

## I. Law and Society in the Yi Dynasty

### Byung Ho Park, Traditional Korean Society and Law

Yong-jin Kang 9526008 Japanese Lang. & Lit.

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In Korea the inherited traditional legal system was transformed first through the gradual reception of modern, western legal principles following the *Kabo Reforms* (甲午更張) of 1894. Complete reception of a modern, western legal system occurred after that because it was considered to be modern, regardless of its relevancy to the actual social conditions. In the history of Korea, the reception of foreign law occurred in several stages. Prior to modern age, only Chinese law had been received. Thus the Confucian, jurisprudential culture of China exerted a great influence on the development of our traditional law and society.

Yi song-gye, who became King Taejo adopted the laws from Koryo Dynasty without radical reform for the new dynasty. Those laws were compiled into a code, *Kyongje Yukjon* (經濟六典) which was promulgated in the 6th year of King Taejos reign. It was not only for governmental needs but also for legal precedents and customary. It was considered that it was wrong to repeal or amend the old laws (royal ancestors constitution) by enacting new laws because they believed that legislation entails evils. However this principal became unstable when confronted with changeable new political, economic, social and cultural circumstances. Although the dynasty tried to realize Confucian ideology in all fields, the relationship of tension between the indigenous laws and Confucian ideology established Koreas social order during the 500 years of the dynasty.

The Confucian family system based on clan rules (宗法) is a patriarchal family system. It is a system that attaches much importance to the worship of ancestors and patriarchal power. There was a foundation for patriarchal family system even before the reception of Confucianism, and the reception of it strengthened this system. Although Confucianism influenced on the family system in Yi-Dynasty, there still were many indigenous customs for family affairs like matrilocal marriage and equal inheritance. Those customs were followed by the majority in spite of the opinion of the minority that China (Confucian) custom should be followed in family affairs because they thought that those customs were barbarian. As the centuries passed the basing of governmental policy on Confucianism brought about a gradual Confucianization of indigenous institutions. Accordingly, the custom of matrilocal marriage and the system of equal inheritance came to be criticized. Moreover, during Japanese colonial period the Confucian family system was further strengthened due to the elimination of traditional laws and customs by Japanese government-made customs and legal precedents. Throughout the colonial period the Korean people came unconsciously to support Japanese system and went so far as to believe that it was our indigenous system from the Yi-Dynasty period.

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### D. Legal Capacity

#### 1) Ownership in Yi Dynasty

The family is formed by marriage and the property of every family was the property of the individual members depending on how it was originally acquired.

This individualism in the house community was reflected in the village and the clan(宗中), and there was no communal ownership of farmlands and other real estate.

2) Legal Capacity: the capacity to hold rights, which is considered a prerequisite to the enjoyment of rights.

- the capacity to hold and exercise political rights
- to enter legally approved and protected family relationships
- to acquire and hold property rights
- to request legal protection of personality, freedom, life and body

As to the first capacity, only the governing class (兩班) held full capacity but, the other three capacities were, in principal, legally guaranteed for all classes (中人, 常民, 賤民) regardless of sex or age.

cf.) Even slaves were able to acquire and own property though they were subject to restrictions in the case of inheritance. (When a slave had no descendant, his property was vested in his master (in the case of a private slave, 私賤) or in the government. (in the case of a public slave, 公賤))

### **E. Property ownership**

1) Private ownership was formed by making a relevant report to the authorities concerned, and receiving permission, called an 'Ib-an' (立案).

Private ownership was protected by the concrete law (戶典田宅條) and the litigation procedure called 'Sasong' (詞訟).

cf.) If land was not used for 3 years, others could use it but they could not become its owner. The ownership was respected only when there was actual control of the land.

2) There was neither over-ownership nor under-ownership like the feudal ownership of the Middle Ages in Western Europe. Ownership during the Yi Dynasty had characteristics similar to those of modern ownership.

### **F. Conclusion**

In Korea, the situation is different from that of Western Europe and Japan. Rights and ownership under the modern legal system of law are not strange concepts in Korea.

**William R. Shaw, *Social and Intellectual Aspects  
of Traditional Korean Law, 1392-1910***

Jung-won Lee 9816019 Korean History

(Page 20~34)

### **A. Traditional Law in the Yi Dynasty**

Hahm Pyong-choon and others argue that traditional Korean political philosophy, in both its institutional and theoretical aspects, was based on Confucian precepts, and hence law and legal institutions were undervalued and despised. The presumption is significant for several reasons. If the entire notion of law was alien and illegitimate in traditional Korea, it would be misleading to use even the most general Western legal terminology in describing Korea, because the underlying basis of ideas would be so different that no common universe of discourse would exist. The nature of traditional Korean law also has important implications for the study of Korean economic history. Vindication of the thesis that

law was intellectually and institutionally insignificant in traditional Korea would also provide an insight into Korea's lack of success in adapting to international political life in the late nineteenth century. Finally, the nature of traditional Korean legal thought and institutions has an important bearing on the study of Korean legal development in the twentieth century. The present study can do no more than outline some key areas that must be examined if the traditional baseline of modern Korean legal development is to be properly understood in its historical context. The first two sections below examine the intellectual basis of traditional Korean law as manifested in general writings on political theory, judicial reasoning used in deciding specific cases, and the nature and development of Yi-dynasty law and legislation.

## **B. Legal Values and Legal Thought in Traditional Korea**

### **1. Law in Korean Political Theory**

Until relatively recently, studies of the Chinese and Korean legal traditions have stressed the great gulf that presumably divided those traditions from the legal thought and institutions of early-modern and modern Europe. In Korea, as in China, it was said that judges looked to the circumstances of each case {*chong*, Chinese *ching*} rather than to the statutory law {*pop*, Chinese *fa*}. We will discuss this topic in the context of two questions: ① Did Yi-dynasty thinkers regard law as a legitimate part of government, and what did they feel should be the role of law? and ② What can be learned about Korean legal values from the analysis of case decisions?

#### **1) Law and Confucianism**

Recent studies of the Chinese intellectual and legal traditions have suggested that the early twentieth-century Western portrait of Chinese law and legal thought is overdrawn. For example, the commentaries of Chu His (1130-1200) on the works of the classical period make it clear that he did not reject penal law in favor of the power of moral example, but that he regarded the two as complementary aspects of an integrated whole; neither aspect could be unilaterally discarded. These ideas were introduced in Korea in their most developed form in the writings of Chong To-jon (d. 1398), particularly in his *Choson Kyonggukchon* {Law for the Government of Korea}, a treatise on government presented to the Yi-dynasty founder Yi Song-gye. Like Chu His, Chong viewed punitive or disciplinary law as an indispensable tool of government. Legal sanctions were seen as a vital aspect of all branches of administration. Even the ruler's responsibility to transform his officials and his subjects through the force of moral example, a common theme in Chinese and Korean Confucian thought, did not obviate the need for legal mechanisms. Thought of the later Yi dynasty also emphasized the use of law in government, a circumstance reflected in several reprintings of Chong To-jon's work. For example, there were the *sirhak* or practical learning encyclopedist Yi Ik (1681-1763), and Yi Ik's student and editor, An Chong-bok (1712-1791), who stressed the holistic natures of ethical and institutional-legal considerations in government. In this respect, although by the later Yi period many of the specific issues and problems facing Korean society and government had changed there is little to distinguish Korean legal values of the seventeenth and eighteenth centuries from those expressed by Chong To-jon as part of his blueprint for the Yi dynasty in the late fourteenth century. In short, the use of penal law was not merely tolerated, *faute de mieux*, much less thought of as an indication of moral failure on the part of the ruler, but was assumed to be an indispensable tool of government.

### **2. Korean Legal Thought in Action**

What was Korean legal thinking like in the practice of legal administration: The answer may be found by examining criminal case records and the reasoning used to adjudicate such cases. For more insight into Korean legal thought, we must turn to the records generated by the *simni* review process. The following analysis is largely based on translation and study of a representative sample of one hundred of these cases. The reasoning of the king and high officials in discussing and setting these cases reveals important aspects of Korean legal thought and practice, aspects that cannot be understood on the basis of

general philosophical writings alone. One example of such reasoning is what the records tell us of how punishments were justified in Korea. Frequent are phrases such as killing the criminal so others can live {*saendo sarin*}, which have no classical pedigree but which reflect a utilitarian conception that protection of society is a valid function of criminal law.

### 1) Requit for a life

Perhaps an even more important motive for prosecution of a murderer, if the case records are any indication, was the principles of requital for a life {*sangmyong*}. The death of the victim had upset the cosmic balance, as it were, and it became the governments task to redress the balance. In the traditional Korean view, both sociological and religious considerations underlay the concept of requital. It was mispunishment that upset the cosmic balance, not the crime. The notion of requital for a life is especially important for its contributions to Korean attitudes and evidence, because requital was a two-edged concept. Wrongful punishment was an act of misgovernment with cosmic implications. Many grounds for reduced individual culpability existed in Chinese law and so the review process in murder cases became a careful search to see whether such grounds for clemency existed.

### 2) Law and circumstances

The case records also clarify the Korean usage of a major conceptual distinction, that between law (*pop*) and circumstances {*chong*}. In looking at this from a modern perspective, it has often seemed that the term circumstances was used to disguise various particularistic or extralegal grounds for judgment. A second point is that in the majority of cases where law and circumstances were cited, the two were held to be in agreement. In summary, the murder cases of the *simnirok* do not show that the concept of circumstances was generally used to subjectively manipulate judgments, although some instances of manipulation can be found.

## 3. Conclusion

Korean writings on political theory and the specific reasoning used in resolving criminal cases suggest a number of conclusions concerning the role of law in Korean society and Korean legal concepts. First, law, including criminal law, was not devalued but was highly regarded. Second, there was a manifest concern in case records like those of the *Simnirok* for factual accuracy, substantive legal precision, and procedural niceties. The cases suggest rationale in a formal legal sense. Considerations of personal moral insight, social status distinctions, or policy considerations did at times intrude into the process of judgment, but such intrusions seem to have been exceptional. The concept of requital for a life and the concomitant concern for careful investigation of cases lest a less than fully culpable person be executed resulted in the state assuming a heavy burden of proof against defendants in murder cases. Finally, the discussions between the king and his ministers in deliberating problematic cases provide an intriguing insight into the nature of the Korean monarchy. This suggests that the Korean king was seen (and saw himself) as bound by the law and that he functioned, in this context at least, as king in council: rather than as absolute monarch.

## C. Sources of Law and The Legislative Process in Yi Dynasty Korea, 1392-1910

### 1. The Role of Chinese Law

No understanding of the Yi-dynasty legal tradition is possible without coming to grips with the role of Chinese law and legal concepts in Korea during the Yi period. Chinese law, particularly that of the Tang and Sung periods, was known in Korea before the Yi dynasty. Partly due to the pro-Ming diplomacy of the new regime of Yi Song-gye, however, and partly due to the pro-Ming diplomacy of the new regime of Yi Song-gye, however, and partly due to the greater clarity and level of organization of the Ming Code, it was the latter that was finally adopted in Korea. This law appealed to the Yi-dynasty founder and his advisors because of its clarity and for legal, institutional, and conceptual reasons. In sum, an important characteristic of Ming law for the bureaucrats and statesmen of the early Yi period was its rationality. The

Ming Code not only provided a basic foundation for criminal law during the Yi period, but also served as the basic foundation for a comprehensive social reform along neo-Confucian lines.

## 2. Korean Legislation

Of course, Ming law was not the only law in effect in Korea, even during the early decades of the Yi period. A native administrative and penal code, the *Kyongjeyukchon* {Six-Division Code for Administration}, was promulgated as early as 1397. Three revisions of this code were produced between 1413 and 1433. These became in turn the basis for the central legislative accomplishment of the early Yi dynasty, the *Kyongguk taejon* {Great Code for Administering the Country}. Major supplements to the *Kyongguk taejon* appeared in 1746, 1785, and 1865. As important as Chinese law was in the Yi dynasty, then, it would be misleading to slight the significance of domestic codification and other forms of lawmaking. Essentially, Korea law developed to regulate positive programs of administration, including tax and population policies, ritual matters, and military organization, for which contemporary Chinese law offered little that could be applied to specifically Korean conditions. Despite the existence and growth of such distinctions, however, Korean criminal law never departed significantly from the fundamental theoretical categories of Chinese criminal law.

## 3. Law and the Sovereign

The fiction was preserved throughout the Yi period that new laws were the result of spontaneous royal initiatives, but in fact the position of Korean kings was institutionally weak. It would be more accurate to say that usually a Korean king presided over the deliberations of high ministers as *primus inter pares*.

## 4. The Lawmaking Process

The lawmaking process in the Yi period was essentially similar to that of Ming and Ching China. Piecemeal incrementation of the existing body of law was more common than systematic legislation. The *Kyongje yukchon* of 1397, for example, had been made up of royal edicts from 1388 to the date of promulgation. Such edicts were kept on file in the appropriate administrative agency of the government and were treated as binding precedents. Periodically such edicts were edited and published for the benefit of other central-government agencies and provincial and county-level officials of which there is the code?chon} and supplements {nok}.

## 5. Rationality in Legislation

It was recognized in the later Yi period that piecemeal lawmaking in the manner described presented problems for regularity in law enforcement and rational administration. By the seventeenth and eighteenth centuries, the problems of merely keeping track of the total corpus of legislation, much less reconciling inconsistencies, were becoming nearly insurmountable. Late Yi-dynasty governments used various methods to reduce the adverse impact of the traditional ad hoc approach to lawmaking. One important technique was to assign a particular administrative agency of the government the task of producing a legislative package containing interrelated provisions dealing with given problem in some detail.

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## D. The Interaction of Law and Society in Traditional Korea

- Inequality

1) three broad social categories

Our traditional society had a rigid and hierarchical social order.

▶ Yangban : members of hereditary houses entitled by station of birth to take the notional literary examinations and serve in the higher civil service.

▶ Yangin [ good people ] or Sangmin [ ordinary people ] : the common farmers and the addressees of tax, tribute, and military-service systems of the central government.

▶ ch'onin [ the despised people ] including slaves and those in demeaned occupations, such as butchers, prostitutes, entertainers, and shamans. Many petty functionaries of the government, such as postal-station employees or underlings of the country magistrates' yamen, were also classified as ch'onin

2) Position of women in Confucian thought in Korean culture and law

a double standard of judgments clearly existed in traditional Korea, and where inequality in judgment went beyond the already unequal provisions of the criminal code

### **E. Local Society and Government in Eighteenth-Century Korea**

The Simmirok cases are especially informative where they touch on the role of violence in rural life, attitudes toward involvement with the law, and the nature and quality of local government. Examination of these areas may result in the reexamination of some of the generalizations and suppositions commonly held concerning traditional Korean rural society.

▶ Attitudes toward Involvement with the Law

Most people would like to avoid involvement with the courts and with the legal process at all costs. They are not so eager to become involved in a criminal case, however, even as witnesses.

▶ Local Government

The central government appears at least to have placed a high priority on the punishment of counterfeiting and abuse of official seals and documents. Society-It would seem that Korean rural society was not fully self-administrating. There appears to have been constant legal interaction between the central government and the country level.

### **P47-61(for presentation)**

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2. Korea's initial encounter with the western law(1866-1910 A.D)

A. Initial contact with international law

1. Historical context of the middle of 19th Century

1) Korea : Isolation policy (Leave us alone)

2) The world : Imperialism

2. First two international treaties of Korea.

1) Kangwha treaty(1876) : The first international and unequal treaty.

2) The treaty of peace, Amity, Commerce and Navigation between Korea and United States(1882)

3. A slow reform of the legal system.

1) Tongli-amun(1880) : The first institution for the reform.

## B. Reform and Westernization.

### 1. Wrongly established legal system by the influence of Japan.

It was difficult for the Korean people to have faith in the reform measures. When the Japanese were forcing Korean people to declare its independent sovereignty not the purpose of its surface meaning but terminating the influence of other power supposedly China.

### 2. The reforms of the legal system

- 1) A adoption of a two-level system of courts.(1895)
- 2) Popkwanyangsongso : The first school for the judicial officers.(1895)
- 3) The promulgation of law of the constitution.(1895)
- 4) Taehangukche : New constitution(1899)

### 3. Resistances against reforms.

- 1) The assassination of the vice minister of Justice who was the central figure in the pro-Japanese (domestic)
- 2) Checked by a Russia-German-French international diplomatic

intervention (international)

### 4. Assassination and reinforcement.

To recover the influence and power over Korea considering that Korea was increasingly leaning toward Russia and other European powers, Japan assassinated the queen of chosun.

### 5. The resume of the reform(1895)

- 1) The abolishment of the use of the lunar calendar
- 2) Hair-cut edict

\*The more violent the reaction against the new and the modern the more likely it is that regression employed by the power elite will be more harsh and bloody.

### 8. Strong army and wealthy nation.

\* Overwhelmed by the military might and the industrial wealth of the west, Korean elite didn't or couldn't pay enough attention to modernization of law and legal development.

## (p47-61) Summary of the content

Jinwoo Lee(9521012), Sociology Dep.

## 2. Korea's initial encounter with the western law(1866-1910 A.D)

### A. Initial contact with international law

#### 1. surroundings of the middle of 19th century.

##### 1) Korea: Leave us alone

Korea had maintained the international relationship with just only one country, china, for a long time until Korea had no way to avoid it. Korea wanted to be left alone peacefully regardless of the changes of the world.

##### 2) The world:

It was the age of the imperialism. Western countries would like to have colonies to extend their territory or power and exploit resources from colonies. Of course, they didn't neglect to check the Asian countries, as well. Especially, with some purpose, United States unlocked the door of Japan about a decade before Japan did it to Korea.

#### 2. First two international treaties in Korea.

##### 1) Kangwha treaty in 1876 ; the first international and unequal treaty.

International law took a role of justifying the imperialism. So in the case of Japan, the Japanese demanded a treaty- statute , in written documents.

##### 2) The treaty of peace, Amity, Commerce and Navigation between Korean and United States on May 22, 1882.

\*The Korea's traditional legal system was plainly not civilized enough under the prevailing standards of international law. To make it worse, the westernization of Korea's legal system

usually in the form of discarding the traditional system and importing a European system has remained a political imperative in Korea ever since Korea's first formal encounter with the west.

3. Korea's reform of the legal system.

1) Tongli-amun(1880) : the first institution for reforming.

This contained such offices as those in charge of armaments, naval vessels, foreign trade and foreign languages but no office in charge of legal affairs.

2) Delay of the reform

Due to the resistance and a lack of mind, the reform of the legal system was postponed until 1894 when a sweeping reform was forced to the Korean government by the Japanese army that a westernized judicial system was finally established.

\*International law helps only those who helped themselves militarily.

B. Reform and Westernization.

1. Wrongly established legal system by the influence of Japan.

It was difficult for the Korean people to have faith in the reform measures. When the Japanese were forcing Korean people to declare its independent sovereignty not the purpose of its surface meaning but the purpose of terminating the influence of other power supposedly China.

2. The change from a traditional minister of punishment to a minister of justice in 1894.

\* The ministry of justice was entrusted with administration of courts, police and prison.

3. The process of the legal development in 1895.

1) The promulgation of law of the constitution.

2) Popkwanyangsongso ( ) : The first school for the judicial officers.

3) A adoption of a two-level system of courts.

a) Local court ( )

b) High court ( )

4. The institutional reform.

1) Inadequate understanding of new Judicial system. So the old law had to be applied in the absence of a westernized code.

2) First graduating class of law school.

The Japanese teachers attempted to teach the Korean students the general outline of the Japanized version of European jurisprudence.

3) Social reform (customs and conventions)

-military, clothing, etc.

5. Resistance and violent opposition against reforms.

1) The assassination of the vice minister of Justice who was the central figure in the pro-Japanese (domestic)

2) Checked by a Russia-German-French international diplomatic intervention (international)

6. Regain of influence over Korea.

To recover the influence and power over Korea, with afeared that Korea was increasingly leaning toward Russia and other European powers, they assassinated the queen of chosun.



7. The resume of the reform by Japan in 1895.

- 1) The abolishment of the use of the lunar calendar
- 2) Hair-cut edict

\*The more violent the reaction against the new and the modern the more likely it is that regression employed by the power elite will be more harsh and bloody.

8. Strong army and wealthy nation.

\* Overwhelmed by the military might and the industrial wealth of the west, Korean elite didnt or couldnt pay enough attention to modernization of law and legal development.

9. New constitution (Taehangukche, )

In the middle of confusion and instability, the Korean government managed to promulgate the new version of constitution. We can glance at the fact that by addressing the independence of chosun, Japan would take advantages of colonizing chosun.

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### C. Protectorate and Annexation

#### 1. Recognition of Japan's Relationship with Korea

1) July 29, 1905: the signing of the Taft-Katsura agreement

the U.S. recognized that Japan's taking over of the diplomatic rights of Korea was logical as long as Japan did not invade the Phillipines

2) Sept. 5, 1905: the signing of the Russo-Japanese peace treaty

Russia recognized Japan's "paramount interests" in Korea

#### 2. Korea's loss of international personality

1) Nov.17, 1905: the forced signing of a "protectorate treaty"

the Korean ministry of foreign affairs was abolished, thenceforth all diplomatic functions were to be performed by Japan

2) The Korean emperor's course of action (appeal to international law)

① Sought help from the U.S. based on Article I of the American-Korean Treaty of Commerce and Consular Rights, which was understood on the basis of the ordinary meanings of the terms in his cultural text.

② Send secret envoys to the Second Peace Conference at the

Hague in the S

#### 3. Progress in municipal law

1) Regulation of "civil" matters by a penal code

2) Respect for the integrity of the family life and the unity of the clan

3) Humanity to the convicted prisoners was shown

4) Inequality in the penal system was continued

#### 4. The strengthening of Japan's hold on Korea

1) July 20, 1907 a new agreement between Japan and Korea was signed

① Article 2: No law, ordinance, or regulations could be

promulgated with

② Article 3: judicial matters were to be separated from other

government bus

③ Article 4: high officials of the government could be appointed or

dismissed only upon the consultations with the Resident-General

2) July 27, 1907: the Newspaper Law was promulgated

3) July 29, 1907: the Peace Preservation Law was put into effect to prohibit unauthorized assembly or association

4) July 31, 1907: the Korean army was disbanded

#### 5. The change in Korea's legal system

1) December of 1907 the Law of Constitution of the Courts was promulgated

- ① three levels of courts were created
  - one Supreme Court(Taesimwon)
  - three Courts of Appeals(Kongsowon)
  - eight Local Courts(Chibang Chaep'anso)
  - 113 District Courts(Ku Chaep'anso)

\* All courts were to be headed by the Japanese

2) July 1908: Hyongpop Taejon was revised

3) January 1909: an increase in the number of Local and District Courts took place, eight more prisons were added to the system, a legislative research bureau was established, and a Japanese jurist named Ume was installed as the head of the bureau

4) July 12, 1909: a memorandum was exchanged between the Korean and Japanese governments "entrusting" the judicial and prison affairs of the Korean government to the Japanese government

5) October 1909: The Korean ministry of justice was abolished and a department of justice was established in the Residency-General.

#### 6. The annexation of Korea

1) July 30, 1909: the Korean ministry of war was abolished

2) June 24, 1910: police power was transferred to the Japanese government

3) August 22, 1910: the annexation treaty was signed

4) August 29, 1910: the Korean emperor ceded the sovereignty to the Japanese emperor

#### D. Concluding Remarks

It is the tragedy of modern Korean legal history that "reforms" and "modernization" was accompanied by progressive loss of national independence. The administration of a new system of law under the Japanese colonial rule aggravated ill-will against the westernized legal system and this heritage continues to afflict the Westernized legal system of Korea even to this day.

(p68-74)Doohui Song(9744054, Life Science)  
United States Military Government in Korea

#### Beginning of U.S. Military Government in Korea

- 1 Proclamation No.1-September 7, 1945(in the name of CINCAFPAC)
- 1 U.S. troops land in Korea-September 8, 1945
- 1 Command Structure

#### Inadequate Preparation by the U.S. Army

- 1 Unexpectedly quick surrender of Japan
- 1 Other important objectives of occupation
- 1 Contrast between U.S. and Russia

#### Requirements of the legal division of the Military Government

- 1 The ambiguous judicial policy of the United States Military Government in Korea

#### Removal of Japanese officials

- 1 Relatively simple removal of the Japanese officials
- 1 Destruction of important documents
- 1 Opening of the doors to Koreans for positions in the bureau

#### Difficulties in abolishing the Japanese legal system

- 1 Lack of trained Koreans who were not labeled as a pro-Japanese collaborator
- 1 Formation of a New National Bar Association
- 1 Ordinance No.21-November 2, 1945

#### Changes in the laws and the resulting side effects

- 1 Ordinance No.11-October 9, 1945

#### Improvements that were made

- 1 Establishment of a system of special judicial officers
- 1 Justice of peace of the United States

#### Confusion in the establishment of Provost Courts

- 1 The CINCAFPAC proclamation No.2-September 7, 1945
- 1 Justification for the establishment of military occupation courts
- 1 Two separate sets of courts with jurisdiction over the same offenses

#### Anglo-American jurisprudence on an operational and practical level

- 1 American legal system
- 1 American pronouncements on the sacredness of individual rights
- 1 Rectified injustices

#### Tension between American and Korean courts

- 1 A case heard by the Seoul District Court
- 1 Military Governor orders case to be appealed
- 1 Military Governor transfers case to a military commission

#### Existence of two parallel court systems with overlapping jurisdiction

- 1 Misunderstanding and ill-will between the Americans and Koreans
- 1 Segregation of trials
- 1 Compromise by the Military Government

#### Efforts to modernize and democratize the Korean legal system

- 1 Ordinance No.121-November 17, 1946
- 1 The Child Labor Act
- 1 Labor department orders No.1 and No.2
- 1 Abolition of the Japanese-promulgated Public Prostitution Law of March 1916 and licensed prostitution in Korea

Military Government in dealing with Korean situations

- 1 Ordinance No.72-May 4, 1946
- 1 Reforms introduced into the criminal procedure

Proclamation of the Rights of the Korean people

- 1 Enumeration of the eleven inherent liberties in the proclamation

Degree of success in the Military Government efforts to de-Japanize the Korean law

- 1 Impact of the American legal system
- 1 Establishment of the Korean-American Legal Academy

p75-98

Prepared by Kim Min kyung(2001110261), and Cho Minji(9729023)

The new legal system established in Korea between 1905 and 1919 was created mainly to promote Japanese policy in Korea.

When the first change in the judicial system under the resident-general in 1907, legal advisors took an active part in administration of judicial business. Advisory system had lasted for about six months, the advisors made a number of complaints about corruption and excessive use of torture and extensive and discretionary power.

Ito, resident general, had called a conference in attempt to solve those problems, but just after conference Ito considered problems were not likely to be solved without extensive reforms. The new treaties called Law of the Constitution of court provided. In July 1909, just over a year before annexation the administration of Korean courts and prison was delegated to Japan.

The annexation of Korea was declared on Aug 29, 1910, and Government General opened its office. Judicial department itself was changed only name, but there was important change in the top of structure. Government general could also control the administrative and legislation powers. Accordingly, the laws of government general placed no such a limitation on the supervisory power of the governor-general. This changes may have depend on personalities of the two governors, but for most part it reflected different ways of using the judicial system to support two distinct policies.

Reform of the laws was characterized by the same general pattern that has been found in the reform of the judicial system. Until the annexation decision was made, there was an attempt to reform Korea as a separate state under strong Japanese influence. This policy required "peace and order" as a basis, and the law strongly emphasized efficient control while at the same time protecting Japanese interests once the decision had been made to annex Korea, the legal system was used as an instrument to help carry out annexation and attain efficient control specifically for Japanese benefit.

Reform of the laws with objective of promoting Japanese policy toward Korea began early in the protectorate period before the treaty of 1907 which Ito, the resident general, obtained a new treaty that greatly increased his powers and dissolved the Korean army. A sincere professional belief that the reforms were in the best interest of the Korean people may also have been an important, though secondary, motivation. As could be expected, the new laws often closely resembled Japanese legislation.

We may find some examples in the following areas such as in the Procedural Law, Criminal Law, Control of the Press, Regulation of Assembly, and the Cadastral Survey.

