

Presentation The Structure and Approach of Korean Legal Scholarship

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In this article the author told us that the Korean laws are much influenced by German legal tradition filtered through Japan from the late 19th century until 1945. Most of Korea's judges, lawyers, prosecutors, and legal scholars in the legal profession are still heavily influenced by a Japanized European approach to law and legal scholarship. That made Korean law's peculiar characters.

The author analyses the significance of comparative study of law and the difficulties to approach Korean law for foreign comparative lawyers, The author also introduced the Korean legal materials by summary.

A. The comparative Study of Korean law and society

It is significant to pursue comparative legal studies between law of one's home jurisdiction and law of other countries. One of the most important benefits of comparative law is that it can provide a knowledge of the different patterns of legal thinking current in the world. But the study of various rules, institutions and legal systems, their comparison and the pointing out of similarities and differences in the fields of study is something which can lead us only to the presentation of a superficial framework, so superficial in fact that it is of little value for supplying theoretical consequences or practical

directives for future action. Comparative law must not limit itself to consideration of rules currently in force, but it must , with the aid of socio-legal techniques, examine the degree of relationship or conflict between the rules formerly in force and the present patterns of legal conduct. For those who take this view of comparative law, the development of Korean law provides material which will enable them to extend their studies both substantially and methodologically. On the other hand, Korea's success in terms of economic growth and democracy would interest many comparative lawyers, especially those in developing countries.

To pursue comparative legal studies between law of one's home and Korean law, he has to learn that in Korea society today, a transitional state between Confucianism and capitalism exists side by side with that of an already well advanced capitalism, and these two aspects are interrelated in a very complex manner. That is what we call Double Structure . The reality of Korean law would be misunderstood if only one side of this double structure was considered. And the double structure of Korean society will continue to exist as before for a certain long time. It is wise, therefore never to forget that Korea is in the process of changing and that Korean society has a complex and developing structure.

B. Korean language in the Study of Korean Law

When foreign lawyers wish to study Korean law in a more detailed way, they have to learn Korean language. To most people, foreign language are difficult. But the problem is that the Korean language is very complicated. Firstly, Korean language is less logical and less ordered than European language and Chinese. Secondly, in Korean language, the expressions used

for the same thing varied noticeably according to the social class of the persons concerned. But with an adequate knowledge of the Korean language, the difficulties likely to met during research can be encountered and overcome more successfully.

C. Research in Korean Legal Materials

Differing from a American lawyer, a Korean lawyer would tend to proceed from the consideration of a general theory to the application of the theory to a particular problem. It is a Korean lawyer's job to interpret and elaborate more generally the codified laws that are the primary statements of an integrated body of general theory, sometimes literally or by analogy. So as a starting point of research in Korea, therefore, one must familiarize oneself with the basic relevant statute in the compendium of laws, narrow down the relevant provisions and move into the detailed commentaries, textbooks or articles written by scholars and lawyers.

1. Six Basic Codes and Other Laws

There are Six basic codes and other forms of written law in Korea now. Six basic codes are: the Constitution, the Civil Code , The Commercial. Code, the Code of Civil Procedure, the Criminal Code, and the Code of Criminal Procedure. The code is the basis for judicial decisions. Learning, therefore, to interpret the text of the codes and other legal provisions is an important part of Korean legal study and judicial decision-making.

2. Custom

In Korean law, custom is generally considered a source of law. Custom is usually a subsidiary source of law that a judge can apply only in the absence of statute.

3. Jori

Which means the general principles of law. When the judge is unable to resort either to legislation or to custom to reach a decision, they are allowed to resort to jori or common sense to fill gaps in legislation.

4. Cases and Commentaries

Although the number of court cases in Korea is a lot fewer than in Western countries, case law, to the extent available, is very important in determining the status of Korean law in a specific area, particularly in civil and commercial matters. According to the majority view, legal commentary is technically not a source law., but legal commentary is of great importance in the legal system.

5. Legal Theory

Legal theory is very important to the formation of positive law. But Korean law does not recognize legal theory as a source of law.

Because of the peculiar history background of Korean law, the allure of western ideas is still dominant. The author suggested that scientific method must be built up and continually reworked in order to apply better to the objects under investigation and to provide for better analysis of them. I agree with him, too.