

SALIENT PROFESSIONALS, A SILENT PROFESSION: THE RISE, PROMINENCE, AND  
MARGINALIZATION OF LAWYERS IN KOREA UNDER JAPAN'S RULE 1906-1945

BY

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## ABSTRACT

This dissertation examines how lawyers emerged as powerful professionals during the period of Japanese colonialism in Korea (1906-1945) even as the legal profession, as a whole, remained relatively disempowered. After the registration of the first three Korean lawyers as litigation experts in 1906, lawyers became prestigious ones in local politics, business, and society in colonial Korea, but the practicing lawyers remained largely inactive and silent as a collective for most of the colonial period. Although lawyers were appointed for lawsuits at the highest court level and rewarded with both social prestige and high salaries, they remained politically and juristically marginalized because of the colonial rule that enabled the attorney system to be dramatically implanted onto colonial Korea.

To explicate the discrepancy between the dramatic rise and prominence of lawyer as individual practitioners and their collective disempowerment as bar associations in colonial Korea, this dissertation conceptualizes the colonial legal structures by relying theories of social structures and legal pluralism within colonial historiographies. I define colonial legal structures as hierarchically arranged legal orders that consist of formal procedures imposed by the colonizer on substantive legal sources originating from the colonized. I suggest that the legal profession be an actor that derived from the colonial legal structures that enable and constrain the boundary of its social action. Despite the establishments of educational institutes, qualifying examination, and the court system, all of which contributed to training and producing lawyers, the lawyers in colonial Korea remained unable to secure their legal expertise, build similar experiences, and claim equivalent status to the state. Consequently, the colonial legal structures facilitate lawyers to be prominent professionals but at the same time professionalize the lawyers to be individually salient but to be collectively silent.

Through examining the professionalization of lawyers in colonial Korea under the Japanese Empire, I conclude that colonization brings the legal profession into the colony by establishing Western courts and procedures but segregates the profession from the field in which it is supposed to be. The establishment of a legal education, bar exams, and judicial bureaucracy necessitated the production of practicing lawyers who were expected to become prominent professionals in the fields of local politics, business, and society. Aside from the establishments of these formal institutions, however, the legal profession lacks the ground on which the collective entity of individual practitioners secure their expertise based on common experiences. I argue that the colonial legal structures professionalized the lawyers to be substantively shallow, because colonization deprived them of structural opportunities to employ native legal sources, to nurture an identity as a profession, and to contest with the state.

This dissertation is based on 22 months of archival research that I conducted in Seoul, South Korea from October 2011 to July 2013. Of interest were the legislative efforts, enactments and the issuance of executive ordinances pertaining to lawyers, all of which were involved in constructing the attorney system from the late 1890s to the end of colonial rule in 1945. I also looked at governmental documents that recorded lawyers' registration, transfer, and dropout in order to understand who the lawyers were and what their demography was during the period. With the governmental documents, I was able to construct a comprehensive survey of the profiles of 814 men who had registered as lawyers from 1906 to 1945. In addition to archives regarding legislative efforts for and the registration of lawyers, classified documents produced by the colonial government revealed how the government viewed and treated the practitioners. I also examined classified documents pertaining to lawyers' registration produced by the colonial government to censor lawyers in colonial Korea.

To Hee Jung who makes everything in my life beautiful.

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## CHAPTER 1: INTRODUCTION

Lawyers are a group of legal experts who engage in lawsuits on behalf of their clients. After graduating law school and successfully passing a set of qualifying exams, they become esteemed professionals who are deemed to be knowledgeable in law and litigation procedures. As a collective body, they are regulated by an association of legal professionals who not only oversee the registration and examination of the individual lawyers but also claim their exclusive power over their members and external entities. Based on knowledge to certain problem sets and social recognition that they solve the problem sets faster and easier than competitors, an expert group transforms a collective body of professionals, a profession. The process of transforming a group of experts into a collective body of professionals known as “professionalization,” therefore, is, a social, cultural, and historical process in which an occupational expert legitimizes their expertise based on knowledge and builds a common identity in relation to their competitors in a political boundary. In the rise and proliferation of lawyers in Europe, various factors have played a role including political regime changes, the rise of nation-states and restructuring of legal systems, and the formation of centralized bureaucracies.

Explaining the rise of lawyers in Korea for the first half of the twentieth century confronts remarkably different historical, cultural, and social conditions from Europe. In contrast to lawyers in Europe, though their roles and jobs were varied across countries, where lawyers were knowledgeable at local customs and played an important role in codifying statutory laws, experts in law in Korea were either lower-mid ranked officials or prodigals to raise social disharmony. Korea had held little cultural root of civil codes in contrast to its sophisticated state-penal codes. Not only had litigations been strongly discouraged by the government, but the

employment of private agents in lawsuits had been prohibited until 1895. Given that the civil codes were nearly absent, or at best scattered to the state-penal codes, law had existed to be a secondary tool to Confucian ideals in rule. The central and local governments established judicial organs, but the judiciary run under a strict division of labor between Confucian yangban literati located at higher positions and chungin technical experts in law assigned to lower-mid positions. On the other hand, colonization by the Japanese accounted for the adaptation and subsequent development of legal institutions. First Korean lawyers registered to the Korean government and started to practice law in 1906, right after Korea fell into Japan's protectorate in December 1905. In less than five years since then, employment of lawyers at the highest level of court in Korea became indispensable. While all courts in Korea were Westernized and three quarters of judicial officials were recruited by Japanese in 1909, Korea's judicial sovereignty was enforced to be delegated to the Japanese. During the period of Japan's rule from 1910 to 1945, legal professions including lawyers grew in parallel with the changes of the legal institutions of the Japanese Empire. Competitive examinations to become a lawyer along with law education into colonial Korea gained popularity among Koreans, as remarkable socioeconomic compensation was given to individual practitioners. The title of lawyer was a ticket to the upper class socially, economically, and politically in colonial and post-colonial Korean society. The rise of lawyer in Korea therefore resulted from a radical departure from the traditional but a landing onto the modern-yet-colonial legal system.

My task in this project is to explore how colonization by the Japanese played a role in professionalizing lawyers in Korea where the legal traditions had been estranged to the advent of the legal expert and the colonial state authoritatively controlled its courts and managed the legal profession. The legal traditions of pre-colonial Korea were interpreted by the Japanese colonizers

and used to rule cases filed to the courts in colonial Korea. The colonial state that exercised administrative, legislative, and judicial power together established separated jurisdictional boundary from the metropole Japanese state. While the colonial state monopolized interpretation of native legal sources and administered independent qualifying examinations for screening lawyers from mainland Japan, the collective body of lawyers existed as loose associations that was comprised of two ethnic lawyers who originated from various institutional pathways. Although individual lawyers became salient in various social realms, lawyer as a collective entity remained silent to political, social, and juristic issues. In other words, lawyers were introduced to Korea alongside colonial encroachments and many people in colonial Korea aspired to be a lawyer, but few were interested in what lawyers' associations could and should do in the colony.

### **Legal Structures by Colonization**

Social structures are defined as durable schemas and movable resources that both empower and constrain social action (Sewell 1992; Sahlins 1985; Bourdieu 2007). Such social structures are not conceptually singular but multiple allowing us to envision a chain of structures with relative autonomy and distinctive logics that affect or govern adjacent structures (Sewell 1992). The multiplicity of structures allows us to envision a chain of structures with relative autonomy and distinct logics that affect their adjacent structures. Due to the relative durability of cultural schemas that legitimate certain behavioral logics within a structure, some actors may belong to multiple structures with intersecting behavioral logics (Bourdieu 2007).

Colonial historiographies have portrayed the colonial legal system as a plurality of legal schemas and resources that originate from both the colonizer and colonized (Benton 1999) and

that are, in turn, formally integrated but substantively differentiated. That is, while the implementation of Westernized legal systems and practices were praised as civilizing measures by the colonizers (Merry 1999), native legal practices and institutions were often preserved to maintain colonial stability (Likhovski 2006; Cohn 1996). Therefore, the legal system usually consisted of both state-official courts that primarily dealt with secular cases and native courts that covered cases involving religious or customary laws (Christelow 1982). Meanwhile, the literature on legal pluralism suggests that laws and legal institutions in the colony were plural in nature between colonial institutions such as the government and church as well as between the colonizer and the colonized (Benton 1999). Such plurality of law and legal institutions in the colony, however, by no means implied an equal relationship between the colonial and native legal sources. Rather, as Barry Hooker has suggested through his term, “dominant and servient laws” (1975: 4), there was often a sharp hierarchy between the two orders. As revealed in Katherine Hoffman’s comparative study of French rule in Morocco in the 1930s (2010), customary law and judicial officials were regarded as residual in the sense that “[they] consisted of what remained after colonial powers fretted out [customary legal sources] (852).” In terms of law and legal structures, colonization can therefore be viewed as a process in which the colonizer imposes a hierarchical arrangement of legal institutions between the metropole and colony.

Drawing on these studies, this dissertation articulates the colonial legal structures as an integrated legal system of hierarchically arranged colonial and native legal sources imposed on the colony as part of a stratified imperial order. Colonial institutions necessary for stable rule, such as the court and prison systems, legal educational institutions and their qualifying examinations, and the judicial bureaucracy and its personnel, were dramatically implemented within the colony. The implementation of the colonial legal system facilitated the growth of legal

professions as it meant the formal integration of differing legal systems in the metropole and colony. In terms of formal procedures within lawsuits to deal with secular affairs, the colony and metropole exhibited little difference. However, behind the formal integration of the metropolitan and colonial legal systems, the native legal sources often took a back seat to the formal colonial order. Indigenous legal sources such as native customs became the province of either native jurists who handled them within native courts or colonial judicial officials assigned to colonial courts that dealt with secular and religious affairs (Brown 1995; Roberts and Mann 1991; Hoffman 2010).

Insofar as colonial legal structures encompass plural legal structures that do not necessarily become compatible simply through formal integration, these colonial structures exhibited two distinguishing features. One was the cultural and structural chasm between the colonial and native legal orders that needed to be linked for the sake of colonial rule. As some researchers on colonialism have suggested, while the colonial state may have played a predominant role within these legal institutions, local colonial authorities still played a key role in integrating them into the colony, particularly when unexpected conflicts arose (Go 2000; Berman and Lonsdale 1992). Within these hierarchically arranged colonial legal structures, the role of cultural brokers became crucial. On the other hand, from the perspective of the entire empire, the integration of the colony into the legal jurisdiction of the empire meant the marginalization of the former. The colony remained peripheral in that the colonial state existed as a subordinated part of the governing colonial apparatus. According to Steinmetz, while many colonial governments over the nineteenth and early twentieth centuries exercised autonomy (Steinmetz 2008), their autonomy was simply designed to render the governing structure more efficient. That is, rather than independence, the colonial state's autonomy signified less

interference from the motherland and therefore a more efficient system of colonial governance. The autonomy designed to efficiency in governance and the detachment of legal sources and statutory laws characterizes the legal structures in the colony to be formally similar to but substantively dissimilar from the metropole.

### **Professionalization of Legal Experts in the Colony**

Existing literature has envisioned professionalization as a process in which an occupational group of experts develop and exercise their expertise within certain domains while building a corresponding identity based on shared experiences in relation to the state, the market, and other competitors (Liu 2013; Freidson 1986; Abbott 1988; Halliday and Karpik 1997). As a knowledge-based occupational group (Gorman and Sandefur 2011) that constructs its knowledge through “diagnosis-inference-treatment” (Abbott 1988: 35-58), a profession seeks to secure a domain of expertise (Abbott 1988). Their collective identity did not derive automatically from their shared technical expertise or even their occupational pride, but rather from how they successfully aligned their professional interest to those of the public’s (Ramsey 1984). For instance, French doctors claimed to be curers for social pathologies thereby consolidating their professional identity (Goldstein 1984). Independent of both the market and state, their identity building process is involved with making distinction from other occupational groups and controlling its members by establishing a strong professional association with rules and regulations. Along this vein, the decline of a profession is often associated with the rising power of a market or state (Krause 1999). Finally, professionalization often denote a close relationship with the state. Like many modern professions, lawyers depend on the legal system of a nation-

state to define and delimit their areas of expertise and jurisdiction. According to Dietrich Rueschemeyer (1986), with the roles and expertise of the lawyers determined by political structures, their bar autonomy is not an intrinsic social value for the lawyers. Since Randall Collins (1979)'s pioneering study of the Continental versus the Angle-American model of state-profession relationships, many scholars implicitly assume the dependence of lawyers and legal professions on the nation-state (Bailes 1996; Balzer 1996; McClelland 2002; Orlovsky 1996). Even within the UK-US tradition (Goebel 1994), their professionalization has taken place alongside or under the auspices of the state. Halliday and his colleagues propose that the politics is critically important in forming and maintaining lawyers' role and status through comparative and historical analysis on the UK, the US, France, and Germany (Halliday and Karpik 1997). With both law a highly localized practice and the lawyers' social networks deeply embedded within local contexts and therefore the legal profession was considered unrecognizable when it moved beyond a particular jurisdiction (Michelson 2007; Liu 2011), the single structure premise of the state-legal profession was considered to be more powerful in explaining the profession of lawyers than others. In short, existing theories of professionalization are grounded in three interlocking assumptions of lawyers as: 1) a profession with legal expertise and jurisdiction who contributes to nation-building; 2) an autonomous group of professionals with a coherent identity; 3) a profession with state-mandated jurisdiction over a particular area.<sup>1</sup>

While a plethora of studies have examined the processes of colonization and the implementation of colonial legal systems, few have explicitly examined the professionalization

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<sup>1</sup> Of course, these classifications are not clear-cut but rather closely associated with one another. For example, Larson asserted that professions' power stemmed from monopolistic control over their members and knowledge. She stated that 'an attempt to translate one order of scarce resources to another one such as economic and social rewards is professionalization' (Larson 1977: p. xvi). Following Larson's thesis of professions, Johnson (1995) argued that in order to secure their monopolizing power from other occupational groups, professions are likely to involve a collaboration with the state in which their knowledge and techniques are used to govern the public (Johnson 1995).

of lawyers in the colony. In contrast to lawyers in the West where their professionalization encompassed a struggle for an area of expertise and jurisdiction, the formation of a unified identity through the sharing of common experiences, and reciprocal relationships with the nation-state, the colonial context challenges each of these assumptions. The jurisdictional power of lawyers in Western Europe originates within specific historical circumstances that determine what law students should learn in schools and what expertise they should eventually exercise as legal professionals. As described by James Brundage (2010), the historical origin of lawyers' expertise in twelfth century Europe came from conflicting interpretations of canon law. However, native legal sources in colonies were selectively interpreted and adopted by the colonial state as it tried to construct colonial jurisprudence for colonial rule. The colonial jurisprudence was one of the ways to establish colonial Others (Said 1978). Although this process of codifying or quasi-codifying local indigenous customs looks similar to the enactment of civil laws in European countries, it substantively differed in that it was designed to make the native legal orders responsive to the institutional needs of the colonial state.<sup>2</sup> In other words, the lawyers in the colony did not participate in the same process of acquiring expertise in legal sources and winning social recognition during the period of modern nation-building. Instead, they became "shallow" practitioners of law who were accredited through formal colonial institutions but lacked the means to produce their own legal knowledge. Instead, they devolved into consumers of legal knowledge imported from the metropole. Within this broader context, it is not a surprise that lawyers in the colony often tended to be double agents and cultural translators who worked for both the colonizer and colonized (Shamir 2001; Lo 2002).

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<sup>2</sup> Even in the contemporary world, a similar process takes place in many developing countries. In many developing countries around the world today, the conflicts and debates between civil and common laws are similarly observed as they seek to model their legal systems (Halliday and Carruthers 2007).

Second, the presumption of a profession's coherent identity is questioned by the multi-racial and multi-ethnic makeup of the professionals in the colony. The literature on professions presumes that one of the ways that a group of experts highlight their power and social prestige and protect their profession is by organizing themselves into a group. As Rogers Brubaker (2005) points out, however, the forging of "groupness" is hardly possible through the simple sharing of one or even multiple attributes. Making a group is a social, cultural, and political project in which certain categories are transformed into a sense of groupness. Within the accreditation process, professionals are often actively discriminated against in terms of race, gender, and social background. For instance, the professionalization often intersects with gendered (Davies 1996), racialized (Shaw 1996) mechanisms of exclusion (Witz 1992), and heterosexualized mechanisms of exclusion in order to construct the profession as the province of largely white men with degrees from elite law schools. Historical studies suggest the segmentation of professional groups which appeared along with racial/ethnic lines characterized a racially or ethnically divided society created by external conquerors (Lo 2002; Reid 1974; Sharafi 2007). In this vein, Lo (2005) proposes that profession is a site of professionals' identity formation.

Third, the assumption of a legal professional's single jurisdiction within the existing literature speaks little to their professionalization process within the empire and colony. Empire is defined as a transnational political formation in which one state exerts political power and control over a subordinated territory and its peoples (Go 2008a). Despite the integration of the legal system between the metropole and the colony, empires maintained a great deal of exemptions and exclusions for the sake of efficient rule in colony. Although the metropole and the colony engaged in reciprocal interactions, they were grounded in unequal chains of knowledge production where the former produced while the latter consumed. The colonial state

also differed from the nation-state in that it lacked an embedded context where the governmental organizations are responsive to the needs and demands of the society within which various social actors construct and enable or disable a set of political institutions within an embedded context (Skocpol 1985; Stepan 1985; P. Evans 1995). On the contrary, the colonial state can be viewed as an extremely autonomous organization with little intervention of the society. As an autonomous organization, the colonial state can be viewed as a bundle of hierarchical structures unconstrained by social interests which implement policies and construct administrative orders. As a field, however, the state can be viewed as a social configuration lacking a clear understanding of their subjects. Colonial policy makers often misrepresented their subjects and engaged in faulty policies that resulted in, for instance, the creation of two competing administrative organizations (Wilson 2013). The colonial policies of the colonizer could have very different consequences depending on how they were received by the colonized subjects (Go 2008b). Given that the colonial state was a periphery organization in the politics of an empire and existed to be over-autonomous yet under-embedded, the legal profession tended to have few institutional places for their politics. As far as the colonial state remained simply an administrative organization for the entire empire, lawyers in the colony had little space to voice out their demand and venue to advance.

The professionalization of lawyers in the colony occurred under two types of marginalization. On the one hand, lawyers in the colony were marginalized by the center-periphery topology of the empire. Located in the periphery, they became technical practitioner who consumed knowledge that was imported from the metropole. As far as lawyers in the colony are able to secure their expertise at knowledge on native legal sources, they stand along with the metropole practitioners. If they lost the control of the knowledge on local customs, they were

relegated to merely a technician of law. On the other hand, the lawyers were marginalized by the colonial state that tried to monopolize the interpretation of native legal sources. Even though the colonial laws and legal institutions implemented by the colonizers resulted in a favorable environment for their growth, the lawyers in the colony remained excluded from the process of interpreting and applying the indigenous legal sources. In other words, the professionalization of colonial lawyers through the establishment of modern institutions such as law schools, bar examinations, and the courts hardly resulted in the deployment of native laws, customs, and other legal practices with significant indigenous content. Challenging the conventional definition of professionalization as a process in which a group of experts becomes an occupation simply through institutional arrangements, these two types of marginalization resonate with Frederick Cooper (2005)'s assertion on colonial modernity that "positing a colonial modernity reduces the conflicting strategies of colonization to a modernity perhaps never experienced by those being colonized" (Cooper 2005: 16).

### **Japan's Deviation, Korea's Particularity: A Historical Comparative View**

#### *Japan's Deviation*

The historical particularity of the Korean legal system shaped by Japanese imperialism heightened the decoupling of lawyers as individual practitioners from their grouping as experts in comparison with other colonies in the era of colonialism from the nineteenth to the early twentieth century. Like many Western imperial powers at the turn of the twentieth century, the Japanese empire maintained two major colonies with large colonial governments in Korea and Taiwan. Unlike their Western counterparts, though the colonial government attempted to be

autonomous from the interventions of the metropole government (Steinmetz 2008), the autonomy of Japanese colonial governments was designed to maximize the efficiency in rule by politicians and military officials in mainland Japan from its earlier periods. While the Japanese government established hierarchical bureaucratic organizations in Taiwan and Korea (Chen 1970; Wang 2001), the power and authority of the Governor-General of colonial Korea not only served as the head officer of the administrative office but also covered both legislative and judicial branches.<sup>3</sup> In terms of the legislative control, the Governor-General issued executive ordinances that were equivalent to the enactive laws in metropole Japan. Annexed to imperial Japan after 1910, colonial Korea became part of the Japanese Empire where the enactment of the Constitution of Rights specified in Japan was postponed and no laws that were passed by the Imperial Diet went into effect unless authorized by an executive ordinance by the Governor-General known as *seirei*<sup>4</sup>. In terms of the judicial power, he controlled the judiciary through the Bureau of Justice.<sup>5</sup> The head of the Bureau of Justice, occasionally exchanged with one of highest judges or prosecutors in colonial Korea, engaged in the personnel management practices of judicial officials assigned to colonial Korea. Designed to maximize the efficiency of colonial governance, the strong autonomy of the Governor-General and his colonial government resulted in colonial courts with a separate area of jurisdiction from mainland Japan.

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<sup>3</sup> Until 1920, the Governor-Generals of Korea and Taiwan enjoyed nearly similar amounts of autonomy from the metropole government. The Governor-Generals were answerable not to the Japanese government but to the Japanese emperor. After 1920, as the metropole government started to intervene in colonial affairs, the power of the Governor-General in Taiwan started to be shrunk. However, the intervention of the Japanese government into colonial Korea did not occur in a full-scale until just a few years before Japan's loss in World War II.

<sup>4</sup> Chen (1984) reported that there were 676 *seirei* were promulgated in the 35 years of Japanese rule by nine governors-general of Korea and that the Criminal Code, Criminal Procedure, Civil Code, Civil Procedure, Commercial Law, Maritime Law, Law regarding Real Estate, and Census Registration Act were all *seirei* (261-262).

<sup>5</sup> As one of the highest level of generals in the Japanese Army, the Governor-General was even authorized to deploy Japanese military units that were stationed in Korea.

The separation of the legal jurisdictions thereby challenged the constitutional status of the judiciary and its officials and lawyers in colonial Korea.<sup>6</sup> Constituted by an executive ordinance on the court system in colonial Korea in 1911, the courts and prosecutor's offices existed as affiliates of the colonial government—raising the broader question of whether the colonial judiciary was really grounded in the Japanese constitution. While the majority of Japanese judges and prosecutors were appointed by the Japanese Prime Minister before they came to Korea, they fell under the supervisory control of the Governor-General in colonial Korea and not the Ministry of Justice in metropole Japan after they arrived in the colony. Through a *seirei* promulgated in 1911, the Governor-General in Korea had the authority to appoint, discipline, and dismiss any judicial official who belonged to the colonial court. In 1921, the colonial government enacted another *seirei* to constitute the Korean Bar Examination and its accompanying regulations. With the executive ordinances valid only within the boundary of colonial Korea, however, those lawyers defined by this ordinance were not authorized to practice law in any other region of the Japanese empire (e.g., Japan or Taiwan). In other words, those judicial officials and lawyers who obtained their legal qualifications in colonial Korea became sharply differentiated from those who had passed their bar or higher civil service examinations in the metropole.

Another significant difference of Japanese colonial rule in Korea from that of Western colonial powers at the time lay in the single court structure. Since colonial Korea constituted a separate area of jurisdiction from metropole Japan, the cases that were filed in Korea were not

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<sup>6</sup> The colonization of Korea began in August 1910, but the Japanese colonizers started to intervene in domestic politics only in 1906 with the signing of the Second Japan and Korea Treaty, which transformed Korea into a Japanese protectorate. It is noteworthy that major reforms in laws and legal institutions that lasted during the colonial and even post-colonial periods were established during this period. For instance, the First Lawyers' Law was enacted in November 1905 and the separation of judiciary from administration was completed at the local level when the Japanese judicial officials were assigned to the courts of towns and villages in July 1908.

transferred to the Japanese courts. Instead, The High Court of Colonial Korea became the final arbitrator of a court rule or decision. Neither were the courts in colonial Korea divided according to litigation. In March 1912, the colonial government issued an ordinance on civil matters upon which Korea's basic legal order was constituted throughout the colonial period. While the Japanese civil code became the governing law in colonial Korea, the Governor-General insisted that private law matters among Koreans be regulated by Korean customary rules. This dual system was very different from some British and French colonies where native and religious matters were filed or transferred to the native courts to be adjudicated by native jurists and legal professionals (Roberts and Mann 1991). Instead, Japanese judges were three times more likely than Korean judges to discuss and rule upon Korean customs. With a handful of elite Japanese judges interpreting Korean native customs (M. S. Kim 2009), the native lawyers lacked authority to assess these customs.

A third distinctive feature of lawyers in colonial Korea lay in the fact that the lawyers-- despite their ethnicity and various qualifications--were equally entitled to practice law within the jurisdictional boundary of the colonial government. The qualifications of the lawyers varied depending on where they had obtained their license. In addition to dividing their legal jurisdiction between metropole Japan and colonial Korea, the colonial government created two avenues for becoming a practicing lawyer: the judiciary and the bar. The judicial officials (judges and prosecutors) of the colonial judiciary became eligible to practice law after resigning/retiring from their former posts. The colonial judicial officials also became divided into two groups: those who had migrated to Korea from Japan after passing the qualifying examinations or graduating from imperial universities and those who had been recruited under special criteria to fill in the court vacancies in colonial Korea. In addition to the successful

candidates of the two bar exams, lawyers who had already practiced law before colonization were entitled to practice law in colonial Korea. Further adding to the diverse backgrounds of the practicing lawyers in colonial Korea was their ethnicity. According to an ordinance on lawyers in colonial Korea promulgated in 1912, all lawyers in Korea had to register in one of the eight bar associations that were located in the local courts of eight cities. Seoul lawyers, who comprised about one third of the practicing lawyers in the country, were divided into the two Japanese and Korean associations.

Fourth and last, the large transnational mobility of legal professionals from Japan to Korea, which was enabled by the geographical proximity of the two countries, characterized the lawyers in colonial Korea. Covering the 700 miles from Tokyo to Seoul by ship took about three days in the 1920s. The port in Pusan, which served as the main gateway for Japanese migrants to Korea, was only 130 miles from Fukuoka in Kyushu. Within less than 40 years of colonial period, Japanese companies and colonial government offices sponsored the migration of more than one million Japanese and their families to colonial Korea. The geographical proximity of the two countries also facilitated the study abroad of Korean students in Japan. Before the colonial authority's resumption of the Korean bar exam in 1922, passing the Japanese bar exam was one of the two routes to practicing law in colonial Korea. Therefore, studying abroad in Japan in order to become an official of the colonial government remained popular even after 1922. The migration of Japanese and Korean lawyers who had passed their qualifying exams in Japan to colonial Korea not only added the complicating factors of ethnicity and qualifications to the Korean bar association's membership but also made it difficult for the bar to forge a coherent stance against the colonial government or address issues of whether the colonial government should defer its judicial authority to the metropolitan government. Similar to traditional Chinese

and Japanese societies, Korea retained its civil laws as a subordinated element of the public-state law system.

### *Korea's Particularity*

In addition to the deviance of Japan as a colonial power, pre-colonial Korea—the Chosŏn-Korea dynasty (1392-1910), had no explicit body of written private law except for some provisions scattered across the state-penal codes. The Japanese colonial officials had to find the source of laws in order to regulate Koreans' private relations. Of course, this did not mean that no legal codes regulated individual relations. However, the absence of custom or customary laws that could later evolve into codified civil laws in pre-colonial Korea often resulted in the misinterpretation of Korean customs and the creation of colonial customary laws in contemporary Korea (M. S. Kim 2009). In deciding cases, Japanese jurists and elite judicial officials had to struggle to make sense of Korean customs by drawing upon their personal understanding of these customs. In the absence of codified private laws, the Japanese judicial officials' interpretations of the existing customs resulted in the over-representation of colonial judicial authority. Given their legal authority to enact laws through court rulings and decisions, the colonial judiciary and government often served as a quasi-Congress.

The emergence of the legal profession came with the retreat of traditional state structures and functions that had subjugated the judiciary under the general administration. This resulted in limited expertise and jurisdiction for the legal profession until the state structures became dissolved. Compared to another major Japanese colony—Taiwan (Wang 2001)—another particularity of the Korean nation was its people's sharp ethnic and national consciousness. Although the nation-state imaginary of Koreans did not emerge until various colonial

encroachments in the late 1890s (Schmid 2002), the country maintained its status as a distinctive unit with exclusive jurisdiction over its populace for more than five centuries. This distinctiveness was supported by its own bureaucracy and legal institutions based on state-penal codes. Ironically, with the intrusion of Japanese colonizers into Korea, lawyer also began to emerge as a nationalistic profession. Its emergence occurred in 1906, one year after the promulgation of the Lawyers Laws in Korea when the establishment of the Resident-General's Office in Korea enabled the Japanese to engage in extensively internal affairs of Korea. Until 1909, lawyers became a greater part of the system of litigations in Korea even as the Korean state continued to defer its judicial sovereignty to Japan. Following Japan's annexation of Korea in 1910, the lawyers in pre-colonial Korea became fully integrated into the Japanese empire's legal sphere, enabling judicial officials and lawyers from mainland Japan to work in Korea. However, the deferral of its legal authority to and its annexation by Japan did not mean that Japan and Korea enjoyed a perfect legal union. Rather, colonial Korea was governed by special ordinances and regulations which could supersede enacted laws by the Japanese Diet. These dual systems of jurisdiction characterized the legal systems of both Taiwan and Korea. Working within a different area of jurisdiction, judicial officials and lawyers with different qualifications were, therefore, produced in these two countries. In short, colonization had the contradictory effect of both enabling the rise of lawyers and the founding of a weak legal profession in Korea.

### *Research Questions from the Legal Structures in Colonial Korea*

Japan's deviation from the trajectory of Western colonial powers and Korea's own historical particularity, therefore, produced a unique legal system in the world history of colonialism. The uniqueness of the Korean case, first of all, lies at the temporal radicalness in

implementing the attorney system. Although the attorney system was introduced in 1906 and Western courts throughout the Korean peninsula were established in 1909, the use of lawyer in the highest court became nearly taken for granted before colonization. Such drastic changes in the attorney and the legal systems raise questions of what the existing structures and cultural schemas did in time of the rapid transition. More specifically, why and how lawyering became institutionalized so rapidly in Korea where there had long been little socio-cultural root for lawyer and who or which social status group advanced to the legal profession. Second, Korea's uniqueness also resides in the complex composition of the body of practicing lawyers. Few things differentiated the lawyers with qualifications from the metropole from those with qualifications from the colony insofar as both were able to practice law in colonial Korea. However, the profession, as a whole, failed to take a unified stance, as various institutional pathways were aligned to get the license of lawyering. Pertaining to the complexity of associational composition yet the equal treatments by the colonial state, I address a question of what the fragmented stances and/or attitudes of lawyers did in forming a professional identity vis-à-vis the colonial and the metropole states. Third, lawyer in colonial Korea is unique from other historical cases in that the lawyers were hardly accessible to producing and securing knowledge on native legal sources, as the colonial courts seized power to interpret them. Since Korea had maintained a very sophisticated public-state code system that had regulated the relations both among individuals and between government organizations until the early twentieth century, there were few experts on civil laws. Moreover, the Japanese colonizers, unlike Western colonizers, did not separate courts in Korea into secular and religious. While native customs and practices usually fell into the jurisdiction of native jurists and lawyers, it was the colonial judiciary that played the role of a quasi-Congress that codified indigenous customs through court

rulings. Given the circumstance, I ask what roles were assigned to the lawyers in the stratification of the legal professions.

## **Research Design and Data**

### *Research Design*

Taking into account the Japan's deviation from the trajectory of Western imperial powers and the particularity of Korea's historical context, this dissertation is organized into two interrelated themes. One examines the effects of Japan's colonial encroachment on colonial legal structures in Korea in order to explain why and how Korean lawyers arose as a profession in the early 1900s. Given that lawyers are a group of experts in law and litigation and their professionalization relies on how they secure expertise, build identity, and make a relationship with the state, I focus on the effects of Japan's colonization on the legal system in Korea. Above, I noted how Chosŏn-Korea (1392-1910) carried out reforms from 1894-95 that brought into being Western-style courts and law schools. Even so, due to conservative reforms from 1897 to 1905 which subordinated the judiciary to the absolute monarchy and his administration, these institutions became virtually ineffective. Japan's efforts to create modern-yet-colonial courts created a "structural chasm" between the two cultural practices in Korea in the early 1900s. The notion of structural chasm refers, on the one hand, to the traditional views of court and practices of litigation and, on the other hand, to modernized litigation practices that remained reliant upon Japanese laws. In other words, the Japanese encroachment into the Korean legal system put into place a legal structure that operated with modernized procedures and professionalized legal experts. With the new legal structure introduced by the Japanese reliant upon different

operational logics, Korean subjects also needed agents to link them to the new courts and practices.

This dissertation also focuses on the pattern of social mobility through the emergence of law as a prestigious occupation in the early twentieth century. In contrast to the relatively low social status of legal occupations in pre-colonial Korea, modern judicial officials and practicing lawyers started becoming promoted to prestigious positions. What factors account for such dramatic change in the status of legal occupations? Focusing on the regime changes brought about by the Japanese colonizer in 1905, this dissertation analyzes both the effects of the law education on the professionalization of the legal occupation and the backgrounds of early Korean lawyers who had registered from 1906 to 1910.

The other theme explored by this dissertation is the discrepancy between the powerful position of individual lawyers and the disempowered position of bar associations. Although Japan's colonial encroachment into Korea introduced the attorney system and contributed to the rise of lawyers as important actors within litigation procedures, the bar associations in colonial Korea remained largely inactive and silent. In contrast to the standard understanding of professionalization as a process in which a group of experts is authorized to produce a particular form of specialized knowledge and eventually organizes itself into a powerful association, the professionalization of lawyers in colonial Korea occurred in such a way that the bar associations remained nominal with little political and juristic leverage.

To understand this discrepancy, this dissertation first examined the diverse backgrounds of the practicing lawyers shaped by the unequal relationship between the metropole and colony. Aside from an oppressive colonial state, the independent jurisdiction maintained by the colonial government produced practicing lawyers with different qualifications and ethnicity. This

dissertation also investigated the structural conditions in which the lawyers in colonial Korea were pushed to the periphery of the Japanese Empire's jurisprudence and denied access to the production of legal knowledge. These two themes are complementary in the sense that each addresses the crucial dimensions of the rise and institutionalization of lawyers in the colony.

### *Data*

The data analyzed for the present dissertation consists of two types. One type originates from archives both before and after the colonial period from 1906 to 1945. Prior to colonization, the Chosŏn-Korean government tried to establish Western-style judiciary and courts as a way to resist the wave of imperialism. Though a series of legislative efforts, the Korean government established courts and law schools, appointed judges and prosecutors, and set regulations on law examinations, etc. Examining official records including The Official Gazette of the Taehan Empire (1897-1910), The Diary of the Royal Secretariat, and The Resume of the Officials of the Taehan Empire enabled me to understand the historical context within which the rise of lawyers in Korea was situated. To trace the family backgrounds of the early lawyers and judicial officials, I also looked at the lists of national examination passers (*Pangmok*).

In addition to the pre-colonization records, I also looked at archival data published during the colonial period. The primary source for identifying practicing lawyers in colonial Korea was The Official Gazette of the Colonial Government (j: *Chousŕn soutokufu kampou*; k: *Chosŏn ch'ongdokbu kwanbo*). This official gazette (1910-1945) included detailed information of registered lawyers including their hometown (j: *honseki*; k: *ponchŏk*), registration site, a record of transfers and withdrawals and reasons for withdrawal (submitter's request, disciplinary action, or death). Another important source of archival data was classified documents regarding lawyers

in colonial Korea (j: bengoshi kankeishoru; k: pyŏnhosa kwankyesŏryu). While most classified documents pertaining to the lawyers' registration from 1927 through 1939 were available through the National Archives of Korea in a digitized form, some had to be requested through personal visits or letters. These classified documents contained personal information about the lawyers including their hometown, date of birth, qualification types, family registry, resumes and self-evaluation of their personality as well as inspection reports by local police officers and village heads. The classified documents were of two types: requests for registration with the colonial authority by neophyte lawyers and requests for transfer by the more established practitioners.

Another important source of data came from The Official Gazette of the Colonial Government through which I reconstructed the profiles of all registered lawyers. With the aim of understanding how the colonial legal structures were shaped by the lawyers' ethnicity and qualifications, I reconstructed the profiles of 814 registered lawyers including their name, ethnicity, qualification, education, in-office career, registration site, date of their transfer, registration and withdrawal, and other significant career moves. To verify the accuracy of my profiles, I compared them with the information gleaned from other secondary sources including the chronicles published by The Korean Bar Association and The Supreme Court of Korea. These chronicles included lists of registered lawyers and judicial officials from 1895 and 1906. These chronicles also contained a list of Korean lawyers registered under Japanese names.

Biographies, autobiographies, alumni reflections, and government reports were also useful in cross-checking the accuracy and reliability of my data. In particular, I looked at The List of Pro-Japanese and Anti-National Collaborators published by The National Committee of Republic of Korea for Investigation into Pro-Japanese and Anti-National Collaborators and their

Behavior (*Ch'inil panminchok chinsangkyumyǒng wiwǒnhoe*) which contained detailed sections on judicial officials. Those who had passed The National Civil Service Examination or Bar Examination and reached high positions in Korea after independence also published biographies and autobiographies, which became another source of data. I examined these materials not only to check the demographic information, schools, and in-office careers of the lawyers but also to understand what inspired them to become judicial officials and lawyers.

### **Scholarly Contributions**

In addressing the sharp discrepancy between the high prestige of lawyers as individual practitioners and their relative insignificance as a professional group, this dissertation pushes the boundaries of the three scholarships. First, it contributes to profession studies by linking it with historiographies of colony and empire. In contrast to the literature based on a set of specific assumptions, this research suggests that professionalization in the colony was and is a multi-layered process in which the institutionalization of law schools, legal examinations, and the court system do not necessarily lead to a substantive change in the underlying logics, identity, or prioritization of the legal profession—all hallmarks of professionalization. Rather, the present study argues that professionalization depends on socio-legal conditions that differentiate and integrate its members. This dissertation also contributes to colonialism studies by delineating the colonial modernity of the attorney system. Demonstrating the ways in which the colonial rule has produced lawyers as powerful individuals while leaving the bar association relatively disempowered, this research draws attention to the unequal division of labor within knowledge production between the metropole and colony. In contrast to the scholarship on colonial

modernity that have highlighted the material and infrastructure developments within a colony (Shin and Robinson 1999), this research highlights how Korean subjects during the Japanese Empire became empowered as legal practitioners while being simultaneously deprived as knowledge producers. Finally, mirroring the thrust of recent transnational studies of the two Koreas and East Asia this study highlights the unequal interactions between the metropole and colony. In focusing on the formation of a transnational legal system, this study demands that careful attention be paid to the historical specificity of Korea and its reliance on Japanese colonial rule to build a hybridized attorney system. The legal profession can be considered one of the critical sites for social mobility in Korea in the early twentieth century. By synthesizing the diachronic and synchronic aspects of this transformation within the Korean attorney system, this study thus contributes to comparative studies of colonial legal systems.

## **CHAPTER 2: LAWYERS AS CULTURAL HOLES**

### **The Rise of Lawyers and the Fall of the State in Korea Circa 1895-1909**

#### **Chapter Summary**

In this chapter, I argue that lawyers in Korea became professionals by playing the role of “cultural holes” during a period of political transformation from 1906 to 1909. By “cultural holes,” I mean exercising agency that arises from structural disparities and therefore gaining empowerments that originate from the brokerage role. After demonstrating the creation of a structural chasm between the traditional and the modern-yet-still-colonial legal systems during this transformation through archival research circa 1895 to 1909, I explain why lawyers, who did not become professionals until 1906, quickly became prominent through their role as cultural brokers who claimed both the need and legitimacy of legal knowledge. This study recommends the importance of understanding the rise of a profession in its proper historical context, drawing on the classical theses on professions.

#### **Introduction**

Andrew Abbott’s seminal work, “The System of Professions (1988),’ defines a profession as an occupational group with an exclusive control over the (re)production of knowledge vis-à-vis outsiders by applying its abstract knowledge to specific cases. Such ideological understanding of professions is useful for explaining how lawyers vanquish their

competitors to emerge as a profession, but leaves explored the processes by which their expertise is historically constituted and their exclusive jurisdiction shaped by non-professional entities (e.g., the state and the market). Addressing these missing elements is the more critical for explaining the constitution of legal professions, as the legitimacy of their expertise and its application to various legal domains stems from the historical configuration of the legal system (Rue 1986). Insofar as the bulk of the work of lawyers' and judicial officials' lies in the excavation and interpretation of abstract legal codes, their rise as a legal profession depends on several factors including 1) a legal system that carves a separate realm of law out of the general administration; 2) the codification of norms and customs into laws; and 3) the legalization and legitimization of legal knowledge. At issue then is not whether an occupational group is able to solve a problem faster and better than its competitors, but to understand the historical process that a problem becomes socially recognized under a certain legal system. In other words, the rise of lawyering as a profession is not simply a matter of the absence or presence of a certain occupation but the emergence of a legal system including, for instance, the proliferation of law schools and bar associations alongside the emergence of modern lawyers.

Examining the emergence of lawyering as a profession in Korea at the turn of the twentieth century, however, confronts the irony of witnessing the collapse of traditional state functions precisely during the same period. One year after the proclamation of the Lawyers Law and the introduction of legal services in November 1905, three Koreans registered to the Ministry of Justice and started to practice law in 1906. By the end of the decade, lawyers stood as prominent experts in lawsuits. Their rapid rise marked a decisive step towards a Westernized legal system where professional judicial officials, independent of administration rule, presided over the property disputes of individuals within the courts. However, the rise of legal

professionals cannot be simply attributed to the series of legislative reforms that occurred between 1895 and 1905. Despite the reform of the legal institutions during this period, Korea maintained a legal system that was remarkably old-fashioned until 1905. In fact, it was not until the forcible intrusion of the Japanese colonial system into Korea in 1908 that the judiciary and courts in Korea experienced irreversible change. Certainly, while the years from 1906 through 1909 witnessed the dramatic appearance of lawyers, they were also filled with many preliminary steps towards the full colonization of the country by Japan in 1910. In 1907, the Korean government revoked the absolute authority of the monarchy over the judiciary—a legal principle which it had been dedicated to from 1897 to 1905—preparing for the ceding of its judicial sovereignty, including the Ministry of Justice, the courts, and prison to Japan in 1909. Over the period from 1907 to 1909 for which the modern-yet-still-colonial courts started to be established throughout the Korean peninsula, Japanese judges ruled over private cases with Japanese civil laws in Japanese in Korean courts.

Within this context, this chapter explores how Korean lawyers became radically integrated in the fabric of traditional Korean society through their role as “cultural holes” (Pachucki and Breiger 2010). In his pioneering work on “structural holes,” Ronald Burt refers to structural holes which connect two or more groups of actors otherwise disconnected and described advantages that originate from the controlling position (Burt 1992). Expanding and complimenting structural holes, the notion of “cultural holes” highlights the roles of certain actors or groups of actors in connecting two or more structural practices or networks that would otherwise remain unconnected. They do so, however, by foregrounding the cultural contingencies and institutional logics of this “hole-building” or “functioning” which contrasts to the structural hole that implicitly assumes that the advantage is structurally and automatically

given to the node at the hole (Pachucki and Breiger 2010; Xiao and Tsui 2007; Podolny 2001). Rather, the cultural holes focus on the interactions between social structures and social agency, drawing on structural accounts in sociology and other social sciences. As structuralists have proposed, social structures consist of multiple sets of relations, practices, meanings, and networks that sometimes converge and merge (Sewell 1992; Bourdieu 2007; Sahlins 1985; Hays 1994). Structural understanding does oppose a binary approach between structure and culture; which is typically stated that structures are fixed, stable, and durable, whereas cultures are malleable, unstable, and subjective, but proposes that social structure can be viewed as consisting of two central interconnected elements: systems of social relations and systems of meaning (Hays 1994; Sewell 1999).

Such structural accounts are particularly useful in understanding legal structures within colonial contexts. Legal historiographies of colonies have envisioned colonization as a transformative process that hierarchically rearranges existing legal orders by integrating native laws into a stratified imperial order as a servient legal source (Benton 1999; Merry 1999; Likhovski 2006; Cohn 1996). In addition to differentiating between “dominant and servient laws” (Hooker 1975: 4), the colonial legal structure usually consisted of two courts: the state-official courts that primarily dealt with secular cases and native courts that mostly covered cases involving religious or customary laws (Christelow 1982). As revealed in Hoffman’s comparative study of French rule in Morocco in the 1930s (Hoffman 2010), customary laws were regarded as a residual in the sense that “[they] consisted of what remained after colonial powers fretted out (852).”

Such dual judicial structure in the colony can be viewed as originating in the nature of the colonial state. In addition to an understanding that colonization meant the monopolization of

physical forces by external conquerors, the colonial state creates political, economic, social, and cultural gulfs within the colony between the colonized and the colonizer through the “rule of colonial difference” (Chatterjee 1993: 17). In doing so, the colonial state reproduces a system of differentiation and inequality among the very people that it incorporates (Cooper 2005). Similar to the functioning of the normative state (Scott 1999), the colonial state and its system of administrators abstract social relations from their local circumstances and remap them onto a standardized grid. Among the many projects administered by the colonial state along these standardized grids in order to govern were sanitation and medicine as well as urban planning (Henry 2005; Cohn 1996; Manderson 2002; Arnold 1993). While a central feature of colonial rule and its many projects was the knowledge of the colonized (Said 1978; Steinmetz 2008; Steinmetz 2003), this knowledge was always incomplete at best and downright wrong at worst. As Hoover Wilson has proposed (2013), the organizational forms of the colonial states and their rulers were always built on the limited knowledge and understanding of the colonizer, necessitating the role of a cultural mediator who works as an interpreter between the colonizer and colonized (Lo 2002; Sharafi 2007). To rephrase the colonial state in regard of the structural accounts, the colonial state is comprised of different networks of meanings Harrison White (1992, 315) or an island of meanings Eviatar Zerubavel (1991) between the colonizer and the colonized. In other words, the colonial state can be defined a state of governance that seizes physical coercion through implementing modern institutions but seeks cultural and symbolic power by developing discourses of differentiation and integration.

These structural and cultural conditions in the colony elevates the lawyers to their cultural interpreter position. Colonization served as an impetus to change to a new legal system that necessitated the legal profession. Structural conditions and individual agency presume each

other (Sewell 1992). If no structural and cultural opportunities were available to the lawyers, they would have had few chances to demonstrate their legal prowess. Likewise, if they held no expertise appropriate for such structural and cultural change, the opportunities would have been useless. Therefore, the particular arrangement of structural and cultural opportunities arranged by the colonization facilitates the legal profession and experts in law to rise.

In the meantime, the literature in the study of professions has highlighted the importance of expertise and jurisdiction for a profession to secure their jurisdiction against external competitors and social institutions. However, the literature has not paid attention to the process in which the expertise is historically and socially (re)constructed. The negligence to the historical reconfiguration of the expertise is critically important to study legal professions in the non-Western context, because colonization marginalized, replaced, or even destroyed the indigenous legal system that had served as a foundation of the expertise before the advent of Western lawyers. In explaining the rise of legal professions in most colonies, it is imperative to investigate the historical juncture that changed the legal systems.

Drawing on the notion of cultural holes to explain the surge in the number of lawyers in Korea in the early 1900s, I explain how cultural holes enabled the legal profession's knowledge of law to be significant and granted lawyers an exclusive control over litigations. At the turn of the 20<sup>th</sup> century, the legal system of Korea barely recognized nor allowed the expertise of lawyers to prevail within its jurisdiction because it had long maintained the state-penal codes used occasionally to rule private litigations. The lack of civil codes regulating individual relations and contracts hindered the rise of experts proficient in interpreting civil codes. Ironically, the legal profession was established as the Japanese colonizers usurped the judicial sovereignty of Korea in the late 1900s. During this period, with the recognition of lawyers'

knowledge of modern law, the legal profession gained exclusive control over application in lawsuits, because the traditional state's judicial functions were dissolved and replaced with the colonial judiciary.

## **A Brief Description on the Legal System in Korea before 1905**

### *The Traditional System before 1895*

The legal systems of Northeast Asian countries (China, Japan, and Korea) were less favorable than European countries for private practitioners to conduct lawsuits on behalf of their clients. In European countries, the sources of civil codes had existed independently of the state-penal codes until the sixteenth century and the collection of legal sources and their codification into a system of unified state codes was, therefore, one of the main tasks of building a modern nation-state. Customary laws, which evolved from customs scattered across regions, went through processes of enactments by the state and judiciary. In contrast, the legal systems in Northeast Asia, which were dominated by a highly centralized bureaucracy armed with sophisticated state-penal codes, subordinated civil code elements into penal codes. Although the Chinese state took the cases filed in courts very seriously and private lawsuits were adjudicated by the court (Huang 1998), lawsuits among individuals depended on stipulated state-penal codes, social customs, or the understanding of local magistrates. Local customs had remained an uncoded behavioral guide among individuals but had hardly been legally enforceable. Instead, the local magistrate's understanding of a case, *chori* (naturalis ratio), was much more important than the customs. Moreover, civil matters such as relations among individuals were easily transposed into public/penal matters punished by state codes since there was little distinction

between civil and criminal cases. While existing customs evolved into laws or legal sources in France, there was no such transformation of customs into customary laws in Chosŏn-Korea (1392-1910).

In Chosŏn Korea, the Grand Codes of the State Governance (*Kyŏngguk taechŏn*) were proclaimed in the 15<sup>th</sup> century based both on earlier national codes (*Kyŏngche yukchŏn*) passed in 1397 and the Great Ming codes. While Korea's bureaucracy had maintained judicial organizations to handle judicial affairs, the judiciary existed as part of the main administrative body of the central and local governments. In the bureaucratic structures of Chosŏn-Korea, judicial affairs were conducted by multiple agencies including *Hyŏngjo* (the Board of Punishment), *Ŭgŭmbu* (the Royal Tribunal), *Sahŏnbu* (the Censorate), and *Hansŏngbu* (the Bureau of Seoul). Aside from these central offices, local magistrates ranging from *Hyŏn* (village or town), the lowest local administrative unit, to *To* (Province), the highest local unit, exercised their judicial authority over their respective jurisdiction. Since adjudication was considered part of administration, it was taken for granted that magistrates ruled over both civil and criminal cases.

Many governmental agencies exercised judicial power but the majority of officials in charge of these agencies were not legal experts. From *Hyŏngjo* of the central government to *Hyŏn* in villages, most officials at higher posts were recruited from the yangban literati-aristocrats who had passed the national civil or military exam. Officials who specialized in law, called *yulkwon*, came from the successful candidates of the technical exam that covered multiple branches of knowledge including foreign language, medicine, astronomy, accounting, painting,

and law.<sup>7</sup> After passing the national exam, the *yulkwan* officials were primarily assigned to several sub-departments of *Hyǒngjo* before being reassigned to other agencies as needed (To 2014). Although *yulkwan* officials specialized in law and its interpretation, their positions were limited to mid-low ranking ones with limited room for promotion within the bureaucracy. In other words, they received limited social respect. In the bureaucracy, their promotion was limited to the lower echelon (12<sup>th</sup> out of 18 ranks) even though they had passed the national exam alongside other successful candidates (N. Yi 1999). Even within the *Chapkwa* exam passers, law officials were more marginalized than interpreters or doctors. Although the successful candidates of the foreign language and medical exams were limited to the upper 3<sup>rd</sup> of the bureaucracy that consisted of 18 ranks (the fifth out of the 18 ranks), the monarchy and the aristocrats occasionally recognized the distinguished achievements of some officials by promoting them to the highest rank in the bureaucracy.

Social respect given to private agents was almost negligible. The activities of private agents or deputy-representatives in litigations had been illegalized from the mid sixteenth century. Agents specializing in litigation, called *oijibu*, existed as a counterpart of the *Tokwanjibu* (aka *Changyewǒn*) or *chibu*.<sup>8</sup> Retired lower ranked officials of the agency, *oijibu* played the role of brokers linking litigants to lawsuits by assisting them to prepare documents to offices. But, their activities remained illegalized until 1895 under the Confucian belief that litigations unnecessarily stirred up social disharmony (Cho 2002).

Laws were not a source of arbitration to be publicized among the people nor a medium to regulate their individual relations, but a source of instrumental instruction for officials involved

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<sup>7</sup> Two officials of these organizations were recruited from national exams. One was the *yangban*, the Confucian literati armed with Confucian learning, who passed *Munkwa* (the National Civil Service Exam), whilst the other was the *chungin* technocrats specializing in law who passed *Chapkwa* (the National Technical Exam).

<sup>8</sup> *Oijibu* means outside of *chibu* in Korean. *Chibu* referred to *Changyewǒn*, an organ that handled the registry of slaves.

in judicial functions. Originally, the Korean legal system, which had adopted and modified the Chinese system, did not separate the civil and criminal codes. The confessions of accused were regarded as an important piece of evidence not because they served as proof of the crime but because they represented the criminal's self-conscience for guilt (Moon 2010). Not only were lawsuits ideologically discouraged but the lack of a clear distinction between the civil and the penal codes also blurred the distinction between private lawsuits and criminal ones so that the former was often judged as part of the latter. Private debt issues were often transposed into a crime that was accompanied by corporeal punishment or imprisonment. Since there were few civil code elements and violations of individual relations were punished by the criminal codes, the learning and teaching law became limited to a few officials in the local or central governments. In a civil lawsuit during the Chosŏn period, the plaintiff and the accused physically appeared in front of a district magistrate who held both administrative and juridical power in his hand. As in a criminal lawsuit, the dependent had no right to an advocate (Lee 1999).

Under the traditional Korean legal system, the expertise of legal professions lacked social recognition in either the public or private sector. Despite their important knowledge of law, judicial officials remained at the periphery of bureaucracy. Both the absence of civil codes and the lack of institutions to teach and train legal experts discouraged the rise of lawyers in Korea. Given the state of the legal system, it was difficult to expect the rise of legal professionals armed with legal knowledge who could enjoy exclusive rights over litigation.

#### *Legislative Efforts and Reforms on the Legal System in 1895-96*

The legislative efforts and reforms for the judiciary and courts between 1895 and 1896 occurred in two directions.<sup>9</sup> On the one hand, the Korean government established two Western-style courts in Seoul by promulgating the first Court Constitution Laws (CCL) in 1895. The 1895 CCL stipulated five kinds of courts: the Court of Seoul (Hansŏng chaep'anso), the Local Courts (Chibang chaep'anso), the Circuit Court (Sunhoe chaep'anso), the Special Court (T'ŭkbyŏl chaep'anso), and the Higher Court (Kodŭng chaep'anso).<sup>10</sup> Although the Korean government allowed the local magistrates to occupy the position of judicial official in the Local courts for a while, it soon established the Court of Seoul and the High Court in Seoul, both of which began to recruit new judges and prosecutors in greater numbers. One significant recommendation of the 1895 CCL was that the two kinds of modern-style courts—the Court of Seoul and the Higher Court—be separated from the administration (P. Park 1974). Along with the promulgation of CCL, the Codes on Procedures for Civil and Criminal Lawsuits (Minhyŏngsosong kyuchŏng) were also proclaimed on April 29<sup>th</sup>, 1895. Dividing civil cases from criminal ones, these codes enacted 25 articles for civil cases and 19 articles for criminal ones. The regulations allowed litigants to hire agents in litigation if necessary, by legalizing the participation of private agents in lawsuit that had been banned since the mid-sixteenth century. As a result of these legislative efforts between 1895 and 96, two types of agents (*taeŏnin* and *taesŏin*) started to provide their clients with services for both oral representation (*taeŏnin*) and the preparation and filing of court documents (*taesŏin*).

The other direction of reforms lay with legal education. The Korean government established a state-run school to train judges and prosecutors. Paralleled with the establishment of the new courts in 1895, the Jurist Training School (K: Pŏpkwan yangsŏngso) opened its doors

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<sup>9</sup> Chosŏn-Korea's self-reliant reforms began in 1894. However, the reforms on the judicial system began in 1895.

<sup>10</sup> Although the 1895 CCL declared that the government shall establish the Circuit Court and the Special Court in sooner future, both courts hardly operated.

in Seoul in April 1895. According to class schedule published in 1895, three Japanese instructors taught civil law, civil law procedures, and criminal law on top of traditional law from 10:00 AM to 2:00 PM every weekday (The Centennial History of Law School of Seoul University). Since the school's goal was to produce judicial officials in a relatively short period of six to even three months, the school produced its first graduates in the following year. In addition to training judicial officials at the national institute, the Korean government also strived to produce them by sending a group of students to law schools in Japan. As a part of a study abroad program to Japan, about a dozen students studied law and returned to Korea between 1900 and 1904.

#### *The Kwangmu Conservative Reforms from 1897 to 1905*

Despite these legislative reforms of the legal system, the outcomes were less fruitful than expected. The reforms in 1895-96 were fragile in the sense that the key figures of the cabinet who propelled the reforms were too politically dependent on Japan. Neither was the Korean monarchy supportive of the reforms designed for a constitutional monarchy that challenged his authority. Various domestic and international political events such as the assassination of Queen Min in 1895, the subsequent fleeing of the Korean monarchy to Russian embassy in 1896, and international relations around Korea and China contributed to the collapse of the pro-Japanese cabinet in 1896 and left Korea in a political vacuum until 1905 when the Japanese colonizers made the country its protectorate. The King of Chosŏn-Korea employed this short term of peace to reinforce his power and authority and to secure national independence. The so-called *Kwangmu* Reforms from 1895 to 1905 declared his absolute power by nullifying the outcomes of reforms made between 1895-96 (To 2014). With a declaration of the empire's independence in 1897, the Korean Emperor, first of all, nullified the division between adjudication and administration by reinstating the courts under the supervision of the administration in 1899. The

Court of Seoul and the Higher Court became affiliated with the Bureau of Seoul and the Ministry of Justice respectively. With the chief and the vice-chief of the Bureau of Seoul (Hansŏngbu P'anyun and Hansŏngbu Soyun) concurrently holding the positions of both the chief judge and one of the two judgeships of the Court of Seoul, plans to produce an independent and specialized corps of judicial officials were also cancelled. The chief justice of P'yŏngriwŏn was occasionally appointed from the position of either the Minister of Justice or Vice-Minister of Justice until 1904.<sup>11</sup> The Jurist Training School closed in 1897 after producing only two cohorts of about 80 graduates. While ten graduates were appointed to the Ministry of Justice and the new courts, the rest became assigned to unrelated departments or disappeared from the government offices.

Even though the reforms in 1895-96 had divided the judiciary from the administration, most intellectuals in Korea of both conservative and progressive backgrounds encouraged the close monitoring of the courts by the Ministry of Justice. Conservative officials, in particular, believed that the division of administration and judiciary to be inefficient and ineffective. In 1898, Yi Yuin, the Minister of Justice, sent a petition to the King insisting that the judiciary be integrated into the administration in order to make the fulfillment of judicial duties more efficient.<sup>12</sup> Such conservative understanding towards the status of the judiciary converged with the King's desire to strengthen his authority vis-à-vis international powers and domestic aristocrats. Even the strong critics of absolute monarchism, the Independent Society (Toknip Hyŏphoe), did not believe the establishment of an independent judiciary to be an urgent task.

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<sup>11</sup> 1904.1.11 (a memorial of Yi Kŭnmyŏng: the Prime Ministry of Korea in 1904; The Daily Records of the Royal Secretariats)

<sup>12</sup> In my opinion, the trials of Kyŏnggi Province should be placed under the jurisdiction of the governor and the trials of Seoul be placed under the jurisdiction of the chief insofar as both positions should be established and not dissolved. If the work related to the two courts is important and therefore should be expanded and not shrunk, the governor and the chief should exercise their jurisdiction in the courts (January 26, 1898, The Diary of the Royal Secretariat).

Rather, the society insisted that the judiciary should be monitored and censored not by the monarchy but by the administrative government (The Independence, November 6, 1897).

During the *Kwangmu* period, the appointments of judicial officials were by and large unstable as the absolute monarchy became deeply involved in the personnel management of judicial officials. The traditional qualifying system of judicial officials was replaced by whimsical criteria in favor of the monarchy. According to the Codes Regarding Appointments of Military and Judicial Officers promulgated on April 27, 1900, judicial officials were to be selected from law school graduates who had passed the jurist examination administered by the Ministry of Justice or from those candidates who were thought to have a mastery of judicial affairs even though they did not have a law school diploma (The Collections of Modern Laws and Acts in Late Chosŏn-Korea: *Hanmal kŭndae pŏpŕyŏng charyochip*). However, the real intent of such measures was to recruit those royal to the king to the judiciary positions. In particular, given the closing of the Jurist Training School in 1896, these measures contradicted efforts to elect officials familiar with modern laws. On the contrary, the positions of judicial officials were filled by traditional literati, the monarchy's close associates, or those who had worked in the Board of Punishment before the 1895 reforms. The monarchy wished to keep the judiciary under his direct control as his predecessors had done with the Royal Tribunal. Thus, the chief judges of the Court of Seoul and the Higher Court (later renamed to P'yŏngriwŏn in 1899, the Court of Cassation) were appointed from his first-aides although other judges and prosecutors were recruited from the internal pool of judicial officials. Of the eighteen chief judges in the two new courts over the *Kwangmu* period, no one was promoted from ordinary judgeship. Instead, all came from different departments or bureaus within the bureaucracy. In contrast to his belief in the first-aides, the Korean emperor was suspicious of the study abroad students in Japan

believing them to be potential instigators of political coups. Some of the study abroad students did become involved in coup attempts against the Emperor at the turn of the twentieth century. Consequently, few became appointed to office upon their return. Moreover, the ministers and officials of the Korean government not only shared this distrust of the returning students but also doubted their ability to properly rule Korean cases after having been schooled in Japanese law (Sichŏng kaesŏn hyŏpŭihoi Dialogue November 11, 1906).

Whereas the laws and regulations of Chosŏn Korea gestured toward a Western-style judicial system, the actual operations relied heavily on traditional customs. Although the Jurist Training School reopened in April 1903, it taught traditional laws to the students.<sup>13</sup> The promulgation of the Great Criminal Codes (Hyŏngpŏp taechŏn) in April 1905 exemplified the government's aims of incorporating Western laws into traditional legal codes. The Codes, however, were simply a compilation of every possible crime and its corresponding punishment. Nowhere in the Codes were the rights of individual subjects defined; the Western laws appeared in the Codes to supplement the traditional codes (The Sourcebook of Modern Laws and Acts in Late Chosŏn-Korea: *Hanmal kŭndae pŏpŕyŏng charyochip*).

While the monarchy and government were very much concerned with reforming the public sector of the legal system; even if it was not to establish an independent judiciary, they paid little attention to reforming the legal institutions within the private sector. The Korean government was aware of what lawyers did. Just like newspapers and intellectuals in the West had introduced the legal institutions to the public, the Korean people were exposed to the Western-style attorney system as early as the 1880s (Daily Hansŏng; Hansŏng sunbo 1884). Instead, they considered the legalization and regulation of native legal agents (*taeŏnin* or *taesŏin*)

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<sup>13</sup> A 1903 report by the Ministry of Justice asked the King to reprint and distribute the Great Ming Code to the students of the Jurist Training School as the remaining volumes of the Codes at the Ministry of Justice were insufficient to educate them (August 3, 1903, The Diary of the Royal Secretariat).

to be enough. The Ministry of Justice issued an executive ordinance regulating these agents on September 4, 1897 (The Sourcebook of Modern Statutory Laws at Late Chosŏn-Korea; *hanmal geundae böpnyung charyojip*). Although their roles looked similar to those of lawyers in that they engaged in part of the litigation, the majority of *taesŏin* or *tæŏnin* did not have legal expertise; instead, they helped the litigants to prepare and file legal documents or spoke on their behalf in the court. Their legalization did not improve the quality of litigation but, on the contrary, caused myriad problems and inconveniences for the litigants including the overcharging of litigants for filing court documents (The Imperial Gazette 1897).

Even as late as 1905, the legal system of Korea still remained in the traditional sphere. While the political orientation of Korea at the turn of the twentieth century subordinated the judiciary within the administration just like the traditional legal system, the reforms stressed a retrospective reconstruction of a monarchy with an absolute control over the legislative, administrative, and judicial powers. Given such conservative orientations of the *Kwangmu* reforms, it is not surprising that few attempts were made to investigate the local customs and norms in order to promulgate the civil codes.<sup>14</sup> Whereas the Great Code of Penal Laws was declared in 1905, the codification of civil laws through investigating and collecting indigenous customs was postponed. Admittedly, the Korean government organized as a belated attempt the Committee for Investigating Customs and Enacting Civil Laws in July 1905.

In short, the reforms failed to bring about an independent judiciary and the promulgation of civil codes. Although some reforms were made, few policies or enactments paid attention to the private sector, including the introduction of the attorney system, but rather simply used old

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<sup>14</sup> Ironically, the establishment of Korea's civil codes through investigating indigenous customs was fulfilled by the Japanese colonizers as a course of colonization in 1907-09 years. However, the trial to establish Korea's independent civil codes in Korea from Japan was discarded as Japan annexed Korea under its direct rule (Y. Yi 2011).

measures to regulate private relations. Expertise of law was hardly recognized in the private sphere of law in Korea. The Korean government was either unable or unwilling to create an independent judiciary. This not only meant engaging in organizational reform but more fundamentally creating a field of jurisdiction for lawyers. In fact, the Korean government possessed few resources and even less will to enact the civil codes. Rather, the government focused its attention on promulgating public codes that incorporated both traditional and new elements of laws in 1905. Since there were no laws or regulations that defined their roles or demanded their expertise, Korean subjects proceeded to litigation without a lawyer or, at best, a non-lawyer agent. Up until November 1905 when the first Lawyers Law was promulgated in Korea, the Korean government took few actions to institutionalize an attorney system. On the contrary, the Korean government believed that regulating non-lawyer agents, called *taesŏin* (or *taesŏpcha*), was enough to regulate the transactions among Koreans and between Koreans and foreigners, which had dramatically increased at the turn of the twentieth century. It is significant that the lawyers' law was enacted in November 1905 when the Japanese colonizers, who believed in the critical importance of lawyers for the purchase of land in Korea by the Japanese settlers, were about to take over Korea's diplomatic sovereignty.

### **The Co-existence of Two Legal Structures as a Result of Japan's Encroachment**

#### *In-Between: the Appearance of First Lawyers in 1906-07*

Two events in late 1905 are particularly noteworthy for bringing new legal system into Korea. One was the enactment of the First Lawyers Law on November 8<sup>th</sup>, 1905 from such

transitional environment (November 8, 1905 Law No. 5).<sup>15</sup> Of its many articles, the first and second articles are of particular interest in defining the roles and qualifications of lawyers.

- Article 1. Lawyers act as an agent in litigation and exercise advocacy by procuring clients or the criminally accused.
- Article 2. Lawyers, with the permission of the Ministry of Justice, should become qualified by satisfying one of the following conditions: 1) being a successful candidate of the Deliberate Selection Process of Judicial Official Committee or the Judicial Examination administered by the Committee; 2) being a successful candidate of the Korean Bar Examination; 3) being a Member of the Bar Examination Committee; or 4) being a retired Judge or Prosecutor of P'yŏnriwŏn (the Court of Cassation), or of the Court of Seoul, or Instructor of the Jurist Training School who has served for more than one and a half year.

In Article 1, it states that lawyers should be understood as having a special authorization to exercise advocacy in criminal cases in addition to acting as an agent in litigation. In fact, the first Lawyers Law did not clearly distinguish practicing lawyers from indigenous *taeŏnin* agents in terms of being a deputy-agent in civil litigation. Rather, the feature entitling lawyers to act as defense for the criminally accused became magnified. While many non-lawyer agents played the role of an agent in a civil lawsuit before the enactment of the Lawyers Law, the role of advocacy in criminal lawsuits represented great progress and was a definitive feature of the new legal profession. In fact, in traditional Korea, defending criminals was strictly prohibited. Thus, the advocacy for criminals was a distinctive jurisdiction granted to lawyers from 1905 onwards.

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<sup>15</sup> It is unknown why the Lawyers Law was enacted in such a hurry in November 1905. In fact,

Newspaper advertisements by early Korean lawyers in the subsequent years illustrate this well. The first, second, and third conditions in Article 2 strictly limited the qualification of Korean lawyers. As of 1906, neither the Judicial Examination nor the Bar Examination were administered. The fourth condition was also committed to guaranteeing the quality of practicing lawyers by limiting the position to those who were judicial officials within modern-style courts—P’yŏngriwŏn and the Court of Seoul.

Following the promulgation of the First Lawyers Law in 1905, Hong Chaeki became the first person in June 1906 to register with the Ministry of Justice as a lawyer and to practice law in Korea (The Imperial Gazette, July 3th, 1906). A few months later in August and November, Yi Myŏnu and Chŏng Myŏngsŏp respectively also obtained permission from the Ministry of Justice to practice law in Korea. The first Korean Bar Examination was also administered on June 24<sup>th</sup>, 1907 (Official Gazette No. 3809). The exam produced six lawyers out of twenty applicants. One year later in 1908, the second Korean Bar Examination was administered in Seoul, producing four successful candidates of twelve applicants.

The other event, presumably even more important than the first one, was the appointment of Yi Myŏnu as the head of the Jurist Training School on December 11<sup>th</sup>, 1905. On one hand, his appointment represented the advancement of the study abroad students to Japan into the judiciary and the field of law in Korea. As aforementioned, Yu was one of the students who had studied law in Japan from 1895 and returned to Korea in 1900. However, he did not become employed by the Korean government until 1902 and then merely in a lower-mid rank (*chusa*) position in the Ministry of Agriculture. He finally entered the judiciary after his appointment as a probationary prosecutor in June 1904 by the Korean government. Two days after his appointment as the head of the school, he replaced all the instructors who had primarily taught

traditional laws with Hong Chaeki, Yu Munhwan, and other study abroad students from the 1890s (the Diary of the Royal Secretariats, December 13<sup>th</sup>, 1905). The massive layoff of the old instructors and the appointment of new ones signaled the transformation of the Jurist Training School into an institute geared towards teaching Western and Japanese laws. The replacement accordingly, stirred up a conflict between the practitioners of old and new laws. Those study abroad students who had learned law in Japan refused to recognize the old laws or senior students who had had learned the traditional legal codes after entering the school in 1903 (The Daily Korea March 13<sup>th</sup>, 1906). In 1906, with the employment of study abroad students by the Korean government, there was a further shift from indigenous to a new legal system.

With the introduction of the attorney system, law education started adopting a system of modern laws; nonetheless, these measures did not automatically guarantee the jurisdiction of lawyers over lawsuits. As a matter of fact, the occupational title, lawyer (K: *pyŏnhosa*), held a meaning that was closer to a qualifier than a noun in entitling the lawyers to exercise advocacy for the criminally accused. Article 1 of the Lawyers Law in 1905 continued to define the roles of a lawyer as *taeŏn* (oral representation) and *pyŏnho* (advocacy). This was a significant progress in the sense that the Korean government had not previously recognized advocacy for the criminally accused. However, the Lawyers Law did not inhibit the brokering of native agents' in litigation nor differentiated lawyers from other non-lawyer agents. By 1907 there were many native agents, often called *taeŏnin*, who served as agents in their clients' lawsuit. Until 1905, a *taeŏnin* was closer in meaning to a messenger serving his master (Kyuchanggak Document No. 27318). The *taeŏnin* could also be other family members, relatives, friends, or neighbors appointed on behalf of youth, elderly, or a woman who were unlikely to appear by themselves in the court. In other words, even after the promulgation of the Lawyers Law, the lawyers coexisted along with other

native agents in the field of litigation for years. In fact, most Koreans did not understand what lawyers did and how they differed from the existing *taeŏnin* agents promoting the lawyers to work towards differentiating themselves from these agents by adding an additional occupational category of an oral agent-lawyer (*taeŏnin pyŏnhosa*).

Complicating matters even more, not just the authorities but even the clients occasionally looked down upon the lawyers. The authorities took for granted the use of corporal punishment to discipline lawyers. In 1906, the first Korean lawyer, Hong Chaeki, was accused of being impolite to a plaintiff's wife. After the plaintiff charged him, the Ministry of Justice sentenced Hong with 80 lashes. With no penal codes for regulating such insulting behavior, however, the Ministry had to draw on codes in the Great Ming Codes that specified the punishment of such [ethically and morally] inappropriate behavior even without a specific statement (The Korea Daily December 29<sup>th</sup>, 1906). Moreover, the ruling of the judges in either Seoul or the local areas did not necessitate the advice of lawyers because most of the verdicts were not grounded in statutory laws but the judge's reasoning. As a result, most Koreans did not feel any needs to hire a lawyer for litigation. Despite their vast knowledge of law, most clients failed to recognize the difference between the lawyers and their non-lawyer agent competitors.

### *The Establishment of the Modern-Yet-Still-Colonial Judicial System in 1908*

While the Second Japan-Korea Treaty (K: Ŭlsa Choyak) made Korea into Japan's protectorate in 1905, it was the Third Japan-Korea Treaty on July 24<sup>th</sup>, 1907 that fundamentally changed the legal system in Korea, even nullifying the reforms that had been made by the Japanese themselves within the previous eighteen months. Itō Hirobumi, the first Residency-General in Korea, wanted Korea to be dependent on Japan but did not advocate an abrupt

colonization process for his earlier terms.<sup>16</sup> Reforming the judicial system of Korea had two goals. One was to garner the support of the Korean people for Japanese rule by reforming the old-tyranny of the judiciary; the other was to abolish the extraterritorial rights imposed by other Western powers. Less interested in direct rule than in gradually expanding its influences over the peninsula, the Japanese colonizers began to reform the judicial system by appointing a dozen of Japanese legal advisors in the courts throughout the Korean peninsula in 1906. However, Itō's first trial conducted within the new judicial system faced strong resistance from the Korean emperor and local magistrates who had been accustomed to exercising judicial power. While the nationalistic judicial officials were by no means supportive of the Japanese policies, the Righteous Army (Korean Guerrillas) arose to resist Japan's intrusion into Korea.

Following the sending of a secret delegation to Hague in the Netherlands by the Korean Emperor in June 1907 in order to plead for Korea's liberation from Japan, the Third Treaty between Japan and Korea (K: Chōngmi Choyak) resulted in the deposition of the Korean Emperor and the division of the judiciary from administration. The Japanese believed that the Korean Emperor and his loyalists in the judiciary were hindering the Residency Office-led reforms to the judicial system. To effect the new division and to secure the judiciary in the hand of the Japanese, more than four hundred Japanese judicial officials from mainland Japan were assigned to posts within the Ministry of Justice and its courts throughout the Korean peninsula. They included the highest posts such as the Chief Justice of the Supreme Court, the Chief Prosecutor of the Supreme Court, and the Vice Minister of Justice. Ending the Japanese Legal Advisor Policies for the Korean courts which the Japanese had introduced in 1906, the 1907

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<sup>16</sup> Itō intervened in extensive areas of Korea's domestic affairs through bi-weekly meetings with the Ministers of the Korean cabinet, even though the Treaty limited his authority to diplomatic affairs. Itō was much concerned with rearranging the legal system of Korea and aggressively pushed for the reform of the court system in Korea, insisting that much of the underdevelopment of Chosŏn-Korea originated from a deficient court system and the unity of administration and adjudication.

Court Constitution Laws (CCL) reconstructed the Korean judiciary and courts into one within which the Japanese judicial officials, with the support of Korean officials, controlled the chief positions. Promulgated in 1906, Korea's new court system consisted of four levels of courts with three trial structures. The new courts opened on August 1<sup>st</sup>, 1908—a full year after the signing of the Third Treaty and eight months after the promulgation of the Court Constitution Laws in December 1907. In addition to promoting these organizational changes, the CCL in 1907 differed from its two earlier enactments in 1895 and 1899 in other substantive ways. In the first enactment of CCL in 1895, independent courts were established in Seoul but the courts in local areas were left intact. In 1899, the courts became a branch of the administrative organizations once again. In contrast, the CCL in 1907 clarified the separation of judicial power from the administration at every level of the courts and made judges and prosecutors to be separated from the local administrative officials. Before 1908, the magistrate of a county (*kunsu*) usually assumed the roles of both administrative and judicial officials, but now the magistrate's role was only limited to administration. The supervisory role of the Ministry of Justice was either minimized or abolished. Before 1908, it was de facto the highest level of court as it presided over the cases filed with the organization. The Ministry of Justice had served as an organ in which the monarchy and the Minister frequently engaged. The CCL in 1907 declared that the Supreme Court is the highest court that finalized ruling and decisions. As of August 1908, however, all of the courts on the Korean peninsula were controlled by Japanese judicial officials. While about 35% of judges and 10% of prosecutors were Korean, none of them occupied a supervisory position.

By 1909, the judicial power of local magistrates was delegated to the courts and the local magistrates remained administrative officials. On July 12<sup>th</sup> 1909, a memorandum pertaining to the administration of judicial affairs and prisons in Korea was signed, which included the

dissolution of the Ministry of Justice. Subsequently, Korean judicial courts and prisons were formally entrusted to Japan. The name change of the highest court from Taesimwŏn (the Supreme Court) to Kodŭng Pŏpwŏn (the High Court) implied that the courts in Korea would soon fall under the Japanese jurisdiction and never be equal to those in Japan.<sup>17</sup>

### *Structural Chasm between New Courts and Old Practices*

Although such changes between 1908-09 expedited the ceding Korea's judicial sovereignty to Japan and its colonization, they contingently concretized the lawyers' expertise with their jurisdiction over litigation. They also have effected marginalizing the native agents in the courts. First of all, the imposition of the colonial court system on Korea caused changes in the verdicts. Even as late as 1907, most verdicts were grounded on traditional ways with the traditional judge usually listening to both the accuser and accused and making a ruling based on his own judgment. What mattered most in the assessment of a case was the judge's reasoning of native norms and customs. With the changes, litigation procedures became more complicated than before. Not only was the language of the litigation documents and court proceedings in Japanese, the procedures were also based on Japanese laws. The number of articles also increased from 43 within the procedure laws in 1899 to 118 in 1907. Moreover, the enactment of the Regulations on Litigation Procedures in 1908 reinforced the jurisdiction of lawyers over the non-lawyer *taeŏnin* agents. The regulations that were promulgated on July 13<sup>th</sup>, 1908 stipulated the entrusting of a litigant with a lawyer or agent. In order to hire a non-lawyer agent for litigation, however, the litigant had to obtain the court's permission. Finally, the official language used within the court proceedings and the filed documents changed from Korean to

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<sup>17</sup> The term pŏpwŏn refers to courts whose status was not stipulated by the Japanese Constitution in the Japanese empire. While courts in metropole Japan were generally called saibansō (chaep'ansō in Korean), courts in the colonies, including Korea and Taiwan, were called houin (pŏpwŏn in Korean).

Japanese. Although the Korean government and the Japanese offices employed interpreters during litigation, the majority of them were not proficient enough in understanding legal jargons and terms.

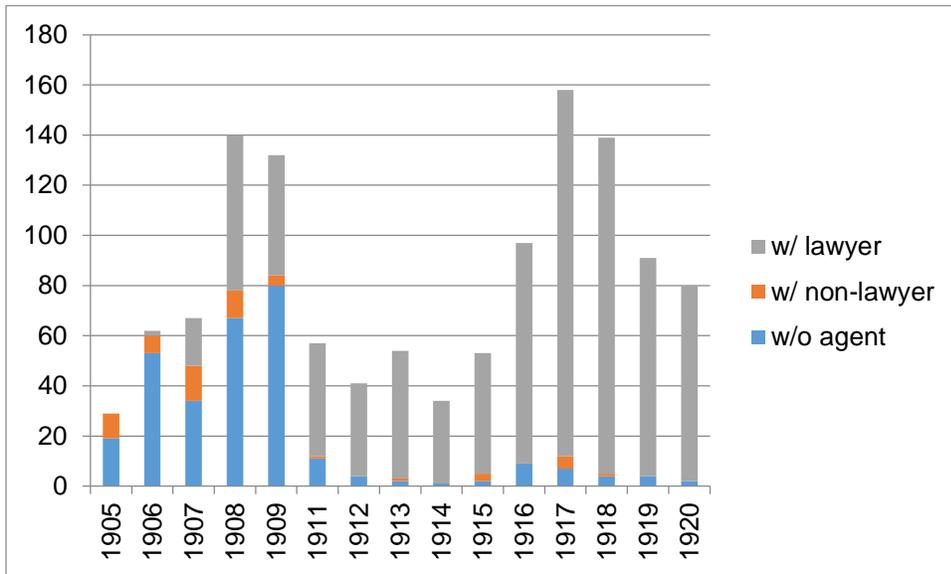


Figure 1 Institutionalized Use of Lawyers in Litigation at the High Court of Colonial Korea; Source: the collection of verdicts of Chosŏn Supreme Court 1905-1909, the collective of verdicts of the High Court of Colonial Korea 1911-1920, the profile of lawyers was collected by the author from the Official Gazette of Chosŏn and the Official Gazette of Governor-General Office Note: w/lawyer denotes cases in which either accuser or accused or both sides hired a lawyer in litigation; the cases in 1910 were missing.

Figure 1 presents the use of lawyers in litigations filed at the highest level of court in Korea from 1905 to 1920 (the Supreme Court of Korea—P’yŏngriwŏn and Taesimwŏn—from 1905 to 1909 and the High Court of Colonial Korea from 1909 to 1920). Three findings are intriguing. First, the use of agents for litigation at the highest courts started increasing from 1908 and became dominant by the early 1910s. In 1906, in only two out of sixty two cases were lawyers appointed by the plaintiff or defendant (3%). In 1907, the number of litigations with a lawyer increased to nineteen out of sixty seven cases (28%). In the next two years from 1908-09, however, the number of litigations involving a lawyer rose to 62 out of 140 (44%) cases in 1908

and 42 out of 133 (34%) cases in 1909. Second, 1911—one year after the colonization of Korea—became an important year when the use of lawyers became a rule of thumb for litigants. Of the total of 57 cases dealt with by the High Court in 1911, lawyers were hired by the plaintiff or defendant in 47 cases (82%). For the following years until 1920, lawyers became an indispensable element for the winning of a case in the High Court of colonial Korea. In 1920, lawyers were hired in 78 of the 80 cases (98%) that were filed. Third, non-lawyer agents nearly disappeared in the 1910s. After the number of cases involving non-lawyer agents peaked in 1907 at 21 out of 66 (19%) cases, their number shrank to only three cases in 1911. With litigants allowed to use non-lawyer agents only on special occasions, the agent came to reside primarily outside rather than inside the court.

Detailed case illustrations can help us understand the changes in which type of agents were used between these two periods. By 1907, the use of non-lawyer agents in lawsuits at the highest court was not uncommon. In a verdict in 1907 (case No. 48 and No. 49, *Kuhanmal minsachaep'an p'angyŏlchip: the Collections of Verdicts of the Supreme Court of Pre-colonial Korea*), Chŏng Ch'angkyu played the role of a non-lawyer agent in the litigation. In another case, Chang Chuyŏng, exercised the role of the non-lawyer agent (Volume 42. Page 269). In another example, both the accused and the accuser hired non-lawyer agents in the same litigation. In a verdict on November 22, 1907 (Volume 45 No. 144). Even some non-lawyer agents seemed to play like a professional lawyer. For instance, Kim Ikche was a non-lawyer agent who appeared in various cases in 1907. He, on one hand, appeared on behalf of a Korean geisha (*gisaeng*), and also appeared in another case.

However, the 1907 CCL profoundly changed the landscape by inviting Japanese judges and prosecutors to Korean courts. Japanese judges, in principle, needed to apply Korean laws to

individual cases; in reality, they relied on Japanese civil laws. A Japanese judge at the P'yŏngyang local court recalled how judges followed civil procedural rules but resorted to Japanese civil laws in substantive laws (Nam p. 49). The Japanese judges resorted to applying Japanese laws because there had few sources to refer to. Complicated litigation procedures and the implicit use of Japanese civil laws fueled the disappearance of non-lawyer agents in litigation from 1909. The imposition of the colonial court system also brought up the issue of translation and interpretation. With the majority of judicial officials and court clerks being Japanese, Japanese language proficiency became an asset among the majority of litigants who were Korean. In 1908-09, while the Japanese office and the Korean government eagerly recruited fluent Japanese speakers, the Korean officials and newspapers criticized these Japanese language-oriented policies. The 1907 CCL drastically changed the status of both lawyers and non-lawyer agents as well. According to Article 63, while the status and rights of the lawyers were recognized by the court, those of the non-lawyer agents needed the court's permission. The 1907 CCL also changed the court environment in which Japanese became the official language. Even with the court interpreters, there were issues of language within the new courts presided over primarily by the Japanese judges. Given the general lack of judicial officials proficient in both law and the two languages, prowess in both was considered noteworthy.<sup>18</sup> The majority of the first generation of Korean lawyers came from students who had been sponsored by the Korean government to study in Japan in the 1890s.

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<sup>18</sup> Thus some Korean judicial officials were recruited from those who spoke Japanese well even though they had little experience in the judiciary. Cho Wŏnkyu was one such case. Except for three months as a lower-mid rank official in the Ministry of Justice from December 1895 to March 1896 as his first appointment, Cho served mostly as a language interpreter for the Korean bureaucracy for more than ten years. Nonetheless, in December 1908, he was named a judge. Other cases included Yi Sŏnchong and Hong Sŭngkŭn. Both Yi and Hong had graduated from the public Japanese Language School in 1904 and entered the office as interpreter officials in P'yŏngriwŏn (The Court of Cassation) and The Ministry of Justice. Neither of them had any law school training in either Japan or Korea (Taehan cheguk kwanhŏn iryŏksŏ 1907; The Collections of Officials' Resumes of the Taehan Empire 1907).

## Lawyers as Cultural Holes

Lawyers located themselves as cultural brokers within these structural arrangements. In concert with the establishment of colonial courts in Korea from 1908, the lawyers made efforts to create a forum in which they could express their expertise and claim jurisdiction. Alongside other jurists and law students, Korean lawyers organized the Society of Jurisprudence (Pŏphak hyŏphoe) in 1908. It is notable that the notion of legal right was introduced and employed by the society's official journal (Pŏphakkye) published in 1908. In the journal, translating the concept of right into "Kwŏnri" into Korean, consisting of the two Chinese characters denoting authority (Kwŏn) and profit or interest (Ri), the lawyers claimed that individuals in an advanced or civilized society exercised their right by advocating for and protecting their own interests.

The entire nation's legal mind, in other words, is the nation's legal right mind. If the legal right is lost then the soul of the laws becomes lost. And if the soul of the laws is lost, then the legal right is lost. [...] In discussing why Anglo-Saxon nations have been dominant in the world, [I suggest it is] because they have an abundance of good legal minds. In order to obtain their legal right, they have been diligent. In order to dignify their legal right, they have been reckless. And in order to claim their legal right, they have been strenuous. [...] Alas, we Koreans! Have we ever held exhibited the legal right mind? In order to cultivate our nation's legal right mind, there is no other way but to raise its legal mind (Byŏn, Yŏngman, pp 11-12).

The author, Byŏn Yŏngman, considers the notions of right and legal right to be mutually complementary and recommends their cultivation among Koreans. Indeed, because both the concept of right and seeking one's right through laws were novel for most Koreans, the pursuit of both right and legal right was considered a decisive break from the traditional legal system. Byŏn asserted that legal procedures and litigations were no longer considered activities that disturb social harmony but a process in which one's right could be realized by citing the case of the Anglo Saxon that their passion for and possession of the legal right mind was critical for their development and dominance in the world.

The practicing lawyers thus positioned themselves as a cultural bridge for Koreans who were not accustomed to a Westernized litigation process within the colonial courts set up by the Japanese. It was not uncommon to observe the discomfort of Koreans with such a Westernized litigation process in advertisements from 1908-09.

Despite living in an era when many new laws and regulations are being promulgated, many people are clearly ignorant of their meanings and thus are unable to protect themselves or their property. Resigning from his position as XX, Mr. Choe (Choe Chin) has thus devoted himself to interpreting the laws and representing the litigants (The Imperial Gazette August 27, 1908).

Due to the complicated procedures, many members of the public are unable to properly handle their own litigation. Instead, they just spend a lot money and feel overwhelmed. In order to advocate for the people and protect their property, Mr.

Yu (Yu, Munhwan) has resigned from his office and opened a law office (The Imperial Gazette, October 23, 1908).

In the same vein, the expulsion of a young lawyer, Hō Hōn, from the list of lawyers in 1908 because of his misdemeanor in the court drew the attention of the mass media. Hō had been one of the six successful candidates of the first Korean Bar Examination in 1907. He became expelled from the list when he yelled at a judge whom he believed was negligent in listening to his client's case. Hō was disciplined and expelled from the list of lawyers by the Ministry of Justice. However, one article in the Korea Daily celebrated Hō as a true advocate of litigators against the corrupt court and its judges (The Korea Daily, December 8, 1908).

## **Chapter Conclusion**

In this chapter, I have argued that the cultural holes created by the implementation of the modern-yet-still-colonial legal system enabled Korean lawyers to promote their knowledge of law and claim exclusive control over litigation procedures. Exploiting both structural and cultural opportunities between 1908-09, these legal experts not only defeated their native agent rivals but also became prominent professionals of Westernized court procedures. Identifying the concept of right with that of legal right, the Korean lawyers underlined their roles as cultural bridges for their Korean clients within courts where the Japanese judicial officials ruled over cases in Japanese using Japanese laws. From 1909 onwards, it became nearly impossible to litigate in the highest courts without legal experts. This was a dramatic change in the turn-of-the twentieth-century-Korea where legal occupations had traditionally received little social

recognition or respect. Using the concept of cultural holes, I have highlighted how they advocated the importance of legal knowledge and litigation in resolving social disputes.

Ironically, with Korea's colonization, the rise of lawyers occurred in tandem with the collapse of the traditional state's judicial functions. Before the first Lawyers Law was promulgated in Korea in November 1905, the Korean government had taken few steps to bring the attorney system to the country. The Korean government paid much attention to securing the judiciary as a vehicle for cementing monarchical power believing that its absolute manifestation was the only way to overcome the threats of imperialism during this era. The Court of Seoul and the Higher Court (the Court of Cassation after 1899), both of which were supposed to be filled by independent and modern judicial officials, remained in monarchical hands until 1907. On the contrary, the Korean government believed that it was enough to regulate the native agents, called *taeŏnin* and *taesŏin*, to regulate the transactions among Koreans and between Koreans and foreigners. Given the Korean government's obsession with restoring the old orders from 1897 to 1905, it is not surprising that the government did little to try to separate the private from the public sector. It was natural for most Korean rulers including the monarchy and his ministers to insist that the judiciary remain under the supervision of administrative officials and the private sector be monitored by the public sector. While the Great Codes of Penal Laws were proclaimed in 1905, no explicit attempts were made to promulgate civil codes that regulated individual relations. Insofar as lawyer's expertise resides in knowledge of codified law and local customs that potentially convert into legal codes, the absence of codified civil laws prevented the emergence of lawyering as a profession.

Lawyers emerged as a profession out of a sudden transition in power towards the Japanese colonizers who usurped the judicial sovereignty of Korea and implemented Western-

style courts throughout the Korean peninsula. The Japanese colonizers were concerned from 1906 with instituting an independent judiciary because they believed that it was an efficient way to expand and secure their influence over the country. The proclamation of the Court Constitution Law in 1907, the invitation of Japanese judicial officials to Korean courts, and the eventual usurpation of Korea's judicial sovereignty by Japan generated a structural chasm in the sense that Japanese officials ruled over cases involving Koreans who were not familiar with legal procedures. Armed with their knowledge of modern law and its litigation procedures, the lawyers emerged as indispensable actors within the new courts within in a matter of few years. Not only did the lawyers and the jurists organize a forum in which they could promote their status but they also proactively positioned themselves as cultural mediators who linked the Korea public to the new court system. By 1909, the profession's skillful maneuvering of the structural and cultural contingencies of the era made the use of lawyers a taken-for-granted fact at the highest level of court.

Explaining the abrupt rise and consolidation of lawyers in Korea in the late 1900s in terms of structural and cultural contingencies, the present study suggests that legal professions, in particular, and professions, in general, craft and find their expertise and jurisdiction in structuration processes. Expertise—referring here to knowledge of Japanese Western law—had been undervalued until 1905. Japan's colonial courts that resulted from Japan's colonial intrusion in Korea, however, contributed to reassessing its value. Jurisdiction—referring to the exclusive application of this knowledge to litigation—was granted to lawyers as they were able to linguistically and juristically navigate the new courts but not to the native agents. In addition to navigating such structural features, the lawyers were nimble at filling in the gulf between the Japanese judges and their Korean subjects. Their roles as a cultural interpreter were appreciated

under the structures that placed them at the chasm as evidenced in articles and advertisements addressing that the individual right is protected through litigations and proper procedures.

## **CHAPTER 3: SOCIAL CLASS MOBILITY THROUGH LAWYER**

### **The Effects of State's Symbolic Power on Social Class Mobility in Korea from 1895 to 1910**

#### **Chapter Summary**

Given the political changes that eventually ended in the Japanese colonial occupation of Korea at the turn of the twentieth century, one intriguing question is how the regime change affected existing social status system and social class mobility. Judicial officials and private lawyers hailed from the members of the upper-middle classes, not only because they were materially affordable to law education but because they took for granted becoming a legal professional and being infused with existing symbolic capitals. Drawing on theories of state's symbolic capitals, I argue in this chapter that it was relatively marginal literati groups entered legal professions because the ruling elites in pre-colonial Korea were ill-prepared to employ the symbolic capital of the professions during a period of radical regime change. By analyzing the effects of law education on the appointment of judicial officials and the backgrounds of early Korean lawyers registered from 1895 to 1909, I demonstrate that few families with the highest social prestige produced the legal professionals.

#### **Introduction**

Lawyer is a profession that relies on the state's symbolic power. The profession and the state are interdependent with each other in the sense that the former's rise occurred along with

political regime changes that replaced the legal system and the latter required the former to actively engage in shaping the political system. As Perkin (2001) points out, the advent of lawyers as a professional group in England in sixteenth century took place alongside the rise of the dominant middle-class ideology. In reverse, with political regime changes that provided the institutional contexts for the new professions, who or which social class advanced to the professions is determined. Abbott (1988) asserts that building a nation-state necessitated professions' role. By positioning themselves as curers of the social pathologies of the nation, medical doctors were able to establish themselves as a profession in nineteenth century France (Goldstein 1984). In this sense, the politics matter for the legal professions not only because it consolidates the legal professions by creating institutional contexts (Halliday and Karpik 1997), but grants symbolic power on the professions' role and status.

Despite the plethora of studies on the relationship between the politics and legal professions, however, few have examined how the politics is related to the professions by state's symbolic capital. It is state's symbolic power that exerts control over the behaviors of the ruling class and legitimizes their actions to become a legal professional. State's symbolic power, an exclusive power to constitute the given to be natural (Bourdieu 1991), enframes the legitimate schemas, practices, and world views. The monopolization of the symbolic power that judges good or bad and right or wrong knowledge affects the behaviors of the ruling class, because, as Philip Gorski (2003) points out, "states are pedagogical, corrective, and ideological organizations (165-166)." Julia Adams (1994) powerfully demonstrates that the state's cultural system that state actors inhabit is integral for understanding how the actors think about the state and how they use the power through an analysis on the case of the Netherlands. Ruler's cultural frameworks determine which policies to be administered. Julian Go (2008) proves that the

cultural project of the colonizers was central to their strategy of rule by a comparative analysis on the US colonizers' tutelary interventions into local political culture between the Philippines and Puerto Rico. Specifically, radical political regime changes minimize or obsolete the opposition from existing factors that advocated traditional symbolic powers (Loveman 2005).

Investigating the process by which the exercise of the symbolic power by the state shapes the significance of the professions counts, because it explains the social class mobility through legal professions. Professions turn to be a channel for social mobility after they became socially aspired. Their prestige and esteem that make them aspirant are not sui generis but constituted by social processes that recognized them. Historical studies have witnessed that in some places occupations in law existed one of prestigious and influential social classes (Bouwsma 1973; Amelang 1984), whereas in others their existence was insignificant or negligible. Lawyers and judges served as a main channel for social reproduction or upward mobility because of high social esteem, while they remained a secondary route due to the lack of social recognitions given to them.

The rise of legal professions at the turn of twentieth century Korea provides a unique research site to test these theories in that social class mobility via the legal profession occurred alongside political regime changes. As we have already seen in Chapter 2, Japan's colonial encroachment into Korea resulted in the establishment of a whole new set of professions including professional judges, prosecutors, and lawyers. Several waves of political change from absolute monarchism to semi-colonialism and then full colonialism facilitated the formation of prestigious legal professions independent of administration in the late 1900s, which had barely been imagined by the ruling elites in 1890s Korea. While the effect of regime changes upon the constitution of the legal professions as a new legal system has been well documented, less

explored has been its effects on social class mobility via the profession that started to rise to prestigious occupations. With the Korean monarchy continuing its conservative reforms as late as 1904, the king and his cabinet members maintained a hostile stance towards Western laws and their legal institutions. With a few exceptions, most judicial positions within the courts in both Seoul and local towns were filled by those with little expertise in Western laws. The students of modern law schools, on the other hand, usually landed a lower mid-ranked position in the bureaucracy after graduation. However, only a handful of the graduates were appointed to ordinary judicial officials until 1905. It was a radical regime change after 1906 that generated new opportunities for social mobility through law education and judicial examinations.

Through an analysis of two things, I argue that the conservative reforms by the Korean monarchy that lasted until 1905 made the ruling elites ill-prepared to become legal professionals: 1) the effects of Western law education and qualifying examinations on the process of becoming a judicial official and 2) the occupations/titles/ranks of the fathers of the early Korean lawyers who registered from 1906 to 1910. I collected the data from historical archives including The Official Gazette of the Taehan Empire (*Taehanchekek kwanbo*), The Resumes of the Officials of the Taehan Empire (*Taehanchekek kwanwŏn iryŏksŏ*), The Diary of the Royal Secretariat (*Sŭngchŏngwŏn ilgi*), and The Lists of Successful Candidates of the National Examinations from 1864 to 1894 (*Pangmok*), newspapers from 1895 to 1909. Examining the organization of the judiciary within the bureaucracy from 1895 to 1909, I analyzed the effects of modern law education on the process of becoming a judicial official from 1895 to 1909, compared the career trajectories of two officials who had passed the civil service examination in 1905 and then the judicial service examination in 1906, and then analyzed the family backgrounds of the first 25 Koreans who had registered as lawyers from 1906 to 1910. I found that even though reforms in

Korea at the turn of the twentieth century resulted in the establishment of Western-style courts, the traditional understanding to the judiciary not only survived but continued to reign among those who became judges and prosecutors.

### **Legal Professions as a Symbolic Conduit for Social Class Mobility**

In two regards, becoming a professional is a behavior to enter already established cultural web in which the state designed and incorporated with existing social forces. On the one hand, becoming a professional means learning knowledge that institutionally accepted. On the other hand, it suggests that in doing so, professionals accept existing order of knowledge that are critically and directly related to the governance. In most Western/European countries, in fact, legal professions remained a social pathway to transfer one's social status and fortune to offspring. Based on the assumption that every member of a society aspires to advance into a profession, the literature has also viewed professions as merely a conduit for social mobility or class reproduction. This assumption, however, needs to be modified in order to be applied to radical regime changes. Given the fact that the expertise of the professions and their application of this expertise within certain domains are a culturally contested process (Freidson 1986; Abbott 1988; Liu 2013; Kellogg 2014), the rise of a profession as a cultural phenomenon must be accompanied by the reconfiguration of the dominant cultural schemas. An occupational group of experts becomes a profession when the view that their knowledge solves a set of problems faster and better than their competitors gains wide social legitimacy (Abbott 1986; Abbott 1988; Liu 2013). Gaining this legitimacy is made within cultural schemas that outline a set of behavioral guidelines for social actors to make judgments about their actions (Biernacki 2005; Swidler

1986). For the case of the legal professions, the issue of legitimacy gets intensified due to their central role within state bureaucracy. The rise of the legal professions, on the one hand, represents a political regime change because their judicial functions and roles are closely tied to state governance. On the other hand, their rise also indicates cultural and ideological changes (Brint 1984; Perkin 2002). The different historical experiences of Anglo-Saxons from Continental European countries (with differences even between France and German) have shaped the diverse roles and features of judicial officials and practicing lawyers (Collins 1990). Examining the rise of English lawyers in the sixteenth century, Perkin (2002) asserts that it also meant the rise of a new political ideology. Asserting that the roles and expertise of lawyers who rose as a profession in Germany in the nineteenth century were determined by political structures, Rueschemeyer (1986) suggests that the historical development of a legal profession is heavily dependent on how a state and its governmental organizations interact within a particular society.

Politically transitional periods provide different contexts for patterns of social class mobility through professions. Professions are an important social channel through which ruling class members transfer their status and wealth to descendants during transitional periods such as revolution, marketization, and colonization (Walder 1995). As an occupational group of experts, a profession's status and privilege heavily depends upon to what extent a ruling class or group has monopolized political power before the transition, how long the transition period has lasted, and what structural opportunities the ruling elites have been able to appropriate (Walder 2003). Kontinen (1991), for instance, has shown that Finish legal professionals hailed from the noble class that employed the judicial bureaucracy as a means to transfer their status, because the noble class firmly controlled the bureaucracy. His account of their transition from nobility to judicial officials and practicing lawyers draws attention to the backgrounds of the legal professionals and

the social status system. Analyzing the social backgrounds of medical doctors in Thailand, Maxwell (1975) discovered that the majority of doctors emerged from either the royal families or the upper classes during modernization.

Professions have traditionally served as a social conduit within modern societies to either reproduce a social class or effect upward social mobility. Since becoming a professional usually requires a longer education and qualifying examinations, both of which require material and cultural support, professions are usually dominated by those who can afford the education and often take it for granted (Dezalay and Garth 2010). At the same time, since professional qualifications are granted to candidates who successfully pass the examinations regardless of their social background (Collins 1979), talented members of the lower class or social minorities, who are attracted by such meritocratic features, enter the professions. Therefore, examining the ways in which members of a lower class or social minorities advance into a profession is key to understanding the pattern of social class mobility.

Rather than simply a hallowed conduit through which one attempts to pass in order to achieve upward social mobility, legal professions in a transitional period have to be culturally fortified. Cultural repertoires serve as tools that either strengthen or weaken the legitimacy of a legal profession during a transitional period. During a period of structural change, culture creates multiple competing ideologies that model new ways of organizing social actions. In turn, it makes people either adhere to traditional ways of doing things or adopt new patterns of behavior (Swidler 1986). To properly understand the pattern of social mobility through legal professions, it is necessary to investigate how competing cultural understandings of a profession are incorporated into a political regime and how this incorporation leads a profession to be victorious.

Consequently, in regards of social class mobility through professions, it was the ruling class members that exclusively took advantage of the transition. However, political regime changes shift, and even challenge, the assumed pattern that the ruling class advanced to the professions by challenging the symbolic powers associated with the relationship between the state and the profession. Political regime changes change the status of symbolic power that had been legitimized. The doubt on existing system of the symbolic power delegitimizes the institutionalized paths. The rise of professions is an outcome of the changes.

### **The Marginal Status of Occupations in Law in the Bureaucracy**

In traditional Korea, the bureaucratic system was closely related to the Confucian political regime. Confucianism, according to Weber (1978), is a bureaucratic religion that typically lacks both an internalized drive to salvation or spirituality—the main means for people to legitimize their social situation in the world and for the state to control the populace. Confucianism and the state bureaucracy of Korea mutually reinforced each other in that all bureaucrats were Confucian literati who had learned the Confucian classics, passed the national examinations based on these classics, possessed military skills, and had knowledge of applied sciences. The state bureaucracy of Korea served as both an instrument to spread Confucianism throughout the country and a field in which the bureaucrats and the king learned and reflected upon Confucian learnings. Confucian ideologies defined the relationship between administration and judiciary. With adjudication considered a part of the administration, holding a judicial position in the bureaucracy was considered a stepping stone to becoming a good magistrate for the people or bureaucrat for the state. Since becoming a good arbitrator was the first virtue of a

magistrate assigned to local governments, the magistrate did his best to solve the lawsuits as quickly as possible. By no means, however, did this suggest that the magistrates be legal specialists. On the contrary, it implied that the backlog of litigation would have not have been created if a magistrate's governance depended on his virtue and not on laws. The prioritization of the rule of virtue over law, though idealistic, made the interpretation and application of laws a secondary matter. According to studies of the legal clerks and the judicial department in Chosŏn Korea, the former were mainly assigned to the Board of Punishment (*Hyŏngjo*) or its affiliated organs after passing the national examination but their rank and promotion were limited to the junior sixth rank (To 2014; N. Yi 1999).

This hierarchical division of labor was closely related to the social status system in Korea before 1894. The higher ranks and important positions in the bureaucracy including the Board of Punishment, the Censorate, the Royal Tribunal, and the Bureau of Seoul were monopolized by the *yangban* literati-aristocrat who had passed the civil service branch of the three national examinations. Those who had passed the technical branch of the national examinations were assigned to the lower mid-rank positions in the judicial departments. Along with other *chapkwa chungin* that included the collective body of government interpreters, medical doctors, astronomers, painters, and mathematicians, the lower mid-ranked judicial officials were assigned to specific departments and bureaus that needed their specialty (S. J. Kim 2008; Hwang 2004). Within members of the *chungin* status, those who specialized in law were further marginalized. A study found that officials in foreign language interpretation and medicine were generally promoted up to the senior third rank (*chŏng samp'um*)—the fifth rank within a bureaucratic system with eighteen ranks—while officials in laws did not go beyond the junior sixth rank??? (*chong yokp'um*) (N. Yi 1999). In addition, Yi (1999) found that while officials in foreign

language interpretation and medicine began to form strong social networks through marriages in order to emerge as a core block in 18<sup>th</sup> and 19<sup>th</sup> Korea, other technical officials did not enjoy such a rise.

Thus, reforming the bureaucracy not only meant rearranging the bureaucratic hierarchy between the yangban literati aristocrats and chungin law clerks, but also involved changing the social status system that buttressed the hierarchical division between the administration and judiciary. It was cultural understanding that divided the social statuses and further legitimized the hierarchical division, because the division of the social status and the hierarchical division between the administration and judiciary were supported by particular cultural understandings. From the traditional point of view, it was hard to imagine the separation of the judicial officials from civil ones and promoting officials who specialized in law to high positions. Traditionally, adjudication was considered one of the most important tasks of the central and local governments. Judicial officials and magistrates assumed the role of the judge in cases filed to administrative offices. Law clerks or assistants were expected to provide the necessary interpretation of laws during their application. However, having a specialized knowledge of laws was not considered a necessary virtue to become a good magistrate. Although the majority of ruling elites, including the yangban literati, were civil officials whose jurisdiction included the judiciary, they were expected to be good judges but not proficient at interpreting the laws. For the ruling elites, therefore, it made no sense to pass the judicial examination and become a judicial official.

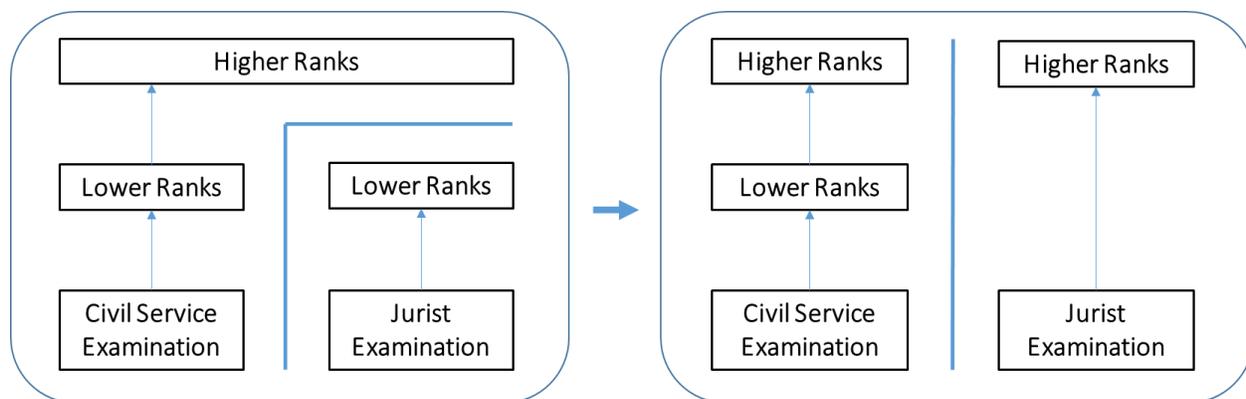


Figure 2 The Bureaucracy Structure of the Korean Government before 1895 and after 1906

Figure 2 summarizes the organizational changes pertaining to the judiciary within the bureaucracy. The judiciary before 1895—on the left side of Figure 2—had been subjugated to the administration, although it had used to recruit officials from the national jurist examination. The promotion of the officials was limited and the role in the bureaucracy was marginal. It was the yangban literati officials who occupied the higher ranks of the bureaucracy that supervised the officials in the judicial organs. While civil officials assigned to judicial departments or local governments assumed the roles of judges before 1895, the judges and prosecutors were elected from a pool of candidates who had passed the jurist examination and been dispatched to the local courts after 1906. Another significant change was the naming of those who had passed the jurist examination to the higher rank (*chuimkwan*) of judges or prosecutors whereas those who had passed the civil examination were assigned to the bureaucracy's lower ranks (*p'animkwan*).<sup>19</sup>

Structural changes in the bureaucracy seen in the above diagram accompanied the radical political changes in the regimes. The bureaucratic structures in the right diagram were conceived by Korean politicians during the 1894-95 reforms which were necessarily incomplete because

<sup>19</sup> Ch'ikimkwan, Chuimkwan, and P'animkwan were the officials' ranks established in 1894. The Korean government replaced a rank system that consisted of 18 classes with one that consisted of 11. While Ch'ikimkwan occupied the highest two, each of which had senior and junior segments, Chuimkwan was located from the third through the sixth, and P'animkwan formed the lowest from the seventh to the ninth.

they lacked the resources. The reforms from 1894-96 rearranged the status and role of the judiciary quite differently from the traditional system. First, the judges and prosecutors in the courts were relieved of their administrative affairs and their status elevated. Judges and prosecutors were assigned to the higher status of officials (Hanmal kŭndae pŏpŕyŏng charyŏchip) as *h'ikimkwan* or *chuimkwan*.<sup>20</sup> Second, the criteria for selecting the judicial officials, such as the education and examination process, also changed. The establishment of the Jurist Training School in 1895 set the groundwork for modern law education in Korea. The Jurist Training School recruited Japanese instructors to teach Japanese civil, criminal, and procedural laws. Along with establishing Western-style courts in Seoul—the Court of Seoul and the Higher Court—the Korean government initially planned to supply the judiciary with its graduates who had learned Western laws.

While the reforms from 1894-96 emulated Meiji Japan in orienting Korea towards Constitutional Monarchism, the subsequent reforms from 1897-1905 prioritized the restoration of absolute monarchy. In other words, even though both reforms had tried to establish a modern judiciary, their underlying visions for the judiciary were sharply different. The reforms from 1897-1905 were essentially conservative in a sense that the judicial officials were appointed by the Korean monarchy who directly controlled the Ministry of Justice and the Court of Cassation. Therefore, the reforms from 1897-1905 focused on nullifying or at least minimizing the effects of the earlier reforms on the judiciary. First, the division between the administration and the adjudication was restored. In 1899, the Court of Seoul fell once again under the jurisdiction of the Bureau of Seoul. In relation to the restoration, although the higher status and rank of judicial officials were preserved, the independence of judicial officials was revoked. Although the Court

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<sup>20</sup> In a job classification of prosecutors (*kŏmsa chikje*) published in 1895, prosecutors were stipulated as part of the higher *chuimkwan* ranks.

of Cassation (*P'yŏngriwŏn*) was established as the highest court in Korea in 1899, it actually served as an appellant court that had higher authority than both the court in Seoul and the 24 local courts scattered throughout the Korean peninsula. It was the Ministry of Justice that finalized and even remanded the rulings of judges in the lower courts, including the Court of Seoul and the Court of Cassation. The Minister of Justice, Kwŏn Chaehyŏng, took for granted such a hierarchy between the Court of Cassation and the Ministry of Justice (The Diary of the Royal Secretariat September 5<sup>th</sup>, 1900). Likewise, the Court of Seoul was seen as an administrative office that dealt with affairs in Seoul.

Although the Korean government announced regulations pertaining to the examination of judicial officials in 1899, it did not administer it until 1906. The regulations in 1899 stated that the judicial officials had to be elected from those who had either graduated from law schools or who were proficient in legal knowledge. However, given that the Jurist Training School was closed and no examinations were arranged, this regulation served to justify the whimsical appointment of judicial officials. Until 1906, examinations for recruiting judicial officials were administered only to lower mid-rank officials upon the recommendation of the Ministry of Justice. Therefore, judicial officials in the Court of Seoul and the Court of Cassation were not selected through an open examination but appointed by the Emperor through the recommendation of the Ministry of Justice. In March 1898, the Minister of Justice, Yi Yu-in, was impeached by Kim Sŏkryŏng because Yi had arbitrarily appointed judges in violation of these regulations (The Diary of the Royal Secretariat March 29<sup>th</sup>, 1898). The origin of such impeachment can also be traced to Yi Yuin's attitude towards the judicial officials. In a petition to king in 1898 which suggested that the courts in Seoul dissolved into the administrative organizations. In the same petition, Yi also expressed that judges and prosecutors assigned at the

Court of Seoul and the Court of Cassation were regarded as an upstart that promoted from lower-mid ranked officials to the rank of higher officials in a day thanks to a bit of their knowledge on laws.

## **The Korean State as the Monopolizer of Symbolic Capital Until 1905**

### *Effects of Modern Law Education on Becoming a Judicial Official*

One dimension showing to what extent the state seized symbolic capital of law is the effect of law education on becoming a judicial official or a legal profession. Examining the profiles of graduates who became judicial officials from 1895 to 1909 provides a clear snapshot of the impact of modern law education. As discussed in Chapter 2, the Chosŏn Korean government not only adopted Western-style courts in Seoul but also became concerned with training jurists from 1895-96. The judges and prosecutors assigned to courts in Seoul were expected to be independent judicial officials. In addition, the government established the Jurist Training Center in Seoul to educate young officials who specialized in modern laws and sent hundreds of youths to Japan in the hope of recruiting them later as officials.

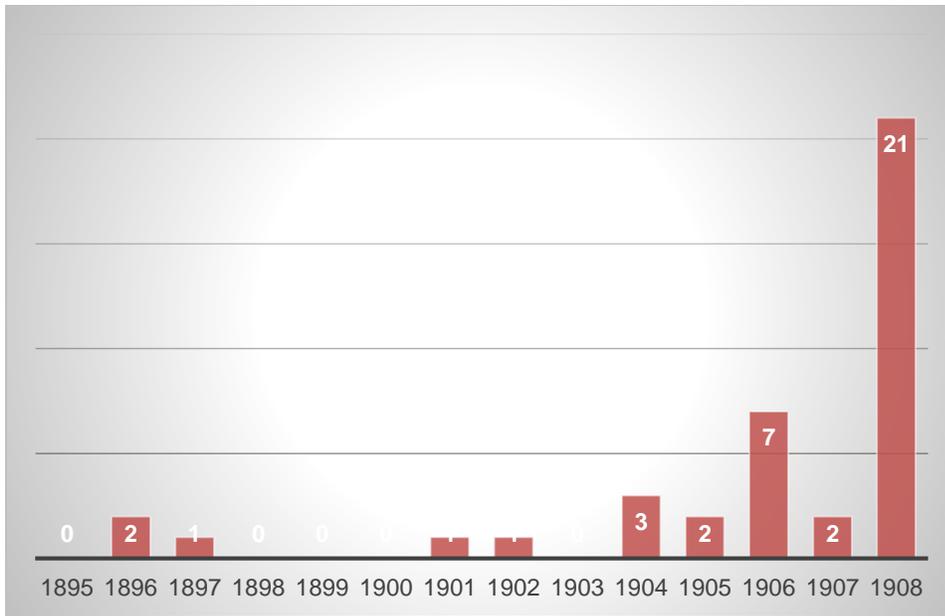


Figure 3 Number of Officials at Courts in Seoul with Modern Law Education from 1895 to 1908; source: The Resume of Officials of the Taehan Empire; the Diary of the Royal Secretariat; note: Modern Law Education includes graduates or students of the Jurist Training School of Korea, graduates of Japanese law schools, and graduates of private law schools in Korea.

Figure 3 shows the frequency of appointment for judicial officials who had received their modern law education from 1895 to 1908. With the production of the first two cohorts by the Jurist Training Center from 1895-96, it is possible that the Korean government used them in 1896 to fill the positions of judges or prosecutors. Moreover, with the study abroad students returning to Korea from 1900, it could have also appointed them to the judiciary during 1900-01. Until 1905, however, only eight judicial officials (either judge or prosecutor) who had received modern law education were named to judicial positions.<sup>21</sup> During 1896-97, that number was three. Of the three, Yi Sŏn-chae (aka Yi Chun) and Ham T’ae-yŏng, who had both graduated from the Jurist Training Center in 1895, were named to probationary prosecutors in 1896 (For Yi, The Diary of the Royal Secretariat Feb 3<sup>rd</sup>, and for Ham, The Daily Reflection March 5<sup>th</sup>, 1896). Yun Sŏng-po, another graduate in 1895, was appointed as a probationary prosecutor in 1897 (The

<sup>21</sup> They are Yi Sŏnchae (aka Yi Chun), Ham T’aeyŏng, Yun Sŏngpo, Yun Panghyŏn, Hong Yongp’yo, Chang To, Yi Myŏnu, and Hong Chaeki,

Diary of the Royal Secretariat July 10<sup>th</sup>, 1897). Even for the period from 1898 to 1903, there were only two. Hong, Yongp'yo, a graduate in 1896, was initially appointed as a lower mid-rank official in the Ministry of Justice before being promoted to a judge in the Court of Cassation in July 1902 (The Diary of the Royal Secretariat July 3<sup>rd</sup>, 1902), a year after the appointment of Yun, Panghyŏn in 1901, who had studied in Japan for less than a year before returning to Korea in 1896 (Yun's resume).<sup>22</sup>

It was not necessarily foreordained that the graduates of the Jurist Training School would be appointed to a mid low-rank official position. In addition to the three judicial officials, sixteen graduates were appointed as lower mid-rank officials in the Ministry of Justice (*chusa*), which accounted for less than 20% of the 86 graduates of the first two cohorts in 1896.<sup>23</sup> The lower appointment rates of the graduates of the Jurist Training School show that a Western legal education was not fully appreciated until 1905. As seen in Figure 3, becoming a judicial official was much harder because the majority of judicial officials in Seoul courts still came from a pool of officials who had already worked in the judicial departments before the reforms or those who had been appointed by the king or the Minister of Justice. For example, Yi Hŭi-sŏn became a probationary prosecutor in the Court of Seoul in November 1896 and passed the first stage of the civil service examination in 1883 (Yi's resume, The Diary of the Royal Secretariat February 8, 1883). Appointed as a prosecutor in the Higher Court in February 1896, Yi Hoegu was a successful candidate of the traditional civil service examination in 1894 (The Diary of the Royal Secretariat February 8, 1894). Yi Hŭichŏng became a judge of the Court of Seoul in 1897 (The Diary of the Royal Secretariat November 1<sup>st</sup>, 1897). None of these judicial officials were

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<sup>22</sup> One exception is Hwang Ch'ŏlsu, who had graduated from law school in November 1895 and was appointed as a probationary prosecutor on Cheju Island in 1902. Since the court on Cheju was old-fashioned, it is difficult to understand how it fit into the larger legal context.

<sup>23</sup> Some graduates advanced to other governmental departments such as The Ministry of Treasury, The Ministry of Education, and so on.

graduates of the Jurist Training School but were lower mid-rank officials in the Ministry of Justice.

While some of the appointed judges and prosecutors were proficient in laws and legal procedures, others were not. Not only did the judicial officials appointed after 1895 have little legal experience, the frequent change in appointments made it difficult for them to become proficient in one job. The career of Yun, Söngpo's illustrates how chaotic the personnel management was at the turn of the twentieth century. Yun, a graduate of the Jurist Training School, was first promoted from a *chusa* position to that of a probationary prosecutor in the Higher Court in November 1897 (Yun's resume). Eight months later in July 1898, he was named prosecutor in the Higher Court. Four months later in November 1898, he was, once again, transferred to the Court of Seoul. In the next month, December 1898, he was assigned to the Governor of Kangsö (*kunsu*). Returning to the Ministry of Justice in June 1901, he became a judge in December 1901 (Yun's resume). In addition, with political considerations influencing the appointment of chief judges in the Court of Seoul and the Court of Cassation, the Minister, the Vice Minister, and military generals were often named to such positions (To 2014). Once, the Minister of Justice even asked the king to dismiss the chief judge in the Court of Seoul due to his incompetence in law and legal procedures (The Diary of the Royal Secretariat April 3<sup>rd</sup>, 1905).

Given the solid status of the Korean state as the guidance of the old practices, it was hard for those who learned modern law to enter the bureaucracy and to become a judicial official. The state agent behaved and the bureaucrats believed that the judiciary should be integrated with the general administration regardless of different political stances and views. The state was the monopolizer of the symbolic power that governed the behaviors of individual bureaucrats. The fact that some judges and prosecutors were still recruited from officials who had worked in other

administrative departments or bureaus reflects that the Korean government did not firmly establish the idea that the judiciary should be detached and judicial officials learned specialty in law. In the same vein, officials with training in law were assigned to another department. Given the circumstance, the effects of modern law education on becoming a judicial official did not work immediately until 1905 when the Japanese started to intervene in the domestic affairs of Korea in a full-scale.

#### *Increased Prestige of the Judicial Service Examination vs. the Civil Service Examination*

The effects of modern law education on the process of becoming a judicial official did not make themselves fully visible until 1905. While the majority of judges and prosecutors originally hailed from lower mid-rank officials in the Ministry of Justice, the transition years of 1905-07 changed the recruitment patterns profoundly, especially for newly appointed judicial officials. Beginning with the study abroad students, an increasing number law school graduates entered the bureaucracy. Along with the increasing dominance of law school graduates in the judiciary, the higher ranks of the successful candidates of the judicial service examination added prestige to both the position of judicial officials and law education. The first open qualifying examinations for electing judicial officials was administered on December 5<sup>th</sup>, 1906, producing twelve successful candidates (Official Gazette No. 3634 December 12<sup>th</sup>, 1906). This examination acted as a gateway to the Korean judiciary for law school graduates. All twelve of them had entered the Jurist Training School in 1904. While ten candidates were assigned to probationary positions in local courts on December 12<sup>th</sup>, 1906, one was assigned to the Jurist Training School; the fate of the last one is unknown. Skipping the years 1907-08 when the examination was not

administered, seven out of about two hundred applicants successfully passed it on October 13<sup>th</sup>, 1909, when it was readministered.<sup>24</sup>

During 1905-06, it is noteworthy that the passers of the judicial service examination were considered more prestigious than the passers of the civil service examination. The two examinations were administered around a similar period. After reforms dissolved the traditional exam system in 1894, the Korean government administered the civil service examination on May 18, 1905 and the judicial examination on December 5, 1906 as the first set of open qualifying tests. While the former produced 30 successful candidates who passed both the first and second stages, the latter produced twelve. Of the 29 civil exam passers, all except one were appointed to the position of lower mid-rank official (*p'animkwan*). For the twelve successful candidates of the judicial examination, eleven were appointed to the higher rank (*chuiimkwan*). Therefore, both the pre-colonial Korean and the colonial Japanese government extended preferential treatment to the successful candidates of the judicial service examinations in terms of both rank and promotion. Despite their nearly similar qualifications in terms of successfully passing the examinations, their pre-office careers, and educational backgrounds, most passers of the civil service examination began their service at a lower rank than the passers of the judicial service examination, who started immediately at the top. During their tenure, the judicial officials also experienced faster rates of promotion.

A closer comparison of two figures, who had each passed two examinations, helps us to understand the discrepancy further. After entering the Jurist Training School in 1904, Kim Yi-hyŏn passed the civil service examination in May 1905 (Kim's resume). Right after he passed the exam, he was assigned to the Department of Treasury in December 1905 as an 8<sup>th</sup> *p'animkwan*

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<sup>24</sup> The Korean Bar Examination was administered separately from the Judicial Service Examination. On June 24<sup>th</sup>, 1907 the first Korean Bar Examination produced six successful candidates out of twenty applicants. And on November 16 in the next year, the examination selected four out of twelve applicants.

(The Diary of the Royal Secretariat December 21, 1905). Next year, he was promoted to the 7th *p'animkwan* (Kim's resume). During his in-office career under colonial rule, his position remained in the realm of a *p'anim* rank until 1921. After being named the governor of Sach'ŏn county (*kunsu*) in 1922, he was finally promoted to the 8<sup>th</sup> *chuimkwan* rank in XX (List of Government Officials of the Colonial Government of Korea 1922). In contrast, Yun Hŏnku who had graduated from the Jurist Training School on July 6, 1904 passed the Judicial Service Examination on December 5, 1906 whereupon he was promoted to the *chuimkwan* rank and assigned a prosecutor position in a North Chŏnra Province court. Continuing his in-office career under Japanese colonial rule, Yun was promoted to the 6<sup>th</sup> rank of *chuimkwan* with a 9<sup>th</sup> salary class in 1913. After resigning as a prosecutor in the Haeju local court in May 1914 (Official Gazette of the Colonial Government, May 1<sup>st</sup>, 1914), he practiced law in Haeju until 1913 (Official Gazette of the Colonial Government, September 3<sup>rd</sup>, 1931).

The fewer opportunities for a recipient of a modern law degree to become a judicial official reflect the ruling class's adherence to a traditional understanding of the judiciary in the turn of the twentieth century Korea. Because the ruling elite viewed that courts were still regarded as part of the administration, the division of the judiciary from the administration was considered either illegitimate or at best waste of money.

### *The Family Backgrounds of the Early Korean Lawyers Registered from 1906 to 1910*

Another important venue for examining legal professions as a channel of social mobility is the lawyers' family backgrounds. By analyzing the occupations of the early Korean lawyers' fathers, I tried to understand the patterns of inter-generational mobility through the legal professions. Since 1906, when three lawyers first registered in the Ministry of Justice in Korea,

48 more lawyers have registered and practiced law until 1910. The 51 Korean lawyers during this period came from either the judiciary or the successful candidates of the Korean Bar Examination. Of these 51 registered lawyers, I was able to locate information about the occupations, titles, and ranks of 25 of the lawyers' fathers within the bureaucracy and classified them into five categories. The first and second categories refer to those who were either appointed as officials or held officially named or awarded ranks. I then divided them into lower and upper echelons depending on whether they had remained lower than it (*Tanghakwan* or equivalent ranks) or been promoted or appointed to a position higher than the third senior (*Tangsangkwan* or equivalent ranks). The third category refers to those who had passed the first stages of the traditional exam system and gained titles such as *Chinsa* or *Saengwŏn*. Although they were not officially named an official in the bureaucracy, their titles indicated that they were both learned and enjoyed social prestige. The fourth category refers to those who were learned but not recognized by any social institution. *Yuhak* or *Haksaeng* were some of the titles given to those who were learned but had not passed the entry level examinations in the Chosŏn dynasty.

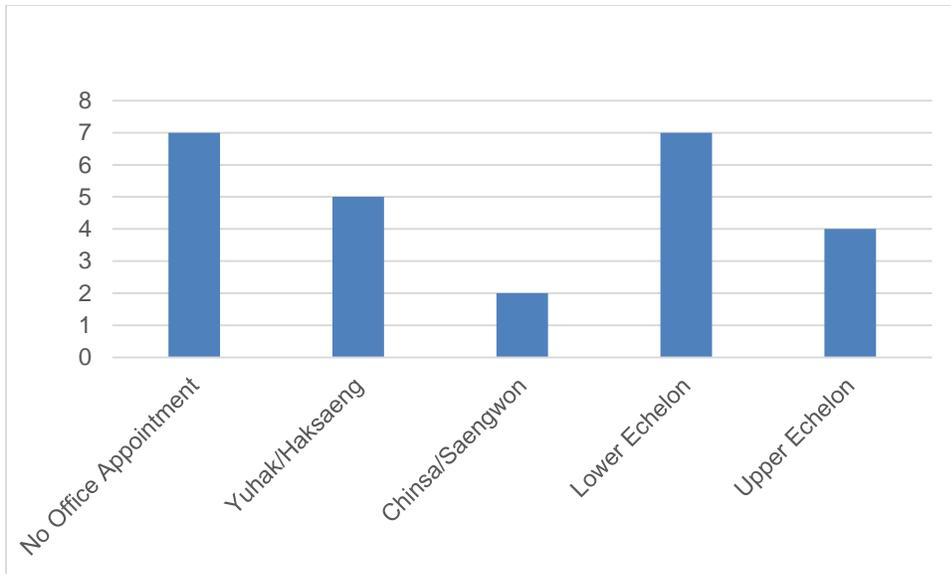


Figure 4 Early Korean Lawyers' Family Backgrounds (father's occupation, title or rank); source: the Collection of Resumes of the Officials of the Taehan Empire

Of the information about the occupation/title/rank of the fathers of the twenty five Korean lawyers registered from 1906 to 1910 that I was able to locate from the resumes of the governmental officials in Korea, only four of them had received ranks above the upper echelon of the bureaucracy (*Tangsangkwon*); seven received the lower echelon positions (*Tanghakwan*); two passed the first stages of the national exam system (*Chinsa* or *Saengwŏn*); five were *Yuhak* or *Haksaeng* and had no official title; and the rest had no official careers (See Table 9 in the APPENDIX located at the end of this dissertation for details).

While eleven of the lawyers' fathers were listed as government officials, further investigation reveals a different picture. Of the four who were promoted to the upper echelon, three did not pass the highest stage of the civil service examination (*Taekwa*), which was considered the primary path to becoming a higher official. In contrast, P'yi Sang-pŏm's father, P'yi Chong-yun, was granted the rank of the upper echelon (*Chŏlch'ung Changgun*) but did not pass *Taekwa*. From the fact that P'yi Sang-pŏm had passed the traditional jurist examination in

1882 (P'yi's resume), I concluded that he had a chungin background. Another case of Yi Kyōng-chi, Yi Yong-sōng's father, was awarded the rank of T'ongchongdaebu because of his achievement as a government interpreter—a position that he occupied after passing the interpreter examination in 1849. Yi Yong-sōng's grandfather was a medical doctor who had passed the medical examination in 1803 and been promoted to the rank of Kasōndaebu, the junior second rank of the bureaucracy. In other words, lawyer Yi Yong-sōng had a prestigious chungin background in the nineteenth century. Pyōn Yōng-man's father, Pyōn Chōng-sang, was promoted to the position of *Puyun*, a governor of Samhwa, a region located in the South P'yōnyan Province. Even though Pyōn Chōng-sang achieved the junior second position, there was no record of him passing the traditional service examination. In contrast to these three figures, Yi, Chong-sōng's father, Yi, Sō-yōng, was the only one out of the 25 lawyers' fathers to pass the traditional civil service examination and become promoted to the upper echelon (Vice Minister of the Board of Rite, *Yecho Ch'amp'an*).

Having a father at the lower echelon of the bureaucracy did not necessarily mean that he was powerful and had served as an official for a long time. Rather, it simply meant that he had been appointed and recognized by the government. In fact, out of the nine cases whose father entered the bureaucracy, three were lowest in the eighteen rank system of the traditional Korean bureaucracy. For instance, Pak, Sūngpin's father, Pak, Gyōngyang, was named to *Kagamyōggwan*, a temporarily established position ranking junior 9<sup>th</sup>, the lowest position in the bureaucracy. Kwōn Pyōnghun's father, Kwōn Panghōn, was named to the *Ch'ampong* position, also the lowest position in the bureaucracy. In addition, the fathers' ranks and positions disclosed the military background of some of the early lawyers' fathers. *Sōnryak Changgun*, to which

Chang To's and Yi Kõnho's fathers were named, was a junior fourth rank that was usually awarded to military officials.

Two lawyers' fathers gained the title of *Chinsa* or *Saengwõn* and five lawyers' fathers were identified as *Yuhak* or *Haksaeng*. The *Chinsa* or *Saengwõn* titles were awarded to those who had passed the first two stages of the national civil service examination. Only those who held either *Chinsa* or *Saengwõn* title were allowed to take the main exam. In contrast to *Chinsa* or *Saengwõn*, *Yuhak* and *Haksaeng* titles were not officially granted. Meaning "still immature learning" and "student," the two titles recognized that one was learned but had not taken any examination. Therefore, these titles indicated that the fathers of seven lawyers were learned to a certain extent and probably identified themselves as part of the learned class. The reports of the lawyers to their clans also indicated their self-identification as learned families, which were distinctive from the commoners in the social status system. These seven lawyers wrote their fathers' names on their resumes without a specific rank, position, or title. I was unable to locate their names from the list of the successful candidates of the national examinations of Chosõn Korea.

Given that father's occupation or rank indicated family prestige in pre-colonial Korean society, the missing of them represents that the seven lawyers highly likely hailed from somewhat marginalized classes rather than the upper/ruling classes. There is little evidence to suggest that men from elite yangban lineages or their descendants entered the field of law and practiced it in early 1900s Korea. Of the 51 first lawyers, no one had passed the final stage of the civil service examination that was maintained until 1894. In Chosõn-Korea, passing the final stage of the civil service examination guaranteed promotion to higher positions in the bureaucracy. However, the fact that no evidence found that the lawyers had passed the

examination indicates that becoming a lawyer had less to do with the reproduction of the existing elites. The link between judicial professionals and the chungin families is not clear. I was able to identify only three out of the 25 lawyers with a *chungin* lineage (see Table 9 in the APPENDIX at the end of this dissertation). According to a study on the chungin families in 18-19<sup>th</sup> century Korea, the chungin families became prominent through inter-family marriages among those who had produced the passers of the national examinations (N. Yi 1999). Although some lawyers out of 51 early Korean lawyers originated from chungin families, an insignificant portion of prominent chungin families advanced to the legal profession in early twentieth century Korea. This analysis shows that the first lawyers came from neither the elite yangban nor chungin backgrounds but from other social status groups that were hardly present in the bureaucracy until the late nineteenth century.

This finding suggests both nuanced similarities and differentials to the body of literature on the social mobility at the dawn of modernity of Korea. The literature has suggested or conjectured that modern professions (lawyers, doctors, and a few more) became a gate for marginalized status groups to make upward social mobility. Though there have not been explicit attempts to define what marginalized social status groups were in pre-colonial Korea, the present finding is in sync with the literature in the way that somewhat relegated status groups who had been blocked to advance to the bureaucracy advanced to the legal profession. At the same time, the present finding proposes that it was not the chungin families—those who had produced the passers of the national service examination—that constituted the majority of the legal professionals in early modern Korea. Lawyer in late 1900s Korea was not a site employed by the existing ruling elites—both the elite yangban families and the elite chungin families—to reproduce their social status. Until 1905, only a handful of law school graduates were appointed

as judges or prosecutors within the Korean government. In contrast, the majority of the judicial positions were recruited from traditional civil or military officials who had little knowledge of Western laws. If there was any social mobility through the legal profession, it occurred after 1905 with the administration of the Judicial Service Examination and the Korean Bar Examination.

## **Chapter Conclusion**

A puzzle that has been unexplored is how the existing social status system in pre-colonial Korea engaged in producing professionals and it came to be changed alongside the rise of modern professions. Radical political change during early 1900s Korea resulted in the entrance of judicial officials and practicing lawyers from the learned members of the marginalized class while simultaneously excluding the ill-prepared ruling class through cultural reformulation. For the ruling elites, becoming a professional judicial official or a practicing lawyer was not urgently felt insofar as the regime remained unchanged. It also meant that it was difficult for them to adapt to another cultural schema that they had hardly been even aware of. Although the courts in Seoul were organizationally separated from 1895 to 1905, the judges and prosecutors were still considered to be a part of the administration. Along this vein of thought, education on modern laws played an insignificant role in promoting the social advancement of the recipients of law degrees. Only a handful of modern law school graduates in Japan and Korea were appointed as judges and prosecutors until 1905. Before the surge of appointments of modern law recipients to judicial positions, judges and prosecutors were recruited either from traditional literati officials or the monarchy's first-aides. From 1906 and onwards, however, the judicial examination

became a shortcut to the higher positions in the bureaucracy. Of the backgrounds of 25 lawyers who had registered in the profession from 1906 to 1910, their fathers' ranks, occupations, and titles indicated that the majority of them hailed from learned families with relatively less social prestige than the ruling elites. Their fathers' occupations/titles denoted that few of them, despite their partially learned status, had been named to important posts in the bureaucracy.

These findings suggest that the social class mobility through the legal professions occurred in an abrupt and uneven manner, because of the symbolic power to which the ruling elites had adhered. A series of changes in the legal system including the separation of the judiciary from the executive branch and the appointment of private lawyers in litigation was an abrupt change hardly compatible with existing schemas the ruling yangban elites had depended on. It was also abrupt in a sense that the social esteem of judicial officials and lawyers was established in a few years as the field of law and its expertise became independent from the administration. In contrast, relatively marginal groups among literati were not motivated to adhere to the existing symbolic power. Learning Western laws was not a hesitant behavior that stigmatize their conscience. It was uneven in that the legal professions were filled by members of learned but relatively marginalized classes. The majority of early Korean lawyers had neither a prestigious yangban lineage nor an elite chungin family background. Rather, their families were learned but located at the periphery of the state status system. Coupled with the collapse of the traditional social status system, learning law became the shortest path for colonial Korean subjects into the colonial bureaucracy, though the path remains narrow and competitive. The growing popularity of law education and soaring aspirations for passing the qualifying examinations were further propelled by colonial credentialism that, in part, enabled the Koreans to fight back against ethnic discrimination in colonial Korea. Such patterns of social class

mobility in Korea are somewhat different from other colonial cases where the native elites took advantage of the courts to secure their social status (Brown 1995; Roberts and Mann 1991; Hoffman 2010). In contrast to British-Egypt, French-Senegal and other countries where religious matters were separated from secular ones before colonization, Korea maintained an integrated legal system in which religious and secular laws were intertwined. In order to understand this disjuncture between Korea and the other countries, an examination of social class mobility via social paths other than professions within various pre-colonial contexts is needed. Meantime, in relation to the literature on institutional transitions, the present study suggests that the political orientation of reforms is more important than the reforms themselves in ensuring a successful transfer of status and the survival of existing elites. While the temporal success of the Kwangmu reform nullified the effects of reforms from 1894-96 and made Korea conservative, it also made the ruling elites ill-prepared to reproduce their social status via the newly emerging professions.

There are, however, several limitations within this chapter that suggest future avenues of research. First, because the chapter did not investigate the family lineages of all the judicial officials and lawyers in the 1900s, the overall pattern of inter-generational mobility is not fully clear. Recent studies of families lineages reveal that the Korean society in the 18<sup>th</sup> and 19<sup>th</sup> centuries was remarkably dynamic to the extent that some families bought or even fabricated their elite yangban status while others descended to the status of commoners (Park 2014). If research on professions can be complemented by genealogical approaches, we will be able to better understand social class mobility at the dawn of modern Korea. Second, this study did not address why some judicial officials failed to practice law despite their eligibility to do so. The Lawyers Laws in 1905 and 1909 did not allow for the presence of judicial officials at every level of the court; instead, they strictly limited the eligibility criteria to the judicial officials of courts

in Seoul or judicial officials who had learned Western and Japanese laws. Even officials who met the conditions did not practice law after resignation/retirement. Further inquiries are to be made for why they did not practice law despite eligibility. Lastly, according to some studies, the ruling elites successfully became bankers or businessmen during the colonial period (Eckert 1996). Hence, a comparative study of the legal profession with other professions (e.g., medical doctors) and colonial Korea with other countries such as colonial Taiwan and even metropole Japan is required to understand more comprehensive pattern of social class mobility in early twentieth century Korea.

## **CHAPTER 4: THE FRAGMENTED IDENTITY OF LAWYERS**

### **Between Colonial Lawyers and Lawyers in the Colony**

#### **Chapter Summary**

In this chapter, I examine how legal structures contributed to the fragmentation of the practicing lawyers' identities within colonial Korea. The 1910 annexation treaty made Korea part of the Japanese empire but left its jurisdiction a legally separate territory with independent legal orders and courts imported from mainland Japan. This simultaneous integration and differentiation of colonial Korea resulted in a complex juxtaposition of practicing lawyers with qualifications from both metropole Japan and colonial Korea. Together, the dual nature of the lawyers' qualifications along with their ethnic division prevented them from building a coherent identity as a profession. In particular, these differences manifested themselves in terms of the lawyers' different attitudes towards the implementation of Court Constitution Laws.

#### **The Impact of Social Structures on the Identity Formation of the Professions**

A traditional view of the professions has identified professionals as those individuals with a higher level of education and work ethics that are essential to public interest (Carr-Saunders and Wilson 1933). This view mainly stems from the Durkheimian thought that professionals should play a key role in treating the moral diseases of society (Durkheim 1979; Durkheim 1992). Building on this line of thought, existing literature advocates that professions should exercise a

distinctive form of logic that is different from both the state and market, locating professions as a manifestation of modernity in providing checks and balances to the state and market and “guarding” modern society. For example, in contrast to the state which values authority and the market which stresses efficiency, Eliot Freidson (2001) contends that professions can regulate their members with rules and norms that form their own distinctive “third logic.” The distinctive logic is important for professions such that it contributes to forming a common will and a unified sense of collectivity which are necessary conditions for professional autonomy (Halliday and Karpik 1997: 32). In reverse, some scholar suggests that the death of guild power be read as the decline of professionalism. Paralleling the ideal of guild that regulate and works for its members, Elliott Krause argues that the proliferation of market and state power over professions deteriorates the power of professions (Krause 1999).

Much of the literature has highlighted the premise of a profession sharing a common identity, but, nonetheless, it leaves unexplored the process by which a group of experts becomes a profession. The premise holds true if and only if all or at least many professionals gather under a common banner of ideology and identity through similar experiences and social backgrounds. For instance, scholars have shown how professionalization intersects with multiple structures of discrimination, including patriarchy (Davies 1996; Witz 1992), heterosexuality (Woods 1993), and race (Shaw 1996). Stephanie Shaw (1996), for instance, has illustrated how professionalization for Black women involves a process of excluding their race and gender. In this sense, Ming-Chen Lo (Lo 2005) proposes that professionalization is a site of identity formation. Often embedded within the formal credentialing process, these exclusionary mechanisms serve to discriminate against female, non-white, and non-elite school practitioners of the profession. Or conversely, they work to create the dominant image of a profession as

composed of white, male, elite school graduates. That is, the collective identity of lawyers vis-à-vis other professions does not spontaneously arise simply by the sharing of the nominal title of “lawyer” or any single or multiple attribute(s). Instead, it can be considered a social, cultural, and political project that transforms certain categories into a sense of groupness (Brubaker 2005).

For practicing lawyers in the non-West, the colonial legal structures provide another lens to examine how their professional body became fragmented by racial/ethnic divisions and professional qualifications. Hierarchically arranged by race/ethnicity and by different qualifications between the metropole and the colony, the colonial legal structures generated vertical relations among the legal practitioners. Race/ethnicity, qualification, and the interplay of race/ethnicity with qualification thus differentiated the legal profession rather than integrated it. While racial/ethnic differentials discriminated against lawyers who became qualified in the colony, the different qualifications between the metropole and colony further reproduced them. It is doubtful that professionals from the ruling racial/ethnic group regarded their colonial counterparts as their peers.

Such differentials of race/ethnicity and qualifications made it difficult for the collective body of lawyers to share common experiences that often form the basis of a coherent identity. According to Jan Goldstein (1984), it was the common experiences of fighting against epidemics that consolidated the identity of French medical doctors in the early nineteenth century into a profession. In contrast, as I argue below, by partitioning the individual practitioners of law in colonial Korea into several subgroups, the colonial legal structures made it difficult for them to build a unified professional identity. On the one hand, the ethnic division between Japanese and Korean lawyers was hardly undeniable in colonial Korea where Japanese were privileged to Korean subjects in most aspects. Japanese, regardless of either being migrated to or being

nurtured in colonial Korea, took for granted their superiority to native Koreans (Uchida 2011). Nationalistic stances were a dominant sentiment among Koreans. Even within the Bar association, Korean lawyers wished to be segregated from the Japanese counterparts (Yi 1974). On the other hand, professional qualifications partitioned the legal profession into colonial lawyers and lawyers in the colony. While the former group's license was limited only to colonial Korea, the latter group was entitled to practice law everywhere in the Japanese empire. In doing so, the structures contributed the profession to be fragmented rather than building a distinctive logic against the colonial state.

### **Research Context: Why Lawyers in Colonial Korea?**

#### *The Separate Jurisdiction of Colonial Korea from Metropole Japan*

Examining the colonial context of Korea in the early 20<sup>th</sup> century and lawyers in colonial Korea contributes to debunking the conventional notion that professions in general and lawyers in particular hold a coherent identity. The separate jurisdiction of colonial Korea from metropole Japan resulted in legal practitioners in the colony who were differentiated from those in the metropole. While most colonial governments during the nineteenth and early twentieth centuries were autonomous from their mother countries (Steinmetz 2008), the Governor-General of colonial Korea exercised extensive control over the legislature, judiciary, and administration. As an active Japanese army general, he was directly responsible to the Japanese emperor and—until a few years prior to Japan's loss in World War II—was not at all accountable to the Japanese Cabinet. Although colonial Korea had formally belonged to the Japanese empire since 1910, laws promulgated by the Japanese Imperial Diet had no effect on people living on the Korean

peninsula unless they were sanctioned by the Governor-General's executive ordinance known as *seirei*. The separate jurisdiction that accompanied the territorial distinction between Japan as *naichi* (the internal land) and Korea as *gaichi* (the external land) resulted in an autonomous court system in which the High Court exercised the final decision over every lawsuit that was filed within colonial Korea.

However, with the executive ordinances that were valid and effective within the boundary of colonial Korea underpinning the legitimacy of the colonial court and the status of its officials, the issue of whether or not the colonial judiciary was grounded in the Japanese Constitution arose. Courts in colonial Korea belonged to the colonial government as affiliated entities. Complying with the Japanese empire's personnel management system, the judges and prosecutors were appointed by the Japanese Prime Minister but they remained under the supervisory control of the Governor-General. Executive ordinances on courts in Korea that were declared in 1911 secured all the appointments of judges and prosecutors through the Governor-General, making the colonial judiciary subordinate to the colonial administration. With few exchanges of personnel during the colonial period, the judiciary in metropole Japan remained largely disconnected from that in colonial Korea. While there were Japanese judicial officials who volunteered to be stationed in colonial Korea, most judges and prosecutors assigned to colonial Korea were likely to finish their career there and unlikely to return to metropole Japan. The Governor-General's legislative power also allowed him to enact executive ordinances to regulate the selection process of judicial officials and lawyers. Judicial officials and lawyers who obtained their qualifications in colonial Korea were sometimes differentiated from those who had obtained them under the metropole conditions of the Japanese Bar or National Higher Civil

Service examinations. For instance, lawyers who were governed by this ordinance were not entitled to practice law in other regions of the Japanese empire (e.g., Japan and Taiwan).

*Multiple Routes to Practicing Lawyers, Two Ethnicities, and a Single Title*<sup>25</sup>

The second distinctive feature of the legal profession in colonial Korea lay in the fact that its members were entitled to practice law under the single court structure despite holding various qualifications and having two different ethnicities. Similar to the metropole government, the colonial government maintained two routes to become a practicing lawyer: the judiciary and the bar. All judicial officials (judge and prosecutor) of the colonial judiciary were eligible to practice law in colonial Korea unless their retirement/resignation resulted from disciplinary actions.

Although some judicial officials were recruited through special recruitment programs run by the colonial government, the different qualifications had no impact on a lawyer as long as he practiced law in colonial Korea. Likewise, within the boundary of colonial Korea, those who passed the Korean bar examination held the same rights and obligations as those who passed the Japanese bar examination. By the executive ordinances of the Governor-General, lawyers who had been practicing law before colonization were permitted to continue practicing it in colonial Korea. By the mid-1920s, retired judicial officials of the Chosŏn-Korean government and passers of the Korean bar examination administered in 1907 and 1908 comprised the majority of Korean lawyers.

Complicating the diverse backgrounds of the practicing lawyers in colonial Korea was the factor of ethnicity. According to the ordinance on lawyers in colonial Korea promulgated in

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<sup>25</sup> Regulations on Lawyers in Colonial Korea [seirei No. 12 in 1910 December 15<sup>th</sup> ; seirei No. 5 in March 1912; seirei No. 15 December 1921; seirei No. 8 June 1922]

1. Those who obtained the license of lawyer in accordance with the Lawyers Law in Japan
2. Japanese male subjects older than twenty who passed the Korean Bar exam
3. The judicial officials of the courts of the Chosŏn-Korean government, the officials of the Residency-General's Office, the officials of the Colonial Government, or those who had already practice law in Korea before colonization.

1912, all lawyers in Korea had to register in one of the bar associations located in the eight cities of the local courts. Many Japanese and Korean lawyers outside of Seoul belonged to these local bar associations. Accounting for approximately two-thirds of the practicing lawyers in colonial Korea who did not belong to the bar associations of Seoul, these two associations continued to be divided by ethnicity until 1937 when the colonial government united them.

The equal status of lawyers despite their qualifications and ethnicities was made possible by the single court structure of the Japanese colonizers. Unlike some British and French colonies with a parallel system of courts in which native jurists and legal professionals ruled cases involving indigenous customs (Brown 1995; Sarr and Roberts 1991; Christelow 1982), the Japanese colonizers established a single court structure in colonial Korea in which all civil litigations and criminal trials began and were completed within the colonial court system. In March 1912 the colonial government issued the Ordinance on Civil Matters under which the basic legal order of the colonial period was constituted. While Japan's civil code became the governing law in colonial Korea, the Governor-General decreed that private legal matters among Koreans be regulated by Korean customary rules. Thus, both Japanese residents and Koreans in colonial Korea had to consult with lawyers registered by the colonial authorities in order to file their lawsuits.

### *Geographical Proximity and Transnational Migration between Japan and Korea*

The third factor that made the legal profession in colonial Korea noteworthy was the geographical proximity of Japan and Korea, which enabled a large transnational mobility of legal professionals. The 700 miles between Tokyo and Seoul took about three days to cross in the 1920s. Pusan, which served as the main gateway for Japanese migration to Korea, was only 130

miles from the City of Fukuoka in Kyushu. During less than 40 years of colonial period, Japanese companies and their colonial government brought over more than one million Japanese migrants and their families to colonial Korea. Lawyers comprised a minor portion of the entire Japanese migrant population but their inflow to Korea continued steadily into the early 1940s.

The geographical proximity of the two countries also facilitated the Korean students' study abroad to Japan. Before 1922 when the colonial authority resumed the Korean Bar Examination, returning to Korea after passing the Japanese Bar Examination was one of the two routes for them to practice law in colonial Korea. Even after 1922, with Keijō Imperial University remaining the only college-level institute in colonial Korea until the end of colonial rule in 1945, studying abroad to Japan was popular with elite Korean students who desired to study law. This desire was reinforced by the ethnic quota maintained by Imperial University in which only one third of the spots were reserved for Korean students forcing many elite Korean families to send their offspring to Japan every year for higher education. Studying in Japan was also advantageous for taking qualifying examinations such as the Japanese Bar Examination and the National Higher Civil Service Examination. Consequently, in the last two years of colonial rule, the number of Koreans who passed the exams in mainland Japan exceeded 70.

## **The Pathways to Become a Practicing Lawyer in Colonial Korea**

### *Lawyers with Metropole Qualifications*

Metropole qualifications reflected the changes in selection criteria established by the metropole Japanese government. The qualifications consisted of three different conditions. The first condition was passing the Japanese Bar Examination. All practicing lawyers in mainland

Japan were entitled to practice law in Korea (and colonial Taiwan). Until 1925 when the Japanese Bar Examination was integrated into the National Higher Civil Service Examination, the Bar Examination served as the major source of practicing lawyers for the Japanese empire. Even after 1925, this source of practicing lawyers survived under the name of the “52 Exam.”

Former judicial officials in mainland Japan were also granted the right to practice law in colonial Korea after retirement with no restriction. For many judicial officials, passed the jurist examination was considered another pathway to becoming a lawyer. Graduating from an imperial university was the third and last condition for meeting the metropole qualifications of becoming a practicing lawyer although this pathway was cut short in 1921. After graduation, the Imperial University graduates were often granted a probationary judgeship or prosecutor position. Unlike private university graduates, Imperial University graduates were not required to take the jurist exam either to become a judicial official although they were still required to pass a test after an eighteen-month probationary position. In addition, they were allowed to practice law as a lawyer. After the administration of the National Higher Civil Service Examinations in 1925 united the two paths to becoming a judicial official or practicing lawyer, the judicial branch of the examination, as one branch of the National Higher Civil Service Examinations, produced about 300 successful candidates per year.

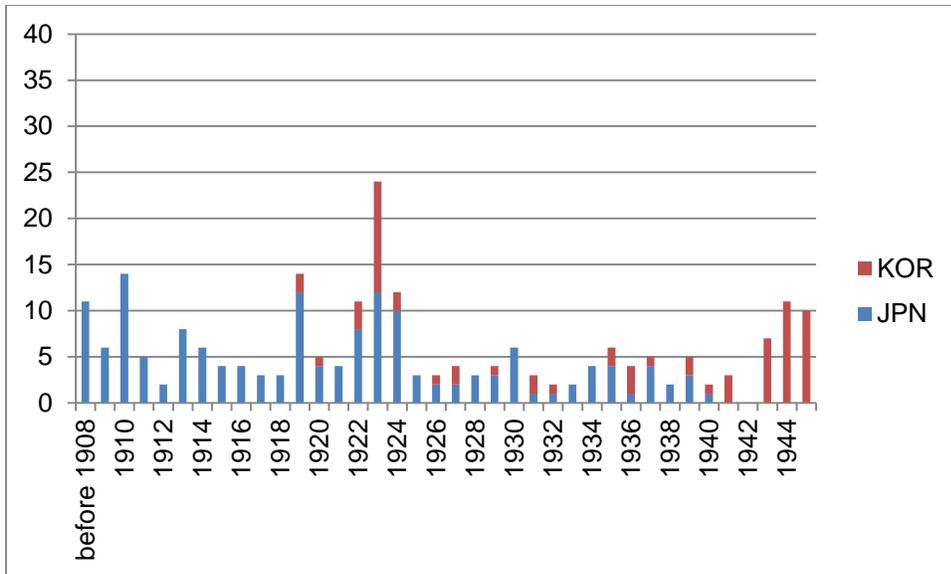


Figure 5 Registration of Lawyers with Metropole Conditions in Colonial Korea from 1908 to 1945; source: The Official Gazettes of the Colonial Government from 1910 to 1945; the Official Gazettes of the Metropole Government from 1916 to 1924

Figure 5 presents the annual number of lawyers by ethnicity who registered as lawyers after satisfying the metropole conditions. To locate the registration of metropole lawyers, I examined the lawyers' qualifications from archives including the Official Gazettes of the colonial and the metropole governments, a colonial Korean version of Who's Who (Chosŏn Sinsataedongpo) and constructed all registered lawyers' profile during the colonial period. The supply of lawyers with metropole qualifications in colonial Korea depended on the unequal relationship between the two countries. The first generation of metropole lawyers in colonial Korea can be traced back to the late 1900s. One group came from the members of the judicial advisor to the pre-colonial Korean government or the affiliated officials of the Residency-General's Office. Keeping with the aim of the Residency-General's Office's policies to Westernize the Korean judiciary, they were appointed as judicial officials in colonial Korea. Colonization of Korea changed many of the Japanese officials' career trajectories. After the colonial government of Korea downsized the colonial judiciary in 1911-12, many of them

resigned from their offices. Some of those who resigned stayed in Korea, and started to practice law.

Along with them, migrant Japanese lawyers constituted the main corpus of metropole lawyers in colonial Korea as late as 1919. In contrast to the influx of metropole lawyers into colonial Korea in the early 1910s, which occurred in part due to the colonization project, the migration of Japanese lawyers after the late 1910s was caused by the oversupply of lawyers in Japan. After the 1920s, the Japanese Bar Examination produced a greater number of successful candidates. More than 700 became successful graduates in both 1922 and 1923, which was five times the number of passers in 1919 (the Official Gazette of the Japanese Government 1922; 1923). From 1919 to 1924, about 47 Japanese metropole lawyers migrated to Korea to practice law, far exceeding the previous number of Japanese migrant lawyers.

From the early 1920s onwards, a growing number of Korean lawyers with metropole qualifications started to register and practice law in colonial Korea. Many were former study abroad students who had studied in Japan's elite universities. The first Korean to pass the Japanese Bar Examination in 1918 was Yi Sŭngu. Following Yi, twenty Korean lawyers registered with the colonial government after passing the Japanese Bar Examination between 1919 and 1924 (the Official Gazette of the Japanese Government 1919; 1920; 1921; 1922; and 1923). It is noteworthy that the key figures of the lawyer activism in the 1920s, including Yi In and Kim Yong-mu, were those who had passed the Japanese Bar Examination. Although not all Korean candidates returned to Korea right after passing the exam, the majority of them did. Kim Pyŏng-u, who passed the Japanese Bar Examination in 1921, came back to Korea in 1927 (The Official Gazette of the Colonial Government July 14<sup>th</sup>, 1927). After the judicial examinations became integrated into the National Higher Civil Service Examination in 1925, the influx of

returning Korean candidates continued. In the early 1940s, while the number of Koreans who passed the National Higher Civil Service Examination surged, the number of Japanese applicants decreased due to conscription.

The study abroad of Korean students and their return after graduation originated from a huge difference in law education between metropole Japan and colonial Korea. Emulating the education system in metropole Japan, the colonial government maintained its education structure but segregated the structure into a two-track system based on ethnic division. Most Japanese students followed a track oriented to higher education from elementary, to secondary, and to college education, whereas most Korean students trailed a path directed toward vocational education from normal, to secondary, and higher vocational education. Most Koreans were allowed to learn law in vocational colleges. An offspring of the pre-colonial Korean government's Jurist Training School, the Keijō Vocational Law School (k: Kyōngsōng pōphak chōnmunhakkyo; j: Keijō hougaku senmon gakou) was the sole path to learning law and becoming a low mid-ranking official within the colonial government. However, graduating from this school did not guarantee a lawyer license. To become a lawyer, one had to compete with other Korean court clerks for the three or four positions as judge or prosecutor within the colonial government that were available every year.

With the path to higher education nearly closed to them in colonial Korea, many Korean students opted to study in Japanese colleges, which remained open to Korean students (Zeng 1999). Many Korean elite students considered study abroad in Japan as the most promising way to attain higher education in the early 1900s and transformed Japanese colleges into a training ground for national exams. In particular, for Korean students who usually did not have a middle

school diploma, the vocational programs (j: senmonbu) within the Japanese four-year colleges were the most popular.

### *Lawyers with Colonial Qualifications*

The Lawyer's Law in 1912 divided the lawyers into two groups depending on their qualification. One was lawyers qualified by imperial law; the other was lawyers qualified by an executive ordinance. Lawyers with colonial qualifications were qualified by an executive ordinance that operated independently of the laws in mainland Japan. Unlike judicial officials with metropole qualifications, some judges and prosecutors of the colonial government were recruited through a special condition that responded flexibly to colonial circumstances. In principle, the colonial government had to abide by the Constitution and Court Constitution Laws in electing its higher officials. The Constitution and Court Constitution Laws dictated that judges and prosecutors meet their qualifications by either passing the Jurist Examination (later known as the National Higher Civil Service Examination) or graduating from an imperial university (before 1920). However, attracting elite judicial officials to colonial Korea was not an easy task. Vacancies at the lowest level of court became common from the late 1910s to the late 1920s. To fill these vacancies, the colonial government introduced a measure in 1922 to hire judicial officials from a pool of Japanese and Korean court clerks. During the 1920s, about 80 Japanese and 60 Korean court clerks were promoted to judges or prosecutors and assigned to the lowest level courts. In addition, special regulations for Korean judicial officials, who accounted for a quarter of the judicial officials within the colonial government, were passed. The quota, inherited from the pre-colonial government of Korea in 1908, remained in effect until the end of colonial rule. After the promulgation of ordinances No. 6 and 7 in 1910, it became possible for Korean

judicial officials and Korean court clerks to become judges or prosecutors within the colonial government. For most Korean judicial officials, who had neither graduated from imperial universities nor passed the national exams, this was their only path of employment in the colonial government?

With the end of this system of promotion for Korean clerks who wished to become judicial officials in the early 1930s, the judicial bureaucracy became the main source of lawyers in colonial Korea. Although they were devised to meet the shortage of qualified judicial officials and recruit Korean officials into the colonial government, the Governor-General's ordinances created special paths of recruitment which would have not been possible in metropole Japan. Many court clerks, some policemen, and Korean officials were named judges or prosecutors through executive ordinances on their qualifications. Still, judicial officials appointed through these measures were not allowed to be promoted to higher positions such as the chief-judge of local courts or the prosecutor-in-chief of local prosecutor's offices. In addition, judicial officials and lawyers appointed through these special conditions were not entitled to practice law outside of colonial Korea.

After the Korean Bar Examination that had ceased operation in 1909 resumed in 1922, it also became an important institution for producing lawyers in colonial Korea. Unlike the Japanese Bar Examination administered by the Ministry of Justice in metropole Japan, the Korean Bar Examination was administered by the colonial government's Bureau of Justice. An ordinance on the Korean Bar Examination passed on December 2<sup>nd</sup>, 1921 stipulated that the examination be comprised of a preliminary exam, a main written and oral exam, and a medical checkup. Those who had completed preliminary college courses or their equivalent as recognized by the Governor-General were waived from taking the preliminary exam, which consisted of an

essay. Topics within the written exam included civil law, criminal law, commercial law, civil procedure, criminal procedure, international law, the Constitution, and economics. The successful candidates of the written exam moved onto the oral exam, which tested their knowledge of civil law, criminal law, commercial law, civil procedure, and criminal procedure.

By 1945, the Korean Bar Examination had produced 224 successful candidates who were entitled to practice law only within the jurisdictional boundary of colonial Korea. Also different from the Japanese bar examination was the quota system that was in place with the Korean Bar Examination. Within the Korean Bar Examination system, only a limited number of successful candidates could pass the exam. Until 1940, the number of successful candidates of the examination remained less than 10 per year. In 1924, Daily Dong-A newspaper reported how exam applicants had pleaded with the Governor-General and even to the Japanese government to increase the number of passers after pointing out how the examination had produced only three that year (Daily Dong-A September 14<sup>th</sup> and September 29<sup>th</sup>, 1924).

The category of colonial lawyers also included Korean lawyers who had already practiced law before colonization. The Korean Bar Exam was administered twice in 1907 and 1908, producing 11 lawyers in total. In addition to these practicing lawyers, there were Korean lawyers who had retired from the Korean courts prior to the delegation of judicial sovereignty to Japan in 1909. By an executive ordinance passed in 1910, the Japanese colonial government recognized the right of these lawyers to practice law. Therefore, before colonization, there were about 47 practicing Korean lawyers either from the pre-colonial Korean judiciary or the Korean Bar Examination.

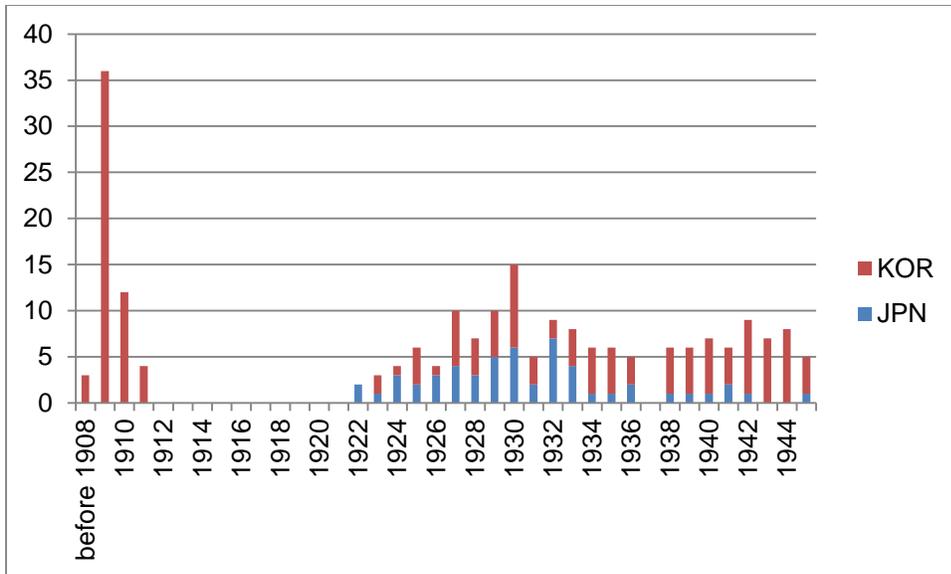


Figure 6 Registration of Lawyers with Colonial Conditions; source: The Official Gazette of the Colonial Government from 1910 to 1945; note: there was no lawyer registration in 1937 because the Lawyers Law in 1936 required the Korean Bar Examination passers to go through an eighteen-month probationary course. Thus, those who passed the exam in 1936 and 1937 started to register only in 1938.

Figure 6 presents the longitudinal trend of colonial lawyers' registration with the colonial government from 1910 to 1945. Until 1921, nearly all the colonial lawyers were Koreans. Most Korean lawyers who registered before 1911 were lawyers who had already obtained their license from the pre-colonial Korean government. From 1912 to 1921, there were only a handful of lawyers with colonial qualifications since the government did not administer the Korean Bar Examination. During this period, the Korean lawyers were either practicing lawyers who had already registered before the country's colonization in 1910 or judicial officials of pre-colonial or colonial Korean governments. With the resumption of the Korean Bar Examination in 1922 by colonial authorities, the supply of lawyers with colonial conditions slowly but steadily increased.

Still, until the early 1930s, the Korean Bar Examination produced less than 10 successful candidates per year. The first year, for instance, produced only four passers out of 122 applicants. In 1923, the second year, the number of passer remained at only five. Meanwhile, the

administration of the Korean Bar Examination in 1922 induced the influx of Japanese into colonial Korea. In fact, the Korean Bar Examination was another route for talented Japanese court clerks or policemen to become a lawyer within a few years. In 1922, three out of the four successful candidates were Japanese. The dominance of Japanese passers continued until the early 1930s leading to a growing number of Japanese practitioners with colonial qualifications. From 1922 to 1936, about fifty Japanese lawyers who had satisfied the colonial conditions practiced law in colonial Korea.

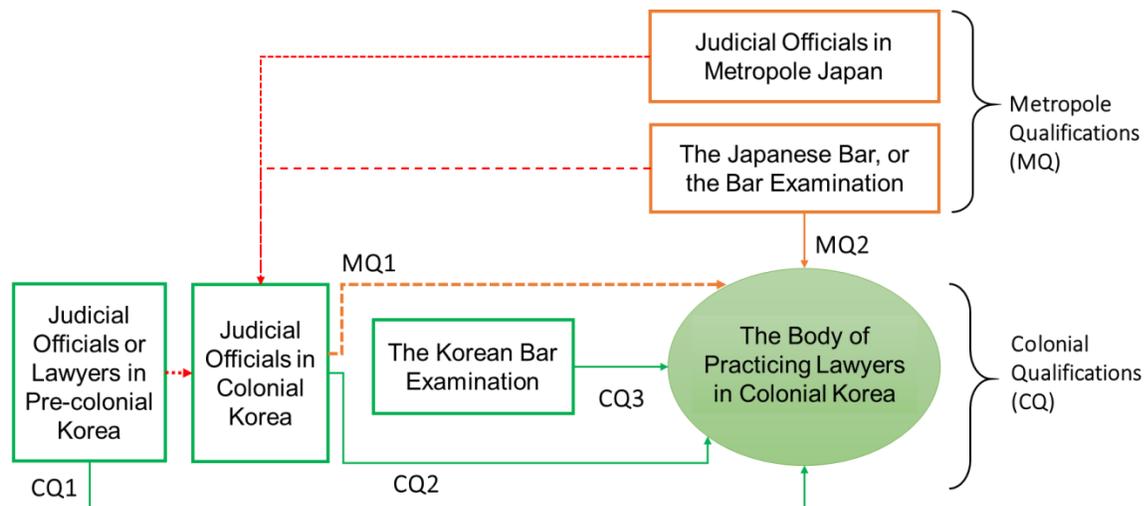


Figure 7 the Institutional Pathways to Practicing Lawyers in Colonial Korea from 1910 to 1945

Figure 7 illustrates the five institutional pathways to becoming a practicing lawyer in colonial Korea. While metropole lawyers were either judicial officials of the colonial government (MQ1) or migrant lawyers from mainland Japan (MQ2), colonial lawyers came from practicing lawyers in pre-colonial Korea (CQ1), retired/resigned judicial officials of the colonial government (CQ2), or the Korean Bar Examination passers (CQ3). Ethnicity became a complicating factor in the composition of practicing lawyers in colonial Korea. Ethnicity

complicated the five pathways in increasing the numbers of Japanese who became a lawyer through colonial qualifications while Koreans became a lawyer through metropole ones.

Due to these different backgrounds, it became difficult for the collective body of practicing lawyers in colonial Korea to build a coherent professional identity. As former judicial officials of the colonial government or migrant lawyers, the Japanese lawyers considered practicing law in colonial Korea to be a business. If their business did not go well, they just quit and left. Their professional identity remained that of practicing lawyers in a colony. For colonial lawyers, in contrast, colonial Korea was the jurisdictional boundary within which their status was legally guaranteed. They thus became colonial lawyers with a marginalized status vis-à-vis their metropole counterparts.

### **Fragmented Interests and Identity**

Such different attitudes of the Japanese and Korean lawyers towards colonial Korea manifested themselves specifically in their differing stance towards the withdrawal of registration and implementation of Court Constitution Laws. While resigning meant quitting their job within the colonial government for colonial lawyers, it meant leaving colonial Korea for presumably another job—similar or different—elsewhere in the empire for metropole lawyers.

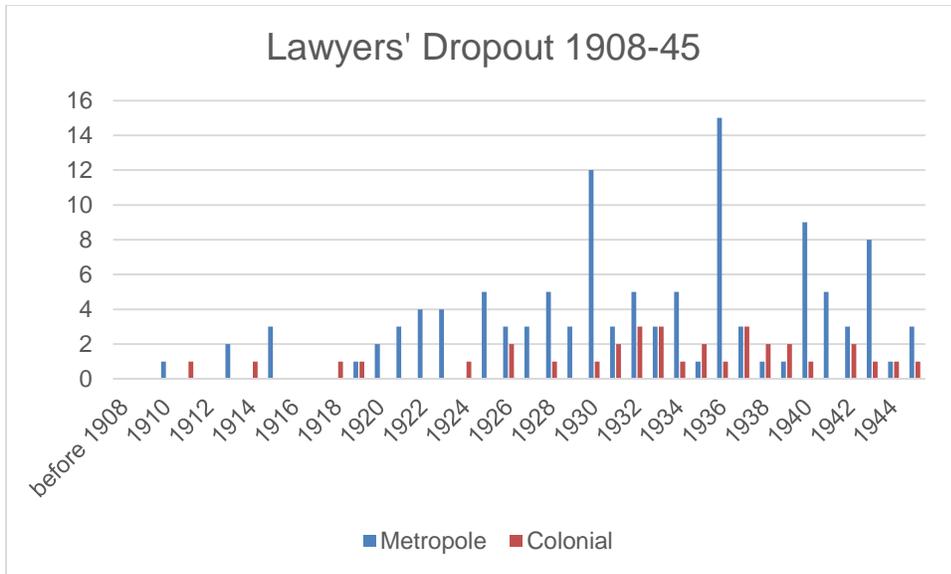


Figure 8 Lawyer's Dropout Except for Death Divided between Metropole and Colonial Lawyers; source: The Official Gazette of the Colonial Government from 1910 to 1945

Figure 8 shows the longitudinal trend of the lawyers' dropout except for death from 1908 to 1945 divided into metropole and colonial lawyers. Because the executive ordinance on lawyers in colonial Korea stipulated that lawyers be disqualified through the submission of the withdrawal to the colonial government, disciplinary actions imposed by the government, or death, the longitudinal trend of lawyers' dropout represents the different intents of quitting their work by professional qualifications. The overall frequency of withdrawals from the lawyer registration by Japanese metropole lawyers is shown to be far greater than the withdrawal of other groups of lawyers. Whereas no more than ten colonial lawyers submitted their withdrawal requests to the colonial government for the first two decades of the colonial rule, the number of requests of metropole lawyers amounted to 37 for the same period. The submission of withdrawals of metropole lawyers rapidly increased, as Japan entered in conflicts with China and Western countries in the 1930s. 12 lawyers in 1930 and 15 lawyers in 1936 submitted such requests. In particular, after the colonial government enacted an executive ordinance in 1936 requiring all

lawyers to register with a bar association, many metropole lawyers left colonial Korea. If the 13 metropole lawyers who had been deleted from the colonial government's registry would have been included in the counting (the Official Gazette of the Colonial Government August 3<sup>rd</sup> 1936), then the number of metropole lawyers' withdrawal request becomes 27. With the start of a full-scale war by Japan in the 1940s, many metropole lawyers also decided to return to Japan. From 1940 to 1943, while 26 metropole lawyers dropped out of the bar associations in colonial Korea, no metropole lawyers registered in colonial Korea.

More complicated than the withdrawal of lawyers from colonial Korea was the issue of implementing the Court Constitution Laws that had the potential to unify the separate legal jurisdictions and equalize the status of colonial and metropole lawyers.<sup>26</sup> The unification of the two jurisdictions involved the fundamental issue of whether the Governor-General in Korea or the Minister of Justice in Japan would exercise control over the judicial officials and court administration in the colony. As a separate jurisdiction, colonial Korea was under the direct rule of the Governor-General who controlled the affiliated organizations and issued executive ordinances that were equivalent to enacted laws in mainland Japan. The ordinance on colonial Korean courts (Chosŏn Chuhutoku Saipanshurei) stipulated that the authority to monitor judicial officials in colonial Korea was held not by the Ministry of Justice but by the colonial government. In contrast to judges in mainland Japan whose independent status was protected by the Constitution and its related laws, judges in colonial Korea had no such protection. Some articles in the ordinances stipulated the independence of judges but their coverage fell far short of those

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<sup>26</sup> To restrain the Governor-General's extensive authority in colonial Korea, the metropole government in the 1920s introduced several measures. Attributing the cause of the country-wide anti-Japanese movement in Korea 1919 to the Governor-General the Japanese government tried to appoint a civilian official to this position. The appointment of Saito Makoto, a Navy Admiral, was a result of negotiation between the Japanese government and the Japanese Army.

in metropole Japan.<sup>27</sup> If the Court Constitution Laws were applied to colonial Korea, then the Governor-General would have lost its power to monitor the judiciary. Therefore, the application of the Court Constitution Laws to colonial Korea was a non-negotiable issue for the colonial government.

In general, the Japanese metropole lawyers also took a negative stance towards the implementation of these laws, insisting that colonial Korea was too under-developed to be completely incorporated into Japan. In a lawyer's conference in 1925, Matsuda, a Japanese lawyer, suggested that colonial Korea remain under the direct control of the Governor-General for a while longer. It is not surprising that Matsuda took this stance since he was a former judicial official of the colonial courts. In contrast, Japanese colonial lawyers viewed the implementation of these laws as an important means to elevate colonial Korea's level of civilization. With their legal status as a lawyer meaningless outside the boundary of colonial Korea, they pushed for the unification of the two jurisdictions as a means to practice law anywhere in the Japanese empire.

While the Korean lawyers and the general Korean public were well aware of the importance of the Court Constitution Laws, they were divided as to how to view them. In 1921, the Daily Dong-A proposed that the Court Constitution Laws be applied to colonial Korea as part of legislative efforts to eventually make Koreans equal to the Japanese in terms of voting rights and other constitutional protections (Daily Dong-A May 11<sup>th</sup>, 1921). In the following year, the newspaper also declared that jurists in colonial Korea should remain keenly aware of the people's right to vote (Daily Dong-A February 27<sup>th</sup>, 1922). To be sure, Korean lawyers were already well aware of importance of colonial Korea's juridical separation from mainland Japan.

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<sup>27</sup> For example, the judge disciplinary committee was organized by the Governor-General and the General assumed the chair of the committee. Moreover, The Bureau of Justice, one of the six main bureaus within the Governor's Office, supported and advised the General with regard to the personnel management of judicial officials.

In an interview with *Tongkwang* (1932), one Korean lawyer, Hō Hōn, asserted that “the point that we want to reiterate is the different jurisdiction of colonial Korea from metropole Japan since the Court Constitution Laws do not apply to this country (Hō Hōn, November 1<sup>st</sup>, 1932 *Tongkwang* Vol. 39).”

However, applying the Court Constitution Laws to colonial Korea was not an easy issue for nationalistic activists. Depending on whether they believed that colonial Korea would one day be part of the Japanese empire or an autonomous territory that deserved its own self-governance, the Koreans viewed the laws differently. The issue of the law’s implementation also provoked strong reaction on the part of pro-Japanese Koreans who actively championed the equal rights of Koreans. They believed that the integration of colonial Korea into imperial Japan would eventually result in an envoy of Korean representatives to the Imperial Diet. In contrast, the majority of nationalistic Koreans, who stressed the education and enlightenment of the Korean public, supported jurisdictional separation. They, on the one hand, hoped that the institution of the Court Constitution Laws would contribute to the abolishment of oppressive legislations based on the Governor-General’s executive ordinances regarding security, newspapers, and public gatherings—all of which constrained the Korean people’s freedom. Despite these hopes, however, they were still concerned that the integration of colonial Korea into the Japanese empire would result in its permanent subordination, which opposed to their goal to achieve self-ruling by Koreans in the Japanese empire. Between the integration of the legal system and the jurisdictional separation, many nationalistic lawyers did not firmly establish their stances, because each represented two different ideals. The integration of the legal system risked their nationalistic and realistic goal to obtain self-governance, although it possibly improved the oppressive politics by the colonial authorities. In contrast, the jurisdictional

separation to some extent guaranteed the different status of colonial Korea from metropole Japan. Advocated by the colonial government, the separation served as the main reason for extensive power of the colonial government. However, it also played the deterioration of the rule of law in colonial Korea, as it granted the colonial government excessive power.

The group that most aggressively challenged the status quo and advocated for the adoption of these laws were the Japanese colonial lawyers. In a newspaper article entitled, “The Independence of the Judiciary and colonial Korea,” Miyazaki Takeshi, a Japanese lawyer who had passed the Korean Bar Examination in 1924, asserted,

The direct control of the Governor-General over the court should be ceased at its administrative control, but not be extended to the content of judgments. I have been told a rumor that the Governor-General has occasionally intervened in some cases. I do not believe such a rumor to be true. But I suggest that the rumor already reflected that the judicial system exposes some problems... The prosecutor’s office as well as the court should be under the jurisdiction of the Minister of Justice in mainland Japan. Although such a delegation [of the judicial power to the Ministry of Justice] would be uneasy for the Governor-General and the colonial government, it is inevitable [for the independence of the judiciary] (Miyazaki Takeshi, September 8<sup>th</sup>, 1929, Horitsu Shinbum).

In the article, Miyazaki asserts that the division of the judiciary from the administration be accomplished and further the court be integrated into the court system in metropole Japan in order to improve the role of judiciary in colonial Korea. His arguments were reasonable in that as a practicing lawyer in colonial Korea with the colonial qualification, the unification of the legal

system brought him to the same legal status to metropole lawyers. Moreover, similar to many Japanese residents in colonial Korea who believed that the colonial government was oppressive even to Japanese, his argument aimed at restraining the extensive power of the colonial government. However, the arguments were hardly acceptable for both the colonial government and the Korean practitioners with entirely different reasons. For the colonial government, on the one hand, the unification meant the loss of judicial power that had served one of its main wings to stably and efficiently rule colonial Korea. For most Korean lawyers, on the other hand, the unification denoted that colonial Korea to be unified into a part of Japan and therefore lose the change to be independent.

## **Chapter Conclusion**

In this chapter, I have shown how the identity of practicing lawyers in colonial Korea, as dictated by the colonial legal structures, became fragmented by qualifications and ethnicity. Lawyers who were segregated by separate jurisdictions and ethnicity displayed very different attitudes towards the legal orders of colonial Korea and the entire empire. I have suggested that one way the lawyers in the colony and the colonial lawyers differed was through their different patterns of withdrawal and attitudes towards the Court Constitution Laws. For most metropole Japanese lawyers, colonial Korea was merely an extension camp where they might advance to or retreat from. Within metropole lawyers, Japanese lawyers were not much interested in improving the status of colonial Korea. In contrast to their metropole counterparts, Japanese lawyers who obtained their license from the colonial government were the most actively engaged in the unification movement.

Such varying attitudes derived from the legal structures in colonial Korea imposed by the Japanese colonizers. The legal structures made it difficult for lawyers, divided by qualification and ethnicity, to form a coherent professional identity. With ethnicity and/or qualification prioritized over their unity, it also made it difficult for the profession—despite the high status of individual lawyers—to be vocal on public issues.

## CHAPTER 5: THE GEOGRAPHICAL DISTRIBUTION OF LAWYERS

### Where to Practice and Where to Move

#### Chapter Summary

This chapter explains how lawyers' status in the bar hierarchy affected their choice of residence during the colonial period from 1910 to 1945. To analyze their "geographical distribution," I examined the relationship between their first choice of place to practice law and the odds of being transferred to another place with their ethnicity, qualification, and in-office career. As explicated earlier, lawyers in colonial Korea were equally treated regardless of their origin of qualification or ethnicity. Drawing on writings on the social stratification of lawyers which argue that a lawyer's place of practice and chances for transfer are determined by their status, I argue that both the most and least prestigious lawyers practiced law in Seoul whereas lawyers with intermediate prestige practiced law in minor cities. After constructing a profile of the 799 practicing lawyers including their dates of registration, plates of registration, dates of transfer, dates of withdrawal, and their in-office career trajectories through archival research, I engaged in logistic regression analysis to discover that lawyers who served in higher level courts and who started their law practice right after passing the bar examination tended to choose Seoul as their first place of registration. In contrast, Korean lawyers with colonial qualifications were more likely transfer to another place. Another logic regression analysis tracing the Korean lawyers' history of transfer showed that the majority of Korean lawyers circulated around local cities or moved from larger to smaller cities. I conclude that lawyers in colonial Korea, who were

hierarchically structured by their in-office career, qualification origin, and ethnicity—all of which differently impacted their status in the bar—experienced different forms of geographical distribution.

### **Theories of Lawyer Status in the Bar and their Geographical Distribution**

The geographical distribution of lawyers represents two dimensions. On the one hand, it is involved with where lawyers decide to practice law. The fact that elite lawyers have corporate clients also suggests that they are more likely to locate in big rather than mid or small-sized cities. That is because major cities provide more opportunities for lawyers to acquire corporate clients. In today's globalized world, prestigious law firms in the United States or United Kingdom open branch offices in large metropolitan cities in Asia, Africa, and South America but not in minor cities (Silver 2007). On the other hand, the distribution is related to where practicing lawyers transfer. Literature on lawyers' domestic and international migration supports this proposition. For instance, with rapid industrialization, Chinese lawyers have migrated from inner cities and rural towns in the western part of the country to big cities on the east coast to seek opportunities (Liu, Liang, and Michelson 2014). With the choice for place where to practice law and the decision to transfer, the geographical distribution of practicing lawyers is determined.

Where to practice law and where to transfer are closely associated with the lawyers' relative status in the bar hierarchy. The social status of lawyers in the bar is by and large determined by two factors. One is the client-type. According to Heinz and Laumann (1994), lawyers have two client types: corporations and individuals. Lawyers with higher social status tend to work for corporate clients or a few select individuals. Lending support to this thesis has

been Sandefur's research, which shows that lawyers, whose prestige lies in their specialty, are more likely to attract corporate clients (Sandefur 2001). Dinovitzer and Garth (2007: 43) have also suggested that "the higher a lawyers' law school ranking is, the more likely s/he would have corporate type clients than individual/small business type clients." Another factor contributing to the lawyers' social status is their durable social relationships with their clients. The expertise of lawyers is in many cases defined by their jurisdictional boundary since law is a system not only of substantive incentives and penalties but also moral principles and symbolic rules (Suchman and Edelman 1996). If they move beyond the jurisdictional boundary of their knowledge, they are likely to lose legal authority. With their expertise heavily reliant on local knowledge and local social networks, lawyers seek to maximize both in order to bolster not only their income but also their social status (Michelson 2007; Sarat and Felstiner 1994; Silbey 1981; Mather, McEwen, and Mainman 2001). Since lawyer is a legal profession whose power is based on long-term relationships with their clients, migration to a new place often risks the loss of social capital as well as their expertise resulted in entering the bottom of the legal profession's social structures (Dinovitzer 2006).

The concepts of social capital bridge the distribution of lawyers with their status in the bar. Social capital, defined as potential and realized benefits from social ties with someone (Bourdieu 2001; Lin 2002),<sup>28</sup> the capital can be measured empirically along two dimensions. One is the prestige of the people with whom I have a relationship. Existing literature on social network studies suggests that the prestige of the people with whom I made be considered in differentiating social links (Katz 1953) (Podolny 2001). The other is the duration of social relationships with which I have maintained. As Ronit Dinovitzer (2006) asserts, "[T]o be productive social capital must be successfully marshaled by those *situated* individuals who can

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<sup>28</sup> There are some studies noting constraining effects of social capital (Uzzi 1996; Dinovitzer 2006).

convert it into a meaningful resources” (448: italic added by the author). How long a person makes a relationship with others indicates the depth of the relationship and therefore increase the likelihood to convert the relationship into resources. In other words, a lawyers’ social capital is a situated asset whose conversion into a more tangible form depends on who the other person is and how long the lawyer has known him or her.

With regard to the relationship between the lawyers’ status and their geographical distribution, therefore, the most prestigious are those who have enjoyed a stable relationship with prestigious clients. In other words, lawyers with relationships with corporate-type clients for a long while are the most prestigious lawyers. Such lawyers are found in large cities with a great number of corporations and prestigious individual clients. In contrast, the least prestigious are those who have maintained short-term relationships with individual clients. In failing to find and maintain durable relationships with prestigious corporate or individual clients, non-elite lawyers often migrate to either big or mid to small-sized cities in order to find better opportunities. Somewhere between the most and the least prestigious lawyers, there are mid-ranked lawyer groups who enjoyed either durable relationships with their individual clients or unstable relationships with corporate clients. Lawyers who fall in these two groups hold intermediate levels of prestige in a sense that they lack either compared to the most prestigious lawyers.

Using the theoretical insights of these readings, this chapter seeks to understand the geographical distribution of practicing lawyers in terms of social capital that shows what types of social network one maintains. We can conceptualize two clusters of practicing lawyers in a given geographical distribution by the relationship’s stability and prestige. In one cluster, the most and least prestigious lawyers practice law in big cities for very different reasons. Lawyers, who belong to the dominant racial/ethnic group and have an upper class family background and elite

law school education, are much more likely to have stable and well-compensated relationships with higher status clients. In contrast, lawyers from a minor racial/ethnic group with lower class family background and less prestigious law school education undergo many difficulties in finding stable client relationships and settling down. Unlike elite lawyers, non-elite lawyers in big cities are forced to decide whether to stay or leave a big city depending on the ethnic networks that are available to them in other cities. In the other cluster are lawyers with an intermediate level of prestige, who are neither super elite nor super poor. They practice law in minor cities by relying on existing social networks. Although these practicing lawyers in small cities and rural areas have limited chances to gain prestigious clients, their durable relations with the residents and community leaders of these cities sometimes contribute to them becoming influential figures. In sum, the geographical distribution of practicing lawyers can be summarized as follow: 1) lawyers who graduated from elite law school likely to practice law in major cities; 2) lawyers who graduated from non-elite law school likely to practice law in major cities; 3) lawyers who graduated mid-level law school likely to practice law in minor cities; 4) lawyers who held lower level of social network likely to transfer to another city.

### **The Colonial Korean Context for the Lawyers' Bar Status**

#### *Japanese Migrant Lawyers to Colonial Korea*

Colonial Korea provided a context for migrating Japanese lawyers that was both similar and different from the context of ordinary migrants. Unlike migrant workers who often lacked the basic language skills and social networks to acquire prestigious jobs (Ahmad 2014), the Japanese migrant lawyers had little problem communicating with Japanese government officials

in colonial Korea. In fact, even though Japanese residents represented less than 3% of the entire population in colonial Korea until the 1940s (Uchida 2013), they monopolized important political, economic, and social positions. As for some Japanese lawyers, they were much more privileged than their Korean counterparts in possessing valuable social networks. For this reason, many celebrated Japanese metropole lawyers settled in Seoul and engaged in various enterprises ranging from mining, fishery, agriculture, fabrics, and finance.

For example, after registering to practice law in Seoul in 1916, Fusaki Uzawa later became a member of the Japanese Diet in 1930-34 followed by an appointment as the president of Meiji University 1934-1935. After graduating from Tokyo Imperial University, Torakichi Akao migrated to Seoul in 1912 and practiced law together with another prominent Japanese lawyer, Takahashi Shonosuke. In 1914, Mr. Akao obtained an exclusive mining concession in the Hamhŭng province from the colonial government. Another case was Heikichi Okawa who returned to Japan after being appointed the Minister of Justice in 1925. As Uchida (2013) quipped, these lawyers were brokers for the empire, linking the metropole and colony and imposing the colonial rulers' perspective on the Koreans (Uchida 2011). For the Japanese lawyers, however, living in colonial Korea was like migrating to a distant foreign country in the sense that they felt immediately estranged once they stepped outside of the few familiar residential areas. This sense of estrangement constrained them from transferring to other places. In particular, Japanese lawyers who qualified under colonial conditions (see Chapter 4 for a more detailed analysis) were migrant lawyers in a sense that they had fewer social networks to mobilize than other Japanese metropole lawyers or even Korean lawyers.

*The Growth and Development of Seoul during the Colonial Rule*

The colonization of Korea also changed the status of Seoul. After the country's colonization in 1910, the Japanese colonizer downgraded the status of Seoul from the capital city of a five-century-long Chosŏn dynasty (1392-1910) to merely one of many colonial cities. In 1914, along with 14 other major cities in colonial Korea, Seoul was administratively downgraded to a city (*pu*), which stirred up internal and external tensions (B. Kim 2010). The Japanese residents in Seoul were outraged by the plan and appealed to the colonial government to develop their residential areas in the southern part of the city. Korean residents also expressed discontent at the colonial government's lack of interest in developing Seoul and its unequal treatment between Korean and Japanese residents. Consequently, the colonial government in the 1920s reversed its position and implemented plans to develop Seoul to be on par with other major cities in Japan such as Tokyo and Osaka. As a result, the population of Japanese residents in Seoul exploded nearly four-fold from 1910 to 1940. From less than 40,000 in 1910, the number of Japanese residents in Seoul increased to 65,617 in 1920, 97,758 in 1930, and eventually 150,627 in 1940. The last figure accounted for nearly 21% of the total 707,337 Japanese residents in colonial Korea during that period ([www.kostat.go.kr](http://www.kostat.go.kr)). The rise of Seoul as a metropolitan city attracted highly skilled workers from Japan and the inner cities of colonial Korea. Good amenities, including educational facilities, also attracted lawyers from metropole Japan and other local cities to Seoul.

Not only was Seoul's population growth, the city turned to be a center of colonial judiciary. The colonial government's main office building was located at the very front of the main palace of Chosŏn-Korea. In Seoul, the three levels of court were established from the local court, the appeal court, and the high court. The local court of Seoul supervised branch courts in Kyŏnggi and Kangwŏn provinces, which amounted to 18 in the 1930s. The appeal court of Seoul

controlled local courts under its jurisdiction which included courts of Seoul, Kongju, and Hamhŭng, and Ch'öngchin, and served as the higher courts to which cases filed to these local courts were transferred. Moreover, the high court that exercised control over all personnel in the judiciary was located in Seoul. Not surprisingly, the number of judicial officials assigned to Seoul accounted for the largest proportion. In 1930, there were 39 judges and 16 prosecutors were assigned to courts in Seoul, which accounted for 20% (39/196) and 19% (16/86), respectively.

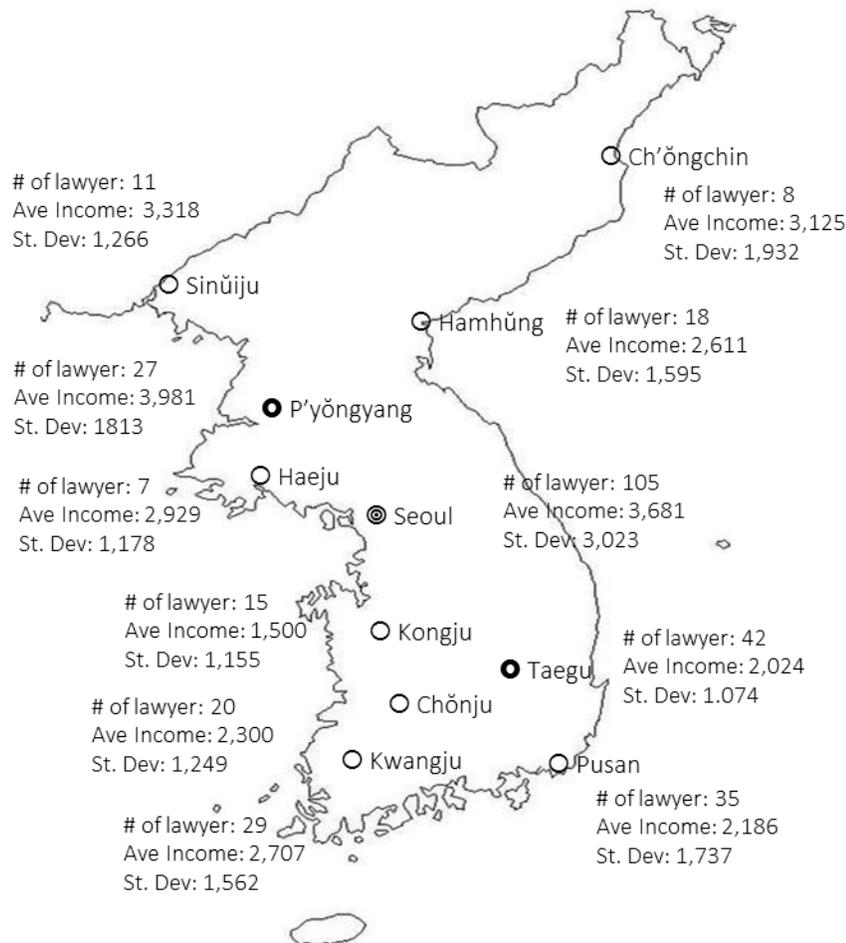


Figure 9 The Number of Practicing Lawyers, their Average Annual Income, and Its Standard Deviation in 1935-36; source: Survey on Lawyers' Income by the Colonial Government's Bureau of Justice 1935-1936

The concentration of elite lawyers to Seoul, depending on the social structure, also resulted in a particular geographical distribution of lawyers in colonial Korea. Figure 9 presents a map of the geographical distribution of lawyers throughout the Korean peninsula during the years 1935-36 along with their average annual income and the standard deviation of the income according to the cities in which they practiced. Noteworthy in Seoul's dominant status is the number of lawyers, their average annual income, and the standard deviation of this income. Of 317 reported number of practicing lawyers in eleven cities, 105 lawyers practiced law in Seoul, accounting for 33% of the total registered lawyers. Lawyers in Seoul far outnumbered the sum of lawyers in P'yŏngyang (27) and Taegu (42), then the second and third largest cities in Korea. Following P'yŏngyang, the average annual income of practicing lawyers in Seoul was second out of eleven cities. The average income of Seoul lawyers (at 3,618 Japanese Yen) was only slightly less than lawyers in P'yŏngyang at 3,918 Yen. Even though P'yŏngyang lawyers, on average, earned more than Seoul lawyers, the latter recorded the broadest range in annual income from 1,000 to 14,000 Yen compared to 2,000 to 8,000 Yen for the former. No other city in colonial Korea had such a huge range of lawyers' average income. In other words, the practicing lawyers in Seoul had the most inegalitarian income structure in colonial Korea during the mid-1930s.

## **Research Design**

### *Data*

To collect data pertaining to the registration, transfer, and withdrawal of lawyers in colonial Korea under Japanese rule, I looked at the official gazettes of the Japanese colonial

government from October 1910 to August 1945. Given the independence of the colonial judiciary, the colonial government was central to the registration of lawyers in colonial Korea. Lawyers who met or passed the metropole conditions were entitled to practice law in colonial Korea. This was after submitting a registration request form and obtaining permission from the prosecutor-in-chief of the local prosecutor office.<sup>29</sup> Likewise, when a lawyer wanted to transfer to another location, he had to submit a transfer request form to the prosecutor-in-chief. Upon receiving the request, the prosecutor-in-chief filed a report with the director of the Bureau of Judicial Affairs along with his evaluation of the lawyer. Upon approving the registration or transfer, their details were publicized in the official gazette along with the lawyer's name, location of practice, and the date of request.

To identify the lawyers' qualification, institutional origin, and ethnicity, I also looked at other archival sources including the official gazette of the imperial Japanese government (1910-1943), the official gazette of the Taehan Empire (1906-1909), and the list of officials in the Japanese colonial government (1910-1943) as well as the official gazette of the Japanese colonial government. From the first archival source, I obtained a list of judicial officials assigned to the colonial government and the successful candidates of the Japanese and Korean bar exams. From the second archival source, I obtained a list of Korean lawyers who had practiced law prior to colonization in 1910. From the third archival source, I was able to find out whether a lawyer came from the judiciary or not. From the fourth source, I was able to attain the list of successful candidates of the Korean bar exam from 1922 to 1945.

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<sup>29</sup> The letters included a set of documents including the certificate of qualification, university diploma, resume, home registry, biographical information, and, if necessary, a recommendation letter by a former employer. By regulation, all practicing lawyers in colonial Korea were required to submit a transfer request form in order to practice law in another place. They were also required to submit a withdrawal request form in order to quit their service.

## Variable Measures and Descriptions

Variable	Description	Operationalization	Mean (Std. Dev)	Number of observation
Ethnicity	Lawyer's ethnicity	(Korean =1, Japanese =0)	.525(.500)	795
Qualification Origin	Lawyer's place of license acquisition	(colonial Korea = 1, metropole Japan =0)	.457(.498)	784
Bar Exam	Whether a lawyer came directly after passing ? the Japanese/Korean bar exams or not	(the successful candidates of the bar exams = 1, )	.575(.495)	784
Rank	The highest rank in office achieved by the lawyer	1 (the lowest) to 37 (the highest), 0 indicates no office career	6.548(9.744)	799
Level	The level of court in which a lawyer served his final year of office.	1 (the lowest) to 4 (the highest), 0 indicates no office career	.697(.949)	791
Seoul	Whether a lawyer's first registration place is Seoul or not	(Seoul = 1, other cities = 0)	.395(.489)	799
Transfer	If a lawyer submitted a transfer request to another place within colonial Korea during his time of service, then 1; otherwise 0	(Transfer = 1, otherwise = 0)	.171(.377)	799

Table 1 Variables and Descriptions

Table 1 presents and summarizes the variables measured for the present analysis. Though there was a total of 814 lawyers registered during the colonial period, this study analyzed only 782 because I was unable to verify some of the attributes of the remaining 32 lawyers such as their ethnicity, origin of qualification, first registration date, etc.<sup>30</sup> Rank indicates the highest position within the colonial government's judiciary achieved by the lawyer. The system of ranking for judges and prosecutors ranged from the 1<sup>st</sup> rank with 1<sup>st</sup> salary class for the Chief

<sup>30</sup> I excluded three lawyers who registered in the 1940s because their Japanese names hindered me from judging their ethnicity. With the colonial government forcing all Korean residents to adopt a Japanese first and/or last name, many Korean lawyers complied by changing their first name, last name, or both. Though I tried to find and link their old Korean name to the new Japanese one, I was not totally successful. Therefore, I left these individuals unidentified.

Justice of the High Court and the Prosecutor General to the 8<sup>th</sup> rank with 12<sup>th</sup> salary class, which was the entry class for Korean judicial officials in the 1910s. Between these two ranks, there were 34 combinations of rank and salary class within the colonial judiciary hierarchy. Therefore, in order to conduct the analysis, I operationalized the rank as a continuous variable from 1 for the lowest and 37 for the highest. The Level variable, meanwhile, denotes the level of court at which a lawyer conducted his last year of service. Though the colonial court system technically consisted of three level courts with three trials, in reality, it had four tiers: the branch courts, the local courts, the appeal courts, and the high court.<sup>31</sup> The judges and prosecutors at the higher level of court had more authority than those at the lower level. Thus, I assigned one point in an ascending level from the lowest courts to the high court.

As dependent variables, I focused on two dimensions of the lawyers' migration: lawyers' concentration of Seoul and the transfer of lawyers. As described in an earlier section, Seoul's development attracted an increasing number of Japanese and Koreans during the colonial era, prompting Japanese firms in mainland Japan to open offices in Seoul. In addition, Seoul was home to both the highest court of authority and the law faculty of Keijō Imperial University making it the center of legal authority. The concentration of lawyers to Seoul, I suggest, represented the structuation of lawyers in colonial Korea in the way which elite lawyers increasingly settled down. Meanwhile, the transfer of practicing lawyers in colonial Korea also is the point on which this analysis focuses. Given that lawyers' reputation and prestige are accumulated from social networks, I suggest that frequent transfer(s) denotes that the lawyer failed to form firm social networks and accrue social capital. Therefore, lawyers' frequent transfer indicates lawyers with lower prestige.

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<sup>31</sup> The three trial system worked in such a way that the cases filed at the branch court level moved up to the appeal court level and not to the local court level.

## Analysis and Findings

### Regression Model Results

#### 1) Where to Practice Law (Seoul Orientation)

Variables		Model 1		Model 2		Model 3	
		b	Exp(b)	B	Exp(b)	b	Exp(b)
Ethnicity (KOR=1)		-.325(.178)†	.723	-.684(.160)***	.504	-.443(.166)**	.642
Colonial Qualifications		-.450(.178)*	.638				
Bar		1.069(.158)***	2.911				
In-Office Career	Rank			-.032(.013)*	.969	-.001(.152)	1.001
	Level			-.061(.126)	.940	-2.130(.334)***	.119
	Level-Sq					.707(.103)***	2.027
Constant		-.647(.158)***		.176(.126)		.249(.128)†	
Log Likelihood		-489.41					
Pseudo R2		.070		.033		.086	
N		782		789		789	
Chi-Sq		73.93		35.16		91.5	

\*p <.05, \*\*p<.01, \*\*\*p<.001, †<.1, standard errors in parentheses

Table 2 Logistic Regression Models on the Choice of Seoul as Lawyers' First Registration Place

The first model, displayed in Table 2, indicates the influence of ethnicity, qualification origin, and office career on the odds of practicing law in Seoul. Specifically, controlling the effects of qualification origin and the bar exam, the odds of practicing law in Seoul for Korean lawyers are .723 compared to the Japanese lawyers. Inversely, in terms of percentage, the odds for Japanese lawyers are 38% higher than Korean lawyers. As for the effects of the bar exam on the odds of practicing law in Seoul, holding the effects of ethnicity and qualification origin on the odds of practicing law in Seoul constant, the odds of practicing law in Seoul for lawyers who passed the bar exam and held no office career are 191% higher than lawyers who went through the office. In sum, Japanese metropole migrant lawyers formed the majority of practicing lawyers in Seoul.

Then, to what extent did office careers affect the likelihood of lawyers beginning their service in Seoul? In Models 2 and 3, to test the effect of office careers on the odds of practicing law in Seoul, I measured the lawyers with ex-judicial official experiences. Rank denotes the highest promotion of the lawyer in office, while court level means the level of courts in time of registration. In Model 2 where both rank and office levels are taken into account, only Rank proved statistically significant. One unit increase in the lawyer's rank during their time of service resulted in a slight decrease in their odds of practicing law in Seoul. However, in Model 3, where the squared value of the office level (Level-Sq) was inserted, the variable Level turned out to be statistically significant. Holding Ethnicity and Rank constant?, the office level turned out to have a positive effect on the odds of practicing law in Seoul, when the lawyer worked either at the Appeal Court (Level = 3; in Seoul, P'yöngyang, or Taegu) or the High Court level (Level = 4; in Seoul).

These findings are consistent with my argument that the most and least prestigious lawyers tend to practice law in big cities whereas lawyers with mid-level of prestige practice law in minor cities. After passing their bar exams, more elite lawyers with greater office experience and non-elite lawyers with little office experience worked in Seoul than lawyers with ordinary office experience. With lawyers from the colonial judiciary already having formed social networks during their time of service in local cities, they had to consider their accumulated capital when deciding where to practice law. Although some were able to mobilize their social capital during their term in office, their social capital remained, to a large extent, effective only at the local level. In Seoul and within the central bureaucracy, the dominant bureaucrats of the colonial government hailed from elite Japanese imperial university or private university graduates. In contrast to legal practitioners from the judiciary who usually opened their first

office at which they served for last term in order to maximize their social networks with local community leaders, the lawyers who became qualified through the bar exam usually registered in Seoul. Such lawyers who became qualified through the bar exam had few social networks to mobilize. Unlike Korean lawyers who became qualified through the bar exam, who might utilize their hometown or family networks, the Japanese lawyers had few such connections in colonial Korea.

## 2) Lawyers' Transfer

	Variables	Model 1		Model 2		Model 3	
		b	Exp(b)		Exp(b)		Exp(b)
Seoul		-.474(.219)*	.623	-.588(.213)**	.555	-.466(.219)*	.628
Ethnicity (KOR=1)		.513(.235)*	1.670	.643(.218)**	1.901	.547(.221)*	1.728
Colonial Qualifications		.676(.244)**	1.966				
Bar		-.066(.202)	.936				
Office career	Rank			-.054(.020)**	.947	-.067(.020)**	.936
	Level			.341(.168)*	1.406	1.330(.385)**	3.783
	Level-Sq					-.388(.142)**	.678
Constant		-2.081(.237)***		-1.667(.209)***		-1.770(.214)***	
Log Likelihood		-344.23		-345.283		-341.03	
Pseudo R2		.051		.052		.064	
N		782		789		789	
Chi-Sq		37.27		37.85		46.37	

\*p <.05, \*\*p<.01, \*\*\*p<.001, †<.1, standard errors in parentheses

Table 3 Logistic Regression Models on Lawyer's Transfer

Table 3 presents the results of a logistic regression of the transfer variables. In Model I, I found that Seoul had a negative effect on a lawyer's transfer while a Korean ethnicity and colonial qualification had a positive effect. This result indicates that the minorities in the bar—Korean ethnicity and colonial qualifications—did not play a positive role in the lawyers' decision to settle down in a place. That is, Korean colonial lawyers, regardless of whether they came from the judiciary or not, were more likely than other lawyers to transfer during their time of service. One possible explanation for the Korean lawyers' propensity to transfer may be their desire to maximize their social networks of families, relatives, and friends in the local cities.

In Model 2 and 3, I also discovered that Rank consistently had a negative effect on the likelihood to transfer, implying that a higher ranked lawyer was less likely to transfer to another city. More specifically, one unit increase of Rank decreased the odds of transfer by .95 in Model 2 and by .94 in Model 3. For instance, the odds of a lawyer at the 5<sup>th</sup> rank with 8<sup>th</sup> salary class (Rank = 20) transferring was lower than the odds of a lawyer with no office career (Rank = 0) transferring by a factor of .26 ( $e^{-1.34} = .26$ ). Similar to the results in TABLE 3, in terms of the office level, the higher level a lawyer served, the more unlikely he was to transfer.

The findings of the second logistic regression analysis proved consistent with the findings of the first regression analysis in that lawyers with a lower social status tended to seek opportunities in other places. However, this still left unexplained why more Korean colonial lawyers from the colonial judiciary tended to transfer to another city than their Japanese colonial counterparts. This differential between the Korean and Japanese lawyers can be explained by the fact that the Korean lawyers retired at a younger age than the Japanese lawyers who retired as late as possible. In fact, the average years of service for Korean judicial officials were less than six and a half years compared to more than 14 years for Japanese judicial officials (The List of Officials of the Colonial Government). As a result, Korea judicial officials, despite being less than Japanese judicial officials, were the source for supplying lawyers during the colonial period.

#### *Further Analysis of the Korean Lawyers' Transfer*

According to Model 1 in Table 4, Korean lawyers with colonial qualifications were the most likely of all lawyers to transfer to another place. In the following section, I further analyzed their transfer requests according to three periods: 1) 1910 – 1919; 2) 1920 – 1929; 3) 1930 – 1939. With only two cases for 1940s, the transfer frequencies for this period were not included. I

then divided eleven Korean cities in which they practiced law into three tiers by the level of courts located. Thus, Seoul was measured as a first tier city, P'yongyang and Taegu as second, and Pusan, Kwangju, Chŏnju, Kongju, Haeju, Sinŭiju, Hamŭng, and Ch'ŏngchin as third.

	1910-19			1920-29			1930-39		
From/to	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup> Tier	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>
1 <sup>st</sup> Tier	N/A	2	3	N/A	1	5	N/A	4	9
2 <sup>nd</sup> Tier	0	1	1	5	0	16	3	0	12
3 <sup>rd</sup> Tier	2	1	3	7	4	16	10	3	8

Table 4 Korean Lawyers' Transfer from 1910 to 1939; source: the Official Gazettes of the Japanese Colonial Government from 1910 to 1939

Table 4 can be interpreted as follows. During a set period, I charted the transfer of each lawyer from a departure city (a row) to a destination city (a column). Thus, if a lawyer moved from Seoul to P'yŏngyang in 1916, I counted this transfer as one from a first tier city to a second tier city during the 1910 to 1919 period. Likewise, if a lawyer moved from Taegu to Pusan in 1931, I counted this as a second to a third tier city transfer from 1930 to 1939. Cells in the upper diagonals represent migrations from upper status to lower status cities (e.g., from Seoul to P'yŏngyang or Pusan or P'yŏngyang to Hamhŭng), while those in the lower diagonals denote a transfer from a lower to an upper tier (e.g., from Haeju to P'yŏngyang or P'yŏngyang to Seoul). Over the colonial period from 1910 to 1940, a total of 118 transfer cases was observed.

The two most frequent forms of transfer observed in the 1920s were from second to third tier cities and among the third tier cities. In total, there were 16 cases of these forms of transfer, indicating that Korean lawyers tended to move to lower status cities and practice law in local cities. Even during the 1930s, there was no change in such tendency with 12 cases of transfer from second to third-tier cities and eight cases of transfer among third tier cities. Some lawyers also transferred to Seoul during the 1920s to 1930s. Twelve and 13 transfers from local cities to

Seoul were reported in the 1920s and 1930s, respectively, accounting for 10% (12/118) and 11% (13/118) of the total transfers. However, in general, the Korean lawyers' transfers were oriented towards a local city. From the 1910s to 1930s, the frequency of downward transfer was 53 (2+3+1+1+5+16+4+9+12) while that of upward transfer was 35 (2+1+5+7+4+3+10+3). Thus, taking into account transfers among third tier cities, 27 (3+16+8), the majority of Korean lawyers practiced law in local cities.

Additional archival data buttressed the above findings of Korean lawyers engaging in downward transfers or circulating among local cities. In his transfer request submitted in 1936, a Korean lawyer, Yi Kwan-su, who had been practicing in Taegu, stated that he had been earned less than ¥ 1,200 per year since 1927. After his transfer to his hometown in Kongju, he wrote that he expected to earn more (Lawyer Documents No. 1936-27). Another Korean lawyer, Kang Kō-pok, also transferred from Seoul to Haeju, his hometown, in 1933 in the hope of increasing his income (Lawyer Documents No. 1933-13).

### **Geographical Distribution of Lawyers in Colonial Korea**

The analysis thus far indicates that the geographical distribution of lawyers depended on the lawyers' relative social status. First, while ethnicity, qualification origin, and the bar were all factors affecting the lawyers' first place of law practice, the bar had the largest impact on whether they chose Seoul as their location. Logistic regression analysis has also revealed the Japanese metropole lawyers with little office experience in the colonial judiciary to be more likely to practice law in Seoul than Korean colonial lawyers with a lot of office experience. Lawyers working at a higher level of court also tended to register in Seoul compared to those who worked in the lower level courts who tended to open their office in local cities. In the

colonial context, lawyers from the Korean bar exam were the least prestigious group of lawyers in Seoul. Unlike their counterparts within the judiciary, they had few solid connections to local leaders. Nor did they have connection with high status corporate or individual clients like their metropole counterparts.

The second regression analysis also revealed the Korean lawyers to be making the most frequent moves to another place. In contrast to their Japanese counterparts, Korean lawyers had to submit a transfer request to the colonial authority regardless of whether they had graduated from the bar or not. A more detailed analysis of the Korean lawyers' transfer showed the transfer to be occurred in two opposing directions. One was from Seoul to other local cities; another was from local cities to Seoul. The results of both the regression and trace analyses demonstrated that Korean lawyers transferred to Seoul or moved to local cities during the colonial period.

Consequently, lawyers in colonial Korea became divided into two clusters by whether they practiced in law in Seoul or not. In one cluster were Japanese elite and non-elite lawyers who practiced law in Seoul. Within this group of elite Japanese lawyers were those armed with diplomas from prestigious imperial universities and those who had resigned from higher posts within the colonial judiciary. However, colonial lawyers who had passed the Korean bar examination comprised of a great portion of practicing lawyers in Seoul. With no experiences in the judiciary as judicial officials, these lawyers suffered at competing with the elite lawyers in Seoul. In the other cluster were lawyers with mid-level office careers who tended to practice law in local cities and who tried to use their relationships with the local leaders to their advantage. The linkage of the two clusters was Korean lawyers. With the dominance of Japanese lawyers in Seoul, Korean lawyers practiced law in second, third, or even lower tier cities and towns in

colonial Korea. Within such a system, lawyers who had become qualified in the old Chosŏn-Korean system and bar exam passers became pushed to the bottom tiers of the legal profession.

## **Chapter Conclusion**

In this chapter, I have examined the effects of lawyers' status on their geographical distribution through two regression analyses testing the factors that affected the lawyers' first place of law practice and the likelihood of transferring to another place. I have also added a complementary analysis showing that Korean lawyers with colonial qualifications made frequent transfers from one place to another due to their insufficient income and poor social networks. Using the dataset obtained from archival research published by the colonial government, I have demonstrated that being Japanese, having metropole qualifications, and passing the bar exam all increased the odds of practicing law in Seoul over such attributes as being Korean, having colonial qualifications, and leading office careers. In other words, while Japanese elite lawyers opened their office in Seoul, Korean lawyers from the colonial judiciary tended to practice law in the local cities. With regard to the issue of transfer, possessing a Korean ethnicity and colonial qualifications were the two main factors driving the lawyers' transfer to another city. Given the risk to the lawyers' reputation and the potential loss of social networks, the least prestigious category of lawyers--Korean colonial lawyers--were the mostly likely to transfer. In a further analysis of their origin-destination, the majority of Korean colonial lawyers were seen to transfer from upper to lower status cities or circulated among third tier cities.

By synthesizing social status and social relations theories, we can better understand the geographical distribution of lawyers as shaped by their spatial mobility. The lawyers' location of

practice and their transfer to a new place were not only related to their relative social status but also intimately tied to the geo-politics of colonial Korea. The findings within this chapter also reveal how the spatial division between the center and the periphery in colonial Korea was tied to the hierarchical relationship between metropole Japan and colonial Korea. With Seoul, the capital of colonial Korea, dominated by elite Japanese lawyers, Korean lawyers were able to exercise control only within local cities. The present study urges further examination of the effects of spatial division on colonial politics in studying legal institutions within the colony.

## **CHAPTER 6: THE PROFESSIONALIZATION OF LAWYERS**

### **Salient Professionals, a Silent Profession**

#### **Chapter Summary**

In this chapter, I argue that the colonial legal structures produced lawyers in colonial Korea who were prominent as individuals but comparatively powerless as a profession. In other words, while many individual lawyers became prominent figures in local politics, business and finance, and social organizations, the bar associations, in which they were members, remained politically and juristically marginalized. Although the annexation of Korea and the establishment of the colonial court system resulted in the proliferation of practicing lawyers, colonial Korea remained isolated from mainland Japan with the colonial government exercising absolute control over the colonial judiciary and administration. At the same time, colonial Korea remained peripheral to the production of legal knowledge that was either imported from mainland Japan or formed through the interpretation of indigenous Korean customs by elite Japanese judicial officials in the High Court of Colonial Korea. By showing how Japanese colonization brought about the formal professionalization of Korean lawyers without granting them substantive rights as a profession, this chapter concludes that being a lawyer in colonial Korea was a means to gain power and prestige in other social realms but was not an end in itself to form an independent profession.

#### **Popularity of Law Education and Qualifying Examinations**

The popular aspiration to become a practicing lawyer could be seen in great public attention paid to the colonial government's administration of the Korean Bar Examination in 1922. On December 2<sup>nd</sup> 1921, the ordinance on the regulation of the Korean Bar Examination stipulated that the examination be comprised of the preliminary exam, the main (written and oral) exam, and a medical check-up (The Official Gazette of the Colonial Korea, December 2<sup>nd</sup>, 1921). While an essay test served as the first stage of the exam, those who had completed a preliminary college course or its equivalent as recognized by the Governor-General were waived from it. The subjects of the written exam included civil law, criminal law, commercial law, civil procedure, criminal procedure, international law, Constitution, and economics. Only the successful candidates of the written exam were entitled to take the oral exam that tested civil law, criminal law, commercial law, civil procedure, and criminal procedure. The first Korean candidate to pass the Bar Examination, Yi Chongsŏng, along with two Japanese passers, became the subject of intense media spotlight in 1922 (Daily Dong-A October 10<sup>th</sup>, 1922). The competition rate was extremely high for this bar examination with 117 applicants taking the main examination and only three successful candidates going through all of its three stages (Daily Dong-A October 10<sup>th</sup>, 1922). The number of successful candidates for the annual bar examination gradually increased from the 1930s to the 40s, but the steep competition remained unchanged. From a pool of nearly 600 applicants, the exam produced about 20 successful candidates per year in the 1940s. The extremely competitive nature of the exam disclosed the unprecedented popularity of law as a profession.

Ironically, one factor responsible for the soaring competition was the poor education system. The colonial educational structure brought to colonial Korea by the Japanese colonizers consisted of academic and vocational tracks divided from the level of elementary education. In

turn, these two tracks corresponded to the ethnic division between Japanese and Koreans with the former following a path of elementary school, middle school, and then higher education (higher school and university) in Japan while the latter followed a course of a normal school, higher normal school, and then vocational school. Despite the modern education system, the enrolment rate in these schools remained extremely low. According to one study, with the number of students far exceeded the number of schools, the enrolment rate for normal school was less than 40 percent until the end of colonial rule (Oh and Kim 2011). Moreover, until the opening of Keijō Imperial University (k: Kyōngsōng cheguktaehak) in 1924, there were no universities in colonial Korea. While post-secondary schools in Korea remained vocationally-oriented (j: Senmon gakkū; k: chōnmun hakkyo), the colonial government prevented private vocational colleges from becoming universities. Law education in colonial Korea was taught at vocational law schools including Keijō Vocational Law School (k: Kyōngsōng pōphak chōnmun hakkyo) and Posōng Vocational College (Posōng chōnmun hakkyo). They were designed to teach law for vocational purposes and provide a supply of lower mid-level officials such as court clerks, policemen, and administrative clerks for the courts and government. For the graduates of these schools, there was no possibility of further education.

The bar examination thus became increasingly viewed as a path of upward social mobility for students and lower mid-level officials. Since the examination did not require a formal legal education, lower mid-ranking officials and white-collar workers with a secondary education were particularly interested in taking it. Among them was Kang Kongsūng who passed the preliminary stage of the Korean Bar Examination in 1925 (Dong-A Ilbo, September 10<sup>th</sup>, 1925) but failed to pass the main exam that followed it. He kept applying for the bar exam in the 1930s and even petitioned the colonial government in 1938 not to abolish it (Dong-A Ilbo,

December 27<sup>th</sup>, 1938). In 1938, 1940, and 1942, he (Official Gazette of the Colonial Government, July 25<sup>th</sup>, 1938; Official Gazette of the Colonial Government, July 29<sup>th</sup>, 1940; Official Gazette of the Colonial Government, July 27<sup>th</sup>, 1942) but failed in passing the main exam. Finally in 1944, he passed all three stages of the bar examination just one year before the colonial government's demise and the independence of Korea (Official Gazette of the Colonial Government, August 28<sup>th</sup>, 1944). After independence, he was issued his lawyer license by the Korean Bar Association in Seoul in 1946 (Dong-A Ilbo February 7<sup>th</sup>, 1946). He worked as a mid-level manager (*chusa*) in the central bank of colonial Korea, Bank of Chosŏn, which usually required a middle school diploma. A diploma of the secondary education, which took ten to twelve years to get, signaled that its hold could be a white collar worker. Though Kang's case is somewhat extreme, many people in mid ranking positions took many years to pass the bar examination.

Background	Court-Clerk	Other governmental positions (e.g., policeman, school teacher)	Student	Others	Unknown	Not to practice law	Total
Total	59 (32.6%)	15 (8.3%)	40 (22.1%)	10 (5.5%)	43 (23.8%)	14 (7.7%)	181

Table 5 Backgrounds of Successful Candidates of Korean Bar Examination from 1922 to 1942; source: Official Gazette of the Colonial Government of Korea 1922-1942; Daily Dong-A 1922-1938; Alumni List of the Law School of Seoul National University; Alumni List of the Law School of Korea University

Table 6 lists the backgrounds of the Korean Bar Examination's successful candidates from 1922 to 1942. I obtained the table by investigating individual passers' jobs before practicing law from multiple archives such as newspapers, biographies, and classified documents surveying educational and occupational backgrounds. Seventy-four out of the 181 successful candidates were court clerks, policemen, or teachers, all of which were ranked lower-mid rank officials during the colonial period. Although being a court clerk or administrative clerk held a certain degree of social prestige and power in colonial Korea (Chang 2001), with the exception

of a few who became judicial officials, the majority of them did not rise to the rank of a higher official (j: koukokan; k: kodŭngkwan) within the colonial bureaucratic system. Passing the Bar Examination became one of the ways to climb the social ladder. The court clerks were more advantaged than other applicants in dealing with litigation and other legal issues in everyday life. Few applicants in Korea had the opportunity to learn law in the regular colleges. Of the 84 successful candidates of the Korean Bar Examination from 1922 to 1931, 62 candidates (74%) were court clerks.

The popular aspiration to become a lawyer also manifested itself in the transnational migration across the Korean Strait. Hong Nam-sun, who had grown up in South Chŏnra Province's Hwasun County, migrated to the City of Yakayama in Japan in 1936 to enter its Yakayama Commercial School. Working as a migrant worker during daytime and studying law at night, Hong spent the late 1930s preparing for the Higher Civil Service Examination. When his attempts proved unsuccessful, he returned to Korea in 1940 to take up a position as the director of Hwasun County's registration office from 1940 to 1947. Eventually, however, he passed the Korean Bar Examination in 1948 and became a practicing lawyer (Memorial Committee for Lawyer Hong Nam-sun, 2004).

Among the disciplines in Keijō Imperial University, law education was the most popular and prestigious. Until the end of colonial rule, Keijō Imperial University, founded in 1924, was the highest level of educational institute in colonial Korea (Chŏng et al. 2011). According to an ethnic quota system, among the 120-150 students admitted each year, one third were Koreans. In contrast to the four other Imperial Universities in mainland Japan that had natural sciences and engineering departments, Keijō Imperial University only had its School of Law and Letters and the School of Medical Science. Within the School of Law and Letters, the majority of students

were inclined towards the law department. In 1930s, while 16 Korean students transferred from the Department of Letters to the Department of Law, no student did the reverse (Law Faculty Alumni of Seoul National University, 2004).<sup>32</sup>

## **Socioeconomic Compensation of Lawyers**

### *High Level of Income*

What made lawyer a popular profession was its high income. After the use of a lawyer became a taken-for-granted aspect of litigation in the highest level of court from the early 1910s, the incomes of lawyers began to soar. Ch'oe Sunmun, the son of Ch'oe Chin, one of the earliest Korean lawyers to practice law since 1908, recalled his family never suffering financially during his youth. In the early 1910s, a few years after he started to practice law, his father was able to purchase a 17 room-house in Seoul (The Journal of the Korean Bar Association: Taehanpõnhosa hyõphoechi, 1972). Pak Ch'anil, another Korean lawyer who practiced law in Kwangju in the 1930s, stated that most lawyers earned an average of 3,000 Japanese Yen per year and paid no tax on this income (Taehanpõnhosa Hyõphoechi 1973). Although this was not true for all practicing lawyers in colonial Korea, the majority of the lawyers earned far more than ordinary workers and other professionals. According to a statistic released by the colonial government, the average annual income of tenants and semi-tenants was around 500 and 550 Yen, respectively, during this period (The Annual Statistics of the Colonial Government 1925). While secondary school teachers earned about 720 to 1,080 Yen per year, journalists at major newspapers usually

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<sup>32</sup> Korean students at Keijõ Imperial University preferred law to the letters faculty for practical reasons. Graduates of the letters faculty who taught the liberal arts disciplines of language and literature, philosophy, and history experienced lower social status and prestige. The Korean graduates of this department could become secondary education teachers but not full-time faculty at an Imperial University.

earned from 960 to 1,080 Yen. Doctors, meanwhile, earned approximately 1,080 to 1,400 Yen per year. Even relatively high-ranking government officials received less than 2,000 Japanese Yen per year.<sup>33</sup>

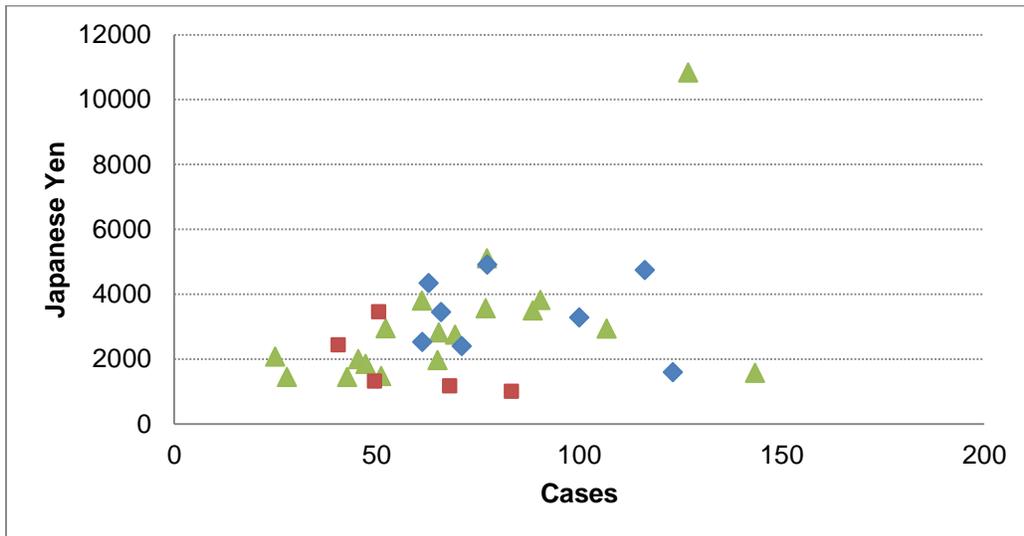


Figure 10 Average Annual Income of Practicing Lawyers in Northwestern Korea in 1927-28 and Number of Civil Cases Assumed; source: Classified Documents Regarding Lawyers' Registration 1927-28; note: the income was counted with civil cases)

Figure 10 shows the annual average income of practicing lawyers in two cities: P'yŏngyang and Sinŭiju in Northwestern Korea, which the colonial authorities surveyed twice in 1927 and 1928. It presents the average income of lawyers from civil cases reported in the two surveys. From an annual figure of 66 cases per lawyer, the average reported income was 2,903 Japanese Yen. An outlier was O Sungŭn, a Korean lawyer, who reported 12,000 Yen from 95 cases in 1927 and 9,684 Yen from 76 cases in 1928. Promoted from a court clerk to a prosecutor in 1921, he started to practice law in the city of Sinŭiju in 1923 (Official Gazette of the Colonial Government January 27<sup>th</sup>, 1923). He seemed to choose Sinŭiju as the registration place, because

<sup>33</sup> Judges and prosecutors made 1,080 to 1,200 Japanese Yen during their first year of service year, which varied slightly depending on their salary class. To earn at least 3,300 Yen per year, the official had to have more than fifteen years of service.

the city was close to his birth place, Ch'ölsan, North P'yöngan Province. Even after excluding this outlier, the average income for lawyers was about 2,606 Japanese Yen. The fees for the cases varied by the lawyer. While Cho Wönkyu, a Korean lawyer, charged 23.8 Yen per case for a total income of 4,160 Yen for the 175 cases he took on between 1927 and 1928, O Sungün charged 126.8 Yen per case for the 171 cases he represented during this two year-period.

The main reason for the lawyers' high income was the tacit practice of giving an honorarium to a lawyer who won his lawsuit. Unlike the retainer fee, which ranged from 24 to 133 Yen per case, the honorarium had no limit. According to one law journal in 1930, lawyers customarily received up to 10 percent of the profit that their client expected to earn from a litigation (Hōritsu Shimbun 1930, November 5<sup>th</sup>). Occasionally, the honorarium reached several thousand Yen. For example, a magazine cynically reported in the 1930s a case that Han Ch'angtal, a Korean lawyer, received an honorarium of 2,000 Yen from a civil case involving an inheritance dispute between a father and son (Samch'önri January 1<sup>st</sup>, 1935).

Categories	Monthly Expenditure
Office rent	40
Salary for clerk in the office	50
Other expense	40
Money to home	80
General expense	30
Social expense	40
Total	280 Japanese Yen

Table 6 Proposed Budget Plan submitted to the Colonial Government in time of Registration Request (source: Pyönhosa kwankye sōryo Pak Ch'anil 1934 No. 6)

The lawyers' monthly budget also indicated their affluence. Table 6 shows the proposed budget of lawyer Pak Ch'anil from his registration request in 1934: 280 Japanese Yen for monthly expenses for a total of 3,300 Yen per year. Except for office rent (40 Yen), the office clerk's salary (50 Yen), and family expenses (80 Yen), the rest were variable expenses. Although

this was an estimation calculated before practicing law, it indicates that most lawyers looked forward to earning around 3,000 Yen per year.

### *Advancement into Local Politics, Business, and Social Organizations*

Due to their high social status and prestige as reflected in their income, many lawyers became prominent political, business, and social leaders. Becoming a board member of one of the local assemblies (hyōpūhoe) was one way for lawyers to engage in local politics and build social networks with local leaders. Despite the introduction of the local congress system into Korea by the colonial government, the congress was not a legislative organ and did not have the authority to decide on politically sensitive issues. The colonial government prevented self-reliance to the extent that the voters could not freely elect their representatives. Instead, the colonial authorities administered local politics in order to placate the local population and to offer the Japanese residents a similar system that they had enjoyed back in Japan. Despite of the limited nature of the election, however, its membership was sufficient enough to show leadership in local community (Tong 2011). With the right to run for political office open only to a certain class of tax payers, it was not easy for commoners to become local elected officials. A notable exception was the Korean and Japanese lawyers who ran and often won these elections.

Using their social prestige and high income, lawyers successfully transformed themselves into business entrepreneurs with close connection to the central and local governments in colonial Korea. After graduating from prestigious imperial or private universities, Japanese migrant lawyers engaged in various enterprises ranging from mining, fishery, agriculture, fabric production, and finance. Utilizing their connections to the government officials, businessmen, and other professionals, the Japanese lawyers successfully expanded their businesses. For

example, Akao Torakichi, a Japanese lawyer who had migrated to Korea in 1912 to work with another prominent Japanese lawyer, Takahashi Shonosuke, acquired the right to mine a section of North Hamkyŏng Province to start a mining company (Official Gazette of the Colonial Government 1914). Another noteworthy example was the Japanese lawyer, Tominaga Koreyatsu. After graduating from Tokyo Imperial University in 1914, he migrated to Korea and became the executive of a financial union in Yŏngdŭngp'o in 1915. A few years later, he moved to the city of Sinŭiju to chair the local financial union until 1925. As the owner of a publishing company in Japan and Korea, he also frequently crossed the Korean Strait to conduct business. Finally, as a practicing lawyer in Sinŭiju, he reported an additional annual income of 6,423 Yen in 1927 (Classified Documents Pertaining to Lawyer Registration 1927). Tominaga's work as a businessman in northwestern Korea and practicing lawyer in Sinŭiju worked synergistically to advance his career.

Also noteworthy was the advancement of Korean lawyers into business and financial sectors. In 1930, Yi Hŭichŏk, a practicing lawyer in Sinŭiju, was elected president of its finance union, which consisted of both Korean and Japanese members. This was the first time in the finance union's 30 year-old history that a Korean was elected the president (Ch'oe 2012). Along with his peer lawyers, Ch'oe Ch'angcho and Han Ch'angtal, Yi Hŭichŏk used his money and social connections to become involved in many firms located in Korea's northwestern cities. After serving on one company's board of directors, in 1940, Yi Hŭichŏk became the president of his own company capitalized at 125,000 Yen. Like Yi Hŭichŏk, some if not all lawyers in colonial Korea used their positions as corporate auditors or lawyers to become involved in company administration.

Many Korean lawyers also served as lawyers in criminal cases involving Koreans and participated in various nationalistic movements for Korean independence. According to one Korean lawyer, Yi In, in criminal cases involving the issues of nationalism or socialism, the nationalistic Korean lawyers did not receive a retaining fee or honorarium (Yi 1974). In 1927, under the banner of political liberty and ethnic equality for Koreans, nationalistic Korean lawyers, including Hō Hōn, Kim Pyōngro, Yi In, Kim Yōngmu, Kwōn Sūngryōl, and Kim T'aeyōng, formed Hyōngsa kongdongyōnghoe (The United Research Group to Unjust Criminal Cases) (H. Kim 2001). The goal of the group was to provide free advocacy for those charged by the colonial government. In a survey conducted by the colonial government, one member, Kwōn Sūngryōl, refused the retaining fee for the four cases he took on between 1927-28 (Classified Documents Pertaining to Lawyer Registration 1928. No. 34).<sup>34</sup>

Participating in such anti-colonial government movements granted these Korean lawyers with social and moral capital. Certainly, it was not a coincidence that the second and third presidents of Shin'ganhoe—the United Association of Korean Nationalists and Socialists (1927-1930)—were both Korean lawyers.<sup>35</sup> After the retirement of the first president, Yi Sangchae, Hō Hōn and Kim Pyōngro respectively led the association until it was disassembled in 1930 (K. Yi 1993). When they became presidents, Hō had already earned their reputation as nationalistic lawyers in the 1920s through their involvement in various movements including the March 1st Independence Movement in 1919. Kim, after resigning the colonial judiciary in 1920 for less than a 20-month of service, started to take on pro bono cases for nationalistic activities involved. According to Yi In (I. Yi 1974), his peer lawyer in the cause lawyering activities, they defended Koreans against unjust prosecution by the Japanese colonial government in the 1920s. For the

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<sup>34</sup> Criminal cases were not as lucrative as civil cases. It was often reported that some lawyers who left the former to assume the latter were able to make more money (Tong-kwang 1931, Pyōnhosa p'yōngp'anki).

<sup>35</sup> The first president, Yi Sangchae, died in 1927 after chairing the presidency for six months.

second half of the 1920s, Hŏ and Kim would also chair the Bar Association of Korean Lawyers in Seoul (see appendix for the list of Bar Association chairs).

Along with their social capital, the Korean lawyers had considerable material resources. For many social organizations, lawyers were ideal members who could both successfully mobilize the people for social movements and solve financial hardship. Shin'ganhoe, for instance, was reliant on the donations of its two lawyers to remain financially viable. Kim recalled contributing thousands of Yen to cover expenses that were not covered by the membership fees (H. Kim 2001). Thus Korean lawyers in colonial Korea brought their legal knowledge, social leadership, and material wealth to their socially important positions.<sup>36</sup>

Except for a handful of nationalistic Korean lawyers, the accumulation of political, economic, and social capital occurred for the lawyers in a complementary manner. After resigning from his judgeship, Kim Sangsŏp started a law practice in the city of Taegu in 1911 (Official Gazette of the Colonial Government November 29<sup>th</sup>, 1911). Soon after moving to the city of Mok'p'o in South Chŏnra Province in 1913, he became one of the most influential figures in the city. Not only did he chair the Youth Association of Mok'p'o in 1920, he was named an executive of Mok'po's Commerce Chamber and later in the 1920s became the Bank of Mok'p'o's president. From 1924 to 1934, Kim also served as the representative of a local assembly. In between, he also became a state council member. Kim was not alone. From 1924 to 1944, another Korean lawyer, Yim Ch'angsu, served as the representative of a local assembly in South Ch'ungchong Province before advancing to the state council in 1945.

### **The Formation of Legal Professional Families (Pŏpchoin Kajok)**

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<sup>36</sup> Their commitment to nationalistic movements was rewarded after the country's independence in 1945. While Hŏ, a nationalistic-left lawyer, became the first president of Kim Il-sung University in North Korea, Kim, a nationalistic-right lawyer, became appointed as the first Chief-Justice of the Judiciary in South Korea.

One significant phenomenon during the colonial period that contributed to the socio-economic reproduction of lawyers was the formation of legal professional families (Pöpchoin Kajok). This occurred when the relatives or descendants of a judicial official or lawyer followed in their footsteps to become a judge, prosecutor, or practicing lawyer. Compared to a generation ago in the early 1900s when native agents in lawsuits still suffered from low social status, law became an important route to achieving social mobility within the colonial context. As a result, wealthy farmers and businessmen became eager to have their sons enter the legal profession. In 1935, Kong Chint'ae, a lawyer who returned to Korea to practice law in 1923 after passing the Japanese Bar Examination in Tokyo in 1922, sent his two sons to study at Keijō Imperial University. His first son, Kong Yongho, attended the faculty of law of the university. Kong Chint'ae's father, Kong Söngchae, meanwhile, was a ginseng merchant in the City of Kaesöng (Kong's profile from Chosön insa hüngsinrok, the Directory of Influential Korean Figures). The transfer of wealth and social status from father to son often occurred through the narrow path of being a judicial official or lawyer. For instance, Kim Kapsu, who passed the National Higher Civil Service Exam in 1939, was the son of Kim Chongho, who had served as a judge in the colonial government from 1917 to 1919 and practiced law in Kwangju in 1919. Kim Kapsu's granduncle, Kim Chöngbae, also became a judge in the colonial government from 1918 to 1922 (List of Officials of the Colonial Government 1918; 1919; 1920; 1921; Official Gazette of the Colonial Government September 18<sup>th</sup>, 1922). Kim recalled his father and grand-uncle deeply influencing his path to the Faculty of Law of Keijō Imperial University at an early age (K. Kim 1970). Another famous father-son lawyer family in colonial Korea was No Chaesüng and No Yöngho. After retiring from the judiciary in 1912, No Chaesüng started to practice law in

Kwangju from 1913. By the time that he retired from the legal profession, he reported an ownership of 200 durak of rice paddy (about 11.00 ha), 50 durak of field (about 2.8 ha), and 10 chŏngbo of forest (9.9 ha). After passing the National Higher Civil Service Examination in Tokyo in 1939, his son, No Yong-ho, also became a judicial official (Chŏn 2010). Two other cases of father-son lawyer families were Chŏng Kuch'ang and Chŏng Kŭnyŏng and Ch'oe Chin and Ch'oe Sunmun. After resigning from the colonial judiciary, Chŏng Kuch'ang started to practice law in Seoul in 1913. After passing the Korean Bar Examination in 1941, his son, Chŏng Kŭnyŏng, also became a lawyer in 1944. Similar to the Chŏng family, Ch'oe Chin became a lawyer in 1908 followed by his son, Ch'oe Sunmun, in 1934. Meanwhile, after resigning from the colonial judiciary in 1927 and 1933, respectively, Yi Uik and Yi Usik became a team of brother lawyers who practiced law in Taegu. While the older brother, Yi Uik, became a prosecutor in a Hamhŭng court in 1916 after graduating from Keijō Vocational Law School in 1912. Yi Usik entered the colonial judiciary in 1928 after passing the Higher Civil Service Examination in Tokyo in 1927.

Father \ Son	1910-19	1920-29	1930-39	1940-45	Post-colonial period
Before 1910			1		1
1910-19			2		2
1920-29		2			4
1930-39					3
1940-45				1	1
Post-colonial					

Table 7 The Formation of Law Families (including judicial officials, lawyers, and law faculties) in Korea from the late 1900s to post-colonial period; source: the official gazette of the colonial government, the classified documents pertaining to lawyers' registration

Table 7 presents the number of cases in which family members (father-son, in-laws, and brothers) were involved in the legal professions as judges, prosecutors, lawyers, or passers of the

civil service exam. When someone had more than two sons (in-laws), for instance, who became legal professionals, I counted them as one case. The impact of family on improving one's chances of becoming a lawyer was negligible: every year, only four to ten candidates passed the Korean Bar Exam and the maximum number of successful candidates in the entire Japanese empire was less than 300 hundred per year. Passing the Higher Service Examination or the two Bar Examinations in Tokyo and Seoul thus guaranteed social success and prosperity at a relatively young age. The mix of elitism and meritocracy within the extremely competitive examination process worked to some extent to overcome the ethnic discrimination against Koreans.

The formation of lawyer (or legal professional) families that began in the 1910s was a dramatic indicator of the growing prominence of lawyers and other legal professionals as a profession. As seen in Chapter 3, the first generation of Korean lawyers, in large part, had a relatively marginalized social background. The majority of the early lawyers' fathers had failed to advance into the mainstream of the late 19th century Korean society. During the colonial period, however, becoming a judicial official or a lawyer became closely linked with more prestigious family backgrounds. Although there were some self-supporting students among the passers of the legal profession's qualifying examinations, the schooling and preparation for the examinations were often possible only with strong family support. To receive a proper education for the bar or national civil service exams, the students needed money for tuition and living expenses that ordinary people in colonial Korea could not afford.<sup>37</sup> The total cost of attending Keijō Imperial University, including tuition, living expenses, and other fees was 400 Japanese

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<sup>37</sup> The coupling of affluent backgrounds and high education credentials also applied to Korean judicial officials who had passed the Higher Civil Service Examination. According to one Korean researcher, the socioeconomic background of Korean judicial officials who passed the Service Examination was much higher than that of ordinary Koreans. (Chōn 2010)

Yen per year, which was slightly less than the annual income of ordinary workers in colonial Korea (Chōng et al. 2011). An alternative option for law education was Keijō Vocational Law School whose tuition was 141 Japanese Yen per year (Law Faculty Alumni of Seoul National University 2004). Moreover, getting a higher education meant paying for all the educational costs associated with lower level education, which included at least ten years of elementary and middle schools. Although the examinations were meritocratic to the extent that they did not require a formal law education, they, in fact, favored higher education recipients. Passing the Korean Bar Examination was a goal of those who had completed secondary education or held equivalent credentials, while passing the Higher Civil Service Examination was the goal of elite law school students from Imperial Universities in the Japanese Empire.

Lawyers became prominent professionals in colonial Korea. The high socioeconomic compensation of legal professionals propelled many aspiring Koreans to enter law and its related fields. The educational institutions and qualifying examinations, meanwhile, permitted only a handful of people to get into the profession and enjoy its exclusive rewards. Becoming a lawyer and judicial official meant not only individual prestige but also honor for his family and region. Meanwhile, facilitating such institutional path from receiving a law education to becoming a legal professional was Japan's colonial rule. Even though their intentions were not necessarily benign, the Japanese colonizers established the court structure, law education, and the exam system to becoming a lawyer.

Many Koreans in colonial Korea regarded the legal profession as a means to enter local politics, business and finance, and/or social organizations. However, few seriously contemplated what was involved in being a lawyer. The lawyers were an instrumental means to accomplish other people's work but not a field with a common identity or shared set of values. However, the

legal profession was an outlet from which individual practitioners left, but not an entrance to the field of law. Except a handful of lawyers who willingly engaged in political movements; either pro-Japanese or anti-Japanese, most lawyers were not interested in what the bar associations did for the sake of their autonomy and the rule of law under the colonial rule. The bar associations hardly formed a collective identity of lawyers. Such inversion was caused not by individual lawyers but by structural relations that the lawyers made with the colonial state, the metropole state, and the colonized subjects.

### **The Oppressive Colonial State and Constrained Political Space**

Although many legal practitioners enjoyed a prominent status in various social realms as individuals, their profession by no means enjoyed the same prominence. Rather, the bar associations remained weak, inactive, and even silent about major political and juristic issues during the colonial period. One reason for the legal profession's marginality lay in the oppressive colonial government that extensively regulated the lawyers. During the colonial period, the entire number of registered lawyers reached around 814.<sup>38</sup> However, this number never exceeded 400, which was far less than the number of practicing lawyers in Japan and Taiwan per capita.

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<sup>38</sup> I examined multiple sources to find every registered lawyer during the colonial period. However, because of the name change campaign led by the colonial government that forced some lawyers to change their Korean names to Japanese ones, I was unsuccessful in some cases.

	Japan	Taiwan	Korea
1921	15916	65018	85975
1925	10432	44596	61539
1931	9603	30405	N/A
1935	9705	34971	56276
1940	13386	49915	66975

Table 8 Population per Lawyer in Japan, Taiwan, and Korea from 1921 to 1940; Source: Wang (2001: 89 table 3.6)

According to Table 8 quoted from Wang (2001: 89), the number of practicing lawyer per population was 56,276 in mid-1930s Korea, which means that one lawyer covered approximately 56,000 Koreans. Compared to metropole Japan and colonial Taiwan, where one lawyer was for slightly less than 10,000 and for about 35,000 respectively, the ratio represents that the number of practicing lawyers in colonial Korea was far short of. Throughout the entire colonial period, the number of practicing lawyers in colonial Korea never exceeded 420.

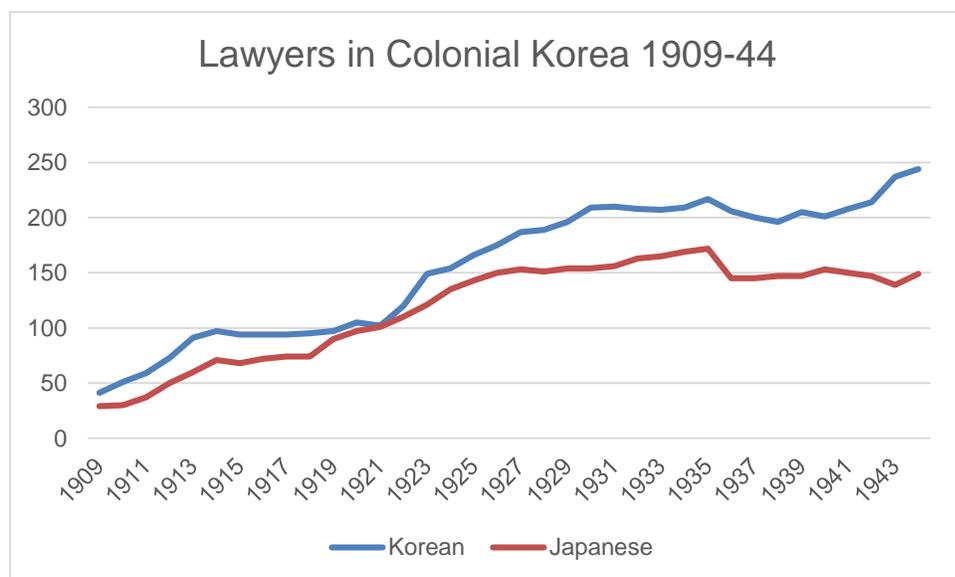


Figure 11 The Number of Practicing Lawyers in Colonial Korea Divided by Ethnicity from 1909-1944 (Source: The Official Gazette of the Governor-general's Office from 1910 to 1944; the data for 1909 was obtained from the Annual Report of the Residency)

General's Office in 1909) (Note: candidates who passed the bar exam in 1944 and 1945 were not eligible to practice law as they had to undergo an eighteen-month apprenticeship period.)

Figure 11 shows the longitudinal trend of registered lawyers in colonial Korea from 1909 to 1944.<sup>39</sup> In terms of the supply of lawyers, the colonial period can be divided into three periods: 1) 1909—1919 2) 1920—1935 and; 3) 1936—1945. The first regime of the colonial state (1910-1919), often characterized as a period of military rule, was neither interested in expanding the role or function of the judiciary nor in establishing independent legal institutions. Instead, in accordance with Korea's colony status, the colonial government tried to simplify the judicial procedures. Admittedly, Terauchi Mashatake (from 1910 to 1917), a formerly active Japanese Army general and the first Governor-General, who became the Prime Minister of Japan in 1917, championed the rule of policemen and military police by allowing them to prosecute and even rule on minor cases without going through the court or the prosecutor's office. It is not surprising that such colonial government did not administer the Korean Bar Examination for a long time. As a result, except for the influx of migrant lawyers from Japan or resigned/retired judicial officials, the supply of lawyers to colonial Korea remained largely stagnant.

The supply of practicing lawyers in colonial Korea dramatically changed at the turn of the 1920s as the colonial government adopted more conciliatory policies. The colonial government resumed the Korean Bar Examination in 1922. Saito Makoto, the newly assigned Governor-General in 1920, initiated many measures to overcome the unequal standards between the Japanese and Koreans and to encourage the Koreans' political participation. As a result, beginning with three successful candidates in 1922, the bar exam produced a total of 181

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<sup>39</sup> After the registration of the first three Korean lawyers in 1906, by 1910, 47 Korean lawyers practiced law in Korea alongside approximately 29 Japanese lawyers. The majority of the first generation of Korean lawyers came from study abroad students to Japan who had passed the Korean Bar Examination administered twice by the Korean government in 1907 and 1908. This exam turned out 10 successful candidates.

successful candidates by 1942.<sup>40</sup> Over the 1922 to 1935 period, the number of registered lawyers in colonial Korea increased from 230 to 389. The year 1936 marked another threshold for lawyers in Korea. After the colonial authority classified lawyers who did not meet the profession's standards, eighteen lawyers became deleted from the legal registry (Official Gazette of Governor-General Office 1935). Although the number of lawyers steadily increased until the end of World War II to arrive at the total figure of 400, the number of lawyers still fell far short of the demand for lawyers among the residents in colonial Korea.

Despite such longitudinal changes in the lawyers' registration, these increased figures did not change the colonial government's registration, withdrawal, and disciplining of the lawyers. In other words, the bar association remained powerless to control the supply of lawyers in colonial Korea. Although the Korean Bar Examination resumed in 1922, the exam committee consisted of one chair and seven or eight committee members, all of whom were judicial officials within the colonial government. In contrast to the Director of the Bureau of Justice who continuously occupied the role of chair for the exam, no lawyers became appointed to the committee during the colonial period.

The colonial government control of the Korean Bar Examination did not differ from the metropole government's control of the Japanese Bar Examination. What differed, however, was the colonial government's control of the supply of legal professionals by overseeing the lawyers' registration process. Unlike metropole Japan where lawyers were allowed to practice law without the metropole government's permission, all the lawyers in colonial Korea had to obtain the colonial government's permission in order to begin their service.

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<sup>40</sup> The Korean Bar Examination produced passers in years 1943 and 1944; however, it was unclear whether they actually practiced law since a new Lawyer Law passed in 1935 forced them to undergo an 18 month-apprenticeship under a senior lawyer.

Registration was a very strict process for most lawyers. The colonial government required all applicants to have the village headman of their residential area submit an application letter, resume, record of family registration, record of qualification type, and confirmation letter. In addition, the prosecutor-in-chief of the local court where the lawyer planned to practice law had to submit a confidential report recommending the applicant to the Bureau of Justice. Attached to this report was another inspection report written by a policeman which detailed the applicant's character, family wealth and reputation, and record of anti-social behavior, etc. Some lawyers failed to pass this registration process due to earlier run-ins with the law or their family background. For example, one request for a lawyer's license by Kil Wŏnpong, a Korean applicant, in 1933 was denied because of his involvement in the 1919 Independence Movement (Classified Documents Pertaining to Lawyer Registration 1933 No. 4). Another application by Korean lawyer, Wŏn T'aekyŏn, in 1931 was rejected after the local police station reported his father and brother's involvement in the March First Movement in 1919 to the local prosecutor's office (Classified Documents Pertaining to Lawyer Registration 1931 No. 3).

The colonial government was also strict with the Japanese lawyers. A request by Japanese lawyer, Kuriyama Kenkichi, was denied by the colonial authority in 1938 when the prosecutor-in-chief of the P'yŏngyang local court deemed him a threat to the city. A former prosecutor of the colonial government until 1923, Kuriyama practiced law in Seoul from 1924 to 1933 but remained thousands of Yen in debt to his friends while expanding his business. After he returned to Japan in 1933 only to come back to Korea in 1938, the prosecutor-in-chief became suspicious of his "unrealistic" dream to become rich overnight (Classified Documents Pertaining to Lawyer Registration 1938 No. 17). Personal character was another factor that the colonial government took seriously. In 1938, the registration request by a Japanese lawyer, Tajiyourou

Tanida, was rejected because of his “insincere” attitude towards work. After passing the judge-prosecutor recruiting exam in 1918, he had practiced law in Japan but earned bad reputation among his peers (Classified Documents Pertaining to Lawyer Registration 1938 No. 25).

The colonial government disciplined lawyers through the disciplinary committee where, similar to the Bar Examination committee, seven or eight judicial officials of the colonial government sat. There was no position reserved for practicing lawyers on this committee. The colonial government believed the attorney system to be evidence of the improved judicial system that they had brought to colonial Korea. As a result, the government was very sensitive to any misdemeanors by lawyers that threatened this system. By the early 1930s, most disciplinary actions against lawyers were for their misdemeanors. However, they were also used by the colonial government to restrict the activities of nationalist lawyers. For example, in 1931, one Korean nationalist lawyer, Hō Hōn, was charged with conspiring to start a socialist organization and disqualified from the bar.

### **Fragmented Bar Associations**

Aside from the oppressive colonial state, the fragmented bar associations also weakened the legal profession. Even though all practicing lawyers in colonial Korea were treated as part of the legal profession and entitled to practice law without institutional discrimination, they were partitioned into various subgroups divided by ethnicity and qualification. For instance, the Seoul bar associations, which comprised more than one third of the entire body of practicing lawyers during the colonial period, were divided into the Seoul bar association for Japanese lawyers and the First Seoul bar association for their Korean counterparts. The division of the bar association

into these two separate bodies was precipitated by the election of a Korean lawyer as its president for the first time in 1914. Japanese lawyers, who were upset by the result, boycotted the presidency (Korean Bar Association 1980). After that, with the Japanese empire entering the period of total war, the reunification of the two bar associations did not occur 1938. Even after its reunification, the bar association engaged in few political activities. As the country's atmosphere increasingly turned hostile against the United States and United Kingdom, the colonial government portrayed the reunified bar association as symbolizing the joint efforts of Japanese and Koreans against the West. After its reunification in 1938, the bar association also engaged in such activities such as raising funds for soldiers in Manchu (Hōritsu Shimbun April, 1938).

Some Korean lawyers took for granted prioritizing ethnic equality over professional virtues in colonial Korea. With non-lawyer agents in Japan and Korea still helping people's litigation practices, the colonial government allowed some Japanese non-lawyer agents to earn a lawyer license under particular conditions in the 1910-20s. After witnessing the granting of the lawyer's license to Japanese non-lawyer agents, the Bar Association of Korean lawyers in Seoul in 1924 advocated for the granting of lawyer's license to Korean non-lawyer agents (Dong-A Ilbo March, 29<sup>th</sup>, 1924). The colonial authorities' decision was explicitly unfair in that no Korean agents were entitled to practice law for the same period. Such a claim by the Korean bar association, though grounded on ethnic equality, however, could damage lawyers' professionalism and credentialism that all practitioners should hold the same qualifications. If the Korean lawyers had stressed professionalism over ethnic equality, they would have accused their Japanese counterparts of violating the qualification system. But it was not easy for the lawyers to advocate professionalism and their exclusive right in colony where Japanese were much favored

in most cases. Although some events required the collaborations of the two ethnic groups, neither the Japanese nor Korean lawyers recommended the reunification of the bar associations until 1938.

Despite the association's ethnic division that divided Koreans from Japanese, not all Korean lawyers were united under the single banner of being "Korean." A chief source of division among them was their political stance towards the colonial rule. Yi In, one Korean lawyer who was actively engaged in cause lawyering for nationalistic activists during the colonial period, stated that Korean lawyers were divided into pro-Japanese, anti-Japanese, and hermitlike groups (I. Yi 1974). Except for the nationalistic lawyers like Yi In, most Korean lawyers were not interested in the cause of Korean nationalism. In addition, with most Korean lawyers coming from the positions of resigned/retired judicial officials at the lowest branch courts until the 1930s, they practiced law in local cities rather than Seoul.

Meanwhile, the conflict caused by qualification was much more serious for Japanese lawyers than it was for Korean lawyers. Lawyers in colonial Korea were governed by the executive ordinance decreed by the Governor-General of colonial Korea and not by the metropole law of Japan. The Governor-General' ordinance on lawyers' qualification promulgated in 1912 defined two types of lawyers eligible to practice law in Korea: 1) practicing lawyers in Japan or eligible candidates with Japanese qualification and; 2) practicing lawyers in Korea or eligible candidates with Korean qualifications. This meant that lawyers who obtained their qualification from the colonial government were limited in their jurisdictional activity to colonial Korea. For most Korean lawyers, regardless of the qualifications, the jurisdictional limit was not a problem at all, because they kept practicing law within colonial Korea. In contrast to the Korean lawyers, however, Japanese lawyers who had served in the colonial judiciary or had

passed the Korean Bar Examination were not entitled to practice law in mainland Japan. Ironically, it was Japanese lawyers qualified in colonial Korea who most actively and aggressively contested the ethnic division. In contrast to Korean lawyers who could take advantage of local networks for their practice and had few reasons to migrate to Japan, the Japanese lawyers who had obtained their license from the colonial government were not allowed to practice law in Japan. In order to ameliorate their disadvantaged status vis-à-vis the metropole lawyers, the Japanese lawyers used many forums including *Hōritsu Shimbun* to advocate for the unification of the Japanese and Korean legal systems. Among the main contributors to this journal was a Japanese lawyer, Miyazaki Tsuyoshi, who had passed the Korean Bar Examination in 1923. In 1929-30, he wrote several articles criticizing the underdevelopment of the colonial judiciary including “The Independence of the Judiciary in Colonial Korea (*Hōritsu Shimbun* September 1929),” “The Will of Governor-General Saito and the Application of the Court Constitution Law to Colonial Korea (*Hōritsu Shimbun* April 1930),” “The Shortage of Manpower in Keijō Local Court and the Prestige of the Judiciary.”

### **Juristic Marginalization**

In addition to the oppressive colonial state and the fragmented bar associations, the lawyers in colonial Korea had few means to produce legal knowledge. Therefore, rather than lawyers, the colonial state and a handful of elite judges in the Higher Court exercised juristic and even legislative powers. While the colonization of the country in 1910 applied Japanese laws to the lives of residents in colonial Korea, the relationships among Koreans were governed by a set of executive ordinances decreed by the Governor-General. The ordinances promulgated in 1912,

which went through several revisions during the colonial period, dictated that civil relations among Koreans, including family affairs, be governed by Korean customs and not Japanese laws.<sup>41</sup> The fact that the Korean customs were never codified during the colonial period thus became a critical issue. After an attempt to codify and enact civil laws in colonial Korea based on Korean customs became thwarted in the late 1900s, the judges in colonial courts used Korean customs but did not properly cite them.<sup>42</sup> Moreover, the Japanese judges remained largely ignorant of Korean customs or distorted them. For instance, with many judges assuming that the Korean customs were the same as the Japanese ones,<sup>43</sup> they either applied the Japanese concept of family to Korean cases or overgeneralized a custom particular to a certain village or town to other regions.

With the judges in the High Court of Colonial Korea determining the validity of Korean customs to individual cases (M. S. Kim 2009), the lawyers in colonial Korea had little power to link native law and legal sources to colonial law. These lawyers were aware, however, that most interpretations by the High Court judges were either incorrect or too distant from accepted Korean customs to be effective. As a result, they suggested the need on the part of the colonial government and its judiciary to codify these customs into statutory laws (Daily Dong-A October

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<sup>41</sup> Instead, the indigenous Korean custom was inserted into a sub-section of the colonial legal order. According to the Ordinance on Civil Matters (j: Chosen Minjirei; k: Chosŏn Minsaryŏng) in Article 10 passed in 1912, civil matters involving only Koreans were to be governed by a Korean custom even if the specific custom differed from a law as long as the law was not related to public order. According to Article 11, Korean customs rather than the laws listed in Article 1 applied to the provisions for family and succession for Koreans. According to Article 12, except for the property rights stipulated in Article 1, the kinds and effects of real property rights were to be governed by the Korean custom.

<sup>42</sup> A recent study sheds light on the Protectorate period (1905-1910) as one in which a policy shift from Japan's status as a protectorate to colonizer occurred as Japanese liberals and aggressive colonialists vied for power. A Japanese jurist, Ume Kenjirō, who studied Korean customs, tried to codify them into law. After the death of Korea's Governor-General, Itō, in 1909, followed by the death of Ume himself in 1910, his efforts proved fruitless (Y. Yi 2011).

<sup>43</sup> In particular, the notions of family and family head authority in Korea became translated into the concept of ie or Japanese family. In contrast to the Korean family, the head of the Japanese family was considered identical to the other family members and exercised absolute control over them. Japanese judicial officials also remained deeply confused about the different inheritance structures of Japanese and Korean families (Yuhokyokai 1966).

1<sup>st</sup>, 1928). However, neither the colonial state nor its judicial officials responded to these suggestions.

Due to the marginalization of most lawyers, in general, and Korean lawyers, in particular, from discussions of native legal practices, they remained powerless to counter the misinterpretation of Korean customs by the colonial state and its judiciary. In contrast to lawyers in pre-colonial Korea who actively engaged in the construction of a colonial jurisprudence through diverse conferences and forums, the lawyers in Korea in the 1920s failed to engage in similar efforts. With an increasing number of lawyers originating from the positions of court clerks with expertise in litigation procedures than jurisprudence per se, the silence around the distortion of Korean customs intensified. Some lawyers intermittently submitted articles to journals or newspapers to discuss the difference of Japanese and Korean institutions. Among them was Kim Pyönu who contributed multiple articles to *Hōritsu Shimbun* in the late 1920s regarding the different tenant systems in Japan and Korea. Except for few lawyers such as Kim who had studied law in a Japanese college, the lawyers in colonial Korea remained reticent in discussing issues of jurisprudence. The task of publishing papers and organizing forums to study Korean customs fell upon the judges and prosecutors instead. According to a study (Hong 2009), one Japanese higher judge published more than two dozen papers on the Korean family system, decisively affecting the meaning and structure of the Korean family.<sup>44</sup>

Despite the popularity of the Korean Bar Examination with the general public, elite law students shied away from it. In 1939, while the number of applicants who took the exam exceeded 250, most Keijō Imperial University students did not take the Korean Bar Examination nor its graduates seriously. Students from Imperial University, like many other imperial

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<sup>44</sup> In the same study, Hong (2009) pointed to one of the most critical misunderstandings of the Japanese judge, Nomura Chotaro, and the High Court of Colonial Korea—that the inheritance of service rituals for family lineage in the Korean family (*chesa sangsok*) had moral and ethical but no legal meaning..

university students across the Japanese empire, aspired to become an official by passing the National Higher Civil Service Examination (j: Koutoubunkan shiken, Kodŭng munkwan sihŏm). Thus, it was rare for students at Imperial University to take the Bar Examination and start a law practice without applying for the Civil Service Examination. Of the 226 successful candidates of the Korean Bar Examination from 1922 to 1944, I was able to identify only four such cases. On the contrary, with the elite law students considering the Bar Examination in colonial Korea to be only a preliminary test to preparing for the Civil Service Exams in Tokyo, few successful candidates of the Korean Bar exam practiced law.

For example, after passing the Korean Bar Examination in 1938, Ko Chaeho did not practice law but took the Civil Service Exam in 1939 instead. After passing this exam, he was appointed as a probationary prosecutor within a local court in Taegu in 1940. Later, Ko confessed that he had taken the Korean Bar Examination because he was unsure whether he would successfully pass the Civil Service Examination (Ko 1985). Until the end of colonial rule, nine Keijō Imperial University students, along with Ko, took the Bar Examination and the Civil Service Examination. No one, however, practiced law immediately after passing them. Another Keijō Imperial University student, Sōnu Chongwŏn, who graduated in 1941 and passed the Civil Service Examination in 1943, recalled—somewhat disparagingly—the Korean Bar Examination as being much easier than the Higher Civil Service Examination (Sōnu 2010).

There were several reasons why few elite law students in colonial Korea took the Bar Examination seriously even though it was no easier than the Higher Civil Service Examination. Practically, the Korean bar exam was harder in a sense that it did not exempt the preliminary test for candidates who had successfully passed it in the previous year. Thus, examinees often complained about the Korean bar exam being harder than the Japanese exam. Aside from the

practical hardship in preparing and passing the examination, one reason for their sense of dismissal lay in the discrimination of the colonial government against the successful candidates of the Korean Bar Examination. The colonial government, even though it administered the exam, did not draw upon the pool of successful candidates of the Korean Bar Examination to fill in its vacancies within the judiciary. Suffering from a lack of applicants from Japan until the mid-1930s, the colonial government either engaged in special campaigns to recruit the court clerks or invited applications from practicing lawyers in Japan. In the 1920s, more than 150 court clerks became appointed to judicial officials and in the 1930s, more than 50 lawyers qualified in metropole Japan were named as judicial officials. However, no practicing lawyers who passed the Korean Bar Examination were named to judicial officials during the colonial period. For example, a Korean lawyer, Pak Uyun, who had started to practice law from 1933 after passing the Higher Civil Service Examination in 1932, was appointed to a judge at the branch court in Chŏngŭp in North Chŏnra Province in 1940. His appointment was possible because he had not passed the colonial exam but the metropole exam.

Despite the handful of lawyers engaged in civic movements, with the fragmentation of the legal profession and the dependence of the lawyers on the colonial state, the overall attitude of colonial lawyers was one of powerlessness and disengagement from juristic issues. As aforementioned, the lawyers' conferences did not work as a forum for practicing lawyers to discuss and exchange their thoughts of law. A few newspapers engaged in jurisprudence by spreading and sharing new rulings at the Supreme Court in Tokyo and the High Court in Seoul, but most of all its aim resided in letting examinees to know those cases rather than discussing jurisprudence. In the face of these divisions, the national conference of lawyers proved ineffective in forging a common future for practicing lawyers in colonial Korea. Except for the

first national conference in 1925 joined by the higher judicial officials of colonial Korea, most conferences ended in fruitless debates. In 1925, both Japanese and Korean lawyers proposed a 15 article resolution to the colonial government that advocated for the adoption of the Court Constitution Laws in order to improve human rights, improve equality between the Japanese and Koreans, and abolish other “evil” laws. However, these resolutions were met by the colonial government’s stony silence and had to be reissued every year. A young Korean lawyer, So Wankyu, who had passed the Korean Bar Examination in 1931, lamented that lawyers in the 1932 conference were more interested in a Mt. Kūmkang tour than the conference itself. Commenting on the overall atmosphere, one higher judge stated, “Compared to the commitment to jurisprudence of lawyers in Japan, those lawyers in colonial Korea are too reticent and, to be frank, too disengaged. I encourage you to be more engaged” (Hōritsu Shimbun April 20<sup>th</sup>, 1938).

The juristic marginalization of lawyers in Korea had a negative impact on the drafting of the Constitution and other acts after the country’s independence. Among the ten members on the Committee for the Foundation of the Constitution and the Governmental Organization Law of South Korea on June 2<sup>nd</sup>, 1948,<sup>45</sup> only three were practicing lawyers who had passed the bar examinations during the colonial rule (Kwōn Sūngryōl, Han Kūncho, and No Chinsōl). The other six committee members were either graduates of imperial universities or the successful candidates of the Higher Civil Service Examination who had served as government officials

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<sup>45</sup> Yu Chino (Keijo Imperial University, a law professor at Posōng School), Kwōn Sūngryōl (Nihon University, Korean Bar Examination, practicing lawyer), No Yongho (Kyoto Imperial University, Higher Civil Service Examination, a judge), Yun, Kilchung (Nihon University, Higher Civil Service Examination, a county governor) Ko Pyōngkuk (Tokyo Imperial University, Higher Civil Service Examination, practicing lawyer) Han Kūncho (Meiji University, Japanese Bar Examination, practicing lawyer) Ch’a Yunhong (unknown), Im Munhwan (Tokyo Imperial University, Higher Civil Service Examination, County governor), No Chinsōl (Meiji University, Korean Bar Examination, practicing lawyer) and Kim Yongkūn (Keijo Imperial University, Higher Civil Service Examination, a county governor).

during the colonial period. Yu Chino, the president of the Committee, later confessed that he struggled to establish the Constitution since few committee members understood its nature.<sup>46</sup>

## **Chapter Conclusion**

In this chapter, I have shown how individual lawyers became prominent in various social realms as well as the court during the colonial period while the collective body of lawyers remained largely inactive. Not only did the individual lawyers in colonial Korea earn an astronomically high income compared to other professionals but they also advanced into local politics, business and finance, and social organizations. While some Japanese lawyers conducted business across the Korea Strait, other Korean lawyers gained social esteem as nationalistic advocates that they later put to good use as judiciary leaders of the newly independent South Korean government. Behind the high prestige enjoyed by individual lawyers, however, the bar association remained largely silent to political and juristic issues in colonial Korea. Until the colonial government forcibly reunited the two associations divided by ethnicity, the bar associations of lawyers in Seoul remained split for a long time. Through the bar examination and strict registration processes, the oppressive colonial state tightly controlled the supply of practicing lawyers. The colonial state and its judiciary also became the privileged interpreters of native Korean customs and, therefore, served as a quasi-congress that codified them into quasi-statutory laws.

The ironic juxtaposition of “salient” professionals and a “silent” profession can be explained in terms of the juristic marginalization of the colonial state vis-à-vis the metropole. On

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<sup>46</sup> As many researchers have pointed out, unraveling intricately entwined customary laws that constitute both native customs and the processed customs of the colonial jurisprudence remains one of the major tasks of the South Korean judiciary (M. S. Kim 2009).

one hand, the colonial lawyers were relegated to consumers of imported legal knowledge from the metropole. Many lawyers in colonial Korea remained technical practitioners assigned with the task of applying existing legal knowledge to specific cases for their clients. On the other hand, the colonial government excluded the colonial lawyers from legal forums to discuss colonial laws and Korean customs. As a result, the lawyers remained passive bystanders who simply read and applied the verdicts reached by the High Court of Colonial Korea. The political marginalization of the legal profession can also be attributed to the oppressive colonial state and fragmented bar associations. With little political space for lawyers in colonial Korea, the bar association faced difficulty in mobilizing them for social action.

As a result, the legal profession in colonial Korea, I have suggested, existed as a means for aspiring individuals to advance into social realms but was not a field in which individual lawyers turned into a collective body of a profession. Being a lawyer in colonial Korea became a nominal title representing a knowledgeable, intelligent, and likely influential figure within the local community. However, it said little about the political involvement of this individual in the development of colonial Korea's legal system. The Janus-faced feature of the Korean Bar Examination is noteworthy in this regard. The examination became a popular channel for lower mid-ranked government officials and white-collar workers to climb the social ladder. With the new-found popularity of law education, the insufficient educational infrastructure of colonial Korea necessary to prepare for the bar examination also became a social issue that attracted much public attention. Not only that, in contrast to the deep interest that lower mid-ranked officials showed in the law examination, elite law students shunned it. Few students at Keijō Imperial University took the Korean Bar Examination seriously due to the limited jurisdiction of

the Korean Bar Examination. Instead, most aimed their sights higher on passing the Higher Civil Service Examination in Tokyo.

## **CONCLUSION: THE DIVORCE OF LAWYER AS A PROFESSIONAL FROM A PROFESSION**

In this dissertation, I have argued that the legal structures imposed on colonial Korea by the Japanese colonizers shaped the professionalization of lawyers to be instrumentally prominent but substantively disempowered actors. As a result of the Japanese colonial rule, procedural laws became unified across the Japanese Empire, legal professions were trained with the laws, and being a lawyer became a means both to gain exclusive authority within the courts and to advance into other social realms. Along with the establishment of the attorney system in 1905 and the subsequent reforms of the judicial system in the late 1900s, Korea was enforced to enter a novel field in which Western laws and court systems governed litigations among individuals.

Individual practitioners' prominence spawned out of this coercive change that resulted in high social prestige and socioeconomic compensation as well as popularity of law education. Not only was the title of lawyer a ticket to enter various fields including the local assembly, business and finance, and society during the colonial period, but the lofty prestige of its practitioners was also reflected in the popularity of law education for the socially ambitious and the rise of prominent families with legal connections in colonial and post-colonial Korean society.

However, the rise of individual lawyers as prestigious professionals did not mean a similar rise in the power and prestige of the legal profession. On the contrary, the legal profession was not only tightly controlled by the oppressive colonial state but also fragmented by the different ethnicity and qualifications of its members. The colonial government and its judiciary censored lawyers by engaging in lawyers' registration and dropout processes. In

addition to the authoritarian state, the bar associations that consisted of different ethnicities and qualifications did not play a pivotal role in establishing the profession's autonomy and the rule of law in colonial Korea. Given the division between metropole Japan and colonial Korea, moreover, colonial jurisprudence was formulated by a handful of elite judges and law professors at the Keijō Imperial University but not by lawyers in colonial Korea. Rather, lawyers remained marginalized as technical practitioners who simply applied rather than produced new forms of legal knowledge, and the bar associations did few things to secure their position in discussing and formulating colonial jurisprudence.

I conclude that colonization in general, the colonial legal structures in particular, shapes the legal profession to be substantively hollow despite the establishments of formal institutions including law education and exams, Western courts, and judicial systems in the colony. The implementation of the formal institutions by the colonizers radically brought colonies and subjects into the field of Western law. As seen in Chapter 2, lawyers, despite lacking a strong socio-cultural basis in the traditional Korean legal system, took advantage of the rearrangements of legal systems in early twentieth century Korea by linking the Korean subjects to Westernized forms of litigation. The establishment of modern-yet-still-colonial courts and the appointment of Japanese judicial officials to Korean courts necessitated the lawyers' knowledge of Japanese laws. In Chapter 3, I have argued that because of the radical political regime changes the ruling elites in Korea were less prepared than their less well-off counterparts to advance into the prestigious legal profession. In contrast to the preceding decades, from 1910 onwards, the legal profession became a means for Koreans to either change their social status or achieve upward social mobility. Showing the rise of lawyers as a powerful professional class in colonial Korean

society through Chapter 2 and 3, I have argued that lawyering became one expedient means for the previously marginalized members of the learned class to achieve social mobility.

In contrast to the rising prominence of individual lawyers, however, the bar associations did not rise to an independent entity that regulated and protected practicing lawyers based on common experiences. As seen in Chapter 4, the different ethnicities of the Korean and Japanese lawyers and their diverse qualifications hindered the consolidation of the legal profession with a shared identity. That is, the status of colonial Korea in the Japanese empire as an annexed territory with a separate jurisdiction entitled all practitioners of law to enjoy the title of lawyer. However, this shared title hardly contributed to a collective stance against Japanese colonial rule that kept colonial Korea both separate and subordinate to mainland Japan. Moreover, the differences of ethnicity and qualification gave the lawyers a different status in the bar, determined where they could practice, and decided whether they could even transfer. In Chapter 5, I suggested that the location of the lawyers' first place to practice and their likelihood of being transferred were influenced by factors such as their in-office career, ethnicity, and origin of qualification. In particular, Korean lawyers who earned their law degrees in colonial Korea were likely to practice law in local cities. In Chapter 6, I showed how the oppressive colonial state, the fragmented bar association, and the juristic marginalization of lawyers contributed to the relegation of colonial lawyers to technical practitioners who simply applied existing legal knowledge to specific cases.

Showing that the disjuncture between individual lawyers as influential professionals and lawyer as a relatively disempowered profession characterizes the professionalization process in colonial Korea, I suggest that to understand lawyers in the colony it is imperative to examine the legal structures that the colonizers imposed onto the colony. The roles of the colonial legal

structures are two-fold. On the one hand, it facilitates the rise of lawyers as influential professionals that resulted from the process of colonization that replaced the pre-colonial legal regime in Korea with modern law schools, courts, and other legal organizations. Regardless of whether the colonization process was voluntary or coerced, the Japanese colonization of Korea established an arena in which the legal knowledge of practicing lawyers became regarded as valuable. On the other hand, the process of colonization contributed to the marginalization of the lawyers as a collective. Although colonization created legal institutions in colonial Korea that were formally identical to those in metropole Japan, in fact, the field of law or jurisprudence became hardly established in colonial Korea. Insofar as the Japanese colonial state remained an apparatus for ensuring the stable rule of its colonial subjects, no lawyers—with the possible exception of a handful of nationalists—engaged in political mobilization. Lacking both the socio-cultural roots of lawyering in pre-colonial Korea and the statutory laws to regulate individual relations, the lawyers in colonial Korea were forced to rely upon the interpretation of a few elite judicial officials on Korean customs.

By demonstrating the paradoxical aspect of professionalization of lawyers in colonial Korea—the salience of individual lawyers tied with the silence of their association, this dissertation contributes to three bodies of literature. First, the dissertation criticizes existing literature of profession study's three assumptions; 1) professionals are members of a profession that shares a common identity; 2) they go through the same qualification system to become an expert; and 3) they formed under the aegis of the nation-states. That is, regardless of whether they draw upon inter-professional or intra-professional competition theories, scholars have assumed that a profession consists of a distinct field of experts who share similar behavioral codes in relation to the nation-state. The lawyers in colonial Korea challenge this understanding

in that overly-developed individual practitioners coexisted with relatively underdeveloped bar associations under the colonial rule. The divorce of legal professionals from the profession challenges existing assumptions about two key dimensions of the professionalization process. According to neoinstitutional theories on profession and professionalization in sociology, a profession emerges out of institutional adaptations such as schools and examination systems (Meyer and Rowan 1977; DiMaggio and Powell 1983). With the ability of such institutional arrangements to spread to another place, colonial expansion is one medium through which the formal process of professionalization can be brought about. Aside from such formal establishments which facilitated emulations at the superficial level, the professionalization concerned with a process in which actors engage in building a field should be seen separately. If the neoinstitutional theory seeks a better explanatory framework, then it delves into how adopted institutions actually work in a new context (see Fourcade 2006).

Second, drawing attention to the complicated relationship between the traditional, modern, and colonial elements of legal professionalization, this dissertation critically reviews the concept of colonial modernity. The Japanese colonization of Korea dissolved the pre-colonial legal system that had discouraged agents from engaging in litigation. Instead, by replacing this antiquated system with Westernized courts, the Japanese colonization propelled legal practitioners to become prominent professionals. However, the inactive nature of the Korean bar association which emerged within these colonial conditions raises questions of whether and to what extent colonized Koreans were truly modern. Behind the formal implementation of modern courts and the attorney system, the colonial state constantly suppressed the lawyers' activities. Because the bar association was not able to build a coherent identity, the lawyers barely advocated their autonomy from the state. Aside from the professional autonomy, the lawyers

were marginalized from producing and securing legal knowledge under the colonial politics where the colonial rulers nearly monopolized the interpretation of what the colony is. The relative disempowerment of the lawyers as a profession, on the contrary, draws attention to the modernized nature of coloniality. That is, these modern elements imposed by the Japanese were ultimately designed to perpetuate colonial rule. This disempowerment of the legal profession also sheds light on colonialism as a process that perpetuates a division of labor between the metropole and the colony in terms of knowledge production. From this perspective, we can view the shift in imperialism from direct to an indirect rule during the second half of the twentieth century as a continuation of the colonial relationship between the metropole and colony—albeit through a rearranged system of knowledge production.

Finally, this dissertation contributes to the literature on legal history in East Asia by raising fundamental questions about the colonial foundations of the legal system in contemporary South (and North) Korea. From the qualifications of practicing lawyers to the codification of civil laws, the colonial rule exerted a large influence on the legal system in post-colonial Korean society. Recent scholarship has begun to address this issue of colonial legacy in raising questions about the continuity of colonial jurisprudence and the legal institutions over the twentieth century (M. S. Kim 2009; Moon 2010; Y. Yi 2011). My dissertation suggests that the legal system in twentieth century Korea be seen as transnational in the sense that pre-colonial, colonial, and post-colonial elements were inextricably linked. At least in terms of practicing lawyers, many were transnational in the sense that many studied and took their bar exams in Japan. In other words, these lawyers were produced within a transnational realm encompassing the Japanese Empire. With many of them continuing to practice their profession after liberation, some advanced to high positions within the administration and judiciary of South Korea, where

they contributed to the legislation of Korean civil and criminal laws. Keeping in mind the transnationality of both legal professionals and government officials, we can review the history of Korea in the second half of the twentieth century as one of transnationally-embedded elites engaging in the nation-building process. In contrast to the dominant historiography in South Korea that understands this period as one where nationalistic leaders recover the nation, this dissertation highlights the strong tension between transnational elites and nationalistic masses.

## APPENDIX: THE 25 LAWYERS' FAMILY BACKGROUNDS

ID	Name	Date of Birth	Family Clan (Ponkwon)	Education	Father's name (or Grandfather's)	Father's Rank or Title	Chungin Status
1	Kim, Chŏng-mok	1866.5.20	Kyŏngju	Home (Kasuk)	Kim, Kyo-sŭng	Yukp'um (Lower Echelon; 6th rank at the bureaucracy)	
2	Cho, Kyŏng-ku	1875.7.16	P'ungyang	Home (Kasuk)	Cho, Tong-sŏk	Kongcho Chongnang (Lower Echelon)	
3	Song, Chin-ok	1865.9.20	Yŏsang	Home (Kasuk)	?		
4	P'yi, Sang-pŏm	1856.7.16	Hongch'ŏn	Traditional Jurist Exam	Pyi, Chong-yun	Cholchung changkun (Upper Echelon)	Chungin
5	Hyŏn, Sŏk-kŏn	?	Yŏnju	Meiji Univ.	Hyŏn, Kyŏng-un		Chungin
6	Hong, Chae-ki	1870.12.26	Seoul	Keio Univ.	Hong, Chŏng-sŏp		
7	Yi, Myŏn-u	1897	Chŏnju	Chuo Univ.	Yi Hoe-rae	<i>Chinsa</i>	
8	Yi, Cho-wŏn	1884.11.24	?	Jurist Training School	Yi Tu-pok		
9	Yi-, Yong-sŏng	1861.11.7	Ansan	Jurist Training School	Yi Kyŏng-chi	T'ongchongdaebu (Upper Echelon)	Chungin
10	Pak, Sŭng-pin	1880	Pannam	Chuo Univ.	Pak, Gyŏng-yang	Kagamyokkwan (Lower Echelon)	
11	Chang, To	1876.5.7	Tŏksu	Chuo Univ.	Chang, Hu-kŭn	Sŏnryak Changgun (Lower Echelon)	
12	Yun, Pang-hyŏn	1875.1.30	P'ap'yŏng	Keio Univ.	Yun, Chŏl-kyu		
13	Song, T'ae-hwan	1868.3.5	Yasong	Jurist Training School	Song, Sang-ki	Haksaeng	
14	T'ae, Myŏng-sik	1870. 3.14	Namwŏn	Home	T'ae, U-nam	<i>Yuhak</i>	
15	Pyŏn, Yŏng-man	1889.6.23	Milyang	Posŏng School	Pyon, Chŏng-sang	Samhwa Puyun (Upper Echelon)	
16	Yu, Mun-hwan	1874.8.24	Kangnŭng	Chuo Univ.	Yu, Ton-sang		
17	Chŏng, Myŏng-sŏp	1864.3	Naju	a private law school in Korea	Chŏng, Tae-yŏng	Haksaeng	
18	Hong, Myŏn-hŭi	1877.8.27	P'ungsan	Jurist Training School	Hong, Chae-sik		
19	Yi, Chong-u	1858.5.27	Tŏksu	Jurist Training School	Yi, Chu-yŏng	<i>Yuhak</i>	
20	Yi, Hŭi-son	1865.7.4	Ugye	Traditional Civil Exam, first stages	Yi Chae-myŏng	T'onghundaebu (Lower Echelon)	
21	Yi, Yong-sang	1884.10.17	Kwangju	Jurist Training School	Yi, Sŏk-rae	Saengwŏn	
22	Yi, Chong-sŏng	1876.11.7	Tŏksu	Traditional Civil Exam, first stages	Yi, Sŏ-yŏng	Yecho Ch'amp'an (Upper Echelon)	
23	Yi, Kŏn-ho	1865	Chŏnui	Traditional Military Exam	Yi, Kyo-rin	Sŏnryak Changgun (Lower Echelon)	
24	Kwŏn Pyŏng-hun	1864	Andong	Home (Kasuk)	Kwŏn, Pang-hŏn	Chŏngnŭng Ch'ampong (Lower Echelon)	
25	Kye, Myŏng-ki	1870.10.26	Suan	Posŏng School	Kye, To-hyŏng	<i>Yuhak</i>	

Table 9 25 First Korean Lawyers' Family Backgrounds registered from 1906 to 1910 (Source: The Collections of Resumes of Officials of the Taehan Empire, The Information System on Figures in Korean History by the Academy of Korean Studies)

## THE LIST OF PRIMARY SOURCES

### 1. Governmental Documents

- Classified Documents Pertaining to Lawyers Registration (1927-1940); *Pyŏnhosa Kwangye Sŏryu*
- The List of Government Officials of the Colonial Government of Korea:
- The Lists of Successful Candidates of the National Examinations from 1864 to 1894: *Pangmok*
- The Official Gazette of the Taehan Empire: *Taehanchekek kwanbo*
- The Official Gazette of the Colonial Government (j: *Chosŏn soutokufu kampou*; k: *Chosŏn ch'ongdokbu kwanbo*).
- The Official Gazette of the Metropole Government
- The Resumes of the Officials of the Taehan Empire: *Taehanchekek Kwanwŏn Iryŏksŏ*)
- The Diary of the Royal Secretariat: *Sŭngchŏngwŏn Ilki*)
- The Sourcebook of Modern Laws and Acts in Late Chosŏn-Korea: *Hanmal Keundae Pŏpŏryŏng Charyojip*

### 2. Private Documents

- Who's Who: Chosŏn Sinsataedongpo

### 3. Newspaper

- Daily Hansŏng: *Hansŏng sunbo*
- The Imperial Gazette: Hwangŏng Shinmun
- Daily Dong-A: Dong-A Ilbo
- The Independence: Toknip Shinmun
- The Law Journal: Horitsu Sinbum

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