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Master's Thesis

**The 2011 Amendment to the  
Special Adoption Law:**

**A One-Year Evaluation**

**2011 년 입양특례법 개정:  
시행 초기 1 년의 영향 분석**

**February 2014**

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# **The 2011 Amendment to the**

## **Special Adoption Law:**

### **A One-Year Evaluation**

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## **Abstract**

### **The 2011 Amendment to the Special Adoption Law:**

#### **A One-Year Evaluation**

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The purpose of this thesis is to evaluate the impact of the Amendment to South Korea's Special Adoption Law, which passed in 2011. The evaluation uses information that was available from August 2012 through July 2013, which marks one full year after enforcement.

The expectations of various stakeholders who helped to amend the adoption law are examined through newspaper articles, government documents, and texts that they themselves produced in order to garner support for their legislation and also defend their positions. Intended and unintended outcomes of the implementation are examined, as well as the stakeholders' responses to these consequences.

The theoretical framework of this thesis is social construction theory. Social construction theory helps us to grasp the historic significance of the 2011 revision to the adoption law, which was led by the affected parties (i.e., internationally adopted Koreans, unwed child-rearing mothers at risk of losing their children to adoption, and parents who had lost children to overseas adoption). Social construction theory can help explain why the parties had never before been involved in drafting this adoption law, which tremendously affected their own lives. Rather than involving these parties in democratic processes, the government and adoption agencies had controlled this law until 2011. Social construction theory reveals that a main achievement and unintended outcome of the amendment was that

in the process of drafting it, the affected parties mobilized and participated in democratic processes for the first time. They worked together with Korean civil society activists to overcome negative social images of themselves which permeated Korean society, and became empowered as active participants in democratic processes affecting their own lives. This in itself was a huge achievement.

The most dramatic and publicized unintended consequence of the law revision, however, was the issue of anonymous child abandonment being raised in society. The “babybox” -- a child abandonment site at a church located in the district of Gwanak in Seoul -- became a symbol of child abandonment. The increase of abandonments there fueled a new movement to overturn parts of the amendment. This movement, which began in the first months of 2013, resulted in a slew of media reports that echoed the opinions of domestic adoptive parents, adoption agencies, and churches who blamed the Special Adoption Law for increased abandonments, calling these tragedies an unintended outcome of the law. They said that if unwed mothers were not allowed to abandon their children in the babybox, they might kill them.

However, the parties who had worked to amend the Special Adoption Law in the first place refuted this argument. They did not see the abandonments as an outcome of the law itself, but rather misinformation about the law. They tried to refocus arguments over child abandonment onto fundamental problems such as the faulty birth registration system, individual privacy, and the lack of adequate social welfare for unwed mother families. In addition, they blamed the media for providing “free advertising” for the babybox.

Using statistics gathered through the Korean search engine Naver and government bodies, an analysis shows that abandonments did not increase in a statistically significant way directly after the enforcement of the Special Adoption Law. Rather, they increased after legislation was proposed in order to re-revise the adoption law and media coverage of the

babybox increased. There was a correlation between the number of abandonments in the babybox and the number of news stories released by the media, with more abandonments recorded in the babybox than the rest of the entire country. Finally, infanticides were shown to not decrease significantly during the one-year period after enforcement. The conclusions show that Korea is not exceptional in patterns of child abandonment and infanticide. In Western countries, abandonment also rises when anonymous abandonment sites are introduced, but infanticide does not decrease.

While the two sides debated about whether or not the increased child abandonments were actually caused by certain revisions to the adoption law, other revisions were almost completely overlooked due to uneven implementation. One important part of the law that was not implemented well was the section on adult adoptees' rights to information with regard to the search for their biological families. Due to the non-enforcement of this part of the law, the overseas adoptees continued to struggle for the enforcement of the 2011 amendment.

**Keywords:** Special Adoption Law, child abandonment, babybox, unwed mothers, Korean adoptees



## Table of Contents

Abstract .....	5
1. Introduction .....	9
2. 1. Theoretical framework .....	12
2. 2. Social constructions make reality .....	14
2. 3. Locating target groups .....	16
Table 1: Categorizations of target groups .....	17
3. 1. Debunking war and poverty as drivers of adoption .....	20
Graph 2: Trend of Intercountry Adoption vs. GDP .....	22
Table 3: Intercountry Adoption vs. GDP .....	23
3. 2. Lack of a consistent policy direction in the adoption program .....	25
3. 3. Social construction as a main driver of the adoption program .....	27
3. 4. Social construction of adoption agencies: advantaged .....	29
3. 5. Social construction of unwed mothers / parents who lost children to adoption: deviants .....	31
Graph 4: Korean society's perceptions of different kinds of women: .....	32
Warmth toward them and belief in their competence .....	32
3. 6. Social construction of adoptees: dependents .....	36
3. 7. Social construction of adoptive parents: advantaged .....	37
4. 1. Stakeholder expectations of the Special Adoption Law: adoption agencies .....	40
4. 2. The demands and expectations of the affected parties .....	43
4. 3. The government's language on the final bill .....	48
Timeline of Events Related to the Adoption Law Revision .....	52
5. 1. Unintended outcomes: Abandonment? .....	55
Table 5: Yearly Abandonment vs. Infanticide .....	61
Table 6: Abandonment vs. Infanticide by Period .....	61
Table 7: Abandonments in Gwanak-gu and Not Gwanak-gu, Period A .....	63
Table 8: Abandonments in Gwanak-gu and Not Gwanak-gu, Period B .....	64
Table 9: Abandonments in Gwanak-gu and Not Gwanak-gu, Period C .....	64
Table 10: Abandonments in Gwanak vs. Not Gwanak: Estimated Median, Lower Confidence Limit, Upper Confidence Limit at a Confidence Level of 95% .....	67
Graph 11: Babybox Abandonments & News Stories .....	70
Graph 12: Fit plot for abandonment and news .....	73
Table 13: Domestic and overseas adoptions since the implementation of the Special Adoption Law Revisions: August 2012 to June 2013 .....	75
5. 2. Positive unintended outcomes .....	84
6. Implementation .....	86
7. Conclusion .....	91
8. Bibliography .....	96
Korean language abstract .....	103

## 1. Introduction

In the early autumn of 2012, only about two months after the enforcement of the amendments to the Special Adoption Law that governs international adoption from Korea and domestic adoptions of children from institutions<sup>1</sup>, adoption agencies and adoptive parents' groups started calling for another revision to the law. These groups cited increased anonymous abandonments at the "babybox" located in Gwanak-gu, Seoul, as proof that the amendment was bad, saying that the amendment itself was the cause of an increase in abandonments (Ahn 2012). This babybox was the only such site in Korea and existed without a legal basis.

The amendment had been sponsored by National Assembly Member Choi Young-hee and drafted by Gonggam Public Interest Lawyer So Rami in cooperation with overseas adoptees, unwed mothers, and a group of Korean parents who had lost children to overseas adoption. The law responded to these groups' real-life experiences with adoption by attempting to create a system that encouraged unwed mothers to raise their children by introducing a seven-day "cooling-off period" after childbirth, only after which they could choose to relinquish their children. Moreover, a main goal of the law was to work together with the courts in order to leave an administrative record about adopted children's families of origin so they would be able to find them after becoming majority age. This is administrative duty was included in the old adoption law, but was never enforced, leaving the vast majority of adult adoptees unable to trace their original families.

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<sup>1</sup> The revisions to the Special Adoption Law passed June 29, 2011 as the government-sponsored Bill #18-12414 with 188 yeas, zero nays and four abstentions. It was enforced August 5, 2012.

Adoption agencies and adoptive parent groups believed that the Special Adoption Law should be re-revised in order to ease these regulations that they believed caused an increase in anonymous abandonment. Namely, they wanted to revise the law so that anonymously abandoned children could be adopted. On the other hand, the groups that amended the law in 2011 argued that what needed to be changed was not the Special Adoption Law, but the support system for unwed mothers and the family registration law and/or birth reporting system. Unwed mothers' children were a focus because they had comprised 90% or more of adopted children since the 1990s.

In the wake of the 2011 revision to the Special Adoption Law that entered into force in August 2012, the babybox issue brought discussion into the public arena about long-standing issues in Korea that have historically contributed to the perpetuation of the international adoption system: birth registration, unwed mothers, disability, and privacy on the family registration system. The language of the amendments to the Special Adoption Law served as the catalyst for these two sides to publicly debate important social issues that have yet to be solved by consensus in South Korea.

My research aims to evaluate this 2011 amendment to the Special Adoption Law as a social intervention one year after its implementation. I will attempt to answer the following research questions:

- What were the expectations/goals/intended results of the different stakeholders (e.g., government agencies, semi-governmental agencies, private adoptions, and NGOs) involved in supporting or opposing the amendment to the Special Adoption Law?
- Were these expectations/goals/intended results fulfilled by the law change?
- How did stakeholders react to the results after the law was implemented?
- What were the unintended outcomes and new challenges growing out of this law?

- What was the impact of the law in terms of social construction, i.e., how were people's perceptions changed about adoption problems, the perception of single moms, the role of the government, the conditions of democracy, and the protection children's and minority rights? Have the law and resulting enforcement decrees and policies been implemented?

## **2. 1. Theoretical framework**

There are numerous theories that have been developed that can be used in order to trace and describe how public policy is formed. These theories include institutional rational choice theory championed by Elinor Ostrom, the advocacy coalition framework developed by Paul A. Sabatier, the punctuated-equilibrium theory used by James L. True, Bryan D. Jones, and Frank R. Baumgartner, and the multiple streams framework researched by Nikolaos Zahariadis. These theories focus on how institutions, coalitions of interest groups and non-governmental organizations, and policy entrepreneurs work together to put issues onto the policy agenda and get their policies implemented over large spans of time (Sabatier 1999).

While these theories are useful, and while any one of them could be used to partially describe how the Special Adoption Law was amended in 2011, social construction theory is better suited for evaluating the significance and impact of the Special Adoption Law. One major reason for this is that a major facet of social construction theory is its emphasis on how the participation of target groups changes the conditions of democracy in a society and feeds into the policy cycle. This idea in itself is useful for evaluating the significance and impact of the Special Adoption Law. In addition, the other theories seem to be more useful for describing, in hindsight, how policies came into being, rather than for understanding the impact of a new policy intervention only about a year old at the time of this writing. In fact, at the time of this writing it was impossible to evaluate the long-term impact of the Special Adoption Law revision, which has enormous potential to set off a domino effect in laws and policies about child welfare and support for single mothers. In fact, this domino effect has already started. While the other theories may be able to locate the players and the coalitions that they formed, and the institutions that affect them, only social construction theory can

describe why certain target groups had been historically either completely ignored or penalized by public policy, and others had benefited from public policy. In other words, social construction theory seemed to be the best fit to describe the situation in Korea because of the nature of the people most affected by the Special Adoption Law. They were an oppressed group of people who had historically been penalized by public policy, but who became policy entrepreneurs in a relatively short time because of their work on this law. These people were mainly the overseas adoptees themselves -- who have been absent from Korea because the very adoption law that created them exiled them outside the country, and outside of a sphere where they could impact any policy or law about themselves -- and the unwed mothers who have supplied most of the children who have been sent for overseas adoption. These women have until very recently been mostly ignored by public policy makers, governmental institutions, non-governmental organizations, and even interest groups that may have logically formed coalitions with them. As these groups were penalized and silenced by public policy, adoption agencies had historically been rewarded by public policy.

These conditions in Korea mean that it is difficult to explain these target groups' sudden appearance in the policy field after their long absence using more traditional theories that trace movements over larger spans of time. However, social construction theory provides some explanations about this exceptional situation. In addition, social construction theory can be used to instruct target groups on what needs to be done in order to further their cause, as well as predict what might reasonably happen in the future. Finally, social construction theory has rarely been applied in the Korean context, so it is an interesting intellectual exercise to see how it may be applied to understand Korean target groups and the policies that affect them (Sabatier 1999).

## **2. 2. Social constructions make reality**

Through human interaction mediated through institutions such as the family, education, the economy, the state, and the media, people construct reality. Beliefs and categories of difference or value judgments about different groups of people become so “real” to members of the same culture through these interactions that people’s ability to question how these assumptions arose in history, or to even imagine questions that challenge these assumptions, may be impaired (Sabatier 1999) (Ore 2003).

Social constructions are created in three stages, according to Berger and Luckmann. The first stage is externalization, in which social interactions produce cultural products such as material artifacts, social institutions, or beliefs about a particular group. For instance, the concepts of gender and race emerged in stages and developed over a documentable, traceable history (Berger and Luckmann 1966).

The second stage is objectivation. In this stage, cultural products seem to take on an objective existence and are taken for granted. Constructions are considered to be real and natural, not created by human institutions and human interactions. People forget that they have actually created these products through their culture and social interaction. (Berger and Luckmann 1966). For instance, most Americans believe that there are only two genders: male and female. This is despite the fact that medical technology has intervened to medically alter intersexed people, and that the existence of intersexed people is acknowledged in other cultures (Ore 2003).

Finally, internalization is the stage in which “objective facts” about cultural products are learned by people of the same culture (Berger and Luckmann 1966). For instance, the belief that masculinity is equivalent to physical strength or that femininity is equivalent to the expression of emotion is one example of internalization.

Social construction theory takes into account that people hold these beliefs and that they act on them as part of their reality. Therefore, social construction theory can help to answer why public policies continually benefit some groups while continually punishing others, even though citizens are theoretically equal under the law. Social construction theory argues that the public image of groups, in other words, their social construction, holds the key to understanding why they receive or do not receive benefits. Target groups such as mothers who receive welfare benefits, children, people living with handicaps, and businesses and institutions carry positive or negative images and symbolism that affects whether they consistently benefit or are burdened public policies. For example, retirees carry an overall positive image and therefore consistently receive benefits from the U.S. government. On the other hand, criminals carry an overall negative image and are consistently punished by U.S. public policy (Ingram 2007).

In the U.K., which experienced the retrenchment of social welfare programs and moves toward privatization in the 1980s and 1990s, the rights of the full citizen gave way to privileges. Which target groups were and were not able to access these privileges was dependent on their social construction (Samson and South 1996). Some target groups continue to be oppressed because categories of difference, such as race or gender, serve to maintain systems of oppression and privilege institutionally, interpersonally, and internally in individuals (Ore 2003).

Public image plays such a large role in determining which groups get benefits that it can override scientific evidence. The stronger a group's social construction is, i.e., the more preconceived notions that the public has about the group, whether positive or negative, the less scientific proof matters in arguing for or against distributing or not distributing benefits to a group (Ingram 2007).



Strong social construction not only weakens the role of science in policy design, but it can also determine path dependency. In other words, the status quo (i.e., path dependency) will have a tendency to stay the same if the social construction of a group is strong. It is difficult to change a policy for a group about which the public has a strong preconceived notion, such as criminals (Ingram 2007) or welfare mothers (Benson-Smith 2005).

### **2. 3. Locating target groups**

Ingram, Schneider, and DeLeon use a chart consisting of four quadrants to locate various target groups in the U.S. along two spectrums. The X axis represents social construction, with negative image to the left and positive to the right. The Y axis represents the groups' power or ability to affect public policy, with low power near the bottom and higher power near the top. In other words, positively socially constructed groups with high power are found at the top right corner. Negatively socially constructed groups with high power are found at the top left corner. Positively constructed groups with low power are found at the bottom right corner, and negatively constructed groups with low power are found at the bottom left corner. Because groups are located along two spectrums, they can be found anywhere inside the chart.

**Table 1: Categorizations of target groups**

<i>Advantaged</i>	<i>Contenders</i>
Positive Social Construction	Negative Social Construction
High Power	High Power
<i>Dependents</i>	<i>Deviants</i>
Positive Social Construction	Negative Social Construction
Low Power	Low Power

The examples of target groups used by Ingram, Schneider, and DeLeon reflect the prevailing American context in 2007, but there may be disagreement on the authors' categorizations of target groups. For instance, Ingram, Schneider, and DeLeon categorize the military as having a positive public image, although many people in the U.S. strongly disagree that the military has a positive image.

The authors call "contenders" groups with negative social constructions but high power, such as labor unions. Although contenders have high political power, politicians may be reluctant to be too closely associated with them because the non-unionized think they already benefit too much from public policy. "Advantaged" groups are those that have both positive social constructions and high political power. They benefit from public policy and do not receive much burden. Benefiting these groups is good for politicians' careers, as these groups' interests are seen as national interests. The examples given by Ingram are small businesses and homeowners -- although after the U.S. financial crisis in 2007-2009 which forced many homeowners out of their homes and small businesses to collapse, the authors might reconsider this analysis. "Deviants" are groups that have negative social constructions and low power, including welfare mothers and criminals. They do not have the power to

fight against politicians whose careers may be bolstered by increasingly burdening them, and few advocacy groups want to touch these groups. Finally, “dependents” are those such as the poor and children who have positive social constructions, but low political power. They may receive positive lip service and symbolic support, but whatever positive rewards they may receive from public policy may be inadequate to begin with or easily decreased (Ingram 2007).

Social construction affects groups not just by playing a part in who benefits from and who is punished by public policy. It also affects how groups see themselves and their role in democracy. Public policies themselves send messages to groups and the general public about who is deserving and who is not, and who may participate in political processes and who may not. In other words, the attitude that groups have toward their governments and how much they participate or refuse to participate as citizens with the capacity to solve their own problems is a response to how they are treated by their governments (Ingram 2007) (Benson-Smith 2005).

Politicians win or lose votes by advocating within government for target groups who have public sympathy, or by working against target groups who are reviled by the public. If people consistently try to better their lot and fail, or cannot get a politician on their side to advocate for them, of course they would be discouraged from trying to continue to participate in nominally democratic processes. For example, if people who receive welfare are seen as undeserving and they do not receive much benefit from public policy anyway, it would seem futile to them to try to continue to lobby for benefits. The public will continue to see them as undeserving because the public policy itself has reinforced the belief that people do not deserve generous social welfare. However, if a group such as retired people consistently benefits from public policy, they feel that they matter. In addition, the public

believes that they are entitled to benefits, and retirees will want to continue to participate in shaping the public policies that affect their lives (Ingram 2007) (Campbell 2003).

Therefore, while the social construction of groups is affected by past policy design that reinforces existing notions of groups' deservingness or undeservingness, it can also affect future policy design by encouraging or discouraging these same groups from public participation in democratic processes (Ingram 2007). In addition, expectations about groups are reinforced socially (Sabatier 1999) (Ore 2003). For example, if Korean policy design has created a society in which unwed mothers have no choice but to give up their children for adoption, it is true that few unwed mothers will actually have the ability to raise their children. Therefore, the target group consisting of child-rearing unwed mothers is a social minority; lack of governmental support has prevented this target group from existing in large enough numbers to become politically powerful. Therefore, a vicious circle is created in which unmarried women get pregnant and then become social minorities, they experience prejudice at the levels of both government and society, they subsequently give up their children for adoption, and finally the population of potentially child-rearing unwed mother families is further depleted and politically disempowered.

### **3. 1. Debunking war and poverty as drivers of adoption**

There are many social constructions about the Korean adoption program that have produced general assumptions in Korean society and abroad about the nature of the program and the children sent for adoption. Just as we can point out that many immigrants who came to the United States had an “American Dream,” and this is common knowledge, we can also point out that it is commonly believed that war and poverty are the origins of the Korean international adoption program. However, not everyone knows that the program has continued until this day, even while Korea is an OECD country and the Korean War ended in a cease-fire (not a peace treaty) in 1953.

Because the adoption program began as a response to war, it is often thought that Korean War orphans make up the bulk of children who were adopted from Korea. However, we can see that compared to the whole population of children sent overseas for adoption over the past 60 years, very few were sent for overseas adoption immediately after the Korean War. This means that some other populations, not war orphans, have been the main populations sent overseas for adoption.

Another common belief or social construction about the adoption program is that children were sent overseas because of Korea’s poverty. However, a look at the numbers of children sent overseas for adoption as compared with the trend of GDP per capita growth shows that counter intuitively, adoptions rose as the GDP increased. This is because in any country that is entirely impoverished, there is little infrastructure. However, as a country grows in wealth, various infrastructures can be developed, including the international adoption infrastructure.

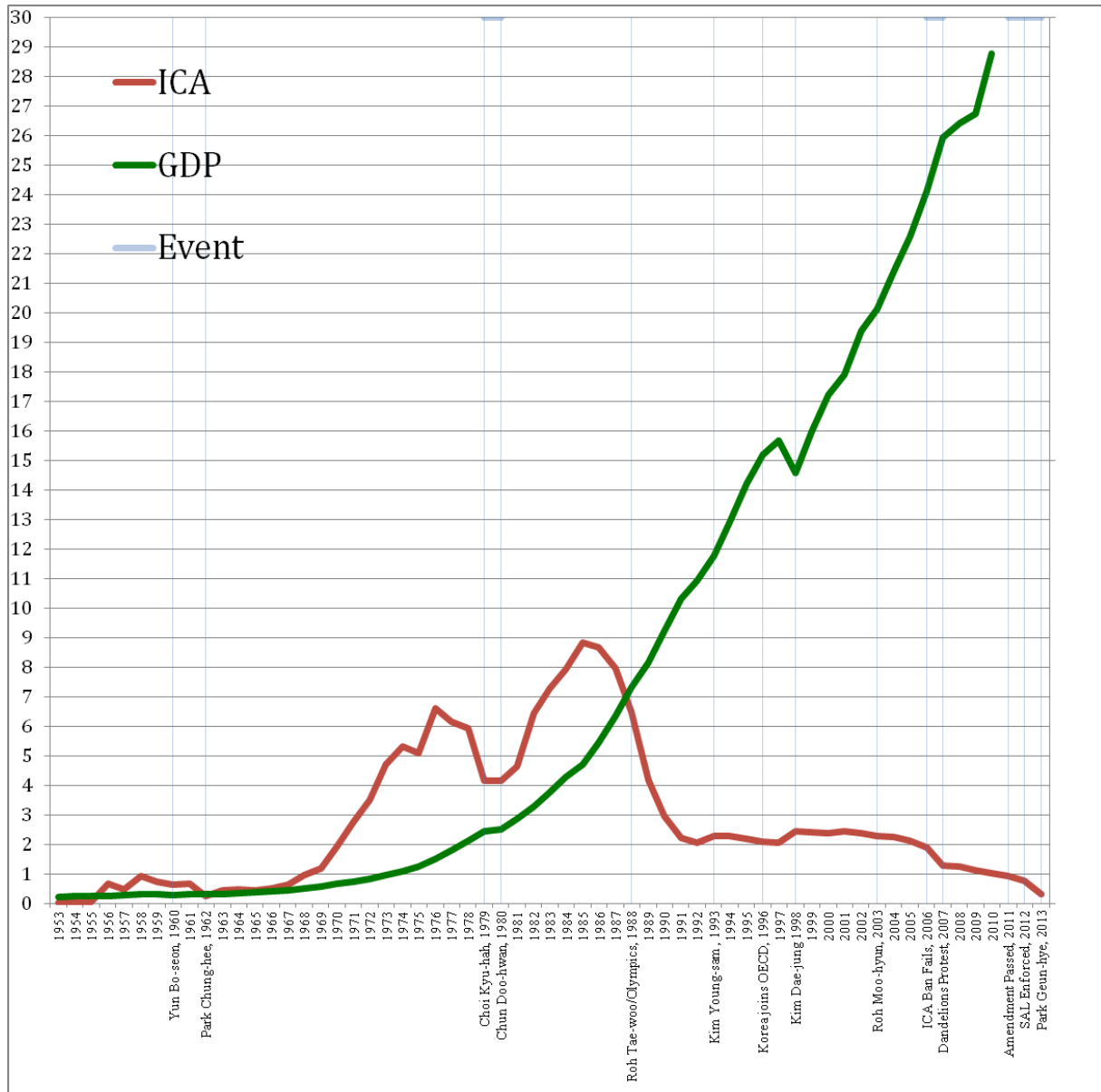
While Korea may still have been considered to be poor even as GDP rose, one would probably guess that as the country got richer, international adoptions would have fallen. However, that is exactly the opposite of what happened. This phenomenon shows that

the social construction or public image of the Korean adoption program being equivalent to a response to the absolute poverty of most people in the country may have started in some truth, but this situation became less and less true over time.

Yet the image of poverty or war as the cause of the adoptions remains. This shows the power of the social construction of the institution itself and the institution's power to keep perpetuating itself with the help of this social construction, despite strong evidence showing that the institution does not actually hold the characteristics it is believed to have. We can see on the table and chart below that the 1950-1953 Korean War and poverty cannot objectively be said to be the main drivers of international adoption.

The chart below shows the trend of the official numbers of children sent for intercountry adoption against South Korea's GDP per capita. The numbers on the Y axis are X1,000 for both the numbers of children and dollars.

**Graph 2: Trend of Intercountry Adoption vs. GDP**



**Table 3: Intercountry Adoption vs. GDP**

President/Event	Year	Official # of overseas adoptions	PP Converted GDP Per Capita of Korea, G-K method, at current prices (in International\$) (Penn World Table)
	1953	4	227.6699
	1954	8	234.7899
	1955	59	253.4235
	1956	671	258.1653
	1957	486	285.1581
	1958	930	295.5146
	1959	741	296.6874
<b>Yun Bo-seon</b>	1960	638	291.0783
	1961	660	297.7316
<b>Park Chung-hee</b>	1962	254	295.3659
	1963	442	324.0719
	1964	462	347.8518
	1965	451	363.161
	1966	494	407.9658
	1967	626	433.8472
	1968	949	489.3059
	1969	1,190	578.5569
	1970	1,932	653.6131
	1971	2,725	739.0756
	1972	3,490	816.0481
	1973	4,688	961.7593
	1974	5,302	1,083.51
	1975	5,077	1,231.484
	1976	6,597	1,505.772
	1977	6,159	1,785.751
	1978	5,917	2,103.982
<b>Choi Kyu-hah</b>	1979	4,148	2,446.144
<b>Chun Doo-hwan</b>	1980	4,144	2,487.98
	1981	4,628	2,864.863
	1982	6,434	3,273.484
	1983	7,263	3,758.605
	1984	7,924	4,269.421
	1985	8,837	4,681.949
	1986	8,680	5,451.017
	1987	7,947	6,347.883
<b>Roh Tae-woo</b>	1988	6,463	7,321.156
	1989	4,191	8,150.132



	1990	2,962	9,223.458
	1991	2,197	10,296.26
	1992	2,045	10,914.26
<b>Kim Young-sam</b>	1993	2,290	11,774.33
	1994	2,262	12,915.75
	1995	2,180	14,222.91
<b>Korea joins OECD</b>	1996	2,080	15,188.51
	1997	2,057	15,659.46
<b>Kim Dae-jung</b>	1998	2,443	14,560.34
	1999	2,409	15,945.28
	2000	2,360	17,207.63
	2001	2,436	17,880.82
	2002	2,365	19,380.45
<b>Roh Moo-hyun</b>	2003	2,287	20,118.18
	2004	2,258	21,396.63
	2005	2,101	22,577.33
<b>Legislation to ban international adoption is introduced at Korean National Assembly and fails</b>	2006	1,899	24,115.32
<b>Parents who lost children to international adoption protest to end ICA</b>	2007	1,264	25,933.95
	2008	1,250	26,421.06
	2009	1,125	26,740.21
	2010	1,013	28,768.22
<b>Amendment to Special Adoption Law passed</b>	2011	916	
<b>Special Adoption Law enforced</b>	2012	755	
<b>Park Geun-hye</b>	2013	300-400 (projected)	

Source for number of adoptions: Ministry of Health and Welfare

Source for economic data: Penn World Table Version 7.1 (Heston 2012)

### **3. 2. Lack of a consistent policy direction in the adoption program**

The government allowed the adoption infrastructure to be established, and it thrived under military dictatorship. This infrastructure consisted of institutions that included the following: adoption agencies that worked with overseas adoption agencies, orphanages that sent children to the adoption agencies, the medical profession, particularly obstetricians and gynecologists, and the legal basis to facilitate the adoptions.

The Special Adoption Law that was amended in 2011 was only the latest incarnation of what had previously been called “The Special Law on Adoption Procedure and Promotion,” which before that had been known as “The Orphan Adoption Special Law” (Hübinette 2006). At the time of this writing, this law has had revisions proposed to it 40 times, including four proposals that occurred after the 2011 amendment (National Assembly 2013).

The Orphan Adoption Special Law had been promulgated in 1961 under the military dictatorship of Park Chung-hee following the May 16 coup in 1961, greatly helping to facilitate the speedy adoptions of children to foreign countries. The numbers of children who were sent for adoption increased from the era of Park Chung-hee and subsequent dictatorships in the 1970s-1980s (Hübinette 2006). Despite a quota system introduced even prior to 1980 which tied the number of overseas adoptions that could be performed to the number of domestic adoptions performed, in addition to legislative attempts to abolish international adoption by 1985, plans were overturned before the goal date. Overseas adoptions were fully opened again in the 1980s (Holt Children's Services 2005). The overseas adoptions decreased only after the 1988 Olympics, when South Korea was embarrassed by North Korea, which accused the South of selling its own children (Hübinette 2006). The government responded to this shaming by aiming to abolish all overseas

adoptions from 1996 (Holt Children's Services 2005), and a drop by half each year can be seen directly following the Olympics. Following this drop, we see a relatively stable number of overseas adoptions through the 1990s and into the 2000s, during which the vast majority of those children sent for adoption had been born to unwed mothers (Hübinette 2006). In 1994, all policies prohibiting overseas adoption were cancelled, but the government followed up in 1996 with a policy that aimed to abolish overseas adoption with the exception of disabled and mixed-race children (Holt Children's Services 2005). The Ministry of Health and Welfare again attempted to abolish overseas adoption by 2012 (Onishi 2008), but 2012 came and went, and that policy was all but forgotten.

Meanwhile, the expansion of domestic adoptions had been called for throughout this history of international adoption, but such programs consistently failed to meet their goals (Holt Children's Services 2005). The latest domestic adoption priority system started as a policy in 2007 (Yim Young-Eon and Lim 2012). The domestic adoption priority system was legalized by the amendment to the Special Adoption Law in 2011 and came into force in 2012.

To summarize the history of the careening, back-and-forth policy of international adoption in Korea, we can say that the law and policies that have governed the adoption program have historically been fully in the control of only the government and the adoption agencies. Because the adoptions were rampant under military dictatorship and thrived even more under dictatorship in the 1960s-1980s than after the war, we can view the current program as more of a vestige of the era of military dictatorship rather than as a vestige of war. After the huge cut in adoptions following the Olympics during the transitional government of Roh Tae-woo, the international adoptions did not see a dramatic decrease again until 2012. One reason that the international adoptions did not remain as a hot item on the policy agenda, and seem to have been forgotten about by the public for about three

decades, might be that North Korea did not criticize South Korea for selling its own children again. In other words, there was no intense pressure on the government to do anything about the program. Only the full democratic participation of the *dangsaja*, meaning the people directly affected by the relevant law or policy, could bring international adoption into the policy arena again. This happened almost 20 years after the first fully civilian government was established in Korea.

Ironically, during the first year of the amended law's enforcement, 2012-2013, Park Geun-hye, the daughter of the dictator Park Chung-hee, was the president of South Korea. Officially, 51,563 children were sent overseas during the era of Park Chung-hee, and 33,200 of them were sent from 1974-1979, the time in which Park Geun-hye was the acting first lady of South Korea following the assassination of her mother.

### **3. 3. Social construction as a main driver of the adoption program**

If the huge numbers of adoption cannot be explained in the face of an ever-growing GDP or a war that in practical terms ended in 1953, what can explain it? Clearly Korea's international adoption policy has gone back and forth over the years, veering from banning overseas adoption to promoting it. What can explain the longevity of this program that seems to have been have been created and maintained without much evaluation or policy rationale? Why has the program been so sensitive to public reaction, such as the Olympic scandal, but has lacked a clear and lasting policy direction?

I argue that the lack of a consistent policy direction in the adoption program shows that governmental decisions have not been made based on program design, implementation, and evaluation, but rather ideologies and social construction. One notable ideology created by Syngman Rhee, who ironically was married to a European white woman, was that of "one

race.” This idea was a response to Japan’s colonial rule of Korea. From this environment where to be Korean meant that one had to be a “full-blooded” Korean, children born to Korean women and foreigners were expelled from the Korea for international adoption (Hübinette 2006). By 1958, less than 50% of children sent from Korea by Holt were mixed-race, and by 1980, less than 1% of children sent for adoption by Holt were of mixed-race, rendering them statistically irrelevant (Holt Children's Services 2005). However, because Korean international adoption started as a child welfare response to war orphans and mixed-race children following the Korean War (Hübinette 2006) (Kim 2010) (Choy 2013), children sent for adoption have continued to be socially constructed as war orphans or those who have little chance of physical survival within a war-torn Korea, even though time has advanced and this is factually no longer the case.

On the chart developed by Ingram, Schneider, and DeLeon, we may locate adoptees themselves, no matter what their original situation in Korea, as dependents with low political power. The mothers of adoptees, including unwed mothers and especially the mothers of mixed-race adoptees who had sexual relationships with American and U.N. servicemen (Han and Ruth 2004), might be located in the quadrant of “deviants” who also have low political power. With both groups having low political power and the group with the most public sympathy (the adopted children) having been sent out of the country, it is no wonder that mothers and family types that fell outside the normative Korean family were punished or burdened by public policy in the form of international adoption that separated family members from each other (Hübinette 2006).

In all policy design, who receives benefits and who receives burdens has to be justified. The problem has to be defined, and there has to be causal logic to back up the rationale (Ingram 2007). However, there has been little if no casual logic or research to back up the rationale behind the adoption program. Rather, it seems that social construction and

the idea of who is a full and deserving citizen as opposed to who is not has been one of the main engines behind Korea's adoption program.

In the case of the overseas adoptees, it seems that they were deemed to be not deserving of even living in their own country, even though they were all born in Korea to Korean citizen mothers, and not deserving of full citizenship or even nominal citizenship, as the adoption and naturalization procedure is supposed to cancel their original Korean citizenship.

### **3. 4. Social construction of adoption agencies: advantaged**

Target populations related to adoption are socially constructed in an ahistorical way that makes the adoptions of children from certain backgrounds seem inevitable, good, and in the best interests of the child. These social constructions have reached the stage of internalization in both the sending country of Korea and the receiving countries. When the social construction is internalized, it means that in beliefs about groups have become accepted as "objective facts." These powerful social constructions that are internalized create a feedback loop of perception. Adoptions are conducted; adoption becomes the quickest answer; other systems to care for children and their families are not developed; and finally adoption is not only the quickest answer, but the only and inevitable answer.

The Holt adoption agency in Korea in particular has become synonymous with international adoption. The founder of the Holt agency, Harry Holt, was posthumously awarded the "Cultural Medal of the Republic of Korea" by the Korean government in May 1964, implying that the social construction of the agency is one that does good work that is beneficial for children and society as a whole. This award and the fact that many Holt adoption agency officials have had connections with the government (Holt Children's

Services 2005) imply that the adoption agencies are advantaged in terms of their social construction, and also have high political power.

The media is a form of social institution, and newspaper articles can provide a window onto the social construction of target groups, as the articles reflect prevailing attitudes and ideologies of the time (Ore 2003). A longitudinal study conducted using newspaper articles to examine the social psychology of the Korean society from 1920-2006 with regard to adoption showed that the media, using distorted or false causation, has created a social reality in South Korea in which unwed mothers (rather than governmental policy or adoption agencies) are blamed for producing the large numbers of overseas adoptees. While in the past, the tone of the newspaper articles was related to feelings of nationalism and painful emotions such as guilt, the public perception of adoption itself as an institution has in recent years become more positive as adoption becomes more acknowledged by society (Jung 2008).

Conservative media in the time period of the 2000s has said that overseas adoption is necessary, while a more liberal newspaper called for the solution of the “unwed mother problem,” more domestic adoption, and overcoming biases against children with disabilities (Yim and Lim 2012).

When international adoption is questioned in the media (by people who are not involved with the adoptee coalition side), skepticism about the goodness or rightness of the practice is centered on the institution of adoption itself, as if it is a naturally occurring phenomenon with an invisible decision-making process, rather than a business conducted by private adoption agencies under the auspices of the government.

### **3. 5. Social construction of unwed mothers / parents who lost children to adoption: deviants**

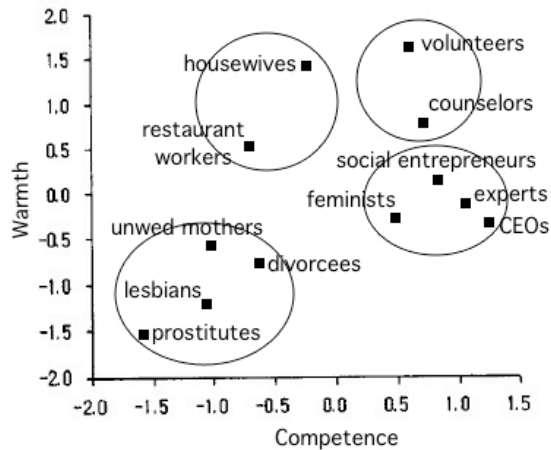
Unwed mothers in Korea face enormous social stigma. This is common-sense knowledge in Korea at a conversational level and taken as a natural condition due to the “Confucian” nature of “Korean culture” and the emphasis on “bloodlines” (that emphasize not one’s biology, but one’s father’s lineage gained through birth that takes place within marriage). A 2005 Korean survey of 1540 respondents by Kim Hai-sook showed that among different groups of women, Koreans have the least warm feelings toward the group comprised of unwed mothers, divorced women, lesbians, and sex workers, and also believe this group to have the least ability (Kim 2005).

The study measured both male and female perceptions of target groups’ “competence” and their feelings of “warmth” toward the different groups. Four groups emerged in clusters, as seen in the graph below.



**Graph 4: Korean society's perceptions of different kinds of women:**

**Warmth toward them and belief in their competence**



- Group 1: experts, feminists, social entrepreneurs, CEOs
- Group 2: divorcees, lesbians, unwed mothers, prostitutes
- Group 3: housewives, restaurant workers
- Group 4: counselors, volunteers

The group containing unwed mothers was the group that received the most social discrimination through both society's coldness and society's belief that they are incompetent. Respondents showed more negative attitudes toward groups considered to be "nontraditional" as opposed to "traditional" (Kim 2005).

In the same survey showing that unwed mothers, divorced women, lesbians, and prostitutes are perceived as incompetent and that people do not have warm feelings toward them, it was observed that the group that Koreans have the very warmest feelings toward is comprised of volunteers and counselors. Not only that, but they are also believed to be the group with the most ability or competence. Therefore, this group comprised of volunteers and counselors and the group that includes unwed mothers stand on the opposite ends of the spectrum, with the counselor/volunteer group being the most highly regarded and the unwed

mother group being the worst regarded. Another group consisting of social entrepreneurs, experts, feminists, and CEOs was perceived to have the most ability or competence. Of the professions in the group that is perceived to be highly competent, volunteers evoked the warmest feelings (Kim 2005).

While adoption workers were not specifically named in this study, people who work in adoption agencies are considered by Koreans to be “counselors” and “volunteers,” even if they work for a salary. Employees might be perceived as volunteers because of the many volunteer opportunities available through adoption agencies. However, these volunteer posts are necessarily limited in their scope of their duty because of the level of training and knowledge needed. Therefore, it seems to follow that adoption workers are regarded very highly in terms of warmth and ability. This is in contrast to unwed mothers, who are viewed to be amongst the least capable people in Korean society, and who receive the least warmth (Kim 2005).

Unwed mothers and adoption agency workers are also part of the Korean society. Therefore, they may already have these perceptions about not only each other, but also themselves, and they would bring these perceptions into interactions with each other. For instance, if an unwed mother is receiving “counseling” by an adoption agency worker encouraging her to give up her child for adoption, both the unwed mother and the adoption agency worker may already believe that the adoption agency worker is much more capable than the unwed mother and is therefore in a better position to make a decision for the unwed mother’s child than the mother herself. In addition, as it is common knowledge in Korea that there is discrimination against and coldness toward unwed mothers, the adoption agency worker may emphasize this point, which the unwed mother already knows herself. Therefore, the adoption agency worker can easily convince the unwed mother that the only thing to do is to give in to the discrimination by relinquishing her child.

Finally, if the unwed mother challenges the adoption agency worker's will by attempting to reclaim her child after she has already relinquished the child due to unbearable pressure by her family or other factors, adoption agency workers may not cooperate with the mother and demand payment for the days that the child has spent at the adoption agency or try to delay the return of the child (Choi 2010).

A 2001 study states that Korean unwed mothers are perceived to be "runaway youths from the disintegrated families" and "deviants" who display "destructive behaviors," "truancy," and "helplessness." Unwed mothers who have no support fear for themselves financially, as well as their children who will grow up fatherless in Korean society and the social "despise" facing them.

The study explains how the Korean government's policy on unwed mothers was conceptualized as a "no-policy policy." The "hands-off" policy came out of the government's judgmental view that unwed births should not be encouraged, as any support for unwed mothers would lead to more births out of wedlock. Unwed mothers were excluded from the group that was defined by The Mother and Child Welfare Act that provided protection and subsidies for lone mothers with dependent children under the age of 18. Only mothers who had given birth within wedlock (meaning those who were widowed, divorced, or married to husbands unable to make a living) were allowed to get benefits from this program. Family planning policy has also focused on mainly married women and ignored unmarried women and teenagers (Shin 2001).

In other words, the Korean government has internalized an extremely negative social construction of unwed mothers that has led it to treat unwed mothers as if they do not exist, in an effort to ignore them out of existence. Indeed, with so many of the unwed mothers' children having been sent overseas, it is possible that if the goal was to ignore the children right out of Korea, the policy objective has been reached successfully.

Ore describes three forms of oppression that maintain systems of oppression and privilege. The first is institutionalized oppression, which is characterized by oppression “built into, supported by and, perpetuated by social institutions.” The second is interpersonal oppression, which occurs between individuals. The third is internalized oppression, which is “directed at oneself” (Ore 2003).

Unwed Korean mothers, facing their own social construction and who have no choice but to give up children for adoption, face all three categories of oppression. The institutionalized oppression they face is built into the social institution of the adoption agency and the government-approved adoption program, as well as the no-policy policy for unwed mothers that enforces the disappearance of their children from Korean society. The unwed mother faces interpersonal oppression when encountering her family members, friends, and the social worker who counsels her to give up her child for the good of her family, her child, and herself. Finally, the unwed mother who feels that she is inferior to married adoptive parents who have more material resources to offer her child encounters internalized oppression and becomes triply oppressed.

Although not all parents who lost children to adoption were unwed mothers at the time of adoption, I group all of the parents who lost children to adoption into this category because the majority of adopted children have come from unwed mothers. In addition, the social construction of parents who have lost children to adoption is quite difficult to pinpoint in media because they have been all but made invisible in Korean society, with the exception of some appearances on television shows where parents are reunited with adoptees and the handful of parents active in the Dandelions Group of Adoptees’ Families of Origin, which was involved in the 2011 law revisions. The reason for this disappearance from society of the parents of nearly 200,000 adoptees may be theorized as a “social death” driven by structural violence, stigma against families who relinquish children, and the self-imposed

shame of having lost a child to adoption, despite having no other viable choice (Trenka 2010). Therefore, unwed mothers and parents who have lost children to adoption can be categorized as deviants with low political power.

### **3. 6. Social construction of adoptees: dependents**

The social construction of adoptees in Korea is consistently inconsistent. Kim Chaemin, a Ph.D. candidate from the progressive Anglican University in Korea, conceptualizes adoptees as having been sent for international adoption because their unwed mothers did not meet the post-colonial nation's standard of the "normal citizen." Kim claims that overseas adoptees who return to Korea become social minorities who do not enjoy equal rights as members of Korean society. In addition, he claims that the Korean government ignores the existence of the adoptees (Kim 2013). Hübinette has also claimed that in certain years, international adoption was tantamount to a state secret (Hübinette 2006). Yet, Yim and Young claim that Koreans' interest in overseas adoptees has grown, and that adoptees were formally included in the global Korean community when the Overseas Korean Foundation was legislated into existence in 1997. They claim that adoptees are seen as having been adopted because they were female, disabled, or born out of wedlock, and that they are not truly understood (Yim Young-Eon and Lim 2012). Hübinette's dissertation shows that adoptees are often represented as either successful or pathetic and destroyed, and that they can be saved through contacts with Korean people and culture (Hübinette 2006).

Recently, a handful of prominent, "successful" adopted individuals have captured the Korean media's attention, such as Fleur Pellerin and Jean-Vincent Place.

Fleur Pellerin is a French adoptee born in 1973 who became a minister-level politician in France. She is a member of the Socialist Party. On May 16, 2012 she was appointed by President François Hollande as Minister Delegate with responsibility for Small

and Medium Enterprises, Innovation, and the Digital Economy (Wikipedia 2013). Her success brought into clear contrast the difference between Pellerin who “worked hard by clenching her teeth” and adoptees such as Susanne Brink, who was adopted to Sweden and whose life of struggle was popularized in the Korean movie *Susanne Brink’s Arirang* (Song 2012).

Jean-Vincent Place of France was elected as the Green Party’s floor leader in December 2011. He was touted as the first ethnic Korean to win a seat in the French Senate in September 2011 (Lee 2012). Like Pellerin, he is sometimes used in newspaper articles as a contrast to adoptees who have suffered from racial discrimination, social discrimination, statelessness, fraudulent adoptions, and longing for their Korean parents and homeland (Shim 2012).

In short, the international adoptees, who have become more and more visible in Korean society due to their return to Korea both individually and en masse for conferences, are perceived simultaneously as having “grown up well” and also being a “thorn piercing the conscience of Korea” (Hankyoreh 2007). Perhaps this dual and opposing social construction of the “dependent” on Ingram’s chart is one reason that the government finds it difficult to create and follow through with a consistent policy around adoption. This group’s low political power in Korea has historically enabled others do whatever they pleased with adoption policy without the input of the dangsaja.

### **3. 7. Social construction of adoptive parents: advantaged**

The social construction of adoptive parents can be located in how unwed mothers are pressured by adoption agencies to relinquish their children in favor of adoptive parent. The adoption agencies compare the adoptive parents with the unwed mother during the counseling of the unwed mother. Adoptive parents are married, which is framed as

preferable to being unmarried, and they are depicted as being capable of raising a child better than the unwed mother due to their financial and professional standing (Choi 2010).

In addition, we can locate the social construction of adoptive parents in the way adoption is marketed to them. Holt calls the act of adoption “Love in action” and claims on its Web site that “It’s most beautiful when children receive love” (Holt Children's Services 2013). The Web site of the semi-governmental Korea Adoption Services proclaims, “Adoption is love” and “Adoption is happiness” (KAS 2013). In other words, adoptive parents are socially constructed as loving, happy people who are doing a good deed for children.

Adoptive parents are highly aligned with adoption agencies. Their alignment can be seen in Adoption Day, which is the Korean government’s holiday to promote domestic adoption that has been celebrated each May 11 since 2006. The festival in 2013, titled “Adoption is Love Born from the Heart” was the eighth of its kind (Sang-cheon 2013). The central government spends 100,000,000 Korean won on this one day each year. Festivities to celebrate the nationally designated holiday, which has its legal basis in the Special Adoption Law, are conducted by adoptive parent groups and adoption agencies in cooperation with the local governments and central government (Trenka 2010).

In addition, domestic adoptive parents can get generous government benefits for adopting a child. These benefits are advertised in many places, including subway cars, the KAS Web site, and the Web site of the private adoption agency Holt: 2,700,000 KRW in support for adoption expenses and 1,000,000 KRW for the designated agency (one-time payout); 150,000 KRW per month to support raising the adopted child under the age of 13; 2,600,000 KRW in medical support per year; and 200,000 KRW per month in support for psychological services for children under the age of 18. For children with disabilities, adoptive parents may get a subsidy of 627,000 KRW per month for a severely disabled child

and 551,000 KRW per month for a slightly disabled. (Ages are in international age, not Korean age, which is one to two years older than the Western counting system) (KAS 2013) (Holt Children's Services 2013). Observing the advertisements that are circulated targeting adoptive parents and the government benefits made available to them, I categorize adoptive parents as advantaged with high political power.



#### **4. 1. Stakeholder expectations of the Special Adoption Law: adoption agencies**

In 2008, the government had set aside budget to research the Special Adoption Law with an eye toward ratification of the Hague Convention on Intercountry Adoption, which it signed in May 2013. Because of this budget that was set aside, there arose a window of opportunity or an opening of the policy window during which stakeholders and lawmakers could mobilize to make changes in the law.

When the government set aside this budget, it created a task force in order to make recommendations about how the Special Adoption law should be amended. The government naturally went to the adoption agencies and those connected with the adoption agencies first, as they have always been the go-to people. At the time, the government could be viewed as on the adoption agency side, as there was not a strong alternative.

The adoption agency side was led by social welfare Professor Huh Nam-soon of Hallym University, who had formerly worked in adoption agencies and whose name can still be read on adult adoptees' adoption papers. She was designated as the leader of the task force that was mandated with researching how the Special Adoption Law should be amended in order to ratify the Hague Convention with Respect to Intercountry Adoption. Working with her on the team were Aju University law professor Yoon Seong-seung and Lee Bae-geun. At the time, Lee was the chair of the Korean Children's Promotion Center. Later that year, he became the chair of KCARE, which served as a kind of central adoption authority.

The first public hearing on amending the law was held on February 26, 2009 and hosted by the Ministry of Health and Welfare. The researchers who were invited to speak were those noted above. Discussants were Han Yeon-hee, the chair of the domestic adoptive parents' group MPAK; Park Hong-geun from the Holt adoption agency; Kim Sang-yong, a professor in the Chungang University Law Department; and Kim Dae-won from the adoptee

organization G.O.A'L., which later dropped out of the law revision process citing reasons of “neutrality.” Representatives from the overseas adoptee organizations TRACK and ASK, which ultimately finished the revision process, were in the audience at the time and demonstrated for inclusion in the process and language access by using picket signs; the public hearing was conducted entirely in Korean without formal interpretation or translation provided. (G.O.A'L. had brought translators, but they were not given time to speak or microphones. There was no translation booth with professional translation or listening devices.)

The adoption agency side called for the protection of children against domestic adoption dissolution, an increase in post-adoption services, and the establishment of a central adoption authority. In addition, they called to lower the age at which children may consent to be adopted (Hong 2009).

In the months between the first and the second public hearing, KoRoot (a civil organization serving adoptees) and adoptees had attended government task force meetings. In the second public hearing, interpretation devices were provided for non-Korean speakers by the Korean Women's Development Institute (KWDI). It was held on July 1, 2009 and sponsored by the Ministry of Health and Welfare and KWDI. It is significant that KWDI was involved in this point, because it meant that adoption started to be seen as a women's issue. At this hearing, Professor Huh Nam-soon recommended the following:

a. Agreement with other laws regarding children on the age at which a child becomes an adult. She recommended that the age change from 18 to 19, although she did not indicate whether she meant international age or Korean age.

b. Strengthening the qualifications needed for adoptive parents. Adoptive parents could not have histories of child abuse, violence, or crime. Adoptive parents should have a

homestudy before adopting. Ethnic Koreans living overseas should be treated as domestic adoptive parents.

c. The consent process of adoption should be simplified so children who are in facilities can be adopted.

d. There should be a careful deliberation system introduced before adoption. The age of consent for adoption should be changed from 15 to 13 years. A child may not be relinquished for adoption until 72 hours after birth and adoption proceedings have to start 30 days after consent to adoption.

e. Establishment of the “central adoption information center.”

f. Domestic adoption preference.

g . Overseas Koreans should be treated as an exception because they have “Korean blood” and can teach Korean culture.

h. The government should offer social welfare services to adoptive families in their provinces and support for finding birth families.

i. The adoptee has a right to access their birth information.

j. Expansion of benefits provided for for child-rearing of adopted children (Huh 2009).

The adoption agency side, in the end, did not produce a fully amended bill. However, their suggestions were taken into account in the wholly revised amendment. The suggestions that they made that were met by the 2011 amendment were the following: Benefits for adoptive parents were expanded not by the law, but policy. By law (but not practice), adoptees gained the right to access most of their birth information and support for finding their original families through post-adoption services. Domestic adoption preference was legalized, as was the central adoption authority, which is tasked with post-adoption

services. The age of a child's consent to adoption was lowered and screening of adoptive parents in an attempt to prevent adoption dissolution was strengthened.

The suggestions that they made which were not met by the amendment were the following: The adoption agency recommended a 72-hour waiting period after birth before a child could be relinquished, but the law that was passed expanded the waiting period into 7 days, which was a compromise with the adoptee side's even longer 30 days. The automatic termination of parental rights for children living in facilities was accomplished by a different law on December 29, 2011. There was no exception made for overseas Koreans in the law. However, MPAK reported that on the policy level, Korean-American adoptive families, in which one of the couple was of Korean descent, would be given priority exit permits for their adoptive child starting from fall of 2011, a full year before the law was enforced (Morrison 2011).

#### **4. 2. The demands and expectations of the affected parties**

The coalition of parties affected by international adoption that banded together to revise South Korea's Special Law on Adoption Promotion and Procedure consisted of the overseas adoptee organizations Truth and Reconciliation for the Adoption Community of Korea (TRACK) and Adoptee Solidarity Korea (ASK), the civic organization KoRoot (House of Korean Root), the Korean Unwed Mothers and Family Association (KUMFA), and the Dandelions group for parents who lost children to adoption. The bill was drafted by the Gonggam Public Interest Lawyers and sponsored by National Assembly member Choi Young-hee from the Democratic Party (Trenka 2011).

TRACK had originally conceived of Korean international adoption not as an international or foreigners' issue, but as a Korean issue amongst Koreans. This is because all

the adoptees had been born in Korea to at least one Korean parent. For this reason, in February of 2008, TRACK paid visits to both the National Assembly Office of Civil Affairs and the Ombudsman of Korea. It was at the Ombudsman of Korea, where TRACK ended up filing the request for investigation that would ultimately propel the group into becoming involved in revising the Special Adoption Law. The group had documented dubious practices that have been discovered by adoptees, particularly those who have been reunited. The practices that they cited in their complaint included, but were not limited to, the following:

1. Unclear relinquishment -- parent did not relinquish under real name, a person other than the parent relinquished, only one parent relinquished, the child was relinquished for domestic but NOT international adoption, or the signature on the relinquishment form appeared to be forged.
2. Kidnappings within the family, particularly by paternal grandmother.
3. Misrepresentation of child's information to adoptive parents and Western adoption agency such as age, social history, and medical history.
4. Contradictions in the adoption file of the same child. Contradictions had been found going from Korean-language record to Korean-language record (from police to orphanage to agency, or intra-agency), as well as Korean-language record to English-language record (or other Western language).

5. Kidnapping by orphanage -- the Korean parent came looking and they were told that the child was not there, or had died.
6. An “orphan *hojuk*” (birth registration) made to replace the child's real *hojuk*. The fake orphan *hojuk* was used for adoption.
7. The child was recorded as having been sent to a different adoptive country than they really were and were recorded as having gained the citizenship of the wrong country.
8. The child was switched for another child who was not able to be sent at the time the adoption was scheduled (TRACK 2008).

The Ombudsman’s Office was folded into the Anti-Corruption and Civil Rights Commission after President Lee Myung-bak took office in 2008, and TRACK’s cases were closed by the commission on June 8, 2008. Because the leadership of TRACK felt that the the commission gave superficial responses to the complaint, TRACK took the issue to the Gonggam Public Interest Lawyers, who advised participation in the amendment process of the Special Adoption Law. The complaints filed with the ombudsman were incorporated into the adoptee coalition’s vision for the law, and were transformed into key demands. One of these demands was the provision that children sent for adoption would have to be adopted using their original birth registration documents. This came out of the experience of the adoptee community’s struggle to reunite with families, which was made harder because of the practice of anonymous abandonment and use of fabricated birth registration documents (Trenka 2011).

In order to bolster their cause, adoptees cited international law and Korea's need to meet the standards of international law with regard to the procedure of adoption throughout the process of revising the Special Adoption Law. They continually referred to the complaint filed with the ombudsman as grounds for the need to reform the adoption system (Trenka 2011). The main demands of the coalition of dangsaja, as listed on their last pamphlet that they circulated in order to pass the law, were the following:

**1. A paradigm shift from adoption promotion to family preservation first**

- Change the title of the adoption law so it would no longer say adoption “promotion.”
- Support unwed mothers and lower-class families through expanded support policies.
- Strengthen domestic adoption first and install a watchdog.
- Put the best interest of the child first and obey international standards.

**2. Improve the adoption process to put the child's welfare first**

- Strengthen screening of adoptive parents.
- Install a 30-day waiting period before the mother is allowed to relinquish her child.
- All domestic and international adoptions have to go through the court.
- Adoptions have to be completed in Korea.

**3. Establishment of a central authority**

- The central authority should be a watchdog over the adoption agencies.
- The dangsaja should have the right to participate on the central authority's board.

#### **4. The adoptee has a right to find their roots**

- The adoptee can get their personal information with the exception of the parent's identifying information in case the parent does not consent, but there is a need to get medical information.
- When the adoptee is 19 years old in international age, he or she has the right to apply for his or her information. The adoption agency has a duty to protect the adoptee's information.

#### **5. The Special Adoption Law should be in accordance with the Hague Adoption**

**Convention and the United Nations Convention on the Rights of the Child (Kim 2011).**



#### **4. 3. The government's language on the final bill**

In addition to civil society, a total of 48 Members of Parliament were involved in proposing amendments to the law. There were four bills to amend the Special Adoption Law proposed to the Health and Welfare Committee of the National Assembly on June 20 and June 22, 2011. The Government and two Members of Parliament had fielded partially amended bills, while MP Choi Young-Hee proposed a fully amended bill. Choi worked with KoRoot, TRACK, ASK, Dandelions, and KUMFA<sup>2</sup>. The final Bill #12414 that was passed was a substitute bill proposed by the Health and Welfare Committee that integrated elements of all four bills into the law. Because Choi Young-hee had proposed a fully revised bill and the others were only partially amended, there are more elements of Choi Young-hee's bill in the final product than there are of the others. Because it was this bill that was passed, the government bill can be viewed as having come over to the side of the dangsaja in the end. The government's expectations and reasoning became harmonized with that of the dangsaja. Although there were a few details that differed, the final law was not much different from the one that the dangsaja proposed. The difference in details included the fact that the waiting time for relinquishment was reduced to 7 days after childbirth, down from the 30 days that the dangsaja proposed, and the central authority did not get power as a watchdog.

The Health and Welfare Committee of the National Assembly stated its reasons for amending the Special Adoption Law, citing the subsidiarity principle of The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. This principle states that the best option for a child is to

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<sup>2</sup> The bills proposed were the following: the Government's Bill #1810473, introduced June 13, 2011; Bill #1808103, introduced by 17 MPs including Lee Yae-ju on April 12, 2011; Bill #18102693, introduced by 18 MPs including Kim Jong-ryul; and Bill #1808453, introduced by 13 MPs including Choi Young-hee on April 12, 2011.

be raised in his or her own family. If that is not possible, then to be raised in one's own country is preferable. Intercountry adoption should be used as the last resort. The Government stated that contrary to this principle, the law before the amendment promoted adoption and even contained measures to simplify the adoption process. Because the law was meant to handle adoptions to foreigners and was used mainly for that purpose -- with the exception of its use in some domestic adoptions, mainly of older children who had lived in orphanages -- it can be said that a main Government interest in amending the law was to bring the country up to Hague Convention standards.

In line with the Hague Convention's principle of subsidiarity, the Committee also stated that the Government should support direct child-rearing by biological parents, who should be given sufficient counseling and information on child-rearing. In keeping with the principle that domestic adoptions shall be held to the same standards as international adoptions, the Committee explained that both domestic and overseas adoptions should go through a court process, adding that the regulation of domestic adoption promotes the rights, benefits, and well-being of children. In addition, the Committee said that in order to give the utmost benefit to children, biological parents may not relinquish a child until seven days after birth. Finally, in the case of an adoption, adoptees must be given access to their personal information.

The following is a translation of the government's summary of the main content of the bill that passed (National Assembly 2013).

A. Change of the name of the law from "Special Law Concerning Adoption Promotion and Procedure" to "Adoption Special Law" (Title).

B. The purpose of this law is to promote the rights, best interests and well-being of children who are being adopted by regulating necessary supporting matters concerning adoption conditions and procedures for children who need to be protected (Article 1).

C. The government shall look for domestic adoptive parents as the first priority when children need to be adopted. According to a decree of the Health and Welfare Ministry, the head of the adoption agency has a duty to take measures to find domestic adoptive parents when children need to be adopted, and must report to the relevant head of governmental agency. Overseas adoption shall only be possible when the children need to be adopted are unable to find domestic adoptive parents, despite the above efforts and measures of the relevant organizations (Article 7).

D. The qualifications of the adoptive parent candidates shall be strengthened: they must be clear from a history of child abuse, domestic violence, drug abuse, crimes, and alcohol abuse; prior to adoption, they shall take relevant education courses from adoption agency according to a decree of the Health and Welfare Ministry (Article 10).

E. The adoptive parent candidates shall be established on the above conditions, and then they can apply to the family court for adoption permission (Article 11).

F. Biological parents can give adoption consent after one week of the birth of a baby, and not before then. The biological parents shall not be eligible to receive

any money, benefit or compensation whatsoever because of the adoption consent (Article 13).

G. Adopted children shall be given the same rights as “fully adopted” children according to the Civil Law (Article 14).

H. If the adoptive parents abuse the adopted children or vice versa, they can dissolve the adoption in Family Court (Article 17).

I. In order to promote domestic adoption and take relevant measures regarding adoption, the Health and Welfare Minister shall establish and operate a Central Adoption Authority (CAA). The CAA shall accumulate and operate an integrated database system on adoptees, adoptive parents, and biological parents (Article 26).

J. The adoptees can apply for information access to the CAA or the adoption agencies. The heads of CAA or adoption agencies shall reveal information with the consent of the biological parents. If the biological parents refuse to reveal identifying information about themselves, non-identifying information shall be revealed (Article 36, Clause 1 and 2).

K. For medical purposes of adoptees or in special circumstances, such as in the case of the biological parents’ deaths or other inevitable reasons in which consent cannot be obtained, the adoption information can be revealed regardless of the permission of the biological parents (Article 36, Clause 3).

### **Timeline of Events Related to the Adoption Law Revision**

- January 2008 - TRACK submits six cases of adoption irregularities to the Ombudsman of Korea, which was later folded into the Anti-Corruption and Civil Rights Commission.
- August 2008 - TRACK forms alliance with the Korean Public Interest Lawyers' group Gonggam and National Assembly Rep. Choi Young-hee.
- Fall 2008 - Law coalition of TRACK, ASK, and KoRoot formed.
- Fall 2008, 2009, 2010 - Rep. Choi Young-hee submits questions from TRACK, ASK, and KoRoot to the National Assembly audit of the Ministry of Health and Welfare.
- 2009 - The Ministry of Strategy and Finance allocates 720 million won to set up a "central authority"<sup>3</sup>.
- January 2009 - TRACK starts struggle for language access at government public hearings.
- February-March 2009 - TRACK and KoRoot attend Ministry of Health and Welfare's adoption law reform meetings.
- May 11, 2009 - TRACK puppet performance and public education event at Boshingak in downtown Seoul start media attention for adoptee, birthfamily, and unwed mothers' rights.
- July 2009 - Simultaneous professional translation is provided by the Korean Women's Development Institute at the ministry's second public hearing, enabling adoptees to talk directly to the Korean government about laws affecting their lives.

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<sup>3</sup>Establishing a central authority is necessary for South Korea to ratify the Hague Convention on Intercountry Adoption.

- July 2009 - Miss Mamma Mia, later called Korean Unwed Mothers and Family Association, joins the law coalition.
- August 2009 – Adoptees petitioned the Ministry of Health and Welfare to include the adoption community in adoption law revisions. So Rami from the Gonggam Public Interest Lawyers is appointed to the government task force.
- November 10, 2009 – A public hearing on the coalition’s adoption law revision bill, sponsored by Rep. Choi Young-hee, is held at the National Assembly.
- May 11, 2010 - Press conference held by Choi Young-hee to introduce the bill to the National Assembly.
- June 2010 - National Assembly TV broadcast on the Special Adoption Law revisions airs.
- September 26, 2010 - The Ministry of Justice announces that adoptions of children by Koreans and foreigners should be approved by the court and sets up a committee to discuss how to amend the civil law.
- March 2011 - Dandelions group of parents who lost children to adoption join the coalition.
- March 10, 2011 Choi Young-hee makes motion to ratify the Hague Convention with Respect to Inter-country Adoption, Bill #1808456.
- March 11, 2011 The Single Parent Support Bill #1811098 sponsored by Choi Young-hee is passed. The bill requires the separation of adoption agencies and unwed mothers’ homes. Adoption agencies are banned from owning or operating unwed mothers’ homes from July 2015.
- April 2011 - The review of the adoption bill introduced by Choi Young-hee is completed by the Health and Welfare Committee. The bill goes into the Health and Welfare subcommittee, but is neither forwarded nor rejected.

- May 11, 2011 - TRACK, KoRoot, Korean Unwed Mothers and Family Association, and Korean Single Parent Association declare “Single Moms’ Day” to challenge the government and adoption agency-led “Adoption Day.” The conference held in celebration is called “Redefining Family: Moving from Adoption to Family Preservation.” The three major TV broadcasters cover the event, as well as many newspapers and internet sites. Single Moms’ Day continued in 2012 and 2013.
- June 29, 2011 - Special Adoption Law wholly amended.
- July 2011 – Three adoption agencies that own/operate unwed mothers homes file a complaint to the Constitutional Court saying that the Single Parent Support Bill requiring the separation of adoption agencies and unwed mothers’ homes violates their right of choice of employment (Oh 2013).
- August 5, 2012 - Special Adoption Law amendments enforced.
- September 2012 - Holt domestic adoptive parents’ group, MPAK, and babybox pastor start campaign to re-revise Special Adoption Law and connect babybox abandonments with the law revisions.
- October 2012 - U.S. branch of Mission to Promote Adoption in Korea connects babybox abandonments with the Special Adoption Law on its blog.
- January 18, 2013 - Baek Jae-hyun makes recommendation to re-revise the Special Adoption Law.
- February 19, 2013: Baek Jae-hyun, babybox Pastor Lee Jong-rak, Mission to Promote Adoption in Korea, and domestic adoptive parents group try to propel Cosette Law in the National Assembly (Kim 2013).

### **5. 1. Unintended outcomes: Abandonment?**

Only about two months after the law was implemented in August 2012, media reports started called for the re-revision of the law (Ahn 2012). By January 2013, Member of Parliament Baek Jae-hyun added his voice calling for revisions, along with the adoption agency Holt, adoption agency Social Welfare Society, adoption agency Eastern Social Welfare Society, adoptive parent groups, the pro-life movement, and Pastor Lee Jong-rak, who runs the babybox anonymous child abandonment site at the Jusarang Church in Gwanak-gu (Yeom 2013) (Kim 2013).

These groups claimed that unwed mothers have a “right” to anonymously abandon their children, and that the Special Adoption Law revisions violate this right. They said that unwed mothers may murder their children if they do not have the option to anonymously abandon them, and the child’s right to life is more important than the right to identity. Against this backdrop, the babybox became a symbol of the movement saying that the Special Adoption Law must be re-revised.

It was a fact that abandonments in the box had gone up. But would these children have really been killed by their own mothers if the babybox were not available? If the babybox were a true alternative to infanticide, we should see such killings decrease when the babybox was introduced. Instead, we see that since the babybox was introduced, infanticides have stayed about the same. There has been an average of 12 infanticides per year from 2006-2012. During the one-year period after the Special Adoption Law was enforced (August 2012 to July 2013), there were 11 infanticides and 1 attempted infanticide reported by the media, for a total of 12 in the one-year period, completely consistent with the



average<sup>4</sup>. The fact that the babybox has done nothing to decrease infanticide in Korea echoes findings from the U.S. (Murat 1999), Austria (Willenbacher 2004), and Germany (Hommes

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<sup>4</sup> The following are the infanticides reported by the Korean media to have occurred during the one-year period after the revisions to the Special Adoption Law were implemented on August 5, 2012. Married people are indicated with an \*asterik.\*

1. Seoul, Guro-gu August 10, 2012, female teenager
- \*2. Changwon City November 25, 2012, mother Choi age 37, married to father Jeong age 42
3. Daejeon, December 30, 2012, woman 27 years old
- \*4. Busan, January 7, 2013, housewife age 33
5. Anseong February 4, 2013, unwed mother age 26 (intended to kill but was caught)
6. Paju City March 12, 2013, mother age 20
7. Ulsan, March 22 2013, unwed woman age 37
- \*8. Daegu, March 24, 2013, housewife age 43
9. Gwangju, April 24, 2013, unwed mother in her 20s
- \*10. Yeongju, June 10, 2013, father age 39
- \*11. Daegu, June 2013, mother aged 36

1. Seoul, Guro-gu August 10, 2012, female teenager

High school student had baby in the bathroom at home and wrapped it in a towel and killed it. Then she put the body in a plastic bag and six hours later threw away the body away in the Sindorim subway women's bathroom. She was ashamed to tell her family or friends that she was pregnant (Park 2012).

Regarding the same story, another newspaper said that teen unwed mothers need emotional support and a policy to prevent against abandonment and infanticide (Park 2012).

2. Changwon City November 25, 2012, mother Choi age 37, married to father Jeong age 42

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The 36-month-old son was crying loudly, and then there was violence. After that they put the body in a suitcase and abandoned in a reservoir. Both mother and father were put in prison (Kang 2012).

3. Daejon, December 30, 2012, woman 27 years old

Suspect was caught by police February 23 2013 in Nonsan. She gave birth in Daejon in a motel alone to a child born from relationship with a boyfriend that had broken up two years before. She is suspected of smothering the child and put it in a shopping bag, and then putting the corpse in a locker in the subway. Then in the city of Gyeongsang, Eomsamyeon, Dogokri on a hill, she buried the body. Her fingerprint was collected from the shopping bag (Kim 2013).

4. Busan, January 7, 2013, housewife age 33

A two-month-old boy was smothered with a handtowel. The mother called the emergency line and turned herself in. She said she did not have the ability to raise her child (Park 2013).

5. Anseong February 4, 2013, unwed mother age 26 (intended to kill but was caught)

Mother gave birth to boy in her own house, put the baby in a black plastic bag, and then intended to bury the child in her home's yard. Neighbors heard the crying of baby and intervened. The baby was taken to the hospital, and there was no health problem. They questioned a married man who the mother said was the father of the baby. He said that he is not the father. (Herald Economy 2013)..

6. Paju City March 11, 2013, mother age 20

Mother did not know what she was pregnant. Now she is getting treatment at a hospital. The mother had a friend age 21 living in the same apartment, and this mother reported the infanticide. The dead baby found in the apartment bathroom in the garbage. Authorities were trying to find out the cause of death (Lee 2013).

7. Ulsan, March 22 2013, unwed woman age 37

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A 37-year-old woman gave birth to boy baby in a gas station bathroom and killed the baby in Ulsan and abandoned it. In court she got a prison sentence of two years with a stay of execution for three years, probation for two years. She was sentenced this way because of the hard situation of the mother who had economic difficulties and didn't know who the father was. She was a noraebang hostess (Ban 2013) (Kim 2013).

8. Daegu, March 24, 2013, housewife age 43

A housewife aged 42 in Daegu strangled her baby to death on March 24, 2013. She had a rare genetic disease and had anxiety that her third child would probably have it too and be a disabled person. Her non-disabled family did not welcome her pregnancy because of this disease, and therefore she took this action (Choi S.-h. 2013). Choi, I.-y. 2013).

9. Gwangju, April 24, 2013, unwed mother in her 20s

A woman in her 20s who had been raped gave birth to a boy. On August 14, 2013 there was an arrest warrant issued for her by the West Gwangju Police and her whereabouts were guessed to be in the city of Cheonan. At the time of the four-month-old child's death the woman stated that on April 24 in a house in Gwangju she fed her child milk and put him to sleep, and when she got up and looked at him he was no longer breathing. According to the autopsy there was no powdered milk in the body and the child had been smothered. It is suspected that she smothered him by holding a hand towel over his nose and mouth. She had suffered from severe depression after she was raped. She said that every time she looked at the baby, she thought of the rape (Bae 2013) (Channel A 2013) (Jang 2013).

10. Yeongju, June 10, 2013, father age 39

In the city of Yeongju a 39-year-old man was suspected of killing his three-month-old child and the child's grandmother who was taking care of the child. He intended to kill his new wife and their child, but she was out at the time and he found his new wife's mother taking care of the child so he killed her instead. He had been divorced and had gotten married again (Kim 2013).

2013) (Werner 2012) that have also shown that infanticide does not decline with the introduction of anonymous abandonment mechanisms.

Why do infanticides remain stable even if anonymous abandonment is presented as an option? In the case of Korea, we might guess that a mother who takes the time to find the babybox has some ability to acknowledge her pregnancy, try to plan what to do about it by making phone calls, and to actually find the babybox, which is located far from the nearest subway station and up a steep hill. If we read on the internet the tragic stories of mothers who have committed infanticide, we see a much different kind of mother. We see mothers who, for example, do not seem to be aware of or acknowledge their pregnancies and who therefore seem to have made no plans for childbirth.

For instance, one baby was found dead in a plastic bag in the Line 2 Sindorim subway station bathroom on August 10, 2012. The mother was a high school student who was ashamed to tell her family or friends that she was pregnant (Park 2012). The Sindorim subway station in Seoul is on the same subway line as the subway station nearest to the babybox, and is located only three stops away, a ride of less than 10 minutes. Despite her proximity to the babybox, the student apparently did not have the ability or interest in using the babybox anyway.

Studies from Austria (Danner 2005) and the U.S. state of Nebraska (Donnelly 2009) have shown that mothers who kill are not the same ones as those who utilize babyboxes.

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11. Daegu, June 2013, mother aged 36

A mother killed her autistic daughter aged 4. The mother was most likely married, although it was not stated in the news article (which is why we can assume she was married). She had originally intended a murder-suicide, but only killed her daughter (CBS No Cut 2013).

Moreover, they show that a major risk factor for infanticide is the denial of pregnancy (Oberman 2003) (Overpeck 1998) (Craig 2004) (Racine 2005) or a psychological state of disassociation (Spinelli 2003). The fact that in Korea, the number of infanticides is fairly stable seems to show that in any given year, there is a fairly predictable number of parents who will kill their children and who unfortunately are not be reachable by the offer of an abandonment site, even if it is nearby.

**Table 5: Yearly Abandonment vs. Infanticide<sup>5</sup>**

	2006	2007	2008	2009 (Babybox made Dec. 2009)	2010	2011	2012
Abandonment	88	87	63	52	62	127	139
Infanticide	4	11	12	12	18	12	16

**Table 6: Abandonment vs. Infanticide by Period<sup>6</sup>**

	January to July 2013	One-year period after SAL implemented: August 2012 – July 2013	Period B	Period C
Abandonment	152	214	77	152
Infanticide	8	11	3	8

As seen in the table above, infanticides went up the year after the babybox was introduced, then went back down to the level of 2009, the year it was introduced, then shot back up in 2012. Therefore, it is impossible to say that the babybox in Korea does anything to prevent infanticide. On the other hand, abandonments in Korea had been falling since 2007, but after the babybox was made in December 2009, they rose in 2010 and continued to rise. In Germany, abandonments also rose after the introduction of a babybox (Riedel 2006).

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<sup>5</sup> Source for 2006-2008 abandonment and infanticide: Kim, S. (2010). Babies left on the street. BabyNews. Seoul.

Source for 2009-2012 abandonment and infanticide: Park, S.-b. (2013). 300,000 youth expose 'dangerous sexual relationship' Money Today. Seoul.

<sup>6</sup> Source: Department of Child Welfare Policy. (2013). Document from the office of National Assembly member Min Hyun-ju.

What effect does the babybox in Gwanak-gu actually have? I argue that Korean mothers are not different from the rest of the world's mothers, and the babybox is not different from the rest of the world's anonymous abandonment sites. Clearly, the babybox in Gwanak-gu, which is so easily analyzed because it is the only one in Korea, has not done anything to save lives. It has only encouraged abandonment, posing as a legitimate form of child protection to women in crisis who need actual services.

### **When did abandonments rise?**

If we look at abandonments in the babybox following the revision of the Special Adoption Law just casually with a layman's eye, we see that in August, the month that the Special Adoption Law was enforced, there were eight abandonments, up two from July. This increase of two abandonments was cited by those involved in overturning the Special Adoption Law as the reason for their activity. However, after one more month, abandonments in the babybox fell from eight to seven. In October, the abandonments dropped to a level that was better than before the Special Adoption Law was enforced, since there were only four abandonments. Abandonments in both November and December were at seven. Then in January, the number dropped to six, the same as before the Special Adoption Law was enforced. However, in February, there was a huge jump, going into the double digits for the first time to 15. After that, the number of abandonments in the babybox has stayed in the double digits.

The following tables compare abandonments in Gwanak-gu and Not Gwanak-gu (i.e., every other place in the country). The vast majority of abandonments in Gwanak-gu are assumed to be in the babybox.

**Table 7: Abandonments in Gwanak-gu and Not Gwanak-gu, Period A**

	<b>Period A (January 2012 – July 2012): Before the Special Adoption Law was revised</b>						
	<b>Jan.</b>	<b>Feb.</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>
<b>Gwanak-gu</b>	3	2	2	3	5	5	6
<b>Not Gwanak-gu</b>	3	3	5	6	4	9	6
<b>Total Gwanak + Not Gwanak</b>	6	5	7	9	9	14	12
<b>% of total in box</b>	50	40	28.6	33.3	55.6	35.7	50
<b># of news stories</b>	8	1	0	0	0	0	0



**Table 8: Abandonments in Gwanak-gu and Not Gwanak-gu, Period B**

	<b>Period B (August 2012 – December 2012) Month of and immediately following the revision of the Special Adoption Law</b>				
	<b>Aug.</b>	<b>Sept.</b>	<b>Oct.</b>	<b>Nov.</b>	<b>Dec.</b>
<b>Gwanak-gu</b>	8	7	4	7	7
<b>Not Gwanak-gu</b>	9	4	12	8	11
<b>Total</b>	17	11	16	15	18
<b>% of total in box</b>	47.1	63.6	25	46.7	38.9
<b># of news stories</b>	0	3	6	4	12

**Table 9: Abandonments in Gwanak-gu and Not Gwanak-gu, Period C**

	<b>Period C (January 2013 – July 2013): Month of and immediately following MP Baek Jae-hyun’s announcement of proposed legislation to revise the Special Adoption Law because of “increased abandonments.”</b>						
	<b>Jan.</b>	<b>Feb.</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>
<b>Gwanak-gu</b>	6	15	17	19	15	17	18
<b>Not Gwanak-gu</b>	6	5	3	5	9	5	12
<b>Total</b>	12	20	20	24	24	22	30
<b>% of total in box</b>	50	75	85	79.2	62.5	77.3	60
<b># of news stories</b>	16	22	18	42	17	5	5

How can we explain the rise in abandonments in the babybox, which have gone up since January to create a crisis situation? We certainly cannot say that it happened because of the Special Adoption Law revisions because it did not happen immediately after the Special Adoption Law was implemented. So when exactly did the rise happen? In order to make scientifically make sense out of the numbers, we need to analyze them using statistical methods.

We want to know the following: 1. Did the abandonments rise? 2. When did they rise? 3. Where did they rise? 4. Is there a difference between abandonments in Gwanak-gu, where the babybox is located, and all other areas of the country?

In order to measure the abandonments, let's conceptualize an imaginary population of all the children abandoned in Korea at all possible sites. One site is Gwanak-gu (G), and we will consider that since most children abandoned in Gwanak-gu are abandoned at the babybox, Gwanak-gu will be the same as the babybox for our analytical purposes. The other sites are anyplace that children are abandoned throughout Korea, in any district and at any site such as a bathroom. We conceptualize that we cannot know how many children there are abandoned at these other nationwide sites because the children might not be found. These sites are called "not Gwanak-gu."

We want to estimate the median of the sample of the population in Gwanak-gu and the upper and lower confidence limits of the estimated median at a confidence level of 95%. The confidence interval means that we can be 95% confident that the true mean of the population falls somewhere in between the lower and upper limits.

We also want to do this same procedure for the sample of the population that is not Gwanak-gu, representing abandonments at all other possible sites. Then we will compare Gwanak-gu with the sample of the population from not Gwanak-gu.

The information on abandonment for each month from January 2012 through July 2013 comes from the National Police Agency via MP Min Hyun-ju's office. I have divided the abandonments into three periods:

- Period A is January 2012 through July 2012. This is the seven months leading up to the enforcement of the Special Adoption Law revisions.
- Period B is from August 2012 to December 2012. The Special Adoption Law revisions were enforced on August 5, 2012. The five-month period that follows is the immediate period following the enforcement.
- Period is from January 2013 to July 2013. January 2013 is the month when MP Baek Jae-hyun joined the babybox supporters, adoption agencies, domestic adoptive parents, and pro-life groups who advocated for the re-revision of the Special Adoption Law. This marks the beginning of increased media attention on the babybox due to the proposed legislation to re-revise the Special Adoption Law that was dubbed the "Cosette Law." July 2013 marks the last month of the 12-month period in which the Special Adoption Law has had time to take effect after its enforcement.

**Table 10: Abandonments in Gwanak vs. Not Gwanak: Estimated Median, Lower Confidence Limit, Upper Confidence Limit at a Confidence Level of 95%<sup>7</sup>**

	Period A			Period B			Period C		
	Estimate	LCL	UCL	Estimate	LCL	UCL	Estimate	LCL	UCL
Gwanak-gu	3.7143	2.2312	5.1973	6.6000	4.7169	8.4831	15.2857	11.2645	19.3069
Not Gwanak-gu	5.1429	3.1862	7.0996	8.8000	4.9329	12.6671	6.4286	3.6103	9.2468

Using SAS (Statistical Analysis Software), we can see that at the 95% confidence level, the interval between the lower confidence limit and upper confidence limits for Gwanak overlap for Period A (2.2312 to 5.1973) and Period B (4.7169 to 8.4831). This means that it is possible that the mean might not actually be changed because although the mean is estimated at a certain level, it can be anywhere between the lower and upper confidence limits. In other words, there is no significant change in Period B from Period A. However, the interval of the lower and upper confidence limit for Period C (11.2645 to 19.3069) does not overlap with Period A or Period B. This shows that there is a statistically significant change in Period C from both Period A and Period B. The meaning is that in Period C, during which legislation was proposed, abandonments went up in Gwank-gu

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<sup>7</sup> Calculations made using SAS (Statistical Analysis Software).

significantly. However, during Period B, directly after the enforcement of the Special Adoption Law, abandonments did not go up significantly.

If we look at the sample of the population called “Not Gwanak-gu,” we see that the at the 95% confidence level, the interval between the lower confidence limit and upper confidence limits for overlap for Period A (3.1862 to 7.0996) and Period B (4.9329 to 12.6671). Again, this means that it is possible that the mean might not actually be changed because although the mean is estimated at a certain level, it can be anywhere between the lower and upper confidence limits. In other words, there is no significant change in Period B from Period A. Then, we see that the interval of the lower and upper confidence limit for Period C (3.6103 to 9.2468) overlaps with both Period A and Period B. This shows that in places where children are abandoned throughout the country, there has been no statistically significant change from Period A, B, or C.

The meaning is that there has been no significant statistical change in the number of abandonments in the year following the enforcement of the Special Adoption Law in every part of the country except Gwanak-gu.

In addition, we can see that in Period C, Gwanak-gu (11.2645 to 19.3069) and not Gwanak-gu (3.6103 to 9.2468) for the first time do not overlap, meaning that in Period C a statistically significant difference developed between the number of children going into the babybox and the number of abandonments everywhere else. This means that although the whole country is operating under the same conditions as far as legal requirements for adoption, Gwanak-gu is exceptional, and what makes it exceptional is the presence of the babybox and its ability to encourage the abandonment of children.

Finally, we see that when we compare the proportion of children abandoned in the babybox every month to those who are abandoned in other places, only in Period C does the

majority of children end up in the box every month, which is not the case in Period A or Period B.

### **Abandonment and the Media**

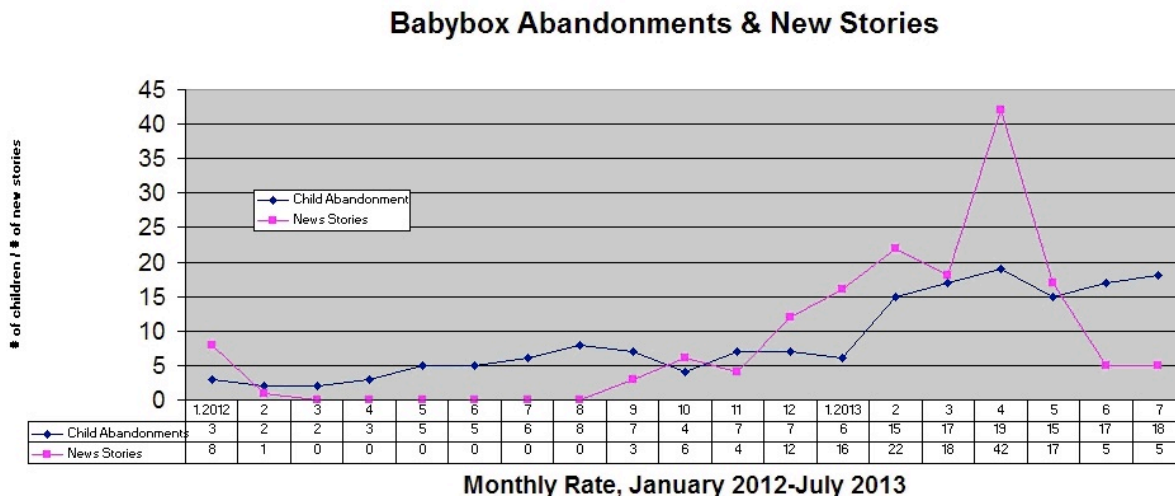
While the Special Adoption Law is being accused of being the cause of increased abandonments, proving causation scientifically is not possible in this case. There are too many factors and too many unknowns, the least of which is that there are no reliable statistics kept on the rate of births to unwed mothers, if they are indeed the people who are abandoning these children. (This is also questionable since the abandonments are by nature anonymous). Those who want to re-revise the Special Adoption Law might say that there is at least a correlation between the increase in abandonments and the enforcement of the Special Adoption Law, but I have already disproved that above: There was no significant statistical difference between the abandonments in the box before and immediately after the implementation of the Special Adoption Law; the statistically significant change started in Period C, which I measured starting in January 2013.

If we think more deeply about what happened in January 2013, which starts my Period C, we recall that it was during that month that the media reported that MP Baek Jae-hyun had joined a coalition of organizations working to revise the Special Adoption Law and was sponsoring a bill called the “Cosette Law,” which aimed to allow anonymously abandoned children to be sent for adoption, as in the past. In February, Baek sponsored a forum at the National Assembly in which he tried to make a case to propel the “Cosette Law” forward as a piece of legislation. The organizations that backed this legislation included domestic adoptive parent groups originating at Holt and Eastern adoption agencies, a pro-life group, Mission to Promote Adoption in Korea, which has branches in the United States and Korea, and the three adoption agencies permitted to perform international

adoptions: Holt, Social Welfare Society, and Eastern (Eastern Welfare Society 2013). Holt adoption agency had come out as early as October 1, 2012 in the newspaper against the Special Adoption Law revisions, speaking supposedly on behalf of unwed mothers' right to abandon their children anonymously in an article that connected abandonments in the babybox with the Special Adoption Law (Ahn 2012). During this Period C, media reports on the babybox, especially those blaming the Adoption Special Law for an increase in abandonments at the babybox, rose dramatically. Against this backdrop, let's look again at the number of abandonments compared with the number of news reports highlighting the babybox.

The following graph shows that the number of abandonments and the number of news stories on the babybox rise together.

**Graph 11: Babybox Abandonments & News Stories**



Source on abandonment: Department of Child Welfare Policy (2013).  
News stories were compiled using an online search by KoRoot staff.

Using statistical methods again, we can perform a linear regression analysis on SAS using the number of news stories about the babybox as the independent variable and the number of abandonments as the dependent variable. The parameter estimates predict the dependent variable from the independent variable. The regression equation used by SAS is:

$$Y^{\wedge} = b0 + b1 * x1$$

$$\text{Abandonment}^{\wedge} = b0 + b1 * \text{News}$$

$$b0^{\wedge} \text{ intercept} = 5.74197$$

$$b1^{\wedge} \text{ intercept} = 0.35788$$

$$\text{Abandonment}^{\wedge} = 5.74197 + 0.35788 * \text{News}$$

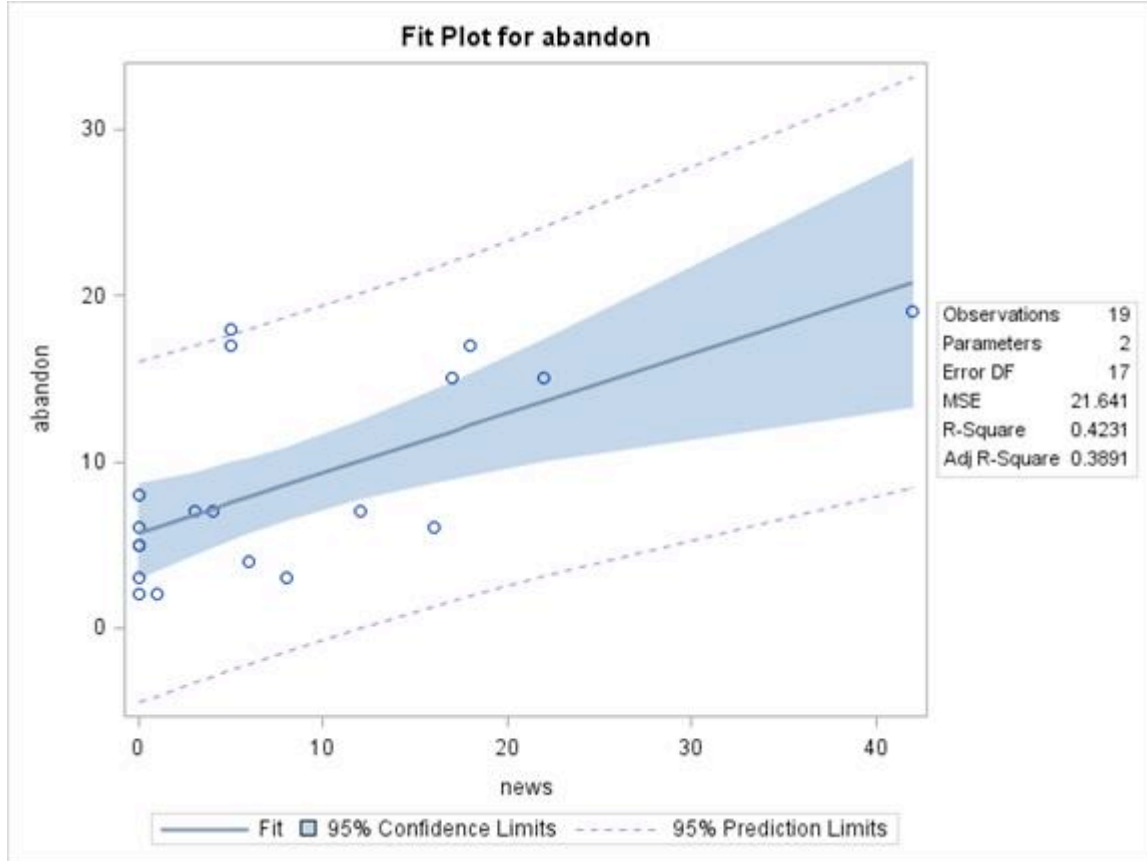
The p-value is 0.0026. With alpha set at .05 there is a correlation between news reporting and abandonments at the babybox that is statistically significant. The null hypothesis is: there is no relationship between media and abandonment. Because the null is less than 0.05, it means that the null is false and there is not no relationship. In other words, there is a relationship between news media and abandonments.

Using statistical methods again, we can perform a linear regression analysis using the number of news stories about the babybox as the independent variable and the number of abandonments as the dependent variable. We find that for every one unit increase in news reports, a 0.35788 increase in abandonment is predicted, holding all other things constant. The R square = 0.4231. Therefore, we can describe 42% of what is happening in real life with only this simple model, accounting for only the number of news stories and abandonments. This is a moderate correlation.



Although it is not scientifically possible to prove causation, the correlation falls within the 95% prediction limits with the exception of one outlier, which is the month of April 2013, in which 42 news stories were written in one month about the babybox and 19 children abandoned there. The abandonment rate in April was not much different from the surrounding months of March, when 17 children were abandoned there and there were 18 news stories, and May, when 15 children were abandoned there and there were 17 news stories written about the babybox. We can reason that although the news stories may rise to an infinite number each month, there is a limit to the number of children who may be abandoned each month because there is a limited number of children living in situations where their families are at risk of breaking.

**Graph 12: Fit plot for abandonment and news**



$$\text{Regression equation: } \text{Abandonment}^{\wedge} = 5.74197 + 0.35788 * \text{News}$$

This correlation between abandonments and increased media attention and legislation is completely consistent with the experience of the U.S., where this has also been the trend (Dreyer 2002).

In other words, there is nothing special about the babybox in Gwankak-gu. It is an idea copied from Western countries, and it is accompanied by exactly the same problems as anonymous child abandonment sites in Western countries: they increase abandonment

without preventing infanticide, and the more attention they get, the more abandonment increases.

Pastor Lee Jong-rak made the babybox as a response to a baby having been left outside his church in a cardboard box one autumn night in 2009 (Borowiec 2013). At that time, it was still possible to anonymously relinquish children or do so under a false name at an adoption agency. In other words, even if Pastor Lee Jong-rak thinks that the babybox is necessary because of the Special Adoption Law revisions, this method of abandonment could not have been justified with this same logic in 2009. In other words, there was no policy logic behind the original installation of the babybox. Likewise, the babyboxes that exist in 11 out of 27 EU states, safe haven laws in the U.S. and Birth Under X in France were all created as emotional reactions amid a lack of research, but much moral panic (Institute 2003).

The main criticism against the Special Adoption Law revisions is this: “The law makes adoption more difficult because children must be registered first. The law is bad because it is preventing adoptions.” As previously mentioned, the earliest news articles connecting the Special Adoption Law with abandonment in the babybox came out only one to two months after the enforcement of the law. At that time, there had not been nearly a sufficient amount of time to know the real effect of the law. Yet the players in the movement to re-revise the law acted extremely swiftly – in fact too swiftly for this to be seen as a response to the conditions as they happened.

Those involved in adoption in Korea have known since 2009 that there was budget allocated for revising the Special Adoption Law, and adoption agencies were very much involved in that process from the beginning. Later, that side pitted themselves against adoptees, unwed mothers, and families of origin who also wanted to revise the law in their

own way. In the end, the version of the law that was passed was not the version drafted by adoption agency interests. Rather, it was a compromise bill, and the main part of it was drafted by unwed mothers, adoptees, and their families of origin.

Because of the restrictions placed on adoptions in the revision, such as the requirement that mothers may not relinquish children to adoption agencies for seven days after childbirth (as opposed to while still in the womb, which had accepted been the practice until the Special Adoption Law was revised), the adoption agencies must have known that their supply of children that they could send to meet the demand of foreign adopters would dwindle. In addition, they must have also logically foreseen that the family court approval process would slow the adoptions. Indeed, that is completely what happened. If we look at the adoptions that were performed since the implementation of the Special Adoption Law Revisions in August 2012 until June 2013, we see that the more lucrative overseas adoptions ground to a halt from August until March, and began again only in April.

**Table 13: Domestic and overseas adoptions since the implementation of the Special Adoption Law Revisions: August 2012 to June 2013<sup>8</sup>**

	Aug 2012	S	O	N	D	Jan 2013	F	M	A	M	J	Total
Domestic Adoption	0	1	2	10	22	29	39	28	70	75	56	332
Overseas adoption	0	0	0	0	0	0	0	0	3	11	45	59
Total	0	1	2	10	22	29	39	28	73	86	101	391

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<sup>8</sup> Source: Member of Parliament Min Hyun-ju's office

The movement to re-revise the adoption law points to the rights of unwed mothers as its motivation, saying that abandoning one's child anonymously is necessary for unwed mothers, and that the adoption law should be re-revised in order to allow anonymously abandoned children to be adopted again. Certainly, it would be in the best interest of adoption agencies to create an endless supply of anonymously abandoned and adoptable children flowing to keep them in business for another 60 years. But this endless supply of has dried up as Korea has adopted a court permission system for adoptions, and the agencies are now complaining that they don't know how to plan for the future. U.S. MPAK predicts that only 300-400 children will be sent overseas in 2013, down from 755 in 2012.

The average number of children sent overseas per month by adoption agencies was 63 in 2012. To get this number, I simply divided the 755 children sent in 2012 by 12 months. Therefore, from August 2012 to March 2013, when international adoptions had halted and no children were sent overseas, the agencies lost over 8 million dollars by the 2012 standard. I calculated this with the following equation:  $63 \text{ (children)} \times 8 \text{ (months)} \times (\text{US\$}16,500)^9 = \text{US\$}8,316,000$ .

However, the Special Adoption Law was implemented halfway through 2012. So maybe it is better to look at numbers of children sent overseas for adoption in 2011 to get a better idea of the average in a normal year. The total number of children sent for overseas adoption in 2011 was 916. Therefore, the average number of children sent per month was 76.

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<sup>9</sup> The fee US\$16,500 is the amount cited by the Australian Attorney-General's Department as the fee charged by the Korean adoption agency Eastern Social Welfare Society to Australia for each Korean child prior to January 1, 2014. I used this number for my estimate with the assumption that all the adoption agencies charge similar prices. Australian Attorney-General's Department Web site accessed January 27, 2014 at <http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Pages/SouthKorea.aspx>

The same calculation using the year 2011 as the standard is: 76 (children) X 8 (months) X (US\$16,500) = US\$10,032,000. These numbers do not include any donations that would have been given by adoptive parents at the time of adoption, in addition to the regular adoption fees. We can estimate, therefore, that the adoption agencies lost over US\$10 million because of the implementation of the Special Adoption Law.

It is possible that the adoption agencies could easily foresee what was going to happen to their private businesses as the real consequence of the revision of the Special Adoption Law from the time that it was passed in June 2011, and had made preparations to try to overturn it since then. It is even possible that the good-hearted Pastor Lee Jong-rak and his babybox are being used by the adoption agencies and their supporters to confuse the public on the issue with a “red herring” or a “smokescreen.”

### **Misunderstanding about the Special Adoption Law’s function**

The revisions to the Special Adoption Law were blamed as the cause of an increase in the domestic exchange of children arranged by individuals over the internet, completely without any legal or institutional channels. The death of one child who was “illegally adopted” this way was reported in September 2013. The child, who was born in September 2012 to an unwed mother, had been found starved to death after having been left alone by the adoptive parents in an empty apartment since July 2013 (Jeon 2013).

Members of the National Assembly Cheon Pyung-heon and Baek Jae-hyun proposed the following in a public hearing on April 10, 2013:

1. Unwed mothers under the age of 24 should be allowed to anonymously relinquish and not have to register the births of their children.

2. Birth registrations would be created by adoption agencies for children born to unwed mothers under the age of 24, and babies would be regarded as true orphans without a mother or father. This would also protect the mother's privacy.
3. The seven-day waiting period would not apply to unwed mothers under the age of 24 (Kwon 2013).

These were more specific and more developed requests than the same groups had presented in February 2013 at a press conference at the National Assembly titled “Baek, Jae-hyun, Press Conference to Propel the Revision of the Special Adoption Law to Protect the Right to Life of the Abandoned Babies.” In February, these stakeholders, mainly with affiliations to adoption agencies or adoptive parent groups, noted the increase in anonymous abandonments at the babybox and more generally argued that the revisions to the Special Adoption Law are the cause of anonymous child abandonment because of the law's requirement that children sent for adoption first be legally registered. They argued that the law forces unwed mothers to register the births of their children, and therefore some prefer to anonymously abandon or even murder their children instead of relinquishing them to adoption agencies. The unwed mother's objective in murdering or anonymously abandoning her child in the babybox would be to protect her privacy by leaving no trace of the existence of her child on her family register (Lee 2013)<sup>10</sup>. Later, other groups argued that American-

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<sup>10</sup> The groups which signed the February press release included 200 churches and civic organizations, MPAK chair Han Yeon-hee, Koshin University Professor Hwang Soo-seob, Pro-life Society chair Cha Hee-jae, lawyer Song Yoon-jeong, TV personality Joo Young-hoon, celebrity Lee Jae-ryong, and Pastor Kim Hae-seong of Global Village Sharing, an organization for migrants (Lee 2013). Pastor Kim went on to announce in early January 2014 that he would open another babybox for migrants, which would be Korea's second babybox (Choe 2014).

style safe haven laws should be introduced to Korea in order to legalize anonymous abandonment (Morrison 2013).

Meanwhile, advocates for not changing the birth registration requirement of the Special Adoption law pointed out that the Korean Family Registration law already makes birth reporting compulsory. Therefore, birth reporting was not created by the Adoption Special Law. It is already required of everyone. The reason it is new for adoption is because the agencies have historically sent children for overseas adoption with a fabricated birth registration paper called an “orphan hojuk.” In the case of documented domestic adoptions, around 90% of them have been “secret adoptions” in which parents would register the adopted child as a biological child. This happened even though the adoption agency facilitated the adoption (Lee 2009).

Moreover, the requirement to register the birth of an adopted child was implied in the Special Adoption Law even before the amendment. Article 7 of the adoption law before the amendment already stated that "The adoption provided by this act comes into effect after reporting complying with the Act on family relation registration etc." Professor Kim Sang-Yong of the Law School of Chung-Ang University wrote, “The ‘reporting’ in this article means a report of adoption, which is naturally subject to the registration of a birth. Therefore, the claim that the registration of a birth was not compulsory before the amendment of the act is totally baseless. The most important difference between the amendment and the old act is the change from reporting adoption to the permit system of adoption” (Kim 2013).

In other words, a child who was to be adopted has to already legally exist, meaning the birth has to be registered. However, the adoption agencies and domestic adoptive parents were able to avoid this by fabricating the birth registration record in the case of the international adoptees and registering the child as a biological child in the case of the



domestic adoptees. The permission system is now handled by the Family Court, and the Family Court will not accept fabricated birth documents.

Moreover, there are two ways to protect unwed mothers' privacy on the family register already. First of all, after the child is adopted, there will be no record left on the family registration document (Kim 2013). Secondly, even if the child is not adopted, a "partial" proof document is available to use for the family register. This document does not show children born from previous marriages or children born outside of marriage but shows only the mother's "current" status. However, it is seldom used because few people, even civil servants, know about it. Therefore, when a family registration document is requested by the mother, civil servants automatically issue the "whole" proof document. Moreover, partners and immediate family members may get this the "whole" proof document, even online, without the authority of power of attorney (So 2013) (Kim 2013)<sup>11</sup>.

Under the domestic legal framework, there are three sets of laws, all with separate tasks, that are being confused in the debate. They are: 1) the Special Adoption Law which rules adoption; 2) the weak Single Parent Law that is failing to protect unwed mothers and their children; and 3) the Family Registration Law that already provides for a "partial proof document" that can provide for the privacy of the unwed mother in the case that a family

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<sup>11</sup> The Family Registration Law was amended on January 31, 2011 to make this "partial" proof system, and it became usable to the public on December 30, 2011. People may choose the "partial" proof or "whole" proof document. The partial proof document allows the person to omit the following information: divorce, dissolution of adoption, name change, children born outside of marriage, children born into former marriages, children who have died, recognition or termination of parental rights or guardianship, change in sex or hometown, cancellation of citizenship, and this kind of fluctuation of the personal situation (Lee 2011).

registration document is needed, but that is in need of further revision to guarantee privacy for all individuals and also the legal existence of all children through universal birth registration. Moreover, under the civil law, children already had to be registered in order to be adopted. In other words, a child must be born and legally exist before being adopted into another family, but the adoption agencies simply ignored this. This was possible because the adoption agencies completely processed the adoption. What changed with the revisions to the Special Adoption Law was that the court permission system was introduced, and the adoption agencies were no longer able to break the law whenever and however they wished.

In the realm of international law, the Special Adoption Law revisions were praised by the United Nations as progress taken by the Korean government in upholding human rights at the 2011 meeting of the U.N. Committee on the Rights of the Child (Committee on the Rights of the Child 2011), and again at the 2012 Universal Periodic Review (Human Rights Council 2012). Finally, the European Union parliament has urged states to ensure that children are not deprived of their right to know their origins (Hancock 2008), and in 2011, the U.N. Committee on the Rights of the Child called on the Czech Republic to end its program of 50 babyboxes and instead focus on eliminating the causes of abandonment (Meyer 2013).

Arguing against anonymous abandonment mechanisms, critics internationally have said that sites such as babyboxes can be used to cover up crimes such as kidnapping, rape, or incest, further victimizing a woman or girl by preventing her from finding legal remedies. In the U.S., concerns have been raised that anonymity prevents social services from reaching women in need of support (Ferkenhoff 2005).

While the word “human rights” has been invoked in order to support arguments saying that the mother may anonymously abandon her child, no international human rights convention states that mothers have the “right” to abandon their children. Regarding the right

of a child to live, we have already discovered through studies in foreign countries that anonymous child abandonment mechanisms do not decrease infanticide because mothers who kill are different from mothers who abandon. The babybox only increases abandonment and increases violations against children's human right to birth registration as stated in international human rights treaties that Korea has already ratified by its own volition: the United Nations Convention on the Rights of the Child (ratified in 1991); the Convention on the Rights of Persons with Disabilities (ratified in 2008); and the United Nations International Covenant on Civil and Political Rights (ratified in 1990). The relevant articles of those laws are below:

#### **Convention on the Rights of Persons with Disabilities**

Ratified by ROK on December 11, 2008

##### **Article 18**

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

#### **The United Nations International Covenant on Civil and Political Rights**

Ratified by ROK on April 10, 1990

##### **Article 24**

1. Every child shall be registered immediately after birth and shall have a name.

#### **UN Convention on the Rights of the Child**

Ratified by ROK on November 20, 1991

**Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

The relevant Korean domestic law is is the Criminal Act.

**Criminal Act**

Amended by Act. No. 5057, Dec. 29, 1995

**Article 272 (Abandoning Baby)**

A lineal ascendant who abandons a baby in order to avoid disgrace or for fear of not being able to bring the baby up or for some other extenuating motives, shall be punished by imprisonment for not more than two years or by a fine not exceeding three million won.

## 5. 2. Positive unintended outcomes

While the furor over the babybox might be perceived as a negative outcome, it can also be seen as a positive outcome for several reasons. First of all, the criticism blaming the Special Adoption Law amendment for the child abandonments loudly raised the discussion in society about the rights of adoptees to identity, the right of unwed mothers to social welfare, privacy on the family registration system, and the right of children to birth registration. There was much more heated debate about these issues because of the babybox than there had been about simply the adoption law itself at the time leading up to its passage. This gives the public a chance to build social consensus about important issues and invites experts at both the local and international level to voice their opinion on a hitherto ignored matter. For instance, Lee Yang-hee, a Korean committee member of the United Nations Convention on the Rights of the Child, wrote an article that was published in Korea's largest circulating newspaper, the *Chosun Ilbo*, stating that the babybox was against the principles of child rights (Lee 2013). In another article, which was published in the major newspaper the *Joongang Ilbo*, Gonggam Public Interest Lawyer So Rami, who drafted the Special Adoption Law amendment, criticized the babybox and advocated for changes in the family registration system as opposed to the Special Adoption Law (So 2013). In other words, the supporters of the babybox who were trying to overturn the adoption law actually helped to open a policy window further than it had already been opened by the adoption law revision, and in a more urgent fashion.

Finally, the abandonments at the babybox created an emergency situation that forced into stark relief the problem of the lack of support for unwed mothers. Accordingly, in order to protect children and support mothers for the first seven days after birth, the government installed a support system where unwed mothers could apply for childbirth support money at

their village offices. From its implementation on April 8, 2013 until July 2013, a total of 239 unwed mothers availed themselves to this service, and a total of 79,050,000 KRW in aid was dispersed by both the central government and provincial governments (Department of Child Welfare Policy 2013).

## 6. Implementation

The biggest problem in implementation of the Special Adoption Law has been related to post-adoption services, most notably the adoptees' birthfamily search. The adoptees claimed that historically, they had been given erratic, arbitrary, and unfair service by adoption agency social workers, which has resulted in a 2.7% rate of reunion, according to the adoption agencies' own records<sup>12</sup>. That is why they believed that if the semi-governmental third party of KAS were given a legal basis, they would have fairer treatment and the rate of reunion would go up. However, the adoptees were disappointed and heavily criticized KAS. They claimed that the adoption agencies continued to withhold information from them even after the revisions to the Special Adoption Law and accused the Ministry of Health and Welfare and KAS as being unwilling to force the agencies to uphold their obligations under law, citing their lack of budget, lack of manpower, or lack of authority. Adoptees pointed out that the law was worthless if not enforced. The problems with birthfamily search were described as follows:

1. There is no there is no enforcement and no penalty for adoption agencies if they violate the Special Adoption Law with regard to an adoptee's birthfamily search (Trenka 2013).
2. The records were all still all in the hands of the agencies and treated as private property. Because of this, KAS had no information of its own besides a skeleton

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<sup>12</sup> This rate of 2.7% was printed in the *International Korean Adoptee Resource Book*, published in 2006 by the Overseas Koreans Foundation.

database. KAS negotiated with agencies in order to get information. Adoptees criticized KAS for not exerting more power to advocate for them (Trenka 2013).

Adoptees claimed that Korea Social Service violated the law because according to Article 25.2 of the Enforcement Rule of the Special Adoption Act (amended August 3, 2012 and enforced August 5, 2012), the adoption agency has to transfer the records to Korea Adoption Services when they close their business. Korea Social Service's (KSS's) international adoption business closed, but the records were never moved or even copied (Trenka 2013).

3. The agencies withheld information from adoptees in various ways. One way to withhold information was to give only English documents, when adoptees knew that everything had been first written in Korean. Moreover, the law states in Chapter 5 Article 36 that if the biological parents are dead or cannot give consent due to inevitable situation be contacted for inevitable reasons, adoptees may get the personal details of their parents. Article 13 of the Enforcement Decree (amended by Presidential Decree on August 5, 2012 and enforced August 5, 2012) says that such details include the parent's name, birthdate, and citizen number. However, adoption agencies would not give adoptees information, even though the parents were dead or could not be found. There was no deadline set for when a parent could be declared as unable to be found, leaving some adoptees in a permanent limbo (Trenka 2013).

4. KAS was understaffed and did not have experienced workers. Therefore, they were too quick to recommend going on TV broadcasts to search for parents before using their own resources or trying to find an administrative way such as police



search to trace parents. They also did not provide adequate translation on their Web site where people posted ads for search, and they did not provide adequate translation of documents (Trenka 2013).

5. Clear consent or dissent for contact was not requested from birthparents when KAS or agencies contacted birthparents through “telegrams.” This meant that adoptees were left in a limbo when the person did not respond at all, Moreover, only a DNA test can tell if the parent and adoptee are truly parent and child, but there was no requirement for a DNA test to be done with a potential match (Trenka 2013).

6. Adoptees said that while KAS must respond to the adoptee’s request to perform in search in 15 days, they are not forced to bring a result in 15 days. Therefore, they just keep extending the period for search and the adoptee is left in limbo (Trenka 2013).

Organizationally, KAS had problems with its staff and board that were criticized by adoptees:

1. They criticized the head of post-adoption services, Mr. Choi Young-dae, for being unable to understand adoptees because he does not speak English. Adoptees felt that it was impossible for him to do his job if he could not communicate with adoptees. They also criticized KAS of nepotism, as KAS had noted that since employing Mr. Choi, Holt was more cooperative in birthfamily search. (Choi had formerly worked for Holt in the planning team and also received donations for the organization.)

Adoptees felt that their birthfamily search should not depend on cronyism (Trenka 2013). On December 3, 2013, KAS posted a notice saying that they were seeking someone to take this position (KAS 2013).

2. Adoptees also criticized KAS for not having French-speaking staff for over one year (Trenka 2013). This was rectified in October 2013, when KAS announced on its Web site that a French speaker would be available for consultations (KAS 2013).

3. Adoptees criticized KAS for being in violation of the law because there was no board of directors for one year after the law was implemented. Of course, there was no adoptee appointed to sit on the board since there was no board at all. The board was finally formed on August 28, 2013, and the first board meeting was held on September 12, 2013 (Han 2013).

Finally, adoptees criticized KAS for not being able to solve general long-standing problems. A year after its founding, there was still no organized way to handle the deportation of adult adoptees from the United States to Korea, about 10 of whom had been deported in adulthood after having not received U.S. citizenship. They said that all Korean embassies in the U.S. should work together with the relevant Korean ministries to make a system. These ministries were the Ministry of Foreign Affairs and Trade, the Ministry of Justice, and the Ministry of Health and Welfare (Trenka 2013). However, this was not accomplished, and the next American adoptee was deported in early November 2013 (Kim 2013).

Adoptees asked for more transparency of the budget for post-adoption services due to their bitter experience of 2013, in which the Ministry of Health and Welfare promised to

increase its budget for post-adoption services for 2013, but the promise was broken six weeks later. There was no increase and no accountability. Adoptees also called for strengthening the family court system so that all mothers who relinquished children would be interviewed before the adoptions of their children. They also called for more oversight by KAS in order to make sure that children were not sent to families who did not meet the criteria for adoption. Adoptees accused KAS of not performing proper oversight over the agencies' activities. Finally, adoptees said that the government should not be allowed to ratify the Hague Convention unless the Special Adoption Law was strictly enforced (Trenka 2013).

## 7. Conclusion

*The clash in ideology that results from challenging beliefs, values, and attitudes that see members of certain groups as inferior or superior is generally seen as disruptive to the social order and may result in strong reactions on the part of those interested in maintaining the power of the dominant group.*

--Tracy E. Ore, *The Social Construction of Difference and Inequality: Race, Class, Gender, and Sexuality*

The theory of social construction can help us understand why unwed mothers, parents who lost children to adoption, and adoptees did not participate in the political processes that directly affected them until 2011. It can also help explain why there was a strong backlash against the law after its implementation, which manifested in the babybox issue. The belief of the dangsaja was that if adoption had to be conducted, it should be done in a transparent and ethical manner that included the adoptee's right to an original birth registration. This belief came out of the lived experiences of people who had experienced adoption the way it had been done for 60 years. However, their beliefs, which ultimately became legislated, strongly disrupted the existing order. The dominant group -- the adoption agencies and adoptive parent groups -- said that they prioritized unwed mothers' "privacy." It was another way to say that they believed that adopted children should continue to be allowed to be anonymously abandoned, meaning these groups which had experienced dominance until 2011 wanted a return to the status quo.

The greatest value of the Special Adoption Law was its contribution to democracy. The passage of this law mean that adoptees who had technically lost their citizenship at the

time of their adoptions could take part in symbolically in democratic processes, and those at risk of losing their children to adoption experienced a fuller citizenship. By participating in the legislative process, adoptees and unwed mothers built accountability into the government's process (Hankyoreh 2009). The achievement was not only an achievement in democratic representation, but also a personal and psychological achievement for the dangsaja. By making themselves indispensable players in the policy-making process, they overcame a portion of their internalized oppression and eroded a small part of the institutionalized oppression that had powerfully shaped some of the most fundamental aspects of their lives.

The greatest disappointment of the Special Adoption Law from the perspective of the dangsaja was its non-implementation with regard to adoptees' birthfamily searches. Meanwhile, the formerly dominant group -- consisting of the adoption agencies, adoptive parent groups, and religious groups -- were also disappointed in the law. They claimed that the birth registration requirement in the adoption law caused negative unintended consequences: an increase of anonymous abandonments and a decrease in the number of adoptions. However, the research in this thesis shows that Korea is not exceptional in the world when it comes to patterns of abandonments. Abandonments did not increase in a statistically significant way until legislation was proposed to re-revise the Special Adoption. This is consistent with U.S. states and European countries, where abandonments have risen along with media attention due to legislative proposals. Also consistent with other countries, infanticides remained stable despite the presence of the babybox, and more children were abandoned in the babybox than in other parts of the country.

Despite these scientific findings, it is doubtful that the babybox will suddenly be replaced by governmental support for unwed mothers in need. Social construction theory predicts that in the face of strong social constructions, scientific evidence matters less to

decision-makers. As the adoption agencies, unwed mothers, and the babybox itself all carry strong social constructions, it stands to reason that the status quo or path dependency of public policy will remain unchanged without continued, strong intervention by the oppressed groups.

It remains yet to be seen if the dangsaja's continued involvement in democratic processes lasts. Within the first year, some of their leaders continued to participate in democratic processes, as shown through their writing, which drew on their experiences and interactions with government officials and their own communities following the implementation of the law. They tried to counter the vast number of media reports that highlighted the babybox issue, citing misinterpretation of the law. However, their voices were far fewer and far weaker than those of the other side, not to mention too technical and dry for mass media consumption. Overall media attention was focused on the more sensational issue of increased child abandonment, the potential murders of unwed mothers' children, and fewer adoptions. Meanwhile, the media paid little attention to adoptees' right to identity and virtually no attention at all to failed birthfamily searches. Unwed mothers and parents who lost children to adoption became nearly absent from the discussion about the enforcement of the adoption law. However, a few parties who were responsible for spearheading the adoption law revisions continued to struggle for complete implementation. They continued to advocate for a complete paradigm shift from family separation to family preservation, and from anonymous child abandonment to the right to identity for adoptees.

At the time of this writing, the Special Adoption Law still stands exactly as it was passed in 2011, despite the threat of the adoption agency and adoptive parent side to overturn it using the babybox as a symbol of why the law should be overturned. After more than one year of the two sides struggling to win public and governmental consensus over to their side on the issue of anonymous abandonment, Mission to Promote Adoption in Korea announced

on its blog on November 27, 2013 that the city of Seoul, the Seoul Metropolitan Children's Welfare Center, and the Seoul City Children's Hospital would no longer accept babies from the box. Not only that, but the church was told that it "would be good" for the babybox to move outside of Seoul (Morrison 2013).

My evaluation is limited by the data available to me and the time in history in which this thesis is written. This thesis was completed in January 2014. Usually, government statistics become available in the spring of the following year. Because the time period that I evaluated is August 2012-July 2013, it was impossible to receive most government statistics. Because of this limitation, I would like to urge the relevant ministries of the Korean government to evaluate the law revision as a public policy treatment when more information and numbers become available. The government can do this by auditing privately run entities such as unwed mothers' homes and adoption agencies. They might also improve the capacity of public administration and public policy decision-making by accurately counting people using improved census and birth registration systems. In particular, I recommend that Korea adopt a universal birth registration system, available to all children born in Korea, that has the capability to confirm children's identities through connected administrative systems such as hospital and pre-natal care records<sup>13</sup>.

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<sup>13</sup> The central government does not keep official statistics on the number of births to unwed mothers. Because birth registration in Korea is not done automatically at the hospital and there is no formal link between prenatal and maternal healthcare and vital statistics public administration, it is possible for children to be not registered at birth. Historically, this system has been misused by adoption agencies, as many children who were born out of wedlock were sent for adoption without their original birth registrations, and therefore did not legally exist until their adoptions. Therefore, it is impossible to determine the exact number of children who are born to unwed mothers in Korea. Because it is impossible to even determine how many are born, it is also impossible to determine their movement and the proportion of this population that is being sent to various places. Are they being raised by their mothers more or less after the implementation of the law revisions? Are they being killed?

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Are they being relinquished for adoption? Are they being put into institutions? We cannot know these outcomes without official governmental statistics on births to unwed mothers, which at the time of this writing, do not exist and have never existed in Korea.

In addition, because adoption agencies are private entities in Korea, they cannot be forced to give information, such as the number of unwed mothers who use their unwed mother facilities or the number of reunions they have facilitated with adoptees and birth parents.

Therefore, major pieces of knowledge that are critical for evaluating the law is missing from this thesis due to the time this thesis is written, the Korean government's lack of statistics on relevant populations, and the private nature of the adoption agencies.

The only other related academic paper that has been written since the passage of the Special Adoption Law is a legal paper that gives recommendations for aligning the adoption law with the child welfare law. As it was written before the adoption law was implemented, it was impossible to make any evaluation about the actual implementation or enforcement at the time (Choi 2011).



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**2011 년 입양특례법 개정:**

**시행 초기 1 년의 영향 분석**

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본 연구는 2011 년에 통과된 한국의 입양특례법 개정의 영향을 분석하는 데 목적을 갖는다. 이 분석에는 개정입양특례법 시행 후 1 년 동안인 2012 년 8 월부터 2013 년 7 월까지 기간 중에 구할 수 있는 정보를 사용하였다.

입양특례법 개정에 일조한 여러 이해관계자들의 예상들은 신문기사, 정부 공문서, 그리고 이해관계자들이 그들의 법안에 지지를 얻기 위해 그리고 또한 자신들의 입장을 옹호하기 위해 이해관계자들 스스로 작성한 글들을 통해 조사하였다. 개정입양특례법 시행의 의도한 그리고 의도치 않은 결과들과 함께 이 결과들에 대한 이해관계자들의 대응 또한 조사되었다.

이 논문의 이론적 프레임워크는 사회구성론이다. 사회구성론은 입양특례법에 영향을 받는 당사자들(해외입양인, 입양으로 자식을 잃을 위험에 처한 미혼모들, 해외입양으로 자식을 잃은 부모들)에 의해 주도된 2011 년 입양특례법 개정의 역사적 의의를 파악하는데 도움이 된다. 사회구성론은 왜 이 당사자들이 자신들의 삶에 큰 영향을 미치는 이 입양특례법의 기안에 한 번도 참여하지 못했는지를 설명할 수 있다. 민주적 절차들에서 이 당사자들이 참여하는 것 대신에 정부와 입양기관들이 2011 년까지 이법을 조정해왔다. 사회구성론은, 법 개정의 주요 성취와 의도하지 않은 결과는 그것을 성안하는 과정에서 영향받는 당사자들이 처음으로 능동화되고 민주적



절차에 참여하였다는 점이라는 것을 보여준다. 당사자들은 한국시민사회활동가들과 함께 한국사회에 퍼져있는 자기 자신들의 부정적인 사회적 이미지를 극복하는데 노력하였고 자신들의 삶에 영향을 미치는 민주적 과정에 적극적인 참여자들이 되었다.

이 자체만으로도 큰 성과이었다.

하지만 입양특례법 개정의 가장 극적이고 일반인들에게 알려진 의도하지 않은 결과는 익명 아동유기 문제가 사회 내에서 불거진 것이다. “베이비박스 -- 서울 관악구에 위치한 아동유기장소--는 아동유기의 상징이 되었다. 아동유기의 증가는 개정입양특례법의 일부를 뒤집는 새로운 운동에 힘을 실어주게 되었다. 이 운동은 개정입양특례법 때문에 아동유기가 증가되었다고 비난하며, 이러한 비극들이 개정입양특례법의 의도하지 않은 결과물이라고 말하는, 국내 입양 부모들, 입양기관들 그리고 교회들의 의견을 그대로 따라 한 많은 언론매체의 보도의 결과로 2013 년 초에 시작되었다. 그들은 미혼모들이 미혼모의 아기를 베이비 박스에 유기하도록 허락되지 않았다면 미혼모들은 자기자식을 죽였을 지 모른다고 말했다.

그러나 입양특례법 개정에 참여한 당사자들은 제일 먼저 이 논쟁에 반박했다. 그들은 아동유기의 증가를 개정입양특례법 자체의 결과가 아닌 그 법에 대한 잘못된 정보의 결과로 보았다. 그들은 아동유기를 넘어 잘못된 출생신고 시스템, 개인정보보호, 미혼모 가족을 위한 적절한 사회복지 부족과 같은 근본적인 문제에 다시 집중하려 노력했다. 추가적으로 그들은 베이비박스에 대한 언론매체의 “무료광고”제공을 비난했다.

한국의 검색엔진 네이버와 정부기관을 통해 수집된 통계정보를 이용한 분석은 개정입양특례법 시행 직후 통계적으로 유의하게 아동유기가 증가하지 않음을

보여준다. 오히려, 아동유기는 입양특례법제개정을 위한 법안이 발의된 후 그리고 매스컴의 베이비박스에 대한 보도량이 늘어난 이후에 증가하였다. 베이비박스를 제외한 전국에서의 아동유기 집계 횟수보다 베이비 박스에서 더 많은 아동유기가 집계된 것과 함께 베이비박스에 유기된 아동의 수와 미디어에 보도된 뉴스의 수 사이에는 연관관계가 있었다. 마지막으로 영아살해는 개정입양특례법 시행 후 1 년동안 크게 줄지 않은 것으로 나타났다. 이 결론들은 한국이 아동유기와 영아살해의 패턴에서 예외적이지 않음을 보여준다. 서방국가에서 익명 아동유기 장소가 소개되었을 때 아동유기 또한 증가하지만 영아살해는 감소하지 않았다.

아동유기의 증가가 실제로 입양특례법 개정에 의한 것인지에 대한 여부에 토론이 양측에서 진행되는 동안 다른 개정안들은 고르지 못한 법 시행으로 인해 거의 전적으로 간과되었다. 개정입양특례법에서 잘 실행되지 못한 중요한 부분 하나는 성인 입양인들의 친생가족을 찾는 것에 관한 정보에 대한 권리에 대한 부분이었다. 개정입양특례법 중 이에 관련된 부분의 미시행 때문에, 해외 입양인들은 지속적으로 2011 년도 개정입양특례법 시행을 위해 노력하고 있다.

**키워드:** 입양특례법, 아동유기, 베이비박스, 미혼모, 한국 입양인