

Contents

Illustrations		page ix	
Ta	bles	xi	
Acknowledgments		xiii	
	Introduction	I	
I.	Comparative Reflections on the Concepts of Law and Custom Concepts of Custom in European and East Asian Legal Traditions	13 16	
	Law and Local Customs in Chosŏn Korea, 1392–1910	2 I	
	The Myth of Custom	38	
2.	Law and Legal Culture under the Chosŏn Dynasty	41	
	The Community Compact	43	
	Law versus Standard of Behavior	51	
	Rule of Law and the Role of Law	56	
	Korea's Autonomous Attempts for Legal Reform	59	
3.	Custom and Legal Reception: The Japanese Precedent	65	
	The Introduction of the Legal Theory of Custom in East Asia	67	
	The Making of the Japanese Civil Code and Ume Kenjirō	82	
	Sources of Law in the Japanese and the French Civil Codes	94	
4.	Legal Reforms in Protectorate Korea, 1905–1910	101	
	Precedents of Reform: The Building of a Colonial Legal		
	System in Taiwan	105	
	Ume Kenjirō and Reforms of Korean Law and the Legal System	112	
	The Evolution of Japanese Politics and Legal Policy in Korea	134	
	A Tale of Two Assimilations	146	
5.	Colonial Law and the Legal System, 1910–1945	151	
	The Constitutional Status of the Colony	153	
	The Creation of Colonial Courts	156	
	The Colonial Customary Law Order	172	
	Conflict of Laws in the Colonial Empire: The Coordination		
	Law System	180	
		vii	



viii		Contents
6.	Colonial Jurisprudence and the Construction of Korean	
	Customary Law	192
	The Interpretation of Custom	193
	Reconfiguring Korean Customs into Customary Law	201
	Analysis of Customary Law Cases	208
	Jurisprudence of Customary Law and Colonial Policy	232
7.	The Japanese Deviation: Comparison of Colonial Customary	
	Law Policies	235
	Legal Pluralism in European Colonies	237
	Comparison of Japanese and European Customary Law Policies	245
	Law, Civilization, and Assimilation	249
	The Evolution of Colonial Legal Policy	257
	The Legacy of the Deviation	262
8.	Customary Law in Modern Korea	267
	Custom and the Korean Civil Code	270
	Colonial Law and Postcolonial Jurisprudence	274
	Custom, Culture, and the Constitution	286
	Tradition versus Modernity and Jurisprudential Quandary	292
	Conclusion	297
Ap_{i}	pendix A: List of Major Colonial Officials	303
Appendix B: Selected Law Provisions Cited in the Text		305
Bibliography		311
Index		345



Illustrations

I.I.	Trial scene during the Choson dynasty (1392–1910). The magistrate is seated on the left; the two parties are sitting on the ground. From <i>The Second Annual Report</i> on the Reforms and Progress in Korea, 1908–9.	page 31
3.1.	Ume Kenjirō, May 1909. Ume (1860–1910) was one of the drafters of the Japanese Civil Code and a legal advisor to the Korean government between 1906 and 1910. Collection of the Editorial Committee on History of Hosei University.	87
4.1.	First modern courts, circa 1910. All four levels of Korea's first modern courts that opened doors in 1908 were housed in this building in Kongpyŏngdong in Seoul. The colonial Chosŏn High Court moved to Sŏsomundong in 1911 and the lower courts followed in 1920. Courtesy of Seomoondang, Co.	123
4.2.	Courtroom scene from the Japanese protectorate period (1905–1910). The Korean defendants face the judges in Western suits. From The Second Annual Report on the Reforms and Progress in Korea, 1908–9.	128
6.1.	The Chosŏn High Court building shown in a postcard, circa 1935. Both the colonial high court and, after independence, the Supreme Court of Korea (Taepŏpwŏn) occupied this building in Sŏsomundong in Seoul continuously from 1928 to 1995. Collection of Korea Creative Content Agency (KOCCA).	223
8.1.	The Supreme Court of Korea. The court en banc in May 1956. In the middle is the first Supreme Court Chief Justice Kim Pyŏng-ro (1888–1964). Collection of the Supreme Court Library of Korea.	274
		ix



x Illustrations

8.2. Judicial robe, circa 1960.

280

A judge in full judicial gear that was used between 1953 and 1965. The robe features the embroidery of a rose of Sharon (Mugunghwa), the national flower of Korea, and the hat has a *t'aegŭk* mark inside the rose of Sharon. The judge, Kim Yoon-Haeng, later a Supreme Court Justice, was the author's father. Personal collection of the author.



Tables

5.1. Number of Judicial Posts (as prescribed in the Imperial Ordinance of 1920)

page 159

5.2. Population and Judicial Personnel, 1910–1944

161