

SOCIAL SECURITY SYSTEMS AROUND THE WORLD: DO CULTURAL PRIORITIES AFFECT THEIR DEVELOPMENT?

Elaine S. Kuntz

Many countries have distinct views about the importance of the elderly in society. One manifestation of how the elderly are valued in a culture is how these individuals are provided for in old age, specifically by social security systems. This Note conducts a cultural survey of three countries: South Korea, Saudi Arabia, and Brazil. These countries represent a wide variety of political, economic, and social climates. The Note attempts to draw conclusions between the cultural values of each country and the social security system that has been adopted. In Korea, the strong Confucian ideals of family-independence and discipline have created a state with considerably less social welfare than other countries relative to its budget. Saudi Arabia, on the other hand, has not been affected by global aging at this point in time and continues to have a strong welfare system in place that is tied to its economic success in the oil industry. While the country shares a respect for the elderly, it does not appear to have a strong sense of philosophy that is shaping government spending in the same way as South Korea. Likewise, Brazil's social security system appears to be largely tied to its economic climate, but in different ways. As the average age in Brazil has risen dramatically in recent decades, Brazil was forced to adapt its social pension system to meet the needs of the population. In the end, the examination concludes that while cultural values do influence the development of a social security system, the economic status of a country may be the stronger indicator of what type of welfare system will be implemented for the elderly. However, the faces of countries are continuing to change rapidly with the growth of the elderly population, and it is likely that priorities will continue to evolve and cause welfare systems to evolve in turn.

Elaine S. Kuntz is Editor-in-Chief 2009–2010, Member 2008–2009, *The Elder Law Journal*; J.D. 2010, University of Illinois, Urbana-Champaign; B.A. 2007, St. Cloud State University.

I. Introduction

“Más sabe el diablo por viejo que por diablo.” This Spanish proverb translates into, “The devil knows more because he’s old than because he’s the devil,” and it illustrates the common notion that with age comes wisdom.¹ But this is not the only view commonly associated with the elderly. Take, for example, the well-known Chinese proverb which says, “Our generation plants the trees under whose shade future generations rest,” or a Swedish proverb which states, “Youth goes in a flock, manhood in pairs, and old age alone.”² While the Chinese proverb demonstrates the idea of interrelatedness between generations, the Swedish proverb gives a negative view of aging that paints the elderly as lonely.³

Proverbs such as these, which by definition express “some obvious truth or familiar experience,” tend to be a reflection of a people’s culture.⁴ While proverbs can be a useful method of learning about a culture, it is not necessary to study proverbs or travel the world to see the cultural differences in attitudes toward aging and the elderly—it is enough to go to a nearby nursing home. The concept of a nursing home is inconsistent with the cultural emphasis on the family and respect for elders that exist in many Asian and Latin American countries.⁵ Many children of immigrants have a hard time sending their parents to nursing homes, as the parents often find it hard to adjust.⁶

Take the case of Hardev Singh, a seventy-five-year-old Indian immigrant living in California.⁷ Singh moved to California to live with his daughter and her family, but he was unable to stay with them

1. Matthew S. Kaplan, *Employing Proverbs to Explore Intergenerational Relations Across Cultures*, in *LINKING LIFETIMES: A GLOBAL VIEW OF INTERGENERATIONAL EXCHANGE* 39, 44 (Matthew S. Kaplan et al. eds., 2002).

2. *Id.* at 44, 52.

3. *Id.* While proverbs are a useful tool for studying a culture, they are to be taken with a grain of salt, as many countries have contradictory proverbs. The Italians have a saying, “The aging process is like a piece of iron in the rain. It gets rusty.” At the same time, however, another Italian proverb, “Age commands respect,” illustrates a much different sentiment. *Id.* at 45.

4. *Id.* at 39.

5. See Sarah Kershaw, *Many Immigrants Decide to Embrace Homes for Elderly*, *N.Y. TIMES*, Oct. 20, 2003, at A1.

6. *Id.* Nursing homes appear to have caught on among the Asian immigrant community; however, Hispanic immigrants have been more reluctant to the idea. *Id.*

7. Lonny Shavelson, *Elderly Immigrants Need Special Help*, *VOICE OF AM.*, Apr. 2, 2008, <http://www1.voanews.com/english/news/a-13-2008-04-02-voa29-66816117.html>.

and was forced to find a place of his own.⁸ Expecting an extended-family living arrangement, such as would have been provided in his home country, Singh found it hard to adjust to living alone in California.⁹

Some cities have sought solutions to the problem through nursing homes that cater to elderly immigrants.¹⁰ In a Japanese nursing home where residents are served Japanese food and have familiar activities on the calendar, Marie Fujii, an eighty-two-year-old Japanese immigrant, still explains how difficult the decision for her to live there was for the family.¹¹ Japanese children are taught to look after their parents as they get older, so the idea of a nursing home can be disconcerting to some.¹²

This Note will explore the connection between culture and law in the area of elder law, specifically focusing on the social security systems of the nations of South Korea, Saudi Arabia, and Brazil. By examining both legal systems and the cultural attitudes toward aging and the elderly, the Note will look for connections between these two aspects of society. Part II details the drastic change in the international age structure and examines the international response to the issue of aging before giving a brief discussion of the relationship between law and culture. Part III first details the legal systems, cultural attitudes toward and roles played by the elderly in society in each of the three countries; it then explains the social security systems of each of these focus countries. Part IV explores possible connections between these laws and the cultures of which they are a part and seeks an explanation of this relationship.

II. Background

A. United Nations' Response to Aging Issues

Regardless of existing cultural attitudes toward the elderly, the rapid increase in the size of the elderly population will force all nations to reconsider the role played by the elderly in society; it has already prompted the United Nations to take action.¹³ Consider these

8. *Id.*

9. *Id.*

10. Kershaw, *supra* note 5, at A1.

11. *Id.*

12. *Id.*

13. See G.A. Res. 33/52, ¶ 1, U.N. Doc. A/RES/33/52 (Dec. 14, 1978) (reflecting the decision of the United Nations to organize a World Assembly on the Elder-

statistics: by the year 2050, the percentage of the population age sixty years and over will increase from ten percent to twenty-one percent.¹⁴ The effect of aging can be seen clearly in developing countries, where the elderly population is projected to quadruple in the next fifty years.¹⁵ The increase in the elderly population in developed countries is in some places coupled with a decrease in birth rate, even to the extent that some countries now report elderly populations that surpass those of children.¹⁶

The first major action taken by the United Nations in response to rapidly aging populations came in 1982 at the World Assembly on Ageing, during which the Vienna International Plan of Action on Ageing (the Vienna Plan) was adopted.¹⁷ The Vienna Plan was established to promote global understanding of the implications that aging would have on development, as well as the humanitarian issues that accompany the process of aging.¹⁸ Based on principles such as the maintenance of family, the value of the contributions of the elderly to society, and the responsibility that government has to the elderly, the Vienna Plan sets out recommendations for action, emphasizing seven key areas of concern to the elderly.¹⁹ At the end of the Vienna Plan, both national governments and international agencies are called upon to implement the plan in the ways they best see fit.²⁰

After the endorsement of the Vienna Plan, the United Nations further emphasized the importance of governmental attention to aging and issued the United Nations Principles for Older Persons.²¹ The

ly in 1982 as a response to the issues facing the world's elderly population); Second World Assembly on Ageing, Madrid, Spain, Apr. 8–12, 2002, *Political Declaration*, art. 2, U.N. Doc. A/CONF.197/9 [hereinafter *Political Declaration*].

14. *Political Declaration*, *supra* note 13, at art. 2.

15. Second World Assembly on Ageing, Madrid, Spain, Apr. 8–12, 2002, *Madrid International Plan of Action on Ageing, 2002*, ¶ 2, U.N. Doc.A/CONF.197/9 [hereinafter *The Madrid Plan*].

16. *Id.* ¶ 3.

17. G.A. Res. 37/51, ¶ 2, U.N. Doc. A/RES/37/51 (Dec. 3, 1982) (providing the resolution in which the General Assembly endorses the Vienna Plan); United Nations Programme on Ageing, Vienna International Plan of Action on Ageing, http://www.un.org/esa/socdev/ageing/vienna_intlplanofaction.html (last visited Jan. 29, 2010).

18. World Assembly on Aging, Vienna, Austria, July 26–Aug. 6, 1982, *Vienna International Plan of Action on Aging*, ¶ 3 [hereinafter *The Vienna Plan*], available at http://www.monitoringris.org/documents/norm_glob/vipaa.pdf.

19. *Id.* ¶¶ 25, 49–76 (listing the seven key areas of concern as being health and nutrition, protection of elderly consumers, housing and environment, family, social welfare, income security and employment, and education).

20. *Id.* ¶¶ 86–101.

21. G.A. Res. 46/91, Annex, U.N. Doc. A/RES/46/91/Annex (Dec. 16, 1991).

UN listed the following five principles and encouraged governments to include them in their national plans: independence (emphasizing the right to work and education), participation, care (calling for access to health care and social security, among other things), self-fulfillment, and dignity (stressing fair treatment and freedom from abuse).²²

Seeking to revisit the Vienna Plan and create a long-term strategy for the world to deal with the problems of aging, the United Nations called for a second World Assembly on Ageing, twenty years after the first.²³ The product of this second Assembly was the Madrid International Plan of Action on Ageing (the Madrid Plan), a document similar to the Vienna Plan but more extensive in its concerns and recommendations.²⁴ For example, the Madrid Plan calls on developed nations to donate a percentage of their Gross National Product (GNP) to less developed states to aid them in achieving the set-forth goals.²⁵ The United Nations Programme on Ageing has been created as a part of the United Nations Division for Social Policy and Development, with its main purpose being the promotion and implementation of the Madrid Plan.²⁶

B. The Relationship Between Law and Culture

Though one is not always considered in relation to the other, there is a reciprocal connection between law and culture, with each influencing the other in different ways.²⁷ There are conflicting views

22. *Id.*

23. G.A. Res. 54/262, ¶ 1, U.N. Doc. A/RES/54/262 (June 16, 2000).

24. See *The Madrid Plan*, *supra* note 15; *The Vienna Plan*, *supra* note 18. Rather than separating the Madrid Plan into seven key areas of concern, as was the format of the Vienna Plan, the Madrid Plan is divided into three priority directions: older persons and development, advancing health and well-being into old age, and ensuring enabling and supportive environments. Within each category are a number of important issues, with objectives identified within each issue. Among the issues that are addressed in the Madrid Plan which were not addressed in the Vienna Plan are the treatment of elderly patients with HIV/AIDS and the images of aging, with the main objective of the latter issue being the "enhancement of public recognition of the authority, wisdom, productivity and other important contributions of older persons." *The Madrid Plan*, *supra* note 15, ¶¶ 14, 78, 112-13.

25. *The Madrid Plan*, *supra* note 15, ¶ 122. Specifically, the Madrid Plan provides for 0.7% of GNP to be given as assistance for developing nations and 0.15% of GNP to be given to the least developed nations. *Id.*

26. United Nations Programme on Ageing, Mission Statement, <http://www.un.org/esa/socdev/ageing/aboutus.html> (last visited Jan. 29, 2010).

27. See Berta Esperanza Hernandez-Truyol, *Glocalizing Law and Culture: Towards a Cross-Constitutive Paradigm*, 67 ALB. L. REV. 617, 619 (2003).

as to the nature of the relationship of law to culture, with some scholars arguing that law enforces cultural norms and others insisting that it does more than just *enforce* culture; rather, law can often *shape* culture, and vice versa.²⁸

A major proponent of the argument that law should enforce cultural norms was Patrick Devlin, who wrote of the role of law as enforcing morality.²⁹ Devlin justifies the use of law in this manner by speaking of a “public morality,” stating that a society is a “community of ideas . . . about the way its members should behave and govern their lives.”³⁰ Devlin’s concept of society is a group of people held together by its “fundamental agreement about good and evil” and its “invisible bonds of common thought” which, without these bonds, would fail.³¹

Devlin’s arguments have been criticized, however, as being overly simplistic, both in their concept of the law and their portrayal of culture.³² As to the oversimplification of the legal system, the Devlin model seems to ignore the fact that laws can be used both to further policy goals of a government and to alter the culture of a nation.³³ The Devlin model is also predicated on the idea that culture is the set of “shared ideas on politics, morals, and ethics” that keep a society together.³⁴ However, a quick glance at any society will prove that no one comprehensive culture exists among a people; instead, culture is a constantly evolving “process of creating meaning.”³⁵ It would be difficult to argue that law enforces some static view of culture when what it is really doing is inserting itself into the process of cultural de-

28. See PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS* 7 (1965); Naomi Mezey, *Law as Culture*, 13 *YALE J.L. & HUMAN.* 35, 52 (2001).

29. DEVLIN, *supra* note 28, at 7.

30. *Id.* at 9. Devlin uses the example of marriage to illustrate his point; marriage in England at the time he was writing was the Christian conception of marriage—namely, it was a monogamous relationship between a man and a woman. However, while this formulation of marriage may have started as a Christian institution, it has become part of the fabric of British society. Even if a non-Christian did not believe in the monogamous, heterosexual definition of marriage, he would not have grounds to challenge it because he is not challenging a Christian institution anymore, he is challenging a British one. *Id.*

31. *Id.* at 10.

32. Robert Post, *Law and Cultural Conflict*, 78 *CHI.-KENT L. REV.* 485, 487 (2003).

33. *Id.* at 488.

34. DEVLIN, *supra* note 28, at 10.

35. Post, *supra* note 32, at 491.

velopment.³⁶ As one critic put it, “[t]his use of law is never innocent.”³⁷

Another critique of the Devlin model, which may not have been as prevalent in the 1960s when his arguments were published, but is certainly an issue now, is the increasing multiculturalism in many states.³⁸ The argument that law enforces culture becomes much less tenable when it is considered that many legal systems govern multiple cultures.³⁹

Taking the Devlin argument a step further, rather than law merely enforcing culture, law may be used as a tool to shape culture.⁴⁰ Laws passed to give rights to groups that had been discriminated against sought to reshape cultural attitudes toward the target groups; one example of this is Title VII of the Civil Rights Act of 1964, which granted rights to people regardless of race.⁴¹ It is not only the legislature that has the ability to shape culture; the judicial branch can also make rulings that have an effect on culture. Consider the Supreme Court’s ruling on *Brown v. Board of Education*, whose effect on race relations was felt for decades after it was decided.⁴²

The relationship between law and culture also can work the other way; that is, culture can have an influence on laws and how they are enforced.⁴³ State speed limits are an example of a set of laws that are not enforced according to what is on the books, but rather according to general practice which varies depending on the road and the time of day.⁴⁴

The relationship of law to culture also can be seen when considering a specific cultural trait. In a survey involving both collectivistic and individualistic nations, the role played by the government and

36. *Id.*

37. *Id.*

38. *See id.* at 492–93. Consider the demographics of a country like South Africa, which is 79% black African, 9.6% white, 8.9% colored, and 2.5% Indian/Asian; or Brazil, which is 53.7% white, 38.5% mulatto, and 7.8% other; compare these countries with, for example, South Korea, which is homogeneous, except for about 20,000 Chinese. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 534, 84, 319 (2008) [hereinafter CIA: THE WORLD FACTBOOK].

39. Post, *supra* note 32, at 492–93.

40. Hernandez-Truyol, *supra* note 27, at 618.

41. Post, *supra* note 32, at 488.

42. *See* Michael W. Combs & Gwendolyn M. Combs, *Revisiting Brown v. Board of Education: A Cultural, Historical-Legal, and Political Perspective*, 47 HOW. L.J. 627 (discussing the cultural significance of *Brown v. Board*).

43. Mezey, *supra* note 28, at 51.

44. *See id.* at 52 (presenting a more in-depth discussion of the relation of culture to the enforcement of speed limits).

the legal system was less important in collectivistic nations where respondents preferred to get their rules from religious or traditional norms.⁴⁵ The individualistic respondents, however, identified that they preferred “formal procedures and guidelines.”⁴⁶ There is also a separation in the two groups’ ideas of the correct way to distribute punishment; the collectivistic cultures prefer a method based on equality, as opposed to individualistic cultures, which will choose equity, a response that reflects the emphasis placed on achievement and competitiveness.⁴⁷

A major concept that influences the thinking of collectivistic cultures is the idea of the in-group and the out-group.⁴⁸ Because of the importance that is given to the in-group and the maintenance of group harmony, a collectivistic individual will be more prone to prefer dispute resolution in the form of mediation as opposed to adjudication.⁴⁹ The importance of the in-group shows its effect in the lower degree to which members of collectivistic cultures are willing to allow the state to regulate or intervene in a family-related dispute or any dispute between close parties.⁵⁰

III. Analysis

The analysis of this Note will focus on the cultural attitudes toward the elderly, the legal and economic backgrounds of each country, and the social security systems currently in place, as well as some historical information about the programs. The demographics of each country’s population will also be examined. In the absence of hard data examining cultural attitudes toward the elderly, the Note will look to other indicators, including religion, language, family structure, and at times anecdotal evidence.

45. Günter Bierbrauer, *Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism Between Kurds, Lebanese, and Germans*, 28 *LAW & SOC’Y. REV.* 243, 244 (1994).

46. *Id.*

47. *Id.* at 246.

48. *Id.*

49. *See id.* at 247.

50. *See id.* at 254–55.

A. South Korea**1. ATTITUDES TOWARD AND THE ROLE OF THE ELDERLY POPULATION**

Much of Korean culture is derived from principles of Confucianism, and as such, respect for one's elders is not only practiced by, but expected of the younger generation of Koreans.⁵¹ One of the major tenets of Confucianism is that "between elder and younger there should be proper order," and the result of this is not only an immense degree of respect for the elderly population, but also a younger population that, in a sense, knows its place.⁵² The degree of competitiveness and the desire to be an "up and comer" that are so often seen in the United States are not present to the same degree in Korea; the knowledge of elder academics is considered authority, and for a young Korean student to challenge these ideas would be at the height of disrespectful behavior.⁵³ The upside of this "wait your turn" mentality is an elderly population that is dignified and respected and a younger population who sees its later years as something to look forward to, rather than to dread.⁵⁴

The worship of elders comes not only in the form of showing respect to living family members, but also in the long tradition of ancestor worship.⁵⁵ A system of laws pertaining to ancestor worship was firmly in place during the Koryo and early Chosun Dynasties, and the mid-fifteenth century saw the start of the spread of family shrines in Korea.⁵⁶ The practice usually included worship of ancestors three to four generations back.⁵⁷ Ancestor worship is still practiced to some

51. INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA 26 (Sang Hyun Song ed., 1983) [hereinafter INTRODUCTION TO KOREA]. For purposes of this note, Korea and the Republic of Korea, along with South Korea, will all be used to refer to South Korea.

52. *Id.* at 26–27.

53. *Id.* at 26.

54. *Id.* at 27.

55. Byoung Ho Park, *Traditional Korean Society and Law*, 5 KOREAN J. COMP. L. 1, 7–8 (1977).

56. Geungisk Jung, *The Formation of Four-Generation Ancestor Worship in Early Chosun*, 1 J. KOREAN L. 137, 142–43 (2001). The system of discriminatory ancestor worship preceded that of four-generation ancestor worship in Korea and was a system based on class which was characterized by a "rigid social hierarchy" and greater "state interference in family and village affairs." *Id.* at 140. The four-generation system, which did not exclude the lower classes, was a more socially equalizing system. *Id.* at 142.

57. *Id.* at 144. Inheritance documents have shown that inheritance monies were freed after the passage of the third generation, one indication that ancestor worship was intended to extend to three generations. *Id.* at 147.

degree in Korea; it is part of the Chusok celebration, when families both visit the graves of ancestors to care for them or leave tokens of thanks and often also perform rituals at home.⁵⁸

Manifestations of respect for the elderly are not always obvious. There is a theory, referred to as the "linguistic relativity hypothesis," that language traps thought and that a group of people is restricted in its thought process by the words available to it.⁵⁹ This principle can be illustrated by the use of levels in the Korean language.⁶⁰ In addition to the outward show of respect toward elders that is often observed in Korea, there is a certain level of deference for elders and superiors that is embedded in the Korean language.⁶¹ There are three levels of formality in Korean speech which are observed in all conversations.⁶² Speech can be either plain, polite, or deferential, and instead of the predicate agreeing with the subject of the sentence, it agrees solely with the level of respect.⁶³

Though it was once a relatively young nation, as is the case with many economically advanced countries, the elderly population in Korea is quickly increasing, and this aging "epidemic" could put a strain on the Korean economy.⁶⁴ Based on 2008 estimates, the life expectancy numbers in the Republic of Korea are in the top twenty percent in the world, with a life expectancy at birth of 77.42 years.⁶⁵ This number is even more astonishing when compared with the life expectancy figures from 1970 when a male could be expected to live to the age of fifty-nine, and a woman to age sixty-six.⁶⁶ The age structure of Korea also illustrates the aging nature of the population: with 72.3% of the

58. Sandee Brawarsky, *For Koreans, Feast and Thanks*, N.Y. TIMES, Oct. 4, 2002, at E29.

59. John A. Lucy, *Linguistic Relativity*, 26 ANN. REV. ANTHROPOLOGY 291, 292, available at <http://www.russian.pomona.edu/harves/LucyREVIEWONLinguisticRela.pdf> (explaining the linguistic relativity hypothesis, also known as the Sapir-Whorf hypothesis, and offering criticisms of it).

60. Hahn-Sok Wang, *Toward a Description of the Organization of Korean Speech Levels*, 82 INT'L J. SOC. LANGUAGE 25, 25 (1990).

61. *Id.* at 26.

62. *Id.* at 27.

63. *Id.* at 31.

64. Jeffrey Robertson, *Young North Korea Could Save Old South*, ASIA TIMES, Mar. 2, 2005, available at <http://www.atimes.com/atimes/Korea/GC02Dg01.html>.

65. CIA: THE WORLD FACTBOOK, *supra* note 38, at 319.

66. Chang-sik Shin & Ian Shaw, *Social Policy in South Korea: Cultural and Structural Factors in the Emergence of Welfare*, 37 SOC. POL'Y & ADMIN. 328, 331 (2003).

population between the ages of fifteen and sixty-four, 9.9% of Korea's population is aged sixty-five or older.⁶⁷

There is great potential for an economic crisis caused by such a high ratio of dependants to workers, as an unfavorable dependency ratio can lead to lower productivity, a lower gross domestic product (GDP), and an overall loss in tax revenues.⁶⁸ Fewer government revenues will, of course, lead to a reduction in the available resources for government-funded programs, such as health care and pension plans.⁶⁹

To prevent such a crisis, Korea must choose one of the avenues available to it, one option being tax increases.⁷⁰ As a country that boasts some of the lowest taxes in the developed world, Korea has a built-in cushion to raise taxes and increase revenues if the elderly population causes financial strain.⁷¹ Another resource Korea can take advantage of is the high number of elderly employees active in the economy, either in the formal workplace or the less documented, but very present, small business arena.⁷² If Korea is able to encourage its workers to continue working later in life, the economic burden could be lessened.⁷³

2. BRIEF HISTORY OF SOUTH KOREA, THE LEGAL SYSTEM, AND THE ECONOMY

The emphasis that is placed on ancestors in the Korean culture is not surprising considering the nation's extensive and storied history, dating back as far as 194 B.C.⁷⁴ Early in its history, Korea was heavily influenced by Chinese civilization and embraced the principles of Buddhism.⁷⁵ Beginning in the fourteenth century, the Yi dynasty adapted Korea to the principles of Confucianism.⁷⁶ After a period of Japanese rule beginning in 1910, the separation of the peninsula along the thirty-eighth parallel during World War II, and the Korean War,

67. CIA: THE WORLD FACTBOOK, *supra* note 38, at 318. Ten percent of a population in the oldest age bracket is near the top of the list worldwide, with only developed countries surpassing Korea's numbers. *Id.*

68. Robertson, *supra* note 64.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. INTRODUCTION TO KOREA, *supra* note 51, at 3 (citing the Kingdom of Wei-man, established in 194 B.C. as the "first truly historical state in Korea").

75. *Id.*

76. *Id.* at 4.

the Republic of Korea faced periods of political turmoil, coups d'état, and changing regimes.⁷⁷

With so much of Korean history tied to the teachings of Confucius, it is important to understand what Confucianism is and was at a basic level. A dominant school of thought in Eastern Asia, Confucianism is not a religion, nor did Confucius consider himself a deity.⁷⁸ An important tenet of Confucianism is group harmony and the individual's ability to properly function within a society.⁷⁹ In order to accomplish this harmonious society, a hierarchy is established and maintained through the five relationships: (1) ruler and subject; (2) father and son; (3) elder brother and younger brother; (4) husband and wife; and (5) friend and friend.⁸⁰

Another important aspect of Confucianism is the idea of *jen*, which has been translated to mean "love," "goodness," or "humanity."⁸¹ The ways in which *jen* is manifested, *chung* and *shu*, are translated as faithfulness, both to oneself and to others, and altruism, respectively.⁸²

Confucianism had not only an enormous impact on Korean culture, but it also did a great deal to shape the Korean legal system.⁸³ The idea of "law" as we speak of it today did not exist in Confucian Korea.⁸⁴ The law was used only as a means for the government to impose its obligations on the people, not for the people to enforce their rights against the government.⁸⁵ The importance placed on relationships and hierarchies by Confucianism led to a lack of equality under the law; people could not seek equal treatment who were, by very definition, unequal parties in society.⁸⁶

The lack of a legal system where parties could enforce their rights, and instead the presence of a system of obligations and punishments, was not necessarily a failure of Confucian Korea, at least

77. *Id.* at 4–9.

78. History.com, Encyclopedia: Confucianism, <http://www.history.com/encyclopedia.do?articleId=206303> (last visited Jan. 29, 2010).

79. Confucianism, <http://www.globaled.org/chinaproject/confucian/reading1.html> (last visited Jan. 29, 2010).

80. *Id.*

81. History.com, *supra* note 78.

82. *Id.*

83. INTRODUCTION TO KOREA, *supra* note 51, at 50.

84. *See id.*

85. *Id.*

86. *Id.* The hierarchies present in Confucianism can be embodied in the quote, "The rules of polite behavior (*Li*) do not reach down to the common people; the punishments (*Hsing*) do not reach up to the great dignitaries." *Id.*

not when viewed from the Confucian perspective.⁸⁷ A Confucian leader has done his job properly, not when he is able to settle disputes and allocate rights among parties, but rather when he “so inculcates virtue in the people that law . . . and courthouses are rendered superfluous.”⁸⁸ Disputes were best settled within the family, thereby maintaining the harmony and relationships that were the very foundations of society.⁸⁹

While it was certainly a major factor in Korean history and the early conceptions of law in Korea, Confucianism no longer holds the grip that it once held on the Korean people.⁹⁰ However, that is not to say that there are not remnants of Confucianism in almost every aspect of Korean life, including the legal system.⁹¹

The South Korean economy, with a per capita GDP which ranks fifty-first in the world,⁹² has managed to recover successfully from the damage done by the Korean War and the Asian Financial Crisis of 1997.⁹³ The second half of the twentieth century saw Korea making huge economic gains; the per capita GNP in 1995 was 129 times the amount that it was in 1960.⁹⁴ Much of the economic gains can be attributed to the extremely successful *chaebol* system, a structure of around fifty conglomerates, each owned by one family, and all contributing significantly to economic output.⁹⁵ These companies were not simply the result of industrious Korean businessmen—the government used

87. *Id.*

88. *Id.*

89. *Id.*

90. Chaihark Hahm, *Law, Culture, and the Politics of Confucianism*, 16 COLUM. J. ASIAN L. 253, 269.

91. *Id.* at 278. A good example of the degree of Korean respect for elders is a case decided by the Korean Supreme Court in 1998. The owner of an apartment building was unable to evict his tenants, even though they had not paid their rent, because the tenants in question were the owner’s own elderly father and ill brother, and they were unable to find work. While the owner’s arguments may have had a solid basis in contract law, the court still held for the tenants, as enforcing the owner’s right in this case “would contravene the moral principles widely accepted by Koreans, and thus would constitute an abuse of the right.” *Id.*

92. CIA: THE WORLD FACTBOOK, *supra* note 38, at 320. For comparison figures, visit the World Factbook Web site at <https://www.cia.gov/library/publications/the-world-factbook/geos/ks.html>.

93. LIBRARY OF CONGRESS—FEDERAL RESEARCH DIVISION, COUNTRY PROFILE: SOUTH KOREA 8–9 (May 2005), available at http://lcweb2.loc.gov/frd/cs/profiles/South_Korea.pdf.

94. Shin & Shaw, *supra* note 66, at 333. Per capita GNP was the equivalent of \$82 in 1960 and \$10,548 in 1995. *Id.*

95. *Id.* The author cites this statistic to emphasize the importance of the *chaebol*: “[i]n 1983, the combined net sales of the top 30 *chaebol* was responsible for 75% of Korea’s output of goods and services.” *Id.*

its financial and trade powers to merge the *chaebol*, demonstrating its priority of economic development.⁹⁶

3. THE SOCIAL SECURITY SYSTEM

The strong Confucian values present in Korean culture have had a noticeable effect on the social welfare system throughout the country.⁹⁷ As compared to the other Organisation for Economic Cooperation and Development (OECD) member countries, South Korea allocates considerably less of its budget to social welfare spending.⁹⁸ Though social spending increased drastically after the 1990s, a survey of thirty OECD countries between 1990 and 2001 showed that, as a percentage of GDP, South Korea's expenditures were consistently the lowest, with numbers ranging between 2.9% and 6.9%.⁹⁹ Total expenditures for social programs in Korea are just a quarter of those of other OECD countries.¹⁰⁰ As is to be expected with such low levels of spending, the levels of coverage are also fairly low, with only 51.8% of Korean employees covered by the national pension in 2001.¹⁰¹ In fact, the system is currently so underdeveloped that some studies indicate the social security fund will be completely depleted by 2040.¹⁰² There are many reasons why Korea's social welfare system is not as developed as those of other countries, but there are two major contributing factors: the emphasis that the government places on economic policy over social policy, and the Confucian ideals of family.¹⁰³

The Korean government has been described as having a "productivist" welfare regime, in which economic goals are considered before social policy goals.¹⁰⁴ The national economic view held by Korean leaders beginning in the 1960s and continuing into the twenty-first century was that "a variety of socio-economic goals, such as better incomes and wealth distribution, social benefits, employment expan-

96. *Id.*

97. *Id.* at 337.

98. *Id.* at 335.

99. Yong Soo Park, *Revisiting the Welfare State System in the Republic of Korea*, INT'L SOC. SECURITY REV., Apr.-June 2008, at 3, 10 tbl.2. To put these numbers in perspective, the United States allocated between 13.4% and 15.4% in the same time period, and Sweden's numbers were the highest, with percentages between 29.5 and 36.8. *Id.*

100. *Id.* at 12.

101. *Id.* at 6-7.

102. *Id.* at 7.

103. See Shin & Shaw, *supra* note 66, at 335.

104. *Id.* at 335.

sion, and the improvement of working conditions and living standards, could be achieved automatically through a trickle-down effect generated by rapid economic development."¹⁰⁵ Following this theory, increased social spending would be counterproductive to both the government's social as well as its economic goals.¹⁰⁶

The other major factor in Korea's relatively weak social welfare structure is the maintenance of Confucian values by the Korean people.¹⁰⁷ Traditional Confucian teachings give the role of caregiver to the eldest son, and this value system has been translated into a collection of civil laws imposing duties upon the families to care for other family members.¹⁰⁸ In addition, the government has enacted legislation that is intended to benefit the elderly but has very little impact; the 1981 Elderly Welfare Law, for example, provided that the elderly population should be honored for one week of every year.¹⁰⁹

As a justification of its social welfare policies, the government has argued that "supportive income and social services would undermine the neo-Confucian tradition of family care for dependent people."¹¹⁰ In a publication by Korea's Bureau of Social Welfare in 1979, the social security system is described as a means to supplement the system of parent-care already in place, explaining that "[t]he support of elderly parents should be left primarily to their grown-up children."¹¹¹ Despite the fact that these values are widely held in Korean society, some have questioned whether the government is hiding behind Confucianism as a justification for its "laissez-faire approach" to social welfare.¹¹²

The Korean social welfare system also may not be as extensive as it could be due to the presence of a system of mutual aid in which individuals make material and nonmaterial transfers among themselves without government intervention.¹¹³ This system has a long history in

105. Park, *supra* note 99, at 11.

106. *Id.*

107. Shin & Shaw, *supra* note 66, at 337.

108. *Id.* at 335, 337.

109. Annette Hye Kyung Son, *Mutual Aid in the Welfare System in the Republic of Korea*, 5 INT'L J. SOC. WELFARE 97, 101 (1996). This law was not completely devoid of economic benefit for the elderly—it began providing free health examinations for elderly citizens in 1983. *Id.*

110. Shin & Shaw, *supra* note 66, at 337.

111. Bureau of Soc. Welfare, Ministry of Health & Social Affairs, Republic of Korea, *Changing Family Patterns and Social Security Protection: The Case of the Republic of Korea*, INT'L SOC. SECURITY REV., Jan. 2009, at 21, 31.

112. See Shin & Shaw, *supra* note 66, at 337.

113. Son, *supra* note 109, at 97–98.

Korea, and the aid given can range from “assisting elderly people during a hospital stay to assuming the guardianship of a relative’s children upon the death of the parents.”¹¹⁴ Mutual aid programs can be structured both as exchanges between individuals (often organized by location or family groups) and as organized collective aid networks (some of which associate with occupations and receive their funds based on members’ pay).¹¹⁵ The actual aid received is not the only benefit the individual receives from a mutual aid system; mutual aid also fosters a sense of community and belonging, important values in a collectivist society.¹¹⁶

Despite all of the forces working against it, a system of social welfare has developed in Korea, with credit going to multiple contributing factors.¹¹⁷ First, while economic growth may have occurred to the detriment of the social welfare system, the increase in resources actually put the government in a much better position to develop a public spending program.¹¹⁸ Second, the government may have used social welfare programs as a form of “nation-building” after the Korean War.¹¹⁹ Finally, the increased industrialization of Korea led to a number of social problems that required government intervention, the most significant being the shift away from the ideals of family responsibility that left a number of elderly citizens without sufficient care.¹²⁰

A relatively young system, the first social security system in Korea was implemented in 1960 and provided aid to government employees.¹²¹ In the following years, aid was extended to teachers and military personnel.¹²² Social security was provided for private sector employees for the first time in 1988 with the creation of the National Pension Scheme, which was eventually extended to farmers and fisherman.¹²³

114. *Id.* at 98.

115. *See id.* at 101–03.

116. *Id.* at 98.

117. *See* Shin & Shaw, *supra* note 66, at 329–34.

118. *Id.* at 333–34.

119. *Id.* at 333. The programs enacted after the Korean War, however, were not immediately implemented, which would imply that these programs were enacted by a government that took steps to please its people without actually having the desire or the resources to follow through on the promises. *Id.*

120. *Id.* Other social problems that coincided with industrialization were an increase in divorce rates, alcohol abuse, and crime and suicide rates. *Id.*

121. Jae-jin Yang, *Democratic Governance and Bureaucratic Politics: A Case of Pension Reform in Korea*, 32 *POL’Y & POL.* 193, 197 (2004).

122. *Id.*

123. *Id.*

The current social security system in South Korea is a two-tiered system which applies to employees and the self-employed separately from military personnel, civil servants, private-school employees, and employees of the special post office.¹²⁴ The current system of social insurance is funded through contributions of employees and employers, with government contributions subsidizing some of the contributions for farmers and fisherman, covering part of the cost of administration, and providing the total cost of the social assistance program.¹²⁵ For employees and employers, the contribution is 4.5% of pretax monthly earnings or payroll; those who are voluntarily insured contribute 9% of monthly earnings, as do the self-employed.¹²⁶

The Korean system requires a citizen wishing to receive full old-age pension benefits to be at least sixty years old and have twenty years of coverage.¹²⁷ For those without twenty years of coverage, a reduced old-age pension can be obtained at age sixty with between ten and nineteen years of coverage, so long as monthly income or earnings from employment do not exceed 1,676,837 won (about \$1400).¹²⁸ This same maximum is applied to those seeking early-age pensions, which begin at age fifty-five and require at least ten years of coverage.¹²⁹ There is also a social assistance program whose only requirements are that a person be over sixty-five and have an income below a maximum amount.¹³⁰ This amount, determined by the president, was 400,000 won per month in 2008 (about \$335).¹³¹

The calculations for the various types of pensions are based around the basic monthly pension amount (BPA), which is defined as "1.5 times the sum of the average indexed national monthly wage in the 3 years immediately before the year in which the pension is first paid and the insured's average monthly wage over the insured's total

124. SOC. SEC. ADMIN., SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD: ASIA AND THE PACIFIC, SOUTH KOREA 118 (2008) [hereinafter SOCIAL SECURITY: SOUTH KOREA], available at <http://www.ssa.gov/policy/docs/progdesc/ssptw/2008-2009/asia/southkorea.pdf>.

125. *Id.*

126. *Id.* The percentages for all contributions are confined within minimum and maximum monthly earnings of 222,000 won (approximately \$150) and 3,600,000 won (approximately \$2400). *Id.*

127. *Id.* The sixty-year age minimum will be gradually increased to sixty-five by the year 2033. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

contribution period.”¹³² Using the BPA as a base, the social security system then provides incremental adjustments for payments made past twenty years and different amounts to those receiving full, reduced, or active old-age pensions.¹³³ For example, the reduced old-age pension is fifty to ninety-five percent of the monthly BPA for those with more than ten but fewer than twenty years of contributions.¹³⁴

A number of factors affect the current social security system in South Korea. However, it is clear that culture is one of the largest influences.¹³⁵ The system, considered underdeveloped in comparison to many nations’ programs, took longer to form because of a governmental reliance on Confucian family values.¹³⁶ The focus on economic development in Korea had a strong effect on the system in both positive ways, by providing the financial resources, and negative ways, by at the same time taking attention away from social programs.¹³⁷

B. Saudi Arabia

1. ATTITUDES TOWARD AND THE ROLE OF THE ELDERLY POPULATION

While advancements in health care have increased the life span in Saudi Arabia, a demographic look at the population of Saudi Arabia still shows a nation with a bottom-heavy age distribution, that is to say, almost ninety-eight percent of the population is under the age of sixty-five.¹³⁸ The median ages for men and women in Saudi Arabia are 22.9 and 19.4 respectively.¹³⁹ The life expectancy at birth in Saudi Ara-

132. *Id.* at 119. This calculation is adjusted annually to account for changes in the consumer price index. *Id.*

133. *See id.*

134. *Id.*

135. *See* Shin & Shaw, *supra* note 66, at 336–37.

136. *See* Park, *supra* note 99, at 9, 15 (“[P]ublic social expenditure in Korea is extremely low when compared to that of all other OECD countries, with the exception of Mexico.”); Shin & Shaw, *supra* note 66, at 337 (explaining that the Confucian value system contributed to the government deliberately deciding not to develop welfare and social service programs).

137. Shin & Shaw, *supra* note 66, at 333, 335.

138. CIA: THE WORLD FACTBOOK, *supra* note 38; DAVID E. LONG, CULTURE AND CUSTOMS OF SAUDI ARABIA 44 (2005).

139. LIBRARY OF CONGRESS—FEDERAL RESEARCH DIVISION, COUNTRY PROFILE: SAUDI ARABIA 7 (Sept. 2006) [hereinafter COUNTRY PROFILE: SAUDI ARABIA], available at http://lcweb2.loc.gov/frd/cs/profiles/Saudi_Arabia.pdf. These numbers become more striking when compared to the median ages for men and women in Korea, which are 36 and 38.5, respectively. CIA: THE WORLD FACTBOOK, *supra* note 38.

bia is slightly shorter than those of Korea and the United States, with an average expectancy of 76.09 years.¹⁴⁰

An exploration of Islamic teachings and the Saudi Arabian family structure indicates a level of respect present in Saudi Arabian culture toward elders. There are a few Muslim adages which illustrate the emphasis placed on family and elder respect in Muslim culture. In the first, the Prophet is approached by a man who wishes to go to battle; when the Prophet learns that the man's parents are still alive, he instructs him to "strive to serve them."¹⁴¹ In the second, Muhammad says to him that sees his Parents in their old age but does not do good by them, "May his nose be rubbed in the dust!" which is an insulting Arabic expression.¹⁴²

Islamic culture places a high value on the family, and families in Saudi Arabia are often extended, rather than nuclear; it is not uncommon for three generations to live together.¹⁴³ Traditionally, extended families in Saudi Arabia were both patriarchal and patrilocal, meaning authority was concentrated in the elder generations and the families lived close to one another.¹⁴⁴ Many aspects of Saudi Arabian culture have undergone a change, however, with rapid modernization forcing families into the city and increasingly strong Western influences changing the attitudes of many Saudi youth.¹⁴⁵ Surprisingly, the family structure and the respect for the elderly has been resistant to the rapid changes.¹⁴⁶ Elderly Saudis are not only well respected within their family groups, but they also hold many senior positions in the business sector.¹⁴⁷ As oil revenues increased and the Saudi Arabian economy grew, family businesses gained prominence and, in turn, heads of family businesses, almost always elders, became executives of these large corporations.¹⁴⁸

140. CIA: THE WORLD FACTBOOK, *supra* note 38, at 507.

141. Sangeeta Dhami & Aziz Sheikh, *The Muslim Family: Predicament and Promise*, 173 W. J. MED. 352, 355 (2000).

142. *Id.*

143. *Id.* at 352.

144. LONG, *supra* note 138, at 35. Saudi Arabian families were also traditionally patrilineal (descent followed the male line), endogamous (marriages were often between family members or those of the same social group), and occasionally polygamous. *Id.*

145. *Id.* at 41-42.

146. *Id.* at 38.

147. *Id.*

148. *Id.*

2. BRIEF HISTORY OF SAUDI ARABIA, THE LEGAL SYSTEM, AND THE ECONOMY

Still operating as a kingdom, current Saudi Arabian history begins in 1932 with the establishment of the monarchy.¹⁴⁹ However, the Saudi Arabian peninsula has history which stretches much farther back.¹⁵⁰ As a center of ancient trade routes, it became the birthplace of Islam in the seventh century when Muhammad received his message from God.¹⁵¹ The predominant family in Saudi history, the Al-Saud family, established a presence in the region during the eighteenth century.¹⁵² It was not until 1932, however, that the Al-Saud family took permanent control and established the Kingdom of Saudi Arabia.¹⁵³

Saudi Arabia was developed as an Islamic state, and as such has a legal system based on *Sharia*, or Islamic law.¹⁵⁴ Article I of the Basic Law, adopted in 1992, states that the *Quran* (the word of God as revealed to Muhammad) and the *Sunnah* of His Prophet are the national Constitution; the Saudi government also derives its authority from these writings.¹⁵⁵ *Sharia* translates into "the path in which God wishes for men to walk," and there are four sources from which nations can derive *Sharia*: the *Quran* (the primary source of *Sharia*), the *Sunna* (the doings of the Prophet Muhammad, written by his Companions), *Ijma* (the "consensus of the community," *Ijma* is used in dispute resolution when the answer cannot properly be found in the *Quran* or the *Sunnah*), and *Qiyas* (this is the fourth source used, and it is only used when the first three have not provided an answer; *Qiyas* employs logic and reasoning to find the solution).¹⁵⁶ Saudi Arabia, however, takes a more fundamental approach to interpreting *Sharia*; employing the *Hanbali* school of interpretation, Saudi Arabia declines to use *Ijma* in any capacity, and only uses *Qiyas* in a limited sense.¹⁵⁷

The Saudi government, on paper, is organized like those of many other states. The Basic Law provides for the separation of pow-

149. COUNTRY PROFILE: SAUDI ARABIA, *supra* note 139, at 1, 19.

150. *Id.* at 1-4.

151. *Id.* at 1-2.

152. *Id.* at 2.

153. *Id.* at 3.

154. Maren Hanson, *The Influence of French Law on the Legal Development of Saudi Arabia*, 2 ARAB L.Q. 272, 272 (1987).

155. Ayoub M. Al-Jarbou, *Judicial Independence: Case Study of Saudi Arabia*, 19 ARAB L.Q. 5, 12-13 (2004).

156. Hanson, *supra* note 154, at 272-73.

157. *Id.* at 274.

ers into judicial, executive, and legislative authorities.¹⁵⁸ However, actual Saudi practice is inconsistent with this provision.¹⁵⁹ One example of this inconsistency is illustrated in the Council of Ministers, which seems to fill both legislative and executive roles.¹⁶⁰ The other inconsistency, of course, is the presence of a monarch with extensive powers; the king is authorized to appoint various heads of government, including the Heir Apparent, deputies to the prime minister, governors, and judges.¹⁶¹ In reality, even if the head of state has appointed judges, he may still act as a judge himself.¹⁶²

Saudi Arabia's commitment to *Sharia* has resulted in difficulties with modernizing the legal system in response to current social and economic needs.¹⁶³ Saudi Arabia chose not to follow the examples set for it by previous Islamic states, like Turkey, who chose to reform the legal system by adopting and integrating the codes of other, mostly European, nations.¹⁶⁴ The problem for Saudi Arabia with this approach was the number of inconsistencies the civil codes had with *Sharia*.¹⁶⁵ Instead, Saudi Arabia has struggled to make its own legal system, and this decision resulted in the necessary legal changes lagging behind the economic changes that make them so important.¹⁶⁶ Unwilling to use "*kanun*," the Arabic word for "law," Saudis instead enact regulations under the doctrine of public interest (*Al massalih al mursala*) and use "*nizam*," the Arabic word for "regulation."¹⁶⁷ Saudi Arabia currently has an extensive system of regulations, including a very sophisticated commercial code based on the commercial code of Turkey, which, like much other Turkish law, is heavily influenced by European codes.¹⁶⁸

158. Al-Jarbou, *supra* note 155, at 18.

159. *Id.*

160. *Id.* The Council of Ministers was established as a lawmaking body, with the king serving as prime minister of the Council. COUNTRY PROFILE: SAUDI ARABIA, *supra* note 139, at 19.

161. Al-Jarbou, *supra* note 155, at 18.

162. *Id.* at 15.

163. George N. Sfeir, *The Saudi Approach to Law Reform*, 36 AM. J. COMP. L. 729, 729 (1988).

164. *Id.* at 748.

165. *See id.* at 749. One example of this is the punishments provided for by *Sharia* which Turkey did not maintain when it made the switch to a more European criminal code. *Id.* *Sharia* also forbids the practice of charging interest, and Saudi Arabia has had to adjust national laws to so comply. *Id.* at 734–35.

166. *Id.* at 750.

167. Hanson, *supra* note 154, at 289.

168. Saad El-Fishawy, *Contracts and Litigation in Islamic Law*, 76 AM. SOC'Y INT'L L. PROC. 62, 62 (1982).

Saudi Arabia has a flourishing economy, with a gross domestic product ranking in the top fifteen percent of world GDPs.¹⁶⁹ However, the economy is largely undiversified, and the vast majority of revenue is derived from oil production, which makes the Saudi GDP very vulnerable to changes in oil prices.¹⁷⁰ The oil revenues that the Saudi government receives are so substantial that aside from the payroll tax used to fund the social insurance programs, Saudi citizens are subject to only a minimal income tax and no capital gains taxes.¹⁷¹

3. THE SOCIAL SECURITY SYSTEM

The formal social security system in Saudi Arabia was established in 1969 through the Social Insurance Act, issued by Royal Decree and implemented in 1973.¹⁷² Though this would imply that the social security system in Saudi Arabia is comparatively young, the kingdom has been providing social assistance in some form for many years, with the first recorded instance coming 1400 years ago.¹⁷³ Islamic teachings "require the ruler to ensure social solidarity," and prior to this system, the monarchy used the *zakat* (a tax imposed on the rich) to fund social assistance payments of various kinds.¹⁷⁴ In addition to providing for two kinds of social insurance, annuities and occupational hazards, the Social Insurance Act provided for the establishment of the General Organization for Social Insurance (GOSI), an autonomous organization created to oversee the system.¹⁷⁵

The system is funded almost entirely through the contributions of employers and employees, with the government paying the administrative costs and funding any deficits.¹⁷⁶ When it was established, the contribution rate was set at thirteen percent, with eight percent of

169. CIA: THE WORLD FACTBOOK, *supra* note 38, at 508. For comparison figures, visit the World Factbook Web site at <https://cia.gov/library/publications/the-world-factbook/geos/sa.html>.

170. COUNTRY PROFILE: SAUDI ARABIA, *supra* note 139, at 9.

171. *Id.* at 10.

172. SOC. SECURITY ADMIN., SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD: ASIA AND THE PACIFIC, SAUDI ARABIA 173 (2008) [hereinafter SOCIAL SECURITY: SAUDI ARABIA], available at <http://www.ssa.gov/policy/docs/progdsc/ssptw/2008-2009/asia/saudi-arabia.pdf>; *Saudi Arabia: Social Insurance System of the Kingdom of Saudi Arabia*, INT'L SOC. SECURITY REV., July 1997, at 67, 68 [hereinafter *Saudi Arabia: Social Insurance System*].

173. *Saudi Arabia: Social Insurance System*, *supra* note 172, at 67.

174. *Id.*

175. *Id.* at 68.

176. *Id.* at 73.

that coming from the employer.¹⁷⁷ The contribution rates have since been raised to eighteen percent, with equal contributions of nine percent coming from employer and employee.¹⁷⁸

To qualify for an old-age pension in Saudi Arabia under the current system, after 120 months of contributions, Saudi men must have reached the age of sixty and Saudi women must have reached the age of fifty-five.¹⁷⁹ This is the same age requirement that was established in the original law, though there were no alternate provisions for women in the 1969 version.¹⁸⁰ An exception is made for men working in "arduous or unhealthy work," with the age requirement here being only fifty-five years.¹⁸¹ In order to qualify for an early age pension (available to citizens who are under the age of sixty), a Saudi citizen must have made contributions for at least twenty-five years.¹⁸² An old-age settlement may be paid out to a Saudi citizen who has failed to meet the old-age pension requirements.¹⁸³

When it was established, the payments were calculated as "2 per cent of the average monthly wages of the worker for the last 24 months, multiplied by the number of years of contributions."¹⁸⁴ This has since been adjusted upward to 2.5% capped at 100% of total earnings.¹⁸⁵ There are adjustment provisions in the social insurance law to provide for both drastic increases and decreases in income during the last two years before retirement.¹⁸⁶ The minimum pension given is 1725 riyals (approximately \$460).¹⁸⁷

Based on the above discussion, it does not appear that Saudi Arabia's pension system has been strongly influenced by cultural fac-

177. Ibrahim A. Al-Zaid, *Social Insurance in Saudi Arabia*, INT'L SOC. SECURITY REV., July 1975, at 256, 257.

178. SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172, at 173. The minimum and maximum amounts for contributions purposes are 1500 riyals (approximately \$400) and 45,000 riyals (approximately \$12,000). *Id.* The minimum contributions for self-employed individuals, who contribute 18%, is 1200 riyals (approximately \$320). *Id.*

179. *Id.*

180. Al-Zaid, *supra* note 177, at 258.

181. SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172, at 173.

182. *Id.*

183. *Id.* at 174.

184. Al-Zaid, *supra* note 177, at 258.

185. SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172, at 173.

186. *Id.* at 174.

187. *Id.* The last calculation, for old-age settlements, is defined as "a lump sum . . . paid equal to 10% of the insured's average monthly earnings during the last 2 years before retirement for each month of the first 5 years of contributions plus 12% for each additional month." *Id.*

tors. The oil-rich economy has allowed for a government subsidy and greater contributions from the citizens, as this is one of the only taxes they pay.¹⁸⁸ Saudi Arabia's system also reaps the benefits of the country's relative youth.¹⁸⁹ While the system may function sufficiently under the country's current conditions, Saudi Arabia may face problems in the future if its population catches up with the worldwide aging trend or if the oil revenues that support the Saudi economy decrease significantly.

C. Brazil

1. ATTITUDES TOWARD AND THE ROLE OF THE ELDERLY POPULATION

Traditionally, the Brazilian family system has been similar to those of other Latin American countries, which are characterized by the significant presence of multigenerational households.¹⁹⁰ Statistics indicate that throughout Latin America, the majority of the elderly population, anywhere from sixty-seven to eighty-seven percent, reside in multigenerational households.¹⁹¹ In 2002, one-fifth of all households included at least one member over the age of sixty-five.¹⁹²

The explanation for the importance of the multigenerational family varies among regions and households, but economic motivations are largely viewed as a major contributing factor.¹⁹³ A correlation found between the level of coverage provided by social pension systems and the percentage of elderly coresiding with younger family members suggests that the more able the elderly are to support themselves, the more likely they will choose to live independently.¹⁹⁴

188. COUNTRY PROFILE: SAUDI ARABIA, *supra* note 139, at 10.

189. CIA: THE WORLD FACTBOOK, *supra* note 38, at 507. The median age in Saudi Arabia is 21.5, as compared to 36.4 in South Korea and 29 in Brazil. *Id.* at 84, 319, 507.

190. U.N. Econ. Comm'n for Latin Am. & the Caribbean, *Social Panorama of Latin America*, 115, U.N. Doc. LC/G. 2068-P (Nov. 2000) [hereinafter *Social Panorama 2000*], available at http://www.eclac.cl/publicaciones/xml/2/6002/lcg2068i_4.pdf.

191. *Id.*

192. U.N. Econ. Comm'n for Latin Am. & the Caribbean, *Social Panorama of Latin America*, 38, U.N. Doc. LC/L.2220 (Nov. 2004) [hereinafter *Social Panorama 2004*], available at http://www.eclac.cl/publicaciones/xml/1/20391/PSI2004_Summary_Web.pdf.

193. Leah K. VanWey & Kara B. Cebulko, *Intergenerational Coresidence Among Small Farmers in Brazilian Amazônia*, 69 J. MARRIAGE & FAM. 1257, 1258 (2007).

194. *Social Panorama 2000*, *supra* note 190, at 115–16.

On the other hand, a study of multigenerational households in rural Brazil found almost no correlation between financial capabilities and the presence of older adults.¹⁹⁵ Instead, the most significant determinant of whether older children resided with parents was whether they were married.¹⁹⁶ However, this contradictory explanation may be better attributed to the rural setting of the study than to the incomes of the families.¹⁹⁷

The Latin American family structure has been evolving in recent years with the development of a wider variety of family structures.¹⁹⁸ It is likely that families will continue to evolve and adapt as the number of elderly citizens increases.¹⁹⁹ The elderly population has been and is expected to continue increasing in both absolute and relative terms due to the combination of a decreased birth rate with decreased mortality.²⁰⁰ This increase has been dramatic in the recent past—while the proportion of the population age sixty and over was at 5.1% in 1970, by 2000 it had jumped to 8.6%.²⁰¹ The 2004 estimates had the sixty and over population sitting at 9.7%.²⁰²

The increase in the number of dependants is going to put a strain on the Brazilian economy in the coming years.²⁰³ In 2000, Brazil's age-related revenues almost equaled the age-related expenditures, with thirty-seven percent of the expenditures allocated to the population age sixty and over.²⁰⁴ Projections of these numbers fifty years in the future, however, are troubling: in 2025, the government will be allocating roughly forty-nine percent of its expenditures to the elderly, and by 2050, government expenditures will exceed revenues by a sub-

195. VanWey & Cebulko, *supra* note 193, at 1268.

196. *Id.* at 1268.

197. *Id.* at 1267.

198. *Social Panorama 2004*, *supra* note 192, at 33–34.

199. *See id.* at 34, 38.

200. Laura Rodriguez-Wong & José Alberto M. de Carvalho, Age Structural Transition in Brazil—Demographic Bonuses and Emerging Challenges 4 (Feb. 14, 2004) (unpublished paper presented to a Seminar for the Committee for International Cooperation in National Research in Demography), <http://www.cicred.org/Eng/Seminars/Details/Seminars/Popwaves/PopwavesWongCarvalho.pdf>. Between the years of 1965 and 1990, the average fertility rate dropped from 6.2 children per woman to 2.7. *Id.* at 6. The chance of living to retirement age increased from 50% to 80% between the 1950s and the year 2000. *Id.* at 8–9.

201. *Id.* at 9.

202. LEONARDO GASPARINI ET AL., POVERTY AMONG THE ELDERLY IN LATIN AMERICA AND THE CARIBBEAN 38 tbl.2.3 (2007), <http://www.un.org/esa/policy/wess/wess2007files/backgroundpapers/lac.pdf>.

203. *See* Rodriguez-Wong & de Carvalho, *supra* note 200, at 15–16.

204. *Id.* at 17 tbl.3.

stantial amount, with approximately sixty-eight percent of the money going to the elderly population.²⁰⁵ While the decreasing birth rate may prove to be a financial relief to Brazil, it may also have to consider reducing the benefits it allocates to each citizen to maintain a functioning social security system.²⁰⁶

2. BRIEF HISTORY OF BRAZIL AND ITS LEGAL SYSTEM

Brazil's history can be divided into two major eras: pre- and post-colonialism. The land was discovered in 1500 by Portuguese explorers, and for the next 300 years, Brazil was under the control of the Portuguese crown.²⁰⁷ It became a major producer of sugar and coffee and proved to be very valuable to Portugal after the discovery of gold and diamonds.²⁰⁸

Brazil gained its independence peacefully in 1822 when the crown prince of Portugal declared Brazil an independent state.²⁰⁹ However, Brazil remained a monarchy under Portuguese royalty until the establishment of the first republic in 1889.²¹⁰ The first constitution, adopted in 1891, provided for a government very strongly modeled after that of the United States.²¹¹ When the economy faltered during the Great Depression, a coalition of citizens dissatisfied with their government led a successful revolution.²¹²

After the revolution of 1930, and until the call for a direct election in 1984, Brazil went through periods of democracy, political unrest, and military dictatorship.²¹³ The new administration created the 1988 Constitution which took some power out of the hands of the executive branch, and the ensuing administrations were able to privatize and restructure social programs to help bring Brazil out of its debt.²¹⁴

205. *Id.* These projections assume that per capita transfers remain constant by age. *Id.* at 17.

206. *See id.* at 24.

207. Library of Congress—Federal Research Division, A Country Study: Brazil, <http://lcweb2.loc.gov/frd/cs/brtoc.html> (select "The Colonial Era, 1500–1815") (last visited Feb. 1, 2010) [hereinafter A Country Study: Brazil].

208. *Id.*

209. A Country Study: Brazil, *supra* note 207 (select "The Empire, 1822–89").

210. *Id.*

211. A Country Study: Brazil, *supra* note 207 (select "The Republican Era, 1889–1985").

212. A Country Study: Brazil, *supra* note 207 (select "The Era of Getulio Vargas, 1930–54").

213. A Country Study: Brazil, *supra* note 207 (select "The Post-Vargas Republic, 1954–64" and "The Military Republic, 1964–85").

214. Britannica Online Encyclopedia, Brazil, <http://www.britannica.com/EBchecked/topic/78101/Brazil> (last visited Feb. 1, 2010).

Although agriculture accounts for only 5.5% of Brazil's GDP, it remains one of the world's largest exporters of food and other agricultural products.²¹⁵ While Brazil may have the tenth highest GDP worldwide (and the highest of the countries surveyed in this Note), Brazil's per capita GDP is barely within the top half of the world's GDPs, ranking only 102nd.²¹⁶

3. THE SOCIAL SECURITY SYSTEM

The oldest of the three programs surveyed, social security in Brazil dates back to 1923, when the first system was implemented to benefit railway workers.²¹⁷ After years of an occupation-based system of social pensions, the Brazilian government in the 1960s reorganized social security into one comprehensive system.²¹⁸ This centralized system was actually composed of two separate systems: the pay-as-you-go General Regime for Social Security which covered "regular" employees, and the noncontributory Pension Regime for Government Workers.²¹⁹ The early social security systems worked adequately when the average life expectancy of a Brazilian citizen was forty-five, but with the population swell and the drastic life expectancy increase to sixty-five years, it was no longer possible to provide sufficient financing.²²⁰

The breakdown in the social security systems became more serious after the passage of the 1988 Constitution, which specifically guaranteed the right to social security for all citizens.²²¹ This new constitution was a commitment made by the Brazilian government to

215. A Country Study: Brazil, *supra* note 207 (under "Country Profile" select "Economy"). Brazil is almost completely self-sufficient as far as food production is concerned. *Id.*

216. CIA: THE WORLD FACTBOOK, *supra* note 38, at 85. For comparison figures, visit the World Factbook Web site at <https://www.cia.gov/library/publications/the-world-factbook/geos/br.html>.

217. Akiko Koyasu, *Social Security Reform by the Cardoso Government of Brazil: Challenges and Limitations of Reform Ten Years After "Democratization"*, 42 DEVELOPING ECONOMIES 241, 249 (2004).

218. *Id.* at 250. This was not necessarily for the benefit of the Brazilian citizens, however. Brazil was being led by a military regime at this time, and the goal was likely to garner more centralized power.

219. *Id.* at 253.

220. *Id.*

221. *See id.* at 253. The state first registered deficits in 1994, with a deficit of 409 million reais (approximately \$179 million). By 1999, this deficit had increased to 8.103 trillion reais (approximately \$3.5 trillion). *Id.*

provide social security to rural and informal workers, a sector of the population that was specifically excluded in the 1934 Constitution.²²²

The biggest reforms to the social security system began in 1991, with the passage of *Prêvidencia Rural* (PR), a system of old-age pensions for rural workers, including those in the informal economy.²²³ The hallmark of this program, and the thing that sets Brazil apart from many other Latin American countries, is that this program is noncontributory.²²⁴ This system imposes no economic requirements on its beneficiaries; in order to qualify to receive these benefits, which are the equivalent of minimum wage, workers need only prove that they have not contributed to social pensions in any way and that they are employed in agricultural or subsistence production.²²⁵ These benefits are available to women age fifty-five or older and men age sixty or older.²²⁶

For urban workers, a new noncontributory social security system, the *Benefício de Prestação Continuada* (BPC) was introduced in 1996.²²⁷ Unlike the rural PR system, BPC benefits are contingent upon the recipient proving that per capita household income is equal or less than one-quarter of the minimum wage.²²⁸ Both men and women become eligible for these benefits at age sixty-seven.²²⁹

In addition to the noncontributory pension system, Brazil also has a more traditional, age-based, contributory system in place.²³⁰ Brazilians can qualify for these pensions in one of two ways: by being the requisite age, or by having the requisite number of years of contributions.²³¹ To qualify for old-age benefits, men must be sixty-five

222. Armando Barrientos, Cash Transfers for Older People Reduce Poverty and Inequality 7 (Dec. 2004) (unpublished Background Paper for WDR: 2006 Equity and Development), http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Pensions_Brazil_Bangladesh_SouthAfrica_Barrientos.pdf.

223. *Id.* at 3.

224. *Id.*

225. *Id.* at 3–4.

226. *Id.*

227. *Id.* at 4. This program was introduced to replace the *Renda Mensal Vitalicia* (RMV), which was introduced in 1974, and provided a flat rate benefit to citizens aged seventy and over who have at least twelve months of contributions. *Id.*

228. *Id.* While it was intended that the recipients be reviewed every two years, administrative difficulties have prevented this from happening. *Id.* at 8.

229. *Id.* at 4.

230. SOC. SEC. ADMIN., SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD: THE AMERICAS, BRAZIL 61 (2007) [hereinafter SOCIAL SECURITY: BRAZIL], available at <http://www.ssa.gov/policy/docs/progdesc/ssptw/2006-2007/americas/brazil.pdf>.

231. *Id.*

years of age and women must be at least sixty.²³² The old-age benefits require either twelve or fifteen years of contributions, depending on when the recipient first became insured.²³³ The second option for contributory pensions is not based on age.²³⁴ Rather the recipient must have contributed for a minimum number of years: thirty-five years for men or thirty for women.²³⁵ There is a third option for those seeking a contributory pension that allows beneficiaries to receive pensions at a younger age if they have contributed for the required number of years: men can receive pensions at age fifty-three with thirty years of contributions, and women can receive pensions at forty-eight with twenty-five years of contributions.²³⁶

Like many systems, the funding for the contributory pensions comes from both the employee and the employer, with the amount of contributions given being contingent upon the amount of gross monthly earnings (for the employee) or the type of business (for the employer).²³⁷ The contributions from the employee range from 8% to 11% of gross monthly earnings, with a self-employed person contributing 20% of earnings.²³⁸ Contributions from the employer are set at 20%, but an exception is made for small-enterprise employers, who may contribute between 1.8% and 7.83% of declared earnings.²³⁹ The government earmarks taxes for some of the administrative costs as well as any deficit.²⁴⁰ These numbers are not directly comparable to those of South Korea and Saudi Arabia's systems, however, as Brazil's contributions apply to sickness and maternity benefits as well as social pensions.²⁴¹

232. *Id.*

233. *Id.* Benefits are based on whether the recipient made contributions beginning before July 25, 1991, or on or after. *Id.*

234. *Id.*

235. *Id.* The requisite number of years is decreased for arduous employment between fifteen and twenty-five years. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* For work cooperatives, fifteen percent of earnings are contributed, twelve percent of payroll is contributed for domestic workers, and all other employers contribute twenty percent. *Id.*

240. *Id.*

241. *Id.* at 61, 63. South Korea's sickness and maternity systems are taxed separately, with employees and employers each contributing around two percent of wages and payroll. SOCIAL SECURITY: SOUTH KOREA, *supra* note 124, at 120. Saudi Arabia does not have a regulatory system in place for sickness and maternity benefits. SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172, at 175.

The maximum payout for both old-age and contributory pensions is 100% of average earnings, which are calculated using the best four-fifths of the total months of earnings.²⁴² All beneficiaries of contributory pensions receive 100% of their average earnings, while recipients of the old-age pension receive "70 percent of . . . average earnings plus 1 percent of average earnings for each year of contributions."²⁴³ The means-tested old-age pension pays out the monthly minimum wage, adjusted annually.²⁴⁴

The rapid change in the age structure in Brazil forced the nation to create a social pension system that was sustainable but also compatible with its constitutional commitments.²⁴⁵ What resulted was a system that reflected the prevalence of the multigenerational family and the agrarian nature of the Brazilian economy.²⁴⁶ The social security system in Brazil places a great deal of emphasis on pensions for rural workers, and it is likely that the development of this system was heavily influenced by economic and demographic factors over cultural attitudes.²⁴⁷

IV. Resolution: Connections Between Cultural Priorities and Social Security Systems

While all of the subject social security systems share some commonalities, there are key differences that may provide insight into the link between culture and law. The age requirements, for example, are higher in Brazil than they are in the other two countries.²⁴⁸ This could be a reflection of either the elderly being less of a priority, or it may reflect the fact that there is an alternate system based on years of contribution, so a younger requisite age is not as necessary.²⁴⁹ Another notable difference is the fact that South Korea is the only subject coun-

242. SOCIAL SECURITY: BRAZIL, *supra* note 230, at 62.

243. *Id.*

244. *Id.*

245. See Koyasu, *supra* note 217, at 251–59.

246. See Maria Cristina & Gomes da Conceição, *Households and Income: Ageing and Gender Inequalities in Urban Brazil and Colombia*, 18 J. DEVELOPING SOCIETIES 149, 149 (2002).

247. *Id.* at 151.

248. SOCIAL SECURITY: BRAZIL, *supra* note 230; SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172; SOCIAL SECURITY: SOUTH KOREA, *supra* note 124.

249. Brazil's pensions begin at age sixty or sixty-five, as compared to sixty in Korea (though this is being gradually raised to sixty-five) and fifty-five or sixty in Saudi Arabia. SOCIAL SECURITY: BRAZIL, *supra* note 230; SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172; SOCIAL SECURITY: SOUTH KOREA, *supra* note 124.

try that does not distinguish between sexes when providing benefits; all citizens receive benefits at sixty years, a difference that is likely more indicative of gender roles than treatment of the elderly.²⁵⁰

The level of contributions in each country also demonstrates some of the differences in priorities. Brazil has the highest level of contributions, with some employers contributing up to twenty percent of monthly payroll for social pensions and the sickness and maternity programs.²⁵¹ The amount of contributions and the comprehensiveness of the coverage reflect the commitment Brazil has made to its social programs in its Constitution. On the opposite end of the spectrum is South Korea, whose contributions are not surprisingly the lowest of the subject countries: employer contributions of only 4.5% of payroll illustrate the relatively underdeveloped nature of the Korean pension system.²⁵²

The range of options offered by each country is another factor to consider when evaluating programs. One of the best examples of Brazil's commitment to social programs is its noncontributory social assistance program, which offers aid to both rural and urban workers.²⁵³ Saudi Arabia also has an arduous work option that allows men to receive pensions five years earlier, though this program is more likely a reflection of the types of work done in Saudi Arabia than the level of respect for the elderly.²⁵⁴

There are two factors that are likely the most influential in forming a social security system: the economy and the culture. It is clear that the economic situation of any country has to be considered when creating a system, but the extent to which it is a factor varies. Of the subject countries, Brazil has the lowest per capita GDP, but one of the most comprehensive systems.²⁵⁵ The contributions of beneficiaries of this system are, in most instances, the highest of the countries surveyed, and the noncontributory pensions provide assistance when it would otherwise not be possible.²⁵⁶

250. SOCIAL SECURITY: BRAZIL, *supra* note 230; SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172; SOCIAL SECURITY: SOUTH KOREA, *supra* note 124.

251. SOCIAL SECURITY: BRAZIL, *supra* note 230.

252. SOCIAL SECURITY: SOUTH KOREA, *supra* note 124.

253. See *supra* notes 224–31 and accompanying text.

254. SOCIAL SECURITY: SAUDI ARABIA, *supra* note 172.

255. CIA: THE WORLD FACTBOOK, *supra* note 38, at 85, 320, 508. The per capita GDP of Brazil is \$9700, and those of South Korea and Saudi Arabia are both more than double that, at \$24,600 and \$20,700, respectively. *Id.*

256. SOCIAL SECURITY: BRAZIL, *supra* note 230.

South Korea's system has been motivated by economic policy as well. Due in large part to the government's preoccupation with economic development, the social pension system has taken a back seat to other concerns.²⁵⁷ Saudi Arabia's system may also reflect its economic situation—with its oil revenues subsidizing many of the government expenditures and the residents having to pay almost no other taxes, it is not surprising that the level of contributions from Saudi citizens would be higher than those of Korean citizens, even with the two countries having comparable per capita GDPs.²⁵⁸

The economic argument indicates that social security systems are often systems born out of practicality and necessity. This idea is again reflected in the shocking age statistic presented earlier.²⁵⁹ Brazil's constitutional commitment to social security and the reforms that followed came during a dramatic shift in the age structure of the Brazilian population.²⁶⁰ On the opposite side, Saudi Arabia has not been forced to address these issues, as it remains a relatively young population.²⁶¹

This leaves the analysis with the issue of what effect culture had on these systems. The most clear example of culture having a hand in creating a social security system is South Korea; the Confucian values of close relationships and respect for elders held by most of the country have been used by the government as an excuse to have a less-developed social pension system.²⁶² However, Korea's response to the cultural priorities of its population is not the only possibility. Japan, a nation with similar cultural attitudes toward the elderly, has a pension system that pays so much out to the elderly population that some worry it is unsustainable and in need of reform.²⁶³

Another way to relate Korean culture to the social pension system is by using Geert Hofstede's cultural dimensions.²⁶⁴ South Korea

257. See *supra* notes 104–06 and accompanying text.

258. See CIA: THE WORLD FACTBOOK, *supra* note 38, at 320, 508; *supra* note 188 and accompanying text.

259. See *supra* notes 14–15 and accompanying text.

260. See *supra* notes 200–21 and accompanying text.

261. See *supra* notes 138–39 and accompanying text.

262. See *supra* notes 110–12 and accompanying text.

263. See Alison Chopel et al., *Social Security, Taxation, and Redistribution in Japan*, PUB. BUDGETING & FIN., Winter 2005, at 20, 21–22. Japan's situation is also similar to Korea's in that the country has a very rapidly aging population, with 17.2% of the population over the age of sixty-five in 2000. *Id.* at 23.

264. Geert Hofstede Cultural Dimensions, http://www.geert-hofstede.com/hofstede_south_korea.shtml (last visited Feb. 1, 2010).

is an extremely collectivist nation, with an individualism score of only eighteen (on a scale to one hundred).²⁶⁵ As noted earlier, collectivistic cultures are less willing to permit state intervention in family matters, and this attitude could have had an effect on government pensions.²⁶⁶

The cultural influences are not so easily seen in the other two systems: in some ways, it appears that Saudi Arabia's gender attitudes have more effect than do attitudes toward the elderly.²⁶⁷ The cultural priority at work in the Brazilian system is the emphasis on the extended family and the agrarian nature of the society.²⁶⁸ The noncontributory rural system encourages families to remain in the rural areas rather than moving into the cities.²⁶⁹

While culture may play some role in the development of all social pension systems, it appears that a cultural preference has to be a major priority of the nation before it becomes the controlling factor. This would explain why Brazil and Saudi Arabia's systems do not show strong indications of cultural influence—the attitudes toward the elderly population are not a cultural priority to the degree that they are in South Korea.

V. Conclusion

A nation's collective culture, or at least the predominant culture, clearly has an influence on many, if not all, aspects of life. There are examples of the effect that culture can have on the legal system, but the reverse is also true—law can have an effect on a collective culture. The evidence from this limited examination of global social pension systems, however, indicates that respect for the elderly population has to be a top priority for a nation before it has a noticeable effect on the system. Absent a very strong cultural force, economic factors are likely to be more decisive when creating a social pension system. However, it is possible that the effects of the drastic aging of the population have not been fully felt, and even countries with a strong emphasis on

265. *Id.*

266. See Bierbrauer, *supra* note 45, at 245–55.

267. See COUNTRY PROFILE: SAUDI ARABIA, *supra* note 139, at 27–28. Women in Saudi Arabia still occupy a mostly subordinate position to men, and this is reflected in the social pension system through the lack of maternity benefits, and even in some sense the fact that women cannot get arduous work benefits.

268. See *supra* notes 190, 197 and accompanying text.

269. See *supra* notes 224–25, 245–47 and accompanying text.

family care of the elderly may need to strengthen their systems if they hope to provide for their aging citizens.