

Characteristics of Japan's Annexation of Korea and the Japanese Colonial System: A Comparison of Korean and Taiwanese Legislation System

LEE Seung-il

Abstract

This research conducts a comparative analysis of the structure and characteristics of Taiwan and Joseon's legislation systems under Japan's colonial rule, which aims to examine the formation process and characteristics of this legislative power. Taiwan's legislation system during the Japanese colonial period is represented by Article 63 of Law enacted in 1896, which weakened parliamentary procedures in Taiwan and ensured the dictatorial power of the Japanese Governor-General in Taiwan. The model of Japan's colonial rule in Taiwan was introduced to Joseon. Katsura and Terauchi, who led Japan's annexation of Korea, modified the model in ways that strengthened the governor's political authority without interference from the Imperial Diet. They enacted a permanent law that delegated the legislative power of Joseon to the Governor-General of Joseon and considerably simplified legislative procedures. As a result, there were no institutional foundations in Joseon that could prevent the governor's dictatorial power. In conclusion, the system of Japan's colonial rule in Joseon became the institutional foundation that led to the authoritative and dictatorial characteristics of the Japanese colonial administration.

Keywords: Meiji Constitution, Japanese Government-General of Joseon, Japanese Government-General of Taiwan, Imperial Diet, *riturei*, *seirei*

LEE Seung-il is a lecturer at Hankuk University of Foreign Studies. He received his Ph.D. in history from Hanyang University in 2003. His publications include *Joseon chongdokbu beopje jeongchaek* (Legislation Policy of the Japanese General-Government of Joseon) (2008) and *Joseon chongdokbu gongmunseo* (Official Documents of the Japanese General-Government of Joseon) (coauthored, 2007). E-mail: blueat89@hanmail.net.

Introduction

Japan's system of colonization, originally modeled after Western systems, was tailored to fit its constitutional system. Ever since its occupation of Taiwan, Japan collected data associated with Europe's colonial ruling systems and examined cases of colonial rule by employing a European advisor. William Montague Kirkwood, a British advisor to the Ministry of Judicial Affairs, made significant contributions to the establishment of Japan's colonial ruling system. He presented a draft of a colonial ruling system to the Minister of Judicial Affairs in 1895, which assigned administrative and legislative powers to a civil governor so that the governor could rule over the colony in a stable manner. The draft proposed the establishment of an administrative council consisting of bureaucrats in the Government-General and the Board of Legislation to be in charge of colonial legislation and assist the civil governor.

However, the Japanese government did not fully accept Kirkwood's proposed plan; partial modifications resulted in the mapping of a new ruling plan that became the "Act on Regulations Applicable to Taiwan" under Law 63 in 1896. The changes made to Kirkwood's proposed plans by the Japanese government weakened Taiwan's internal legislative deliberation procedures and strengthened the dictatorial power of the Japanese Governor-General of Taiwan. In particular, Law 63 empowered the Governor-General to exercise legislative power for three years, thereby basically disabling the application of Japan's domestic laws and institutions to Taiwan.¹

The Taiwanese model of Japanese colonial rule was almost identically applied to Joseon. In introducing the Taiwanese model into Joseon, however, the Japanese government sought to eliminate the intervention of the Imperial Diet and partially amend the ruling

1. For the *ritsurei* 律令 ("codes") implemented in colonial Taiwan and the *seirei* 制令 ("regulations") implemented in colonial Korea, refer to the following books and articles: Haruyama and Wagabayashi (1980); Ebashi (1985); C. Kim (2002); Hirano (1972); Mun (2004); and Jeon (2010).

model to guarantee the political authority of Terauchi, the first Japanese Governor-General of Joseon. For instance, the Japanese government attempted to grant the Governor-General of Joseon the legislative power to instate decrees instead of laws in order to make legislation permanent laws rather than laws that expire. They also worked on a plan to drastically simplify legislative procedures for the *seirei* 制令 (“regulations”) of Korea.

However, the plan of the Japanese government was met by opposition from the Imperial Diet and failed to work out as originally planned. The Japanese government and Imperial Diet compromised by writing the legislative power of the Governor-General of Joseon into a permanent law instead of delegating statutory power. At the same time, a simplification of legislative procedures drastically increased the Governor-General’s dictatorial power in Korea in comparison to that of the Governor-General of Taiwan.

The Japanese government delegated comprehensive authority to the governor-generals in Taiwan and Korea with legislative powers. Accordingly, methods of Japanese rule over each colony depended on the acts instituted by that colony’s Governor-General. It is possible to learn about the nature of Japan’s systems of colonial rule by analyzing the *ritsurei* and *seirei* that the Japanese governor-generals implemented.

This study finds that the Japanese system of colonial rule in Taiwan developed to decrease Taiwan’s legislative deliberation procedures while emphasizing the Governor-General’s autocratic authority; such developments took place as institution such as the Japanese government and Imperial Diet reviewed the British model of rule in India.² While existing studies on the history of colonial policies have chosen to analyze individual policies implemented by the Governor-General in Korea in order to reconstruct colonial policies or analyze colonial political theory,³ this paper aims to approach the topic by

2. For Britain’s rule of India, refer to the following books: Jo (2004); Jeong (2005); and Bak (1999).

3. Major research achievements of the Korean history studies circle on Japan’s colonial policies include: Kwon (2008, 2001); Ryu (2007); Choi (1997); and Kang (1994).

analyzing the Governor-General's comprehensive power of policy-making and its characteristics in the context of Taiwanese history. At the same time, this paper also seeks to look into how the Taiwanese ruling model affected Korea.

Taiwanese Legislation System and Rule over Taiwan

Japan's victory in the Sino-Japanese War enabled Japan to colonize Taiwan. The Shimonoseki Treaty was signed on April 17, 1895, and ratified three days later on April 20; the instrument of ratification marking Japan's official rule of Taiwan was exchanged on May 8. With no ruling plan mapped out after the occupation of Taiwan, the Japanese government observed the systems of colonization employed by Western powers such as Britain and France and decided to benchmark them.

The Japanese government sought to model its ruling system over Taiwan after the British model of colonization.⁴ Kirkwood presented a document titled "Colonial Systems" investigating the colonial systems of various lands. He came up with eleven suggestions regarding the composition of the Japanese colonial organization, including the following:

- A civil governor shall be appointed for each colony for the purpose of colonial administration.
- An administrative counsel assisting the governor shall be set up in each colony.
- A Board of Legislation chaired by the governor shall be set up for each colony.

4. Japan came to learn of the Britain's colonial ruling system through Kirkwood and got to the heart of the France's colonial ruling policy through Le Bon. Le Bon of French origin presented to the Minister of Judicial Affairs a ruling plan where he suggested that Japan set up a system whereby to count Taiwan among Japan's districts in the same way as France did to Algeria. However, Japan seems to have opted for Kirkwood's proposed plan instead of Le Bon's, accepting the former more extensively.

- The governor of each colony shall institute laws with the assent and consent of the Board of Legislation in order to safeguard security, maintain order, and implement policies. In emergency, the governor shall exercise the right to enact laws on his own.
- The emperor shall exercise the right to prevent certain existing laws from being implemented. In the case that the emperor prohibits an active law, the prohibition shall be considered equal to abolishment of said law.
- Legislation, institutions, and customs of the colony that are practicable shall remain as they are and shall not be abolished or altered unless amended by the Board of Legislation or otherwise adapted into new legislation. Until existing laws are abolished or otherwise amended based on the procedure set forth in the preceding articles, they shall remain enforced except for those laws that conflict with Japan's judicial principles under any circumstances.⁵

Dubbing Taiwan a colony, Kirkwood suggested that the civil governor representing the colony utilize the Board of Legislation and Administrative Counsel. Kirkwood's suggestions to guarantee the civil governor's ruling authority by the formation and utilization of supporting institutions assigned powerful authority to the civil governor regarding legislation and administration while leaving unchanged the authority of the Japanese government and Imperial Diet to interfere in colonial policies.

The Imperial Diet had little power to participate in the legislation of the colony. Legislation and customs of the colony were given priority over laws instituted by the Imperial Diet, and it was provided that customs of the colony should not be abolished or altered arbitrarily. The emperor alone was entitled to interfere with Taiwan. Even when the emperor did interfere with Taiwan, he did so primarily by exercising his right to abolish colonial legislation.

Such special ruling principles set forth by Kirkwood require the

5. Quoted and translated from Ito (1936, 108-148).

formation of independent decision-making structures similar to the Taiwanese Board of Legislation and Administrative Counsel.⁶ Though different from the modern concept of separation of powers, it seems that a procedure of checks was partly at work in Kirkwood's proposed policy: because the civil governor doubled as the chairman of the Board of Legislation, the governor was required to enact legislation through the assent and consent of the Board of Legislation.

Kirkwood further presented "The Opinion about Taiwan Administration, Supreme Power of the Emperor and the Imperial Diet" (hereafter referred to as "Opinion") to the Minister of Judicial Affairs on July 24, 1895, which focuses primarily on the relationship between Taiwan's ruling system and the Meiji Constitution (Ito 1936, 78-107). He claimed that The "Opinion" provided legal evidence that the Japanese civil governor in Taiwan was able to enact laws without going through a constitutional procedure (the assent and consent of the Imperial Diet), based on the premise that the Meiji Constitution was not applied in principle within Taiwan.

Kirkwood's assertion was attributable to the perception that implementing the constitution with no changes was impracticable in "such an overseas land as Taiwan." If the Meiji Constitution was to be implemented in Taiwan, the constitution should have been amended as follows (Ito 1936, 105-106):

- The clause of this constitution does not apply to Japan's overseas colonies or dependent lands Japan acquired after the promulgation of the constitution.
- The institutions of colonies or dependent lands are implemented by imperial decrees based on the emperor's administrative and legislative prerogatives.

6. Advocacy for special ruling carries two senses. First, the sense in which the institution alone set up especially for Taiwan rules it rather than the national institution designated in the Meiji Constitution does. Second, the sense in which Japan rules Taiwan by means of separate laws and institutions specifically applicable to Taiwan and Taiwanese citizens, rather than by means of Japanese laws and institutions.

Since Japan had no colonies at the time of the Meiji Constitution's institution, no explicit regulations were available as to whether the constitution should apply to colonies or not. However, after the occupation of Taiwan, it became controversial whether the major contents and constitutional process of the Meiji Constitution should apply to Taiwan. Kirkwood's understanding of the Meiji Constitution was that unless clauses were specifically defined as applicable to colonies, the constitution itself was inapplicable to Taiwan.

Kirkwood's interpretation provided a constitutional basis required to establish ruling systems for Taiwan and Joseon. In addition, Kirkwood's proposal did not stop at being just a theory of colonial policy, but substantially affected the Japanese government in practice. However, Kirkwood's proposed colony ruling plan was amended under the review of the Japanese government, the Government-General of Taiwan, the Imperial Diet, and so forth.

These facts were confirmed by various Taiwan ruling plans drafted by the Japanese Secretariat in Taiwan and other related entities. The Japanese government set up the Japanese Secretariat in Taiwan⁷ on June 13, 1895; the Japanese government's Taiwan ruling principles were officially decided within the Secretariat. The military government was introduced on July 18, 1895, as a result of an armed anti-Japanese struggle, but the Japanese government found it necessary to map out a Taiwan ruling policy for the post-military government. On the occasion of the civilian government's introduction on April 1, 1896, a plan titled "Taiwan Government-General Bureaucratic System" that would take charge of the colonies, was drafted; along with this draft, the "Taiwan Decree Plan" (hereafter referred to as "Decree Plan") describing the Taiwanese ruling system, was present-

7. Ito Hirobumi (Prime Minister) was appointed as Governor of the Japanese Secretariat in Taiwan and Kawakami Soroku as Deputy Governor (Deputy Commander-in-Chief) on June 18. Vice Ministers of each ministry discussed as committee members the principles of ruling Taiwan and the establishment of institutions for Taiwan. Hara participated in the conference in the capacity of Vice-Minister of the Ministry of Foreign Affairs. Official system of the Japanese Secretariat in Taiwan was made public on June 30.

ed (Nakamura 1943, 60-61).

Article 1. The Governor-General of Taiwan shall be appointed to have jurisdiction over Taiwan and Pénghú Archipelago.

Article 2. The Governor-General is entitled to issue Government-General decrees, which shall become legally binding within the assigned jurisdiction after imperial sanction and the approval of the Legislation Conference.

Article 3. Under emergency, the Governor-General is entitled to issue a ministerial emergency ordinance in order to maintain security and order within the jurisdiction. In the case of the preceding clause, imperial sanction is requested after the approval of the Legislation Conference. In case the ordinance is not approved by the Legislation Conference, it shall be invalidated.

Article 5. Each of the following shall be decided by the Legislation Conference:

- (1) Proposed ministerial ordinances that are legally binding
- (2) Proposed budget and settlement plans
- (3) Particularly important cases selected among people's petitions

The Decree Plan consists of 21 articles in total with a focus on administration, legislation, judicial affairs, and financing. It entitled the Governor-General to issue legally effective decrees of the Government-General and established the Legislation Conference, showing that the plan was largely affected by Kirkwood's proposals (Nakamura 1943, 70-71). The Decree Plan also proposed that budgeting issues, settlement of accounts, and important cases selected among people's petitions be determined by the Legislation Conference. Colonial legislative procedures were similar: the Kirkwood plan provided that laws be instituted with the assent and consent of the Legislation Conference, and the Decree Plan provided that laws be instituted subject to imperial sanction and determination by the Legislation Conference.

However, ministerial emergency ordinances in the Decree Plan

were subject to the sanction of the subsequent Legislation Conference. Should the ministerial ordinance fail to be approved by the Legislation Conference, it would be invalidated. This regulation emphasizes the role and authority of the Legislation Conference much more than the Kirkwood plan; all Kirkwood proposed was that the governor is empowered to enact a law in emergency. Accordingly, in the case that a ministerial ordinance and a ministerial emergency ordinance were vetoed or disapproved by the Legislation Conference, the Governor-General lost authority to issue a ministerial ordinance.

The Government-General of Taiwan strongly expressed its discontent with such developments. The Government-General of Taiwan was opposed to the Decree Plan, asserting that it inordinately enhanced the authority of the Legislation Conference while limiting the Governor-General's legislative power (Government-General of Taiwan 1995, 69). "The Taiwan Ruling Act," supposedly an amended version of the Decree Plan, reflected such views (Ito 1936, 151-153).

- Article 1. The Governor-General of Taiwan shall be appointed to have jurisdiction over Taiwan and Pénghú Archipelago.
- Article 2. The Governor-General of Taiwan is entitled to issue Government-General decrees, which shall be legally binding within the assigned jurisdiction after imperial sanction.
- Article 3. Under emergency, the Governor-General of Taiwan is entitled to issue a Governor-General's emergency ordinance to be legally binding in order to maintain security and order within the jurisdiction. In the case of the preceding clause, imperial sanction is requested forthwith upon the promulgation of the ministerial emergency ordinance. In case the ordinance is not approved by imperial sanction, it shall be invalidated.
- Article 5. The Governor-General of Taiwan shall refer each of the following conditions to the verdict of the council of the Government-General.
 - (1) Proposed Governor-General's ordinances that are legally binding

(2) Proposed budget and settlement plans

Article 18. Among the laws currently enforced or to be issued in the future, those applied in part or in whole to Taiwan shall be determined by imperial decrees on the proviso that the laws enforced in Taiwan are not subject to the foregoing limitations.

The Decree Plan and the Taiwan Ruling Act differed in Article 2. While the Decree Plan states that “the Government-General’s ordinance be enacted by way of the decision of the Legislation Conference and imperial sanction,” the Taiwan Ruling Act was amended to stipulate that the Government-General’s ordinances be enacted by way of imperial sanction; additionally, legally effective policies such as the proposed Government-General’s ordinances and proposed budget and accounts settlement plans would be implemented by way of the Government-General’s council. At the same time, the Taiwan Ruling Act omitted the clause assigning the review of civilian petitions to the Legislation Conference as included in the Decree Plan. This indicates the Government-General’s weakened intentions to reflect the thoughts of Taiwanese residents. In addition, with respect to the legislative process of the Governor-General’s issuance of decrees in emergency, the proposed ordinance plan required the process of winning sanction from the Legislation Conference while the Taiwan Ruling Act omitted this clause, requiring only an imperial decision.

The Decree Plan and the Taiwan Ruling Act both admit the necessity of the Government-General’s ordinance, but differ in issuance protocol. This is because the authority and role of the Legislation Conference in the process of enacting the Government-General’s ordinances were largely scaled down in the Taiwan Ruling act in comparison to the proposed ordinance plan. Kirkwood’s principle that ruling behaviors would be implemented via deliberation by legislative institutions was significantly modified.

At the same time, Article 18 could be seen as having stipulated the process of and approach to implementing laws of the Imperial Diet in Taiwan. No article in Kirkwood’s proposition empowered the

Imperial Diet to interfere with the legislation of the colony. The Taiwan Ruling Act newly established a regulation stipulating that Japanese laws and laws enacted by the Imperial Diet specifically for Taiwan could be implemented in Taiwan by an imperial decree. Laws of the Imperial Diet could not be applied to Taiwan without regulation by an imperial decree.

On the other hand, the “Ordinance of the Government-General of Taiwan,” drafted and presented along with the Taiwan Ruling Act, stipulates the appointment of the Governor-General of Taiwan and his scope of jurisdiction. The subtitle that reads “a proposed imperial decree” indicates that the ordinance would have been written into law in the form of an imperial decree (Ito 1936, 154-155).

Article 1. The office of the Governor-General of Taiwan shall be appointed directly and the appointed individual will be an army general or lieutenant general.

Article 2. The Governor-General shall be under direct control of the emperor, and is in command of the army, navy, and air force in his jurisdiction; he will take charge of administrative and judicial matters in compliance with the regulations of the Taiwan Ruling Act and the instructions of the Minister of Immigration.

Article 5. The Governor-General is able to mobilize military force if deemed necessary in order to maintain security and order in the jurisdiction. Under circumstances set forth in the preceding paragraph, the Governor-General shall report directly to the Ministers of Army, Navy, and Immigration.

The proposed ordinance plan of the Government-General of Taiwan reflected the position of the military to a large extent. Kirkwood’s proposition that a civil governor be appointed as Governor-General was disregarded. Instead, qualifications for the appointment to the post of the Governor-General were limited to army, navy, and air force generals or lieutenant generals. This altered the law so that only those with military backgrounds could be appointed as Governor-

General of Taiwan. At the same time, the wording “the instructions of the Minister of Immigration” in Article 2 refers to checks on the power of the Governor-General of Taiwan. While it was formerly stipulated that the Governor-General of Taiwan was under direct control of the emperor alone, the amendments to the proposed plan assign supervisory responsibilities over the Governor-General of Taiwan to some of the ministers of the cabinet.

Kirkwood’s proposed plan, the “Taiwan Decree Plan,” and the Taiwan Ruling Act were among the measures that specifically defined the authority and roles of the Government-General of Taiwan. The ultimate decision of the Japanese government concerning Taiwan was made at the conference held by the Japanese Secretariat in Taiwan on February 2, 1896. Held during the session of the 9th Imperial Diet, the conference provided an opportunity for the proposed government plan to be presented to the Imperial Diet for confirmation.

During the conference, Hara Takashi⁸ suggested that “those laws to be implemented in and applicable to Taiwan among current laws should be put into force gradually,” and that for the other matters, “stipulations should be made or an urgent imperial decree enacted specifically for Taiwan” (Ito 1936, 32-34). Hara asserted the direct implementation of Japan’s domestic laws and institutions in Taiwan with the proviso that legislation be made separately under special circumstances substantiating such legislation. Hara’s assertion was sharply different from the colony domination plan that had been previously discussed in the Japanese government. Eventually, Hara’s colony domination plan extending domestic laws to colonial territories went amiss when faced with opposition from all fronts. Many disagreed with Hara’s propositions. Initially, the assertion that an army, navy, and air force general or lieutenant general shall be the Governor-General of Taiwan under the Governor-General commissioning system faced majority opposition, but because the Prime Minister insisted on taking into consideration the position of the army,

8. At that time, Hara Takashi, then Vice-Minister of Foreign Affairs, was serving as a member of the Japanese Secretariat in Taiwan.

the original plan was accepted (Hara 1981, 230). In consideration of the various proposed plans, the Japanese government decided on a bill titled “Proposed Bill Concerning Laws and Regulations Applicable to Taiwan” as set forth in the following and presented it to the Imperial Diet.

Article 1. The Governor-General of Taiwan is empowered to issue orders to be legally effective in his jurisdiction.

Article 2. The orders articulated in the preceding article shall be determined in the Council of the Government-General of Taiwan and be referred to the emperor for sanction by the Minister of Immigration. The structure of the Council of the Government-General of Taiwan shall be prescribed by an imperial decree.

Article 3. In emergency and on a temporary basis, the Governor-General of Taiwan is able to issue orders under Article 1 without going through the council as outlined in Paragraph 1 of Article 2.

Article 4. Orders issued under the preceding clause shall be referred immediately to the emperor for sanction and reported to the Council of the Government-General of Taiwan. If the order fails to win imperial sanction, the Governor-General shall declare the order invalidated.

Article 5. Among current laws or those to be promulgated in the days to come, those to be implemented in Taiwan shall be decided upon by imperial decrees.

This draft of the proposed law combines only the policies on legislative procedures and protocol among the Kirkwood plan, the Decree Plan, and the Taiwan Ruling Act. The authority of the Governor-General of Taiwan to issue legally effective decrees was accepted. Additionally, the legislative process as stipulated in the Taiwan Ruling Act was also accepted.

Though this draft of the proposed law faced heated controversy in deliberation, it was accepted by the Imperial Diet with the Japan-

ese government accepting the application of the constitution to Taiwan. However, as passing the proposed law as a permanent law was viewed as problematic, the proposition was promulgated in 1896 as Law 63 as a law to be enforced for the next three years.⁹

Law 63 well illustrates the way Japan ruled its colonies. On the one hand, the law featured the comprehensive delegation of authority over Taiwan to the Governor-General. On the other hand, the law showed the hesitant approval of the Governor-General of Taiwan's rights. That is, the law confirmed the fact that the Imperial Diet delegated legislative power over the Taiwanese region to the Governor-General of Taiwan by assigning a statutory period of three years to Law 63. However, there was no indication of what would happen after three years when Law 63 became ineffective. There was also the problem of how the enforcement of this law would be extended by the Imperial Diet.¹⁰

Law 63 stipulated that the Governor-General of Taiwan was to undergo a review process by the Council in order to institute legislative orders. This appears as if a system of internal deliberation was established. However, as the staff of the Governor-General's Council consisted of officials such as the Governor-General, chief of Bureau of Civilian Affairs, and chief of Bureau of Military Affairs, the Council was not an adequate institution to balance out the Governor-General's authority but rather served to assist the Governor-General's policies.¹¹ Accordingly, system of Japanese rule in Taiwan was construct-

9. Article 6 stipulated that the law shall be automatically rendered invalid after three years of the day implemented.

10. Law 63 that had been extended every three years was reenacted in 1906 as Law 31 (effective January 1, 1907). Later, it was written into Law 3 in 1921 (effective as of January 1, 1922) and amended again.

11. The General-Council of the government-general of Taiwan could reply concerning the following matters based on the governor-general's counsel as well as the decision of Decree 63: ① proposed budget and accounts settlement plan; ② designing of important civil engineering projects; ③ particularly important matters presented in the form of people's petitions; and ④ other matters deemed necessary and thus requiring consultation with superiors ("Council of the Government-General of Taiwan," Imperial Decree 90).

ed so as to legally protect the power of the Governor-General.

Proposals about Japan's rule over Taiwan including Law 63 and Kirkwood's proposal shared the view that separate organizations to oversee the colony were necessary rather than simply applying Japan's domestic laws to the colony. A system of rule was established over Taiwan so that deliberative systems were diminished and the Governor-General's dictatorial power was prioritized.

Japan's Rule over Joseon and Its Legislative System

Japan's colonial ruling system was built on the institution of Law 63 in 1896, and the system of rule over Taiwan was applied to Joseon when it became a Japanese colony in 1910. However, colonial legislation in Joseon was implemented as a permanent law in order to reduce interference from the Imperial Parliament, and the legislative process of the *seirei* in Korea was further simplified differently than in Taiwan. It was in 1909 that the Japanese government decided to embark on the annexation of Korea.

Policies regarding the rule over Korea were decided upon at the cabinet meeting on June 3, 1910 (Ministry of Foreign Affairs of Japan 1965, 336):

- The constitution shall not be applied to Joseon for the time being, but shall be ruled in accordance with imperial agenda.
- The Governor-General shall be under the control of the emperor and have full jurisdiction over political affairs in Joseon.
- The Governor-General shall be authorized to issue orders with respect to legal matters delegated by imperial agenda. However, such orders shall be categorized into laws and decrees.
- The accounting of the Government-General shall be a special governmental account.

APPENDIX: Interpretation of Constitution

In regards to Japan-Korea annexation, the imperial constitution is applicable to the new territory. However, since it does not seem

appropriate to apply every article of the imperial constitution to the new territory, regulations should be outlined on articles to exempt.

While it seems as the Meiji Constitution was implemented in colonial Joseon according to the above principle, efforts were made to establish a ruling system apart from the Meiji Constitution during a grace period. Since the principle that “Regardless of old or new, imperial territories are subject to the constitution” was already confirmed in the deliberation process of Law 63 of Taiwan, this principle could not be disregarded altogether. Despite such principles, attempts were made in Joseon to operationally disregard the Meiji Constitution. It turned out that the legislative right of the Governor-General of Joseon was not awarded by the Imperial Diet but was delegated by the emperor’s imperial decrees. Terauchi’s intention to empower the Governor-General instead of the Meiji Empire in Korea is demonstrated.

The confidential document entitled “Ruling the Korean Peninsula after Annexation in Regards to the Imperial Constitution,” which seems to have been drafted prior to Japan’s annexation of Korea is thought to have affected decisions made at the ministerial meeting on June 3.¹² The document states that views on whether to apply each article of the Meiji Constitution to newly acquired territories needed to be expressed, indicating that the constitution should not be thought of as automatically applicable to new territories; at this time, Taiwan, Sakhalin, and Korea were not yet colonies of Japan.

Though legal matters of Taiwan and Sakhalin were stipulated by laws within the framework of the constitution, views contrary to the conventional government principles were adopted in the case of Joseon in particular, leaving the peninsula under direct rule by prerogatives.

12. 「秘合併後韓半島ノ統治ト帝國憲法トノ關係」(Ruling the Korean Peninsula after Annexation in Regards to the Imperial Constitution), in Terauchi (n.d.).

The same document asserted that since the Japanese constitution is not identical to those of the United Kingdom, France, and Germany, whether or not to apply the Meiji Constitution to overseas colonies was dependent on the emperor's prerogatives. At the same time, since the cultures, customs, and practices of Korea were very different from those of mainland Japan, it suggested that the Meiji Constitution should not apply in entirety to the Korean peninsula. Instead, it insisted on direct rule by the emperor, suggesting that such a clause should be made clear in the imperial prescript.¹³

This position of the Japanese government seems to have been significantly affected by the difficulties faced in the deliberation process of Law 63 at the Imperial Diet. There were assertions that it was unconstitutional for the Governor-General of Taiwan to exercise legislative power in the deliberation process of Law 63 by the Imperial Diet every three or five years after its institution by the Imperial Diet; the Government-General of Taiwan and the Japanese government had to put in a great deal of effort to persuade the Imperial Diet about the validity of Law 63. Accordingly, it seems as though attempts were made to delegate legislative power to the emperor in order to ward off the Imperial Diet's intervention.

When the Japan-Korea Annexation Treaty was concluded on August 22, 1910, the Japanese government judged various laws and regulations concerning Korea as urgent and confidential, and promulgating 12 emergency imperial decrees without waiting for the assent and consent of the Imperial Diet (Lee 2008). The Japanese government also renamed Korea Joseon under Imperial decree 318 and established the Government-General of Joseon under Imperial Decree 319. At the same time, a series of emergency decrees titled "Matters concerning laws and regulations applicable to Joseon" under Emergency Imperial Decree 324 were promulgated one after another. Such decrees, which had already been determined at cabinet meetings, were issued in the form of emergency decrees, their essential points

13. Gatsura states that the plan that they would not apply the constitution to Joseon was proposed with Terauchi taking the initiative (Hara 1981, 63-64).

being as follows:

Emergency Imperial Decree 324

Article 1. Matters requiring legislation in Joseon shall be determined by the order of the Governor-General of Joseon.

Article 2. The order in the preceding article shall be subject to imperial sanction by the prime minister of the cabinet.

Article 3. In emergency and on a temporary basis, the Governor-General of Joseon is able to issue orders provided under Article 1. Orders in the preceding article should be subject to imperial sanction immediately after issuance. In case the order fails to win imperial sanction, the Governor-General of Joseon should declare the order invalidated immediately.

Article 4. Whether legislation is implemented in Joseon in part or in entirety shall be determined by imperial decree.

Article 5. The order provided under Article 1 should not run counter to laws implemented in Joseon based on Article 4, especially to laws and imperial decrees enacted for implementation in Joseon.

Article 6. Orders under Article 1 are called the *seirei*.¹⁴

Emergency Imperial Decree 324 is similar to the laws awarding legislative power to the Governor-General of Taiwan. However, an examination of the legislative process and its effective period indicates that the Governor-General of Joseon had a more stabilized level authority compared to that of the Governor-General of Taiwan. This stipulation prescribed that the *ritsurei* of Taiwan was determined by the council of the Government-General of Taiwan and referred to the emperor by the Minister of Immigration, while the *seirei* of Korea was referred directly to the emperor by the Governor-General of Joseon.

14. "Emergency Royal Decree 324, August 29, 1919," in 『朝鮮總督府官報』 (The Government-General's Official Gazette).

Since the Governor-General of Taiwan's right to issue the *ritsurei* on was subject to the deliberation of the Imperial Diet every three or five years, his authority was affected by the political atmosphere of Japan. Meanwhile, the Governor-General of Joseon's right to issue the *seirei* as permanent law was likely exercised as an autonomic right relatively free from intervention by the Imperial Diet.

However, the plan of rule over Joseon that the Japanese government conceived right before the annexation of Korea failed to be realized because the Japanese government promulgated Emergency Imperial decree 324 unilaterally without consulting the Imperial Diet in advance. Because the Meiji Constitution stipulated that emergency imperial decrees are subject to approval by the subsequent conference of the Imperial Diet, it could not remain legally enforced without winning approval from the Imperial Diet.¹⁵

There were discussions about Emergency Imperial Decree 324 between the Japanese government and political parties. Hara of the Seiyu Party visited Gatsura and learned of Gatsura's view on the *ritsurei* of Taiwan and the *seirei* of Joseon. Gatsura said he would come up with a draft of proposed laws for Joseon, which was identical to Taiwan's *ritsurei*. At that time, Gatsura seemed to have presented a draft of proposed laws that would not expire (Hara 1981, 63-64). Though Hara objected to the fact that the Governor-General of Joseon's would have permanent rights to issue the *seirei*, Gatsura disregarded Hara's objection and submitted the draft of proposed laws straight to the Imperial Diet.

The 27th conference of the Imperial Diet convened in Tokyo on December 2, 1910 for the deliberation of emergency imperial decrees promulgated after the annexation of Korea, with the opening ceremony of the conference held on December 23. However, unlike the Japanese government had planned, a prediction was issued that the emergency imperial decrees would not pass the Imperial Diet to be held on January 15, 1911. At the special committee meeting concerning the emergency imperial decree held from January 25 through

15. *Great Japanese Imperial Constitution* (November 29, 1890), Article 8.

March 11, deliberation was underway concerning a series of emergency imperial decrees headed by Law 324. Since Law 324 was in fact similar to Law 31 (the law following Law 63), which had already been implemented in Taiwan, it seemed unlikely that there would be problems delegating legislative power to the Governor-General of Joseon.

However, Emergency Imperial Decree 324 faced heated criticism from the special committee of the Imperial Diet held on January 25, 1911. For one thing, Urabe Kitaro, one of those opposed to the proposal, indicated that Emergency Decree 324 ran counter to the constitution. First, he indicated that the decree failed to stipulate the contents of the law as it should but instead delegated orders that would take the place of laws; thus, the decree could never be acknowledged to be in accordance with the Meiji Constitution.

Second, he asserted that laws are subject to the assent and consent of the Imperial Diet under the Meiji Constitution, a natural and vested right as the legislative branch of the country; thus, delegating full legislative power to the Governor-General of Joseon counters the constitution.¹⁶ Urabe viewed the Governor-General of Joseon's right to issue the *seirei* as the Governor-General's seizure of legislative power from the Imperial Diet.

As criticism from members of the Imperial Diet concentrated on constitutionality, Yasuhiro Banichiro, the then minister of the Ministry of Legislation, explained that Decree 324 was fundamentally the same set of regulations as those implemented in Taiwan and, as such, were not unconstitutional. Furthermore, he pointed out that once Decree 324 was accepted as a law, it could be amended or abolished, along with the *seirei* of Korea. Yasuhiro was seeking consent by asserting that Decree 324 was the same as the legislative system

16. The Meiji Constitution Article 8 reads: "The emperor issues a royal decree that takes the place of a law at the time the Imperial Diet is opened in accord with urgent needs to maintain public security or ward off disasters. The decree should be presented to the next session of the Imperial Diet. Should the decree fail to win approval from the Imperial Diet, the government should declare the decree invalidated in the days to come."

implemented in Taiwan.

However, Urabe indicated that since the *ritsurei* of Taiwan was acknowledged as a form of law by the assent and consent of the Imperial Parliament, the *seirei* of Korea was rightly classified as an emergency decree, pointing out how the two policies were essentially different. Members of the Imperial Diet were aware that the *ritsurei* of Taiwan and the *seirei* of Korea seemed similar in content, but that their legal and political effects were different. With criticism from members of the parliament gaining momentum in the deliberation of Decree 324, Hanai Takuzo came up with a new draft of proposed laws.¹⁷

Draft of proposed laws concerning the laws and regulations applicable to Joseon

Article 1. Matters requiring legislation for Joseon can be stipulated by means of orders of the Governor-General of Joseon.

Article 2. The preceding order is subject to royal sanction by way of the prime minister of the cabinet.

Article 3. Under emergency and on a temporary basis, the Governor-General of Joseon is able to issue orders provided under Article 1. Orders in the preceding article are subject to imperial sanction immediately after issuance. In case the order fails to win imperial sanction, the Governor-General of Joseon should immediately declare the order invalidated.

Article 4. Laws requiring implementation in Joseon, in whole or part, shall be determined by an imperial decree.

Article 5. The orders provided under Article 1 shall not run counter to the laws applicable to Joseon and laws and imperial decrees instituted for the specific purpose of implementing them in Joseon.

17. University of Tokyo Publishing Society, 『帝國議會衆議院議會速記録』 (Stenographic Records of Imperial Diet).

Article 6. Orders under Article 1 shall be called the Governor-General of Joseon's decree.

Supplementary Provisions

This law comes into force on the day promulgated and remains in force until December 31, Meiji Era.

The draft of laws proposed by Hanai is essentially the same as Emergency Imperial Decree 324 presented by the government, differing only in that the Governor-General of Joseon's legislative power would be granted by the law and that it was only effective until December 31, 1915. If the Japanese government's original proposal was made to exclude Joseon from the protection of the constitution, Hanai's proposal granted authority to the Governor-General of Joseon through the Imperial Diet in order to ease the Imperial Diet's fear of losing legislative authority over the Joseon region.

Faced with opposition by the Imperial Diet against Emergency Decree 324, the Japanese government withdrew their former proposal and came up with a new draft partially accepting assertions made by the Imperial Diet. This newly proposed bill was in fact Hanai's proposal made permanent without time restraints. This was how Law 30 was instituted.

The reason Emergency Imperial Decree 324 was instituted as Law 30 despite mounting criticism is attributable to the view that Japan could not possibly rule Joseon solely by means of Japan's laws and institutions. This was Japan's basic principle when ruling its colonies. Granted, Law 30 meant that the Gatsura cabinet's concept of ruling Joseon failed to pass despite expectations. The Gatsura cabinet attempted to designate Joseon as an extra-constitutional zone and secure the autonomy of the Governor-General of Joseon but failed when faced with opposition from the Imperial Diet. Such developments left the Imperial Parliament with possibilities to interfere in colonial legislation.

In comparison to the Governor-General of Taiwan, the Governor-General of Joseon stood a better chance in his negotiations with

mainland Japan. While the Governor-General of Taiwan had to go to the extreme trouble of persuading the Imperial Diet to grant his legislative rights every three or five years, the Governor-General of Joseon's legislative authority did not expire, making it unnecessary to negotiate with the Imperial Diet.

As reviewed thus far, the Joseon and Taiwan ruling systems were shaped by consultation with national institutions with conflicting interests including the Japanese government, the Imperial Diet and the Governments-General of Taiwan and Joseon. The acknowledgement of the *ritsurei* of Taiwan and the *seirei* of Korea in mainland Japan was based on the perception that the laws and institutions of mainland Japan could not be applied to the overseas colonies without amendments. Joseon and Taiwan, though they were parts of Japanese territories, became special jurisdictional zones that no Japanese national institution could control directly, and where laws and institutions of mainland Japan were not necessarily applicable. Accordingly, Joseon and Taiwanese citizens could not successfully enjoy the rights and duties guaranteed by the Japanese constitution in the same way as Japanese citizens. A Joseon man's legal rights and duties were to be defined by the legislation of the Governor-General of Joseon.

Law 30 in particular lacked a formal internal device to check the authority of the Governor-General. While the Governor-General of Taiwan had to go through Council deliberations to exercise legislative authority, such internal processes were altogether absent for the Governor-General of Joseon. This paved the way for the settlement of an authoritative and dictatorial ruling style in Joseon. No institutional devices existed in Joseon in the 1910s that could indicate the wrongdoings of the colonial administration and prevent them from recurring in colonial rule, and the Japanese government had no will to reflect colonial residents' political views in their administrative policies.

Conclusion

Using a comparative approach, this study analyzed Japan's colonial ruling structures with a focus on the legislative systems of Taiwan and Joseon. The reason for focusing on the legislative systems of Taiwan and Joseon is that the Japanese colonial ruling system was structured, operated, and centered on the legislative power of the Governor-General of Taiwan and of Joseon. This study analyzed the process in which the legislative power and characteristics of colonial Governor-Generals were approved.

Taiwan's legislative system was based on the model of the British colonial system. Kirkwood, a British advisor to the Ministry of Judicial Affairs, suggested that the Governor-General of Taiwan institute colonial laws for the colony through the assent and consent of the Board of Legislation. The proposed plan featured the attempt to set up a process of deliberation such as the establishment of the Board of Legislation. However, Kirkwood's plan was amended during the review process by the Government-General of Taiwan, the Japanese government, and the Imperial Diet; amendments were written as Law 63 in 1896. Law 63 delegated Taiwan's legislative rights to the Governor-General and drastically weakened Taiwan's internal deliberation processes so that the Governor-General's dictatorial authority could be protected.

The Taiwanese ruling model was introduced to Joseon almost unchanged. However, Gatsura and Terauchi eliminated intervention by the Imperial Diet and revised the ruling model so that the Governor-General's political authority was enhanced. They instituted laws authorizing the Governor-General of Joseon to introduce permanent legislation and drastically simplified the process of legislation of the *seirei*.

Accordingly, the Governor-General of Joseon's legislative power was granted in such a way that it could directly reach the emperor and bypass internal deliberation processes. Joseon lacked institutional devices to check the Governor-General's dictatorial rights compared to Taiwan. Such a ruling structure served as the basis for an

authoritative and dictatorial administration. It also indicated that the colonial residents did not even attempt to reflect their political views on the colonial administration from the outset.

The Japanese government did not implement its existing laws and institutions in Taiwan and Joseon but delegated the legislative right to the Governor-General for three reasons. First, the Japanese government lacked the financial capability to do otherwise. The introduction of new laws and institutions for its colonies required the Japanese government to assume tremendous financial burdens, which neither the Government-General of Joseon nor the Japanese government could afford without the annual support of the national treasury.

Second, forcibly imposing Japan's society, institutions, and culture, which were so different from those of the colony, onto the colony was not conducive to Japan's colonial ruling system. A typical example of this is the ruling of a Joseon civilian decree in 1912, which established that longstanding customs, such as family systems, should be left as they were even while introducing Japanese laws and institutions in other areas of life.

Third, Japan did not think it necessary to share the major rights and duties guaranteed to Japanese citizens under the Japanese constitution and laws with the Joseon people. While Joseon civil affairs decrees introduced many Japanese laws and institutions, they did not grant rights to Joseon citizens as enjoyed by the Japanese, and set aside such major laws, governing rights, and duties as inapplicable to Joseon citizens.

From the standpoint of Koreans, citizens of colonial Joseon did not enjoy values of postmodern civilizations due to Japan's colonial policy. Joseon citizens were deprived of the opportunity to train themselves in democracy and to enjoy universally guaranteed values such as human rights, political freedom, and freedom of thoughts throughout the entirety of colonial rule. This lack of opportunity to participate in the management of a nation throughout Japanese rule is partly responsible for the failure of Joseon citizens to uphold democracy for a long time after independence.

REFERENCES

- Cho, Kiltae. 2004. *Yeongguk-ui indo tongchi jeongchaek* (Britain's India Ruling Policy). Seoul: Mineumsa.
- Choe, Seokyeong. 1997. *Ilje-ui donghwa ideollogi changchul* (Creation of Assimilation Ideology by Japan). Seoul: Sogyong Munhwasa.
- Chung, Byung Jo. 2005. *Indosa* (History of India). Seoul: Daehan Textbook Printing Co.
- Ebashi, Takashi 江橋崇. 1985. 「植民地における憲法の適用—明治立憲體制の一側面」 (The Application of Domestic Constitutions to Colonies: A Dimension of the Meiji Constitution System). 『法學志林』 (Review of Law and Political Sciences) 82.3/4.
- Government-General of Taiwan. 1995. 『臺灣總督府警察沿革誌』 (A Chronology of the Government-General of Taiwan's Police). Taipei: Nantian Shufang.
- Hara, Keiichiro 原奎一郎, ed. 1981. 『原敬日記』 (The Dairy of Hara Takashi).
- Haruyama, Meitetsu 春山明哲, and Wakabayashi Seisho 若林正丈. 1980. 「日本植民地主義の政治的展開 1895-1934」 (Political Development of Japan's Colonialism 1895-1934). 『法學志林』 (Asia Politico-Economic Society).
- Hirano, Takeshi 平野武. 1972. 「日本統治下の朝鮮の法的地位」 (Joseon's Legal Standing under the Japanese Rule). 『阪大法學』 (Osaka University Law Science) 83.
- Ito, Hirobumi 伊藤博文, ed. 1936. 『臺灣資料』 (Data on Taiwan).
- Jeon, Youngwook. 2010. "Terauchi Masatake-ui chongdok jeongchi-wa je 27 hoe jeguk uihoe-ui nonui" (Discussion on Terauchi Masatake's Governor-General Politics and the 27th Imperial Diet). M.A. diss., University of Seoul.
- Kang, Chang-il. 1994. "Ilje-ui joseon jibae jeongchaek" (Japan's Policy of Rule over Joseon). *Yeoksa-wa hyeonsil* (History and Reality) 12.
- Kim, Chang-rok. 2002. "Jeryeong-e gwanhan yeongu" (A Study on the Governor-General of Joseon's Decree). *Beopsahak yeongu* (Korean Journal of Legal History) 26.
- Kwon, Taeoek. 2001. "Donghwa jeongchaengnon" (Assimilation Policy Theory). *Yeoksa hakbo* (Korean Historical Review) 172.
- _____. 2008. "1910 nyeondae ilje-ui joseon donghwaron-gwa donghwa jeongchaek" (Japan's Assimilation Theory and Policy in Joseon in the 1990s). *Hankguk munhwa* (Korean Culture) 44.
- Lee, Seung-il. 2008. *Joseon chongdokbu beopje jeongchaek* (Legislation Policy of Government-General of Joseon). Seoul: Yeoksa Bipyeongsa.

- Lyu, Seung Reul. 2007. "Hanguk-ui ilje gangjeomgi donghwaron yeongu-e daehan meta bunseok" (Meta-Analysis of Studies on Assimilation Theory during Japan's Occupation of Korea). *Yeoksa-wa hyeonsil* (History and Reality) 65.
- Ministry of Foreign Affairs of Japan. 1965. 『日本外交年表並主要文書』 (Japan's Diplomatic Chronological Table and Major Documents). Vols. 1-2. Tokyo: Hara Shobo.
- _____. 1990. 『外地法制誌』 (Overseas Legislation Review). Tokyo: Bunsei Shoin.
- Moon, Joon-Young. 2004. "Jeguk ilbon-ui singminjihyeong sabeop jedo-ui hyeongseong-gwa hwaksan" (Shaping and Spread of Imperial Japan's Colonial-style Judicial System). *Beopsahak yeongu* (Korean Journal of Legal History) 30.
- Nakamura, Tetsu 中村哲. 1943. 『植民地統治法の基本問題』 (Basic Problems of Colonial Rule). Tokyo: Nihon Hyoronsha.
- Park, Jihang. 1999. "Gwallyoje-reul tonghae bon yeongjeguk tongchi-ui mekanijeum" (British Empire's Ruling Mechanism from the Perspective of Bureaucracy). *Yeoksa hakbo* (Korean Historical Review) 162.
- Terauchi, Masatake 寺内正毅. n.d. 『寺内正毅文書』 (The Documents of Terauchi Masatake).
- Tokyo University Publishing Society, ed. 1986. 『帝國議會衆議院委員會速記録』 (Imperial Diet Committee Stenographic Records). Tokyo: Tokyo University Publishing Society.
- Yamazaki, Tansho 山崎丹照. 1943. 『外地統治機構の研究』 (A Study of Overseas Ruling Institutions). Tokyo: Takayama Shoin.