

Edward J. Baker, "The Role of Legal Reforms in the Japanese Annexation and Rules of Korea, 1905-1919

C. Law Reform

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

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.

We may find some examples in the following areas:

1. In preparation for the opening of the Korean courts, civil and criminal procedural regulations were drawn up on the basis of Japanese procedural law. However, it contained many defects which was mainly due to the very short time available for their preparation. Therefore, the new temporal regulations were introduced, taking into account the practical size of the political, economic, and the social conditions of the Korean, paying less attention to legal formalities or systems, which emphasizes the efficiency for the courts rather than the fairness to civil litigants or criminal defendants.
2. In criminal law, the main emphasis was on the maintenance of "peace and order". Until 1919 the criminal law system was reformed only to ensure more efficient, harsher control. Abolition of harsher penalties for Koreans than for Japanese in cases of murder and armed robbery is one of the few changes in the legal system during that period that did not increase the inequality of the two peoples before the law. After the Independence Movement in 1919 the legal system was again reformed in minor ways. These reforms appear to have made the system less harsh and more equal in its treatment of Koreans and Japanese. Flogging system and the restriction of Korean judges to cases involving only Koreans were abolished.
3. Regulation of publishing was an area in which the Residency-General was very active. In the official view, freedom of the press was desirable for civilized countries, "but in a backward nation where readers are easily influenced or instigated by seditious

comments, or where editors are often lacking in common sense and sound judgment, this freedom is accompanied by certain disadvantages which far outweigh its merits. Therefore, resident general made a law that gives the power to control the press.

4. Freedom of assembly and association was regulated by the Peace Preservation Law of July 1907, which gave the minister of home affairs the power to dissolve any association or forbid any gathering he deemed necessary in order to preserve peace and order.

5. Though the effect to collect traditional Korean legal materials, Japanese came to understand that the Koreans had little or no conception of private rights, which led it to understand the need to codify the Korean law so that it can protect individual rights and property. As part of such effort, the land and building certification promulgated in 1906.

6. Another area of civil law reform was the change in the law of real property and the accompanying cadastral survey, which was designed for Japanese exploitation, it has been argued by Korean and Japanese writers that actual effect of the survey was to deprive large percentage of Korean farmers of their land. It prompted many farmers become tenants or emigrate to Manchuria. Japan seemed to have undertaken the survey to protect the rights of ownership, thereby facilitating transactions, especially for Japanese who are unfamiliar with traditional land practices.

Reform of the laws with the 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.