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"Ground-Up" Legal Mobilization in South Korea

Rights Claiming in South Korea. Edited by Celeste L. Arrington & Patricia Goedde. Cambridge: Cambridge University Press, 2021, 300 pp. Paperback \$33.99
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The role and features of law in political, economic, and social changes in South Korea is a popular topic in law and society studies. Insightful research has been made available by way of articles, monographs, and edited volumes.¹ *Rights Claiming in South Korea*, a product of 15 contributors, provides an updated understanding of law and social change in South Korea. The volume, moreover, comes up with novel efforts intended to distinguish it from many existing studies. In summing up the introductory chapter, the editors Celeste Arrington and Patricia Goedde characterize the volume in the following terms:

Rights Claiming in South Korea presents interdisciplinary analyses of why and how communities and individuals in Korea have mobilized the law and rights language to express grievances and claim entitlements. This volume explores the varieties of discursive rights frames that claimants and activists deploy. (p. 15)

Whereas studies in law and society in Korea have tended to focus on institutional structures or politico-legal developments, often through the lens of democratization, this collective project shifts the focus of inquiry to "claimants." With a "bottom-up approach," the book analyzes claimants' discursive strategies for rationalizing and framing their grievances as rights, legal mobilization practices to challenge the existing distribution of rights, and counter-mobilization schemes in defence of the status quo, which both shape and are shaped by legislative rules and judicial decisions in an iterative process.

Who are the claimants? The first two chapters bring to light petitioning by women in the late Joseon period (Chapter 1 by Jisoo Kim) and women's lawsuits during Japanese rule (Chapter 2 by Sungyun Lim), respectively, followed by a chapter on women's legal status in postliberation Korea (Chapter 3 by Eunkyung Kim). The other groups of claimants are: the family members of the victims of atrocities during the Jeju 4.3 events (Chapter 4 by Hun Joon Kim), industrial workers (Chapter 9 by Yoonkyung Lee), persons with disabilities

¹ Yang (2013); Ginsburg (2004); Mo & Brady (2010); Yoon (2010), to name a few.

(Chapter 10 by JaeWon Kim), LGBTI people (Chapter 11 by Ju Hui Judy Han), international migrants (Chapter 13 by Erin Aeran Chung), and North Koreans in South Korea (Chapter 14 by Sheena Chestnut Greitens). The claimants are those victims or minority group members who actively seek redress or campaign for the betterment of their positions. They also include activists, NGOs, and advocacy networks that participate in rights claiming as a form of social movement.

A few chapters are assigned to some of the institutional vehicles of rights claiming and fora of struggle—the National Human Rights Commission (Chapter 5 by Soo-Young Hwang), the Constitutional Court (Chapter 6 by Hannes Mosler), and ordinary courts (Chapter 7 by Celeste Arrington). “Public interest lawyers” form another part of the infrastructure for legal mobilization, while they play a significant role as actors themselves, namely as activists and advocates (Chapter 8 by Patricia Goedde). The book also contains a chapter on the ongoing battle prompted by the campaign for comprehensive anti-discrimination legislation, which is a strategic goal for multiple groups of claimants (Chapter 12 by Jihye Kim and Sung Soo Hong).

The volume has the following features. First, it builds upon a conference held in April 2018, organized by the George Washington Institute for Korean Studies. This explains how the multiple authors agree on the purposes and character of the volume, which they by and large declare to follow in their chapters—a bottom-up, constructivist and interactionist approach, interest in legal mobilization, concern with “support structures” for rights claiming, and so forth. The chapters cite one another in making common arguments and drawing on mutually supporting information. All of the contributors are established experts in respective research areas, many of them having published monographs on the topic of their respective chapter, in which they take approaches that are more or less in harmony with the common agenda of the volume. Nevertheless, the editors deserve a lion’s share of credit for having orchestrated the 15 pieces into a coherent whole.

Second, the editors have skilfully defined the methodological and theoretical identity of the book and thrown into relief the book’s distinctive characteristics in comparison to existing literature. They reject the simple assumption that civil and human rights in Korea have cumulatively expanded in proportion to democratization. They emphasize the agency of claimants in making the socio-legal order instead of portraying them as passive targets or beneficiaries of the official legal system. They say:

[W]e employ a bottom-up approach and trace how mobilizing the law and rights language constitutes rights and imbues them with meaning. (p. 4)

The volume thus advances scholarship about how societal actors do not just respond to perceived judicial receptivity to particular rights but also shape it. (p. 6)

At the same time, they (per Arrington) propose to overcome the “false dichotomy of structure versus agency” (p. 153). They do so by introducing the concept of “legal opportunity structure”—the structure of rules and procedures that encourage or discourage rights claims, which shapes and is mediated by actors’ perceptions of legal institutions and their acts of leveraging the opportunities (Chapter 7).

Third, the volume successfully shows how the differing areas of struggle for rights intersect with one another. LGBTI people and Muslim migrants have commonly fallen victim to hate speech by conservative Protestant church groups. Interconnectedness between different areas of discrimination has been recognized and seized on by the anti-discrimination movement; advocacy organizations representing diverse minority groups formed the Coalition for Anti-Discrimination Legislation (Chapter 12). Dongilyeon, a gay and lesbian rights organization, “asserted that what threatened one vulnerable group

would render other marginalized individuals vulnerable as well.” Judy Han has it that “their activism promoted LGBTI rights not by excluding other rights claims but by bridging their claims with other groups’ rights” (p. 245). Yet the volume simultaneously points out that “the very process of claims-making and societal groups’ interactions with the state” has contributed to “hierarchies of rights” (p. 322). This means that, while responses from state actors and the intensity and complexness of counter-mobilization discourse shape potential claimants’ prospects of success and perceptions of the state institutions’ receptivity, it is eventually through the choice of action on the part of those actors—accurately speaking, differing groups of actors—that certain rights are suppressed presumably to promote other rights. Judy Han uses the term “politics of postponement” in highlighting the deprioritizing of LGBTI rights by President Moon Jae-in when he presented himself as a “feminist president” and a champion of gender equality (pp. 246–9). South Korean progressives’ indifference to the rights of “North Korean defectors” is well known, and conservatives take on the opposite attitude by prioritizing North Korean human rights over many minority rights and anti-discrimination claims (p. 323).

Although the authors express their commitment to the shared definition of what the book should do, they naturally expose variations. While it is somewhat unclear what the authors mean by the “constructivist” and “interactionist” approach they say they have adopted and where on the map of social-scientific methodology it is situated, one may find some prominent features of symbolic interactionism and phenomenological research, which treat the social world as a construct made of shared interpretations and subjective meanings entertained and projected by the members of the society. For example, Yoonkyung Lee, in delineating the changing notion of labour rights, professes to “take the lived experiences in the workplace as the primary ground from which workers’ grievances and rights claims are generated” (p. 197). Yet authors differ as regards whose lifeworld they inquire into. While most chapters attend to claimants’ perceptions of their conditions and their interactions with the state and powerful actors, Eunkyung Kim focuses almost exclusively on the thoughts and motives of a few major jurists who led the legal discourse of the immediate postliberation period and the drafting of the Civil Code of 1958, and deciphers the cultural code lurking in the gender-related rules of civil law without any account of ordinary societal actors’ perspectives (Chapter 3). Indeed, the shared “consciousness” of the societal actors referred to in this volume is what Anthony Giddens terms “discursive consciousness” as opposed to “practical consciousness.”² That type of consciousness takes on deliberate theoretical expressions and often manifests itself in propositional forms of knowledge that are susceptible to strategic (re)framing. The best example is what Soo-Young Hwang depicts as *seonjinguk* (advanced country) identity (Chapter 5). Hwang shows how this “intersubjective” national identity was invoked to rationalize the call for a national human rights institution (National Human Rights Commission of Korea, NHRCK). The establishment of the NHRCK was precipitated by the influence of international human rights organizations and also by President Kim Dae-jung’s winning of the Nobel Peace Prize. The *seonjinguk* identity was reframed under the Lee Myung-bak presidency in favour of economic growth, resulting in the downgrading of the NHRCK. Another good example is the politics of historical memory surrounding the Jeju 4.3 events and concomitant redress claims. Hun Joon Kim demonstrates how the memories were negotiated in the conflictual process of truth and reconciliation and the framing of claims was influenced by changes in political power (Chapter 4).

One of the theoretical thrusts of the book, as highlighted by the editors, is that “rights are plural and fluid in meaning.” While this thesis is intended to explain all cases of framing grievances, it best fits the first two chapters. Jisoo Kim illuminates an erstwhile

² Giddens (1984).

neglected reality of women in the late Joseon period (Chapter 1). She underlines the fact that all people regardless of their positions in the social hierarchy had legal capacity to file petitions and shows how women used petitions to address their grievances, which they framed in narratives developed within a range permitted by Confucian ideology. Sungyun Lim corrects the stereotypical understanding of the legal rights of women during Japanese rule based on fixation with the household head system and Article 14 of the Japanese Civil Code denying women full legal capacity. She introduces cases in which the courts recognized the right of women over “separate property” (Chapter 2).

While the editors try to distance their book from the familiar assumption that improvement in human rights is a natural outcome of democratization, neither they nor the authors of the individual chapters downplay the fact that democratization has created a necessary condition for Korea’s remarkable progress in human rights. To be sure, democratization has strengthened the infrastructure and expanded opportunities for legal mobilization. Erin Aeran Chung makes it the crux of her discussion to acknowledge continuity between the movement for democracy and minority rights advocacy. She employs the concept of “civic legacies” to describe how “the ideas, networks, and strategies applied in previous struggles for democratic inclusion” have shaped the ways in which civil society actors and migrants address their grievances and claim rights in post-democratization settings (Chapter 13).

Considering the subject matter of the volume, readers may not be surprised that some of the authors expose their political viewpoints and make politically engaged statements. It is understandable that they make a distinction between the liberal Kim Dae-jung and Roh Moo-hyun administrations on one side and the conservative administrations of Lee Myung-bak and Park Geun-hye on the other in evaluating the progress of human and minority rights. Readers may feel much sympathy with the activists for disability rights who urged in great haste the National Assembly to enact the Disability Discrimination Act, even jettisoning the chance to adopt new elements of the advanced 2006 UN Convention on the Rights of Persons with Disabilities, because they thought the law should be enacted before the anticipated return to power of the conservatives (p. 230). That the conference based on which this volume came out was held at a time of euphoria—a year after the inauguration of President Moon Jae-in, the consummation of the so-called “candlelight revolution,” and only a few days before Moon met the North Korean leader Kim Jong Un—may explain such remarks as “Moon and his election represent the hope to restore democracy and normalize the country after Park’s impeachment” (p. 120). Yet some instances of premature judgment and lack of sufficient distancing between the author and the realities observed may raise eyebrows for some readers. For instance, commenting on President Moon’s exhortation pressing for the conversion of “irregular workers” into regular employment in the Incheon International Airport in 2017, Yoonkyung Lee concludes that “[t]hese are positive examples that show how government intervention can uphold workers’ rights and bring a closure to long, protracted labour struggles in South Korea” (p. 213). Isn’t this simplistic, given the furor, particularly among the youths, following Moon’s political gesture that left intact the huge gaps between regular and irregular workers in the vast majority of industrial sectors? By characterizing authoritarian South Korea as an “autocratic” state (p. 200) and explaining away the complex structural forces that have created a dual labour market by catch-all terminologies such as “neoliberal restructuring” or “neoliberal shift,” this author reduces the credibility of her otherwise well-founded inquiry into the rights consciousness of workers and their changing claims (Chapter 9).

Yet some superfluous dicta and minor oversight do not detract from the great contributions the volume makes to Korean studies and the areas of socio-legal research represented by its chapters.³ For introducing new archival sources and fresh interviews, and

³ It was not the “Administrative Procedure Law” (p. 157) that created an administrative court (what is now the Seoul Administrative Court). An administrative court was established by the Court Organization Act as amended

with theoretical insight garnered from up-to-date literature in social science, *Rights Claiming in South Korea* will be praised as a significant breakthrough as well as a reliable handbook in the study of law and society in Korea and Asia.

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History of South Korea's Courts and Constitutional Transitions

Constitutional Transition and the Travail of Judges: The Courts of South Korea.
 By Marie Seong-Hak Kim. Cambridge and New York: Cambridge University Press, 2019.
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South Korea's 1987 constitutional transition has received ample and well-deserved scholarly attention, being hailed as the point of departure of both democracy and the rule of law in the country. By contrast, the decades running back to the founding of the state in 1948 are typically associated with authoritarianism and rule by law, having brought about repression and human rights violations primarily through the arrests, trials, and imprisonments suffered by generations of political dissidents. This incontrovertible reality has bred "the oversimplified view that the courts were inoperative, even irrelevant, before democratization" as stated by legal historian Marie Seong-Hak Kim (p. 15). Her book therefore revisits what the judiciary did under the successive regimes marking South Korea's contemporary history.

Kim compellingly contributes to and engages with the comparative literature on courts in autocratic contexts by her in-depth case-study research. Empirically, she examines judicial arrangements and rulings for the entire period since the end of Korea's colonization by Japan in 1945. Following the introduction, Chapter 2 is dedicated to the post-liberation years (including the 1948–60 First Republic under Rhee Syngman as well as the shortly lived 1960–61 Second Republic), Chapter 3 to Park Chung Hee's Third Republic (1962–72), Chapters 4, 5, and 6 to Park's Fourth Republic (1972–79, also known as the

in 1994 and most of its procedural matters are provided for by the Administrative Litigation Act. Art. 750 cited on p. 163 is not an article in the Civil Procedure Act, but an article in the Civil Code. The English translations of the names of a number of Korean laws cited in the book do not correspond to the translations provided by the Ministry of Government Legislation. Since the Ministry's translations are not always the best and often lack elegance, one has justifiable reason to come up with different translations. But, in an edited volume with multiple contributors, translations should be uniform throughout.