CAMBRIDGE

Cambridge University Press
978-1-107-00697-3 - Law and Custom in Korea: Comparative Legal History
Marie Seong-Hak Kim
Index
More information

Index

adat law, 234, 236, 244, 248, 264
adoption, 22, 27, 33, 93, 94, 174, 186, 213–216
  adoption of son-in-law, 178, 179–180, 184, 277
  non-agnatic adoption, 179, 277–279, 287
Africa
  British colonies, 239–240
  French colonies, 241–243
An, Ch'ŏng-bok, 33, 37
Aquinas, Thomas, 18
Arakawa, Yoshihito, 231–232
Asami, Rintarō, 132–133
Asano, Toyomi, 102, 109, 125, 147, 182
assimilation, 5, 8, 131, 146–149, 151–152, 172, 174, 177–180, 189–190, 235, 241–243, 246, 249–257, 258, 269, 298
  assimilation en masse, 254–255
Austrian Civil Code, 72

Baldus, 17
Ball, John, 244
Bartolus, 17
Beaumanoir, Philippe de, 17
Bodin, Jean, 39
Boissonade code, 81, 84–86. *See also Kyū minpō*; civil code debate
Boissonade de Fontarabie, Gustave, 71, 80–86, 91–93, 95, 111, 132, 174
Bourgon, Jérôme, 15, 35, 295

canon law, 18, 80
Caprio, Mark, 257
Chanock, Martin, 238, 248
chijōken. *See* superficies
Chinese Civil Code, 68, 271
chisangkwŏn. *See* superficies
Chŏng, Kwang-hyŏn, 179, 183, 184, 194, 231, 277, 283
Chŏng, Yag-yong, 27, 33, 37
chongchung, 285
chŏnse, 228
chori. *See jōri*
Chōsen Shihō Kyōkai, 175, 200
  Chōsen Shihō Kyōkai zasshi, 175, 197, 200, 202, 216
Chosŏn Ordinance on Civil Matters, 152, 154, 173–174, 178–180, 184–187, 192–201, 203, 210, 216, 223, 229–231, 235, 247, 253, 258–259, 267, 272, 274, 277, 279
Chosŏn Ordinance on Criminal Matters, 155
Chu, Se-bung, 45
civil code. *See* country name
civil code debate (*hōten ronsō*), 81, 83–86
civil law tradition, 2, 82, 207, 294. *See also* Roman law
civil procedure, 35, 97, 123, 126–128, 155, 173, 198–199, 275
Civil Status Regulation (*Minjŏngnyŏng*), 181
civilizing mission, 3, 254
Code Investigation Bureau, 127, 130, 136, 144, 149, 225
common customary law, 20, 96, 203. *See also* custom
community compact, 9, 41–51, 52, 55. *See also hyangyak*
conflict of laws, 22, 152, 171, 174, 180–187. *See also* Coordination Law
Confucianism, 29, 44, 52–58, 285, 286–292, 298. *See also* neo-Confuciasm
Constitution of Japan, 108, 140–141, 145, 146–148, 153
Constitution of Korea, 140–141, 286–292, 294. *See also* Constitutional Court, Korea

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-00697-3 - Law and Custom in Korea: Comparative Legal History
Marie Seong-Hak Kim
Index
More information

Constitutional Court, Korea, 9, 269–270, 286–295. *See also* Constitution of Korea
Coordination Law, 152, 185–189, 229
Corpus iuris civilis, 7, 16, 84. *See also* Justinian Code
Court Organization Law
  Japan, 61, 157, 158, 161, 163, 164, 165–171, 261
  Korea, 61, 62, 270
Court Organization Regulation
  government general, 156–164
  residency general, 139–141. *See also* residency general court
custom
  "bad custom", 18, 225
  concepts, 3–7, 16–21, 73–75
  custom in fact, 194–196, 197–198, 203, 205, 272, 279–281
  in Japanese Civil Code, 193–197
  proof of, 18, 20, 79, 198–199, 201–206, 226, 239, 281–282, 294. *See also enquête par turbe*
  repeal of, 285–286, 294–295
  as a source of law, 1, 2, 4–7, 10, 16, 65, 69–73, 76, 90, 94–96, 152, 174, 177, 192–193, 268–272, 277, 279–282, 295–296
customary constitutional law, 293–294. *See also* custom
customs survey
  Japan. 77. *See also Minji kanrei ruishō*; *Zenkoku minji kanrei ruishō*
  Korea, 112, 130, 131, 132. *See also Customs Survey Report*, Korea
  Taiwan, 130–131
Customs Survey Report, Korea, 119, 130, 149, 175, 201, 215, 223, 225, 267

Daishinin, Japan, 68, 79, 89, 110, 157, 164, 171, 184, 189, 196, 228–232, 261
Dajōkan, 62, 67
Dajōkan Decree No. 103 (1875), 67–78, 79, 85, 95, 99, 100, 114, 271
de Thou, Christophe, 20
Deuchler, Martina, 27, 49, 50, 55
developmental colonialism, 264
divorce, 178, 179, 184, 216, 221
dōri, 74, 75. *See also jōri*
Dutch Civil Code, 72

East Indies, Dutch, 244–245
Egyptian Civil Code, 72
ei kosaku ken. *See* emphyteusis
emphyteusis, 142, 227–228
enquête par turbe, 17
Etō, Shimpei, 67, 68
Exegetical School, 38, 83
extraterritoriality, 60, 63–64, 102–104, 108, 113–114, 120, 124–125, 134–138, 145, 150, 186, 249

Family Registration Regulation (*Hojŏngnyŏng*), 179, 180, 187, 231
Free Law School, 90
French Civil Code, 7, 21, 68, 69, 71–72, 79–81, 84, 95–98, 192, 241
Friedman, Lawrence, 5

Geertz, Clifford, 238
Gény, François, 19, 38, 89–91, 98, 100, 193, 195
German Civil Code, 69
Gilissen, John, 19
Glenn, H. Patrick, 51
Gōtō, Shimpei, 130, 147–148
Great Council of State, Japan. *See* Dajōkan

Hague secret emissary affair, 120
Hahm, Pyong-Choon, 56–57
Haley, John O., 57, 62, 75, 78
Hara, Masakane, 174, 258
Hara, Takashi, 167
Historical School, 2, 38, 66, 83–84, 90, 174
historiography, colonial, 2, 134
Hobbes, Thomas, 39
Hojŏngnyŏng. *See* Family Registration Regulation
hoju system, 278, 280, 287, 289–290. *See also* household headship succession
Hongbŏm Fourteen Articles, 60
Hooker, M.B., 237
Hōrei, 94–95, 99, 185, 187–188, 193–196, 229, 247
Hōritsu Shinbun, 121, 158
house (*ie*) system, 92–94
household headship succession, 94, 215–215, 229–231, 278, 279–281, 289–291. *See also hoju* system
Hozumi, Nobushige, 70, 81, 83, 86, 104, 195
Hozumi, Yatsuka, 67, 86, 146
Huber, Eugen, 70
hyangyak, 9, 41–51, 52–56, 58. *See also* community compact
Hyŏngjo, 61
Hyŏngpŏp taejŏn, 63, 129, 178, 182, 250

incommensurability, 3
India, British, 240
indirect rule, 239–240, 241, 249, 262
Indochina, French, 243

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-00697-3 - Law and Custom in Korea: Comparative Legal History
Marie Seong-Hak Kim
Index
More information

inheritance. *See* property succession
Inoue, Kaoru, 74, 79
internal colonialism, 236
invention of tradition, 236, 249
Ishida, Minori, 77
Itō, Hirobumi, 10, 101–104, 108–113, 118–125, 134–137, 141, 145, 167
ius commune, 7, 38

Jacob, Robert, 20, 38
Japanese Civil Code, 7–8, 69, 83–90, 102–104, 130, 179, 187, 193–201, 209–211, 215–216, 224–225, 273
Jhering, Rudolf von, 83
jōri, 71, 74–75, 79, 80, 100, 211, 222, 231–232, 271. *See also* reason; *dōri*
judicial independence, 60–62, 102–103, 110, 119, 121–125, 141, 145, 147, 151, 157–159, 164–171, 265
judicial notice, 202, 204
jurisprudence constante, 97–98
Justinian Code, 7, 16. *See also Corpus iuris civilis*

Kabo Reform, 130
Kahn-Freund, Otto, 5
Kanshū chōsa hōkokusho. *See Customs Survey Report*, Korea
Kim, An-guk, 44, 45
Kim, Paek-kan, 35
Kim, Pyŏng-hwa, 59
Kim, Pyŏng-ro, 273
Kirkwood, William Montague, 107, 109, 148
Kitō, Heiichi, 162, 203
Kodŭng Chaep'anso, 61
Kodŭng Pŏpwŏn, 138, 193. *See also* Kōtō Hōin
Kohler, Joseph, 214
Koiso, Kuniaki, 260
Kojong, 63, 120
Kokubu, Sangai, 122, 164, 168, 170–171, 177, 190
Korea-Japan Treaty, 59, 100, 120
Korean Civil Code, 2, 68, 130, 187, 268, 269, 270–273, 278, 283, 287, 289, 296–296
Koryŏ dynasty, 26
Kōtō Hōin, 138, 159, 175, 193. *See also* Kodŭng Pŏpwŏn
Krynen, Jacques, 38, 39
Kuratomi, Yuzaburō, 120, 128, 130, 136–137, 139, 149, 164, 168–170, 171
Kwangmu Reform, 59–62
Kyŏngguk taejŏn, 21–22, 26, 31, 34, 130, 178
Kyōtsūhō. *See* Coordination Law
Kyū minpō, 71. *See also* Boissonade code

Law No. 30, Korea, 154–156
Law No. 63, Taiwan, 71, 106–107, 108, 110, 153, 155, 180
legal capacity, 184, 201–202, 209–210, 275
legal humanism, France, 30, 42–43
legal imperialism, 6, 236, 239, 297, 298, 301
legal pluralism, 4, 235, 237–238, 239, 244, 249, 251, 298
legal positivism, 3, 38, 39, 91
legal reception, 6, 23, 65, 66, 262, 266, 301. *See also* legal transplantation
  involuntary reception, 13
  voluntary reception, 64
legal transplantation, 5–6, 43, 58, 64, 67, 81, 234, 237, 296, 297, 301. *See also* legal reception
  "receptive transplant", 262–263
  "unreceptive transplant", 262–263
Leiden School, 238, 264. *See also* Vollenhoven, Cornelis van
litigation expert, 32
Lü, Dajun, 43

Maki, Kenji, 73
Manchu Civil Code, 68, 271
March First Movement, 167
Matsudera, Takeo, 178
Matsuoka, Shūtarō, 261
Meiji Charter Oath, 67, 76
Meiji Constitution, 62, 105, 109, 140, 153
Merryman, John Henry, 268
Minami, Jirō, 261
Minji kanrei ruishō, 77
Minjirei, Korea. *See* Choson Ordinance on Civil Matters
Minjirei, Taiwan, 172, 173–174, 178, 187
Minjŏngnyŏng. *See* Civil Status Regulation
Minsaryŏng. *See* Choson Ordinance on Civil Matters
mission civilisatrice. *See* civilizing mission
Mitsukuri, Rinshō, 68, 79
Miyawaki, Umekichi, 158
Montesquieu, Charles-Louis de Secondat, 5
Montil-lez-Tours, ordinance of, 20
Moriyama, Shigenori, 101–102, 125, 137

nationalism, 1, 8, 11–12, 14, 104, 117, 145, 186, 191, 268, 271–272, 276, 286–287, 291–292, 298
Nationality Law, Japan, 188, 260
native court, 235, 238, 239–241, 242, 255, 257, 264
natural law, 58, 69, 71–72, 75–76, 77, 79–80, 83, 91–92, 146, 211, 246, 276

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-00697-3 - Law and Custom in Korea: Comparative Legal History
Marie Seong-Hak Kim
Index
More information

neo-Confucianism, 9, 26–29, 46, 48, 52, 54. *See also* Confucianism
Noda, Yoshiyuki, 71, 78, 79
Nomura, Chotarō, 214, 216

Oguma, Eiji, 146, 252, 257
Oka, Takashi, 82
Okamatsu, Santarō, 130–131
Ōkawa, Sumio, 74, 114
Ōki, Takatō, 68, 76
Olivier-Martin, François, 39–40
opinio juris. *See opinio necessitatis*
opinio necessitatis, 17, 19, 38, 176, 233, 272, 281, 284
Ōtsu incident, 124

Pak, Il-wŏn, 31
Pak, Pyŏng-ho, 13, 295, 300
Palais, James, 48, 52
Pandekten system, 83, 87, 94, 130
Parlement, 18–19, 96
penal law, 4, 16, 36, 41, 63, 75, 247, 250
Pound, Roscoe, 5, 300
private law, 4, 8, 14–16, 25, 38–40, 41, 57, 75–76, 100, 111, 128, 208, 248, 297
property succession, 28, 218–214, 220–221
protectorate, 1, 63, 100, 102–104, 118, 137, 145, 225, 240, 242
public order and good morals, 76, 94–95, 100, 173, 190, 193–197, 203, 211–213, 243, 246–247, 262, 278, 295

Qing Code, 14

reason
  as a source of law, 68–78, 85, 271. *See also jōri*
  "written reason", 65, 80, 192
recovery of succession rights, 221–222, 231
repugnancy clause, 240, 246
residency general court, 139–141, 164, 183
Revon, Michel, 107
ritsurei, 106, 108, 109, 155, 158, 183, 185, 189
ritual succession, 176, 213, 215–215
Roman law, 1, 6, 7, 9, 16–17, 23, 38, 78, 79, 95, 224, 246
Rudolf, Otto, 61

Saada, Emmanuelle, 251
Saikin hanrei hihyō, 88
Saito, Makoto, 165, 169, 171
Saleilles, Raymond, 83, 91
Sasaki, Sōichi, 157
Sasong yuch'wi, 35
Savigny, Friedrich Karl von, 5, 38, 69, 83–84
seigneurial justice, France, 24
seirei, 153–155, 156, 158, 164, 174, 177, 182, 185, 189, 258, 261
Seizelet, Eric, 67
Shaw, William, 11, 32, 54, 57
Shen, Jiaben, 62
sirhak school, 27
Sok taejŏn, 22, 130
Sŏnggyungwan, 30
stare decisis, 97, 207
succession. *See* household headship succession; property succession; ritual succession
Sugiyama, Naojirō, 70, 71, 78, 81
sugyo, 25
superficies, 223, 224
Supreme Court, Japan, 187–188, 196, 198
Supreme Court, Korea, 9, 267, 269, 270, 273, 275–286, 289, 292–293, 294–295
Swiss Civil Code, 66, 68–70, 77, 271

T'oegye. *See* Yi, Hwang, T'oegye
Ta Ming Lü, 22, 130
Tabana, Tameo, 49
Taehan Cheguk, 59
Taejŏn hoet'ong, 22, 130
Taesimwŏn, Korea, 122, 138
Taiwan, 10, 100, 105–110, 130–131, 141, 146–148, 153–156, 167, 203, 260. *See also Minjirei*, Taiwan
  colonial court, 141, 156–157, 163, 168, 171, 183–186, 232
Takano, Takenori, 163
Tamanaha, Brian Z., 238
Tang dynasty, 23
Tansong dogam, 36
Ter Haar, Barend, 234
Terauchi, Masatake, 149, 153, 166, 172, 190, 249
Thibaut, A.F.J., 83
Third Republic, France, 66, 241, 243, 264
Tomii, Masaakira, 70, 77, 86, 89, 195, 224
Tong-A Ilbo, 160
tongsŏng tongbon marriage, 288–289
Turkish Civil Code, 66

Ulpian, 17, 25
Ume, Kenjirō, 10, 70, 168, 172, 175, 195, 225
  building modern Korean courts, 118–123
  colonial theories, 108–109, 146–149
  death, 144
  education, 82–83

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-00697-3 - Law and Custom in Korea: Comparative Legal History
Marie Seong-Hak Kim
Index
More information

investigation of Korean customs, 130–134
Japanese Civil Code, 83–88
juridical beliefs, 88–94, 195
reform of Korean law, 112–118
uxorilocal marriage, 25–27

volksgeist, 5, 38, 269
Vollenhoven, Cornelis van, 244, 264. *See also* Leiden School

Wagner, Edward, 45, 49
Wang, Yangming, 44
Watanabe, Nobu, 122
Watson, Alan, 5–6, 297
Weber, Eugen, 66
Whitman, James Q., 239
Wigmore, John Henry, 84, 85
Windscheid, Bernhard, 83

xiangyue, 43, 44, 52

Yamada, Saburō, 181, 190, 254
Yamaguchi, Sadamasa, 170
Yanaihara, Tadao, 117, 146, 256
Yang, Ch'ang-su, 270
yangban, 9, 29, 41–42, 47, 49, 53, 54, 58
Yi, Hwang, T'oegye, 46–47
Yi, I, Yulgok, 46, 47–50, 55
Yi, Sŭng-il, 139
Yokota, Gōrō, 162, 178
yŏng sojak kwŏn. *See* emphyteusis
Yoshida, Heijirō, 197–199, 228
Yulgok. *See* Yi, I, Yulgok
yurhak, 30

Zenkoku minji kanrei ruishō, 77
Zhu, Xi, 43–44, 48, 50

© in this web service Cambridge University Press www.cambridge.org