[page 1] **Traditional Korean Law and Its Modernization**

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I. INTRODUCTION

There may be some, who wonder whether Korea is always a country of political clashes or is really a state with law. They might also ask, “Is there law in Korea? If Korean law does exist, what is it, and how does it compare with other legal traditions and world legal cultures? What was traditional Korean law and how has it been modernized? What is the present situation of law and legal science in Korea?” I will try to answer, taking a broad perspective. As you know, law is a specific and sometimes technical subject to handle. Since I am a legal historian, who teaches the history of legal thoughts at a college of law in Korea, I wish to tackle this problem from the historical point of view on the one hand and give a general description of the present Korean situation on the other hand, while focusing on the reception of western law as follows:

1) traditional jurisprudence, or Yulhak

2) early contacts with western legal science through Shilhak, the practical learning, school

3) access to international law

4) the roles of western legal consultants in Korea

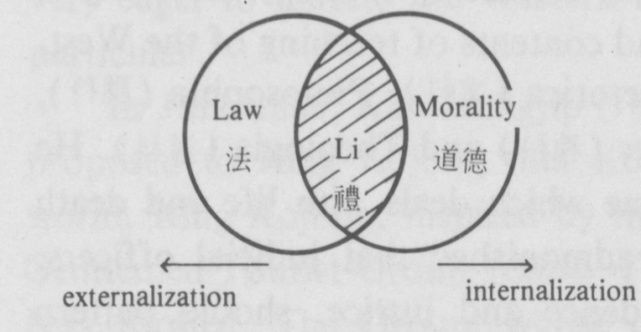
5) reception of western law from American, French, and German laws and legal sciences.

Finally, I will describe the present situation of Korean legal culture and discuss the problem of the legal consciousness of Koreans and the problem of law and social development in Korea.1

II. YULHAK: KOREAN TRADITIONAL JURISPRUDENCE

In the traditional society of Korea, there have been, of course, laws [page 2] written in codes; like Kyongjeyugwon (Six Division Code for Administration, 1397), Kyongguktaejon (Grand Code for Ruling the State, 1471), Soktaejon (Supplementary Grand Code, 1746), Taejont’ongp’yon (Great Code for Ruling the State, 1785), Taejonhoet’ong (Grand Code for Ruling the State, 1865).

But as indicated aptly by Max Weber, the dominance of the cultured literati prevented the formation of the lawyer class (Juristenstand) in the Orient and thus made it impossible for jurisprudence to develop as an independent discipline.2 Traditional Jurisprudence, Yulhak (律學), existed in Korea throughout the Three Kingdoms, Koryo Dynasty, and Choson Dynasty (till 1910),but was always regarded as one branch of Technical Learning or Miscellaneous Learning, like medicine, arithmetic or divination, as inferior to Confucian Scriptural Learning. Yulhak was not taught at Songgyunkwan, the leading national academy, but at the Ministry of Punishment as a technical subject in order to train its officials on a small scale. The executive and the judiciary were not separated from each other; as a result, administrators such as governors and county chiefs were empowered to administer justice, while Yulhak graduates merely assisted in the process of trial. The law was always utilized by the ruling yangban (nobility) class as a tool of political rule. Even though there was some technical development of the criminal code, civil and commercial laws remained as customary law. As the law was regarded as a collection of samples showing the conduct of royal ancestors (Chojongsonghon, 祖宗成憲 ), older codes actually regulated a newly proposed code, quite unlike those in the West. Legal affairs thus remained stagnant in Korea until the latter half of the 19th century. The traditional Korean legal theory was strongly based on Confucian ethics and state ideology. Koreans regarded the law not as a purpose but as a means to realize morals. They typically said, “Morality is the main point, law is subsidiary” (禮主法從, “Virtue works, punishment helps”(德主刑輔).3 Because Confucianism contains basically a humanistic element, it could make reference to law and politics, while Buddhism has remained remote from public life. Law was associated with the concept of punishment rather than with the concept of rights or protection. One was never protected by law; one was exploited by it. The Confucian law was hierarchical, so equality under the law was unknown. The Confucian emphasis was on ‘‘li”(禮) or rules of polite behavior. If I may visualize the law and morals in the Confucian society as follows, it [page 3] seems quite different from monism or from the dualism of law and morality in Western countries.



li = the rules of polite behavior, externalization of morals and internalization of law

My thesis is: because “li” was developed excessively in Korean history, law and morality could not develop independently. We see so many books on li doctrines ( 禮學書 ),while there have been few books on law ( 律學書 ) in traditional Korean society.

Because I have no time to explain more about traditional law, I would like to refer you to three excellent books about that. Hahm Pyong Choon’s The Korean Political Tradition and Law (1976) and his posthumously published work, Korean Jurisprudence, Politics and Culture (1986) and William Shaw’s book, Legal Norms in a Confucian State (1984).4

III. EARLY CONTACTS WITH WESTERN LAW

Korea’s first contact with Western law was through China in the 17th century by Korean scholars who formed the School of Practical Learning (Silhak, 實學 ). Korean envoys to the Chinese court brought back with them from Peking the so-called Books of Western Learning (Hanyok Sohakso, 漢譯西學書 ), which were translated or authored by Catholic missionaries. The Korean scholars at the time did not study the books to learn Western law seriously but rather to satisfy their curiosity about Western Learning (Catholicism) and to criticize it.

Although it is difficult to compile an accurate list of Western books translated into Chinese which were brought to Korea at the time, it can be presumed that they covered a considerable variety of subjects and thereby exerted some influence on Korean society and thought in the succeeding years.

The books which introduced Western law were Sohak Pom (西學凡 , 1623) and Chikpang Oegi (職方外紀,1623) authored by Julius Aleni (1582- 1649), an Italian Jesuit priest in China. Chikpang Oegi, in introducing the institutions and geographical features of various countries, sought to correct the Sinocentric world view of Chinese scholars who knew nothing [page 4] about the world outside their “Celestial Empire” and referred to the academic system of Europe. Sohak Pom, consisting of thirty three pages, introduced the university curriculum and contents of teaching of the West, which were divided into six fields: Rhetorica (文科), Philosophia (理科), Medicina (醫科),Leges (法科),Canones (教科) and Theologia (道科). He defined Leges as an important discipline which deals with life and death of both the spirit and the body and admonished that judicial officers, whose mission was to embody Providence and justice, should pattern themselves after saints and sages and become well-versed in the classics. He then explained that only those who mastered philosophy were. Taught jurisprudence and were required to pass rigorous examinations to become judicial officers in the West.

Chikpang Oegi was introduced to Korea by the Korean envoy Chong Tu-Won (1581—?) in 1631, eight years after its publication. The first instance in which Sohak Pom was mentioned in Korean writing appears in the collection of Yi Ka-Hwan, who was killed in the Catholic persecution of 1801. The books which introduced Western law had a significant impact upon Korea’s traditional Confucian jurisprudence which was based on the principle of respecting the codes enacted and transmitted by ancestors (Chojongsonghon-juui, 祖宗成憲王義 ), Quite expectedly, Korean intellectuals of the 17th and 18th Centuries criticized and opposed “Catholic/ Western” jurisprudence.

Sin Hu-dam (1702—1761), a Korean Confucian scholar, read these Western books and wrote Sohak Pyon ( 西學辦 ),a lengthy dissertation criticizing Western Learning. On the basis of Confucian theory, Sin asserted that Western Learning is false from the outset by placing emphasis only on trivial subjects according to its erroneous educational principles and by adapting itself to practical life. He criticized Western Learning on three points: 1) Western universities, despite their mission to help students who complete primary and secondary courses and cultivate their virtue to perfection, taught only “ignoble techniques”; 2) law departments in Western universities did not profess that both law and politics find their origin in Enlightenment and that morality does not separate the two; 3) university graduates, who were victimized by these inadequacies of Western education, were assigned to technical duty through examinations. Such criticisms of professional Western legal education stemmed naturally from the Confucian educational ideology that respected general cultivation of a Kunja (君子,Gentleman) style of life.

The next step in the reception of Western jurisprudence was taken by [page 5] Japan in the 1880s. Japan at the time, amidst the Meiji Restoration, was very eager to imitate the Western legal system — the German model, in particular.5

In June 1880,Kim Hongjip (1841—1896),the Korean envoy to Japan, proposed to King Kojong that Korea open itself up to the rest of the world. King Kojong, inspired by this advice, ordered a group named the Gentlemen-Tourist-Group (Sinsa Yuramdan, 神士遊覧團 ) of twelve members formed. The Group, whose duty was to observe Japanese society and study its culture, left for Japan on February 9,1881. One of the members, Om Saeyong, was designated to visit the Japanese Ministry of Justice and observe the legal culture of Japan. After his return to Korea, Om authored a book entitled Ilbon Kyonmun Sagoncho (日本見聞事件草, My Observations on Japanese Things), and a report on the Japanese Ministry of Justice, entitled Ilbon Sapopsong Sichalki (曰本司法省視察記). In these publications, the extent to which Om and his colleagues witnessed Japan and its legal culture becomes evident. Om translated almost all the contemporary laws of Japan, including the Japanese Penal Code, Criminal Procedure Law and many administrative statutes. Om and the other Group members, however, did not dare to assert that Korea should re-form its traditional laws and system as Japan had done by imitating a Western model. On the contrary, they criticized the Japanese “reception of Western laws and civilization without critical evaluation”. Such critical reports on Japan only helped discourage King Kojong from reforming Korea’s traditional laws.6

In summary, Korea did not receive, in the real sense of ‘‘reception”, Western jurisprudence and a legal system from either China or Japan. The process of introduction of Western law into Korea could more appropriately be called “counter-reception’’ (Gegenrezeption) or “pre-reception (Frlihrezeption) to use the terminology of Western legal history.

IV. THE ACCESS TO INTERNATIONAL LAW

In the latter half of the 19th Century, Koreans made direct and voluntary contact with Western law. Yu Kil-chun (1856-1914), one of the Korean pioneers in the School of Enlightenment, studied at Keio University in Japan from 1881 under Yukichi Fukuzawa (1835—1901),an Enlightenment thinker, and also at Dummer Academy in the United States from 1883 to 1885 under Professor Edward S. Morse (1838-1925). His book Soyu Kyonmun (西遊見聞, 1895) which he spent six years in writing after [page 6] his return to Korea, introduced Western civilization and a wide variety of subjects for the first time, including the Western concepts of state, law, rights, and liberty.

So Chae-pil (Philip Jaisohn,1866—1951) began to study medicine in 1883 at La Fayette University and then at Washington University; he returned home in 1896. Having intended to study jurisprudence originally, he remained interested in law. As a consultant to the Korean government, he strove for national enlightenment, founded the Independence Club, and published the newspaper Tongnip Sinmun (The Independent), through which he endeavored to enlighten the Korean people on Western democracy and its rational legal system.7

The first Korean to study law in Europe was Hong Chong-u (1854-?). His passport, issued in 1887,indicated that he was about to travel to France to study jurisprudence. Hong arrived in Paris on December 24, 1890. It is not certain, however,to what extent he studied French law during the three years he spent in France. Hong did not return home directly but stayed in Japan for some time. In Shanghai, on May 22,1894, he is known to have assassinated Kim, Ok-kyun (1851—1894),leader of the Enlightenment Party. Unfortunately, it is not certain what role he played afterwards in the modernization of Korean law. He is known, ironically, to have obstructed activities of reformists in various ways.

In March 1895,a group of Koreans,including Yi Myon-u,Chang To, Hong Chae-gi,and Yu Mun-hwan,went to Japan to study law, for the first time with government scholarships. Most of them studied at Keio University and, upon returning home, became judges, prosecutors or professors at the Judicial Officer Training Institute (法官養成所 ).8

The Western world’s concepts of international law most significantly affected the traditional Korean legal system and Korean way of thinking. Technology and international law, Professor Hahm Pyong-choon stated,9 were the two evident characteristics of Western civilization that fascinated the Oriental people. International law, known to have been “a public law common to all nations {Man’guk Kongpop, 萬國公法 )”, perplexed and threatened the Korean officials, who did not even know what a treaty or sovereignty was, due to Korea’s national policy that had long isolated her from foreign nations.

The first Western law books introduced to East Asia were translations done by William A.P. Martin (1827—1916), an American missionary active China.10 The first was Man’guk Kongpop (萬國公法 , 1841), a [page 7] translation into Chinese of Henry Wheaton’s Elements of International Law (Philadelphia, 1836). Kongpop Pyollam(公法便覧,1877) was also a translation into Chinese of Theodore D. Woolsey’s, Introduction to the Study of International Law (N.Y., 1906). Kongpop Hoetong (公法會通, 1880) was again a translation into Chinese of Johann C. Bluntschli,s,Das Moderne Volkerrecht der Civilisierten Staaten als Rechtsbuch dargestellt (Nordlingen, 1867.11 These three books on international law were immediately brought to Japan and marked the beginning of modern Japanese jurisprudence.

These three books on international law were presumably introduced to Korea directly from China. Although when the books were brought to Korea is not certain, it is known that on May 9,1896,immediately after the Kabo Reform, Bluntschli’s book was printed by the Ministry of Education in three volumes following the Chinese text with a foreword by Yi Kyong-sik, the Ministry’s Director of Publications,and the copies were distributed among the monarch and ministers. This was the first Western law book in Korea,and it is presumed that terms such as “public law common to all nations”, which are found frequently in documents of that time, were derived from this book.

On October 25,1897,King Kojong changed the name of the country to the Taehan Empire, enthroned himself as emperor,and proclaimed independence from China as the suzerain. In order to make the image of Korea one of a constitutional monarchy,he promulgated a constitution in August 1899. The first modern constitution of this country consisted of nine articles:

Article 1: The Taehan Empire shall be an autonomous and independent empire to be recognized officially by all nations of the world.

Article 2: The Taehan Empire shall be governed by the autocracy which has been handed down from generation to generation for 500 years and which shall be immutable forever.

Article 3: The Emperor of the Taehan Empire shall enjoy boundless sovereign powers and embody the right to define the Constitution as referred to in the public law. (I omit the following six articles.)

Article 4: Subjects of the Taehan Empire shall not violate the sovereign powers enjoyed by the Emperor without being blamed as being inconsistent with reason.

Article 5: The Emperor of the Taehan Empire shall command the army and navy of the country, regulate their organization, and declare or [page 8] lift martial law.

Article 6: The Emperor of the Taehan Empire shall enact laws, order their promulgation and execution, amend domestic laws in accordance with the legal codes common to all nations, mitigations, and reinstatements, and represent the right to legislate on his own authority as referred to in public law.

Article 7: The Emperor of the Taehan Empire shall institute or revise the organization of all executive agencies and the salary scale of civil officials, issue various imperial ordinances necessary for public administration, and represent self-governing and self-regulation as referred to in public law.

Article 8: The Emperor of the Taehan Empire shall appoint or dismiss civil and military officials, confer or rescind peerages, decorations, and other honors,and exercise free will to choose public officials as referred to in public law.

Article 9: The Emperor of the Taehan Empire shall dispatch to and station his envoys in countries with which the empire has entered into treaties, declare war, make peace,conclude various treaties, and exercise the right to send envoys of his own accord.

According to an analysis by Dr. Chun Bong-duck, a legal historian, this constitution was strikingly similar to the contents of Bluntschli’s book.12 The similarity suggests European legal theories’ strong influence on the Korean government through the publication of Kongpop Hoetong, (Bluntschli’s book), and a remarkable achievement in Korea’s reception of Western law. Suddenly and seemingly accidentally, the process of receiving Western law in Korea was speedy; Westerners could hardly imagine how immediate and broad the reception was. A book authored by a German scholar of international law helped formulate the basis of the first constitution of a country thousands of miles away.

V. THE ROLES OF WESTERN LEGAL CONSULTANTS

The third impetus for promoting contact with Western law, in addition to direct contacts and translations, came from Western lawyers who worked in Korea. It is well-known that a significant number of Western jurists, among them A. Moss, G. E. Boissonade and H. Roesler, contributed to the development of Meiji legislation in Japan.

The first Western legal consultant who came to Korea was a German [page 9] named Paul Georg von Mollendorff (穆麟德, 1847—1901).13 Having majored in law and Oriental studies at Halle University, he worked in China as a customs officer and, at the recommendation of Li Hung- chang, known as ‘‘the Bismarck of the Orient” , came to Korea towards the end of 1882 to assume the post of legal consultant for diplomatic and customs affairs. Until 1885, while he held posts in the port customs offices, he earned for himself the nickname, “Mok Champan” (Vice Minister Mollendorff 穆參判) and exercised immense power; his multilateral ac? tivities extended to all segments of Korea’s national administration and focused on its legal system. Nevertheless, one could not expect Mollendorff, officially a consultant to the monarch and a close friend of conservative politicians, to effect a resolute legal reform or make contributions to Korean jurisprudence. We can find his ideas for reform of Korea only in Die Reorganization Koreas (1897),a memorandum which he wrote later in China.

Owen N. Denny (德尼 1838-1900), a former judge from the United States, replaced Mollendorff as a consultant to the Korean government.14 Denny stayed in Korea for four years from 1886. He was the first foreigner to assert, in his booklet, China and Korea (清韓論 1888) that Korea was not a vassal state of China from the point of international law but was undoubtedly an independent country. This assertion, announced in the U.S. Senate by Senator Mitchell, was recorded in the American Congressional Record. Mollendorff, in China, wrote a refutation to Denny’s assertion; the argument between the two became the first discussion of Korea-China relations viewed from the perspective of international law: The next notable figure in Korea was Charles W. LeGendre ( 李善得, 1830-1899), a French American, who was legal consultant to the Korean Ministry of Home Affairs from 1890 until his death in 1899. His successor, William Sands (山島,1875-?), also an American, wrote the autobiographical book Undiplomatic Memories (London, rep. Seoul, 1975), which contains many interesting episodes about the diplomatic world of Korea at that time. C. R. Greainouse (具禮 1845—1899), an American jurist, worked in Korea as a legal consultant to the Ministry of Home Affairs from 1890 until his death in 1899 and was buried along with LeGendre at the Foreigners Cemetery in Seoul. Laurent Cremazy (金雅始 , 1837-?), a French jurist and pupil of Boisonade, worked in Korea from 1900 to 1905 as a consultant to the Ministry of Justice and as a lecturer at the Judicial Officer Training Institute; during his stay in Korea he trans- [page 10] lated the Korean penal code into French and published it under the title,

Foreign legal consultants working in Korea were fewer than and generally inferior in quality to their counterparts in Japan.15 Due to certain complications, the Korean government, moreover, could not adhere to the advice of the Western legal consultants fully. Korea was entering an unstable period of history. In September 1904, with the takeover by the Japanese consultants of important positions in each ministry of the Korean government, Korea’s initial efforts to receive Western law were replaced by her obligation to follow Japanese law.

VI. DIRECTIONS OF RECEPTION

Turning to the stages of receiving Western laws in Korea, we can identify three phases: 1) American law, 2) French law, and 3) German law.16

Although Anglo-American legal thought was widely introduced, it could not be realized in Korean legislation and legal science. There were two main reasons: the first is the inherent character of Anglo-American law, which does not consist of written legal codes but of case law or judge- made law. Such case law is easily developed only in the proper legal culture of England and America, and seems vague without corresponding legal theories and standards of interpretation in foreign countries.

The second reason was the severing of relationships between Korea and America due to the intervention of Japan. America gave up Korea with the secret bargain between Taft and Gazura under the auspices of Theodore Roosevelt. America welcomed the “modernization of Korean law by the Japanese”, which was mainly propaganda to camouflage Japanese imperialistic expansion in Korea.

The next yearning toward Western law in Korea was toward French law. As in Meiji Japan, French legal thought began to have considerable influence in Korea after 1886. The French-Korean treaty was not entered into until that year, because the Korean government feared the spiritual influence of Catholicism, which had been spread mainly by French missionaries from the second half of the 18th century. French law did not have a continuous impact in Korea because of the dwindling power of France in Korea after the 1890s.

Korean access to German law was mediated by the growing power of Japan in Korea. Japan had, as is well known, already experienced almost [page 11] the same course, that is, from Anglo-American through French to German law reception. Japanese legislation of civil and penal codes was based in the long run on the German BGB (Civil Code) and StGB (Penal Code). German legal thought appeared to Koreans rather authoritative and conservative, not liberal or progressive, but her success in the Prussia- France War (1870-1871) made a powerful impression on Koreans. The Korean Government like Germany developed a strong yearning toward nation building. Books about the Franco-Prussian War and about the life of Friedrich the Great of Prussia were popular among the Korean people. If we look at the articles on legal topics in magazines and newspapers of the time, we find many news items and explanations of German things.

The German-Korean kinship in law,molded by the Japanese, remained uniquely strong even after the national liberation in 1945. Hans Kelsen and Gustav Radbruch have been best known as the main German scholars in Korean legal philosophy.17 Since 1945 about fifty Korean jurists have attained doctoratal degrees {doctor juris utrisque) from German universities.

The Deutsch-Koreanische Juristengesellschaft (Korean-German Asso-ciation for Legal Science) was founded in 1976 and publishes the magazine Handok Pophak (Recht in Deutschland und Korea). Though the three year U.S. military government from 1945 through 1948 ‘‘americanized” Korea in many aspects, Korean legal culture remains uniquely pro- German. Korean law students nowadays learn almost all the German legal theories and the names of the German legal scholars.18

Therefore, it can also be inferred that Korean legal culture has a dual character of German legal theory and americanized social reality. Needless to say,this discrepancy is a stumbling block to the development of Korean legal culture.

Nowadays, Korean law schools are trying to introduce the American case-method in their curricula. The Korean Legal Center (法學院 ), which was founded with the help of the American Bar Association in 1953, offers some programs to broaden the knowledge of Koreans about American law. I can use in this sense the expression “Korean legal culture has German bones and American flesh”.

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VII. RECEPTION AS PROBLEM AND TASK

Now I would like to sketch the present situation and climate of Korean law and legal science.19 Although the imported legal system has become effective within a relatively short time, the reality of Korean society is not really westernized. Sociological surveys still reveal the mixture of traditional and modernized legal consciousness of Koreans. The most important single study made of attitudes towards law in Korea was carried out by Hahm Pyong-Choon in 1964.20 In this study, he selected a random sample of 1,301 persons throughout the country.

In general, Hahm’s evidence demonstrates that there is considerable reluctance on the part of citizens to resort to law to solve pressing problems under any circumstances. For example, only 32.22% said they would go to court to settle a family problem which could not otherwise be resolved by family, clan, or other form of conciliation. In accordance with the Confucian ethical background of the co-mingling of law and morality, law is also tempered by social and ethical factors: the relative social or economic status of the people involved, and the Confucian norms of behavior. In picking the better person between a filial law-breaker and an unfilial law-abider,41.76% picked the filial law-breaker as the better person while 33.22% picked the law-abiding person. In questions of adultery,51.38% felt the woman was more to blame, while only 8.3% felt the man was more to blame. If a destitute family illegally builds a shack on another’s land,80.25% would let them stay, and only 7.15% would force them to leave. If the land was needed, and the family refused to move, only 14.76% would resort to the law,while 40.68% would give the family money to move. Social justice was deemed more important than law.

There is also considerable reluctance to consult the police and blame or take action against the government. Only 56.91 °/o would inform the police if they saw someone stealing,and that figure dropped to 30.91% if it was a poor man on the verge of starvation stealing from a rich man. However, 73.75% would inform the police if murder was about to be committed. In a case in which, in the American context,the state was clearly to blame for an unrepaired bridge, constructed by public funds, which caused injury to a citizen, 73.75% of the people said that it was the fault of the person who got hurt.

Hahm concludes that the rural sector is the most alegal and accepting element in the population as one might expect, that the metropolitan pop- [page 13] ulation (Seoul) is more legally oriented, and that the urban provincial is prone to compromise. While we have noted the religious origins within law in the West, Christianity in Korea seems to make no substantial difference in attitudes. Christian respondents indicated little difference from the general population in respect to their views towards law, although there was some indication that they were a little more conscious of their rights as individuals. Buddhists seemed slightly more respectful towards law, probably because the character used for law(法)is also the one used for Buddhist law, the dharma. The religious sample is probably too small to indicate a decisive trend on this question.21

In general, the group in Korean society most prone to be aggressive about rights and resort to the law was the lower middle classes who were high school graduates. The upper classes, college graduates, the wealthy, etc., were more inclined to avoid the law and felt more vulneraole, perhaps because of tax evasion.

Koreans prefer moral values to the legal in life, and are inclined more to a political way of thinking than to a judicial one. They value modesty, humility and harmony over argumentation,dispute,competition, and context. They are skeptical about the decisions of the courts. Professor Hahm calls Korea a “dispute-avoiding” culture. Some scholars even maintain that the Korean language is more proper to emotional expression than logical. It might be said with some exaggeration that Koreans live not in a rational sense but rather in sentiment. In this harmonious, conciliatory sentiment, Koreans seem to feel a kind of happiness.22

What does the reception of Western law mean in this context? I think it means first of all the conceptualization of legal motives. As you know legal science began in the Roman period originally from the casuistic way of thinking, but with the help of Greek philosophy it became legal science or jurisprudence with legal concepts. Anglo-American jurisprudence has a somewhat different history with its case method, but I believe it will move more and more toward the concept-oriented process. Anyway, Korea traditionally also had a kind of casuistry in its way of legal thinking. Although Confucian philosophy and the general ethos among Koreans is a concept-oriented way of thinking, Korean traditional jurisprudence failed to be combined with this idea. Why? Korea has been invaded many times either by China or Japan, so that she could not build up her own legal methodology. I believe that law can not develop, if social stability is not secured.

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We have already seen, with this vacuum of legal science, how earnestly and rapidly Korea tried to receive Western law and legal science, but all problems cannot be solved by the reception of Western law, mainly of German law. The German legal science, which was introduced into Korea, is the so-called pandectistic legal science (Pandektenrechtswissenschaft), which was developed during the 19th century in Germany. As R. von Jhering nicknamed it, “Begriffsjurisprudenz im Himmel’ (concept jurisprudence in heaven), 23 it is formed solely with legal concepts and theories, abstract and sometimes vague, but this Begriffsjurisprudenz has been superceded in Germany by some new trends in legal methodology, namely Freirechts- schule (free law movement) and Interessenjurisprudenz (interest law school).24 Only in Korea and probably in Japan, has this Begriffsjurisprudenz never been criticized basically or superceded. If we speak somewhat cynically, we can name Korean legal science as Begriffsund Buro- kratsjurisprudenz; that is conceptual and bureaucratic jurisprudence. This means that unavoidably it contains the danger of remoteness from social reality. For that reason also, Korean lawyers regard their jobs not as a service but as a privilege. There are about 4,000 lawyers in Korea for 40 million people. There are 50 colleges and departments of law public and private, and approximately 5,000 law students are produced annually, but only 300 applicants pass the national bar examination; the judicial service examination. I think this is a problem institutionally and in policy making. Anyway, we sometimes hear criticism of the Korean judiciary as a Klas- senjustiz (class judiciary).

VIII. CONCLUSION

In the above, I have explained how Western laws have been introduced into Korea. Now at law schools in Korea, Western laws are taught under the names of Introduction to Anglo-American Law, Introduction to German Law, Introduction to French Law, European Legal History, Roman Law, and History of Western Legal Thought. Regardless of the subjects, almost all lectures are strongly based on Western legal theories. In this sense, Korean lawyers seem to be richly equipped with knowledge about Western law.

Then finally, let us give some thought to the problem of the national self-identity of Korean law. I do not know where I could live more hap- pily, in Korea or in a Western country. Some Western scholars praise the Asian conciliatory legal culture over a litigious or suing society like the [page 15] American one. I can not evaluate or prophesy, but I would say we can not be social romanticists anymore, at least from the point of view of a lawyer.

I sometimes think that law is like water. No doubt, we can not live without water nor without law, but law flows like water from high to low. If there is a more highly developed law, it must flow to underdeveloped law and society. Some Koreans may ask, why Koreans should be interested in receiving German and American laws, why Koreans are less inclined to develop their own laws and legal sciences. The answer to this question is very important,but as I said,law influences or submerges other law. The question is not whether the law is purely our own or a received one, but whether it is developed or not. If any law,either statutory or non-statutory, is made by Koreans, I believe,it is Korean law.

The problem of indigenization (土着化 ) of law is also widely discussed nowadays, especially among younger scholars. I myself am engaged in a working program to survey Korean customary laws. As the necessity of reforming the Korean civil and criminal codes increases these days,we should study “the living laws” of Koreans. Simple imitation of western legal theories is not sufficient to satisfy Korean students any longer,but it is regrettable that no Korean scholar has gathered and analyzed the customary laws of Koreans as Jacob and Wilhelm Grimm did in Germany. Only the Japanese scholars did this work and published the results in the many volumes of The Reports of Korean Customs Investigations ( 朝鮮慣習調査報告書 ) just before the occupation of Korea for the purpose of colonization. Korean scholars are now reviewing these reports with critical comments, and I believe,Korean lawyers should pursue actively finding out the differences between the North and South Korean legal systems and how to harmonize them in the process of national unification.

My final comment in this presentation follows: the reception of Western law in Korea will continue to gain breadth and depth toward globalization of the legal culture. In this integration process, Korea will find its own way of establishing Korean law,based on national self-identify, and contribute to world legal culture.25

[page 16] **NOTES**

1. For an introduction to Korean law in general see Song Sang-Hyun (ed), Introduction to Law and Legal System in Korea, Seoul: 1983; Chon Sin-Yong (ed), Legal System of Korea, Seoul: 1975; Kim Chin, Korean Law Study Guide, San Diego, 1987.

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