
BOOK REVIEW

Law and Justice in Korea: South and North. By Chongko Choi.* Seoul: Seoul National University Press, 2005, Pp. 533. US\$30.

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With more texts like Professor Chongko Choi's *Law and Justice in Korea: South and North*, there might well come a day soon when those with a passion for Korean law will no longer be able to lament the "lack of a suitable, practical guide in any [W]estern language" or the "paucity of relevant materials" on the subject.¹⁾ Authored by one of the most prolific scholars in Korean law (in any language), the book is a welcome addition to the bibliography.

The opening chapter, which could serve as both an introduction and overview, should pique the interest of newcomers to Korean law, as well as specialists. Of note here is the presentation of "the unique Korean images of law and justice, in contrast to Western legal symbols" (p. vi). This section includes a description of *haetae*, a mystical animal resembling a sea camel (with or without its horn) that appears in many locations throughout Korea.²⁾ The image of *haetae* is an easy reminder that although law and its many aspects may be universal in character, in Korea, there are differences, as well as similarities. In all events, as Professor Choi indicates, Korea has emerged as a setting where the rule (and role) of law in society deserves more attention.

The introduction is followed by a wide range of subjects that reflects the very

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1) INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA iii (Sang Hyun Song ed., 1983) (foreword).

2) As Professor Choi explains, contemporary Koreans do not necessarily regard *haetae* as a symbol of justice, instead believing that "it is just a good animal that prevents disasters" (p. 38).

ambitious nature of Professor Choi's undertaking. Any understanding of law in Korea must take into account the long history of the society, which is provided in "Traditional Law in Korea." The discussion of law in the Chosun (or Yi) dynasty serves as an important foundation for the subsequent chapters. The chapter entitled "Modernization of Korean Law" elaborates on the development of Korean law beginning from the closing years of the nineteenth century and relates the reception of Western law in Korea. This chapter illustrates in a historical setting what Korea is likely to face in the years to come, namely, the influence of Western (principally U.S.) law in a society where deeply-embedded Confucian norms continue.³⁾ The next chapter, "Law and Justice in Contemporary Korea," offers a discussion of selected issues affecting Korea's legal institutions in the contemporary setting, including the judiciary, legal education, legal scholarship, and a changing societal consciousness relating to the role of law and the concept of rights. The final chapter, "Law and Legal Theory in South and North Korea," introduces readers to law in (and of) reclusive North Korea, toward the possibility of a comparative study.

While some of the above topics may be covered in other survey texts on Korean law, Professor Choi's work is more current. His treatment of law, policy and politics in Korea takes into account such developments as the financial crisis of 1997, the presidential election of 2002, and the escalating concern over the threat of nuclear weapons in North Korea. The book is also different from others in that it offers informative profiles of non-Korean scholars of Korean law. Moreover, an annotated bibliography of key works in Korean law is simply a treasure trove for researchers and scholars in the field.

Within the several chapters, there is something for virtually everyone with an interest in Korea or Korean law. Given the range of subjects, the book will be appealing to an array of readers for different strengths and different reasons. For this reviewer, topics of special interest relate to the book's advancement of an "East Asian Common Law," discussion of the changing legal consciousness in contemporary Korean society, and introduction to North Korean constitutional law.

The mere phrasing of "East Asian Common Law" is intriguing, for Korea is generally known as a civil law jurisdiction, which in significant part still reflects the

3) There is discussion and debate in the commentary concerning the continuing impact and influence of Confucian ideals in Korean society. See Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement (with Japan and the U.S. in Mind)*, 27 MICH. J. INT'L L. ____ (forthcoming 2006).

Japanese legal system that was imposed on the peninsula during the decades of colonial rule. And Japanese law, in turn, borrows from the German model, a civil law jurisdiction. There is also great diversity within East Asia. Korea, Japan and China are three separate jurisdictions, with different languages, cultures and histories. So one wonders how the respective law of these three countries could be considered collectively as part of an “East Asian Common Law.”

Indeed, common law, “distinguished from law created by the enactment of legislatures,” is derived “from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs.”⁴⁾ But another definition of the term lends support to Professor Choi’s phrasing. Specifically, common law refers to “the body of those principles and rules of action . . . , which derive their authority solely from usages *and customs of immemorial antiquity*.”⁵⁾ The long histories of East Asian countries might well provide common “usages and customs” relating to law. Professor Choi argues that “shared elements” are seen in the law and legal systems of jurisdictions in East Asia (p. 127).

Specifically, he advances a case for “East Asian Common Law” from five different perspectives: (i) codification, or an eagerness to establish legal codes; (ii) Confucianism, “the vehicle of morality and law”; (iii) “community compact,” that is, “East Asian have been regulated somehow automatically”; (iv) a core jurisprudence; and (v) “the strong tradition of reconciliation and mediation” and love for “autonomous solution of disputes” (pp. 127-28, 262). Given Professor Choi’s elaboration, perhaps the “East Asian Common Law” term requires more emphasis on the *commonality* seen in the law of the jurisdictions in the region, and not on the technical definition of *common law*, in contrast to *civil law*. At the very least, Professor Choi’s discussion of an “East Asian Common Law” offers a method to approach Korean law in the context of law in the neighboring region. He deserves praise for taking on a challenging and provocative idea. As noted in the book, the author has proposed the establishment of a Center for East Asian Common Law (pp. 270, 317), and it will be interesting to see more scholarship in this area.

The changing societal consciousness relating to law in contemporary Korea offers another subject of keen interest. Initially, the book acknowledges the works of

4) BLACK’S LAW DICTIONARY 250-51 (5th ed. 1979).

5) *Id.* at 250.

commentators, principally Professor Pyong Choon Hahm, who urged that law in Korea was traditionally regarded with skepticism and occasional opposition, a sentiment that continued into the twentieth century. Yet Professor Choi alerts readers to the empirical research indicating changing attitudes in the contemporary setting. For example, survey results tend to show “an increase in positive legal consciousness” (p. 298), more frequent resort to formal legal mechanisms to resolve disputes, an increasingly critical view of violations of law, and an elevated consciousness of legal rights (pp. 298-99).⁶⁾ Professor Choi explains that a rapidly changing society beginning from the 1980s helps to explain the shift in attitudes toward law and rights in contemporary society. Perhaps a more in-depth examination of this shift in today’s Korea was beyond the scope of the book. The subject has received attention in the popular media and social sciences commentary.⁷⁾ The *New York Times* has reported that Korea appears to be in the “throes of a social transformation,” with increasing preferences for individual wants, and changes in attitudes regarding family, gender, and employment.⁸⁾

The final chapter, “Law and Legal Theory in South and North Korea,” begins with the apt statement, “The most salient feature of Korean law is that it is divided into South and North. Which one is ‘Korean law’ in the true sense? To answer this question, South and North Korean law must be compared . . .” (p. 321). Indeed, much of the commentary on contemporary Korean law is devoted to that south of the DMZ, and only in recent years has there been more treatment of law in North Korea. As Professor Choi points out, exploration of North Korean law entertains the possibility of comparative legal studies within the peninsula itself.

Most revealing in this chapter is the description of the North Korean Constitution, a full translation of which is available in the Appendix. It will be of little surprise to Westerners that the constitutional text reflects a collectivist and socialist mindset, or that it specifically refers to *juche* (self reliance). There are also multiple references to “[t]he great leader Comrade Kim Il Sung” (pp. 338-39). The constitution requires citizens to “constantly increase their revolutionary vigilance and devotedly fight for the security of the State” and “firmly safeguard the political

6) Yet survey data relating to a society in transformation are rarely tidy; the text also notes one survey indicating that “the law-abiding spirit is practically non-existent and the epidemic disregard for law prevails” (p. 299).

7) E.g., Ok Kyung Yang, *Family Structure and Relations*, 62 SOC. INDICATORS RES. 121 (Apr. 2003).

8) Norimitsu Onishi, *Divorce in South Korea: Striking a New Attitude*, N.Y. TIMES, Sept. 21, 2003, at 19.

and ideological unity and solidarity of the people” (p. 342). Perhaps much more surprising is that the North Korean Constitution also provides for freedom of speech, press, assembly, demonstration, and association (p. 340), which should remind that the study of constitutional law of any national jurisdiction requires not only review of the textual mandates, but also the local culture and application.⁹⁾ Or perhaps Professor Choi seizes the reality of the situation in his observation that “the Constitution outlines a wide range of rights, but . . . duties jump ahead of rights” (p. 342).

A brief section describes the human rights situation in North Korea. Professor Choi’s insightful references to the “blending of Confucianism’s accent on submission to authority and modern nationalism” and “emphasis on collectivism over individualism” (p. 382) emphasize how deeply-rooted cultural norms can shape national policy, and how culture at the extremes may lead to disadvantage. Although it may well be that culture is neither bad nor good (rather, just different), culture can also be “taken too far.”¹⁰⁾ Professor Choi’s analysis could certainly be read to suggest that the matter of human rights in North Korea is one such example. His statement that “North Korea’s human rights record is bad, but at various times the same could be said of the other East Asian nations” (p. 382), might read to some as unnecessarily sympathetic, and draw some comment.

Given the subtitle of the book — “*South and North*” — one might have expected more of the work to be devoted to law in North Korea toward a comparative study, or perhaps to law relating to unification. The treatment of these topics is more limited, however. As Professor Choi notes, there is still much that is not yet known about law in this isolated jurisdiction (p. 130). Readers will look forward to subsequent works shedding further light on law in North Korea, and the role of law in every day North Korean life.

As there are different ways to view a fine piece of art, there are different ways to appreciate Professor Choi’s recent work. To this reviewer, a read of the book could easily be an exercise in further examining the intersection of law and culture — in

9) In this light, one wonders about the practical meaning of a constitutional provision that guarantees that “[w]omen are accorded an equal social status and rights with men” (p. 341). The Constitution of South Korea likewise provides that “[a]ll citizens shall be equal before the law,” and explicitly prohibits discrimination based on sex. S. KOREA CONST. art. 11(1). Some commentators may question the extent of gender equality in Korea.

10) CHARLES M. HAMPDEN-TURNER & FONS TROMPENAARS, BUILDING CROSS-CULTURAL COMPETENCE: HOW TO CREATE WEALTH FROM CONFLICTING VALUES 12 (2000).

Korea as a beginning point, and in other jurisdictions as well. Initially, some might question what the terms “law” and “culture” mean precisely. But as Judge Posner has stated, “efforts to define intuitive concepts . . . are often both futile and unnecessary. We use with perfect clarity many words that we can’t define, such as ‘time,’ ‘number,’ ‘beauty,’ and ‘law.’”¹¹⁾ Law commentators might have the same view of “culture,” though counterparts in the anthropology department have agonized over its definition.¹²⁾ Culture is multi-faceted, “one of the two or three most complicated words in the English language.”¹³⁾ Understanding a societal culture requires some appreciation of its social history, language, norms, and values.

Discussion of law and culture is especially apt in the Korean setting. Korea has a five-century history in its Chosun dynasty. (Across the Pacific, the corresponding dates of reference are a century before Columbus purportedly discovered America to the closing years of the first Roosevelt’s tenure in the White House.) The development of law during this era should be of more than mere historical interest, given the Confucian foundations of the society. As a reminder that culture is not permanent or monolithic or fixed, Professor Choi notes that changing social attitudes have led to shifting views on law, individual rights, and the legal institutions. And as he suggests, perhaps the impact of culture on law in Korea is most blatant in the North, where the constitution explicitly refers to the *juche* culture of self reliance, and the regard for the collective interest of the state over individual rights is obvious.

Just as there is something in the book for virtually every reader, portions of the text might be lacking to some, especially those with specialized interests in Korean law. In this regard, the book, which is a collection of previously written articles (p. v), appears in some places to adhere too strictly to the article format, choosing not to address with elaboration items of great interest. One example is the recently announced plans for Korea to implement a U.S.-type law school within the next few years, as part of legal education reform. Japan saw the beginning of such schools in

11) *Publications Int’l, Ltd. v. Landoll, Inc.*, 164 F.3d 337, 339 (7th Cir. 1998) (Posner, C.J.) (emphasis added).

12) *See, e.g.*, IRWIN ALTMAN & MARTIN CHEMERS, *CULTURE AND ENVIRONMENT* 3 (1980); JAMES CLIFFORD, *THE PREDICAMENT OF CULTURE* 13 (1988); Clifford Geertz, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES* 3, 25 (1973); ROGER M. KEESING, *CULTURAL ANTHROPOLOGY* 11 (2d ed. 1981); CLYDE KLUCKHOHN, *CULTURE AND BEHAVIOR* 22-25 (Richard Kluckhohn ed., 1962).

13) RAYMOND WILLIAMS, *KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY* 76 (1976).

2004, after years of debate, some opposition and controversy. There was much of the same in Korea, but as of this writing, it appears that Korea will also take this path. The book acknowledges this development in legal education reform (pp. vii, 315-16) and readers would have benefited from Professor Choi's candid analysis of the debate, the reasons for opposition, and the outlook ahead.¹⁴⁾

Finally, as another book reviewer observed in a previous issue of this *Journal*, even the most highly regarded works in Korean law could benefit from a more careful edit.¹⁵⁾ There is some repetitive material (again, due to close adherence to the article format). An otherwise readable profile of Professor Paul Kichyun Ryu seems misplaced in the chapter on South and North Korean law. The entries in the very useful annotated bibliography do not appear to be organized in a readily recognizable order.

Even with these observations, Professor Chongko Choi's *Law and Justice in Korea: South and North* is an important work in a field that is deservedly receiving more attention. No library of Korean law will be complete without this book.

14) Passages in the book indicate the author's candid and uninhibited writing style. "Korea is not a land of ceaseless noisy politics, as frequently reported in the Western mass media" (p. 15). "The worst American lawyer to become a legal adviser to the Korean government was Durham White Stevens" (p. 19).

15) William P. Alford, Book Review, 1 J. KOREAN L. 173, 179 (2001) (reviewing RECENT TRANSFORMATION IN KOREAN LAW AND SOCIETY (Dae-Kyu Yoon ed., 2000)) ("it is likely that Jim would have put it through a more careful proofread, catching mis-spellings of the names of such well-known figures as Bruce Cumings and John Langbein").