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"Woman Free of Habitually Lewd Acts?": Criminal Law, Postcoloniality, and Women's Sexuality, 1953-1960*

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This paper examines the relationship between Criminal Law, postcoloniality, and women's sexuality in postwar Korea by exploring the genealogy of the "woman free from habitual debauchery." This category was specified in two provisions of the Criminal Law, the "crime of mediating debauchery" (Clause 242) and the "crime of obtaining sex under false promises of marriage" (Clause 304).

The idea of the "woman free from habitual debauchery" first appeared in relation to the "crime of suggesting debauchery" in the Old Criminal Law of the colonial period (Clause 182), and it was succeeded by the Criminal Law of the newly born Republic of Korea. In this regard, the idea of the "woman free from habitual debauchery" is a useful clue to reveal the coloniality of both the Criminal Law and the Korean society that produced such a law.

However, the Criminal Law did not provide the definition of "woman free from habitual debauchery." This study explores who was actually referred to as such category by investigating precedents. On the trials concerning the "crime of mediating debauchery," the accusers' "habitual debauchery" was hardly contested. It was because this category was related to the "minority"—another category of the same provision—and overwhelmed by it, so the accusers were labeled as "obviously vulnerable victims." On the contrary, in the case of the "crime of obtaining sex under false promises of marriage," "habitual debauchery" was much more controversial. There was no consensus among lawyers about how to define "debauchery" and "habit," so the accusers' sexual histories, rather than the defendants' fraud, were often debated. The so-called "Park In-Soo Affair" was such a case.

Therefore, the trials regarding the "crime of obtaining sex under false promises of marriage" functioned as the "public sphere" to verify a sense of chastity of Korean women, to establish a new standard of it, and to socially punish the women who fell short of such a standard. In conclusion, the category of the "woman free from habitual debauchery" was not

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a nominal trace that legal scholars carelessly forgot to delete, but was a means of disciplining women's sexuality and rebuilding male-oriented gender order that had been destroyed by the war.

Keywords: *Criminal Law, Crime of Mediating Lewd Acts, Crime of Obtaining Sex under False Promises of Marriage, Women Free of Habitually Lewd Acts, the Park In-Soo Affair, postcoloniality*

I. INTRODUCTION

In November 2009, the Constitutional Court of Korea ruled that the "Crime of Obtaining Sex under False Promises of Marriage" was unconstitutional, following the appeal of two men who had been convicted and insisted that it inhibited their sexual autonomy and pursuit of happiness. The law (Article 304) stated that "Anyone who has sexual intercourse with a woman free of habitually lewd acts using the promise of marriage or fraudulent means shall be punished by imprisonment not more than two years or by a fine not exceeding five million won." The Constitutional Court ruled the provision unconstitutional on the following grounds:

1. "The problem that men select women for their act of love without using malevolent means like force or violence is a private and intimate area that the state should refrain from intervening."
2. "It is denying the sexual autonomy of a woman to demand a punishment of a man with whom she had an affair by insisting that the decision to have sexual intercourse was made by a misunderstanding, even though she did decide to have sexual intercourse by herself."
3. "Limiting the subject of protection to women free of habitually lewd acts is forcing a patriarchal and moralistic sexual ideology based on a male chauvinist concept of chastity." (Full Bench 2008 Hŏn-Ba 58, 26, November 2009)

To summarise, the crime was deemed unconstitutional because it violates proportionality, denies women's sexual autonomy, and only applies to wome "free of habitually lewd acts." Furthermore, unlike the crime of adultery,

which also pertains to sexual autonomy, the crime of obtaining sex under false promises of marriage punished only men. The reason that the latter was repealed prior to the former, which had gone with more constitutional appeals even earlier,[1] is probably not irrelevant to the discriminative nature between the subject of protection as coded ("Women free of habitually lewd acts") and the objects of punishment (i.e., men).

What is interesting here is that the crime is not a relic of the criminal code that was imposed during the Japanese occupation, but was introduced after liberation, though it is related to the colonial legal system. Japan drafted a criminal code between 1926 and 1940 (hereafter, the Japanese draft),[2] to correct various problems in the existing criminal law. The Japanese draft was suspended during World War II and was eventually abandoned (Oh and Choi 1999; Oh 2003). The proposed legal code was the first to criminalize the act of obtaining sex under false promises of marriage,[3] and it came to be enshrined in the new Korean criminal law in 1953. After liberation, legal scholars depended on the Japanese draft as a template to make the new criminal law (Oh 2003, 111-112; Cha 1996, 55-56). As a result, the crime, which was never enforced in Japan, was now introduced to Korea (Cho 2009, 260). Hence, this particular crime is a product of an irony, one wherein a colonial vestige (the old criminal law) was replaced with another colonial vestige (the Japanese draft) in the process of building a new postcolonial nation-state.

However, the newly legislated criminal law limited the victims to women "free of habitually lewd acts," unlike the Japanese draft. The phrase "woman free of habitually lewd acts" appears in the crime of "soliciting lewd acts"

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1 The constitutional appeal for adultery has been filed four times: 1989, 1990, 2000, and 2007. For crime of obtaining sex under false promises of marriage, it has been filed three times: 1999, 2002, and 2008.

2 The formal title for this draft is "*Resolution and Reservation Clauses from General Meeting of Commission for Amendment of Criminal Law and Prison Law: Unsettled Draft for General Principles and Particulars of Criminal Law*" (Oh and Choi 1999, 107).

3 Chapter XXXV (Crimes of Adultery) Article 395. A person who induces a female to engage in sexual intercourse under pretence of marriage shall be punished by imprisonment for not more than three years (Ministry of Justice Investigative Bureau 1948, 70).

from the colonial version of the criminal law (Article 182), and is the direct translation from Japanese expression "淫行の常習なき婦女." The colonial version of the criminal law stipulated that "Anyone who makes a woman free of habitually lewd acts to commit adultery by soliciting lewd acts for profit shall be punished by imprisonment of not more than three years or by a fine not exceeding five hundred yen" (Boa 1910, 470). This crime was replaced with the Crime of "Mediating Lewd Acts" of the new criminal law (Article 242), and still remains in force today. As a result, even though Crime of Obtaining Sex under False Promises of Marriage has been repealed, the anachronistic phrase "woman free of habitually lewd acts" is still intact under current criminal law (it was repealed in December 2012—Translator).

This raises several questions. Who is a "woman free of habitually lewd acts"? How did the court define "habitually lewd acts"? Why did the criminal law under Japanese rule make this distinction? Why did the Korean government enact a law making this distinction? Furthermore, what effect has this clause had? This article tries to answer these questions.

This analysis covers the period between the end of the Korean War in 1953 to 1960, the year before the military coup. During this period, Korean society was faced with a dramatic crisis: an increase in the number of war widows and orphans, mass unemployment, the weakening of traditional rural communities, rising crime rates, and the spread of American culture. Interestingly, such a crisis also coincided with the overturn of the traditional gender hierarchy. Although war claimed the lives of numerous people, the death rate was highest among men.[4] In the absence of men, many women entered various kind of labour including sex work, and this made many men feel insecure (Kim 2006, 18-19; Park 2011, 121). As such, the period right after the Korean War is a period when men's concern over female sexuality was higher than other periods, thus the need for the state to intervene to curb "sexual decadence" rose sharply. For these reasons, post-war Korea is

[4] In 1952, the male population of South Korea was around 10,083,000, more than 100,000 smaller compared to 10,180,000 in 1949. On the other hand, the female population increased to 10,443,000 in 1952 from 9,970,000 in 1949. The fatality was very high in male of their 20s. The sex ratio of peoples aged 20-29 by region in March 1952 was: 47.3% in Seoul, 76.6% in Gyeonggi, and 87.4% in Gyeongnam (Jeong 1999, 18-19).

an interesting site for analysing the relationship among female sexuality, the gender order, and state power.

II. METHODS AND DATA

Academic discussions among criminal law scholars on "woman free of habitually lewd acts" have concentrated on its meaning. By contrast, there is no research on who the "woman free of habitually lewd acts" actually were in the rulings concerning Crime of Mediating Lewd Acts (henceforth, CML) or Crime of Obtaining Sex under False Promises of Marriage (henceforth, COS). Furthermore, the legal scholars, most of whom were male, had for a long time paid scant attention to the sexism of these two crimes, both of which define women in terms of an ambiguous criterion like "habitually lewd acts" and protect only the "woman free of habitually lewd acts." The problem of this criterion has only recently received attention (Park and Kim 2006, 120-121; Ryu 2007, 12; Yoon 2007, 62-63; Cho 2009, 262-263; Lee 2011, 344-345). However, these studies also lack an analysis of the rulings, and have merely pointed out the gender discriminatory aspect of the language defining the crimes. Nor have they taken notice of the historic process by which this strange phrase was introduced and upheld.

To overcome these shortcomings, this paper will analyse CML and COS by using methods of historical sociology. In other words, this paper will examine the postcoloniality of criminal law in Korean society by tracing the genealogy of the phrase, "woman free of habitually lewd acts," which is the object of protection in both crimes. In particular, it is worth noting that these legal codes were not so much simple vestiges of the colonial law as they are "practical principles of reproducing the present" (Kim and Jung 2003, 22), whether they were not deleted just carelessly or introduced on purpose. Furthermore, this paper will examine how the two crimes have been enforced. They are exceptional not only because they are designed to protect women and not men, but also because they differentiate women on the basis of their "habitually lewd acts." Thus, the rulings that applied to the two crimes are clues to analysing sexuality and gender order in Korean society. For this purpose, this paper will conduct discourse analyses on the rulings pertaining

to these laws.

The fact that the elements from the colonial version of criminal law and the Japanese draft were modified and reintroduced in the writing of the new criminal law and remained in force even after liberation reveals Korea's postcolonial situation. Postcoloniality is defined here as the preservation, maintenance, modification and reproduction of colonial legacies after the end of colonial rule.[5] Therefore, a critical analysis of the colonial legacy can be a starting point for dissolving it.

The rulings were collected from the Korea Law Service Centre (KLSC), LAWnB, and National Archives Contents Portal (NACP). Through KLSC and LAWnB, one ruling that applied the CML was found (Supreme Court Decision 55 Do 37, Decided on 8 July, 1955), and one for COS (Supreme Court Decision 4288 Hyŏng-Sang 109, Decided on 28 June, 1955). Through the NACP, twenty-one rulings for the Crime of Soliciting Lewd Acts (hereafter, CSL) were found, and this paper reviews the twenty that were partially or fully available to the public. For the CML, this paper analyses twenty-nine open documents from total fifty-three rulings, and fifty-nine from a total of seventy cases of rulings for COS.[6] The cases concerning CSL were included in the analysis, because even though the crime was from the colonial criminal code, the cases were thought to be historical precedents for examining the genealogy of "woman free of habitually lewd acts."

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5 At first, the term 'post(-)colonial' had chronological meaning referring to the states liberated from colonial rule after WWII (thus, postcolonial states). However, after the late 1970s, the term has been used by literary critics to discuss various cultural effects of colonisation (Ashcroft, Griffiths and Tiffin 2000, 186). Therefore the term 'postcolonial' includes reference of the end, thus break from colonial rule, and also the present effect, thus continuance and modification, of colonialism.

6 The National Archives of Korea decides what documents should be open for public peruse or not, following the Official Information Disclosure Act (Act No. 10012) and Act on the Management of Public Archives (Act No. 11391). The documents not made public are probably classified as they are "feared to infringe on the secrets or rights to their privacy" (OIDA, Article 9; this information was retrieved from a phone call with the person in charge in National Archives). The fact that the number of non-disclosed documents about COS is higher than that of CSL or CML suggests that the privacies of complainants or the accused were more disputed in court in cases of the former rather than the latter.

Table 1. Rulings selected for discourse analysis[7]

Crime	Authority	Date	Document No	NA/KLSC Title	NA registration No	Case No
Crime Of Soliciting Lewd Acts	Office of Governer-General to Korea	3 March, 1925	Kei-Kou(刑公) 29	Abduction for profit and soliciting lewd acts	CJA0000282	CSL-1-A
		15 April, 1925	Kei-Kou(刑控) 98	Abduction for profit and soliciting lewd acts	CJA0000621	CSL-1-B
		31 August, 1934	Kei-Kou(刑公) 929	Attempted murder and soliciting lewd acts	CJA0001799	CSL-2-A
		5 October, 1934	Kei-Kou-Kou(刑控公) 472	Attempted murder and soliciting lewd acts	CJA0000858	CSL-2-B
Crime of Mediating Lewd Acts	Supreme Court	8 July, 1955	Decision 55 Do 37	Mediating lewd acts	(Ruling)	CML-1
	Seoul District Prosecutor's Office	5 August, 1955	Hyŏng 5331	Mediating lewd acts	BA0079797	CML-2
	Seoul District Prosecutor's Office	4 March, 1957	Hyŏng 308	Mediating lewd acts, violation of act no 7 (act on the abolition of state-sanctioned prostitution system)	BA0079804	CML-3

[7] The case number is given by the author for convenience of reference. Crime of soliciting lewd acts is marked as "CSL," crime of mediating lewd acts is marked as "CML," and crime of obtaining sex under false promises of marriage is marked as "COS" respectively. The number is given by order of the ruling was written, and 'A' and 'B' represents the first instance and the second instance respectively. The date of some documents differed from that marked by National Archives, and this paper followed the date on the original document if so. For [CSL-1-A] and [CSL-1-B], the National Archives marked its date as 1937, but according to the original document, it is Showa 9, thus 1934 in Gregorian calendar. [COS-5] was also marked by NA as 1957, but it is 4289 After Dangun, thus 1956 in Gregorian calendar.

Table 1. (continued)

Crime	Authority	Date	Document No	NA/KLSC Title	NA registration No	Case No
	Jeonju District Prosecutor's Office	26 September, 1957	Hyŏng-Gong(刑公) 928	Mediating lewd acts	BA0029006	CML-4
	Busan District Prosecutor's Office	6 July, 1959	Hyŏng-Gong(刑公) 1815	Mediating lewd acts	BA0061675	CML-5
Crime of Obtaining Sex Under False Promises of Marriage	Seoul District Prosecutor's Office	16 May, 1955	Hyŏng-Gong(刑公) 2823	Inflicting bodily injury and obtaining sex under false promises of marriage	BA0079670	COS-1
	Supreme Court	28 June, 1955	4288 Hyŏng-Sang 109	Obtaining sex under false promises of marriage	(Ruling)	COS-2
	(Seoul District Court)	22 July, 1955		So-called "Park In-Soo Affair"	(Newspaper/ Magazine)	COS-3-A
	(Seoul High Court)	14 October, 1955		So-called "Park In-Soo Affair"	(Newspaper/ Magazine)	COS-3-B
	Jeonju District Prosecutor's Office	27 October, 1956	Hyŏng-Gong(刑公) 429	Inflicting bodily injury and obtaining sex under false promises of marriage	BA0024709	COS-4
	Seoul District Prosecutor's Office	21 December, 1956	Hyŏng-Gong(刑公) 299	Obtaining sex under false promises of marriage	BA0079804	COS-5
	Seoul District Prosecutor's Office	30 October, 1958	Hyŏng-Gong(刑公) 5478	Theft, fraud, and obtaining sex under false promises of marriage	BA0079712	COS-6
	Seoul District Prosecutor's Office	16 April, 1960	Hyŏng-Gong(刑公) 1378	Fraud and obtaining sex under false promises of marriage	BA0079758	COS-7

The large number of non-disclosed documents has made it impossible to find the ruling for the "Park In-Soo Affair" of the 1950s (I will discuss this later in more detail). In this case, it was necessary to consult secondary sources such as newspaper and magazine articles.[8] Moreover, the disclosed documents were mostly simple rulings, which used the phrase "woman free of habitually lewd acts" as just an idiom. However, some documents hint at why the complainant was or was not considered a "woman free of habitually lewd acts." As a result, the rulings selected for discourse analysis are listed in Table 1.

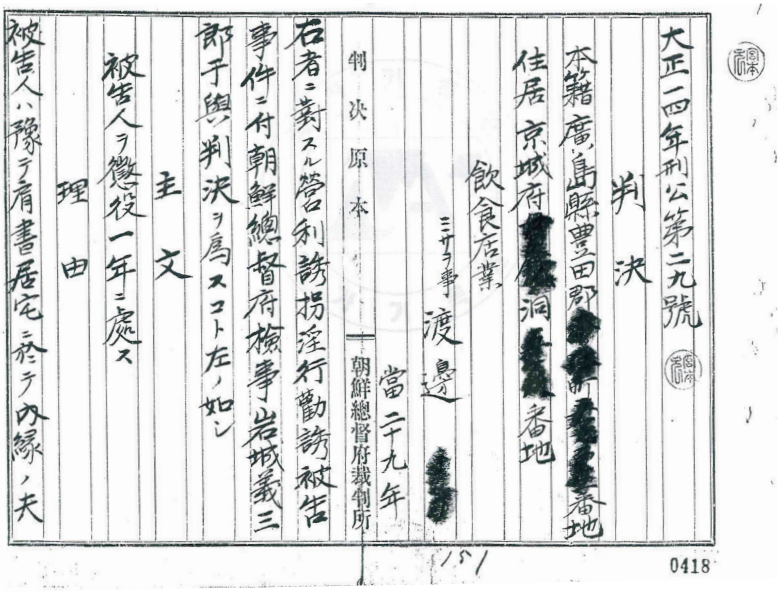
III. THE GENEALOGY OF "WOMAN FREE OF HABITUALLY LEWD ACTS": CRIMINAL LAW AND POSTCOLONIALITY

1. Crime of Soliciting Lewd Acts: The 'Chastity' of Women in Court

Under the Article 182 of the colonial period criminal law, "Anyone who makes a woman free of habitually lewd acts to commit adultery by soliciting lewd acts for profit shall be punished by imprisonment of not more than three years or by a fine not exceeding five hundred yen." However, the colonial period criminal law does not offer a definition of a "woman free of habitually lewd acts." Therefore, the meaning must be inferred from the legal system, rulings, and social conditions of that period.

Every ruling that applied to the CSL is related to prostitution. Hence, it can be inferred that making "a woman free of habitually lewd acts to commit adultery by soliciting lewd acts" referred to soliciting or coercing women to sell sex. Moreover, the code does not consider cases regarding woman *with* habitually lewd acts as a crime, as it states that only soliciting lewd acts for "woman free of habitually lewd acts" is punishable. As there was licensed

[8] However, unless they were considered scandalous like the 'Park In-Soo Affair', newspapers seldom treated the cases of crimes that are subjects of analysis in this paper. This is the reason that this paper used newspaper articles only for a supplementary data. Additionally, governmental statistics for filed complaints about those crimes during this period were not findable.


大正一四年刑公第二九號
判決
本籍 廣島縣豊田郡
住居 京城府
飲食店業
三十ヲ事 渡邊
當二十九年
判決原本
朝鮮總督府裁判所
右者ニ對スル營利誘拐淫行勸誘被告
事件ニ付朝鮮總督府檢事岩城義三
郎干與判決ヲ爲スコト左ノ如シ
主文
被告人ヲ懲役一年ニ處ス
理由
被告人ハ豫テ肩書居宅ニ於テ內緣ノ夫
0418

Source: The Japanese Government-General of Korea (1925a), Abduction for Profit and *Soliciting Lewd Acts* (NA registration No CJA0000282, 418).

Picture 1. The ruling applying the Crime of Soliciting Lewd Acts [CSL-1-A]

prostitution in the colonial period, it was legal to suggest a "lewd act" to licensed prostitutes. Therefore, women "free of habitually lewd acts" can be seen as a reference to those women who were not professional sex workers including licensed prostitutes (娼妓, *ch'anggi*) or 'hospitality women'.[9]

However, the category of "women *with* habitually lewd acts" and that of sex workers were not exactly interchangeable, because it was not *habitually lewd acts* but a *contract* that made a woman a prostitute. *Regulations on Brothel Owners and Prostitutes* (Government General Police Administration Division Ordinance No. 4, 1916) ruled that the following five documents were required to get a prostitution license: (1) an application form, (2) a

[9] During the colonial period, it was widely acknowledged that women such as 'geisha', 'barmaids', and 'waitresses' were also vulnerable to prostitution. Unlike licensed prostitutes, prostitution of such women was prohibited under *Regulations on Punishing Criminals* (article 1-3), although it was still carried out in everyday practice. For further information, see Park (2011: 40-50).

written consent of legal guardian, (3) a certificate of family registration, (4) a certificate of sanitation, and (5) a contract of prostitution (Article 16). In addition, when the woman was younger than seventeen years old, when she had an infectious disease, or even when "the contract was unfair", she could not get licensed (Article 17). *Regulations on Geishas (yegi), Barmaids (chakbu), and the Restaurants Employing Geishas* (Government General Police Administration Division Ordinance No. 3, 1916) also ruled the same documents were needed for licensing those businesses (Article 1), and the license were not given if the contract was unfair (Article 2; the Japanese Government-General of Korea 1916, 443; 446). *The Standard Rules for Café Businesses* (Article 18) similarly needed consent of the woman's legal guardian or husband and summary of employment contract (Chief of Police Businesses 1934, 145).

As a result, any women without *habits* of lewd acts or even a sexual experience could be prostitutes or other sex workers through *contracts*. If this provision was interpreted letter by letter, it could be considered as CSL to solicit or coerce such women to have sexual intercourse. However, there was no such case. Had the law had been applied in that way, it would have been hard to maintain the public prostitution system.

Considering that the main principle of licensed prostitution was a contract, the concept of "habitually lewd acts" was not only unnecessary but might conflict with licensed prostitution. As a matter of fact, human trafficking was prevalent during the colonial period (Park 2010, 99-110), and thus prostitution could take place without appropriate contracts. However, if the law is seen as an ideal aim, the *contract* was clearly incompatible with *habit*, which is a sexual preference built on nature or environment.

What is interesting is that "habitually lewd acts," which is an irrational and bizarre concept, had legal effect. CSL was not applied when the victim was recognised as a woman with "habitually lewd acts." This made the victim's "habitually lewd acts" a point of argument in the court.

[CSL-1-A], the ruling made in 1925, is such a case. Watanabe (渡辺□□, a woman aged 29),[10] who was originally from Hiroshima and managed

[10] The National Archives deleted the accused's given name to protect their privacy. The unreadable characters are marked as □ hereafter.

a restaurant in Keijō (as Seoul was called under Japanese occupation—Translator), forced a 14-year-girl to become a prostitute, after luring her to be a barmaid in Hiroshima in 1924. Watanabe did not obtain a consent from the victim's father, who was her legal guardian. She also deceived her mother, telling her that she was hiring the victim as a nanny. In spite of such facts, the accused insisted that the victim was already "habitually lewd" before becoming a barmaid. The claim of the accused was not accepted, and the judge sentenced her to prison for a term of one year for CSL and the Crime of Abduction for Profit (Criminal Law, Article 225). Watanabe appealed but the court confirmed the ruling ([CSL-1-B]). This case shows that habitually it had to be proven in the court whether the victim was "habitually lewd" or not.

The case of [CSL-2-A] can be understood in a similar context. Yunga□□, the accused 1 who lived in North Jeolla Province, had an "activity of passion" (intercourse—Translator) with the victim, Han○○[11] (aged 17). He deceived her by telling her that he was divorced. He also promised to open a bar for her and to accept her as his legal wife. After that, he abducted the victim and made her a barmaid. Yunja□□, the accused 2, who was a younger sister of the accused 1, solicited lewd acts for the wife of accused 1 and Han, who were free of "habitually lewd acts." However, when Han accused Yunga of abducting her, Yunja stabbed Han so severely that Han was hospitalized for two weeks. Consequently, the court sentenced Yunga to imprisonment for one and a half year for crime of abduction for profit and CSL, and Yunja to imprisonment for three years for CSL and attempted murder. The accused 2 appealed, but the court upheld the original sentences ([CSL-2-B]).

At this trial, the dispute over the "habitually lewd acts" of the victim reappeared. The victim Han made a statement, which can be summarised as follows: she married at fourteen and divorced at seventeen, but, after the divorce, she never had sexual intercourse with men other than her husband (Yunga). The court accepted her statement and applied the CSL to the accused. By contrast, another victim, Kim○○, at least according to the ruling, did not make such a statement. Unlike Han, her status as Yunga's legal wife spared Kim from having to prove that she was not "habitually lewd."

[11] The National Archives often did not delete the victim's name. The name is blinded with ○ in this paper.

In this way, the colonial version of criminal law clearly identified the "woman *free of* habitually lewd acts," from the "woman *with* habitually lewd acts." Therefore, the category of "woman free of habitually lewd acts" can be seen as the legal realisation of prevailing male fantasy that separates the "lady" from the "slut." Colonial period criminal law institutionalised discrimination among women by only placing the former under its protection. In short, 'chastity' became a criterion of women's legal status.

Defining a person or a group of persons on the basis of sexual habits, not by a result of particular illegal activity, and excluding them from legal protection for the same reason, violate the principle of equality before the law. Moreover, it is difficult to judge someone's sexual habits or "habitually lewd acts," which is a private matter. The cases examined above show that sexual histories of victims were matters of debate in the trial for CSL.

Furthermore, the category of "habitually lewd acts" itself begs further questions. What is a "lewd act"? Is it limited to penetrative sexual intercourse? Is it any extramarital sexual intercourse? How much sexual activity constitutes a "habit"?

Examining the two cases above, "habitually lewd acts" means "having sexual intercourse with multiple men," regardless of being paid for it or not. However, it is hard to generalise that people with legal professions shared these criteria by examining only two cases. In addition, even if there were some criteria that were in use generally, it was always possible for the new criterion to be introduced in each trial because there was no clear definition about it in the legal code.

As a result, the ambiguity of the concept "woman free of habitually lewd acts" could be resolved only by deleting it. However, in the criminal law newly introduced after the liberation, the concept was not only maintained but was sustained both in its original and modified form increasing its ambiguity.

2. The Legislation of Criminal Law after the Liberation: The Reproduction of Colonial Concept of 'Chastity'

The bill of Criminal Law was introduced on April 16, 1953, passed through the National Assembly on July 9 and took force on October 3 that year. In the background of this quick passage of a Criminal Law during the war was the

urgent need to establish a legal system that was suitable for an independent country and to restore the fractured social order. It was considered harmful to Korea's national reputation to continue using colonial Criminal Law after independence, and the Commission for Publishing the Code tried to complete a draft quickly while fleeing to Busan (Choi 1991a, 448-51).

The Explanation for Reasons of Draft for Criminal Law by the Commission for the Publication of the Codebook (1950) is a useful material to understand what character Criminal Law had and what the drafters of the law thought (86-7). The Commission stated that it consulted German and Chinese Criminal Laws to break from Japanese colonial Criminal Law (Article 1), and tried to maintain and improve "the good customs that are unique to our people," which had been suppressed under colonial rule (Article 5). However, the decolonisation of legal system was much harder than their statement.

The Summary of Draft by the Commission for the Compilation of Korean Legal System (1948) divided "crimes of obscenity, adultery, and bigamy" of the colonial Criminal Law into "crimes concerning sexual morals" (Chapter XXII) and "crimes concerning chastity" (Chapter XXXII). According to this, CSL was modified to CML (Article 242) and categorised as the former along with other crimes such as adultery, distribution of obscene pictures, manufacture of obscene pictures, and public indecency. The provision for CML coded "Anyone who, for the purpose of profit, induces a minor female or a female free of habitually lewd acts, to engage in fornication, shall be punished by imprisonment for not more than three years or by a fine not exceeding fifteen thousand Hwan" (South Korea's unit of currency, 1953-1962—Translator). CML was different from CSL only in the addition of minors to the object of protection. Even the term of imprisonment was same.

However, the situation after the liberation was totally different from that under the colonial rule. During the colonial period, soliciting prostitution had been legal due to the public prostitution system. After the liberation, by contrast, any activities related to prostitution became illegal under 'Act on the Abolition of State-Sanctioned Prostitution System" (The South Korean Interim Government Law No. 7, hereafter the Abolition Act), which was implemented in 1948.[12] Despite this, CML de facto decriminalised mediating

[12] The Abolition Act stated that a person "a. who continues or manages business that is

lewd acts for *adult* women *with* habitually lewd acts, by stipulating the objects of protection as only "minor female or a female free of habitually lewd acts." Therefore, CML confronted with the Abolition Act that criminalized all the activities involved in prostitution.

This raises a question: Why was CML inserted into the new Criminal Law in spite of the Abolition Act, which abolished licensed prostitution? Two answers are possible. One is the rigidity of Criminal Law itself. A member of the Commission for the Compilation of the Codebook stated that the central concern of compiling the codebook should be the "eradication of Japanese custom." At the same time, however, he added that "in the particulars of Criminal Law, *several adjustments will be sufficient*" (Choi 1991b, 58-59, emphasis added by the author). This reveals how difficult the perfect eradication of colonial customs was. The fact that all of the legislators engaged in the writing of the new criminal law were trained in the colonial period was a serious obstacle to uproot the colonial relic.

The other possible answer is that the law was a reflection of social conditions of the postcolonial Korea. Owing to rapid changes following independence and the Korean War, the sex industry grew tremendously as a result of poverty, political anomie, and the presence of the US Army. Considering this, the lawmakers might have thought that mediating lewd acts for 'women who were already decadent' was not against "sexual morals," even though licensed prostitution had been repealed. However, the exact reason cannot be found, because the Commission never explained it and the National Assembly passed the bill without debate.[13]

The "woman free of habitually lewd acts" was mentioned once more in Criminal Law. Article 304 stated that "Anyone who has sexual intercourse with *woman free of habitually lewd acts* using pretence of marriage or fraudulent means shall be punished by imprisonment for not more than two

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repealed by this act [licensed prostitution], b. who does, arranges, or provides place for prostitution, or c. who gets service from a person stated in b." should be punished by an imprisonment not more than two years or by a fine not exceeding fifty thousand won. As such, the Abolition Act was a typical prohibition in the sense that it punished all of the people involved in prostitution.

13 The minutes from 16-8th session of 16th meeting of the second National Assembly, *National Assembly Minutes* No. 16-8.

years or by a fine not exceeding twenty-five thousand Hwan" (emphasis added by the author). As described above, COS was introduced into the Japanese draft and survived into Korean Criminal Law. In this process, "woman" in the Japanese draft was suddenly transformed into "woman free of habitually lewd acts."

Unlike CML, the COS hints at the reason that it was introduced. Eom Sang-seop, the head of the Legislation and Judiciary Committee in National Assembly, offered an explanation of the crime in an article titled "Summarised Explanation of Criminal Law," which was published in the September-October issue of *The Court*:

> Considering our country's traditional good customs, the chastity of women is more important than the right of property, sometimes even than the right to life. However, there is no rule for punishing men's activities to toy with women's chastity, when it is not a rape. This [provision] meant to punish these activities (Eom 1948, 63).[14]

In another article published in *The Court,* Eom also insisted that COS testified to the "democratic nature" of Criminal Law, in the sense that it was introduced to protect women from fraudulent sexual relations (Eom 1955, 86).

Though, the idea that women's chastity was sometimes more important than the right to life suggests that *chastity*, needed protection more than *human rights* did. Moreover, CML limited the object of protection to "woman free of habitually lewd acts." Therefore, contrary to Eom's argument, the crime was counter to the protection of human rights and the spirit of democracy.

In this way, CML and COS epitomized the postcolonial conditions of Korean society. After the liberation, Korean jurists had the formidable task of creating a new legal system. However, given that a modern legal system had been transplanted by a colonial occupier, it was not an easy job to construct a logic and language that was free of colonial vestiges. The "good customs special to our people" had also to be discovered, restored and reinterpreted. Therefore, it was difficult to establish a new legal system

[14] On the other hand, Eom stated that the crimes concerning sexual morals, to which CML belong, "does not need explanation" (Eom 1955, 62).

imbued with the "national tradition," if not impossible.

However, the reality betrays idealism. The desire to have a legal code written in Korean as soon as possible resulted in 'continuationism' meaning that as long as it was written in the Korean language, a direct translation from Japanese codes was acceptable (Choi 1991a, 446). As a result, not only most elements of the colonial legal system survived, but also those of the abandoned Japanese draft were introduced to the new Criminal Law.

It is not known why the legal scholars on Criminal Law consulted the Japanese draft. It could have been because the Japanese draft was most compatible with colonial Criminal Law and comprehensible to legal scholars who had been trained under the colonial regime. In addition, given that the reason for writing the Japanese draft was to reinforce "good customs special to Japanese people,"[15] the legal scholars might have referred to the Japanese draft in a desire to establish a "sound" social order for the new nation-state.

Against this evidence, the Commission did not mention the Japanese draft and the colonial Criminal Law in *the Explanation for Reasons of Draft for Criminal Law*, expressing only a preference for German and Chinese criminal laws. This silence or denial strongly supports the presence of colonial legal vestige. Along with that, the colonial concept of demarcating and thus institutionally discriminating against women on the basis of "habitually lewd acts" survived.

IV. "WOMAN FREE OF HABITUALLY LEWD ACTS" IN THE POSTCOLONIAL KOREA

What effects did CML and COS have in the postcolonial Korea? Who was the "woman free of habitually lewd acts"? Had criteria to decide "habitually lewd acts" changed since the colonial period? Had the COS protected women as Eom had expected?

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[15] In 1921, the Japanese government inquired the Provisional Committee for Legislation that "The overhaul of criminal law is needed (…) because first, to reflect Japanese moral and good customs, second, to completely protect personality and fame, third, to ensure crime prevention considering these day's social current" (Oh and Choi 1999, 112).

Legal scholars are of two minds in relation to the "woman free of habitually lewd acts." One school of thought interprets the phrase narrowly, as "a person who does not have sexual habits that are morally reproachable," and the other takes the phrase as "woman who is not a professional prostitute." According to the former, concubines or women engaged in extramarital affairs cannot be protected as they are presumably "women *with* habitually lewd acts." In contrast, according to the latter, "any person who has decadent sex life" but who is not a professional prostitute can be protected (Chin 1985, 183). The dominant opinion is now the latter (Won 2006, 63). This opinion was also the prevailing one right after the 1953 legislation of the Criminal Law,[16] but there was also the opinion that a woman who "lacks the concept of chastity" should be considered as a woman "with habitually lewd acts," even if she was not a sex worker.[17] In the following section, I will examine how the concept has been applied via written rulings.

1. Crime of Mediating Lewd Acts: The Link of "Minor" and "Woman Free of Habitually Lewd Acts"

On July 8 in 1955, the Supreme Court convicted the accused, charged with having arranged for a 17-year-old to have sexual intercourse with anonymous men [CML-1]. However, in this case the accused was found not guilty in the

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[16] "The woman free of habitually lewd acts means who has no sexual habit that is morally reproachable. However, as a theory, it includes *any woman who is not professional prostitute*." (Kim 1955, 180) "The woman free of habitually lewd acts means a woman who has no sexual habit that is morally reproachable. In reality, it means *any woman who is not so-called prostitute*, despite whether she has experienced sexual activities or not and how old she is." (Lee 1957, 149) Emphasis added by the Author.

[17] "The woman free of habitually lewd acts" means a woman who has a concept of chastity that is not decadent. *Not only professional prostitutes are women with habitually lewd acts. Anyone who has extremely low concept of chastity and has sexual activities with unspecific men should be seen as a woman with habitually lewd acts, even she it is not professional prostitute.* That is because this crime has the purpose of protecting women's chastity, *which means it is not to protect anyone who has extremely low concept of chastity*, and any woman who has concept of chastity and decency should be protected even if she has some status that is morally reproachable like a concubine (Jeong 1963, 285-286; Highlights by the Author)."

first and second instances of CML because the defendant made a "strong appeal" that the victim "already had experience of lewd acts." However, the Supreme Court overturned original rulings and sent the case back to the High Court. The reason for this was as follows.

> Although the habit of lewd acts is not a requirement for establishment of the crime when [the victim is] minor, yet it is a negation of crime to make a statement that [the victim] had habitually lewd acts. This is an error in the misapprehension of the legal principle or misinterpretation of the record.

According to the new Criminal Law, the case of [CML-1] included to the object of protection a minor who, under the colonial law, could not have been protected because of her "habitually lewd acts." At the same time, this case shows that the phrase of "woman free of habitually lewd acts" was still highly valid. If the victim were an adult, the accused's claim would have been accepted.

This case also reveals that CML clashed with the repeal of licensed prostitution. Following the principle of *lex specialis derogat legi*, the accused of this case should be found guilty of violating the Abolition Act, regardless of the age of the victim and whether or not she was habitually lewd. However, in all instances, the courts applied not the Abolition Act but CML. This inconsistency brought about an irrational situation, in which innocence or guilt shifted depending on which law was being applied.[18]

Other cases pertaining to CML also shows that the accused tended to be convicted, when the victims were minors, most of whom came from rural areas to Seoul to earn money and were forced to prostitute by the accused's

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[18] The Court seemed to leave which law should be applied to the judge's discretion. As a result, there was a case that CML was applied in the third instance where the Abolition Act had been applied in first and second instance, leading to change of punishment. *"The Supreme Court made a new decision that does not follow the Abolition Act but applied Article 242(CML) of Criminal Law to so-called pimps who hired night ladies."* As a result, the accused who had been sentenced to imprisonment for one year and one year plus six months respectively in the second instance for violation of the Abolition Act was sentenced to imprisonment for six months and eight months respectively in the third instance for mediating lewd acts (*The Chosun Ilbo*, 14 March, 1959; emphasis added by the author).

fraudulent job offers. To quote [CML-2]:

> At around 9 pm, 30 May 4288 After Dangun (a calendar used in South Korea in 1948-1962; 1955 in Gregorian calendar —Translator), the accused's mother, the non-indicted Gyeong□□(aged 56 then), found that non-indicted Lee□□ [Unreadable] [and] Choi□□(aged 19) came to Seoul to have a job, wandering in front of the Seoul Station. [Gyeong] deceived them by saying that she would introduce kind boarding house for them and took them to the accused's house. The accused seduced them into prostitution, by saying that it would be lucrative while getting other jobs was hard. [After that] the accused mediated fornications between several unnamed men and the victims who were free of habitually lewd acts, for more than ten times until 15 June of the same year, starting with disabled veteran the non-indicted Kim□□(aged 29 then) for a thousand Hwan habitually(Seoul District Prosecutor's Office 1955a, 518).

Other rulings had similar narratives to the above.[19] Likewise, most victims of CML were minors, and raised almost no debates over their "habitually lewd acts" in the rulings, except for [CML-1]. In conclusion, "woman free of habitually lewd acts" of CML has had a tendency being linked to the signifier of "minor," resulting in its meaning as 'obvious victim'.

2. Crime of Obtaining Sex under False Promises of Marriage: Protection or Punishment for Women?

In contrast, COS was totally different from CML. The criterion for "habitually lewd acts" was much more controversial, and the victims found that it was hard to be protected. [COS-2] is an exemplary case. The accused "fraudulently

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[19] "In August 4289 After Dangun, the victim, Park○○, who was a minor (aged 19 then), came to Seoul to work as a housemaid. The accused took her to his home and seduced her into prostitution (…)" ([CML-3]; Seoul District Prosecutor's Office 1957, 481). "The accused, who manages unlicensed accommodation, hired Ryu□□ (aged 18), and Kim□□ (aged 19) as housemaids, who were minors free of habitually lewd acts (…)" ([CML-4]; Jeonju District Prosecutor's Office 1957, 222). "The accused, who manages a restaurant named □□□□, [seduced into prostitution] Han□□ (aged 18), who was his housemaid and a minor, in around 10 pm, unknown day April 4291 After Dangun (…)" ([CML-5]; Busan District Prosecutor's Office 1959, 336).

asked a virgin (aged 23 then) to marry him," and he "committed adultery" with her. He deceived her "by saying that he was single because he alone exiled to the South from the North." However, after the accused broke up with her, "with realising that he was attracted to the demi-monde," the victim committed suicide owing to "severe frustration." As a result, the victim's father accused him of COS.[20]

However, the Supreme Court ruled that the suit was invalid, as it was "clearly against the victim's will," based on testimonies of the victim's friends. They argued that she had not wanted to sue him before her death. However, there was little possibility that the accused would be found guilty even if the suit was valid, because the Supreme Court judged that the victim was "habitually lewd." This ruling also completely relied on the testimonies of her acquaintances. They asserted that she was originally a dancer exiled to the South and she had "bad morals" enough to "live with" multiple numbers of men including an American soldier. To quote the ruling:

> The original ruling (…) applied Article 304 of Criminal Law and sentenced [the accused] to imprisonment for six months. However, the crime applied here *can only be established if the victim is woman free of habitually lewd acts*. According to the records to verify the victim's habitually lewd acts, the non-indicted 1, (…) she had *bad morals* (…). To synthesise evidences, *the non-indicted 1 (…) exiled from Pyongyang to the South as a dancer. She received immoral education from the puppet state's capital of Pyungyang, where, imbued with the Soviet immorality, adultery is not recognised as a crime and demoralisation is rampant. Considering that she was at passionate age of 23, indulged in dance as a personal dancing instructor or a dancer, and considering the current decadent dance boom that corrupts young people, the non-indicted 1 is obviously a woman with habitually lewd acts, even if she was unmarried.*

[20] This case was reported by a newspaper. "Prosecutor Kim Seong-Jae arrested Park○○ for COS around 5pm on 4 November. The 'patron' Park, aged 34, allegedly had extramarital relationship with the ill-treated victim, Kim (a dancer, aged 23). She committed suicide by quinine overdose at Donga Hotel in Yeongdeungpo-gu on 10 September, due to frustration after Park ended the relationship. At the time, she was pregnant for four months. The victim's father filed a complaint to District Prosecutor's Office (27 September), asking for investigation into his daughter's death. Her death raised a debate on whether it was murder or suicide, and Park was arrested for the reason above." (*The Kyunghyang Shinmun*, 6 November, 1954)

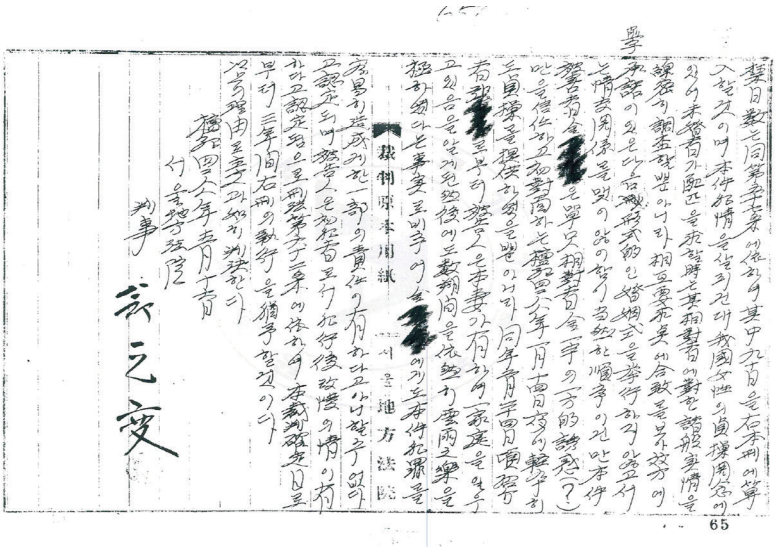
> Therefore, the ruling of the first instance finding [the accused] not guilty is reasonable (Emphasis by the author).

This ruling indicates that a woman who was not a professional sex worker could be assumed to be "habitually lewd." However, there is no evidence that all judges shared the same criterion, as the court of the second instance convicted him unlike those of the first and the final instances. In this way, the criterion of "habitually lewd acts" was hard to reach a consensus among judges.

A more serious problem is that the finding of "habitually lewd acts" was based on testimonies of the victims' acquaintances. As a result, there was a possibility that witnesses could be suborned by the complainant or the accused. Especially in this case, there was no way for the victim to refute testimonies that were unfavourable to her, because she was already dead. Moreover, the judges of the Supreme Court were convinced of her "habitually lewd acts," pointing out that she was from Pyungyang, a city where, "imbued with the Soviet immorality," "demoralisation is rampant." It is an interesting point that the fears of women's sexual decadence were combined with anticommunism. This ruling was also a cautionary message against "the current decadent dance boom that corrupts young people."

As such, the COS was a judgement not only on the defendant's responsibility, but on the victim's moral standing. This characteristic can be found in other trials. The accused of the case [COS-1], aged 40, was introduced to a virgin, aged 22, who was a friend of an employee of his neighbourhood company, although he had a legal wife. The accused deceived her, by saying that he was divorced. He sent her letters and telegrams promising that he would pay for her education or find her a job if she came to Seoul and married him. The court prosecuted him for COS and sentenced him to a year's imprisonment. However, the court suspended the execution for three years, with stating as follows.

> *According to ordinary women's sense of virtue in our country, it is natural that an unmarried woman should not have a sexual intercourse* without investigating partner's background, making a consent in each other's demands, and having formal wedding. However, the victim of this case, Kim□□,



Source: Seoul District Prosecutor's Office (1955b), *Inflicting bodily injury and obtaining sex under false promises of marriage* (NA registration No BA0079670, 65).

Picture 2. The written ruling for crime of obtaining sex under false promises of marriage ([COS-1])

> *thoughtlessly offered her virginity* to her partner Kim○○ on the first night they met, only trusting his promises. (…) *Moreover, she bravely continued their affair for several months even after realizing that the accused had a wife and family*. Therefore, it cannot be denied that that Kim□□ [the victim] has some responsibility for making [the accused to] commit the crime easily (Seoul District Prosecutor's Office 1955b, 65; Emphasis added by the author).

In other words, the court sentenced the accused to probation even though the victim met formal criteria of being a "woman free of habitually lewd acts," as she did not merit protection because she did not follow the "sense of virtue."

The case in which the victim's morals were most controversial was the "Park In-Soo Affair" ([COS-3-A, B]), which was called the "greatest show in the court" at the time (*The Kyunghyang Shinmun*, 10 July, 1955). In June 1955, a young man named Park In-Soo was accused of having impersonated a military police captain and seduced six women with false promises of marriage. This case attracted a lot of attention, as the victims were "well-raised

Source: *The Kyunghyang Shinmun*, 9 July, 1955.

Picture 3. Park In-Soo's trial

ladies from good families," most of whom were students attending a famous university. The public was fascinated not only with Park, but also with these women. The media even reported details of their privacies (*The Kyunghyang Shinmun*, 18 June, 1955).

Consequently, the court was overcrowded. *The Chosun Ilbo* reported the situation as follows. "*Probably for female university students, who has played a pivotal role in demoralising our society, were to be in the court as witnesses*, (…) the Supreme Court was jammed with audiences" (9 July, 1955; Emphasis added by the author). As a result, the hearing had to be adjourned. As the sensation of this case became uncontrollable, the complaints refused to witness at the court. For that reason, Park's arguments gained more credence than those of complaints. He insisted that most of the complaints were not virgins and some of them were even called as sluts among his friends.

At the last trial of the first instance on July 22, 1955, Park was fined

twenty thousand Hwan for the impersonation and the forgery of official documents but found not guilty for COS. The court judged that the assertion of complaints did not constitute sufficient evidence. The judge left a famous statement, which would be cited for so long time: "Not all chastity is protected by law. Law protects chastity *only if it deserves to be protected*" (*The Dong-A Ilbo*, 23 July, 1955; emphasis added by the author).

The prosecutor immediately filed an appeal (*The Chosun Ilbo*, 23 July, 1955). He demanded one year and six months of imprisonment, pointing out that "the complaints cannot be regarded as non-virgins based solely onthe accused's arbitrary statements. Considering that all complainants were highly educated and that *they are not prostitutes or geishas, they should be seen as virgins*" (Min 1955, 133; emphasis added by the author). In the final trial on 14 October, 1955, Park was convicted of COS and sentenced to imprisonment of one year. His appeal was dismissed (*The Kyunghyang Shinmun*, 1 February, 1956).

To understand Park In-Soo's scandal properly, it is necessary to take into consideration of social circumstances where it was embedded. As already noted, there was great concern about women's sexual decadence owing to the Korean War: the dissolution of families, the imbalance of sex ratio, and the increase of women's labour. The US Army presence and the spread of American culture contributed to these worries. Western culture and styles such as western clothes, makeup, permanent, and dance boom affected not only '*Yanggongju*' ("Western Princesses," which meant sex workers catering to American servicemen —Translator), but also women who were not sex workers. It was great shock to men that even "ladies from good families" got away from restrictions previously applied to women (Park 2011, 121-124).

The judge's reference to "the current decadent dance boom that corrupts young people" (in [COS-1]) and "women's sense of virtue in our country" (in [COS-2]) can also be understood in this context. Although Park was found guilty, the case was hardly a victory for his victims. They were de facto socially ostracized, as their personal lives had been exposed and expelled from their school (*The Kyunghyang Shinmun*, 12 July, 1955).

By contrast, at least in written rulings, there were cases in which the complainant's morals were not considered as a problem. The cases [COS-4] to [COS-7] are such examples. Interestingly, they shared similar characteristics.

On the one hand, the accused were obvious villains, who were charged with not only COS but also with theft, fraud, or violence ([COS-4], [COS-6], [COS-7]). On the other hand, the complainants were widows with perfect reputations ([COS-4], [COS-5]).[21]

This paper has examined the rulings in cases of COS. Did the law protected women from sexual decadence after the War, as its drafters had intended? For women that the courts considered free of habitually lewd acts, it can be said so. However, as criteria of "habitually lewd acts" were not clear, each judge applied his own definition. As a result, some judges considered the victim as "habitually lewd" or gave a light sentence to the accused, since the victim either had sexual experience or "had offered her chastity" willingly. In particular, the Park In-Soo Affair shows that the litigation process for COS amounted to proving the victim's *virginity*, beyond *habit* of lewd acts. Likewise, the "habits of lewd acts," due to the obscurity of its definition, subjected the plaintiffs to the danger of having their sexual history being exposed and judged.In the end, the legal protection of COS was extended only to the "woman free of habitually lewd acts." It distinguished *chaste women* from *unchaste women*, and it de facto exerted an effect to protect men from accusations brought by the latter. The *unchaste women* were punished by being forced to testify about their sexual histories. In conclusion, COS functioned as a caution for women's sexual decadence—or freedom—in the 1950s.

[21] The complainant of [COS-4] was "a widow who sought remarriage and free of habitually lewd acts." She "refused to live with the accused with saying that she "cannot live with a man with a legal wife." For that reason, she was battered by the accused (Jeonju District Prosecutor's Office 1956, 237). The court sentenced the accused to imprisonment of one year. Unlike [COS-1], the court might have judged that this case was not against "women's sense of virtue in our country," as the complainant was a widow and was even assaulted by the accused for refusing the relationship. The complainant of [COS-5] was a nurse from a health centre who "raises two children after losing her husband." (Seoul District Prosecutor's Office 1957, 687).

V. CONCLUSION

The phrase of "woman free of habitually lewd acts," from the colonial laws survived into the post-liberation period, as CSL of the colonial Criminal Act was transformed into CML and COS in the new Criminal Law. As a result, the colonial practice of excluding the so-called immoral women from legal protection also survived. For this reason, the "woman free of habitually lewd acts" is a useful clue for excavating the (post-)coloniality of the Criminal Law.

However, the "woman free of habitually lewd acts" is more than a colonial vestige. The introduction of COS and the replacement of "woman" to "woman free of habitually lewd acts" was also a reflection of the will to reassure sexual morals of postcolonial Korea. Additionally, the fact that cases concerning COS were actively sued and prosecuted indicates that it functioned as an actual principle to discipline the Korean society. Eventually, trials of COS functioned as a kind of "public sphere" to test the sense of virtue among women, to establish new standard of sex morals, and to punish women who did not satisfy such a standard. Therefore, the "woman free of habitually lewd acts" was not a dead phrase that escaped deletion by the drafters' overlook; it was a means to control women's sexuality and restore the patriarchy that has been weakened by the war.

The COS remained in Criminal Law until 2009, and CML is still in effect. The "habitually lewd acts" is still carved into the law as a criterion for deciding women's legal status (With the revision on December 2012, the phrase "woman free of habitually lewd acts" was replaced by "person." — Translator). The elimination of "woman free of habitually lewd acts" would not automatically eradicate notorious practices that compel the victim of sex crimes to testify about their sexual histories at the courts. Without it, however, such a practice would definitely not disappear on its own accord. Additionally, changing provisions of Criminal Law that discriminate women is also a way to "decolonize" criminal law, which is a task that has been postponed since Independence.

REFERENCES

Primary Sources in Korean

The Chosun Ilbo

The Dong-A Ilbo

The Kyunghyang Shinmun

Ministry of Justice Investigative Bureau. 1948. *Justice source-book, band V: Chinese criminal code, Manchurian criminal code, Soviet criminal code and draft for amendment of Japanese criminal law* (『법무자료 제5집: 중국형법전, 만주형법전, 소련형법전 및 일본개정형법가안』).

Busan District Prosecutor's Office. 1959. *Arranging prostitution*. NA registration No BA0061675 (「음행매개」(국가기록원 관리번호 BA0061675).

Commission for Publishing Korean Legal System. 1948. "The summary of basics concerning publishing for Commission for Publishing Korean Legal System". *The Court* (July). In *Criminal law legislation source-book, I: Criminal Act.* Korean Institute of Criminology. 1990 (「朝鮮法制編纂委員會刑法起草要綱」, 『법정』 7월호, 1948. 『형사법령제정자료집(1): 형법』 한국형사정책연구원. 1990).

Commission for Publishing the Codebook. 1950. *The explanation for reasons of draft for criminal law.* In *Criminal law legislation source-book, I: Criminal Act.* Korean Institute of Criminology. 1990 (「형법초안이유 설명서」, 『형사법령제정자료집(1): 형법』 한국형사정책연구원. 1990).

Eom, Sang-seop. 1948. "Summarised Explanation of Criminal Act". The Court September and October. In *Hyodang Eom Sang-seop's disquisitions on criminal law*, eds. Shin dong-wun and Heo Il-tae. 2006. Seoul: Seoul National University Press (「형법요강해설」, 『법정』 9월호, 10월호. 신동운 · 허일태 편. 『효당 엄상섭 형법논집』 서울대학교출판부. 2006).

Eom, Sang-seop. 1955. "Clauses of Criminal Law Democratisation in Our Criminal Code". *The Court* (November) In *Criminal law legislation source-book, I: Criminal Act.* Korean Institute of Criminology. 1990 (「우리형법전에 나타난 형법민주화의 조항」 『법정』 11월호. 『형사법령제정자료집(1): 형법』 한국형사정책연구원. 1990).

Jeonju District Prosecutor's Office. 1957. Mediating lewd acts. NA registration No BA0029006 (「음행매개」(국가기록원 관리번호 BA0029006)).

Kim, Seok-yeong. 1955. "The comprehensive review on so-called Park In-Soo Affair", *Women* (September) (「世稱 朴仁秀 事件에 對한 綜合的인 檢討」, 『여성

계』 9월호).
Korean Institute of Criminology. 1990. *Criminal law legislation source-book, I: Criminal Act* (『형사법령제정자료집(1): 형법』).
Min, Gyeong-il. 1955. "Following the Park In-Soo's lechery affair: He rang a big alarm on wicked morals", *Women* (September) (「朴仁秀 獵色 事件 追擊: 그는 悖倫의 性道德에 一大警鐘을 울렸다」, 『여성계』 9월호).
Seoul District Prosecutor's Office. 1955a. *Mediating lewd acts.* NA registration No BA0079797 (「음행매개」(국가기록원 관리번호 BA0079797)).
_____. 1955b. *Inflicting bodily injury and obtaining sex under false promises of marriage.* NA registration No BA0079670 (「혼인빙자에 의한 간음 및 상해」(국가기록원 관리번호 BA0079670)).
_____. 1956a. *Inflicting bodily injury, violence, and obtaining sex under false promises of marriage.* NA registration No BA0079676 (「혼인빙자간음 폭행상해」(국가기록원 관리번호 BA0079676)).
_____. 1956b. *Obtaining sex under false promises of marriage.* NA registration No 0079804 (「혼인을 빙자한 간음」(국가기록원 관리번호 BA0079804)).
_____. 1957. *Mediating lewd acts, violation of Act No 7(Decree to repeal licensed prostitution.* NA registration No 0079804 (「음행매개법률 제7호(공창제도등폐지령)위반」(국가기록원 관리번호 BA0079804)).
_____. 1958. *Theft, fraud, and obtaining sex under false promises of marriage.* NA registration No 0079712 (「혼인빙자한 간음 사기 절도」(국가기록원 관리번호 BA0079712)).
Korea Law Service Centre (http://www.law.go.kr)
LAWnB (http://www.lawnb.com)
National Archives Contents Portal (http://contents.archives.go.kr)
National Assembly Minutes (http://likms.assembly.go.kr/record/index.html)
The Supreme Court Library (http://library.scourt.go.kr)

Primary Sources in Japanese

Chief of police businesses. 1934. "On the standard rules for café businesses". Korean police association ed. *Police Businesses Bulletin* 342 (「カフェー營業取締內規標準ニ關スル件」, 朝鮮警察協會 編, 『警務彙報』, 第三四二號).
Office of Governer-General to Korea. 1916. *Office of Governer-General to Korea Gazette 109 — 30 March Taisho 5* (『朝鮮總督府官報』, 第一〇九號(大正五年三月三十日)).
_____. 1925a. *Suggesting lewd acts for profit via abduction*. NA registration No CJA0000282 (「營利誘拐淫行勸誘」(국가기록원 관리번호 CJA0000282)).

_____. 1925b. *Suggesting lewd acts for profit via abduction*. NA registration No CJA0000621 (「營利誘拐淫行勸誘」(국가기록원 관리번호 CJA0000621)).

_____. 1934a. *Attempted murder and suggesting lewd act.* NA registration No CJA0001799 「淫行勸誘殺人未遂」(국가기록원 관리번호 CJA0001799)).

_____. 1934b. *Attempted murder and suggesting lewd act.* NA registration No CJA0000858 (「淫行勸誘殺人未遂」(국가기록원 관리번호 CJA0000858)).

Secondary Sources in Korean

Cha, Yong-Seok. 1996. "Criminal Law System and Japanese Colonial Vestige". In *Japanese Colonial Vestige: What is the Problem?*, ed. Han Sang-Beom. Seoul: Institute of Legal Administration (「형사법제와 일제 잔재」, 한상범 편. 『일제 잔재, 무엇이 문제인가』 법률행정연구원).

Chin, Gye-Ho. 1985. *New Particulars of Criminal Law*. Seoul: Daewangsa (『신고 형법각론』 대왕사).

Cho, Kuk. 2009. "The Unconstitutionality of the Crime of Sexual Intercourse under Pretence of Marriage". *Korean Criminological Review* 21 (3) ("혼인빙자 간음죄 위헌론 소고." 『형사법연구』 21 (3)).

Choe, Jong-Go. 1991a. "Reorganisation of Korean Basic Legal System after the Independence". *Treatises Concerning Korean Law History Commemorating Professor Park Byung-Ho's Sixtieth Birthday*. Seoul: Pakyoungsa (「해방 후 한국기본법제의 정비」, 박병호교수환갑기념논총발행위원회 편, 『박병호 교수환갑기념 한국법사학논총』, 박영사).

_____. 1991b. "A Study on Development of Modern Korean Law System". *Seoul Law Journal* 34 (1-2) (「현대 한국법제의 형성과정고」, 『법학』 34 (1-2)).

Jeong, Chang-Wun. 1963. *Particulars of Criminal Law*. Seoul: Pakyoungsa (『형법학각론』 박영사).

Jeong, Seong-Ho. 1999. "Korean War and Demographical Change". In *Korean War and Change in Social Structure*, ed. The Academy of Korean Studies. Seoul: Baeksan Seodang (「한국전쟁과 인구사회학적 변화」, 한국정신문화연구원 편, 『한국전쟁과 사회구조의 변화』 백산서당).

Kim, Eunkyung. "After Korean War, 'Tradition' in the Process of the Reconstruction and Women". *Journal of Asian Women* 45 (2) (「한국전쟁 후 재건윤리로서의 '전통론'과 여성」, 『아시아여성연구』 45 (2)).

Kim, Jin-Gyun and Jung Keun-Sik. 2003. "The colonial regime and modern rules". Kim, Jin-Gyun and Jung Keun-Sik eds. The modern subjective and colonial ruling power. Seoul: Social and Material (「식민지체제와 근대적 규율」, 김진균 · 정근식 편. 『근대주체와 식민지 규율권력』 문화과학사).

Kim, Yong-sik. 1955. *Particulars of New Criminal Law (of Republic of Korea)*. Seoul: Bomungak (『(대한민국)신형법각론』 보문각).

Korean Institute of Criminology. 1990. *Criminal law legislation source-book, I: Criminal Act* (『형사법령제정자료집(1): 형법』).

Korean Women's Institute in Ewha Womans University. 2001. *Research on Overseas Alternatives for Preventing Sale of Sex*. Ministry of Gender Equality (「성매매 방지를 위한 국외 대안 사례연구」 여성부).

Lee, Geun-Sang. 1957. *Particulars of Criminal Law*. Ilhan Publishing (『형법각론』 일한도서출판사).

Lee, Ho-Joong. 2011. "Context and Limits in the Legal Discourse about Sexuality". *Korean Journal of Criminology* 23 (1) (「성형법 담론에서 섹슈얼리티 논의지형과 한계: 혼인빙자간음죄와 간통죄 폐지논의를 중심으로」, 『형사정책』 23 (1)).

Oh, Yeong-geun and Choi, Jong-sik. 1999. "Brief Review on Japanese Draft for Revising Criminal Law". *Korean Criminological Review* 10(1) (「일본 개정형법가안에 관한 일고찰」, 『형사정책연구』 10 (1)).

Oh, Yeong-geun. 2003. "The Influences of Japanese Draft for Revising Criminal Law(1940) on Korean Criminal Law". *Criminal Law Review* 20 (「일본개정형법가안이 제정형법에 미친 영향과 현행 형법해석론의 문제점」, 『형사법연구』 20).

Park, Jeong-Mi. 2011. "A study on prostitution policies in Korea: the transformation of 'Toleration-Regulation Regime' and the historical construction of 'the Prostitute', 1945-2005". Seoul National University doctoral dissertation (「한국 성매매정책에 관한 연구: '묵인–관리 체제'의 변동과 성판매여성의 역사적 구성, 1945~2005년」 서울대학교 사회학과 박사논문).

Park, Jung Ae. 2009. "A Study on State-Regulated Prostitution and Unlicensed Prostitute Management of Japanese Imperialism". Sookmyung Women's University doctoral dissertation (「일제의 공창제 시행과 사창 관리 연구」 숙명여자대학교 사학과 박사논문).

Park, Seon Young and Kim Jin. 2006. "A Study on Amendment Direction of Gender Discrimination in Law". *Issues in Feminism* 6 (「현행 법령 속에 존재하는 성차별 규정 및 개정 방향에 관한 연구」, 『페미니즘연구』 6).

Ryu, Hwa-Jin. 2007. "Aussicht auf das koreanische StGB nach Veränderung der sexualen Erkenntnis". *Pusan National University Law Review* 47 (2) (「성적 인식 변화에 따른 형사법의 전망」, 『부산대학교 법학연구』 47 (2)).

Won, Mi Hye. 2010. "A life history research of women who sell sex: the temporal and spatial operationalization of intersectional sex hierarchy." Ewha Womans University doctoral dissertation (「'성 판매 여성'의 생애체험 연구:

교차적 성 위계의 시·공간적 작용을 중심으로」 이화여자대학교 여성학과 박사논문).

Won, Yu-Seok. 2006. "Crimes concerning sexual morals". In *Particulars of Criminal Law with Comments (III),* eds. Park Jae-Yoon et al. Seoul: Korean Judicial Administration Institute (「성풍속에 관한 죄」, 박재윤 외, 『주석 형법 각칙(3)』 한국사법행정학회).

Yoon, Dong-Ho. 2007. *Problems and Improvement of Sexual Offences*. Seoul: Korean Institute of Criminology (『형법각칙 개정연구 [4]: 개인적 법익에 관한 죄(3) 성범죄규정』 한국형사정책연구원).

Secondary Sources in English

Ashcroft, Bill. Gareth Griffiths and Helen Tiffin. 2000. *Key Concepts in Post-colonial Studies*. London: Routledge.

Secondary Sources in Japanese

Ōba, Shigema. 1910. *Particulars of Criminal Law: Band II*. Tōkyō: Chuō University (『刑法各論 下券』 中央大學).