

The Legal Topography of Agrarian Relations in Southern Korea under Japanese Rule: Law and Tenancy Practices in Suncheon County, South Jeolla Province, 1920-1934

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The study explores the legal topography of landlord-tenant relations in Korea under Japanese rule with particular reference to Suncheon County in South Jeolla Province during the period 1920-1934. It inquires into the legal relations between landlord and tenant with regard to the forms of tenancy contract, security of tenure, rent payment and renegotiation, and the control of the labor process. It highlights, on the one hand, gaps in rules and options in action in the functioning of the law. The study throws light on situations where multiple rules were available for invocation and application, choice between which involved conflicts between differing group interests. On the other hand, it brings into relief the structural limitations of the choice of action. It shows how the law suppressed claims that might have disrupted landlordism in a fundamental way. By bringing the two aspects together, this study attempts a nuanced interpretation of the social implications of the law and legal system of Korea under Japanese rule.

Keywords: Suncheon, tenancy, peasant, landlordism, custom, Japanese rule

1. Introduction

Writing about agrarian relations in Korea during Japanese rule may look old-fashioned. The theme has not drawn much attention in Korean historiography since the mid-1990s, while studies of the same period have flourished with diverse topics and fresh perspectives. But the bygone character of the study of the theme makes it even more urgent to fill the gaps exposed by the existing studies. One of the gaps is the lack of inquiry into the working of law in shaping agrarian

relations. Detailed accounts of landlord-tenant relations were produced from extensive research conducted by economic historians between the early 1970s and mid-1990s. While those accounts touch upon agricultural policies implemented by law and contractual arrangements between economic actors, law itself has rarely been a focus of analysis. Implied in the neglect of law is the assumption that the law, especially the system of rules imposed by foreign rulers, was either irrelevant to the actual socioeconomic life of the people or so strictly binding and overpowering that people's behavior was governed in a uniform way as prescribed by it. This study distances itself from these points of view in exploring the legal topography of landlord-tenant relations. The study throws light on both sides of the reality: gaps in rules and options in action on the one hand and, on the other, structural limitations that circumscribed the choice of action.

A fluid legal landscape with many gaps in rules encourages the use of law as a battleground for groups seeking diverse and conflicting interests. Sensitive to this aspect of law, this study resonates with the processual paradigm in the social-scientific study of law, which sees law as an ongoing process and an arena of strategic pursuit of interests rather than a coherent and mechanically operating institutional framework built upon sets of closed rules (Moore 1978; Comaroff and Roberts 1981). Insofar as gaps in rules increase options in action and add to the agency of private actors, one might expect that this study sits well with the perspective and findings advanced lately in the study of peasant protest in Korea under Japanese rule. This strand of study, represented by Gi-Wook Shin (1996), departs from the dominant perspective and assumptions in Korean historiography. In correcting the tendency of explaining the reality in terms of structural forces, Shin stresses the interest-oriented action of the peasants. Countering the pauperization-revolution thesis and the characterization of colonial Korean agrarian society from that perspective, Shin explains the peasant movement in terms of middling farmers' strategic actions to improve their economic conditions. With regard to the early and mid-1920s in particular, Shin (1996: chap. 4) points out that peasants staged protests with a view to securing rent reductions and other favorable tenancy terms and that they more or less achieved their goals.¹

1. Emphasis on the role of middling farmers is not unique to Shin and other challengers to the dominant perspective in Korean historiography. Bak Myeonggyu (1997: chap. 10), who more or less represents the traditional viewpoint, also attends to the precarious position of middling farmers in the agrarian economy which made them susceptible to the causes of peasant protest. Yet Bak takes the structural condition of polarization more seriously than Shin.

This study, however, does not purport to corroborate these arguments and findings. It differs from the latter in the object of analysis and scope of empirical research. The options in action that follow the gaps in rules that this study highlights are choices in invoking and applying legal rules rather than choices in peasant collective action in general. The study brings into relief the availability of multiple rules applicable to a single situation and the negotiability of those rules. It does not directly address the question of how the legal situation conditioned the collective action of peasants, let alone questions as to the nature, backgrounds, and effects of the peasant movement.² At the same time, this study shows that the mobilization of rules as resources was kept within bounds by the structure and character of the law of landlord-tenant relations in those days. In other words, the fluidity of the legal system should not be exaggerated. As we shall see, the law had clear limitations in providing weapons for tenants. This study warns against any neglect of this side of the reality by studies that stress the achievement of the non-revolutionary gradualist efforts of middling farmers.

This study focuses on landlord-tenant relations in Suncheon County in South Jeolla Province during the period 1920-1934. The region has been known for a well-organized peasant movement and rural unrest in the mid-1920s. Peasant unions were organized in the wake of a series of demonstrations in the winter of 1922-1923 and campaigned for the interests of tenant farmers until they were dissolved in 1934. The peasant movement developed to a scale of its countywide organization, the Suncheon Nongmin Federation (*Suncheon nongmin yeonhaphoe*), claiming a membership of 11,000, which amounted to one-tenth of the county's population (Kanemori 1982:290).³ Suncheon quickly attracted the attention of the press, whose extraordinarily detailed coverage continued until the peasant movement declined in 1926, after the arrest of some of its leading activists for their roles in the Korean Communist Party. I owe much information to *Dong-a ilbo* (hereinafter abbreviated *DI*) articles of those days, along with judicial records of the Suncheon Branch of the Gwangju District Court.

The period 1920-1934 was distinct from other periods of Japanese rule for a couple of reasons. It was the period of the Rice Production Increase Plan, during

2. Those issues are addressed in my other studies. See Yi (2002; 2006).

3. The word *nongmin* (pronounced *nōmin* in Japanese) applies to various kinds of small farmers. I employ the English term 'peasant' when describing *nongmin*, but leave the Korean word intact when it is part of the name of an organization.

which Korea's rural economy was transformed toward a commercial agriculture. For a legal historian, the year 1934 was a dividing line between two phases, as the Korean Farmland Ordinance (*Chōsen nōchirei*) was issued, which brought substantial changes to the law governing agrarian relations.

Although Suncheon's peasant movement deserves much discussion and while I make frequent reference to it, I do not give an account of it.⁴ I concentrate my analysis on features of the law that regulated agrarian relations. I begin with an overview of the constellation of legal rules governing landlord-tenant relations under Japanese rule structured by the Ordinance on Civil Affairs in Korea (*Chōsen minjirei*) and the Japanese Civil Code. It is followed by an account of tenancy practices in Suncheon, which demonstrates the availability of differing interpretations of, and multiple ways of constructing, legal and customary rules as well as the limitations of the law in protecting the tenantry.

2. Legal Structure of Landlord-Tenant Relations

Although Japanese rule did not bring a major change to the landholding pattern, statistics indicate that the inequality in land distribution worsened under Japanese rule. Land under tenant farming increased from a little over 50 percent of all arable land to almost 60 percent, with rice paddies under tenancy making up 65-70 percent of all rice paddies throughout the period. Peasants who subsisted on tenancy already formed three quarters of the farming population at the beginning of Japanese rule and the percentage did not change much, but those who lived purely on tenancy without any plot of their own increased from less than 40 percent to 50 percent of the farming population, while owner-tenants, that is, tenants who owned some land of their own, gradually lost their land and became pure tenants (*Chōsen sōtokufu* 1940:109, 120-21, 139; *Nongnim sinmunsa* 1949:41-42).⁵

4. Accounts of the Suncheon peasant movement are available in Kanemori (1982), Ōwa (1982), Ji (1997), Han (2006), and Yi (1997; 2006).

5. The change in the land distribution pattern, of course, does not necessarily explain the change in the economic condition of the rural population, that is, living standards, per capita income, and so forth. The proponents of the so-called "colonial modernization thesis" have recently challenged the erstwhile dominant pauperization-polarization assumption.

The standard legal relationship between landlord and tenant was carved out through a number of processes, beginning in Meiji Japan. The legal transformation of agrarian relations in Japan began in 1871, when the Meiji government issued title deeds to landowners and reclassified the types of tenancy (*kosaku*). The exclusive title to a plot of land was given to the person that received rent, while the interests enjoyed by the actual tiller were reduced to a lesser category of right under a new regime of private law. Tillers' interests without an agreed term of duration were classified as "ordinary tenancies." After the enactment of the Civil Code, these and the fewer tenancies for years (tenancies with a fixed term of duration) were brought under the Code's rules on contractual leases (*chintaishaku*). The government found that some tillers were enjoying customary "permanent tenancies" (*eikosaku*). Some of them had obtained the rights in return for the supply of labor in reclaiming land and enjoyed those rights as long as they paid rent. Other permanent tenancies were 'permanent' in the sense that they had existed for generations without express agreement on how many years they would last (Fukushima 1958:64). But, under the objective of "reforming unclear and disparate customary practices," all customary tenancies were squeezed into the categories of right for which the Civil Code stipulated (Kitashima 1975:334-35). Although the Civil Code provided for permanent tenancies, most permanent tenancies were converted into ordinary tenancies, which made up 99 percent of all tenancies at the turn of the century (Waswo 1977:17-21).

Korean peasants found themselves subject to similar forces. The Korean Cadastral Survey of 1912-1918 clarified the title to each plot of land.⁶ Most tillers without ownership found their interests treated as contractual leases under the Civil Code. Yet the system of rules applied to Koreans somewhat differed from that for the Japanese. While the Civil Code applied in Korea, along with other major private law statutes in Japan, Korean customs were given room for survival.

The foundation of private law in Korea was laid by *Chōsen minjirei* or the Ordinance on Civil Affairs in Korea (hereinafter OCAK) issued by the Governor-General in 1912. The OCAK transplanted Japan's Civil Code to this part of the empire; Civil Code rules were to apply when there were no

6. The previously dominant assumption that the Cadastral Survey resulted in massive changes of ownership has been rebutted by scholars who have conducted detailed case studies. See the collection of essays in Gim et al. (1997).

conflicting rules in the OCAK.⁷ At the same time, the OCAK provided grounds for the application of customs. Article 12 of the OCAK stipulated that real property rights could be established by custom, unlike in the Civil Code, where property rights could be created only by statutory law.⁸ Hence, customary tenancies of property-right character could possibly be created outside of the Civil Code. Theoretically, therefore, three categories of right were available to tenants in Korea: the rights under the Civil Code—the contractual lease and the permanent tenancy—and customary property rights recognized by the OCAK.⁹ In practice, however, the OCAK's recognition of customary property rights did not have any meaning in practice, as its Article 12 was out of use in dealing with tenancies.

Korean customs found another route for survival and reproduction. Article 10 of the OCAK provided, “Customs which differ from relevant provisions of Diet acts or executive orders which do not pertain to public order (*ordre public*) shall apply to legal transactions between Koreans.” Apparently, the OCAK treated custom more generously than did the Japanese statute *Hōrei*. According to Article 2 of the Japanese statute, customs applied only when a statutory rule so provided or when there was no statutory rule concerning the issue in question. With all this difference, however, the courts of both Japan and Korea preferred to apply Article 92 of the Civil Code instead of Article 2 of *Hōrei* or Article 10 of the OCAK. Article 92 of the Civil Code stipulated, “In the event that a custom exists which differs from the relevant provision of a Diet act or executive order which does not pertain to public order, the custom shall apply if the parties in the legal transaction are recognized to have the intention to comply with that custom.” This provision was interpreted to provide for ‘customs as fact’ whereas Article 2 of *Hōrei* and Article 10 of the OCAK were regarded as stipulating for ‘customary law.’¹⁰ The apparently restrictive wording of Article 92 was loosened by the courts of both Japan and Korea, which held that unless

7. The OCAK also introduced other major Japanese statutes into Korea, such as the Commercial Code and the Code of Civil Procedure.

8. A few customary property rights were nevertheless recognized in Japan by court decisions. Many Japanese jurists criticized Article 12 of the OCAK for giving Koreans too much independence from the Japanese legal system and causing instability in economic transactions (Jeong 1989:109, 128-30).

9. A property right or a real right and a contractual right differ in that the former can be asserted against anyone in the world, whereas the latter can be asserted only against a specific obligor.

10. The difference between customs as fact and customary law lies in whether a custom is supported by a sense of legal obligation requiring enforcement in the minds of the guarantors of the norm

any of the parties made an express objection the parties were presumed to have the intention to comply with the custom in question.¹¹ Therefore, insofar as the parties did not say otherwise, customs took precedence over statutory rules that did not pertain to public order, or rules that were not ‘mandatory.’ Most of the statutory rules on leases were not mandatory, like most rules on other nominate contracts in the Civil Code, and, therefore, customary practices could replace the terms of the Civil Code provisions.

3. Tenancy Practices in Suncheon

Economic Background

Reliance on agriculture and inequality in land distribution were more pronounced in Suncheon and South Jeolla Province than in most other regions in Korea. The farming population made up over 80 percent of Suncheon’s population throughout Japanese rule. In this county, where rice paddies accounted for 70 percent of the arable land, which totaled about 18,000 *chō* (*jeongbo*), a greater percentage of people lived from tenant farming than the national average. Almost 65 percent of all arable land and 70 percent of rice paddies were tilled by tenants. Whereas pure tenants and farm laborers formed 47 percent and owner-tenants 32.5 percent of the county’s 21,600 households or about 110,000 residents in 1922, pure tenants and laborers had increased to 61 percent of the 19,200 farming households by 1931, and 69 percent in 1938, while owner-tenants decreased to 23 percent (Zenranandō 1923:101; 1932:190, 195, 200; 1938:52).

A survey in 1931 discovered 347 landlord households in Suncheon, of which ninety-five lived on rental incomes alone or on rental incomes plus some non-agricultural incomes while the remaining 252 worked on their farmland as well (Zenranandō 1932:195). Landholding in Korea was notoriously scattered, and

(Weber 1968:323). Customary law is a source of law, albeit secondary to statutory law, while customs as fact are mere factual practices. But that difference is often blurred and, as we see in the above, customs as fact often take precedence over non-mandatory statutory rules when they are interpreted to constitute intentions of the parties in a contract.

11. Judgments of the Supreme Court of Japan, October 27, 1914, December 23, 1914, and June 2, 1921 (issues and holdings summarized in Shinotsuka 1977:152). Judgments of the High Court of Korea, June 5, 1917, and December 23, 1921 (Shihō kyōkai 1943:31).

most landlords controlled small plots in different places rather than huge consolidated farms. Some landlords held plots that totaled hundreds of *chō*, but not more than thirty in Suncheon and not more than fifty including adjacent Beolgyo owned more than 50 *chō*.¹² Thirty-two of the fifty were Korean, while the largest landowner was a Japanese named Kanatani, whose holdings reached 1,100 *chō* in 1931 (Hanguk nongchon kyeongje yeonguwon 1985:201-03, 267-75, 299-301). Since the majority of landlords were Korean and perhaps because of the small size of the Japanese population in the county, which was no bigger than 900 in 1924, ethno-national conflict was not conspicuous in the agrarian unrest of the 1920s unlike in some other regions.

Forms of Contract

A large percentage of tenancy contracts were oral agreements. According to a survey in 1923, less than fifty landlords in Suncheon had adopted written contracts (Zenranandō 1923:149). But an increasing number of landlords came to write down their agreements. According to a 1932 survey, written contracts accounted for 60 percent of tenancy contracts in South Jeolla Province (Chōsen sōtokufu 1932: I/15). It is unclear on what criteria these surveys distinguished written from oral contracts. In many cases, the landlord issued a simple tenancy deed, containing little information other than the names of the parties, a very rough description of the plot, and the date of agreement.¹³ Even the size of the rent and the duration of the contract were frequently omitted. Written contracts became more refined in the 1930s, with the location of the plot, its size, its grade of fertility, the annual rent, and the dates of the beginning and the end of the tenancy recorded.¹⁴ Contracts used by large farming corporations contained detailed rules which the tenant was asked to follow, including rules regarding the kind of rice seed, the type of fertilizer, and the method of cultivation.

Landlords took precautionary measures against tenants evading their obligations. It became commonplace to require joint guarantors who would ensure the performance of the contract. Large landowners who had many plots

12. Beolgyo, a district in Boseong County, borders the southern part of Suncheon and has maintained close socioeconomic ties with Suncheon.

13. See Appendix I for a tenancy deed issued in 1928 by Bak Changseo, the county's second largest Korean landowner with over 400 *chō*.

14. See Appendix II for a tenancy deed issued by Bak in 1931.

of land distant from their offices received applications from peasants who wished to farm on their land. Applicants were required to give information concerning their family situation, the size of the residence, cattle ownership, tools, debts, the occupations of the guarantors, and so forth. They were often asked to state their educational backgrounds and even to describe their personalities.¹⁵ These were standard contracts where tenants had to state required information on a printed form that contained uniform terms and conditions for all tenants.

Security of Tenure

Historians have noted customary permanent tenancies had existed since before Japanese rule (Sin 1982:260-69; Bak 1983:237-46). Sin Yongha (1982) popularized the term *doji* as the generic name for those rights. The Government-General of Korea admitted that such rights existed, which it termed “special tenancies” (Chōsen sōtokufu 1912:130-39; 1932: I/707-811). Some of these tenancies were similar to customary permanent tenancies in Japan which tillers had acquired in return for committing labor to the reclamation of land (*kaikon eikosaku*). Others were created in return for bearing part of the cost of repairing land wasted by a natural disaster, for shouldering the landlord’s tax burden, in exchange for performing the service of a graveyard warden, and so forth (Bak 1997:114). In both Japan and Korea the position of such rights was precarious, overwhelmed by the notion of exclusive ownership in the new civil law that originated from the Roman legal concept of *dominium*. As mentioned, almost all customary permanent tenancies in Japan were converted into ordinary contractual leases, despite the Civil Code’s recognition of permanent tenancy as a property right. Koreans theoretically had an extra route for having their customary rights recognized, that is, by resorting to Article 12 of the OCAK. A customary permanent tenancy under this rule would have differed from a permanent tenancy under the Civil Code in that the holder of the former needed not register his/her right in order to assert it against a third party and that it could have lasted longer than fifty years, the maximum duration allowed to the latter. But the courts held that the Civil Code rules on permanent tenancies should

15. See Hong Seongchan’s detailed account of the Donggo Farm of Hwasun, a farming company that held many plots in the western part of Suncheon County (Hong 1992:478-80).

govern cases of “leasing another person’s land permanently for the purpose of farming,” indicating that customary permanent tenancies should not be recognized despite its ground in the OCAK.¹⁶ Furthermore, even permanent tenancies under the Civil Code were rarely recognized. By 1930, only 516 cases of permanent tenancy had been registered, most of which were newly created rather than had existed since before Japanese rule (Sin 1987:250).

As to permanent tenancies in Suncheon, a few judicial decisions are the only source of information. The permanent tenancies at issue in those disputes were alleged to have been created through a number of routes: in return for the repairing of damaged land or for sharing the cost of building dikes, by selling a piece of land at a low price in exchange for continued possession, by conveying the title to a piece of land to a creditor and reserving the right to redeem the title, in exchange for assuming a debt of the landowner, or by paying rents unpaid by other tenants. In dealing with these cases, the Suncheon Branch of the Gwangju District Court made reference only to the Civil Code and ignored Article 12 of the OCAK. Except in a very few cases, those who claimed to be permanent tenants were defeated in the disputes either because they had not registered their rights as required by the Civil Code or because they failed to prove the factual grounds for the rights.¹⁷

Like the courts in mainland Japan, the courts in Korea interpreted most of the alleged customary permanent tenancies to be mere contractual rights, not property rights. But it is questionable whether the courts supplanted a firmly rooted popular conception with their biased view in favor of landlords. The interests which were alleged to be permanent tenancies did not consist of uniform and clear expectations. People who represented themselves as permanent tenants tried to defend themselves against third parties only on the basis of deliberate agreements that they had made with the parties involved.¹⁸ Hence, what people called a permanent tenancy was not a package of claims

16. Judgment of the High Court of Korea, January 7, 1915 (Shihō kyōkai 1943:119).

17. Suncheon Branch of the Gwangju District Court (hereinafter SBGDC) Civil Case (hereinafter CC) 70/1924 (judgment made on January 23, 1924); 84/1924 (January 29, 1924); 748/1924 (judgment date unknown); 755/1925 (October 8, 1925); 956/1925 (December 1, 1925); 396/1926 (June 14, 1926); and 307/1931 (May 15, 1931). Claims honored or rights defended in CC 86/1926 (February 5, 1926); 398/1926 (June 21, 1926); 400/1926 (June 21, 1926); and 483/1933 (July 27, 1933).

18. SBGDC CC 3/1925 (January 7, 1925); CC 398/1926 (June 21, 1926); CC 400/1926 (June 21, 1926); CC 593/1927 (July 29, 1927); and CC 550/1933 (September 20, 1933).

which were uniform in all circumstances. We must posit a continuum, at the end of which stands an ideal-type permanent tenancy having the characteristics of a full property right that lasts forever and can be asserted against third parties. At the other end stands an ideal-typical tenancy at will that has no security of tenure at all. Customary tenancies stood in differing positions between these two extremes.

Most of the tenancies treated as contractual leases had no agreed term of duration. They could be regarded as tenancies at will. Article 617 of the Civil Code protected tenants at will who cultivated seasonal crops by requiring a notice of termination to be served during a specific period—after the end of a crop season and before the beginning of another. Further, the notice of termination took effect and the tenancy came to an end only upon the lapse of a year after the notice. I have found one case in which the Suncheon court applied this rule.¹⁹ Some jurists suggested that it was desirable on policy grounds to apply the rule uniformly to tenancies with no agreed term of duration (Nomura 1929:124). In most cases, however, the courts took the stance that the contract terminated immediately after notice. Why?

The courts and the government explained that there was an implied agreement between the landlord and the tenant that the tenancy would last only one year (Chōsen sōtokufu 1912:243; 1932: II, *sankōhen*, 39-56, 109-10). This interpretation was disputed by popular advocates of tenant rights. The peasant unions in Suncheon expressed indignation at evictions without any misconduct on the part of the tenant, and argued that the landlord could evict the tenant only when 1) the tenant dilapidated the land; 2) transferred the tenancy to another person or subleased the land without approval; 3) defaulted on rent payment; or 4) the title to the land had been conveyed to another (*DI*, April 21, 1923: 4; April 27, 1924: 3; June 3, 1924: 3). Some officials who took part in government surveys on tenancy customs entertained a similar view, suggesting that tenancies without a fixed period carried with them an implied consent that they would last as long as the tenant discharged his obligations (Chōsen sōtokufu 1932: II, *sankōhen*, 78-79). Yi In (1933:38-39), a lawyer and nationalist leader, concurred with the courts' view that such a tenancy was a yearly tenancy, but contended that by custom the landlord was barred from refusing to renew the tenancy unless the tenant failed to discharge his obligations. Justice Nomura

19. SBGDC CC 409/1931 (June 30, 1931).

Chōtarō of the High Court of Korea conceded that, though most tenancies without fixed duration were yearly tenancies, local customs often forbade landlords from abusing their freedom of termination (Nomura 1929:122-23). Thus tenancies without a fixed term of duration were open to three different interpretations: 1) that they were yearly tenancies and the landlord could freely refuse to renew the tenancy upon expiry; 2) that they were yearly tenancies, but by custom the landlord was obligated to renew the tenancy if the tenant had discharged his obligations in full; and 3) that they were tenancies at will subject to Article 617 of the Civil Code and, therefore, termination took effect a year after the notice of termination.

Many disputes broke out because landlords terminated tenancies very shortly before, or worse, after the beginning of a new crop season.²⁰ The law gave tenants some protection. Article 619 of the Civil Code stipulated that the landlord and the tenant were presumed to have agreed to renew the contract under the same terms and conditions if the tenant continued to possess the land after the expiry of the contract and the landlord made no objection. Yet I have found no case in which the Suncheon court applied this rule. Neither did tenants resort to this provision when protesting against evictions. Instead, they drew on the traditional principle embodied in the maxim “The vernal equinox having passed, stop litigation and return to farming (*chunbun igwa jeongsong gwinong*)” (*DI*, November 13, 1923: 4). Proponents of tenancy reform and government researchers showed interest in this customary principle. The High Court of Korea agreed. It held, “In Korea, there is a customary principle that neither the landlord nor the tenant may terminate the tenancy between the vernal equinox and the winter solstice even if the tenancy had no agreed term of duration.”²¹ The Suncheon court honored the principle at least in one case.²² Indeed, the principle was a legal rule inscribed in *Gyeongguk daejeon*, a fifteenth-century codebook. Whereas it had been a procedural rule barring litigation after a certain point, it was now used as a substantive rule protecting

20. One might attribute such disputes to the socioeconomic change under Japanese rule, assuming that the commercialization of agriculture stimulated egoistic motives and precipitated the disintegration of amicable relations between landlord and tenant. A similar picture, however, can be glimpsed from historical records of precolonial Korea. By his analysis of 1872 and 1897 civil petition records from Yeonggwang County in Jeolla Province, Bak Myeongyu (1997:111-15) shows that such disputes were quite widespread in the late nineteenth century.

21. Judgment of the High Court of Korea, October 19, 1917 (Shihō kyōkai 1943:260).

22. SBGDC CC 791/1925 (December 10, 1925).

the tenant in possession.²³

Many standard contracts of large farming corporations contained agreements on duration, but at the same time gave the landlord the right to terminate the tenancy “at any time” whenever he “needed” to do so. Some jurists said that such a contract was invalid under Article 90 of the Civil Code, according to which a legal transaction was void if it was contrary to public order or good morals. Others said that it was not invalid but termination took effect with the lapse of a year after notice because Article 617 also applied to fixed-term contracts in which the landlord reserved the right to terminate before the expiry of the contract. Article 617 was, however, not a mandatory provision and, therefore, could be excluded by agreement (Yi 1934:50-51). Hence, tenants in such a contract were out of protection.

Rental Shares

According to a government survey in the late 1920s and early 1930s, the average fixed rent for a 0.1 hectare of single-crop paddy field was 1.4 *seok* of unhulled paddy, 61 percent of the average yield of 2.3 *seok* or 415 liters. For a double-crop paddy field of the same size, the average rent was 1.6 *seok*, 64 percent of the average yield of 2.5 *seok* (Chōsen sōtokufu 1932: I/82, 205).

When peasant protest swept Suncheon in the early 1920s, peasants demanded that their fixed rents be lowered to the level of 40 percent of the yield. They argued that their demand was to restore the customary level of rent prevalent twenty years earlier, which they believed had been roughly 30 percent of the yield. At that time, they said, the entire amount a tenant paid hardly exceeded 36-37 percent of the yield even when the tenant paid the land tax (*DI*, November 6, 1923: 4; November 13, 1923: 4). For landlords, the custom was different. They maintained that a 50:50 division had been customary (*DI*, March 12, 1923: 3; April 30, 1923: 3). Although fixed rents actually exceeded half of the yield, the landlords argued as if those rents were worked out on the basis of the 50:50 ratio.²⁴ The traditional terminology *byeongjak bansu*, literally meaning

23. According to *Gyeongjuk daejeon*, “Proceedings shall be stayed at the vernal equinox and resumed at the winter solstice” (Yun 1998:437-38).

24. Rental shares are frequently described as 50:50 even when the actual division is unequal (Scott 1976:4; Byres 1983:20-21), as if the settlement for this “magic number,” which has “the advantage of sounding equitable” and with which the parties can “save themselves the bother of detailed arithmetic,” has been “elevated to the status of a social norm” (Bell and Zusman 1976:587).

“cultivation with half-and-half reaping,” may suggest that the norm of dividing the yield in the mid-Joseon period was 50:50. But this was standard only in sharecropping.

While the peasant unions vigorously campaigned for a 40-percent rental rate, some union members conceded that 50 percent was acceptable if landlords did not levy more than the agreed rent. Because rent collectors cheated when measuring grain and landlords imposed a variety of extra levies, they said, the part of the yield actually taken by the landlord far exceeded the agreed rent. Therefore, settling on 40 percent would be a tactic to enable the tenant to keep half of the yield in his hands (*DI*, April 30, 1923: 3). Representatives of the peasant unions castigated this theory and suspected that landlords disseminated it through the words of subservient tenants. They argued that an extraction of 50 percent would render it impossible for most tenants to recover their farming costs (*DI*, November 6, 1923: 4; November 13, 1923: 4).

In any case, the peasant unions realized that it was difficult to achieve the 40-percent target. Only in the years 1923 and 1924 did a substantial number of landlords in Suncheon accept the demand, and they did under exceptional popular pressure. Even when they agreed, many landlords broke the promise soon after harvest. Landlords' opposition was so strong that the peasant unions often openly gave up their goal of achieving the 40-percent term except when paying rent with the best quality paddy (*DI*, October 14, 1923: 4; October 30, 1923: 4; October 8, 1924: 3). On other occasions, peasants achieved the 40-percent target by exercising collective pressure at rent-paying spots where paddy was actually delivered (*DI*, October 4, 1923: 2; October 14, 1923: 4).

Fixed-rent tenancies were attractive to tenants as long as they entailed low rents, and to landlords who wanted to avoid the extra work of supervising their tenants. As rents shot up, however, fixed rent was more unfavorable to tenants than sharecropping. Growing anxieties about disputes arising from the insecurity of fixed-rent tenancies made people turn their eyes back to the ‘archaic’ practice of sharecropping, which James Scott (1976) describes with reference to various Southeast Asian peasant societies as the favored method of paying rent for risk-averse subsistence-farming peasants. Agricultural commentators in colonial Korea began to underscore the comparative fairness and flexibility of sharecropping, in which crop failure was automatically taken into account in distributing the yield, and some large farms switched to sharecropping in order to avoid dispute (*DI*, May 25, 1923: 5; December 2, 1924: 1; October 9, 1929: 3). Some peasant unions in Suncheon also campaigned for 50:50 sharecropping

(DI, October 9, 1923: 4).

In Suncheon and probably in other regions too, fixed-rent tenancies did not necessarily preclude readjustment of rent. It was conventional to negotiate the amount of rent in the event of crop failure. The difference was that in fixed-rent tenancies compromise was struck in an *ad hoc* manner whereas risk sharing was built into sharecropping. For landlords, fixed-rent tenancies incurred negotiation costs, as tenants asked for renegotiation when a harvest failed, while sharecropping generated supervision costs. Although some landlords switched to sharecropping in order to avoid face-to-face negotiations with their tenants, a larger number of landlords seem to have preferred fixed rent because the advantage of avoiding face-to-face confrontations did not outweigh the advantage of earning symbolic profit by reducing rent on an *ad hoc* basis as well as the benefit of avoiding the supervision cost.

Landlords and tenants rationalized their contentions regarding the just level of rent by drawing on differing representations of customs in bilateral and collective negotiations. Did this take place in court too? The Suncheon court dealt with a number of tenancy disputes regarding rent payment. Yet only in a very few cases did it resort to custom when deciding the right amount of rent. Custom became a focus of conflict when the parties found it difficult to prove their rental agreement. The court relied on customs when interpreting the contractual intentions of the parties, and the question of custom was a question of fact and not of justice.²⁵ Indeed, custom could have been referred to as a ground for judging whether a rent was just, as Article 90 of the Civil Code introduced “public order” and “good morals” as grounds for judging the validity of legal transactions. But the courts were extremely cautious in applying this provision to tenancy contracts. I have found no case in which the Suncheon court invalidated a tenancy contract because it was *contra bonos mores* or at variance with public order.²⁶ And no legislative attempt was made to control rent until the Rent Control Edict was promulgated in 1939.

Among the miscellaneous levies imposed on top of rent or added into rent was the land tax. The question of who should bear the burden of paying the land tax was one of the sources of controversy that sparked the protest of the early 1920s. According to the Suncheon Nongmin Federation, the average land tax

25. SBGDC CC 988&989/1925 (November 16, 1925).

26. I have found one case in which the court judged a rental practice valid in light of public order. SBGDC CC 778/1925 (September 16, 1925).

amounted to 10-15 percent of the yield if computed in paddy (*DI*, October 14, 1925: 4). The Land Tax Ordinance of 1914 imposed the tax obligation on the holder of the title. When landlords paid the tax, however, they more often than not raised rent or exacted an extra amount of crop to make up for the tax expenditure. Many landlords even asked their tenants to pay the tax directly, and local officials often collected taxes directly from tenants (*DI*, January 5, 1923: 3; March 2, 1923: 3). An official survey shows that in 1930 almost half of the tenants in South Jeolla Province were forced to take care of the tax bill and that many of them were asked to pre-pay an amount of crop equivalent to the tax for the coming year (Chōsen sōtokufu 1932: I/558-68).

Crop Failures and Natural Disasters

The Civil Code had a few provisions with regard to the reduction of rent in the event of crop failure. The main one was Article 609, according to which the tenant had the obligation to pay only up to the “gain” when the gain was smaller than the rent and the crop failure was not his fault. This rule applied only to fixed-rent tenancies and not to sharecropping, as rent was automatically readjusted in the latter. The rule, however, gave little protection to the tenant. Since the ‘gain’ was interpreted as meaning the ‘yield,’ the tenant was still obligated to submit the entire yield as long as the yield exceeded the rent by any small margin. This was the authoritative interpretation of the courts, as guided by precedent in Japan (Hisama 1943:134-38).²⁷

To be sure, readjustments of rent were common. When a crop failed, the tenant reported the failure to the landlord and invited him to inspect the condition. The landlord visited the field, estimated the harvest, and reduced the rent. This was, however, not based on a clear set of norms, and the *ad hoc* character of renegotiation created chances for dispute as well as paternalism. Peasants’ grievances toward landlords who gave no or insufficient reductions when crops failed was one of the biggest causes of the peasant protest in

27. Ann Waswo (1988:578) overstated the legal protection of Japanese tenants against crop failures when she said, “Tenants enjoyed both a customary and a legal right to rent reductions.” The Boissonade draft of the Japanese civil code had provided that if the gain decreased by one-third of the average yield the rent should be reduced in proportion to the decrease. The new team of jurists who replaced Boissonade stressed that any further reduction than the one they eventually put in the Civil Code was a matter of custom and not of law (Fukushima 1975:290).

Suncheon in the 1920s. Rent-reduction disputes broke out every year, but the scale was extraordinary in 1925 and 1931, when natural disasters cut the average yield by more than 30 percent.

If renegotiations of rent were conventional, the question becomes whether this custom could be invoked in court. A number of actions were brought before the Suncheon court involving rent reduction disputes, but most of them concerned whether the tenant had paid the already readjusted rent and not whether and to what extent rent should be reduced. In two cases the court hinted that it could in certain circumstances strike off part of the rent as excessive in light of customary standards, but the tenants were defeated in those cases because they had failed to make proper reduction requests, and the court did not need to unveil its idea of fair rent.²⁸

Another source of grievance was the repairing of land. Articles 606 and 608 of the Civil Code, which gave the landlord the duty to do necessary repairs and entitled the tenant to reimbursement for the cost he bore, were not mandatory provisions and could be excluded by agreement. Many landlords wrote into the contract a clause that apparently exempted them from any responsibility and made the tenant responsible for all kinds of repairs. The standard contract of the Donggo Farm required the tenant to do maintenance work as instructed by the management and without objection, and subjected him to forfeiture and compensation for any kind of permissive waste. The most striking provision was that the tenant should compensate for any “damage incurred regardless of his fault” (Hong 1992:478-80). Such a provision could be judged invalid, but I have not found any court decisions addressing this problem.

The cost of repair was an important issue in the peasant protest of the 1920s. In Suncheon some peasant unions demanded that the landlord pay for repairs in excess of one yen, but the majority compromised on 2 yen (DI, January 11, 1923: 4; January 23, 1923: 4; January 24, 1923: 4; February 7, 1923: 4; May 12, 1923: 3; October 11, 1923: 4; September 12, 1924: 3). Natural disasters often gave chances to tenants, particularly owner-tenants or tenants who could spread the risk between several plots they possessed. They could have their rents cut down or tenancies lengthened by carrying out repairs their landlords found cumbersome—a route through which customary permanent tenancies had been created in earlier times.

28. SBGDC CC 163-165/1924 (judgment date unknown); CC 359/1925 (12 May 1925).

Modes of Management and Relations of Production

As rice was a significant export commodity, the tastes of Japanese consumers were crucial in deciding what species of paddy to grow and how the products should be processed. Tenancy contracts designed by large farming corporations such as the Donggo Farm strictly enforced the cultivation of particular Japanese paddy species, and introduced meticulous regulations on the methods of threshing, hulling, drying, and packaging. Landlords ordered tenants to process paddy under their instruction. They often exacted rent in paddy even when the land under tenancy was a dry field where coarse crops were cultivated. They showed little interest in money rent. Korea's incorporation into the capitalist economy and the commercialization of agriculture did not bring a transition from rent in kind to money rent, but made rent in kind, particularly in the paddy form, persist as the dominant form of rent.

Big landlords introduced strict rules as to the maintenance and improvement of land, regulating such details as the quantity and sequence of applying fertilizer, the method of manuring the land, and the depth of ploughing. This raises a theoretical question about the relationship between the tenancy as a legal form and the economic relations dressed up in that legal form. Tenancy presupposes the tenant's possession of the land in opposition to the landlord's ownership. This signifies dissociation between what Balibar terms the "real (or material) appropriation connexion" and the "property connexion." The tenant is a subject of the "real material appropriation of the means of production in the labor process," while the landlord remains a mere expropriator of surplus labor, which derives from his ownership of the means of production, without having control over the labor process. However, if the landlord intervenes in the above way, the tenant no longer has control over the labor process and the two connexions merge like in capitalist-proletarian relations (Althusser and Balibar 1979:212-24).

Indeed, landowner-tiller relations did not have to fit into the legal category of tenancy under the Civil Code. The parties were free to design their contractual relations as they intended. Contractual arrangements with the tightest control over the labor process contained elements of both a contract for work (*ukeoi*; *Werkvertrag* in German), as it looked like the landlord carrying out his own farming and contracting out only a part of it to the tiller, and employment, because the landlord's supervision, guidance, and control were omnipresent. So-called "mandated farming" (*witak gyeongjak*) was an example of such contracts.

Mandated farming was typified by a written contract, a strictly limited term of duration—mostly a single year—, paraphernalia of regulations regarding the type and quality of crop and the method of fertilizing, close overseeing by the landlord and his agents over the labor process, and many grounds for termination of the tenancy (Hisama 1935:86-99). The tightest mandated farming contracts precluded the tiller's ownership of the yield; the tiller was simply keeping the produce in bailment until rent was paid. Even when no such agreement was made, the prevailing judicial opinion was that the yield did not belong to the tiller as long as he was a mere contractor undertaking the landowner's farming or an employee supplying labor to the landowner. Hence, when the tiller consumed the crop or disposed of it before paying rent, regardless of whether the remaining amount was sufficient for paying the rent, he could be prosecuted for theft or embezzlement. Moreover, when a creditor sought to seize the crop to satisfy his claim against the tiller, the landowner could file an objection to execution on the grounds that the crop did not belong to the tiller. Some commentators, including some government advisors, recommended that such contracts should be invalidated as *contra bonos mores* (Hisama 1935:121-22).

In such a contract, the tiller was no longer an independent possessor of the land. The property connexion and the real appropriation connexion overlapped. The entire yield belonged to the landowner and, if some amount of the crop was left with the tiller after he paid rent, it was given to him as wages. In short, the tiller was a proletarian rather than an independent producer. Yet he was not a full proletarian, because he was still owner/possessor of part of the means of production, such as simple tools and cattle, though few tillers under mandated farming arrangements could afford cattle. The tiller also bore the risk of crop failure. The landowner provided seeds in some mandated farming contracts, but in others the landowner charged the tiller for the seeds and fertilizer, and collected fees if the tiller used the landowner's equipment. Those charges and fees were similar to interest on capital, which made the landowner a sort of merchant/usury capitalist. Thus, various economic relations which we can analytically discern were present in the connection between landowner and tiller in mandated farming. The incomplete proletarianization of the tiller left with him an enormous load of responsibility, risks, and costs which a full wage-laborer would not have to bear. With all the mixed legal and economic forms, mandated farming was interpreted as a form of tenancy when the Korean Farmland Ordinance was issued in 1934 and was brought under the same rules that regulated tenancies.

Mandated farming was first devised by a farming company in North Jeolla Province and spread to other farms and big landlords in the early 1930s, when peasants were more heavily indebted than at any other time (Hisama 1935:82-84). The contractual modes adopted by Suncheon's elite landlords do not seem to have contained the most extreme elements of mandated farming, but, as we see in the case of the Donggo Farm, some elements were introduced such as the prohibition of tenants from disposing of the product or offering it as security and the landlord's priority when the product was seized and auctioned to satisfy debts. Not only in mandated farming but in most tenancy relations under some kind of written contract, the tenant was required to bring guarantors who were jointly and severally liable for the contractual obligations.

The landlord Oh Chin of Hwasun, a relative of the proprietor of the Donggo Farm, inserted in his contracts a provision that he could terminate the tenancy if the tenant was "neglectful" or "behaved improperly" (Hong 1992:483). Many standard contracts of large farming corporations devised similar provisions, provisions against "improper words," "violent character and indecent conduct" (Chōsen sōtokufu 1929:168; 1932: II/281). When major landlords in eastern South Jeolla Province assembled in Beolgyo in 1923 in reaction to the spread of peasant protest in the region, they uniformly condemned "insolent" tenants. They drew up blacklists of those who they thought agitated protest and refused to grant them tenancies (*DI*, March 12, 1923: 3). Above all, they feared concerted and organized defiance led by peasant unions, whose leaders were beginning to subscribe to left-wing ideas, but "improper," "indecent," or "insolent" behavior also covered various forms of "avoidance protest," such as cheating in rent payment or disobeying instructions, which were perhaps efficient ways of struggle for peasants whose labor was individualized (Adas 1981; Scott 1987).

4. Conclusion

We have seen that the legal rules on landlord-tenant relations based on Ordinance on Civil Affairs in Korea and the Civil Code of Japan were not a perfectly structured, internally consistent set of rules that regulated the conduct of social actors in a determinate way. Rather, those rules formed a "loosely constructed repertoire" of resources to be drawn on to rationalize particular goals of action and strategic objectives (Comaroff and Roberts 1981:18). While the

wiping out of customary permanent tenancies might fit into the familiar picture of a colonial situation in which official law backed by state power ruthlessly tears apart popular or indigenous orders, we have seen that many customs were given room to survive or were reproduced in a new context. Law and custom, and custom and contract, were not categorically opposed to each other as sources of conflicting claims. Instead, law called upon customs to fill the gaps of codified rules and contractual intentions. Landlords and tenants contested fiercely over the interpretation of legal and customary rules, and some rules were successfully invoked by tenants striving to secure a little more breathing space.

Yet attempts to throw fresh light upon features that have been neglected in existing historical studies should not lead to the opposite error of portraying the colonial legal system as an open-ended space with ample availability of 'weapons of the weak.' Tenants found customs being unfavorably interpreted by the courts and found few statutory rules that they could invoke against onerous contractual and customary practices.

If the peasants made attempts to use the law as resources in their pursuit of interest within clear bounds, their initiatives both within and outside the law created a climate for change to the law itself. Alarmed by the destitution of the rural populace caused by the recessions of the late 1920s and growing militancy in peasant protests, the Government-General began to consider a reform of the law of tenancy. Between 1927 and 1932, the government launched a large-scale research project to collect information of tenancy customs throughout Korea, which was followed by the issuance of two laws. The Tenancy Conciliation Ordinance of 1932 relaxed the rigidity of the erstwhile adjudication-centered dispute resolution procedure by making conciliation available to parties in tenancy disputes. More importantly, the Korean Farmland Ordinance of 1934 introduced substantive rules to correct the extreme insecurity of tenancies.

The Korean Farmland Ordinance placed a three-year minimum period on tenancies for cultivating annual crops and barred the landlord from refusing to renew the contract except on account of an "unfaithful act" on the part of the tenant or for a "due reason." The rule restricting the refusal of renewal did not differ from what peasants had represented as customary in their earlier protests. Hence the Korean Farmland Ordinance turned loose normative resources that peasants had unsuccessfully drawn on into practices enforced by law. The new law also relaxed the conditions for mandatory rent reduction in the event of crop failure, giving greater protection than any customary practice or the equal-risk-sharing device inherent in sharecropping.

Yet the new law had unintended consequences. Landlords flocked to replace assertive tenants before the ordinance came into force. In Suncheon, over 700 tenants were evicted in the space of four months (*DI*, June 10, 1934: 3). A considerable number of tenants were ousted with the lapse of the first three-year minimum period (*DI*, June 1, 1938: southern print 7). Many landlords refused to renew the contract, saying that they or their family members would use the land, as self-farming was an excuse allowed by the law. Ironically, the increased security of tenure contributed to solidifying the existing unequal distribution of tenancies among the tenants, impeding the “rural rehabilitation” initiative of the government by blocking the upward mobility of the bottom stream of the tenantry (Hisama 1943:99-126). The new agrarian policy was a desperate attempt to preserve the rural order based on landlordism, which was brought down only by the governments of the two Koreas after liberation.²⁹

To be sure, the new land law of the mid-1930s helped to reduce conflict. Government statistics show an upsurge of tenancy disputes: from a little over 1,000 per year in the 1920s to over 20,000 in the late 1930s (Chōsen sōtokufu 1940:6). The small number of disputes the Government-General discovered in the 1920s were mass strikes, whereas the government counted all controversies brought to conciliation panels after the introduction of the new law. Thus the Government-General employed different criteria in counting tenancy disputes, but it is true that the pattern of dispute had also changed. Aggrieved tenants sought redress through institutional devices of dispute resolution made available by the introduction of conciliations, supported by a change of substantive rules in their favor. In other words, disputes were individualized, and were managed within an institutional framework. An official who had taken part in drafting the new legislation lamented that the new law created an “emotional gap” between landlords and tenants rather than promoting harmony (Enda 1960:254). Nonetheless, it was less disturbing than the mass protests of the mid-1920s or the militant activism led by “red” peasant unions in the late 1920s and early 1930s.

The goal of pacifying rural society was, of course, not achieved solely by the introduction of a piece of legislation or two. The violent suppression of popular movements should not be neglected. The avarice of landlords was curbed to some extent, but so were popular liberties, and the road was paved for the state

29. The land reform in South Korea turned 88 percent of the rural population into owner-cultivators (Shin 1996:176).

to become the biggest claimant in a wartime economy.

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