

An Analysis of the Debate over Conscientious Objection in Korea*

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Although freedom of conscience, the legal foundation of conscientious objection, was incorporated into the South Korean Constitution in 1948, conscientious objection in Korea remained taboo until the late 1990s. The goal of this article is to illustrate how and why attitudes towards conscientious objection remained virtually unchanged in such a fast-moving society like that of Korea. Freedom of religion and conscience represent the central concepts of Western Constitutions and conscientious objection in the West is deeply rooted in the history of pacifist Christian churches there. However, Korean society had no ideological background or historical experience with respect to conscientious objection. The concept of conscientious objection was so foreign to the Korean people that there was no proper terminology for indicating such a notion; instead, terms such as *jingjip geobu* (refusal of conscription) or *byeongyeok gipi* (draft evasion) were used. Conscientious objection was perceived not as a human rights issue, but as a matter concerning a few particular Christian denominations, denominations largely deemed socially unacceptable by the Korean populace. In other words, the Korean debate on conscientious objection was framed as a confrontation between the Korean state and specific Christian denominations, particularly the Jehovah's Witnesses and the Seventh-Day Adventists, rather than as an issue of confrontation between individual citizens and the state.

Only around 2000 were Korean conscientious objectors able to extricate themselves from such a narrow mindset. Since the late 1990s the determination made out of individual conscience to never kill another person or participate in war of any sort, has

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emerged as a meaningful and controversial issue. This change in the nation's collective consciousness may be summarized in terms of the "formation of the individual." Not only have conscientious objectors begun to represent themselves as individuals, but South Korean society has also come to show sympathy with those individuals who have different ideas from the majority concerning military service and conscientious objection.

Keywords: Freedom of conscience, conscientious objection in Korea, formation of the individual in Korea

Introduction

On October 23, 1975, Kim Jongsik (21) was forcibly inducted into the South Korean army despite his steadfast claims to be a conscientious objector based on his beliefs as a Jehovah's Witness. Not long after his induction, after refusing to pick up a weapon due to his religious principles, Kim was severely beaten by his fellow conscripts. On November 13, just twenty days after his enlistment, Kim was hospitalized as a result of his injuries, dying the following afternoon. In Seoul National Cemetery we can find the tombstone of this young man who died before his twenty-second birthday for the sake of personal convictions incompatible with those of his own society.¹ Had he lived longer, Kim might have numbered one of 16,000 men in Korea who have been imprisoned as conscientious objectors since 1939, when the first Korean conscientious objector was convicted.² Korean conscientious objectors are a remarkable international issue, for they account for 80% of international prisoners being punished for this universal issue, which has been debated since the Roman Empire. In addition, conscientious objection in South Korea, which is behind some 700-800 lawsuits filed annually, is the single most important domestic human rights issue in that country.³

1. Kim Jongsik was one of five Jehovah's Witnesses to be officially acknowledged as victims by the Presidential Committee for Investigating Suspicious Deaths within the Military (Daetongnyeong sosok gun ui munsa jinsang gyumyeong wiwonhoe). See "Jinjeong je 490-ho Kim Jongsik sageon, daetongnyeong sosok gun ui munsa jinsang gyumyeong wiwonhoe gyeolgwa bogoseo" [Report of the presidential committee for investigating suspicious deaths within the military, with respect to the affair of Kim Jongsik, petition no. 490], available through the National Archives of Korea.

2. Yi Gyeongmi "Yangsimeok byeongyeok geobuja 50 myeong UN jipdan cheongwon" [Fifty conscientious objectors collectively appeal to UN], *Hangyeore* [Hankyoreh] *News*, March 23, 2012, <http://www.hani.co.kr/arti/society/rights/524904.html> (accessed March 23, 2012).

3. O Dujin, "Heonbeop gwa gukjebeop cheukmyeon eseo bon yangsimjeok byeongyeok geobu" [Conscientious objection under the terms of constitutional and international law], in *Hanguk ui*

Until 2001, conscientious objection in Korea remained outside of both media and academia because it was perceived as a matter unique to the sect of the Jehovah's Witnesses, which was referred to by Koreans merely as "heresy." This issue of conscientious objection finally began to receive public attention in South Korea through a series of reports in a weekly newsmagazine called *Hangyeore* [*Hankyoreh*] 21. These reports were published in 2001⁴ and conscientious objection emerged as a serious legal issue. This controversial subject has subsequently been brought once before the Supreme Court and twice before the Constitutional Court,⁵ not to mention numerous times before provincial courts. In short, Korean attitudes toward conscientious objection have changed considerably over the last decade. This paper will trace that shift.

Korean academia has paid scant attention to conscientious objection and only recently began producing academic studies on the issue.⁶ These studies have mainly focused on the current legal debate, the experience of other countries, and the ideological origin of conscientious objection in the West, while the topic of how Korean society has dealt with this problem over the last several decades remains relatively neglected. The only exceptions, apart from a few reports on the lives of individual objectors,⁷ are a short article by Han

yangsimjeok byeongyeok geobugwon [The right of conscientious objection in Korea], ed. SNU Center for Public Interest & Human Rights (Seoul: SNU Center for Public Interest & Human Rights, May 2012), 77.

4. The Korean media subsequently generated numerous reports on this issue. The list of these publications can be found in *Hanguk ui yangsimjeok byeongyeok geobugwon* [The right of conscientious objection in Korea], ed. SNU Center for Public Interest & Human Rights (Seoul: SNU Center for Public Interest & Human Rights, May 2012), 94-95.

5. The ruling of the Supreme Court of July 16, 2004, and the rulings by the Constitutional Court of August 26, 2004 and August 30, 2011. This process is summarized in a pamphlet published by the Seouldae sahoe gwahak yeonguwon [SNU Center for Social Science Research], *Yangsimjeok byeongyeok geobuja, eoteoke hal geosinga?* [How shall we deal with conscientious objectors?], 14-18.

6. Yun Yeongcheol, "Yangsimjeok byeongyeok geobu e daehan hyeongsa cheobeol ui hyeongbeopjeok munjejeom" [The problem under the criminal code regarding conscientious objection], *Hyeongsa jeongchaek* 16, no. 2 (2004): 93-120; An Gyeonghwan and Jang Bokhui, *Yangsimjeok byeongyeok geobu* [Conscientious objection] (Seoul: Saram saenggak, 2002); Yi Seogu, *Yangsimjeok byeongyeok geobu 2005-nyeon: Hyeonsil jindan gwa daean mosaek* [Conscientious objection in 2005: Assessment of the situation and possible countermeasures] (Seoul: Saram saenggak, 2005); Kim Dusik, *Pyeonghwa ui eolgul* [The face of peace] (Seoul: Gyoyangin, 2010); Yi Namseok, *Yangsim e ttareun byeongyeok geobu wa simin bulbokjong* [Refusal of military service on conscientious grounds and civil disobedience] (Seoul: Geurinbi, 2004); Jo Guk, *Yangsim gwa sasang ui jayu reul wihayeo* [For the sake of freedom of conscience and thought] (Seoul: Chaek sesang, 2001).

7. Kim Dusik, "Yangsim e ttareun byeongyeok geobujadeul gwa talyeong byeongdeul ui seulpun norae" [Melancholy songs of conscientious objectors and deserters], in *Talyeongjadeul ui*

Honggu briefly summarizing the history of Korean conscientious objection⁸ and a monograph by O Man'gyu, which focused solely on the experiences of the Seventh-Day Adventists.⁹ Of course, these approaches, which lack historical perspective, are insufficient for explaining the characteristics of the Korean approach toward this universal issue. Nor can they explain why Korean society, which is renowned for its rapid and unprecedented development in various sectors, was unable for nearly sixty years to make the leap forward in terms of conscientious objection, and then ultimately came to accept such a notion. Conscientious objection is an integral part of freedom of conscience. By focusing on the debates relative to conscientious objection, I hope to elucidate how Korean society has come to embrace its own notion of freedom of conscience.

In the contemporary world, human rights seem to be trans-historical and even self-evident. Historically, however, the concept of human rights is an invented one. As Lynn Hunt, a specialist on the Enlightenment and the French Revolutionary period, asserts, “the promise of those rights can be denied, suppressed, or just remain unfulfilled, but it does not die.”¹⁰ In short, the idea of human rights continues to proliferate throughout the world. Although a vast number of countries embrace freedom of conscience, there is no single path toward its acceptance. In this article, I seek to explain how the South Korean version of freedom of conscience came to take shape. To this end, I will introduce the historical perspective and try to elucidate the continuity and change in the Korean discourse on the issue of conscientious objection by analyzing numerous newspaper articles, literature, legal documents and academic studies.

My conclusion is that popular views on conscientious objection in Korea remained virtually unchanged until the late 1990s because until that time it was perceived not as a human rights issue, but as a matter peculiar to a few particular Christian denominations that were deemed to be socially unacceptable.

ginyeombi [Monument for deserters], ed. Kim Susik, 210-235 (Seoul: Saenggak ui namu, 2003).

8. Han Honggu, “Inmingundo mujakjeong cheobeol an haetta: dasi boneun yangsime ttareun byeongyeok geobu ui yeoksa” [Even the North Korean army did not blindly punish them: a history of conscientious objection], in Han Honggu, *Daehan minguksa* [History of the Republic of Korea], vol. 2 (Seoul: Hangeore Publishing House, 2010), 210-220.

9. O Man'gyu, *Jipchong geobu wa ansikil junsu ui sinang yangsim* [Refusal to bear arms and religious conscience of Sabbath-keeping] (Seoul: Samyuk University, 2002).

10. Lynn Hunt, *Inventing Human Rights* (New York: W.W. Norton & Company, 2007), 175. In her book, Hunt argues human rights to be an invention of the eighteenth century, a period when empathy for others began to be imagined. The representative evidence she presents for her hypothesis is the moral campaign against torture that was initiated in the late eighteenth century.

In other words, the Korean debate on this issue was limited to a confrontation between the Korean state and specific Christian denominations, in particular the Jehovah's Witnesses (hereafter also referred to simply as "Witnesses") and the Seventh-Day Adventists, rather than being an issue between individual citizens and the state. Of course, this is not the only way to approach this issue, because freedom of conscience, the legal foundation of conscientious objection, was incorporated into the Korean Constitution in 1948. If conscientious objection would have been construed as a human rights issue, rather than an issue concerned with incomprehensible "heretics," and which thus needed to be suppressed, Korean conscientious objectors would have faced a different destiny.

This conclusion as such is anything but new to Koreans. The primary goal of this article is to illustrate how and why conscientious objection was construed as a confrontation between certain Christian denominations and the state rather than as a confrontation between individual citizens and the state. In addition, it is necessary to trace how and why this narrow discourse came to encompass human rights. Since conscientious objection requires an explicit and public statement of opposition to the government's demands, it functions as a fairly good indicator of the relationship between the individual and the state. By analyzing the debate on conscientious objection, we can trace the formation of the individual in Korean society. In order to show the distinctive features of the Korean approach to this universal issue more clearly, I will incorporate the West German approach into this article. Germany can serve as a useful comparative case study because, as a divided nation during the Cold War, it shared a similar security threat as Korea, and as a result, maintained a strict conscription system comparable to that of Korea.

The first part of this paper examines why freedom of conscience, which formed the legal foundation of conscientious objection in other countries, was enacted in the South Korean constitution. The second part looks at the arguments of conscientious objectors within Korean society, which had no ideological background or historical experience with respect to conscientious objection. The subsequent two sections investigate how conscientious objection was dealt with in the executive and legislative branches. The final part of the paper will analyze how the public responded to this issue.

The Enactment of "Freedom of Conscience" in the Constitution

Freedom of conscience was guaranteed in Article 12 of the first South Korean Constitution: "All citizens shall enjoy freedom of conscience. No state religion

shall be recognized and church and state shall be separated.”¹¹ Although freedom of conscience was easily ratified, the members of the Constitutional Assembly could not clearly envision what consequences it would bring. Gwon Seungyul, who served as an expert adviser to this constitutional article, argued for freedom of conscience as follows:

If we look at the constitutions of different countries, we can find articles referring to the freedom of conscience and freedom of religion ... These probably refer to making the freedom of good will (*yangsim*), not that of ill will (*aksim*). That means respecting good will ... Article 12 concerns religion or belief, that is, the highest form of a human being's activity, the exercise of conscience, which means doing what I think is right according to my own will.¹²

Here Gwon contrasts the conscience with ill will. By his definition, conscience means only “good will.” Yu Jino, another expert advisor on this issue, and who played a central role in drafting the South Korean Constitution, additionally asserted that freedom of conscience, “simply concerns the innermost heart and includes the freedom to not be forced to pledge oneself.”¹³ In the ongoing debate, an independent representative, Seo Yonggil, asserted, “Freedom of conscience is clearly different from that of thought. We can expose our ignorance if we confuse these two different freedoms.”¹⁴ He provided no further explanation regarding his perception of freedom of conscience. Another independent representative, Kim Gyeongbae, opposed the incorporation of freedom of thought because freedom of “thought” (*sasang*) could open the door to supporters of Kim Il-Sung.¹⁵ In this period, “thought” and “ideology” were synonymous with “socialism.” Although the arguments of these two representatives were far from sufficient to develop the notion of freedom of conscience, they were the only ones who formulated any arguments on the issue. With respect to Article 12, there was no further discussion. From this debate, we can conclude that the founders of the Constitution did not recognize

11. Stenographic record of the 1-17th Assembly, plenary session, 1948, 3.

12. The original Korean text was not written logically. It reads: “양심을 존중한다는 것은, 즉 마음을 자유로 쓸 수가 있다는 것을 보장하는 것인데, 법률적으로는 보장합니다마는 양심을 지키는 것이 좋을 것이고 또 외국헌법에도 많이 있습니다. 그래서 그것을 써넣었습니다 ... 12조는 종교나 신앙, 즉 우리가 제일 숭고한 인간의 할 일이라고 생각을 해서 양심의 발동, 나 자기가 옳다고 믿는 것을 자기 뜻대로 나가는 것을 주창하는 것이 좋겠습니다.” Stenographic record of the 1-18th National Assembly, plenary session, 1948, 15.

13. Stenographic record of the 1-18th National Assembly, plenary session, 1948, 15.

14. Stenographic record of the 1-23rd National Assembly, plenary session, 1948, 14.

15. Stenographic record of the 1-23rd National Assembly, plenary session, 1948, 17.

the political connotations of freedom of conscience.

Then, why would such a vague article, the nuances of which no one seemed to understand, be incorporated into the Constitution? Again, we turn to Gwon who drafted this article:

Respecting conscience means to guarantee by law the free use of one's mind. It is desirable to protect the conscience and many foreign constitutions have integrated this article. Thus, it was inserted into the Constitution.¹⁶

Freedom of conscience was written into the Constitution with no serious consideration because many foreign constitutions had already guaranteed it, as Gwon pointed out, and because the founders viewed such a freedom as merely the exercise of one's "innermost heart," as Yu expressed it. What then is freedom of conscience as understood in the many foreign constitutions into which it had been integrated? The definition of conscience provided by the *Encyclopedia Britannica* is "a personal sense of the moral content of one's own conduct, intentions, or character with regard to a feeling of obligation to do right or be good."¹⁷ In German, "Gewissen" (conscience) means "an inner moral conviction of what is right and wrong and the resulting obligation to act or not act in a certain way."¹⁸ One interesting study has suggested that the Asian notion of conscience, an idea which can be traced back to Mencius, is identical or similar to that expressed by Kant.¹⁹ However, it is quite clear that the political meaning of conscience varies from country to country. In European countries freedom of conscience was equated with freedom of religion,²⁰

16. Stenographic record of the 1-18th National Assembly plenary session, 1948, 15.

17. *Encyclopedia Britannica online*, s.v. "conscience," <http://www.britannica.com/EBchecked/topic/133250/conscience> (accessed June 20, 2012).

18. VII. Senat des Bundesverwaltungsgerichts on March 10, 1958, cited in, Charles C. Moskos et al., ed., *The New Conscientious Objection: From Sacred to Secular Resistance* (Oxford: Oxford University Press, 1993), 98.

19. See Yi Hoyeon, "Maengja wa Kanteu ui yangsim iron ui bigyo yeongu" [A comparative study of the theory on conscience between Mencius and Kant], *Gungmin yulli yeongu* 42 (1999): 393-413.

20. In the case of the German Constitution, freedom of faith and conscience are included in the same article. Article 4, Clause 1 states: "Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable." Since the 1848 Revolution, when the first debate on the German Constitution was initiated, freedom of conscience and religion have continued to be bound together. Article 5, Clause 144 of the Constitution of 1848 reads: "Every German person shall enjoy complete freedom of religion and conscience. No person shall be obliged to reveal his religion" ("Jeder Deutsche hat volle Glaubens- und Gewissensfreiheit. Niemand ist verpflichtet, seine religiöse Ueberzeugung zu offenbaren"). Unlike its Western counterparts, the Japanese Constitution separates freedom of conscience from that of religion.

because the foundation of Western moral consciousness was Christianity. The freedom of religion and conscience represents the core concept of the Western constitution and was born out of religious conflict and persecution. Thus, freedom of religion was one of the first articles to be integrated into the constitutions of various Western states.

In the West, conscientious objection was deeply rooted in Christian pacifism, and military service had been controversial there since the early days of the Christian Church.²¹ It can be traced back to a Roman citizen named Maximilian, who refused to perform military service in 295 CE. Although the Christian Church generally accepted the concept of a “just war,” there continued to be small pacifist churches that rejected the just war doctrine and insisted that any violence contradicted Biblical commandments. There was a long tradition of bargaining between the state and these pacifist churches, especially Protestant sects, a process that included the payment of fines and commutation of military service to other forms of service. The provision of substitutes became an established custom in regard to this issue. Thus, it is quite clear that in the West freedom of religion and conscientious objection were closely intertwined and, even in the World War I era, the Anglo-American nations recognized the legal right of members of pacifist churches to conscientiously object. In short, both freedom of conscience and conscientious objection were deeply rooted in the Western legal system.

By contrast, it is a matter of some controversy whether the Korean or Sino-Korean concept of “*yangsim*” carries any political connotation. In reference to the Korean term *yangsim*, Choe Daegwon, a representative Korean constitutional scholar, insisted that although Mencius used the term *yangsim* (Ch. *liangxin* 良心), it did not seem to have any political connotation.²² Moreover, Choe stated that it was unclear whether this Asian *yangsim* could be identified with “conscience,” which included moral judgment. Unlike Choe, Jang Seunghui posits that Mencius’ concept of conscience included the right to demonstrate against political leaders who did not comply with the “mandate of

Article 19 of the Japanese Constitution reads, “Freedom of thought and conscience shall not be violated,” while Article 20 states, “freedom of religion is guaranteed to all.” <http://www.solon.org/Constitutions/Japan/English/english-Constitution.html> (accessed December 18, 2012).

21. For a brief overview of the history of pacifist churches, see Charles C. Moskos, et al., ed., *The New Conscientious Objection: From Sacred to Secular Resistance*, 9-15. For more detailed coverage of the history of pacifist churches, see Kim Dusik, *Pyeonghwa ui eolgul*, 160-187.

22. Choe Daegwon, “Yangsim ui jayu wa sa joe gwanggo” [Freedom of conscience and the court-ordered apology], *Seoul daehakkyo beophak* 39, no. 3 (1999), 17 (note 18).

Heaven” (*cheonmyeong*), the source of conscience.²³ Irrespective of this controversy, it can be said that there was no legal tradition in Korea which brought freedom of conscience to the fore, as we can easily discern from the constitutional debate of 1948. The founders of the Korean Constitution did not grasp that freedom of conscience could lead to such political demands as conscientious objection. In this context, Kim Dusik, a legal expert, even asserted in his book *Pyeonghwa ui eolgul* (The face of peace) that it was wrong to translate the term “conscience,” the thought and knowledge of individual person, as “*yangsim*,” a term close in meaning to “*teotteotham*,” which is a much more passive posture of mind.²⁴

Considering the fact that even the founders of the Korean Constitution had no clear notion of freedom of conscience, it is not surprising that conscientious objection went unmentioned in the debate over the military service law. The first military service law, Article 41, was enacted in 1949. The first article of this law states, “Every man of Korean nationality is obliged to serve in the military.”²⁵ During the parliamentary debate, conscientious objection was not mentioned at all. In Korea, there was no historical experience or collective pressure for conscientious objection. Furthermore, the military itself was an institution welcomed by society. When the first Korean military law was enacted, Representative Yi Sukju stated, “The historical military service law passed, although we did not have a right or duty to perform military service over the last forty years.”²⁶ As his statement clearly shows, there was no massive objection to the military itself, which served as a symbol of the independent state.²⁷

At this point, a comparison with Germany can further clarify Korea’s unique situation. West Germany guaranteed the right of conscientious objection in its Constitution of 1949, and subsequently restated it in the military law of 1959.²⁸ One reason for this was the widely held belief that the guarantee of the

23. Jang Seunghui, “Maengja ui yangsimnon” [Mencius’ theory of conscience], *Yugyo sasang yeongu* 32 (2008), 219-249.

24. Kim Dusik, *Pyeonghwa ui eolgul*, 38-39.

25. Stenographic record of the 4-11th extraordinary session of the National Assembly, 1948, 4.

26. Stenographic record of the 4-11th extraordinary session of the National Assembly, 1948, 4.

27. For a history of the South Korean conscription system, see Han Honggu, *Daehan minguksa*, vol. 1, 261-271.

28. Article 25 of the West German Military Service Law, enacted after fierce dispute, reads: “Those who refuse to serve in the army on the grounds of conscience can perform civilian service.” Wilfried von Bredow, *Demokratie und Streitkräfte: Militär, Staat und Gesellschaft in der Bundesrepublik Deutschland* (Wiesbaden: Westdeutscher Verlag), 134.

right of West German citizens to refuse military service was a measure against the resurgence of Nazism or militarism.²⁹ In the years immediately after World War II there was strong antipathy in West Germany towards the military, something transformed into a demand to democratize the military as German remilitarization became inevitable in the context of the Cold war. Thus, the debate over the rebuilding of the German military was closely related with the creation of a democratic military. The enactment of conscientious objection symbolized the new, democratic German army, as Fritz Eberhard, a representative from the SPD (Sozialdemokratische Partei Deutschlands, or Social Democratic party), clearly indicated. During the constitutional debate, Eberhard remarked, “After German society’s long winter slumber of the conscience with the culture of ‘an order is an order,’ conscientious objection is necessary to bring to an end that culture of ‘an order is an order.’”³⁰ In Korea, where there existed strong support for the military, a symbol of an independent state, there was no such widespread dissatisfaction with the military to provide favorable conditions for the acceptance of conscientious objection.

With the enactment of Article 44 on August 15, 1957, conscientious objection in South Korea could result in a jail term of up to one year. During the 1957 debate over this law, the Seventh-Day Adventists’ objection to military service was mentioned once. However, this was countered by the argument that “only the Seventh-Day Adventist Church insisted on conscientious objection, even though no other Christian church ever refused individual gun possession.”³¹ The Vice-minister for Defense stated more emphatically that “there is no legal foundation in Korea to accept conscientious objection,”³² even though freedom of conscience was incorporated in the Korean Constitution.

The Formation of “Conscience:” The Arguments of the Conscientious Objectors

There were a variety of conscientious objectors in Western countries, where debates on the issue were persistent. In these countries, the category of conscientious objector gradually broadened from those who objected to

29. Mun Suhyeon [Mun Soo-Hyun], “Seodok eseo yangsimjeok byeongyeok geobu e daehan nonui” [The Debate over conscientious objection in West Germany], *Yeoksa wa munwaha* 17 (2009), 106-133.

30. Detlef Bald, *Demokratie und Streitkräfte*, 119.

31. “Gijaseok” [From the press box], *Gyeonghyang sinmun*, July 14, 1957.

32. Stenographic record of the 33rd National Assembly, plenary session, 1948, 20.

military service due to their religious beliefs to include even those whose objection was based on secular grounds. Religious objectors were joined by anarchist and socialist opponents of the military system, as well as the liberal reformist peace associations that had emerged in Europe and America. For instance, the West German law of 1959 officially allowed alternative service for any sincere conscientious objector, be that objection on religious or secular grounds.

Unlike the case of Western countries, objection to military service as a weapon against war was not a concept to indigenously emerge in Korean society. We can ascertain this with statistics: in Korea, conscientious objection was almost completely confined to two Christian denominations—the Seventh-Day Adventists and the Jehovah’s Witnesses. In a variety of documents, such as legal statements, newspaper articles, biographies and numerous monographs, no objectors unrelated to these two churches are reported before the 2000s.³³ Even Catholic objectors go unreported.³⁴

Each of these two Christian churches selected its own strategy for pursuing conscientious objection. The Adventists chose to be disobedient by refusing to carry weapons within the military, and instead were proponents of engaging in non-military roles, such as that of medic. They indicated their submission to the state, if not to military service. As a result, Adventists were consequentially court-martialed. By contrast, the Witnesses refused to be conscripted at all and were tried and punished by civil courts for violating the military service law.³⁵

First, let us examine the position of the Adventists. In the initial stage, the Korean Adventists apparently had no consistent position toward military

33. Two exceptional cases, one of a secular objector and another of a Catholic, are reported in the autobiography of Won Donggyu, who was imprisoned for more than seven years. According to Won, the secular objector was regarded as insane, and thus released, while the Catholic objector suddenly disappeared. Won Donggyu, *Geuriseudoin ui tto dareum jeonjaeng* [Another war for Christians] (Seoul: Polmoseuteu, 2006), 112-114.

34. Let us look at the American case during World War II. Among the 12,000 Americans who refused military service during World War II on the grounds of conscientious objection, 532 came from among the Jehovah’s Witnesses, 162 from the Catholic Church, 845 from the Methodist Churches, and 735 from the Presbyterian Church. Gukhoe gukbang wiwonhoe [National Assembly, Defense Committee], “Byeongyeokbeop junggae jeongbeopyuran gongcheonghoe: yangsimjeok byeongyeok geobujae daehan daeche bokmu jedo doip gwallyeon” [Public hearing regarding the revision of the military law on conscientious objectors], March 17, 2005, 48.

35. The Witnesses do not seem to have a unified policy in regards to alternative service. For instance, West German Witnesses refused not only physical military training, but also the military in general. Among the 821 applicants for conscientious objection, 783 were reported to be members of the Witnesses’ Church, who had even rejected alternative forms of service. See Christian Rabe u.a., *Kriegsdienstverweigerer in der BRD* (Opladen: Westdeutscher Verlag, 1972), 90.

service. In his *Hanguk jaerim gyohoesa* (History of the Korean Adventist Church), O Man'gyu writes, "Not only were the young Adventists conscripted, but the leaders of the [Adventist] Church did not know what to do with conscientious objection." And further, "There were only a few people who vaguely knew about non-military service and the American Adventists were allowed to keep the Sabbath during military service."³⁶ Only gradually did the Korean Adventists decide to adopt non-military service and train the Adventists to serve as medics. It is impossible to find evidence to show how the policy of the Church affected the decisions of individual believers in those days. However, it is quite clear that the attitude of the Korean Adventist Church toward military service was not decided by the Korean Adventists, but was directly connected to the American Adventist Church. That is, the non-military service policy was gradually imported to Korea by the missionaries, a phenomenon we might term the "importation of conscience."

So closely was the non-military service policy of the Adventists tied to the activities of the American missionaries that the Korean Adventist Church abandoned this policy after the missionaries retreated as heads of the Korean Adventist Church. As the South Korean military government intensified its oppression, a growing number of Korean Adventists gave up non-military service and the Korean Adventist Church leaders began to spread different ideas about conscientious objection. Kim Iyeol, who later became president of the Korean Adventists, began to insist that conscientious objection should not be a matter of the Church but of individuals. He said, "People can accept or refuse to carry a gun according to the light given by God. Thus, we cannot decide who is more pious based solely on our current attitude toward military service."³⁷ Facing such a challenge from within, the director of the Military Service Department in the General Assembly of the Seventh-Day Adventists (Jaeringyo daechonghoe gunbong sawiwonjang) from the United States visited the Korean Adventist Church as well as the Korean Defense Ministry and proclaimed the strong conviction of the Adventists regarding conscientious objection. Ultimately, in 1971, when Kim Iyeol replaced the missionary leaders and emerged as the actual leader of the Korean Adventist Church, the dispute over non-military service came to an end. The fact that Choe Bangwon, the Adventist who had served the longest prison term for his objection to military service, was not even mentioned in the church weekly after his release from seven and a half years of

36. Quoted in Yi Yeongnin, *Hanguk jaerim gyohoesa* [History of the Korean Adventist Church] (Seoul: Sijosa, 1965), 248.

37. O Man'gyu, *Jipchong geobu wa ansikil junsu*, 96.

imprisonment, clearly shows the shift in the Adventist Church's policy regarding this issue.³⁸

With respect to this situation, O Man'gyu, an Adventist preacher and expert on Adventist conscientious objection, came up with an interesting interpretation. He wrote in his comprehensive history of the Korean Adventists and military service that they would not have been involved in the ideological confusion or have made such a "wrong" decision to abandon their pacifist convictions "if there had been the internet or if the Korean Adventist leaders could have spoken fluent English."³⁹ In his analysis, conscientious objection is not a matter of individual morality, but a matter of Church doctrine. Then, we can ask whether the state is obliged to accept and respect this doctrine of a particular church when membership in certain denominations automatically leads to conscientious objection. In Western societies such as that of West Germany, which had continued to wrestle with this issue, the answer was clear: the correlation between membership in particular pacifist churches and conscientious objection could be easily acknowledged. However, this was because the correlation was historically justified and proven, especially in the case of Germany, where during the Nazi period 20,000 proved the authenticity of their conscience by being executed.⁴⁰ However, in Korean society, where there was virtually no historical precedent for the contemporary legitimacy of conscientious objection, it was quite difficult to cope with what was perceived of as a completely foreign issue.

Unlike the Adventists, the Witnesses in Korea made conscientious objection a matter of individual conscience. The Witnesses had traditionally tried not to participate in secular matters of state. However, they were forced to officially announce their position on this issue when the military government, which had attempted to completely eliminate conscientious objectors, repeatedly contacted the Witness Church in the years between 1973 and 1975. The headquarters of the Witnesses alleged that the individual Witnesses chose conscientious objection based on their own convictions and that the Church could not intervene. However, the Military Manpower Administration (Byeongmucheong) countered

38. O Man'gyu, *Jipchong geobu wa ansikil junsu*, 122-123.

39. O Man'gyu, *Jipchong geobu wa ansikil junsu*, 195.

40. During World War II, conscientious objection in Nazi Germany was punishable by death. Unfortunately, data on such cases is very scant. Some 20,000 civilians were reported to have been executed for conscientious objection, of which a large number were Jehovah's Witnesses, which constituted a rare opposition group during Nazi Germany. Patrick Bernhard, *Zivildienst zwischen Reform und Revolte: eine bundesdeutsche Institution im gesellschaftlichen Wandel 1961-1982* (München: R. Oldenbourg, 2005), 12.

this argument by asserting that “no Christians besides the Witnesses had ever refused to serve in the army.”⁴¹ Donald L. Steele, President of the Korean Witnesses, or as they were officially known, “The Watchtower Bible and Tract Society,” argued, “Conscientious objection hinged on the individual decision, although the massive number of Witnesses made the same decision, and the Church could not take responsibility for this individual decision.”⁴² Indeed, unlike the Adventist Church, which officially appealed to legalize conscientious objection or negotiated with the Ministry of Defense, the Witnesses took no legal measures to defend themselves. In a dialogue with a provincial Military Manpower Administration, the Witnesses restated their stance: “We do not urge the government to enact the law pertaining to conscientious objection since we are not in the position to do that.”⁴³

Although these two pacifist churches chose different strategies to achieve the same goal, the Korean objectors from both churches argued for conscientious objection in the same way. They legitimized their decision not to serve in the army on the basis of church teachings, not on the basis of their own conscience, irrespective of the divergent beliefs of these two denominations. We can easily find a number of conscientious objection cases in newspaper articles published between the 1950s and 1970s. The believers in both Christian denominations declared that service in the military was unacceptable for various reasons, including, “joining the army is against the Church precepts;”⁴⁴ “I would rather be imprisoned than betray the Biblical teachings;”⁴⁵ “I cannot be enlisted because killing deviates from the Church;”⁴⁶ “because the Church doctrine

41. Byeongmucheong [Military Manpower Administration] (February 8, 1974). This document is found in the library of the Jehovah’s Witnesses Church, Anseong, Gyeonggi-do. Hereinafter, I will designate documents from this library as JW. Here I would like to express my deep gratitude to the Korean Watchtower Bible and Tract Society, and especially Kim Dongin, for its willingness to provide me all relevant documents and respond promptly to my questions.

42. Letter from Mr. Steele to the President of the Military Manpower Administration, “Yeohowa ui jeungin sindo byeongyeok uimu ihaeng chokgu e daehan hoesin” [Response to the request for the Witnesses to do their military service], February 23, 1974, JW.

43. “Gangwon-do jibang Byeongmu cheongjang Jo Byeongjik 1973” [Military Manpower Administration in Gangwon Province], JW.

44. “Nonsan daesin gamok e” [To jail rather than Nonsan military camp], *Donga ilbo*, March 21, 1959.

45. “Yeohowa ui jeungin byeongyeok gipi sageon” [Conscientious objection cases of the witnesses], *Gyeonghyang sinmun*, July 14, 1957.

46. “Geumgohyeong guhyeong sojip buleungjae” [Imprisonment for those unwilling to be enlisted], *Donga ilbo*, July 15, 1957.

teaches not to kill;⁴⁷ and, “in order to comply with Church doctrine.”⁴⁸ From this, it is questionable whether the meaningful notion of the “individual” that makes a decision based on his own will could have existed in the mind of Korean conscientious objectors.

An article entitled “Judge became infuriated,” published in the *Donga ilbo*, a major Korean daily, reported one interesting case.⁴⁹ A Jehovah’s Witness named Kim Taesun had argued that service in the military, an organization for killing, was against Church doctrine. He listed several verses from the Bible which could be construed as arguments for conscientious objection, without, however providing his own ideas on the issue. In his decision, the judge sentenced Kim Taesun to two years imprisonment, one year longer than the prosecutor had demanded, for the reason that the alleged fanatic needed sufficient time to reflect on his behavior. To the judge, what was at stake in this trial was how to punish “the fanatic,” not how to find an equilibrium between the freedom of individual citizens and the needs of the state.

Another interesting case, reported in February 1959, points out that Korean conscientious objectors did not establish their own pacifism. Yi Byeongyeop, a Witness who escaped from North Korea in search of freedom and who was opposed to communist suppression, asserted that “true Witnesses cannot be conscripted.” As to the question of who should be in charge of national defense, his reply was “those who do not believe in Christianity.”⁵⁰ His pacifism did not seem to go beyond his own denomination to reach universal pacifism. As such, he probably strengthened the general perception that conscientious objection was a matter of particular Christian denominations. Indeed, it was declared in a German court that if a conscientious objector did not wish for others to follow his decision, his refusal to serve in the army could not be viewed as a decision predicated on his conscience.⁵¹

Such an argument based on Church doctrine, rather than on individual conscience, still exists. In 1999, the Military Court of the Third Corps issued its

47. “Hoengseol suseol” [Talking nonsense], *Donga ilbo*, December 5, 1958.

48. “Hullyeon geobuhan ansik gyododeul hangmyeong joemok euro yuk myeong gusok” [Confinement of six Adventists who refused manual exercises on charge of betrayal], *Gyeonghyang simmun*, October 31, 1958.

49. “Damdang pansa daenohada” [Judge became infuriated], *Donga ilbo*, April 30, 1959.

50. “Ibeon eun jingiip jochado geobu” [Now they even refused to be enlisted], *Donga ilbo*, February 14, 1959.

51. According to this decision, the notion of freedom of conscience guaranteed by the Constitution is not an arbitrary decision, but an objective one that could be generally accepted. Cited from, “Yangsimu gaenyem hwaksan sago nollan” [Controversy over conscientious objection stirred up], *Donga ilbo*, November 5, 1997.

judgment on conscientious objection, stating that “the accused refused to serve in the military by reason that military service violates the church doctrine of the Witnesses.”⁵²

Reflecting on the fact that Korean conscientious objectors invoked the authority of the doctrine of their Church, rather than their individual conscience, we can likely conclude that the conscience as guaranteed by the Constitution was not yet formed, even among the conscientious objectors themselves. We cannot completely rule out the possibility that this wording was not made by conscientious objectors, but by journalists, judges and the government officers in charge of this issue who were prejudiced against the Adventists and Witnesses. In either case, we can understand why conscientious objection was unacceptable to Korean society: it was only a matter of particular Christian denominations, and thus, recognition of conscientious objection was believed to result in privileging these particular churches.

Since 2000, this argument has been partly overturned, mainly because the composition of conscientious objectors has diversified: not only the Witnesses, but also the Buddhists, the Catholics and the pacifists comprise the growing list of conscientious objectors. It is reported that in 2011 fifty-two non-Witness conscientious objectors in South Korea faced imprisonment.⁵³

Change has occurred not only in the number and diversity of objectors, but also in the content of their arguments. Ko Dongju, a Catholic conscientious objector, stated in detail how he came to his pacifist convictions through experiencing numerous private and public events. His documents contrast sharply with those provided by other former conscientious objectors. His attorney speculated about this aspect of his case in his statement of rationale behind his conscientious objection: “Ko’s statement is not confined to stating his membership in the Christian Church, but clearly shows the process of his conscientious decision.”⁵⁴ That is, the debate is evolving from one characterized by “the confrontation between the church and state” to “the confrontation between the individual and the state.”

52. Je samgun saryeongbu botong gunsa beopwon [Military court of the Third Corps], “99 go 250, Disobedience,” delivered December 9, 1999. The same can be true of the subsequent decisions. For instance, see Je samgun saryeongbu botong gunsa beopwon [Military court of the Third Corps], “2000 go 18, Disobedience,” delivered April 6, 2000, JW.

53. “World Without War,” <http://www.withoutwar.org> (accessed June 20, 2012).

54. “Protocol for the first public trial regarding Seoul Western District Court, 2006 go dan 152.” I am very grateful to “Jeonjaeng comneun sesang” [World Without War] for sharing this valuable personal document.

The Response of the Ministry of Defense and the Military

In Korea, the Ministry of Defense did not set up consistent measures to deal with this issue until the 1960s. First of all, until that time compulsory conscription had not been thoroughly implemented, resulting in numerous draft evaders. For instance, it was reported by the Military Manpower Administration in 1958 that there were some 75,000 evaders in Seoul alone, most of them from privileged families.⁵⁵ During such a chaotic period when the government offered no clear-cut position, it was mostly up to individual military leaders of various ranks to decide on the extent of punishment for evaders.⁵⁶ In a book published by the Seventh-Day Adventist Church entitled *The History of the Korean Adventist Church (Hanguk jaerim gyohoesa)*, frequently mentioned were the experiences of church members who, God having heard their prayers, met merciful military leaders.⁵⁷

In other cases, the Ministry of Defense set out to settle negotiations with the Seventh-Day Church. The Korean Seventh-Day Church, which had been dismantled due to suppression from the Japanese colonial regime, reestablished itself with the support of American missionaries after liberation. Since it had close connections with the U.S. military in South Korea,⁵⁸ the Church could actively participate in the debate on conscientious objection by visiting the Ministry of Defense or by sending letters to the Minister of Defense. This state of affairs is in sharp contrast to the church of the Witnesses, which regarded conscientious objection as a private matter and never officially confronted it. At times, the efforts of the Adventists resulted in obvious success. For instance, in 1957 the Minister of Defense issued an order entitled “Gukbang chongje 2288 ho”, which stated that the members of the Seventh-Day Church could serve as medics or be allotted to a military unit where usage of weapons was unnecessary. This order seemed to not have been thoroughly implemented though because

55. “Chilmani neomneun byeongyeok gipija, geu cheoljeohan dansok eul yomang handa” [More than 70,000 draft evaders should be strictly punished], *Gyeonghyang sinmun*, December 23, 1958.

56. Since the Witnesses were incarcerated in a civilian prison, the debate of conscientious objection in the military camp was confined to the Adventists.

57. Yi Yeongnin, *Hanguk jaerim gyohoesa*, 248-259. In addition, O Man'gyu compiled a number of essays written by the Adventists in his aforementioned book. Pak Gyesin, a former conscientious objector, even asserted that “what matters was whether their immediate superior would have an understanding of conscientious objection.” See O Man'gyu, *Jipchong geobu wa ansikil junsu*, 331.

58. O Man'gyu, *Jipchong geobu wa ansikil junsu*, 53.

the same appeal was delivered to the Ministry of Defense in 1958. However, it is quite clear that this order was at least partly implemented because it was reported that in 1960, 85 of 250 soldiers from the Seventh-Day Church were serving as medics.⁵⁹

This flexible attitude on the part of the Ministry of Defense completely disappeared beginning in the late 1960s. The government undertook a revision of the military law in 1970 and unified various local military manpower offices into a single national institute to strengthen the enforcement of military service. The raid on the Blue House by North Korean Special Forces on January 21, 1968, followed by the North Korean capture of the American spy ship *USS Pueblo* on January 23, served to provide momentum for this revision.⁶⁰ With respect to the debate on conscientious objection, the year 1973 marked a turning point. Through a special law No. 2455 against violations of military law (Byeongyeokbeop wiban beomjoe cheobeole gwanhan teukbyeoljochibeop je 2455-ho), issued on January 30, 1973, the government increased the prison sentence for refusal of military service from three to ten years. Subsequently, in 1975, President Park Chung Hee ordered that 100% enlistment be reached by 1975. Indeed, it was reported that the percentage of objectors was reduced to 0.3% in 1976.

In the aftermath of such measures, the Seventh-Day Adventist Church abandoned their conscientious objection policy. In 1976, the man in charge of military service affairs within the Seventh-Day Adventist Church stated that “Our Church does not view the gun itself or its handling as a sin.”⁶¹ As a result, the Witnesses remained as the sole group which collectively refused military service.⁶² The government’s motto, “annihilation of objectors,” implied the extreme suppression of the Witnesses. Even those who provided sanctuaries for objectors were prosecuted,⁶³ while employers who hired objectors faced the revocation of their business licenses.⁶⁴ The Military Manpower Administration

59. For more detailed information, see O Man’gyu, *Jipchong geobu wa ansikil junsu*, 51-84.

60. “Jeongbu yeodang byeongyeokbeop jeonmyeon gaejeong” [Ruling party sets out to thoroughly revise the military service law], *Gyeonghyang sinmun*, November 28, 1970.

61. O Man’gyu, *Jipchong geobu wa ansikil junsu*, 136.

62. It is said that the Witnesses constituted over 60% of the conscientious objectors in 1974 (“Gipija ui onsang” [Hotbed of draft dodgers], *Daegu maeil sinmun*, May 30, 1974). Another article suggested that the Witnesses comprised of 87% of the evaders (“Byeongyeok gipi ui sahoe munjehwa” [Conscientious objection emerges as social issue], *Jugan jonggyo*, August 14, 1974).

63. “Byeongyeok gipija sumgyeo jun Yeohowa ui jeungin gobal” [Witness accused of providing refuge to a conscientious objector], *Gyeonghyang sinmun*, December 20, 1974.

64. “Byeongmucheong. teukbyeol geomgeo gigan e gipija 539 myeong gusok” [Military Manpower Administration arrests 539 evaders], *Gyeonghyang sinmun*, July 30, 1974.

requested the courts at various levels deal with the Witnesses in particular with especial harshness.⁶⁵ Furthermore, offices of the Military Manpower Administration forcibly inducted Witnesses. In one notable case, on March 9, 1975 (an incident that the Witnesses called the “March Ninth Incident,” or *sam gu satae*) all nineteen Jehovah’s Witness Churches in Busan were attacked by men from the Military Manpower Administration, and sixty-three Witnesses were forcibly inducted on the spot.⁶⁶

The situation within military units was much worse. There is considerable evidence of brutality and mistreatment on the bases. Conscientious objectors in the barracks were beaten, denied food, and sent to specially devised cells that hindered sleeping and standing.⁶⁷ Although such brutalities were reported to the military police, no measures were taken against the perpetrators. The brutality and mistreatment were quasi-legal. Not surprisingly, Jeong Chun’guk, a former medical student and then a farmer after serving a prison term of seven years and ten months for refusing military service, testified in an article published in the journal *Minbyeon hoebo*, a journal of Korean Democratic lawyers, in 2001 that “the Witnesses belong to the lowest strata of Korean society.”⁶⁸

How could the government legitimize such an infringement upon human rights? The Witness Church, which had remained aloof from secular affairs, has preserved various documents from this period. Documents pertaining to the position of the government, such as protocols during the meeting with the president of the local Military Manpower Administration office or their letters to the head of the Witnesses, are exceptionally well preserved in the library of the Witness Church’s headquarters. These are very valuable because we cannot find official documentation of the government’s stance on this issue during this period anywhere else, for it was unnecessary for the then undemocratic South Korean government to legitimize their political measures to the minority, especially when it came to military matters. All these documents tend to maximize the threat of North Korea. A number of letters, written by the presidents of the local offices of the Military Manpower Administration between

65. “Min Daebeopwonjang jeonguk beopwonjang hoeuiseo jisi” [Min, president of the Supreme Court, ordered by the presiding officer of the district courts], *Gyeonghyang sinmun*, December 3, 1975.

66. “Watchitawo [Watchtower] seongseo chaekja hyeophoe bonaen pyeonji” [A letter to the headquarters of the Witnesses’ Church], December 10, 1975, JW.

67. For more detailed information, see the documents of the Presidential Committee for Investigating Suspicious Deaths in the Military (Daetongnyeong sosok gun ui munsa jinsang gyumyeong wiwonhoe), available in the National Archives of Korea.

68. Jeong Chun’guk, “Icheojilsu eomneun sageon e daehan josa” [Condolences for an unforgettable event], *Minbyeon hoebo* 41 (July-August 2001), 40.

November and December 1973, repeatedly mention the imminent threat posed by North Korea: “With the background of rapidly changing world politics that has resulted in the Vietnam War and the conflicts in the Middle East, the North Korean government is now reaching out its monstrous hands to South Korea by dispatching spies”;⁶⁹ or, “Now, we should keep a keen eye on the hostility of North Korea, which is about again to play with fire on us.”⁷⁰ Since similar expressions are used in various letters to describe the imminent threat, one can assume that the Military Manpower Administration provided a single guideline for such letters.

Such statements on the imminent threat from North Korea led to an emphasis on Korea’s singular circumstances. In a dialogue with the president of the Korean Witnesses, Cho Byeongjik, president of the Military Manpower Administration office in Gangwon Province, insisted, “You are now talking about the case of other countries that have allowed conscientious objection, but no foreign lesson, principal or philosophy can be applied to Korea.” The reason being that, “In our country, which experienced bloody fratricidal war and colonial occupation for a quarter of a century, it doesn’t matter what other people say because it is just the position of a disinterested third party.”⁷¹ Facing this argument, Mr. Steele, President of the Korean Witnesses’ Church, stated that he himself had experienced the Korean War in Korea.⁷² Perhaps, this was the only way he saw, as a foreigner, of obtaining the right to participate in the debate in such a unique society as Korea’s.

Except for the imminent threats and the peculiarity of the Korean situation itself, two other arguments were made by the government against conscientious objection. First, it was stated that the Bible “cannot be taught in a place without peace, and a sermon can be preached only in a place with strong national defense.”⁷³ Second, the government could not grant “a privilege to a particular religion and belief.”⁷⁴

69. Letter from the Military Manpower Administration of Jeonbuk Province to the headquarters of the Witnesses (December 1973), JW.

70. Letter from the Military Manpower Administration of Cheju Province to the headquarters of the Witnesses (November 1973), JW.

71. Letter from Cho Byeongjik, head of the Military Manpower Administration of Gangwon Province to the headquarters of the Witnesses (August 23, 1973), JW.

72. *Ibid.*

73. Letter of the Military Manpower Administration of Jeonbuk Province to the headquarters of the Witnesses (December 1973), JW.

74. Letter of the Military Manpower Administration of Chungnam Province to the headquarters of the Witnesses (December 1973), JW.

The extreme violence sanctioned by the government against the objectors, which eventually resulted in a number of suspicious deaths within military units, among which five cases were officially acknowledged by a recent governmental investigation, disappeared with the political transformation from dictatorship to democracy. However, the basic attitude of the Korean government did not change. In an official statement released in 2008, the Minister of Defense proclaimed, "Considering the security situation, the lack of peace, the social equity of military duty, and the social impact unleashed by the introduction of alternative services, we think that a social agreement and consensus has not yet formed."⁷⁵ What has changed is that the Minister of Defense was at least forced to officially legitimize the position of the government, which had for a long time previous, since the creation of South Korea conscription system, been completely unnecessary.

In sum, the government argued that national security should have priority over the will of the individual, especially when the existence of the state as such is under threat, and the maintenance of national conscription, based on absolute equality, is the only way to ensure national security.⁷⁶ In this context, it may be instructive to refer to the West German case because German society argued over this same issue but in exactly the opposite way. In Article 4, Clause 3 of its Constitution, which states that "no one shall be compelled against his conscience to render military service involving the use of arms," West Germany decided to place priority on the will of the individual, rather than on the national security. Such a decision was drawn from the lessons of the Nazi era; it was the historical lesson that the moral sovereignty of the people was unthinkable without freedom of religion and conscience.⁷⁷

Analysis of the Trials Regarding Conscientious Objection

Prior to 2000, there were no serious legal disputes over conscientious objection since the Korean judiciary showed a clear and consistent attitude toward it.

75. "Jonggyojeok iyu byeongyeok geobuja daeche bokmu, gukbangbu 'sigi sangjo' gyeollon," http://orbi.kr/bbs/board.php?bo_table=xi_agit_article&wr_id=34552 (accessed June 20, 2012).

76. In her impressive study, *Militarized Modernity and Gendered Citizenship in South Korea*, Seungsook Moon indicates that the "fairness" of conscription is the last credential the South Korean government can provide for the military, because the military does not have a positive image in South Korean society. Seungsook Moon, *Militarized Modernity and Gendered Citizenship in South Korea* (Durham, NC: Duke University Press), 71-80.

77. From 1962 even East Germany provided a legal status for conscientious objectors, becoming the only socialist state to allow a non-combat alternative service for its pacifist citizens.

They continued to oppose conscientious objection with the argument that “religious reason cannot be an excuse for not serving in the military” and “conscientious objection is not guaranteed by the Constitutional article on freedom of conscience.” However, this principle had not been strictly implemented in earlier years. Before the 1970s, judges had broad discretionary powers in deciding sentences and, in some cases, the sentence was not served in full: originally sentenced to three years’ imprisonment in December 1956, Hur Seunghui was released after six months. In addition, teachers from a high school attached to the Seventh-Day Church, who had been sentenced to three years, were reported released after just one month.⁷⁸

However, such a flexible attitude later disappeared. Over time, conscientious objectors faced increasingly severe penalties. In some cases, penalties were accumulated because some objectors were enlisted immediately after being released from prison. Chae Eugu, an Adventist who spent seven years and two months in prison, is an example of an extreme case. As he appealed to the Supreme Court, the Court declared that “in case wherein a person refuses the order to bear arms on multiple occasions, we cannot say that there is only one offense, although the refusal to bear arms is consistent and the violated law is the same.”⁷⁹

It is difficult to find legal documents pertaining to this issue outside of the official sentences.⁸⁰ Based only on these, a small number of newspaper articles and a few rare documents preserved by the Witness Church, we can barely analyze the Korean judiciaries’ attitude and discourse on this issue.

The sentences of the court are characterized by their lack of controversy. For instance, the Seoul District Criminal Court declared conscientious objection illegal in 1974. The court explained this ruling with a single sentence: the accused refused enlistment “without just reason.”⁸¹ The case of Jeong Chun’guk, who was imprisoned for seven years and ten months, was worse. In its judgment, the Military Court of the 32nd Division stated that Article 44-4 of the Military

78. Yi Yeongnin, *Hanguk jaerim gyohoesa*, 251.

79. Supreme Court decision 65 do 894, delivered December 22, 1965.

80. Unfortunately, even the documents of cases that were appealed to the Supreme Court were not preserved in the relevant official libraries. Thus, only the documents kept by those directly involved and contemporary newspaper reports are available to the researcher. The Jehovah’s Witness Church has documents regarding four cases. Chae, who was imprisoned for more than seven years and brought his case to the court, did not preserve relevant documents “due to fear.”

81. Western Branch of Seoul District Criminal Court, Eighth Department, 74 go hap 399, delivered August 22, 1974.

Criminal Law could be applied to this case,⁸² and the accused had to spend four years in prison.⁸³

Even the Supreme Court was not so different from the various provincial and military courts. Until the 1990s, there were five cases brought before the Supreme Court.⁸⁴ In all five of these cases, the Supreme Court consistently proclaimed that freedom of religion did not include the right to refuse military service.⁸⁵ The point which deserves our attention is how the Supreme Court described the cases. The Supreme Court sentences read that the accused argued against serving in the military “by bringing religious doctrine forward,”⁸⁶ with the reason that military service violates Church doctrine,⁸⁷ again “with the excuse of religious doctrine.”⁸⁸ In these sentences, terms such as individual conscience or religious conscience were not used to describe that which constituted an offense.

Since the case was confined to the religious doctrine of particular churches, not to the conscience of the citizen which was guaranteed by the Constitution, the objection was viewed merely as an “offense without just reason,” not as a seriously controversial constitutional issue. In that sense, it is not surprising that all five decisions amounted to only 1-4 pages.⁸⁹ Silence pervaded even the Supreme Court, which could have been a verbal battlefield of opposing ideologies. Won Donggyu, a member of the Seventh-Day Adventist Church who was summoned to the Supreme Court trial in November 1969, said that the Supreme Court, taking no more than thirty seconds, dismissed his case without any explanation as to its decision.⁹⁰

The attitude of the West German judiciaries contrasted sharply with that of the Koreans. Although conscientious objection was constitutionalized in West Germany, it was hardly the case that the German debates were not contentious. First, there were various efforts to nullify Article 4, Clause 3, which regulates

82. Military Court of the 32nd Division, 77 ** Gunhyeong No. 15, delivered April 19, 1977, JW.

83. One report on the trials of the day recorded, “it took less than three minutes to pronounce a sentence of three years imprisonment to a young man with a bright future.” Cited in Yi Namseok, *Yangsīm e ttareun byeongyeok goebu wa simin bulbokjong*, 22-23.

84. Supreme Court Decision 65 do 894; 69 do 934; 77 do 1457; 85 do 1094; 92 do 1534.

85. Supreme Court Decision 65 do 894, delivered December 21, 1965.

86. Supreme Court Decision 65 do 894, delivered December 21, 1965.

87. Supreme Court Decision 77 do 1457, delivered July 12, 1977, 2.

88. These two decisions have exactly the same wording as found in Supreme Court Decision 85 do 1094.

89. Supreme Court Decision, 1992 do 1534.

90. Won Donggyu, *Geuriseudoin ui ttodarun jeonjaeng*, 120.

conscientious objection. It was relatively easy to settle the first controversy because conscientious objection was enacted by the Constitution, not just by military law. The second issue was whether political motivation could be a legitimate reason for conscientious objection. After years of discussion, politically motivated conscientious objectors became exempt from military service. As an example, the application of a conscientious objector who refused military service in the divided nation due to the possibility of a fratricidal war, but would accept military service after German unification, would have been rejected by the Supreme Executive Court in 1960 but was accepted in 1968.⁹¹ The third controversial issue was whether the applicants for conscientious objection refused military service on truly conscientious grounds. This was an exceedingly difficult issue because the personality of a particular person must be litigable in order to respond to this question. Such a gradual “expansion of conscience,” which had been unavoidable in German courts, was not to be found in Korean courts because the Korean judiciary avoided dealing with this by defining the issue as a matter of particular Christian denominations.⁹²

Freedom of conscience and individual human rights would have been forced to remain silent by the Korean judiciaries. But silence could not be constant in a state like South Korea, which guaranteed freedom of conscience in its Constitution. Starting in the 1990s, the courts began to show meaningful changes with regard to conscientious objection. First, the courts devised varied sentences. For instance, the Masan District Court decided to dismiss an arrest

91. Detlef Bald, *Militär und Gesellschaft, 1945-1990: die Bundeswehr der Bonner Republik* (Baden-Baden: Nomos, 1994), 120.

92. Up to 1984, every person seeking conscientious objector status might attain it through an oral inquest organized by the Ministry of Defense, and if granted such status be allowed to perform their service outside of the armed forces. Because the number of applications for exemption from military service dramatically increased due to the influence of the 1968 revolutions, the West German government was forced to change its conscription system. The student demonstrations of 1968 and the Vietnam War provoked massive nationwide anti-draft activities. In order to curb the rising number of applications for conscientious objection, the West German government introduced a stricter screening process, but to no avail. The SPD government therefore prepared a very tolerant law in 1977: all applicants for conscientious objector status were granted it. The CDU (Christliche Demokratische Union, or Christian Democratic Party) and the three state governments led by the CDU were vehemently against this law and filed a constitutional appeal. And indeed, this law was later judged unconstitutional. The West German Constitutional Court declared that alternative service should be “more onerous,” and the applicants for conscientious objector status should prove their application to be the result of conscience. The year 1984 was a watershed, as that year administrative responsibility for determining conscientious objector status shifted from the Ministry of Defense to the Ministry for Youth, Family Affairs, Women and Health, and the procedures for recognizing conscientious objectors were eased. Instead of undergoing an oral examination, the written application now became the sole source for granting conscientious objector status.

warrant for a Witness who refused to participate in reserve forces training because the arrest was deemed to be excessive.⁹³

Second, it was not religious doctrine, but “religious conscience” that came to be used as the term of offense. In the aforementioned case of the Masan District Court, the judge used the phrase, “If his absence from the training was in compliance with his own religious conscience...”⁹⁴ In connection with this, the judiciaries began to discuss this issue in depth. Both the Supreme Court and the Constitutional Court declared conscientious objection illegal, on July 15, 2004 and August 26, 2004, respectively. Furthermore, the two Courts no longer “merely stated” their position, but rather began to “argue” against conscientious objection. In 2011, the Korean Constitutional Court accepted that conscientious objection was related to constitutional freedom of conscience, but added that freedom of conscience was not an absolute constitutional right, but rather a relative right that should be adjusted to Korean circumstances.⁹⁵ Since there is no guarantee that conscientious objection will not endanger national security, as both the Supreme Court and Constitutional Court argued, the time is not yet ripe for legalizing conscientious objection. Although there has been no change in the final decision, the debate itself has changed. This issue, which had been viewed as unworthy of discussion, has become at least worthy of debate. In a nutshell, the concept of conscience began to be discussed in the Korean courts fifty years after it was guaranteed by the nation’s Constitution.

Can there be a universal developmental stage in dealing with this global and classic issue? Can there be a point at which different approaches taken by various countries converge? If so, Korean society has not yet reached Germany’s starting point. Why would the government permit the establishment of an institution that permits citizens to legally disobey the state? As to this question, the German courts repeatedly and clearly proclaimed that the state should be a community of free individuals and that the maintenance of the people’s moral sovereignty should be central to that community. In short, priority should be

93. “Jonggyojeok iyu ro yebigun hullyeon bulcham yeohowa ui jeungin sindo yeongjang gigak” [Warrant for the arrest of a Jehovah’s Witness who refused reservist training on religious grounds dismissed], *Hangyeore*, January 15, 1992.

94. *Ibid.* Similar decisions ensued. For instance, a judge declared two Witnesses innocent. See Seoul Southern District Court Decision, 2001 go dan 5819, delivered May 21, 2004.

95. These decisions are fully analyzed in various literature. See O Dongsuk, “Byeongyeok Geobugwon gwa Heonbeop” [The Right to Refuse Military Service and the Constitution], in *Hanguk ui yangsimjeok byeongyeok geobugwon* [The right of conscientious objection in Korea], ed. SNU Center for Public Interest & Human Rights, 1-11 (Seoul: SNU Center for Public Interest & Human Rights, May 2012); also, Seouldae sahoe gwahak yeonguwon, *Yangsimjeok byeongyeok geobuja, eoteoke hal geosinga?*, 25-30.

placed upon the individual, not the community, and not the other way around, as was the case with Korea. Those who oppose conscientious objection argue that the conditions of Korean society are unique, incomparable to those of any other society in the world. The question is how and by whom this peculiarity can be measured. In this way, the “legal” issue is transformed into a “social” issue, because whether or to what extent Korea is peculiar to the point that the standards of other countries may not be applicable cannot be a legal issue.

Public Response

The concept of conscientious objection was so foreign to the Korean people that they did not even have the terminology in their vocabulary until the 1990s. Among the major newspapers, the reformist *Hangyeore* [Hankyoreh] first used the term *yangsimjeok byeongyeok geobu* (conscientious objection [lit. “refusal of”] to military duty) in 1991.⁹⁶ Prior to the 1990s, conscientious objectors were merely considered illegal draft dodgers. Terms such as *jingjip geobu* (refusal of conscription) or *byeongyeok gipi* (draft evasion), terms that clearly implied a moral judgment, were widely used to indicate conscientious objectors, mainly because these objectors were not meaningful participants in the debate. Members of pacifist churches were numerically few and socially weak. Thus, they did not become a significant political force until they became intertwined with the rise of civil rights movements in the 2000s.

Given the fact that conscientious objection has hardly been a public issue in Korean society, it is not surprising that the Korean press consistently and almost unanimously assumed a critical position toward it. I argue that this negative attitude cannot be ascribed to the military government’s censorship. Conscientious objection was regarded by the public as the concern of particular Christian churches, a view shared by the courts at various levels. Jehovah’s Witnesses were believed to be a threat to the state. For instance, a journal entitled “Weekly Religion” (*Jugan jonggyo*) published an article on August 14, 1974 that said, “The public is requiring them to share mental agony with other people by discarding their sense of entitlement that is disconnected from reality, and serve in the military in spite of the fact that military service collides with their Church doctrine.” The article also quoted an expert on theology, who said, “The fundamental duties of citizens should be fulfilled, irrespective of

96. “Budodeokhan Geolpeujeon geobu neun chamgunin jeongsin” [Objection to immoral Gulf War stems from true martial spirit], *Hangyeore*, February 8, 1991.

church membership ... and refusal to serve in the military stems from forgetting the essence of religion ... and has nothing to do with religion.”⁹⁷ Such a standpoint on conscientious objection is easily found in other literature. In the reader’s column of the *Gyeonghyang sinmun*, we can find an article that embodied the overarching Korean attitude. Its author asks of the Witnesses, “Don’t you have a fatherland? Who else, except for ourselves, can defend our country?” The author continues by asserting that communization would bring not only the fatherland, freedom and sovereignty but also religion to an end.⁹⁸ The date of this article might be 1950 or 2000, or any year in between.

Because such an unsympathetic attitude toward the Witnesses remained dominant, it is fairly easy to understand why ordinary Korean citizens could both actively and passively take part in violence against conscientious objectors. In short, this violence was widely condoned by Korean society. The documents regarding Kim Jongsik, one of five Witnesses who died as a result of harsh treatment within the military and was officially acknowledged as a victim by the Presidential Committee for Investigating Suspicious Deaths within the Military (Daetongnyeong sosok gun ui munsa jinsang gyumyeong wiwonhoe), clearly reveal the attitude of ordinary soldiers toward conscientious objectors. Mr. X, a private who served in the 39th Division along with Kim stated, “I firmly believed that if war broke out again, our country would collapse due to such people as Kim.” Another private called Mr. Y stated, “The Witnesses were treated as traitors.”⁹⁹ In another case, a victim named Kim Suntae was beaten to death by his fellow conscripts, who described him as a “betrayers who sold out our country.”¹⁰⁰ Through these actions, the ordinary soldiers seemed to comply with the governmental policy towards the Witnesses or conscientious objectors, feeling no guilt. In short, both the victims and the oppressors seemed to have behaved according to their conscience.

97. “Byeongyeok gipi ui sahoe munjehwa,” *Jugan jonggyo*, August 14, 1974.

98. “Gyoryeon bulcham yeogosaengdeul hansim, joguk i beonyeong doel ttae jonggyo do itta” [Pitiful high school girls who refused military training; only the state can guarantee freedom of religion], *Gyeonghyang sinmun*, June 20, 1973.

99. “Jinjeong je 490-ho Kim Jongsik sageon, daetongnyeong sosok gun ui munsa jinsang gyumyeong wiwonhoe gyeolgwa bogoseo” [Report of the presidential committee for investigating suspicious deaths within the military, with respect to the affair of Kim Jongsik, petition no. 490], 16.

100. “Jinjeong je 442-ho Kim Seontae sageon, daetongnyeong sosok gun ui munsa jinsang gyumyeong wiwonhoe gyeolgwa bogoseo” [Report of the presidential committee for investigating suspicious deaths within the military, with respect to the affair of Kim Suntae, petition no. 442], 10.

Such a hostile environment changed only gradually. Evidence of this change can be found in a 1983 article from the *Donga ilbo*, written by the well-known journalist Han Changgi: "... they [the Jehovah's Witnesses] deserved imprisonment, because the situation of our country is completely different from that of other countries such as the U.S., which legalized conscientious objection." But despite this sentiment, Han continues, "They also deserve respect and kind treatment as human beings ... because even though their beliefs seem to be wrong from the perspective of outsiders, their willingness to run the risk of being imprisoned for the sake of preserving their beliefs can be right."¹⁰¹ This article was a rare case that pointed out the human rights of the Witnesses, a sentiment also expressed in a poem by Kim Chiha. Kim, a representative political prisoner and a renowned poet, again casts a positive light on the Witnesses through his poem entitled, "Mr. Jang, a Janitor": "I, a so-called democratic activist, am no better than Mr. Jang, Mr. Jang's belief, Mr. Jang's steadiness."¹⁰²

A novel entitled *My Youth is No More* (*Jeolmeun nal eun eopda*), published by Ha Changsu in 1992, carries crucial meaning in the debate on conscientious objection in Korea. This novel, which directly confronts the topic of the Witnesses' conscientious objection, does more than simply show sympathy for the sufferings of the Witnesses. It deals with the people's right to choose conscientious objection.¹⁰³ It opens with a quote by Peter Rühmkorf, a noted scholar on Wolfgang Borchert, "The man, whose freedom, free will, and freedom of decision and action were stolen, becomes just an object." The novel goes on to describe the wandering Minhu, who suffers from the collectivism of both the military and the Witnesses. Due to an internal conflict, Minhu gives up his convictions on conscientious objection and enters the military. But he is devastated by the tragedies of his comrades, such as that of one man who cuts his body in order to be released from the military, or another who is shot to death as a result of his repeated attempts at desertion. Thus, Minhu is unable to adjust to military life. He is opposed to the Christian argument that, whether it out of religious motivation or not, "the refusal to obey an order of the homeland, simply means you want to defend yourself with egoism despite the threats to the state."¹⁰⁴ In his own defense, Minhu counters, "Although I am now a soldier

101. "Yeohowa ui jeungin" [The Jehovah's Witnesses], *Donga ilbo*, January 27, 1983.

102. The original Korean text reads: "알 운동한다는 내가 장씨 만할까, 똥퍼 장씨 믿음만 할까, 똥퍼 장씨 항심만 할까," <http://www.lightearth.net/discussion/24810> (accessed December 18, 2012).

103. Ha Changsu, "Jeolmeun nal eun eopda" [My youth is no more], *Jakga segye* 4-2, 387-464; 4-3, 271-351.

104. Ha, *Jakga segye* 4-2, 407.

ruled by military law ... prior to this, I was an individual entity, a citizen who could enjoy the right of religious freedom guaranteed by the Constitution and act according to my own convictions.”¹⁰⁵ However, his comrades just refer to him as an “s.o.b., worse than a commie”¹⁰⁶ and harshly criticize him, insulting him as an “Odious guy,” and demanding, “Where are you from? You’re an s. o. b. who should be killed.”¹⁰⁷ Minhu appears to resign himself to everything, lamenting, “There seems to be no one who finds it unfair that I’m treated inhumanely. I can’t understand such people who consider it natural for me to be treated harshly, even though they have no idea who I am or what I think.”¹⁰⁸ Such a convincing argument had never been proposed before. The Korean conscientious objector was left with no choice but to wait until “their youth is gone.”¹⁰⁹ This novel, which approached conscientious objection from the perspective of the constitutional rights of individual human beings, can be viewed as paving the way to a solution to this issue.

Change regarding this issue became much more apparent after 2000.¹¹⁰ To begin with, the tone of criticism toward the Witnesses became less emotional. Witnesses began to be no longer denounced as “betrayers” or “traitors who sell out their country.” An opinion poll reflected this change: according to a survey conducted in 2004 by the *Chosun Ilbo* and Korean Gallup, 32-38% of respondents supported conscientious objection.¹¹¹ In 2008, when the social debate on this issue reached its apex, supporters of conscientious objection outnumbered opponents, 44.3% vs. 38.7%.

105. Ibid., 439.

106. Ibid., 437.

107. Ibid., 452.

108. Ibid., 438.

109. Ibid., 419. This work received positive reviews from critics. For instance, according to an article published in *Yeonhap News* (September 30, 1992), Ha’s work put into question “the existent circumstances in which no one can question the necessity of the military since the division of Korea is viewed as such a unique situation,” and indicated that “the free will of the individual, which can be symbolized by the acts of Witnesses, has no place in Korean society where only the logic of military, society and state are prevailing.” <http://news.naver.com/main/read.nhn?mode=LS D&mid=sec&csid1=103&oid=001&aid=0003605226> (accessed December 18, 2012).

110. Of course, the security threat remains dominant in the Korean media. Even in recent newspaper reports, we can find beliefs such as that “the sacred obligation for national defense would be shaken, if we allow any exception.” The main reason, I argue, is that conscientious objection was regarded by both the public and the various courts as the concern of particular Christian churches.

111. Sun Dokgo, et al., sa05-2137, Byeongyeok gwallyeon hyeonan e daehan josa yeongu, Hanguk gukbang yeonguwon yeongu bogoseo [National Defense Research Institute report survey on pending issues regarding military service], 11.

Even the nation's conservative newspapers became more ambivalent toward conscientious objectors. The representative conservative newspaper, *Donga ilbo*, wrote, "We cannot ignore the reality that hundreds of conscientious objectors are sentenced," this despite the title of the editorial, "We Cannot Accept Conscientious Objection."¹¹² Another conservative Christian newspaper, the *Kukmin ilbo*, insisted, "We should open our eyes to alternative services in order to prevent the unfortunate circumstance of young men choosing jail."¹¹³ Interestingly, suggestions to allow conscientious objection are mainly based on sympathy for conscientious objectors, who continue to demonstrate their aversion to serving in the military. Still, these papers do not state that the right of conscientious objection can be inferred from the constitutional rights of individual human beings.¹¹⁴

However, a counter trend can also be discerned: conscientious objection in Korea began to deteriorate into a problem between Christian denominations, in other words, a conflict between "heresy" and the "legitimate church." One of the main arguments to be proposed against conscientious objection was that "The introduction of alternative service can intensify conflict amongst the religious factions because through alternative service for conscientious objectors, the Witnesses can obtain benefits for their missionary work."¹¹⁵

This perception, that allowing alternative service for conscientious objectors would mean granting privilege to the Witnesses, effectively devalues the efforts to legalize conscientious objection. Jang Yeongdal and Chun Jungbae, the representatives who attempted to legalize conscientious objection, complained

112. "Yangsimjeok byeongyeok geobu sugeunghagi eoryeopda" [It is difficult to accept conscientious objection], *Donga ilbo*, May 24, 2004.

113. "Byeongyeok geobu hollan kkeut naeneun gyegiro" [An opportunity to bring the debate on conscientious objection to an end], *Kukmin ilbo* [Gungmin ilbo], July 16, 2004. It is easy to find similar attitudes. For instance, the *Munhwa ilbo* published an article suggesting the need "to find a solution to the agony and internal conflict of conscientious objectors" ("Heonbeop ui ireum euro jaehwaginhan anobeop ik" [Constitution ascertained the significance of national security], *Munhwa ilbo*, August 27, 2004).

114. This approach to conscientious objection emerged when the U.S. government first acknowledged such status, meaning that conscientious objectors could receive special exemption from military service, but not because of their constitutional human rights. See Yi Jaeseung, "Chamgoin uigyeonseo" [Statement of the referee], submitted by Yi Saeseung to the Constitutional Court on November 11, 2010, 301-302. 1&comm_id=M0004&media_id=452169999&pg=1&list_type=02&gubun=2 (accessed June 20, 2012).

115. For a more detailed discussion of the position of conservative Christian churches, see Sinyun Dong'uk, "Idan ui gasigwan sseun daeche bokmuje" [The alternative service wearing crown of thorns of heresy], *Hangyeore 21*, see under <http://blog.naver.com/passionate25?Redirect=Log&logNo=10033324335> (accessed June 20, 2012).

that they could not even organize a public hearing on the issue due to objections by the Christian churches, and that a lot of other representatives, although initially in favor of conscientious objection, retracted their approval because of continued opposition from Christian churches. What remains constant is that conscientious objection continues to be viewed as a privilege of the Witnesses. However, what has changed is that the Christian churches, rather than the state, have come to the forefront of the attack on conscientious objection

Conclusion

When Article 12 regarding freedom of conscience was constitutionalized in Korea, there was no social agreement or even social understanding of freedom of conscience. Even in the Constitutional Assembly, no one seemed to have a proper understanding of the political connotation of freedom of conscience, to say nothing of conscientious objection. The fathers of the South Korean Constitution did not foresee the impact of Article 12.

The idea that peace can be maintained by refusing to serve in the military is an unfamiliar and extrinsic one in Korean society. The concept of conscientious objection was so foreign to the Korean people that there was not even a proper terminology for indicating conscientious objection, or terms such as *jingjip geobu* or *byeongyeok gipi*, which imply clear moral judgments, were widely used up until the 1990s. We can say that conscientious objection was “imported” by Western Christian churches. This is why it was previously an issue only among two Christian churches, the Seventh-Day Adventist Church and the Jehovah’s Witnesses. This is also why the Seventh-Day Adventist Church abandoned conscientious objection after the retreat of the American missionaries as heads of Church in Korea, and that is why ordinary Korean soldiers could take part in violence against conscientious objectors, with their consciences intact.

Since the debate on conscientious objection was confined to the religious doctrine of particular churches and not perceived as a seriously controversial constitutional issue, the Korean government and the courts at various levels viewed it merely as an offense without just reason. Not only government authorities and the courts, but also the applicants for conscientious objection, were trapped in this narrow perspective: not the individual conscience, but “church doctrine” or “the position of the church” were proposed as the reasons for conscientious objection. In short, there was no concept of the individual within Korean society’s discourse on conscientious objection. If conscientious objection is indeed the matter of particular Christian churches, and not the matter of an individual citizen’s

human rights, the Korean government's arguments and the courts' belief that conscientious objection could bring privilege to particular Christian denominations might be more convincing than that of conscientious objectors. In the end, what matters in a constitutional state is the will of its citizens, not the will of a doctrine belonging to a few particular churches that are extrinsic to this state. As a result of this discourse, conscientious objection and freedom of conscience were either silenced or placed in situations of extreme violence.

Since the late 1990s, the conviction to never kill another human being nor participate in a war as a matter of individual conscience emerged as a meaningful, controversial issue in Korea. This subject, which had long been deemed unworthy of discussion, came to be accepted from the late 1990s as an intrinsic human right and essentially became "debatable." This change in the nation's collective thinking can be summarized as the "formation of the individual." Not only could conscientious objectors now represent themselves as individuals, but society at large became prepared to sympathize with those who had ideas different from those of the majority. These change can be traced back in various ways: the statement of Ko Dongju, who described the development of his unwillingness to participate in military service, contrasts sharply with that of the Witnesses who just listed Bible verses emphasizing peace; we can observe a diversified composition of conscientious objectors; we can notice different tones in the newspaper articles pertaining to conscientious objection published in conservative newspapers such as the *Donga ilbo*.

Of course, the conflict between the church and state was not completely replaced by the conflict between the individual and the state. However, we can see that the conflict between the church and state was partly substituted by a conflict between Christian denominations, and this new and old perception that ascribed conscientious objection to the Jehovah's Witnesses recently resurfaced as a powerful factor behind the initiative to halt the legalization of conscientious objection in Korea.

Although conscientious objectors have been few in number, the investigation of conscientious objection permits some insight into the changing relationship between the citizen and the state. In analyzing the discourse on conscientious objection, we can trace the formation of the individual within Korean society. Returning to Lynn Hunt, at the end of her book, *Inventing Human Rights*, she asserts, "You know the meaning of human rights because you feel distressed when they are violated." Now, a growing number of people are coming to "feel distressed" about the agony of conscientious objectors. Through their empathy, freedom of conscience and the place of the individual are being strengthened in Korea.

While the Republic of Korea's Constitution states that all citizens, regardless of gender, sex, political or religious affiliation, should be afforded equal treatment under the law, some scholars, such as Intaek Hwang, claim that the culture of militarism is so pervasive that Conscientious Objectors are stripped of the rights discussed in the Constitution when universal male conscription became the law in 1948. A Conscientious Objector is defined as "an individual who has claimed the right to refuse For, as the debate over conscientious objection to vaccination reveals, who exactly was entitled to make a claim to possess a conscience, with its concomitant rights, was itself a contested issue. Export citation Request permission. Copyright.Â For an additional analysis of the mother as parent see PRO, HO 45/10358/157384/19. The issue was raised after 1908 from time to time in local courts but legally had been settled by this time. 110 Swan, , The Vaccination Problem, p. 85; Vaccination Inquirer (1 November 1909), p. 170.