹ This underscores the fact that Korea, which has one of the highest rates of broadband access in the world, has seen a popular trend to vet social issues and individual matters in cyberspace.¹³⁰

CONCLUSION

Korea is a constitutional democracy, albeit a relatively new one, whose law guarantees equality before the law, at least with respect to state actors. This jurisdiction has also created a human rights commission to which persons may petition to address complaints of unequal treatment by any party, private or otherwise. But how equality, discrimination, and unlawful discrimination are viewed by members of various national societies may be shaped by their respective social histories and societal norms. This is not to suggest that cultural norms attributed to Korean society (or any society) must have a deterministic effect on a predetermined result. Moreover, with respect to Korea, one is reminded that a societal culture is not permanent, fixed, or unchanging, given the recent changes seen there.

The notion and perceptions of equality in contemporary Korea are of interest given the unique setting: a young constitutional democracy with a deeply-rooted Confucian history. One basic goal of this survey was to see how participating Koreans would respond to questions of discrimination, illegality, and responding action. A large majority of the participants saw discrimination in the hypothetical, but only about half saw it as illegal or unlawful. The explanations pro-

that specific airline company and then there will be an appropriate action regarding this matter.

I apologize on behalf of the airline company, if you were discomforted at the Incheon Airport.

Id.

¹²⁹ Korean Perception(s) of Equality Survey, *supra* note 103. Of the fifty-nine, twelve others stated that they would contact the media, ten said they would contact the airline another time, and five indicated leading a boycott. *Id.*

¹³⁰ See Sang-Hun Choe, *Tracking an Online Trend, and a Route to Suicide*, N.Y. TIMES, May 23, 2007, at A4 (noting use of Internet by Koreans to trade tips about committing suicide).

vided by those who did not see illegality or unlawfulness or did not see how law was relevant to the situation, might indicate how a portion of the society perceives the role of law in everyday life situations. The comments relating to what action the participants would take in response indicate a society that appears to be more aware of the petitioning procedure, including the resort to government and to a more accessible practicing bar and legal system. All of these factors are indicators of a society in continuing transition. This Article encourages further examination of Korean society and transition, and comparative examinations of universal legal precepts.