BOOK REVIEW


Unlike Western jurisprudence, East Asian jurisprudence is an unfamiliar and amorphous field for most jurists in the world. With this in mind, Professor Chongko Choi has written a monograph in English to introduce East Asian legal thought with the ultimate aim of building a theory of “East Asian common law,” or East Asian *jus commune*. Choi ambitiously sets out to offer a comparative perspective on East Asian jurisprudence by spanning the works of Chinese, Japanese and Korean legal philosophers and thinkers from ancient to contemporary times.

The book has two main parts. The first part provides a history of East Asian jurisprudence in a series of five chapters consisting mainly of biographies of major figures in East Asian legal thought, starting with ancient jurisprudence (e.g., mythology, Confucianism, Legalism, Taoism) and pre-modern jurisprudence (Neo-Confucianism) and leading into modernity and confrontation with Western jurisprudence before ending with contemporary jurisprudence. The second part moves into contemplating a theory of East Asian jurisprudence, consisting of ten chapters. The early chapters discuss the conceptual basis of law in East Asia, including images and ideals of law across East Asia. The following chapters discuss law in relation to morality, practical reason, ideology and religion, as well as in terms of rights, duties and responsibility, while the last two chapters close the book addressing feminism and globalization.

The main strengths of the book are the many interesting biographical vignettes and the illustrative progression of legal thought in China, Korea and Japan. By providing concise reviews of the major legal philosophers and thinkers in East Asia, Part I traces how layers of Legalism and Taoism weaved into Chinese Confucian thought; how Korea seized upon the formalities and philosophical underpinnings of Confucianism with Neo-Confucianism; and how Japan balanced Confucian and Neo-Confucian thought with Shintoism. Part I also shows how independent thinkers in all three countries sometimes eschewed the dominant ideologies altogether, and what conflicts ensued with the introduction of Western legal transplants. (One gem is Choi’s translation of a letter written by a German lawyer in post-colonial Korea describing how his civil and common law training was vital in advising both Korean lawyers and American officers about the others’ laws.) Readers also learn about the mythic origins of national birth, ancient derivations of the concept of law, and symbolic, continental images about law and justice in East Asia (such as the mythical one-horned sheep).

For those completely unfamiliar with law in China, Korea, and Japan, this book is helpful in introducing symbols and figures seminal to the respective legal traditions in these countries and in showing the dissemination of Confucian and Neo-Confucian aspects from China to Korea and Japan. It is difficult to find a treatment of legal philosophy concerning all three countries in a single volume, so *East Asian Jurisprudence* serves as a handy, encyclopedic reader for the unacquainted.
Beyond these particular strengths, however, the monograph falls short of meeting its objective. The main weakness of the book is its absence of an overarching and connecting narrative. For example, Part I risks losing the audience in a parade of legal thinkers without the common thread of a narrative to link them across countries and time periods. The first chapter in Part II aids in synthesizing some of Part I, but it could have better compared the commonalities and divergences in legal thought among China, Korea, and Japan. Part II would also have benefited from a tighter coherence linking one chapter to the next. While each chapter may stand alone ruminating law vis-à-vis morality, reason, ideology, and religion, readers will have difficulty gaining a comprehensive or comparative sense of these topics in relation to China, Korea, and Japan. For example, the discourse on the primacy of Confucianism and the relevance of the enduring concept of *li* (propriety or rites) in relation to law and morality could have been more strongly developed with respect to the three countries. Given the weight of male orientation in the book, feminists will also be disappointed with the chapter on feminism and jurisprudence. Surely this subject is deserving of more than five pages; the chapter could relate more to the subject of feminism; and the author could at the very least cite scholarship by Asian feminist legal scholars.

Is there an East Asian *jus commune*, that is, legal principles common across East Asia? If there is, it seems to be anchored in Confucian jurisprudence. Choi identifies a stream of Confucian jurisprudence across China, Korea, and Japan, and the variations presented in its transmission across the continent. To Choi’s credit, Part I guards against the stereotype of equating East Asian jurisprudence to a singular type of Confucian jurisprudence, yet Part II constantly revisits Confucius, Confucianism, and Confucian jurisprudence, maintaining their centrality to East Asian jurisprudence. The generalization appears to be that there is more to East Asian jurisprudence than Confucianism, but in the end, Confucianism is what distinguishes East Asian jurisprudence from Western jurisprudence.

On a further note, any discourse on East Asian jurisprudence would be incomplete without seriously addressing the entry and influence of Socialism, which endures in the geographical bulk of East Asia today (e.g., China, North Korea, and Vietnam). Rather than dismiss Communism as a failed ideology, it would have been more constructive to analyze how Confucianism and Socialism have survived as ideological partners.

A word must be said about the frequency of spelling errors, formatting inconsistencies, and the stylistic presentation of the book. This includes two pages of material in Part II that repeat verbatim from an early section in Part I, which will give readers a disconcerting sense of déjà vu. References cited at the end of each section within individual chapters also prevent the smooth flow of reading. More vigorous editing by the publisher could have easily remedied these distractions.

*East Asian Jurisprudence* is rich in history, biography, and personal reflections. Choi succeeds in his monumental effort to display the depth of serious legal thought in the countries of China, Korea, and Japan. While the ambition of constructing a theory of an East Asian *jus commune* is laudable, it is questionable whether this monograph has advanced discourse beyond a Confucian jurisprudence. Choi himself
states at the end, “I am not sure whether I have brought the readers to the convincing theories of East Asian jurisprudence.” Choi deserves credit for beginning the discussion, but, as he admits, the task of building a theory of East Asian jus commune remains unfinished and left for other scholars to inherit.

Patricia GOEDDE, Assistant Professor
School of Law, Sungkyunkwan University
BOOK REVIEW


Yi, T'aejin is one of the towering figures in Korean historiography for the last four decades. He has published extensively on just about every period of Korean history and his interests range from social to economic history, from Koryo institutional history to the role of Confucianism as a force of modernization, from a historical and legal reevaluation of the early twentieth-century treaties between Japan and Korea that made annexation possible to the influence of the Little Ice Age on Choson. The versatility of his historical interests is well matched by the influence of his studies. In that regard it is certainly gratifying to have a volume entirely dedicated to Yi Taejin's scholarship available in English. Translated by a team of academics and professional translators, it is edited by Michael D. Shin and published in Cornell's East Asia Series. Although usually for reviews of works like this, the quality of the translation is only mentioned in the very last paragraph and often presented by a few translation errors that slipped past the editor, I would like to start this review with an appraisal of the translation since it is absolutely vital for the accessibility and usability of the book. Five different translators have worked on this volume, which in a way is a compliment to the versatility of Yi Taejin. I am sure I am not alone in stating that I would feel confident of being familiar with the field and the terminology of only a few of the studies collected in this book. The translations are excellent. They read very well in English and the sentences themselves do not give away the fact that they are translations from Korean (the overall structure of the studies sometimes does appear like that, but that is a mere observation, not a point of criticism). The translators have succeeded in rendering Yi's Korean into readable English, finding good English-language equivalents for the many specific Korean terms of the original papers. With regard to the editing work, I've also found it excellent (with one glaring exception: the header between pages 139 and 163 displays 'adaption' instead of 'adoption').

The book has four parts: 1. Socioeconomic development and neo-Confucianism; 2. International relations in a period of historical transition; 3. Modernization and Confucianism; 4. Overcoming the distortions of Korean history. These four parts have not been created equally. The first is arguably the least interesting for most readers. It suffers from a problem inevitably associated with essay collections such as this volume: some articles, especially the older ones, will have been surpassed by more recent studies. And ironically, given the influence of Yi Taejin's socioeconomic and social research, this is precisely what has happened to the articles collected in part one. Although one could argue that it is relevant to have these articles available in English, I have my doubts. To name but one example, the
first article “Social change during the Koryo-Choson transition” is a good example of the notion that a new class of landed gentry was responsible for the transition, but John Duncan’s research has since made this idea untenable. At the very least, an article defending the notion of the emergence of a new class during the transition must engage with Duncan’s arguments. Obviously, Yi’s article does not, since it predates Duncan’s work. This does not reflect on the value of the article, but it does put a question mark behind the decision to translate it into English now. At the same time, it should be mentioned that there is of course always a trade-off involved between aspiring to completeness and being up-to-date in the editing of a volume of such as this.

The three remaining parts incorporate increasingly more recent articles ranging from 1991 to 2004. Two of these are very general articles originally written for the Han’guksa shimin kangjwa series (Public Lectures on Korean History) which address a broad audience: broader, perhaps, than the audience that will be interested in this volume. Ideally, a review of this book would engage with all the major arguments presented. That, however, would probably result in a separate volume. Instead, I will focus on a number of Yi T’aejin’s most important general arguments. Perhaps the most obvious element of Yi T’aejin’s scholarship is the concern he displays to make Korean history (independent of the particular period he works on) understandable, legible if you will, as a part of world history. To this end, he makes sure his research is in touch with research done in and on Japan, China and the international world in general. As such his work on the effects of the Little Ice Age in mid-Choson was groundbreaking: it not only offered an explanan to phenomena otherwise difficult to grasp, it also made his research accessible to historians of other areas, dealing with the same problems. A minor point in his persistent efforts to have Korean history count as ‘real’ history is that it sometimes border on the preachy, which might be counterproductive.

Yi’s re-evaluation of Kojong and his (once) contested appraisal of Kojong as a strong and able monarch appeared in Korean as a monograph and has also found its way into English presentation in the form of several articles. It is certainly of importance to have Yi’s voice in English contributing to the debate on late 19th and early 20th century Korea. Too often, a sense of negativism has pervaded English-language studies on Kojong. And although I think Yi is probably a bit too positive in his reappraisal of Kojong, his view might just balance out the debate. Closely connected to his research on Kojong is his understanding of the illegal nature of the treaties that Japan forced on Korea. Focusing on the seals used (or not used), his view that the 1910 annexation treaty was never properly ratified by the Korean monarch and as such not valid, has penetrated even into the international law arena (http://opiniojuris.org/2010/08/11/the-case-of-the-wrong-seal-was-korea-legally-annexed-by-japan/). Nonetheless, despite the historiographical and perhaps moral implications of Yi’s research (which he has been conducting for years now in close dialogue with Japanese scholars, publishing in Japanese also), international law scholars seem reluctant to agree with Yi’s conclusion that lack of ratification erases

the validity of the treaty. Even so, the problematizing of the treaty signing processes is an important step in understanding how the annexation came about.

Although overall I am sympathetic to Yi T’aejin’s mission to write Korean history that quite literally measures up to the histories of other parts and periods of the world, I have discerned a failure in Yi’s way to problematize the concepts he uses to draw Korean history into the international discourse. His studies on modernization and neo-Confucianism in particular are exemplary of such an approach. While understandable, methodologically the approach to use concepts developed to suit quite different historical experiences (even if like modernity they subsequently claim universal status) without thorough and critical reflection on their origins, uses and abuses may in the end turn out to be self-defeating. Like a Trojan horse, such concepts may seem to bring emancipation from a view of history that is no longer tenable, but what they deliver instead is not necessarily better. On the other hand, it needs to be said that thanks to the efforts of scholars such as Yi T’aejin, other scholars can now take a more critical look at the concepts of modern historiography and emancipate Korean history not only in terms of subject and theme, but also in terms of theory and abstract notions that do not necessarily take problematic ‘universal’ concepts such as modernity as their thinking and arguing tools.

The Dynamics of Confucianism and Modernization in Korean History is a thoughtfully and carefully edited and translated collection of articles by one of Korea’s most eminent historians. Despite some of the articles having become outdated by now, the book offers plenty for students of Korean history to chew on. In virtue of the excellent translations, the articles are easily accessible. I imagine this volume will be a useful addition to the English-language scholarship in the many periods and subjects Yi T’aejin has written about, foremost his reappraisal of Kojong and the controversies on the treaties.

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Leiden University