

Presentation Law and Society in the Yi Dynasty

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This is my first presentation about the Korean legal system, so I think there must exist many shortcomings, I am eager to get your guidance in time. The following is my presentation of the article "Law and Society in the Yi Dynasty" written by Byung Ho Park. Speaking it from the strict aspect, maybe it is like a summarization not a presentation, don't mention about it, this just is the beginning.

In this article, the author describes the legal system, specialized in the family and ownership of the Yi dynasty and through this to explain some problem about the Korean legal system's evolution.

A Issues Raised

In Korea the inherited traditional legal system was transformed first through the gradual reception of modern western legal principles following three Kabo Reforms of 1894. The reception of this modernized legal system did not coincide with a scientific and historical analysis of its suitability and efficacy. In summary, a sociological analysis of law, not to mention the functions of the present legal structure, is possible on the basis of the perspectives of a history of law. The reception from the foreign law is from late Yi dynasty and it mainly focus the two aspects: family and ownership as the two key relating to the structure, functions, and development of a society.

B The Relation between the Reception of Foreign Law and the Traditional Law

In the history of Korea, the reception of foreign law occurred in several stages, the reception of the "Wei- Chin Law" and the "Tang Law" and the "Song -Yuan Law", "Ta Ming Law" and the Western laws Continental law during the Japanese colonial period and the reception of Anglo-American after the liberation. In addition to them, the most important law is from Chinese. Many basic law principle is from China and through assimilation to change the part of Korean Law. In respect to the laws functioning in history Korean society,

the author first clarify the relationship between the received laws on the one hand and the indigenous law and social reality on the other, with emphasis on the method and process of the reception of foreign law.

The beginning of the Yi dynasty's legal system was from Yi Song-gye, who became King T'aejo, declared in his inaugural speech that in order to conduct government by law he would enact a code as the basic governmental law and that this legislation would be carried out by adoption the law which had been in force since the preceding Koryo Dynasty without radical reform. This code the "Kyongje Yukjon" was promulgated and came into effect in December of the 6th year of King T'aejo's reign. The wording and contents of the Kyongje Yukjon underwent gradual amendment and its simple structure matured through supplementation. The complete compilation of the code based on a finding of "living laws" which emanated from social reality and which were in effect as social norms, was a decisive turning-point in the inheritance of Korea's indigenous laws however it may be evaluated in terms of social development. After the code, there was the enactment of various subsequent codes such as the Taejon Tongp'yon and the Taejon Hoet'ong. Following the strengthened of the legal system in Yi dynasty, there gradually established some law principles.

1. Principle of Respect for the Royal Ancestor's Constitution". The principle called for unification of the laws by arranging the text of all laws according to the original code, deletion of all of those provisions of the appendix which conflicted with those of the original code, and, where amendment which conflict with those of the original code.

2. "Good law and fair sense". This is a old law principle. But there is necessary to point out that this principle became unstable when confronted with changeable new political, economic, social and cultural circumstances.

3. "legislation entails evils". This principle always tended to restrict creative legislation.

Following the author take this kind of traditional legal order as the major precise and attempt to discuss law and society in Korean history by focusing on the family system and the land ownership system which are the most basic institutions in determining the structure, functioning and development of a society.

C Family

Ideologically the Confucian family system based on clan rules is a patriarchal family system. The kind of family has three characteristics. First to a system under which the

permanence of the family based on the worship of ancestors is respected. Second , under this system the powerful patriarchal head represents the family and also exercises control within the family . Third , under this system there is hierarchic order of control and obedience centering on the patriarchal head which discriminates between high and low, elder and younger, and male and female.

In Yi Dynasty , the change passed three stages. First was the pure matrilineal society relatively. Second was the alternate matrilineal society. The third was the patrilineal.

At the beginning of the Yi Dynasty , the family system was the matrilineal society. The content is different from the primitive society's. The main mean of this kind of family includes that the bride and the son-in-law must stay for 4-5 years in the wife's family and the equal inheritance between son and daughter. Before 17th century, it was very special than the other country such as China, Japan and etc. at that time. The matrilocal marriage was a traditional, universal customary law deeply rooted throughout Korean history and equal inheritance was also a compulsory norm codified by legal usage and precedent.

The changement was from the marriage . It had two nights at the bride's home and then go to the groom's home for a short time. The couple then returned to the bride's parents for a period which was gradually shortened to a period of 2 or 3 from 4 or 5. Then after 18th century the system of equal inheritance and the sense that shares should be equal underwent gradual change. Until the end of the dynasty, however , the inheritance system did not excessively discriminate between sons and daughters.

Following the Japanese imperialistic annexation of Korea in 1910 the Confucian family system was further strengthened, supplemented and readjusted in accordance with the Japanese ideology of an imperial family state. Thus , the traditional, indigenous law was gradually eliminated by government-made customs and legal precedents. Such as the three days of the bridgeroom's and the daughters were deprived of their right to inherit.

D Legal Capacity

The legal capacity to hold rights encompasses first, the capacity to hold and exercise various political rights, second the capacity to enter legally approved and protected family relationships, third the capacity to acquire and hold property rights, and fourth the capacity to request legal protection of personality ,freedom, life and body.

From the view point of the formal legal system the clarification of these questions which are relevant to the present statutory law is pre-requisite to discussion of existing laws and the modernization thereof. Whether rights are provided in the formal legal system or not depends largely on the state of rights in real life and the political power's relationship to it.

During the Yi Dynasty, between individuals and the State, there lay no community capable of categorically grasping and controlling the member's individuality and, outside the community's restricted domain, individuals were free.

When the head of the family obtained property by inheritance, this property was his individual property, and he also owned in his own name such property as he obtained through purchase or other means. Each member of the family including the head of the head of the family could own his or her own property.

E. Property Ownership

Ownership is not a right to own goods or a right to hold goods in simple terms but a right which is guaranteed by law and which develops with the law. In legal systems, the ownership of land meant the possibility of inheritance and alienation and this was adhered to throughout the dynasty.

Private ownership was protected in absolute terms by the Hojon Chont'aekjo section of the code. This "Sasong" procedure played an effective role in helping people to realize their rights.

Some consciousness implies the expectation that others will respect one's ownership, confidence in others' respect of one's ownership, and the belief that if one's rights be encroached upon, he would be able to redeem them through legal proceedings before the authorities concerned.

According to the formal legal system, if his ownership was encroached upon, the original owner could request relief on the basis of his title regardless of whether he exercised actual control or not.

Under governmental policy powerful controls were exercised lest any land should be left idle, and to the consciousness that in addition to alleging title anyone who wished to assert his right and receive legal relief should allege that he was making actual use of his property, or had utilized it until it was invaded.

This legal system of ownership as a pre-modern system of law was based on rights ,to the extent of being selfish, and at the same time the performance of the duty to utilize land was compulsory.

Where relationships of mutual opposition are not balanced because of the rule of the strong who were selfish, there were only such factors as negative rights.

F. Conclusion

It is impossible to define the historical nature of the Yi Dynasty and understand the process of development of contemporary law and society including the significance of the period of the Japanese colonial rule without discussing those factors which characterize historical Korean society.

It is obviously that the modern Korean legal system inherit some contents of Yi Dynasty's law, such as some law principle and to realize this point is very important for us to acknowledge the whole scope of Korea legal system.