

## The Role and Function of the Yangban(兩班) in the Development of the Legal Culture in Korea\*

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### I. Preface

The Confucian culture of China influenced the formation and development of the Korean state and laws from ancient times to the 19th century. That influence reached its peak in the 15th century. The most salient characteristic of the Chosŏn period, from the 15th to 19th century, can be found in that the Chosŏn dynasty was a centralized yangban-bureaucratic state with Confucianism adopted as its ideology of government. This means that the yangban were the nucleus of government. The ruling yangban class, upholding Zhu Hsi's Neo-Confucianism as the ideology of government for the newly founded dynasty, fixed itself as the exclusive and dominant estate, and then assumed and carried out the role of ruler and leader in the political, economic, social, and other fields, and monopolized the enjoyment of Confucian scholarship and refinement. It could be said that the Chosŏn dynasty was truly a society ruled by the yangban and this applied to the making and executing of laws as well.

### II. The Pattern of the Existence of the Yangban

The term yangban indicated the civil(tongban or munban, 東班, 文班) and military(sŏban or muban, 西班, 武班) officials who were divided into 18 ranks in the official organization. The term began to be used in the last years of the 10th century to indicate only bureaucrats in active service. As the yangban

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-bureaucratic system became firmly established and the tradition and social superiority of the bureaucratic families continued, not only the yangban officials themselves but their family members and descendants as well, came to be called yangban. Especially during the Chosŏn period after the 15th century, the term yangban lost its connection with the official organization and was diverted to mean a privileged social estate different from the class of *yangin*(良人 good people, commoners). The terms *sadaebu*(士大夫), *sajok*(士族), *sain*(士人), *saryu*(士流), and *sarim*(士林) were also included in the concept of the yangban. Its generally understood meaning was "descendants of high bureaucrats who, coming of noble lineage, belong to a high estate." The *sarim* indicated the groups of yangban intellectuals out of government service as opposed to the bureaucrats in active service in the central government, who emerged beginning in the latter half of the 15th century.

The standard of evaluating the yangban was the lineage. This was because the lineage was closely connected with government ranks, which, in turn, formed the source of authority, wealth, and dignity. Accordingly, the rank and the status of one's lineage was determined by whether one had noted ancestors in one's paternal line, whether one inherited Confucianism and Chinese literature, whether one held a government position, whether one had passed the government service examination, by marriage between the same yangban families, and by the quality and quantity of one's association. The lineage of military officials was regarded as lower than that of civil officials.

The estate of the yangban was not one that could be acquired upon possessing set requirements but one that was acquired by birth, and enjoyed by heredity in principle. Receiving the Confucian education, applying for the civil and military service examinations, which were gateway to government positions, and satisfying the requirements for being employed by the government, were privileges legally guaranteed, exclusively to the yangban and to those born to yangban parents(especially a yangban father).

Although the estate of the yangban was a fixed one, social mobility which

could allow a yangban to be degraded into a commoner and a commoner to rise to a yangban was recognized by the law and social custom, but such cases were exceptional. In order for a yangban to enjoy his position accruing from his privileged estate and enable his descendants to inherit it, he was required to make constant efforts to build up his Confucian refinement through ceaseless reading and observation and to pass the government service examination or become an official and, if he failed in these attempts, he had to secure and maintain his relations of marriage and association with his yangban colleagues ceaselessly in order to be recognized socially, give proof of his talent, knowledge, and literary ability in the form of writings, display his estate by demonstrating the achievements of his noted ancestors by erecting monuments, shrines, pavilions, and private schools in their names, and strengthen his clan solidarity and ties by forming his paternal clan into an organization called *chongjung*(宗中). If he failed to satisfy any of the above-mentioned conditions, he could not avoid the fall of his estate position.

Ability and character based on Confucian refinement were especially required of yangban intellectuals. In other words, they were required to be equipped with speech and conduct and character based on refinement cultivated by studies of the Four Books and Five Classics of Confucianism(四書五經) to the extent that they could repeat most of them from memory, and realize the spirit of the Chinese sages, becoming well versed in the history of politics of China and Korea through all ages, have the polish of the literary ability to compose poems and prose writings patterned after Chinese classical prose and poetry, calligraphic ability of writing letters in a beautiful style with refined touches of the brush. This was the ideal image of yangban intellectuals who were the objects of respect.

### III. The Social Function of the Yangban

The only and supreme objective of the yangban intellectuals aspired after and regarded as their mission in life was to pass the government service

examination becoming an official, and display their statesmanship by participating in politics. This was not only to glorify themselves and their lineage but to acquire political authority, behave as a member of the ruling class by becoming an official, and relying on that authority, provide a stable basis of life and expand it.

In order to become an official and be employed by the government they had to pass the government service examination. Other factors, such as meritorious services rendered to the state by their ancestors, were also considered. Advancing through government circles by these procedures, they exercised the state authority. On the other hand, those yangban who retired or were not given opportunities to become officials exercised their influence on local politics and the education of commoners in the capacity of faithful subjects of the king while remaining in their native towns. As individuals or in groups they also submitted proposals and advice accompanied with poignant criticism of the policies of the king or the central government. The functions of these yangban intellectuals, who were not bureaucrats, to speak for the commoners, from opinions, and convey them to the capital, should not be underestimated.

As partisan strife among yangban cliques became intense and political confusion continued from the 16th century, it no longer became possible to give equal opportunities to yangban to rise because of only their estate and academic knowledge. As a consequence, there arose the tendency that they maintained their existence by forming academic cliques around their teachers or their regional or blood ties rather than trying to pass the government service examination or become officials, and satisfied themselves with self-cultivation merely as book readers.

#### IV. The Legal Knowledge of the Yangban

What was called law in Korea was traditionally a written law legislated by the state. Its contents consisted mainly of criminal law and administrative regulations. In particular, the law usually meant the criminal law and

jurisprudence was called *yulhak*(律學), *yul*(律), meaning criminal law, being synonymous with the law. The king and the bureaucrats regarded the law as the ideal of government to rule the people with Confucian civility and provide them with virtue, and the law was considered to be a tool for governing with civility, and a part of politics. The importance of government by the law was fully recognized within this limit, but the knowledge of the law in general, including criminal law and procedures, was slighted.

Placed outside the matters to be included in Confucian knowledge were jurisprudence, medicine, astrology, geography, foreign languages, arithmetic, music, and painting, which the ruling yangban class called "miscellaneous learning"(雜學) meaning that they were vulgar. The government positions dealing with these subjects were called "miscellaneous positions"(雜職) and the government service examination to select persons to such miscellaneous positions were called "miscellaneous examination"(雜科).

There were judicial positions in the judicial offices of the central government and in the administrative offices of the local governments, but they were lower positions. Those who wanted to be employed at these positions applied for the judicial service examination by absorbing knowledge of law as law students. Subjects at the examination were recited by rote and interpretation of the *Da Ming Lü*(大明律) and *Wu-Yüan-Lu*(無冤錄), a book of medical jurisprudence, and of the *Kyöngguk Taejön*(經國大典) and *Sok Taejön*(續大典), both codes of the Chosön Dynasty.

Early in the Chosön period there were instances that descendants of yangban studied law and applied for judicial positions after passing the government service examination. On account of the policy that judicial services were not transferred to the general administrative positions they yearned for so much, even after their term of office expired, but were appointed to military posts, and the fact that the government tried to professionalize the judicial positions, and due to the feeling that yangban should devote themselves wholly to Confucianism and should not engage in law, the yangban slighted judicial

positions and kept themselves at a distance from study of law. Judicial positions were filled through the judicial service examination. As a result, persons from lower classes were assigned to technical positions including the judicial posts from the mid-15th century on, and the trend of hereditary transmission came into being. After that time, persons who engaged in technical positions formed their own peculiar estate lower than that of the yangban and they came to be called *chungin*(middle people, 中人). At the same time, the local clerks, who, being the lowest officials, were in charge of detailed administrative affairs, were called *ajön*(衙前) or *sōri*(胥吏) and entitled to hereditary transmission of their estate like the middle people. In this manner the yangban defined persons who engaged in technical positions and who were in charge of detailed administrative affairs as vulgar intellectuals and fixed the exclusiveness of its own estate in order to more firmly secure its estate.

Thus, legal knowledge and actual judicial jobs were transformed into hereditary positions monopolized by the middle people and local clerks, and the yangban devoted themselves solely to studies of the Confucian classics, poetry, and calligraphy. They regarded it as shameful to read the law, and hid their codes of laws deep in their closets, never to attract their attention again. Even though the reading of codes was required in the government service examination and in promotion tests, it was customary to pass by way of temporary means. As a result, nobody knew anything worthwhile about law. Since the yangban bureaucrats, despite the fact that they were both officials and judges, knew nothing about judicial affairs, they had to entrust all to the middle people or local clerks. What the yangban administrators did was to keep their seats and place their names on documents. It was usual that the persons in charge of actual judicial affairs took an irresponsible and temporizing attitude, merely finding pertinent provisions mechanically on the basis of their long hereditary practical experiences, and playing tricks at will. The petit officials engaged in actual judicial affairs did not conceive of the idea of

cultivating their knowledge of law in order to develop legal theories, or to form their own independent judicial group, and the yangban bureaucrats let them alone. As a result, jurisprudence could not be studied and systematized as special professional knowledge.

A system of agents for lawsuits called “*oechibuin*”(外知部人) sprang up spontaneously and was in practice until the end of the 15th century. What did the “*oechibuin*” do? They drew up a complaint after hearing the contents of an incident, gave advice as to the essential points of a lawsuit or instigated the filing of it, and, when asked, appeared in court and took part in the trial on behalf of the client and received a promised amount of remuneration in case of winning the lawsuit. Because of this practice, the number of lawsuits increased, trials were prolonged, and the number of unsettled lawsuits accumulated, making it inevitable for the government to take the measure of prohibiting “*oechibuin*” to interfere at the end of the 15th century. Furthermore, the government hunted and arrested them and exiled all their family members, promulgating a decree that those who informed against them or arrested them would be given a prize as in case of robbers. The “*oechibuin*” gradually disappeared and a bud of the lawyers in Korea was nipped.

## V. Roles of Legislation and Application of Law

The yangban bureaucrats in power, after the foundation of the new dynasty, established the basic ideology for its government by law in the 15th century. They believed that the older the laws were, the better they were, and the better they suited the wishes of the people. Therefore, they believed, laws should be eternally immutable and, when it was inevitable to amend them, it would be better to amend or abolish only regulations relative to a particular application, without altering the basic spirit of the old law. Thus they attached sacredness to old laws. This was an idea aimed at legal stability and this basic ideology was observed generally for 500 years. The assertion began to rise in the 16th century that laws should be amended in accordance with

changes of the times and changes in the circumstances in order to insure their validity concretely. However, this assertion failed to convince conservatives who believed that the foundation of the dynasty should be solidified and legal stability be insured by suppressing the excessive promulgation of new laws that were neither necessary nor urgent.

The yangban bureaucrats in power played an unprecedented role in history in the introduction of Chinese laws, legislation, and the compilation of codes. Before compiling Korea's unique codes, they translated the entire *Da Ming Lü* into Korean wording to help officials understand and apply it more conveniently. *Da Ming Lü* was applied as the general rule of criminal law for 500 years, until the end of the 19th century.

Legislation, compilation of codes, and publication of numerous collections of regulations were carried out by the yangban bureaucrats. They compiled codes that were the basis of government by collecting, classifying, and systematizing the laws in force and published a book of annotations of legal terms in order to substantiate government by law. When laws and regulations were accumulated, they compiled new collections and, they revised and supplemented the existing code. Furthermore, the bureaucrats published various introductions to the code, collections of administrative regulations, and a collection of regulations concerning criminal administration. Those among the bureaucrats who were thorough in their sense of mission and interested deeply in law privately wrote guides to administration and trials, books on criminal law, and collections of precedents in criminal trials on the basis of their knowledge and experience, and endeavored to enlighten those who were concerned.

Seen from this angle, the yangban bureaucrats can be evaluated as having been conscious of their responsibility in the legislation and application of laws and as having fulfilled their responsibility.



## VI. Evaluation in the Process of Modernization

Beginning in the end of the 17th century, some of the bureaucrats and yangban intellectuals out of government service launched a silhak(實學) movement through writing and practice, rejecting the speculative learning of Zhu Hsi and appealing for efforts to settle problems in real terms with a concern for people, in order to revitalize the stagnant society. They advocated that old laws which did not suit the demands of the times be abolished, and aroused interest in law. However, most of the yangban intellectuals still adhered to the traditional knowledge and thought.

In the last years of the 19th century, legally recognized estates were abolished, and jurisprudence and the judicial profession were recognized as a modern science and a modern profession. Even though intellectuals coming from newly rising families and the middle people participated in promoting the introduction of western culture, men from the yangban class still formed the main stream and worked actively as bureaucrats, judicial officers, and intellectuals. This situation continued under Japanese rule. Availing themselves of the Japanese policy of appeasing the yangban, students from yangban families occupied the majority among those who studied in Japan or received modern educations, and after becoming bureaucrats, judicial officers, and intellectuals, they played the same role as the yangban intellectuals did in the former period. The situation was the same after independence in 1945. Families that had enjoyed economic wealth and privileges while reigning as the power-oriented and self-righteous ruling class throughout the 500-year Chosŏn period and descendants of alienated yangban families, retained their socially superior tradition by rapidly coping with and adapting themselves to the changing times and the changed circumstances, while holding on to their spiritual tradition and economic wealth.

## VII. Conclusion

The view of value accumulated through the roles played by the yangban in politics and law for 500 years, whether positive or negative, still exerts a latent influence in the modern age. The character and virtues possessed by the yangban are still considered the model of ideal human beings, even after the acceptance of the European view of citizens. Therefore, in order to affirmatively understand the historical nature and roles of the yangban type intellectuals in the process of modernization, we must comprehend the historical background of the Confucian and bureaucratic characteristics.