

BOOK REVIEW

Marie Seong-Hak KIM, ed. *The Spirit of Korean Law: Korean Legal History in Context*. Leiden and Boston: Brill, 2016. 272 pages. ISBN 978-90-04-29077-8 (Hardback). 173.00 USD.

The essays in this volume covering the Chosŏn, colonial, and modern periods, are a great addition to the growing body of literature on Korean legal history. Taking into consideration the fact that previous edited volumes in English on Korean legal history were mostly published in the 1980s, this volume is a welcome addition in that it fills a lacuna in a field that continues to be relatively neglected. As the title suggests, the aim of the collected essays is to search for “the spirit of Korean law” through examining the processes of legal borrowing in Korean history. The title of the volume may at first seem unappealing in that seeking the “spirit” of Korean law appears somewhat outdated and precarious by attempting to essentialize it. However, on the contrary, the aim of the volume is to use an analytical framework of legal borrowing to illuminate Korea’s interaction with Chinese law in the Chosŏn period and “Japanized imported European law” in the twentieth century (5).

The book, which has an introduction and nine chapters, is divided into three main parts. Part I discusses how Sinicized law or Confucian law influenced codification, judicial decisions, and legal reforms during the Chosŏn period. Part II shows the transplantation of modern laws and a legal system during the Japanese occupation period by exploring the themes of constitutional law, civil and criminal law, and international law. In investigating the postliberation period, Part III primarily focuses on the new constitution of South Korea and discusses the issue of the national security law and the search for a new liberal constitution in the context of the Cold War.

Part I begins with Chapter 2, which is co-authored by Jérôme Bourgon and Pierre-Emmanuel Roux, by examining the Chosŏn law codes in a broad East Asian context. This chapter argues that Korean judicial decisions, compared to Chinese ones, were “less systematic and more piecemeal, or even incoherent and contradictory” but also “less stereotyped, less subservient to the formulaic jargon of the Great Ming Code” (38). In Chapter 3, Frédéric Constant continues the discussion of the Chinese influence in not only legal codes, but also legal thought, by delving into the notion of requital for life in death penalty cases. He shows the importance of Confucian ideology and how kings interpreted Chinese law according to the Korean context. Unlike the previous two chapters that focus on the reception and the interpretation of Chinese law, in Chapter 4 Anders Karlsson delves into the legal development of indigenous codes and argues that Chosŏn law should be understood less in terms of Confucian ideology, but more as judicial decisions that were made based on political necessities and exigencies.

Moving on to the transition from traditional to modernity, Part II focuses on the establishment of modern law and a legal system under Japanese colonial rule. In Chapter 5, Noriko Kokubun successfully shows how political nationalism evolved

into legal nationalism, which led to the rise of the constitutional thought of Korea. She analyzes how Korean intellectuals appropriated the Confucian legal tradition and Japanese law that was influenced by the German model in constructing Korean constitutional thought. In Chapter 6, Marie Seong-Hak Kim examines Korean law and jurisprudence during the period of Japanese occupation. Kim makes two basic claims: first, that contrary to common belief, Japanese colonial courts were characterized by probity and efficiency, contributing to the success of post-independence notions of impartial justice; and second, that unlike the Dutch and other European colonial powers, Japanese judges in Korea developed Korean customary law in a modernizing manner in order to arrive at reasonable judicial outcomes. Kim's generous perspective on Japanese courts is provocative, and she admits that some may find her assessment "overly kind to colonialism" (153). Next, Samuel Guex addresses why Koreans and Japanese disagree on the legality of the Korea-Japan Annexation treaties. He outlines the two main arguments against the treaties' legality, namely coercion and procedural inadequacy. Guex then claims that assertions from Japanese liberals that the treaties were legal but illegitimate are seen as provocative because Koreans view moral and legal responsibility for the treaties as tightly entwined. This chapter seems out of place in the collection because it does not engage with the book's theme that Korean law has developed through interactions with outside laws. Indeed, it does not discuss Korean law at all, but rather addresses a narrow international law topic and comes to a conclusion that few will find particularly surprising or noteworthy.

Part III of the book continues to discuss the modern law and legal system, but in the postliberation context. In Chapter 8, Joon-Young Moon examines the making of the Constitution and Civil Code in postliberation Korea. After contextualizing the challenging political situation of the time, Moon describes how drafters of both the Constitution and Civil Code included elements derived from foreign laws (including German, French, and Swiss law, but especially the Japanese and Manchu Civil Codes), along with "uniquely Korean inventions" (177). Moon pays particular attention to the incorporation of customary law under the post-independence legal system, with a focus on the evolving regulation of family law and *chōnse* contracts. In Chapter 9, Justine Guichard analyzes the role of the Constitutional Court in redefining the contours of the concept of enmity. The first part of her essay discusses the establishment of the Court in 1987, noting particularly the institutional elements that were drawn from the German model. She then moves on to review the Court's jurisprudence, first focusing on cases narrowing the scope of repressive criminal law provisions, and then on cases upholding laws and policies left over from the pre-democratic period, such as the National Security Act, the ideological conversion policy, and the ban on conscientious objection to military service. Her thesis is that the Court has not (contrary to some observers' opinions) aimed to weaken state power, but rather to legitimize state power "by subjecting it to the dictates of the rule of law" (221). Finally, Tom Ginsburg in Chapter 10 reviews recent Korean legal reforms. He argues that prior to the mid-1990s, Japan, Korea, and Taiwan formed a "Northeast Asian Legal Complex," by which he means the set of institutions bequeathed by

Japan that saw law as an instrument of state modernization. Ginsburg then argues that Korea (like Japan and Taiwan) has engaged in an interlinked set of reforms since the mid-1990s whereby governments have sought legitimation through public participation rather than any particular set of outcomes (234). While his view that Korea was formerly a “mere object of reforms conceived elsewhere” (259) may be inconsistent with the rest of this book, Ginsburg does point to an interesting shift in institutional legitimation, as contextualized by comparative research.

The essays in this volume collectively offer a significant understanding of the process of legal “diffusion and reception” in Korean history. The contributors do a fine job of explaining the importance of how Korean law evolved from the Chosŏn to the postliberation era. However, one critique of the volume is that the evolution of law is narrowly defined or understood in Korean history. The editor states, “the evolution of law is in the hands of the legal elite, not society or the people” (6). As a volume, it is fine to focus on the legal elites and their interpretation of laws in examining the evolution of Korean law. However, to claim that the evolution of law was only shaped by legal elites neglects to consider the complex outcome of the law that was co-constructed by the state and society across time and space. Despite the narrow understanding of the evolution of law in Korean history, this quibble does not diminish the significance of the volume. In conclusion, the collected essays in the volume provide a solid baseline for future research of the Korean law in a broader East Asian and global legal context.

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