Thai Family System and Women's Property Rights under the Traditional Law[1]

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ABSTRACT: *The purpose of this study is to consider and to examine how the property right of women was defined and protected by both the traditional law and Thai society of the early twentieth century, by using the marriage law, the inheritance law and the Supreme Court precedents of that period. In the point of women's property right of that time, their rights were largely recognized regardless of their marital status. As one of the reasons, the influence of a strong maternal principle in the traditional Thai family will be considered. On the contrary of a hypothesis of some gender or modernization theories, the property right of women was limited and a series of patrilineal principles were introduced to Thai society as well as the establishment of new "Westernized" family law in 1935.*

At first I would like to introduce a photograph. This is an old picture of the children from a noble family in the early twentieth century Siam (Thailand) (See Figure 1). From this picture, we easily realize that there were little sex differences between boys' and girls' appearances. This might be an interesting fact for the people who are used to East Asian or European customs of the same period, because in their customs, the females' appearances such as hair styles, clothes were clearly different from male

Figure 1. Children from a noble family in the early twentieth century.

(Cited from Sumalee Bumroongsiook, *Love and Marriage: Mate Selection In Twentieth-Century Central Thailand*, Chulalongkorn University Press, 1995, p. 230.)

1 This paper is based on my latest essay written in Japanese, titled "20 seiki shoto Tai ni okeru tsuma no chii - Horitsu to hanreishu ni miru tsuma no zaisanken (The Status of Wives in Early Twentieth Century Thailand: Wives' Property Right in the Traditional Law and the Precedents)," *Sociological Review of Kobe University*, No.19, 2002, pp. 73-91.

ones. What do these little differences of sex in the appearance of men and women in Siam of those days tell us?

The concern with Thai family studies has been growing. Over the past few decades, a considerable number of studies have been conducted, mainly in the field of sociology and anthropology, while very few attempts have been made at the historical studies of Thai family. The accumulations of these monographs suggested the different tradition and historical development of Thai families from that of Europe or East Asia. These studies contributed findings of various important concepts on the characteristics of Thai family and kinship system, such as the "bilineal (bilateral) kinship system" or the "multihousehold compound." However, there has also been a renewal of interest in the Thai family from a historical perspective. Adding to this, development of gender studies in recent years shows new fields of vision in Thai family studies.

However, Emiko Ochiai has observed otherwise. That is, the historical or cultural variety of traditional forms of families has been overlooked in historical studies on families and gender in Asia, including Thailand.[2] Moreover, due to the influence of modernization theory, the continuity of the women's situation in Asia, before and after the modernization, has been overemphasized. (Ochiai, 2000, pp. 40-61)[3]

Gender studies in Thailand tend to focus on solving practical matters and current problems which the society and women of Thai presently face. A number of researchers in Thailand agree on the fact that the theoretical framework of this field can be practically applied to such problems (Pongsapich, 1997, pp. 3-51). It is the central matter to make clear the historically exploited structure of Thai women. As a result, the historical and cultural characteristics of the families in Southeast Asia have been neglected. There is a danger that this neglect will result in acceptance of western modernizing theory that tends to claim that Asian traditional cultures are neither progressive nor "democratic." Consequently, the historical-cultural characteristics of families in Southeast Asia, mentioned above, tend to be discarded. What is needed is for a historical recognition to prevail. Otherwise, even in anthropological studies, the observed phenomena are apt to be considered "traditional" without any investigation of historical Seldom have phenomena been recognized as the results of "modernization." In the past, little attention has been given to "what the traditional Thai family system was." What seems to be lacking is to make clear the definition of "tradition" of Thai family, and especially of the social role of Thai women.

In this article, I would like to examine how the property right of women was

2 In an exceptional historical work, Junko Koizumi analyzed Thai families since the beginning to middle of nineteenth century, early period of the Chakkri dynasty, by using fragmented historical materials. She suggested a strong matrilineal line in the succession of the political power (Koizumi, 2000, pp. 254-338).

3 For example, in the recent works on Thai gender studies, Thai family and kinship system was described as follows, 'Historically, traditional bilateralism with matrilateral-biases made way to patriarchy as Hinduism, Buddhism, and Confucianism came in.' (Amara Pongsapich, 1997, p. 43.)

defined by the law and Thai society, and how the right was protected in the actual lawsuits in the early twentieth century. To consider these points, I use the marriage law, the inheritance law and the Supreme Court precedents as historical resources.

In the beginning, I will consider how the traditional law was adopted in Thai society in the early twentieth century. Then I will explain the emphasis on the parents-daughter relationship in Thai family, the meaning of marriage, the traditional way of dividing property between husbands and wives, and the inheritance right of Thai wives in the case of divorce or separation by death. In this article, I would like to make clear that under the traditional law and the traditional family system, the property right of Thai women was more prescribed and more protected than the rights of women of the same age in the societies of East Asia, or even Thai women under the "modern" family law.

I. THE ADOPTION OF THE TRADITIONAL LAW IN EARLY TWENTIETH CENTURY THAILAND

In Thailand, a traditional law called "the law of the three seals"[4] was generally used until 1935, when "modern" law was established. Rama I, at the beginning of the Chakkri dynasty in 1805, edited this law, and it was the mixture of the law enacted in the period of his rule (1782-1809) with the existing old Ayutthaya law. At the base of this law, there was the customary law used around the outskirts of Ayutthaya area.[5] The contents are divided into three parts, that is, the beginning sentences "*Phra Thammasat*" which expressed the religious idea of the law; a number of rules and articles (about 60% of the whole); and the concrete precedents collection (about 30% of the whole) (Ishii, 1983, pp. 29-30).

Under the Bowring treaty concluded with Great Britain in 1855, Thailand had to recognize the consular jurisdiction right of a number of foreign countries. Since the reorganization of the criminal law was needed for the abolition of the consular jurisdiction right of these countries, European or Japanese legal advisers were immediately invited. Certain civil affairs such as marriage or inheritance were not included in the reorganization process of modernizing the law code system, however, and the traditional law continued in use until the new family law was enacted in 1935. As actually

4 Since Thai traditional law had three seals on the cover of the manuscript, the law was usually called as "The Law of the Three Seals." These seals were the seals of the ministry of Interior, the ministry of Military Affairs, and the ministry of Harbor Service in that time. (Cited from Yoneo Ishii "The Law of the Three Seals," In Yoneo Ishii & Toshiharu Yoshikawa eds., *Tai no jiten* [The Encyclopedia of Thailand], 1993, p.139.)

5 Kitahara Atsushi states that "The Law of the Three Seals," which was originated in the present Central Thailand, and "*Mangraisat*" of *Lanna* (the present Northern Thailand) could be classified basically as the national written law codes of that time. He, however, described that these codes had the legal culture of the customary law as their base. In other words, these Thai ethnic groups' national laws absorbed these customary laws which had existed in the rural areas also, and utilized them to maintain the function of the law. (Kitahara, 1983, p.34)

adapted for use, this traditional law originated in the Ayuttaya period, and consisted of fragmentary articles and precedents divided into several law collection. Adding to this, interpretations and judgments in the Supreme Court were recognized as precedents, and it may be said that the law was adjusted according to the present conditions.

These laws are valuable historical materials to understand how the property right of Thai women had been prescribed and protected since ancient times. However, it is more important to examine the collections of Supreme Court precedents for understanding two facts: how the traditional law was adapted and interpreted to protect the legal rights of Thai women in the modern trial processes; and how the social role of Thai women and the family norms changed in early twentieth-century Thailand that had begun to walk a road to a "modern" nation.

Thailand in the early twentieth century might be called a "suit society," because sometimes more than 1,000 suits were brought into the Supreme Court annually.[6] In the precedent collection, there were a number of suits about divorce, inheritance, adultery, other issues concerned with Thai families. As examined later, many of the divorce suits were brought by women. Since the trial expense of the Supreme Court was 50 baht, which was an unprecedented expensive charge at the time, it is obvious that most of the people fighting at the Supreme Court were from the Central region and tended to be wealthy people (the royal or noble families, Chinese

Table 1. Ethnic composition of Siam's population according to various estimates in the early 20th century

Ethnic Groups/ Year, Source	1899 v.Hesse-Wartegg	1901 Aymonnie	1904 Lunet de Lajonquiere	1903 Little
Siamese	3,000,000	3,000,000	1,766,000	1,700,000
Lao	1,500,000	1,000,000	1,354,000	2,000,000
Chinese	3,000,000	2,000,000	523,000	700,000
Malay	1,000,000	1,000,000	753,000	600,000
Khmer	1,000,000	800,000	490,000	
Mon		100,00	130,000	
Karen	500,000	100,000	130,000	
Others			51,000	
Total	10,000,000	8,000,000	5,197,000	5,000,000

Cited from Vollker Grabowsky, *An Early Thai Census: Translation and Analysis,* Institute of Population Studies, Chulalongkorn University Press, 1993, pp.23-24.

6 This number is estimated from the last title number of the Supreme Court precedents of each year. These precedents include suits concerning commercial law and some suits concerning criminal cases.

merchants, foreigners, government officials, or other rich people), but there were not a few suits that involved peasants also. If we consider the fact that the population of Thailand in that period was estimated at between 5,000,000 and 8,000,000 (see Table 1 for the estimated population of that period), suits were brought in the Supreme Court in a ratio of one per several thousand people. It might be said that it happened with considerable frequency. Judging from the above, it is clear that the number of suits brought in the district/local courts were several times the number brought in the Supreme Court. "A court of law" or "a trial" was not alien to a large part of the nation in Thailand of those days.

In a society in which "patterned deviation from the norm"[7] was common, the supreme norm with compelling force would be the model for the law of the nation. Besides, since it absorbed the customary law, which had existed in the Central rural area and had been incorporated into the National law, it could be said that such a value model prevails over the hierarchy and is shared among all the classes.

II. FAMILY AND WOMEN IN THAI SOCIETY IN THE EARLY TWENTIETH CENTURY

1. Traditional Thai Family System

One can argue that the Thai family had a vague family category on the basis of an unstable marriage relation, but there was a strong tendency of uxorilocality.[8] It was not a nuclear family, nor was it an ancestor-centered unilineal extended family, but a matri-extended family with vagueness in its category.[9]

A number of sociological and anthropological studies have been made on the family system of Thailand. These works often describe the Thai family as a typical Southeast Asia bilateral kinship system. In such a bilateral kinship system in Southeast Asia, there is no preference to the patrilineal line, neither to the matrilineal one. They do not organize a lineage like Chinese or Korean society, but only a vague ego-centered kinship category exists.

In Thailand, however, there was also a strong tendency of uxorilocality. Usually, a bridegroom came in to live with his wife's parents. Normally they would leave for a new house after several years of uxorilocal residence. This sometimes

7 An American anthropologist, Herbert Phillips, explains the existence of the gap between the norm and the real behavior in Thai society as "patterned deviation from the norm." (Herbert Phillips, "The Scope and Limits of the 'Loose Structure' Concept," in Hans-Dieter Evers eds., *Loosely Structured Social Systems: Thailand in Comparative Perspective*, New Haven, 1969, p. 26.)

8 For example, in the marriage law, there were many descriptions which suggested the strong tendency towards an uxorilocality. Also many anthropological monographs on modern Thai rural society mentioned their uxorilocal rule of residence.

9 Junko Koizumi comments on "a family" in Siam (Thai) society before the mid-nineteenth century as follows: 'the realm of "the family" should be seen as a very broad sphere, embracing a multitude of factors and networks of relations which helped bind its vaguely defined members together.' Koizumi, Ibid., p.255.

happened at the time of their second daughter's marriage. Their new house was usually built within/near the compound of the wife's parents. In the rural areas, these kin groups (the parents and their married daughters' households) normally had such close relationships that they ate every meal together and cultivated their parents' land jointly. This kin group is called a "domestic group" (Keyes, 1975, pp. 274-297) or a "multihousehold compound" (Mizuno, 1968, p. 845). In other words, the strong bond between the parents and their daughters continued after the marriage.

In the inheritance of the parents' property, there was no preference of gender, and inheritance was normally distributed equally among the siblings.[10] There existed so-called bilateralism in the case of division of the property. However, the bond between daughters and their natal families was very strong, and the women's relationships with the close relatives (especially their parents) continued after their marriage. Besides, these relatives sometimes intervened and exercised powerful influence in the couple's life.[11] On occasion, a husband emotionally resisted this, and this could lead to a divorce. It seemed that the intervention by the close relatives of wives was thought to be rather natural. In addition, if a husband exerted violence on his wife's parents or her relatives, or even if he verbally abused them, this was considered as sufficient grounds for divorce. In the trials on divorce of those days, cases in which a husband accused his wife and wife's parents, or cases in which the wife and her parents accused a husband, were not rare. There were even some cases in which a husband and his wife's parents squabbled with each other over a wife (a daughter).[12]

It was Thai "polygyny" that gave the Thai traditional family vagueness of category, and became a factor letting the bond between a daughter and her natal family

10 An examination of the inheritance law indicates that, in the Thai family, there was no any preference of gender of the children. It cannot be said, on the contrary to what Mizuno pointed out, there was "daughters' inheritance" in those days.

However, looking at the trials over the inheritances in those days, we find that children's equal rights to succeed the properties were to be considered totally with reference to the question "How much each child had been given by the parents through his/her life?" or "How much each child took care of the parents' properties?." Therefore, these children might lose their right on the inheritance after their parents' death if they were paid expensive *ruan ho* or big amounts of *sin sort* at the time of their marriage. If they lived apart and didn't visit the parents nor manage the property after their marriage, they might lose their right . By this fact and the strong uxorilocal rule of residence existed in those days, it is possible that the man who married in the wife's house lost his potential right on his parents' land. For example, in the trial in Supanburi in B.E.2463 (1921), The Supreme Court judged that though *sin sort* or *ruan ho*, customary couldn't be included as an item of succession to the property, if they cost much enough if compared with the total property and the rest of the property was less than them, those who had been paid the money at the marriage should lose their right on the property. (Supreme Court precedent 364 / 2463)

11 In Chanthaburi in B. E. 2471 (1928), a woman named Kim asked to the court to divorce her husband by the reason of his violence on her. The husband, the defendant, claimed it was self-defense, that he had to hit her with a wooden stick because she had brought the stick out before, and her mother and her younger sister had joined and tried to hit him also. The Supreme Court recognized his argument, and his wife's divorce request was rejected after all. This story tell us how the wife's natal family "naturally" intervened into the couple's life.

12 For example, in Prachinburi, B.E.2464 (1921), a mother of a daughter brought a suit in the court to demand a divorce between her daughter and her son-law. The reason was that the son-in law hated to live with his mother in-law. The Supreme Court judged that reason was not enough for divorce the young couple. There is another similar case. A divorce suit in Bangkok in B.E. 2462 (1920) was brought in by a woman against her son-in-law. In this case, the mother and her daughter hated her daughter's husband who tried to take his wife from her mother's home to dwell separately.

remain strong.[13] At that time, it was permitted for a man to have plural wives by Thai traditional law. Some legal advisors insisted that a "monogamy" system must be legalized in Thai marriage law, but Rama V decided to let the polygyny system continue for the time being, upon the advice of French legal advisers (Ishii & Yoshikawa, 1987, pp. 160-161).

The remarkable characteristic of Thai polygyny was that, in many cases except royal families, wives were separated and did not live together, and the man went to stay at each wife's house for a while. A wife might keep on living in her birthplace, or she might stay at the house that her husband prepared for her particularly. Thai polygyny of those days was concentrated among the rich. The most frequent cases found throughout all social classes were, however, not this "polygyny type" common among the wealthy. Instead they were of the "bigamy type," in which a husband ran away from his wife without declaring divorce and stayed together with another woman, entering a new married life. In early twentieth-century Thailand, the marriage registration system was extremely incomplete throughout all the social classes.[14] Furthermore, after a husband left a house and his wife, he began to live with another woman without divorcing. Such cases are considered as a kind of "polygyny." However, as described in the following chapter, it was forbidden for a wife to take the form of "bigamy," that is to say, to have a new husband without divorcing the former husband. There was always a possibility for her to be accused of the offence of adultery by the former husband.

An important point is, in early twentieth-century Thailand, "the full-time housewife" idea or "the division of labor model of husband and wife" (woman should engage in housework in a house, and man should work as a breadwinner outside), was still a rarity. Even the women of common status, and not only the wealthy, were engaged in their own businesses, and doing business was not uncommon for them. Moreover, they used their private properties freely, which they brought with them at the time of marriage (*sin doem*), and were allowed to accumulate wealth for themselves.

The wives were able to hand over their *sin doem* to third persons by their own free wills even without their husbands' permission. In fact, there were few social sanctions on women's work.[15] Even in the case of polygyny, there weren't any norms

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13 It is not clear with how much frequency "polygyny" occurred in Thai society of those days. However, Louis Duplatre stated that the cases that a man having more than one wife was the minority of the society of his days (1920's). (Louis Duplatre, 1997, p.4)

14 Duplatre also described that even in the 1920's, marriage registration system was not familiar among Thai people yet. (Loeuis Duplatre, op.cit.)

15 According to Deplatre, Thai women could take almost any occupation except lawyer or politician. In fact, a lot of women engaged in commerce, but there were very few women who worked in legal sector. He explained that this was not because of legal prohibition but because of social values in Thailand of those days. (Louis Duplatre, Ibid., pp.10-11.)

or customs that forced these wives to live together, or forced minor wives to be subordinate to the first or the main wife.[16] The wives were able to work, and able to appeal for a divorce if a man did not treat them equally. There were differences of social status of each wife in polygyny, according to the marriage law. However, whatever status the wife might have, she had the right to be treated as "a wife" by her husband, and the wives were recognized as having the power to divorce if their husbands didn't fulfill their duties.

In other words, though Thai society of those days could be characterized as polygynistic society, nevertheless, it is necessary to understand this in the context of Thai history and culture. The "discourse" which argues that "polygyny" is simply equal to a "paternal/ patriarchy" system will be open to discussion.

2. Marriage and the Relationship between Husband and Wife

In Thai society of those days, it seemed that the divorce occurred with considerable frequency. The Frenchman Louis Duplatre, a legal adviser, stated that divorce was too easy in Thailand (Duplatre, 1997, pp. 72-80). Though the reasons of divorce were various (a debt, a quarrel between husband and wife, interference of the wife's parents, or the husband's - and sometimes the wife's - disappearance from the home), there was not any social pressure that restrained either divorce or second marriage throughout all the social classes.

Even though the marriage registration system was incomplete, the custom that a newly married couple made a contract document on the occasion of the marriage, or made a list of the private property (*sin doem*) which was brought by both sides, was frequently ofserved, especially among wealthier families. When a man and his wife's life failed and they divorced each other, a "*banchii thaaifon* (list of property)," in which property items of each were described in detail, was submitted without fail for the property division by both sides (or by a plaintiff). It might be said that there was a strong custom of making a list of property on both sides at the marriage, so that the list-making work could be done quickly. According to Duplatre, in Thai marriage law, there was an article originally to oblige the newly married couple to record *sin doem* of each other on the occasion of marriage, till it was abolished in 1804 (Ibid., p. 65). It indicates that making a list of property in marriage had existed as a strong custom from ancient times.

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16 A suit brought in Bangkok in B.E. 2472 (1929) would be a typical example to show polygyny of Thailand of those days. The plaintiff was a Thai woman who married a Chinese man (the defendant) who ran a rice mill. At the marriage, the Chinese husband promised her parents that he would never call his Chinese wife from China to live together with her. However, his Chinese wife later came to Thailand to live together. After that, the Chinese man began to treat the Chinese wife as his "main wife (*phanraya chaoruan*)," while treating this Thai woman as a mere housemaid. Finally this Thai woman was expelled from the house. The Thai woman, therefore, brought the suit to the court to divorce and to demand the return of her *sin doem*. The Supreme Court permitted their divorce and commanded the Chinese man to return of the *sin doem* to her.

There were three kinds of properties for a husband and a wife.

1. Private properties of husband and wife: *sin doem*
2. The fund that is brought in upon commencement of married life: *thun*
3. The property that generated after marriage: *sin somrot*

However, the distinction between *sin and doem* and *sin somrot* was complicated by time. For example, *sin somrot* could repay the *sin doem*, which each side had exhausted after marriage. Though a wife's parent had given it as *sin doem* or *thun* for their daughter, the inherited land was treated as *sin somrot* if a land certificate was published after marriage. *Sin doem* was the private property that a husband and his wife might use to purchase a home each in case of divorce or separation by the death of the partner. A wife could sell *sin doem* of her own without permission of her husband (Supreme Court precedent 416 / 2456) or she was able to hand it over to a third person by her will (Supreme Court precedent 1124 / 2456). Sometimes a wife's *sin doem* could be exempted as an object of debt attachment of a husband.

The marriage ceremony had an important meaning, in that the couple was admitted as "husband and wife." Thailand's marriage registration system was still incomplete in those days. Among wealthy people, *taeng gaan* (a wedding ceremony) was held on the occasion of the marriage. However, the couple who finished "*khanmaak*," a ceremony of engagement, was considered already to be a "formal" (and also "legal") husband and wife. According to the marriage law, the status of the wives were defined as follows;

1. A wife granted by the King,
2. A wife given by her parents after the engagement ceremony *(suukho khanmaak),*

There was not any description of the wedding ceremony in the law, and it is realized that the wife who married after *khanmaak* ceremony was recognized as a "legal" wife.

Furthermore, in the case of the wealthy class, *thongman* (the gold given for the bride from the bridegroom at the time of their engagement), and *sin sort* (dowry for the bride from the bridegroom) were prepared before the wedding.

However, one of the most important properties as an asset was "*ruan ho*," a new home for a newly married couple, which was built just before the marriage in the compound of the wife's parents' home. In the original sentences of articles on marriage law, a detailed description about *ruan ho* is not found, but in the commentary book on marriage and inheritance law, published by a judge in B.E. 2456 (1913), there

was an explanation on this *ruan ho* as follows:

> "When a man will live and eat together with a woman, usually the man side constructs *ruan ho* in the woman's land or her relatives' land, and sometimes there are cases that a woman's side receive the expenses for *ruan ho*, and prepare a house in the same kind of land for the couple." (Luanphitsaloysaniti, 1913, p. 25).

Both sides talked about the structure and the size of *ruan ho* beforehand, and usually paid and offered the money and the materials, and built it in the land of the bride by the date of wedding. Sometimes, this *ruan ho* was gorgeously made, with several bedrooms with a boarded wall, and it was sometimes a large portion of the couple's assets.[17]

Ruan ho was dismantled on the occasion of divorce, and a husband had it with his *sin doem* as the property of his side. In case of remarriage, he rebuilt that *ruan ho* on the land of his new wife.

In addition, it became grounds for divorce if a husband "gave up" *ruan ho*. In divorce request trials by the wife's side initiated in Prachinburi and Pichit in 1916-17, for example, the judges in the Supreme Court cited article 51 ["If a husband takes all his own property, dismantles his *ruan ho*, and leaves his wife, even just one day, this should be enough reason to prove '*khat phuamia kan* (the relation of him and his wife was already ended)' and even if they didn't take a procedure of a divorce, they are to be divorced already."] and recognized their divorce (Supreme Court precedent 37 / 2459 and 818 / 2459).[18]

In case of common people, a ceremony of engagement or marriage was often omitted and took a form of "living together (*yuu kin ruamkan*)." (Also in getting the second or additional wife in polygyny cases, these forms tended to be taken.) A man lived together in the house of his future wife's parents for one or two years and helped them in their work. If the parents examined him and thought he was adequate to be their son-in-law, they made *ruan ho* for the couple. The couple then finally became independent. For this newly married-in husband, whether they moved to their *ruan ho* or still lived with his wife's parents was an important point for securing the right of control over his wife. In addition, it was a significant point that influenced his share of

17 It ranges from several hundred baht up to several thousand baht of those days. These *ruan ho*, *sin sort*, and *thong man* seem to have been familiar to the farmers in the Central Thailand a long time ago. According to the interviews that I conducted at the villages in both Northern and Central part of Thailand during 1995-96, at a village in *Nakhorn Phathom*, the Central Area, the expense for *ruan ho* was offered by the bridegroom's side, and was built in the compound of the bride's side. The expense for building *ruan ho* usually ran very high among the wealthier farmers. Otherwise, at a village in *Chiang Mai*, the Northern part of Thailand, all the villagers I met didn't know the word "*ruan ho*." In traditional manner, Northern Thai villagers seldom paid *sin sort* on the occasion of marriage.

18 A similar suit was done in Monthon Nakhorn Rachashima in B. E. 2472 (1930), for example.

the property at the time of divorce or his wife's death.

However, in the trial around the divorce or the inheritance, the court must begin firstly to examine whether a man and woman are "a husband and a wife." If the couple had not gone through the engagement ceremony, the important conditions to prove that the couple was "a husband and his wife" were as follows: they got permission of the woman's parents,[19] or the woman had no sexual relation with another man simultaneously, or the man fed that woman as his wife continuously, etc. In case that a woman had not attained twenty years old, whether getting permission of her parents or not was most important point. For the women over twenty years old, whether being treated as a wife or not was most important.

III. WOMAN'S RIGHT OF INHERITANCE IN THAILAND

1. Divorce

When a couple registered at their marriage, they could divorce by the signatures of both the husband and his wife (the husband gave his wife the documents of acknowledgment of their divorce and took an oath in front of witnesses). In that event, a village headman or a public official might notify about their divorce and the property division of the couple. In addition, in a case in which a wife got rid of her husband who became a priest, and the husband recognized it, it was considered that the marriage was over. If the husband had neither *sin doem* nor *thun*, the couple was considered perfectly divorced.

However, when a husband and a wife did not divorce in this way, she had to bring a divorce suit in order to secure her property, or to do a second marriage, or in order not to be accused of "an offence of adultery."

By the reason of the expense of a Supreme Court trial, and the setting of the minimum property total sum that would be taken up in court, however, there have been many cases in which the parties accepted the judgment by district courts / High Courts, though they felt dissatisfied with the results. The marriage law determined the cases in which divorce was recognized as follows.

a. As a result of discord, a husband does not take care of his wife and leaves her alone for more than a defined period (Article 49-55, the Marriage Law), but if a husband dismantles their *ruan ho*, and runs away from home with his

19 Even though without permission of a woman's parents, when the woman gave birth to a child and her lover introduced her as his wife openly to the neighborhood, the couple was considered to be a husband and a wife legally enough. However, if the woman was under 20 years old, especially in a case of a girl in her low teens, the consent of the parents was inadequate for the legal marriage. In a suit that occurred in Samut Songkhram B.E. 2470 (1927), a mother of a 14 year-old girl accused a man who eloped with her daughter, and demanded that he return her home. She was in the fourth month of pregnancy then, and the defendant competed against the plaintiff to the Supreme Court. The court commanded to the man to return the girl to her mother and did not recognize their marriage yet since her mother had not given permission to the couple to marry.

property, it is considered that this couple is already divorced.[20]

b. When a husband insults his wife's relatives (Article 57, 58, 61 and 118, the Marriage Law).[21]
c. When a husband is proved to be an inadequate or bad person who commits crimes (robbery criminals, for example) (Article 108, the Marriage Law).
d. When a husband becomes a priest without dividing property (Article 37, the Marriage Law).
e. When a husband does not treat his wife fairly (*liang mia mai pen tham*) (Article 18, Royal Ordinance, the Marriage Law).
f. When the violence of a husband exceeds a limit[22] (Article112, 141, the Marriage Law).
g. When a husband is proved to deceive a woman to be his wife[23] (Article112, 141, the Marriage Law).

In particular, the fifth reason (e.) was important, and if the court recognized a husband didn't treat his wife well and properly, he could not accuse her even if she took a lover. When their divorce was concluded, each took *sin doem* home, as a general rule. When they divided *sin somrot*, a husband took two-thirds, and a wife received one-third; but when a wife alone had offered *sin doem* at their marriage, she could get two-thirds of *sin somrot*.

However, exceptional division methods were emploryed in the following cases.

a. When a husband expelled his wife from their house,
b. When he married other women and didn't take care of his former wife

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20 However, if a husband leaves his wife for business or work, a wife can't bring a suit of a divorce by the reason of absence of her husband. At least, the wife had to wait for a year, and 7 years at maximum. (Article 62, the Marriage law).

21 At Ubon Rachathani, in B. E. 2469 (1926), a man whose name was Suu brought a suit against his minor wife who escaped from him and her parents. The court took into consideration the fact that Suu broke the promise before their marriage and let her stay with his main wife, and abused and repelled her mother who visited her daughter. The court then judged Suu violated Article 58 of the Marriage Law (which prohibited a husband abusing his wife's relatives), and recognized their divorce as the minor wife claimed. (Supreme Court precedent 309/ 2469). In addition, in the next year, in Pethburi, a divorce suit of the wife who accused her husband of insulting her parents was also recognized (Supreme Court precedent 935 / 2469).

22 A case that a man forced a woman to be his wife by using violence, or a case of a husband's excessive use of violence on his wife after marriage was assumed as possible cause for divorce. In the case of divorce suit which raised the reason of the husband's violence, the important issue was whether his manner should be realized as "instructive" for his wife or not; his behavior was a kind of self-defense caused by his wife's violence.
According to the precedents on the divorce suit raised by the reason of husbands' violence, the difference between "reasonable instructive manner" and "excessive use of violence" seemed to be very unclear. However, as for the case when the husband's violence was not confined to his wife but extended to his wife's relatives (the parents in particular), or the case when the husband seriously injured the body of his wife (bone broken, head broken), the divorce seemed to be recognized.

23 For example, the case that a man asked a woman to marry him without informing her he had already married another woman, or the case that a man didn't feed his wife though he had promised before marriage to give her financial support. Those cases were also included.

If either of these two cases applied, *sin somrot* was divided in half between the husband and the (former) wife (Article 70, the Marriage Law).

If a husband used violence on the parents of his wife but did not apologize to them, and this fact was recognized by the court as the main reason of their divorce, the wife could take all of their *sin somrot*.

As described above, one of the reasons why many suit on divorce and inheritance of property had been brought by the women's side is that the wives had to undertake divorce suits in order to oftain shares of the property which they themselves built after marriage.

If it was considered that their divorce was not yet final, a wife still had the responsibility for a debt of her husband, and there were some cases that her "former" husband accused her of "an offence of adultery" as soon as she "remarried."

"An offence of adultery" was treated as an object of civil action instead of criminal one. Besides, once "an offence of adultery" was applied, all the property of the woman must be forfeited and monetary compensation for a husband and a fine for the Thai government were imposed on her lover. However, when the Supreme Court recognized a wife as a "*mia rang*" (a wife for whom the husband didn't care for a long time), this case was treated as an exception, so that her property was not confiscated. Adding to this, if her husband's debt occurred after their separation, and his creditors also knew the fact, his wife's property was not placed under receivership (Supreme Court precedent 353, 354 / 2461).

An offence of adultery of those days included the proviso that if a husband stated nothing for three months after he knew his wife had a lover, the husband was considered to have agreed to a divorce (Supreme Court precedent 434 / 2461). The reason why women caused a divorce suit regardless of large expense is that there was such an acute problem in the background.

The case in B.E. 2472 (1929) in Bangkok was suit brought by a husband who left home for seven months, and accused his wife who stayed home of an offence of adultery. This suit was raised after the wife inherited 10,000 *baht* from her father. When an offence of adultery of a wife was recognized, usually her property was forfeited and a fine and money of compensation was imposed on her lover. In this case, though the Supreme Court didn't consider that this man and his wife were divorced, it attached great importance to the fact that the wife was made to leave for a long time by her husband and finally judged this wife was *mia rang*. When a woman was judged to be *mia rang*, her property was not confiscated, and the fine of her lover was reduced by half (Supreme Court precedent 1051/ 2472). The existence of this "*mia rang*" was one of the big problems for judges of those days.

In the Supreme Court deliberation around succession to property of the woman, who was *mia rang* occurred in Nontaburi in B.E. 2456 (1913), a judge commented on

a point how *mia rang* was treated legally as follows:

> "Even if she is a *mia rang*, she must be punished when she has a lover, but the property which she accrued while she was abandoned by her husband shouldn't be *sin somrot*.
> We, therefore, in future, should not recognize *mia rang*'s right of inheritance for property of her husband, and should not recognize that, on the contrary, an original husband accuses a second marriage of a *mia rang* as adultery and demands the property confiscation either. Because she is not a complete wife legally."

In the precedents of those days, sympathetic descriptions of the situation of this *mia rang* stands out. However, the situation of incomplete divorce was not always disadvantageous to a woman. For example, there was a case in which a wife who lived apart from her husband for nearly 20 years brought suit against her husband's present wife, insisting on her right of inheritance, and her children's share of the property of her deceased husband.[24]

In another case, a husband could not evict his wife from the land that was his *sin doem* or their *sin somrot* until their divorce was concluded legally.[25] In the trials on divorce or property division, both sides (and the side who demands the property division) submitted a "*banchii thaai foong* (list of property)." In that list, all of the property which might be concerned, such as cash, jewels, real estate (land), a house, and personal property including furniture, personal ornaments, even one item of tableware, were written down with their prices. In the trial, the court examined minutely all the items to determine whether they were *sin somrot* or *sin doem*. In the case of polygyny, only *sin somrot* that had been accumulated the divorcing wife and her husband became an object of the division. (The property division of polygyny cases will be explained in detail in the next chapter).

Making a list of property was rather common practice in Thai society in those days. It could be said that in a society like Thailand, where divorce happened very frequently, and a husband and his wife hold their own property, such a document was necessary for a married couple.

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24 Supreme Court precedent 256 / 2456. In the trial, in Nonthaburi, a wife who lived separated from her husband for 27 years, and her children demanded the right on the property of her deceased husband against his present wife. For the *sin somrot* that generated when the woman was a "wife" of the man, the court recognized their right of inheritance.

25 Supreme Court precedent 471 / 2459. In Panga province, 1916, a man brought a suit against his separated wife to evict her from his land. The Supreme Court recognized the wife was *mia rang*; in other words, they had not divorced yet. The court thus prohibited the man from evicting his wife before divorce and dividing their property.

2. Separation by Death

As seen in the case of divorce, *sin doem* is considered as a personal possession, while *sin somrot* is a common property between a husband and a wife. In the case of separation caused by the husband's death, the most important points that affected the wife's rights were as follows;

1. Existence of their child
2. Status of the wife (main wife or minor wife)
3. Wife's possession of *sin doem* at their marriage

In the inheritance, the minor wife who had not brought her own *sin doem* and had not given birth to any child had to content herself with the most disadvantageous status.

When a husband died first, and he had no child, *thun* and *sin doem* that both sides contributed were returned to each. As for the husband's property, legal heirs (his parents, his siblings, and other relatives) had the right, while the share of his wife was returned to her. If a deceased husband had only one wife and had no children, their *sin somrot* was to be divided in the same way as in the case of divorce. When there were no relatives on the husband's side, the wife succeeded entirely.[26]

However, when there were children, the widow and the children halved the husband's estate. In other words, in the case of separation by death, a widow had also the right of the lost husband share in the whole *sin somrot*. If she was an only wife, she would succeed to two-thirds of property of her husband as a result.

It is the property division method in the case of polygyny that becomes a problem here. The inheritance method in a case of polygyny was determined by the position of a wife in the Inheritance Law, as follows:

1. A wife who was granted by a king 3.5 shares of *sim somrot*

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26 Otherwise the inheritance rights of widowers were clearly asymmetric to the cases of widows. If a wife died and she didn't have any child with her husband, that widower alone succeeds to both *sin doem* of his wife and all of *sin somrot* when *sin somrot* did not reach two times the *sin doem* of husband and wife.

When *sin somrot* is equal to or more than two times of *sin doem* of a husband and a wife, the wife's *sin doem* was given to her parents and the husband succeeded to all of their *sin somrot*. If a deceased wife had no children and no *sin doem*, the widower has the right on the whole property. But when a wife died during the period living together with her parents, all of the wife's property is in the possession of her parents. (Article 20, the Inheritance law). This was because the wife is still considered in the protection of her parents, not of her husband, while they lived with her parents. It is however, noteworthy that land which a wife inherited from parents after marriage was considered being *sin somrot*. A husband had the right on this kind of *sin somrot* when his wife died and had no children or both his wife and his child died.

The inheritance at the case of separation by death is clearly profitable to a widower than a widow. It is however, necessary to examine why such a non-symmetric system was adopted on the occasion of separation by death, before concluding that the principle of the paternalism was applied here. We must take consider this inheritance system existed under the strong rule of uxorilocality. That is, a husband has to depend on the financial support from the wife's parents, especially at the beginning of marriage. In this uxorilocality rule, a widower without any children would easily fall into the disadvantageous situation. It is considered that this non-symmetric system might be established to prevent this and to protect the property right of widowers.

2. A wife whom he married through *khanmaak* ceremony ("major wife") 3 shares
3. A minor wife 2.5 shares

However, in the case of a minor wife, she had to pass at least three years with her husband. If their married life had not lasted at least three years, her share was only 0.5 (Article 5, the Inheritance Law).

A wife granted by a king was already extremely exceptional in early twentieth-century Thailand, and the main distinction between the wives was major wife or minor wife. In many cases, the first wife tended to be a major wife who was married in a *khanmaak* ceremony; however, if a first wife became wife with no ceremony and a second wife married through the ceremony, the latter one might become the "major wife."[27] If all the wives married without any ceremony, they were considered to have an equal status.

The existence of children (a legal heir of her husband) very much affected the widow's claim to a share of her husband's property. If she was a mere minor wife with no child, she sometimes had to claim for her right to her husband's property against other wives in court to secure her share.[28] Even if a child had died before his father's death, whether a baby lived after the birth for a while was a very important condition in the property division.

For example, both in Ayutthaya in B.E.2472 (1930) and in Chachoengsao, in B.E. 2471 (1928) there were trials in which wives who had no child (or her mother) claimed their share of the deceased husbands' property. Though they were seemingly very similar cases, the claim was recognized in one case but not the other. The reason for different judgments was that the judge considered whether each baby was born

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27 Under Thai polygyny system, a minor wife also had the right to inherit her husband's property at the time of divorce or separation by death. These minor wives usually entered into agreements with their husbands at their marriage to be treated as "wives" by the husbands. However, if a woman (or her parents) had came to an agreement with a man that she would stay with him as "*nang bamroe*" (a house maid), she didn't have any right to inherit her "master's" property, even though she behaved herself as "his wife."

In Chiang Mai, 1914, a British subject woman brought a lawsuit against her master's children to claim her right to inherit his property on the grounds that she had behaved herself as his "wife" actually. The Supreme Court didn't recognize her claim since the agreement between her father and the man had been that she had been sent to him as *nang bamroe*, not as a wife, thus she was not any kind of wife (Supreme Court precedent 1261/2456).

28 In Nakhon Si Thammarat, B.E. 2468 (1925), an ex-wife of a nobleman and her children raised a lawsuit against her deceased husband's second wife. The ex-wife claimed she and her children had the right to succeed her husband's own property (*sin doem*) so the second wife should return it to them. The supreme court recognized her claim on the reason that the second wife had no child thus she had no right to succeed her husband's *sin doem* (Supreme Court precedent 115/2468). There were some similar cases in the precedents. Especially in the case of minor wives having no *sin doem* and no child, their rights of inheritance tended not to be recognized.

alive and had survived for a while or not.[29]

In polygyny cases, calculations such as *sin doem, sin somrot* were complicated, and since many of the minor wives became these kinds of wives because of economic reasons, to secure their share to the property was vitally serious for them.

In the beginning of Thailand's "modern" court system, there was still an effort to make judgments in accordance with the traditional marriage law. That is to say, every item of property was added up, and it was divided by the whole again. Later, this old method of calculating property was considered to unsuitable for the reality. *Sin doem* and *sin somrot* thus began to be added and divided only between a husband and the concerned wife.

In 1904, there was a suit in Bangkok, in which the major wife accused the minor wife and her children of refusing to include their residence into their deceased husband's property to be divided. The judges did not admit the claim of the major wife, for the reason that the preparation of the law code of these cases had not been finished yet. Besides, the court was afraid the minor wife and her four children would be at a loss if they were forced to sell their residence. The court thus finally assumed that there were proprietary rights to a house of a second wife (Supreme Court precedent 501/ 122).

Later, the Supreme Court recognized difficulties of the property division of polygyny cases. The decision paper noted that the prompt revision of the law was needed since calculation of *sin somrot* became more complicated (Supreme Court precedent 213 / 2456).

And finally, in the trials involving inheritance division in instances of polygyny, only *sin doem* and *sin somrot* between a husband and the concerned wife were considered.[30]

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29 In B.E. 2471 (1928), Khem, a woman in Chachoeangsao, brought a lawsuit against her daughter's husband's children. She demanded she should inherit the property in place of her daughter and her daughter's child. Khem's daughter whose name was Choy married a man named Chum. Chum's former wife had died already and they had children. Chum died soon after their marriage, and then Choy was five months pregnant. A few months later, Choy had a stillbirth and died soon. The Supreme Court recognized that Chum's property was *sin doem*, which occurred before their marriage, and they had no *sin somrot*. Since Choy had a stillbirth thus she was deemed to have no child. The court, therefore, didn't recognize Khem's claim. (Supreme Court precedent 338 / 2471).

Otherwise, at Ayutthaya in 2472 (1930), a man raised a lawsuit against his father's second wife claiming that she had no right on his father's property because she had no child. The Supreme Court took consider the fact that the defendant (the second wife) once had a child though the child died soon after its birth. The court recognized her right to inherit her husband's property (Supreme Court precedent 730/ 2472).

30 See the decision paper of the local court in the Supreme Court precedent 831/2456 for example. In this paper, the judge suggested the policy to divide properties in polygyny cases as follows;

"In the cases of polygyny, if each wife lived separately at each different residence, *sin somrot* should be divided among the husband and each wife respectively, since they generated this property by themselves. It should not be added together and should not be divided among all the wives."

CONCLUSION

The married women in early twentieth century Thailand didn't identify themselves as "full-time housewives," and they were accepted by Thai society to be engaged in commerce or business working outside home.

Furthermore, Thai married women had equal right to their brothers to succeed to their parents' property. They were permitted to own their private property *(sin doem)* after marriage, and they were able to bring lawsuits to be protected by law or secure their shares of the properties.

Though the property right of married women was surely recognized, it was a fact that they were disadvantaged compared with men. First of all, by the frequency of divorce and the uncertainty of married life, Thai women might fall into economically or legally disadvantageous situations. In addition, Thai wives couldn't demand a division of property unless their divorce was complete. Therefore, the married women had to raise divorce suits when their husbands had new wives in order to get their property rights. Actually, the married women had a lot of reasons to divorce their husbands, but one of the reasons, "violence of a husband," was not readily recognized as grounds for divorce, for sometimes it was recognized as "a kind of instruction for a wife by her husband."

Furthermore, when a wife succeeded to a vast inheritance, her husband had the right to two-thirds of the property automatically (since it was recognized as *sin somrot*), and if he accused his wife of the "offence of adultery" and the court approved his claim, all of her property became his own property. It is possible to think some husbands actually started suits in order to get their wives, property.

However, as for the women's side, they also tried to minimize their losses in case of divorce by making mutual contracts or making lists of properties on the occasion of marriage. When Thai women remarried they protected themselves against accsations of "an offence of adultery" by telling of their divorce in front of witnesses or by bringing a divorce suit. The numerousness of divorce suits of those days could be just understood as opposition to husbands in order to obtain property security for wives.

In Thai women's mind of those days (and Thai men's also), the marriage was neither a result of "romantic love" demanding complete devotion for each other, nor a strict institution which forced Thai women not to divorce their husbands during their lifetimes.

However, as revealed by an examination of the precedents of those days, the court, especially the Supreme Court, seemed to make an effort to hold rather fair trials for women. For example, in property division in cases of polygyny, though the judges depended on traditional law on the point of "protection of a property right of a

woman," and if they judged it to be unsuitable for the real situation, they tried to adapt the law to the reality. They invented realistic measures to calculate *sin doem* and *sin somrot* between a husband and the concerned wife respectively, and these became precedents.[31]

In the case of the accusation of an offence of adultery, the Supreme Court tried to avoid unfair judgments for the wives who had been gotten rid of by their husbands. The judges gradually used the concept of "*mia rang*" (a wife left by a husband) in their trials and these judgments became precedents. If the wives were recognized as "*mia rang*," their property was never confiscated if they were accused of adultery.[32]

Furthermore, a husband had duty to treat the woman whom he married as a wife in a humane way. Besides, a husband had also to be responsible for his main wife's debt.[33] Thai wives used their own property and *sin somrot* freely and were even able to run their own enterprises, such as house-renting.

The above-mentioned Duplatre states that "The power of Thai husbands on management of *sin somrot* is not much. However, since the main wives could borrow money freely, the authority on the property of them was very big." (Duplatre, ibid. pp. 68-69).

In addition, it is necessary to take into account that many articles about divorce in the marriage law were the ones relating to divorce requested from the women's side unilaterally. A judge of those days said, "Thai marriage law gives only a woman an opportunity to divorce. Because a woman is under free will of her husband after marriage, therefore, she must be cautious of all kind of behavior of her husband." Furthermore, he added that a lot of divorce suits intiated by husbands were concerned with the property that their wives owned. The courts of law, however, did not easily recognize lawsuits of men, and examined more strictly than in cases of women

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31 In Bangkok, B.E.2474 (1932), a minor wife of a nobleman brought a lawsuit to demand divorce and division of their property (*sin somrot*). In the suit, the point whether jewels and the cash which she brought in at the marriage were *sin doem* or simple "personal articles" (*sin suwantua*) was argued in the Supreme Court. The court cited the previous precedent, which originally ordered the wife's responsibility for the husband's debt, "If a husband and a wife brought their own properties at their marriage, even though whatever purpose they used them, they should be *sin doem*. It was not necessarily utilized together. (Supreme Court precedent 265/2473)" and recognized this minor wife's right on *sin somrot* (Supreme Court precedent 614/2475).

32 It is noteworthy that the purpose of "an offence of adultery" in Thailand of those days was not necessarily to prevent "unfaithful behavior" of a wife. As mentioned earlier, an offence of adultery of those days had prescription. Besides, if it was proved that a husband did not treat a wife in a humane way, he couldn't bring suit against his wife if she took a lover. Adding to this, in the articles about "an offence of adultery" described in the marriage law, there was a description as follows:
"If a husband and a wife had no children and then she ran away for her lover. If she had three children with this lover, the former husband couldn't brought a lawsuit against her as an offence of adultery" (*Article 20, the Marriage Law*). Even though a woman was accused of an offence of adultery and the court recognized it, she could divorce her husband and remarry her lover later (*Article 10&56, the Marriage Law*). These facts seem to suggest that "an offence of adultery" of those days in Thailand apparently had different meanings from the other more "paternalistic" societies such as Japan.

33 Usually, a husband had to be responsible for his major wife's debt when she couldn't repay the debt. If a wife borrowed money and her husband didn't know the fact, the husband had to be responsible only for the principal, and the creditor could demand the interest only from the wife's *sin doem*. However, if he had known of his wife's debt, he had also to be responsible for the interest of the debt. If their *sin somrot* was not enough for repaying all the debt, the husband had to pay from his *sin doem* also. (Supreme Court precedent 379 / 2447, 705/ 2449 and Duplatre, Ibid., pp.68-69)

(Luanphisaloysaniti, 1913, p.43).

In other words, for Thai women, marriage was unstable and the tie between a husband and a wife was easy to break. However, their relatives protected them, and they had their own property as well. Even though a woman might suffer damage by failure of her marriage, there were various legal protections to minimize her loss in the case of divorce or the case of separation by death.

In fact, if we saw only the facts that there existed legally admitted polygyny, an offence of adultery, and the acceptance of "violence of a husband," these would be enough elements to lead to the conclusion that in the early twentieth-century Thailand, Thai wives were under the absolute power of their husbands.

However, if we reexamine these elements in historical/cultural context of Thailand, we find a rather different reality of the status of Thai women. In reality, Thai women of those days dared to bring lawsuits against their husbands to protect her dignity and property. This is considerably different from "a woman image in modern Thai society" on the basis of Western modernization theory's viewpoint.

The present trend of the historical research, as well as studies on Thai family, seems to give excessive esteem to "modernization theory." This kind of view, however, has the possibility to lead to the gender theory that overemphasizes the influence of "Western culture," as well as oversimplifying the historical development and variety of the status of women.

If anything, it might be said that the status of Thai married women changed largely after "family law" establishment in 1935. This law was a product of a "Constitutional Revolution," and mainly followed the French model of the same period as "modern law." Monogamy became prescribed in place of polygyny. Under the actual continuation of polygynistic practices, the status of the wives who were not registered as legal wives had to change from "a wife" into "a housemaid (*nang bamroe*)." This fact meant both the unregistered wives and their children lost the right of inheritance of the properties of their husbands (fathers). By this law, women's property right was largely limited, the same as French women of those days. In the text of the law, a husband was described as a "head of family" for the first time. Adding to this, a wife had to ask "permission" of her husband when she wished to work outside or on the occasion of disposal of her own *sin doem*. "Parental authority" of children belongs to their father, not their mother. In other words it may be said that Thailand then selected the road of "modernization" by introducing the European paternal principle. However, one can argue Thai women had lost many of their rights by the process of "Westernization."[34]

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34 After the coup or so-called "Constitutional Revolution," in 1932, how did the political leaders try to redefine the social role of Thai women? What kind of "Nations" they tried to modify Thai women? These points should be also examined from the viewpoints of gender studies hereafter.

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