ACTA KOREANA
VOL. 21, NO. 1, JUNE 2018: 205–229
doi:10.18399/acta.2018.21.1.008
© Academia Koreana, Keimyung University, 2018

MODIFYING THE HAGUE CONVENTION? US MILITARY OCCUPATION OF KOREA AND JAPANESE RELIGIOUS PROPERTY IN KOREA, 1945–1948

By AN JONG-CHOL

After World War II, the United States established the US Army Government in Korea (USAMGIK, 1945–48) in South Korea, and tried to justify its military occupation by international law, particularly the Hague Convention IV (1907). The Convention stipulates an occupant's right to take all the measures necessary to restore public order and safety and his or her duty to respect the indigenous law. Considering the changed situation during World War II, however, where the military institutions of the Axis Powers drove their aggression into other countries, it was inevitable that the Allied Powers would modify the convention to apply it to the occupied countries. Since Japanese public or private property comprised the most wealth in colonial Korea, one of the key issues that USAMGIK faced in liberated Korea was how to handle former Japanese property, ultimately culminating in the confiscation of all Japanese property into the possession of USAMGIK. Thus, this article expounds this thorny issue by dealing with the rationale of this change of the international law, specifically a religious one, with the *cy pres* (as near as possible) principle, a category that USAMGIK handled with discretion compared to commercial or government property. Consequently, this article shows that USAMGIK ultimately facilitated a close relationship between Christianity and the state in post-war Korean society.

Keywords: US Army Military Government in Korea (USAMGIK), Shinto shrine, Hague Convention, Hague Regulations, Ernst Fraenkel, *cy pres* principle

> Today the needle of history which quavers between the magnetic forces centered in Washington and Moscow points directly at Korea, the only country in the world where American and Russian ideologies and methods co-exist side by side, and the only country under joint American-Russian domination. Korea, therefore, more than Japan, China, Germany, or Austria

> is the testing ground for the world's greatest forces. (Richard E. Lauterbach, 1947)[1]

> The governmental vacuum brought about by the de-facto separation of Korea from Japan resulted in a type of military occupation which deviates somewhat from the normal type of military occupation. The general rule of international law that sovereignty rests with the government of the occupied country is not applicable to a country which lacks a government of its own. (Ernst Fraenkel, 1948)[2]

During World War II, the Japanese government mobilized imperial subjects into the war, so that the military-driven regime could use Koreans for the war machine, particularly towards the end of the war.[3] Since the Korean peninsula became important to the United States during World War II, policy makers in the US government envisioned an American military occupation of Korea with some social changes.[4] With a hasty resolution and agreement between the United States and the USSR, US Army Forces in Korea (hereafter USAFIK) occupied South Korea on September 8, 1945 while the USSR became an occupier in North Korea above the 38th parallel. Following this occupation, for civil rule, USAFIK established the United States Army Military Government in Korea (hereafter USAMGIK). Thus, the US military occupation of South Korea leads us to question what the legal basis of the occupation was.

In the US military occupation of South Korea following the expulsion of the Japanese, nothing was more drastic than confiscating Japanese property, irrespective of whether public or private, and the United States vesting itself with control of Japanese property in Korea, a radical step in international law at the

---

* This work was supported by the Core University Program for Korean Studies through the Korean Studies Promotion Service of the Academy of Korean Studies (AKS-2016-OLU-2250003).

[1] Richard E. Lauterbach, "Hodge's Korea," *The Virginia Quarterly Review* 23, no. 2 (July 1947): 349.

[2] Ernst Fraenkel, "Structure of the United States Army Military Government in Korea" (1948), National Archives and Records Administration (NARA), Washington D.C., RG 554 [Hereinafter "Structure of USAMGIK"], 2. This memorandum is also available in Gerhard Göhler and Dirk Rüdiger Schumann eds., *Ernst Fraenkel Gesammelte Schriftern*, Band 3 *Neuaufbau der Demokratie in Deutschland und Korea* (Baden-Baden: Nomos Verlagsgessellschaft, 1999), 426–439.

[3] Concerning the wartime mobilization, see Carter J. Eckert, "Total War, Industrialization, and Social change in Late Colonial Korea," in Peter Duus, Ramon H. Myers, and Mark R. Peattie, *The Japanese Wartime Empire, 1931–1945* (Princeton, NJ: Princeton University Press, 1996), 3–39.

[4] Regarding US planning of post-war Korea, refer to Bruce Cumings, *The Origins of the Korean War: Liberation and the Emergence of Separate Regime 1945–1947* (Princeton, NJ: Princeton University Press, 1981), 101–131.

time.[5] No doubt Koreans accepted this exceptional policy for a newly liberated Korea with a different motive at least at an early stage of military occupation, i.e. the awareness of the potential to use this property for their own needs, such that USAMGIK was able to successfully push this policy. Although the wide corruption attendant on appointments of managers of the vested property is broadly discussed in existing literature,[6] current literature has not thoroughly examined what legal questions confronted the United States and USAMGIK in the confiscation of Japanese property and how it handled the issue.[7]

This article also aims to explain how post-colonial Korean society dealt with former Japanese religious property, a part of vested Japanese property.[8] Among several Japanese wartime mobilization projects, the worship at Shinto shrines played a significant role as the de facto state religion, by suppressing alternative religious teachings and co-opting them into the state Shintoism.[9] Thus, based upon the Potsdam Declaration in July 1945, right after the War, USAFIK planned to secure freedom of religion in Korea.[10] The abolition of militaristic laws, such

---

[5] Regarding overall USAMGIK policy towards Japanese property in Korea, see United States Armed Forces in Korea, "History of the U.S. Armed Forces in Korea," Manuscript in Office of Military History, Washington D.C. (Seoul and Tokyo, 1947, 1948) (Hereafter HUSAFIK), vol. 3, ch. 2, 49–54.

[6] George M McCune, *Korea Today* (Cambridge, MA: Harvard University Press, 1950), 100; Bruce Cumings, *The Origins of the Korean War*, 200, 515–516. Also, USAMGIK's selling of Japanese farmland to Korean tenants in April 1948 was also carefully researched. See Charles Clyde Mitchell, Jr., "Land Management and Tenancy Reform in Korea against a Background of United States Army Occupation, 1945–1948" (Harvard Ph.D. Dissertation, 1949).

[7] There is little scholarship on this issue, agreeing that USAMGIK did not properly handle this issue. See George M McCune, *Korea Today*, 96–102; Ki-Won Kim, *Migunjŏnggi ŭi kyŏngje kujo* [Economic Structure of the US Army Military Government in Korea] (Seoul, Purŭnsan, 1990), particularly, ch. 4; and Yi Tae-gŭn, *Kwisok chesan yŏn'gu: Singminji yusan kwa Han'guk kyŏngje ŭi chillo* [Studies on vested property: Colonial legacy and the road of the Korean economy] (Seoul: Isup, 2015), 349–384.

[8] After Japan surrendered, the Colonial and local governments burned the tablets as a Shinto dissolution ceremony. See Morita Yoshio, *Chosen Shōsen no Kiroku* [Record of the end of the war in Korea], 109–112. However, the Shinto property site remained for other usages.

[9] Regarding wartime mobilization, see Wan-yao Chou, "The Kōminka Movement in Taiwan and Korea: Comparisons and Interpretations," Peter Duus, et al., *The Japanese Wartime Empire 1931–1945*, 45–48; Concerning wartime Shintoism and Korean resistance to it, refer to Wi Jo Kang, *Religion and Politics Under the Japanese Rule* (New York: The Edwin Mellen Press, 1987), 33–43.

[10] Concerning the Potsdam Declaration on Japan, see online sources of the Harry S. Truman Library & Museum, https://www.trumanlibrary.org/whistlestop/study_collections/naval/berlin/index.php?documentVersion=original&documentid=hst-naval_naid1701729-04&page number=1 (March 16, 2018). See also Columbia University's website, http://afe.easia.columbia.edu/ps/japan/potsdam.pdf (January 17, 2018). Particularly religious freedom, see article 10, "Freedom of speech, of religion, and of thought, as well as respect for the fundamental

as those related to Shinto shrines, would follow. Shintoism is a unique Japanese state religion, and so Shinto shrines were doomed to disappear with the demise of Japanese rule in post-war Korea. As of June 1945, at least 1,441 Shinto shrines remained on the Korean peninsula, having been predominately established since the mid-1930s.[11] Existing literature on Japanese religious or Shinto shrines in Korea is primarily concerned with colonial Shinto shrines rather than post-colonial issues. This is partly due to the belief that the Shinto shrines were immediately demolished right after the Korean liberation. Thus, this article is the first to deal with the Shinto-related property and its whereabouts in post-colonial Korea, putting forward several representative cases in Namsan (South Mountain), located in the center of Seoul.[12]

Unlike the conventional wisdom that Koreans simply destroyed these Shinto remnants,[13] this article will argue that USAMGIK and Korean elites handed over these properties to the Korean public or Korean Christian institutions. However, this religious property transfer was not within the purview of the Hague Convention, except in cases of military necessity, because it was widely accepted before World War I that "He [the occupier] must not alter the local laws according to discretion: he must respect them and leave them in force unless absolutely prevented by military necessity"[14] Thus, this action of transfer had to be justified in post-war Korea. Specifically, the USAMGIK legitimized this handover on the basis of the *cy pres* principle, an Anglo-American trust law that states that whenever the object of a charitable trust fails, the courts will direct the funds to be applied under a scheme as close as possible to the original purpose. It shows that some Shinto or Japanese religious properties were delivered to Korean religious organizations, particularly Korean Christian groups. Consequently, this

---

human rights shall be established."

[11] Regarding colonial Shinto shrines in Korea, see Morita Yoshio, *Chosen shōsen no kiroku* [Record of the end of the war in Korea] (Tokyo: Gannando Shoten, 1964), 108.

[12] Regarding Shinto shrines in colonial Korea, see the above-mentioned, Wi Jo Kang, *Religion and Politics Under The Japanese Rule*; Son Chŏng-Mok, "Chosŏn Ch'ongdokpu ŭi sinsa pokŭp kwa sinsa ch'ambae kangyo chŏngch'aek yŏn'gu"[Study on Japanese Colonial Government's policy on Shinto shrine propagation and enforcement] in Kim Sŭng-T'ae, ed, *Han'guk kidokkyo wa sinsa ch'ambae munje* [Korean Christianity and Shinto shrine worship issues] (Seoul: Han'guk kidokkyo yŏksa yŏn'guso, 1991), 247–309.

[13] The information that Koreans set fire to Jinja right after the Japanese surrender is recorded in several Japanese reports such as Morita Yoshio, *Chosen shōsen no kiroku* [Record of the end of the war in Korea], 108 and Ōkurashō kanrikyoku (Japanese Department of Finance, Bureau of Management), ed. *Nihonjin no kaigaikatsudō ni kansuru rekishiteki tsōsa* [Historical investigation of Japanese overseas activities] (Japanese Government, 1946), vol. 4, no. 3, 63.

[14] Lassa Oppenheim, "The Legal Relations between an Occupying Power and the Inhabitants," *Law Quarterly Review* 33 (Oct. 1917): 365.

policy was to strengthen a new type of relationship between the state and religion in a post-war Korea, favorable to Christianity.[15] Thus, the first half of this article handles the US policy background related to the confiscation of Japanese property, while the second half is concerned with Japanese religious property itself. The conclusion will summarize the article and explain the origins of the particular relationship between state and religion in post-colonial Korea.

US POLICY TOWARDS POST-COLONIAL KOREA AND PROPERTY ISSUES

When the United States decided to make a liberated Korea independent, one of its priorities was to secure its own economic foundation, preparing the Korean detachment from the Japanese Empire, i.e. Greater East Asia Co-Prosperity Sphere. At the time of the Korean liberation, however, many US experts on Korea predicted that Korean independence would be difficult because "Korea lacks the resources to become economically or politically independent of these [China, Russia, and Japan] nations."[16] This was because, prior to the war, 80–85% of industrial production and over 25% of agricultural property were owned by Japanese individuals or corporations who were heavily supported by their own government.[17] Japanese agricultural property was generally the most productive area in the Korean peninsula. Moreover, the Japanese completely controlled the banks and financial institutions.[18] Native Koreans had only 11.3% of the paid capital of Korea's industrial corporations.[19] It was estimated that Japanese public and private property comprised 80–85% of the whole property value in the Korean peninsula.[20] Because Japan's colonial policy was marked by tight control over the Korean economy, the elimination of Japanese control constituted "the

[15] Examples of Shinto property in this article, however, are offered as guiding points for further empirical research rather than as firm statements.
[16] Arthur C. Bunce, "The Future of Korea: Part I," *The Far Eastern Survey* 13, no. 8 (April 1944): 67.
[17] "HUSAFIK," vol. 3, ch. 2, 50.
[18] Ernst Fraenkel, "Structure of USAMGIK," (1948), 7. This document was prepared for the general background of USAMGIK for the United Nations Temporary Commission on Korea which was supposed to oversee the Korean situation before the general election in May 1948. Therefore, it might be acceptable to assume that this document was widely accepted by the top leaders in the military government in Korea.
[19] George M. McCune, "US Policy Act II: Korea," *New Republic*, 24 (May 5, 1947), 26.
[20] Yi Tae-gŭn, *Kwisok chesan yŏn'gu: Singminji yusan kwa Han'guk kyŏngje ŭi chillo*, 350.

necessary prerequisite of the liberation of Korea."[21] Nonetheless, it did not mean that all Japanese private property was immediately confiscated by the occupying government but rather that the whereabouts of the property was still fluid at the early stage of occupation.

1. US Policy towards Japanese Property

When USAFIK was installed and deployed in September 1945, Lieutenant General John R. Hodge was assigned to the position of chief officer in occupied Korea, a man who was more a field soldier than a civil officer in occupied territory. Without clear directions from Washington D.C. but with General Douglas MacArthur's Proclamation, Hodge ordered all the Japanese to continue their jobs in USAFIK in September 1945, with Koreans vehemently opposed to this policy.[22] Thus, realizing the severity of this issue, the US changed its own policy of retaining Japanese in Korea to their rapid extradition to Japan.[23] Against this backdrop, USAMGIK proclaimed Ordinance 2 on September 25, 1945, limiting the transactions of Japanese property rights, rather than vesting them to USAMGIK. The clause is as follows.

> Section I. **The purchase, sale, acquisition, transfer, payment, withdrawal, disposition, importation, exportation, or any dealing in or the exercise of any right, power, or privilege** with any gold, silver, platinum,…and any other property owned or controlled directly or indirectly, in whole part on or since 9 August 1945, by any of the Governments of Japan, Germany, Italy….are prohibited, except in accordance with this ordinance.[24] [Emphasis added]

The reason why August 9, 1945 was designated was because the Japanese Government decided to surrender on that date. Following this section, there are

---

21 Ernst Fraenkel, "Structure of USAMGIK," 8.

22 "Proclamation No. 1 by General of the Army Douglas MacArthur" (September 7, 1945), *Foreign Relations of the United States Diplomatic Papers 1945, Vol. VI The British Commonwealth and the Far East* (Washington D.C., United States Government Printing Office, 1969) (hereafter FRUS), 1043–44; George M. McCune, *Korea Today*, 47–48.

23 Memorandum by the Acting Chairman of the State-War-Navy Coordinating Committee (SWNCC 176/4) (September 10, 1945), FRUS, Vol. VI, 1044–45.

24 "Ordinance 2, Concerning Property Transfers," in Han'guk pŏpche yŏn'guhoe ed. *Migunjŏng pŏmnyŏng ch'ongnam, yŏngmunp'an* [US Military Government Law Collection]. (Seoul: Han'guk pŏpche yŏn'guhoe, 1971) (hereafter US Military Law Collection), 53–54. Also, some ordinances are available in Wikipedia site, e.g. Ordinance 32, https://en.wikisource.org/wiki/USAMGIK_Ordinance_32 (July 3, 2017).

procedures for "the sale" by the owners in accordance with the designated terms in the Ordinance.[25] Therefore, it was true that USAMGIK did not confiscate Japanese private property, although it rendered void any property transaction without consent of USAMGIK after August 9, 1945.

There was also another, or perhaps a more important, reason for this drastic policy. If Korean nationalists seized Japanese property, it could have been a nightmare for US political and military leaders who thought the post-war economy would be based upon more international trade and cooperation, rather than Korean national autarky. Consequently, US leaders feared that it would create an "economic-legal vacuum" so severe that the military occupation would be in danger.[26]

Actually, the property issue was not an agenda that the Military Government in Korea was able to unilaterally handle. Thus, USAMGIK asked Washington D.C. to send a concrete policy on Korea, including the property issue. Responding to this, the US government sent the policy decision SWNCC176/8 to USAMGIK through General MacArthur in Japan. It ordered USAMGIK to take a drastic step and vest the titles to Japanese property in the name of the US military government in Korea.

> You should seek out and **take title to all Japanese public and private property interest** of any type and description located in Korea. You will provide full reports to your Government, through the Joint Chiefs of Staff, on such property interests which will be held for ultimate disposition in accordance with detailed instructions to be forwarded to you. [Emphasis added].[27]

Based upon this general policy of the United States, USAMGIK decided that all the legal title of Japanese property be first vested in USAMGIK and that a Property Custodian was to administer the property.[28]

Following this basic principle, USAMGIK proclaimed Ordinance 33 that vested all the Japanese property in the military government:

> Section II. The title to all gold, silver, platinum, currency, securities, accounts in financial institutions, credits, valuable papers, and any other

---

25 Ordinance 2, "Section 3. e. The proceeds of such sale shall be delivered simultaneously with the consummation of the transaction to the Bank of Chosen or the nearest branch or agency thereof for the account of the Government of Korea."

26 Arthur C. Bunce, "The Future of Korea: Part I," 68.

27 SWNCC 176/8 (October 13, 1945), *FRUS* Vol. VI, 1073-1091. The cited part is from 1091.

28 "Structure of USAMGIK," 8.

> property located within the jurisdiction of this Command, of any type and description, and the proceeds thereof, owned or controlled, directly or indirectly, in whole or part, on or since **9 August 1945**, by the Government of Japan, or any agency thereof, or by any of **its nationals**, corporations, societies, associations, or any other organization of such government or incorporated or regulated by it is hereby **vested in the Military Government of Korea** as of 25 September 1945, and all such property is owned by the Military Government of Korea. [Emphasis added][29]

What was the policy background of this drastic property transfer to USAMGIK? USAFIK saw this extreme step as necessary "in order to break the Japanese stranglehold on Korea."[30] On the same date that Ordinance 33 was proclaimed, General Hodge justified this confiscation of private and public property in terms of reparations for Japanese wartime or colonial dominance and Korean economic stability as follows:

> It is my personal opinion that all Japanese property in Korea should be turned over to the Korean people by orderly means through the government of Korea—ours or Korean—**as partial payment for what Japan has stripped out of Korea**. It will be about the only means whereby **a sound Korean monetary system and sound economy** can be established. Any operation that takes any Japanese property or wealth from Korea for reparations will create a bad feeling we can never overcome.[31]

It presented two reasons: Japanese reparation to Koreans or the United States, and establishment of a sound Korean economy. Also, a political advisor in USAMGIK justified the fact that "all the private and movable property in our Zone is being held in trust by us for the future Korean government to dispose of in any way it cares to," while the USSR disposed of this type of property without any consultation with the United States.[32] Thus, the suggestion was to consider the North Korean situation.

Furthermore, Ambassador Edwin W. Pauley, who visited Korea, Japan, and

---

[29] Headquarters, United States Army Forces in Korea, "Ordinance 33, Vesting Title to Japanese Property within Korea" (December 6, 1945), in *US Military Government Law Collection*, 95. Also it is available in Wikipedia, https://en.wikisource.org/wiki/USAMGIK_Ordinance_33 (October 3, 2016).

[30] "HUSAFIK," Vol. 3, ch. 2, 52.

[31] John R. Hodge to John J. McCloy (December 6, 1945), Institute of Asian Culture Studies ed., *John R. Hodge munsŏjip* [John R. Hodge Papers], Hallym University, 1995.

[32] 895.01/12-1445, "The Acting Political Advisor in Korea (Langdon) to the Secretary of State" (December 14, 1945), *FRUS*, 1945, Vol. VI, The British Commonwealth, The Far East, 1144.

Manchuria to investigate the remaining industrial equipment as a Personal Representative of the President on Reparation issues under President Harry Truman in 1946, even further argued that Korea should receive Japanese equipment in Japan.

> Korea should receive certain needed industrial equipment from Japan as part of reparations removals. Her industrial economy presently is developed for the production of raw and semi-finished materials which were required by Japan. She now requires equipment such as machine tools in order to devote the products of her present industry to the needs of her internal economy.[33]

Pauley argued that the Japanese property could be sold for the sake of the future Korea and that Korea should get what it needed from Japan. Thus, at least up to the first stage of the military occupation of Korea, there was some consensus among US high officials involved in the Japanese property vestment that the confiscation of all the Japanese property in Korea would be justified as an aspect of reparations. This drastic step, aiming at depriving the Japanese of public and private property, at the outset of the establishment of USAMGIK, was related to Japanese reimbursement of the costs of occupation or wartime reparation, which required negotiation with the Japanese government.[34]

However, in addition to this, there was another important reason for this radical policy, namely to prevent the delivery of property to more nationalistic Korean political groups, as Pauley argued below.

> Communism in Korea could get off to a better start than practically anywhere else in the world. The Japanese owned the railroads, all of the public utilities including power and light, as well as all of the major industries and national resources. Therefore, if these are suddenly found to be owned by "The People's Committee" (The Communist Party), they will have acquired them without any struggle of any kind or any work in developing them. **This is one of the reasons why the United States**

[33] 740.00119 PW/7-346, "Ambassador Edwin W. Pauley to President Truman" (June 22, 1946), *FRUS* 1946, Vol VIII The Far East, 709. Regarding Edwin W. Pauley's background, see Harry S. Truman Presidential Library and Museum website, available at https://www.trumanlibrary.org/hstpaper/pauleyew.htm (January 17, 2018).

[34] United States Army Forces in Korea, "Selected Legal Opinions of the Department of Justice, United States Army Military Government in Korea" (Compilation Prepared by the Department of Justice Headquarters, United States Army Military Government in Korea, 1948), vols. 1–2. [Hereinafter "Selected Legal Opinions"], Opinion # 1269, at 276. This collection contains selective but important perspectives from 1665 opinions.

> **should not waive its title or claim to Japanese external assets located in Korea** until a democratic (capitalistic) form of government is assured.[35] [Emphasis added]

Putting aside Pauley's opinion that the nationalistic People's Committee could be equated with the communist party, implying that he considered "democratic" to signify capitalism, US high officials believed that the former Japanese property would be delivered to a US-friendly government in Korea.

2. Reconciling US Policy with International Law

Regardless of the policy background, whether good or bad, this policy inspired thorny legal issues in relation to international law at the time. It seemed opposed to the then valid international convention on military occupation, the Hague Convention IV (1907).[36] Many international law scholars were against this type of private property confiscation. Although the US government did not totally support the Hague Convention right after World War II, international legal scholars argued that private property should not be confiscated based upon the Convention.[37]

Article 43 in the Hague Regulations is the linchpin of an occupying power's behavior in an occupied territory: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while **respecting, unless absolutely prevented, the laws in force in the country.**" [Emphasis added][38] Thus, the change of local laws in an occupied territory was supposed to be limited to some exceptional cases where occupying authorities had a military justification.[39] This is also recognized in contemporary

---

[35] 740.00119 PW/7-346, "Ambassador Edwin W. Pauley to President Truman" (June 22, 1946), 707.

[36] Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907. See International Committee of the Red Cross documents, available at https://ihl-databases.icrc.org/ihl/INTRO/195 (last access on October 1, 2016) [for specific regulations, hereinafter Hague Regulations].

[37] One leading scholar was Philip C. Jessup. See "Enemy Property," *The American Journal of International Law*, vol. 49, no. 1 (Jan., 1955): 57–62.

[38] Hague Regulations Art. 43, see http://www.icrc.org/ihl.nsf/WebART/195-200053?OpenDocument (accessed on October 1, 2016).

[39] This was clear from the Allied Powers' occupation of the German Rhineland right after World War I. For the legal issues of occupation here, refer to Ernst Fraenkel, *Military Occupation and the Rule of Law: Occupation Government in the Rhineland, 1918–1923* (New York and London, Oxford

international law in instances of military necessity.[40]

World War II actually weakened the logic of the Hague Regulations, first by the institution of heinous German laws on confiscating Jewish property and later by robbing other ethnic groups of their property in occupied territory. Thus, German treatment of occupied property may be titled "the most important practical legacy" in the post-war world, such that eastern and central Europe saw the confiscation of German private property without compensation.[41] Envisioning a post-war world, Allied Powers proclaimed radical post-war policies to limit the former Axis Powers' economic clout. This is well summarized in the Potsdam Declaration of July 26, 1945, a policy statement to be applied to Germany and Japan.

> 12. At the earliest practicable date, the German economy shall be decentralized for the purpose of eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements. [Applied to Germany][42]
>
> 7. Until such a new order is established and until there is convincing proof that Japan's war-making power is destroyed, points in Japanese territory to be designated by the Allies shall be occupied to secure the achievement of the basic objectives we are here setting forth. [Applied to Japan][43]

Allied Powers' position on defeated Axis Powers was to bring economic and political reforms. It was inevitable that economic reform had an impact upon private economic interests. Consequently, through odious German crimes and the Allied Powers' subsequent drastic policy, the Hague Regulations was weakened with regard to the occupier's involvement in the domestic order of the occupied

---

University Press, 1944), 83–186 and *passim*. Fraenkel ended up working in USAMGIK. See Bruce Cumings, *The Origins of the Korean War*, 160.

[40] See Yoram Dinstein, "Legislation Under Article 43 of the Hague Regulations: Belligerent Occupation and Peacebuilding," *Occasional Paper Series* (Fall 2004) No. 1, published by Program on Humanitarian Policy and Conflict Research, Harvard University.

[41] Tony Judt, *Postwar: A History of Europe Since 1945* (London: Penguin Books, 2005), 38–39.

[42] For Declaration on Germany, see Document 41 "The Berlin (Potsdam) Conference," Frederick H. Hartmann ed., *Basic Documents of International Relations* (Westport, CT: Greenwood Press, 1951), 246.

[43] For Declaration on Japan, see The Harry S. Truman Library & Museum, https://www.trumanlibrary.org/whistlestop/study_collections/naval/berlin/index.php?documentVersion=original&documentid=hst-naval_naid1701729-04&pagenumber=2 (March 16, 2018); Japanese National Diet Library, http://www.ndl.go.jp/constitution/e/etc/c06.html (January 17, 2018).

territory, a step that contributed to an aspect of real politics in confiscating property.

Unexpectedly, at the level of policy executors in occupied South Korea, there arose many interesting but heated disputes following the proclamation of Ordinance 33 concerning whether some property really belonged to the Japanese. There were diverse properties co-owned by Koreans and the Japanese at the end of World War II; furthermore, there were many cases of interracial marriage between Koreans and the Japanese.

In order to solve these issues, the Property Custodian system was introduced to replace Provincial Governors in enemy property management on March 1, 1946, obviously in response to North Korean confiscation of Japanese property and impending land reform.[44] Up to that time, the property Custodian delegated his authority to local government branches. However, it was not until May 1946 that local property custodians undertook their roles.[45]

The pressing issue with vested Japanese property was how USAMGIK would dispose of the property in the case of very exceptional transactions, involving "responsible and efficient purchasers." In March 1947, for the sake of economic stability, USAMGIK decided that small business and lands would be sold to Koreans while core industries belonged to USAMGIK.[46] The latter were continuously sold to private businessmen after the Republic of Korea was established in 1948. Even until then, a complete list of Japanese property including industrial, commercial, and private was lacking.[47]

In the case of disputes, therefore, against this backdrop, the property issues at hand were supposed to be appealed to the Property Claims Commission.[48] The Commission, however, needed some guidelines to decide various cases. Thus, the Bureau of Opinions at the Department of Justice provided instructions to resolve these disputes. Thus, for example, regarding who had to pay for the rented

---

[44] "HUSAFIK," Vol. 3, ch. 2, 53.

[45] George M McCune, *Korea Today*, 98.

[46] U.S. Armed Forces in Korea, "South Korea Interim Government Activities," December 1947, 13, cited in George M. McCune, *Korea Today*, 99.

[47] George M. McCune, Korea Today, 102.

[48] Opinion #658 (October 8, 1946), "Ownership of land bought by Koreans but not registered before August 9, 1945," in "Selected Legal Opinions," 180 (a Korean bought a certain piece of land from a Japanese in May 1945 but due to administrative delay, the land was not registered. Fraenkel argued that the Property Claims Commission would decide the case based upon evidence). The Bureau of Opinions advised that the Department of Justice "is not authorized to decide cases." Opinion # 683 (October 21 1946), "Status of Korean property "sold" to Japanese to secure loan with special stipulation for repurchase (in the nature of a mortgage)," in "Selected Legal Opinions," 189.

property, specifically whether departments or instrumentalities of the Military Government of Korea would pay for rentals of the vested property, was said to be "a matter of policy and administrative discretion and does not present a legal question."[49]

Delineating the boundary between public and private property was always problematic, however. The Bureau of Opinions was instrumental in drawing the relevant lines. According to the Hague Regulations (1907), the occupying power was allowed to take into its possession all movable goods that belonged to the state and could be used for military occupation in an occupied area.

> Art. 53. An army of occupation can only take possession of cash, funds, and realizable securities which **are strictly the property of the State,** depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations. All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made. [Emphasis added][50]

Except for the private munitions of war, private property would not be taken by the occupying powers. International law at the time supported the idea that there should be payment of compensation if the requisitioned property was not government property. Even if state property was taken, the occupying power only continued to have a usufructuary duty.

> Art. 55. The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. [51]

According to legal opinion, however, municipal property was not vested property.[52] Article 52 in the Hague Regulations stipulated that the requisition

---

[49] Opinion # 563 (September 9, 1946), "Payment of rentals by Government agencies on vested property," in "Selected Legal Opinions," 152.

[50] Hague Regulations.

[51] Ibid.

[52] Opinion # 382 (June 20, 1946), "Rental by Military units of buildings owned by the City of

"shall not be demanded from municipalities or inhabitants."

> Requisitions in kind and services shall not be demanded from **municipalities or inhabitants** except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible. [Emphasis added].[53]

According to the "Rules of Land Warfare," Public Property, Article 318 provides that "the property of municipalities that of institutions dedicated to religion, charity, and education, the arts and sciences, even with state property, shall be treated as private property."[54] At the end of World War II, it was interpreted that the property of municipalities ("*communes*" in the original document) in Art. 56 of the Hague Regulations should not include all types of property owned by municipal governments. Rather, the property should be "within the category of humanitarian or intellectual properties."[55] Thus, USAMGIK tried to invoke international law as a legal basis, while the vested private property was seemingly a deviation from the standard up to that time. The unique point in occupied Korea was that the Japanese had to leave Korea and return to Japan, and so there was chaos regarding who owned their property, private or public.[56]

In addition, USAMGIK already proclaimed Ordinance 21 on current laws on November 2, 1945, a law that provides, "Until further ordered, and except as previously repealed or abolished, all laws which were in force, regulations, orders, notices or other documents issued by any former government of Korea having the force of law on 9 August 1945 will continue in full force and effect until

---

Seoul," in "Selected Legal Opinions," 105.

53 The requisition was possible in the case of "the needs of the army of occupation." When the Military Government needed Japanese nationals who had returned to Japan, it was able to recall them to Korea. Opinion # 751 (November 21, 1946), "Requisition and Return of Japanese persons to Korea for needs of Occupation," in "Selected Legal Opinions," 210.

54 Opinion # 382 (June 20, 1946), in "Selected Legal Opinions," 105. The implication is that the Military Government could pay rental fees to the City of Seoul when they leased a piece of land.

55 William M. Franklin, "Municipal Property under Belligerent Occupation," *The American Journal of International Law* 38 (1944), 395.

56 The reason why USAMGIK proclaimed Ordinance No. 33 for the vestment of Japanese property is because the vested property may have defrayed the US occupation budget and be used for an independent country.

repealed by express order of the Military of Korea."[57] Thus, in order to change notorious laws such as the Shinto law and the suppression of freedom of speech etc., the existing laws would be valid unless USAMGIK passed a new law. Particularly, the Peace Preservation Law and Shinto-related laws were exemplary legislation that many Koreans tried to repeal.

USAMGIK TOWARDS JAPANESE RELIGIOUS PROPERTY

Although USAMGIK decided to vest all the Japanese property in the United States until a new republic would be established, it had to meet urgent needs for Koreans who were eager to use those properties in a dire post-war situation. Thus, when several legal issues arose regarding vested property, the Executive, particularly the Department of Justice, intervened in decision-making in the context where an independent judiciary was about to be born. Within the Department of Justice, the Bureau of Opinions in which Charles Pergler (1893–1954), a former Czech national, and Ernst Fraenkel (1898–1975), a German émigré were active became pivotal in providing legal advice to various organizations.

1. The Role of the Bureau of Opinions

While the Bureau of Opinions at the Department of Justice had the Hague Convention/Regulations in mind for handling Japanese property, it tried to add a new meaning to "state property," so that the definition was broadened.[58] Ernst Fraenkel played a key role in devising a new concept of state-owned property, anchored in his experience of a "totalitarian state" in pre-war Germany. He broadened the term "state property" in the case of government-supported organizations. Regarding the Korean Agricultural Association, established by a special Ordinance of the Japanese Government (Ordinance No. 1 (1926)), he argued that totalitarian states used "the traditional forms of quasi-autonomous organizations" in order to use them for their specific purposes. Discarding the pre-World War II assumption that government property and non-government property can be easily distinguished, Fraenkel argued that "the gradual conversion

[57] Ordinance 21, November 2, 1945, available at the Wikipedia site, https://en.wikisource.org/wiki/USAMGIK_Ordinance_21 (October 3, 2016).

[58] See Opinion # 489 (July 15, 1946), "Vesting of Property of Korean Agriculture Association Distinction between National and Property of Local Authorities," in "Selected Legal Opinions," 130.

of allegedly private or semi-private organizations into mere instrumentalities of the government is one of the most characteristic features of the German as well as the Japanese totalitarian dictatorship."[59]

Revising the Hague Regulations criteria as to whether property is state or private property, Fraenkel introduced another test regarding whether "such property was at the time of the occupation of Korea by the US army owned in reality by the Japanese Government and used for purposes which are governmental in character."

> An institution which is established, sponsored, staffed and wholly controlled by the Government is a mere instrumentality of the states. Irrespective of the legal form of such an institution its property is property of the state.[60]

Therefore, the Korean Agricultural Association was a national organization that had assisted with the wartime mobilization, and thus the organization had become state property. The Military Government would be able to use the Association's property for its own purposes without being obligated to pay compensation. This interpretation gave USAMGIK much discretion to use its own power relevant to the pseudo-government organization.

In the context of vested property with shareholders divided between Koreans and Japanese in a ratio of approximately 49 to 51, the Bureau of Opinions held that the Hague Convention on Land Warfare did not apply. Instead, it recommended that the property should not be vested in military government "to protect the equitable rights of the Korean shareholders by the administrative adjustment."[61] Legal advisors actually brought the judicial enactment of law into reality by interpreting and modifying contemporary international law.

As acting custodian of the property, USAMGIK did not sell the property to Koreans with only some exceptions, and there were many cases where Koreans used those properties as leases.[62] However, in April, 1948, right before the May 10 general election for political stability, agricultural lands formerly owned by Japanese companies or individuals were sold to Koreans, mostly tenants, forming

---

[59] Ibid.
[60] Ibid.
[61] Opinion # 810 (May 16, 1947), "Lease by Military of factory belonging to Korean incorporated Company," in "Selected Legal Opinions," 224.
[62] Exemplary cases are Opinion # 151 (May 15, 1946), "Construction of Buildings on Vested Property," and Opinion # 201 (May 8, 1946), "Lease of Shinosaki Building," in "Selected Legal Opinions," 30 and 45.

15.3% of the farmland in South Korea.[63] After the Republic of Korea was established on August 15, 1948, a new government concluded a treaty with the United States, entitled "Initial Financial and Property Settlement between the Government of the United States of America and the Government of the Republic of Korea" (September 1948), inheriting all the administrative affairs and property that USAMGIK had managed.[64] Thus, substantial ownership changes occurred only after the Republic of Korea was set up.

2. Handling of Japanese Religious Property

In the case of religious property, as a general principle, the Bureau of Opinions still applied the Hague Regulations, which stated "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when state property, shall be treated as private property. All seizure of, destruction or willful [*sic*] damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings" (Article 56). So called "cultural property" also would be secured as being similar to private property.[65] However, there was no meaningful differentiation with Japanese property, because all the Japanese property was invested into USAMGIK.

In regard to religious shrines, as shown in Ordinance 21, with the introduction of Ordinance 11 (October 9, 1945), the religion and practices of Shintoism were abolished, while other colonial laws on religion were still valid.[66] Thus, the

---

[63] Essentially, farmers were supposed to pay one-fifth of their average crops per year for fifteen years before they became owners of the land. Originally, this rather progressive policy was planned by Korean and American policy makers under USAMGIK, in the hope that "it might serve as a pattern for other, more extensive programs in Korea, China, Japan, and elsewhere in the far East." See C. Clyde Mitchell, "Land Reform in South Korea," *Pacific Affairs* Vol. 22 (May 1949), 144.

[64] See Korean National Archive's document No. BA0028980, available at the Korean National Archive website, http://theme.archives.go.kr/viewer/common/archWebViewer.do?singleData=Y&archiveEventId=0049272290 (October 5, 2017).

[65] Later, there was another Hague Convention on Property in 1954. See David A. Meyer, "The 1954 Hague Cultural Property Convention and Its Emergence into Customary International Law," *The Boston University International Law Journal* 11 (1993).

[66] Ordinance 11 eliminated "the policies and doctrines which discriminate against and are oppressive to the Korean people, and to restore to the Korean people the rule of Justice and Equality before the law." Thus it repealed the following laws such as "a. Act of Punishing Political Convicts, Vol 6, Sec 14, P 020 of the General Code of Korea enacted 15 April 1919. b. The Preliminary Imprisonment Act, Vol 2, Sec 8, P 26 of the General Code of Korea enacted 15 May 1941. c. Act of Preserving Public Order, Vol 2, Sec 8, P 16 of the General Code of Korea enacted 8 May 1925. d. Act of Publication, Vol 2, Sec 8, P 255 of the General Code of Korea enacted

colonial Buddhism law did not change with the coming of USAMGIK, probably due to political reasons.[67] Under the colonial rule, all the Buddhist temples and property were reported to the Governor General so that when an attempt was made to move a temple or to change its property status, a license had to be obtained, a policy that had controlled Buddhist temples.[68]

Although it is extremely difficult to investigate all the cases related to Japanese state Buddhist temples and Shinto shrines, it is still possible to grasp a representative trend. As for the Buddhist temple, it was not so difficult to transfer a Buddhist Japanese property to a similar Korean Buddhist denomination or sect. This nevertheless became challenging on an occasion when the Japanese Buddhist sect was not related to Korean Buddhism.

In the case of the Japanese Buddhist Ha Kubun Temple (Pakmunsa in Korean), not relevant to Korean Buddhist denominations,[69] the site had also been to a certain extent affiliated with the Japanese government, in memory of fallen Itō Hirobumi. Irrespective of its own function and history, according to Fraenkel, it was still a Buddhist temple, so that the Hague Regulations applied.[70] The temple was generally used as a war memorial, since the Japanese used Buddhist temples for wartime consolation. It was determined that the temple no longer functioned as a Buddhist temple. Acknowledging that "any seizure or destruction or willful damage to religious institutions" was prohibited under Art. 56 of the Hague Regulations, Fraenkel tried to modify the Hague definition because the site had become empty. He introduced a principle of Anglo-American trust law that

---

February 1910. e. The Decree for the Protection of Political Convicts, Vol 2, Sec 8, P 23 of the General Code of Korea enacted 12 December 1936. ***f. The Act of Shrine, Vol 2, Sec 6, P 1-88 of the General Code of Korea enacted 18 July 1919***. g. The Judicial Power of Police Chiefs, Vol 6, Sec 3, P 939–940 General Code of Korea."[Emphasis added]. The Ordinance is available at the Wikipedia site, https://en.wikisource.org/wiki/USAMGIK_Ordinance_11 (October 3, 2016).

[67] USAMGIK did not develop close relationships except with several intellectuals. Therefore, it did not feel the necessity to repeal colonial laws related to Buddhism, and instead postponed the decisions until after the foundation of a new republic. However, from the 1950s onwards, government control of Buddhism did not change substantially.

[68] Opinion # 282 (May 6, 1946), "Title to Articles in Religious Shrines," in "Selected Legal Opinions," 63.

[69] Opinion # 503 (August 2, 1946), "Status of abandoned [sic] religious shrine-Transfer of religious property," in "Selected Legal Opinions," 134–135.

[70] This is a memorial temple for Itō Hirobumi who was the first Resident-General in Korea in 1906. He initiated the Japanese Protectorate treaty in 1905 and later deposed the last Korean king, Kojong in 1907. Itō was assassinated by a Korean patriot in 1909 in Harbin, China. The temple site was actually the Korean National Memorial Hall, which was founded in the early twentieth century. Therefore, several organizations gathered around this site and attempted to secure it for their purposes. For example, the US military tried to acquire the site for billets or as an Officers' Club etc.

"whenever the object of a charitable trust fails, the courts will direct the funds to be applied under a scheme as close as possible to the original purpose."[71] It was immaterial whether the temple actually was a trust. Fraenkel innovatively tried to create a legal solution by applying diverse legal theories, leading to the possibility of delivering Japanese religious property to Korean religious organizations. Thus, the temple could be used by the Buddhist Hyehwa College (currently Tongguk University) "for furthering religious teaching."[72]

As for Shinto shrine property, once the USAMGIK Ordinance 11 (November 9, 1945) stipulated that Shinto worship had ended in post-war Korea, the property's main function stopped. The problem was that when the Shinto property ceased its functions, there was no one to inherit it. Seoul, particularly Namsan (South Mountain) district, had been developed around the time Korea became a Japanese Protectorate. Since Japanese modernity was intertwined with religions such as Buddhism and Shintoism, Keijo jinja (Kyŏngsŏng Shinto Shrine), Chosen jinkū (Chosŏn Shinto Shrine), and Ha Kubun Temple were constructed in Namsan district in 1898, 1925, and 1932 respectively.[73] In addition, the Japanese government in Tokyo and Seoul even decided to dedicate a shrine to fallen soldiers in Seoul and Nanam, Hamkyŏng Province and so the government established Keijo gokoku jinja (Seoul Patriotic Shinto Shrine; K. Kyŏngsŏng hoguk sinsa) around the southern part of Namsan in 1943.[74]

With the exception of the Chosen jingū property which belonged to government land, all other property later became private or quasi-private. Keijo

---

[71] Opinion # 503 (August 2, 1946), in "Selected Legal Opinions," 135. Japan trust law adopted the common law, *cy pres* [as near as] doctrine in the Art. 70 of Law No. 63 (April 22, 1922; The Trust Law). It is interesting that the Bureau of Opinions brought diverse sources of law to bear to justify their approach to the situation.

[72] Ibid.

[73] Keijo jinja (Kyŏngsŏng Shinto Shrine) was a Kokupei Shosha (国幣小社) funded by the Japanese colonial government while Chosen jinkū (Chosŏn Shinto Shrine) was a Kanpei Taisha (官幣大社) managed by the Japanese government. Ha Kubun temple was established by the Governor General's support. Regarding each institute's founding and management, see Kim Tae-ho, "1910–20 nyŏndae Chosŏn ch'ongdokpu ŭi Chosŏn singung kŏllip kwa unyŏng"[Japanese Governor-General's establishment and management of Chosen jinkū in 1910–20s], *Han'guk saron* (Thesis on Korean History) 50 (2004): 291–368 and see also An Chong-ch'ŏl [An Jong Chol], "Singminji hugi Pangmunsa ŭi kŏllip, hwaryong kwa haebang hu ch'ŏri" [The establishment and utilization of Pangmun Temple during the late colonial period and its disposal after the liberation]. *Tongguk sahak* 46 (June 2009): 67–93.

[74] See An Chong-ch'ŏl [An Jong Chol], "1930–40 nyŏndae Namsan sojae Kyŏngsŏng Hoguk Sinsa ŭi kŏllip, hwaryong, kŭrigo haebang hu pyŏnhwa" [The founding, usage, and the post-war change of the Keijō Gōkoku Jinjya during the 1930–40s], *Sŏulhak yŏn'gu* 42 (February, 2011): 49–74.

jinja property was rented to Korean educational foundations like Sung-ŭi Women's School, while the Ha Kubun Temple site became the Korean nationalists' memorial site in the 1940–60s and later became Shilla Hotel property in the 1970s. Furthermore, the Keijo gokoku jinja site also became a habitation for North Korean refugees during the cold war era, was rented out and later sold by the Seoul City government.[75] Outside Seoul, there is a similar case like Kangwon jinja on the slopes of Mount Peacock (currently Mount Pongŭi) in Chunchŏn, Kangwon Province. It was first turned into a Korean public library. Later, in early 1948, the USAFIK decided to transform the property into an American Information office.[76]

There are lots of cases where Japanese religious property was delivered specifically to a Korean Christian organization. The most interesting cases are those of the Japanese Shinto sect, Tenrikyo (heavenly principle teachings). Without any inheriting Korean institutions, through the Korean Christians' negotiations with USAMGIK, several Tenri temple sites were delivered to the Korean Presbyterian Theological Seminary (currently Hanshin University) and Yŏngnak church, one of the megachurches for North Korean refugees. In the center of Seoul, their property comprised more than forty former Tenrikyo churches.[77] Surprisingly, the Property section in USAMGIK included several Christians, such as Horace H. Underwood and Namgung Hyŏk, who clandestinely helped the property transfer.[78]

The Military Government in Korea was entitled to sell vested property, though "only in exceptional cases." The authorized land was used for "agricultural purposes, small businesses, and perishable goods." Therefore, the sale of government land in urban areas was not permitted in principle.[79] Even vested properties had become "instrumentalities of Military Government."[80] With

---

75 The different outcomes of these properties comes from the criteria of whether a particular property was government land or municipal (city) land. This topic is beyond the scope of this article.

76 John C. Caldwell, *The Korea Story* (Chicago, IL: Henry Regnery Company), 4–5. Caldwell was a member of the United Army office of Civil Information and came to Ch'unchŏn, Kangwon Province. This site currently has the Sejong Hotel, so how this public property was delivered to private corporations should be researched.

77 Scholars are waiting for sound research on this issue, including missionaries' activities. Regarding Horace H. Underwood's role in property transfer to Korean Christian leaders, see, Jong-Chol An, "No Distinction between Sacred and Secular: Horace H. Underwood and Korean-American Relations, 1934–1948," *Seoul Journal of Korean Studies*, 23/2 (2010), 243–245.

78 Ibid.

79 Opinion # 356 (June 24, 1946), "Request for acquisition of title to fire-break areas and authority to Convert into streets and parkways," in "Selected Legal Opinions," 95.

80 Opinion # 374 (June 17, 1948), "New Korea Company asked to manage certain farmland upon

substantial political change, especially the North Korean initiative on land reform in March 1946, USAMGIK gradually sold vested property to Korean businessmen and peasants.[81]

In its management of vested property, USAMGIK played a government role that the indigenous government usually assumes under international law. Since the US tactical army (USAFIK) was a US delegate and differed from USAMGIK, tensions arose between them regarding property use and its consequent misuse in the case of leases. In the case of damage to vested property, the Provincial Military Governor raised the issue of whether it could file civil suits "if a manager of a vested company misappropriated or embezzled funds owned by such a company."[82]

In the legal Opinion #444 to that question, Fraenkel argued that according to Article 266 of the Commercial Code, if directors have neglected their duties they were "jointly and severally liable for damages to the company." Thus, as a majority shareholder, the Military Government had the capacity to take action on behalf of the company against the director. Also, the Military Government was able to sue in its own name "on the theory that a director appointed by Military Government is an agent of the latter."[83] The Military Government thus had dual duties as a majority shareholder and as the employer regarding vested property.

CONCLUSION

USAMGIK would take on a difficult task when it met a strange circumstance in post-war liberated Korea: to stabilize the situation until a new Korean government was set up while it preserved the peace based upon international law. US military occupation of Korea was unprecedented, in that while in liberated Korea, the

---

which a bank had a pledge of the right of management in order to secure a loan made by it," in "Selected Legal Opinions," 102.

[81] The most conspicuous is the selling of Japanese-owned agricultural land in March 1948. See C. Clyde Mitchell, "Land Reform in South Korea," *Pacific Affairs* 22 (May 1949), 144–145 ("Since Japanese had owned no more than 15.3 percent of the farmland in South Korea, this program affected only one aspect of the land problem. It was planned, however, by Korean and American economists and administrators in the hope that it might serve as a pattern for other, more extensive programs in Korea, China, Japan and elsewhere in the Far East"). Even though the Japanese land did not take a major portion of the whole arable land, the land comprised the most fertile areas so that this policy brought some stability to Korea which had been in economic chaos since the end of World War II.

[82] Opinion # 444 (June 27, 1946), "Recovery of funds of vested companies lost by mismanagement or embezzlement," in "Selected Legal Opinions," 124.

[83] Ibid.

military occupier would expel the former sovereignty, Japan, the United States did not explicitly recognize Korean sovereignty. Thus, it was difficult to reconcile the cherished Hague Regulations with the policy of military occupation.

As a drastic step, USAMGIK vested all the Japanese property in its own administration, in order to use during occupation and later for the Korean government. In the taking of these radical steps, USAMGIK entrusted lots of Japanese private property to Koreans, such that the Department of Justice in particular reinterpreted the international law at the time, the Hague Convention, by arguing that in response to military needs it was possible to vest even private enemy property.

However, in spite of goodwill on the part of USAMGIK, particularly its legal advisors, there was confusion regarding vested property. Whether a specific property would be vested, whether a Korean-Japanese joint project would be vested, and whether a piece of property would be sold, all were challenging issues. Moreover, there was a lack of a complete ledger for the property, so that it would have been fairer for the Japanese to leave only after a complete list had been prepared.[84]

Considering the importance of religious mobilization with diverse Shinto shrines, there were also legal issues in the case of the Japanese Shinto shrines in Korea. Those properties were converted into Korean government property, so the Korean government could handle this issue for its own usage later. Regarding private Shinto shrine properties, most were entrusted to Korean religious organizations. The Japanese Buddhist temple, which was mentioned earlier, is a case in point. Thus, a new Korea inherited this policy from USAMGIK such that the relationship between state and religion became complicated. While the Korean Constitution secured religious freedom, Christianity was favored by USAMGIK and the early Republic of Korea in terms of the public land issue.[85] Therefore, its influence has an origin dating from the USAMGIK era, this issue shedding light on the relationship between the state and religion.

This article has several important implications for further research. First, there should be comparative research on property handling between the Soviet Union

---

[84] E. Grant Meade, *American Military Government in Korea* (New York, Columbia University Press, 1951), 210.

[85] The first Korean Constitution has freedom of religion in Art. 12 as "All nationals have freedom of religion and conscience. There is no national religion and religion is independent from politics." Current Korean Constitution (amended by Constitution No. 10, October 29, 1987) Art. 20 is more specific. "(1) All citizens shall enjoy freedom of religion. (2) No state religion shall be recognized and there should be a separation of the state and of religion," available at the (Korean) Ministry of Government Legislation website, http://www.moleg.go.kr/english/korLawEng?pstSeq=54794 (October 1, 2016).

and Japan, or the People's Republic of China and Japan etc. Also, the relationship between the San Francisco Peace Treaty (1951) and property is a topic to be elaborated upon. Second, determining the legacy USAMGIK's handling of Japanese property had on Korean-Japanese relations, particularly a discussion of Japanese private property issues, is of interest. The latter awaits further archival studies to bring more empirical research to bear on Japanese religious property and Korean society.

Submitted: January 19, 2018
Sent for revision: March 12, 2018
Accepted: April 17, 2018

AN JONG-CHOL (jongc.an@koreanistik.uni-tuebingen.de) *is a junior professor in the Department of Chinese and Korean Studies, University of Tuebingen, Germany.*

REFERENCES

Primary Sources

Göhler, Gerhard and Dirk Rüdiger Schumann, eds. Ernst Fraenkel Gesammelte Schriftern, Band 3 Neuaufbau der Demokraite in Deutschland und Korea. Baden-Baden: Nomos Verlagsgessellschaft, 1999.

Hague Convention (IV) and Regulations (18 October 1907). [International Committee of the Red Cross], https://ihl-databases.icrc.org/ihl/INTRO/195

Han'guk pŏpche yŏn'guhoe, ed. Migunjŏng pŏmnyŏng ch'ongnam, yŏngmunp'an [US Military Government Law Collection]. Han'guk pŏpche yŏn'guhoe, 1971. Also available at [Wikipedia], https://en.wikisource.org/wiki/USAMGIK.

Institute of Asian Culture Studies, ed. John R. Hodge munsŏjip [John R. Hodge Papers] Vol. 1, Hallym University, 1995.

The First Korean Constitution (1948). [(Korean) Ministry of the Government Legislation]. http://www.moleg.go.kr/english/korLawEng?pstSeq=54794

United States Army Forces in Korea. "Selected Legal Opinions of the Department of Justice, United States Army Military Government in Korea" (Compilation Prepared by the Department of Justice Headquarters, United States Army Military Government in Korea, 1948), Vols. 1–2.

Secondary Sources

An Jong-Chol. "No Distinction between Sacred and Secular: Horace H. Underwood and Korean-American Relations, 1934–1948," *Seoul Journal of Korean Studies* 23, no. 2 (2010): 225–246.

———. "Singminji hugi Pangmunsa ŭi kŏllip, hwaryong kwa haebang hu ch'ŏri" [The establishment and utilization of Pangmun Temple during the late colonial eperiod and its disposal after the liberation]. *Tongguk sahak* 46 (June 2009): 67–93.

Bunce, Arthur C. "The Future of Korea: Part I," *The Far Eastern Survey* 13, no. 8 (April 1944): 67–70.

Chou, Wan-yao. "The Kōminka Movement in Taiwan and Korea: Comparisons and Interpretations." *The Japanese Wartime Empire, 1931–1945*. Edited by Peter Duus, Ramon H. Myers, and Mark R. Peattie. Princeton, NJ: Princeton University Press, 1996: 40–68.

Cumings, Bruce. *The Origins of the Korean War: Liberation and the Emergence of Separate Regimes 1945–1947*. Princeton, NJ: Princeton University Press, 1981.

Dinstein, Yoram. "Legislation Under Article 43 of the Hague Regulations:

Belligerent Occupation and Peacebuilding," *Harvard PHPC Occasional Paper Series* (Fall 2004), No. 1: 1-16.

Eckert, Carter J. "Total War, Industrialization, and Social change in Late Colonial Korea." *The Japanese Wartime Empire, 1931–1945*. Edited by Peter Duus, Ramon H. Myers, and Mark R. Peattie. Princeton, NJ: Princeton University Press, 1996.

Fraenkel, Ernst. *Military Occupation and the Rule of Law: Occupation Government in the Rhineland, 1918–1923*. New York and London, Oxford University Press, 1944.

Franklin, William M. "Municipal Property under Belligerent Occupation." *The American Journal of International Law* 38 (1944): 383–396.

Kang, Wi Jo. *Religion and Politics Under the Japanese Rule*. New York: The Edwin Mellen Press, 1987.

Kim Tae-ho. "1910–20 nyŏndae Chosŏn ch'ongdokpu ŭi Chosŏn sin'gung kŏllip kwa unyŏng" [Japanese Governor-General's establishment and management of Chosen jinkū in 1910–20s], *Han'guk saron* 50 (2004): 291–368.

Kim Sŭng-t'ae, ed. *Han'guk kidokkyo wa sinsa ch'ambae munje* [Korean Christianity and Shinto shrine worship issues]. Seoul: Han'guk kidokkyo yŏksayŏn'guso, 1991.

Lauterbach, Richard E. "Hodge's Korea." *The Virginia Quarterly Review* 23, no. 2 (July 1947): 349–368.

McCune, George M. *Korea Today*. Cambridge, MA: Harvard University Press, 1950.

———. "US Policy Act II: Korea," *New Republic*, 24. May 5, 1947: 25–27.

Meade, E. Grant. *American Military Government in Korea*. New York: Columbia University Press, 1951.

Meyer, David A. "The 1954 Hague Cultural Property Convention and Its Emergence into Customary International Law." *The Boston University International Law Journal* 11 (1993): 349–389.

Mitchell, C. Clyde. "Land Reform in South Korea." *Pacific Affairs* 22, May 1949: 144–154.

Oppenheim, Lass. "The Legal Relations between an Occupying Power and the Inhabitants." *Law Quarterly Review* 33 (October. 1917): 363–356.

United States Armed Forces in Korea. "History of the U.S. Armed Forces in Korea." Manuscript in the Office of Military History, Washington D.C. (Seoul and Tokyo, 1947, 1948), Vols. 1–3.

Yi Tae-gŭn. *Kwisok chesan yŏn'gu: Singminji yusan kwa Han'guk kyŏngje ŭi chillo* [A study on vested property: Colonial legacy and the road of the Korean economy]. Seoul: Isup, 2015.

Yoshio Morita. *Chosen Shōsen no Kiroku* [Record of the end of the war in Korea]. Tokyo: Gannando Shŏten, 1964.