

# ***HANGEUL AS A TOOL OF RESISTANCE AGAINST FORCED ASSIMILATION: MAKING SENSE OF THE FRAMEWORK ACT ON KOREAN LANGUAGE***

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*Abstract:* Language policies that mandate a government use a single language may seem controversial and unconstitutional. English-only policies are often seen as xenophobic and discriminatory. However, that may not be the case for South Korea's Framework Act on Korean Language, which mandates the use of the Korean alphabet, *Hangeul*, for official documents by government institutions. Despite the resemblance between the Framework Act on Korean Language and English-only policies, the Framework Act should be understood differently than English-only policies because the *Hangeul*-only movement has an inverse history to English-only movements. English-only movements have a history of using English as a tool to force assimilation. In contrast, *Hangeul* has a history of being a tool of resistance against forced assimilation perpetrated by the Japanese colonial government. Japanese colonizers attempted to eliminate the Korean language by forcing Japanese as the national language of Korea, removing Korean language arts as a subject from school curricula, and punishing those who still retained Korean. As an act of independence and autonomy, Korean scholars continued to study and develop *Hangeul* and the Korean language. This historical context of *Hangeul* demonstrates one perspective in understanding the Framework Act on Korean Language and its constitutionality differently than English-only policies in the United States. However, the dangers of discrimination arising from the Framework Act on Korean Language cannot be ignored. Thus, this Comment also examines the law's discriminatory effect as Korea's foreign population continues to grow.

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## I. INTRODUCTION

In 2005, South Korea (hereinafter "Korea") enacted the Framework Act on Korean Language (hereinafter "Framework Act").<sup>1</sup> Article 14 of the

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<sup>1</sup> Cho Hang-rok, *Gugeogibonbeopgwa hangugeogyoyuk* [A Study of the Fundamental Law for Korean Language and Korean Language Education], 18 J. KOREAN LANGUAGE EDUC. 401, 404 (2007).

Framework Act mandates the use of *Hangeul*,<sup>2</sup> the Korean alphabet,<sup>3</sup> for official documents by government institutions.<sup>4</sup> It also provides for exceptions to use other foreign characters by a presidential decree.<sup>5</sup>

At first glance, the language of the Framework Act may resemble a language policy similar to English-only policies which some states have attempted to implement in the United States.<sup>6</sup> English-only policies in the United States typically affect how governments use languages, such as mandating the use of only English for government documents, meetings, and other official acts.<sup>7</sup> They may also sometimes prohibit the use of other languages.<sup>8</sup> These types of English-only policies are controversial, as those who oppose them view them as xenophobic and a barrier to accessing resources.<sup>9</sup> English-only opponents hold the view that laws “regulating ethnic

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<sup>2</sup> I have romanized the word according to the rules set forth by the Korean government. See *Romanization of Korean*, MINISTRY OF CULTURE, SPORTS & TOURISM, <http://www.mcst.go.kr/english/koreaInfo/language/romanization.jsp> (last visited May 6, 2018). The word is romanized as *Hangul* only when it is spelled as such in titles of sources or in direct quotes.

<sup>3</sup> *Hangeul* is a phonetic writing system where it uses a combination of consonantal letters and vocalic letters to create each syllable block. See Daniel Zagar, *Hangul: A Fascinating Writing System. A Comment on Kwon, Nam, and Lee (2015)*, 121 PERCEPTUAL & MOTOR SKILLS: LEARNING & MEMORY 461, 462 (2015); Li Ying Che, *Hangul's Universal Appeal and Future Potential*, 51 J. KOREAN STUD. 51, 53–56 (2014). As a comparison, *Hanja* (Chinese characters) uses individual characters to indicate meaning of the word rather than distinct sounds like *Hangeul*. Li Ying Che, *Hangul's Universal Appeal and Future Potential*, 51 J. KOREAN STUD. 51, 56 (2014).

<sup>4</sup> Framework Act on Korean Language, Act No. 7368, July 28, 2005, amended by Act No. 14625, Sep. 22, 2017, art. 14 (S. Kor.), translated in National Law Information Center online database, <http://www.law.go.kr/LSW/eng/engMain.do> (“Public institutions, etc. shall prepare official documents in the Korean language in accordance with language norms, using terms and sentences which ordinary citizens easily understand: Provided, That [sic] Chinese characters or other foreign letters may be entered in parentheses, in cases prescribed by Presidential Decree.”).

<sup>5</sup> *Id.*

<sup>6</sup> Given the limited scope and length of this comment, a comparison is limited to the English-only language policies in the United States.

<sup>7</sup> See Josh Hill et al., *Watch Your Language! The Kansas Law Review Survey of Official-English and English-only Laws and Policies*, 57 U. KAN. L. REV. 669, 673 (2009).

<sup>8</sup> Crystal Goodson Wilkerson, *Patriotism or Prejudice: Alabama's Official English Amendment*, 34 CUMB. L. REV. 253, 259 (2004).

<sup>9</sup> See, e.g., Andrew Hartman, *Language as Oppression: The English-only Movement in the United States*, 17 SOCIALISM & DEMOCRACY 187, 195 (2003) (“The standardization of language is an oppressive and racist agenda that limits social mobility for people of color. . . . [T]he oppression of language successfully defends a society constructed according to the supremacy of whites.”); Teresa Pac, *The English-Only Movement in the US and the World in the Twenty-First Century*, 11 PERSP. ON GLOB. DEV. & TECH. 192, 197 (2012) (“[L]egislating English as the official language of the U.S. is not about preserving bonds or providing opportunities; it is about restricting language rights, limiting access to education, impeding socioeconomic mobility, and ultimately making assimilation into the American nationality for specific populations more difficult.”). Even the referendum to include Article XXVIII to the Constitution of Arizona only passed with a small margin, with 50.5% of votes. RAYMOND TATALOVICH, NATIVISM REBORN?: THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES 145 (2015) (ebook); Chris Boehler, *Yniguez v.*

and language minorities' language use are not about language per se, but about social control goaded by racial animus that uses language to discriminate against its speaker."<sup>10</sup>

English-only policies are also frequently held unconstitutional<sup>11</sup> because they restrict "citizens' rights to communicate with elected officials and constituents."<sup>12</sup> For example, Article XXVIII of the Arizona Constitution (hereinafter "Article") mandated the use of English for all official government documents in 1988.<sup>13</sup> However, the Supreme Court of Arizona struck down Article XXVIII as unconstitutional in *Ruiz v. Hull*.<sup>14</sup> The court held that the Article violated the First Amendment because people with limited English proficiency could not communicate with the government.<sup>15</sup> The Article limited their rights to access the government and participate equally in the political process.<sup>16</sup> Further, the court found that the Article limited the political speech of elected officials and public employees.<sup>17</sup>

Despite the resemblance between the Article and Article 14 of the Framework Act,<sup>18</sup> the Constitutional Court of Korea (hereinafter

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*Arizonans for Official English: The Struggle to Make English the Official Language*, 34 HOUS. L. REV. 1637, 1642 (1998).

<sup>10</sup> Pac, *supra* note 9, at 195.

<sup>11</sup> Wilkerson, *supra* note 8, at 259.

<sup>12</sup> Hill et al., *supra* note 7, at 675.

<sup>13</sup> Article XXVIII declared English as the official language of Arizona. Government branches subject to the Amendment included the legislative, executive, and judicial branch, as well as all political subdivisions, departments, and agencies, including local governments and municipalities. Section three of the Amendment prohibited Arizona from using or requiring the use of languages other than English. All political subdivisions and Arizona were to only act in English and any governmental document that were not in English were not deemed valid, effective, or enforceable. Languages other than English could be used, however, in educating students not proficient in English, to comply with other federal laws, foreign language education, to protect public health or safety, and to protect the rights of criminal defendants or victims of crime. *See Ruiz v. Hull*, 957 P.2d 984, 1003–04 (Ariz. 1998).

<sup>14</sup> *Id.* Arizona state employees, consisting of four elected officials, five state employees, and one public school teacher, challenged the Article as unconstitutional because they could not speak Spanish when performing government business. Hill et al., *supra* note 7, at 677. They argued the Article violated the First Amendment because it regulated content of a speech. *Ruiz*, 957 P.2d at 990. The plaintiffs also argued that the Article violated the Equal Protection Clause of the Fourteenth Amendment because it discriminated against non-English-speaking minorities. *Id.*

<sup>15</sup> Hill et al., *supra* note 7, at 677.

<sup>16</sup> *Ruiz*, 957 P.2d at 997.

<sup>17</sup> David Michael Miller, *Assimilate Me. It's as Easy as (Getting Rid of) Uno, Dos, Tres*, 74 UMKC L. REV. 455, 464 (2005).

<sup>18</sup> It is also important to note the differences. Arizona's Article goes further than Article 14 by mandating use of English in government acts as well. In addition, while Article 14 does not say anything about whether the validity of an official document can be questioned if it is in a language other than Korean, Arizona's Article specifically discusses that no government document is valid, effective, and enforceable if

“Constitutional Court”) held that the Framework Act mandating the use of *Hangeul* was constitutional.<sup>19</sup> One obvious contributing factor to the Constitutional Court’s reasoning is that Korea is largely homogeneous and the majority of Koreans speak Korean, and thus read and write *Hangeul*.<sup>20</sup> This Comment, however, provides a context beyond the obvious difference in demographics with the United States. The *Hangeul*’s historical context is examined to demonstrate the *Hangeul*-only<sup>21</sup> movement’s inverse history to English-only movements, and thus the need to understand the Framework Act’s *Hangeul*-only mandate in a different context than when scrutinizing English-only policies.

While English-only movements historically used English as a tool to force assimilation and exclude immigrants, *Hangeul* in Korea was used as a tool of resistance against forced assimilation. Koreans used and studied *Hangeul* in opposition to the Japanese colonial government’s forced assimilation policy during the Japanese colonial era.<sup>22</sup> During the colonization period, the Japanese colonial government attempted to eliminate the Korean language by removing Korean language arts from school curricula, forcing Koreans to take Japanese names, and punishing those who spoke Korean in public.<sup>23</sup> Yet, it was during this time that Korean scholars developed norms for the Korean language and *Hangeul*.<sup>24</sup> Researching and developing the language during the colonial period was a demonstration of

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it is not in English. *Ruiz*, 957 P.2d at 1004. Arizona’s law also specifically prohibits making or enforcing a law that requires use of other languages other than English, whereas Korea’s law does not explicitly ban laws that require other languages. *Id.*

<sup>19</sup> Constitutional Court [Const. Ct.], 2012Hun-Ma854, Dec. 20, 2016 (S. Kor.).

<sup>20</sup> *Korea, South*, CENTRAL INTELLIGENCE AGENCY: WORLD FACTBOOK (Mar. 15, 2018), <https://www.cia.gov/library/publications/the-world-factbook/geos/ks.html>.

<sup>21</sup> For the purposes of this Comment, I will interchangeably refer to the Framework Act as *Hangeul*-only, although it is important to keep in mind that the Framework Act provides exceptions to using only *Hangeul*.

<sup>22</sup> See Park Yong-Kyu, *Haebang ihu joseoneohakhoeui jeongchi jihyeong A Political Spectrum of the Members of the Korean Language Society after the Liberation*, 19 J. KOREAN SUNDO CULTURE 45–47 (2015). See generally Choi Kyeong-bong, *Iljegangjeomgi joseoneohakhoe hwaldongui yeoksajeok uimi [The Historical Meaning of the Korean Language Society Activities in the Colonial Period]*, 31 J. KOREAN LITERARY HIST. 408 (2006).

<sup>23</sup> See Park Gyunseop, *Eoneo tongjeui gyoyuksa: ‘joseoneo’ malsalgwa ‘gugeo’ gangyouti pokryeokseong [History of Language Control: Annihilation of ‘Korean’ and the Violence of Forcing ‘National Language’]*, JAPANESE LANGUAGE LITERATURE ASS’N OF KOREA DISSERTATION PRESENTATIONS COLLECTION 272, 272 (2004); Jung Jae-hwan, *Haebang hu urimal doro chatgi undongui naeyonggwa seonggwa [Recovery Campaign of Mother Tongue and Its Result after Korean Liberation]*, 296 HAN-GEUL 151, 154, 180 (2012).

<sup>24</sup> Choi Kyeongbong, *Iljeui ilboneo sayong jeongchaekgwa joseoneohakhoe [The Japanese Colonial Government’s Japanese Language Use Policy and the Korean Language Society]*, 32 NAEIL-EUL YEONEUN YEOKSA 66, 73 (2008).

resistance, independence, and autonomy. It was an effort to put the Korean language at the same status as the Japanese language, which, at the time, was forced upon Korean citizens as the national language.<sup>25</sup>

Current literature regarding the Framework Act largely focuses on the development and criticisms of the law.<sup>26</sup> The existing literature also examines the efficiency of the Framework Act, how it can be amended, and how it compares to other previous laws that attempted to regulate the use of *Hangeul*.<sup>27</sup> Some academic articles discuss how the law influenced Korean language arts education<sup>28</sup> and reasons for opposing the law.<sup>29</sup> This Comment aims to contribute to the existing English-language literature by providing context to the *Hangeul*-only mandate. While other contexts and perspectives may exist to understand the constitutionality of the Framework Act, *Hangeul*'s historical context will be examined as one perspective in understanding the Framework Act and its constitutionality.

Part II begins by providing background on *Hangeul* and Korea's Framework Act. Then, Part III considers the historical context of *Hangeul*, examining its role in resisting forced assimilation during the Japanese colonial era. An analysis is given on how this historical context is inverse to the English-only movements' history in the United States. Part IV discusses the potential harm and discriminatory effects which might arise from the Framework Act's *Hangeul*-only mandate, considering that Korea is experiencing an increase in ethnic and racial diversity. Part V concludes the Comment with the hope that laws in general will be contextualized to better grasp their direct and disparate impacts in society.

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<sup>25</sup> Kim Gujin, *Joseoneo hakhoe sageoneul tonghae bon minjok munhwa undong* [Ethnic Nationalism Movement Viewed Through the Korean Language Society Incident], 42 NARASARANG 56, 61 (1982).

<sup>26</sup> See, e.g., Cho Tae-rin, *Eoneo jeongchaekeseo beopjeok gyujeongui uimiwa hangye-gugeogibonbeop dasi bogi-* [Signification and Limitation of Legal Regulations on Language Policy-Reviewing the "Fundamental Law on the Korean Language"-], 24 KOREAN LANGUAGE RES. 241, 257 (2009).

<sup>27</sup> See generally Park Yong-chan, *Gugeo gibonbeobui beopryuljeok silhyoseonggwa uiui* [How effective is "The Framework Act on the Korean Language"?], 23 KOREAN LANGUAGE RES. 121 (2008).

<sup>28</sup> See, e.g., Cho Hang-rok, *supra* note 1.

<sup>29</sup> See, e.g., Jin Jae-kyo, "Gugeogibonbeop" gwa hanmungyoyukui banghyang-eoneo naesyeneollijeumeul neomeo- [The Basic Law of Korean National Language and the Direction for Teaching Classical Chinese-Transcending Korean Lingual Nationalism-], 27 J. KOREAN CLASSICAL EDUC. 361 (2006); Choi Dai-kwon, *Gugeogibonbeobui wiheonseonge gwanhan yeongu: hangeuljeonyongui gangjereul jungsimeuro* [A Study of the Constitutionality of Kukokibonbop (Basic Act for Korean National Language): With the Focus Placed on Its Command for Hangeul (Korean Alphabets) Only Policy], 55 SEOUL L.J. 241 (2014).

## II. BACKGROUND ON *HANGEUL* AND THE FRAMEWORK ACT ON KOREAN LANGUAGE

### A. *Creation of Hangeul, Korea's Alphabet*

Before 1446, Korea used *Hanja* (Chinese characters) as its writing system.<sup>30</sup> Using *Hanja* as a writing system presented a few issues. For example, literacy in *Hanja* was limited to the elite class.<sup>31</sup> Thus, the ability to read and write *Hanja* was a status symbol for the ruling class.<sup>32</sup> In addition, *Hanja* did not represent all Korean sounds and words.<sup>33</sup>

King Sejong, the fourth King of Chosun, who reigned from 1418 to 1450,<sup>34</sup> wanted to develop a writing system that would be accessible to all Koreans.<sup>35</sup> King Sejong, with the help of his scholars, created and developed *Hangeul*<sup>36</sup> in 1443,<sup>37</sup> and promulgated the writing system in 1446.<sup>38</sup> He also published *Hunminjeongeum*, which is the Correct Sounds for the Instruction of the People (hereinafter “Correct Sounds”), with examples of *Hangeul* pronunciation and the principles behind the alphabet.<sup>39</sup> The Correct Sounds described King Sejong’s motivation for creating and developing *Hangeul*:

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<sup>30</sup> Young-Key Kim-Renaud, *Introduction*, in *THE KOREAN ALPHABET: ITS HISTORY AND STRUCTURE* 1, 2 (Young-Key Kim-Renaud ed. 1997); KI-MOON LEE & S. ROBERT RAMSEY, *A HISTORY OF THE KOREAN LANGUAGE* 50 (2011).

<sup>31</sup> Kim-Renaud, *supra* note 30, at 2.

<sup>32</sup> Chin W. Kim, *The Legacy of King Sejong the Great*, 30 *STUD. LINGUISTIC SCI.* 3, 6 (2000); Florian Coulmas, *The Nationalization of Writing*, 30 *STUD. LINGUISTIC SCI.* 47, 56 (2000) (“Mastery of Classical Chinese was an indispensable prerequisite for securing a place among the intellectual elite.”).

<sup>33</sup> Kim-Renaud, *supra* note 30, at 2. *See also* Chin W. Kim, *supra* note 32, at 7; Li Ying Che, *supra* note 3, at 53. *See generally* GARY K. LEDYARD, *THE KOREAN LANGUAGE REFORM OF 1446* (1998) (explaining the history of language development in Korea, starting from Chinese language influence in Korean peninsula to the context behind the need for *Hangeul*).

<sup>34</sup> *Sejong*, NAVER, <http://terms.naver.com/entry.nhn?docId=657676&cid=46622&categoryId=46622> (last visited Mar. 21, 2018).

<sup>35</sup> Kim-Renaud, *supra* note 30, at 2; *See also* Chin W. Kim, *supra* note 32, at 7 (“It is unequivocally clear what the king was striving for: a simple writing system for mass literacy.”).

<sup>36</sup> According to Siwon Lee, the term “*Hangeul*” was first coined by Sigyeong Ju, the founder of modern Korean linguistics, between 1910 and 1913. The word before *Hangeul* was *Eonmun*, meaning vernacular script. In coining the term *Hangeul*, Ju’s effort was to “promote the superiority of the script created by King Sejong in the mid-fifteenth century.” Siwon Lee, *Multicultural Education and Language Ideology in South Korea*, 28 *WORKING PAPERS EDUC. LINGUISTICS* 43, 46 (2013).

<sup>37</sup> Ki-Moon Lee, *The Inventor of the Korean Alphabet*, in *THE KOREAN ALPHABET: ITS HISTORY AND STRUCTURE*, *supra* note 30, at 15.

<sup>38</sup> Kim-Renaud, *supra* note 30, at 1.

<sup>39</sup> LEE & RAMSEY, *supra* note 30, at 102.

[A]mong the ignorant people, there have been many who, having something they want to put into words, have in the end been unable to express their feelings. I have been distressed because of this and have newly designed twenty-eight letters, which I wish to have everyone practice at their ease and make convenient for their daily use.<sup>40</sup>

King Sejong believed that if *Hangeul* were to be used, even uneducated citizens would understand the laws and avoid facing adverse results due to misunderstandings.<sup>41</sup>

*Hangeul* was not, however, immediately accepted as Korea's new primary writing system after its promulgation.<sup>42</sup> *Hanja* was still associated with elite status and *Hangeul* was viewed as a vernacular language.<sup>43</sup> Korea continued to use *Hanja*<sup>44</sup> or used a mix of *Hangeul* and *Hanja* when writing.<sup>45</sup> The movement to use *Hangeul* instead of *Hanja* began at the end of the 19th Century.<sup>46</sup>

### B. Framework Act on Korean Language

*Hangeul* is now a source of cultural pride for Korea, as demonstrated by the Framework Act on Korean Language. Korea enacted the Framework Act in 2005.<sup>47</sup> The law states that people “shall recognize that the Korean

<sup>40</sup> Ki-Moon Lee, *supra* note 37, at 27.

<sup>41</sup> KIM MIKYUNG, HANGUGEUI HIM [THE POWER OF KOREAN] 55 (2011).

<sup>42</sup> LEE & RAMSEY, *supra* note 30, at 111 (“*Hangul* was not considered a primary medium of literacy. That role, after all, was served by Chinese characters and Classical Chinese, and the supremacy of Chinese writing remained unchallenged. . . . *Hangul* was used to explicate the reading of Chinese texts and the pronunciation of Chinese characters, and, . . . a method of disseminating information and proselytizing.”).

<sup>43</sup> Coulmas, *supra* note 32, at 56.

<sup>44</sup> *Id.*

<sup>45</sup> Shin Dong-rip, “*Hangeuljeonyong gugeogibonbeobeun wiheonida*” . . . *wae?* [“*Hangeul-only Framework Act on Korean Language is Unconstitutional*” . . . *Why?*], NEWSIS (Dec. 28, 2016), [http://www.newsis.com/view/?id=NISX20161028\\_0014480641](http://www.newsis.com/view/?id=NISX20161028_0014480641); LEE & RAMSEY, *supra* note 30, at 53–56, 287 (*Idu*, the most common traditional method of writing Korean using Chinese characters, continued to be used as a writing system after *Hangeul* was created. The author describes in detail the *Idu* system. During the mid 19<sup>th</sup> Century, using Chinese characters was still the prestigious method of writing, *Hangeul* was the least prestigious, while some used a mix of Chinese phrases with *Hangeul*).

<sup>46</sup> Lee Jun-sik, *Haebang hu gugeohakgyeui bunyeolgwa daerip* [Language Nationalism and Scientific Linguistic After the Liberation], 67 J. KOREAN MOD. & CONTEMP. HIST. 88, 89 (2013); LEE & RAMSEY, *supra* note 30, at 288 (“Early in the twentieth century, the mixed script replaced Classical Chinese as the medium for formal writing. . . . *Hangul-only* writing was also moving ahead”).

<sup>47</sup> Cho Hang-rok, *supra* note 1.

language is the most valuable cultural heritage of the nation.”<sup>48</sup> The Framework Act recognizes Korean as the official language of Korea<sup>49</sup> and *Hangeul* as Korea’s native alphabet used to write Korean.<sup>50</sup> The Framework Act also designates October 9th as *Hangeul* Day, to “introduce the unique and scientific features of Hangeul at home and overseas and to raise nationwide awareness of and affection for Hangeul.”<sup>51</sup>

In general, the Framework Act regulates the use of *Hangeul* in various areas, such as administration, education, and language rights.<sup>52</sup> It establishes responsibilities of various governmental bodies to develop plans and programs that will further develop and preserve the Korean language.<sup>53</sup> Governmental bodies are also responsible for conducting research into Korean citizens’ language aptitude for the purposes of establishing policies around *Hangeul*.<sup>54</sup> The Framework Act requires the use of proper Korean language norms in various areas, such as textbooks.<sup>55</sup> Further, the Framework Act encourages disseminating Korean as a second language by developing a curriculum for teaching Korean language arts<sup>56</sup> and establishing the King Sejong Institute Foundation to teach Korean to foreigners.<sup>57</sup>

The article most central to this Comment, however, is Article 14 of the Framework Act. Article 14(1) states that official documents of government institutions must be written in *Hangeul* and use easy terminology and phrasing so ordinary citizens can understand the documents.<sup>58</sup> Other characters, such as *Hanja*, can be used in parenthetical notation when prescribed by a Presidential Decree.<sup>59</sup> A Presidential Decree did in fact follow the Framework Act to prescribe instances where foreign characters could be used for official documents of government institutions. This was the Enforcement Decree of the Framework Act (hereinafter “Enforcement Decree”), which stated that

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<sup>48</sup> Framework Act on Korean Language, Act No. 7368, July 28, 2005, amended by Act No. 14625, Sep. 22, 2017, art. 2 (S. Kor.), translated in National Law Information Center online database, <http://www.law.go.kr/LSW/eng/engMain.do>.

<sup>49</sup> *Id.* at art. 3(1).

<sup>50</sup> *Id.* at art. 3(2).

<sup>51</sup> *Id.* at art. 20.

<sup>52</sup> See Cho Tae-rin, *supra* note 26, at 255 (table).

<sup>53</sup> Gugeogibonbeop [Framework Act on Korean Language], Act No. 14625, art. 6.

<sup>54</sup> *Id.* at art. 9.

<sup>55</sup> See e.g., *id.* at art. 17.

<sup>56</sup> *Id.* at art. 19.

<sup>57</sup> *Id.* at art. 19-2.

<sup>58</sup> *Id.* at art. 14(1).

<sup>59</sup> *Id.*



government institutions can use *Hanja* or other foreign characters in parentheses as needed to convey the exact meaning of a word or to contextualize difficult or unfamiliar technical or newly coined terms.<sup>60</sup> For instance, if *Hangeul* is used to write an English or Chinese word, then the actual word spelled with the English alphabet or *Hanja*, respectively, would be allowed in parentheses to signal to the reader that the word written in *Hangeul* is meant to convey the English or Chinese word.

### III. *HANGEUL*'S HISTORICAL CONTEXT TO UNDERSTAND THE FRAMEWORK ACT AND ITS CONSTITUTIONALITY

Given that the Framework Act affects the way the Korean government uses languages for official documents, just like English-only policies, one may question the constitutionality of the Framework Act. An obvious explanation for the Framework Act's constitutionality and a reason why it should be understood differently from English-only policies is Korea's language demographics. In contemporary society, Koreans mostly read and write using *Hangeul*.<sup>61</sup> As explained in the previous section, *Hanja* existed as Korea's writing system before *Hangeul* and is still used by some, especially those among the older generation.<sup>62</sup> Despite Korea's history of using *Hanja* or a mix of *Hanja* and *Hangeul*, a decline in the use of *Hanja* is the dominant trend. For instance, newspapers that previously published with a mix of *Hanja* and *Hangeul* have been decreasing their use of *Hanja* over the years.<sup>63</sup> Curricula for public schools have also changed to reflect the decreasing presence of *Hanja* in society. *Hanja* and Chinese classics were required courses in 1971 and 1972.<sup>64</sup> Currently, however, the Ministry of Education has made *Hanja*

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<sup>60</sup> Gugeogibonbeop sihaengryeong [Enforcement Decree of the Framework Act on Korean Language], Presidential Decree No. 18973, July 28, 2005, amended by Presidential Decree No. 28306, Sep. 22, 2017, art. 11 (S. Kor.).

<sup>61</sup> Susan J. Paik, *Introduction, background, and international perspectives: Korean history, culture, and education*, 35 INT'L J. EDUC. RES. 535, 540 (2001).

<sup>62</sup> For instance, some Koreans still use *Hanja* to write their names, especially among the older generation. *South Korea's Hangul Alphabet: Superscript*, ECONOMIST (Oct. 8, 2015), <https://www.economist.com/news/asia/21672358-country-celebrates-ingenious-writing-system-superscript>.

<sup>63</sup> Jang Yeonghui, *Hanja gyoyukui hyeonjaewa mirae [The Present and Future of Hanja Education]*, 17 KOREAN LANGUAGE RES. SOC'Y DISSERTATION PRESENTATIONS COLLECTION 110, 111 (2003); LEE & RAMSEY, *supra* note 30, at 289.

<sup>64</sup> Jang Yeonghui, *supra* note 63, at 114. In 1972 the Korean government selected 1,800 basic *Hanja* that were required to be taught through middle and high school. *Id.* However, as the curriculum policy went through various amendments after 1972, *Hanja* and Chinese classics were reduced to elective courses and became a subject that would not be taught until second year of high school for students. *Id.*

education an elective course in elementary and middle school.<sup>65</sup> Continuing the use of *Hanja* for official documents thus may lead to difficulties for Korean citizens who have limited knowledge of *Hanja* in present-day Korea.

With this backdrop, the Constitutional Court was not persuaded when a group of claimants challenged Article 14(1) of the Framework Act and Article 11 of the Enforcement decree as unconstitutional.<sup>66</sup> The claimants consisted of pre-elementary, elementary, and middle school students and their parents, as well as primary school teachers, publisher representatives, government officials, and other ordinary citizens.<sup>67</sup> They claimed that because they could not use *Hanja* as a method of communication,<sup>68</sup> Article 14(1) and Article 11 violated their general right to freedom of action and

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<sup>65</sup> Ko Yunsang, 'Gongmunseo hangeullojakseong' gugeogibonbeop hapheon [*Official Documents by Government Institutions Written in Hangeul*] *Constitutionality of Framework Act on Korean Language*, KOREA ECON. DAILY (Nov. 25, 2016), <http://www.hankyung.com/news/app/newsview.php?type=2&aid=2016112450321&nid=910&sid=010620>.

<sup>66</sup> Typically, the Constitutional Court has jurisdiction over constitutionality of laws upon requests of courts. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 111(1) (S. Kor.). The Constitutional Court also has jurisdiction over impeachment, dissolution of a political party, competence disputes between state agencies, state and local governments, and constitutional complaints as prescribed by other acts. *Id.* However, individual citizens can access the Constitutional Court by submitting a motion to the ordinary court and requesting a review by the Constitutional Court. *Jurisdiction: Adjudication on the Constitutionality of Statutes*, CONST. CT. KOREA, <http://english.court.go.kr/cckhome/eng/jurisdiction/jurisdiction/adjuOnConsOfStatutes.do> (last visited Mar. 22, 2018). The motion should identify the parties, the statute at issue, the reason for unconstitutionality, etc. *Id.* There is also a constitutional complaint system available for individuals who believe that their basic rights under the Constitution has been violated. *Jurisdiction: Constitutional Complaint*, CONST. CT. KOREA, <http://english.court.go.kr/cckhome/eng/jurisdiction/jurisdiction/constComplaint.do> (last visited Mar. 22, 2018). However, if a relief process exists under another law, the individual must exhaust all other relief processes before filing a constitutional complaint. *Id.*; Constitutional Court Act, Act No. 4963, Aug. 4, 1995, amended by Act No. 10546, Apr. 5, 2011, art. 68(1) (S. Kor.), translated in National Law Information Center online database, <http://www.law.go.kr/LSW/eng/engMain.do>.

<sup>67</sup> There were a total of 333 claimants. Park Yonggyu, *Heonbeopjaepansoneun gugeogibonbeop wiheon sosongeu! jeukgak gigakhara!* [*The Constitutional Court should immediately dismiss the lawsuit over unconstitutionality of the Framework Act on Korean Language!*], BREAKNEWS (Nov. 18, 2016), <http://www.breaknews.com/newnews/print.php?uid=474579>; Shin Jimin, *Heonjae "gongmunseo hangeuljeonyong gugeogibonbeop hapheon"* [*Constitutional Court "Exclusive Hangeul on Official Documents of Government Institutions, Framework Act on Korean Language is Constitutional"*], LAW TIMES (Nov. 24, 2016), <https://www.lawtimes.co.kr/Legal-News/Print-News?serial=106016>.

<sup>68</sup> Constitutional Court [Const. Ct.], 2012Hun-Ma854, Dec. 20, 2016 (S. Kor.). The claimants also argued that the two articles contributed to Korean citizens' lack of *Hanja* comprehension by prohibiting the use of *Hanja*. *Id.* In addition, they challenged Article 3, 5, and 16 of the Framework Act because it forced upon Korean citizens a language policy that excluded the use of *Hanja*. The claimants argued that the above articles violated rights arising from the right to pursue happiness from Article 10 of Constitution of Korea, relating to having a choice in language and enjoying a mix of *Hanja* and *Hangeul*, and their freedom of expression arising from Article 21 of the Constitution of Korea. The claimants also argued that their basic rights were violated because Article 18 of the Framework Act prohibited using a mix of *Hangeul* and *Hanja* in elementary and middle school textbooks and the Ministry of Education made education in *Hanja* an elective course. *Id.*

freedom of expression, which are protected under the right to pursue happiness of Korea's Constitution.<sup>69</sup>

The Constitutional Court, however, unanimously held that Article 14 was constitutional.<sup>70</sup> Given that Korean citizens generally were more proficient at reading *Hangeul* than *Hanja*, Article 14 allowed all citizens to understand official documents of government institutions regardless of their level of knowledge and education in *Hanja*.<sup>71</sup> If an official document used *Hanja* simply because the word was based on Chinese characters, then those who are not familiar with *Hanja* will have difficulty understanding the information.<sup>72</sup> Since official documents of government institutions provide information about a citizen's duties and rights, the Constitutional Court reasoned it was necessary to write such documents in *Hangeul*, which can be read and understood by most of Korea's citizens.<sup>73</sup>

Further, Article 14 did not necessarily prohibit the use of *Hanja*. The Constitutional Court noted that the Enforcement Decree allowed the use of *Hanja* in parentheses to convey the clear meaning of a word.<sup>74</sup> Additionally, Article 14(1) only applied to official documents prepared by government institutions.<sup>75</sup> It did not affect an ordinary citizen's choice to use *Hanja* when completing documents to submit to government institutions.<sup>76</sup> Thus, the Constitutional Court upheld Article 14.<sup>77</sup>

The difference in demographics and change in writing system—from *Hanja* to *Hangeul*—offers an explanation as to why the Framework Act should be scrutinized differently than English-only policies. However, a deeper look into the historical context of Korea provides further insight as to why the Framework Act's *Hangeul*-only mandate differs. *Hangeul*'s role during Japan's colonization of Korea shows the Korean language was used to

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<sup>69</sup> DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 10 (S. Kor.) (all citizens shall be assured of human worth and dignity and have the right to pursue happiness).

<sup>70</sup> Ko Yunsang, *supra* note 65.

<sup>71</sup> Constitutional Court [Const. Ct.], 2012Hun-Ma854, Dec. 20, 2016 (S. Kor.).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* The Constitutional Court rejected the claimants' argument that words based on Chinese characters should be written using *Hanja* to clearly express their meaning and thus should allow for use of mix of *Hanja* and *Hangeul* on official documents, because even if the word was not written using *Hanja*, people could still understand the word's meaning through the context of the sentence. *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Ko Yunsang, *supra* note 65.

<sup>77</sup> *Id.*

resist forced assimilation, unlike the history of English-only policies and their role in perpetrating forced assimilation.

A. *Violence against Koreans, the Korean Language, and Hangeul under Japanese Colonial Rule: Korean as a Weapon against Forced Assimilation*

To understand why the *Hangeul*-only mandate should be understood in a different context than English-only policies, it is important to look into the role of *Hangeul* in resisting forced assimilation during the Japanese colonial era. In 1910, Japan annexed Korea and colonized the country until 1945.<sup>78</sup> Japanese colonization of Korea can be split into three periods.<sup>79</sup> The military rule lasted from 1910–1919, the cultural rule lasted from 1919–1938, and the oppressive rule lasted from 1938–1945.<sup>80</sup> Koreans were seen as inferior and categorized as “Chosenjin,” a “derogatory classification that applied to all Koreans.”<sup>81</sup> This kind of racial categorization was used to legitimize Japan’s colonial rule.<sup>82</sup> The Japanese colonizers perpetrated numerous cases of violence against the Korean people, including forced labor on the island of Hashima and forced sexual slavery of “comfort women.”<sup>83</sup> The Japanese

<sup>78</sup> Paul E. Kim, *Darkness in the Land of the Rising Sun: How the Japanese Discriminate Against Ethnic Koreans Living in Japan*, 4 CARDOZO J. INT’L & COMP. L. 479, 481 (1996).

<sup>79</sup> See Choi Yong-gi, *Ilje gangjeomgiui gugeo jeongchaek* [The Korean Language Policy in the Period of Japan’s Colonial Rule of Korea], 46 DONG-AK SOC’Y LANGUAGE & LITERATURE 9, 14 (2006).

<sup>80</sup> Some scholars have split the colonial era into four different periods, based on four educational ordinances that were issued during 1910–1945. See e.g., Soon-Yong Pak & Keumjoong Hwang, *Assimilation and segregation of imperial subjects: “educating” the colonized during the 1910–1945 Japanese colonial rule of Korea*, 47 PAEDAGOGICA HISTORICA 377 (2011).

<sup>81</sup> GI-WOOK SHIN, *ETHNIC NATIONALISM IN KOREA: GENEALOGY, POLITICS, AND LEGACY* 45 (2006).

<sup>82</sup> *Id.* at 42; Pak & Hwang, *supra* note 80, at 384 (“Official colonial policy assumed, in theory, the eventual cultural, linguistic and political assimilation of Korea. However, the kind of assimilation imagined by Japanese colonial authorities was one based on the eradication of Korean cultural identity. In other words, the assimilation policy presupposed Japanese superiority that justified the effacement of Korean culture rather than tolerating or accepting it.”).

<sup>83</sup> See, e.g., Chunghee Sarah Soh, *The Korean “comfort women” tragedy as structural violence*, in *RETHINKING HISTORICAL INJUSTICE AND RECONCILIATION IN NORTHEAST ASIA: THE KOREAN EXPERIENCE* 17 (Gi-Wook Shin, Soon-Won Park & Daqing Yang eds., 2007) (“Comfort women” is a euphemistic term to refer to “young females of various ethnic and national backgrounds and social circumstances . . . who were forced to offer sexual services to the Japanese troops before and during the Second World War.”); Soon-Won Park, *The politics of remembrance: The case of Korean forced laborers in the Second World War*, in *RETHINKING HISTORICAL INJUSTICE AND RECONCILIATION IN NORTHEAST ASIA: THE KOREAN EXPERIENCE* 56-7 (Gi-Wook Shin, Soon-Won Park & Daqing Yang eds., 2007) (During World War II, Korean forced laborers were sent to Japan to work in coal mines, construction sites, and industrial plants. The forced laborers labored under “hunger, fear, torture, and murder.”). See generally Yvonne Park Hsu, *“Comfort Women” from Korea: Japan’s World War II Sex Slaves and the Legitimacy of their Claims for Reparations*, 2 PAC. RIM L. & POL’Y J. 97 (1993); Ethan Hee-Seok Shin, *The “Comfort Women” Reparation Movement:*

colonial government and the Japanese Government General of Korea (hereinafter “Government General”)<sup>84</sup> also pursued an assimilation policy.<sup>85</sup> The Japanese government saw that the Korean language was a defining characteristic of Korean ethnicity.<sup>86</sup> Thus, they suppressed and attempted to erase the Korean language and alphabet.<sup>87</sup> During the colonial period, the Japanese colonizers forced Japanese as Korea’s national language.<sup>88</sup> Despite the attempts to erase the Korean language, many Koreans during this period used the Korean language and *Hangeul* to oppose the Japanese colonial government and status of the Japanese language in Korea.<sup>89</sup>

One way the Japanese colonial government began controlling the use of the Korean language was through textbooks. Even before the official start of colonization in 1910 (during the protectorate era of 1905–1910),<sup>90</sup> the Japanese began publishing textbooks for Japanese language arts and natural science courses only in Japanese, leaving other subjects’ textbooks to be published in a mix of *Hangeul* and *Hanja*.<sup>91</sup> The Japanese colonizers also began removing courses on Korean geography and history, which were “key subjects in teaching of national identity.”<sup>92</sup> They controlled usage of textbooks in private education as well by requiring pre-approval of textbooks before being used in classrooms.<sup>93</sup> Textbooks that included subjects on

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*Between Universal Women’s Human Right and Particular Anti-colonial Nationalism*, 28 FLA. J. INT’L L. 87 (2016).

<sup>84</sup> A colonial government organization established by the Japanese colonial government to govern Korea during the colonial period. The Governor-General had all the power under this colonial government organization. Pak & Hwang, *supra* note 80, at 381. See also *The Japanese Government General of Korea*, NAVER, <http://terms.naver.com/entry.nhn?docId=2458251&cid=46623&categoryId=46623> (last visited Mar. 24, 2018).

<sup>85</sup> See generally Kim Sin-jae, *Iljegangjeomgi joseonchongdokbuui jibaejeongchaekgwa donghwajeongchaek* [*Japanese Empire’s Ruling Policy for Joseon and Assimilation Policy under the Rule of Japanese Imperialism*], 60 DONGGUKSAHAK 191 (2016).

<sup>86</sup> Park Gyunseop, *supra* note 23, at 272. The Japanese colonial government relied on the ideology of “Korean and Japan are one” to legitimize its measures to suppress the use of Korean language. *Id.*

<sup>87</sup> See generally Kim Sin-jae, *supra* note 85.

<sup>88</sup> Choi Yong-gi, *supra* note 79, at 11 (explaining that during the period of colonization, Japanese was to be considered Korea’s national language).

<sup>89</sup> Jung Jae-hwan, *supra* note 23, at 184.

<sup>90</sup> Andrew Hall, *First Steps Towards Assimilation: Japanese-run Education in Korea, 1905-1910*, 18 ACTA KOREANA 357, 357 (2015).

<sup>91</sup> Choi Kyeongbong, *supra* note 24, at 67. The decision to allow publication of textbooks for other subjects in a mix of *Hangeul* and *Hanja* was a response to the resistance to the policy that was announced previously, which was that all textbooks would be published in Japanese. *Id.* In addition, since Korea was still an independent country before the annexation by Japan in 1910, the Japanese government could not completely overrun the education system and force assimilation. Hall, *supra* note 90, at 358.

<sup>92</sup> Hall, *supra* note 90, at 375.

<sup>93</sup> *Id.* at 387.

history, geography, and Korean language arts were rejected because the materials were believed to encourage or promote anti-Japanese thought.<sup>94</sup>

Once colonization of Korea officially began in 1910, all textbooks were published in Japanese.<sup>95</sup> Classes<sup>96</sup> and school ceremonies were also all conducted in Japanese.<sup>97</sup> As colonization of Korea continued, Korean language arts became an elective, was given less class time, and was eventually eliminated altogether from school curriculums.<sup>98</sup>

By changing the language of textbooks and classroom instruction to Japanese, the Japanese colonial government instituted its assimilation policy in a non-violent manner and shifted the language of power to Japanese.<sup>99</sup> Many Koreans felt the need to become fluent in Japanese to pursue upward social mobility. For example, access to education depended on fluency in Japanese.<sup>100</sup> At the time, university entrance exams and the admission of Korean students to post-elementary schools required fluency in Japanese.<sup>101</sup> Students who graduated with a grasp of Japanese experienced increased social status.<sup>102</sup> Additionally, since Japanese was used for textbooks in the natural science subjects, the Japanese language naturally became the practical language,<sup>103</sup> significantly reducing the role of Korean.<sup>104</sup> Students disregarded Korean language arts as it became an elective in schools and was not tested in university entrance examinations.<sup>105</sup> By decreasing the importance of and need for the Korean language and increasing the utility of the Japanese language, the Japanese colonial government enforced their assimilation policy without resorting to violence.<sup>106</sup>

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<sup>94</sup> *Id.*

<sup>95</sup> Choi Kyeongbong, *supra* note 24, at 68.

<sup>96</sup> HYUNG IL PAI, CONSTRUCTING “KOREAN” ORIGINS: A CRITICAL REVIEW OF ARCHAEOLOGY, HISTORIOGRAPHY, AND RACIAL MYTH IN KOREAN STATE-FORMATION THEORIES 9 (2000).

<sup>97</sup> Park Gyunseop, *supra* note 23, at 274.

<sup>98</sup> *Id.* at 273; Pak & Hwang, *supra* note 80, at 391.

<sup>99</sup> Choi Kyeongbong, *supra* note 24, at 67.

<sup>100</sup> Pak & Hwang, *supra* note 80, at 395.

<sup>101</sup> *Id.*

<sup>102</sup> Choi Yong-gi, *supra* note 79, at 18–19.

<sup>103</sup> Choi Kyeongbong, *supra* note 24, at 67; Hall, *supra* note 90, at 374. In 1906, the Japanese language education was presented as a “practical tool for success, rather than as a way of assimilation.” Hall, *supra* note 90, at 374.

<sup>104</sup> Choi Kyeongbong, *supra* note 24, at 67.

<sup>105</sup> *Id.* at 70.

<sup>106</sup> Kim Gujin, *supra* note 25, at 56 (during colonization, “the schools taught Japanese history instead of Korea’s history and geography, increased class time for Japanese and decreased time for classes in Korean language, and by doing this they made Korea’s next generation ignorant on Korea’s history and language.”).

Enforcing the assimilation policy against Korean students became increasingly violent and forceful by the mid-1930s. When some Koreans resisted going to schools run by the Japanese,<sup>107</sup> the Japanese colonial government utilized force to increase the number of enrolled students, such as jailing parents until they agreed to enroll their children.<sup>108</sup> Those who spoke Korean during class were punished, expelled,<sup>109</sup> and/or fined.<sup>110</sup>

The suppression of the Korean language and forcible use of Japanese as the national language also moved beyond classrooms and into the public and private sphere.<sup>111</sup> During the Pacific War, the Government General imposed compulsory use of the Japanese language in 1938.<sup>112</sup> After the Sino-Japanese War and expansion of frontlines in 1940,<sup>113</sup> the Japanese began to teach the Japanese language to Koreans who were not educated due to the Japanese colonial government's need to draft Koreans into war.<sup>114</sup> In public, Koreans who spoke Korean were penalized or fined.<sup>115</sup> Newspapers were also banned from being printed in Korean beginning in 1940.<sup>116</sup> Japanese became the standard language for administrative and legal documents.<sup>117</sup> There were instances when people used Korean in courtrooms, and the trial was postponed or rejected.<sup>118</sup> Thus, Korean no longer held the status of a national language during the Japanese colonial period.<sup>119</sup>

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*Id.* See also Pak & Hwang, *supra* note 80, at 395 (“To grasp the dimension of the assimilation strategy through schooling, one can refer to the measures taken by the colonial authorities that involved language, which was a powerful tool in the policy of assimilation. . . . As colonial rulers, the authorities saw teaching of the Japanese language as education’s vital role in assimilation of the Korean people. . . . As the principal instrument of assimilation, education was regarded as the primary means to subordinate the ethnic identity of the colonized and to transform them into loyal imperial subjects.”).

<sup>107</sup> Pak & Hwang, *supra* note 80, at 383.

<sup>108</sup> *Id.*

<sup>109</sup> Choi Kyeongbong, *supra* note 24, at 71.

<sup>110</sup> Choi Yong-gi, *supra* note 79, at 18.

<sup>111</sup> Jung Jae-hwan, *supra* note 23, at 155.

<sup>112</sup> Pak & Hwang, *supra* note 80, at 391.

<sup>113</sup> Choi Kyeongbong, *supra* note 24, at 71.

<sup>114</sup> *Id.*

<sup>115</sup> Jung Jae-hwan, *supra* note 23, at 154; HYUNG IL PAI, *supra* note 96, at 9.

<sup>116</sup> Paul E. Kim, *supra* note 78, at 482; Lee Hye-Ryoung, [*Gihoek: hanguk geundae-eoui tansaeng*] *Hangeurundonggwa geundae-eo ideollogi* [*The Birth of Modern Language*] *Hangeul Movement and the Modern Language Ideology*, 71 *CRITICAL REV. HIST* 337, 340 (2005).

<sup>117</sup> Choi Kyeongbong, *supra* note 24, at 68.

<sup>118</sup> Choi Yong-gi, *supra* note 79, at 18.

<sup>119</sup> Kang Mi-ok, *Jeohang, jeongcheseong, jaban: hangugeoui sahoeoneahakjeok uimi byeonhwa yeongu* [*Resistance, Identity, and Capital: A Study on the Changes in the Socio-linguistic Meaning of the Korean Language*], 48 *YONGBONG J. HUMAN.* 5, 12 (2016).

Another policy the Japanese colonial government imposed to enforce the assimilation policy was an imperial order forcing Koreans to change their names to Japanese names.<sup>120</sup> The Name Change Order<sup>121</sup> was announced in 1939 and became effective in February 1940.<sup>122</sup> The Government General recognized that an order directing Koreans to change their names could incite an uprising among the Koreans.<sup>123</sup> Thus, initially, the Government General attempted to convince Koreans to change their names by framing the order as a move to eliminate discrimination between Korean and Japanese citizens.<sup>124</sup> When only a low number of Koreans changed their names in response to the order, the Government General utilized force and violence.<sup>125</sup> Those who did not change their names were punished—they were taken to perform forced labor, prohibited from enrolling children in school, did not receive their ration of food, and could not find employment.<sup>126</sup> They also could not obtain civil documents nor send mail via the postal service.<sup>127</sup> The ultimate purpose of this imperial order was to enforce the “Koreans and Japanese are one” policy.<sup>128</sup> These actions during the colonization era were an attempt to take away individualized national identity from Koreans<sup>129</sup> and erase the Korean language.<sup>130</sup>

But the current rules of spelling and standard language<sup>131</sup> for Korean developed during this time.<sup>132</sup> The Japanese colonial government allowed, *inter alia*, Korean scholars to continue studying the Korean language after a movement known as *Samilundong* (translated to English as “March 1 Movement in 1919”).<sup>133</sup> During the March 1 Movement, demonstrators

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<sup>120</sup> Jung Jae-hwan, *supra* note 23, at 180. The imperial order was nullified after liberation, through Ordinance Number 122 announced by the United States Army military government in Korea. Koo Kwang-mo, *Changssigaemyeongjeongchaekgwa joseoninui daeung [The Name-Changing Program and the Response of Koreans Under the Japanese Colonial Government]*, 45 KOREAN J. INT’L STUD. 31, 48 (2005).

<sup>121</sup> Pak & Hwang, *supra* note 80, at 391.

<sup>122</sup> Park Gyunseop, *supra* note 23, at 284.

<sup>123</sup> Koo Kwang-mo, *supra* note 120, at 43.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*; Park Gyunseop, *supra* note 23, at 274.

<sup>126</sup> Park Gyunseop, *supra* note 23, at 274; Koo Kwang-mo, *supra* note 120, at 45; Pak & Hwang, *supra* note 80, at 391.

<sup>127</sup> Park Gyunseop, *supra* note 23, at 274; Koo Kwang-mo, *supra* note 120, at 45.

<sup>128</sup> Koo Kwang-mo, *supra* note 120, at 42.

<sup>129</sup> Han Sangbum, HANGUGUI BEOPMUNHWAWA ILBON JEGUKJUUIUI JANJAE [KOREA’S LEGAL CULTURE AND VESTIGES OF JAPANESE IMPERIALISM] 195 (1994).

<sup>130</sup> Park Gyunseop, *supra* note 23, at 272.

<sup>131</sup> Standard language in this context means *pyojuneo*, which is the speech used in Seoul, South Korea. Siwon Lee, *supra* note 36, at 47.

<sup>132</sup> Choi Kyeongbong, *supra* note 24, at 73.

<sup>133</sup> Kim Gujin, *supra* note 25, at 56–57.



nonviolently resisted Japanese occupation and shouted for independence.<sup>134</sup> After the March 1 Movement, and due to public resistance, the Japanese colonial government came to realize that a military rule was not an effective colonial policy and instead shifted to a policy of cultural rule.<sup>135</sup> Various Korean cultural activities recommenced, such as the publication of newspapers in Korean.<sup>136</sup> In 1921, two years after the March 1 Movement, Korean scholars created the Korean Language Society (hereinafter referred as “Society”).<sup>137</sup> Its mission was to research and unify Korean speech and writing.<sup>138</sup> The Society established *Hangeul* Day and published reports on its research of *Hangeul*.<sup>139</sup> From 1930 to 1940, the Society also put its efforts into completing and announcing drafts for a unified *Hangeul* spelling system and standard language, as well as a draft on unified notation system for foreign words.<sup>140</sup> Based on these drafts, the Society wanted to create a dictionary.<sup>141</sup> The Committee on Publication of Korean Language Dictionary consisted of “108 reputable nationalists,” demonstrating the status of the Society and the historical importance of creating and publishing a Korean language dictionary.<sup>142</sup>

The Society, however, was unable to complete its task in creating the Korean language dictionary.<sup>143</sup> It was not immune to the violence of the Japanese colonial government, especially given that the Japanese returned to

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<sup>134</sup> The March 1 Movement happened out of a growing resentment towards the Japanese colonial government due to their discriminatory treatment towards Koreans. Pak & Hwang, *supra* note 80, at 384.

<sup>135</sup> *Id.* at 385. Cultural rule is where the Japanese colonial government sought to appease nationalism among Koreans by expanding freedom of press to Koreans and allowing access to other Korean culture. However, the colonial policy and forced assimilation continued in other forms, especially education. See Choi Yong-gi, *supra* note 79, at 17; Pak & Hwang, *supra* note 80, at 387. Additionally, after the March 1 Movement, “the idea that over time the Korean people would naturally assimilate was replaced by the idea that the Japanese had to work to guide Koreans to this goal. Exposing them to culture—even their own—would develop within them the sophistication required to evaluate their culture against that of the Japanese. The Japanese expressed confidence that their more developed culture would prevail in the end. From this time, the Japanese enacted reforms that relaxed the psychological distance between [Japanese and Koreans].” MARK E. CAPRIO, JAPANESE ASSIMILATION POLICIES IN COLONIAL KOREA, 1910–1945 112 (2011).

<sup>136</sup> Choi Yong-gi, *supra* note 79, at 17.

<sup>137</sup> Choi Kyeongbong, *supra* note 24, at 73.

<sup>138</sup> Choi Yong-gi, *supra* note 79, at 25.

<sup>139</sup> Choi Kyeongbong, *supra* note 24, at 72.

<sup>140</sup> Lee Jun-sik, *supra* note 46, at 95.

<sup>141</sup> *Id.*

<sup>142</sup> Choi Kyeongbong, *supra* note 24, at 72; See also Ko Young-geun, *Joseoneohakhoe sunangwa minjogeo suho undong-ilje gangjeomgiui hangeul undongeun gukgwon hoebok undongieosdda*- [The Korean Language Society Incident and Movement to Protect Ethnic Language-Hangeul Movement during Japanese Colonial Period was Movement to Recover National Sovereignty-], 22 SAEGUGEOSAENGHWAL 131, 140 (2012).

<sup>143</sup> Lee Jun-sik, *supra* note 46, at 95.

and increased their efforts to enforce their assimilation policy in the late 1930s and early 1940s.<sup>144</sup> When Taejin Jung, a teacher who was part of the committee to create a Korean language dictionary, was arrested, the Japanese colonial government tortured him and obtained a false confession that the Society was a nationalist group secretly working towards an independence movement.<sup>145</sup> After this false confession, the Japanese arrested and tortured the leaders of the Society.<sup>146</sup> The Japanese colonial government claimed the group was an independence movement organized under the veil of an academic society,<sup>147</sup> and framed the Society's actions to promote and develop *Hangeul* as an illegal act.<sup>148</sup> The Society was perceived as a hindrance to the "Korea and Japan are one" policy.<sup>149</sup> They attempted to re-establish Korean as an official language, making efforts to create a Korean language dictionary and place importance on the standardization of the Korean language during a time when Korean was a language of the subjugated ethnicity.<sup>150</sup> This kind of attempt at recognizing the Korean language was an aggressive political act against the Japanese colonial government and its colonial policy.<sup>151</sup> The Society's efforts to create a dictionary demonstrated their resistance to the forced assimilation policy as well as their independence and autonomy.<sup>152</sup>

Teachers and students were not submissive actors either. For instance, some teachers continued to teach Korean history and language using their own textbooks and students boycotted the use of Japanese as the national language by submitting blank answer sheets during an exam in Japanese language arts class.<sup>153</sup>

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<sup>144</sup> See, e.g., Choi Kyeongbong, *supra* note 24, at 71; Kang Mi-ok, *supra* note 119, at 14.

<sup>145</sup> Jung Inseung, *Minjoksaro bon joseoneo hakhoe sageon [The Korean Language Society Incident Through the Lens of National History]*, 42 NARASARANG 14, 20 (1982); Ko Young-geun, *supra* note 142, at 147. The event when members of the Society were caught and tortured is called The Korean Language Society Incident. One of the reasons for why Taejin Jung was arrested is because the Japanese found a diary of a student, where an entry read that a teacher punished a student for speaking Japanese, which was forced as the national language at the time, and thus such action was anti-state (anti-Japanese colonial government) activity. See Ko Young-geun, *supra* note 142, at 146. However, there are various records on what events led to the arrest of Taejin Jung, and thus the beginning of The Korean Language Society Incident. See generally Jang Shin, *Joseoneohakhoe sageonui baldangwa minjokseosai tansaeng [Rise in the Affair of Korean Language Society and the Birth of National Narrative]*, 53 J. KOREAN INDEPENDENCE MOVEMENT STUD. 109 (2016).

<sup>146</sup> Jung Inseung, *supra* note 145, at 20.

<sup>147</sup> Park Gyunseop, *supra* note 23, at 276.

<sup>148</sup> Ko Young-geun, *supra* note 142, at 147.

<sup>149</sup> *Id.*

<sup>150</sup> Choi Kyeongbong, *supra* note 24, at 68.

<sup>151</sup> Park Gyunseop, *supra* note 23, at 276.

<sup>152</sup> Kim Gujin, *supra* note 25, at 61.

<sup>153</sup> Pak & Hwang, *supra* note 80, at 389.

Thus, the Japanese colonization and their attempts to forcefully assimilate Koreans actually “played a significant role in shaping the nature and development of Korean nationalism.”<sup>154</sup> Korea’s heritage was reevaluated in a positive light, and language became a major focus of Korean nationalist efforts.<sup>155</sup> The nationalists claimed the Korean language “not only as a heritage from ancestors but also as the essence” of Korea, and they “called for the preservation of the language as necessary to keep national spirit and consciousness alive.”<sup>156</sup> Using *Hangeul* “became a visible symbol of opposition and self-esteem,”<sup>157</sup> and the alphabet was a hallmark of Korean culture that survived through severe trials.<sup>158</sup>

After Korea’s liberation from the Japanese colonial government in 1945, a movement began to reclaim the Korean language, focusing on eliminating remnants of Japanese from the Korean language.<sup>159</sup> There was a push for the exclusive use of *Hangeul*.<sup>160</sup> The Society led efforts in restoring Korean language arts education<sup>161</sup> and created a textbook for teaching the Korean language.<sup>162</sup> The liberation of Korea from Japan’s colonization was

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<sup>154</sup> GI-WOOK SHIN, *supra* note 81, at 42.

<sup>155</sup> *Id.* at 47, 51.

<sup>156</sup> *Id.* at 51.

<sup>157</sup> Coulmas, *supra* note 32, at 56 (Coulmas cites to the publishing of the all-*Hangeul* newspaper Independence Newspaper).

<sup>158</sup> Lee Hye-Ryoung, *supra* note 116, at 338.

<sup>159</sup> Lee Jae-eun, *Haebang hu hangeuljeonyongronui juche, bangbeop, beomwiui munje-joseoneohakhoewi ‘urimal doro chatgi undonggwa gimgirimui uriman nonuireul jungsimeuro* [The Problems in Setting the Subject, Methods, and Scopes in the Exclusive Use of Hangeul after the Liberation—Focusing on the Recovery Movement of Korean Words in the Chosun Language Society and the Argument about Korean words by Kim Gi Rim], 41 J. KOREAN MOD. LITERATURE 283, 283 (2014); see also Choi Kyeongbong, *Gugeosajeongwa eomunminjokjuui* [Korean Language Dictionary and Linguistic Nationalism], KOREAN ASS’N FOR LEXICOGRAPHY (KOREALEX) DISSERTATION PRESENTATIONS COLLECTION 49, 56 (2017) (stating that the crux of the language policy after liberation was purifying the Korean language and discontinuing the use of *Hanja*). However, this movement led to the issue of abolishing the use of *Hanja* and thus arose arguments for exclusive use of *Hangeul* and those opposing the total abolishment of *Hanja* or those supporting the use of mixing *Hanja* and *Hangeul*. See Lee Jae-eun, *Haebang hu hangeuljeonyongronui juche, bangbeop, beomwiui munje-joseoneohakhoewi ‘urimal doro chatgi undonggwa gimgirimui uriman nonuireul jungsimeuro* [The Problems in Setting the Subject, Methods, and Scopes in the Exclusive Use of Hangeul after the Liberation—Focusing on the Recovery Movement of Korean Words in the Chosun Language Society and the Argument about Korean words by Kim Gi Rim], 41 J. KOREAN MOD. LITERATURE 283, 283 (2014).

<sup>160</sup> Lee Jun-sik, *supra* note 46, at 89.

<sup>161</sup> Lee Jae-eun, *supra* note 159, at 290. See generally Jung Jae-hwan, 8.15 *haebang jikhu joseoneohakhoewi hwaldong-1945.8.15~1946.2-* [The Activities of the Korean Language Society Directly After the Liberation on August 15—from August 15, 1945 to February 1946-], 41 SARIM 269 (2012).

<sup>162</sup> Lee Jae-eun, *supra* note 159, at 290; Jung Jae-hwan, *supra* note 161, at 277–82.

thus a turning point for the Korean language to be reborn as the national language.<sup>163</sup>

*B. The Importance of Hangeul's Historical Context in Understanding Korea's Framework Act and its Constitutionality*

The historical context of *Hangeul* described above shows that the *Hangeul*-only movement has an inverse history to the English-only movements. Proponents of English-only policies claim that such policies will be a “key to success for new immigrants.”<sup>164</sup> Some believe that a lack of English fluency will prohibit people from becoming educated, having a good job, and participating in American society.<sup>165</sup> Proponents also reason that English-only policies would save taxpayers money because there would be no need to provide bilingual services.<sup>166</sup>

On the other hand, opponents of English-only policies see the movements as xenophobic, making non-English speakers feel unwanted.<sup>167</sup> English-only movements and their efforts to have English declared as an official language are emotionally charged issues.<sup>168</sup> Opponents believe that declaring English the official language of the United States would sanction harassment and discrimination against people who do not use English.<sup>169</sup> English-only policies also restrict language rights, limit access to education, and hinder socioeconomic mobility among minorities who do not speak English.<sup>170</sup>

While most English-only policies are purportedly only concerned with language and unity, they are closely tied to anti-immigrant sentiments.<sup>171</sup>

<sup>163</sup> Kang Mi-ok, *supra* note 119, at 14–15.

<sup>164</sup> Audrey Daly, Comment, *How to Speak American: In Search of the Real Meaning of “Meaningful Access” to Government Services for Language Minorities*, 110 PA. ST. L. REV. 1005, 1012 (2006).

<sup>165</sup> Wilkerson, *supra* note 8, at 256.

<sup>166</sup> Daly, *supra* note 164, at 1012.

<sup>167</sup> Wilkerson, *supra* note 8, at 257.

<sup>168</sup> Boehler, *supra* note 9, at 1641.

<sup>169</sup> Daly, *supra* note 164, at 1018.

<sup>170</sup> Pac, *supra* note 9, at 197; RON SCHMIDT, SR., LANGUAGE POLICY AND IDENTITY POLITICS IN THE UNITED STATES 172 (2000) (ebook).

<sup>171</sup> Rachele Lawton, *Speak English or Go Home: The Anti-Immigrant Discourse of the American ‘English Only’ Movement*, 7 CRITICAL APPROACHES TO DISCOURSE ANALYSIS ACROSS DISCIPLINES 100, 115 (2013); Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 324 (1989) (“While the English-speaking community may see English-Only proposals as benign, minority-language communities view such legislation as stigmatizing and as an expression of xenophobia. . . . Hispanics are concerned that the English-only movement is an attempt to brand Hispanics

Traction for English-only movements usually correlates with an increase in immigrant population.<sup>172</sup> English-only proponents portray current immigrants as unwilling to assimilate and thus threatening the “melting pot.”<sup>173</sup> However, there is no evidence that non-English speakers actually resist learning or using English.<sup>174</sup> The call for “unity” seems to be a call to keep the status quo of English as the dominant language and to maintain the privilege of the English-speaking group.<sup>175</sup> English-only proponents’ focus on forcing assimilation is fueled by the fear of losing their majority status.<sup>176</sup> They are not concerned about the language per se, but are concerned that immigrants who speak another language other than English pose a threat to Anglo dominance.<sup>177</sup>

Further, English has historically been used to perpetrate forced assimilation. For instance, between 1917 and 1922, many states passed laws that obligated non-English speaking foreigners to attend schools to learn English and sometimes imposed fines on foreigners who did not comply with such laws.<sup>178</sup> Additionally, settlers forced the assimilation of young Native

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as inferior and un-American.”). Controlling language “might [also] amount to intentional discrimination based on race or national origin because the enacting state may be using language as a proxy for race or national origin.” Michael A. Zuckerman, *Constitutional Clash When English-only Meets Voting Rights*, 28 YALE L. & POL’Y REV. 353, 363 (2010).

<sup>172</sup> See Cecilia Wong, *Language is Speech: The Illegitimacy of Official English after Yniguez v. Arizonans for Official English*, 30 U.C. DAVIS L. REV. 277, 282–83 (1996) (discussing that movement for declaring English as the official language showed an uptick when eastern European immigrants were coming to the United States, and when there was an increase in the number of Latin and Asian American immigrants after 1965).

<sup>173</sup> Lawton, *supra* note 171, at 111. The “melting pot” theory/myth is a “metaphor depict[ing] immigrants assimilating and acculturating into dominant society” voluntarily. Kevin R. Johnson, “*Melting Pot*” or “*Ring of Fire*”? : *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259, 1277 (1997); see also TAMAR JACOBY, REINVENTING THE MELTING POT: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN 37 (2009) (the melting pot metaphor works together with a theory of assimilation that suggest that assimilation into American society would continue uninterrupted.).

<sup>174</sup> SCHMIDT, SR., *supra* note 170, at 78; Califa, *supra* note 171, at 314.

<sup>175</sup> SCHMIDT, SR., *supra* note 170, at 173 (“An important aspect of the pluralist argument here is that, in the context of the struggle for equality on the part of subordinated ethnolinguistic groups, dominant-group resistance to equality is often couched in the language of “unity,” and it often masks (consciously or unconsciously) a dominant-group demand for the preservation of its privileged position. That is, demands for a return to social peace and harmony, or national unity, are in fact demands for a return to a supposedly peaceful domination of one group by another.”).

<sup>176</sup> Lawton, *supra* note 171, at 112. See also Daly, *supra* note 164, at 1011 (proponents of English-only or Official English are motivated by “fear that non-English speakers will somehow ‘take over’ if their failure to assimilate is not met with some level of disapproval by government”).

<sup>177</sup> Califa, *supra* note 171, at 328 (“English-only proponents are worried about a perceived Hispanic threat, not the threat of Spanish.”).

<sup>178</sup> Aneta Pavlenko, *‘We have room for but one language here’: Language and national identity in the US at the turn of the 20th Century*, 21 MULTILINGUA 163, 179 (2002).

Americans to “civilize” them.<sup>179</sup> The Board of Indian Commissioners at the time believed that forced learning of English was the method to assimilate Native Americans and transform them into white men.<sup>180</sup> In the federal Indian boarding school system, Native Americans relinquished their given name and took an English name.<sup>181</sup> They were punished for speaking their native language as well.<sup>182</sup> Native American families who refused to send children to these boarding schools had their federal rations withheld.<sup>183</sup>

Unlike English, however, the Korean language and *Hangeul* was the language of the subjugated ethnicity and used to demonstrate opposition to the Japanese colonial government and its forced assimilation policy. In fact, the Japanese colonial language policy is more similar to the English-only policies and movements. During the Japanese colonial era, the Japanese colonial government used the Japanese language to decrease the status of the Korean language and reward those who learned the Japanese language with upward social mobility, thus enforcing the assimilation policy. Just like English-only policies that can hinder socioeconomic mobility and access to education, the language policy of the Japanese colonial government hindered Koreans from accessing education and upward social mobility if they did not conform to the assimilation policy and abandon their Korean roots. The Japanese also legitimized their colonial rule under the logic that Koreans were “inferior” subjects that needed to be “civilized.”<sup>184</sup> Similar to how English was used to forcibly assimilate young Native Americans, the Japanese colonial government attempted to take away Koreans’ identity by forcing them to take Japanese names and punishing them for speaking Korean. As some English-only proponents view immigrants and non-English languages as a threat to their power, the Japanese colonial government saw the Korean language and development of *Hangeul* as a threat to their colonial assimilation policy.

Even though the Japanese attempted to forcibly assimilate the Korean people and prohibited the use of the Korean language, nationalistic efforts still led to the research and development of *Hangeul* during the colonial period.

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<sup>179</sup> See, e.g., Lindsay Glauner, *The Need for Accountability and Reparation: 1830-1976 The United States Government’s Role in the Promotion, Implementation, and Execution of the Crime of Genocide Against Native Americans*, 51 DEPAUL L. REV. 911, 940–43 (2002); Pavlenko, *supra* note 178, at 171–72.

<sup>180</sup> Pavlenko, *supra* note 178, at 171–72.

<sup>181</sup> Glauner, *supra* note 179, at 940–43.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> GI-WOOK SHIN, *supra* note 81, at 42–45.

The act of developing *Hangeul* and the Korean language was a show of independence and opposition to the Japanese colonial government. Such efforts also helped Koreans develop their nationalism while under Japanese colonization. This historical context shows how *Hangeul* was used to resist forced assimilation, in contrast to English that has historically been used to perpetrate forced assimilation. Thus, Korea's Framework Act mandating the use of *Hangeul* for official documents of government institutions should be understood in a different context than when scrutinizing English-only policies.

#### IV. POTENTIAL DANGERS OF ARTICLE 14 OF THE FRAMEWORK ACT

While the focus of this Comment is to demonstrate why Korea's Framework Act needs to be understood differently than English-only policies, the Framework Act's potential adverse and discriminatory effects cannot be ignored. When the Framework Act was first proposed in 2003, the law was critiqued as too restrictive and nationalistic—that it prohibited creative ways of using the language and invaded the freedom of speech.<sup>185</sup> Criticisms also claimed the Framework Act did not include enough protections for foreign migrant workers or minority groups' language rights.<sup>186</sup>

One obvious adverse effect is limited access to government documents by foreigners in Korea who have yet to comprehend *Hangeul*. While Korea is largely ethnically and linguistically homogenous, there are 1,741,919 foreigners residing in Korea.<sup>187</sup> Korea used to export labor, but, beginning in the late 1980s, has become a labor-importing nation.<sup>188</sup> Foreign workers typically come from other Asian countries, but they also come from countries such as Brazil, Nigeria, and Russia; workers tend to work in manufacturing, agricultural, fisheries, and service industries.<sup>189</sup> The Korean population is likely to become more ethnically diverse due to Korea's aging population and

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<sup>185</sup> Cho Tae-rin, *supra* note 26, at 257.

<sup>186</sup> *Id.* at 257. Once the law became official in 2005, the criticisms of the law shifted to its lack and difficulty of enforcement. *Id.* at 259.

<sup>187</sup> Yujin Yi, *The Status Quo of Racial Discrimination in Japan and the Republic of Korea and the Need to Provide for Anti-discrimination Laws*, 7 COLUM. J. RACE & L. 410, 419 (2017).

<sup>188</sup> Andrew Eungi Kim, *The Origin of Ethnic Diversity in South Korea: Issues and Implications*, 1 J. MIGRATION & SOC'Y 85, 87 (2010); Erin Aeran Chung & Daisy Kim, *Citizenship and Marriage in a Globalizing World: Multicultural Families and Monocultural Nationality Laws in Korea and Japan*, 19 IND. J. GLOB. LEGAL STUD. 195, 206 (2012).

<sup>189</sup> Andrew Eungi Kim, *supra* note 188, at 88.

lower marriage and birth rates, leading to increasing numbers of foreign workers and international marriages.<sup>190</sup>

There have been efforts to increase accessibility to information for foreigners in Korea. For example, in 2006 the Ministry of Health and Welfare published information booklets in English, Chinese, Vietnamese, Russian, Mongolian, and Tagalog to assist foreigners living in Korea.<sup>191</sup> In 2007, Korea Exchange Bank also published a guidebook for foreign workers in eight other Asian languages and provided information on accessing medical and postal services, public transportation, important laws and regulations foreign workers should know, as well as various emergency numbers.<sup>192</sup> Local cities also began to provide interpreter services for legal and medical services.<sup>193</sup>

Understanding Korea's Framework Act and its constitutionality through the historical context provided in this Comment can have discriminatory effects. One of the dangers is nationalism. Even given the Society's accomplishments during the Japanese colonial era, controversy erupted when the Society moved to exclusively use *Hangeul* and eradicate any foreign words after liberation.<sup>194</sup>

The Korean language and *Hangeul* are closely tied to Korean national identity.<sup>195</sup> For instance, historical fiction focusing on *Hangeul*'s creation evokes greater ethnic nationalism than any other piece of Korean historical fiction.<sup>196</sup> The Framework Act also demonstrates national pride and identity

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<sup>190</sup> See generally Andrew Eungi Kim, *supra* note 188. See also Siwon Lee, *supra* note 36, at 48; Byoung-ha Lee, *Incorporating Foreigners in Korea: The Politics of Differentiated Membership*, 1 OMNES: J. MULTICULTURAL SOC'Y 35, 46 (2010); Chung & Kim, *supra* note 188, at 196–97.

<sup>191</sup> Myung Hee Yang, *Damunhwa sidaewa eoneojeongchaek [Multicultural Age and Language Policy]*, 20 J. KOREAN LANGUAGE EDUC. 111, 123 (2009).

<sup>192</sup> *Id.* at 123–24.

<sup>193</sup> *Id.* at 124.

<sup>194</sup> For instance, there were scholars who were graduates from a university that was created during the Japanese colonial era that opposed using *Hangeul* exclusively, called Keijo Imperial University. This university was created for the needs of the Japanese colonial government and the scholars learned from Japanese linguistics professors. The role of the university was to promote and spread ideologies necessary for retaining colonial power. See Lee Jun-sik, *supra* note 46, at 90, 95–97.

<sup>195</sup> Siwon Lee, *supra* note 36, at 45–47 (“[T]he Korean language is closely related to Korean national identity, and this relationship has been reinforced and intertwined with the ideology of ethnic nationalism especially following Japanese colonial rule from 1910 to 1945. . . . Also, the Korean language and its written form, *Hangeul*, serve as one of the salient markers that represent Korean national identity.”).

<sup>196</sup> Lee Kyung-jae, *Hangeul changjereul darun nambukhan yeoksaseol bigyo [A Comparison of Historical Novels of North and South Korea Dealing with the Creation of Hangeul]*, 67 J. LANGUAGE & LITERATURE 229, 232 (2016).



arising from *Hangeul*, as the law promotes the proper use of *Hangeul* and commemorates the language, such as through codifying *Hangeul Day*.<sup>197</sup> Additionally, Korean society considers King Sejong's creation and development of *Hangeul* as one of his greatest accomplishments and celebrates such accomplishment by naming language institutions after him<sup>198</sup> and building a statute commemorating him.<sup>199</sup> Many Koreans take pride in international scholars' acknowledgement of *Hangeul*'s scientific characteristics<sup>200</sup> and the fact that due to the historical background of *Hangeul*'s creation, the writing system is described as the only script in the world where people know who made it, when it became official, and how it developed.<sup>201</sup>

Ethnic nationalism is also fairly strong among Koreans. As mentioned in the previous section, the fight against colonial rule strengthened Korean's ethnic identity and nationality.<sup>202</sup> Koreans also share the idea that they come

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<sup>197</sup> See also Coulmas, *supra* note 32, at 56. (“[*Hangeul*] is a matter of understandable pride for the Koreans . . . Hangeul is the best asset which Korea has inherited from her past.”).

<sup>198</sup> Framework Act on Korean Language, Act No. 7368, July 28, 2005, amended by Act No. 14625, Sep. 22, 2017, art. 19-2 (S. Kor.), translated in National Law Information Center online database, <http://www.law.go.kr/LSW/eng/engMain.do> (naming the King Sejong Institute Foundation).

<sup>199</sup> *Statute of King Sejong the Great*, NAVER, <http://terms.naver.com/entry.nhn?docId=1999788&cid=42856&categoryId=42856> (last visited Mar. 22, 2018); LEDYARD, *supra* note 33, at 107 (“Of all Korean kings, Sejong is the one most remembered by his people. He is the king who appears on the postage stamps, of whose life movies are made, after whom streets are named. It is no exaggeration to say that the great respect in which his memory is held is due solely to his invention of the alphabet. . .”).

<sup>200</sup> See, e.g., Chin W. Kim, *supra* note 32, at 7 (“I think it is safe to say that, except for Hangeul, all writing systems in the world today are evolutionary products. The history of writing is in general a story of borrowing a neighbor's writing system and adapting it to a new language. But Hangeul is a true invention.”). See also Kim-Renaud, *supra* note 30, at 4 (the Korean alphabet is often described as unique because the alphabets are put together to form a “syllable block”); LEDYARD, *supra* note 33, at 107 (“[*Hangeul*] was in essence an invention, because however old the theories behind it may have been, and however significant the foreign influence was, it still was an entirely different kind of script, of a type never before seen, elaborated after conscious research and study by a single man.”).

<sup>201</sup> *Hangeul*, NAVER (May 19, 2010), [http://navercast.naver.com/contents.nhn?rid=92&contents\\_id=2737](http://navercast.naver.com/contents.nhn?rid=92&contents_id=2737).

<sup>202</sup> Sungjin Yoo, *Legal Reform Related to Interracial Koreans*, 16 WASH. U. GLOB. STUD. L. REV. 365, 366–67 (2017); Gi-Wook Shin, *Korea's ethnic nationalism is a source of both pride and prejudice, according to Gi-Wook Shin*, STANFORD ASIA-PACIFIC RESEARCH CENTER (Aug. 2, 2006), [http://aparc.fsi.stanford.edu/news/koreas\\_ethnic\\_nationalism\\_is\\_a\\_source\\_of\\_both\\_pride\\_and\\_prejudice\\_according\\_to\\_giw\\_ook\\_shin\\_20060802](http://aparc.fsi.stanford.edu/news/koreas_ethnic_nationalism_is_a_source_of_both_pride_and_prejudice_according_to_giw_ook_shin_20060802) (“Faced with imperialist encroachments, Koreans developed the notion of a unitary nation to show its autonomy and uniqueness. They stressed the ethnic base, rather than civic elements, in defining the Korean nation.”); Jae-won Joo, *Conceptualising Korean Nationalism—Focusing on the Modern History and Societal Context*, 26 J. KOREAN CULTURE 287, 297 (2014) (“The Japanese colonization which was prior to the modernization process, played a critical role in the formation of Korean nationalism.”).

from one common ancestry.<sup>203</sup> The myth that Koreans come from the mythic founder, Dan-Gun, was used to “reinforc[e] Korean nationalism at a time of national crisis [Japanese colonization], creating internal cohesiveness and strength amongst its members.”<sup>204</sup> In addition, ethnic nationalism also contributed to South Korea’s rapid industrialization and economic development between the 1960s and 1990s.<sup>205</sup>

Unfortunately, such ethnic nationalism can lead to discrimination against those who do not share Korean ethnicity and come from different backgrounds.<sup>206</sup> Korea is currently experiencing an increase in diversity of ethnicities and racial groups, and the country is not immune to racism, xenophobia, and colorism.<sup>207</sup> For instance, when Bonojit Hussain, an Indian research professor, took public transit with his Korean friend, a Korean man yelled at him for his “odor” and yelled “you Arab! Arab!”<sup>208</sup> The discrimination also extended to his Korean friend, who was insulted for being with an Arab man.<sup>209</sup> Laws that exist to protect foreigners and provide assistance to multicultural families<sup>210</sup> are also not enough because the idea of promoting multiculturalism in Korea means cultural assimilation rather than

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<sup>203</sup> Gi-Wook Shin, *supra* note 202 (“Koreans thus believe that they all belong to a ‘unitary nation’ (danil minjok), one that is ethnically homogeneous and racially distinctive”); Byoung-ha Lee, *supra* note 190, at 38.

<sup>204</sup> Joo Jae-won, *supra* note 202, at 295.

<sup>205</sup> Siwon Lee, *supra* note 36, at 47.

<sup>206</sup> GI-WOOK SHIN, *supra* note 81, at 233 (“[E]thnic nationalism has become a considerable force in Korean society and politics and that it can be dangerous and oppressive when fused with racism and other essentialist ideologies. Koreans must thus strive to find ways to use ethnic nationalism constructively and mitigate its potential harmful effects.”); Siwon Lee, *supra* note 36, at 47 (ethnic nationalism has led to “intolerance of diverse cultural and ethnic identities within Korean society”).

<sup>207</sup> See Yujin Yi, *supra* note 187, at 442–53; *UN expert on racism urges the Republic of Korea to adopt a comprehensive anti-discrimination law*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15147&LangID=E> (last visited Mar. 22, 2018); Lee Hyo-Sik, *Concerns increase over online racism*, KOREA TIMES (May 13, 2011), <http://www.koreatimes.co.kr/www/common/printpreview.asp?categoryCode=117&newsIdx=86959>; Lee Kyungtae, “*Injongchabyeol? hangukcheoreom onjeongjeogin narado eopsneunde . . .*” [“*Racial discrimination? There’s no country as compassionate as Korea . . .*”], OHMYNEWS (Sep. 29, 2009), [http://www.ohmynews.com/NWS\\_Web/View/at\\_pg.aspx?CNTN\\_CD=A0001217714](http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0001217714).

<sup>208</sup> Roh Jeongyeon, *Injongchabyeoljeok bareoneuro cheot giso sarye mandeun bonojit husein gyosu* [Professor Bonojit Hussain who made the first case of indictment based on racially discriminatory comment], LADY KYUNGHYANG (Oct. 14, 2009), [http://news.khan.co.kr/kh\\_news/art\\_print.html?med\\_id=lady&artid=200910141648131](http://news.khan.co.kr/kh_news/art_print.html?med_id=lady&artid=200910141648131). See also Yujin Yi, *supra* note 187, at 443.

<sup>209</sup> Roh Jeongyeon, *supra* note 208.

<sup>210</sup> For instance, the Multicultural Families Support Act, Act. No. 8937, Sep. 22, 2008, amended by Act No. 14061, Sep. 3, 2016 (S. Kor.), translated in National Law Information Center online database, <http://www.law.go.kr/LSW/eng/engMain.do>.

respecting different cultures and ethnicities.<sup>211</sup> These types of laws do not combat ethnocentrism and racism.<sup>212</sup>

As the foreign population in Korea increases, Korea should consider amending the Act to allow more than an exception to use foreign characters in parentheses. It should provide a proviso, stating that the Act does not prohibit using language and characters other than the Korean language and *Hangeul*, so that government institutions can provide official documents in other languages to increase access to foreigners in Korea.

## V. CONCLUSION

While Korea's Framework Act may seem similar to English-only policies in the United States, such as Article XXVIII of Arizona's Constitution, to fully understand the reason behind the law and its social impact, one should understand the law through a contextualized lens. An obvious context that makes the *Hangeul*-only mandate different from English-only policies is the homogeneous demographic of Korea and the fact that Koreans largely read and write *Hangeul*. Through this Comment, I provided the historical context behind *Hangeul* and the Korean language to help readers better understand why and how Korea's Framework Act and the Constitutional Court's ruling could be understood differently than English-only policies in the United States. The historical background of using *Hangeul* to resist forced assimilation perpetrated by the Japanese colonial government demonstrates its inverse history to the English-only policies and movements.

The Framework Act, however, still does have potential to create discriminatory effects in Korea's increasingly diverse future. As the number of foreigners increase in Korea, accessibility to official documents could become a serious issue. In addition, Korea should be cautious in the narrative of *Hangeul* as a source of national identity and pride, as it could lead to nationalism that perpetuates discrimination against those who are not ethnically Korean.

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<sup>211</sup> See Claire Lee, *Defining racism in Korea*, KOREAN HERALD (Sep. 4, 2014), <http://www.korea-herald.com/common/newsprint.php?ud=20140904001088>; Hee-Eun Lee, Kyung-Han Yoo, & Ji-Hyun Ahn, *TV gwanggoe natanan jeonryakjeok damunhwajuuiwa injongjuui* [Strategic Multiculturalism and Racialism in Television Advertising], 39 KOREAN J. COMM. & INFO. 473, 475 (2007).

<sup>212</sup> Sungjin Yoo, *supra* note 202, at 379–82.

